No. 12-1226

IN THE

Supreme Court of the United States

PEGGY YOUNG,

Petitioner,

v.

UNITED PARCEL SERVICE, INC.,

Respondent.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

BRIEF OF THE LEADERSHIP CONFERENCE ON CIVIL AND HUMAN RIGHTS AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF AMICUS CURIAE[1]

Amicus curiae, The Leadership Conference on Civil and Human Rights ("The Leadership Conference"), is a coalition of more than 200 organizations committed to the protection of civil and human rights in the United States. Founded in 1950 by three legendary leaders of the civil rights movement, The Leadership Conference is the nation's oldest, largest, and most diverse civil and human rights coalition. Its member organizations represent people of all races, ethnicities and sexual orientations. The Leadership Conference works to build an America that is inclusive and as good as its ideals. For more than half a century, The Leadership Conference, based in Washington, D.C., has led the fight for civil and human rights by advocating for federal legislation and policy, securing passage of every major civil rights statute since the Civil Rights Act of 1957. The Leadership Conference was a leader in the efforts to pass both the Americans with Disabilities Act ("ADA") of 1990 and the Americans with Disabilities Act Amendments Act ("ADAAA") of 2008.

The Leadership Conference believes that all workers deserve to have a workplace free from discrimination and to that end seeks to ensure that the equal opportunity and fairness protections of the Pregnancy Discrimination Act ("PDA") are afforded to all pregnant workers, particularly low-income

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[1] The parties in this case have consented to the filing of this brief. Pursuant to Rule 37.6, the *amicus curiae* states that no counsel for a party has authored this brief, in whole or in part, and no entity, other than the *amicus curiae*, its members or its counsel, has made a monetary contribution to the preparation or submission of this brief.

women and women of color who would be disproportionately impacted by an interpretation of the PDA that fails to protect them from job loss due to pregnancy. The Leadership Conference believes that an interpretation of the PDA that permits employers to refuse to accommodate pregnant workers while providing accommodations to others similar in their ability or inability to work jeopardizes the important legal protections guaranteed to pregnant women under the PDA and the ADA.

BACKGROUND

Petitioner Peggy Young began working for Respondent United Parcel Service, Inc. ("UPS") in October 1999, when she was 27 years old. *Young* v. *United Parcel Service, Inc.*, No. DKC 08-2586, 2011 WL 665321, *1 (D. Md. Feb. 14, 2011), *aff'd*, 707 F.3d 437 (4th Cir. 2013). In 2002, Ms. Young began working as a part-time early-morning air driver. *Id.* Although the job description required the ability to "'lift, lower, push, pull, leverage and manipulate' letters and packages 'weighing up to 70 pounds,'" the need to maneuver packages even close to 70 pounds rarely arose. *Id.*

After working for UPS for six years, Ms. Young and her husband decided to have a third child and in July 2006, she began an approved, unpaid leave to undergo in vitro fertilization and then became pregnant. *Young* v. *UPS*, 707 F.3d 437, 441 (4th Cir. 2013). Given difficulties with earlier pregnancies, Ms. Young got permission to extend her leave, as provided by the Family and Medical Leave Act ("FMLA"), to October 2006. *Young*, 2011 WL 665321 at *6.

In October 2006, Ms. Young informed her supervisor that she was ready to return to work, but that, according to her doctor, her pregnancy prevented her from lifting more than 20 pounds. *Id.* at *5. Ms. Young's supervisor informed her that—unlike employees with on-the-job injuries, ADA-qualifying disabilities, or who had lost their Department of Transportation ("DOT") certification due to on-the-job or off-the-job conditions, for whom UPS sometimes made "light duty" work accommodations—the company refused to provide such accommodations for pregnancy-related needs. *Id.* at *5. Ms. Young explained that she needed the income and benefits provided by her employment and that she wanted to work. Response in Opposition to Motion for Summary Judgment, Statement of Peggy Young at 4, *Young*, 2011 WL 665321, ECF 76-16 (hereinafter "Young Stmt."). Ms. Young's supervisor advised that Ms. Young was ineligible for any accommodation unless she could provide a doctor's note saying that she was completely disabled. *Young*, 2011 WL 665321 at *6. Ms. Young never made such a request because she believed that she was physically capable of working and wanted to do so. Young Stmt. at 4. In November 2006, a senior manager informed Ms. Young that she should not return to work until she was no longer pregnant, because she was "too much of a liability." *Young*, 2011 WL 665321 at *6. As a result, Ms. Young lost her income and medical coverage. *Id.*

On April 29, 2007, Ms. Young gave birth to her daughter, and returned to work at UPS two months later, on June 26, 2007. *Id.* During Ms. Young's forced absence from work, she received no pay or medical or pension benefits. *Id.*

Seeking a remedy for UPS's refusal to accommodate her pregnancy-related restrictions, and after exhausting her administrative remedies, Ms. Young filed suit in the United States District Court for the District of Maryland alleging, among other claims, violations of the PDA. *Id*. Ms. Young asserted that UPS's refusal to accommodate her pregnancy-related restrictions in the same way that UPS accommodated other employees similar in their ability or inability to work presented both direct and circumstantial evidence of discrimination under Title VII. The district court granted summary judgment in favor of UPS in February 2011. *Id*. at *9.

The United States Court of Appeals, Fourth Circuit affirmed, concluding that UPS had "crafted a pregnancy-blind policy," even though that very policy resulted in a pregnant Ms. Young being forced to leave her job without pay and medical benefits while other workers with similar limitations in ability to work not arising out of pregnancy were accommodated. 707 F.3d at 446. The court of appeals held that Ms. Young failed to identify an appropriate comparator under the *McDonnell Douglas* burden-shifting framework, summarily dismissing workers with an ADA-qualifying disability as comparators, on the ground that Ms. Young's limitation was "temporary and not a significant restriction on her ability to perform major life activities." 707 F.3d at 450. The court of appeals held that workers injured on the job and drivers who lost their DOT certification are similarly inapposite as comparators.

This Court granted Ms. Young's petition for a writ of certiorari on July 1, 2014.

SUMMARY OF ARGUMENT

The PDA mandates that employers must treat pregnant women "the same" as other employees "similar in their ability or inability to work." In absolving UPS of this obligation, the court of appeals' reading of the PDA was erroneous and must be reversed.

The court of appeals disregarded the plain language of the PDA, which defines the universe of similarly situated employees for assessing a PDA claim as other employees "similar in their ability or inability to work." Pregnancy Discrimination Act of 1978, 42 U.S.C. § 2000e(k) (2012). In failing to find direct evidence or a *prima facie* case of discrimination based on UPS's policy of accommodating employees injured on the job, ADA-qualifying employees, or employees decertified by the DOT, the court of appeals misapprehended the nature of the inquiry required by the PDA, which focuses on a pregnant woman's *ability* to work, not on the *cause* of the restriction. A plain reading of the statute, and of the Equal Employment Opportunity Commission ("EEOC") Guidelines interpreting the PDA, requires that the court of appeals' decision be reversed.

Moreover, in holding that Ms. Young failed to establish a *prima facie* case of discrimination, the court of appeals incorrectly held that ADA-qualifying employees could never be appropriate comparators for pregnant workers for purposes of a PDA claim. Such a categorical exclusion violates both the text and intent of the PDA. Indeed, courts of appeals have used individuals accommodated under the ADA as comparators in other employment discrimination contexts, relying on—as the PDA mandates—the nature of the accommodation needed

rather than the status of the individuals being accommodated.

Finally, this Court should reject the court of appeals' cramped and misguided reading of appropriate comparators under the PDA and instead defer to the EEOC's guidance on the identification of appropriate comparators for a PDA claim. As the agency charged with ensuring that employers adhere to Title VII's mandate, the EEOC has repeatedly implemented guidelines for the PDA that are consistent with a plain language interpretation of the PDA. Because the EEOC's guidance regarding the PDA is validly reasoned, thoroughly considered, and consistent with both the plain text of the statute and the EEOC's other statements on the PDA, this Court should reject the court of appeals' contrary reading of the PDA and defer to the EEOC's interpretation under this Court's decision in *Skidmore* v. *Swift & Co.*, 323 U.S. 134 (1944).

ARGUMENT

I. THE COURT OF APPEALS' DECISION CONFLICTS WITH THE PLAIN LANGUAGE AND CLEAR PURPOSE OF THE PREGNANCY DISCRIMINATION ACT.

The court of appeals erred in holding that Ms. Young could not use as a comparator a fellow employee accommodated under a UPS policy. Specifically, the court of appeals mistakenly concluded that: (1) UPS's practice of accommodating non-pregnant employees with similar work restrictions was not direct evidence of discrimination, and (2) pregnant employees cannot allege a *prima facie* case of sex discrimination by

using employees injured on the job, ADA-qualifying employees, or DOT-decertified employees as comparators under the *McDonnell Douglas* framework.[2] *Young*, 707 F.3d at 445-51. In so holding, the court of appeals disregarded the plain language of the PDA, which requires that, to prove a violation of the statute, a plaintiff need only identify other employees, similar in their ability to work, who were granted accommodations that were denied the pregnant employee.[3]

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[2] A plaintiff may make a disparate treatment claim under the PDA and Title VII by showing either direct evidence of discrimination or by proffering evidence sufficient to prove a *prima facie* case of discrimination under the *McDonnell Douglas* burden-shifting framework. *McDonnell Douglas Corp*. v. *Green*, 411 U.S. 792, 802 (1973). To make out a *prima facie* case of sex discrimination, a required element under *McDonnell Douglas*, a plaintiff must prove: "(1) membership in a protected class; (2) satisfactory job performance; (3) adverse employment action; and (4) that similarly situated employees outside the protected class received more favorable treatment." *Gerner* v. *C'nty of Chesterfield, VA*, 674 F.3d 264, 266 (4th Cir. 2012) (internal citations and punctuation omitted).

[3] A plaintiff who has established that an employer has failed to treat a pregnant woman the same as a non-pregnant employee similar in his or her ability or inability to work need not resort to the *McDonnell Douglas* framework to state a claim. Under either method of stating a claim—direct evidence or a *prima facie* case—the PDA establishes the class of employees to be compared to the pregnant woman making a claim. *See EEOC Enforcement Guidance: Pregnancy Discrimination & Related Issues,* Notice No. 915.003 at Sec. C. (July 14, 2014).

A. The Plain Language of the PDA Identifies the Appropriate Pool of Comparators for Pregnant Employees.

Passed in 1978 as an amendment to Title VII of the Civil Rights Act of 1964, the PDA expanded the definition of sex discrimination to include pregnancy and articulated that pregnant employees who are limited in their ability to work must be treated in the same manner as similarly situated non-pregnant employees with limitations. The statute's first clause included pregnancy claims within the ambit of sex discrimination under Title VII and the second clause set forth the pool of similar employees—or appropriate comparators—to evaluate whether a pregnant woman is being "treated the same" at work.

By the statute's plain terms, the test for a PDA claim is whether the non-pregnant employee who is accommodated is similar in his or her "ability to work," and not whether the pregnant employee's impairment derives from the same cause, or is expected to be of the same duration, or whether it affects the pregnant employee's abilities outside of work. Specifically, the PDA mandates that:

> women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, *as other persons not so affected but similar in their ability or inability to work*.

42 U.S.C. § 2000e(k) (emphasis added).

This Court has observed that the PDA "makes clear that it is discriminatory to treat pregnancy-related conditions less favorably than other medical conditions." *Newport News Shipbuilding & Dry Dock Co.* v. *EEOC*, 462 U.S. 669, 684 (1983). Likewise, this Court has acknowledged that the statute's second clause—setting forth the mandate that pregnant employees "be treated the same" as other employees "similar in their ability or inability to work"—"was intended . . . to illustrate *how* discrimination against pregnancy is to be remedied." *California Fed. Sav. & Loan Ass'n* v. *Guerra*, 479 U.S. 272, 285 (1987) (emphasis added). Applying this mandate, other courts have recognized that the comparator question in a PDA claim does not focus on the nature or cause of the employee's medical condition, but rather on how the condition affects the employee's ability to work. *See Ensley-Gaines* v. *Runyon*, 100 F.3d 1220, 1226 (6th Cir. 1996) ("[T]he PDA requires *only* that the employee be similarly situated in his or her 'ability or inability to work.'") (emphasis added).

The statute's language is simple and clear.[4] Where an employer accommodates a non-pregnant

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[4] The court of appeals stated that reading the PDA's first clause (explicitly stating that discrimination based on pregnancy constituted sex discrimination) and its second clause (mandating equal treatment for pregnant employees) together caused "confusion." *Young,* 707 F.3d at 447. Far from confusing, the two clauses are clear and unambiguous as to what Congress mandated, and work in tandem: the PDA's first clause brings pregnancy-related conditions under the protective aegis of Title VII and the second clause provides the standard of comparison to evaluate claims of discrimination. Indeed, the two-clause statutory structure used in the PDA is not unique in Title VII: the definition of "religion" under Title VII likewise contains a second clause that defines an

employee *similar in his or her ability or inability to work* to a pregnant employee, the employer must likewise accommodate the pregnant employee. This determination does not require any inquiry into the cause or basis for the need for an accommodation.

The court of appeals' contrary reading turns this plain language on its head. Indeed, its approach would effectively vitiate the PDA's protections for pregnant women in the workplace by irrationally narrowing the field of comparators. For example, because the court of appeals focused on the causes of the employees' limitations in ability or inability to work—*i.e.*, an on-the-job injury, an ADA-qualifying condition, or a DOT decertification—it concluded that the causes accommodated by UPS could not, by definition, be similar to pregnancy. However, the PDA must be read to accommodate pregnant employees within the context of the UPS policy. The PDA "makes clear that it is discriminatory to treat pregnancy-related conditions less favorably than other medical conditions." *Newport News*, 462 U.S. at 684. Following the court of appeals' reasoning to its logical conclusion means that the only appropriate comparators under the PDA are employees with a similar ability or inability to work as pregnant employees *where the ability or inability to work derives from the same cause,* that is, other pregnant employees. It cannot be the case that the PDA only protects pregnant employees to the extent other pregnant employees are accommodated. Such a reading would render the PDA toothless, contrary to its plain language and clear intent that pregnant employees be protected from discrimination.

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employer's obligation to make reasonable accommodations for an employee's religious observance. 42 U.S.C. § 2000e(j) (2012).

The court of appeals also wrongly concluded that granting Ms. Young's PDA claim would provide pregnant employees with "a preferential treatment mandate that Congress neither intended nor enacted," because, as the court explained, individuals with the same lifting restriction caused by "picking up his infant child" or working as a "volunteer firefighter would be ineligible for any accommodations." 707 F.3d at 448. The court of appeals' faulty reasoning misses a critical point. While the PDA may not provide pregnant women with "preferential" treatment, it does guarantee pregnant women *equal* treatment. The absence of such protections for other employees limited in their ability to work for various reasons is *no* basis to ignore the PDA's mandate.

In short, for the PDA's directive that pregnant workers must be treated the same as others "similar in their ability to inability to work" to have any meaning, it must require an employer to provide light duty work to a pregnant woman where the employer so provides for other non-pregnant employees similarly limited in their ability to work. The cause of the employee's limitation simply does not matter for this analysis, which is precisely what the PDA means when it mandates that employees should not be treated differently because they are pregnant.

B. The EEOC's Guidelines Support a Plain Reading of the Statute.

Further reinforcing the plain language reading of the PDA, the EEOC's Guidelines make clear that pregnant employees like Ms. Young should be accommodated where other employees with similar limitations are accommodated regardless of the cause of their limitations. As the agency primarily

responsible for ensuring that employers comply with Title VII's mandate, the EEOC speaks with unique authority and deep knowledge on the subject of Title VII.[5] As applicable here, following the enactment of the PDA in 1978, the EEOC issued "Guidelines on Discrimination Because of Sex" interpreting and explaining an employer's obligation under the PDA (the "EEOC's 1979 Guidelines" or the "1979 Guidelines"). 29 C.F.R. app. Pt. 1604 (1979), Questions and Answers on the Pregnancy Discrimination Act (the "App. to Pt. 1604"). The 1979 Guidelines highlight as the "basic principle of the Act" that "women affected by pregnancy and related conditions must be treated the same as other applicants and employees *on the basis of their ability or inability to work*." *Id.* (emphasis added).

The EEOC's 1979 Guidelines specifically describe an employer's obligation under the PDA to pregnant employees with lifting restrictions like Ms. Young. App. to Pt. 1604, question 5. The Guidelines state that "[i]f other employees temporarily unable to lift are relieved of these functions, pregnant employees also unable to lift must be temporarily relieved of the function." *Id.* The EEOC issued guidance restating this same interpretation in 1983 and again in 2014. *See* EEOC Compliance Manual ("EEOCCM") § 626.4: Right to Work, 2006 WL 4673391 (1983) (the "1983 Guidelines") ("[W]hen a woman employee is unable to perform some of the functions of her job, e.g., heavy lifting, because of pregnancy or a related

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[5] The EEOC is charged with enforcing federal laws designed to protect job applicants and employees from discrimination on the basis of race, color, religion, sex, national origin, age, disability or genetic information. *See* United States Equal Employment Opportunity Commission: Overview, *available at* http://www.eeoc.gov/eeoc/ (last visited Sept. 7, 2014).

condition, the employer may not deny her the opportunity to perform modified tasks or alternative assignments or to transfer to another available position if the employer provides such opportunities to employees who are temporarily disabled for other reasons."); EEOC Enforcement Guidance: Pregnancy Discrimination & Related Issues, Notice No. 915.003 (July 14, 2014) (the "2014 Guidelines"). The EEOC's guidance follows the statute's plain text that the appropriate basis for comparison is not the cause of the restriction (*i.e.*, pregnancy or on-the-job injury), but rather the impact of the cause on the employee's ability to perform her job (*i.e.*, a lifting restriction).

In the 2014 Guidelines, the EEOC restated its position, explicitly affirming that "an employer may not refuse to treat a pregnant worker the same as other employees who are similar in their ability or inability to work by relying on a policy that makes distinctions based on the source of an employee's limitations." *Id.* The 2014 Guidelines further provide that a pregnant woman can "establish a violation of the PDA by showing that she was denied light duty or other accommodations that were granted to other employees who are similar in their ability or inability to work." *Id.* The EEOC's guidance clarifies that "evidence that a pregnant employee was denied a light duty position provided to other employees" constitutes direct evidence of violation of the PDA.[6] *Id.*

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[6] Because this is direct evidence of a violation of the PDA, it is not necessary for plaintiffs with such evidence to engage in the *McDonnell Douglas* burden-shifting analysis. Nonetheless, if a plaintiff should choose to do so, the 2014 Guidelines make clear that "workers placed in light duty positions because they were injured on the job and/or because

The EEOC's 2014 Guidelines explicitly address the issue on review in this case and confirm that UPS's policy violates the PDA. *See id.* Although the district court and the court of appeals did not have the benefit of the 2014 Guidelines issued in July of this year, they merely reinforce the guidance advanced in 1979 and again in 1983. Each demonstrates the EEOC's full support for a plain text reading of the statute and appropriately guides the analysis of this Court.

C. The History of the PDA's Passage Supports a Plain Reading of the Statute.

The history of the PDA's passage further supports a plain reading of the statute.

Indisputably, Congress passed the PDA in response to *General Electric* v. *Gilbert*, in which this Court held that a company's disability plan that excluded pregnancy did not constitute sex discrimination under Title VII. 429 U.S. 125 (1976), *superseded by statute*, Pregnancy Discrimination Act of 1978, Pub. L. No. 95-955, 92 Stat. 2076, *as recognized in Newport News Shipbuilding & Dry Dock Co.* v. *EEOC*, 462 U.S. 669 (1983). The employer in *Gilbert* had denied compensation to

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they meet the definition of 'disability' under the ADA are appropriate comparators" in establishing discrimination under the *McDonnell Douglas* burden-shifting framework, and proof that another employee similarly situated on the basis of ability or inability to work was treated "differently or more favorably than the pregnant worker" can establish a *prima facie* case of discrimination. *See EEOC Enforcement Guidance: Pregnancy Discrimination & Related Issues,* Notice No. 915.003 (July 14, 2014).

pregnant employees for pregnancy-related absences, but provided compensation for absences of non-pregnant employees as a result of illness or injury. *429 U.S.* at 128-29. In rejecting the pregnant employees' Title VII claim, the Court held that a disability plan covering non-occupational sickness and injury but excluding sickness and injury arising from pregnancy did not violate Title VII because it was "gender neutral." *Id.* at 145-46. The Court also rejected the claim that a classification concerning pregnancy was necessarily a sex-based classification. *Id.* at 143-44. In the *Gilbert* Court's view, the employer's policy "merely remove[d] one physical condition . . . from the list of compensable disabilities," despite the fact that only one sex, women, could become pregnant. *Id.* (quoting *Geduldig* v. *Aiello*, 417 U.S. 484, 487-89 (1974)).

Congress responded to *Gilbert* by passing the PDA, establishing that the dispositive question in a pregnancy discrimination case is not whether the employer's policy is gender-neutral or pregnancy-blind, but rather, whether pregnant employees are treated equally to non-pregnant employees based on the employees' ability or inability to work. *See* S. Rep. No. 95-331, 95th Cong., 1st Sess. 3-4 (1977) ("Under this bill, the treatment of pregnant women in covered employment must focus not on their condition alone but on the actual effects of that condition on their ability to work."). Under the PDA, the fact that a company policy does not expressly treat pregnant women adversely does not absolve the company of its obligation to extend the same accommodations to pregnant workers as it provides to any non-pregnant employees similarly limited in their ability to work. The court of appeals thus inappropriately relied on UPS's superficially "pregnancy-blind" policies, akin to those at issue in *Gilbert*, in assessing whether Ms. Young was similar

in her ability to work as the employees UPS accommodated under those policies. This approach directly contradicts Congress' response to *Gilbert* in passing the PDA.

Policies that cause pregnant women to suffer job loss endanger the economic stability of a substantial number of American families, particularly low-income women and women of color who are disproportionately likely to head households and to work in low-wage jobs that may be physically demanding. *See* Advocacy Letter from Wade Henderson, President and CEO, & Nancy Zirkin, Executive Vice President, The Leadership Conference for Civil and Human Rights, to Member of the House of Representative (Aug. 6, 2014), *available at* http://www.civilrights.org/advocacy/letters/2014/support-pwfa.html. Indeed, the PDA provides critical protections for women and their families to ensure financial security during a woman's pregnancy. In passing the PDA, Congress recognized that "[m]any women disabled by pregnancy and childbirth will be forced to take leave without pay." *Id*. at 3. Noting that women comprised an increasing share of both the U.S. workforce and heads of household in 1978, Congress determined that "the resulting loss of income [would] have a devastating effect on the family unit." *Id.* Today, this potentially devastating impact on pregnant employees is compounded as women make up a significantly larger percentage of the workforce than in 1978. *See* Mitra Toosi, Bureau of Labor Statistics, *Labor Force Projections to 2020: A More Slowly Growing Workforce*, MONTHLY LAB. REV., Jan. 2012, at 43-64.

Like the plaintiffs in *Gilbert*, Ms. Young was forced to take unpaid leave from her job because of a restriction that would have entitled her to a

benefit—in this case light duty—under UPS's policy had the restriction been the result of an ADA-qualifying disability, an on-the-job injury or a DOT decertification, as opposed to pregnancy. *Young,* 707 F.3d at 441. This forced unpaid leave of absence deprived Ms. Young of income, medical insurance, and work experience. *See id*. at 439-41. The PDA was passed to prevent just this type of unequal access to employment benefits.

II. THE COURT OF APPEALS' DECISION IMPROPERLY EXCLUDED ADA-QUALIFYING EMPLOYEES AS APPROPRIATE COMPARATORS FOR A PDA CLAIM.

The court of appeals declined to consider employees accommodated under the ADA as comparators for Ms. Young's PDA claim on the ground that she "is dissimilar to an employee disabled under the ADA for the same reason she herself was not disabled: her lifting limitation was temporary and not a significant restriction on her ability to perform major life activities." 707 F.3d 437 at 450. But the court of appeals' reasoning improperly conflated coverage under the ADA with comparison to the ADA for purposes of a PDA claim. Ms. Young did not claim that her pregnancy was a disability covered by the ADA; rather, she argued—based on the PDA's text—that her employer's refusal to accommodate a pregnant worker on the basis of her inability to work violates the PDA's strict mandate when a non-pregnant ADA-qualifying employee "similar in . . . ability or inability to work" would be accommodated. 42 U.S.C. § 2000e(k). Not only is Ms. Young's position supported by the PDA's plain language, as discussed above, but it is also supported by the ADA's unambiguous purpose—to provide workers with

broad workplace protections from discrimination—and other court decisions considering employees accommodated pursuant to the ADA as appropriate comparators in employment discrimination cases. In short, the court of appeals erred by focusing its comparator analysis on a restrictive interpretation of the ADA's applicability, to the exclusion of the PDA's clear mandate, which requires courts simply to compare the accommodations provided pregnant women to those offered to other employees similar in their ability to work.

A. The ADA and ADAAA Were Enacted With the Intent to Broaden Workplace Protections.

The ADA, enacted in 1990, sought to improve protections for individuals with disabilities who had been subject to workplace discrimination. As its preamble states, "the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, and independent living, and economic self-sufficiency for such individuals." Americans with Disabilities Act, Pub. L. No. 101-336, 104 Stat 327 (1990), (current version at 42 U.S.C. § 12101 (2012)).

Similar to Congress's intent to clarify protections for pregnant women in passing the PDA, Congress passed the ADAAA eighteen years after the ADA's enactment in response to two court decisions that had narrowed the scope of the ADA. In *Sutton* v. *United Air Lines, Inc*., 527 U.S. 471 (1999) ("*Sutton*"), the Court limited the breadth of the ADA, deciding that whether or not someone has a "disability" under the ADA turns on whether corrective measures allow that individual to perform major life activities. In *Toyota Motor Mfg., Kentucky, Inc.* v. *Williams*, the Court further limited

the scope of the ADA's protections, ruling that "to be substantially limited in performing manual tasks, an individual must have an impairment that prevents or severely restricts the individual from doing activities that are of central importance to most people's daily lives" and that "the impairment's impact must also be permanent or long term." 534 U.S. 184, 198 (2002). In the "Findings and Purposes" section of the ADAAA, Congress unequivocally responded to both holdings, demonstrating its clear intent that the ADA be interpreted broadly. Pub. L. 110-325, § 2, 122 Stat. 3553 (2008), 42 U.S.C.A. § 12102 (West 2012) (containing uncodified Findings and Purposes of Americans with Disabilities Amendments Act of 2008). Congress specified that one of the purposes of the ADAAA was "to carry out the ADA's objectives of providing 'a clear and comprehensive national mandate for the elimination of discrimination' and 'clear, strong, consistent, enforceable standards addressing discrimination' by reinstating a broad scope of protection to be available under the ADA[.]" 42 U.S.C.A. § 12101 (b)(1) (West 2012). Accordingly, the ADAAA clarified that the definitions of "substantially limits" and "major life activities" were originally intended to have broader application than the Court ascribed to them in *Sutton* and *Toyota*. 42 U.S.C.A § 12101(b)(2), (4) (West 2012).

Although the ADAAA was not yet enacted when Ms. Young's case arose, its passage illustrates how the court of appeals' narrow interpretation of the PDA and exclusion of ADA-qualifying employees as comparators is particularly problematic.[7] As with

[7] Notably, subsequent to its decision in this case, the court of appeals has recognized that the ADAAA was "intended to liberalize the ADA 'in favor of broad coverage,'" holding that a

the history of the PDA, Congress's response to the Court's narrow reading of the ADA in prior cases was to broaden workplace protections by passing the ADAAA. Though the ADAAA does not apply to this case (*see infra* section II.C.), the fact of its passage should guide this Court away from a narrow application of the ADA that would limit the efficacy of the PDA. As explained above (*see supra* Section I.A.) if all ADA-qualifying employees are excluded as comparators in PDA claims because the cause of the inability to work is dissimilar to pregnancy, PDA claimants would be limited to using only other pregnant women as comparators, which defies the statutory text and could not be what Congress intended. Moreover, the perverse result flowing from the court of appeals' reasoning is amplified by the expansion of the pool of individuals potentially receiving accommodations under the ADAAA going forward. If no person accommodated under the ADA, including the ADAAA, can be a comparator for PDA claims, almost every available comparator would be eliminated, in effect isolating pregnant women from the protections of the PDA.

The Court should read the PDA and the ADA in concert. It can do so by following the PDA's plain language and permitting ADA-qualifying employees as comparators, a result which harmonizes Congress's repeated efforts to broaden the statute's text and workplace protections.

"temporary injury" could constitute a protected disability. *Summers* v. *Altarum Inst., Corp.*, 740 F.3d 325, 330 (4th Cir. 2014) (noting that "[a]lthough short-term impairments qualify as disabilities only if they are 'sufficiently severe'" under EEOC guidelines, a plaintiff with broken legs alleged a "serious impairment" "severe enough to qualify" as disabled).

B. Individuals Accommodated Pursuant to the ADA Have Been Used as Comparators in Other Employment Discrimination Contexts.

In contrast to the court of appeals, other courts have relied on persons receiving accommodations pursuant to the ADA as comparators in non-disability related discrimination cases. These cases demonstrate that the proper determination of a comparator in discrimination cases focuses on the needed accommodation, rather than the cause underlying the condition giving rise to that need. *See Fraternal Order of Police Newark Lodge No. 12* v. *City of Newark*, 170 F.3d 359, 365-66 (3d Cir. 1999) (Alito, J.) (hereinafter "*Fraternal Order of Police*"); *Riback* v. *Las Vegas Metro. Police Dep't*, No. 2:07-cv-1152, 2008 WL 3211279 at *4-6 (D. Nev. Aug. 6, 2008) (hereinafter "*Riback*").

In *Fraternal Order of Police*, for example, the court of appeals held that a police department's practice of permitting beards for medical reasons, purportedly adopted to be ADA-compliant, was appropriately taken into account in considering a free exercise claim based on the department's refusal to accommodate employees' request to wear beards in observance of their Muslim faith. 170 F.3d. at 365. The Newark Police Department had allowed exemptions to its "no beard" policy for medical reasons, but not for officers whose religious beliefs prohibited them from shaving their beards. *Id.* The court of appeals held that the medical exemptions were a valid basis of comparison for the employer's refusal to allow religious-based accommodations. *Id.* The court focused its inquiry on the type of accommodation needed—the ability to have a beard—and not on the similarity or

dissimilarity between the religiously observant plaintiffs and persons with disabilities. *See also Riback*, 2008 WL 3211279 at *4-6 (adopting reasoning of *Fraternal Order of Police* to find similar no-beard policy invalid under the free exercise clause and holding that same result would follow under Title VII analysis); *EEOC* v. *Abercrombie & Fitch Stores, Inc.*, 731 F.3d 1106, 1119 (10th Cir. 2013) (noting comparisons to ADA-based accommodations in religious discrimination cases).

The court of appeals' analysis in *Young* conflicts with the results and reasoning of these cases. The courts in both *Fraternal Order of Police* and *Riback* focused on the actual accommodation needed—as opposed to the condition from which that practical need arose—to identify comparison groups. In contrast, the court of appeals here focused on the dissimilarities between pregnancy and ADA-qualifying disabilities—the conditions that gave rise to a need for light duty—to exclude employees receiving ADA-based accommodations as comparators and allow only other pregnant women to serve as comparators for a PDA claim.

In so doing, the court of appeals misapprehended the purpose of identifying a comparator under the PDA specifically, and discrimination cases generally. The purpose of a comparator is to "eliminate confounding variables" in order to "isolate the critical independent variable," namely the presence of discrimination. *Humphries* v. *CBOCS West, Inc.*, 474 F.3d 387, 405 (7th Cir. 2007). The PDA further simplifies the comparator analysis by explicitly identifying the sole criteria for comparison: the pregnant employee's ability or inability to work. By analyzing the similarities between pregnancy and ADA-qualifying disabilities, the court of appeals inappropriately introduced a

confounding variable which only served to isolate pregnant workers into a class unto themselves. As demonstrated in *Fraternal Order of Police*, the court of appeals should have focused its inquiry on the specific accommodation that Ms. Young needed as a result of her restricted "ability to work"—rather than the nature of pregnancy itself—to identify employees with similar lifting restrictions receiving ADA-based accommodations as valid comparators under the PDA. Its failure to do so was error, and should be reversed.

C. Persons Receiving ADAAA-Based Accommodations Are Appropriate Comparators for a PDA Claim.

Although the ADAAA had not yet been enacted when Ms. Young's claim arose, the statute reaffirms Congress's original intent in enacting the ADA in 1990. As discussed *supra* Section II.A., the ADAAA restated the ADA's original promise, and "restore[d] the landmark Americans with Disabilities Act to the civil rights law it was meant to be." 154 Cong. Rec. S9626-01 (daily ed. Sept. 26, 2008) (statement of Sen. Harry Reid, Senate Majority Leader). By clarifying the definition of "disability" and "direct[ing] the courts toward a broader meaning and application of the ADA's definition of disability," the ADAAA codifies a broader understanding of which restrictions are entitled to accommodations under the ADA. *Id*.

The statute's potential impact on PDA cases since its enactment is significant. For plaintiffs bringing claims under the PDA since the ADAAA's passage, the statute provides a clarified and expanded pool of potential comparators. As the EEOC makes clear in its final regulations regarding the implementation of the ADAAA's equal

employment provisions, "someone with an impairment resulting in a 20-pound lifting restriction that lasts or is expected to last for several months is substantially limited in the major life activity of lifting, and need not also show that he is unable to perform activities of daily living that require lifting in order to be considered substantially limited" under the statute. 29 C.F.R. Pt. 1630, Appendix to Pt. 1630 (2014).

As a result, an employer would be obligated under the ADAAA to accommodate an employee, temporarily restricted from lifting twenty pounds for the duration of the impairment, and any accommodation provided as a result of that restriction could be considered a comparator for a PDA claim like that of Ms. Young, who was also restricted from lifting twenty pounds for a period shorter than six months. Were this Court to affirm the court of appeals' categorical rejection of employees receiving ADA-based accommodations as comparators based on the permanent and severe nature of the disabilities covered by the ADA at the time Ms. Young brought her claim, such a holding would be limited only to pre-ADAAA cases, as pregnant employees can now rely on the wide range of ADAAA-qualifying disabilities to demonstrate a similar ability to work as any employees receiving accommodations as a result.

III. THIS COURT SHOULD DEFER TO THE EEOC'S GUIDELINES WHEN INTERPRETING THE PDA.

Consistent with the statutory text, the EEOC's PDA Guidelines make clear that the appropriate basis for comparison in a PDA claim is not the cause of the restriction (*i.e.*, pregnancy or on-the-job injury) but rather the impact of the cause on the

employee's ability to perform her job (*i.e.*, a lifting restriction). *See* App. to Pt. 1604 (stating "[i]f other employees temporarily unable to lift are relieved of these functions, pregnant employees also unable to lift must be temporarily relieved of the function."); *see also* EEOCCM § 626.4 (1983); EEOC Enforcement Guidance: Pregnancy Discrimination & Related Issues, Notice No. 915.003 (July 14, 2014). The court of appeals' interpretation of the PDA directly conflicts with the EEOC's long-standing and well-reasoned interpretation of the PDA. *See supra* Section I.B. In reviewing the court of appeals' contrary interpretation, this Court should defer to the statute's plain language and the EEOC's consistent interpretation of the PDA, and reverse. *See Skidmore* v. *Swift & Co.*, 323 U.S. 134 (1944).

In *Skidmore* v. *Swift & Co*, this Court held that the opinions of an agency with the authority to regulate a particular area of the law are to be given "considerable and in some cases decisive" weight, given the agency's "more specialized experience and broader investigations and information than is likely to come to a judge in a particular case." 323 U.S. at 139-40. This "body of experience and informed judgment" imbues an agency's guidelines and policies with valuable insight, making the guidelines a source "to which courts and litigants may properly resort for guidance." *See id.* at 140. Indeed, *Skidmore* instructs courts "to defer to an agency interpretation of the statute that it administers if the agency has conducted a careful analysis of the statutory issue, if the agency's position has been consistent and reflects agency-wide policy, and if the agency's position constitutes a reasonable conclusion as to the proper construction of the statute, even if [the court] might not have adopted that construction without the

benefit of the agency's analysis." *Cathedral Candle Co.* v. *United States ITC*, 400 F.3d 1352, 1366 (Fed. Cir. 2005).

Courts examining Title VII cases in which the EEOC has issued applicable guidance are not to decide *whether* to give deference under *Skidmore*. Rather, the inquiry is *how much* persuasive weight to afford the EEOC's position. In this determination, courts consider various factors, including "the thoroughness evident in [an agency's] consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control." *Skidmore*, 323 U.S. at 140. "The mix of factors, once assayed, either contributes to or detracts from the power of an agency's interpretation to persuade." *Doe* v. *Leavitt*, 552 F.3d 75, 81 (1st Cir. 2009) (citing *Skidmore*, 323 U.S. at 140).

Accordingly, because the EEOC has unique authority and knowledge on the subject of employment discrimination, this Court has long afforded the EEOC's Title VII guidelines deference under *Skidmore*. *See Nat'l R.R. Passenger Corp.* v. *Morgan*, 536 U.S. 101, 110 n.6 (2002) (holding that the EEOC's interpretation contained in its Compliance Manual is due *Skidmore* deference); *EEOC* v. *Arabian American Oil Co.*, 499 U.S. 244, 257 (1991) (citing the *Skidmore* standard as the appropriate level of deference for EEOC guidelines and engaging in analysis under *Skidmore*) (overruled on other grounds).

This Court likewise should defer to the EEOC's interpretation of the PDA in this case.[8] Specifically, under the EEOC Guidelines, an appropriate comparator for a pregnant employee with work restrictions need not be similar to the pregnant employee in all respects; rather, the similarity requirement under the PDA is satisfied by drawing a comparison to an employee similar in his or her "ability or inability to work." *See supra* Section I.B. Because the EEOC's Guidelines are validly reasoned, thoroughly considered and consistent with the EEOC's other interpretations of the PDA, *Skidmore* mandates deference to this interpretation.

A. The EEOC's PDA Guidelines Are Validly Reasoned.

A validly reasoned agency interpretation is afforded significant weight under *Skidmore*. *See* 323 U.S. at 140. Interpretations that are consistent with the statute and legislative intent are afforded significant deference. *See Kasten* v. *Saint-Gobain Performance Plastics Corp.*, 131 S. Ct. 1325, 1335 (2011) ("These agency views are reasonable. They are consistent with the Act.") (holding that the EEOC's interpretation of a statute "add[ed] force to [the Court's] conclusion" because it was reasonable);

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[8] Although the lower courts lacked the opportunity to consider the 2014 Guidelines because they were issued in July of this year, the 1979 and 1983 Guidelines provide ample support for a plain text reading and the lower courts should have deferred to the EEOC's interpretation under those Guidelines. To the extent this Court does not reverse the court of appeals' decision and requires further findings regarding the EEOC's most recent interpretation, it should remand this case to the lower court for consideration of the EEOC's 2014 Guidelines.

Fed. Express Corp. v. *Holowecki*, 552 U.S. 389, 401-02 (2008) (holding that deference to an EEOC interpretation regarding the type of filing that constituted a "charge" under the Age Discrimination in Employment Act of 1967 was appropriate under *Skidmore* in part because it was consistent with "Congress' expressed desire that the EEOC act as an information provider and try to settle employment disputes through informal means.").

As noted in section I.B., the EEOC's statements interpreting the PDA are consistent with the statute's plain language. By merely requiring as a comparator a non-pregnant employee with similar work restrictions (and *not* a non-pregnant employee whose restriction is caused by a similar *condition*), the EEOC Guidelines give force to the PDA's plain language requirement that pregnant employees are accommodated in the *same* manner as non-pregnant employees similar in their "ability or inability to work." *See supra* Section I.B.[9]

The EEOC's interpretation also is consistent with this Court's prior interpretation of the PDA. *California Fed. Sav. & Loan Ass'n* v. *Guerra*, 479 U.S. 272, 285 (1987) ("Congress intended the PDA to be a floor beneath which pregnancy disability benefits may not drop—not a ceiling above which they may not rise.") (internal citations omitted); *see also Ensley-Gaines,* 100 F.3d at 1226 ("While Title VII generally requires that a plaintiff demonstrate

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[9] This interpretation also is supported by the legislative history of the PDA, which states that "the treatment of pregnant *women* in covered employment must focus not on their condition alone but on the actual effects of that condition on their ability to work." S. Rep. No. 95-331 at 4; *see supra* Section I.A.

that the employee who received more favorable treatment be similarly situated 'in all respects,' . . . the PDA requires only that the employee be similarly situated in his or her '*ability or inability to work*.'")(emphasis added).

Because the EEOC's interpretation of the PDA is consistently *supported* by the plain language of the Act, the Congressional intent behind the PDA, and this Court's interpretation and understanding of the Act, there can be no doubt that the EEOC Guidelines are validly reasoned.

B. The EEOC's PDA Guidelines Are Consistent With Earlier and Later Agency Pronouncements.

An agency's consistency in its interpretation of a statute entitles it to significant deference. *See Skidmore*, 323 U.S. at 140; *United States* v. *Mead Corp.*, 533 U.S. 218, 228 (U.S. 2001) (courts consider the "consistency" of an agency's position in evaluating its persuasiveness); *Good Samaritan Hospital* v. *Shalala*, 508 U.S. 402, 417 (1993) ("[T]he consistency of an agency's position is a factor in assessing the weight that position is due."). The EEOC has maintained its PDA guidelines for thirty-five years. *See* App. to Pt. 1604. Utilizing these guidelines, the EEOC has also maintained a consistent position in litigation for decades. *See EEOC* v. *Horizon/CMS Healthcare Corp.*, 220 F.3d 1184 (10th Cir. 2000) (EEOC arguing that an employer violated the PDA by providing accommodations to employees injured in the work place and employees with temporary injuries or illnesses incurred outside the workplace but not to pregnant woman).

Moreover, the 1979 Guidelines are consistent with the EEOC's statements issued in the decades after the PDA took effect. The EEOC interpreted the PDA in the same manner in its 1983 Compliance Manual. *See* EEOCCM § 626.4 (1983) ("[W]hen a woman employee is unable to perform some of the function of her job, e.g., heavy lifting, because of pregnancy or a related condition, the employer may not deny her the opportunity to perform modified tasks or alternative assignments or to transfer to another available position if the employer provides such opportunities to employees who are temporarily disabled for other reasons."). And most recently, the EEOC's 2014 PDA guidelines maintain the EEOC's position that the appropriate comparator for a pregnant woman is an accommodated employee similar *in his or her ability to work*. EEOC Enforcement Guidance: Pregnancy Discrimination & Related Issues, Notice No. 915.003 (July 14, 2014) ("2014 Guidelines").

The 2014 Guidelines were issued following a February 2012 hearing at which the Commission heard from "a number of witnesses regarding . . . the need for updated guidance to make such protections clear to both employees and employers." Chai R. Feldblum, *Statement of Comm'r Chai R. Feldblum on Approval of the Enforcement Guidance on Pregnancy Discrimination and Related Issues* (July 14, 2014). Like the 1979 guidelines, the 2014 Guidelines make clear that a comparison on the basis of ability or inability to work in the context of a lifting restriction requires a comparison not of the *reason* for the lifting restriction but rather the lifting restriction *itself*. *See* 2014 Guidelines at 8. ("[S]omeone who, because of a back impairment, has a 20-pound lifting restriction that lasts for several months . . . would be an appropriate comparator for PDA purposes to a woman who has a similar

restriction due to pregnancy."); *see also id.* at 12 ("an employer cannot lawfully deny or restrict light duty based on the source of a pregnant employee's limitation"). Not only are the 2014 Guidelines consistent with the earlier 1979 and 1983 Guidelines, Commissioner Chai R. Feldblum has stated that they also are consistent with the EEOC's position in the Commission's other employment discrimination guidance materials. *Statement of Comm'r Chai R. Feldblum* at 2.

Because the EEOC has maintained remarkable consistency in its guidelines from the enactment of the PDA until today, this Court should regard the EEOC's Guidelines as highly persuasive authority. For this additional reason, this Court should reverse the decision of the court of appeals.

* * *

The PDA was enacted to provide pregnant women with protection against workplace discrimination by mandating that pregnancy discrimination is a type of sex discrimination under Title VII and by providing employers and courts with a pool of appropriate comparators to evaluate such claims. That pool is employees similar in their ability to work. The plain language of the PDA makes clear that the relevant inquiry in a PDA claim relates to the employees' work restrictions, not the causes of those restrictions. This interpretation is further supported by the unwavering guidance of the EEOC, the federal agency primarily responsible for the enforcement of Title VII.

In categorically excluding three groups of comparators on the ground that Ms. Young's restriction did not arise in the same manner as

those restrictions accommodated by her employer, the court of appeals effectively gutted the PDA by limiting the pool of comparators for a PDA claim to only other pregnant women. Such a reading is contrary to the plain language and purpose of the PDA to provide protection to pregnant women in the workplace. This Court should reverse.

CONCLUSION

For all of the above reasons, the judgment of the court of appeals should be reversed.

Respectfully submitted,

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Appendix

Coalition Members of The Leadership Conference on Civil and Human Rights

9to5, National Association of Working Women
A. Philip Randolph Institute (APRI)
AARP
AAUW (formerly known as the American Association of University Women)
Advancement Project
African Methodist Episcopal Church (AME Church)
Alaska Federation of Natives (AFN)
Alliance for Retired Americans
Alpha Kappa Alpha Sorority, Inc.
Alpha Phi Alpha Fraternity, Inc.
American-Arab Anti-Discrimination Committee (ADC)
American Association for Access, Equity and Diversity (AAAED)
American Association of Colleges for Teacher Education
American Association of People with Disabilities (AAPD)
American Baptist Home Mission Societies,
American Baptist Churches USA
American Civil Liberties Union (ACLU)
American Council of the Blind (ACB)
American Ethical Union (AEU)
American Federation of Government Employees, AFL-CIO (AFGE)
American Federation of Labor and Industrial Organizations (AFL-CIO)
American Federation of State, County & Municipal Employees, AFL-CIO (AFSCME)
American Federation of Teachers, AFL-CIO (AFT)
American Friends Service Committee (AFSC)
American Islamic Congress (AIC)

American Jewish Committee (AJC)
American Nurses Association (ANA)
American Postal Workers Union, AFL-CIO (APWU)
American Society for Public Administration (ASPA)
American Speech-Language-Hearing Association (ASHA)
Americans for Democratic Action (ADA)
Americans United for Separation of Church and State
Amnesty International USA
The Andrew Goodman Foundation
Anti-Defamation League (ADL)
Appleseed
The Arc
Asian Americans Advancing Justice | AAJC
Asian Pacific American Labor Alliance, AFL-CIO (APALA)
Association for Education and Rehabilitation of the Blind and Visually Impaired. (AER)
The Association of Junior Leagues International Inc. (AJLI)
The Association of University Centers on Disabilities (AUCD)
Bend the Arc
B'nai B'rith International (BBI)
Brennan Center for Justice at New York University School of Law
Building & Construction Trades Department, AFL-CIO (BCTD)
Center for Community Change (CCC)
Center for Responsible Lending (CRL)
Center for Social Inclusion
Center for Women Policy Studies
Children's Defense Fund (CDF)
Church of the Brethren - World Ministries Commission
Church Women United (CWU)
Coalition of Black Trade Unionists (CBTU)

Coalition on Human Needs
Common Cause
Communications Workers of America, AFL-CIO, CLC (CWA)
Community Action Partnership
Community Transportation Association of America (CTAA)
Compassion & Choices
DC Vote
Delta Sigma Theta Sorority, Inc.
DEMOS: A Network for Ideas & Action
Disability Rights Education and Defense Fund (DREDF)
Disability Rights Legal Center
Division of Homeland Ministries - Christian Church (Disciples of Christ)
Epilepsy Foundation of America
Episcopal Church - Public Affairs Office
Equal Justice Society
Evangelical Lutheran Church in America (ELCA)
FairVote
Families USA
Federally Employed Women (FEW)
Feminist Majority
Friends Committee on National Legislation (FCNL)
Gay, Lesbian and Straight Education Network (GLSEN)
Global Rights
Glass, Molders, Pottery, Plastics & Allied Workers International Union (GMP)
Hip Hop Caucus
Human Rights Campaign (HRC)
Human Rights First (HRF)
Immigration Equality
Improved Benevolent and Protective Order of Elks of the World
International Association of Machinists and Aerospace Workers (IAM)

International Association of Official Human Rights Agencies (IAOHRA)
International Brotherhood of Teamsters
International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW)
Iota Phi Lambda Sorority, Inc.
Japanese American Citizens League (JACL)
Jewish Council for Public Affairs (JCPA)
Jewish Labor Committee (JLC)
Jewish Women International (JWI)
Judge David L. Bazelon Center for Mental Health Law (Bazelon Center)
Kappa Alpha Psi Fraternity, Inc.
Labor Council for Latin American Advancement (LCLAA)
Laborers' International Union of North America (LIUNA)
Lambda Legal
LatinoJustice PRLDEF
Lawyers' Committee for Civil Rights Under Law
League of United Latin American Citizens (LULAC)
League of Women Voters of The United States (LWV)
Legal Aid Society – Employment Law Center (LAS-ELC)
Legal Momentum
Mashantucket Pequot Tribal Nation
Matthew Shepard Foundation
Mexican American Legal Defense and Educational Fund (MALDEF)
Muslim Advocates
NA'AMAT USA
NAACP Legal Defense and Educational Fund, Inc. (LDF)
NALEO Educational Fund
National Alliance of Postal & Federal Employees (NAPFE)

National Association for Equal Opportunity in Higher Education (NAFEO)
National Association for the Advancement of Colored People (NAACP)
The National Association of Colored Women's Clubs, Inc. (NACWC)
National Association of Community Health Centers (NACHC)
National Association of Consumer Advocates (NACA)
National Association of Human Rights Workers (NAHRW)
National Association of Latino Elected and Appointed Officials (NALEO)
National Association of Negro Business & Professional Women's Clubs, Inc. (NANBPWC)
National Association of Neighborhoods (NAN)
National Association of Social Workers (NASW)
National Bar Association (NBA)
National Black Caucus of State Legislators (NBCSL)
National Black Justice Coalition (NBJC)
National Center for Lesbian Rights
National Center for Transgender Equality (NCTE)
The National Center on Time & Learning
National Coalition for Asian Pacific American Community Development (National CAPACD)
National Coalition for the Homeless (NCH)
National Coalition on Black Civic Participation (NCBCP)
National Coalition to Abolish the Death Penalty (NCADP)
National Committee on Pay Equity (NCPE)
National Committee to Preserve Social Security & Medicare
National Community Reinvestment Coalition (NCRC)

The National Conference for Community and Justice
National Conference of Black Mayors, Inc. (NCBM)
National Congress for Puerto Rican Rights (NCPRR)
National Congress of American Indians (NCAI)
National Consumer Law Center (NCLC)
National Council of Churches of Christ in the U.S.(NCC)
National Council of Jewish Women (NCJW)
National Council of La Raza (NCLR)
National Council of Negro Women (NCNW)
National Council on Independent Living (NCIL)
National Disability Rights Network (NDRN)
National Education Association (NEA)
National Employment Lawyers Association (NELA)
National Fair Housing Alliance (NFHA)
National Farmers Union (NFU)
National Federation of Filipino American Associations (NaFFAA)
National Gay and Lesbian Task Force
National Health Law Program (NHeLP)
National Hispanic Media Coalition (NHMC)
National Immigration Forum
National Immigration Law Center (NILC)
National Korean American Service and Education Consortium (NAKASEC)
National Latina Institute for Reproductive Health
National Lawyers Guild (NLG)
National Legal Aid & Defender Association (NLADA)
National Low Income Housing Coalition (NLIHC)
National Organization for Women (NOW)
National Partnership for Women & Families
National Parent Teacher Association (PTA)
National Senior Citizens Law Center
National Sorority of Phi Delta Kappa, Inc.
National Urban League (NUL)
National Women's Law Center (NWLC)

National Women's Political Caucus (NWPC)
Native American Rights Fund (NARF)
Newspaper Guild
OCA (formerly known as Organization of Chinese Americans)
ORT America
Office of Communication of the United Church of Christ, Inc. (OC Inc.)
Omega Psi Phi Fraternity, Inc.
Open Society Policy Center (OSPC)
Outserve-SLDN
Paralyzed Veterans of America (PVA)
Parents, Families and Friends of Lesbians and Gays (PFLAG)
People For the American Way (PFAW)
Phi Beta Sigma Fraternity, Inc.
Planned Parenthood Federation of America, Inc. (PPFA)
PolicyLink
Poverty & Race Research Action Council (PRRAC)
Presbyterian Church (U.S.A.)
Pride At Work
Prison Policy Initiative
Progressive National Baptist Convention (PNBC)
Project Vote
Public Advocates Inc.
Religious Action Center of Reform Judaism (RAC)
Retail, Wholesale and Department Store Union (RWDSU)
Secular Coalition for America
Service Employees International Union (SEIU)
The Sierra Club
Sigma Gamma Rho Sorority, Inc.
Sikh American Legal Defense and Education Fund (SALDEF)
Sikh Coalition
South Asian Americans Leading Together (SAALT)
Southeast Asia Resource Action Center (SEARAC)

Southern Christian Leadership Conference (SCLC)
Southern Poverty Law Center (SPLC)
TASH
Teach for America
TransAfrica Forum
Transportation Learning Center
Union for Reform Judaism (URJ)
Unitarian Universalist Association (UUA)
UNITE HERE!
United Brotherhood of Carpenters and Joiners of America (UBC)
United Church of Christ Justice and Witness Ministries (JWM)
United Farm Workers of America, AFL-CIO (UFW)
United Food and Commercial Workers International Union (UFCW)
United Methodist Church-General Board of Church & Society
United Mine Workers of America, AFL-CIO (UMWA)
United States International Council on Disabilities (USICD)
United States Students Association (USSA)
United Steelworkers of America (USW)
United Synagogue of Conservative Judaism (USCJ)
The Voter Participation Center
Wider Opportunities for Women
Workers Defense League
Workmen's Circle
YMCA USA
YWCA USA
Zeta Phi Beta Sorority, Inc.