MEMORANDUM

National Organization for Women Foundation

TO: National Organization for Women (NOW) Foundation Board Members

FROM: Jan Erickson, Director, Foundation Programs, assisted by Amanda Chen, Government Relations Intern

Date: July 7, 2022

Making History: Supreme Court Justice Ketanji Brown Jackson

We were all thrilled to see the first Black woman, Ketanji Brown Jackson sworn in on June 30. Jackson issued a statement before the ceremony say, "I am truly grateful to be part of the promise of our great nation," She took the oath of office in the Court's West Conference Room, administered by Chief Justice John G. Roberts Jr., with outgoing Justice Stephen G. Breyer leading her through the judicial oath. Justice Jackson replaces Breyer whom she served as a law clerk.

Justice Jackson is the first Black woman to ever sit on the Court in its 233-year history. NOW Foundation joined the National Women's Law Center, the Women's Bar Association of the District of Columbia, California Women Lawyers, and various other gender justice organizations and law students in supporting Justice Jackson's nomination and confirmation. We also wrote a letter to the Senate Judiciary Committee Chair, Sen. Dick Durbin (D-IL) and Ranking Member, Sen. Charles Grassley (R-IA) urging confirmation of Ketanji Brown Jackson and criticizing Republican members for their disrespectful treatment of the nominee, contrasted with the solicitous treatment of then nominee Amy Coney Barrett

Justice Jackson is one of the nation's most brilliant legal minds. A dedicated public servant, she has extensive experience as a legal practitioner. Prior to becoming a justice, Justice Jackson was a federal appellate judge, federal district court judge, a member of the U.S. Sentencing Commission, and a federal public defender. She has worked tirelessly throughout her legal career to protect equal justice and uphold the sanctity of constitutional rights, especially those of women, girls, people of color, and. LGBTQ+ people. With her incredible career in the law, she was the ideal candidate to become the 116th Supreme Court justice.

Justice Jackson should have had a smooth confirmation process. While she did receive bipartisan support in the 53-47 Senate confirmation vote, she endured a grueling questioning process from various conservative senators, with many senators attacking her record of protecting women's rights, LGBTQ+ rights, and worker's rights. Nevertheless, we are pleased that Justice Jackson has been confirmed to the Supreme Court. Her confirmation is a step in the

right direction of addressing the generations of racism, discrimination, under-representation that have kept Black women from being included in interpreting the laws that often impact them the most.

Hopefully, Justice Jackson can be part of an eventual return of the Court to making critical decisions in the light of day – instead of in the dark of night with "Shadow Court" proceeding. Additionally, Justice Jackson can be a voice for preserving important precedents, especially those that protect individual rights and advance a more equal society. Finally, she will be a brave voice in dissent in response to the Court's extreme right-wing majority.

They Won't Stop at Roe

Dobbs v. Jackson Women's Health Organization

June 24, 2022

Our rights are under attack. In the Supreme Court's ruling of *Dobbs v. Jackson Women's Health Organization*, the Supreme Court overturned *Roe v. Wade* and *Planned Parenthood of Southeastern Pennsylvania v. Casey*, giving the authority to regulate abortion to the states (unless federal legislation is passed, which seems unlikely). Not only has the Supreme Court taken away people's right to abortion, but they have also put other rights at risk, including the right to privacy—a right that has been used to justify important cases such as *Griswold v. Connecticut*, *Obergefell v. Hayes*, and *Lawrence v. Texas*.

The Feminist Majority Foundation, alongside several other advocacy organizations, including the National Organization for Women Foundation, submitted an amicus brief in support of the Respondents in *Dobbs v. Jackson Women's Health*. In 2018, Mississippi passed the "Gestational Age Act," which prohibits almost all abortions after 15 weeks of pregnancy. This law directly challenges the protections afforded by Roe v. Wade, which asserts that women have the right to choose to have an abortion before viability without government interference. Fetal viability occurs at around 24 weeks of pregnancy, long after the Mississippi law would prohibit abortion. The only exceptions for legal abortions under the Gestational Age Act are in cases of severe medical emergencies and extreme fetal abnormalities. Further, the law calls for penalties – including license revocation – to be applied to abortion providers that do not comply. Less than an hour after the Mississippi governor signed the bill into law, Jackson Women's Health Organization, the only licensed abortion clinic in the state, filed a lawsuit in U.S. federal district court. In addition to challenging the law as unconstitutional, the clinic requested an emergency temporary restraining order (TRO), which prevented the immediate enforcement of the Mississippi law.

The amicus brief submitted by the Feminist Majority Foundation and the National Organization for Women Foundation emphasizes the pervasive pattern of violence from anti-abortion extremists directed at reproductive healthcare clinics, abortion providers, and patients. The

brief emphasizes that the overruling of *Roe v. Wade* would not only undermine the Supreme Court's legitimacy, but it would also symbolize a surrender to the violence that anti-abortion extremists have spurred. Further, the reversal of such a well-established precedent would legitimatize the employment of deliberate violence as a means of altering the rule of law.

Read more about this ruling and its implications on the SCOTUSblog website here: https://www.scotusblog.com/case-files/cases/dobbs-v-jackson-womens-health-organization/

ERA NOW!

State of Illinois, et al., v. David Ferriero

No. 21-5036

September 2022

Oral arguments a case brought be several states Attorneys General to force the Archivist of the United States to publish and certify the Equal Rights Amendment will be heard September xx in the District of the District of Columbia Appeals Court. As you may have heard, the State of Virginia withdrew from the case, so the case is now titled "*State of Illinois, et al., v. David Ferriero*." The U.S. District Court for the District of Columbia dismissed the case, concluding that the deadline for ratification had passed and that the plaintiffs had no standing. The case has now been taken to the U.S. Court of Appeals for the District of Columbia.

NOW joined with the Feminist Majority Foundation and other advocacy groups in submitting an amicus brief in support of the verification of the ERA. The brief highlights the importance of the Equal Rights Amendment in achieving gender equity across the board today—even with the large strides toward equality that have been made in recent decades—especially highlighting the progress that still must be made for women and people of intersecting marginalized identities. The brief also points out that the ERA has passed all the amendment requirements as laid out by Article V, that now time limit actually exists in this amendment process, and that it is now required by federal law for the Archivist to publish it. The brief further pushes that the Archivist must publish the ERA, as it will be an important step forward in having the Constitution accurately reflect the changes in our nation's equality since its original ratification.

It is our sincere hope that the Court of Appeals takes the information from this amicus brief into serious consideration, and that the Court ultimately requires the Archivist to enshrine the ERA in our Constitution. Thank you for your continued support in our fight for equality.

Our brief joins dozens of other briefs from allies as well as opponents of the Equal Rights Amendment. You can read the amicus brief here: https://www.eracoalition.org/wp-content/uploads/2022/01/Amicus-Brief-Filed.pdf

An update provided by ERA Coalition Legal Counsel, Linda Coberly, reported that on April 24th, the Department of Justice filed its brief on behalf of the Archivist in the case in the D.C. Circuit appeal. As you may have heard, the State of Virginia withdrew from the case, so the case is now called "*State of Illinois, et al., v. David Ferriero*." As was expected, the Department of Justice's brief asks the Court to affirm the dismissal of the case. That's disappointing but not a surprise. But there is also modestly good news on a couple of fronts:

She continues, First, the brief repeats the President's statement that he supports the ERA "loudly and clearly" and his view that nothing stands in the way of Congress taking action to recognize the ERA as fully ratified. (See pages 4 and 15 of the brief.) This is actually a pretty unusual thing; it's not common for the DOJ to repeat a political statement by the President. The DOJ clearly went out of its way to include this.

Second, the brief does not say the district court was right to find the deadline effective. The brief argues that the states lack standing to sue because the relief they seek—publication of the ERA—does not make a *legal* difference in terms of whether the ERA Is valid. It also argues that the states did not satisfy the legal test to press a claim for mandamus (that is, for an order forcing a government official to do something) because the validity of the ERA is a "novel and difficult" question—as opposed to "clear and undisputable," which the test for mandamus requires. Because of that argument, the brief did not need to take a position on the ultimate question—whether the ERA is valid today. According to the brief, "Whether the Equal Rights Amendment has been validly ratified and thus become part of the United States Constitution is a question of profound importance that may well be resolved by the courts in an appropriate dispute. This case … is not the proper vehicle to decide that issue." The brief concludes that the court should affirm the dismissal without reaching the issue of the ERA's status.

Finally, the brief does not address recission at all and says instead that the issue would have to be decided by the district court first if the dismissal were reversed.

The Intervenor States also filed their brief last night. Nothing too surprising there, except that it makes an affirmative case that equal rights are already recognized under the 14th Amendment, so the reason advocates are pursuing the ERA must be because of abortion.

The remaining State Plaintiffs will now prepare a reply brief, which will be filed in a few weeks. Then the case will be set for argument.

Dismantling Sex Stereotypes in Charter Schools

Peltier et al v. Charter Day School, Inc. et al.

No. 20-1001

June 14, 2022

More good news is here! In *Peltier et al v. Charter Day School, Inc. et al.*, the Fourth Circuit Court of Appeals ruled that a K-8 public charter school's discriminatory dress code violated the Equal Protection Clause, and that Title IX applies to school dress codes. The charter school's dress code policy required girls to wear skirts as a condition to attending school, which the court found was based on sex stereotypes and therefore in violation of the Equal Protections Clause. This is the first time a federal court has issued a ruling that subjects federally funded charter schools to the same constitutional and civil rights protections as traditional public schools.

The Charter Day School justified the dress code, invoking sex stereotypes by arguing that girls are "more delicate" and in more need of protection than boys. The school further argued that its students did not have constitutional rights when attending school, and that Title IX did not apply to dress codes.

The Fourth Circuit Court rejected these arguments, stating, "Nothing in the Equal Protection Clause prevents public schools from teaching universal values of respect and kindness. But those values are never advanced by the discriminatory treatment of girls in a public school".

Learn more about this ruling in the ACLU's media post here: https://www.aclu.org/press-releases/federal-appeals-court-says-charter-school-students-enjoy-constitutional-rights-case

Defending Diversity Initiatives in Higher Education

Students for Fair Admissions Inc. v. President & Fellows of Harvard College

No. 20-119

October Term 2022

Change is coming. The Supreme Court is set to rule on *Students for Fair Admissions Inc. V. Harvard/UNC* in the coming term. In this case, the Court will rule on two issues revolving around affirmative action: one, whether the Court should overrule *Grutter v. Bollinger* and hold that institutions of higher education cannot use race as a factor in admissions; and two, whether Harvard College is violating Title VI of the Civil Rights Act by penalizing Asian American applicants, engaging in racial balancing, overemphasizing race and rejecting workable race-neutral alternatives.

NOW Foundation will be joining the National Women's Law Center and their law firm partner Linklaters LLP in submitting an amicus brief to the U.S. Supreme Court in the case of *Students for Fair Admissions Inc. V. Harvard/UNC*. The amicus brief will be in support of Harvard and the University of North Carolina and their affirmative action policies. The brief will outline the need for affirmative action policies to create and uphold a diverse student body, remediate past discrimination and exclusion, and reconcile with histories of bias and exclusion.

A prominent feature of the brief will discuss the ways that affirmative action policies are especially necessary to balance out the effects of race and sex discrimination that women of color have experienced and continue to experience, and how these stereotypes have resulted in the underrepresentation of women of color in higher education settings and other fields. This focus on women of color will be particularly essential to acknowledge the intersecting ways in which racism and sexism create barriers for combined marginalized identities. We are hoping that the Court will not overrule these policies, and we hope to shed light on the importance of these universities' affirmative action policies in combatting biases.

Learn more about the pending Supreme Court case via scotusblog.com here: https://www.scotusblog.com/case-files/cases/students-for-fair-admissions-inc-v-president-fellows-of-harvard-college/

Protecting LGBTQ+ Rights

303 Creative LLC v. Elenis

No. 21-476

October Term 2022

The fight continues to protect LGBTQ+ rights. The Supreme Court will soon be hearing *303 Creative LLC v. Elenis*, which is eerily similar to the *Masterpiece Cakeshop* case. In this case, the Court will be ruling on whether applying a public-accommodation law to compel an artist to speak or stay silent violates the free speech clause of the First Amendment. *303 Creative LLC* is a web design firm that refuses to make wedding websites for LGBTQ+ customers.

NOW Foundation will be joining the National Women's Law Center and their law firm partner Covington & Burling LLP in submitting an amicus brief to the U.S. Supreme Court in support of Colorado's public accommodations law that protects LGBTQ individuals from discrimination. The amicus brief will present similar arguments that NWLC made in its *Masterpiece Cakeshop* brief and will focus on the harms that women would face should such an exception be made to public accommodations laws. Specifically, the brief will highlight the importance of public accommodations laws to the full participation of women and LGBTQ individuals in society. The brief will also explain why the First Amendment does not exempt businesses from compliance with these laws, and the harm that would be caused if the Court allowed such an exemption.

Learn more about the pending Supreme Court case via scotusblog.com here: https://www.scotusblog.com/case-files/cases/303-creative-llc-v-elenis/

Victory for App-Based Gig Workers in Massachusetts

El Koussa v. Massachusetts

No. sj-2022-0023

June 14, 2022

Fantastic news has come for app-based gig workers in Massachusetts! In *El Koussa v. Massachusetts*, the Massachusetts Supreme Judicial Court ruled that a ballot initiative, which would have misclassified app-based drivers as independent contractors failed to meet the requirements of the Massachusetts constitution. The court found that the petitions were "buried in obscure language" and, therefore, blocked the petitions from being placed on the ballot.

In blocking the petitions, the Court found that the petitions contained unrelated subjects, obscured by the language of the petitions. Specifically, if passed, the initiative would have limited network companies' liability for torts committed by app-based drivers. As such, the court did not reach the question of whether the Attorney General had provided a fair summary, but did note that, "the failure to even discuss the provisions narrowing third parties' tort recovery here would have rendered the summaries unfair."

NOW Foundation joined the National Women's Law Center, the National Partnership for Women and Families, Pontikes Law LLC and Powers and Jodoin, Margolis & Mantell LLP, and 24 other advocacy groups in filing an amicus brief in support of the app-based drivers, who challenged this ballot initiative. In the brief, we highlight what's at stake for women, and particularly women of color, if the ballot initiative were to pass, including drivers being carved out of critical protections such as leave entitlements, unemployment insurance, pregnancy accommodations, equal pay protections, civil rights protections against sexual, racial and other discrimination, including harassment..

Learn more about this ruling in the NWLC's post here: https://nwlc.org/resource/nwlc-challenges-ballot-initiative-that-would-harm-app-based-drivers/

Defending Civil Rights in the Workplace

Tucker v. Faith Bible Chapel

No. 20-1230

June 7, 2022

A positive update on a recent decision by the 10th Circuit in *Tucker v. Faith Bible Chapel Int'l.* On June 7, 2022, the 10th Circuit denied Faith Christian Academy's appeal, allowing Gregory Tucker's claim that he was discriminated against under Title VII to proceed. Mr. Tucker was

fired after he organized an assembly to address ongoing racist incidents at the school. The 10th Circuit dismissed the employer's appeal, holding that the ministerial exception is properly understood as an affirmative defense and cannot be used to bar employees from bringing suit altogether. The court further underscored that whether an employee should be considered a "minister" and denied civil rights workplace protections requires a "fact-intensive inquiry."

NOW Foundation joined the National Women's Law Center, Quinn Emanuel Urquhart & Sullivan, and 36 other organizations in filing an amicus brief in support of Gregory Tucker. The amicus brief made clear that religious employers cannot unilaterally strip workers of their civil rights by giving them a nominally religious title, without any regard to whether their job involves religious duties. The majority decision supports the arguments made in the brief that courts must undertake a serious analysis before employees are deemed ministers. Thus, employers should not be able to rely solely on formulaic paperwork or handbooks to classify employees as ministers and thereby deny their critical workplace civil rights protections.

Learn more about this ruling in the NWLC's post here: https://nwlc.org/fired-for-fighting-racism-nwlc-leads-amicus-brief-in-support-of-employee-at-religious-school/

Protecting Indigenous Women and Children

Brackeen v. Haaland

No. 21-380

October Term 2022

We must continue to protect indigenous women and children. On February 28, 2022, the Supreme Court announced that it granted certiorari to consider the Fifth Circuit Court of Appeals' ruling in *Brackeen v. Haaland*, a case that concerns the constitutionality of the Indian Child Welfare Act ("ICWA"). The Fifth Circuit, sitting *en banc*, determined that several provisions of ICWA are unconstitutional. While there are many challenges present in regard to ICWA's constitutionality, the equal protection arguments are the most troublesome.

These equal protection arguments are concerning because, if upheld by the Supreme Court, they will undermine the ability of Tribal Nations to exercise their inherent sovereignty to protect their children. And of equal importance, if upheld by the Court, these arguments threaten to undermine the constitutionality of the Violence Against Women Act's Section 804. If "Indian" is declared a race-based classification, then all federal statutes relying on the word "Indian" to refer to a tribal citizen will trigger strict scrutiny—a constitutional test that is nearly impossible to pass. The irony of this, of course, is that if "Indian" is declared to be an impermissible race-based classification, then Congress would be left unable to restore the tribal jurisdiction that the Court erased in Oliphant when the Court held that Tribes could no longer exercise jurisdiction over non-Indians.

NOW Foundation will be joining the National Indigenous Women's Resource Center in filing an amicus brief that will educate the Court on how, why the Framers of the Fourteenth Amendment never intended for equal protection to restrict Congress' ability to effectuate the federal government's trust duty and responsibility to Tribal Nations and their citizens, and finally, how a decision declaring "Indian" to be a race-based classification would significantly undermine safety for Native women and children. In addition to these legal arguments, the brief would also focus on how the placement of Native children in state-run foster homes leaves them vulnerable to other crimes such as sex trafficking, as well as the high rates of abuse Native children face in state-run foster homes. Overall, the amicus brief will contribute a powerful and important voice supporting the constitutionality of ICWA.

Learn more about the pending Supreme Court case via scotusblog.com here: https://www.scotusblog.com/case-files/cases/brackeen-v-haaland/

Victory for Federal Judiciary Employee

Caryn Devins Strickland v. United States et.

No. 21-1346

April 26, 2022

Great news...for the most part! The Fourth Circuit Court of Appeals ruled in favor of gender justice and civil rights in *Caryn Devins Strickland v. United States et. Al*. This case concerned an attorney who was formerly employed by the Federal Public Defender's Office for the Western District of North Carolina (FPDO) and allegedly subjected to sexual harassment by the First Assistant Public Defender. Upon reporting the case of sexual harassment, Caryn Devins was retaliated against. The Court's decision recognized of Strickland's Due Process and Equal Protection rights under the Fifth Amendment. This ruling marks the first time of the Constitutional right of federal judiciary employees to work in an environment free from sexual harassment.

NOW Foundation joined the Purple Campaign, the National Women's Law Center, Legal Momentum, and Willkie Farr & Gallagher in submitting an amicus brief in support of Devins. In the amicus brief, the parties outlined the fact that the more than 30,000 employees of the federal judiciary currently lack federal statutory protections against workplace harassment and discrimination highlighting the need to recognize such rights under the Constitution. The brief also highlighted the facts of Strickland's case—which included quid-pro-quo sexual harassment and related retaliation—underscored the importance of ensuring that equal protection claims survive in situations like this one.

Despite the historic nature of this ruling, the Court's opinion highlights the continuing need for legislative and policy reform to protect federal judiciary employees. At the same time that it

recognized Strickland's substantive Constitutional rights, the Court also held that certain defendants are immune from these claims and that specific remedies -- including back pay -- remain unavailable under existing law. We therefore urge Congress to enact the Judiciary Accountability Act of 2021 (the "JAA") to ensure that federal judiciary employees like Strickland have the same rights and remedies available to private sector employees under Title VII of the Civil Rights Act of 1964 and to employees of the other two branches of the U.S. government.

Learn more about this ruling in the Purple Campaign's post here: https://www.purplecampaign.org/purple-post/2022/4/27/purple-campaign-applauds-landmark-ruling

Affirming Tribal Sovereignty

Denezpi v. United States

No. 20-7622

June 13, 2022

In June, the Supreme Court issued its decision in *Denezpi v. United States*, affirming the inherent right of the Ute Mountain Ute to exercise its sovereignty and protect its women and children from domestic violence and sexual assault, regardless of whether such violent acts are prosecuted in a Court of Federal Offenses ("CFR") or a tribal court. Following his prosecution in the Ute Mountain Ute's CFR Court, defendant Merle Denezpi was subsequently prosecuted in federal court. Denezpi argued in his briefs and before the Court that the Double Jeopardy Clause in the U.S. Constitution prevented the United States from prosecuting him for his commission of sexual assault because he was previously prosecuted in the Tribe's CFR Court—and that this Court exercises federal and not tribal authority. The core of the case deals with the inherent right of Tribal Nations to protect women and children on tribal lands.

In opposition to Denezpi and in support of the United States as Respondent in the case, the National Indigenous Women's Resource Center (NIWRC) through its VAWA Sovereignty Initiative, along with the National Congress of American Indians (NCAI), filed an amicus brief arguing that under the "separate sovereigns doctrine," Denezpi's dual prosecutions did not violate the Double Jeopardy Clause because CFR Courts are tribal courts, exercising tribal, and not federal, authority.

"We are pleased today that the Supreme Court affirmed the inherent right of the Ute Mountain Ute Tribe to implement their sovereign laws to prosecute an offender who attacked a Native woman on the Tribe's own lands," said Lucy Simpson, Diné, NIWRC Executive Director. "Tribal Nations have the right to exercise their own inherent authority to prosecute crimes committed against women and children, regardless of whether they utilize a CFR court or their own tribal

court, and the SCOTUS decision today ensures that tribal prosecutions for such horrific conduct will not be precluded by such meaningless technicalities."

Read more about this ruling in NIWRC's post here: https://www.niwrc.org/news/niwrc-celebrates-scotus-ruling-affirming-tribal-sovereignty-denezpi-0

Tribal Sovereignty Continued

Oklahoma v. Castro-Huerta

No. 21-429

June 29, 2022

On June 29th, the Supreme Court ruled 5-4 in *State of Oklahoma v. Victor Manuel Castro-Huerta* that states have the authority to exercise criminal jurisdiction over crimes committed against Native victims on tribal lands. The case revolved around Castro-Huerta, a non-Indian convicted for committing child abuse against an Indian child on the Cherokee Nation Reservation. *Castro-Huerta* is one of more than thirty petitions that Oklahoma filed asking the Court to reconsider McGirt or narrow the implications of the decision by granting the State of Oklahoma jurisdiction over crimes committed by non-Indian perpetrators, against Native victims on Tribal lands. Notably, the Cherokee Nation and the Muscogee (Creek) Nation filed amicus curiae briefs urging the Court to deny Oklahoma's petition.

The NIWRC's amicus brief argued that Congress has exclusive power to decide which sovereign exercises criminal jurisdiction over crimes committed on tribal lands, and furthermore, Congress has historically tried granting States this jurisdiction (for instance, in PL-280) and that has only led to fewer resources on Tribal lands to combat violence against Native people. Congress is now focused on restoring tribal criminal jurisdiction (i.e., VAWA) over these crimes committed by non-Indians, and the Supreme Court should not interfere with Congress on this important policy decision.

The Supreme Court's decision to grant the State of Oklahoma criminal jurisdiction over crimes committed against Native victims on tribal lands fails to take into consideration the rights and voices of Native victims, as expressed in the amicus brief that we filed with the Court," said Lucy Simpson, Diné, NIWRC Executive Director. "This decision will undoubtedly result in an increase in violent crimes being committed in Indian country."

To read more about this ruling, see the NIWRC's news post here: https://www.niwrc.org/news/niwrc-concerned-scotus-castro-huerta-ruling

Ending Campus Sexual Violence

Brown v. Arizona

No. 20-15568

October Term 2022

As we celebrate Title IX at 50, we must also acknowledge the fights that are still to be won. In this case, we are supporting Mackenzie Brown who seeks to hold University of Arizona ("U of A") responsible for its failure to address sex-based harassment under Title IX. Brown claimed that U of A's failure to take action after known abuse by student-athlete Orlando Bradford of other students resulted in her later suffering severe psychological and physical abuse by Bradford at his off-campus apartment. The Arizona District Court granted summary judgment for U of A, holding that Brown failed to show that U of A had control over the context of this abuse to satisfy Title IX's "control-over-context" requirement. Brown appealed to the Ninth Circuit, which affirmed summary judgment on the same grounds. The majority decision was by two judges appointed by Trump and, given that there was also a strong dissent by Judge Fletcher, we are hopeful that the Ninth Circuit will agree to rehear the case *en banc*.

NOW Foundation will be joining the National Women's Law Center, Hutchinson Black & Cook, and other advocacy groups in filing an amicus brief in support of Mackenzie Brown. The amicus brief will explain that the Ninth Circuit's ruling that U of A did not have control over the context of Bradford's abuse will result in a range of harmful outcomes contrary to Title IX and the intent of this civil rights law. This decision may encourage schools to push students with known histories of sexual assault off campus and enable their continued abuse of other students—without the school being held accountable for addressing and preventing these harms. Further, scores of students would suffer abuse without any civil rights recourse, as an overwhelming majority of college and university students live off-campus. Students experiencing off-campus abuse would also be left to weather the profound impact of such misconduct on their education without support from their schools.

Notably, the Ninth Circuit's decision would allow schools to ignore off-campus sex-based harassment even when schools have policies about responding to other off-campus misconduct, including, for example, other forms of physical assault. This treats student survivors of sex-based assault worse than those who face other kinds of off-campus assault. This also signals to survivors of off-campus sexual assault that their experiences will not be addressed, and this will further dissuade reporting in a climate in which it is already so difficult to come forward about sexual assault. This decision discourages, instead of encourages, schools and universities to address sexual assault, and we are filing this brief to ensure that the Ninth Circuit fully understand what's at stake.

Learn more about the amicus brief in NWLC's post here: https://nwlc.org/nwlc-files-amicus-brief-supporting-university-of-arizona-student-survivor-of-sex-based-violence/

Ending Discriminatory School Discipline

Carolina Youth Action Project v. Wilson

No. 21-2166

October Term 2022

Carolina Youth Action Project v. Wilson (formerly called *Kenny v. Wilson*) is set to be reviewed by the Fourth Circuit Court of Appeals. In this case, the student plaintiffs and CYAP are challenging South Carolina's "Disorderly Conduct" law and the "Disturbing Schools" law, as it was formerly applied to students, as unconstitutionally vague. Plaintiffs claim these laws have denied students due process because they are unable to anticipate which typical, childlike behaviors will lead to criminalization. School officials in South Carolina have also discriminatorily enforced these laws against Blacks students and students with disabilities. In their lawsuit, the student plaintiffs and CYAP are also seeking to have these student criminal records wiped clean in connection with the Disorderly Conduct law and the Disturbing Schools law, as it formerly applied to students.

The National Women's Law Center, the National Association for the Advancement of Colored People (NAACP), the National Disability Rights Network (NDRN), and the National Center for Youth Law (NCYL) joined with other advocacy groups to submit an amicus brief in support of the public school students in South Carolina and the CYAP. NWLC's brief highlights the discriminatory impact of vague school discipline laws and school policing, particularly on Black students including Black girls, who make up the core of their plaintiffs—the organizational plaintiff is the Carolina Youth Action Project (formerly "Girls Rock Charleston"), and the lead plaintiff was Niya Kenny, the student who filmed the now infamous video of a school safety officer flipping a fellow student over in her desk and dragging her in her chair across the classroom, and who was then arrested for speaking out against the officer's misconduct. The brief also discusses the ways in which these harms caused by interactions with law enforcement are exacerbated for other students of color, students with disabilities, LGBTQ students, and students at the intersection of these identities.

Read more about this case and amicus brief in NWLC's post here:
https://nwlc.org/resource/nwlc-files-amicus-brief-to-prevent-school-push-out/

Equal Pay for USWNT!

Morgan, et al. v. U.S Soccer Federation

No. 21-55356

May 18, 2022

Victory has never tasted so sweet for the soccer players of the United States Women's National Team. After years of grueling battles and "equal pay" stadium chants, the USWNT finally has equal pay to their male counterparts.

NOW Foundation joined an equal pay amicus brief in support of professional soccer players on the United States Women's National Team ("USWNT"). The USWNT players appealed to the Ninth Circuit after a California federal district court dismissed their equal pay claims, following a negotiated settlement. For years, the U.S. Soccer Federation paid players on the USWNT less than the male players on the U.S. Men's National Team, despite the USWNT being more successful and bringing in substantially more money than the men's soccer team. The claims were reinstated, and the U.S. Soccer Federation announced a $24 million settlement with the 28 members of the team who brought the lawsuit.

Read more about this lawsuit victory here:
https://www.nytimes.com/2022/02/22/sports/soccer/us-womens-soccer-equal-pay.html

Failing to Hold the FCC Accountable for Promoting Women & Minority Ownership

Federal Communications Commission v. Prometheus Radio Project and National Association of Broadcasters v. Prometheus Radio Project (939 F. 3d 567 Reversed)

No. 04-1168

April 1, 2021

The Federal Communications Commission (FCC) maintains a collection of rules governing ownership of broadcast media, intended to promote "competition, diversity, and localism." In 2017, the FCC issued an order eliminating altogether newspaper/broadcast and television/radio cross-ownership rules and making other substantial changes. It also announced its intention to adopt an incubator program, calling for comment on various aspects of the program. In August 2018, the FCC established a radio incubator program. Numerous parties filed petitions for review challenging various aspects of the FCC's order. Among them, Petitioner Prometheus Radio Project argued that the FCC did not adequately consider the effect its rule changes would have on ownership of broadcast media by women and racial minorities.

NOW Foundation was part of a media diversity coalition in this long-running case that argued that the Federal Communications Commission retains responsibility to assure ownership

diversity and should oppose relaxation of rules against ownership concentration. The Supreme Court decided in favor of the FCC and National Association of Broadcasters that wholesale deregulation would not affect its ownership-diversity policy. Respondents Prometheus Radio Project asserted that failure to promote women- and persons of color-owned broadcast outlets would result in further concentration of media ownership by a few powerful interests. Diversity of ownership in the broadcast industry has greatly diminished over the years despite the advocacy of NOW Foundation and our partners in this effort.

Read more about this ruling on the SCOTUSblog website here: https://www.scotusblog.com/case-files/cases/federal-communications-commission-v-prometheus-radio-project/

FCC v. PROMETHEUS RADIO PROJECT | Supreme Court | US Law | LII / Legal Information Institute (cornell.edu)