

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

ORACLE AMERICA, INC.,

Plaintiff,

v.

U.S. DEPARTMENT OF LABOR, et al.,

Defendants,

and

COMMUNICATIONS WORKERS OF
AMERICA,
501 3rd Street NW
Washington, DC 20001

UNITED STEELWORKERS,
60 Boulevard of The Allies
Pittsburgh, PA 15222

*Proposed Intervenor-
Defendants*

Case No. 1:19-cv-3574 (APM)

**BRIEF OF FORMER OFCCP DIRECTOR PATRICIA A. SHIU, FORMER OFCCP
DEPUTY DIRECTOR PATRICK O. PATTERSON, EQUAL RIGHTS ADVOCATES, AND
OTHER FORMER GOVERNMENT OFFICIALS AND WORKERS' RIGHTS
ADVOCATES AS AMICI CURIAE IN SUPPORT OF PROPOSED INTERVENORS AND
DISMISSAL**

DISCLOSURE STATEMENT

No party to this filing has a parent corporation, and no publicly held corporation owns 10% or more of the stock of any of the parties to this filing.

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IDENTITY AND INTEREST OF *AMICI CURIAE*

Amici curiae are a group of former government officials and employees, civil and workers' rights advocacy groups, labor unions, and law firms, all of whom share a common interest in the ongoing ability of the Office of Federal Contract Compliance Programs ("OFCCP" or the "Office") to implement and enforce the government's longstanding policy against discrimination in government contracting. They respectfully submit that the Court's resolution of this matter would benefit from their collective understanding and perspective on the history, efforts, and accomplishments of this Office. *Amici* former government officials and employees have extensive experience and firsthand knowledge of how OFCCP works and the authority the Office possesses—and requires—to carry out its critical mission: ensuring the government does not contract with businesses that do not afford fair and equal treatment to all workers. *Amici* are concerned that, if successful, Oracle's challenge would severely undermine OFCCP's ability to promote equal opportunity and protect all contractor employees—a huge swath of the workforce in America—against unlawful discrimination in all its insidious forms.

The former government officials include former Director of the OFCCP, Patricia A. Shiu, and former Deputy Director Patrick O. Patterson, as well as several other former OFCCP officials and employees. These *amici* remain committed to OFCCP's mission and its continued success, and can provide valuable insight into the Office's history and operations. Other *amici* include former officials from the Department of Labor ("DOL") and the Equal Employment Opportunity Commission ("EEOC"). Stuart J. Ishimaru, for example, is a former Commissioner of the EEOC, who understands the distinct and important role OFCCP plays in federal antidiscrimination efforts—and the complications that would ensue if (as Oracle seeks) EEOC were required to take on OFCCP's enforcement role.

A diverse coalition of civil, labor, and workers' rights organizations have also joined as *amici* to support OFCCP. Lead *amicus curiae* Equal Rights Advocates ("ERA") is a non-profit legal advocacy organization that fights for gender justice and equal opportunity on behalf of all gender identities, including millions of women who work for federal contractors. ERA is joined by forty-six *amici* workers' rights advocates, labor organizations, and other groups that are committed to protecting civil rights and advancing equal opportunity for all workers—including women, people of color, people with disabilities, and LGBTQ individuals.

In addition, a number of law firms and other legal associations involved in defending workers' rights have joined because they too are committed to the mission of OFCCP and know first-hand that the Office's compliance efforts and its ability to bring enforcement actions are vital to securing equal access and economic opportunity for millions of working people.

Together, all of the *amici* appreciate the gravity of Oracle's challenge and seek to inform the Court of the history and important work of this vital Office. A full list of *amici* and their particular interest in this litigation is attached as Appendix A.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

Beginning with President Franklin D. Roosevelt, the Executive Branch has maintained a firm stated policy that it will not buy goods and services, and will not pay taxpayer dollars, to contractors that discriminate in their employment practices. By Executive Order, contractors must, as a condition of doing business with the government, agree to refrain from discrimination and take affirmative action to promote equal opportunity for all workers. For decades, longstanding regulations have empowered OFCCP to enforce the government's policy against contractor discrimination, authorizing the Office to take those actions necessary to ensure contractors comply with their contractual agreement, and legal obligation, not to discriminate.

OFCCP takes that responsibility seriously. Its goal in every aspect of its work is contractor compliance. The Office works with the government's contracting partners to ensure that they understand what their obligations are and what they must do to comply with those obligations. It monitors whether contractors are achieving and maintaining compliance through reporting requirements and regular audits. Where OFCCP detects areas of noncompliance, it works with contractors to try and identify mutually acceptable ways the contractor can rectify the issue. And, where cooperative efforts fail, OFCCP invokes its power to enforce a contractor's antidiscrimination and affirmative action obligations by asking an Administrative Law Judge ("ALJ") to determine whether the contractor, has in fact, violated those obligations and, if so, what measures (including backpay and other make-whole relief) will be required to bring the contractor back into compliance. Those essential enforcement powers are what Oracle asks the Court to invalidate in this lawsuit.

As Intervenors ably demonstrate, Oracle's challenge ignores decades of precedent confirming that OFCCP acts well within its regulatory authority when it employs those measures necessary to enforce contractor compliance. Oracle also ignores, or at least tries to downplay, the threat that its lawsuit poses to OFCCP's ability to police and prevent contractor discrimination. Oracle denies any attempt to "effectively abolish" the Office, noting that OFCCP would retain certain regulatory powers even if the Court strips it of any enforcement authority. *See, e.g.*, Opp'n Mot. Intervene 7, ECF No. 14. But *amici* can attest, based on decades of collective experience, that the result Oracle seeks would in fact have a devastating impact on OFCCP's ability to achieve its antidiscrimination mission. In a world where OFCCP wields no enforcement authority, contractors would engage less in the various initiatives the Office now undertakes to promote voluntary compliance; they would resist OFCCP's efforts to obtain information on their antidiscrimination

and affirmative action practices (as Oracle itself did in the underlying action, *see* 2d Am. Admin. Compl. ¶¶ 43–51, *OFCCP v. Oracle*, 2017-OFC-6 (Mar. 8, 2019)); and they might well refuse altogether to engage in the meaningful conciliation process OFCCP now employs to resolve issues of potential noncompliance. It is simple common sense, borne out by *amici*'s years of experience as government regulators and workers' rights advocates, that the power to enforce is a necessary complement to the power to regulate.

Oracle also errs in asserting that other agencies could pick up the slack if OFCCP is no longer able to bring claims against contractors who fail to comply with their antidiscrimination obligations. EEOC is chronically underfunded and is only able to litigate a small fraction of its own cases each year. And in any event, the agencies to which Oracle would have OFCCP refer its cases would need to reinvent the wheel every time. Diligent attorneys at EEOC or the Department of Justice would (properly) want to do their own investigations before prosecuting a case, which would take duplicative time and resources and inevitably complicate, slow, and lessen enforcement.

The government's long-stated policy that it will not countenance contractor discrimination is laudable. But even decades since President Roosevelt first pronounced that policy, the fact remains: The individuals who make up the contractor workforce are still often subject to insidious and even blatant discrimination. The gender pay gap is alive and well in this sector and indeed throughout our economy.¹ Hispanic workers are paid poverty-level wages at more than twice the rate of white workers.² The nationwide unemployment rate for Black individuals is more than twice as high as

¹ Elise Gould et al., *What is the Gender Pay Gap and Is It Real?*, Economic Policy Institute, Oct. 20, 2016, <https://www.epi.org/publication/what-is-the-gender-pay-gap-and-is-it-real/>.

² David Cooper, *Workers of Color are Far More Likely to be Paid Poverty-Level Wages Than White Workers*, Economic Policy Institute (June 21, 2018), <https://www.epi.org/blog/workers-of-color-are-far-more-likely-to-be-paid-poverty-level-wages-than-white-workers/>.

the white unemployment rate.³ Substantially hampering the federal agency best-positioned, and long-empowered, to root out and remedy such disparities where they are perpetuated by the government's taxpayer-funded contracting partners would be devastating and wrong-headed. The Court should grant the Intervenor's Motion for Summary Judgement and reject what is, despite Oracle's protestations, an unjustified and unsubstantiated effort to "effectively abolish" OFCCP.

ARGUMENT

I. For Decades, The Government Has Maintained A Policy Against Contracting With Those Who Would Discriminate Against Their Workers

Government contractors and their employees play a critical role in the work of the federal government. They build the government's airplanes, outfit the military, service and maintain our federal buildings, develop information technology, and much more. The government, and thus our nation's taxpayers, spends a huge amount of money on the goods and services contractors provide—up to 40 percent of the government's discretionary budget, translating to hundreds of billions of dollars in recent years.⁴ Contractors are able to perform all of this business and earn all of this revenue through the efforts of millions of workers—employees of federal contractors constitute about 20 percent of the entire U.S. labor force.⁵

While the importance of contractors and their employees to a well-functioning government has increased over the years, it is far from a recent development. This workforce has been crucial for decades. And for decades the government has maintained a firm, stated policy that it will not

³ Janelle Jones, *Black Unemployment is at Least Twice as High as White Unemployment at the National Level and in 12 States and D.C.*, Economic Policy Institute (Oct. 30, 2018), https://www.epi.org/publication/2018q3_unemployment_state_race_ethnicity/

⁴ *Federal Government Contracting for Fiscal Year 2018*, WatchBlog (May 28, 2019), <https://blog.gao.gov/2019/05/28/federal-government-contracting-for-fiscal-year-2018-infographic/>.

⁵ OFCCP, *History of Executive Order 11,246*, <https://www.dol.gov/ofccp/about/50thAnniversaryHistory.html> (last visited April 3, 2020).

award contracts, funded by taxpayer dollars, to businesses that discriminate in their employment practices. That policy reflects this nation's core values. It also helps to ensure "the Government has access to, and ultimately benefits from, the best qualified and most efficient employees," *Discrimination on the Basis of Sex*, 81 Fed. Reg. 39,108, 39,109 (June 15, 2016), thus furthering the critical goals of economical and efficient government contracting set forth in the Federal Property and Administrative Services Act of 1949 (the "Procurement Act"), 40 U.S.C. § 101. *See also* *Validity of Exec. Order Prohibiting Gov't Contractors from Discriminating in Emp't Practices on Grounds of Race, Color, Religion, or Nat'l Origin*, 42 U.S. Op. Att'y Gen. 97 (1961), 1961 WL 4913 (noting that "discriminatory practices . . . might tend to deprive the United States of the services of an important segment of the population in the performance of its contracts.").

Though far from perfect, the government's efforts have, in many ways, led the nation's attempts to address workplace discrimination and the societal and economic damage it inflicts. In 1941, years before Title VII or the establishment of the EEOC, President Roosevelt issued an Executive Order prohibiting discrimination on the basis of "race, creed, color, or national origin" by any federal defense contractor. Exec. Order No. 8,802, 6 Fed. Reg. 3109 (June 25, 1941). Two years later, President Roosevelt went further, prohibiting such discrimination by all businesses that contract to sell goods and services to the government. Exec. Order No. 9,346, 8 Fed. Reg. 7183 (May 27, 1943).

In the following years, it became apparent that simply prohibiting contractors from discriminating was not enough. A 1961 study "reveal[ed] an urgent need" for the government to be more proactive in helping to rectify the nation's long legacy of discrimination. *See* Exec. Order No. 10,925, 26 Fed. Reg. 1977 (March 6, 1961). Responding to that study, President Kennedy ordered that, as a condition of contracting with the government, businesses must specifically covenant to

refrain from discrimination *and* to “take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, creed, color, or national origin.” *Id.*

In more recent times, the government’s efforts to promote equality for the contractor workforce have continued. In 2014, for example, President Obama ordered that any business wishing to contract with the federal government would be required to agree not to discriminate on the basis of sexual orientation or gender identity. Exec. Order No. 13,672, 79 Fed. Reg. 42971 (July 21, 2014).

II. The Government Has Long Used Administrative Procedures To Ensure Contractors Are Abiding By Their Agreements Not To Discriminate

Early on, the Executive recognized that, without “adequate means of enforcement,” a policy against discrimination by the government’s contracting partners “would be nothing more than an empty shell, an abstract statement of principles.” *Uniroyal, Inc. v. Marshall*, 482 F. Supp. 364, 375 (D.D.C. 1979).

In 1951, President Truman established a committee to recommend ways to “strengthen[] and improve[]” efforts to obtain compliance with the prohibition against contractor discrimination. Exec. Order No. 10,308, 16 Fed. Reg. 12303 (Dec. 3, 1951). Two years later, President Eisenhower formed a Government Contract Committee, also focused on compliance, and specifically empowered it to receive and consider complaints about potential contractor discrimination. Exec. Order No. 10,479, 18 Fed. Reg. 4899 (Aug. 13, 1953).

In 1961, President Kennedy further strengthened the enforcement mechanism, authorizing his presidential committee to impose “sanctions” and “remedies” “[i]n the event of the contractor’s non-compliance with the nondiscrimination clauses.” Exec. Order No. 10,925, 26 Fed. Reg. 1977 (March 6, 1961).

Four years later, President Johnson brought that authority to a Cabinet-level agency. In 1965, a government-wide review of civil rights issues led by Vice President Humphrey concluded it was “essential” for the government’s civil rights goals to be “pursued vigorously and without [the] delay that frequently accompanies a proliferation of interagency committees and groups.”⁶ “[W]henver possible,” the review concluded, “operating functions should be performed by departments and agencies with clearly defined responsibilities, as distinguished from interagency committees.”⁷ It was that recommendation that led President Johnson to transfer the authority to implement and enforce the government’s policy against contractor discrimination to the Secretary of Labor.

In Executive Order 11,246, the President confirmed the government’s policy by requiring, consistent with the purposes of the Procurement Act, that contractors agree not to “discriminate against any employee or applicant for employment because of race, creed, color, or national origin.” Exec. Order 11,246 § 202, 30 Fed. Reg. 12319 (Sept. 24, 1965).⁸ And the same Order empowered the Secretary of Labor to promulgate rules and regulations, and issue orders, “necessary and appropriate” to carry out the Order’s antidiscrimination and affirmative-actions purposes. *Id.* §§ 201, 202.

Executive Order 11,246 specifically authorizes the Secretary to “investigate the employment practices of any Government contractor or subcontractor . . . to determine” compliance with the agreement not to discriminate, *id.* § 206; receive and respond to complaints of contractor

⁶ Hubert Horatio Humphrey, Jr., Memorandum For the President From the Vice President on Recommended Reassignment of Civil Rights Functions (Sept. 24, 1965), <https://www.presidency.ucsb.edu/documents/memorandum-reassignment-civil-rights-functions>.

⁷ *Id.*

⁸ Two years later, the Order was amended to add sex to the list of protected categories. *See* Exec. Order 11,375, 32 Fed. Reg. 14303 (Oct. 13, 1967).

noncompliance, *id.*; hold “hearings” to resolve claims that a contractor has violated its contractual and legal obligations, *id.* § 208; and, depending on the results of those hearings, “impos[e], order[], or recommend the imposition of penalties and sanctions” to address noncompliance, *id.* § 208, *see also* §§ 202, 209, 211. The Order makes clear that the Secretary may condition continued and future contracting opportunities “upon a program for future compliance” and may bar a contractor from receiving future contracts until it “has satisfied the Secretary” that it will act in compliance going forward. *See id.* at § 209. The Order also broadly authorizes the Secretary to impose additional remedies “by rule, regulation or order of the Secretary, or as otherwise provided by law.” *Id.* § 202.

In 1966, the Secretary of Labor determined that it was “necessary and appropriate” to establish an office dedicated to implementing and enforcing Executive Order 11,246 and its policy concerning government contracting. Secretary’s Order No. 26-05, 31 Fed. Reg. 6921 (May 11, 1966). That Order gave rise to OFCCP.

III. OFCCP Employs A Range Of Complementary Regulatory Tools To Accomplish Its Mission Of Contractor Compliance

For more than fifty years, OFCCP has acted pursuant to well-established legal authority to implement and enforce Executive Order 11,246’s antidiscrimination and affirmative-action policies. Using a range of collaborative methods, the Office helps contractors understand and comply with their contractual and legal obligations to refrain from discrimination and to promote workplace equality. It is when those collaborative efforts fail that the Office necessarily invokes its authority to ask an ALJ (subject to judicial review) to determine whether a contractor has engaged in discrimination and what remedies are required to bring the contractor back into compliance. History and *amici*’s experience demonstrate that OFCCP’s power to take these enforcement actions is a necessary complement to its other regulatory activities and critical to its ability to “achieve

nondiscrimination in employment by Government contractors.” *See* 31 Fed. Reg. 6921 (May 11, 1966).

a. Compliance Assistance: Education And Support For Contractors

An important aspect of OFCCP’s work is compliance assistance. Through an extensive and frequently updated set of publications, the Office works to ensure contractors understand what their obligations are and what actions they can and must take to comply. Those publications include technical assistance guides, factsheets, brochures, Frequently Asked Questions documents, directives, and more recently, webinars.⁹ In addition, OFCCP publishes a comprehensive Federal Contract Compliance Manual (“Compliance Manual” or “Manual”) that sets forth the methods OFCCP compliance officers employ in performing their duties.¹⁰ The Manual promotes uniformity across OFCCP’s efforts, and also assists contractors in understanding how the Office works and how that work could affect them. No law or regulation requires OFCCP to disseminate the Manual to contractors. Nonetheless, the Office determined that making this resource publicly available would promote the kind of transparency and fairness critical to an effective regulatory regime.

For similar reasons, OFCCP has made it a priority to engage in an open and ongoing dialogue with contractors about the Office’s regulatory priorities and the practical issues facing the contractor community. To that end, upon assuming her position, former OFCCP Director and *amicus* Patricia Shiu embarked on a series of “listening tours.” Meeting directly with contractors, as well as employees and civil rights groups, Director Shiu and the Office gained critical insight that improved their efforts to help contractors achieve and maintain compliance. In the same vein,

⁹ *See* OFCCP, *What Federal Contractors Can Expect* (2018) <https://www.dol.gov/ofccp/CAGuides/files/WhatFederalContractorsCanExpect-CONTR508c.pdf>.

¹⁰ The manual is available on OFFCP’s website. OFFCP, *Federal Contract Compliance Manual* (March 20, 2020), <https://www.dol.gov/agencies/ofccp/manual/fccm>.

OFCCP officials have regularly attended the annual National Industry Liaison Group Conference, one of the largest gatherings of contractors throughout the United States. Such events give contractors the opportunity to share with each other and OFCCP staff their approaches for effective compliance. OFCCP also maintains a virtual “help desk,” to respond to specific compliance questions not answered in published documents and help contractors apply general guidelines to their specific situation through individualized attention and assistance.¹¹

b. Recordkeeping and Reporting Requirements

In addition to engaging with contractors, OFCCP also requires them to compile and periodically submit data concerning their employment practices. By regulation jointly promulgated with EEOC, contractors with more than 50 workers and \$50,000 in federal contracts must submit annual Employer Information Reports EEO-1, providing various demographic information about their workforce. *See* 41 C.F.R. 60-1.7(a). Under separate OFCCP regulations, many federal contractors are also required to create Affirmative Action Plans (“AAPs”). *See* 41 C.F.R. Part 60-2.¹² In their AAPs, contractors must include detailed quantitative analyses concerning, for example, the percentage of women or people of color in specific job groups. *See id.* § 60-2.13. AAPs are a critical tool for contractors to measure and track progress in hiring and promoting a diverse workforce that reflects the pool of qualified available workers for those job groups. Based on that analysis, contractors must set forth in their AAPs objectives and targets for their plan; identify where “impediments to equal opportunity” appear to exist; and describe the “action-oriented

¹¹ *See* Press Release, Department of Labor, U.S. Department Of Labor Launches Online Help Desk To Provide Compliance Assistance To Federal Contractors And Stakeholders (Aug 9, 2019), <https://www.dol.gov/newsroom/releases/ofccp/ofccp20190809-0>.

¹² This requirement applies to contractors not engaged in construction who employ 50 or more workers and have government contracts of \$50,000 or more, and construction contractors with contracts over \$10,000. 41 C.F.R. 60-2.1(a); *id.* § 60-4.1

programs” they will implement to fix those problems. *See id.* §§ 60-2.16–2.17. OFCCP officials review contractors’ AAPs as part of compliance reviews, discussed below. *Id.* § 60-1.20(a)(1); Compliance Manual § 1D.

In the experience of former OFCCP *amici*, the process of pulling together this information can alert a contractor that its standard practices are producing unintentionally discriminatory results—results that take the contractor out of compliance with its obligations and, at the same time, undercut its own goals of efficient and fair employment practices.¹³

c. Compliance Evaluations

Periodic reporting serves another purpose as well: It allows OFCCP to conduct its own analyses of contractors’ employment and hiring practices and thus evaluate contractor compliance. *See* 41 C.F.R. 60-1.20; Compliance Manual §1A02. Using data reported by contractors, compliance officers employ statistics and other analytic tools to identify any anomalous and potentially discriminatory patterns in contractors’ hiring, promotion, or compensation practices. Where these analyses “identify evidence of disparity against members of a protected group, [the compliance officer] must request additional data from the contractor for further analysis.” Compliance Manual § 1O03; *Id.* § 1O02 (instructing that “statistical results that identify preliminary indicators of a potential discrimination problem do not themselves prove discrimination or the existence of an affected class”). That additional data may be collected as part of or in conjunction with an on-site review of the contractor. During such reviews, compliance officers also meet with and interview

¹³ *See* Notice of Proposed Rulemaking, *Government Contractors, Requirement To Report Summary Data on Employee Compensation*, 79 Fed. Reg. 46562, 46563 (Aug. 8, 2014) (“By requiring contractors and subcontractors to report the data, OFCCP believes that some of these employers will voluntarily change their employment policies and practices.”).

members of management and employees themselves. Doing so sometimes enables OFCCP to uncover evidence of disparate treatment discrimination that data and statistics may not reveal.¹⁴

Importantly, OFCCP conducts its compliance evaluations *not* in response to complaints it receives, but proactively, as a way of monitoring contractors' ongoing compliance with their antidiscrimination and affirmative-action agreements.¹⁵ A tool uniquely employed by OFCCP, these comprehensive, data-driven evaluations are a critical means to identify discrimination, including potential systemic, class-based discrimination that could otherwise go undetected and/or unreported, such as discriminatory failures to hire or pay discrimination. Oracle's case provides a ready example. It was through proactive compliance reviews that OFCCP identified what appear to be significant disparities in how Oracle pays and promotes its employees, depending on sex and race. *See* First Admin. Compl. ¶¶ 6–9, *OFCCP v. Oracle*, 2017-OFC-6 (Jan. 17, 2017). The claims that resulted from these findings have yet to be fully adjudicated. But one thing is clear: the pervasive discrimination potentially occurring at Oracle would not have been identified at the time it was but for OFCCP's compliance efforts.

d. The Conciliation Process

In all cases, OFCCP's goal is to assist and work cooperatively with contractors to address any potential discrimination its officers have found. In cases where that is not possible, and where OFCCP has identified sufficient supporting information, the Office may issue the contractor a

¹⁴ The goal of OFCCP's evaluations is not surprise. Per Office policy, compliance officers must schedule evaluations in advance, posting the information online to provide the employer's "EEO staff at least 45-days advance notice to prepare for the compliance review . . . and encourage contractors to take advantage of OFCCP compliance assistance offerings." *See* OFCCP Corporate Scheduling Announcement List Frequently Asked Questions, <https://www.dol.gov/ofccp/regs/compliance/faqs/csafaqs.htm>; *see also* Compliance Manual § 1B03.

¹⁵ OFCCP does investigate complaints it receives, but may refer these complaints to the EEOC if any action is warranted. *See* Memorandum of Understanding Between U.S. Dep't of Labor and Equal Employment Opportunity Commission § 7 (2011).

notice of violation (“NOV”). Compliance Manual § 8F.¹⁶ An NOV “identifies the violations” OFCCP has found and “describes the [Office’s] recommended corrective actions.” *Id.* § 8F00. But an NOV does not lead automatically to an adversarial proceeding. Instead what follows is a “conciliation process,” through which OFCCP and the contractor attempt to negotiate a resolution to the Office’s findings. *Id.* § 8G; *see* 41 C.F.R. § 60-1.33 (discussing conciliation agreements).

There are no formal requirements for the conciliation process. It “may involve various methods of communication, including the exchange of letters and emails, telephone conferences and in-person meetings.” Compliance Manual § 8G. OFCCP encourages compliance officers to “take a collaborative approach with contractors during the exchange of information to promote a shared understanding of the issues and to promote resolution.” *Id.* If the contractor and compliance officer are able to reach a resolution, the officer “document[s] the terms of the settlement in a formal [conciliation agreement].” *Id.* § 8G01; *see* 41 C.F.R. § 60-1.33.

The ultimate goal in any conciliation process is for the contractor and OFCCP to reach agreement on the critical issues the contractor must address and what remedy the contractor will undertake on behalf of the affected workers, including specific injunctive-like relief to ensure that discriminatory conduct does not recur (*e.g.*, personnel policy changes, training, and monitoring). In *amici* former OFCCP officials’ experience, both sides know enforcement is a possibility, and would prefer to avoid it if possible. That leverage is often helpful in encouraging contractors to engage in conciliation efforts and settle cases short of litigation. As such, where basic compliance assistance does not suffice, and compliance reviews turn up discriminatory practices or effects, this

¹⁶ “Since fiscal year 2010, OFCCP has not found violations in the vast majority of its compliance evaluations. For example, in fiscal year 2015 OFCCP did not find violations in 83 percent of its evaluations and found discrimination in about 1 percent of evaluations.” U.S. Gov’t Accountability Off., GAO-16-750, *Equal Employment Opportunity: Strengthening Oversight Could Improve Contractor Nondiscrimination Compliance* 16 (2016), <https://www.gao.gov/assets/680/679960.pdf>.

conciliation process, with its informal, collaborative approach, is greatly effective in producing mutually acceptable and beneficial outcomes. The following are just a few examples:

- **FedEx.** In the course of routine compliance reviews over the course of seven years, OFCCP staff uncovered evidence of discrimination in hiring at 23 FedEx facilities in 15 states. The 21,635 affected job seekers included men, women, African Americans, Caucasians, Native Americans, and people of Hispanic and Asian descent, all of whom OFCCP identified as being subject to improper discrimination through FedEx's hiring practices for entry-level package handler and parcel assistant jobs. Once OFCCP made FedEx aware of the violations, compliance officers worked with the company to resolve these issues. In 2012, that process ended with a successful conciliation agreement, in which FedEx came back into compliance with its contract's antidiscrimination provisions. The company agreed to pay a total of \$3 million in backpay and interest to affected job seekers and to extend job offers to some of the affected workers once positions became available. FedEx also made clear its commitment to complying with its antidiscrimination obligations in the future, by agreeing to employment opportunity training and undertaking extensive self-monitoring measures, including an outside review of its hiring practices.¹⁷
- **Dell EMC.** Pay data OFCCP obtained from Dell EMC indicated potentially discriminatory pay discrepancies at the company's facilities in California and North Carolina. Specifically, regression analyses revealed that Dell EMC had consistently paid lower salaries to women and African Americans working in certain engineering, marketing, and sales positions. After OFCCP issued NOV's to the company, laying out its findings, Dell EMC agreed to pay almost \$3 million in backpay and interest to almost 500 workers affected by its discriminatory practices, as well as to make pay adjustments, conduct annual compensation analyses, and take additional steps to ensure it meets its antidiscrimination obligations going forward.¹⁸
- **Goldman Sachs.** OFCCP's routine compliance evaluations uncovered evidence that between 2011 and 2012, Goldman Sachs had paid lower salaries to African-American, Asian, Hispanic, and female employees in certain positions at its New York City headquarters. Under the terms of s

¹⁷ See Press Release, Department of Labor, Shipping Giant FedEx to Pay \$3 Million to Settle Charges of Hiring Discrimination Brought by US Department of Labor (Mar. 22, 2012), <https://www.dol.gov/newsroom/releases/ofccp/ofccp20120322>.

¹⁸ See Press Release, Department of Labor, U.S. Department of Labor Recovers More Than \$2.9 Million To Resolve Alleged Pay Discrimination Violations at Dell EMC (May 14, 2018) <https://www.dol.gov/newsroom/releases/ofccp/ofccp20180514>; RJ Vogt, *Dell to Pay \$3M to End DOL Pay Discrimination Claims*, Law360, May 15, 2018, <https://www.law360.com/articles/1043729/dell-to-pay-3m-to-end-dol-pay-discrimination-claims>; Conciliation Agreement Between OFCCP and Dell-EMC (Apr. 27, 2018) https://www.dol.gov/sites/dolgov/files/ofccp/foia/files/Dell-EMC-CA_Redacted.pdf.

conciliation agreement, Goldman Sachs agreed to pay almost \$10 million in backpay and interest to 600 affected employees. In addition, it agreed to make changes to its affirmative action program to bring it in line with its legal and contractual obligations.¹⁹

e. Administrative Enforcement Proceedings

In some instances, despite best efforts, compliance officers and contractors are unable to resolve issues OFCCP has identified through conciliation. In those cases, under longstanding regulations, the agency may commence a hearing before a Department of Labor (“DOL”) Administrative Law Judge (“ALJ”), to adjudicate whether a violation has occurred and, if so, the remedies needed to address that violation. 41 C.F.R. § 60-1.26; *see also* 33 Fed. Reg. 7804, 7810 (May 28, 1968) (announcing the rule that first empowered OFCCP to commence formal hearings to adjudicate a contractor’s potential “violation of [Executive Order 11,246’s] equal opportunity clause”).

The decision to commence such a hearing is not taken lightly. It occurs only after extensive deliberation and a multi-layered review process involving the compliance officer who identified the potential violation, her supervisor, the relevant regional director, and OFCCP deputies and the Director. If, after all that, OFCCP brings the potential enforcement case to DOL’s Office of the Solicitor, the attorneys in that office may decide to take no further action, commence a hearing before an ALJ, or potentially refer the case to the Department of Justice. 41 C.F.R. § 60-1.26; Compliance Manual § 8M. Further, if the Solicitor commences a proceeding before an ALJ, and if and when an ALJ subsequently makes any adverse findings against a contractor, those findings are

¹⁹ *See* Press Release, Department of Labor, U.S. Department of Labor Reaches Conciliation Agreement for \$9,995,000 in Back Pay and Interest (Sept. 30, 2019), <https://www.dol.gov/newsroom/releases/ofccp/ofccp20190930>; Adam Lidgett, *Dell, Goldman Sachs Pay \$17M Total To End Bias Accusations*, Law360, Sept. 30, 2019, <https://www.law360.com/articles/1204428/dell-goldman-sachs-pay-17m-total-to-end-bias-accusations>; Early Resolution Conciliation Agreement Between OFCCP and Goldman Sachs & Co. (Sept. 27, 2019), https://www.dol.gov/ofccp/foia/files/GoldmanSachsCA-NE2019-09-27version2019-10-01-1530_Redacted.pdf.

subject to multiple levels of review: by the Administrative Review Board (“ARB”), the Secretary of Labor, and ultimately before Article III federal courts. *See* Proposed Intervenors’ Mot. Summ. J. 11, ECF No. 11-1.

As the Court knows, it is OFCCP’s power to initiate these lawful administrative enforcement actions that Oracle seeks to invalidate in its lawsuit.

IV. Oracle’s Attack, If Successful, Would Undermine OFCCP’s Entire Regulatory Process

Oracle portrays its attack on OFCCP’s regulatory authority as narrow and targeted. It insists it has no quarrel with the government’s right to condition its contracts, and provision of taxpayer dollars, on a business’s agreement to refrain from employee discrimination and promote equal opportunity. *See* Opp. to Mot. to Intervene 1, ECF No. 14. It says it accept the Office’s authority to require reporting, conduct compliance reviews, and even engage in conciliation efforts. *Id.* at 7. It denies that its lawsuit is an effort to “effectively abolish” OFCCP and dismantle the Office’s efforts to implement the government’s policy against contractor discrimination. *Id.* But what Oracle fails to grasp, or perhaps just refuses to acknowledge, is that OFCCP’s ability to operate as an effective regulator capable of implementing the promise of Executive Order 11,2246 is contingent on its ability to take those enforcement actions necessary to enforce its own regulations and requirements. That power provides a critical foundation for OFCCP’s entire regulatory framework.

Intervenors have ably demonstrated the ample legal authority for the enforcement powers that OFCCP has long exercised and contractors have long accepted as a condition of their government contracts, including OFCCP’s power to ask an ALJ to adjudicate and to seek backpay and other remedies to address contractor discrimination. *See* Proposed Intervenors’ Mot. Summ. J.

21–33, ECF No. 11-1.²⁰ *Amici*, for their part, can attest, based on decades of collective experience, that OFCCP’s ability to take such actions is critical to its regulatory mission.

That is true for several reasons. As recounted above, it is the experience of those *amici* who have worked at OFCCP that many contractors willingly collaborate with the Office to meet and maintain their antidiscrimination and affirmative-action obligations. They participate in the Office’s compliance assistance programs and work with, rather than against, compliance officers during evaluations, including by analyzing their own practices. But if OFCCP lacked the authority to enforce the regulations and obligations the Office is asking contractors to abide by, there is no question that dynamic would shift, if not immediately, then at least over time. Oracle itself proves this point: One of the claims OFCCP seeks to adjudicate in the underlying action is Oracle’s failure to provide, and perhaps to perform at all, certain reviews and analyses of its compensation practices and their impact. *See* 2d Am. Admin. Compl. ¶¶ 43–51, *OFCCP v. Oracle*, 2017-OFC-6 (Mar. 8, 2019). If OFCCP had no power to ask an ALJ to adjudicate such violations, this kind of failure to cooperate might proliferate, undermining the Office’s ability to identify discriminatory treatment and impact.

OFCCP’s ability to resolve issues of discrimination through a conciliatory process that produces mutually acceptable outcomes would also be undermined, if not eliminated. The prospect of an enforcement action is important leverage for OFCCP: The desire to avoid an adversarial process is often what motivates a party to come to the table and work with its regulator to reach a

²⁰ Prior to this litigation, Oracle also accepted, as a condition of its government contracts, that it could be subject to administrative adjudication and remedies if it violated its agreement not to discriminate. Since 2005, Oracle has entered into no fewer than 138 separate contracts with various federal contracting agencies and each of those contracts with a value exceeding \$10,000 was conditioned on Oracle’s agreement to “comply with all provisions of Executive Order 11,246” and “rules, regulations, and relevant orders of the Secretary of Labor”—including those that permit the enforcement actions Oracle now challenges. *See* 41 C.F.R. § 60-1.4(a)(5). It was only on the eve of a hearing on OFCCP’s findings of pervasive gender and race discrimination that Oracle came to this Court with a collateral attack on the Office’s long-accepted authority.

compromise. It is the firm judgment of former-OFCCP *amici* that contractors would be far less inclined to try to achieve meaningful conciliation agreements with OFCCP if OFCCP did not itself have the power to ask an ALJ to adjudicate the discrimination it has identified. Contractors would also be less likely to agree to relief like backpay, priority hiring, or training if OFCCP were stripped of the power to seek those particular remedies.²¹ And depriving OFCCP of those remedies means that the only sanction the Office could impose would be debarment—prohibiting a contractor from receiving future contracts. *See* 41 C.F.R. § 60-1.27(b). Leaving OFCCP with only that blunt instrument for addressing violations would not benefit anyone.

OFCCP could, as Oracle notes, refer its discrimination findings to other agencies to pursue. But doing so would significantly complicate, inevitably slow, and in some cases prevent altogether efforts to address the potential discrimination OFCCP has identified. The outside agency—whether EEOC or the Department of Justice—would need to follow its own processes, including conducting its own investigation or assessment, before proceeding to take any action. And that is understandable: Responsible lawyers will not put their names on the cases they file in court unless they are assured they have the facts right. Other agencies might also be driven by policy priorities different from OFCCP’s or limited by different funding constraints. EEOC, for example, has dealt with chronic underfunding and labors under an enormous backlog of complaints.²² And it has its own strategic enforcement plan that differs from the plans and priorities of OFCCP. As a result of

²¹ Oracle claims such remedies are out of bounds for OFCCP, because it does not consider them “contractual” remedies. But that argument misses the mark: A contractor cannot, in its contract with the government, promise it will not discriminate against employees and job applicants, but then proceed to pay certain workers less based on gender, race, or some other improper basis, or refuse to hire applicants on those same improper bases.

²² Kathryn Moss et al., *Unfunded Mandate: An Empirical Study of the Implementation of the Americans With Disabilities Act by the Equal Employment Opportunity Commission*, 50 U. Kan. L. Rev. 1 (2001) (“Congress has never given the EEOC the resources the Agency needed to ensure an appropriate investigation of each case brought before it.”).

these and other factors, EEOC or the Justice Department might well fail to litigate claims that OFCCP otherwise would have.

A critical example are claims concerning systemic discrimination that individual workers are often unable to detect themselves or else are poorly positioned to bring forward themselves. Currently, OFCCP is able to uncover such insidious discrimination through comprehensive analysis of employment data and its proactive, onsite compliance evaluations. OFCCP has developed substantial expertise, and devoted significant resources, to stopping the discrimination it identifies through these methods.

OFCCP could theoretically refer the findings it makes through this type of work to EEOC or DOJ, and EEOC or DOJ might theoretically file a lawsuit based on those findings (after doing its own, independent analysis, as noted above). But there is no guarantee. EEOC, for example, most often brings claims against federal contractors that derive from individual complaints, where a worker is able to identify discrimination and is in a position to bring a claim forward herself. And EEOC and OFCCP have in fact formally agreed, in the area of federal contracting, that it is the latter agency that will take care to prevent and, if necessary, remedy this kind of systemic discrimination. *See Memorandum of Understanding Between U.S. Dep't of Labor and Equal Employment Opportunity Commission § 7(b)–(c) (2011)* (agreeing that individual dual OFCCP/EEOC complaints will be referred to the EEOC but OFCCP will “retain, investigate, process, and resolve” systemic or class allegations.).

Consistent with that agreement, OFCCP has brought administrative actions to vindicate the following claims, thereby correcting substantial contractor noncompliance and obtaining meaningful remedies for the affected workers and job seekers.

- ***NationsBank***. In the mid-1990s, during a routine compliance review at the Charlotte, North Carolina, headquarters of NationsBank (which later

merged with Bank of America), OFCCP uncovered evidence that the bank had discriminated against African-American job applicants for entry-level teller, clerical, and administrative positions. Conciliation efforts failed, and in 1997, DOL filed an administrative complaint to enforce OFCCP's findings. In the meantime, NationsBank challenged OFCCP's compliance review process on Fourth Amendment grounds, first in federal court, then later, after the Fourth Circuit held that it was required to exhaust administrative remedies, *see NationsBank Corp. v. Herman*, 174 F.3d 424 (4th Cir. 1999), through the administrative process. Once those efforts failed, in 2010, an ALJ finally decided the claims against NationsBank on the merits, and found evidence of discrimination in hiring in 1993 and from 2002 to 2005. *OFCCP v. Bank of America*, 1997-OFC-16 (Jan. 21, 2010).²³ In 2013, the ALJ recommended that NationsBank (by then, Bank of America) pay a total of \$2.2 million in backpay to the affected job seekers. *OFCCP v. Bank of America*, 1997-OFC-16 (Sept. 17, 2013).²⁴ Bank of America appealed to the ARB, and a few years later, the Board upheld the ALJ's findings on liability and damages for the 1993 applicants, but reversed its findings on the 2002 through 2005 applicants. *OFCCP v. Bank of America*, ARB Case No. 13-099 (Apr. 21, 2016).²⁵ Shortly thereafter, Bank of America exercised its right to challenge the Department's final agency action in federal court. *See Bank of America, N.A. v. U.S. Dept. of Labor*, 16-cv-968 (D.D.C.). Once the lawsuit was filed, the parties returned to the negotiating table and ultimately reached a settlement, in which Bank of America agreed to pay \$1 million in backpay and interest to 1,027 affected job seekers.²⁶

- ***B&H Foto & Electronics.*** During a routine compliance review of B&H Foto & Electronics Corporation's Brooklyn, New York warehouse, OFCCP determined that between 2011 and 2013, the company hired only men of Hispanic descent for its entry-level laborer positions. In addition, OFCCP found that B&H systematically denied its Hispanic employees promotion opportunities and paid them less than other employees. Further

²³ Available at https://www.oalj.dol.gov/PUBLIC/ARB/DECISIONS/ARB_DECISIONS/OFC/10_048.OFCP.PDF.

²⁴ Available at [https://www.oalj.dol.gov/DECISIONS/ALJ/OFC/1997/OFCCP_-_WASHINGTON_D_v_NATIONSBANK_CORPORAT_1997OFC00016_\(SEP_17_2013\)_073906_CADEC_SD.PDF](https://www.oalj.dol.gov/DECISIONS/ALJ/OFC/1997/OFCCP_-_WASHINGTON_D_v_NATIONSBANK_CORPORAT_1997OFC00016_(SEP_17_2013)_073906_CADEC_SD.PDF)

²⁵ Available at https://www.oalj.dol.gov/PUBLIC/ARB/DECISIONS/ARB_DECISIONS/OFC/13_099.OFCP.PDF.

²⁶ *See, e.g.*, Suevon Lee, *BoA Enters Deal Over '93 NationsBank Race Bias Hiring Case*, Law360, Apr. 17, 2017, <https://www.law360.com/articles/914310/boa-enters-deal-over-93-nationsbank-race-bias-hiring-case>; Press Release, Department of Labor, Following US Labor Department Investigation, Administrative Law Judge Finds Bank of America Discriminated Against African-American Job Applicants (Feb. 2, 2010), <https://www.dol.gov/newsroom/releases/ofccp/ofccp20100202>; Press Release, Department of Labor, Judge Orders Bank of America to Pay Almost \$2.2 Million for Racial Discrimination Against More Than 1,100 African-American Job Seekers (Sept. 23, 2013), <https://www.dol.gov/newsroom/releases/ofccp/ofccp20131967>; Press Release, Department of Labor, Settlement Resolves 24-Year-Old Hiring Discrimination Case (Apr. 17, 2017), <https://www.dol.gov/newsroom/releases/ofccp/ofccp20170417>.

investigation uncovered that Hispanic employees were harassed and subjected to racist comments and forced to use separate restrooms from white employees, which were unsanitary and often inoperable. Conciliation efforts were unsuccessful, as B&H was unwilling to agree to take corrective action to bring itself into compliance with its antidiscrimination agreements. In 2016, DOL filed an administrative complaint to enforce OFCCP's findings. After litigating a number of discovery issues in front of the ALJ, the parties reached a settlement and entered into a consent decree. Under the terms of the settlement, B&H paid over \$3 million in backpay to over 1,300 affected job seekers and employees, and agreed to provide annual antiharassment and antidiscrimination training to its managers to help ensure it would abide by its antidiscrimination agreements going forward.²⁷

- **Palantir.** In 2011, OFCCP conducted a routine compliance review of Palantir's headquarters in Palo Alto, California. Statistical analysis of hiring data obtained during the compliance review showed that the company had been discriminating against job applicants of Asian descent in certain software engineering jobs and utilizing hiring processes, including an employee referral system, that led to discrimination. OFCCP attempted to work with Palantir to bring it into compliance with its antidiscrimination agreements, but conciliation was unsuccessful. In October 2015, OFCCP sent Palantir a Notice to Show Cause why it should not initiate enforcement proceedings, and in February 2016, it filed an administrative complaint. *See* Complaint, *OFCCP v. Palantir Technologies, Inc.*, 2016-OFC-9 (Sept. 26, 2016).²⁸ A little over a year later, the parties reached an agreement to settle the case, with Palantir agreeing to pay \$1.7 million in backpay and other relief, including stock options, and to extend job offers to eight class members.²⁹

²⁷ See Press Release, Department of Labor, US Labor Department Sues B&H Foto & Electronics Corp. For Hiring, Pay, Promotion Discrimination; Harassment (Feb. 25, 2016), <https://www.dol.gov/newsroom/releases/ofccp/ofccp20160225>; Press Release, Department of Labor, B&H Foto Resolves Allegations of Discrimination, Bias, and Harassment (Aug. 14, 2017), <https://www.dol.gov/newsroom/releases/ofccp/ofccp20170814>; Bonnie Eslinger, *Federal Contractor B&H Hit With DOL Race Bias Suit*, Law360, Feb. 26, 2016, <https://www.law360.com/articles/764282/federal-contractor-b-h-hit-with-dol-race-bias-suit>; *OFCCP v. B&H Foto & Electronics Corp.*, 2016-OFC-4 (Aug. 11, 2017), available at [https://www.oalj.dol.gov/DECISIONS/ALJ/OFC/2016/OFCCP_-_NEW_YORK_NY_v_BandH_FOTO_and_ELECT_2016OFC00004_\(AUG_11_2017\)_141112_CADEC_PD.PDF](https://www.oalj.dol.gov/DECISIONS/ALJ/OFC/2016/OFCCP_-_NEW_YORK_NY_v_BandH_FOTO_and_ELECT_2016OFC00004_(AUG_11_2017)_141112_CADEC_PD.PDF).

²⁸ Available at https://www.dol.gov/sites/dolgov/files/legacy-files/newsroom/newsreleases/OFCCP20160926_0.pdf.

²⁹ See Press Release, Department of Labor, US Department of Labor Sues Silicon Valley Tech Company For Discriminating Against Asian Job Applicants (Sept. 26, 2016), <https://www.dol.gov/newsroom/releases/ofccp/ofccp20160926>; Press Release, Department of Labor, US Department of Labor Settles Charges of Hiring Discrimination With Silicon Valley Company (Apr. 25, 2017), <https://www.dol.gov/newsroom/releases/ofccp/ofccp20170425>; Consent Decree, *OFCCP v. Palantir Technologies, Inc.*, 2016-OFC-9 (April 20, 2017), https://www.dol.gov/sites/dolgov/files/ofccp/foia/files/Palantir_CD_DPO_Redacted.pdf.

The foregoing are just a few examples of the protection OFCCP has been able to provide the contractor workforce. From 2009 to 2016 alone, OFCCP evaluated contractor facilities employing more than 12.3 million workers to determine whether those businesses were abiding by their antidiscrimination and affirmative-action promises.³⁰ As a result of those efforts and the discrimination it uncovered, OFCCP was able to obtain contractor compliance, and protect contractor employees, by securing \$85.9 million in backpay for 147,000 employees subjected to unlawful discrimination.³¹ OFCCP's work has continued in the current administration, with the Office securing over \$81 million in backpay for more than 69,000 workers in the last three years alone.³²

In Oracle's ideal world, none of these important accomplishments may have happened at all.

CONCLUSION

For the foregoing reasons, the Court should grant the Intervenors' Motion for Summary Judgment, or, in the alternative, dismiss the case.

Date: April 3, 2020

Respectfully submitted,

/s/ Alexandra Walsh

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³⁰ U.S. Dept. of Labor, *OFCCP By The Numbers*, <https://www.dol.gov/ofccp/BTN/> (as of June 12, 2017).

³¹ *Id.*

³² U.S. Dept. of Labor, *OFCCP By The Numbers*, <https://www.dol.gov/ofccp/BTN/> (as of March 29, 2020).

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APPENDIX A – List of *Amici*

Former Government Officials

Patricia A. Shiu

Former Director of Federal Contract Compliance, OFCCP (2009-2016)

Patrick O. Patterson

Deputy Director, OFCCP (2014-2017)

Senior Counsel to the Chair EEOC (2010-2014)

Shirley J. Wilcher, MA, JD, CAAP

Former Deputy Assistant Secretary for Federal Contract Compliance, OFCCP (1994-2001)

Stuart Ishimaru

Commissioner EEOC (2003-2012)

Acting Chairman EEOC (2009-2010)

Deputy Assistant Attorney General, Civil Rights Division, DOJ (1999-2001)

Richard Ugelow

Former Deputy Chief, U.S. Department of Justice Civil Rights Division, Employment Litigation Section (1973-2002)

Jenny Yang

Former Chair, Vice Chair, & Commissioner, EEOC (2013-2018)

H. Jack Bluestein

Program Operations Director, OFCCP (1978-1990)

Engaged in Executive Order 11,264 compliance for over twenty years beginning in 1966

Gary Buff

Former Associate Solicitor of Labor, Civil Rights Division (2001-2005)

Former Deputy Associate Solicitor (1992-2000)

Pamela Cuokos

Former Senior Advisor, OFCCP (2011-2016)

Michael D. Felsen

Former New England Regional Solicitor, U.S. Department of Labor (2010-2018)

U.S. Department of Labor Office of the Solicitor (1979-2018)

Donna Lenhoff

Former Senior Civil Rights Advisor, OFCCP (2011-2017)

Senior Trial Attorney, Employment Litigation Section, Civil Rights Division, United States Department of Justice (1998-2003)

Thomas McCammon

Former Director, San Diego Local Office, EEOC (2008-2009)

Former Mediator, EEOC (2009-2013)

Organizations and Groups

Equal Rights Advocates

Equal Rights Advocates (ERA) is a national non-profit legal advocacy organization dedicated to protecting and expanding economic and educational access and opportunities for women and girls. Since 1974, ERA has been fighting to protect and advance rights and opportunities for women and people of all gender identities through groundbreaking litigation and bold policy reform initiatives. ERA has represented thousands of workers in gender discrimination matters at all stages of litigation, from the administrative agency level up to and including the U.S. Supreme Court, including employees of federal contractors. ERA has also appeared as *amicus curiae* in numerous class actions and other high-impact cases involving issues of gender discrimination as well as the interpretation and enforcement of employment-related civil rights laws.

ERA frequently has advocated on behalf of women employed by federal contractors, with a particular focus on representing those who work in non-traditional, blue-collar occupations and male-dominated industries, who suffer high levels and extreme forms of discrimination and harassment on the job and often face retaliation or blacklisting for reporting such violations. For example, *Advocates for Women, et al. v. Usery*, Civil Action No. 76-0862, D.D.C. (filed May 14, 1976) and *Women Working in Construction et al. v. Usery*, Civil Action No. 76-527, D.D.C. (filed April 13, 1976), ERA represented women construction workers challenging widespread and egregious sexual harassment in their industry. These lawsuits eventually led to the promulgation of the first federal regulations against workplace sexual harassment and a requirement that federal construction contractors assign two or more women to each construction project, if possible. *See* 43 FR 49258, October 20, 1978. More recently, in *Aviles, et al. v. BAE Systems Norfolk Ship Repair*, Case No. 2:13-cv-00418 (E.D. Va.), ERA represented a class of over 166 female shipyard workers employed by one of the largest defense contractors in the United States who faced discrimination in assignments, job classification and pay, promotions, a sexually hostile work environment, and retaliation for reporting or opposing discriminatory treatment and conditions. *See* First Amended Complaint, *Aviles v. BAE Systems Norfolk Ship Repair Inc.*, Case No. 2:13-cv-00418 (December 17, 2013). The \$4.6 million settlement, which included two years of injunctive relief, was the first gender discrimination class action settlement approved in the Eastern District of Virginia.

ERA also has worked directly with OFCCP to ensure compliance with nondiscrimination and affirmative action requirements: As a member of the oversight committee for the 50 UN Plaza construction “megaproject” in San Francisco from 2010 to 2013, ERA worked with representatives of OFCCP to ensure compliance with anti-discrimination rules and ensure that hiring and retention goals for women on the project were met. From its long history of representing, assisting, and advocating on behalf of women in the federal

contractor workforce, ERA knows that the OFCCP's administrative compliance and enforcement authority – its ability to hold companies accountable and ensure that taxpayer money does not support discrimination in employment – is essential to fulfilling the purpose and guarantee the protections of civil rights laws, including Executive Order 11,246, for ERA's past and present clients, and millions of other workers.

Advocates for Worker Rights LLP

Our firm represents workers, mostly low wage workers in wage and hour and employment discrimination matters. Most workers cannot afford a lawyer to represent them. And while firms like ours represent workers on a contingency-fee basis, there is still an enormous gap in need. There are not enough lawyers to represent workers wronged by unfair and unlawful practices in the workplace, especially on a pro bono or contingency-fee basis. We need all the enforcement mechanisms available to create a fair workplace free of discrimination and illegal bias so that people from all walks of life, including those who cannot afford a lawyer, can enforce their rights under the law. The OFCCP should not be prevented from doing its important enforcement work on behalf of workers.

American Association of University Women (AAUW)

In 1881, the American Association of University Women (AAUW) was founded by like-minded women who had defied society's conventions by earning 27 college degrees. Since then it has worked to increase women's access to higher education through research, advocacy, and philanthropy. Today, AAUW has more than 170,000 members and supporters, 1,000 branches, and 800 college and university partners nationwide. AAUW plays a major role in mobilizing advocates nationwide on AAUW's priority issues, chief among them financial gender equality. In adherence with its member-adopted Public Policy Program, AAUW is a staunch advocate for pay equity. AAUW promotes research and advocacy initiatives that highlight the burdensome impact that financial insecurity, due to debt, the wage gap and other societal factors, can have over women's lifetimes.

American Atheists, Inc.

American Atheists, Inc., (American Atheists) is a national civil rights organization that works to end the stigma associated with atheism; and fosters an environment where bigotry against our community is rejected. Discrimination in the workplace is particularly insidious as it forces members of disfavored groups, including atheists, to choose between their identity and their livelihood.

American Civil Liberties Union (ACLU)

The American Civil Liberties Union ("ACLU") is a nationwide, non-profit, non-partisan organization with approximately 2 million members dedicated to defending the principles of liberty and equality embodied in the U.S. Constitution and our nation's civil rights laws. Through its Racial Justice Program, the ACLU engages in nationwide litigation and advocacy to uphold racial equality and combat racism in all forms. Through its Women's

Rights Project, co-founded by Ruth Bader Ginsburg, the ACLU works to dismantle sex stereotypes and assure sex equality in all areas of civic life, including employment.

American Federation of Teachers

The American Federation of Teachers (AFT), an affiliate of the AFL-CIO, was founded in 1916 and today represents approximately 1.7 million members who are employed across the nation in K-12 and higher education, public employment, and healthcare. The AFT has a diverse membership, which includes a variety of protected classes. The AFT has a longstanding history of advocating for the civil rights of its members and the communities they serve, and fighting discrimination in the workplace and beyond.

Anti-Defamation League

Founded in 1913, ADL (the Anti-Defamation League) is a 501(c)(3) organization that works against intolerance and hatred, seeks to stop the defamation of the Jewish people, and fights to secure justice and fair treatment for all. Through its 25 regional offices throughout the United States, ADL provides materials, programs and services to combat anti-Semitism and all forms of bigotry. 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, as well as amicus briefs supporting anti-discrimination laws and policies that protect historically persecuted groups.

Asian Pacific American Labor Alliance, AFL-CIO

APALA is the first and only national organization of Asian American and Pacific Islander (AAPI) workers which works to advance worker, immigrant and civil rights.

Atlanta Women for Equality

Atlanta Women for Equality is a 501(c)(3) nonprofit legal aid organization dedicated to empowering women students and employees to assert their right to equal treatment using the law and to shaping our education system according to true standards of gender equity. We accomplish this mission by providing free legal advocacy for women and girls facing gender discrimination — in particular campus sexual violence — and by protecting and expanding educational opportunities through policy advocacy.

Building Pathways, Inc

Building Pathways is a non-profit organization based in Boston that provides a gateway for low-income area residents, particularly women and people of color, to access family-sustaining careers in the construction industry through apprenticeship preparedness training and advocacy. We strongly oppose any attempt to impede the ability of the Office of Federal Contract Compliance Programs (OFCCP) to enforce anti-discrimination provisions contained in Executive Order 11246. This authority is critical for all people employed by federal contractors and subcontractors, including graduates of our program who work on federal projects.

California Employment Lawyers Association

CELA is an organization of California attorneys whose members primarily represent employees in a wide range of employment cases, including litigation and agency actions involving federal and state anti-discrimination laws. CELA has a substantial interest in ensuring workers can thrive through equal employment opportunities and workplaces that are free of all forms of wrongful discrimination.

California Women's Law Center

The California Women's Law Center (CWLC) is a statewide, nonprofit law and policy center whose mission is to break down barriers and advance the potential of women and girls through transformative litigation, policy advocacy and education. CWLC's issue priorities include gender discrimination, economic justice, violence against women, and women's health. Since its inception in 1989, CWLC has been on the frontlines of the fight to secure women's economic empowerment in California, including working to combat all forms of gender discrimination in the workplace.

Civil Rights Education and Enforcement Center

The Civil Rights Education and Enforcement Center ("CREEC") is a national nonprofit membership organization whose mission is to defend human and civil rights secured by law, including laws prohibiting discrimination in employment. It is essential to CREEC members and others who work for federal contractors that the Office of Federal Contract Compliance Programs retain the power to enforce non-discrimination laws in this influential sector.

Equality California

Founded in 1999, Equality California (EQCA) is the nation's largest statewide lesbian, gay, bisexual, transgender and queer civil rights organization. Equality California brings the voices of LGBTQ people and allies to institutions of power in California and across the United States, striving to create a world that is healthy, just, and fully equal for all LGBTQ people. We advance civil rights and social justice by inspiring, advocating, and mobilizing through an inclusive movement that works tirelessly on behalf of those we serve. Equality California frequently participates in litigation in support of the rights of LGBTQ persons.

Friedman & Houlding LLP

Friedman & Houlding LLP is a civil rights law firm representing employees in individual and class action employment discrimination litigation. Vigorous enforcement of the anti-discrimination laws by OFCCP, including its ability to order payment of back pay, is critical to meaningfully secure the rights of the employees we serve.

Gender Justice

Gender Justice is a nonprofit legal and policy advocacy organization based in the Midwest that is committed to advancing gender equity through the law. It uses impact litigation, policy advocacy, and education to achieve its goals. As part of its litigation program, Gender Justice represents individuals and provides legal advocacy as amicus

curiae in cases involving issues of gender discrimination. Gender Justice has an interest in ensuring that anti-discrimination and other civil rights laws are enforced.

GLSEN

GLSEN is the leading national organization on lesbian, gay bisexual, transgender, and queer (LGBTQ) issues in K-12 education. Educators who affirm LGBTQ identities can help alleviate harms experienced by LGBTQ students by setting a safe, positive tone in schools and resolving incidents of harassment and bullying based on sexual orientation, gender identity, and gender expression. However, when educators experience discrimination and do not feel safe at school themselves, it is less likely they will be able to support students in these ways. Like all workers who are LGBTQ, some LGBTQ educators continue to experience employment conditions that are not safe. One third of respondents to the National Center for Transgender Equality's 2015 U.S. Transgender Survey reported they were either not hired or denied a promotion based on their gender identity, while 18% of LGB respondents in a separate survey (General Social Survey) indicated they were not hired or promoted due to their sexual orientation. At least 16% of LGB workers and 16% of transgender workers were fired because of their sexual orientation and gender identity respectively. Over one third of LGB workers experienced harassment and over 15% of transgender employees experienced verbal harassment and/or physical assault. Well over half of transgender workers reported they avoided using a public restroom in the past year and over one third limited the amount they ate and drank to do so.

Heartland Center for Jobs and Freedom, Inc.

The Heartland Center for Jobs and Freedom is a nonprofit organization that enforces workers' rights. Discrimination on the basis of gender and race continue to plague the workers we serve. We know that having rights only matters if those rights can be enforced. The OFCCP provides the kind of law enforcement that our nation needs to live up to its promise of equality and that enforcement is consistent with our mission.

Impact Fund

The Impact Fund is a nonprofit legal foundation that provides strategic leadership and support for impact litigation to achieve economic, environmental, racial, and social justice. The Impact Fund provides funding, offers innovative training and support, and serves as counsel for impact litigation across the country. The Impact Fund has served as party or amicus counsel in a number of major civil rights cases before the U.S Supreme Court and numerous Courts of Appeals, including cases challenging employment and housing discrimination; unequal treatment of women, people of color, people with disabilities, and LGBTQ people; and limitations on access to justice. Through its work, the Impact Fund seeks to use and support impact litigation to achieve social justice for all communities. The Impact Fund has a particular interest in ensuring robust enforcement of all anti-discrimination laws.

Irvine Law Group, LLP

Undersigned supports dismissal of the lawsuit brought by Oracle against the U.S. Department of Labor and its Office of Federal Contract Compliance Programs. Oracle wants to enjoy the benefits provided by the Federal government, without adhering to the requirements set forth thereby. This lawsuit should be dismissed with prejudice.

Lambda Legal

Formed in 1973, Lambda Legal Defense and Education Fund, Inc. (Lambda Legal) is the nation's oldest and largest legal organization committed to achieving full recognition of the civil rights of lesbian, gay, bisexual, and transgender ("LGBT") people and everyone living with HIV through impact litigation, education, and public policy work. Lambda Legal has argued many landmark cases on behalf of LGBT workers, especially where the worker has invoked existing federal prohibitions of sex discrimination. But what we've been and still are expending considerable resources to establish, OFCCP already has: not only an unequivocal antidiscrimination mandate that explicitly includes "sexual orientation" and "gender identity," but also universal knowledge of and commitment to that principle through contract language. Preservation of OFCCP's enforcement powers is necessary to avoid discrimination against LGBT workers that could devastate the targeted workers and significantly waste the public fisc.

La Raza Centro Legal/ Workers' Rights Program

La Raza Centro Legal's Workers' Rights Program (WRP) is part of a public-interest organization that for the last 29 year has focused on protecting the rights of low-wage and immigrant workers. We represent workers before the California Labor Commissioner's Office (DLSE) through complaints regarding employment misclassification, wage and hour theft, overtime, meal and rest breaks, discrimination and retaliation; the Department of Labor (DOL) through complaints regarding wage theft; the Department of Fair Employment and Housing (DFEH) through complaints as to unlawful discrimination in employment cases, i.e. national origin discrimination (as in English-only policies); and the Equal Employment Opportunity Commission (EEOC) through complaints regarding sexual harassment and discrimination in the workplace. La Raza Centro Legal recognizes the importance of the executive orders and regulations at the center of this litigation that prohibit discrimination in government contracting, the value of the investigation and enforcement tools vested in the OFCCP, and the adverse consequences of compromising those longstanding protections.

LatinoJustice PRLDEF

LatinoJustice PRLDEF founded in 1972 as the Puerto Rican Legal Defense and Education Fund champions an equitable society. Using the power of the law together with advocacy and education, we seek to protect opportunities for all Latinos to succeed in school and work, fulfill their dreams, and sustain their families and communities. LatinoJustice has successfully litigated numerous civil rights and employment discrimination cases involving wage theft, race and gender discrimination, hostile and unfair workplace conditions, and English-only language policies that attempt to limit the right of Latino workers to secure equal employment opportunities in the workplace.

Lawyers' Committee for Civil Rights Under Law

The Lawyers' Committee for Civil Rights Under Law ("Lawyers' Committee") is a nonpartisan, nonprofit organization that was formed in 1963 at the request of President John F. Kennedy to enlist the private bar's leadership and resources in combating racial discrimination. The principal mission of the Lawyers' Committee is to secure equal justice for all through the rule of law. To that end, the Lawyers' Committee has participated in hundreds of impact lawsuits challenging race discrimination, including in employment. As a leading national racial justice organization, the Lawyers' Committee has a vested interest in ensuring that racial and ethnic minorities have strong enforceable protections from race discrimination in the workplace.

Legal Aid at Work

Legal Aid at Work (LAAW) is a non-profit public interest law firm whose mission is to protect, preserve, and advance the employment and education rights of individuals from traditionally under-represented communities across California and the nation. LAAW has represented plaintiffs in cases of special import to communities of color, women, recent immigrants, individuals with disabilities, the LGBTQ community, veterans, and the working poor. 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 and enforcing the protections afforded to employees and students by this country's antidiscrimination laws is longstanding.

Legal Aid Society of Metropolitan Family Services

Our organization, Legal Aid Society of Metropolitan Family Services, supports this amicus brief in favor of the OFCCP's enforcement powers for civil rights protection of workers of federal contractors and subcontractors.

Matern Law Group, PC

Matern Law Group, PC ("MLG") advocates for workers and the most vulnerable throughout the State of California. MLG represents individuals who have suffered from discrimination on the basis of sex, gender, sexual orientation, gender expression or identity, race, and disability, among others, seeking fairness and justice in the workplace. This case significantly impacts whether anti-discrimination laws could be enforced for federal contract workers, a workforce that is approximately one quarter of the civilian workforce and includes workers in California. It is critical that the federal government be able to enforce anti-discrimination laws to ensure that all workers are treated fairly, equally, and justly.

Movement Advancement Project

The Movement Advancement Project works to advance opportunity and equality for all, including the ability of all to be treated fairly at work and provide for themselves and their families. Ensuring that protections for race and ethnicity, religion, sexual orientation and gender identity, and other key enumerated characteristics are enforced is central to our mission.

NAACP

Founded in 1909, the National Association for the Advancement of Colored People (“NAACP”) is the country’s largest and oldest civil rights organization. The mission of the NAACP is to ensure the equality of political, social, and economic rights of all persons, and to eliminate racial hatred and racial discrimination. Throughout its history, the NAACP has used the legal process to champion equality and justice for all persons. *See generally NAACP v. Alabama*, 357 U.S. 449 (1958); *Morgan v. Virginia*, 328 U.S. 373 (1946); and *Town of Huntington v. Huntington Branch NAACP*, 488 U.S. 15 (1988).

National Asian Pacific American Women’s Forum

NAPAWF is interested in signing on to this brief. AAPI women consistently make lower than white men. The pay gap is even more pronounced when the pay gap data is separate into AAPI subgroups. It is important that OFCCP’s enforcement authority is preserved so they can continue to ensure equal employment opportunities for all Americans.

National Center for Lesbian Rights

The National Center for Lesbian Rights (“NCLR”) is a national nonprofit legal organization dedicated to protecting and advancing the civil rights of lesbian, gay, bisexual, transgender, and queer people and their families through litigation, public policy advocacy, and public education. Since its founding in 1977, NCLR has played a leading role in securing fair and equal treatment for LGBTQ people and their families in cases across the country involving constitutional and civil rights. NCLR has a particular interest in promoting equal opportunity for LGBTQ people in the workplace through legislation, policy, and litigation, and represents LGBTQ people in employment and other cases in courts throughout the country.

National Center for Transgender Equality

The National Center for Transgender Equality (NCTE) was founded in 2003 to provide a voice for transgender people in public policy. NCTE has worked with federal, state, and local agencies and businesses on equal opportunities policies and enforcement, and conducted the largest survey of transgender people to date, the 2015 US Transgender Survey.

National Council of Jewish Women

The National Council of Jewish Women (NCJW) is a grassroots organization of 90,000 volunteers and advocates who turn progressive ideals into action. Inspired by Jewish values, NCJW strives for social justice by improving the quality of life for women, children, and families and by safeguarding individual rights and freedoms. NCJW's Resolutions state that NCJW resolves to work for “Employment laws, policies, and

practices that provide equal pay and benefits for work of comparable worth and equal opportunities for advancement.” Consistent with our Principles and Resolutions, NCJW joins this brief.”

National Employment Law Project

The National Employment Law Project (“NELP”) is a non-profit legal organization with 50 years of experience advocating for the employment and labor rights of low-wage and unemployed workers. NELP seeks to ensure that all employees, and especially the most vulnerable ones, receive the full protection of labor and employment laws, including protections against discrimination, regardless of an individual’s status. NELP has a particular focus on responsible contracting and dismantling structural racism in the workplace. NELP has litigated and participated as amicus curiae in numerous cases in circuit and state and U.S. Supreme Courts addressing the importance of equal access to labor and employment protections for all workers.

National Employment Lawyers Association

The National Employment Lawyers Association (“NELA”) is the largest professional membership organization in the country focused on empowering workers’ rights plaintiffs’ attorneys. NELA and its 69 circuit, state, and local affiliates have a membership of over 4,000 attorneys who are committed to protecting the rights of workers in employment, wage and hour, labor, and civil rights disputes. NELA members routinely represent workers employed by federal contractors, and have an interest in ensuring that OFCCP retain its enforcement authority. OFCCP’s enforcement authority ensures that taxpayer dollars do not support federal contractors who engage in discrimination and bigotry in the workplace, and protects vulnerable workers, including those working for federal contractors in states that lack anti-discrimination laws.

National Equality Action Team

The National Equality Action Team (“NEAT”) is a national nonprofit that partners with local and issue-expert organizations on direct actions focused on providing equality and justice to LGBTQ+ citizens, including intersectional issues that disproportionately affect that population. NEAT is founded and based in the state of New York.

National Lawyers Guild Labor & Employment Committee

The National Lawyers Guild Labor and Employment Committee has a long record of action on behalf of workers, both as amicus and through strategic coordination, scholarship and advocacy. The National Lawyers Guild is a non-profit corporation formed in 1937 as the nation’s first racially integrated voluntary bar association, with a mandate to advocate for the protection of rights granted by the United States Constitution and fundamental principles of human and civil rights. Since then the Guild has been at the forefront of efforts to develop and ensure respect for the rule of law and basic legal principles. Labor and employment issues have been a central focus of the Guild’s mission during its nearly eighty-three-year history. The Guild has long championed effective mechanisms for overcoming the history and practice of structural racism, sexism and other forms of discrimination. The Office of Federal Contract Compliance Programs

(OFCCP) is responsible for investigating, auditing compliance with, and bringing enforcement actions for violations of Executive Order 11246 of 1965 which prohibits race, gender and other forms of discrimination by employers who have contracts with the federal government. The OFCCP has an important role to play in implementing anti-discrimination policies through the use of government contracting rules which should be strengthened not weakened.

National Organization for Women

The National Organization for Women (NOW) Foundation is a 501 (c)(3) entity affiliated with the National Organization for Women, the largest grassroots feminist activist organization in the United States with chapters in every state and the District of Columbia. NOW Foundation is committed to advancing equality for women in the workplace and advocates against sex-, LGBTQIA-, race/ethnicity-, disability- and age-based discrimination.

National Taskforce on Tradeswomen Issues

The National Taskforce on Tradeswomen's Issues is a coalition of local, regional and national organizations, advocates, and individual tradeswomen with the mission of supporting women in achieving access, opportunity, and equity in the construction industry, and other nontraditional occupations. The Taskforce works to promote public policies and advocacy initiatives to increase equity in apprenticeship, training, workforce development, career and technical education, nontraditional employment, and the job site experience. Many individual Taskforce members work for federal contractors and have a direct interest in ensuring that the Office for Federal Contract Compliance Programs retains its authority to fully enforce Executive Order 11246 and other protections to combat discrimination and ensure equal employment opportunity in companies that perform work for the government.

National Urban League

Established in 1910, the National Urban League is the Nation's oldest and largest community based movement devoted to empowering African Americans to enter the economic and social mainstream. Today, the National Urban League, headquartered in New York City, spearheads the non-partisan efforts of its local affiliates. There are over 100 local affiliates of the National Urban League located in 35 states and the District of Columbia providing direct services to more than 2 million people nationwide through programs, advocacy, and research. The mission of the Urban League movement is to enable African Americans to secure economic self-reliance, parity, power and civil rights. The Urban League seeks to implement that mission, among other things, by empowering all people in attaining economic self-sufficiency through good jobs earning a living wage and by promoting and ensuring our civil rights by actively working to eradicate all barriers to equal participation in all aspects of American society, whether political, economic, social, educational or cultural.

Oregon Tradeswomen

Oregon Tradeswomen supports the amicus brief filed by Equal Rights Advocates, and their partner firm Wilkinson Walsh in support of dismissal in the lawsuit brought by tech giant Oracle against the U.S. Department of Labor (DOL) and its Office of Federal Contract Compliance Programs (OFCCP). It is imperative for women, people of color, and persons with disabilities to have a federal agency ensure that if faced with discrimination by employers that they have a federal agency to support their civil and constitutional rights. OFCCP has long held the legal authority to enforce civil rights laws and without such authority our nation's most vulnerable workforce are at risk while corporations go unchecked.

Executive Order 11246 is critical to protecting workers against discrimination — approximately one quarter of the civilian workforce. Organizations such as Oregon Tradeswomen who work as advocates for women and people of color in our nation's construction workforce have seen the impact firsthand of how damaging discrimination can be when gone unchecked and civil rights and anti-discrimination laws go unenforced.

We urge the court to dismiss the lawsuit brought by Oracle and ask that they be held accountable to our nation's most vulnerable workers and to our civil rights laws. We urge the court to ensure that the OFCCP retain its decades-old enforcement authority in order to hold contractors to their promises and ensure that taxpayer dollars do not support discrimination and bigotry. It is the duty of the court to understand and acknowledge how critical it remains for worker protections from discrimination.

Outten & Golden LLP

Outten & Golden LLP is dedicated to representing employees and other individuals (including executives, partners, professionals and talent), not employers, in all industries, across all professions, and at all employment levels. As advocates for workplace fairness, our passion and our profession is to help advance the goals of employees and protect their rights against injustices in the workplace. The OFCCP is an essential tool in the fight to combat discrimination in the workplace.

People's Parity Project

The People's Parity Project is a national network of law students organizing to end how the law and the legal profession enable harassment, discrimination, and other injustices by shielding corporations and the courts from accountability.

PFLAG National

PFLAG is the nation's first and largest organization for lesbian, gay, bisexual, transgender, and queer (LGBTQ+) people, their parents and families, and allies. With over 400 chapters and 200,000 members and supporters crossing multiple generations of families in major urban centers, small cities, and rural areas across America, PFLAG is committed to creating a world where diversity is celebrated and all people are respected, valued, and affirmed.

Public Justice Center

The Public Justice Center (PJC), is a Maryland non-profit civil rights, anti-poverty, racial equity, and legal advocacy organization founded in 1985. The PJC is committed to advancing the rights of employees to be free from workplace discrimination and has often litigated cases and filed amicus briefs involving worker protection and anti-discrimination statutes. *E.g.*, *Salinas v. Commercial Interiors, Inc.*, 848 F.3d 125 (4th Cir. 2017); *Boyer-Liberto v. Fontainebleau Corp.*, 786 F.3d 265 (2015); *Prince of Peace Lutheran Church v. Linklater*, 421 Md. 664 (2011); *Breeden v. Novartis Pharms. Corp.*, 646 F.3d 43 (D.C. Cir. 2011); *Haas v. Lockheed Martin Corp.*, 396 Md. 469 (2007); *Ocheltree v. Scollon Productions, Inc.*, 335 F.3d 325 (4th Cir. 2003) (en banc). The PJC has an interest in ensuring that the Office of Federal Contract Compliance Programs retains its enforcement authority, because that enforcement is critical to protecting the employment rights of people of color, women, people with disabilities, LGBTQ workers, immigrant workers, and other marginalized groups.

Southern Poverty Law Center

Southern Poverty Law Center (“SPLC”) is a non-profit civil rights organization dedicated to fighting hate and bigotry, and to seeking justice for the most vulnerable members of society. Since its founding in 1971, the SPLC has won numerous landmark legal victories on behalf of the exploited, the powerless, and the forgotten.

Sugar Law Center for Economic and Social Justice

The Maurice & Jane Sugar Law Center for Economic & Social Justice (Sugar Law Center) is a leading national nonprofit law center based in Detroit, Michigan in the United States of America. The Sugar Law Center’s central mission includes the promotion of economic and social rights as human rights and civil rights within the legal system. The Sugar Law Center provides legal support to workers and labor organizations on projects to ensure workers’ rights to a fair and decent place to work and one that is free of invidious discrimination. Among the populations we serve are women, racial and ethnic minorities, and immigrant workers. We join this amicus brief together with other interested organizations based on the belief that the outcome of this case will have a significant impact on the rights of our past, present and future clients.

The National Center for Women’s Equity in Apprenticeship and Employment at Chicago Women in Trades

Tradeswomen's access to equal hiring, training, job site conditions, retention are entirely based on the Executive Order 11246. The inability to enforce its provisions with federal contractors would undermine years of progress to support women's access to high-wage skilled trade careers in the construction, manufacturing and transportation sector. This would have repercussions for non-federal projects as well and deter national efforts to further women's pay equity across occupations and eliminate the gender wage gap.

The Sikh Coalition

The Sikh Coalition is the largest community-based Sikh civil rights organization in the United States. Since its inception on September 11, 2001, the Sikh Coalition has worked to defend civil rights and liberties for all people, empower the Sikh communi-ty, create

an environment where Sikhs can lead a dignified life unhindered by bias or discrimination, and educate the broader community about Sikhism. The Sikh Coalition joins this brief out of the belief that civil rights laws are an essential component to preventing discrimination.

Tradeswomen, Inc.

The present and future members of Tradeswomen Inc. depend on the enforcement powers of the OFCCP. OFCCP enforcement of EO 11246 has been fundamental since 1978 to enable women to apply, be hired, and build a career in the skilled trades. Many of our current members and staff owe their careers to the role of the OFCCP in opening the door to an opportunity in the construction trades. Women not only raised their families but now have retirement funds because of these opportunities coupled with their own hard work. OFCCP oversight has been critical in keeping that door open as tradeswomen today depend on EO 11246 as much as ever.

United Food & Commercial Workers International Union (UFCW)

United Food and Commercial Workers International Union (UFCW) is a labor union that represents approximately 1.3 million members in a range of industries, including in meatpacking and poultry, food processing and manufacturing, food distribution and retail sectors. Many of our members are employed by federal contractors. UFCW endeavors to advance full employment, economic security, and the welfare of its members, their families, and workers generally. The UFCW is committed to strengthening and safeguarding equal employment protections.

Women Employed

Women Employed's mission is to improve the economic status of women and remove barriers to economic equity. Since 1973, the organization has assisted thousands of working women with problems of discrimination and harassment, monitored the performance of equal opportunity enforcement agencies, and developed specific, detailed proposals for improving enforcement efforts, particularly on the systemic level. Women Employed believes that the role and authority of the Office of Federal Contract Compliance Programs ("OFCCP") in monitoring the employment practices of federal contractors and enforcing those contractors' obligations is essential to preventing and remedying discrimination on the basis of sex in federal contracting, and is thus critical to ensuring economic equity for women.

Women's Law Project

The Women's Law Project (WLP) is a Pennsylvania-based nonprofit public interest legal advocacy organization that seeks to advance the legal, social, and economic status of all people regardless of gender. To that end, WLP engages in impact litigation and policy advocacy, public education, and individual counseling. Founded in 1974, WLP prioritizes program activities and litigation on behalf of people who are marginalized across multiple identities and disadvantaged by multiple systems of oppression. Throughout its history, the WLP has played a leading role in the struggle to eliminate discrimination based on sex in a wide range of areas including employment and equal pay

and supported litigation to strengthen federal, state, and local equal pay laws and their enforcement.