15-3775

IN THE

United States Court of Appeals

FOR THE SECOND CIRCUIT

MELISSA ZARDA, co-independent executor of the ESTATE OF DONALD ZARDA,
WILLIAM ALLEN MOORE, JR., co-independent executor
of the ESTATE OF DONALD ZARDA,

Plaintiffs-Appellants,

—against—

ALTITUDE EXPRESS, INC., doing business as SKYDIVE LONG ISLAND,
RAY MAYNARD,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

BRIEF FOR *AMICI CURIAE* THE LGBT BAR ASSOCIATION OF GREATER NEW YORK (LEGAL), ANTI-DEFAMATION LEAGUE, ASIAN AMERICAN BAR ASSOCIATION OF NEW YORK, ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK, BAY AREA LAWYERS FOR INDIVIDUAL FREEDOM, HISPANIC NATIONAL BAR ASSOCIATION, LEGAL AID AT WORK, NATIONAL QUEER ASIAN PACIFIC ISLANDER ALLIANCE, NEW YORK COUNTY LAWYERS' ASSOCIATION, AND WOMEN'S BAR ASSOCIATION OF THE STATE OF NEW YORK IN SUPPORT OF PLAINTIFFS-APPELLANTS

THE LGBT BAR ASSOCIATION
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CORPORATE DISCLOSURE STATEMENT

Pursuant to FED. R. APP. P. 26.1, *amicus curiae* **The LGBT Bar Association of Greater New York** ("LeGaL") certifies that it has no parent corporation and no corporation or publicly held entity owns 10% or more of its stock.

The **Anti-Defamation League** ("ADL") certifies that it has no parent corporation and no corporation or publicly held entity owns 10% or more of its stock.

The **Asian American Bar Association of New York** ("AABANY") certifies that it has no parent corporation and no corporation or publicly held entity owns 10% or more of its stock. It is the New York affiliate of the National Asian Pacific American Bar Association.

The **Association of the Bar of the City of New York** (a/k/a the New York City Bar Association), is a voluntary bar association with no parent corporation or subsidiaries, and no corporation or publicly held entity owns 10% or more of its stock. The New York City Bar Association has one affiliate, the Association of the Bar of the City of New York Fund, Inc.

Bay Area Lawyers for Individual Freedom ("BALIF") certifies that it has no parent corporation and no corporation or publicly held entity owns 10% or more of its stock.

The **Hispanic National Bar Association** ("HNBA") certifies that it has no parent corporation and no corporation or publicly held entity owns 10% or more of its stock.

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The **Women's Bar Association of the State of New York** ("WBASNY") states that it is a statewide voluntary bar association incorporated in the State of New York, with no parent corporation, no corporation or publicly held entity owning 10% or more of its stock, and twenty-seven (28) subsidiaries and affiliates (consisting of one (1) direct subsidiary that is an IRC 501(c)(3) charitable foundation incorporated in New York; nineteen (19) affiliated regional chapters across New York, some of which are unincorporated and others of which are

incorporated in New York; and eight (8) IRC 501(c)(3) charitable foundations or legal clinics that are subsidiaries of its chapters and incorporated in New York).[1]

[1] WBASNY's affiliates are: *Chapters* – Adirondack Women's Bar Association; The Bronx Women's Bar Association, Inc.; Brooklyn Women's Bar Association, Inc.; Capital District Women's Bar Association; Central New York Women's Bar Association; Del-Chen-O Women's Bar Association, Finger Lakes Women's Bar Association; Greater Rochester Association for Women Attorneys; Mid-Hudson Women's Bar Association; Mid-York Women's Bar Association; Nassau County Women's Bar Association; New York Women's Bar Association; Queens County Women's Bar Association; Rockland County Women's Bar Association; Staten Island Women's Bar Association; The Suffolk County Women's Bar Association; Westchester Women's Bar Association; Western New York Women's Bar Association; and Women's Bar Association of Orange and Sullivan Counties. *Charitable Foundations & Legal Clinic* – Women's Bar Association of the State of New York Foundation, Inc.; Brooklyn Women's Bar Foundation, Inc.; Capital District Women's Bar Association Legal Project Inc.; Nassau County Women's Bar Association Foundation, Inc.; New York Women's Bar Association Foundation, Inc.; Queens County Women's Bar Foundation; Westchester Women's Bar Association Foundation, Inc.; and The Women's Bar Association of Orange and Sullivan Counties Foundation, Inc.

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INTERESTS OF *AMICI CURIAE*

Amici are a coalition of voluntary bar associations and nonprofit organizations united in their commitment to protecting the rights of LGBT individuals and the prevention of workplace discrimination and harassment of all forms. Detailed statements of interests are in the addendum following this brief.

ARGUMENT SUMMARY

Discrimination on the basis of sexual orientation is discrimination on the basis of sex prohibited under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(a)(1) ("Title VII"). The panel in *Zarda* felt constrained by prior outdated decisions from this Circuit, stating it "lack[ed] the power to overturn Circuit precedent," in rejecting Zarda's request to find discrimination on the basis of sexual orientation is prohibited by Title VII. *Zarda v. Altitude Express*, 855 F.3d 76, 80 (2d Cir. 2017). Furthermore, the prior decisions on which the panel relied are in direct conflict with Supreme Court and Second Circuit case law. Consequently, the law as it stands in this Circuit is in disarray. Lesbian, gay, and bisexual ("LGB") employees deserve clarity with respect to their rights in the workplace, and the time is now ripe for this Court to clarify those rights. For the following reasons, this Court should overturn its outdated precedent established in *Simonton v. Runyon*, 232 F.3d 33 (2d Cir. 2017), and find that Title VII protects

against discrimination on the basis of sexual orientation through its prohibition of discrimination "because of . . . sex."

ARGUMENT

I. The Court Should Overturn *Simonton* Because It Relied on Outdated Law, Resulting in a Decision That Conflicts with Supreme Court and Second Circuit Precedent.

Sexual orientation discrimination constitutes sex discrimination under Title VII in three distinct circumstances: (1) when LGB individuals are treated in a way that would be different "but for" their sex; (2) when LGB individuals are treated less favorably based on the sex of their associates; and (3) when LGB individuals are treated less favorably because they do not conform to gender stereotypes, particularly in romantic relationships. This Court has not had the opportunity to address these compelling theories, which developed after *Simonton v. Runyon*, 232 F.3d 33 (2d Cir. 2000). *See Christiansen v. Omnicom Grp., Inc.*, 852 F.3d 195, 203–06 (2d Cir. 2017) (Katzmann, C.J., concurring). Given the "evolving legal landscape" in the nearly two decades since *Simonton* was decided, a conflict with Supreme Court and more recent Second Circuit precedent now exists. Consequently, *Simonton* should be overturned. *See id.* at 202.

First, *Simonton* was heavily informed by Congress's refusal to expand Title VII protections and thus deserves revisiting. *See* 232 F.3d at 35. This Court reached the bare conclusion in *Simonton* that "Title VII does not prohibit harassment or discrimination because of sexual orientation." Like other circuits,

the Second Circuit inferred Congress's intent to exclude sexual orientation from Title VII from Congressional inaction. *See id.* However, the Supreme Court has stated that "[c]ongressional inaction lacks persuasive significance because several equally tenable inferences may be drawn from such inaction, including the inference that the existing legislation already incorporated the offered change." *Pension Ben. Guar. Corp. v. LTV Corp.*, 496 U.S. 633, 650 (1990) (citation omitted) (internal quotation marks omitted); *see also Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 2017 U.S. App. LEXIS 9362, at *30 (7th Cir. May 30, 2017) (finding congressional inaction not determinative of expanding Title IX protections); *Hively v. Ivy Tech Cmty. Coll. of Indiana*, 853 F.3d 339, 344 (7th Cir. 2017) (finding congressional inaction not determinative of expanding Title VII protections for discrimination based on sexual orientation). Accordingly, the reasoning on which *Simonton* relied is irreconcilable with Supreme Court precedent. Therefore, this panel's reliance on *Simonton* merits reversal.

Second, overturning *Simonton* is warranted in light of the recognition of associational discrimination. The theory of associational discrimination has long been accepted, *see, e.g.*, *Loving v. Virginia*, 388 U.S. 1, 7–8 (1967), and was adopted by this Circuit in *Holcomb v. Iona College*, 521 F.3d 130 (2d Cir. 2008). Although *Loving* and *Holcomb* only addressed race-based associations, the theory of associational discrimination applies "with equal force" to discrimination based

on sex because each enumerated category under Title VII is treated "exactly the same . . . ." *See Price Waterhouse v. Hopkins*, 490 U.S. 228, 243, n.9 (1989). Thus, an employee who alleges that "his or her employer took his or her sex into account by treating him or her differently for *associating* with a person of the same sex" alleges sex discrimination under Title VII. *Baldwin v. Foxx*, EEOC DOC 0120133080, 2015 WL 4397641, at *6 (July 15, 2015). Because *Simonton* predates *Holcomb*, this Court has not yet addressed how associational discrimination intersects with discrimination on the basis of same-sex associations. This conflict in Second Circuit case law necessitates a fresh examination of the legal framework in *Simonton;* in doing so, this Court must overrule *Simonton* and find that associational discrimination includes discrimination on the basis of sex.

Third, the Court should use the opportunity presented here to address the modern approach—that sexual orientation discrimination is a type of gender-stereotyping under Title VII. *Simonton* created a "binary distinction . . . between permissible gender stereotype discrimination claims and impermissible sexual orientation discrimination." *Christiansen*, 852 F.3d at 205 (Katzmann, C.J., concurring). This unworkable distinction has persisted, complicating pleadings and disregarding the strong overlap between gender stereotypes and sexual orientation discrimination. The *Simonton* approach ignores the reality that sexual orientation discrimination is based on gender stereotypes and thus should be

actionable under Title VII. *See id.* at 205-06 ("fundamentally, carving out gender stereotypes related to sexual orientation ignores the fact that negative views of sexual orientation are often, if not always, rooted in the idea that men should be exclusively attracted to women . . . as clear a gender stereotype as any.") The history of Zarda's case demonstrates the resulting burden on LGB plaintiffs. As the panel acknowledged, the District Court limited its analysis of sex stereotyping to "what you may wear or how you may behave," yet failed to analyze "whether Zarda could rely on a 'sex stereotype' that men should date women." *Zarda*, 855 F.3d at 81. In so doing, the District Court furthered, and the panel upheld, the needlessly complicated and increasingly unworkable distinction between discrimination based on gender stereotypes and sexual orientation. Accordingly, this Court should overrule *Simonton* and acknowledge the "gender stereotype at play in sexual orientation discrimination." *Christiansen*, 852 F.3d at 206 (Katzmann, C.J., concurring).

The legal landscape surrounding LGB rights has overwhelmingly changed since *Simonton*. *Simonton* predates the Supreme Court's decisions in *Lawrence v. Texas*, 539 U.S. 558, 578 (2003) (finding unconstitutional Texas's criminalization of same-sex intimacy), *United States v. Windsor*, 133 S. Ct. 2675, 2679 (2013) (finding unconstitutional DOMA's definition of marriage as between a man and woman), and *Obergefell v. Hodges*, 135 S. Ct. 2584, 2607–08 (2015) (holding that

same-sex couples have a fundamental right to marry, as protected under the Fourteenth Amendment). This Court should overrule the outdated, unworkable *Simonton* decision to address more recent legal developments. As reasoned in *Obergefell*, "[i]f rights were defined by who exercised them in the past, then received practices could serve as their own continued justification and new groups could not invoke rights once denied." 135 S. Ct. at 2602.

The panel's decision and its reliance on *Simonton* conflicts with Supreme Court and Second Circuit precedent. In light of this and the changing legal landscape surrounding LGB issues, the Second Circuit should overrule *Simonton* and find discrimination on the basis of sexual orientation is discrimination prohibited under Title VII "because of … sex".

II. This Court Should Follow the Seventh's Circuit's Groundbreaking Precedent in *Hively*.

Two weeks before the panel's decision in this case, the Seventh Circuit published its groundbreaking decision in *Hively*, where it held for the first time that discrimination on the basis of sexual orientation is a form of sex discrimination under Title VII. *See Hively*, 853 F.3d at 341. *Hively* is now in direct conflict with the decision of this panel. Accordingly, this Court should overrule *Simonton*, and follow the persuasive precedent set by the Seventh Circuit in *Hively*.

In *Hively*, the Seventh Circuit held that a plaintiff who alleges discrimination on the basis of sexual orientation can put forth a valid claim of sex discrimination

under Title VII. *See id.* In finding that discrimination on the basis of sexual orientation constitutes a form of sex discrimination covered by Title VII, the Seventh Circuit stressed that it was not "amending" Title VII to add a new protected category, but was rather interpreting "what it means to discriminate on the basis of sex, and in particular, whether actions taken on the basis of sexual orientation are a subset of actions taken on the basis of sex." *Id.* at 343. Ultimately, the Seventh Circuit was convinced that Title VII encompasses sexual orientation discrimination under two alternative theories: (1) the "comparative method," where courts attempt to isolate the significance of a plaintiff's sex in an employer's decision; and (2) the associational discrimination theory. *See id.* at 345.[2]

The Seventh Circuit's *en banc* decision in *Hively* unequivocally overruled prior Seventh Circuit precedent. Like the panel here, the panel in *Hively* also felt constrained by prior outdated precedent. But the Seventh Circuit "recognize[ed] the power of the full court to overrule earlier decisions and to bring [its] law into conformity with the Supreme Court's teachings." *Id.* at 343. This Court now should do the same.

[2] The majority in *Hively* traced its decision against a backdrop of Supreme Court cases beginning with *Romer v. Evans*, 517 U.S. 620 (1996) to the most recent opinion in *Obergefell*, recognizing the evolving sense that laws that discriminate on the basis of sexual orientation violate the Equal Protection Clause. *Id.* at *19.

III. The Panel Decision's Unworkable Approach Leaves LGB Employees Without Clear Protection from Illegal Discrimination Based on Their Sexual Orientation.

In continuing to draw a line between sexual orientation and sex-based discrimination claims, the panel has furthered a fallacious distinction. The law as it currently stands requires district courts to determine whether an allegation is based on gender stereotyping or stereotyping based on sexual orientation. However, numerous courts throughout the country have grappled with this distinction and found it unworkable. *See Christiansen v. Omnicom Grp., Inc.*, 167 F. Supp. 3d 598, 620 (S.D.N.Y. 2016) ("The lesson imparted by the body of Title VII litigation concerning sexual orientation discrimination and sexual stereotyping seems to be that no coherent line can be drawn between these two sorts of claims."); *see also, e.g., Prowel v. Wise Bus. Forms, Inc.*, 579 F.3d 285, 291 (3d Cir. 2009) ("[T]he line between sexual orientation discrimination and discrimination 'because of sex' can be difficult to draw."); *Dawson v. Bumble & Bumble*, 398 F.3d 211, 217 (2d Cir. 2005) (finding it "often difficult to discern" between allegations based on sexual orientation discrimination and those based on sex stereotyping, because "the borders [between these classes] are so imprecise").

The confusion among courts surrounding this artificial line-drawing led the Equal Employment Opportunity Commission ("EEOC") to throw out the distinction altogether. The EEOC's official position is now that "an allegation of

discrimination based on sexual orientation is necessarily an allegation of sex discrimination under Title VII." *Baldwin*, 2015 WL 4397641, at *5. The EEOC reached this conclusion because, among other reasons, discrimination on the basis of sexual orientation inevitably involves stereotypes about the proper gender roles in romantic relationships—namely, that men should only date women and vice versa.

Since *Baldwin*, numerous courts have gone beyond merely lamenting this distinction as unworkable, and have now coalesced to condemn the distinction as an artificial judicial construct with no basis in reality. *See, e.g.*, *Hively*, 853 F.3d at 346 (concluding that the line between sexual orientation discrimination and sex-stereotyping claims "does not exist at all"); *Philpott v. New York*, No. 16 Civ. 6778 (AKH), 2017 U.S. Dist. LEXIS 67591, at *6-7 (S.D.N.Y. May 3, 2017) (following *Hively* and "declin[ing] to embrace an illogical and artificial distinction" between sexual orientation discrimination and gender stereotyping) (internal quotation omitted); *U.S. Equal Emp't Opportunity Comm'n v. Scott Med. Health Ctr., P.C.*, No. 16-225, 2016 WL 6569233, at *6 (W.D. Pa. Nov. 4, 2016) (describing the distinction between sexual orientation discrimination and sex stereotyping as "a distinction without a difference" and concluding that no line separates the two); *Videckis v. Pepperdine Univ.*, 150 F. Supp. 3d 1151, 1159 (C.D. Cal. 2015) ("[T]he Court concludes that the distinction is illusory and artificial, and that

sexual orientation discrimination is not a category distinct from sex or gender discrimination."). Indeed, courts have even rejected the distinction between sexual orientation discrimination and sex stereotyping as immaterial and proceeded to find claims of sexual orientation discrimination "cognizable under Title VII." *Philpott*, 2017 U.S. Dist. LEXIS 67591, at *7.

Under the current framework, LGB employees who face illegal discrimination in the workplace can only seek protections under Title VII if they assert a gender stereotyping claim. This result permits (and perhaps even encourages) employers to claim that they did not discriminate against an employee because of gender stereotypes, but rather, simply because of the employee's sexual orientation. Not only is this illogical, but as the *Christiansen* panel acknowledged in addressing the same issue, it has become "especially difficult for gay plaintiffs to bring" gender stereotyping claims. *Christiansen*, 852 F.3d at 200 (citation omitted).

Title VII protections should extend to all LGB employees, not just a subset who survive scrutiny within a false judicial construct. The law, as it currently stands, leaves LGB employees uniquely vulnerable to illegal employment discrimination, without the reassurance that Title VII protects them from such evils. Indeed, the Williams Institute at the UCLA School of Law has gathered studies demonstrating the impact of sexual orientation discrimination on LGBT

employees. *See* Jennifer C. Pizer et al., *Evidence of Persistent and Pervasive Workplace Discrimination Against LGBT People: The Need for Federal Legislation Prohibiting Discrimination and Providing for Equal Employment Benefits*, 45 Loy. L.A. L. Rev. 715 (2012) (hereinafter "*Persistent Discrimination*"). A 2008 national survey reported that 42% of LGB workers experienced some form of workplace discrimination or harassment related to their sexual orientation. *See Persistent Discrimination* at 722–23. A more recent 2011 study revealed that on a national level, the population-adjusted rate for sexual orientation-based discrimination complaints matches that of race-based discrimination claims at four claims per 10,000 workers, and is just short of the adjusted rate for sex-based discrimination complaints at five claims per 10,000 workers. *See* Brad Sears & Christy Mallory, Williams Inst., *Evidence of Employment Discrimination on the Basis of Sexual Orientation in State and Local Government: Complaints Filed with State Enforcement Agencies 2003-2007* 2 (2011).

Given the community's vulnerability to discrimination, it is not surprising that the EEOC has reported a general upward trend in the number of sexual orientation-based discrimination complaints filed since the agency began tracking such information, including an increase from fiscal year 2015 (when *Baldwin* was issued) to fiscal year 2016. *See* EEOC, *LGBT-Based Sex Discrimination Charges*

(Charges filed with EEOC) FY 2013-FY 2016, https://www.eeoc.gov/eeoc/statistics/enforcement/lgbt_sex_based.cfm (last visited Apr. 19, 2017). Similarly, a 2008 study reported an upward trend in the number of sexual orientation discrimination claims filed between 1999 and 2007 with the appropriate state agencies in Connecticut and New York. *See* Williams Inst., *Annual Discrimination Complaints to State Agencies Prohibiting Sexual Orientation and/or Gender Identity* 2, 5 (2008). Corroborating this study's finding, the New York State Division of Human Rights reported a similar increase of discrimination complaints on the basis of sexual orientation filed from 2003 to 2007. *See* Brad Sears et al., Williams Inst., *Documenting Discrimination on the Basis of Sexual Orientation & Gender Identity in State Employment* 15-67–15-68 (2009).

These studies highlight the dilemma faced by LGB employees, who seek to rely on anti-discrimination laws at roughly equivalent ratios to minority or female workers, but who find that protections for the LGB community are less likely to be enforced to the fullest extent of the law. The history of this case exemplifies the struggle these LGB employees face under the current law. Further, the documented increasing rate at which these claims are being brought, particularly after *Baldwin*, will inevitably compound the confusion district courts face.

LGB employees, their employers, and their respective attorneys all need clarity with respect to this area of law. This Court needs to settle this uncertainty and should retire the unworkable distinction between permissible gender stereotype discrimination claims and impermissible sexual orientation discrimination claims to hold that discrimination based on sexual orientation is, in fact, sex discrimination under Title VII.

CONCLUSION

This Court should overturn *Simonton* and hold that discrimination on the basis of sexual orientation is discrimination on the basis of sex, as prohibited under Title VII.

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitations of Fed. R. App. P. 32(a)(7)(B) and Fed. R. App. P. 29(d) because it contains 3,942 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportional typeface using Microsoft Word in Times New Roman 14-point font.

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CERTIFICATE OF SERVICE

I hereby certify that on June 26, 2017 I electronically filed the foregoing brief with the Clerk of Court for the United States Court of Appeals for the Second Circuit by using the Court's CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

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ADDENDUM: INTERESTS OF *AMICI CURIAE*

The LGBT Bar Association of Greater New York ("LeGaL") was one of the nation's first bar associations of the LGBT legal community and remains one of the largest and most active organizations of its kind in the country. Serving the New York metropolitan area, LeGaL is dedicated to improving the administration of the law, ensuring full equality for members of the LGBT community, and promoting the expertise and advancement of LGBT legal professionals. LeGaL, whose membership includes attorneys that regularly represent LGBT employees in cases of employment discrimination, has a fundamental interest in ensuring that Title VII's protections extend to all LGBT employees.

The **Anti-Defamation League** ("ADL") was founded in 1913 to combat anti-Semitism and other forms of prejudice, and to secure justice and fair treatment to all. Today, ADL is one of the nation's leading civil rights organizations. As part of its commitment to protecting the civil rights of all persons, ADL has filed amicus briefs in numerous cases addressing the unconstitutionality or illegality of discriminatory practices or laws. ADL worked closely with coalition partners to help pass the Civil Rights of Act of 1964, and it maintains a strong interest in ensuring that its provisions, such as Title VII, are interpreted in accordance with the law's intent to protect people in historically persecuted groups, like Donald Zarda, from discrimination.

The **Asian American Bar Association of New York** ("AABANY") was formed in 1989 as a not-for-profit corporation to represent the interests of New York Asian American attorneys, judges, law professors, legal professionals, legal assistants, paralegals and law students. The mission of AABANY is to improve the study and practice of law, and the fair administration of justice for all by ensuring the meaningful participation of Asian Americans in the legal profession. AABANY, currently with over 1000 active members, is the New York affiliate of the National Asian Pacific American Bar Association.

The Association of the Bar of the City of New York (a/k/a the New York City Bar Association or the "City Bar") is a voluntary association of over 24,000 member lawyers and law students. Among other initiatives, the City Bar addresses unmet legal needs, especially the needs of traditionally disadvantaged groups and individuals such as those in the LGBT community. The Committee on LGBT Rights addresses legal and policy issues that affect LGBT individuals.

Bay Area Lawyers for Individual Freedom ("BALIF") is a bar association of approximately 500 lesbian, gay, bisexual, and transgender ("LGBT") members in the San Francisco Bay Area legal community. BALIF promotes the professional interests and social justice goals of its members and the legal interests of the LGBT community at large. For nearly 40 years, BALIF has actively participated in public

policy debates concerning the rights of LGBT people and has authored and joined amicus efforts concerning matters of broad public importance.

The membership of amicus curiae the **Hispanic National Bar Association** (the "HNBA") comprises thousands of Latino lawyers, law professors, law students, legal professionals, state and federal judges, legislators, and bar affiliates across the country. The HNBA supports Hispanic legal professionals and is committed to advocacy on issues of importance to the 53 million people of Hispanic heritage living in the United States. The HNBA regularly participates as amicus in cases concerning civil rights.

Legal Aid at Work ("LAAW") (formerly Legal Aid Society – Employment Law Center) is a non-profit public interest law organization whose mission is to protect, preserve, and advance the employment and education rights of individuals from traditionally under-represented communities. LAAW has represented plaintiffs in cases of special import to communities of color, women and girls, recent immigrants, individuals with disabilities, the LGBT community, and the working poor. LAAW has litigated a number of cases under Title IX of the Education Amendments of 1972 as well as Title VII of the Civil Rights Act of 1964. LAAW has appeared in discrimination cases on numerous occasions both as counsel for plaintiffs, *see, e.g.*, *National Railroad Passenger Corp. v. Morgan*, 536 U.S. 101 (2002); *U.S. Airways, Inc. v. Barnett*, 535 U.S. 391 (2002); and

California Federal Savings & Loan Ass'n v. Guerra, 479 U.S. 272 (1987) (counsel for real party in interest), as well as in an amicus curiae capacity. *See, e.g., U.S. v. Virginia*, 518 U.S. 515 (1996); *Harris v. Forklift Systems*, 510 U.S. 17 (1993); *International Union, UAW v. Johnson Controls*, 499 U.S. 187 (1991); *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989); *Meritor Savings Bank v. Vinson*, 477 U.S. 57 (1986). LAAW's interest in preserving the protections afforded to employees and students by this country's antidiscrimination laws is longstanding.

The National Queer Asian Pacific Islander Alliance ("NQAPIA") is a federation of lesbian, gay, bisexual, and transgender (LGBT) Asian American, South Asian, Southeast Asian, and Pacific Islander (APIs) organizations. NQAPIA builds the capacity of local LGBT API groups, develops leadership, promotes visibility, educates the community, invigorates grassroots organizing, encourages collaborations, and challenges anti-LGBT bias and racism. NQAPIA as long supported the expansion of rights to protect LGBT people from discrimination.

The **New York County Lawyers Association** ("NYCLA") Committee on Lesbian, Gay, Bisexual and Transgender Issues is a committee of NYCLA—a not-for-profit membership organization of approximately 8,000 members committed to applying their knowledge and experience in the field of law to promotion of the public good and ensuring access to justice for all. Founded in 1908, NYCLA was the first major bar association in the country to admit members without regard to

race, ethnicity, religion or gender, and continues to pioneer tangible reforms in American jurisprudence. This amicus brief has been approved by the NYLCA Committee on Lesbian, Gay, Bisexual and Transgender Issues and has not been reviewed by the NYCLA Executive Committee.

The **Women's Bar Association of the State of New York** ("WBASNY") is the second largest statewide bar association in New York, with more 4,400 members in nineteen regional chapters. WBASNY's membership includes jurists, academics, and practicing attorneys in every area of the law, including constitutional and civil rights, employment law, family and matrimonial law, and children's rights.[3] WBASNY's primary mission is to ensure the advancement of equal rights and the fair administration of justice for all persons. It has been a vanguard for the rights of women, children, and LGBT persons for decades, and it has participated as an amicus in many cases supporting equal rights for all persons, regardless of gender or sexual orientation, including before the Second Circuit and U.S. Supreme Court in *Windsor v. United States*, 699 F.3d 169 (2d Cir. 2012), *aff'd sub nom. United States v. Windsor*, 133 S. Ct. 2675 (2013).

[3] The Boards of Directors of WBASNY and its 19 affiliated chapters include attorneys who are judges, court attorneys, or otherwise affiliated with courts in New York. No WBASNY members who are judges or court personnel participated in WBASNY's vote to join in this matter as amicus or in the drafting or review of this brief.