

No. 21-5096

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**In the United States Court of Appeals  
for the District of Columbia Circuit**

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COMMONWEALTH OF VIRGINIA, ET AL.,  
PLAINTIFF-APPELLANTS

*v.*

DAVID S. FERRIERO, ARCHIVIST OF THE UNITED STATES,  
DEFENDANT-APPELLEE,

*and*

STATE OF ALABAMA, ET AL.,  
INTERVENOR-DEFENDANT-APPELLEES

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*ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA (CIV. NO. 20-0242)  
(THE HONORABLE RUDOLPH CONTRERAS, J.)*

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**BRIEF OF BUSINESS AND CORPORATE ENTITIES AS AMICI CURIAE  
SUPPORTING APPELLANTS AND REVERSAL**

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**CERTIFICATE AS TO PARTIES,  
RULINGS UNDER REVIEW, AND RELATED CASES**

Pursuant to Circuit Rule 28(a)(1), counsel for amici curiae business and corporate entities (“Amici Business Entities”) certify as follows:

- A. **Parties and Amici.** All parties, intervenors, and amici appearing before the district court and in this court are listed in the Brief for Appellants.
- B. **Ruling under Review.** References to the rulings at issue appear in the Brief for Appellants.
- C. **Related Cases.** The case now pending before this Court was not previously before this Court or any other court other than the district court below. Counsel is not aware of any related case pending before this Court or any court.

## **RULE 26.1 CORPORATE DISCLOSURE STATEMENT**

Pursuant to Federal Rules of Appellate Procedure 26.1 and 29(a)(4)(A), counsel for Amici Business Entities certify the following statements:

1. No parent, subsidiary, affiliate, or company owns at least 10% of the stock of **98point6 Inc.**, which, to the knowledge of counsel, has any outstanding securities in the hands of the public.
2. No parent, subsidiary, affiliate, or company owns at least 10% of the stock of **Adapt of America, Inc.**, which, to the knowledge of counsel, has any outstanding securities in the hands of the public.
3. **Airbnb, Inc.** discloses that it has no parent corporation, and no publicly-held corporation owns 10% or more of its stock.
4. **Amalgamated Bank** is a wholly owned subsidiary of Amalgamated Financial Corp. (“AMAL”). No parent, subsidiary, affiliate, or company, which owns at least 10% of the stock in AMAL is publicly traded or has any outstanding securities in the hands of the public.
5. **American Express Company** has no parent company. Berkshire Hathaway, Inc., a publicly-traded company, together with its subsidiaries and affiliates, owns 10% or more of the outstanding shares of American Express Company.

6. **American International Group, Inc.** is a publicly-held corporation, and no parent entity or publicly-held entity owns 10% or more of its stock.
7. **Apple Inc.**, by its undersigned attorneys, hereby states that it has no parent corporation and no publicly-held corporation owns 10% or more of its stock.
8. **Asana, Inc.** does not have a parent corporation, and, as of the date of this representation, no publicly-held corporation owns 10% or more of its stock.
9. No parent, subsidiary, affiliate, or company owns at least 10% of the stock of **ASG, LLC**, which, to the knowledge of counsel, has any outstanding securities in the hands of the public.
10. No parent, subsidiary, affiliate, or company owns at least 10% of the stock of **ASG II, LLC**, which, to the knowledge of counsel, has any outstanding securities in the hands of the public.
11. No parent, subsidiary, affiliate, or company owns at least 10% of the stock of **ASG III, LLC**, which, to the knowledge of counsel, has any outstanding securities in the hands of the public.
12. **Atakama Inc.** does not have a parent, subsidiary, affiliate, or company which owns 10% or more of its stock.

13. No parent, subsidiary, affiliate, or company owns at least 10% of the stock of **Baron Capital Group, Inc.**, which, to the knowledge of counsel, has any outstanding securities in the hands of the public.
14. There is no parent company or publicly-held corporation that owns at least 10% of the stock of **Benco Dental Supply Co.**
15. No parent, subsidiary, affiliate, or company owns at least 10% of the stock of **Biogen Inc.**, which, to the knowledge of counsel, has outstanding securities in the hands of the public.
16. No parent, subsidiary, affiliate, or company, which owns at least 10% of the stock in **Bloomberg L.P.**, is publicly traded or has any outstanding securities in the hands of the public.
17. The undersigned counsel of record for **Blue Apron Holdings, Inc.** certify that to the best of their knowledge and belief, the following are parent companies, subsidiaries, affiliates, or companies which own at least 10% of the stock of Blue Apron Holdings, Inc. and which have any outstanding securities in the hands of the public:  
None.
18. The **Bank of New York Mellon Corporation** is a publicly-held corporation with no parent company and no corporation owning 10% or more of its stock.

19. No parent, subsidiary, affiliate, or company owns at least 10% of the stock of **Bowery Farming Inc.**, which, to the knowledge of counsel, has any outstanding securities in the hands of the public.
20. **Braze, Inc.** does not have any individual or entity that owns 10% or more of the beneficial equity of Braze, Inc. or any of its subsidiaries. Braze, Inc. and its subsidiaries are privately held, with no stock in the hands of the public.
21. The following parent, subsidiary, affiliate, or company owns at least 10% of **Brighthouse Financial, Inc.** stock and has outstanding securities in the hands of the public: BlackRock, Inc.
22. **Build America Mutual Assurance Company (“BAM”)** is incorporated as a mutual insurance company under the provisions of the New York Insurance Law. This will certify that, as a mutual insurance company, there are no stockholders; BAM is owned by its members, who are its insured municipalities. There are no parents, subsidiaries, or affiliates owning 10% or more of shares of BAM.
23. No parent, subsidiary, affiliate, or company owns at least 10% of the stock of **CapeSpace, LLC**, which, to the knowledge of counsel, has any outstanding securities in the hands of the public.

24. Based solely on a review of SEC filings, the following parent, subsidiary, affiliate, or company owns at least 10% of the stock of **Capri Holdings Limited** and has outstanding securities in the hands of the public: FMR LLC, BlackRock, Inc., and The Vanguard Group.
25. No parent, subsidiary, affiliate, or company owns at least 10% of the stock of **CAULIPOWER, LLC** which, to the knowledge of counsel, has any outstanding securities in the hands of the public.
26. **Chobani, LLC** is a wholly-owned subsidiary of Chobani Global Holdings, LLC, a private Delaware limited liability company, which is a wholly-owned subsidiary of FHU US Holdings, LLC, a private Delaware limited liability company. No publicly-held corporation owns 10% or more of its equity.
27. **Citigroup Inc.** is a public company listed on the New York Stock Exchange and has no parent corporation. To the best knowledge of Citigroup Inc., no publicly-held corporation or other person owns 10% or more of the common stock of Citigroup Inc.
28. No corporation or other entity or person holds an ownership interest in **Deloitte LLP** of 10% or greater.

29. **Diageo North America, Inc. (“DNA”)**, through its undersigned counsel, certifies that DNA is a wholly-owned subsidiary of its ultimate parent, Diageo PLC, a public limited company organized and existing under the laws of England and Wales, and that there are no other publicly-held corporations owning 10% or more of DNA.

30. No publicly-held corporation owns 10% or more of **Dow Inc.’s** stock.

31. The following parent, subsidiary, affiliate, or company of **Equitable** owns at least 10% of the stock and has outstanding securities in the hands of the public: Equitable Holdings, Inc.; T. Rowe Price.

32. No parent, subsidiary, affiliate, or company owns at least 10% of the stock of **Etsy, Inc.**, which, to the knowledge of counsel, has any outstanding securities in the hands of the public.

33. No parent, subsidiary, affiliate, or company owns at least 10% of the stock of Friend of a Friend d/b/a **Everything is Everything**, which, to the knowledge of counsel, has any outstanding securities in the hands of the public.

34. **General Assembly Space, Inc.** is wholly owned by Adecco, Inc., a U.S. corporation that is wholly owned by Adecco Group, AG, a publicly-traded company in Switzerland.



35. No parent, subsidiary, affiliate, or company, which owns at least 10% of the stock in **Gilead Sciences, Inc.**, is publicly traded or has any outstanding securities in the hands of the public.
36. **Google LLC** is a wholly-owned subsidiary of XXVI Holdings Inc., which is a wholly-owned subsidiary of Alphabet Inc., a publicly-traded company. No publicly-traded company holds more than 10% of Alphabet Inc.'s stock.
37. No parent, subsidiary, affiliate, or company owns at least 10% of the stock of **Greenhouse Software, Inc.**, which, to the knowledge of counsel, has any outstanding securities in the hands of the public.
38. The **Guardian Life Insurance Company of America**, by its authorized representative, states that it has no parent corporation, and that no other corporation holds any stock of said company. Guardian is a mutual life insurance company, is owned by its policyholders and does not issue shares of stock.
39. **International Business Machines Corporation (“IBM”)** has no parent corporation, and no publicly-held corporation owns more than 10% of its stock.
40. CBRE, a publicly-traded company, owns 40% interest in **Industrious**. No other parent, subsidiary, affiliate, or company owns at

least 10% of the stock of Industrious, which, to the knowledge of counsel, has any outstanding securities in the hands of the public.

41. **JPMorgan Chase & Co.** is a publicly-held corporation. JPMorgan Chase & Co. does not have a parent corporation, and no publicly-held corporation owns 10% or more of its stock. However, The Vanguard Group, Inc., an investment adviser which is not a publicly-held corporation, has reported that registered investment companies, other pooled investment vehicles, and institutional accounts that it or its subsidiaries sponsor, manage, or advise have aggregate ownership under certain regulations of 10% or more of the stock of JPMorgan Chase & Co.

42. No publicly-held corporation owns 10% or more of **Kimberly-Clark Corporation's** stock.

43. No parent, subsidiary, affiliate, or company owns at least 10% of the stock of **KIND LLC**, which, to the knowledge of counsel, has any outstanding securities in the hands of the public.

44. No parent, subsidiary, affiliate, or company owns at least 10% of the stock of **Levi Strauss & Co.**, which, to the knowledge of counsel, has any outstanding securities in the hands of the public.

45. No parent, subsidiary, affiliate, or company owns at least 10% of the stock of **Livari Clothing**, which, to the knowledge of counsel, has any outstanding securities in the hands of the public.
46. The following parent, subsidiary, affiliate, or company of **LVMH Moet Hennessy Louis Vuitton Inc.** owns at least 10% of the stock and has outstanding securities in the hands of the public: LVHM Moet Hennessy Louis Vuitton SE.
47. **Lyft, Inc. (“Lyft”)** is a publicly-held corporation traded on the Nasdaq Global Select Market with no parent corporation. Based on Lyft’s knowledge from publicly available U.S. Securities and Exchange Commission filings, no publicly-held corporation or entity owns 10% or more of Lyft’s outstanding common stock.
48. No parent, subsidiary, affiliate, or company owns at least 10% of the stock of **Mastercard Incorporated**, which, to the knowledge of counsel, has any outstanding securities in the hands of the public.
49. No parent, subsidiary, affiliate, or company, which owns at least 10% of the stock in **McKesson Corporation**, is publicly traded or has any outstanding securities in the hands of the public.

50. No parent, subsidiary, affiliate, or company owns at least 10% of the stock of **Microsoft**, which, to the knowledge of counsel, has any outstanding securities in the hands of the public.
51. **Momentive Inc.** is wholly owned by Momentive Global Inc., a publicly-traded company. No other entity, stockholder or affiliate owns more than 10% of Momentive Inc.
52. **Morgan Stanley** is a publicly-held corporation that has no parent corporation. Based on Securities and Exchange Commission Rules regarding beneficial ownership, Mitsubishi UFJ Financial Group, Inc., 7-1 Marunouchi 2-chome, and Chiyoda-ku, Tokyo 100-8330, beneficially own greater than 10% of Morgan Stanley's outstanding common stock.
53. No parent, subsidiary, affiliate, or company owns at least 10% of the stock of **Motus, LLC**, which, to the knowledge of counsel, has any outstanding securities in the hands of the public.
54. No parent, subsidiary, affiliate, or company owns at least 10% of the stock of **Nardello & Co.**, which, to the knowledge of counsel, has any outstanding securities in the hands of the public.

55. **The National Football League** (“NFL”) states that the NFL is an unincorporated association that does not have a parent corporation, and no publicly-held corporation owns 10% or more of its stock.
56. **Neuberger Berman** is a private company with no public equity securities. No employee or former employee owns more than 10% of Neuberger Berman’s equity.
57. **New York Life Insurance Company**, by its authorized representative, states that it has no parent corporation and that no other corporation holds any stock of said company. New York Life Insurance Company is a mutual life insurance company, is owned by its policyholders, and does not issue shares of stock.
58. **Oscar Health, Inc.** discloses that it has no parent corporation, and to the knowledge of counsel, no publicly-held corporation has more than 10% voting control.
59. No parent, subsidiary, affiliate, or company owns at least 10% of the stock of **PepsiCo, Inc.**, which, to the knowledge of counsel, has any outstanding securities in the hands of the public.
60. No parent, subsidiary, affiliate, or company owns at least 10% of the stock of **Pfizer Inc.**, which, to the knowledge of counsel, has any outstanding securities in the hands of the public.

61. No parent, subsidiary, affiliate, or company owns at least 10% of the stock of **Procore Technologies, Inc.**, which, to the knowledge of counsel, has any outstanding securities in the hands of the public.
62. There is no publicly-traded company that owns 10% or more of **Prosperity Life Insurance Group, LLC**.
63. The **Prudential Financial, Inc.** is a publicly-traded company, and no parent corporation or any publicly-held corporation owns 10% or more of its stock.
64. The following parent, subsidiary, affiliate, or company of **Puppet, Inc.** owns at least 10% of the stock and has outstanding securities in the hands of the public: VMware, Inc.
65. No parent, subsidiary, affiliate, or company owns at least 10% of the stock of **Quotient Technology Inc.**, which, to the knowledge of counsel, has any outstanding securities in the hands of the public.
66. No parent, subsidiary, affiliate, or company owns at least 10% of the stock of **Rebelle Media**, which, to the knowledge of counsel, has any outstanding securities in the hands of the public.

67. No parent, subsidiary, affiliate, or company owns at least 10% of the stock of **salesforce.com, inc.**, which, to the knowledge of counsel, has any outstanding securities in the hands of the public.
68. No parent, subsidiary, affiliate, or company owns at least 10% of the stock of **Seed&Spark, Inc.**, which, to the knowledge of counsel, has any outstanding securities in the hands of the public.
69. No parent, subsidiary, affiliate, or company owns at least 10% of the stock of **ShelterPoint Life Insurance Company**, which, to the knowledge of counsel, is publicly traded.
70. The following parent, subsidiary, affiliate, or company of **Shiseido Americas Corporation** owns at least 10% of the stock and has outstanding securities in the hands of the public: Shiseido Company, Ltd.
71. SB Investment Advisers (US), Inc. d/b/a **SoftBank Investment Advisers** is a Delaware corporation and a wholly-owned subsidiary of SoftBank Group Corp., a publicly-traded corporation under the laws of Japan. No publicly-held corporation owns 10% or more of the SoftBank Group Corp.'s stock.
72. No parent, subsidiary, affiliate, or company owns at least 10% of the stock of **Strava**, which, to the knowledge of counsel, has any outstanding securities in the hands of the public.

73. **Tapestry, Inc.** is a publicly-held Maryland corporation that has no parent corporation; based on the Schedule 13-Gs filed with the U.S. Securities and Exchange Commission on February 15, 2021, the publicly-held corporations that own 10% or more of Tapestry's stock are: FMR, LLC and The Vanguard Group.

74. The undersigned, as counsel for **The Estée Lauder Companies Inc. ("ELC")**, hereby states that ELC is a publicly-held corporation.

75. No parent, subsidiary, affiliate, or company owns at least 10% of the stock of **The Hershey Company**, which, to the knowledge of counsel, has any outstanding securities in the hands of the public.

76. The following parent, subsidiary, affiliate, or company of **Thinx** owns at least 10% of the stock and has outstanding securities in the hands of the public: Kimberly-Clark Corporation.

77. **Tiffany & Co.** is a wholly-owned subsidiary of Breakfast Holdings Acquisition Corp., which, in turn, is a wholly-owned subsidiary of LVMH Moët Hennessy Louis Vuitton Inc., which, in turn, is a wholly-owned subsidiary of LVMH Moët Hennessy Louis Vuitton SE. Tiffany & Co. is, thus, an indirect wholly-owned subsidiary of LVMH Moët Hennessy Louis Vuitton SE, which is a publicly-traded company.



78. **Tory Burch LLC** is a non-governmental corporate party; Tory Burch LLC does not have a parent corporation, and no publicly-held corporation owns 10% or more of Tory Burch LLC's stock or membership interests.
79. The following parent, subsidiary, affiliate, or company owns at least 10% of the stock of **TransUnion** and has outstanding securities in the hands of the public: T. Rowe Price.
80. The following parent, subsidiary, affiliate, or company owns at least 10% of **Turo Inc.** stock and has outstanding securities in the hands of the public: InterActiveCorp (IAC).
81. The following parent, subsidiary, affiliate, or company owns at least 10% of **Uber Technologies, Inc.** stock and has outstanding securities in the hands of the public: None.
82. **United States Soccer Federation, Inc.** certifies that no publicly-held corporation holds 10% or more of its stock, and United States Soccer Federation, Inc. does not have a corporate parent.
83. **VF Corporation** discloses that PNC Bank, NA, a privately held company, owns at least 10% of VF Corporation stock. PNC Bank, NA is a subsidiary of The PNC Financial Services Group, Inc., which is publicly traded.

84. **Vice Media LLC** is a Delaware limited liability company and a wholly-owned subsidiary of Vice Group Holding Inc. No publicly-traded company owns 10% or more of its stock.
85. The following parent, subsidiary, affiliate, associate, or company of **WeWork** owns at least 10% of the stock and has outstanding securities in the hands of the public: SoftBank Group Corp.
86. No parent, subsidiary, affiliate, or company owns at least 10% of the stock of **Workday, Inc.**, which, to the knowledge of counsel, has any outstanding securities in the hands of the public.

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**GLOSSARY**

Amici Business Entities	Amici Curiae Business and Corporate Entities
COVID-19	Coronavirus
ERA	Equal Rights Amendment

## IDENTITY AND INTEREST OF AMICI CURIAE<sup>1</sup>

Amici curiae are eighty-six companies whose businesses span the breadth of the U.S. economy. Although amici, whose names are provided in Exhibit 1, represent diverse commercial interests, they are united in their support of gender equality.

Amici have an interest in ensuring the full participation of women in the economy. Operating in a wide range of industries and markets that serve a diverse and multicultural customer base, amici understand that diversity in the workplace drives business performance. A workforce that includes employees with different backgrounds and life experiences is essential for any business operating in a global economy and multicultural society. Unequal access to education and housing, inadequate health care, lack of physical safety, and economic insecurity prevent many women from fully accessing the labor market. The socioeconomic and legal challenges facing women due to gender inequality directly impact businesses in their efforts to recruit and retain women employees and access new markets, making it harder for American businesses to succeed.

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<sup>1</sup> Pursuant to Fed. R. App. P. 29(a)(4)(E), the Amici Business Entities state that no counsel for a party authored this brief in whole or in part, and no monetary contribution was provided that was intended to fund the preparation or submission of this brief by a party, a party's counsel or any other person. The Amici Business Entities file this amicus brief with the consent of all parties.

This case involves the refusal of National Archivist David Ferriero to certify Appellant States' adoption of the Equal Rights Amendment ("ERA"). The ruling below, granting the Archivist's motion to dismiss and Intervenor-Defendants' motion for summary judgment construed as a motion to dismiss, failed to consider that the Archivist's actions undermine women's full participation in the economy, which, in turn, harms Appellant States.

## INTRODUCTION

From the very first words of its preamble, the United States Constitution and its Amendments set forth the nation's values and commitments—including separation of powers; a government accountable to the People at the ballot box; freedom of speech, religion, and the press; the right to due process and equal protection; and the right of all adult citizens to vote regardless of race or sex.<sup>2</sup> These constitutional commitments are central to our understanding of what it means to be American. Indeed these are the values that millions believed were worth fighting for. Some of these core values—such as the Constitution's commitment to freedom itself—were absent from the text for generations and only added after decades of struggle. But with each amendment,

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<sup>2</sup> The Equal Rights Amendment refers to "sex" equality. This brief uses both terms, "sex" and "gender," to refer to broad equality principles that are protected by the ratification of the ERA. *See, e.g., Bostock v. Clayton Cty.*, 140 S. Ct. 1731, 1739 (2020).

Americans built a more perfect union. And for the twenty-eighth time—a century after women secured the right to vote—we have done so again by ratifying the ERA, an amendment that guarantees equal rights for all regardless of sex.

In 1972, after decades of advocacy, Congress approved and submitted the ERA to the States. The amendment was supported on a bipartisan basis, with both chambers approving the ERA by overwhelming majorities that reflected the extraordinary support for the ERA—354 to 24 in the House and 84 to 8 in the Senate. Between 1972 and 1977, thirty-five of the fifty states ratified the ERA, leaving the amendment just three states short of ratification. Although years passed, the urgent need for the ERA never did. Men and women continue to be treated differently in this country on account of sex, resulting in myriad disparities in economic, health, and other outcomes. Mindful of this continued injustice and the harm caused by failing to address gender inequality in the Constitution, each of the three Appellant States considered the amendment in recent years. On a bipartisan basis, Nevada became the thirty-sixth state to ratify the ERA on March 22, 2017. Ratification by Illinois and Virginia followed on May 30, 2018 and January 27, 2020, respectively. While others have argued, untethered from constitutional text or history, that the mere passage of time invalidates the ratification votes of the three Appellant

States, amici submit that the continued interest in the ERA by state legislatures in Appellant States underscores the amendment's continued relevance and popularity.<sup>3</sup>

With Virginia's ratification, the Article V requirements have been met. Yet, Defendant, Mr. Ferriero—charged by statute with carrying out the ministerial function of publishing duly enacted amendments—has refused to certify the ERA's adoption. This inaction obstructed the realization of the People's will, and frustrated the clear purpose of Article V. Accordingly, on January 30, 2020, Appellant States filed suit to ensure that this fundamental duty be carried out.

Amici curiae, a diverse group of eighty-six businesses employing millions of women and men, are united in their support of gender equality. They submit this brief in support of the Appellant States' motion. Proudly joining

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<sup>3</sup> See American Bar Association, *ABA 2020 Survey of Civic Literacy* (May 1, 2020), <https://tinyurl.com/y9u8cumh> (83% of respondents strongly supported the ERA); see also Rachel Minkin, *Most Americans Support Gender Equality, Even If They Don't Identify As Feminists*, Pew Research Center (July 14, 2020), <https://tinyurl.com/4tezcb9m> (78% of Americans, including a majority of Democrats and Republicans support ERA); Maryclaire Dale & Jocelyn Noveck, *AP-NORC Poll: Most Americans Support Equal Rights Amendment*, Associated Press (Feb. 24, 2020), <https://tinyurl.com/uwnda4e> (73% of American adults support the ERA); Kathy Frankovic, *Virginia Could Be the 38th State to Ratify the Equal Rights Amendment, and Americans Approve*, YouGov (Nov. 18, 2019), <https://tinyurl.com/y976jxj4> (majority of Democrats, Republicans, and Independents support adding the ERA to the Constitution).

the overwhelming majority of Americans that support the ERA, amici recognize that eliminating systemic barriers that impede women's economic and social advancement will result in a more just, vibrant, and productive America. Ratification of the ERA sends a powerful message about the nation's commitment to sex equality—a message amici believe would be transformational for the American economy. Amici strongly urge this Court to reverse the judgment of the district court and order the Archivist to perform his statutory duty to publish and certify the ERA as the Twenty-Eighth Amendment. The district court's decision—which effectively turns back progress made over many decades in the struggle for women's Constitutional equality and closes the doors of the courthouse to Appellant States who seek a remedy for the Archivist's unlawful refusal to recognize their ratifications—should be reversed.

### **ARGUMENT**

Adoption of the ERA would support all U.S. businesses in their efforts to diversify the workforce and expand their consumer reach, eliminate the barriers that have hindered the full participation of women in the economy, and provide clear federal principles of equality. For nearly two years, we have watched the novel coronavirus (“COVID-19”) pandemic expose and exacerbate systemic gender inequities in our society. To recover from its devastating impacts, we need, more than ever, an ERA in the U.S. Constitution.

The principle of equality enshrined in the ERA is already the driving force behind long-standing corporate efforts to promote diversity, and the benefits to businesses are myriad. Diverse companies benefit from different perspectives, higher levels of employee morale, and more effective customer and community outreach. Diverse workplaces are better able to maximize talent and productivity, spark creativity and innovation, and positively influence the society in which we live. Ultimately, workplace diversity not only brings about economic success in a globalized world, but also benefits workers' professional lives and identities, promoting a more inclusive nation.

As we have seen the financial hardship of the COVID-19 pandemic fall disproportionately on women, particularly women of color, it is painfully evident to amici that the need for sex equality has never been greater. Despite significant advances over the past three decades, women continue to face substantial and systemic gender-based barriers, including unequal educational opportunities, inadequate health care access, and gender-based violence. Long-standing gender inequities have left many women in a precarious economic position, making them particularly vulnerable to the disastrous economic consequences of the pandemic.

Amici believe that the ERA presents an opportunity for a more inclusive economic recovery as well as a more equitable economy going forward. By facilitating women's full participation in the labor force and improving



women's economic prospects, the ERA would benefit women workers; assist businesses in recruiting, developing, and retaining them; and expand the universe of customers for the products and services these businesses sell. As gender diversity in the workforce increases, economic output and demand will also increase.

Importantly, the ERA would also provide the consistency and certainty of federal principles of equality that businesses need to expand and grow. Ratification of the ERA would provide a uniform federal judicial standard for protection of women's rights, strengthen the legal advances for women that have already been achieved, and enhance the competitive edge of U.S. businesses globally. By addressing the limitations of our legal system that contribute to the socioeconomic marginalization of women, the ERA would enable businesses to emerge from the current crisis even stronger.

The ERA would also send an important message to the global community about American norms and values. The Charter of Fundamental Rights of the European Union, adopted by one of our largest trading partners and a jurisdiction where many amici operate, declares that "[e]quality between

women and men must be ensured in all areas”<sup>4</sup> and prohibits “[a]ny discrimination based on . . . sex.”<sup>5</sup> An overwhelming majority of the world’s constitutions—including virtually all developed nations—contain provisions guaranteeing equal rights or prohibiting discrimination on the basis of sex or gender.<sup>6</sup> Gender equality has also been a core principle of international law for decades—so universally accepted that 187 of the United Nations’ 193 members have ratified or acceded to the Convention on the Elimination of All Forms of Discrimination against Women.<sup>7</sup> Amici, many of which compete internationally for customers and employees, believe the ERA will improve American competitiveness and help accelerate the post-COVID-19 economic recovery.

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<sup>4</sup> Charter of Fundamental Rights of the European Union, title III, art. 23, 2012 O.J. (L 326) 400.

<sup>5</sup> *Id.* at art. 21-1.

<sup>6</sup> Jody Heymann et al., *Advancing Equality: How Constitutional Rights Can Make a Difference Worldwide*, 58 (Univ. of Cal. Press 2020) (85% of constitutions explicitly guarantee equal rights or non-discrimination on the basis of sex and/or gender); *see also* U.S. Library of Congress, *Constitutional Provisions on Women’s Equality* (July 2011), <https://tinyurl.com/487huzph>.

<sup>7</sup> *See* Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13; 19 I.L.M. 33 (1980).

## **I. AS CORPORATE CITIZENS, AMICI ARE STRONGLY COMMITTED TO THE ERA AS A MEANS TO ADVANCE THE GOAL OF GENDER EQUALITY**

### **A. Amici Are Deeply Committed to Principles of Gender Equality, Diversity, & Inclusion**

Amici foster workplace cultures that value the different backgrounds and unique perspectives of their millions of employees. They have devoted considerable resources to initiatives that support gender equality and promote diversity and inclusion within their own organizations. For example, some amici have developed vanguard policies and programs and increased training; others have established offices and executive roles focused on diversity and inclusion. Many have launched mentoring and other initiatives designed to broaden opportunities for women's professional advancement. Amici have also worked to address the effects of gender inequality in their respective communities through corporate social responsibility initiatives.

Amici's commitment to gender equality stems, in part, from a recognition that diversity and inclusion is not only a moral imperative, it is also good for business. It is now well established that gender diversity in the workplace improves performance.<sup>8</sup> Studies show businesses that value equality, promote

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<sup>8</sup> See, e.g., Catalyst, *Why Diversity and Inclusion Matter: Financial Performance (Appendix)* (last updated June 24, 2020), <https://ti.nyurl.com/y7n2kkm5> (collecting studies that demonstrate the financial benefits of workplace gender diversity).

diversity, and emphasize inclusion perform better financially.<sup>9</sup> According to a 2019 study of more than 1,000 large companies in the United States and fourteen other countries, businesses with executive teams in the top quartile of gender diversity were 25 percent more likely to achieve above-average profitability compared to companies in the bottom quartile for gender diversity.<sup>10</sup> Increasingly attuned to the bottom-line benefits of diversity, companies worldwide emphasize efforts to reduce bias and other workplace barriers.<sup>11</sup>

The positive correlation between diversity and financial performance makes sense because the success of businesses ultimately depends on the tenacity, resourcefulness, and creativity of their employees. Employees want to work in an environment where their contributions are valued and rewarded, and businesses want to encourage employees to draw upon and share different

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<sup>9</sup> See Sylvia Ann Hewlett et al., *How Diversity Can Drive Innovation*, Harv. Bus. Rev. (Dec. 2013), <https://tinyurl.com/j8nyu8k>; Dieter Holger, *The Business Case for More Diversity*, Wall St. J. (Oct. 26, 2019), <https://tinyurl.com/y8vt8g4w>; Katherine W. Philips, *How Diversity Makes Us Smarter*, Sci. Am. (Oct. 1, 2014), <https://tinyurl.com/zo3asdr>; Julia Dawson et al., *The CS Gender 3000: The Reward for Change*, Credit Suisse Res. Inst. at 22–25 (Sept. 2016), <https://tinyurl.com/y8g24pmj>; Sundiatu Dixon-Fyle et al., *Diversity Wins: How Inclusion Matters*, McKinsey & Co. at 13–20 (May 2020), <https://tinyurl.com/ybcd2nmd>.

<sup>10</sup> Dixon-Fyle, *supra* note 9, at 3, 14.

<sup>11</sup> See, e.g., Matt Krentz, *Survey: What Diversity and Inclusion Policies Do Employees Actually Want?*, Harv. Bus. Rev. (Feb. 5, 2019), <https://tinyurl.com/yyveswj4>.

perspectives when solving problems or designing new products. Experience and research have repeatedly confirmed that diverse teams are more creative, better able to recognize previously unappreciated opportunities, and more likely to anticipate problems.<sup>12</sup> This means that diverse companies are likely to be more innovative and successful at rolling out new products and solutions in the marketplace.<sup>13</sup>

Women consumers directly make or influence nearly 80 percent of purchases in the United States.<sup>14</sup> As a result, amici's ability to serve women consumers is critical to their continued financial success. Amici recognize that gender diverse teams are more innovative and better able to anticipate consumer needs and patterns.<sup>15</sup>

Building and maintaining an inclusive workplace culture is now understood to be critical for businesses seeking to attract and retain top talent.

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<sup>12</sup> See Hewlett, *supra* note 9; Philips, *supra* note 9; see also Roger C. Mayer et al., *Do Pro-Diversity Policies Improve Corporate Innovation?*, 47 *Fin. Mgmt.* 617 (Fall 2018).

<sup>13</sup> See, e.g., Rocío Lorenzo et al., *How Diverse Leadership Teams Boost Innovation*, Boston Consulting Grp. (Jan 23, 2018), <https://tinyurl.com/y68et2mk>.

<sup>14</sup> See Stuart Levine, *Diversity Confirmed To Boost Innovation and Financial Results*, *Forbes* (Jan. 15, 2020), <https://tinyurl.com/y7foz2dh>.

<sup>15</sup> Heidi Grant & David Rock, *Why Diverse Teams are Smarter*, *Harv. Bus. Rev.* (Nov. 4, 2016), <https://tinyurl.com/yc95n8rc>.

While inattention to diversity and inclusion can lead to increased turnover,<sup>16</sup> draining businesses of experienced talent and saddling them with additional recruiting expenses, studies have shown that companies that prioritize diversity and inclusion are better positioned to recruit and retain employees.<sup>17</sup> The risks of inaction are apparent. According to one study, 86 percent of female and 74 percent of male millennials consider policies on diversity, equality, and inclusion important when assessing a job offer.<sup>18</sup>

A company's corporate values can positively influence consumer and stakeholder decisions. Research suggests Americans prefer to do business

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<sup>16</sup> See Korn Ferry, *Progress Being Made in Diversity and Inclusion Efforts but More Still Needs to Be Done* (Mar. 18, 2019), <https://tinyurl.com/yn3msttd> (49% of executives believed inattention to diversity and inclusion results in higher turnover; 63% believed that diversity and inclusion programs improved their retention rates).

<sup>17</sup> See Vivian Hunt et al., *Diversity Still Matters*, McKinsey & Co., at 9–13 (Feb. 2, 2015), <https://tinyurl.com/4yy5ume9>; Matt Krentz et al., *The Rewards of an Engaged Female Workforce*, Boston Consulting Grp. (Oct. 27, 2016), <https://tinyurl.com/ycbay9yk>.

<sup>18</sup> Aoife Flood, *The Female Millennial: A New Era of Talent*, PwC, 8 (2015), <https://tinyurl.com/y8bva99z>; see also Inst. for Public Relations & Weber Shandwick, *Millennials at Work: Perspectives on Diversity and Inclusion* (Dec. 6, 2016), <https://tinyurl.com/ybgv9bsm/> (47% of millennials view diversity and inclusion of a workplace to be an important factor when searching for a new job).

with socially-conscious companies, particularly with respect to gender and racial equity.<sup>19</sup> Increasingly, institutional investors incorporate considerations of diversity and inclusion into due diligence and investment decisions.<sup>20</sup> In short, diversity and inclusion has become a business imperative.

### **B. Persistent Gender-Based Inequality Demonstrates the Continued Need for the ERA**

Unfortunately, despite decades of efforts to advance women's rights, many women still face socioeconomic barriers preventing them from fully participating in the labor market. The challenges facing women—particularly women of color—have taken on increased urgency during the pandemic. Without full Constitutional equality, women experience widespread, systemic issues that impact the economy and make the ERA as vital as ever today.

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<sup>19</sup> See Wayne Elsey, *Why Your Company Should Be More Socially Responsible*, Forbes (May 30, 2018), <https://tinyurl.com/ybpbj5ts> (63% of American consumers want to do business with companies that are social and environmental leaders; 78% want companies to address social issues; 87% would buy a product based on the company's social advocacy; and 76% would decline to do business with a company that held views or supported issues that conflicted with their beliefs).

<sup>20</sup> See, e.g., Nir Kaissar, *Calpers Diversity Push Blends Social-Investing Camps*, Bloomberg, June 18, 2019, <https://tinyurl.com/yx9h6rddy>; Arleen Jacobius, *CalPERS Turns Focus to Board Diversity in Proxy Voting*, Pensions&Investments, Sept. 17, 2018, <https://tinyurl.com/y7wlmq7d>.

1. *The Legal Landscape Demonstrates a Continued Need for the ERA*

Existing legal decisions have fallen short in effectuating women's basic rights in the enforcement of domestic violence restraining orders and sexual assault laws. Given that the foundation of economic productivity is physical safety and security, it is clear that a constitutional guarantee of equality of rights on the basis of sex is still critically needed. The ERA would provide a consistent federal standard that supports the fundamental rights of physical safety and security.

In *Town of Castle Rock, Colo. v. Gonzales*,<sup>21</sup> for example, the Supreme Court held that a domestic violence victim did not have a right under the Due Process Clause to the enforcement of a restraining order: where the state's laws permitted officer discretion in making restraining order enforcement decisions, the petitioner had no legal remedy. Similarly, in *United States v. Morrison*,<sup>22</sup> the Supreme Court struck down a provision of the Violence Against Women Act that provided a federal civil remedy for victims of sexual violence.<sup>23</sup> In *Geduldig v. Aiello*,<sup>24</sup> the Court upheld a California disability insur-

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<sup>21</sup> 545 U.S. 748 (2005).

<sup>22</sup> 529 U.S. 598 (2000).

<sup>23</sup> *See id.* at 613–27.

<sup>24</sup> 417 U.S. 484 (1974).



ance program that did not cover employment disabilities resulting from pregnancy, essentially holding that the Constitution does not protect women from pregnancy discrimination based on sex.<sup>25</sup>

In each of these cases, the Court held that the petitioner had no legal remedy under the Constitution to address a deprivation of rights on account of sex. The outcome of each of these cases would have been different if sex equality was guaranteed by the Constitution. By providing a constitutional guarantee of equality, elevating the legal standard applied to state action on the basis of sex to strict scrutiny, acknowledging sex equality as a guiding principle, and creating a consistent federal standard, the ERA will expand the power of the courts to effectuate women's rights.

Efforts to enact recent legislation such as the Violence Against Women Reauthorization Act and the Pregnant Workers Fairness Act show bipartisan recognition of the need for greater and more uniform protections for women.<sup>26</sup>

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<sup>25</sup> *Id.* at 495. Without a Constitutional guarantee of equality, women's rights remain vulnerable and subject to the different levels of protection afforded by state legislatures. *See, e.g., Whole Woman's Health v. Jackson*, \_\_ U.S. \_\_, 2021 WL 3910722 (U.S. Sept. 1, 2021); *Jackson Women's Health Org. v. Dobbs*, \_\_ U.S. \_\_, 2021 WL 1951792 (U.S. May 17, 2021).

<sup>26</sup> The Pregnant Workers Fairness Act would make it an unlawful employment practice to fail to make reasonable accommodations for qualified employees affected by pregnancy. *See Pregnant Workers Fairness Act*, H.R.1065, 117th Cong. (2021-2022). The VAWA bill authorizes programs and activities that seek to prevent domestic violence, sexual assault, dating violence, and

But they also highlight that these rights are not historically protected by statute. Nor are they guaranteed even with a federal statute. Congress can always amend or repeal such laws, and the Executive Branch can deprioritize their enforcement.

2. *Women—Particularly Women of Color—Continue to Face Substantial and Systemic Gender-Based Barriers to Full Equality*

Without an ERA as a national standard, widespread, systemic inequalities have taken root and affected women’s full participation in the economy. Difficulties that disproportionately impact women and prevent full labor market participation include gender-based violence, housing instability, lack of health care, and poverty. These difficulties create barriers to the retention of skilled women employees and inhibit economic growth.

Sexual and intimate partner violence impacts a staggering number of women nationwide,<sup>27</sup> with one out of every six women having been the victim of an attempted or completed rape over a lifetime.<sup>28</sup> In 2020 alone, over 320

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stalking; in its reauthorization, the bill establishes new protections that promote housing stability and economic security for victims of domestic violence. *See Violence Against Women Act Reauthorization Act of 2021, H.R.1620, 117th Cong. (2021-2022).*

<sup>27</sup> Jessie Bode Brown, *The Costs of Domestic Violence in the Employment Arena: A Call for Legal Reform and Community-Based Education Initiatives*, 16 Va. J. Soc. Pol’y & L. 1, 1–2 (2008) (citation omitted).

<sup>28</sup> *See Rape, Abuse & Incest National Network, Victims of Sexual Violence: Statistics*, <https://tinyurl.com/hpwax6p>. [Hereinafter “RAINN”]

thousand rapes or sexual assaults were reported to the U.S. Department of Justice.<sup>29</sup> Similarly, one in three women has experienced physical violence by an intimate partner.<sup>30</sup>

Researchers have documented that sexual and intimate partner violence has long-term impacts on victims. Ninety-four percent of rape victims experience symptoms of post-traumatic stress disorder in the weeks immediately following.<sup>31</sup> Approximately 70 percent of sexual assault victims suffer from long-term psychological distress, a higher rate than victims of other violent crimes, such as robbery or assault, experience.<sup>32</sup> Sexual and intimate partner violence also impacts women's relationships with their friends, family, and co-workers. Victim advocacy organizations find that 38 percent of sexual violence victims face issues at work or school, which can include challenges with a boss or coworker.<sup>33</sup> Eighty-four percent of victims of sexual violence by an intimate

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<sup>29</sup> See U.S. Department of Justice, Bureau of Justice Statistics, NCJ 301775, *Criminal Victimization, 2020*, 2 (Oct. 2021), <https://tinyurl.com/ys2nemwc>.

<sup>30</sup> See National Coalition Against Domestic Violence, *Statistics*, <https://tinyurl.com/ydcp7c2x>. [Hereinafter "NCADV"]

<sup>31</sup> See RAINN, *supra* note 28.

<sup>32</sup> U.S. Department of Justice, Bureau of Justice Statistics, NCJ 247076, *Socio-emotional Impact of Violent Crime*, 3 (Sept. 2014), <https://tinyurl.com/y9hdce5q>.

<sup>33</sup> See *id.* at 17.

partner experience socio-emotional issues.<sup>34</sup> Victims of intimate partner violence lose an estimated total of eight million days of paid work every year.<sup>35</sup> Intimate partner violence costs the economy more than \$8.3 billion per year, with between 21 and 60 percent of victims losing their jobs as a result.<sup>36</sup>

The effects of sexual partner violence also extend to housing insecurity. Intimate partner violence is the principal cause of homelessness for women.<sup>37</sup> Insufficient and unsafe housing creates a barrier to full equality because it leads to increased stress and social isolation.

In addition, an inordinate number of women in the United States lack sufficient access to health care. Among high-income countries around the world, U.S. women have the greatest rate of chronic illness, the highest tendency to forego needed health care because of cost, and the greatest difficulty

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<sup>34</sup> *See id.* at 5.

<sup>35</sup> *See* NCADV, *supra* note 30.

<sup>36</sup> *See id.*; *see also* Cynthia Hess et al., Institute for Women's Policy Research, *Dreams Deferred: A Survey on the Impact of Intimate Partner Violence on Survivors' Education, Careers, and Economic Security*, 45 (2018) (lifetime per female victim cost is over \$100,000).

<sup>37</sup> Society for Women's Health Research, *A Look at the COVID-19 Crisis for Women Experiencing Homelessness* (Feb. 18, 2021), <https://ti-nyurl.com/vxs366x7> [Hereinafter "*Women Experiencing Homelessness*"].

affording their health care.<sup>38</sup> One study found that over a third of U.S. women said they skipped needed medical care due to high costs.<sup>39</sup> Women of color face even greater challenges in accessing and receiving care. As an example, Native Americans and Alaska Natives have the lowest rates of mammogram screenings in the 50-74 age cohort.<sup>40</sup>

Maternal mortality rates tragically illustrate the impact of these gender and racial inequalities. As compared to other high-income countries, women in the United States “have the highest rate of maternal mortality,” with dramatic racial disparities.<sup>41</sup> In 2019, there was a rate of 18 deaths per 100,000 live births for White women, as compared with 44 for Black women.<sup>42</sup>

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<sup>38</sup> See Munira Z. Gunja et al., *What is the Status of Women’s Health and Health Care in the U.S. Compared to Ten Other Countries?*, The Commonwealth Fund (Dec. 19, 2018), <https://tinyurl.com/y44g2c8b>.

<sup>39</sup> See *id.*

<sup>40</sup> See Susan G. Komen Foundation, *How Do Breast Cancer Screening Rates Compare Among Different Groups in the U.S.?* (last updated Dec. 2, 2021), <https://tinyurl.com/uhmpoyv>.

<sup>41</sup> See Gunja et al., *supra* note 38.

<sup>42</sup> Donna L. Hoyert et al., U.S. Centers for Disease Control and Prevention, *Maternal Mortality in the United States, 2019*, 3 (April 2021), <https://tinyurl.com/st5cc7f9>.

Finally, women are more likely to face economic burdens in general. Compared to men, women ages 25-34 are 25 percent more likely to live in extreme poverty.<sup>43</sup> In 2019, more than 13.9 million U.S. women lived in poverty, representing 18 percent of Black women, 18 percent of Native American women, 15 percent of Latinas, and 8 percent of Asian women.<sup>44</sup> Seventy percent of the people living in poverty today are women and children, with 35 percent of single mothers living in poverty.<sup>45</sup>

Single mothers who are teenagers attain below-average education levels and are more likely to live in poverty than mothers who gave birth later in life.<sup>46</sup> Children of teenage mothers are more likely to be incarcerated, have chronic medical conditions, struggle at school, be placed in foster care, and become teenage parents.<sup>47</sup>

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<sup>43</sup> United Nations, *Policy Brief: The Impact of COVID-19 on Women*, 7 (Apr. 9, 2020), <https://tinyurl.com/3rvjcrya>. [Hereinafter “Policy Brief”]

<sup>44</sup> Amanda Fins, National Women’s Law Center, *National Snapshot: Poverty Among Women & Families, 2020* (Dec. 2020), <https://tinyurl.com/p82psrddy>.

<sup>45</sup> The Women’s Legal Defense and Education Fund – Legal Momentum, *Women and Poverty in America*, <https://tinyurl.com/yb7w6af6>.

<sup>46</sup> National Conference of State Legislatures, *Teen Childbearing is Costly to Taxpayers* (June 11, 2014), <https://tinyurl.com/yare36co>.

<sup>47</sup> *Id.*

These conditions disproportionately affecting women have multi-generational effects on women's labor force participation and particularly impact communities of color. Black and Latinx children are more likely to live with a single mother<sup>48</sup> and, along with Native American children, more likely to live below the poverty line.<sup>49</sup> Persistent childhood poverty—defined as living below the poverty line for at least half of one's childhood—impacts the ability to complete high school, pursue secondary education, and be consistently employed as adults.<sup>50</sup> Thus, gender inequalities can carry forward into the next generation and are further exacerbated by racial inequalities faced by Black, Latinx, and Native American women.

### 3. *The COVID-19 Pandemic Has Worsened These Disparities*

These issues—gender-based violence, housing insecurity, inadequate health care, and higher female rates of poverty—were worsened by the COVID-19 pandemic. First, women were more likely to be victims of intimate

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<sup>48</sup> Pew Research Center, *About One-Third of U.S. Children Are Living with an Unmarried Parent* (Apr. 27, 2018), <https://tinyurl.com/ya66llyv>.

<sup>49</sup> Research shows 35% of American Indian children, 34% of Black children, and 28% of Latinx children are considered poor compared to 12% of White and Asian children. See Heather Koball & Yang Jiang, *Basic Facts About Low-Income Children – Children Under 18 Years, 2016*, Fig. 6, National Center for Children in Poverty (Jan. 2018), <https://tinyurl.com/yaayuekb>.

<sup>50</sup> Caroline Ratcliffe, *Child Poverty and Adult Success*, 1, Urban Institute (Sept. 2015), <https://tinyurl.com/y9ooz8v5>.



partner violence during the pandemic,<sup>51</sup> with “surges” reported around the world.<sup>52</sup> Restrictions on movement and shelter-in-place orders confined more women with their abusers. Home isolation “g[ave] . . . more power to the abuser,” who was able to isolate the victim from friends, family, and co-workers; monitor the victim; engage in abuse; and cut off intervention.<sup>53</sup> While domestic violence service agencies have piloted creative methods for helping victims—such as converting hotlines to text messaging, which can be used discreetly—many victims were told that police resources are scarce.<sup>54</sup>

Second, housing insecurity is inextricably linked to both gender-based violence and health. Women and families are the fastest-growing portion of the homeless population.<sup>55</sup> According to the National Women’s Law Center, Black and Hispanic women are twice as likely to fall behind on rent and mortgage payments and are disproportionately affected by evictions—a situation that is

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<sup>51</sup> See Harvard Kennedy School Women and Public Policy Program, *Utilizing Evidence-Based Research to Incorporate a Gendered Lens for the COVID-19 Pandemic*, <https://tinyurl.com/y7ohfed6>.

<sup>52</sup> See *Policy Brief*, *supra* note 43, at 17.

<sup>53</sup> Amanda Taub, *A New Covid-19 Crisis: Domestic Violence Rises Worldwide*, N. Y. Times (Apr. 14, 2020), <https://tinyurl.com/vqjlr8q>.

<sup>54</sup> *Id.*

<sup>55</sup> See, *Women Experiencing Homelessness*, *supra* note 37.



worsening as most pandemic-related moratoriums on evictions have been lifted.<sup>56</sup>

Third, more women than men were essential workers, which posed increased risks to their health during peaks of the pandemic. Globally, 70 percent of frontline health workers are women.<sup>57</sup> According to an April 2020 analysis of U.S. Census data conducted by the New York Times, one in three jobs held by women was been deemed essential, with women of color most likely to have been doing essential work.<sup>58</sup> Essential employment resulted in greater health risks: of the over 9,000 COVID-19 cases reported among health care

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<sup>56</sup> See United States Census Bureau, *Likelihood of Having to Leave This House in Next Two Months Due to Eviction*, Table 3b (Oct. 20, 2021), <https://tinyurl.com/25ctpabp> (estimating that nearly 8.4 million rental units across the United States would be subject to eviction proceedings in the last two months of 2021); Sophie Kasakove, *With Cases Piling Up, An Eviction Crisis Unfolds Step by Step*, N.Y. Times (Nov. 8, 2021), <https://tinyurl.com/ysa25nndd>. Fatima Goss Graves, National Women's Law Center, *The Pandemic, the Economy, and the Value of Women's Work*, (March 2021), <https://tinyurl.com/4d8p2ymz>; *Alabama Ass'n of Realtors v. Dep't of Health & Human Servs.*, \_\_\_ U.S. \_\_\_, 2021 WL 3783142, at \*3–4 (Aug. 26, 2021).

<sup>57</sup> *Policy Brief*, *supra* note 43, at 10.

<sup>58</sup> Campbell Robertson & Robert Gebeloff, *How Millions of Women Became the Most Essential Workers in America*, N. Y. Times (Apr. 18, 2020), <https://tinyurl.com/y9rpvjsz>.

professionals over a two-month period at the beginning of the pandemic, 73 percent were women.<sup>59</sup>

Finally, even though more women than men were essential workers, the economic recession resulting from the COVID-19 pandemic has also disproportionately impacted women, who, at the outset, were on more uncertain economic footing.<sup>60</sup> According to data from the Bureau of Labor Statistics, women make up 51.8 percent of the U.S. workforce<sup>61</sup> but, as reported by the National Women's Law Center, accounted for 55 percent of lost jobs in April 2020.<sup>62</sup> Women lost 11.3 million jobs in April 2020 alone, wiping out nearly an entire decade of women's job gains since the Great Recession.<sup>63</sup> As of November 2021, women were still short nearly 2.4 million jobs compared to February 2020. Women of color have been especially impacted. Latinas' unemployment

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<sup>59</sup> CDC COVID-19 Response Team, Centers for Disease Control and Prevention, *Characteristics of Health Care Personnel with COVID-19—United States, February 12 - April 9, 2020* (Apr. 14, 2020), <https://tinyurl.com/y8gz4cgm>.

<sup>60</sup> See *Policy Brief*, *supra* note 43, at 4.

<sup>61</sup> U.S. Bureau of Labor Statistics, *Report No. 1092, Women in the Labor Force: A Databook* (Apr. 2021), <https://tinyurl.com/uxdjt4c8>. [Hereinafter “*Women in the Labor Force*”]

<sup>62</sup> See Claire Ewing-Nelson, *After a Full Month of Business Closures, Women Were Hit Hardest by April's Job Losses*, 1, National Women's Law Center (May 2020), <https://tinyurl.com/yex7utae>.

<sup>63</sup> See Graves, *supra* note 56, at \*3.

rate peaked at 20.1 percent in April 2020 and was still 5.3 percent in November 2021, which is approximately 1.1 times their pre-pandemic unemployment rate of 4.9 percent in February 2020.<sup>64</sup> Nearly two years into the pandemic, November 2021 shows Black women's unemployment rate at 5 percent, and after peaking at 16.6 percent in May 2020, it is finally closing in on the pre-pandemic rate of 4.9 percent.<sup>65</sup> Of particular concern to employers, over 1.6 million women left the labor force between February 2020 and August 2021, meaning they are not working or looking for work.<sup>66</sup> Thus, these unemployment rate statistics do not fully capture the pandemic's economic impact on women of color. If the 253,000 Black women and 435,000 Latinas who left the labor force since February 2020 were counted as unemployed, it would result in an August

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<sup>64</sup> Calculation based on Bureau of Labor Statistics, *The Employment Situation Summary*, Establishment Data Table B-5 (Nov. 2021) and Bureau of Labor Statistics, *The Employment Situation Summary*, Establishment Data Table B-5 (Feb. 2020). Historical data is available at: <https://tinyurl.com/y8aejz7m>. Figures are seasonally adjusted.

<sup>65</sup> Bureau of Labor Statistics, *The Employment Situation Summary*, Establishment Data Table A-3 (Nov. 2021). Historical data is available at: <https://tinyurl.com/y8aejz7m>. Figures are seasonally adjusted.

<sup>66</sup> **Error! Hyperlink reference not valid. Error! Hyperlink reference not valid.** See Jasmine Tucker, *At August's Rate, It Will Take Women 9 Years to Regain the Jobs They Lost in the Pandemic*, 3 National Women's Law Center (Sept. 2021), <https://tinyurl.com/3px4u455>.

2021 unemployment rate of 10.1 percent for Black women and 9.3 percent for Latinas.<sup>67</sup>

This disparity may be explained by the types of jobs that women and men tend to hold. More women than men serve as frontline workers in the health care sector, and women are also more likely to be employed in the hospitality sector—retail and restaurants—which were largely shut down or restricted during the pandemic.<sup>68</sup> By contrast, men are more likely to be employed by financial institutions, technology companies, and other professional services firms.<sup>69</sup> As a result, while many women were unemployed, or else doing essential work throughout the pandemic, a larger percentage of men remained employed, potentially in sectors that permitted them to work remotely. Adding to their financial difficulties, many women with families experienced increased childcare burdens, at a time when they had to account for the threat of social distancing requirements, stay-at-home orders, and school closings that cut off the safety net that many rely on.<sup>70</sup>

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<sup>67</sup> *See id.*

<sup>68</sup> *See Policy Brief, supra* note 43, at 4.

<sup>69</sup> *Women in the Labor Force, supra* note 61, at Table 13.

<sup>70</sup> Caroline Kitchener, *'I Had to Choose Being A Mother': With No Child Care Or Summer Camps, Women Are Being Edged Out of the Workforce*, The Lily (May 22, 2020), <https://tinyurl.com/y9kb265b>.

## II. THE ERA WOULD ENABLE WOMEN'S FULL PARTICIPATION IN THE LABOR FORCE AND PROVIDE CONSISTENCY IN THE ENFORCEMENT OF LAWS AFFECTING WOMEN

Amici support the ERA because it would provide the consistency and certainty of federal principles of equality and better protect women's constitutional rights—critical components of economic development and growth.

### A. Sex Equality Would Benefit Women Workers and Improve Economic Output

By ensuring sex equality under the Constitution, the ERA would help dismantle systemic gender-based barriers, enabling women to more fully participate in the workforce and benefitting the economy as a whole.

#### 1. *The ERA Would Facilitate Women's Full Participation in the Workforce*

As discussed above, gender inequalities diminish women's ability to participate in the workforce. As such, it comes as little surprise that 23.4 percent of working women are employed on a part-time basis, compared to 11.5 percent of men, or that women have lower overall participation rates in the U.S. labor force.<sup>71</sup>

Eliminating systemic barriers that discourage women from entering certain fields, for instance, would significantly expand human capital. Department of Education data show women earn a higher percentage of overall bach-

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<sup>71</sup> *Women in the Labor Force*, *supra* note 61, at Table 21.

elor's degrees compared with men (58 percent versus 42 percent), but are underrepresented in high-paying and highly productive sectors of the economy, such as technology (only 19 percent of software developers are women), manufacturing (29 percent), and other STEM fields.<sup>72</sup> By ensuring that women receive equality under the law, the ERA would promote greater female contribution to these fast-growing fields.

## 2. *Sex Equality Would Increase Economic Output*

Headwinds facing women caused by unequal representation in key industry sectors, gender-based violence, inadequate health care, and poverty undermine professional realization, which has detrimental effects on the economy. But this negative cycle could be reversed—and economic growth expanded—through efforts to promote women's full participation in the labor market. Businesses that effectively recruit and retain women employees are better able to adapt to a rapidly changing global market, leverage additional sources of revenue, and tap into greater human potential.

For example, fast-growing sectors like the digital economy stand to benefit greatly from women's increased participation in the labor force. Over the past 15 years, this sector has grown at a rate two and a half times faster than

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<sup>72</sup> *Id.*; U.S. Department of Education, *Fast Facts: Science, Technology, Engineering, and Mathematics (STEM) Education, by Gender*, <https://tinyurl.com/y9segrbn>.

the global economy, such that it now accounts for 15.5 percent of global GDP.<sup>73</sup> Given that the digital-sector workforce remains nearly three-quarters male, women's increased participation in this labor market will unlock the sector's significant capacity for economic growth.<sup>74</sup>

**B. Businesses and Their Employees Would Benefit from the Consistency and Certainty of Federal Principles of Equality**

Without Constitutional equality, existing laws will continue to fall short in effectuating women's rights, leaving many economically marginalized and with fewer professional options. The ERA would bring consistency in the enforcement of laws that impact women by providing a clear judicial standard based on federal principles of sex equality. By creating an overarching federal legal principle of sex equality, the ERA would fill the void left by inadequately and unevenly enforced state laws. The ERA would also strengthen previously achieved advances by establishing sex equality as an enduring right and a federal constitutional principle. The ERA thus has the potential to significantly improve the physical well-being and financial security of women, enabling amici and all U.S. businesses to benefit from women's greater participation in all aspects of the economy.

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<sup>73</sup> Huawei & Oxford Economics, *Digital Spillover: Measuring the True Impact of the Digital Economy*, 2, 8 (2017), <https://tinyurl.com/y9v76t3b>.

<sup>74</sup> *Women in the Labor Force*, *supra* note 61.

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At its conception, this nation embraced the dream of equality. The struggle to realize equality of all persons continues to this day, and the ideal of sex equality is now closer than ever to reality. With Virginia's ratification of the ERA, the supreme law of the land can reflect, for the first time, a commitment to the equality of all persons regardless of sex.

### **CONCLUSION**

For these reasons, the judgment of the district court should be reversed.



Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE  
WITH TYPEFACE AND WORD-COUNT LIMITATIONS**

I, Liza M. Velazquez, counsel for the Amici Business Entities, and a member of the Bar of this Court, certify, pursuant to Federal Rules of Appellate Procedure 32(a)(7) and 32(g)(1), that the attached brief is proportionately spaced, has a typeface of 14 points or more, was prepared using Microsoft Word 2016, and contains 6,375 words.

/s/ Liza M. Velazquez

LIZA M. VELAZQUEZ

JANUARY 10, 2022

**CERTIFICATE OF SERVICE**

I, Liza M. Velazquez, counsel for the Amici Business Entities, and a member of the Bar of this Court, certify that, on January 10, 2022, a copy of the attached brief was filed with the Clerk and served on the parties through the Court's electronic filing system. I further certify that all parties required to be served have been served.

/s/ Liza M. Velazquez

LIZA M. VELAZQUEZ

# EXHIBIT 1

### LIST OF AMICI

The businesses\* that join this brief are:

1. 98point6, Inc.
2. ADAPT of America, Inc.
3. Airbnb, Inc.
4. Amalgamated Bank\*
5. American Express Company
6. American International Group, Inc.
7. Apple
8. Asana, Inc.
9. ASG, LLC
10. ASG II, LLC
11. ASG III, LLC
12. Atakama Inc.
13. Baron Capital Group, Inc.
14. Benco Dental Supply Co.
15. Biogen Inc.
16. Bloomberg L.P.
17. Blue Apron Holdings, Inc.
18. BNY Mellon

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\* Denotes *amici curiae* represented by Vullo Advisory Services, PLLC and LeGrand Law PLLC. All other *amici curiae* are represented by Paul, Weiss, Rifkind, Wharton & Garrison LLP and Vullo Advisory Services, PLLC.

19. Bowery Farming Inc.
20. Braze, Inc.
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22. Build America Mutual Assurance Company
23. CapeSpace, LLC
24. Capri Holdings Limited
25. CAULIPOWER, LLC
26. Chobani, LLC
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29. Diageo North America, Inc.
30. Dow, Inc.
31. Equitable
32. Etsy, Inc.
33. Everything is Everything
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37. Greenhouse Software, Inc.
38. Guardian Life Insurance Company of America
39. IBM
40. Industrious
41. JPMorgan Chase & Co.

42. Kimberly-Clark Corporation
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45. Livari Clothing
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49. McKesson Corporation\*
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55. National Football League
56. Neuberger Berman
57. New York Life Insurance Company
58. Oscar Health, Inc.
59. PepsiCo, Inc.
60. Pfizer Inc.
61. Procore Technologies, Inc.
62. Prosperity Life Insurance Group, LLC
63. Prudential Financial, Inc.
64. Puppet, Inc.

65. Quotient Technology Inc.
66. Rebelle Media
67. salesforce.com, inc.
68. Seed&Spark, Inc.
69. ShelterPoint Life Insurance Company
70. Shiseido Americas Corporation
71. SoftBank Investment Advisers
72. Strava
73. Tapestry, Inc.
74. The Estée Lauder Companies Inc.
75. The Hershey Company
76. Thinx
77. Tiffany & Co.
78. Tory Burch LLC
79. TransUnion
80. Turo Inc.
81. Uber Technologies, Inc.
82. United States Soccer Federation, Inc.
83. VF Corporation
84. VICE Media LLC
85. WeWork
86. Workday, Inc.