

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

COMMONWEALTH OF VIRGINIA, *et al.*,

Plaintiffs,

v.

DAVID S. FERRIERO, in his official capacity as the
Archivist of the United States,

Defendant,

ALABAMA, LOUISIANA, NEBRASKA,
SOUTH DAKOTA, and TENNESSEE,

Intervenor-Defendants.

No. 1:20-cv-00242 (RC)

**CONSENT MOTION FOR LEAVE TO FILE BRIEF OF BUSINESS AND
CORPORATE ENTITIES AS *AMICI CURIAE* IN SUPPORT OF
PLAINTIFF STATES**

For the reasons stated in their attached Memorandum of Points and Authorities in Support of their Motion for Leave, *amici curiae*, a diverse group of companies whose businesses span the breadth of the U.S. economy, by their attorneys, respectfully ask the Court to grant them leave to file an amicus brief in support of Plaintiffs' Opposition to Defendant's Motion to Dismiss pursuant to Local Civil Rule 7(o). Names of the amici are provided in Exhibit 1 to Appendix A. *Amici* have conferred with counsel for all Parties. The Parties do not object to the filing of this brief.

Dated: June 29, 2020

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**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
CONSENT MOTION FOR LEAVE TO FILE BRIEF OF BUSINESS AND
CORPORATE ENTITIES AS *AMICI CURIAE* IN SUPPORT OF
PLAINTIFF STATES**

Amici curiae, a diverse group of companies whose businesses span the breadth of the U.S. economy (collectively, “*amici*”),¹ hereby respectfully submit this Memorandum of Points and Authorities in Support of their Consent Motion for Leave to File an Amicus Curiae Brief under Local Civil Rule 7(o). A copy of the proposed brief is attached as Appendix A to this Motion.

¹ Names of the *amici* are provided in Exhibit 1 to Appendix A.

I. Identity and Interest of the *Amici Curiae*

Amici curiae are a group of companies whose businesses span the breadth of the U.S. economy. Although *amici* represent diverse commercial interests, they are united in their support of gender equality and opposition to Defendant's motion to dismiss. As entities that apply diversity and inclusion principles in the business setting every day, *amici* bring a unique perspective regarding the economic and other benefits of the Equal Rights Amendment.

Amici recognize that diversity in the workplace drives business performance and that a workforce that includes employees with different backgrounds and life experiences is essential for any business operating in a global economy and multicultural society. *Amici* support the recently ratified Equal Rights Amendment because *amici* believe that eliminating the systemic barriers that continue to impede women's economic and social advancement will result in a more just, vibrant, and productive America. *Amici* understand that 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.

II. Reasons That Consent Motion Should Be Granted

District courts have discretion to allow *amici curiae*. See *Nat'l Ass'n of Home Builders v. U.S. Army Corps of Eng'rs*, 519 F. Supp. 2d 89, 93 (D.D.C. 2007). Courts have permitted parties to file amicus briefs where the brief will assist the judges by presenting ideas, arguments, theories, insights, facts, or data that are not to be found in the parties' briefs. *In re Search of Info. Associated with [Redacted]@Mac.com That Is Stored at Premises Controlled by Apple, Inc.*, 13 F. Supp. 3d 157, 167 (D.D.C. 2014) (internal quotation marks and citation omitted). Courts have also granted proposed *amici* permission to file briefs where “the amicus has unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide.” *Jin v. Ministry of State Sec'y*, 557 F. Supp. 2d 131, 137 (D.D.C. 2008).

The Court should exercise its discretion to permit proposed *amici* to file the amicus brief attached hereto as Appendix A. In a highly competitive global marketplace, the proposed *amici* have a strong interest in ensuring that women are able to fully participate in the economy, both as employees and consumers. The proposed *amici* will draw upon their expertise and experience to provide insight and perspective that the parties are unable to address about the impact of women in the economy that is highly relevant to the issues presented in this case. *Amici*, for

example, specifically address the need for a uniform federal judicial standard to protect women's rights, which will enhance the global competitive edge of *amici* and similar large employers, and in turn benefit Plaintiff States. Accordingly, *amici* respectfully submit that their experience and perspective will assist the Court in resolving the defendant's motion to dismiss.

III. Conclusion

For these reasons, the companies listed in Exhibit 1 to Appendix A respectfully request that the Court grant them leave to file the *amicus curiae* brief attached as Appendix A.

Dated: June 29, 2020

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CERTIFICATE OF SERVICE

Pursuant to LCvR 5.3, I hereby certify that, on June 29, 2020, I caused to be electronically filed a copy of the foregoing Consent Motion for Leave to File Brief of Business and Corporate Entities and Memorandum of Points and Authorities in Support of *Amici Curiae*'s Consent Motion for Leave to File Brief of Business and Corporate Entities as *Amici Curiae* in Support of Plaintiff States using the Court's CM/ECF system, and service was effected electronically pursuant to LCvR 5.4(d) to all counsel of record.

Dated: June 29, 2020

By: /s/ Jeannie S. Rhee
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Appendix A

**IN THE UNITED STATES DISTRICT COURT
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INTRODUCTION

From the very first words of its preamble, the United States Constitution and its Amendments set forth the values and commitments that define a nation—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.¹ These constitutional commitments are central to our understanding of what it means to be an American. Indeed these are the values that millions have believed were worth fighting and marching and dying 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 bitter struggle. But with amendment after amendment, Americans have come together to build 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 Equal Rights Amendment (“ERA”), an amendment that guarantees equal rights for all Americans 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

¹ 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.*, __U.S.__, 2020 WL 3146686, at *4 (U.S. June 15, 2020).

chambers approving the ERA by overwhelming majorities that reflected the extraordinary support for the ERA amongst the American people—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 the 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 Plaintiff 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 Plaintiff States, *amici* submit that the continued interest in the ERA by state legislatures in Plaintiff States underscores the amendment’s continued relevance and popularity.²

² 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 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).

With Virginia’s ratification, the Article V requirements have been met—law, not symbolism, was made this year in Richmond. Yet, Defendant, Archivist David 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 of the Constitution. Accordingly, on January 30, 2020, Plaintiff States filed this action to ensure that this fundamental duty be carried out.

Amici curiae, a diverse group of 93 businesses employing millions of women and men, are united in their longstanding support of gender equality. They submit this brief in support of the Plaintiff States’ opposition to Defendant’s May 7, 2020 motion to dismiss. Proudly joining 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 order the Archivist to perform his statutory duty to publish and certify the ERA as the Twenty-Eighth Amendment.

INTEREST OF THE *AMICI CURIAE*

Amici curiae are a group of 93 companies whose businesses span the breadth of the U.S. economy. Although *amici* represent diverse commercial interests, they are united in their support of gender equality.

Amici seek the full participation of women in the economy. Operating in a wide-range of industries and markets and serving 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, 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.

Names of the *amici* are provided in Exhibit 1.

BACKGROUND

Amici adopt and incorporate by reference the factual background set forth in Plaintiffs' Complaint [Docket No. 1].

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. The novel coronavirus (“COVID-19”) pandemic, which has exposed and exacerbated systemic gender inequities in our society, demonstrates now, more than ever, the need for the 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 and to spark creativity and innovation. But perhaps most importantly, diverse and inclusive workforces positively influence the society in which we live. Ultimately, diversity in the workplace not only brings about economic success in a globalized world, but also benefits workers’ professional lives and identities, promoting a more inclusive nation.

As the financial hardship of the COVID-19 pandemic falls 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 access to health care, and gender-based violence. Longstanding 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 from the COVID-19 crisis 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. Both our neighbor to the north and to the south prohibit discrimination on account of sex or gender in their constitutions.³ The Charter of Fundamental Rights of the European Union, one of our largest trading partners and a jurisdiction where many *amici* operate, declares that “[e]quality between women and

³ U.S. Library of Congress, *Constitutional Provisions on Women’s Equality* (July 2011), <https://tinyurl.com/ydbf3e7y>.

men must be ensured in all areas”⁴ and prohibits “[a]ny discrimination based on . . . sex.”⁵ Canada, Mexico, and the European Union are not outliers—we are. 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.⁶ 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.⁷ *Amici*, many of which compete internationally for customers and employees, believe that the ERA will improve American competitiveness and help accelerate the post-COVID-19 economic recovery.

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

For *amici*, commitment to equality, diversity, and inclusion is a core value.

Amici foster workplace cultures that respect, value, and consider the different

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

⁵ *Id.* at art. 21-1.

⁶ 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, *supra* note 3.

⁷ *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).

backgrounds and unique perspectives of *amici's* millions of employees. Consistent with this commitment, *amici* have devoted considerable resources to a variety of 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; while others have established offices and executive roles focused on diversity and inclusion. Many have launched mentoring and other initiatives designed to broaden the 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 thorough commitment to reducing gender inequality 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.⁸ Studies show businesses that value equality, promote diversity, and emphasize inclusion perform better financially.⁹ According to a 2019 study of more

⁸ See, e.g., Catalyst, *Why Diversity and Inclusion Matter: Financial Performance* (Aug. 1, 2018), <https://tinyurl.com/y7n2kkm5> (collecting studies that demonstrate the financial benefits of workplace gender diversity).

⁹ 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>.

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.¹⁰ Increasingly attuned to the bottom-line benefits of diversity, companies worldwide are aggressively focused on reducing bias and other barriers that employees face at work.¹¹

The positive correlation between diversity and financial performance makes sense, given that the success of *amici* and other businesses ultimately depend 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 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.¹² This means that diverse companies are likely to be more innovative and successful at rolling out new products and solutions in the marketplace.¹³

¹⁰ Dixon-Fyle, *supra* note 9, at 3, 14.

¹¹ 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>.

¹² 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).

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

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

Building and maintaining an inclusive workplace culture is now understood to be critical for businesses seeking to attract and retain top talent. While inattention to diversity and inclusion can lead to increased turnover,¹⁶ 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.¹⁷ The risks of inaction are real. According to one study, 86 percent of female millennials and 74 percent of male millennials believe a prospective employer's policies on diversity, equality, and inclusion are important factors when considering whether to accept a position.¹⁸

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

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

¹⁶ See Korn Ferry, *Executive Survey Finds a Lack of Focus on Diversity and Inclusion Key Factor in Employee Turnover* (Mar. 2, 2015), <https://tinyurl.com/y7vsrawp> (84% of executives believed inattention to diversity and inclusion results in higher turnover; 56% believed that diversity and inclusion programs improved their retention rates).

¹⁷ See Vivian Hunt et al., *Diversity Matters*, McKinsey & Co., at 9–13 (Feb. 2, 2015), <https://tinyurl.com/y8ykymgs>; Matt Krentz et al., *The Rewards of an Engaged Female Workforce*, Boston Consulting Grp. (Oct. 27, 2016), <https://tinyurl.com/ycbay9yk>.

¹⁸ 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),

A company's corporate values, including its commitment to diversity, can positively influence consumer and stakeholder decisions. Research suggests Americans prefer to do business with socially conscious companies, particularly with respect to gender and racial equity.¹⁹ Increasingly, institutional investors incorporate considerations of diversity and inclusion into due diligence and investment decisions.²⁰ 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 in the COVID-19 pandemic. Without full Constitutional equality, women experience widespread, systemic issues that impact the economy and make the ERA as vital as ever today.

<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).

¹⁹ 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).

²⁰ 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. *U.S. Supreme Court Decisions Demonstrate 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 as well as 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*,²¹ 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. The petitioner in that case had made repeated reports to police that her estranged and abusive husband had taken their three daughters in violation of a protective order. The police failed to intervene, and the tragic events culminated in the husband murdering all three children and opening fire at the police station. When she brought a civil rights action based on the officer's refusal to enforce the restraining order, the Court held that the petitioner had no constitutional right to protection: 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*,²² the Supreme Court struck down a provision of the Violence Against Women Act that provided a federal civil remedy for

²¹ 545 U.S. 748 (2005).

²² 529 U.S. 598 (2000).

victims of sexual violence. The petitioner in that case had instituted a lawsuit based on her alleged rape by respondents. The Court reasoned that the federal civil remedy was an unconstitutional extension of Congress's powers under the Commerce Clause and the Equal Protection Clause of the Fourteenth Amendment, rendering them inadequate instruments to address gender-based sexual violence.²³

In *Geduldig v. Aiello*,²⁴ the Court upheld a California disability insurance program that did not cover employment disabilities resulting from pregnancy. The Court reasoned that this policy was not a violation of the Equal Protection Clause, because “[p]articularly with respect to social welfare programs, so long as the line drawn by the State is rationally supportable, the courts will not interpose their judgment as to the appropriate stopping point.”²⁵ In sum, the Court held that the Constitution does not protect women from pregnancy discrimination based on sex.

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,

²³ *See id.* at 613–27.

²⁴ 417 U.S. 484 (1974).

²⁵ *Id.* at 495.

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.

2. *Women—and 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, lack of health care, and poverty. They 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,²⁶ with one out of every six women having been the victim of an attempted or completed rape over a lifetime.²⁷ In 2018 alone, over 730 thousand rapes or sexual assaults were reported to the U.S. Department of Justice.²⁸ Similarly, one in three women has experienced physical violence by an intimate partner.²⁹

Researchers have documented that sexual and intimate partner violence has long-term impacts on victims. Ninety-four percent of rape victims experience

²⁶ 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).

²⁷ See Rape, Abuse & Incest National Network, *Victims of Sexual Violence: Statistics*, <https://tinyurl.com/hpwax6p>. [Hereinafter “RAINN”]

²⁸ See U.S. Department of Justice, Bureau of Justice Statistics, NCJ 253043, *Criminal Victimization, 2018* 4 (Sept. 2019), <https://tinyurl.com/yxet3gqd>.

²⁹ See National Coalition Against Domestic Violence, *Statistics*, <https://tinyurl.com/ydcp7c2x>. [Hereinafter “NCADV”]

symptoms of post-traumatic stress disorder (PTSD) in the weeks immediately following.³⁰ Approximately 70 percent of sexual assault victims suffer from long-term psychological distress, a higher rate than other violent crimes such as robbery or assault.³¹ 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.³² Eighty-four percent of victims of sexual violence by an intimate partner experience socio-emotional issues.³³ Victims of intimate partner violence lose an estimated total of eight million days of paid work every year.³⁴ 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.³⁵

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

³⁰ See RAINN, *supra* note 28.

³¹ U.S. Department of Justice, Bureau of Justice Statistics, NCJ 247076, *Socio-emotional Impact of Violent Crime* 3 (Sept. 2014), <https://tinyurl.com/y9hdce5q>.

³² See *id.* at 17.

³³ See *id.* at 5.

³⁴ See NCADV, *supra* note 30.

³⁵ 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).

health care because of cost, and the greatest difficulty affording their health care.³⁶ One study found that over a third of U.S. women said they skipped needed medical care due to high costs.³⁷ Women of color face even greater challenges in accessing and receiving care. As an example, American Indians and Alaska Natives have the lowest rates of mammogram screenings in the 50-74 age cohort.³⁸

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.³⁹ In 2018, there was a rate of 18 deaths per 100,000 live births for white women, as compared with 43.3 for Black women.⁴⁰

Finally, women are more likely to face economic burdens. Compared to men, women ages 25-34 are 25 percent more likely to live in extreme poverty.⁴¹ In 2018, more than 15.5 million U.S. women lived in poverty, representing 20 percent of Black women, 22 percent of Native women, 18 percent of Latinx women, and 10

³⁶ 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>. [Hereinafter “CF”]

³⁷ See *id.*

³⁸ See Susan G. Komen Foundation, *Comparing Breast Cancer Screening Rates Among Different Groups* (May 18, 2020), <https://tinyurl.com/uhmpoyv>.

³⁹ See CF, *supra* note 37.

⁴⁰ Donna L. Hoyert et al., U.S. Centers for Disease Control and Prevention, *Maternal Mortality in the United States: Changes in Coding Publication, and Data Release, 2018* 6 (Jan. 30, 2020), <https://tinyurl.com/segjovq>.

⁴¹ United Nations, *Policy Brief: The Impact of COVID-19 on Women* 7 (Apr. 9, 2020), <https://tinyurl.com/ycqpf18l>. [Hereinafter “Policy Brief”]

percent of Asian women.⁴² Seventy percent of the people living in poverty today are women and children, with 35 percent of single mothers living in poverty.⁴³

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.⁴⁴ 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.⁴⁵

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 mother⁴⁶ and, along with Indigenous children, more likely to live below the poverty line.⁴⁷ 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

⁴² Amanda Fins, National Women's Law Center, *National Snapshot: Poverty Among Women & Families, 2019* (Oct. 2019), <https://tinyurl.com/yd9stog9>.

⁴³ The Women's Legal Defense and Education Fund – Legal Momentum, *Women and Poverty in America*, <https://tinyurl.com/yb7w6af6>.

⁴⁴ National Conference of State Legislatures, *Teen Childbearing is Costly to Taxpayers* (June 11, 2014), <https://tinyurl.com/yare36co>.

⁴⁵ *Id.*

⁴⁶ Pew Research Center, *About One-Third of U.S. Children Are Living with an Unmarried Parent* (Apr. 27, 2018), <https://tinyurl.com/ya66llyv>.

⁴⁷ 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>.

secondary education, and be consistently employed as adults.⁴⁸ Thus, gender inequalities can carry forward into the next generation and are further exacerbated by racial inequalities faced by Black, Latinx, and Indigenous women.

3. *The COVID-19 Pandemic Has Worsened these Disparities*

These issues—gender-based violence, inadequate health care, and higher female rates of poverty—have been worsened by the COVID-19 pandemic. First, women are more likely to be victims of intimate partner violence during the pandemic,⁴⁹ with “surges” reported around the world.⁵⁰ Restrictions on movement and shelter-in-place orders have confined more women with their abusers. Home isolation “giv[es] . . . more power to the abuser,” who is able to isolate the victim from friends, family, and coworkers, monitor the victim, engage in abuse, and cut off intervention.⁵¹ 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 are being told that police resources are scarce.⁵²

⁴⁸ Caroline Ratcliffe, *Child Poverty and Adult Success* 1, Urban Institute (Sept. 2015), <https://tinyurl.com/y9ooz8v5>.

⁴⁹ 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>.

⁵⁰ See *Policy Brief*, *supra* note 42, at 17.

⁵¹ Amanda Taub, *A New Covid-19 Crisis: Domestic Violence Rises Worldwide*, N. Y. Times (Apr. 14, 2020), <https://tinyurl.com/vqjlr8q>.

⁵² *Id.*

Second, more women than men are essential workers, which poses increased risks to their health. Globally, 70 percent of frontline health workers are women.⁵³ According to an analysis of U.S. Census data conducted by the New York Times, one in three jobs held by women has been deemed essential, with women of color most likely to be doing essential work.⁵⁴ Essential employment results in greater health risks: of the over 9,000 COVID-19 cases reported among health care professionals over a two-month period, 73 percent were women.⁵⁵

Finally, even though more women than men are 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.⁵⁶ According to data from the Bureau of Labor Statistics, women make up 47 percent of the United States workforce⁵⁷ but, as reported by the National Women's Law Center, accounted for 55 percent of lost jobs in April 2020.⁵⁸ Women

⁵³ *Policy Brief*, *supra* note 42, at 10.

⁵⁴ 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>.

⁵⁵ 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>.

⁵⁶ See *Policy Brief*, *supra* note 42, at 4.

⁵⁷ U.S. Bureau of Labor Statistics, *Report No. 1084, Women in the Labor Force: A Databook* (Dec. 2019), <https://tinyurl.com/ybbvclaw>. [Hereinafter “*Women in the Labor Force*”]

⁵⁸ 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/y757dzzs>.

of color have been especially impacted. The unemployment rate for Black women increased to 16.4 percent, and for Latinas it rose to 20.2 percent.⁵⁹ In contrast, the unemployment rate for white men, while still high, is 12.4 percent.⁶⁰

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 has been largely shut down during the pandemic.⁶¹ By contrast, men are more likely to be employed by financial institutions, technology companies, and other professional services firms.⁶² As a result, while women are largely unemployed, or else doing essential work throughout the pandemic, a larger percentage of men remain employed, potentially in sectors that permit them to work remotely. Adding to their financial difficulties, many women with families are experiencing increased childcare burdens, at a time when social distancing, stay-at-home orders, and school closings have cut off the safety net that many rely on.⁶³

⁵⁹ *See id.* at 2.

⁶⁰ *See id.*

⁶¹ *See Policy Brief, supra* note 42, at 4.

⁶² *Women in the Labor Force, supra* note 57 at Table 13.

⁶³ 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 nearly a quarter of working women are employed on a part-time basis, compared to 12 percent of men, or that women have lower overall participation rates in the U.S. labor force.⁶⁴

Eliminating some of the 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 bachelor'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

⁶⁴ *Women in the Labor Force*, *supra* note 57 at Table 21.

technology (only 19 percent of software developers are women), manufacturing (29 percent), and other STEM fields.⁶⁵ 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 the global economy such that it now accounts for 15.5 percent of global GDP.⁶⁶ 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.⁶⁷

⁶⁵ *Id.*; U.S. Department of Education, *Fast Facts: Science, Technology, Engineering, and Mathematics (STEM) Education, by Gender*, <https://tinyurl.com/y9segrbn>.

⁶⁶ Huawei & Oxford Economics, *Digital Spillover: Measuring the True Impact of the Digital Economy* at 2, 8 (2017), <https://tinyurl.com/y9v76t3b>.

⁶⁷ *Women in the Labor Force*, *supra* note 57.

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

Without Constitutional equality, however, existing laws will continue to fall short in effectuating women's rights, leaving many women on the margins of the economy 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.

* * *

At its conception, this nation embraced the dream of equality. The bitter struggle to realize equality of all persons continues to this day. Due to these efforts, 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 now reflect, for the first time, a commitment to the equality of all persons regardless of sex.

CONCLUSION

For these reasons, the Archivist of the United States should be required to recognize the complete and final adoption of the ERA as the Twenty-Eighth Amendment to the Constitution. *Amici* urge the Court to consider this information when assessing whether to deny Defendant's motion to dismiss.

Dated: June 29, 2020

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CERTIFICATE OF SERVICE

Pursuant to LCvR 5.3, I hereby certify that, on June 29, 2020, I caused to be electronically filed a copy of the foregoing Brief of *Amici Curiae* Business and Corporate Entities using the Court's CM/ECF system, and service was effected electronically pursuant to LCvR 5.4(d) to all counsel of record.

Dated: June 29, 2020

By: /s/ Jeannie S. Rhee

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the typeface requirements of Fed. R. App. P. 29(a)(4) and 32(a)(5) and the type-style requirements of Fed. R. App. P. 29(a)(4) and 32(a)(6) because it has been prepared in a proportionally spaced serif typeface in 14-point font.

Dated: June 29, 2020

By: /s/ Jeannie S. Rhee

Exhibit 1

LIST OF AMICI

The businesses* that join this brief are:

1. 1010data, Inc.
2. 98point6 Inc.
3. Advance Local Media LLC
4. Advance Magazine Publishers Inc. AKA Condé Nast
5. Advance Publications, Inc.
6. Airbnb, Inc.
7. Amalgamated Bank*
8. American City Business Journals, Inc.
9. American International Group, Inc.
10. Apollo Global Management, Inc.
11. Apple
12. Asana, Inc.
13. Atakama Inc.
14. Baron Capital Group, Inc.
15. Benco Dental Supply Co.
16. Biogen Inc.
17. Bloomberg L.P.
18. Blue Apron Holdings, Inc.
19. Bowery Farming Inc.

* 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.

20. Braze, Inc.
21. Brighthouse Financial, Inc.
22. Build America Mutual Assurance Company
23. CapeSpace, LLC
24. Capri Holdings Limited
25. Chobani, LLC
26. Citigroup Inc.
27. COTA, Inc.
28. CVS Health*
29. Dayforward Inc.
30. Diageo North America, Inc.
31. Ellig Group LLC
32. Equitable
33. The Estée Lauder Companies Inc.
34. Etsy, Inc.
35. Everything is Everything
36. General Assembly Space, Inc.
37. Gilead Sciences, Inc.*
38. The Goldman Sachs Group, Inc.
39. Google LLC*
40. Guardian Life Insurance Company of America
41. The Hershey Company
42. Industrious

43. Kimberly-Clark Corporation
44. KIND LLC
45. Leaders Group Holdings LLC/Sports Business Journal
46. Levi Strauss & Co.
47. Livari Clothing
48. LVMH Moet Hennessy Louis Vuitton Inc.
49. Lyft, Inc.
50. Mastercard Incorporated
51. McKesson Corporation*
52. Microsoft
53. Morgan Stanley
54. Motus LLC
55. Nardello & Co.
56. National Football League
57. National Women's Soccer League, LLC
58. Neuberger Berman
59. New York Life Insurance Company
60. Oscar Health
61. PepsiCo, Inc.
62. Pfizer Inc.
63. Planet Labs Inc.
64. Procore Technologies, Inc.
65. Prosperity Life Insurance Group, LLC

66. Prudential Financial, Inc.
67. Puppet, Inc.
68. Quotient Technology Inc.
69. Rebelle Media
70. Rodan & Fields, LLC
71. salesforce.com, inc.
72. Seed&Spark, Inc.
73. ShelterPoint Life Insurance Company
74. Shiseido Americas Corporation
75. Shutterstock, Inc.
76. SoftBank Investment Advisers
77. Spotify USA, Inc.
78. Strava
79. SurveyMonkey Inc.
80. Thinx
81. Tiffany & Co.
82. Tory Burch LLC
83. TransUnion
84. Turnitin, LLC
85. Turo Inc.
86. Twitter, Inc.
87. Uber
88. United States Soccer Federation, Inc.

89. Univision Communications Inc.

90. VF Corporation

91. Vice Media LLC

92. WeWork

93. Workday, Inc.

Appendix B

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

COMMONWEALTH OF VIRGINIA, *et al.*,

Plaintiffs,

v.

DAVID S. FERRIERO, in his official capacity as the
Archivist of the United States,

Defendant,

ALABAMA, LOUISIANA, NEBRASKA,
SOUTH DAKOTA, and TENNESSEE,

Intervenor-Defendants.

No. 1:20-cv-00242 (RC)

**CERTIFICATE REQUIRED BY LCvR 26.1 OF THE LOCAL RULES OF
THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
COLUMBIA**

Pursuant to Fed. R. Civ. P. 7.1 and LCvR 26.1, undersigned counsel for proposed *amici curiae* certify the following statements:

1. No parent, subsidiary, affiliate, or company owns at least 10% of the stock of **1010data, Inc.**, which, to the knowledge of counsel, has outstanding securities in the hands of the public.

2. 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.

3. No parent, subsidiary, affiliate, or company owns at least 10% of the stock of **Advance Local Media LLC**, which, to the knowledge of counsel, has outstanding

securities in the hands of the public.

4. No parent, subsidiary, affiliate, or company owns at least 10% of the stock of **Advance Magazine Publishers Inc. AKA Condé Nast**, which, to the knowledge of counsel, has outstanding securities in the hands of the public.

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

6. **Airbnb, Inc.** discloses that it has no parent corporation, and no publicly held corporation owns 10% or more of its stock.

7. No parent, subsidiary, affiliate, or company, which owns at least 10% of the stock in **Amalgamated Bank**,* is publicly traded or has any outstanding securities in the hands of the public.

8. No parent, subsidiary, affiliate, or company owns at least 10% of the stock of **American City Business Journals, Inc.**, which, to the knowledge of counsel, has outstanding securities in the hands of the public.

9. **American International Group, Inc.** is a publicly held corporation, and no parent entity or publicly held entity owns 10% or more of its stock.

10. **Apollo Global Management, Inc.** (“AGM”) has no parent corporation. AGM’s Class A shares are publicly traded on the New York Stock Exchange. No publicly held corporation owns 10% or more of AGM’s common shares.

11. **Apple Inc.**, by its undersigned attorneys, hereby states that it has no

* 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.

parent corporation and no publicly held corporation owns 10% or more of its stock.

12. **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.

13. **Atakama Inc.** does not have a parent, subsidiary, affiliate, or company which owns 10% or more of the stock of that company.

14. 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.

15. There is no parent company or publicly held corporation that owns at least 10% of the stock of **Benco Dental Supply Co.**

16. 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.

17. 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.

18. 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. which have any outstanding securities in the hands of the public: None.

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 percent or more of shares of Build America Mutual Assurance Company.

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. 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: BlackRock, Inc.

25. **Chobani, LLC** is a wholly-owned subsidiary of Chobani Global Holdings, LLC, a private (non-public), Delaware limited liability company, which is a wholly-owned subsidiary of FHU US Holdings, LLC, a private (non-public), Delaware limited liability company. No publicly held corporation owns 10% or more of its equity.

26. **Citigroup Inc.** by its undersigned attorneys, discloses pursuant to

Fed. R. Civ. P. 7.1 and LCvR 26.1 that 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 ten percent or more of the common stock of Citigroup Inc.

27. **COTA, Inc.** is a private corporation and no parent, subsidiary, or affiliate owns 10% or more of COTA's securities.

28. No parent, subsidiary, affiliate, or company, which owns at least 10% of the stock in **CVS Health,*** is publicly traded or has any outstanding securities in the hands of the public.

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

30. **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.

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

32. 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.

33. The undersigned, as counsel for **The Estée Lauder Companies Inc.**

(“ELC”), hereby states that ELC is a publicly held corporation.

34. 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.

35. 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.

36. **General Assembly Space, Inc.** is wholly owned by Adecco, Inc., a US corporation that is wholly owned by Adecco Group, AG, a publicly traded company in Switzerland.

37. 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.

38. **The Goldman Sachs Group, Inc.** (“GS Group”) is a corporation organized under the laws of Delaware, and its shares are publicly traded on the New York Stock Exchange. GS Group has no parent corporation, and to the best of GS Group’s knowledge, no publicly held company owns 10% or more of the common stock of GS Group.

39. **Google LLC*** (formerly Google Inc.) 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.

40. 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.

41. The following company owns at least 10% of the common stock of **The Hershey Company**, which has outstanding securities in the hands of the public: BlackRock, Inc.

42. No 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.

43. No publicly held corporation owns ten percent or more of **Kimberly-Clark Corporation's** stock.

44. 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.

45. No parent, subsidiary, affiliate, or company owns at least 10% of the stock of **Leaders Group Holdings LLC/Sports Business Journal**, which, to the knowledge of counsel, has outstanding securities in the hands of the public.

46. 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.

47. 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.

48. 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.

49. **Lyft, Inc.** 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, Rakuten, Inc., a publicly held corporation traded on the Tokyo Stock Exchange beneficially owns more than ten percent of Lyft's outstanding common stock.

50. 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.

51. 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.

52. 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.

53. The following parent, subsidiary, affiliate, or company of **Morgan Stanley** owns at least 10% of the stock and has outstanding securities in the hands of the public: Mitsubishi UFJ Financial Group, Inc.

54. 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.

55. 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.

56. 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.

57. No parent, subsidiary, affiliate, or company owns at least 10% of the stock of **National Women’s Soccer League, LLC**, which, to the knowledge of counsel, has any outstanding securities in the hands of the public

58. **Neuberger Berman** is a private company with no public equity securities. No employee or former employee owns more than 10 percent of Neuberger Berman’s equity.

59. **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.

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

62. 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.

63. The following parent, subsidiary, affiliate, or company owns at least 10% of **Planet Labs Inc.** and has outstanding securities in the hands of the public: Google LLC, which is wholly owned by Alphabet, Inc., a publicly-traded company.

64. 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.

65. There is no publicly traded company that owns 10% or more of **Prosperity Life Insurance Group, LLC**.

66. 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.

67. 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..

68. 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.

69. 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.

70. No parent, subsidiary, affiliate, or company owns at least 10% of the stock of **Rodan & Fields, LLC**, which, to the knowledge of counsel, has any outstanding

securities in the hands of the public.

71. 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.

72. 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.

73. 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.

74. 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.

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

76. 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 ten percent or more of the SoftBank Group Corp.'s stock.

77. **Spotify USA, Inc.** is a wholly-owned subsidiary of Spotify AB, a company organized under the laws of Sweden. Spotify AB is a wholly-owned subsidiary of Spotify Technology S.A., a publicly traded company organized under the laws of the

Grand Duchy of Luxembourg. Spotify Technology S.A. does not have a parent corporation, and no publicly held corporation owns 10% or more of its stock.

78. 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.

79. **SurveyMonkey Inc.** is wholly owned by SVMK Inc., a publicly traded company. No other entity, stockholder or affiliate owns more than 10% of SurveyMonkey Inc.

80. 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.

81. **Tiffany & Co.** is a publicly held company. Per the most recent proxy statement, Tiffany & Co. has no parent corporation and, to the knowledge of counsel as of March 20, 2020, no other publicly held company owned 10% or more of Tiffany & Co.'s stock.

82. **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/membership interests.

83. 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.

84. No parent, subsidiary, affiliate, or company owns at least 10% of the stock of **Turnitin, LLC**, which, to the knowledge of counsel, has outstanding securities in

the hands of the public.

85. 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).

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

87. The following parent, subsidiary, affiliate, or company owns at least 10% of **Uber** stock and has outstanding securities in the hands of the public: Softbank Group.

88. **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.

89. **Univision Communications Inc.** is a corporation organized under the laws of the state of Delaware. Univision Communications Inc. is wholly owned by Broadcast Media Partners Holdings, Inc. No publicly held corporation owns 10% or more of the stock of Univision Communications Inc.

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

91. The following parent, subsidiary, affiliate, or company owns at least 10% of **Vice Media LLC** stock and has outstanding securities in the hands of the public: The Walt Disney Company.

92. The following parent, subsidiary, affiliate, or company of **WeWork** owns at least 10% of the stock and has outstanding securities in the hands of the public: SoftBank Group Corp.

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

These representations are made in order that judges of this Court may determine the need for recusal. Undersigned counsel of record for the proposed *amici curiae* certify that the foregoing statements are true and correct to the best of our knowledge and belief.

Dated: June 29, 2020

PAUL, WEISS, RIFKIND,
WHARTON & GARRISON LLP

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Counsel for Amici Curiae

(**Applications for *Pro Hac Vice* Admission Forthcoming)

CERTIFICATE OF SERVICE

Pursuant to LCvR 5.3, I hereby certify that, on June 29, 2020, I caused to be electronically filed a copy of the foregoing Certificate Required by LCvR 26.1 of the Local Rules of the United States District Court for the District Of Columbia using the Court's CM/ECF system, and service was effected electronically pursuant to LCvR 5.4(d) to all counsel of record.

Dated: June 29, 2020

By: /s/ Jeannie S. Rhee

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

COMMONWEALTH OF VIRGINIA, *et al.*,

Plaintiffs,

v.

DAVID S. FERRIERO, in his official capacity as the
Archivist of the United States,

Defendant,

No. 1:20-cv-00242 (RC)

ALABAMA, LOUISIANA, NEBRASKA,
SOUTH DAKOTA, and TENNESSEE,

Intervenor-Defendants.

**[PROPOSED] ORDER GRANTING CONSENT MOTION FOR LEAVE TO
FILE BRIEF OF BUSINESS AND CORPORATE ENTITIES AS *AMICI
CURIAE* IN SUPPORT OF PLAINTIFF STATES**

The motion of *amici curiae*¹ for leave to file an amicus brief is
hereby granted. Accordingly, it is hereby:

ORDERED that the Consent Motion for Leave to File Brief of
Business and Corporate Entities as *Amici Curiae* in Support of
Plaintiff States is

GRANTED. SO ORDERED this _____ day of _____
2020.

RUDOLPH CONTRERAS
United States District Judge

¹ Names of *amici* are listed in Appendix B to the *amici curiae*'s Memorandum of
Points and Authorities in Support of their Motion for Leave.