

MEMORANDUM
National Organization for Women Foundation

TO: National Organization for Women (NOW) Foundation Board Members
FROM: Jan Erickson, NOW Foundation Director of Programs, with the assistance of Erin Reichert, NOW Public Policy Intern
Date: November 30, 2023

Class Action Decertification in Equal Pay Case

Jewett v. Oracle America, Inc.

Cal. Ct. App. No. 17-CIV-02669

In *Jewett v. Oracle America, Inc.*, filed June 2017, six female Oracle employees alleged sex-based discrimination in violation of the California Equal Pay Act, among other claims. Three sought to represent over 3,000 other women employed by Oracle in California, arguing that Oracle paid an average of \$13,000 less each year to female workers than to male counterparts. Plaintiffs contend that this disparity resulted in part from Oracle's centralized policies regarding the determination of employees' pay, including its system of job codes and utilization of salary history in determining pay.

On April 30, 2020, a California Superior Court Judge granted class certification. The order relied, in part, on plaintiffs' evidence of the highly centralized, top-down structure of Oracle's compensation policies as well as the company's own job code system, which already groups employees by skill, responsibility, and effort.

In June 2021, Oracle moved to decertify the class. After a subsequent hearing, the Court denied Oracle's decertification, but ordered Class Counsel to file a new trial plan based on concerns about the manageability of trial. After additional briefing and oral argument, Oracle filed a Second Motion for Decertification, and in June 2022, the court granted the motion for decertification on manageability grounds. Plaintiffs appealed and Oracle filed a response brief.

NOW Foundation signed on to an amicus brief on behalf of the plaintiff in this case noting that, "Since our founding, we have advocated for equal pay, worked against sex-based pay discrimination, and stood for the ability of a class of affected employees to be represented in litigation."

Another Challenge to a class action under Title IX

Anders, et al. v. California State University, Fresno

Case No. 1:21-cv-00179-AWI-BAM

Taylor Anders and her then-teammates on the women's lacrosse team originally filed this lawsuit in 2021, alleging that Fresno's athletics program was in violation of Title IX's gender equity mandate. After Fresno cut the women's lacrosse team, the plaintiffs asked a federal court in California to continue their lawsuit as a class action on behalf of all current and future women student-athletes at Fresno. However, the court denied their request, holding that women from one sports team cannot constitutionally represent women from other teams. When the plaintiffs pointed out that they wanted to represent both lacrosse and non-lacrosse women athletes, the court then held that doing so would deprive lacrosse players of sports-specific advocacy. In other words, in the court's view, Taylor and her former lacrosse teammates were both too lacrosse-focused to adequately represent all women athletes and too non-lacrosse-focused to adequately represent lacrosse players.

The amicus brief explains that the district court's decision and its Catch-22 reasoning would eviscerate class action lawsuits as a vehicle for enforcing Title IX in women's sports as intended by Congress, and, accordingly, the Ninth Circuit should reverse. The amicus brief aimed at protecting student athletes' access to class action lawsuits.

<https://nwlc.org/resource/nwlc-joins-amicus-to-protect-student-athletes-access-to-class-action-lawsuits-anders-v-csu-fresno/>

Securities and Exchange Commission v Jarkesy

Docket No. 22-859

This case reviews a ruling that set aside a decision of the SEC that the hedge fund manager George Jarkesy committed fraud when he misrepresented his financial position to investors. Based on that finding, the agency barred Jarkesy and his company from certain parts of the investment business, imposed \$300,000 in penalties on him, and required him to disgorge unlawful profits of nearly \$685,000. What makes this case so extraordinary is not that the U.S. Court of Appeals for the 5th Circuit concluded that the SEC's decision was unconstitutional, but the substance of the three separate grounds it found for doing so. If the lower court ruling is upheld, it would likely make adjudications by most federal agencies (and not just the SEC) a thing of the past.

This case was argued on November 29, 2023.

<https://slate.com/news-and-politics/2023/11/supreme-court-case-sec-jarkesy-stakes.html>

<https://www.washingtonpost.com/opinions/2023/11/24/supreme-court-case-separation-of-powers/>

Update on U.S. v. Rahimi – A challenge to the Constitutionality of the DV Offender Gun Ban

The Supreme Court heard arguments on November 7 in *United States v. Rahimi*, a case coming from the Fifth Circuit Court of Appeals (Texas, Louisiana). The question posed to the Court: Does 18 U.S.C. § 922(g)(8), which prohibits people under domestic violence restraining orders from possessing firearms, violate the Second Amendment? The justices questioned the logic and extent of Rahimi's defense. Hearing from Solicitor General Elizabeth Prelogar the heightened risk of death when a gun is present most justices seemed wary of the potential consequences that could follow striking down the domestic-violence offender gun ban. General Prelogar argued that the ban does not violate the Second Amendment because the history and tradition of firearm regulations in the United States allow Congress to disarm individuals who are not law-abiding, responsible citizens, such as those subject to civil protective orders. In opposition, Respondent Zackey Rahimi contends that § 922(g)(8) violates the Second Amendment on its face because the Second Amendment protects the firearm rights of all United States citizens and § 922(g)(8) bears no resemblance to any firearm regulations in American history. Rahimi has a long history of gun violence and is under a restraining order after assaulting and threatening his then girlfriend. A ruling in the case may not be announced until next spring.

supremecourt.gov/oral_arguments/audio/2023/22-915

[Questions and Answers on U.S. v. Rahimi, the Major Gun Case Before the Supreme Court During its 2023–2024 Term | Johns Hopkins | Bloomberg School of Public Health \(jhu.edu\)](#)

[Takeaways from the Supreme Court oral arguments on the Second Amendment and domestic violence | CNN Politics](#)

[Supreme Court leans toward upholding law that bars those accused of domestic violence from having firearms \(nbcnews.com\)](#)

Right Wing Continues to Challenge FDA over the Abortion Pill and the DV Offender Gun Ban

Reproductive Rights

Slate: [Republicans Have a New Plan to Save the Supreme Court Abortion Pill Case](#)

Susana Rinkunas reports that on Friday “the Republican attorneys general from Missouri, Kansas, and Idaho filed a motion to intervene in Judge Matthew Kacsmaryk’s court, claiming their states are also being injured by the approval of the abortion pill back in 2000.” These three states are attempting to join the case against mifepristone at the appeals court level. If Kacsmaryk allows this, it could slow the case down significantly in its path to the Supreme Court.

Guns

New York Times: [The Supreme Court’s Search for a More Attractive Gun Rights Case](#)

Adam Liptak reports on the case of Bryan Range, “who has challenged a federal law prohibiting people who have been convicted of felonies from owning guns.” Liptak notes that Range is a more sympathetic defendant, as plead guilty to a nonviolent crime in 1995, when “he had made

a false statement to get food stamps” to feed his three young children. The Court considered on Friday whether to take up the case, which Justice Barrett had referenced during arguments in *Rahimi*.

Also covered by: [USA Today](#)

Ethics

The Hill: [The Supreme Court’s new ‘code’ does nothing to enhance ethics](#)

Here is a link to the new ethics code which the Supreme Court has issued which has come under serious criticism because there is no mechanism for enforcement, [Code-of-Conduct-for-Justices November 13 2023.pdf \(supremecourt.gov\)](#) In the Hill article, Trevor Potter argues that the Supreme Court’s ethics code is not good enough and that Congress still needs to act.

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