2019 AMICUS BRIEF SUMMARIES

1. ***Ashley Judd v. Harvey Weinstein*** **(District Court for the Central District of California), filed 12/17/18**

Sexual Harassment
Author: California Women's Law Center

This amicus brief urges the Court to deny defendant Weinstein's motion to dismiss Ms. Judd's cause of action for sexual harassment in a professional relationship (California Civil Code section 51.9). In the 90s, Weinstein, a well-established movie producer, scheduled a "general business meeting" with Ms. Judd in his hotel room, where he made unwanted sexual advances toward her and subsequently retaliated against her by damaging her professional reputation and opportunities. Amicus argues that Ms. Judd and Weinstein's relationship is within the scope of section 51.9, which provides an express remedy for sexual harassment that involves a business, service, or professional relationship, because the two had an ongoing professional relationship that was not easily terminated. The brief emphasizes that the legislative intent of section 51.9 was to create a cause of action for this type of sexual harassment and subsequent amendments suggest the statute clearly applies to plaintiff's sexual harassment claim here.

On January 9, 2019, the Court granted Weinstein's motion to dismiss the section 51.9 claim. On April 2, 2019, the District Court granted a motion to stay the case pending the resolution of Weinstein's criminal case in New York state court. On May 2, 2019, Ms. Judd appealed the final judgment dismissing the sexual harassment claim to the Ninth Circuit. Ms. Judd filed her opening brief with the Ninth Circuit on November 29, 2019.

2. ***In re Marriage of Davila and Mejia*** **(California Supreme Court), filed 1/15/19**

Domestic Violence
Author: Family Violence Appellate Project

The amicus letter asks the court to decline the request to de-publish *In re Marriage of Davila and Mejia*, where the California Court of Appeal held that the Domestic Violence Prevention Act (DVPA) does not require survivors of domestic abuse to describe all actions taken by the alleged abuser in the DVRO restraining order request in order to later testify about those acts at the hearing, as long as the alleged abuser is notified of the general allegations. Amici emphasize the importance of publication to the safety and well-being of domestic violence survivors in California, particularly because *Davila* resolves an issue of first impression, and argue that the decision should remain published for three reasons. First, the opinion correctly applies DVPA notice provisions and notifying the defendant of general allegations provides him with a meaningful opportunity to be heard. Second, *Davila* is the first case to describe the process trial courts should use when a respondent objects to testimony, and, without it as precedent, the brief argues that trial courts could deny meritorious restraining orders when survivors provide general allegations, rather than each specific incident of abuse, in their petitions. Third, *Davila* is consistent with case precedent that litigants are not required to provide every detail to support their claim in writing prior to trial.

On February 1, 2019, the court declined the request to de-publish.

3. ***S.Y. v. Superior Court*** **(California Supreme Court), filed 1/15/19**

Domestic Violence
Author: California Women's Law Center

The amicus letter urges the California Supreme Court to grant the plaintiff's petition for review of Family Code Section 3044 and affirm that a preference for "frequent and continuing contact" with both parents may not be considered in rebutting the presumption against awarding custody of a child to a domestic violence abuser. The amici argue that, despite the clear language of the code, courts regularly misapply section 3044 by evaluating factors beyond those provided in section 3044(b), as the Court did here by improperly considering "frequent and continuing contact." The letter emphasizes that such a consideration is contrary to the purpose of section 3044 by granting an abusive parent custody because it is inherently detrimental to the best interests of the child. Further, it argues that joint custody orders that misapply section 3044 are harmful to survivors and their children because they provide the abuser opportunities to control their partner through violence and intimidation, expose children to harmful effects of domestic violence that can persist throughout adulthood, and undermine the non-abusive parent's safety and ability to parent. Lastly, amici emphasize that a majority of domestic violence survivors are unrepresented at the trial level, and *pro se* domestic violence survivors may have trouble navigating the court system and understanding the court procedures, rules, and substantive standards. As a result, the survivor is likely to be left without effective guidance on how to advocate on her own behalf and prevent the abuser from gaining custody of her child, absent clarification from the California Supreme Court on the correct application of Section 3044.

On March 14, 2019, the California Supreme Court denied the petition for review. Justice Leondra Kruger dissented, writing only that she is "of the opinion that the petition should be granted."

4. *Katherine Moussouris, et. al. v. Microsoft Corp.* (Ninth Circuit), filed 2/6/19

Gender Discrimination
Author: Impact Fund and Equal Rights Advocates

The amicus brief advocates for the Court to reverse and remand the district court's order denying class certification and particularly scrutinizes one specific legal error. Amici argue that the district court incorrectly applied a mechanical, mathematical standard to evaluate anecdotal evidence, allowing the Court to ignore eleven declarations from female employees and evidence of hundreds of internal complaints of gender bias. Amici emphasize the power of anecdotal evidence in bringing cold evidence to life and that the ample evidence precluded here was enough to establish systemic discrimination by Microsoft. Additionally, the brief highlights that this arbitrary numerical threshold is particularly detrimental in the context of systemic gender discrimination litigation, where women and other corroborating employees may be more reluctant to speak out against their employers for fear of negative professional and personal ramifications. For these reasons, amici advocate for a more holistic consideration of anecdotal evidence. Lastly, the brief argues that the district court's analysis of anecdotal evidence will significantly stifle and harm efforts to combat systemic gender discrimination by imposing an erroneous evidentiary hurdle.

Oral argument occurred on November 4, 2019.

5. *Kimberlie Durham v. Rural/Metro Corp.* (Eleventh Circuit), filed 2/8/19

Pregnancy Discrimination
Author: A Better Balance and The Center for Worklife Law

The amicus brief urges the Eleventh Circuit to reverse the district court's decision to grant summary judgment to Rural/Metro Corporation because the district court failed to apply the correct standard for establishing a prima facie case of discrimination based on an employer's failure to accommodate a pregnancy. Amici argue the district court's decision contradicts the Pregnancy Discrimination Act's (PDA) central intent of preventing employers from forcing women out of their job due to their pregnancy. By failing to apply the correct standard, the brief argues that the lower court committed four legal errors. First, the Supreme Court in *Young v. United Parcel Services, Inc.* deemed that showing that an "employer did not accommodate her" was sufficient to satisfy the "adverse action" requirement to establish a prima facie case. Amici argue the plaintiff satisfied this requirement by providing evidence that her employer denied her requested accommodation for a light duty assignment or transfer. Second, the brief argues that the plaintiff is not required to identify similarly-abled employees who were injured in the same way, as the district court erroneously held, but the relevant inquiry is rather whether other employees are similar to the plaintiff in ability or inability to work. Third, the plaintiff is not required to provide several categories of accommodated workers to establish a prima facie case; establishing that some similarly-abled employees were accommodated, as the plaintiff did here, is sufficient according to *Young*. Fourth, the plaintiff met her prima facie burden by establishing that (1) she belonged to a protected class, (2) she sought accommodation, and (3) her employer did not accommodate her. The brief emphasizes that *Durham*, if not reversed, allows employers to prevent pregnant employees from working if they need accommodations, frustrating Congress' purpose in passing the Pregnancy Discrimination Act.

This case remains pending in the Eleventh Circuit. Oral argument is scheduled for January 15, 2020.

6. Adali Lugo v. Moises Corona (CA Court of Appeal), filed 2/14/19

Domestic Violence
Author: California Women's Law Center

The amicus brief argues that the trial court committed legal error in holding that an existing criminal protective order prohibited it from issuing a civil restraining order under the Domestic Violence Protection Act (DPVA). The brief asks the court to clarify that California law encourages the coexistence of criminal protective orders and DPVA restraining orders. Amici further argue that this error, if repeated, would jeopardize the safety of Californians seeking protection against domestic violence and that this finding was in error for three reasons. First, the trial court's reasoning contradicts the text, structure, and legislative intent of DPVA, Family Code provisions, and guidance from the Judicial Council, all of which the brief argues demonstrate the intent for criminal protective orders and DVPA restraining orders to coexist. Second, the coexistence of civil and criminal restraining orders is critical because the two serve different purposes; DPVA's singular focus is to provide domestic abuse survivors protection, whereas criminal protective orders serve other purposes than solely protecting domestic abuse victims. Third, the experience of monolingual Spanish speakers lacking access to legal representation, who compose a significant subset of those seeking the DVPA's protection in California, evidences the need for the Court to correct this error because the trial court's legal error would make it more difficult for these survivors to seek legal protections.

On May 28, 2019, the Court of Appeal reversed the trial court's decision and remanded in a published decision, holding that the existence of a criminal protective order is not a bar to the issuance of a domestic violence restraining order.

7. ***Commonwealth of Pennsylvania v. Patrick Tighe*** **(Pennsylvania Supreme Court), filed 2/25/19**

Sexual Abuse
Author: Women's Law Project

The amicus brief asks the Court to affirm the Superior Court's conviction of the defendant and the trial court's decision to bar the *pro se* defendant from personally cross-examining the child who accused him of sexual violence. Amici argue that the trial court's decision that defendant's standby counsel was required to conduct cross-examination using questions formulated by the defendant was a proper use of judicial discretion for three reasons. First, amici point out that the Sixth Amendment right of self-representation is not absolute and that the Court, in *Faretta v. California*, held that this right is not violated when standby counsel is appointed to maintain courtroom decorum and efficiency. Second, the brief argues that the unsolicited participation of the standby counsel did not impact the jury's perception of the defendant's self-representation because it did not impede on the defendant's ability to represent himself as he wished at trial; the defendant successfully argued several motions and standby counsel used all of his questions during cross-examination. Further, amici highlight that the Court properly instructed the jury in multiple contexts that the standby counsel was acting on behalf of the defendant and was appointed to *procedurally* aid in the defendant's right to represent himself. Third, amici emphasize that the trial court's decision was appropriate because it would have likely resulted in emotional distress to the child. The brief further argues that precluding a defendant from cross-examining a survivor at trial should not be limited to cases involving sexual abuse of a child because emotional distress resulting from such questioning is not limited to child survivors of sexual abuse.

Oral argument occurred May 14, 2019.

8. ***Drew Adams v. School Board of St. Johns County, Florida, et. al.*** **(Eleventh Circuit), filed 2/28/19**

Sexual Orientation Discrimination
Author: National Women's Law Center

The amicus brief asks the court to affirm the district court's holding that the the defendant's policy, which barred the plaintiff from using the boys' restrooms because he is transgender, violates the Constitution's Equal Protection Clause and Title IX. Amici argue that discrimination against transgender individuals either in itself or on the basis of nonconformity to sex stereotypes constitutes sex discrimination. It argues that Title IX's goal of eradicating *all* forms of insidious gender discrimination in educational programs can only be reached by including protection for transgender students, not just for those biologically born female. The brief further emphasizes the need for such protections, particularly in light of the physical and emotional harm transgender individuals, such as the plaintiff here, experience when excluded from restrooms that match their gender identity. This harm can include alienation, humiliation, harassment, anxiety, depression, increased risk of suicide, and health risks, such as kidney

damage and urinary tract infections, associated with transgender individuals limiting fluid intake to minimize public bathroom usage. Finally, the brief argues that policies excluding transgender people from using bathrooms corresponding to their gender identity cannot be justified by a purpose of protecting the privacy and safety of cisgender girls; such policies designed to protect women instead disadvantage women. Courts have acknowledged that these defenses of exclusionary policies are based in harmful, unfounded fears and stereotypes. Accordingly, the Supreme Court has recognized that "protecting women" does not justify sex discrimination.

This case remains pending in the Eleventh Circuit. Oral argument is scheduled for December 5, 2019.

***9. Parents for Privacy v. Dallas School District, No. 2* (Ninth Circuit) filed 3/8/19**
Trans Rights
Author: National Women's Law Center

This amicus brief urges the Court to reject the appellant's conclusory arguments and affirm the district court's decision to dismiss the case. Amici urge the Court to affirm for the following reasons: (1) The mere presence of transgender students in a restroom does not create a hostile environment under Title IX or implicate a privacy concern under the U.S. Constitution; (2) Sex-based protections in federal civil rights laws and the U.S. Constitution include protections for transgender students, and banning them from using restrooms that comport with their gender identities constitutes impermissible sex-based discrimination; (3) Transgender students face documented harms when they are not permitted to use facilities that align with their gender identities; and (4) Appellants' arguments against the Plan rest on the same brand of sex stereotyping historically used to justify sex discrimination, including in the context of racial segregation, and such arguments are rejected by courts today. Amici also argue in support of transgender students and the Student Safety Plan which permits transgender students to use restrooms and other facilities consistent with their gender identities.

Oral argument occurred July 11, 2019.

10. *N.T. v. H.T.* (California Court of Appeal), filed 3/26/19
Domestic Violence
Author: Family Violence Appellate Project

The amicus letter argues that publication of *N.T.* is critical because the opinion is the first to directly address two legal issues concerning domestic violence restraining orders. First, *N.T.* would be the first published opinion to clarify that a violation of a Temporary Restraining Order (TRO) is abuse under the Domestic Violence Prevention Act, Family Code sections 6200 *et. seq.* Amici argue that publication would resolve the lack of clarity among the bench and bar on this issue and universally apply an interpretation that supports the safety and well-being of domestic abuse survivors. Second, *N.T.* would be the first published opinion to interpret "disturbing the peace" under Family Code section 6320 to include threats regarding custody and using unwanted child visitations as means for seeking reconciliation. Further, the letter emphasizes that because the fact pattern in *N.T.* is common for abusive relationships where the parents share a child in common, its publication would provide prevalent, important, and necessary guidance to trial courts evaluating domestic abuse cases. Lastly, the letter notes that such

guidance would help reduce the pervasive and harmful public health and safety consequences, as well as the costs associated with domestic abuse.

The California Court of Appeal changed the publication status of the opinion to published on April 22, 2019.

11. *State of California, et. al. v. U.S. Department of Health & Human Services, et. al.* (First Circuit, Third Circuit, Ninth Circuit), filed 9/21/18 (First Circuit), 3/22/19 (Third Circuit), 4/22/19 (Ninth Circuit)

Reproductive Rights

Author: Center for Reproductive Rights

This series of amicus brief supports enjoining two regulations issued by the Departments of Health and Human Services, Labor, and Treasury: the Religious Exemption Rule, 83 Fed. Reg. 57,536 and the Moral Exemption Rule, 83 Fed. Reg. 57,592 ("Rules"). These two Rules exempt employers and universities with a religious or moral objection from complying with the Affordable Care Act's requirement of providing no-cost coverage for contraceptive services. Amici argue that the aforementioned rules require exacting judicial scrutiny because they discriminate against employees, students, and women who choose to exercise their fundamental right to contraception and seek access to preventive health care. Further, the brief emphasizes that because they burden a fundamental right and heighten structural barriers to equal economic opportunities and health disparities for women of color and low-income women, the Rules are contrary to the goal of the Women's Health Amendment and argue a strict scrutiny standard is required under Equal Protection. If strict scrutiny is properly applied, amici argue that these Rules cannot survive because they are not narrowly tailored; the Rules are unnecessarily broad by offering exceptions to virtually all employers and universities and eliminating the accommodation exception for objecting institutions to achieve any purported goal of reasonably accommodating religious or moral objections.

On May 2, 2019, the First Circuit issued an opinion reversing the district court's dismissal of Massachusetts' case for lack of Article III standing. The First Circuit held the state does have Article III standing and could proceed with its substantive claims against the Final Rules.

The Third Circuit issued a decision affirming the nationwide preliminary injunction against enforcing the Rules on July 12, 2019.

The Ninth Circuit also issued a decision affirming the preliminary injunction against enforcing the Rules on October 22, 2019.

12. *Jane Doe v. University of Kentucky* (Sixth Circuit), filed 5/8/19

Gender Discrimination

Author: National Women's Law Center

The amicus brief asks the court to vacate the district court's order dismissing plaintiff's Title IX claims for lack of standing and remand for two reasons. First, amici argue that Title IX's text, legislative history, implementing regulations, and administrative guidance support a broader interpretation of standing than the district court's narrow reading. The brief argues that the above list supports the conclusion that Title IX does not limit the class of protected persons to

those with a particular relationship to the education institution, as the district court held, but rather characterizes the relationship as discrimination relating to an "education program or activity" including all institution operations. Therefore, the brief argues that the district court erred in denying the plaintiff Title IX protections simply because she was not enrolled at the school, despite the fact that the plaintiff lived on campus, attended classes in the institution's buildings, and studied in the institution's libraries. Second, the brief argues that the district court's narrow reading of the class of people Title IX protects undermines the purpose and policies of the statute; the purpose of Title IX is to regulate the behavior of educational institutions receiving funds, however, the district court's narrow reading would incentivize federally funded universities to discriminate between survivors of sexual harassment based on their enrollment status at the university. Finally, amici emphasize that this exclusion from Title IX's protections undermines congressional goals of equal access to higher education.

Oral argument occurred October 17, 2019.

13. *Crystal Vargas v. Robert Galaviz* (California Court of Appeal), filed 5/14/2019
Domestic Violence and Child Custody
Author: California Women's Law Center

The amicus brief asks the Court to confirm that Family Code Section 3044, which requires a mandatory rebuttable presumption against awarding sole or joint physical or legal custody of a child to a person who has perpetrated domestic violence within the last five years, applies to de facto joint custody orders, even when such orders are called something other than "joint custody" by the judge. The brief emphasizes that courts routinely misapply the rebuttal presumption, as the district court did here, and, therefore, clarification by the Court would provide important guidance to courts when making child custody and visitation determinations. Additionally, amici highlight the immediate- and long-lasting consequences children exposed to domestic abuse face when a court fails to apply Section 3044 to de facto awards of joint custody. Lastly, amici argue that Section 3044's safeguards are particularly critical here because domestic violence victims are often not represented by counsel in custody hearings, and the Court's clarity on Section 3044 would appropriately lessen the burden unrepresented domestic violence survivors currently face in custody hearings.

On August 19, 2019, the Court of Appeal issued an unpublished decision reversing the trial court's custody and visitation order.

14. *Amanda Wible v. School District of Philadelphia* (Commonwealth Court of Pennsylvania), filed 5/22/19
Sexual Harassment and Assault
Author: Education Law Center-PA and Women's Law Project

The amicus brief urges the Court to affirm the trial court's decision that the Pennsylvania Human Relations Act (PHRA) recognizes discrimination claims against educational institutions that fail to promptly address and effectively remedy student-on-student harassment or assault of which they are or should be aware. Amici argue that case law and PHRA's text in the public accommodations provision support a broad interpretation of PHRA, including protections from student-on-student sexual harassment in education based on perceived nonconformance to sex stereotypes. It further emphasizes that the PHRA encompasses direct and indirect

discrimination and does not call for contemplation of an institution's subjective intent. The brief highlights the importance of PHRA because it provides remedial opportunities for the victims of harassment that are not currently available through tort claims, criminal and delinquency charges, or the Pennsylvania Public School Code. Additionally, amici suggest that the Court should use this opportunity to lower the review standard under the PHRA from deliberate indifference to negligence because the deliberate indifference standard is uniquely tailored and applied to Title IX as a spending statute, whereas a negligence standard is applied when an antidiscrimination statute is at issue, as is here. The brief lastly notes that Pennsylvania case law, relevant legislative history, and analogous statutory schemes support the finding that public school districts and educational institutions are not immune from PHRA public accommodations discrimination claims.

The case was settled before oral argument in November 2019.

15. *In re the Marriage of Daisy and Mark P.* (CA Fourth Appellate District), filed 5/28/2019
Domestic Violence
Author: Family Violence Appellate Project

The amicus letter argues that *In re the Marriage of Daisy and Mark P.* should be published as important guidance to trial courts because it makes two significant contributions to domestic violence law. First, this case would be the first published opinion to address the res judicata doctrine in the context of a subsequent request for a Domestic Violence Restraining Order. Amici argue that this opinion would clarify that the doctrine does not apply when an earlier Domestic Violence Restraining Order hearing was unfair, brief, and confused. Second, publication would oblige lower courts to be more proactive and flexible in *pro per* cases. The letter further argues that this guidance is critical, particularly considering the inexperience and language barriers domestic violence survivors often face in court. Lastly, the letter emphasizes that domestic violence is an issue of continuing public interest, supporting publication.

The court denied the request for publication on July 16, 2019.

16. *Lauren Kesterson v. Kent State University, et. al.* (Sixth Circuit), filed 6/4/2019
Sexual Assault
Author: National Women's Law Center

The amicus brief asks the court to clarify that the "appropriate person" test used in employee-on-student sexual harassment cases does not apply to peer harassment cases. The "appropriate person" standard considers an institution to have "actual knowledge" of employee-on-student sexual harassment when a school official with the authority to take corrective measures is notified of such behavior. Amici emphasize that the Sixth Circuit in *Davis v. Monroe Cty. Bd. Of Educ.* did not require an "appropriate person" to have actual knowledge in student-on-student sexual harassment cases to establish a Title IX claim. The brief further argues that many Circuits, including the Sixth, recognize actual knowledge by a wide variety of school employees as sufficient to trigger a school's duty to respond. Amici argue that the plaintiff here met the "actual knowledge" threshold, contrary to the district court's finding, by notifying her softball coach, two assistant coaches, her academic counselor, and the executive director of the Office of Sexual and Relationship Violence Support Services that she had been sexually assaulted. Further, amici argue that imposing an "appropriate person" test in student-on-student sexual

harassment cases is contrary to the purpose of Title IX because it allows school employees who are necessary to a school's Title IX response to suppress reports of rape, insulating the school from damages liability. Conversely, the brief highlights that the purpose of Title IX is to protect individuals from sex discrimination in education. Lastly, it argues that, even if the appropriate person standard is applied, the university had actual knowledge because the plaintiff reported her sexual assault to her softball coach, who was a university official required to report sexual assault to the Title IX office and, therefore, is an appropriate person with the authority to take corrective measures.

Oral argument occurred October 23, 2019.

17. *Bostock v. Clayton County, Georgia,* (Supreme Court), filed 7/3/19
Sexual Orientation and Gender Identity Discrimination
Author: National Women's Law Center

This amicus brief argues that sexual orientation and gender identity should be included in the interpretation of Title VII's wording "because of . . . sex" which has always been understood as barring discrimination based on employers' expectations about how employees of a particular sex will or should behave due to their sex—that is, discrimination based on sex stereotyping. Amici argues that LGBTQ+ employees and applicants should be protected, even when they fail to conform to the employer's sex stereotypes. Sex stereotyping has taken many forms, including beliefs on how men and women should speak, dress, act, etc., therefore, their gender identity and sexual orientation should be protected, even if it deviates from the employer's view.

Oral argument occurred on October 8, 2019.

18. *State of California v. Alex M. Azar II, Essential Access Health, Inc., et al v. Alex M. Azar II* (Ninth Circuit), filed 7/8/2019
Reproductive Rights
Author: California Women's Law Center

This amicus brief analyzes the consequences of the Final rule recently announced by the Department of Health and Human Services on Title X-funded health centers. HHS aims to do away with nondirective pregnancy counseling and referrals, stating eliminating this requirement might increase the number of Title X applicants, expand the network of providers in rural areas, and improve quality of care. There is, however, no evidence to support these claims. The amici argue that the reality of these changes will have detrimental effects on access to reproductive care, particularly in rural areas. With the Final Rule, Title X clinics will have to choose between providing comprehensive reproductive health care and receiving critical Title X funds. Because of this decision, the likely result is decreased access to high-quality family planning and reproductive health care, which in rural areas will be even more significant of a loss.

Oral argument occurred before an en banc panel on September 23, 2019.

19. *John Doe v. Occidental College*, (CA Court of Appeal, Second Appellate District), filed 7/22/19
On Campus Sexual Assault

Author: Equal Rights Advocates

This amicus brief requests that the Court certify the Occidental case for publication as it meets the standards for certification under Rule 8.1105(c). The case provides useful guidance on how credibility assessments made at hearings should be reviewed. It also provided clarity on the reasons for the applicability of the abuse of discretion standard and explicitly asserts that credibility findings should not be disturbed unless no reasonable person could reach the conclusion reached by the university.

The Court of Appeal granted the request to publish on July 24, 2019.

20. *Steven E. Jensen v. Kristen Kerr*, (CA Second Appellate District), filed 8/13/19.
Domestic Violence
Author: Family Violence Appellate Project

This amicus brief provides the Court with a summary of the extensive social science research findings on litigation abuse and the potential for this type of abuse in the civil discovery process, particularly in the context of depositions. In this case, Kerr was subjected to ongoing abuse by Jensen, which continued with abusive litigation conduct where Jensen filed a civil suit and multiple criminal complaints against Kerr as well as multiple to complaints to CPS and different service agencies. Amici requests that this Court issue a decision (1) affirming that the party seeking any modification of a Domestic Violence Restraining Order bears the burden of proof that the requested modification is required under the facts and in the interest of justice, and (2) confirming that the standard for such a modification is no lower just because attendance at the abuse survivor's depositions is requested.

The Court of Appeal granted the petition on October 2, 2019 and remanded to the superior court with instructions to modify the DVRO. The court did not address the issue of litigation abuse, or the issue of which party bears the burden of seeking a modification of a domestic violence restraining order for purposes of attending a civil deposition in-person, but it did adopt a legal standard for modification which holds the purposes of the Domestic Violence Prevention Act as co-equal to the attendance at depositions provisions in the California Civil Discovery Act.

21. *Lizbeth Mendez v. Jesus Gabriel Salcido*. (CA Second Appellate District, Division Two). Filed 8/19/2019
Domestic Violence
Author: California Women's Law Center

This amicus brief requests that the Court reverse the trial court's decision to deny Plaintiff's domestic violence restraining order. By denying restraining orders to victims of domestic violence, survivors are disproportionately and unfairly harmed. This often happens because litigants are not given the full opportunity to present their case before the trial court. This issue is exacerbated when victims are unrepresented and have limited English proficiency. Given the proven correlation between restraining orders and the safety of domestic violence survivors, it is of the utmost importance that courts effectively issue DVROs, including considering all relevant evidence in a full and fair hearing.

The Court of Appeal issued its opinion on October 10, 2019, affirming the trial court's order. A Petition for Review was filed with the California Supreme Court on November 19, 2019. CWLC submitted an amicus letter in support of the Petition on December 9, 2019, along with Family Violence Appellate Project and several other co-signers.

22. *Theresa Victory, et al. v. County of Berks, et al.* (Third Circuit), filed 8/19/2019
Gender Discrimination
Author: Women's Law Project

The amicus brief asks the Court to affirm the district court's orders requiring Berks County to provide Trusty women with the freedom of movement equivalent to Trusty men, in compliance with the Equal Protection Clause. Historically, jails and prisons have failed to provide incarcerated women with the same standard of facilities provided to incarcerated men. This includes, but is not limited to, inadequate housing facilities and medical care. For instance, in Berks County, men have more freedom and less supervision, with the ability to move throughout their assigned unit for up to thirteen hours a day. Additionally, the men have sleeping rooms separated from bathrooms and showers. Incarcerated women of the same security level, however, do not have these same freedoms. Incarcerated women at Berks County can leave their locked cells for at most six hours a day, and their locked cells include open toilets. Although the population of incarcerated women has steadily increased, jails and prisons have failed to bring their women's facilities to the same standard as incarcerated men. Amici argues that Berks County's treatment is a violation of the Equal Protection Clause, because the Trusty women and Trusty men are similarly situated but provides Trusty women with inferior housing conditions. Additionally, providing Trusty women with unequal treatment is not substantially related to the achievement of important government objectives, therefore not justified in this situation.

On October 11, 2019, the Third Circuit resolved the case in a short, non-precential opinion. The opinion did not address the incarcerated women's constitutional sex discrimination claims, because the preliminary injunctions had already expired.

23. *Chelsea Nicole McDowell v. Blaxin Wings Inc.,* (CA Supreme Court), filed 8/21/19
Sexual Harassment
Author: Equal Rights Advocates

This amicus brief asks the Court to grant the Petition for Review or, alternatively, remand the case to the Court of Appeal with directions to grant Plaintiff's relief. Amici discuss the prevalence of sexual harassment in the workplace and the underreporting of this behavior. Refusing to report often comes from many factors, including fear of retaliation or blame. Part of the reason this fear exists is the current practice in civil rights claims of sexual harassment. Unfortunately, it is not uncommon for a victim's privacy to be infringed upon by bringing in their sexual, medical, or mental health history to be used against them. There is no legal or policy justification for this behavior, and every victim's right to privacy should be protected, rather than use discovery to humiliate the victim.

On August 28, 2019, the Court summarily denied the Petition for Review.

24. ***Aileen Rizo v. Jim Yovino, Fresno County Superintendent of Schools, Erroneously Sued Herein as Fresno County Office of Education.*** **(Ninth Circuit), filed 9/20/2019**
Wage Discrimination
Author: Equal Rights Advocates

The amicus brief asks the court to support the conclusion that employers cannot rely on prior salary to justify paying women and men unequally for work. This brief was filed in response to the Court's order to address the Supreme Court's opinion in a recent case, as well as any other developments. The developments related to this case support the conclusion the amici argue. The amici argue that employers cannot rely on prior salary as a "factor other than sex" under the Equal Pay Act because employers cannot use a history of systemic wage discrimination to justify their current wage inequity. The amici show how women earn less than men from the outset of their careers, therefore using prior salary to justify discrimination perpetuates pay disparities.

The case was submitted on the briefs (without oral argument) on September 24, 2019.

25. ***Jennifer Joy Freyd v. University of Oregon, Hal Sadofsky, and Michael Schill.*** **(Ninth Circuit), filed 9/30/2019.**
Wage Discrimination
Author: Equal Rights Advocates

This amicus brief asks the court to reverse the district court's decision defining "equal work" so narrowly that it ignores exemptions that Congress created. The amici point out that the concept of "equal work" is based on a determination that the compared jobs are substantially equal, not identical. Amici points out that there is evidence that shows female professors in the Psychology department received 5 out of 26 retention raises while being 49% of the department faculty. The practice the University was using for retention raises continued gender wage disparities and was not a valid "factor other than sex" under the Equal Pay Act.

Oral argument has not yet been scheduled.

26. ***National Women's Law Center, et al. v. Office of Management and Budget, et al.*** **(US Court of Appeals District of Columbia), filed 10/25/19**
Wage Discrimination
Author: ACLU Women's Rights Project

Here, amici request that this court affirm the district court's judgment. The district court ordered the Equal Employment Opportunity Commission (EEOC) to collect data which promises transparency in private-sector pay. Amici not only concur that the district court was correct, because this pay data collection was justified by law and circumstance, but assert that the pay data would be beneficial for the public in many ways. By providing this information to the public, it would help the EEOC assess discrimination charges and guiding investigations, facilitate self-assessments and compliance by employers, help organizations effectively use their resources, and enable policymakers to assess state and local legislative efforts.

The appeal is pending, no oral argument has been scheduled.

27. *June Medical Services L.L.C., et al., v. Dr. Rebekah Gee* (Supreme Court), filed 12/2/19
Abortion Rights
Author: National Women's Law Center

Amici request that the Supreme Court reverse the judgement of the Fifth Circuit. Act 620, the act in controversy here, requires that a physician providing abortions hold "active admitting privileges" at a hospital located within thirty miles from where the abortion is provided. The purpose and effect of this provision will be to drastically reduce the number of abortion providers, leaving one provider in one clinic in a state with nearly one million women of reproductive age, thereby sharply curtailing the availability of abortion care in Louisiana. Amici argues that a similar Texas law was invalidated by the Supreme court only three years ago. The invalidation of this law reaffirmed that a woman's right to decide to have an abortion is a constitutionally protected personal liberty. Act 620 imposes an undue burden on a woman's ability to make her own reproductive decisions, thereby depriving her the right to liberty promised by the Constitution.

28. *J.S. v. D.S.* (CA Court of Appeal), filed 12/9/19
Domestic Violence
Author: Family Violence Appellate Project

This amicus letter requests publication of the Court of Appeal's decision. The brief argues that the opinion should be published because it provides new and important guidance to trial courts and the bar on the standard for renewing a domestic violence restraining order. First, the opinion explains, for the first time, that a restrained party's ongoing refusal to acknowledge and address their own abusive behavior can be sufficient to justify a protected party's reasonable apprehension of future abuse. Second, the opinion provides guidance to trial court's on the role of a party's geographical relocation plays in evaluating the changed-circumstances prong of the DVRO renewal test.

On December 11, the Court denied the publication request.

29. *In re K.F.* (CA Supreme Court), filed 12/10/19
Domestic Violence
Author: Domestic Violence Appellate Project

The amicus letter encourages the California Supreme Court to grant the Petition for Review, arguing that the case raises issues of statewide importance affecting limited-English-proficient survivors of domestic violence who become involved in juvenile dependency proceedings. Such survivors are often subject to failure-to-protect findings as a result of their limited English proficiency, or on the basis that they directly suffered abuse at the hands of the other parent. The letter argues that the Court should grant review to ensure that survivors are not deprived of the rights to challenge such findings, which can have lasting impacts on affected parents and their children.

The petition is currently pending.