

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

NATIONAL WOMEN’S LAW CENTER,)
et al.,)

Plaintiffs,)

v.)

OFFICE OF MANAGEMENT AND)
BUDGET, *et al.*,)

Defendants.)

Case No. 17-cv-2458 (TSC)

**MOTION FOR LEAVE TO FILE *AMICI CURIAE* BRIEF ON BEHALF OF THE
CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, HR POLICY
ASSOCIATION, ASSOCIATED BUILDERS AND CONTRACTORS, ASSOCIATED
GENERAL CONTRACTORS OF AMERICA, CENTER FOR WORKPLACE
COMPLIANCE, THE INSTITUTE FOR WORKPLACE EQUALITY, THE NATIONAL
ASSOCIATION OF MANUFACTURERS, NATIONAL FEDERATION OF
INDEPENDENT BUSINESS, NATIONAL RETAIL FEDERATION, RESTAURANT
LAW CENTER, RETAIL LITIGATION CENTER, INC.,
AND SOCIETY FOR HUMAN RESOURCE MANAGEMENT**

The Chamber of Commerce of the United States of America (the “Chamber”), the HR Policy Association (“HRPA”), Associated Builders and Contractors (“ABC”), Associated General Contractors of America (“AGC”), the Center for Workplace Compliance (“CWC”), The Institute for Workplace Equality (“the Institute”), the National Association of Manufacturers (“The NAM”), National Federation of Independent Business (“NFIB”), National Retail Federation (“NRF”), the Restaurant Law Center (“RLC”), Retail Litigation Center, Inc., and the Society for Human Resource Management (“SHRM”) (collectively referred to as “*Amici*”) respectfully move for leave to file an *amicus curiae* brief to ensure the Court hears the perspective of the employer community regarding the specific challenges, operational and

system obstacles, and financial burdens that must be overcome before employers are able to comply with Component 2 of the Equal Employment Opportunity Commission's ("EEOC") revised Employer Information Form ("Revised EEO-1"). Given that the impact of Component 2 falls squarely on the shoulders of the employer community, it is important that their capabilities, constraints, and interests — which have not been addressed by the parties — be heard. Simply put, employers cannot quickly meet a data collection and filing deadline for Component 2 data given the necessary lead time, substantial cost, and technological obstacles to compliance. In addition, gathering data retroactively for 2018 in Component 2 form is simply impractical. In support of their motion, *Amici* -- who represent the interests of hundreds of thousands of businesses of all sizes -- state the following:

1. The Chamber is the world's largest business federation. It represents 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus curiae* briefs in cases raising issues of concern to the nation's business community, including, specifically, employers. The Chamber is also an employer which must file the Revised EEO-1 Report.

2. HSPA is a public policy advocacy organization representing the chief human resource officers of major employers. HSPA consists of more than 375 of the largest corporations doing business in the United States and globally. Collectively, their companies employ more than 10 million employees in the United States, nearly 9 percent of the private sector workforce. Since its founding, one of HSPA's principle missions has been to ensure that

laws and policies affecting human resources are sound, practical, and responsive to labor and employment issues arising in the workplace.

3. ABC is a national construction industry trade association representing more than 21,000 members. ABC membership represents all specialties within the U.S. construction industry and is comprised primarily of firms that perform work in the industrial and commercial sectors, including government contractors.

4. AGC is a nationwide trade association of construction companies and related firms. It came into existence in 1918, and over time it has become the recognized leader of the construction industry in the United States. Today, it has more than 26,000 members in 88 chapters stretching from Puerto Rico to Hawaii. These members construct both public and private buildings, including offices, apartments, hospitals, laboratories, schools, shopping centers, factories and warehouses. They also construct a wide variety of other structures, such as highways, bridges, tunnels, dams, airports, industrial plants, pipelines, power lines and both clean and waste water facilities. The EEO-1 reporting requirement applies to a great many, if not most of these firms, and they therefore have a great interest in this Court's recent ruling on the nature and scope of that requirement. Indeed, they are deeply concerned that they cannot meet a May 31, 2019 deadline, and further, that they would risk future liability for mistakes they would inevitably make in attempting to do so.

5. Founded in 1976, CWC (formerly the Equal Employment Advisory Council ("EEAC")), is the nation's leading nonprofit association of employers dedicated exclusively to helping its members develop practical and effective programs for ensuring compliance with fair employment and other workplace requirements. Its membership includes more than 200 major U.S. corporations, collectively providing employment to millions of workers. CWC's directors

and officers include many of industry's leading experts in the field of equal employment opportunity and workplace compliance. Their combined experience gives CWC a unique depth of understanding of the practical as well as legal considerations relevant to the proper interpretation of fair employment policies and requirements.

6. The Institute, formerly known as The OFCCP Institute, is a national not-for-profit membership organization that trains and educates Federal contractors and subcontractors (collectively, "contractors") in understanding and complying with their affirmative action and equal employment obligations. It helps contractors understand and effectively respond to and comply with the new complex and technology-based affirmative action and non-discrimination compliance obligations through training and education. The Institute's Members are representative of nine diverse industries, with over 498,000 employees, annual revenues ranging from below \$10 million to over \$1 billion, and a total of 8,965 separate establishments.

7. The NAM is the largest manufacturing association in the United States, representing small and large manufacturers in every industrial sector and in all 50 states. Manufacturing employs more than 12 million men and women, contributes \$2.25 trillion to the U.S. economy annually, has the largest economic impact of any major sector and accounts for more than three-quarters of all private-sector research and development in the nation. The NAM is the voice of the manufacturing community and the leading advocate for a policy agenda that helps manufacturers compete in the global economy and create jobs across the United States.

8. NFIB is the nation's leading small business association, representing members in Washington, D.C., and all 50 state capitals. Founded in 1943 as a nonprofit, nonpartisan organization, NFIB's mission is to promote and protect the right of its members to own, operate and grow their businesses.

9. NRF is the world's largest retail trade association, representing all aspects of the retail industry. NRF's membership includes discount and department stores, home goods and specialty stores, Main Street merchants, grocers, wholesalers, chain restaurants, and Internet retailers. Retail is the nation's largest private sector employer, supporting one in four U.S. jobs—42 million working Americans. Contributing \$2.6 trillion to annual GDP, retail is a daily barometer for the nation's economy. NRF regularly advocates for the interests of retailers, large and small, in a variety of forums, including before the legislative, executive, and judicial branches of government. As the industry umbrella group, NRF periodically submits *amicus* briefs in cases raising significant issues that are important to the retail industry.

10. RLC is a public policy organization affiliated with and founded by the National Restaurant Association, the largest trade association representing the restaurant and foodservice industry in the world. The National Restaurant Association was founded in 1919 and launched RLC in 2015 to provide courts with the industry's perspective on legal issues significantly impacting our industry. Specifically, RLC highlights the potential industry-wide consequences of pending federal, state, and/or local government actions, such as this one. One of its core functions is to provide collective advocacy for the industry, as it is doing in this litigation. It is a very labor-intensive industry comprised of over one million restaurants and other foodservice outlets employing almost 15 million people—approximately 10 percent of the U.S. workforce. Restaurants and other foodservice providers are the nation's second largest private-sector employer and many are required to comply with EEO-1 reporting obligations. RLC routinely advocates on behalf of the industry on matters of workforce policy and represents the interests of the National Restaurant Association members in matters before the courts.

11. SHRM works to create better workplaces where employers and employees thrive together. As the voice of all things work, workers and the workplace, SHRM is the foremost expert, convener and thought leader on issues impacting today's evolving workplaces. With 300,000+ Human Resource and business executive members in 165 countries, SHRM impacts the lives of more than 115 million workers and families globally.

12. *Amici* have a substantial interest in the outcome of this case. *Amici* are strongly committed to the eradication of discrimination in the workplace and are long-standing supporters of reasonable and necessary steps designed to achieve the goal of equal employment opportunity for all -- steps that include non-discriminatory compensation practices and compliance with applicable laws and other legal requirements. *Amici* are also strongly committed to ensuring compliance with employment-related reporting obligations. Any requirement to comply with Component 2 in the near future would, however, impose an extraordinary and wholly unrealistic burden on employers.

13. District Courts have "inherent authority" to grant participation by an *amicus curiae*. *Youming Jin v. Ministry of State Sec.*, 557 F. Supp. 2d 131, 136 (D.D.C. 2008). In determining whether to grant leave to participate as an *amicus*, this Court has "broad discretion." *Nat'l Ass'n of Home Builders v. U.S. Army Corps of Eng'rs*, 519 F. Supp. 2d 89, 93 (D.D.C. 2007). Participation by an *amicus curiae* is generally allowed when "the information offered is timely and useful." *Ellsworth Assocs. v. United States*, 917 F. Supp. 841, 846 (D.D.C. 1996) (internal citation omitted). Thus, the "filing of an *amicus* brief should be permitted if it will assist the judge 'by presenting ideas, arguments, theories, insights, facts or data that are not to be found in the parties' briefs.'" *Northern Mariana Islands v. United States*, No. 08-1572, 2009 WL 596986, at *1 (D.D.C. Mar. 6, 2009) (quoting *Voices for Choices v. Ill. Bell Tel. Co.*, 339

F.3d 542, 545 (7th Cir. 2003)). In short, courts generally permit third parties to participate as *amicus curiae* when they have “relevant expertise and a stated concern for the issues at stake in [the] case,” *District of Columbia v. Potomac Elec. Power Co.*, 826 F. Supp. 2d 227, 237 (D.D.C. 2011).

14. Here, the Motion is timely. It was only on March 4, when the Court issued its Opinion, that employers’ immediate capabilities and constraints in submitting Component 2 data to the EEOC became an issue. And it was only on March 19 that the Court gave the government until April 3 to provide a submission on the EEOC’s anticipated timeline for implementing Component 2. Consideration of *Amici*’s brief will not delay the proceeding, as it is filed on the same date (April 3) the Court will receive the government’s submission. The brief will provide critical information necessary for consideration by the Court in its ruling — information that is not being provided by the parties to this case.

15. This Court has allowed *amicus curiae* participation when the *amicus* “has unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide.” *Cobell v. Norton*, 246 F. Supp. 2d 59, 62 (D.D.C. 2003) (citing *Ryan v. Commodity Futures Trading Comm’n*, 125 F.3d 1062, 1063 (7th Cir. 1997)). *Amici*’s participation in this case would be appropriate on this ground. *Amici* have unique information and perspective that will help the Court in its decision, particularly as the Court weighs and considers the formidable challenges employers face regarding compliance. *Amici* provide the unique perspective of the practicalities of the workplace and the Human Resource Information Systems (“HRIS”) and payroll systems that will need to be accessed to satisfy the requirements of Component 2. Although OMB and EEOC are defendants in this litigation, it is the nation’s employers that must implement the EEOC’s reporting requirements and the Court’s decision. It

will take employers time to obtain resources, make technological adjustments, and develop the requisite expertise to comply with this new, substantial recordkeeping obligation.

16. Ensuring that the practicalities of the workplace and employers' systems and resources are considered is critical to ensuring the reasonableness of any timetable for an employer's compliance with a completely new, and substantially expanded, recordkeeping obligation. *Amici* will also provide key information as to why employers could not have reasonably foreseen the change in circumstances that would now require immediate compliance as a result of the Court's Opinion.

17. The impact of the Opinion's remedy on employers nationwide is of vital concern to members of *Amici*, the vast majority of which are employers who are immediately affected by the Court's Opinion. The Revised EEO-1 Report significantly expands the data collection obligations of employers from 180 data fields to 3,660 data fields, all of which are to be completed for each employer location. Accurate and fully-verified Revised EEO-1 Reports are not automatically generated using existing technology, as the proposed changes require different database systems (e.g., HRIS and Payroll) to interact with each other.

18. *Amici*, including the Chamber, HR Policy Association, the Center for Workplace Compliance, The Institute for Workplace Equality, the National Association of Manufacturers and the Society for Human Resource Management, as well as other interested members of the public such as human resource organizations, actively participated in providing information to OMB (and the EEOC) describing substantial monetary burdens and time-consuming payroll and HRIS system challenges employers faced in light of the significantly expanded data collection requirements in the Revised EEO-1 Report.¹ Employer data collected and provided to OMB

¹ See Letter from Chamber of Commerce of the U.S. to Bernadette Wilson, Acting Executive Officer, Executive Secretariat, EEOC (Apr. 1, 2016), JA153; Letter from Chamber of Commerce of the U.S. to John M. Mulvaney,

demonstrated that the EEOC had grossly understated the burden that compliance with Component 2 of the Revised EEO-1 Report would have on employers.

19. The attached *amici curiae* brief satisfies the standards for submission. *See* Ex. 1. As is explained more fully above and in their brief, the *amici curiae* brief sets forth information and arguments of the employer community that no other party has presented to this Court. This information and these arguments are essential to understanding the impact and the timeline for compliance with Component 2. Given that this Court's March 4, 2019 Opinion has a direct, immediate, and substantial impact on all employers throughout the United States with 100 or more employees, we urge the Court to grant this request and consider the capabilities, constraints and, interests of the employer community.

20. Counsel for *Amici* have conferred with counsel for all parties. Defendants do not oppose this Motion. Plaintiffs stated they oppose this Motion on the basis of timeliness. *Amici* believe their filing now, as the Court considers information from the EEOC regarding next steps and a timeline for implementation of the Court's March 4, 2019 Opinion, is timely and important for all the reasons stated above and in the attached *Amici* brief.

CONCLUSION

For these reasons, *Amici* respectfully requests leave to file their attached *amici curiae* brief.

Dir., OMB (Feb. 27, 2017), JA 046; Letter from Mark Wilson, HR Policy Ass'n to John Mulvaney, Dir. OMB (Apr. 13, 2017), JA065; Letter from Equal Employment Advisory Council to Hon. Mick Mulvaney, Dir., OMB (Mar. 20, 2017), JA022;; Letter from Center for Workplace Compliance to Hon. Neomi Rao, Administrator, OIRA (July 21, 2017), JA030.; The OFCCP Institute Comment, available at: <https://www.regulations.gov/document?D=EEOC-2016-0002-0278> (last visited Apr. 3, 2019); NAM EEOC EEO-1 Revision Comments, available at: <https://www.regulations.gov/document?D=EEOC-2016-0002-0235> (last visited Apr. 3, 2019); SHRM Comment on EEOC Feb 2016 EEO1 Proposal, available at: <https://www.regulations.gov/document?D=EEOC-2016-0002-0911> (last visited Apr. 3, 2019).

Dated: April 3, 2019

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Dated: April 3, 2019

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INTERESTS OF *AMICI CURIAE*

Amici represent hundreds of thousands of employers of all sizes across the country, most of whom are required to comply with EEO-1 reporting requirements.¹ The interest of *amici* is direct, immediate, and different than the interests of the parties.² The Revised EEO-1 Report (“Revised EEO-1 Report” or “Component 2”) is substantially different and more burdensome than what was previously required of employers. Employers are not parties to this litigation, and the Court has not heard from the employer community with respect to the significant work, resources, and time that employers must devote to create, capture, and produce the Revised EEO-1 Report. *Amici*’s perspective is keenly relevant to the Court’s scheduled proceedings relating to the appropriate timetable for the collection of this information.

SUMMARY OF ARGUMENT

The employer community is the group most directly affected by the Court’s Order lifting the Office of Management and Budget’s (“OMB”) stay of the Revised EEO-1 Report. When the Equal Employment Opportunity Commission (“EEOC”) previously amended the EEO-1 Report, it allowed employers at least 18 months to comply.

¹ The Chamber of Commerce of the United States of America (the “Chamber”), the HR Policy Association (“HRPA”), Associated Builders and Contractors (“ABC”), Associated General Contractors of America (“AGC”), the Center for Workplace Compliance (“CWC”), The Institute for Workplace Equality (“The Institute”), The National Association of Manufacturers (“The NAM”), National Federation of Independent Business (“NFIB”), National Retail Federation (“NRF”), Restaurant Law Center (“RLC”), Retail Litigation Center, Inc., and the Society for Human Resource Management (“SHRM”) (collectively referred to as “*Amici*”).

² Pursuant to Local Rule 7(o)(4) and Fed. R. App. P. 29(a)(4), the *Amici* state: this brief was authored in whole by *Amici*’s outside counsel, Seyfarth Shaw LLP, and no party or party’s counsel authored this brief in whole or in part. No party’s counsel contributed money that was intended to fund preparing or submitting this brief. No person, other than the *Amici* and their Members, contributed money that was intended to fund preparation or submission of this brief.

That compliance transition period is imperative here because, as employer comments in the administrative record confirm, employers cannot simply “flip a switch” and produce payroll, hours worked, job category, and demographic data that has never been organized or previously produced in Component 2 format. Component 2 vastly expands the data fields employers must complete. Component 1 contains only 180 data fields per employer location. Component 2 replaces Component 1 for all private employers with more than 100 employees and contains 3,660 data fields per employer location.

Providing the EEOC with 3,660 data fields per employer location in Component 2 of the EEO-1 Report requires sufficient lead time for employers to revise their systems, implement new procedures, and train employees. That includes time to prepare Human Resource Information Systems (“HRIS”), payroll, and other workplace systems to provide accurate Component 2 data. It also includes time needed by employers to work with their vendors to revise and update their systems and perform other critical work to prepare for collection and submission of Component 2 data to the EEOC. And employers must then begin to capture new data. Under Component 2, for example, employers’ data collection and reporting must factor in employee time off to compute hours worked, and other factors relevant to determining the newly required information. That process is estimated to take at least 18 months, the amount of time EEOC originally provided when the Component 2 form was issued in September 2016.³ To date, employers have followed the express and repeated direction of the EEOC: that 2018 EEO-1 Report data must

³ Although the time needed to comply is substantial, it is difficult to put a precise number of months on it. Amici believe that the EEOC was right when it previously decided that 12 months was not enough and extended the time to 18 months. Another proposed amicus brief suggests a substantial though shorter time period. Regardless, the point is that compliance will require a considerable amount of time well beyond May 2019.

include only Component 1. As a result, employers have not undertaken the enormous burden of preparing to comply with Component 2.⁴

For that reason, preparing to gather data *prospectively* will require at least 18 months' lead time. Gathering data *retroactively* for 2018 in Component 2 form is simply impractical.

Finally, appropriate protection for highly confidential pay data is an unresolved issue. Component 2 should not go into effect without confirmation that adequate EEOC protocols will be in place to protect highly confidential pay data required for the first time.⁵

ARGUMENT

I. IT IS NOT FEASIBLE FOR EMPLOYERS TO FILE 2018 EMPLOYER DATA IN COMPONENT 2 OF THE EEO-1 REPORT

A. The EEOC Has Always Recognized that Changes to EEO-1 Reporting Require Substantial Lead Time

The EEOC first required employers to file the annual EEO-1 Report in 1966. Forty years later, in 2006, the EEOC announced the first major changes to the EEO-1 Report, changing the

⁴ In Defendants' Submission in Response To The Court's Questions Raised During the March 19, 2019 Status Conference filed today ("Defendants' Submission"), EEOC's Acting Chair determined that it was necessary for her to extend the Component 2 collection deadline to September 30, 2019 from May 31, 2019, to accommodate the EEOC's significant practical challenges in collecting Component 2 data. EEOC Submission in Response to March 19 Status Conference, ¶ 4, ECF No. 54. The September 30, 2019 deadline proposed to accommodate the EEOC's challenges did not take into consideration "significant issues" the supporting Declaration of Samuel C. Haffer, the EEOC's Chief Data Officer, noted employers had raised with the EEOC regarding the immediate reporting of Component 2 data, citing a March 29, 2019 letter to the EEOC from the National Payroll Reporting Consortium, Inc. Decl. of Samuel Haffer ¶ 22 n. 5, ECF No. 54-1. The Haffer Declaration also raised numerous concerns, including significant issues with data validity and data reliability of the Component 2 data, under a collection timeline of September 30, 2019. *Id.* at ¶¶ 27, 29

⁵ *Amici* continue to believe that the Revised EEO-1 Report does not comply with the Paperwork Reduction Act, but limit this brief to the implementation issues this Court is now considering.

race and ethnicity designations and adjusting the reported job categories.⁶ Even though those amendments did not change the report's basic structure, they did not go into effect until 20 months after they were announced.

A decade later, on February 1, 2016, the EEOC proposed a revision to the EEO-1 Report. For the first time, the EEOC sought to collect from employers the total number of employees and total number of hours worked for 12 different pay bands, by gender, race, and ethnicity, and for each of the 10 EEO-1 job categories. The EEO-1 Report requires 180 data points. The Revised EEO-1 Report, by contrast, would require employers to submit 3,660 data points for each employer location. In its Final Submission to OMB, the EEOC expressly recognized that “employers reliant on HRIS and payroll software provided comments that they would have insufficient time to budget, develop, and implement new reporting systems if the 2017 EEO-1 Report were to be due on September 30, 2017.”⁷ The EEOC further noted that “[e]mployers lacking HRIS and payroll software said they would have a variety of implementation challenges depending on how they organized their records.” *Id.* As a result, the EEOC added six months of implementation time on top of the one year it had originally proposed as the timetable for filing the Revised EEO-1 Report. On July 14, 2016, the EEOC accordingly published its final submission to OMB providing that the Revised EEO-1 Report containing 2017 data would be due on March 31, 2018 (an 18-month period).

The EEOC's 2006 and 2017 timetables for employers to comply with the revised EEO-1 Report are similar to other timetables set by federal agencies for compliance with new

⁶ See EEOC Press Release: EEOC Implements Final Revisions to EEO-1 Report, available at: <https://www.eeoc.gov/eeoc/newsroom/release/archive/1-27-06.html> (last visited Apr. 1, 2019) (describing the changes to the EEO-1 Report).

⁷ 81 Fed. Reg 45479, 45484 (July 14, 2016).

recordkeeping requirements. *See, e.g., Am. Fed'n of Labor & Cong. of Indus. Organizations v. Chao*, 298 F. Supp. 2d 104 (D.D.C. 2004), *rev'd on other grounds*, 409 F.3d 377 (D.C. Cir. 2005) (two month transition period to begin tracking information for unions to report 14 months later was unreasonable, arbitrary and capricious; unions were provided at least eight months to develop systems to track data that was to be reported no earlier than 20 months after the financial reporting requirement was announced); 79 Fed. Reg. 57465 (September 25, 2014) (Department of Labor delayed amended reporting obligations for one year to ease the implementation burdens); 78 Fed. Reg. 218 (January 2, 2013) (Affordable Care Act (“ACA”) allowed employers nearly two years to create and test their reporting systems).

B. Employers Provided EEOC and OMB with Information that Demonstrates that Complying with Component 2 of the EEO-1 Is Not Feasible in the Near Future

The EEOC’s decision to allow employers 18 months to come into compliance rests on solid support in the administrative record.

Amici, including the Chamber, HR Policy Association, the Center for Workplace Compliance, The Institute for Workplace Equality, the National Association of Manufacturers and the Society for Human Resource Management, as well as other interested members of the public such as human resource organizations, actively participated in providing information to OMB (and the EEOC) describing substantial monetary burdens and time-consuming payroll and HRIS system challenges employers faced in light of the significantly expanded data collection requirements in the Revised EEO-1 Report. See Letter from Chamber of Commerce of the U.S. to Bernadette Wilson, Acting Executive Officer, Executive Secretariat, EEOC (Apr. 1, 2016), JA153; Letter from Chamber of Commerce of the U.S. to John M. Mulvaney, Dir., OMB (Feb. 27, 2017), JA 046; Letter from Mark Wilson, HR Policy Ass’n to John Mulvaney, Dir. OMB (Apr. 13, 2017), JA065; Letter from Equal Employment Advisory Council to Hon. Mick

Mulvaney, Dir., OMB (Mar. 20, 2017), JA022;; Letter from Center for Workplace Compliance to Hon. Neomi Rao, Administrator, OIRA (July 21, 2017), JA030.; The OFCCP Institute Comment, available at: <https://www.regulations.gov/document?D=EEOC-2016-0002-0278> (last visited Apr. 3, 2019); NAM EEOC EEO-1 Revision Comments, available at: <https://www.regulations.gov/document?D=EEOC-2016-0002-0235> (last visited Apr. 3, 2019); SHRM Comment on EEOC Feb 2016 EEO1 Proposal, available at: <https://www.regulations.gov/document?D=EEOC-2016-0002-0911> (last visited Apr. 3, 2019)

After OMB initially approved the proposed EEO-1 revisions on September 29, 2016, *Amici* provided additional information to OMB in early 2017, again showing in particular that the EEOC had not met its requirement to minimize the burden of the proposed data collection and that the agency had effectively ignored confidentiality concerns.⁸ The correspondence enumerated the material errors in the EEOC's burden estimates regarding the costs of preparing and filing the Revised EEO-1 Report, and the agency's failure to timely propose for comment the forms and procedures necessary for employers to comply.⁹

⁸ See Letter from Chamber of Commerce of the U.S. to John M. Mulvaney, Dir., OMB (Feb. 27, 2017), JA 046; Letter from Mark Wilson, HR Policy Ass'n to John Mulvaney, Dir. OMB (Apr. 13, 2017), JA065.

⁹ See *id.*; 5 CFR 1320.10 (f) ("Prior to the expiration of OMB's approval of a collection of information, OMB may decide on its own initiative, after consultation with the agency, to review the collection of information. Such decisions will be made only when relevant circumstances have changed or the burden estimates provided by the agency at the time of initial submission were materially in error. Upon notification by OMB of its decision to review the collection of information, the agency shall submit it to OMB for review under this part.").

Significantly, the information provided to OMB describes the actual experience of employers in attempting to comply with the Component 2 obligations. This information is fully developed in the administrative record of the OMB's decision to stay its prior approval.¹⁰

Examples of *Amici* materials presented to OMB are set forth below. In its submissions to OMB dated August 15, 2016 and February 27, 2017, the Chamber demonstrated that the EEOC had grossly understated the burden of the Revised EEO-1 Report at \$53.5 million per year; whereas, the Chamber Survey of companies with 100 or more employees demonstrated that the cost of the EEOC's Revised EEO-1 Report exceeds \$400 million in pure labor costs alone, and carries a total burden of \$1.3 billion per year for all businesses employing 100 or more employees.¹¹ See Letter from Chamber of Commerce of the U.S. to John M. Mulvaney, Dir., OMB (Feb. 27, 2017), JA 046.

The Chamber explained that Component 2 would require employers to make investments in software upgrades, internal reporting processes, and new staffing in order to comply. The Chamber Survey showed that the EEOC's one-time cost estimate for implementation of Component 2 of \$27.2 million was significantly lower than the Chamber Survey's data, both with respect to one-time costs of complying with the new Component 2 and with respect to employers' increase in their yearly cost to comply with the Revised EEO-1 Report.

First, the Chamber Survey showed that one-time costs and burdens for implementing new data compilation and query systems needed to comply with the revised reporting requirements

¹⁰ See *id.*; Letter from Chamber of Commerce of the U.S. to Bernadette Wilson, Acting Executive Officer, Executive Secretariat (Apr. 1, 2016), JA153.

¹¹ The Chamber Survey collected data from employers who collectively file an estimated 20,000 EEO-1 Reports each year (one per qualifying establishment within each company). The Chamber Survey respondents represent a wide variety of industries and range in size from employers with 400 employees to more 200,000 employees.

and training employees to use these systems will total \$41.9 million in direct labor costs. The Chamber Survey data also calculated additional one-time overhead costs. These additional one-time overhead costs for design, testing, and implementation of information systems were estimated at \$136.1 million. In total, based on the Chamber Survey of employers who will have to comply with Component 2, the record shows that one-time costs for design, testing, and implementation of information systems to provide Component 2 data to the EEOC will cost employers an immediate \$178 million. *Id.*

Second, annual collecting and reporting on the Revised EEO-1 Report would require, on average, 8.066 million hours (up from 4.486 million hours for completion of Component 1), or approximately \$400.8 million, with \$187 million attributable to the additional cost of completing the additional data required under Component 2. *Id.*

Employers also provided EEOC, OMB, and Congress with detailed information on the process of gathering and processing the data that would be necessary to come into compliance with the pay and hours components of the Revised EEO-1 Report, as well as of the burden and diversion of limited human resources and other resources that would be drawn from other ongoing compliance initiatives to comply with the Revised EEO-1 Report. *See* Written Testimony of David S. Fortney, Esq. on behalf of The OFCCP Institute, *available at*: <https://www1.eeoc.gov//eeoc/meetings/3-16-16/fortney.cfm?renderforprint=1> (last visited Apr. 3, 2019). For example, The Institute surveyed its members, and presented to both EEOC and OMB the following findings:

The EEOC substantially underestimated the amount of time and money employers would spend preparing and filing the Revised EEO-1 Report.

Inserting the new pay and hours worked data into Component 2 requires employers to enable payroll and HRIS systems to work together to supply the required information, and seventy-five percent (75%) of The Institute's members responded that they would have to develop or purchase new software, at an

average cost of \$33,000 per employer to enable their companies to match their EEO-1 data with W-2 data.

In addition to the \$33,000 per employer initial software purchase, The Institute's survey estimated an ongoing burden of maintenance of the new system at an average annual cost of \$8,918.75.

As *Amici* discussed in their prior submissions to OMB, the EEOC's burden estimates ignored the cost of programming changes that may be necessary, changes such as "queries to payroll systems for W-2 data" and "the ability to link that data with employee lists generated from the separate HRIS." See Letter from Equal Employment Advisory Council to Mick Mulvaney, Dir., OMB (Mar. 20, 2017), JA026.

Many employers store their W-2, hours worked, and EEO data in separate database systems.¹² The data contained within the separate systems would need to be coded so that they align into a single reporting structure that would then need be matched with EEO-1-related information (e.g., establishment identifiers, EEO job categories, and salary bands). This process is not a simple cut and paste of a few lines of data. Instead, it requires a complex understanding of the separate systems and a verifiable process to ensure accurate reporting of the Revised EEO-1 Report. Testimony on behalf of SHRM explained that for one employer, even after conducting internal validation and utilizing a third-party vendor to test their data file before submission, 20% of the employer's individual location reports had to be manually reviewed. *Id.*

This process is further complicated by the fact that the EEOC requires all subsidiaries of parent companies to file jointly regardless of how the different subsidiaries collect and store their information. See EEO-1 Instructions, *available*

¹² See Written Testimony on behalf of Society for Resource Management, EEOC Hearing of March 16, 2016 - Public Input into the Proposed Revisions to the EEO-1 Report, available at: <https://www.eeoc.gov/eeoc/meetings/3-16-16/murray.cfm> (last visited Apr. 1, 2019). See Written Testimony of David S. Fortney, Esq. on behalf of The OFCCP Institute, *available at*: <https://www.eeoc.gov/eeoc/meetings/3-16-16/fortney.cfm> (last visited Apr. 3, 2019).

at: <https://www.eeoc.gov/employers/eo1survey/2007instructions.cfm> (last visited Apr. 1, 2019).

Subsidiaries may keep their payroll and demographic information in completely separate systems that would need to be harmonized to combine their outputs into a single file. When subsidiaries use different systems for their HRIS and payroll systems, this complicates the data collection process even more, since those systems may not track the necessary data fields consistently, which would require sophisticated data queries to extract information, and may also require manual adjustments to combine the data into a reportable format.

C. Employers Reasonably Relied on Explicit Direction from OMB and EEOC Regarding Their EEO-1 Filing Obligations

As previously noted, authority for collection of data pursuant to the EEO-1 Report is founded on statutory and regulatory requirements that the EEOC is charged with enforcing. *See* Legal Basis for Requirements (*available at: <https://www.eeoc.gov/employers/eo1survey/legalbasis.cfm>* (citing Section 709(c) of Title VII and 29 CFR 1602.7-1602.8) (last visited Apr. 1, 2019)). On the basis of this authority, employers receive their direction from the EEOC with regard to their EEO-1 data collection requirements. To date, the EEOC has advised employers that they should file only Component 1 of the EEO-1 Report, and that they should not submit data related to pay and hours worked. *See* What You Should Know: Statement of Acting Chair Victoria A. Lipnic about OMB Decision on EEO-1 Pay Data Collection *available at: <https://www.eeoc.gov/eeoc/newsroom/wysk/eo1-pay-data.cfm>* (last visited Apr. 1, 2019). The employer community has relied on the EEOC's direction, and has accordingly not taken the preliminary steps needed to comply with the collection and submission of EEO-1 pay and hours data.¹³ Under the circumstances, employers could not

¹³ *See* EEOC May Reinstate Pay Data Reporting, available at: <http://www.nprc-inc.org/blog/> (last visited Apr. 1, 2019) at 2 (“Because of the OMB stay on the revision, employers and service

reasonably have anticipated the Court's ruling and prepared in advance for such a burdensome scenario, as it would require employers to devote enormous resources to an undertaking that the EEOC assured them was unnecessary. Accordingly, any deadlines must consider the significant compliance burdens and current constraints on when employers can produce the Revised EEO-1.

On August 29, 2017, OMB advised the EEOC that it was issuing a "review and immediate stay of the effectiveness" of the collection of hours and compensation data that would have been required under Component 2 of the Revised EEO-1 Report. In light of certain changed circumstances and "material error" in the burden estimates, OMB directed the EEOC to (1) "submit a *new* information collection package for the EEO-1 form to OMB for review," and (2) publish a notice in the Federal Register announcing to employers the immediate stay of Component 2 pay and hours information and confirming that organizations were to use the previously approved EEO-1 form to meet their compliance obligations. *See* Memorandum from OMB to Acting Chair, Victoria Lipnic, EEOC (Aug. 29, 2017), JA020-021.

On the basis of OMB's directive, the EEOC issued a statement on August 30, 2017 regarding OMB's decision. The EEOC statement informed employers that it would be reviewing the OMB's order and "evaluating its options" in light of OMB's decision. In addition, the EEOC instructed employers to comply with Component 1 of the EEO-1 report by March 2018. *See* What You Should Know: Statement of Acting Chair Victoria A. Lipnic about OMB Decision on EEO-1 Pay Data Collection *available at:* <https://www.eeoc.gov/eeoc/newsroom/wysk/eeo1-pay-data.cfm> (last visited Apr. 1, 2019).

The EEOC also followed OMB's directive to publish a notice in the Federal Register announcing the immediate stay. The notice instructed all employers that "until further notice"

providers generally did not develop the data collection mechanisms and did not collect and store the necessary data to comply with such a report for 2018.").

they “should not” submit the compensation and hours worked information that Component 2 would have required. *See* 82 Fed. Reg. 43362-01 (Sept. 15, 2017).

Thus, the employer community received at least three express directives that they should produce only Component 1 of the EEO-1 Report until “further notice.” Importantly, employers were also aware that the next step in the process would be for EEOC to submit a “new information collection package for the EEO-1 form to OMB for review,” and OMB would need to provide its approval before employers would be required to comply with the new information collection request. *See* Memorandum from OMB to Acting Chair, Victoria Lipnic, EEOC (Aug. 29, 2017), JA021; 35 U.S.C. 44 Sec. 3507(a) (3). Employers reasonably interpreted all of this to mean that the Revised EEO-1 Report would be changed and understandably believed that they must comply with only Component 2.

The EEOC has not altered that guidance. In fact, the EEOC recently explained that it was “diligently working on next steps” and that it would provide “further information” to employers regarding the impact of this Court’s decision on the collection of compensation and hours data. Statement on the 2018 EEO-1 Portal Opening for Component 1 Data, *available at*: <https://www.eeoc.gov/employers/eo1survey/statement-2018-opening.cfm> (last visited Apr. 1, 2019). In the meantime, employers were instructed to continue to submit Component 1 data as they had prepared it in other years, this time with a May 31, 2019 reporting deadline. *Id.*

The EEOC’s statement makes clear that the agency is still grappling with how best to proceed under the Court’s Order vacating OMB’s stay and the September 15, 2018 Federal Register notices. The EEOC must develop and implement its processes, systems, and protocols for collecting Component 2 data before it can provide guidance to the employer community regarding the technical aspects of compliance on the EEOC’s survey website. For instance, the

EEOC's EEO-1 Survey website will need to be overhauled in order to even begin the process of accepting the new hours and pay information. The EEOC will also need to provide training and develop instructional materials for employers in connection with the new compliance obligations. Even the electronic file specifications that would be required for the "batch upload" process that the EEOC estimated the majority of employers would use are not available to employers. The EEOC is not ready to collect Component 2 pay and hours data.

D. Employers Must Be Given Sufficient Lead Time to Prepare For the Revised EEO-1

For all of the reasons explained above, employers now face a situation in which they (i) need sufficient time to prepare and (ii) cannot realistically be expected to produce data for past years, including 2018. The National Payroll Reporting Consortium, Inc. ("NPRC"), a non-profit trade association whose member organizations provide payroll processing and related services to nearly two million U.S. employers, representing over 36% of the private sector workforce, recently explained these points in a letter to the EEOC, OMB, and DOJ, publicly available on its website. See EEOC May Reinstate Pay Data Reporting, available at: <http://www.nprc-inc.org/blog/> (last visited Apr. 1, 2019). In Defendants' Submission in Response To the Court's Questions Raised During the March 19, 2019 Status Conference, Defendants informed the Court that the EEOC is "... aware that employers believe that they are likely to experience significant issues regarding the immediate reporting of Component 2 data, based on a March 29, 2019 letter to Acting Chair from the National Payroll Reporting Consortium. Dkt 54-1, Declaration of Samuel Haffer, 24, fn. 5.

Although NPRC "is strictly neutral as to the appropriateness or need for proposed changes to the EEO-1 annual report," it has made clear that it believes "that [t]he revisions

embodied in Component 2 reporting are very substantial and will require an appropriate amount of time for orderly systems development and testing.” *Id.* at 1, 4.

System design and development, testing, release and related training and communications require substantial lead time.¹⁴ As NPRC explained:

Systems development is also not a straightforward task of merely formatting data (assuming such data is available) into an EEOC-defined file specification. Such projects require specific procedural or systemic handling of complex fact patterns, which may require rulemaking or other guidance from EEOC. A few examples include handling of:

1. Employees with job classification code changes during the snapshot period, or the full year
2. Reclassification of a job category during the year
3. Employees that appeared in the snapshot period but were terminated, deceased or retired by the end of the snapshot period
4. Employee changes of status (e.g., temporary to regular; part-time to full-time; non-exempt to exempt) during the snapshot period or year
5. Changes in work location/establishment, or work location/establishment, that become inactive during the period
6. Employees with more than one job classification concurrently or during the snapshot period

Id. at 3.

“[A] substantial added complication [is] that the Component 2 pay data report would require retroactive gathering of input. Because of the OMB stay on the revision, employers and

¹⁴ Systems development requires procedural or systemic handling of complex fact patterns to allow data to be accurately formatted into an EEOC-defined file specification. Examples of such fact patterns include the following: Employees whose employment, position, location, or pay status changes during the time period being captured. *See* EEOC May Reinstate Pay Data Reporting, available at: <http://www.nprc-inc.org/blog/> (last visited Apr. 1, 2019) at 3.

service providers generally did not develop the data collection mechanisms and did not collect and store the necessary data to comply with such a report for 2018.” *Id.* at 2.

As NPRC detailed, hours worked data for 2018 is not generally available, and poses concerns given that Component 2 requires employers to report hours worked data for exempt employees that is not generally collected and stored. NPRC notes the potential “significant difficulties [employers may face] at this point in re-creating hours of service records for 2018.” *Id.* at 2. For example, recognizing that employers may use a 20 or 40 hour proxy for exempt employees, employers would still be required to retroactively gather data to establish the dates of active employment for each exempt employee, and then translate those dates into weeks worked and ultimately hours worked data. As NPRC describes: “For instance, FLSA hours worked is a defined term that does not include all hours that were ‘paid’ to an employee and excludes time for leave of absence, vacation, jury duty and other hours that were paid but not worked.” *Id.* at 2.

As a result, “it may be extraordinarily difficult for some employers to capture or re-create such data even retroactive to January 2019, for any 2019 reports due in 2020.” *Id.* at 3.

Employers are also hampered by the fact that the resources that were available for a brief period when the pay data collection tool was moving forward have all been removed from the EEOC’s website. *See e.g.*, Questions and Answers: The Revised EEO-1 and Summary Pay Data, available at: <https://www1.eeoc.gov/employers/eeo1survey/2017survey-qanda.cfm?redirected=1> (last visited Mar. 31, 2019) (explaining that “[t]his page is in the process of being created or has temporarily been inactivated”). For instance, the Revised EEO-1 Report is no longer available on the EEOC’s website. That means that unless the employer retained a copy of the sample form that was posted on the EEOC’s website for a short time, they no longer have access to this most basic information - the form itself. Similarly, the resources that the EEOC provided to the

employer community to assist with their compliance efforts are also no longer available. Also, the electronic EEO-1 Data File Specifications (i.e., CSV/XML) versions which are necessary for employers to design their reporting systems are no longer available anywhere on the EEOC's website.

In addition, because the Revised EEO-1 Report *replaces* the current EEO-1 Report in both form and substance, a requirement that employers submit Component 2 pay and hours worked data would result in significant waste for employers for all of the time and resources spent working on the Component 1 data that is currently due on May 31, 2019. Submitting Component 1 data under the format of the current EEO-1 Report, in no way satisfies the collection requirements under the Revised EEO-1 Report. Employers instead must start over to re-create and produce data and information that does not currently exist.

II. SUBMISSION OF COMPONENT 2 DATA SHOULD NOT BE REQUIRED UNTIL EEOC CAN PRESERVE CONFIDENTIALITY

Amici have raised concerns to both the EEOC and OMB regarding the EEOC's failure to address the significant privacy and confidentiality concerns related to the collection of highly confidential Component 2 pay data. *See* Letter from Chamber of Commerce of the U.S. to Bernadette Wilson, Acting Executive Officer, Executive Secretariat, EEOC (Apr. 1, 2016), at JA1534-159 ; Letter from Chamber of Commerce of the U.S. to John M. Mulvaney, Dir., OMB (Feb. 27, 2017), JA 046-52; Letter from Equal Employment Advisory Council to Hon. Mick Mulvaney, Dir., OMB (Mar. 20, 2017), at JA024-25.

In Defendants' Submission today, Samuel Haffer, the EEOC's Chief Data Officer and Director of the Office of Enterprise Data and Analytics ("OEDA"), confirmed that the EEOC currently does not have the internal resources to "make the necessary updates, enhancements, security testing, load and performance testing, data validations and verifications, and application

testing to *securely collect and store this significantly increased volume of highly sensitive Component 2 data,*” under its current systems. Decl. of Samuel Haffer ¶ 21, ECF No. 54-1 (emphasis added). As a result, the EEOC has determined that the only way it could undertake the collection of Component 2 data for 2018 by September 30, 2019 would be to engage an independent contractor at a cost in excess of \$3,000,000 for a one-time collection of 2018 data. *Id.* at ¶ 25.

Given that the EEOC has not explained or put in place appropriate protocols necessary to protect the confidentiality of Component 2 data, *Amici* have heightened concerns regarding the EEOC’s ability to ensure their confidential pay data will remain secure. In an era where data breaches occur frequently, such concerns must be immediately addressed. This is an especially important issue for employers of choice and those in competitive job markets who treat individual employee pay data confidentially.

CONCLUSION

For all the reasons set forth herein, *Amici* urge the Court to consider their perspective, including the financial burden, operational challenges, and confidentiality protections applicable to collection of Component 2 data from employers. Consistent with the EEOC's past practice, employers need at least 18 months to comply with Component 2.

Dated: April 3, 2019

Respectfully submitted,

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/s/ Lawrence Z. Lorber

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Institute for Workplace Equality
National Association of Manufacturers
National Federation of Independent Business
National Retail Federation
Restaurant Law Center
Retail Litigation Center, Inc.
Society for Human Resource Management

Respectfully submitted,

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EXHIBIT 2

United States District Court For the District of Columbia

NATIONAL WOMEN'S LAW
CENTER, et al.

vs
Plaintiff

OFFICE OF MANAGEMENT AND
BUDGET, et al.

Defendant

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Civil Action No. 17-cv-2458

CERTIFICATE RULE LCvR 26.1

I, the undersigned, counsel of record for Chamber of Commerce of the United States of America certify that to the best of my knowledge and belief, the following are parent companies, subsidiaries or affiliates of Chamber of Commerce of the United States of America which have any outstanding securities in the hands of the public:

None.

These representations are made in order that judges of this court may determine the need for recusal.

Attorney of Record

Signature

Lawrence Z. Lorber

Print Name

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City

State

Zip Code

202-828-5341

Phone Number

DC Bar No. 103127

BAR IDENTIFICATION NO.

EXHIBIT 3

United States District Court For the District of Columbia

| | | | |
|--|---|-----------|------------------------------------|
| NATIONAL WOMEN'S LAW CENTER, et al. |) | | |
| |) | | |
| |) | | |
| vs |) | Plaintiff | Civil Action No. <u>17-cv-2458</u> |
| |) | | |
| OFFICE OF MANAGEMENT AND BUDGET, et al., |) | | |
| |) | | |
| |) | | |
| Defendant |) | | |

CERTIFICATE RULE LCvR 26.1

I, the undersigned, counsel of record for HR Policy Association certify that to the best of my knowledge and belief, the following are parent companies, subsidiaries or affiliates of HR Policy Association which have any outstanding securities in the hands of the public:

None.

These representations are made in order that judges of this court may determine the need for recusal.

Attorney of Record

DC Bar No. 103127
BAR IDENTIFICATION NO.

Signature

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Print Name

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Washington, DC 20004
City State Zip Code

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Phone Number

EXHIBIT 4

United States District Court For the District of Columbia

| | | |
|--------------------------|---|------------------------------------|
| NATIONAL WOMEN'S LAW |) | |
| CENTER, et al. |) | |
| |) | |
| |) | |
| vs |) | Civil Action No. <u>17-cv-2458</u> |
| |) | |
| Plaintiff |) | |
| |) | |
| OFFICE OF MANAGEMENT AND |) | |
| BUDGET, et al., |) | |
| |) | |
| |) | |
| Defendant |) | |

CERTIFICATE RULE LCvR 26.1

I, the undersigned, counsel of record for Associated Builders and Contractors certify that to the best of my knowledge and belief, the following are parent companies, subsidiaries or affiliates of Associated Builders and Contractors which have any outstanding securities in the hands of the public:

None.

These representations are made in order that judges of this court may determine the need for recusal.

Attorney of Record

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Zip Code

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BAR IDENTIFICATION NO.

EXHIBIT 5

United States District Court For the District of Columbia

| | | | |
|--|---|-----------|------------------------------------|
| NATIONAL WOMEN'S LAW CENTER, et al. |) | | |
| |) | | |
| |) | | |
| vs |) | Plaintiff | Civil Action No. <u>17-cv-2458</u> |
| |) | | |
| OFFICE OF MANAGEMENT AND BUDGET, et al., |) | | |
| |) | | |
| |) | | |
| Defendant |) | | |

CERTIFICATE RULE LCvR 26.1

I, the undersigned, counsel of record for Associated General Contractors of America certify that to the best of my knowledge and belief, the following are parent companies, subsidiaries or affiliates of Associated General Contractors of America which have any outstanding securities in the hands of the public:

None.

These representations are made in order that judges of this court may determine the need for recusal.

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State

Zip Code

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Phone Number

DC Bar No. 103127
BAR IDENTIFICATION NO.

EXHIBIT 6

United States District Court For the District of Columbia

NATIONAL WOMEN'S LAW
CENTER, et al.

vs
Plaintiff

OFFICE OF MANAGEMENT AND
BUDGET, et al.,

Defendant

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Civil Action No. 17-cv-2458

CERTIFICATE RULE LCvR 26.1

I, the undersigned, counsel of record for Center for Workplace Compliance certify that to the best of my knowledge and belief, the following are parent companies, subsidiaries or affiliates of Center for Workplace Compliance which have any outstanding securities in the hands of the public:

None.

These representations are made in order that judges of this court may determine the need for recusal.

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BAR IDENTIFICATION NO.

EXHIBIT 7

United States District Court For the District of Columbia

| | | | |
|--|---|-----------|------------------------------------|
| NATIONAL WOMEN'S LAW CENTER, et al. |) | | |
| |) | | |
| |) | | |
| vs |) | Plaintiff | Civil Action No. <u>17-cv-2458</u> |
| |) | | |
| OFFICE OF MANAGEMENT AND BUDGET, et al., |) | | |
| |) | | |
| |) | | |
| Defendant |) | | |

CERTIFICATE RULE LCvR 26.1

I, the undersigned, counsel of record for Institute for Workplace Equality certify that to the best of my knowledge and belief, the following are parent companies, subsidiaries or affiliates of Institute for Workplace Equality which have any outstanding securities in the hands of the public:

None.

These representations are made in order that judges of this court may determine the need for recusal.

Attorney of Record

DC Bar No. 103127
BAR IDENTIFICATION NO.

Signature

Lawrence Z. Lorber
Print Name

975 F St. NW
Address

Washington, DC 20004
City State Zip Code

202-828-5341
Phone Number

EXHIBIT 8

United States District Court For the District of Columbia

| | | |
|--------------------------|---|------------------------------------|
| NATIONAL WOMEN'S LAW |) | |
| CENTER, et al. |) | |
| |) | |
| |) | |
| vs |) | Civil Action No. <u>17-cv-2458</u> |
| |) | |
| Plaintiff |) | |
| |) | |
| OFFICE OF MANAGEMENT AND |) | |
| BUDGET, et al. |) | |
| |) | |
| |) | |
| Defendant |) | |

CERTIFICATE RULE LCvR 26.1

I, the undersigned, counsel of record for National Association of Manufacturers certify that to the best of my knowledge and belief, the following are parent companies, subsidiaries or affiliates of National Association of Manufacturers which have any outstanding securities in the hands of the public:

None.

These representations are made in order that judges of this court may determine the need for recusal.

Attorney of Record

Signature

Lawrence Z. Lorber
Print Name

Address

975 F. St. BW
Address

City State Zip Code

Washington, DC 20004
City State Zip Code

Phone Number

202-828-5341
Phone Number

DC Bar No. 103127
BAR IDENTIFICATION NO.

EXHIBIT 9

United States District Court For the District of Columbia

| | | |
|--------------------------|---|------------------------------------|
| NATIONAL WOMEN'S LAW |) | |
| CENTER, et al. |) | |
| |) | |
| |) | |
| vs |) | Civil Action No. <u>17-cv-2458</u> |
| |) | |
| Plaintiff |) | |
| |) | |
| OFFICE OF MANAGEMENT AND |) | |
| BUDGET, et al., |) | |
| |) | |
| |) | |
| Defendant |) | |

CERTIFICATE RULE LCvR 26.1

I, the undersigned, counsel of record for National Federation of Independent Business certify that to the best of my knowledge and belief, the following are parent companies, subsidiaries or affiliates of National Federation of Independent Business which have any outstanding securities in the hands of the public:

None.

These representations are made in order that judges of this court may determine the need for recusal.

Attorney of Record

Signature

Lawrence Z. Lorber
Print Name

Print Name

975 F St. NW
Address

Address

Washington, DC 20004
City State Zip Code

City State Zip Code

202-828-5341
Phone Number

Phone Number

DC Bar No. 103127

BAR IDENTIFICATION NO.

EXHIBIT 10

United States District Court For the District of Columbia

| | | | |
|--|---|-----------|------------------------------------|
| NATIONAL WOMEN'S LAW CENTER, et al. |) | | |
| |) | | |
| |) | | |
| vs |) | Plaintiff | Civil Action No. <u>17-cv-2458</u> |
| |) | | |
| OFFICE OF MANAGEMENT AND BUDGET, et al., |) | | |
| |) | | |
| |) | | |
| Defendant |) | | |

CERTIFICATE RULE LCvR 26.1

I, the undersigned, counsel of record for National Retail Federation certify that to the best of my knowledge and belief, the following are parent companies, subsidiaries or affiliates of National Retail Federation which have any outstanding securities in the hands of the public:

None.

These representations are made in order that judges of this court may determine the need for recusal.

Attorney of Record

Signature

Lawrence Z. Lorber

Print Name

975 F St. NW

Address

Washington, DC 20004

City

State

Zip Code

202-828-5341

Phone Number

DC Bar No. 103127
BAR IDENTIFICATION NO.

EXHIBIT 11

United States District Court For the District of Columbia

| | | | |
|--|---|-----------|------------------------------------|
| NATIONAL WOMEN'S LAW CENTER, et al. |) | | |
| |) | | |
| |) | | |
| vs |) | Plaintiff | Civil Action No. <u>17-cv-2458</u> |
| |) | | |
| OFFICE OF MANAGEMENT AND BUDGET, et al., |) | | |
| |) | | |
| |) | | |
| Defendant |) | | |

CERTIFICATE RULE LCvR 26.1

I, the undersigned, counsel of record for Restaurant Law Center certify that to the best of my knowledge and belief, the following are parent companies, subsidiaries or affiliates of Restaurant Law Center which have any outstanding securities in the hands of the public:

None.

These representations are made in order that judges of this court may determine the need for recusal.

Attorney of Record

Signature

Lawrence Z. Lorber

Print Name

975 F St. NW

Address

Washington, DC 20004

City

State

Zip Code

202-828-5341

Phone Number

DC Bar No. 103127
BAR IDENTIFICATION NO.

EXHIBIT 12

United States District Court For the District of Columbia

| | | | |
|---|---|-----------|------------------------------------|
| NATIONAL WOMEN'S LAW CENTER, et al. |) | | |
| |) | | |
| |) | | |
| vs |) | Plaintiff | Civil Action No. <u>17-cv-2458</u> |
| |) | | |
| OFFICE OF MANAGEMENT AND BUDGET, et al. |) | | |
| |) | | |
| |) | | |
| Defendant |) | | |

CERTIFICATE RULE LCvR 26.1

I, the undersigned, counsel of record for Retail Litigation Center, Inc. certify that to the best of my knowledge and belief, the following are parent companies, subsidiaries or affiliates of Retail Litigation Center, Inc. which have any outstanding securities in the hands of the public:

None.

These representations are made in order that judges of this court may determine the need for recusal.

Attorney of Record

Signature

Lawrence Z. Lorber

Print Name

975 F. St. BW

Address

Washington, DC 20004

City

State

Zip Code

202-828-5341

Phone Number

DC Bar No. 103127
BAR IDENTIFICATION NO.

EXHIBIT 13

United States District Court For the District of Columbia

| | | | |
|--|---|-----------|------------------------------------|
| NATIONAL WOMEN'S LAW CENTER, et al. |) | | |
| |) | | |
| |) | | |
| vs |) | Plaintiff | Civil Action No. <u>17-cv-2458</u> |
| |) | | |
| OFFICE OF MANAGEMENT AND BUDGET, et al., |) | | |
| |) | | |
| |) | | |
| Defendant |) | | |

CERTIFICATE RULE LCvR 26.1

I, the undersigned, counsel of record for Society for Human Resource Management certify that to the best of my knowledge and belief, the following are parent companies, subsidiaries or affiliates of Society for Human Resource Management which have any outstanding securities in the hands of the public:

None.

These representations are made in order that judges of this court may determine the need for recusal.

Attorney of Record

Signature

Lawrence Z. Lorber
Print Name

975 F St. NW
Address

Washington, DC 20004
City State Zip Code

202-828-5341
Phone Number

DC Bar No. 103127
BAR IDENTIFICATION NO.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

NATIONAL WOMEN’S LAW CENTER,)
et al.,)

Plaintiffs,)

v.)

OFFICE OF MANAGEMENT AND)
BUDGET, *et al.*,)

Defendants.)

Case No. 17-cv-2458 (TSC)

[PROPOSED] ORDER

Upon consideration of the Motion for Leave to Participate as Amici Curiae by movants Chamber of Commerce of the United States of America), the HR Policy Association, Associated Builders and Contractors, Associated General Contractors of America, the Center for Workplace Compliance, The Institute for Workplace Equality, the National Association of Manufacturers, National Federation of Independent Business, National Retail Federation, the Restaurant Law Center, Retail Litigation Center, Inc., and the Society for Human Resource Management, any opposition thereto, and the record herein, it is hereby

ORDERED that the motion is hereby GRANTED; and it is further

ORDERED the Court shall accept and file Movants Amici brief which is attached to the Motion for Leave, and shall take into consideration any or all information provided therein.

Dated: _____

TANYA S. CHUTKAN
United States District Judge