

No. 16-15372

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

AILEEN RIZO, *Plaintiff-Appellee*,

v.

JIM YOVINO, FRESNO COUNTY SUPERINTENDENT OF SCHOOLS,
ERRONEOUSLY SUED HEREIN AS FRESNO COUNTY OFFICE OF
EDUCATION, *Defendant-Appellant*.

On Appeal from the United States District Court for the Eastern District of
California, Michael J. Seng, Magistrate Judge, Presiding, No. 1:14-cv-00423-MJS

**MOTION OF AMICI CURIAE EQUAL RIGHTS ADVOCATES AND 21
OTHER ORGANIZATIONS FOR LEAVE TO FILE AMICUS CURIAE
BRIEF IN SUPPORT OF PLAINTIFF-APPELLEE**

Filed with Consent of All Parties

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Make-Up Artists and Hair Stylists
Guild, IATSE Local 706; and
Costume Designers Guild, IATSE
Local 892

ADDITIONAL AMICI

- ACLU
- American Association of University Women
- Atlanta Women for Equality
- California Women's Law Center
- Clearinghouse on Women's Issues
- Costume Designers Guild, IATSE Local 892
- Feminist Majority Foundation
- Gender Justice
- KWH Law Center for Social Justice and Change
- Legal Aid at Work
- Legal Voice
- Make-Up Artists and Hair Stylists Guild, IATSE Local 706
- National Asian Pacific American Women's Forum
- National Council of Jewish Women
- National Organization for Women Foundation
- National Partnership for Women & Families
- National Women's Law Center
- Orange County Managers Association
- Southwest Women's Law Center
- Women Employed
- Women's Law Project

MOTION FOR LEAVE TO FILE BRIEF OF *AMICI CURIAE*

Equal Rights Advocates; American Association Of University Women; American Civil Liberties Union (ACLU), Atlanta Women For Equality; California Women’s Law Center; Clearinghouse on Women’s Issues; Costume Designers Guild, IATSE Local 892; Feminist Majority Foundation; Gender Justice; KWH Law Center for Social Justice and Change; Legal Aid At Work; Legal Voice; Make-Up Artists and Hair Stylists Guild, IATSE Local 706; National Asian Pacific American Women's Forum; National Council of Jewish Women; National Organization For Women (Now) Foundation; National Partnership For Women And Families; National Women’s Law Center; Orange County Managers Association; Southwest Women’s Law Center; Women Employed; and Women’s Law Project (collectively, “*Amici*”) submit this motion for leave to file an *amicus curiae* brief in support of Plaintiff-Appellee Aileen Rizo. Both parties have consented to this filing.

Pursuant to Federal Rule of Appellate Procedure 29 and Ninth Circuit Rule 29-2, Amici respectfully request that this Court grant leave to file an *amicus curiae* brief in support of Plaintiff-Appellee. Amici have specific and relevant expertise regarding the subject matter and legal questions presented in this case and provide a unique perspective on the complex issues involved and their impact on the broader public. In support of this motion, counsel for Amici state as follows:

INTEREST OF PROPOSED AMICI

As set forth in their Statements of Interest, *amici* are organizations and entities from across the United States with special expertise regarding the application and enforcement of the Equal Pay Act, 29 U.S.C. § 206 (“Equal Pay Act” or “The Act”), the history and nature of gender-based pay discrimination in the United States, and the relationship between the practice of setting pay based on prior salary and the gender wage gap.

Amici have an interest in ensuring that this Court interprets the Equal Pay Act in a manner consistent with the statutory language and underlying purpose of the Act as applied within the broader context of systemic wage disparities between men and women across occupations, wage levels and educational attainment.

Amici are well-positioned to assist the Court regarding the proper interpretation of the “factor other than sex” affirmative defense under the Equal Pay Act and to provide the Court with relevant developments since the case was submitted to the previous en banc panel.

DESIRABILITY AND RELEVANCE OF AMICUS BRIEF

Amici’s proposed brief provides the Court with additional relevant information and supplementary analysis regarding whether, under the Equal Pay Act, a Defendant employer can defeat a Plaintiff’s prima facie case and satisfy its burden of proof on the “factor other than sex” affirmative defense by relying on

prior salary to justify a gender wage differential. The proposed brief will also aid the Court by providing context about the nature and scope of the gender wage gap and pay discrimination, including developments since the case was submitted to the previous en banc panel, not addressed by the parties, thereby providing a unique and relevant perspective regarding the central question of whether prior salary may justify a violation of the Act.

As set forth in the proposed brief, the statutory language and underlying purpose of the Equal Pay Act, as well as the continued existence of a persistent and pervasive gender wage gap, support the conclusion that prior salary cannot constitute a “factor other than sex” under the Act, either alone or in combination with other factors.

CONCLUSION

For the foregoing reasons, Amici respectfully request the Court grant leave for Equal Rights Advocates et al. to file the amicus curiae brief attached hereto.

Dated: September 24, 2019

Respectfully submitted,

/s/ Jessica Stender

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(a)(7)(c), the undersigned counsel certifies that this motion:

(i) complies with the typeface requirements of Rule 32(a)(5) and the type style requirements of Rule 32(a)(6) because it has been prepared using Microsoft Office Word 2010 and is set in Times New Roman font in a size equivalent to 14 points or larger, and

(ii) complies with the length requirement of Rule 27(d)(2) because it is 585 words.

Dated: September 24, 2019

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CERTIFICATE OF SERVICE

I certify that on September 23, 2019, the foregoing motion was filed using the Court's CM/ECF system. All participants in the case are registered CM/ECF users and will be served electronically via that system.

Dated: September 24, 2019

/s/ Jessica Stender

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