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## **INTERESTS OF AMICI CURIAE**

*Amici* are a coalition of civil rights groups and non-profit organizations committed to preventing, combating, and redressing sex discrimination and protecting the equal rights of women in the United States, including by advocating for the elimination of the gender wage gap. Detailed statements of interest are included in the accompanying appendix.

## **SUMMARY OF ARGUMENT**

*Amici* submit this brief in support of Defendants' opposition to plaintiff's amended motion seeking to preliminarily enjoin on constitutional grounds the implementation of Philadelphia's wage equity ordinance prohibiting reliance on and inquiries about a prospective employee's wage history. Despite federal and state laws adopted over fifty years ago to eradicate the gender wage gap, a significant pay gap persists that harms women, especially women of color. Women continue to earn less than their male colleagues, resulting in a loss of income that burdens not only women, but families, communities, and the entire economy.

Recognizing existing laws have not succeeded in eliminating the wage gap and the ongoing harm the gap causes, Philadelphia City Council unanimously adopted and the mayor signed into law an ordinance intended to significantly reduce the gap. By prohibiting employers from using an applicant's prior pay to determine compensation, the ordinance targets a common employer practice that

perpetuates discriminatory pay based on the erroneous justification that prior pay accurately reflects the skills and experience of an applicant, untainted by discrimination. Philadelphia's wage equity ordinance is a rational legislative policy decision that is similar to well-established prohibitions on employer reliance on and inquiries about factors related to discrimination and does not harm businesses when alternative means of setting pay and obtaining relevant information are readily available. For these reasons, *amici* urge the Court to deny the defendant's amended motion for a preliminary injunction.

## ARGUMENT

### **I. Philadelphia's Ordinance is a Rational Legislative Policy Decision Like Many Longstanding Laws Regulating the Employment Relationship for the Purpose of Eliminating Discrimination.**

Employment policy decisions are the purview of the legislature. As the United States Supreme Court explained in *W. Coast Hotel Co. v. Parrish*, 300 U.S. 379, 393 (1937):

In dealing with the relation of employer and employed, the Legislature has necessarily a wide field of discretion in order that there may be suitable protection of health and safety, and that peace and good order may be promoted through regulations designed to insure wholesome conditions of work and freedom from oppression.

As exercises of the state or municipality's power, the legislature's decisions about whether and when to regulate the employment relationship receive deference so long as they bear a rational relationship to a legitimate governmental purpose. *See*,

*e.g. Hartman v. City of Allentown*, 880 A.2d 737, 743 (Pa. Commw. Ct. 2005); *Chicago, B. & Q.R. Co. v. McGuire*, 219 U.S. 549, 569 (1911); *Day-Brite Lighting Inc. v. State of Mo.*, 342 U.S. 421, 423 (1952) (describing legislatures’ “constitutional authority to experiment with new techniques” and ability to “within extremely broad limits control practices in the business-labor field”).

The Supreme Court of Pennsylvania has adhered to the proposition that courts should interfere with the legislature’s regulation of the workplace “only when a given policy is so obviously for or against public health, safety, morals, or welfare that there is a virtual unanimity of opinion in regard to it.” *Mamlin v. Genoe (City of Philadelphia Police Beneficiary Ass’n)*, 340 Pa. 320 (1941). The Court affirmed the need to defer to the legislature’s employment policy decisions in *Weaver v. Harpster*, 601 Pa. 488, 502 (2009) when it declined to extend Pennsylvania’s statutory antidiscrimination protections to employers who do not meet the statutory definition of employer because “the legislature has spoken” and to do otherwise would “require the courts to act as a super-legislature.” *Id.*

Federal, state, and local legislatures routinely engage in such employment policymaking by enacting laws that set certain terms and conditions of employment – *e.g.*, minimum wage laws, overtime laws, child labor laws, occupational safety and health laws, and more. Federal, state, and local legislatures often enact antidiscrimination laws that prohibit employers from relying on certain

characteristics when making employment decisions. Employers, workers, and others may disagree (and often do) about the wisdom of the legislature's choices as a matter of employment policy — but those arguments are for the legislature rather than the judiciary, as employment policy remains the prerogative of the legislature, subject only to rational-basis review. The U.S. Supreme Court recognized the legislature's power to enact antidiscrimination law — or not — in *Railway Mail Assn. v. Corsi*, where it upheld New York State's antidiscrimination laws against a constitutional challenge from a labor organization intent on denying membership based on protected characteristics. 326 US 88, 89 (1945).

For these reasons, many federal, state, and local employment laws simply identify characteristics that employers may not rely upon in making employment decisions because the legislature has determined that it is immoral or unfair or unwise to rely on such characteristics. In doing so, the legislatures have rejected, as a policy matter, employer claims that such characteristics are accurate proxies for skill, experience, ability, cost, absenteeism, or the like. With Philadelphia's wage equity ordinance, the city's law-making body has concluded that employers should not consider wage history in making employment decisions because the moral and instrumental costs of such reliance outweigh their benefits.

To offer just a few examples, Title VII of the Civil Rights Act prohibits employers from relying on “race, color, religion, sex, or national origin” in making

employment decisions. 42 U.S.C. § 2000e-2. The Pregnancy Discrimination Act prohibits employers from considering “pregnancy, childbirth, or related medical conditions” in making employment decisions generally, 42 U.S.C. § 2000e (k), and the Equal Pay Act prohibits employers from considering sex specifically in pay decisions. 29 U.S.C. § 206(d). The Americans with Disabilities Act prohibits employers from relying upon an applicant’s disability or record of having a disability, among other things, when making employment decisions. 42 U.S.C.A. § 12112. The Genetic Information Nondiscrimination Act prohibits employers from relying on a worker’s genetic history when making employment decisions. 42 U.S.C. § 2000f. The Age Discrimination in Employment Act forbids employers from relying on a worker’s age when making employment decisions. 29 U.S.C. §§ 621-634. Most states, including Pennsylvania, similarly prohibit employers from relying upon race, color, national origin, disability, sex, religion, and age when making employment decisions. *See, e.g.* Ariz. Rev. Stat. § 41-1463; Conn. Gen. Stat. § 46a-60; Fla. Stat. § 760.01; Md. Code, State Gov’t § 20-606; N.C. Gen. Stat. § 143-422.2; N.Y. Exec. Law § 296; 43 Pa. Stat. § 955.

In addition to prohibiting employers from relying on certain immutable characteristics, antidiscrimination laws often prohibit employers from relying on certain life experiences and histories when considering applicants for employment. For example, the Uniformed Services Employment and Reemployment Rights Act

prohibits employers from discriminating against members of the uniformed services by relying on military status when making employment decisions. 38 U.S.C.S. § 4311 (2017). Along the same lines, a variety of statutes ban employer reliance on an applicant's credit history or credit report, *see e.g.* D. C. Code § 2-1402.11, whistleblower status, *see e.g.* 43 Pa. Stat. § 955, and history of making workers' compensation claims, *see e.g.*, Me. Rev. Stat. tit. 5, § 4572.

Once a legislature takes a certain protected characteristic off the table for employment decision-making purposes, one of the best ways to make that legal protection meaningful is to prohibit employers from asking about these matters on the front end. Indeed, an employer's inquiries about protected characteristics, histories, or experiences can enable illegal discrimination based on those traits and/or dissuade the recipients of those communications from pursuing opportunities they have a right to seek.<sup>1</sup> To make these antidiscrimination protections meaningful, many of these statutes thus also expressly prohibit employers from inquiring about or otherwise seeking information about the protected characteristic or experience.

For these reasons, the Pennsylvania Human Relations Act prohibits employers from relying on a variety of protected characteristics and then also

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<sup>1</sup> Helen Norton, *You Can't Ask (Or Say) That: The First Amendment and Civil Rights Restrictions on Decisionmaker Speech*, 11 Wm. & Mary Bill of Rts. J. 727, 753 (2003).



prohibits them from “elicit[ing] any information . . . concerning the race, color, religious creed, ancestry, age, sex, national origin, past handicap or disability or the use of a guide or support animal because of the blindness, deafness or physical handicap of any applicant.” 43 Pa. Stat. § 955(b)(1). Similarly, the Genetic Information Nondiscrimination Act not only prohibits employers from relying on genetic history in employment decision-making, but then also restricts employers’ and employment agencies’ ability to “request, require, or purchase genetic information” regarding applicants and employees or their family members. 42 U.S.C. § 2000ff. The Americans with Disabilities Act prohibits pre-employment inquiries as to an applicant’s disability and also bans medical testing prior to an offer of employment in order to make its protections against disability discrimination meaningful. 42 U.S.C. § 12112(d). Other state antidiscrimination laws also prohibit employers from making inquiries or otherwise seeking to obtain information about applicants’ or employees’ protected characteristics through application forms or pre-application inquiries that “express. . . directly or indirectly any limitation, specification, or discrimination” unless based upon a bona fide occupational qualification. *See, e.g.* Haw. Rev. Stat. § 378-2(C) (no application forms or inquiries); N.J. Stat. § 10:5-12(c) (no application forms or inquiries); Cal. Gov’t Code § 12940(d) (no “nonjob-related” verbal or written inquiries); Mass. Gen. Laws ch. 151B, § 4(3) (no forms, inquiries, or records).

The list goes on and on. For example, some states prohibit employment discrimination on the basis of marital status, and then prohibit employer inquiries regarding applicants' marital status or family status. *See, e.g.* Alaska Stat. § 18.80.220; N.J. Stat. § 10:5-12; Minn. Stat. § 363A.08; N.Y. Exec. Law § 296. For the same reasons, some not only forbid employers' reliance on, but also inquiries about, applicants' sexual orientation, gender identity, and gender expression. *See, e.g.* Colo. Rev. Stat. § 24-34-402 (sexual orientation); Minn. Stat. § 363A.08 (sexual orientation, as defined to include gender identity); OR. Rev. Stat. § 659A.030 (sexual orientation); R.I. Gen. Laws Ann. § 28-5-7 (sexual orientation, gender identity and expression). Connecticut prohibits employers from relying on, or asking about, applicants' "child-bearing age or plans, pregnancy, function of the individual's reproductive system, use of birth control methods, or the individual's familial responsibilities." Conn. Gen. Stat. § 46a-60.

Some states also forbid employers from relying on and inquiring into or investigating applicants' credit history, with limited exceptions in law enforcement and financial institutions. *See, e.g.* D.C. Code § 2-1402.11; OR. Rev. Stat. § 659A.320; VT. Stat. tit. 21, § 495i. Delaware bans public employers from relying on, and inquiring into, an applicant's credit history until after the first interview. *See* Del. Code tit. 19, § 711. In Minnesota, it is illegal not only to rely on, but also

to inquire of the applicant or to obtain from any other source information regarding the applicant's "status as to public assistance." Minn. Stat. § 363A.08.

Some employment statutes prohibit reliance on certain protected characteristics, histories, or other traits without expressly prohibiting inquiries. Even so, enforcement agencies sometimes interpret those laws to prohibit inquiries about protected class status because such prohibitions are helpful in making the reliance bans meaningful. For example, the U. S. Equal Employment Opportunity Commission's regulation on sex discrimination allows employers to ask applicants to identify their sex or preferred title if the request is made with a "nondiscriminatory purpose," but also discourages certain pre-employment inquiries by making it illegal for such inquiry to "express . . . directly or indirectly any limitation, specification, or discrimination as to sex . . . unless based upon a bona fide occupational qualification." 29 C.F.R. § 1604.7. Courts have interpreted this regulation to indicate that "questions about pregnancy and childbearing would be unlawful per se in the absence of a bona fide occupational qualification." *King v. Trans World Airlines, Inc.*, 738 F.2d 255, 259 (8th Cir. 1984); see also *Barbano v. Madison County*, 922 F.2d 139, 143 (2d Cir. 1990). The EEOC's regulations under Title IX limit pre-employment inquiries in education programs related to protected characteristics, such as marital status. 34 C.F.R. § 106.60. Similarly, the EEOC's guidance on pregnancy discrimination warns that employers also should

not make inquiries about an applicant's intention to become pregnant.<sup>2</sup> Such inquiries in and of themselves can constitute evidence of discrimination when an employer does not hire the applicant in question.<sup>3</sup>

In short, Philadelphia's law is entirely consistent with commonplace and longstanding federal, state, and local antidiscrimination law that prohibits employers from relying on (and asking about) certain characteristics or experiences. Philadelphia's law makes wage history a protected characteristic as a matter of employment policy – as is the case in many jurisdictions with respect to race, sex, religion, national origin, disability, genetic history, sexual orientation, veterans' status, and more.

## **II. Philadelphia Enacted the Wage Equity Ordinance to Eliminate the Systemic and Costly Gender Wage Gap.**

By enacting the wage equity ordinance, Philadelphia became part of a growing number of jurisdictions to prohibit employers from relying on (and thus asking about) job applicants' prior wages. Massachusetts was the first state to bar employers from seeking the salary history of job applicants in its 2016 Act to Establish Pay Equity.<sup>4</sup> Since then, laws or executive orders, like Philadelphia's

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<sup>2</sup> See U.S. Equal Employment Opportunity Comm'n (EEOC), Enforcement Guidance on Pregnancy Discrimination and Related Issues, *available at* [https://www.eeoc.gov/laws/guidance/pregnancy\\_guidance.cfm](https://www.eeoc.gov/laws/guidance/pregnancy_guidance.cfm) (last visited July 10, 2017).

<sup>3</sup> *Id.*

<sup>4</sup> Mass. Gen. Laws ch. 149, § 105 (2016) (effective July 1, 2018).

wage equity ordinance, prohibiting reliance on and inquiries into pay history have been enacted in a number of states and cities.<sup>5</sup> Additional jurisdictions have adopted legislation eliminating the ability to use prior pay in setting wages or hiring by banning screening of applicants based on prior pay and the seeking of such information.<sup>6</sup> In 2017, similar legislation was introduced in 21 additional jurisdictions.<sup>7</sup> At the federal level, pending legislation known as the Paycheck Fairness Act would prevent employers from relying on (and asking about) applicants' wage history.<sup>8</sup> The federal Pay Equity for All Act would prohibit screening job applicants based on wage or salary history and seeking wage or

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<sup>5</sup> H.B. 2005, 79<sup>th</sup> Leg. Assemb., Reg. Sess. (Or. 2017); N.Y. Exec. Order No. 161 (2017); N.Y.C. Ordinance No. 1253-2016; Pittsburgh, Pa., Code Ordinances tit. 1, art. XI, § 181.13 (2017); San Francisco Ordinance No. 0142-17 (2017).

<sup>6</sup> H.S. 1 to H.B. 1, 149<sup>th</sup> Gen. Assemb. (Del. 2017); New Orleans Exec. Order MJL17-01 (2017); Puerto Rico Act No. 16-2017 (P.R. 2017).

<sup>7</sup> Assemb. B. 168, 2017-18 Reg. Sess. (Cal.); H.B. 5210, 2017 Reg. Sess. (Conn.); B.22-0016, 22nd Council Period (D.C. 2017); H.B. 345, 2017-18 Reg. Sess. (Ga.); H.B. 71, 64<sup>th</sup> Leg. (Idaho 2017); H.B. 2462, 100<sup>th</sup> Reg. Sess. (Ill. 2017); H.F. 129/S.F. 340, 87<sup>th</sup> Gen. Assemb. (Iowa 2017); H.P. 672/S.P. 422, 128<sup>th</sup> Leg. (Me. 2017); H.B. 398/S.B. 404, 2017 Reg. Sess (Md); H.B. 1080/S.B. 2894, 2017 Reg. Sess. (Miss.); S.B. 148, 65<sup>th</sup> Leg. (Mont. 2017); Assemb. B. 4515, 217<sup>th</sup> Leg. (N.J. 2017); Assemb. B. 3020/ Assemb. B. 4240/ Assemb. B. 5669/ Assemb. B. 6707/S.B. 5233, 2017-18 Reg. Sess. (N.Y. 2017); S.B. 537, 2017 Gen. Assemb. (N.C.); H.B. 931, 2017-18 Reg. Sess. (Pa.); S.B. 583, 2017 Gen. Assemb. (R.I.); S. B. 1160, 85<sup>th</sup> Leg. (Tex. 2017); H.B. 294, 2017-18 Gen. Assemb. (Vt); H.B. 2190, 2017 Reg. Sess. (Va); H.B.1533/S.B. 5555, 65<sup>th</sup> Leg. (Wash. 2017); S.B. 142, 2017-18 Reg. Sess. (Wis.)

<sup>8</sup> S.R. 819, 115<sup>th</sup> Cong. (2017), H.R. 1869, 115<sup>th</sup> Cong. (2017).

salary history.<sup>9</sup> These laws are necessary measures to strengthen equal pay laws and ultimately eliminate the gender wage gap.

The gender wage gap persists despite more than half a century of laws prohibiting unjustified wage differentials between women and men. Congress passed the Equal Pay Act more than fifty years ago, recognizing that sex-based differences in pay between men and women “depress[] wages and living standards for employees necessary for their health and efficiency.” Equal Pay Act of 1963, Pub. L. No. 88-38, 77 Stat. 56 (1963). Pennsylvania’s Equal Pay Act, adopted in 1959, is even older than the federal law. 43 Pa. Stat. Ann. § 336.1 (2016). Legislatures and lawmakers in every state have made it clear that sex-based differences in pay are unlawful, but these laws alone have not been enough to close the gap, which has not changed in a statistically significant way in a decade.<sup>10</sup>

In 2015, the median annual earnings for American women who worked all year at full-time was \$40,742, while the median annual earnings for American men working full-time all year was \$51,212.<sup>11</sup> This discrepancy translates to a 20% pay gap. Put another way, employers pay women on average 80 cents for every dollar

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<sup>9</sup> H.R. 2418, 115th Cong. (2017).

<sup>10</sup> Bernadette D. Proctor, et al, *Income and Poverty in the United States: 2015 Current Population Reports P60-256*, U.S. Census Bureau 10 (2016); See Inst. for Women’s Policy Research (IWPR), *Projected Year the Gap Will Close by State 1* (2017).

<sup>11</sup> See American Association of University Women (AAUW), *The Simple Truth About the Pay Gap* (Spring 2017) at 6.

they pay to men. The national wage gap between white men and women of color is even wider, with employers paying African American women 63 cents for every dollar they pay to white men and paying Latina women only 54 cents.<sup>12</sup>

The wage gap differs by state too, with women in Pennsylvania faring worse than the national average. Pennsylvania women make 79 cents to every dollar employers pay to a man.<sup>13</sup> Broken down by race and ethnicity, African American women in Pennsylvania are paid only 68 cents and Latina women only 57 cents to that same dollar a white man is paid.<sup>14</sup> Women living in Philadelphia, the largest city in the state population-wise and one of the most diverse in terms of race and ethnicity, are similarly affected by the wage gap.<sup>15</sup> Without effective action to reduce the gap, Pennsylvania women will not achieve equal pay until 2068, while nationally, women will achieve equal pay by 2059.<sup>16</sup>

The gender wage gap begins the moment women enter the workforce when they earn less than male counterparts performing comparable jobs with comparable

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<sup>12</sup> *Id.* at 11.

<sup>13</sup> National Partnership for Women & Families (National Partnership), Pennsylvania Women and the Wage Gap (April 2017), <http://www.nationalpartnership.org/research-library/workplace-fairness/fair-pay/4-2017-pa-wage-gap.pdf>.

<sup>14</sup> *Id.*

<sup>15</sup> In Philadelphia, employers pay Latina women 58 cents, Black women 70 cents, and White women 89 cents for every dollar they pay to White men. *See* <https://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml> (the Women's Law Project analyzed the data available here to determine the pay disparity).

<sup>16</sup> IWPR, *supra* note 10.

education and experience. Today, women are more likely than men to receive a higher education.<sup>17</sup> Nevertheless, they earn less than men beginning just one year out of college, even when researchers control for factors like college major, occupation, and hours worked.<sup>18</sup> Disparities persist for women with advanced degrees, both in initial earnings and throughout their careers. Female business school graduates, for example, earn less than their male counterparts at graduation, and the pay gap widens over time.<sup>19</sup> A 2016 survey revealed that the average earnings of male law partners were 44% higher than the average earnings for female law partners.<sup>20</sup> The median earnings for women are lower than men's in nearly all occupations, regardless of whether those occupations are predominantly performed by women, by men, or a mix of both.<sup>21</sup> Research has found that

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<sup>17</sup> Kurt Bauman, *Shift Toward Greater Educational Attainment for Women Began 20 Years Ago*, U.S. Census Bureau (Mar. 29, 2016), <https://www.census.gov/newsroom/blogs/random-samplings/2016/03/shift-toward-greater-educational-attainment-for-women-began-20-years-ago.html>.

<sup>18</sup> Christianne Corbett & Catherine Hill, AAUW, *Graduating to a Pay Gap: The Earnings of Women and Men One Year After College Graduation 2* (2012), <http://www.aauw.org/files/2013/02/graduating-to-a-pay-gap-the-earnings-of-women-and-men-one-year-after-college-graduation.pdf>.

<sup>19</sup> Marianne Bertrand, et al, *Dynamics of the Gender Gap for Young Professionals in the Financial and Corporate Sectors*, 2 Amer. Econ. J.: Applied Econ. 228, 236 (2010).

<sup>20</sup> Jeffrey Lowe, Major, Lindsey & Africa LLC, *Partner Compensation Survey 2016* (2016), <https://www.mlaglobal.com/publications/research/compensation-survey-2016>.

<sup>21</sup> Francine D. Blau & Lawrence M. Kahn, *The Gender Wage Gap: Extent, Trends, and Explanations*, NBER Working Paper No. 2193, National Bureau for Economic Research (2016), <http://www.nber.org/papers/w21913> (last visited May



controlling for race, region, unionization status, education, work experience, occupation, and industry leaves 38 percent of the pay gap “unexplained.”<sup>22</sup> When applying the same methodology to earnings differences between black and white women, and black and white men, a substantial ‘unexplained’ gap remains.<sup>23</sup> Moreover, while the unexplained gap of earnings differences between all women and men has fallen slightly since 1979, the unexplained gap of earnings between black and white women has substantially increased.<sup>24</sup>

Discrimination is the likely cause of this “unexplained” gap. Overt discrimination and unconscious biases result in the devaluation of the work women, mothers, and people of color perform. Researchers found that scientists presented with resumes that were identical except that one “belonged” to someone with a traditionally female name and the other “belonged” to someone with a traditionally male name offered the male applicant a higher starting salary for a

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16, 2017); IWPR, *The Gender Wage Gap by Occupation 2016 and By Race and Ethnicity 1* (2017), <https://iwpr.org/wp-content/uploads/2017/04/C456.pdf>

<sup>22</sup> Blau & Kahn, *supra* note 21 at 8.

<sup>23</sup> Mary C. Daly, et al., *Disappointing Facts about the Black-White Wage Gap*, FRBSF Economic Letter 2017-26, Federal Reserve Bank of San Francisco (Sept. 5, 2017), [http://www.frbsf.org/economic-research/publications/economic-letter/2017/september/disappointing-facts-about-black-white-wage-gap/?utm\\_source=frbsf-home-economic-letter-title&utm\\_medium=frbsf&utm\\_campaign=economic-letter](http://www.frbsf.org/economic-research/publications/economic-letter/2017/september/disappointing-facts-about-black-white-wage-gap/?utm_source=frbsf-home-economic-letter-title&utm_medium=frbsf&utm_campaign=economic-letter) (last visited Sept. 11, 2017).

<sup>24</sup> *Id.*; Blau & Kahn, *supra* note 21.

laboratory manager position than they offered the female applicant.<sup>25</sup> The story is similar for working mothers, with studies showing that employers perceive them to be less competent, less committed, and less valuable workers in comparison to men without children and working fathers. A 2007 study found employers recommended significantly lower starting salaries to working mothers than to men.<sup>26</sup> Research further shows systematic gender and race bias in wage progression within organizations, meaning that at a given level of skills and performance, women and men of color are likely to have a lower salary than a similar white man.<sup>27</sup>

For women, the gender wage gap grows over time, resulting in lower lifetime pay, less income for families, and higher poverty rates across the country.<sup>28</sup> By the time a college-educated woman reaches her 59<sup>th</sup> birthday, she will have lost almost \$800,000 because of the gender wage gap.<sup>29</sup> Overall, the

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<sup>25</sup>Corinne A. Moss-Racusin, et al. *Science Faculty's Subtle Gender Biases Favor Male Students*, 109 PNAS 16474, 16475 (Oct. 2012), available at <http://www.pnas.org/content/109/41/16474.full.pdf>.

<sup>26</sup> Shelly J. Correll, et al, *Getting a Job: Is There a Motherhood Penalty*, 112 American J. of Sociology 1297 (Mar. 2007), available at <http://gender.stanford.edu/sites/default/files/motherhoodpenalty.pdf>.

<sup>27</sup> Emiliano J. Castilla, *Gender, Race, and Meritocracy in Organizational Careers*. Am. J. of Soc. 1479 (2008).

<sup>28</sup> IWPR, *The Economic Impact of Equal Pay by State 1* (2017), <https://iwpr.org/wp-content/uploads/2017/05/C457.pdf>.

<sup>29</sup> IWPR, *Status of Women, Employment & Earnings*, <https://statusofwomendata.org/explore-the-data/employment-and->

gender wage gap costs Pennsylvania women and their families \$34 billion every year.<sup>30</sup> Across the United States, it costs women and their families over \$840 billion a year.<sup>31</sup> The elimination of this gap would reduce the poverty rate for working women by half and have a meaningful impact on American households, including households with children under age 18, 40 percent of which include a mother who is the primary or sole breadwinner.<sup>32</sup> Elimination of the wage gap means more money to shelter and feed one's family, secure child care, otherwise take care of family needs.<sup>33</sup>

### **III. Use of a Job Applicant's Salary History in Setting Pay Perpetuates the Gender Wage Gap.**

As Philadelphia City Council stated in its wage equity ordinance findings:

Since women are paid on average lower wages than men, basing wages upon a worker's wage at a previous job only serves to perpetuate gender wage inequalities and leave families with less money to spend on food, housing, and other essential goods and services.

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earnings/employment-and-earnings/#CumulativeLossesfromtheGenderWageGap (last visited July 19, 2017).

<sup>30</sup> National Partnership, *supra* note 13.

<sup>31</sup> See National Partnership, *America's Women and the Wage Gap 1* (2017), <http://www.nationalpartnership.org/research-library/workplace-fairness/fair-pay/americas-women-and-the-wage-gap.pdf>.

<sup>32</sup> See Pew Research Center, *Breadwinner Moms* (May 29, 2013), <http://www.pewsocialtrends.org/2013/05/29/breadwinner-moms/>.

<sup>33</sup> National Partnership, *supra* note 13.

§ 9-1131 (1)(d). Employers who rely on wage history to select job applicants and to set new hires' pay will often perpetuate discriminatory gender- and race-based pay disparities because women, especially women of color, are typically paid less than men immediately or soon after they join the workforce. Women who start with lower salaries will continue to earn less than their male counterparts if future employers set pay based on prior salaries. *See, e.g., Beck v. Boeing*, 2000 U.S. Dist. LEXIS 23623 (W.D. Wash. 2000) (class action lawsuit alleging pay discrimination where employer based new employee salaries on their salary at their previous job, resulting in a pay disparity between women and men that was unrelated to their performance on the job, skill level, or other job-related reason).

The lower wages women are paid for work comparable to men is the result of a gendered system that devalues the work women perform and results in a situation where women have no choice but to work for lower wages. When asked at the hiring stage, female applicants' prior pay functions as anchors upon which employers determine future pay. Women who try to negotiate for higher wages are often penalized for breaking gender stereotypes by appearing "too masculine."<sup>34</sup>

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<sup>34</sup> *See e.g.,* Todd J. Thorsteinson, *Initiating Salary Discussions With an Extreme Request: Anchoring Effects on Initial Salary Offers*, 41 J. Applied Soc. Psychol. 1774, 1779-81 (2011); Hannah Riley Bowles, et al., *Social Incentives for Gender Differences in the Propensity to Initiate Negotiations: Sometimes it Does Hurt to Ask*, 103 Org. Behav. & Hum. Decision Processes 84, 85 (2006).

As a result of these biases, prior pay is not, as plaintiff's claim, a reflection of a fair market rate. Rather, the market pay for women is lower than it is for men for comparable work. In *Corning Glass Works v. Brennan*, the U. S. Supreme Court rejected the employer's defense that it was only paying the rate determined by "market forces" because it recognized that the job market that allowed Corning to pay women less than men was based on an unlawful factor: sex. 417 U.S. 188, 205 (1974). To pay a truly fair market rate to women, employers must pay women the same rate they pay to men for comparable work, as required by existing law.

Many courts have recognized that prior salary reflects historical inequities in the job market and therefore cannot be "a neutral factor other than sex" defense to claims of pay discrimination under the federal Equal Pay Act. *See, e.g., Cole v. N. Am. Breweries*, No. 1:13-cl-236, 2015 U.S. Dist. LEXIS 6157, at \*29-30 (S.D. Ohio Jan. 20, 2015) (finding employer improperly used a female hire's prior salary to set her pay substantially lower than male employees performing the same job); *Glenn v. General Motors Corp.*, 841 F.2d 1567, 1571 (11th Cir. 1988) (prior salary alone cannot justify a pay disparity; *Angove v. Williams-Sonoma, Inc.*, 70 F. App'x 500, 508 (10th Cir. 2003) (finding that that the Equal Pay Act "precludes an employer from relying solely upon a prior salary to justify pay disparity").

The U.S. Equal Employment Opportunities Commission (EEOC) also recognizes the discriminatory impact on women that occurs when employers rely

on past wages to set future wages. The agency advises employers to avoid basing pay decisions on prior wages<sup>35</sup> because the practice exacerbates “inequality in compensation among genders.”<sup>36</sup>

Nevertheless, in some equal pay cases under federal and state law, courts have permitted employers to use salary history as a justification for paying women less than men for comparable work.<sup>37</sup> *See, e.g., Best v. Janerich*, 80 F. Supp. 2d 334 (M.D. Pa. 1999), *aff’d*, 208 F.3d 205 (3d Cir. 2000). By using prior wages as a basis for paying women less, employers perpetuate gender inequality in the labor market. Philadelphia City Council members passed the wage equity ordinance to remedy this problem for those who work in their city.

#### **IV. The Wage Equity Ordinance Addresses the Gender Wage Gap Without Harming Business.**

Philadelphia’s wage equity ordinance addresses the harm the pay gap imposes on women and people of color without unduly burdening employers because alternatives to asking for and relying on an applicant’s pay history are readily available. Before hiring, employers will have an idea of the skill level,

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<sup>35</sup> EEOC, Tips for Small Businesses, [https://www.eeoc.gov/employers/smallbusiness/checklists/pay\\_tips.cfm](https://www.eeoc.gov/employers/smallbusiness/checklists/pay_tips.cfm) (last visited July 20, 2017).

<sup>36</sup> EEOC, Compliance Manual, No. 915.003 § 10-IV.F.2.g (Dec. 2000), <https://www.eeoc.gov/policy/docs/compensation.html>.

<sup>37</sup> Deborah Thompson Eisenberg, *Money, Sex, & Sunshine: A Market-Based Approach to Pay Discrimination*, 43 Ariz. St. L.J. 951, 967 n. 65 (2011) (citing cases upholding reliance on prior pay as a market defense justifying a wage gap).

knowledge, and experience required for the position they are seeking to fill, the market rate for the job, their pay philosophy (regarding internal and external comparability) and the range of what they are willing to pay for the position. Based on their assessment of the value of the job, and the suitability of the applicant, they can then make an offer to a candidate.

Indeed, some employers have already taken steps to eliminate questions on prior pay because of concerns that they may import discrimination.<sup>38</sup> In the end, paying employees an amount based on factors truly related to the job's value and to the applicant's qualification for the job — such as their skill level and track record — will result in benefits for the employer, including higher morale among employees and decreased turnover.<sup>39</sup>

It is a positive development that some employers have chosen voluntarily to reap the benefits of addressing pay equity; however, the pay gap is a systemic problem that requires a comprehensive solution. In PayScale's study of more than 15,000 job applicants, nearly half (43%) of their prospective employers asked

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<sup>38</sup> Emma Hinchliffe, *Kickstarter joins NYC effort to close wage gap by not asking about employee salary history*, Mashable (Jan. 16, 2017), <http://mashable.com/2017/01/16/kickstarter-public-advocate-nyc-equal-pay/#OSrVxJ4MLOq5>;

<sup>39</sup> See N. Lamb & W. Klein, *A Proactive Approach to Wage Equality is Good for Business*, Employment Relations Today (Summer 2015), <http://arjuna-capital.com/news/a-proactive-approach-to-wage-equality-is-good-for-business/>.

about pay history.<sup>40</sup> Voluntary measures, such as encouragement of pay equity self-audits, are possible tools to partially address the persistence of the pay gap, but they are not enough.<sup>41</sup> Inevitably, some employers will refuse voluntary measures. Thus, Philadelphia's wage equity ordinance is a more comprehensive way to address the problem by directing the entire Philadelphia market to stop engaging in a pernicious hiring practice that is closely tied with discrimination.

### **CONCLUSION**

By passing the wage equity ordinance, Philadelphia made a rational policy decision to narrow the gender wage gap by prohibiting employers from relying on, or asking applicants about, pay history, concluding that pay history often reflects discrimination rather than the value of the applicant for a new job.

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<sup>40</sup> Payscale.com, *The Salary History Question: Alternatives for Recruiters and Hiring Managers* 6 (Unknown Year), <http://hrprofessionalsmagazine.com/the-salary-history-question-alternatives-for-recruiters-and-hiring-managers/>.

<sup>41</sup> In its *amicus* brief, the Chamber of Commerce of the United States of America, et al., asserts that Minnesota's law requiring "public-sector employees to conduct a pay equity study and eliminate pay disparities" would be a lesser restrictive alternative to the wage equity ordinance; however, they have offered no evidence that such a law would be likely to achieve as comprehensive a result as the ordinance, which applies to public and private employers and specifically targets a common aspect of the hiring process that is closely tied to discrimination.



For these reasons, *amici* respectfully request that this Court deny the defendant's amended motion for a preliminary injunction.

Respectfully Submitted,

Date: September 14, 2017

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## **Appendix A**

**STATEMENTS OF INTEREST OF AMICI**

**A BETTER BALANCE**

A Better Balance: The Work and Family Legal Center: A Better Balance is a national legal advocacy organization dedicated to promoting fairness in the workplace and helping employees meet the conflicting demands of work and family. Through its legal clinic, A Better Balance provides direct services to low-income workers on a range of issues, including employment discrimination based on pregnancy and/or caregiver status. A Better Balance also advocates for policies that promote workplace equality and fair pay, including salary history legislation, fair scheduling laws, equal pay disclosure laws, and fair minimum wage laws.

**AMERICAN ASSOCIATION OF UNIVERSITY WOMEN  
AAUW OF PENNSYLVANIA  
AAUW OF DELAWARE  
AAUW OF MASSACHUSETTS  
AAUW OF OREGON**

In 1881, the American Association of University Women (AAUW) was founded by like-minded women who had defied society's conventions by earning college degrees. Since then it has worked to increase women's access to higher education through research, advocacy, and philanthropy. Today, AAUW has more than 170,000 members and supporters, 1,000 branches, and 800 college and university partners nationwide. AAUW of Pennsylvania has over 7,600 members and supporters. AAUW of Delaware has 800 members and

supporters; AAUW of Massachusetts has over 4,200 members and supporters; and AAUW of Oregon has over 4,500 members and supporters. AAUW plays a major role in mobilizing advocates nationwide on AAUW's priority issues to advance gender equity. In adherence with its member-adopted Public Policy Priorities, AAUW supports pay equity and fairness in compensation and benefits.

### **ATLANTA WOMEN FOR EQUALITY**

Atlanta Women for Equality is nonprofit organization dedicated to providing free legal advocacy for women and girls facing sex discrimination in the workplace or at school, protecting and expanding economic and educational opportunities for women and girls, and helping our community shape our workplaces and schools according to true standards of equal treatment. Ensuring pay equity is crucial to our mission.

### **CALIFORNIA WOMEN'S LAW CENTER**

The California Women's Law Center (CWLC) is a statewide, nonprofit law and policy center dedicated to advancing the civil rights of women and girls through impact litigation, advocacy and education. CWLC's issue priorities include gender discrimination, reproductive justice, violence against women, and women's health. Since its inception in 1989, CWLC has been on the frontlines of the fight to secure women's economic empowerment in California, including

working to end practices that contribute to the gender wage gap and women in poverty.

### **COMMUNITY LEGAL SERVICES, INC.**

Community Legal Services Inc. (CLS) was founded by the Philadelphia Bar Association in 1966 as an independent 501(c)(3) organization to provide free legal services in civil matters to low-income Philadelphians. Since its founding, CLS has served more than one million clients who could not afford to pay for legal representation. CLS's representational model is to make systemic changes based upon the legal issues identified through individual representation, to the extent possible, so that its results reach the larger low-income community in Philadelphia and beyond. CLS achieves these systemic reforms through class action and other impact litigation, administrative and legislative advocacy, and communications work.

CLS has represented thousands of individuals in discrimination and wage cases over the last five decades, and we know from our clients' experiences how race and gender discrimination contribute to poverty in Philadelphia. Philadelphia is 42.8% African American and 13.4% Hispanic or Latino. Philadelphia also has one of the highest rates of female-headed households of US cities, at 38.2%. Given its poverty rate of 25.8%, with 12.2% of its families in deep poverty (earning less than 50% of the federal poverty level), this urgent situation requires bold action.

Because of Philadelphia's unique demographics and high poverty rate we believe it is necessary and appropriate for the City of Philadelphia to take reasonable steps to ensure workers' rights, including preventing discrimination, thereby insuring that its citizens are fairly paid and able to succeed.

### **EQUAL PAY TODAY!**

Equal Pay Today!, a project of the Tides Center, is a nonprofit, innovative collaboration of women's legal and workers' rights organizations working at the local, state and federal level to close the gender wage gap and engage new and diverse constituencies in the fight for equal pay. We have members in nearly every region of the country and six state projects in California, Illinois, Minnesota, New Mexico, Pennsylvania, and Washington State. Understanding that many factors contribute to the gender wage gap, we focus on combating pay discrimination, pay secrecy, occupational segregation, pregnancy and caregiver discrimination, wage theft and an inadequate minimum wage.

### **EQUAL RIGHTS ADVOCATES**

Equal Rights Advocates (ERA) is a national non-profit legal organization dedicated to protecting and expanding economic and educational access and opportunities for women and girls. Since its founding in 1974, ERA has litigated class actions and other high-impact cases related to gender discrimination and civil

rights, including *Geduldig v. Aiello*, 417 U.S. 484 (1974) and *Richmond Unified School District v. Berg*, 434 U.S. 158 (1977) and has appeared as amicus curiae in numerous Supreme Court cases involving the interpretation of anti-discrimination laws, including *Meritor Savings Bank, FSB v. Vinson*, 477 U.S. 57 (1986); *Harris v. Forklift Systems, Inc.*, 510 U.S. 17 (1993); *Burlington Industries v. Ellerth*, 524 U.S. 742 (1998); and *Burlington Northern and Santa Fe Ry. Co. v. White*, 126 S. Ct. 2405 (2006). ERA cosponsored the California Fair Pay Act (Cal. Labor Code § 1197.5), which amended the state's Equal Pay Act and prohibits the use of prior salary as the sole justification for a gender pay differential. ERA along with 17 other national organizations, appeared as amicus curiae in *Rizo v. Yovino*, No. 16-15372 (9th Cir.), a Ninth Circuit case involving reliance on prior salary in relation to the federal Equal Pay Act.

## **FAMILY VALUES @ WORK**

Family Values @ Work (FV@W) is a national network of 24 state and local coalitions helping spur the growing movement for family-friendly workplace policies such as paid sick days and family leave insurance. Several of our coalitions, including our members in Pennsylvania, support wage equity laws in their jurisdictions.

## **GENDER JUSTICE**

Gender Justice is a non-profit legal advocacy organization based in the Midwest that works to eliminate gender barriers through impact litigation, policy advocacy, and education. Gender Justice helps courts, employers, schools, and the public better understand the root causes of gender discrimination, such as implicit bias and stereotyping. The organization has an interest in protecting and enforcing women's legal rights in the workplace. Gender Justice serves as counsel to women denied equal pay in the workplace and participates as amicus curiae in state and federal cases that have an impact in the region.

## **INSTITUTE FOR WOMEN'S POLICY RESEARCH**

The Institute for Women's Policy Research ("IWPR") is a leading economic and public policy think tank founded in 1987 that focuses on quantitative and qualitative analysis of issues particularly relevant to women and their families. IWPR's research addresses issues of race, ethnicity, and socioeconomic status, and is concerned with policies that can help women achieve social and economic equality. The gender wage gap is a major contributing factor to poverty and inequality. IWPR's research finds that if women's hourly earnings rose to the level of similarly qualified men's, eliminating the gender wage gap, poverty rates among families with working women would be reduced by half, see *The Economic Impact*



of Equal Pay by State <https://statusofwomendata.org/featured/the-economic-impact-of-equal-pay-by-state/>.

## **KEYSTONE RESEARCH CENTER**

The Keystone Research Center was founded in 1996 to broaden public discussion on strategies to achieve a more prosperous and equitable Pennsylvania economy. Since its creation, KRC has become a leading source of independent analysis of Pennsylvania's economy and public policy. The persistence of the gender wage gap in Pennsylvania remains one of the Commonwealths most persistent economic problems undermining the economic freedom of women. Our interest in this case stems from our judgement that public policy which prevents the use of past salary/pay history in hiring has great potential to narrow the gender wage gap.

## **LEGAL AID AT WORK**

Legal Aid at Work (formerly Legal Aid Society – Employment Law Center) is a non-profit public interest law firm whose mission is to protect, preserve, and advance the employment and education rights of individuals from traditionally under-represented communities. LAAW has represented plaintiffs in cases of special import to communities of color, women and girls, recent immigrants, individuals with disabilities, the LGBT community, and the working poor. LAAW

has litigated a number of cases under Title IX of the Education Amendments of 1972 as well as Title VII of the Civil Rights Act of 1964. LAAW has appeared in discrimination cases on numerous occasions both as counsel for plaintiffs, see, e.g., *National Railroad Passenger Corp. v. Morgan*, 536 U.S. 101 (2002); *U.S. Airways, Inc. v. Barnett*, 535 U.S. 391 (2002); and *California Federal Savings & Loan Ass'n v. Guerra*, 479 U.S. 272 (1987) (counsel for real party in interest), as well as in an amicus curiae capacity. See, e.g., *U.S. v. Virginia*, 518 U.S. 515 (1996); *Harris v. Forklift Systems*, 510 U.S. 17 (1993); *International Union, UAW v. Johnson Controls*, 499 U.S. 187 (1991); *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989); *Meritor Savings Bank v. Vinson*, 477 U.S. 57 (1986). LAAW's interest in preserving the protections afforded to employees and students by this country's antidiscrimination laws is longstanding.

## **LEGAL MOMENTUM, THE WOMEN'S LEGAL DEFENSE AND EDUCATION FUND**

Legal Momentum, the Women's Legal Defense and Education Fund, is a leading national non-profit civil rights organization that for nearly 50 years has used the power of the law to define and defend the rights of girls and women. Legal Momentum has worked for decades to ensure that all employees are treated fairly in the workplace, regardless of their gender. Legal Momentum has litigated cutting-edge gender-based employment discrimination cases, including *Faragher v.*

City of Boca Raton, 524 U.S. 775 (1998), and has participated as amicus curiae on leading cases in this area, including Burlington Industries, Inc. v. Ellerth, 524 U.S. 742 (1998), Oncale v. Sundowner Offshore Services, Inc., 523 U.S. 75 (1998), and Harris v. Forklift Systems, Inc., 510 U.S. 17 (1993). Legal Momentum has also worked to secure the rights of women under state constitutions and local laws, including the right to equal pay for equal work.

## **LEGAL VOICE**

Legal Voice is a nonprofit public interest organization in the Pacific Northwest that works to advance the legal rights of women and girls through litigation, legislation, and public education on legal rights. Since its founding in 1978, Legal Voice has been at the forefront of efforts to combat sex discrimination in the workplace, in schools, and in public accommodations. We have served as counsel and as amicus curiae in numerous cases involving workplace gender discrimination throughout the Northwest and the country. Legal Voice also serves as a regional expert advocating for legislation and for robust interpretation and enforcement of antidiscrimination laws, and has a strong interest in the proper interpretation of the Equal Pay Act in this case.

## **THE NATIONAL CENTER FOR LAW AND ECONOMIC JUSTICE**

The National Center for Law and Economic Justice (NCLEJ) exists to protect the legal rights of people with limited financial means, including persons

receiving public entitlements and low-wage workers. NCLEJ focuses on impact litigation that will establish important principles for the protection of such individuals, and is committed to ensuring that all workers are afforded dignity and fair treatment on the job. A particular focus is protecting the rights of low-income women. It has been involved, as counsel or *amicus curiae*, in many significant cases involving the rights of low-income individuals over the more than 50 years since it was founded in 1965.

## **NATIONAL PARTNERSHIP FOR WOMEN & FAMILIES**

The National Partnership for Women & Families (formerly the Women's Legal Defense Fund) is a national advocacy organization that develops and promotes policies to help achieve fairness in the workplace, reproductive health and rights, quality health care for all, and policies that help women and men meet the dual demands of their jobs and families. Since its founding in 1971, the National Partnership has worked to advance women's equal employment opportunities and health through several means, including by challenging discriminatory employment practices in the courts. The National Partnership has fought for decades for equal pay and to combat sex discrimination.

## **NATIONAL EMPLOYMENT LAW PROJECT**

The National Employment Law Project (“NELP”) is a non-profit legal organization with over 45 years of experience advocating for the employment and labor rights of low-wage and unemployed workers. NELP’s areas of expertise include the workplace rights of low-wage workers under our nation’s employment and labor laws, with a special emphasis on wage and hour rights. NELP has litigated and participated as amicus in numerous cases addressing the rights of workers under federal, state and local wage laws in most state courts, federal circuits and in the US Supreme Court.

## **THE NATIONAL WOMEN’S LAW CENTER**

The National Women’s Law Center is a nonprofit legal advocacy organization dedicated to the advancement and protection of women’s legal rights and opportunities since its founding in 1972. The Center focuses on issues of key importance to women and their families, including economic security, employment, education, health, and reproductive rights, with special attention to the needs of low-income women and women of color, and has participated as counsel or amicus curiae in a range of cases before the U.S. Supreme Court and the federal Courts of Appeals to secure the equal treatment of women under the law, including numerous cases addressing sex discrimination in the workplace. The Center has long sought to ensure that workplace rights and opportunities are not

restricted on the basis of sex, and has a strong interest in closing gender and race wage gaps and ending pay discrimination.

## **PENNSYLVANIA COALITION AGAINST RAPE**

The Pennsylvania Coalition Against Rape (PCAR) works to eliminate all forms of sexual violence and advocate for the rights and needs of sexual assault victims. Founded in 1975, PCAR works with a network of 50 sexual assault centers that bring help, hope, and healing to all of the Commonwealth's 67 counties. We operate the National Sexual Violence Resource Center, which provides the nation with sexual violence prevention training and technical assistance. Pay equity is critical to sexual assault victims' economic security, safety, and well-being. A recent study from the Centers for Disease Control and Prevention found that individual victims of sexual violence incur \$122,461 over a lifetime in costs associated with lost wages, health, criminal justice, and property damage (Peterson et al., 2017). Additional research shows that sexual violence can derail a person's education and employment, resulting in a \$241,600 income loss over a lifetime (MacMillan, 2000). Allowing employers to base wages on pay/salary history will perpetuate pay inequity, leaving sexual assault survivors and their families with fewer economic resources to heal and thrive in their lives.

## **POWHER NEW YORK**

PowHer New York (PowHerNY) is an inclusive statewide network of over one hundred diverse organizations committed to collaborative action to accelerate economic equality for New York women. With the goal of closing the state's wage and opportunity gap, PowHerNY, a nonprofit organization, leads New York's ten-year Equal Pay Campaign which educates and promotes stronger policies on the local, state and federal levels to address persistent wage inequity that continues to disadvantage women and families. On average, New York women are paid 89 cents, but Black women are paid 66 cents, Latinas are paid 56 cents and Asian women are paid 82 cents for every dollar paid to white, non-Hispanic men. Because wage inequity multiples over a career, older women are disproportionately impacted: more than 1 in 5 New York City women 65 years and older live in poverty, having been underpaid, undervalued, and underemployed for decades. Recognizing that current equal pay laws passed over fifty years ago, are insufficient to address ongoing disparity, since 2014 New York has passed new laws aimed at closing the wage gap. This year, a salary history ban was passed in New York City covering all employees, and similar protections were afforded New York State municipal workers by executive action. These and other measures address systemic discrimination and are critical steps toward a more equitable workplace for women and minorities.

## **RESTAURANT OPPORTUNITIES CENTER (ROC) OF PENNSYLVANIA**

Members of our organization working as sous chefs and in other restaurant positions have been impacted by having to provide prior salary histories which has led to women and minority workers being paid less than their white male counterparts with similar and sometimes less qualifications.

## **SOUTHWEST WOMEN'S LAW CENTER**

The Southwest Women's Law Center is a non-profit policy and advocacy law center formed in 2005. The Law Center focuses on advancing positive outcomes for girls and women in the State of New Mexico by ensuring that women and girls are paid equally and fairly. The Southwest Women's Law Center is dedicated to advancing women's economic security by ensuring that all women receive equal pay aligned with their talent, skills and abilities. Accordingly, the Law Center is uniquely qualified to comment on, and inform, the Court about the impact on the wage gap of Philadelphia's ordinance prohibiting reliance on and inquiries about prior pay.

## **WOMEN EMPLOYED**

Women Employed's mission is to improve the economic status of women and remove barriers to economic equity. Since 1973, the organization has assisted thousands of working women with problems of discrimination and harassment,



monitored the performance of equal opportunity enforcement agencies, and developed specific, detailed proposals for improving enforcement efforts, particularly on the systemic level. Women Employed believes that basing pay differentials between men and women on previous salaries should not be allowed as a “factor other than sex” as this is not gender neutral.

## **WOMEN’S LAW PROJECT**

The Women’s Law Project (WLP) is a nonprofit public interest law firm with offices in Philadelphia and Pittsburgh, Pennsylvania. The WLP’s mission is to create a more just and equitable society by advancing the rights and status of women throughout their lives. To meet these goals, the WLP engages in high impact litigation, policy advocacy, public education, and individual counseling. Founded in 1974, the WLP has a long and effective track record on a wide range of legal issues related to women’s health, legal, and economic status. Economic justice and equality for women is a high priority for WLP. To that end, WLP has advocated for equal pay for women, a goal that is far from achieved despite the adopted of federal and state equal pay laws more than fifty years ago. We have supported reform to strengthen federal and state equal pay laws and to enact local laws banning reliance on prior pay to set wages in Philadelphia and Pittsburgh. Such laws are necessary to end the insidious perpetuation of pay discrimination by employers who seek to justify pay discrimination on the basis of prior pay.