NOW Foundation Board Report

To: NOW Foundation Board Members
From: Jan Erickson, Director of Programs
(with help from Emmalyn Brown, NOW Foundation Public Policy Intern)
Date: June 27, 2018

LITIGATION

Judge Rules to bring Families Together in 30 Days

On *Ms. L et al v. U.S. Immigration and Customs Enforcement*
Docket No.
Decided: June 26th, 2018
Issue: Whether the "zero tolerance" immigration policy violates the constitution's due process clause, federal law protection asylum seekers and the administration's order to keep families together.

A federal judge on the United States District Court for the Southern District of California, Dana Sabraw, ruled overnight that families must be brought together. The lawsuit cites violations of the Constitution's due process clause, federal law protecting asylum seekers, and of the government's own directive to keep families intact. The **American Civil Liberties Union (ACLU),** filed a federal lawsuit seeking to reunite an asylum-seeking mother and her 7-year-old daughter fleeing violence in the Democratic Republic of Congo, who were separated from each other in the U.S. and detained 2,000 miles apart. **"**Ms. L" and her daughter were reunited in March, though the national class-action lawsuit in this case continued to bring justice to other families.

A federal judge ruled that the American Civil Liberties Union's challenge to the Trump administration's practice of forcibly separating asylum-seeking parents and young children can proceed, rejecting the government's request to dismiss the case. Overnight, Judge Dana Sabraw issued a preliminary injunction Tuesday at the request of the **ACLU** that calls for all children affected by the Trump administration's "zero-tolerance" immigration policy to be reunited with their parents within 30 days.

Seventeen states' and the District of Columbia's Attorneys General also filed suit against the Trump administration over the family separation policy.

Supreme Court Rules in Favor of Pregnancy Crisis Centers

On *National Institute of Family and Life Advocates v. Becerra*
Docket No. 16-1140
Argued: March 20th, 2018
Decided: June 26th, 2018
Issue: Whether the disclosures required by the California Reproductive FACT Act violate the protections of the free speech clause of the First Amendment.

The California Reproductive FACT Act requires that "pro-life" crisis pregnancy centers post notices encouraging pregnant persons to contact the State to receive information on free or low cost abortions, along with notifications concerning the unlicensed status of medically unlicensed crisis pregnancy centers. All of this had been codified into law to make pregnant persons aware of their rights to choose. The National Institute of Family and Life advocates, however, are of a different opinion – that these provisions deny pro-life organizations, such as themselves, the right to freely advertise as part and parcel of their freedom of speech, along with their right to exercise their religious beliefs.

While a district court and the 9th Circuit Court of Appeals both upheld the FACT Act in this case, the U.S. Supreme Court agreed to hear the case on November 13, albeit stating that they would focus only on freedom of speech, ignoring freedom of exercise. *NIFLA v. Becerra* went before the Supreme Court on March 20. NOW Foundation Signed onto an amicus brief crafted by the **National Women's Law Center**, which states that while "some women may benefit from the services [pregnancy centers] offer", it is imperative that persons be able to make their own informed decisions concerning their bodies. The Supreme Court Ruled against the FACT Act, and in favor of Becerra on June 26th, 2018.

Undermining the Fair Labor Standards Act

On Janus V. AFSCME:
Docket No. 16-1466
Argued: Feb. 26th, 2018
Decided: TBD
Issue(s): Whether the Court's decision in *Abood v. Detroit Board of Education* should be overturned so that public employees who do not belong to a union cannot be required to pay a fee to cover the union's costs to negotiate a contract that applies to all public employees, including those who are not union members.

In 1977, the Supreme Court, in *Abood v. Detroit Board of Education*, upheld against a First Amendment challenge a Michigan law that allowed a public employer whose employees were represented by a union to require those of its employees who did not join the union nevertheless to pay fees to it because they benefited from the union's collective bargaining agreement with the employer.

Illinois has a law similar to that upheld in Michigan. Bruce Rauner (R-IL), Governor of Illinois, brought a lawsuit challenging the law on the ground that the statute violates the First Amendment by compelling employees who disapprove of the union to contribute money to it. The district court dismissed the complaint on the grounds that the governor lacked standing to sue because he did not stand to suffer injury from the law, but two public employees intervened in the action to seek that *Abood* be overturned. Given that *Abood* is binding on lower courts, the district court dismissed the claim, and the Seventh Circuit affirmed dismissal for the same reason.

The **National Women's Law Center** along with **The Leadership Conference on Civil and Human Rights**, of which **NOW Foundation** is a member filed an *amicus* brief which argues that public sector work gives opportunity and dignity to women women and people of color and that the Fair Share Rule allows unions to create economic opportunities for all members of a unit, regardless of union members and specifically women and people of color.

This is just one of many decisions that attempt to undermine the Fair Labor Standards Act and reduce protections for workers. This case was decided on June 27th. The Supreme Court ruled against the union fees, finding in favor of Janus.

Supreme Court Upholds Travel Ban

On *Trump, President of the United States v. Hawaii*
Docket No. 17–965
Argued: April 25th, 2018
Decided: June 26th 2018
Issue(s): Whether the 2017 Trump Travel Ban Does the revised executive order restricting immigration from six countries and setting a cap on refugees seeking admission into the United States violate the first amendment? Does the revised executive order exceed the president's authority to regulate immigration, and is the order reviewable by the court?

In this case, the 2017 Trump Travel Ban was called into question as to whether, among other things, it violated the first amendment. On September 24, 2017, President Trump issued a presidential proclamation outlining new travel restrictions for individuals traveling from eight different countries: Chad, Iran, Libya, North Korea, Syria, Venezuela, Yemen, and Somalia. This was later replaced two earlier executive orders that also imposed travel restrictions. Plaintiffs who had challenged those earlier order amended their suit to include the September 2017 order.

The Supreme Court issued a stay that prevented lower courts' injunctions against the order from going into effect while the appeal was pending. In December, the Ninth Circuit affirmed in part and reversed in part a district court's ruling enjoining the September 2017 order from going into effect. The Ninth Circuit concluded that the president had exceeded his authority.

The According to the Supreme Court decision announced on the 26th, the President has lawfully exercised the broad discretion granted to him to suspend the entry of aliens into the United States; respondents have not demonstrated a likelihood of success on the merits of their claim that Presidential Proclamation No. 9645 violates the establishment clause in an opinion by Chief Justice Roberts. Justice Breyer filed a dissenting opinion, in which Justice Kagan joined. Justice Sotomayor filed a dissenting opinion, in which Justice Ginsburg joined.

Sexual Orientation Discrimination against LGBTQA Individuals

On *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission*
Docket No. 16-111
Argued: December 5th, 2017
Decided: June 4th, 2018
Issue(s): Whether The Colorado Civil Rights Commission's actions in assessing a cakeshop owner's reasons for declining to make a cake for a same-sex couple's wedding celebration violated the free exercise clause.

This case originated in 2012 in Denver Colo., after the **American Civil Liberties Union**'s (ACLU) plaintiffs attempted to order wedding cake from Masterpiece Bakery. They were denied a cake as the bakery said they would not serve same sex couples. However,

Colorado has clauses their civil rights documents that prohibit forms of this discrimination and the couple soon filed a Civil Rights complaint, which was sided with them. On August 13, 2015, the Colorado Court of Appeals unanimously affirmed the Commission's order, finding that the bakery discriminated because of sexual orientation in violation of state law. The court also concluded that application of Colorado's Anti-Discrimination Act did not infringe the bakery's freedom of speech or free exercise of religion. The bakery appealed and the Colorado Supreme Court denied review. The United States Supreme Court granted certiorari on June 26, 2017.

The Supreme court sided with Jack Phillips, the owner of Masterpiece Bakery, whose argument was that baking their cake in accordance with the Colorado law would in fact violate his freedoms. The majority opinion was that the commission had "endorsed the view that religious beliefs cannot legitimately be carried into the public sphere or commercial domain, implying that religious beliefs and persons are less than fully welcome in Colorado's business community." Kennedy added, the commission's treatment of Phillips' religious objections disagreed with its rulings in the cases of bakers who refused to create cakes "with images that conveyed disapproval of same-sex marriage."

In the majority opinion, Justice Kennedy said that Phillips "was entitled to a neutral decision maker who would give full and fair consideration of his religious objection as he sought to assert it in all of the circumstances in which this case was presented, considered, and decided." Because he did not have this, the majority found that the commission's order "must be set aside."

However, it is important to look at the narrow scope of this decision as the opinion seemed to leave open the possibility that in the future a service provider's sincere religious beliefs might have to yield to the state's interest in protecting the rights of same-sex couples, (the state law at the time in 2015 did not recognize same sex marriage), and the majority did not rule at all on one of the central arguments in the case – whether compelling Phillips to bake a cake for a same-sex couple would violate his right to freedom of speech. Instead, Other cases, the majority emphasized, "must await further elaboration in the courts, all in the context of recognizing that these disputes must be resolved with tolerance, without undue disrespect to sincere religious beliefs, and without subjecting gay persons to indignities when they seek goods and services in an open market."

In her dissent, Justice Ruth Bader Ginsburg does not in any way encourage the rollback of discrimination protection mechanisms in the states and in fact does the opposite. In her dissent, she also explains that Craig and Mullins were not looking for a cake that sought to celebrate either heterosexual marriage or homosexual marriage but rather their marriage, making the argument moot. Colorado is one of the few states with these express mechanisms and SCOTUS says that it is appropriate for such state involvement to occur to prohibit discrimination. The dissent also cites the deep history of discrimination and recalls how discrimination and other injustices have been incorrectly justified throughout history. While the bakery won a technical victory, it is not as though SCOTUS ruled in favor of discrimination inherently and the it is important to recognize the narrow and limited nature of the opinion. The court ruled similarly in the recent decision when the justices sent back to lower courts the case of florist who refused to do flowers for same-sex wedding in light of *Masterpiece*.

On *Horton v. Midwest Geriatric Management, LLC.,*
Case No.: 18-1104
Appealed: TBD

Issue(s): Whether employers are free to discriminate against lesbian, gay, and bisexual people without violating Title VII's historic prohibition against discrimination "because of sex."

Decades of Supreme Court decisions make plain that Title VII's prohibition against discrimination because of sex has become a robust source of protection for male and female workers alike. Employers who take sexual orientation into account necessarily take sex into account, because sexual orientation turns on one's sex in relation to the sex of the individuals to whom one is attracted. And bias against lesbian, gay, and bisexual people turns on the sex-role expectation that women should be attracted to only men (and not women) and vice versa.

There is no principled reason to create an exception from Title VII for sex discrimination that involves sexual orientation, as the *en banc* Second and Seventh Circuits, federal district courts, and administrative agencies have recognized. In the case of Mark Horton, who was offered a job as Vice President of Sales and Marketing at Midwest Geriatric Management, LLC, only to have the offer withdrawn after the company learned he had a same-sex partner. The lower district court in Missouri dismissed his discrimination claim under Title VII of the Civil Rights Act of 1964 based on a case from the 1980s stating that Title VII does not protect lesbian, gay, and bisexual people from discrimination.

On March 14, 2018, **National Center for Lesbian Rights (NCLR),** along with **GLBTQ Legal Advocates & Defenders**, filed a friend-of-the-court brief in support of Mark Horton in the U.S. Court of Appeals for the Eighth Circuit. The brief urges the Eighth Circuit to find that sexual orientation discrimination violates Title VII because it is a form of sex discrimination. It argues that earlier court decisions barring lesbian and gay people from bringing employment discrimination claims under Title VII have led to what the Seventh Circuit Court of Appeals called a "confused hodge-podge of cases." That exclusion has caused lower courts to reach inconsistent results and erected unique barriers to sex discrimination claims by lesbian, gay, and bisexual people that other employees do not face.

This case presents an opportunity for the Court to update its interpretation of Title VII's prohibition of discrimination "because of sex." In 1989, this Court held in *Williamson v. A.G. Edwards & Sons, Inc.*, that discrimination on the basis of sexual orientation is not sex-based discrimination. Continued reliance on *Williamson*'s outdated categorical exclusion has led to cramped and illogical attempts to distinguish between sex stereotyping that does not implicate sexual orientation, which is clearly prohibited by Title VII, and sex stereotyping that relates to the fact that an employee is lesbian, gay, or bisexual. **NOW Foundation** signed on the *amicus* brief filed by the **American Civil Liberties Union**.

On *R.M.A. (minor child) v. Blue R-IV School District, et al.,*
Docket No.15-3775
Argued: *September 26, 2017*
Decided: TBD
Issue(s): Whether not allowing a trans student access to facilities consistent with his gender identity is a violation of Missouri Human Rights Act and Title IX

In this case, the lower courts in this case incorrectly held that the Missouri Human Rights Act (MHRA) does not require a school to allow the plaintiff, a trans student, access to facilities consistent with his gender identity.

The Missouri Supreme Court has accepted transfer in a pair of decisions – one on workplace anti-LGB discrimination, the other on school anti-trans discrimination – raising the question of whether sex discrimination under the Missouri Human Rights Act encompasses sex stereotyping, and so protects LGBTQ people. This may be the first state supreme court to consider the question whether sex discrimination includes discrimination because of sexual orientation, gender identity, or both.

R.M.A. concerns the rights of trans youth to learn and thrive in a safe environment. The state Court of Appeals erroneously ruled that sex discrimination under the MHRA does *not* encompass sex stereotyping. On the line, then, are the rights of trans people and all others harmed by sex stereotyping. The amicus brief filed by NWLC, which NOW Foundation signed on to argues that discrimination against transgender individuals is violation of MHRA and Title IX, and inherently harms students and arguments. Arguments made on protective pretexts to cis-gender students historically have been used to justify discrimination and should be invalid as transgender students are the ones at greater risk of sexual harassment and abuse. The appeals process is ongoing.

Access to Birth Control and Abortion Rights

On *State of California V. Hargan* (later *State of California V. Azar*):
Docket No. 220148
Argued: TBD
Issue(s): Whether IFRs should allow employers to invoke religion or morality to block contraceptive coverage.

At stake in this case are two interim final rules (IFRs) promulgated by the Trump administration in October 2017 that significantly broadened the religious exemption to the Affordable Care Act's (ACA) contraception mandate. Prior mandate regulations accommodated houses of worship and religiously affiliated organizations. The new exemption, however, effectively repeals the insurance coverage mandate, which allows employers and universities to invoke religion or morality to block their employees' and students' contraceptive coverage that is otherwise guaranteed by the ACA. On appeal from the **U.S. District Court for the Northern District of California**, the *amicus* brief signed by the **National Women's Law Center, The National Latina Institute for Reproductive Health, Sisterlove Inc., and The National Asian Pacific America Women's Forum** and **NOW Foundation.** The brief cites issues that women would face should the IFR be upheld including the irreparable harm that Black, Latinx, Asian American and Pacific Islander individuals, young people, people with limited resources, and transgender and gender non-conforming people would face. It also addresses the challenges that sexual assault survivors and survivors of interpersonal violence would face, ultimately further discrimination. The plaintiffs' argument also recounts how the use of religion in the United States to justify racial and sex discrimination abated as societal views and norms evolved further; religion in the form of the excessively broad exemption in this case should not be used as a vehicle to discriminate.

On *Garza v. Hargan* (later *Azar v. Garza*):
Docket No. 17-654
Argued: Not argued

Decided: June 4th, 2018
Issue(s): Whether an undocumented person is protected by *Roe v. Wade* and whether the government is allowed to decide to not help facilitate an undocumented person in custody to get an abortion.

The justices handed the administration a partial victory in *Azar v. Garza*, in which it had asked them to nullify a ruling by the U.S. Court of Appeals for the District of Columbia Circuit that cleared the way for a pregnant teenager to obtain an abortion. The teenager, known in the litigation as "Jane Doe," had been caught trying to enter the United States illegally; the agency had refused to allow her to leave the shelter where she was being held in custody, arguing that it did not want to facilitate her abortion. The justices today granted the government's request to throw out the D.C. Circuit's ruling, but it rejected the government's plea to sanction the teen's lawyers, whom the government accused of misleading it about when Doe would obtain her abortion. In October 2017, the D.C. Circuit ruled for Doe, who had an abortion the next day. The government told the justices that it would have sought Supreme Court review, but was unable to do so because the teenager's lawyers had not kept it informed about the timing for the procedure. Therefore, the government argued, the appeal is moot and the Supreme Court should not allow the lower court's decision to serve as future precedent, particularly because it is not the government's fault that the case is moot.

The majority in the Court explained that it fell "squarely within the Court's established practice": the only claim on which the D.C. Circuit ruled, the teenager's individual claim seeking an abortion, "became moot after the abortion." There is no dispute, the court reasoned, that the teenager and her lawyers were the ones who moved quickly to allow her to get an abortion, allowing her to keep the advantage of the D.C. Circuit judgment in her favor.

On Freedom of Speech and Strategic Lawsuits Against Public Participation

On *West, et al. v. Arent Fox LLP, et al.,*
Case No. S247243
Appealed: Petition Denied
Issue(s): Whether SLAPP cases are a violation of freedom of speech and an individual's right to seek redress in a court of law with competent representation is a constitutional right

Defendant and respondent Los Angeles Jewish Home for the Aging (JHA) sued plaintiffs and appellants Val West (West)—the daughter of one of JHA's residents—and David Dizenfeld (Dizenfeld)—a family friend and an attorney—for defamation, civil harassment, trespass, and interference with contract. West and Dizenfeld prevailed on an anti-SLAPP special motion to strike JHA's defamation claim. Doubling down, West and Dizenfeld then initiated a separate lawsuit against JHA and its legal counsel, defendant and respondent Arent Fox LLP (Arent Fox), asserting they maliciously prosecuted the first suit. JHA and Arent Fox responded by filing their own anti-SLAPP motions arguing and the trial court ruled in their favor. On appeal from the trial court's ruling, the parties agree West and Dizenfeld's malicious prosecution claims arise from protected activity.

An appeal has been filed on the basis that the lower court ruling is a clear threat to an individual's First Amendment rights. Further, women especially face further risk should this opinion stand. As women are more often the victims of sexual harassment, sexual assault,

domestic violence, sex- and gender-based employment discrimination, as well as abuse as residents of nursing facilities, as in this case, they must be able to confer freely with their attorneys without fear of being sued for defamation. The burden of having to defend themselves in a defamation challenge in addition to bearing the expense of proceeding with their complaint will make it exceedingly difficult -- if not impossible --for many women to press their cases. Therefore, the significance of the case of *West, et al. v. Arent Fox LLP et al.* extends far beyond California. Disappointingly, the Court recently refused to take up the petition.

Sexual Discrimination in the Workplace Class Action

On *Jock V. Sterling Jewelers INC.*
Docket No. 18-153
Argued: TBD
Issue(s): What the central importance of class actions in enforcing Title VII is and whether fostering the ability to fight injustice through collective action regardless of knowable arbitration.

A group of women who are current and former employees of Sterling Jewelers, filed a class action suit against their employer in 2008 challenging sex discrimination in pay and promotions. All Sterling employees had to sign arbitration agreements as a condition of employment, and plaintiffs did not dispute that they had voluntarily agreed to arbitrate, so this class sex discrimination claim was referred to arbitration. The arbitrator, after several years of procedural battles and extensive discovery, certified a class now composed of approximately 70,000 women to pursue their pay and promotion disparate impact claims for declaratory and injunctive relief as one unified proceeding and the plaintiffs have appealed the lower courts decision. By filing in this manner, the plaintiffs are more able to distribute cost, class litigation is an important mechanism to challenge systemic sex discrimination and effect sweeping institutional changes without placing the burden of making that case on an individual plaintiff.

In the brief **NOW Foundation** supported and which the **National Women's Law Center** has filed, the following is argued that given the historic gains made by women through class actions, what is at stake is assurance this important vehicle for challenging sex discrimination remains available to all of the women affected by Sterling's discriminatory practices in this case.

The sex discrimination claims at issue would be more difficult to bring in individual or opt-in class proceedings because the necessary evidence for proving these claims cannot readily or affordably be developed by individuals or smaller groups. Additionally, the class-wide remedies essential to prevent further sex-based discrimination against all the women affected by Sterling's policies potentially would be unavailable in an individual or opt-in class proceeding. Further, these disparate impact claims would not be appropriately or fairly resolved through the opt-in proceedings the district court has mandated because class members' legitimate and realistic fear of retaliation would prevent many women from opting in. Likewise, the court's concern that women who have not opted in could collaterally attack the final judgment to Sterling's detriment is legally and factually unfounded. This case marks further attacks on class actions by conservative legal advocacy groups.

On *Parker V. Reema Consulting Services.,*
Docket No. 18-1206

Argued: TBD

Issue(s): Whether the rumors of "sleeping her way to the top" attribute to hostile work environments and are therefore sexual harassment and violations of Title VII.

In this case, the plaintiff, Evangeline J. Parker, sought to challenge a gender-based hostile work environment, retaliatory termination, and discriminatory termination under Title VII. Ms. Parker faced unfounded and sexually-explicit rumors based on her gender following her promotion within the company. Specifically, a rumor was circulated among employees that she gained a promotion by having sexual relations with a higher-up. Upon reporting, the company retaliated against her by terminating her instead of resolving the matter. Rather than viewing this as a clear claim of sex discrimination and retaliation, particularly at the motion to dismiss stage, the federal district court in Maryland, dismissed the complaint. The Court held that the rumor and any harassment the plaintiff experienced was not based on her gender, "but rather based on her alleged conduct," and was therefore not actionable under Title VII.

However, numerous courts have correctly held that rumors that a woman was promoted "by sleeping her way to the top" are based on harmful gender stereotypes and may contribute to a hostile work environment that is severe or pervasive. Compelling and reliable social science agrees with Ms. Parker's claim, demonstrating that women frequently face sexual harassment in the workplace; women report experiencing sexual harassment at rates higher than men and workplace rumors about sexual conduct are particularly harmful to women.

The *amicus* brief, which **NOW Foundation** signed on to and which the **National Women's Law Center** filed, highlights that this case is crucial because in this #metoo moment, it is necessary that courts understand how to assess and adjudicate claims of sexual harassment, further it is crucial that the law recognize that the conduct at issue here is sex discrimination, as evidenced through legal precedent and social science. The brief covers how such rumors about "sleeping their way to the top" are based in and reinforce gender stereotypes, and particularly harm women who are advancing in their careers, though we would be sure to state that if same conduct happened to a male employee, it could still constitute sexual harassment based on gender. It also argues that the standard for retaliation was met, and that the Court made inappropriate factual determinations in dismissing the case at the motion to dismiss stage.

Women who experience sexual harassment in the form of malicious rumors meant to question their expertise and thwart their careers *are* experiencing a form of sex discrimination and of course, current and future sexual harassment cases are in danger of dismissal unless we help persuade the Fourth Circuit that the lower court's reasoning is untenable and not in line with the federal legal standards governing sexual harassment and retaliation.

On *US v. CA*

Docket No. 00490

Argued: TBD

Issue(s): Whether California's Sanctuary City Laws (Immigrant Worker Protection Act, Assembly Bill 103 and SB 54) are a violation of the supremacy clause

The United States federal government filed this suit on March 6, 2018, challenging California's "sanctuary city" state laws. This lawsuit comes after a series of lawsuits filed by California jurisdictions challenging the federal government's sanctuary city policies, which deny federal funding to jurisdictions that impede the federal government's immigration policies. The case was filed in the U.S. District Court for the Eastern District of California.

This suit challenged three California laws in particular: (1) the Immigrant Worker Protection Act that prohibits private employers from voluntarily cooperating with federal officials without a judicial warrant or subpoena for purposes of immigration enforcement, (2) Assembly Bill 103 that requires the state attorney general to investigate federal immigration detention facilities and processes, and (3) Senate Bill 54 ("SB 54") that limits local law enforcement from providing information about or transferring individuals subject to federal immigration custody to federal enforcement. The U.S. argued that these laws "reflect a deliberate effort by California to obstruct the United States' enforcement of federal immigration law," that the federal law preempted the state laws, and that the federal government had "preeminent authority" regarding immigration.

The U.S. argued that California therefore violated the Supremacy Clause, and that the Supremacy Clause rendered the state laws invalid. The U.S. sought declaratory and injunctive relief. The same day, the U.S. moved for preliminary injunction. The U.S. sought to enjoin the implementation of these provisions within the three California laws. **NOW Foundation** has signed on to the amicus brief filed by the **National Housing Law Project (NHLP)**, which argues that enjoining SB 54 will increase fear of interactions with local law enforcement which will cause immigrants to forgo treatment and jeopardize the public health of California. It also argues that AB 103 protects California's interest in safeguarding the health and safety of it's residents in detention centers. The case is ongoing.

VOTING RIGHTS—CHALLENGES TO GERRYMANDERED DISTRICTS

While NOW Foundation has only signed on to one amicus brief concerning *Gill v. Whitford* from Wisconsin, other gerrymandering cases are of interest due to NOW Foundation's commitment to voter rights. These cases are summarized below.

Ohio-- On *Husted V. Randolf*:

The American Civil Liberties Union and partner organizations filed a lawsuit challenging Ohio's practice of 'purging' or removing people who vote infrequently from its voting rolls, charging that it is in violation of the National Voter Registration Act (NVRA).
The lawsuit was brought by the ACLU, ACLU of Ohio, and Demos on behalf of the A. Philip Randolph Institute, the Northeast Ohio Coalition for the Homeless, and Larry Harmon, an Ohio resident who was purged from the voter rolls in 2015.

In April of 2016, the complaint was filed in the U.S. District Court for the Southern District of Ohio. The federal district court granted the ACLU and partner's request for a preliminary injunction, halting Ohio's purge practice until the November 2016 election. In September 2016, the Court of Appeals for the Sixth Circuit ruled against Ohio's practice as a violation of the National Voter Registration Act (NVRA). The Supreme Court heard arguments in this case on Jan. 10. The Supreme Court reversed the decision this month, ruling in Ohio's favor.

Wisconsin-- *Gill V. Whitford*

In November 2016, the panel declared that the plan adopted by Wisconsin's Republican-controlled legislature in 2011 was an unconstitutional partisan gerrymander that violated both the Equal Protection Clause and the plaintiffs' First Amendment freedom of

association. The ruling was the first time in over three decades that a federal court invalidated a redistricting plan for partisan bias.

After evaluating the constitutionality of the map with a three-part test, the panel concluded that the map displayed both bad intent and bad effect, citing evidence that the map drawers used special partisan measurements to ensure that the map maximized Republican advantages in assembly seats. Despite Democrats winning a majority of the statewide Assembly vote in 2012 and 2014, Republicans won sixty of the ninety-nine Assembly seats. Wisconsin Republicans dispute the assertion that they intentionally engineered a biased map, arguing that partisan skews in the map reflect a natural geographic advantage they have in redistricting as a result of Democrats clustering in cities while Republicans are spread out more evenly throughout the state. The court, however, said the state's natural political geography "does not explain adequately the sizeable disparate effect" seen in the previous two election cycles.

The panel, however, denied one of the plaintiffs' principal requests: to have judges, not lawmakers and the governor, in charge of redrawing the legislative boundaries, stating in its opinion, "it is neither necessary nor appropriate for us to embroil the Court in the Wisconsin Legislature's deliberations." The court advised the panel to use the November ruling as a guide in developing a new redistricting plan.

Wisconsin filed an appeal on February 24, 2017, asking the Supreme Court to review the decision striking down the map. On May 22, the state asked the Court to stay the panel's order calling for the creation of a new plan. The Court granted the state's request to stay the decision of the lower court while it considers the case. The Court heard oral argument in the case on October 3, 2017. The Court's decision in the case is expected to be announced before the end of this month. The case was rejected by the Court. Following that case, a similar one as seen in *Rucho v. Common Cause* in North Carolina was also rejected.

Texas-- On *Abbott V. Perez*:

Individual voters in Texas, alongside organizations representing African-Americans and Latinos, filed a series of lawsuits in 2011 alleging Texas' congressional and state house plans violated the U.S. Constitution and Section 2 of the Voting Rights Act. Several of these suits were later amended to include claims regarding replacement maps adopted by the Texas Legislature in 2013. Between 2000 and 2010, Latinos and African-Americans accounted for nearly 90 percent of Texas' population growth, which resulted in the state received four additional congressional seats and required significant changes to both the state house and congressional maps. The plaintiffs argue that when the state redrew its congressional and legislative plans, it did not act in good faith to achieve population equity, and instead, intentionally diluted Latino and African-American voting strength. In addition, some of the plaintiffs argue that the state failed in both plans to create all of the majority-minority districts required by Section 2 of the Voting Rights Act.

As a remedy, the plaintiffs argue that Texas should be required to redraw the maps to create additional electoral opportunities for Latino and African-American voters and that, because the state's actions were intentional, that Texas should be placed back under preclearance coverage under Section 3 of the Voting Rights Act. The state asserts the plaintiffs failed to present sufficient facts to demonstrate that minority voters would have suffered "an immediate or threatened injury as a result of the challenged [districts]."

In 2012, the district court ordered interim maps for the congressional and state house districts. Texas subsequently adopted the interim maps on a permanent basis in 2013 – but some of the plaintiffs contend that those maps still have a discriminatory effect against minority voters. The court held trial on the 2013 state house and congressional plans. The court issued a ruling on the 2013 congressional map holding that TX-27 and TX-35 violated the Constitution and the Voting Rights Act. In addition, the court found that enactment of the 2013 congressional plan was intentionally discriminatory.

The state filed an appeal of the ruling on the congressional map and asked the court to stay any remedial proceedings which the court denied. The panel issued an opinion finding that the 2013 state house plan violated the Constitution and Voting Rights Act and, in addition, purposefully maintained discriminatory features in the 2011 plan. On August 25, the state filed an appeal to the Supreme Court and a motion asking the Court to halt the redrawing of the congressional map. On September 12, the Supreme Court granted the stays and halted the redrawing of maps pending appeal. The Texas Democratic Party and Quesada plaintiffs also filed appeals of the court's earlier rulings dismissing its partisan gerrymandering claims, which the Supreme Court dismissed.

On January 12, the Supreme Court agreed to hear the State of Texas' appeals of rulings on the congressional and state house plans. The Court held oral argument in the appeals on April 24. The Court ruled in Texas's Favor throwing out the lower court's finding.

UPDATE--Trump's judicial nominations

We are currently entering President Trump's 15th wave of judicial nominations, including two nominees and one nominee to the U.S. Court of Appeals Sixth and Eighth District respectively. These nominees hold a significant risk to the mission of NOW including abortion access with one of the sixth district nominees not willing to cite an opinion on whether the Supreme Court ruled correctly in *Roe V. Wade*. At the start of his first year, Trump faced 104 open positions and has since appointed 69 nominees to fill the spots. 92% of his appointees are white, while only 8% total are people of color. Compared to President Obama, 23% of Trump's appointees are women compared to nearly double that of Obama's. Besides these troubling statistics, 2 of Trump's picks have received not qualified ratings by the ABA, the same number of nominees to receive the rating split of all presidential terms for the last 29 years. While troubling picks such as Michael Brennan have more recently been confirmed, he is an update on some of the most extreme nominees:

Wendy Vitter—Vitter is nominee for District judge for Eastern Louisiana. Vitter refused to tell the Senate Judiciary Committee whether ***Brown v. Board of Education*** was correctly decided and has withheld other answer such as stances on abortion to the Senate. She has staunchly anti-immigrant views, only has practiced law for 11 years (the ABA recommends 12 to be federal judge), and as a prosecutor in the Orleans Parish District Attorney's office, multiple *Brady* violations were committed by prosecutors in her office. Vitter is also opposed to both contraception and abortion, believing that the pill leads to higher rates of incest, violent death and that women off the pill are "more attractive to men".

Stuart Kyle Duncan—Duncan is a nominee for judge on the U.S. Court of Appeals, 5th circuit. Duncan has spent much of his career attempting to rule back civil rights protections, including in the south. he repeatedly contributed to state-sponsored efforts throughout the South to prevent or

discourage African Americans from fully participating in our political process. Specifically, Duncan defended the actions of the North Carolina Legislature to enact voter suppression measures that included a strict voter ID requirement. He opposed retroactive application of the Supreme Court's holding in *Miller v. Alabama* that mandatory life sentences for juveniles without the possibility of parole were unconstitutional. He is a staunch opponent of marriage equality and co-authored an amicus brief for Louisiana and other states in ***Obergefell v. Hodges*** which opposed "constitutionalizing the issue." He represented the Gloucester County School Board in Virginia in opposing the right of Gavin Grimm, a transgender high school student, to use the boys' restroom. After the Fourth Circuit struck down the policy, Duncan appealed to the Supreme Court, arguing that the decision "would upend the ingrained practices of nearly every school in the nation on a matter of basic privacy and dignity," and that "no one imagined" that **Title IX** would be used to "erase all distinctions between men and women, nor dismantle expectations of privacy between the sexes." He has also delivered remarks to the Alliance for Defending Freedom, which has been classified by the Southern Poverty Law Center (SPLC) as a hate group.

David Stras—Stras is a nominee for the U.S. Court of Appeals for the 8th Circuit, In his writings, Stras has mischaracterized judicial recognition of certain fundamental constitutional rights as "ventures into contentious areas of social policy—such as school integration, abortion, and homosexual rights. Stras also has a history of siding with corporations and granting unfair reviews such as in *Sleiter V. American Family Mutual Insurance*. This kind of judgment also follows into discrimination causes where he ruled that the term "dispute resolution process" to exclude a city's investigation of an employee's discrimination complaint.

Howard Nielson—Nielson is a nominee for district judge in Utah. Nielson has been biased in previous behavior including discriminatory hiring against applicants who had served in civil rights or liberal organizations, including NOW as noted by the Leadership Conference. Nielson has a history of making offensive arguments in LGBTQ cases, (including in 2015, when Mr. Nielson wrote an amicus brief in the landmark Supreme Court case ***Obergefell v. Hodges*** in which he argued against marriage equality). Elsewhere, Nielson supports torture, opposes equal opportunity, is not supportive of women's healthcare, opposes common-sense safety laws, and is active in the Federalist Society.

Gordon Giampetro—Giampetro is a nominee for District Court in Eastern Wisconsin, has been opposed by many human rights organizations on the basis of his opposition for equal marriage and LGBTQ rights. Senator Tammy Baldwin notably wrote a letter dictating her reservations and concerns about Giampetro to the President. He is a source of concerns elsewhere as well, as Giampetro once wrote that "diversity is code for relaxed standards." Like many of Trump's nominees, he also opposes the ruling of ***Obergefell***, and said that it was "worse" than the court's decision legalizing abortion in ***Roe v. Wade*** "because of the damage it does to civil society." He also called the birth control pill an "assault on nature," and blamed it for other problems in society.

Thomas Farr-- Farr is a nominee for judge of the U.S. District Court for the Eastern District of North Carolina. Throughout his career, Mr. Farr has consistently supported and worked for

efforts to intimidate, misinform, or otherwise disenfranchise African American voters. Farr represented Jesse Helms' Senate campaigns in two of the most notoriously racist campaigns in modern American history. Farr has also demonstrated an opposition to workers' rights.

Matthew Kacsmaryk—Kacsmaryk is a nominee for District Judge of the United States District Court for the Northern District of Texas, works for the First Liberty Institute, as deputy general counsel, and filed an amicus brief in ***Masterpiece Cakeshop v. Colorado Civil Rights Commission*** on behalf of the petitioner baker who seeks to deny baking wedding cakes for same-sex couples. Kacsmaryk has expressed strong opinion of his disagreement with the Supreme Court's opinion in ***Obergefell v. Hodges***. Kacsmaryk has vigorously opposed bipartisan federal legislation that would prohibit discrimination based on sexual orientation and gender identity. Kacsmaryk is hostile towards trans people, writing offensive comments in *The Daily Beast* previously. Kacsmaryk supports religious exemption from the ACA women's contraceptive health mandate. Like Nielson, he is a member of the Federalist Society.