IN THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 12-3780

Angela Ames,
Plaintiff - Appellant,

v.

Nationwide Mutual Insurance Company; Nationwide Advantage Mortgage Company; Karla Neel
Defendants - Appellees

On Appeal from the United States District Court for the Southern District of Iowa
Central Division
No. 4:11-cv-00359 RP-RAW
The Honorable Robert W. Pratt

BRIEF OF *AMICI CURIAE* AMERICAN CIVIL LIBERTIES UNION FOUNDATION *ET AL.* IN SUPPORT OF PLAINTIFF-APPELLANT'S PETITION FOR REHEARING *EN BANC*

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rules of Appellate Procedure 26.1 and 29(c), the American Civil Liberties Union Foundation and the ACLU of Iowa state that they are corporations organized under § 501(c)(3) of the Internal Revenue Code. The American Civil Liberties Union Foundation and the ACLU of Iowa do not have parent corporations, nor any stock held by a publicly held company.

RULE 29(C)(5) STATEMENT

Pursuant to Federal Rules of Appellate Procedure 29(c)(5), *Amici Curiae* state that no party's counsel authored the brief in whole or in part; no party or party's counsel contributed money that was intended to fund preparing or submitting the brief; and no person—other than *Amici Curiae,* their members, or their counsel—contributed money that was intended to fund preparing or submitting the brief.

STATEMENT OF INTEREST OF *AMICI CURIAE*

The American Civil Liberties Union (ACLU) and the ACLU of Iowa submit this brief on behalf of the ACLU Foundation and 11 other organizations dedicated to ending discrimination against women in the workplace.[1] A description of the individual organizations and their interests in this case is contained in Appendix A to this brief.

SUMMARY OF ARGUMENT

Amici submit this brief to highlight the importance of this Court's consideration of issues surrounding sex stereotypes, and specifically, stereotypes regarding pregnancy, motherhood, and caregiving, in considering whether to grant rehearing or rehearing *en banc*. In this case, rehearing is necessary to secure and maintain uniformity of the court's decisions because the Panel decision fails to take into account Supreme Court and Eighth Circuit precedent establishing that the eradication of sex stereotypes relating to women and motherhood is a fundamental goal of Title VII. *See Price Waterhouse v. Hopkins,* 490 U.S. 228, 251 (1989); *City of Los Angeles Dep't of Water & Power v. Manhart,* 435 U.S. 702, 707 n. 13 (1978). This case, in which the Plaintiff was told to resign so she could "go home

[1] Plaintiff-Appellant has consented to the filing of this brief. Defendants-Appellees state that they oppose rehearing and rehearing en banc, but to expedite the final resolution of this appeal they consent to the filing of this *amicus* brief without the need for filing a motion for leave.

and be with [her] babies," presents a clear example of the precise issue that motivated Congress in enacting the Pregnancy Discrimination Act: the "gender stereotype . . . that women's family duties trump those of the workplace." *Nevada Dep't of Human Res. v. Hibbs*, 538 U.S. 721, 731, 759 n.5 (2003). The decision also conflicts with established Supreme Court and Eighth Circuit law on constructive discharge, which (a) requires that the reasonableness of the employee's actions be viewed in light of his or her specific circumstances, and (b) limits the employee's obligation to attempt to remedy the problem in situations where the employer's official act precipitated the resignation or further attempts would be futile. Had the Panel given proper consideration to these factors, it would likely have reached a different result. *See Nat'l Labor Relations Bd. v. Brown & Root, Inc*., 206 F.2d 73, 74 (8th Cir. 1953).[2]

FACTS

On a fundamental level, this case demonstrates the ways in which stereotypical assumptions about the proper place of pregnant women and new mothers are still woven into the fabric of the workplace, raising significant barriers to equal opportunity. When Angela Ames, a loss mitigation specialist at Nationwide Insurance, returned to work on her first day back from maternity leave

[2] The Panel did not reach the other issues raised on appeal, including whether Title VII prohibits discrimination on the basis of lactation and whether the Plaintiff had made out a *prima facie* case of sex discrimination. Should rehearing be granted, *Amici* will seek permission to submit additional briefing on those points.

after having her second baby, she tried repeatedly—and unsuccessfully—to secure a private and sanitary location to express breast milk, as was guaranteed to her by law. *See* 29 U.S.C. § 207(r) (requiring employers to provide "reasonable break time for an employee to express breast milk for her nursing child for 1 year after the child's birth each time such employee has need to express the milk").[3] Ames's attempts to secure these accommodations were interrupted when, Neel, the head of her department, stated directly to her, "I think it would be best for you to go home and be with your babies," handed her a pen and paper, and dictated to her what she should write in her letter of resignation.

Because she knew she intended to breastfeed, Ames had begun her attempts to secure a location to pump breast milk during her maternity leave, expressly requesting information on the accommodations available from the disability case manager. The case manager informed her that she could use the company's lactation room, but failed to mention that there was a three-day waiting period to

[3] Women who are away from their babies for work or other reasons must express breast milk on roughly the same schedule as their babies nurse, which for Ames was approximately every three hours. (App. 428-29). Failure to express breast milk on a routine schedule that parallels the baby's nursing schedule leads to pain, engorgement of the breasts, and possible medical complications including infection, blocked milk ducts, and decreased milk supply. (App. 496-97). *See also* Kathleen A. Marinelli et al., Acad. of Breastfeeding Med., *Breastfeeding Support for Mothers in Workplace Employment or Educational Settings*, 8 Breastfeeding Med. 137 (2013), *available at* http://www.bfmed.org/Media/Files/Documents/pdf/Statements/ABM_position_on_mothersinworkplace_2013.pdf.

access it. (App. 429, 431). No one else mentioned this policy to Ames prior to her first day back at work.

During Ames's maternity leave, Neel called to inform her that the company had miscalculated her available FMLA leave, and that she would have to return to work several weeks prior to the previously agreed-upon date, and suggested that if Ames took any additional unpaid leave there would be "red flags" and "problems." (App. 177). Neel had also made negative comments during Ames' pregnancy, including rolling her eyes and stating, when Ames told Neel that her doctor had ordered her on bed rest, that when Neel had been pregnant "all [she had] needed was a pocketful of Tums and [she] was good to go." (App. 163).

At the time of Ames's arrival on her first day back from her leave, it had already been over three hours since she had nursed, and she began attempting to find a location to pump almost immediately. She first approached Neel, who stated that it was "not her job" to help her find a location to pump. (App. 515). She then asked at the security desk, which sent her to the company nurse, who informed her, for the first time, that there was a three-day wait to be approved to use the lactation room. The nurse suggested that she could pump in the "wellness room," but stated that it was currently occupied by a sick employee, had no lock on the door, and "might expose her breast milk to germs." The nurse advised to check in 15 -20 minutes if the room was available, and if so, should place a chair against the door

and sit in it while she was pumping to prevent others from entering. (App. 430-31, 458, 466-467, 515-16).

While she was waiting, Ames met with her immediate supervisor, Brinks, who informed her that she had two weeks in which to complete the eight weeks of work that she had missed while on maternity leave, or face discipline, which would require her to work a great deal of overtime. (App. 430, 516, 450-52).

Ames then went back to Neel, by now in extreme pain (App. 496-97), to again seek help finding a place to pump. It was then that Neel responded "I think it would be best that you go home to be with your babies," handed her a pen and paper, and dictated her resignation letter, saying "just write 'As of July 19th, I, Angela Ames, give my resignation to Nationwide,' and then sign it." (App. 437-39). Ames, believing she was being told to quit, submitted her resignation. This suit followed.

ARGUMENT

I. THE PANEL'S DECISION FAILS TO TAKE INTO ACCOUNT TITLE VII'S GOAL OF COMBATING SEX STEREOTYPES.

In reasoning that Ames had not met the requirement for constructive discharge, the Panel opined that it was "doubtful whether Neel's comment that it was best that Ames go home to with her babies might support a finding of intent to force Ames to resign." On the contrary, Neel's comment and accompanying actions were predicated on explicit stereotypes about the role of women in the

workplace that the Supreme Court and this Court have previously recognized as core prohibitions under Title VII and the Pregnancy Discrimination Act. *See Price Waterhouse*, 490 U.S. at (1989); *Hibbs* at 731, 759 n.5; *Lewis v. Heartland Inns of America, L.L.C.*, 591 F.3d 1033, 1038-39 (8th Cir. 2010).

As the Supreme Court has explained, "[i]n forbidding employers to discriminate against individuals because of their sex, Congress intended to strike at the entire spectrum of disparate treatment of men and women resulting from sex stereotypes." *Manhart*, 435 U.S. at 708 n.13 (citation omitted). Indeed, one of Title VII's principal goals was to move society "beyond the day when an employer could evaluate employees by assuming or insisting that they matched the stereotype associated with their group." *Price Waterhouse*, 490 U.S. at 251 (1989). *Accord Lewis*, 591 F.3d at 1042 (reversing summary judgment for the employer where plaintiff alleged she was discriminated against because her appearance was not typically feminine, concluding that "[c]ompanies may not base employment decisions . . . on sex stereotypes…"); *Carter v. United Food & Commercial Workers, Local No. 789*, 963 F.2d 1078, 1082 (8th Cir. 1992) ("biased remarks" about the role of women in collective bargaining negotiations represented "exactly the sort of 'invidious discrimination' that Title VII was designed to prevent").

In addressing sex stereotypes, the Supreme Court has placed special emphasis on assumptions relating to women's caregiving responsibilities in light of

Congress's findings that "the faultline between work and family [is] *precisely where sex-based overgeneralization has been and remains strongest*." *Hibbs*, 538 U.S. at 738. *See also Lewis*, 591 F.3d at 44 (recognizing the "illegal sex stereotype that women would prioritize child care responsibilities over paid employment" (citing with approval *Chadwick v. WellPoint, Inc.*, 561 F.3d 38, 42 (1st Cir. 2009) (reversing summary judgment for defendant where plaintiff was denied promotion after supervisor stated that it was because with two young children she had "too much on her plate") and *Back v. Hastings on Hudson Union Free Sch. Dist.*, 365 F.3d 107, 120 (2d Cir. 2004) (finding that statement that a mother who received tenure "'would not show the same level of commitment [she] had shown because [she] had little ones at home'" showed discriminatory intent in the tenure decision)).[4] Thus, "where an employer's objection to an employee's parental duties is actually a veiled assertion that mothers, because they are women, are insufficiently devoted to work, or that work and motherhood are incompatible, such treatment is gender based and is properly addressed under Title VII." *Plaetzer*

[4] This recognition in *Lewis* calls into question this Court's previous holding in *Piantanida v. Wyman Ctr., Inc.*, 116 F.3d 340, 342 (8th Cir. 1997), relied on by the District Court, that discriminatory treatment based on parental status *alone* is not prohibited by Title VII. At a minimum, *Lewis* strongly suggests that *Piantanida* should be limited to the facts of that case, in which the plaintiff did not actually assert that she had been subjected to discrimination on the basis of sex stereotypes. *See Nelson v. Wittern Grp., Inc.*, 140 F. Supp. 2d 1001, 1007 (S.D. Iowa 2001) (Pratt, J.) (distinguishing *Piantanida* on that ground where plaintiff had alleged discrimination on the basis of pregnancy as well as being a "single unwed parent").

v. Borton Auto., Inc., No. Civ.02-3089, 2004 WL 2066770, at *10 n.3 (D. Minn. Aug. 13, 2004).

It is difficult to think of a statement that embodies this stereotype more completely than Neel's statement that it would be "best" for Ames to "go home and be with [her] babies." Moreover, Neel's statement must be viewed in the context of the other events leading up that moment, including her derisive comments regarding Ames's pregnancy, her pressure for Ames to return to work before the previously agreed-upon date, Brinks's punitive insistence on her making up her missed work in an unreasonable time-frame and threats of discipline,[5] and, as argued below, the lack of facilities readily accessible to nursing mothers. *Cf. Roberts v. Park Nicollet Health Servs.*, 528 F.3d 1123, 1128 (8th Cir. 2008) (direct supervisor's sighing and asking if plaintiff intended to keep the pregnancy and stating that "with all the problems" the plaintiff might be having soon, termination was "probably the best decision" were sufficient to raise inferences of discrimination and show pretext). Viewed in this light, the picture that emerges is of a workplace that is at best inhospitable and at worst overtly hostile to pregnant

[5] The Panel's conclusion that Brinks's expectations of Ames were reasonable because he "expected all of his employees to keep their work current" and that "Nationwide's policies treated all nursing mothers and loss-mitigation specialists alike" fails to view the evidence in the most favorable light. Brinks demanded that Ames make up approximately eight weeks' work in two weeks' time, or face discipline. A reasonable juror could conclude that Brinks was setting up unreasonable demands with the intent of forcing her to quit. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322–23 (1986).

women and new mothers, *see* Joan Williams, *Unbending Gender* 1-3 (Oxford Univ. Press 2000); in dismissing evidence of blatant sex stereotypes, the decision conflicts with this body of law, and undermines robust enforcement of Title VII.

II. THE PANEL DECISION CONFLICTS WITH ESTABLISHED SUPREME COURT AND EIGHTH CIRCUIT STANDARDS ON CONSTRUCTIVE DISCHARGE.

In order to prove a claim of constructive discharge under Title VII, a plaintiff must show that (1) "a reasonable person would have found the conditions of employment intolerable" and (2) the employer "either intended to force her to resign or could have reasonably foreseen that she would do so as a result of its actions." *See* Op. at 6 (citing *Sanders v. Lee Cnty. Sch. Dist. No. 1*, 669 F.3d 888, 893 (8th Cir. 2012)). The Panel decision fails to apply this standard properly and creates a conflict with established law because it (1) fails to take into account Ames's specific circumstances as a lactating woman, (2) fails to recognize that Ames's resignation, as the result of an official act by her supervisor, was imminently foreseeable, and (3) ignores established law exempting employees from the obligation to attempt to remedy a problem before resigning if attempting to do so would be futile.

First, the decision fails to inquire whether the situation would have been intolerable to a reasonable person *in Ames's position*—i.e. a lactating woman. *See Parrish v. Immanuel Med. Ctr.*, 92 F.3d 727, 732 (8th Cir. 1996) (constructive

discharge "requires a showing that a reasonable person *in the employee's situation* would find the conditions intolerable" (emphasis added)); *Pennsylvania State Police v. Suders*, 542 U.S. 129, 141 (2004) (inquiry in constructive discharge is whether "working conditions [had] become so intolerable that a reasonable person *in the employee's position* would have felt compelled to resign"). Ames had been forced to make repeated attempts to secure an appropriate location in which to pump since her arrival at work that day—at which point it had already been over three hours since she had last nursed her baby. By the time she returned to Neel, she would have been in extreme pain and discomfort. (App. 496-97).The decision fails to take these factors into account in determining whether the conditions had become objectively intolerable.

The same error is evident in the Panel's finding that "Ames was denied immediate access to a lactation room only because she had not completed the paperwork to gain badge access." A company policy that requires lactating women—without exception—to wait three days upon returning to work before they are provided with access to a place to pump is patently unreasonable in light of the medical consequences of failing to pump on a regular schedule. It also violates the requirements of the Nursing Mothers provision of the Affordable Care Act. *See* 29 U.S.C. § 207(r)(1)(a) (requiring break time to be provided "*each time* such employee has need to express the milk" (emphasis added)). A reasonable

person in Ames's circumstances—i.e., a lactating woman in increasing pain due to the need to pump—could find such a situation intolerable.[6]

Second, the Panel's finding that Ames "did not give Nationwide a reasonable opportunity to address and ameliorate the conditions that she claims constituted a constructive discharge" conflicts with the Supreme Court's holding in *Pennsylvania State Police v. Suders*, 542 U.S. 129 (2004). *Suders* instructs that the affirmative defense available to employers in sexual harassment cases articulated in *Faragher v. Boca Raton*, 524 U.S. 775, 808 (1998) and *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742, 765(1998)—that the employer exercised reasonable care to prevent and correct harassment, and the employee unreasonably failed to take advantage of those preventive or corrective opportunities—is not available where a supervisor's official act shows "that the supervisor has used his managerial or controlling position to the employee's disadvantage." *Suders*, 542 U.S. at 148-49.

In this case, Ames was *still in the process* of attempting to provide Nationwide with an opportunity to address the problems when she approached Neel, who cut that process short by stating that she should resign, handing her a

[6] The Panel decision implies that it was unreasonable of Ames not to have located that policy in advance of her return, but omits the fact that neither the disability case manager nor anyone else at the company ever informed her of its existence, although she had directly informed the case manager that she intended to pump and requested information about the available facilities. (App. 431-33).

pen and dictating her resignation. Under *Suders*, that act relieved Ames of any obligation to pursue the matter further, and rendered the company strictly liable. *See id*. at 150 (finding that *Robinson v. Sappington*, 351 F.3d 317, 337 (7th Cir. 2003), which had denied summary judgment for the defendant on constructive discharge where the plaintiff had been transferred to another job, told it would be "living hell," and pressured to resign, was correctly decided).

Moreover, in failing to recognize the impact of Neel's act on Ames, the Panel decision is in conflict with precedent establishing that an employee can demonstrate constructive discharge by showing that the resignation was "foreseeable." *See Campos v. City of Blue Springs*, 289 F.3d 546, 550-51 (8th Cir. 2002) ("To prove constructive discharge, [the plaintiff is] required to establish that the [defendants] . . . deliberately made or allowed her working conditions to become so intolerable that she had no other choice but to resign, *or at least [should] have reasonably foreseen [the plaintiff's] resignation as a consequence of the unlawful working conditions*." (internal quotation and citation omitted, emphasis added)). Because Neel could have reasonably foreseen that Ames would resign after she directly suggested it and dictated her resignation letter, Ames has demonstrated the requisite level of employer intent. *See id.* at 550 (holding that the plaintiff's resignation was a "foreseeable consequence" of her dissertation chair's "refus[al] to respond to her request to attend dissertation meetings, which were a

prerequisite to her continued employment"); *Ogden v. Wax Works, Inc.*, 214 F.3d 999, 1007-08 (8th Cir. 2000) (upholding jury verdict on constructive discharge where supervisor failed to conduct thorough investigation of harassment and told plaintiff that she could no longer work for the company); *Bergstrom-Ek v. Best Oil Co.*, 153 F.3d 851, 859 (8th Cir. 1998) (upholding jury verdict on constructive discharge because plaintiff's resignation was foreseeable consequence of her transfer and reduction in hours following her complaints of pregnancy-based harassment); *Parrish*, 92 F.3d at 732 (employer's proposed reassignment of plaintiff to new position with demeaning tasks and later hours made her resignation foreseeable for purposes of establishing constructive discharge); *Smith v. World Ins. Co.*, 38 F.3d 1456, 1462 (8th Cir. 1994) (upholding jury verdict where age discrimination plaintiff was offered early retirement but his supervisor informed him he would start "turning the screws" if he remained on the job).

Finally, the Panel decision ignores previous decisions of this Court holding that "[i]f an employee quits because she reasonably believes there is no chance for fair treatment, there has been a constructive discharge." *Kimzey v. Wal-Mart Stores, Inc.*, 107 F.3d 568, 574 (8th Cir. 1997) (citing *Winbush v. Iowa*, 66 F.3d 1471, 1485 (8th Cir.1995)); *accord Sanders*, 669 F.3d at 893-94.[7] By the time

[7] The cases relied on in the Panel opinion are distinguishable because in those cases the plaintiffs failed to notify the employer of the unlawful conditions, and did not have reason to expect termination if they did not resign. *See Alvarez v. Des*

Ames approached Neel for the second time that day, she had already unsuccessfully raised the issue with two other company employees; when Ames responded by stating that she should resign, Ames could reasonably have concluded that further attempts to resolve the problem would be futile. Nor did Ames "jump to the conclusion that the attempt [to pump in the wellness room] would not work and that her only reasonable option was to resign." Rather, she was informed *directly* by the company nurse that the room was (a) not free from intrusion, (b) not sanitary, and (c) not available at the time she requested it, with no guarantee that it would become available at a later point.[8] Thus, in light of her previous attempts to secure a suitable location to pump, her continuing efforts in returning to Neel, and Neel's indifferent response—culminating in the statement

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Moines Bolt Supply, Inc., 626 F.3d 410, 422 (8th Cir. 2010) (plaintiff had not presented sufficient evidence of constructive discharge where she had reported sexual harassment in the past, but failed to report subsequent incident prior to quitting); *Trierweiler v. Wells Fargo Bank*, 639 F.3d 456, 461 (8th Cir. 2011) (after being told that she could not miss one more day of work, plaintiff stopped showing up to work after missing a day for pregnancy-related reasons). *See also Fercello v. County of Ramsey*, 612 F.3d 1069, 1083 (8th Cir. 2010) (defendant continuously attempted to work out a solution with the plaintiff up until the time that she quit, and took no official action related to ending her employment).

[8] The decision further fails to take into account that even if that room were to become available, it would likely not comply with the requirements of the Nursing Mothers provision because it was insufficiently private and possibly unsanitary. *See* 29 U.S.C. § 207(r) (requiring provision of a space that is "free from intrusion"); Reasonable Break Time For Nursing Mothers, 75 Fed. Reg. 80,073, 80,075-76 (Dec. 21, 2010) (specifying that "the employer must ensure the employee's privacy through means such as signs that designate when the space is in use, or a lock on the door," and expressing concerns about the "risk of being contaminated with pathogenic bacteria").

that she should resign to "be with her babies"—Ames should not be found to have "unreasonably" failed make efforts to correct the problem. *See Campos*, 289 F.3d at 551 (finding constructive discharge where supervisor failed to respond to her requests to attend meetings necessary for her continued employment); *Ogden*, 214 F.3d at 1008 (evidence supported jury verdict on constructive discharge after employer told plaintiff she could no longer work for the company in response to her sexual harassment complaint); *Bergstrom-Ek*, 153 F.3d at 859 (evidence supported jury verdict on constructive discharge where plaintiff had given employer a reasonable opportunity to address sexual harassment by complaining to supervisor).

CONCLUSION

For the foregoing reasons, the petition should be granted.

Respectfully submitted, Dated: April 17, 2014

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APPENDIX A

STATEMENTS OF INTEREST OF *AMICI CURIAE*

The American Civil Liberties Union Foundation (ACLU) is a nationwide, nonprofit, nonpartisan organization with more than 500,000 members dedicated to the principles of liberty, equality, and justice embodied in this nation's Constitution and civil rights laws. The ACLU Women's Rights Project (WRP) is a leader in the legal effort to ensure women's full equality in American society, including in the workforce. Because economic opportunity is the bedrock of personal autonomy, WRP seeks to ensure that women have equal access to employment and fair treatment in the workplace, with a particular emphasis on issues affecting new mothers and pregnant women at work, including breastfeeding.

The American Civil Liberties Union of Iowa, founded in 1935, is the ACLU's statewide affiliate. The ACLU of Iowa works in the courts and legislature to safeguard the rights of all citizens. As an organization dedicated to protecting the constitutional rights of all since 1935, the ACLU of Iowa has a longstanding interest in protecting the rights of women in the workplace, and has accumulated knowledge and expertise in this area. In the 1980s, the ACLU of Iowa worked to advance the equality of women and men in the workplace through large-

scale discrimination suits, achieving court victories that paved the way for modern employment anti-discrimination efforts. The ACLU of Iowa takes an interest in the importance of the fair treatment of pregnant and nursing women in their employment.

9to5 is a national membership-based organization of women in low-wage jobs working to end discrimination and achieve economic justice. 9to5's members and constituents are directly affected by sex and other forms of workplace discrimination, retaliation, and difficulties seeking and achieving redress for these issues. The organization's toll-free Job Survival Helpline fields thousands of phone calls annually from women facing these and related problems in the workplace. 9to5 has worked for four decades at the federal level and in the states to strengthen protections against workplace discrimination. The issues of this case are directly related to 9to5's work to protect women's rights in the workplace and end workplace discrimination. The outcome of this case will directly affect the organization's members' and constituents' rights in the workplace.

A Better Balance is a national legal advocacy organization dedicated to promoting fairness in the workplace and helping employees meet the conflicting demands of work and family. Through legislative advocacy, litigation, research, public education and technical assistance to state and local campaigns, A Better

Balance is committed to helping workers care for their families without risking their economic security. The organization runs a free legal clinic for workers with family responsibilities, where it frequently speaks with women facing barriers at work as they attempt to stay employed while starting a family. Producing sufficient breast milk is a continual challenge for these women, who must contend with workplace hostility simply because they want to both provide for and feed their babies. Without clear legal protections these nursing mothers often lose their jobs, resulting in devastating financial consequences for their families and contributing to their life-long motherhood wage gap.

The California Women's Law Center (CWLC) is a private, nonprofit public interest law center specializing in the civil rights of women and girls. The California Women's Law Center was established in 1989 to address the comprehensive civil rights of women and girls in the following priority areas: Gender Discrimination, Women's Health, Reproductive Justice and Violence Against Women. Since its inception, CWLC has placed a strong emphasis on eradicating sex discrimination. CWLC has authored numerous amicus briefs, articles, and legal education materials on this issue. *Ames v. Nationwide Mutual Insurance* raises questions within the expertise and concern of the California

Women's Law Center. Therefore, the California Women's Law Center has the requisite interest and expertise to join in the amicus brief in the *Ames* case.

Gender Justice is a non-profit law firm based in the Midwest that eliminates gender barriers through impact litigation, policy advocacy, and education. As part of its mission, Gender Justice helps courts, employers, schools, and the public better understand the role that cognitive bias and unconscious stereotyping play in perpetuating discrimination, and what can be done to limit their harmful effects and ensure equality of opportunity for all. As part of its impact litigation program, Gender Justice represents individual citizens in the Midwest region and provides legal advocacy as *amicus curiae* in cases that have an impact in the region. Gender Justice has an interest in protecting and enforcing women's legal rights in the workplace, and in the proper interpretation of the Civil Rights Act of 1964 and other civil rights laws.

Legal Aid Society – Employment Law Center (Legal Aid) is a public interest legal organization that advocates to improve the working lives of disadvantaged people. Since 1970, Legal Aid has represented low-wage clients in cases involving a broad range of employment-related issues, including discrimination on the basis of race, gender, age, disability, sexual orientation, gender identity, gender expression, national origin, and pregnancy. Legal Aid has

appeared numerous times in federal and state courts, both as counsel for plaintiffs and in an *amicus curiae* capacity, to promote the interests of pregnant and parenting workers. Legal Aid also has extensive policy experience advocating for the employment rights of pregnant and lactating women. Legal Aid has a strong interest in ensuring that pregnant women and nursing mothers are granted the full protections of Title VII and other federal and state anti-discrimination laws.

Legal Momentum (formerly NOW Legal Defense and Education Fund) has been a leading advocate for the elimination of unjust barriers to women's economic security for over forty years. By advocating for legislative reform on the federal, state, and city level, Legal Momentum has played a vital role in securing a number of important protections against sex-based employment discrimination. In addition, Legal Momentum has represented several women who suffered employment discrimination as the result of their pregnancy or related conditions such as breastfeeding. Because safeguarding women's employment rights is central to Legal Momentum's mission, the organization has a strong interest in ensuring that women who suffer breastfeeding-related employment discrimination are protected under the Pregnancy Discrimination Act.

The National Center for Lesbian Rights (NCLR) is a national nonprofit legal organization dedicated to protecting and advancing the civil rights of lesbian,

gay, bisexual, and transgender people and their families through litigation, public policy advocacy, and public education. Since its founding in 1977, NCLR has played a leading role in securing fair and equal treatment for LGBT people and their families in cases across the country involving constitutional and civil rights. NCLR has an interest in ensuring that employers that treat people differently based on sex stereotypes are held liable, as Title VII requires.

The National Organization for Women Foundation is a 501(c)(3) organization devoted to furthering women's rights through education and litigation. Created in 1986, NOW Foundation is affiliated with the National Organization for Women, the largest feminist organization in the United States, with hundreds of thousands of members and contributing supporters in hundreds of chapters in all 50 states and the District of Columbia. Since its inception, NOW Foundation's goals have included advocating against sex discrimination in employment, including pregnancy discrimination in the workplace.

The National Women's Law Center (NWLC) is a nonprofit legal advocacy organization dedicated to the advancement and protection of women's rights and opportunities. Since 1972, NWLC has worked to secure equal opportunity for women in the workplace, which includes the right to a workplace that is free from all forms of discrimination, including discrimination on the basis

of gender stereotypes about mothers' competence and commitment, and discrimination on the basis of pregnancy and related medical conditions, including lactation. NWLC has prepared or participated in the preparation of numerous *amicus* briefs in cases involving sex discrimination in employment before the federal Courts of Appeals and the Supreme Court.

Women Employed's mission is to improve the economic status of women and remove barriers to economic equity. Women Employed promotes fair employment practices and helps increase access to training and education. Since 1973, the organization has assisted thousands of working women with problems of discrimination and harassment, monitored the performance of equal opportunity enforcement agencies, and developed specific, detailed proposals for improving enforcement efforts. Women Employed is committed to protecting fair treatment of all working women, including workers who are pregnant or are new mothers who need a location to express breast milk. When an employer does not follow the law on this issue a woman can no longer continue working and has been constructively discharged.

The Women's Law Project (WLP) is a non-profit public interest law firm with offices in Philadelphia and Pittsburgh, Pennsylvania. Founded in 1974, the WLP works to abolish discrimination and injustice and to advance the legal and

economic status of women and their families through litigation, public policy development, public education and individual counseling. Throughout its history, the WLP has worked to eliminate sex discrimination and the application of sex stereotypes to women in the workplace. We have brought and supported challenges to sex discriminatory practices in the workplace, including with respect to pregnancy and nursing mothers. The WLP has a strong interest in the proper application of civil rights laws to provide appropriate and necessary redress to women victimized by discrimination in the workplace.

APPENDIX B

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 32 of the Federal Rules of Appellate Procedure, I certify that the foregoing brief was prepared using Microsoft Word 2010 software, and complies with the limitations in Rule 32 as follows: the type face is Times New Roman, proportionally spaced, fourteen-point font (ten characters per inch) and does not exceed 15 pages. Pursuant to Eighth Circuit Rule 28A(h)(2), I further certify that the digital versions of this brief and the addendum have been scanned for viruses and are virus-free.

/s/ Galen Sherwin

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APPENDIX C

CERTIFICATE OF SERVICE

I hereby certify that on April 17, 2014, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

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