Memorandum

National Organization for Women Foundation

To: NOW Foundation Board Members
From: Jan Erickson, Director of Programs and Bonnie Grabenhofer, Vice President
Date: June 16, 2017

NOW Foundation signed on to quite a few amicus briefs in recent months, covering such issues as employment discrimination that may be related to previous salary information; several cases seeking a clarification on whether sexual orientation discrimination is sex discrimination under the **Title VII, Civil Rights Act of 1964;** whether a naturalized citizen can be stripped of her citizenship if a false statement in a naturalization application is found to be irrelevant in the naturalization process; three transgender bathroom use denial cases; a reanalysis of the rulemaking process regarding the **Veterans Health Administration's** ban on sex transition-related surgery for veterans; and, a pregnancy discrimination case which seeks clarification on whether it is the employer's responsibility to engage in dialogue with a pregnant employee in order to find an alternative solution if the originally-proposed accommodations are not workable.

Employment Discrimination

Rizo v. Yovino

Argument: TBA
Opinion: TBD

In April, a three-judge panel of the **U.S. Court of Appeals for the Ninth Circuit** ruled that pay discrepancies based exclusively on previous salaries are not discriminatory under the federal **Equal Pay Act (EPA)**. The panel reached this decision based on a misinterpretation of *Kouba v. Allstate Insurance Co.* By relying on a false precedent, the court has sanctioned an interpretation of the EPA which contradicts the very purpose of the Act.

Aileen Rizo was a math consultant for the Fresno County Office of Education. In 2012, she learned that a male coworker was being paid $12,000 more per year than she was, despite her having more experience, education, and seniority. When she confronted her employer, she was told that the county's policy for setting pay was based entirely on incoming employees' previous salaries and that the policy was firm.

The EPA prohibits employers from paying workers of different sexes differently for equal work unless the employer can prove that the salary differences stem from seniority, merit, quantity of work, quality of work, or if they can prove that the differences are based on a factor other than sex.

In this case, the couinty Office of Education argues that prior salary should be considered a 'factor other than sex' and therefore that they are not violating the EPA.

However, prior salaries do not exist within a vacuum and are themselves susceptible to the influence of sexist pay differentials. It is possible and likely that Rizo's lower prior salary was due to sex-based discrimination. Basing Rizo's current salary on her prior salary, then, only continues a legacy of discrimination that the EPA seeks to eliminate.

When *Rizo* was heard at the **U.S. District Court for the Eastern District of California**, the court held in favor of Rizo. However, the **U.S. Court of Appeals for the Ninth Circuit** disagreed and vacated the district court's ruling. The Ninth Circuit, however, erroneously relied upon *Kouba v. Allstate Insurance Co.* to decide that prior salary alone can constitute a "factor other than sex." In *Kouba,* Allstate relied on more than just prior salary to determine incoming employees' pays. Since Allstate looked to ability, education, experience, *and* prior salary, the *Kouba* court deemed their practice justified under the EPA. The Fresno County Office of Education, on the other hand, does not include other factors in determining salaries, therefore being susceptible to continuing the gender wage gap.

Women who start with lower salaries will continue to earn less than their male coworkers if their employers decide future pay scales based on past salaries. The **U.S. Equal Employment Opportunities Commission (EEOC)** advises employers to avoid basing such decisions on prior salary, recognizing that the practice perpetuates inequality. New York, California, and Puerto Rico all have laws or executive orders that limit or ban employers from asking about or relying on prior salary to determine pay scales. Massachusetts will enact a similar law in 2018. New York City, Philadelphia, Pittsburgh, and New Orleans have all individually pursued similar legislation. As of May 19th of this year, twenty-one states and localities have introduced bills to ban inquiry into prior salary. The *amicus* brief NOW has signed onto states: "it is nonsensical to conclude that Congress intended [for the EPA] to allow a factor that allows employers to benefit from a 'bargain' caused by historical wage inequities."

We hope that the U.S. Court of Appeals for the Ninth Circuit will revisit the question raised in *Rizo* and give deference to the EEOC as well as national, state, and legislative bodies that have recognized that allowing prior salary as a justification for a wage differential only reinforces the historical pay gap that the EPA seeks to eliminate.

In 2014, President Barack Obama signed the Fair Pay and Safe Workplaces executive order, requiring companies with federal contracts to follow certain labor and civil rights laws. One provision of this order called for paycheck transparency, meaning that the companies would have to provide all employees with detailed statements on earnings, pay scales, salaries, and other details to diminish the gender pay gap and wage theft overall. In March, President Donald Trump revoked this order.

LGBQIA Discrimination

Zarda v. Altitude Express, Inc.

Argument: September 26th, 2017
Opinion: TBD

Cargian v. Breitling USA, Inc.

Argument: TBA
Opinion: TBD

Evans v. Georgia Regional Hospital

Argument: TBA
Opinion: TBD

In the past few months, the **U.S. Court of Appeals for the Second Circuit** has heard a handful of cases concerning whether discrimination on the basis of sexual orientation is a violation of **Title VII of the Civil Rights Act of 1964**, which forbids discrimination "because sex." NOW has signed onto *amicus* briefs with the American Civil Liberties Union to revisit two of those cases: *Zarda v. Altitude Express, Inc.* and *Cargian v. Breitling USA, Inc.* NOW has also signed onto the *amicus* brief to revisit *Evans v. Georgia Regional Hospital*, a similar case heard at the **U.S. Court of Appeals for the Eleventh Circuit.**

Donald Zarda was employed as a skydiving instructor with Altitude Express, Inc. In 2010, before diving in tandem with a female customer, he told her that he was gay to mitigate the awkwardness she might feel by being incredibly physically close to him during their dives. Later, the customer told her boyfriend that Zarda had disclosed his sexuality to her. The male partner then called Altitude Express to complain about Zarda's admission and Altitude Express fired Zarda soon afterward. The **U.S. District Court for the Southern District of New York** ruled against Zarda and on April 18th, 2017, the Second Circuit upheld the district court's judgement.

Frederick Cargian is a gay man previously employed by Breitling USA, Inc. Cargian worked at Breitling for more than 20 years. He was one of their leading sales representatives and was awarded exemplary reviews and bonuses throughout his career. In 2010, Thierry Prissert assumed the role of Breitling's president. Prissert began demeaning, harassing, and treating Cargian differently than other male staff members on account of his sexuality. Prissert felt that Breitling was a "man's brand" and that only stereotypically straight male behavior and identities were appropriate for the company. Prissert then began privileging other male salespeople over Cargian, particularly those who were interested in sports. Cargian and fellow female sales associates were excluded from business and social opportunities arranged by Prissert. In December of 2013, Prissert terminated Cargian and gave his job duties to a young, athletic, straight man with no prior sales experience. The **United States District Court for the Southern**

District of New York ruled against Cargian and the Second Circuit similarly upheld the district court's judgement.

Jameka Evans is a lesbian who performs her gender in traditionally masculine ways. While working as a security officer at Georgia Regional Hospital, Evans was targeted for termination on account of failing to ascribe to feminine stereotypes. She sued for discrimination on the basis of her sexual orientation and gender nonconformity. In March, The Eleventh Circuit ruled against Evans.

In both Zarda and Cargian, the **Second Circuit** chose to exclude sexual orientation from protection granted through Title VII with a three-judge panel explaining that their hands were tied by precedent set by *Simonton v. Runyon*. The only way to overturn a precedent set by a three-judge panel is to hear the case *en banc*, a hearing format that involves all 11 of the circuit's active judges plus any senior judges who participated in the original three-judge panel.

Evans encountered a similar roadblock in the Eleventh Circuit. While there is no **Supreme Court** precedent establishing sexual orientation as "because sex" discrimination, *Price Waterhouse v. Hopkins* is the next best thing. The Supreme Court in *Price Waterhouse* found that discrimination based on sex stereotyping constitutes a "because sex" discrimination and thereby violates Title VII. Heteronormativity—the assumption that heterosexuality is the normal or preferred sexual orientation—positions homosexuality, bisexuality, and pansexuality as violations of heterosexual stereotypes. Therefore, discriminating against an employee because they are not performing heterosexuality is discriminating against them "because sex." Additionally, in *Macy v. Holder*, the EEOC found that Title VII prohibits discrimination based "not only [on] a person's biological sex but also the cultural and social aspects associated with masculinity and femininity," i.e. sexual orientation.

In *Baldwin v. Foxx*, the EEOC ruled that sexual orientation discrimination is "because sex" discrimination and issued guidelines that Title VII should be interpreted accordingly.

The Seventh Circuit recently issued a groundbreaking ruling in *Hively v. Ivy Tech Community College of Indiana,* whereby the court ruled that workplace discrimination based on sexual orientation violates federal civil rights law.

In September, the Second Circuit will rehear *Zarda en banc* and we hope that the court will strike down its miscalculated precedent established by *Simonton* and finally hold in favor of Zarda.

We hope that the Second Circuit will revisit *Cargian*, that the Eleventh Circuit will revisit *Evans*, and that all courts will defer to the EEOC's guidance on this issue, establishing sexual orientation discrimination as "because sex" discrimination once and for all.

Donald Zarda passed away in a skydiving accident after bringing this suit. His estate has taken over the case. The official case name is now as follows: Melissa Zarda, co-independent executor of the estate of Donald Zarda; William Allen Moore, Jr., co-independent executor of the estate of Donald Zarda v. Altitude Express, Inc.; and Raymond Maynard.

Senators Merkley (D-OR), Baldwin (D-WI), Booker (D-NJ), and Cicilline (D-RI), filed a motion to leave to file an amicus brief to support Evans' petition for review en banc. The lawmakers all co-sponsored the Equality Act of 2015, an effort to update civil rights laws to expressly include sexual orientation and gender identity to Title VII.

Transgender Equality

Whitaker v. Kenosha Unified School District

Argument: March 29th, 2017
Opinion: May 30th, 2017

At the end of May, the **Seventh Circuit Court of Appeals** handed down a groundbreaking ruling in favor of a transgender student plaintiff. The panel unanimously decided that the student should have the right to use the boys' restrooms at his school and that such a right is protected under **Title IX of the Education Amendments Act of 1972** and the **Equal Protection Clause of the Fourteenth Amendment**. The court agreed with the lower court's conclusions that the student was harmed significantly by the School District's discriminatory practices.

Ash Whitaker is a transgender boy who attends high school in the Kenosha Unified School District of Wisconsin. He was expressly prohibited from using the same restroom facilities as the other boy students. His teachers consistently misgendered him and refused to address him by his chosen name. The school even requested that Whitaker wear a green wristband so that teachers could more clearly identify him as transgender and alert them when he was using the boy's restroom. Whitaker was threatened with disciplinary action and official reprimands on his school transcript if he continued to use the boy's restroom.

The Seventh Circuit, which covers Wisconsin, Illinois, and Indiana, is the first federal appeals court to find that transgender students have the right to be treated in accordance with their gender identities at school under Title IX and the Constitution. They handed down this ruling even after the Trump Administration rescinded Obama-era guidance on schools' Title IX obligations to transgender students. The circuit's decision relies heavily on *Price Waterhouse v. Hopkins*' theory of sex stereotyping, finding that Ash and other transgender students are thereby able to bring sex-discrimination claims.

In finding that Ash's school had violated his Title IX rights, the opinion states: "[a] policy that requires an individual to use a bathroom that does not conform with his or her gender identity punishes that individual for his or her gender non-conformance, which in turn violates Title IX. The School District's policy also subjects Ash, as a transgender student, to different rules, sanctions, and treatment than non-transgender students, in violation of Title IX. Providing a gender-neutral alternative is not sufficient to relieve the School District from liability, as it is the policy itself which violates the Act." The court also found in favor of Ash's Equal Protection Claim.

When discussing the pervasive argument that allowing transgender students to use the correct bathrooms infringes upon the privacy of other, cisgender students, the opinion reads: "A transgender student's presence in the restroom provides no more of a risk to other students' privacy rights than the presence of an overly curious student of the same biological sex [... o]r for that matter, any other student who uses the bathroom at the same time. [... n]othing in the record suggests that the bathrooms at [Ash's school] are particularly susceptible to an intrusion upon an individual's privacy." Later in the same section, the court notes that "if the School District's concern is that a child will be in the bathroom with another child who does not look anatomically the same, then it would seem that separate bathrooms also would be appropriate for pre-pubescent and post-pubescent children."

We are happy to be standing on the right side of history with Ash and hope that in the future other courts will rely on the *Whitaker* decision to protect transgender students across the country.

G.G. v. Gloucester County School Board

Argument: TBA
Opinion: TBD

This term, the **Supreme Court** was supposed to hear a case seeking to discern whether or not a transgender student in a public school has the right to use the restroom that corresponds with his gender and whether or not transgender identity is protected under the **Fourteenth Amendment** and **Title IX of the Education Amendments Act of 1972**. Unfortunately, on March 6th, the Supreme Court decided that it would not hear the case. Instead, the Court is remanding the case to the **Fourth Circuit Court of Appeals** following the Trump Administration's decision to rescind protective school guidance for transgender students. Because the Fourth Circuit's original ruling was heavily based on such guidance, the Supreme Court has asked the lower court to revisit the case and rule on the underlying statutory question regarding the scope of Title IX.

G.G., also known as Gavin Grimm, is a recent senior at Gloucester High School in Virginia and identifies as a transgender boy. Initially, when Grimm's parents notified his school administrators that he would begin his social transition, he was able to use the boys' restroom without incident. However, after parents at the school complained, the Gloucester High School adopted a new policy that prohibited Grimm from using the restroom that corresponded with his gender identity.

The *amicus* brief focused on three major points: discrimination against cisgender women and transgender people are rooted in the same biases and therefore the same laws and legal principles protect them; protecting transgender students is required to fulfill the purpose of Title IX; and eradicating discrimination based on gender in educational programs and fearmongering about invented threats to women and girls in bathrooms have historically been used to perpetuate discrimination, including against people of color, and to subvert civil rights movements.

Referencing *Price Waterhouse v. Hopkins*' classification of "sex stereotyping" as a discrimination "because sex," the brief claims that "[t]itle IX would not permit a school to force a cisgender boy who identifies as male, but does not conform to stereotypes of masculinity to use a separate restroom...[T]he Restroom Policy in this case violates Title IX because it is premised

on stereotypical expectations of what it means to be a boy: in petitioner's view, G.G. is both perceived as 'not male enough' or not a 'real' boy-- and therefore should not be treated as male-- but also acting 'too male' for his sex identified at birth." Additionally, the brief addresses how the Gloucester County School Board has attempted to uphold its practices because it neither disfavors men or women as a group. Citing *Schroer v. Billington*, the brief argues, "Imagine that an employee is fired because she converts from Christianity to Judaism. Imagine too that her employer testifies that he harbors no bias toward either Christians or Jews but only 'converts.' That would be a clear case of discrimination 'because of religion.' No court would take seriously the notion that 'converts' are not covered by the statute. Discrimination 'because of religion' easily encompasses discrimination because of a *change* of religion." By analogy, discrimination "because of sex" encompasses discrimination because of a change of sex.

Unfortunately, on March 6th, the **Supreme Court of the United Stat**es decided that it would not hear the case this term. Instead, the Court is sending the case back to the Fourth Circuit Court of Appeals, following the Trump Administration's decision to rescind protective school guidance for transgender students. Because the Fourth Circuit's original ruling was heavily based on the Obama Administration's guidance, the Supreme Court has asked the lower court to revisit the case and rule on the underlying statutory question regarding the scope of Title IX.

Decisions like the **Seventh Circuit's** in *Whitaker v. Kenosha*, found in the absence of Obama-era protections for transgender students, should give us hope for Grimm's case and others like his. We hope that the Fourth Circuit will stand its ground and find that Grimm still has a right to use the bathroom that corresponds to his gender under Title IX and the Fourteenth Amendment.

Board of Education of the Highland Local School District v. United States Department of Education

Argument: TBA
Opinion: TBD

In December 2013, the parents of an eleven year old transgender girl, referred to as "Jane Doe" for the purposes of the case, filed a complaint with the **Office for Civil Rights (OCR)** in the **U.S. Department of Education (DOE)**. The complaint alleged that Doe's school district discriminated against her on the basis of her sex by requiring her to use a separate individual-user bathroom and by denying her access to the same bathrooms used by other female students. The district's bathroom policy took a toll on Jane's mental health: her parents reported that Jane began to suffer from extreme anxiety and depression. In May 2014, Jane was hospitalized for suicidal ideation and depressed mood.

In September 2014, Jane's mother filed a complaint with the superintendent, William Dodds, against the principal of her daughter's school, Shawn Winkelfoos, alleging that the elementary school had created a hostile environment for Jane. Dodd's investigation found the Doe family's claim to be without merit. The Doe family then asked Dodd to ask the Board of Education to allow Jane to use the girls' restroom. The Board denied their request.

On March 29th, 2016, OCR notified Highland Local School District that its treatment of Jane violated Title IX. The School District was resistant to this decision and a few weeks later OCR

issued a **Letter of Impending Enforcement Action,** stating that it would "either initiate administrative proceedings to suspend, terminate, or refuse to grant or continue financial assistance to the District or refer the case to the **U.S. Department of Justice** for judicial proceedings." Instead of remedying the situation according the OCR's guidance, the Board of Education brought action against the DOE and the DOJ, alleging that they had violated the **Administrative Procedure Act, the Spending Clause of Article I, Section 8 of the U.S. Constitution**, the federalism guarantees of the **U.S. Constitution**, and the **Regulatory Flexibility Act.** In opposition, Jane and her parents intervened in the suit and filed their own motion against Dodds, Winkelfoos, the Board of Education, and the Highland Local School District. The Does' case alleges violations of Jane's **Fourteenth Amendment** rights to equal protection of the law, her right to be free from sex discrimination under Title IX of the Education Amendments of 1972, and her fundamental right to privacy under the U.S. Constitution.

On September 26th, 2016, the **U.S. District Court for the Southern District of Ohio** found in favor of Jane. In the opinion, the court cites several guidance documents explaining the DOE's interpretation of Title IX and its relevance to transgender students. In February, the Trump Administration rescinded the DOE's guidance on transgender students. The Board of Education is appealing to continue arguing that the DOE and the DOJ had no right to use the documents as a foundation for sanctioning the School District's treatment of Jane.

We hope that the U.S. District Court will uphold its previous ruling and join the Seventh Circuit in affirming that transgender students' constitutional rights are violated when they are barred from the restrooms that correspond with their genders.

Fulcher v. Secretary of Veterans Affairs

Argument: TBA
Opinion: TBD

A case currently pending in the Federal Circuit seeks to reanalyze the rulemaking process regarding the **Veterans Health Administration's** ban on sex transition-related surgery for veterans.

Twenty years after Dee Fulcher left her twelve-year tenure with the Marine Corps as a helicopter hydraulics systems worker, she came out as a transgender woman. Unable to pay for transition-related costs out of pocket, Fulcher looked to the **Department of Veterans Affairs**. The Department, however, operates blanket prohibition on transgender-specific surgical care. Fulcher joined with Giuliano Silva, a transgender man and Army veteran, and with the Transgender American Veterans Association to challenge the Department's stance. In November 2016, the Department of Veterans Affairs denied their original petition, citing a lack of funding for the regulatory change.

Fulcher and Silva's legal team argues that the Department should lift its ban in part because it already provides transition-related healthcare for transgender people like hormone replacement therapy and mental health services. In 2011, the Department issued a directive requiring that staff members must provide such services "without discrimination." The Department also covers similar surgeries for cisgender people, such as mastectomies. Overall, the legal team seeks to

establish that discrimination based on transgender status is prohibited by the "because sex" protection in the **Civil Rights Act.**

We hope that the court will rule in favor of Fulcher, Silva, and over 150,000 transgender Americans thought to have served or to be serving currently in our military and establish that discrimination on the basis of transgender status is prohibited by federal legislation.

Immigration

Maslenjak v. U.S.

Argument: April 26, 2017
Opinion: TBD

In April, the **Supreme Court** heard a case seeking to establish whether a naturalized U.S. citizen can be stripped of her citizenship because she submitted a false statement in applying for naturalization, even if that false statement is deemed immaterial, meaning irrelevant, to her naturalization process.

As the Bosnian civil war drew to a close in 1998, Divna Maslenjak sought refugee status in the U.S. An ethnic Serb, Maslenjak alleged persecution based on two circumstances: her family's Serbian identity and her husband's evading conscription to the Bosnian Serb militia. The Maslenjak family was granted refugee status in 1999 and immigrated to the U.S. in 2000. Maslenjak was then naturalized as a citizen in 2007. During her naturalization process, Maslenjak denied having given any false or misleading information in order to gain refugee status or to avoid deportation.

A few months after being granted citizenship, the U.S. government learned that Maslenjak's husband had lied about avoiding military conscription. In fact, he had served as an officer in a Serbian unit. Maslenjak admitted that she had lied about her husband's situation to immigration officers during her refugee application interview in 1998. She was then charged with two counts of naturalization fraud for denying having ever given false or misleading information to a U.S. official on her Application for Naturalization.

The U.S. government argued that Maslenjak and her family were granted refugee status based on the lie that her husband was evading military service, but Maslenjak's legal team alleges that the status was conferred due to ethnic persecution of Serbs in Bosnia. There is no way to prove or disprove either claim. At her first trial, the jury was told that Maslenjak's lie did not need to be material, or relevant, in order for her to have violated Section 1425(a) of the Federal Criminal Code which authorizes the government to strip a naturalized American of citizenship. Accordingly, Maslenjak was convicted, sentenced, and denaturalized. The U.S. Court of Appeals for the Sixth Circuit later affirmed her conviction and sentencing.

Before the Supreme Court, Maslenjak's lawyer argued that Section 1425(a) inferred a causal connection; that is, a falsehood provided in an individual's naturalization process must be

influential in the government's decision to grant citizenship. If this interpretation were to be accepted, Maslenjak's falsehood would need to have been the sole reason she was granted entry into the country in order to justify denaturalizing her. When the U.S. government argues that falsehoods need not be relevant to the citizenship application process in order to trigger Section 1425(a), it proposes a policy so broad it is humorous. In oral arguments, Chief Justice Roberts asked the government's counsel if concealing having driven five miles over the speed limit and not having been caught would be grounds for denaturalization, to which the counsel had to confirm that yes, it would be. Upon hearing this, Chief Justice Roberts exclaimed, "oh, come on" in disbelief. When the government's counsel later states that lying about one's weight on an immigration form would also count as grounds for denaturalization, Justice Kagan commented, "I am a little bit horrified to know that every time I lie about my weight, it has those kinds of consequences."

In deeming any knowing false statement or omission as grounds for denaturalization, the U.S. risks creating two classes of citizens. Naturalized citizens, as opposed to native citizens, would be subjected to disproportionate and unfair punishments for irrelevant misstatements and omissions that have no bearing on their qualifications for citizenship. We at NOW are concerned about the harmful effects such a policy could have on women and their families.

We hope that the Supreme Court will reverse the judgement of the **Sixth Circuit** and side with **the First, Fourth, Seventh, and Ninth Circuits** in holding that only relevant lies can be considered grounds for stripping someone of their U.S. citizenship. Lawful immigrants seeking citizenship constitute an important segment of American society and we as a nation should help them along the naturalization process, not intimidate them away from seeking citizenship.

Pregnancy Discrimination

Luke v. CPlace Forest Park SNF, LLC

Argument: TBA
Opinion: TBD

Eryon Luke worked as a certified nursing assistant at CPlace Forest Park, a nursing and rehabilitation facility. During her time there, Luke became pregnant with twins and was given a weight-lifting restriction by her physician. She requested light duty from her supervisor who then denied her request. She was then put on leave. After Luke's four months of allotted leave expired, she requested again to be put on light duty, was again denied, and then subsequently fired.

The **Pregnancy Discrimination Act (PDA)** seeks to ensure that pregnant women may work without discrimination. The law requires that employers treat pregnant women the same as other employees on the basis of their ability or inability to work. In *Young v. United Parcel Service, Inc.*, a similar case in which a pregnant women requested light duty and was denied, the Supreme Court found that a balancing test known as the "McDonald Douglas burden shift" should be used to determine whether a pregnant employee has suffered discrimination on account of their

pregnancy. The complainant must prove first that they belong to the protected class of pregnant individuals, they must demonstrate that they has reached out to their employer for reasonable accommodations, they must show that their employer denied their request, and finally they must prove that the employer has provided accommodations to other similarly-abled, non-pregnant individuals.

Luke's employer argued that it was not required to offer Luke light duty because it had not afforded the same to any coworkers similar in their ability or inability to work. However, Luke's discrimination claim is broader than the specific accommodation she requested. She believed that she could have continued her work if she had been afforded increased lifting assistance and/or mechanical lifts, accommodations that non-pregnant workers, including Luke herself, had been previously offered. Unfortunately, the district court found that Luke's PDA claim was limited to her employer's denial of the specific accommodation she recommended. This precedent places the responsibility for identifying reasonable accommodations solely on the pregnant employee while ridding their employer of any obligation to engage in a dialogue aimed at finding alternative solutions if the originally proposed accommodations are not workable.

Young was meant to make accommodation claims less, not more, onerous for pregnant workers. Even so, the district court incorrectly read *Young* as permitting employers to unilaterally deny accommodations proposed by the pregnant worker without engaging in a dialogue about alternatives, and precluding evidence of favorable treatment of pregnant comparators. When the *Young* case was returned to the district court, parties reached a settlement. We hope that in the future courts will clarify the questions raised in *Young* and *Luke* to establish a more flexible interpretation and clarification of employer's/employee's responsibilities in agreeing on appropriate accommodations.

NOW Public Policy Intern **Leah Starbuck** assisted in the preparation of these case summaries.