# No. 24-3223

**IN THE UNITED STATES COURT OF APPEALS**
**FOR THE SECOND CIRCUIT**

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SILVIA DIAZ-ROA,
*Plaintiff-Appellee*,

v.

HERMES LAW, P.C. ET AL.,
*Defendants-Appellants*.

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On Appeal from the United States District Court
for the Southern District of New York, No. 1:24-cv-2105-LJL

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**BRIEF OF PUBLIC JUSTICE, NATIONAL WOMEN'S LAW CENTER, AMERICAN ASSOCIATION FOR JUSTICE, AND NATIONAL EMPLOYMENT LAWYERS ASSOCIATION AS *AMICI CURIAE* IN SUPPORT OF PLAINTIFF-APPELLEE**

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## CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1(a), *Amici Curiae* Public Justice, National Women's Law Center, American Association for Justice, and National Employment Lawyers Association are non-profit organizations, do not issue stock, and have no parent corporations.

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## STATEMENT OF INTEREST[1]

Public Justice is a national public interest advocacy organization that specializes in precedent-setting, socially significant civil litigation, with a focus on fighting to preserve access to justice for victims of corporate and governmental misconduct. The organization maintains an Access to Justice Project, which seeks to remove procedural barriers that unduly restrict the ability of workers, consumers, and other civil litigants from seeking redress in the civil court system. To that end, Public Justice has a longstanding practice of fighting against the unlawful use of mandatory arbitration clauses that deny workers and consumers their day in court. Public Justice has specifically advocated for full implementation of the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act ("EFAA"), including by filing amicus briefs regarding the interpretation and scope of the Act in a number of cases, including *Olivieri v. Stifel, Nicolaus & Co.*, 112 F.4th 74 (2d Cir. 2024), *Cornelius v. CVS Pharmacy Inc.*, 133 F.4th 240 (3d Cir. 2025), and *Johnson v. Everyrealm, Inc.*, 657 F. Supp. 3d 535 (S.D.N.Y. 2023).

The National Women's Law Center ("NWLC") is a nonprofit organization that fights for gender justice in the courts, in public policy, and in our society, and

[1] No party's counsel authored this brief in whole or in part, nor did a party, its counsel, or any other person contribute money to fund preparing or submitting this brief. *See* Fed. R. App. P. 29(a)(4)(E). The parties consent to the filing of this brief.

works across issues that are central to the lives of women and girls, especially women of color, LGBTQI+ people, and low-income women. Since 1972, NWLC has worked to advance educational opportunities, workplace justice, health and reproductive rights, and income security. The NWLC Fund houses and administers the TIME'S UP Legal Defense Fund, which improves access to justice for those facing workplace sex harassment, including through grants to support legal representation. NWLC has participated in numerous workplace civil rights cases in state and federal courts, including through filing amicus briefs that highlight the critical importance of retaining litigation in court as an option for survivors of sexual violence seeking justice.

The American Association for Justice ("AAJ") is a national, voluntary bar association established in 1946 to strengthen the civil justice system, preserve the right to trial by jury, and protect access to the courts for those who have been wrongfully injured. With members in the United States, Canada, and abroad, AAJ is the world's largest plaintiff trial bar. AAJ's members primarily represent plaintiffs in personal injury actions, employee rights cases, consumer cases, and other civil actions. Throughout its more than 79-year history, AAJ has served as a leading advocate for the right of all Americans to seek legal recourse for wrongful conduct.

Founded in 1985, the National Employment Lawyers Association ("NELA") is the largest bar association in the country focused on empowering workers' rights attorneys. NELA and its 69 circuit, state, and local affiliates have a membership of over 4,000 attorneys who are committed to protecting the rights of workers in employment, wage and hour, labor, and civil rights disputes. NELA members represent workers who have experienced sexual harassment and assault in the workplace, giving NELA a unique interest in ensuring that the EFAA is interpreted correctly by the courts.

## INTRODUCTION AND SUMMARY OF ARGUMENT

Passed in 2022 with bipartisan support, the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act ("EFAA" or "the Act"), 9 U.S.C. §§ 401-402, provides survivors of sexual assault and harassment with the right to seek justice in court instead of being forced into arbitration proceedings. The Act states that, "at the election of the person alleging conduct constituting a sexual harassment dispute or sexual assault dispute . . . no predispute arbitration agreement . . . shall be valid or enforceable with respect to a case which is filed under Federal, Tribal or State law and relates to the sexual assault dispute or the sexual harassment dispute." 9 U.S.C. § 402(a).

The district court correctly interpreted the Act to conclude that Plaintiff-Appellee Silvia Diaz-Roa's case, which includes sexual harassment claims, was not subject to arbitration. Defendants-Appellants and their amicus, the Chamber of Commerce ("the Chamber"), argue that the district court erred because Ms. Diaz-Roa's case involves not only claims of harassment but also what they call "business related" disputes. According to their interpretation, only *claims* that relate to sexual assault or harassment can be subject to the EFAA. That argument directly contravenes the text of the Act, which invalidates an arbitration agreement as to an entire *case*, and has been resoundingly rejected by all but one of the district courts around the country that have examined this issue.

In Amici's view, the EFAA's plain text compels affirmance here. But, should the Court determine that more is required, Amici offer this brief to explain why Defendants' and the Chamber's interpretation also contravenes the Act's legislative purpose and history. Congress passed the EFAA to empower survivors of sexual assault and sex-based harassment to seek justice in court instead of in individual and confidential arbitration, which studies show favors corporations and undermines plaintiffs' ability to enforce their rights. The legislative record confirms what is written in the statutory text: Congress intended the EFAA to have a broad scope, covering any *case* related to conduct alleged to constitute a sexual assault or sexual

harassment dispute. The interpretation put forth by Defendants and the Chamber, by contrast, would lead to exactly the result Congress intended to avoid by making it harder and more burdensome for plaintiffs to access justice and vindicate their rights.

For these reasons, and those provided by Ms. Diaz-Roa, this Court should affirm the district court's denial of Defendants' motion to compel arbitration.

## ARGUMENT

### I. Congress passed the EFAA to provide survivors of sexual assault and harassment with the right to seek justice in court instead of in arbitration.

The EFAA has been heralded as "one of the most significant changes to employment law in years." 168 Cong. Rec. at S619 (2022) (statement of Sen. Chuck Schumer). With this law, Congress intended to "restore access to justice for millions of victims of sexual assault or harassment who are currently locked out of the court system." H.R. Rep. No. 117-234, at 4 (2022). As the House Judiciary Committee Report explained, "forced arbitration clauses have become virtually ubiquitous in everyday contracts," *id.* at 3, and businesses use them "not simply as an alternative means of resolving disputes, but effectively to insulate themselves from accountability," *id.* at 9 (citation omitted). Without "the transparency and precedential guidance of the justice system," forced arbitration can mean that survivors of sexual assault or sex-based harassment are "unable to . . . enforce their

rights under state and federal legal protections, or even simply share their experiences." *Id.* at 3.

In particular, and contrary to the studies the Chamber cites (at 29-30), a 2017 study incorporated into the House report found that employees are less likely to bring claims in arbitration than they are in court, "are less likely to win arbitration cases" than court cases, and "recover lower damages in mandatory employment arbitration than in the courts." Alexander J.S. Colvin, *The Growing Use of Mandatory Arbitration* at 5-6, Econ. Pol'y Inst. (2017) (cited by H.R. Rep. No. 117-234, at 9-10). More recent studies confirm that "mandatory arbitration in the employment context unduly disadvantages employee plaintiffs by relegating their claims to a forum that reduces the likelihood of a verdict in their favor and the size of their monetary awards." Alexander J.S. Colvin & Mark Gough, *Mandatory Employment Arbitration*, 19 Ann. Rev. of L. & Soc. Sci. 131, 136 (2023); *see id.* at 133 (concluding that mandatory arbitration "has tended to suppress access to justice" by surveying existing academic literature and comparing employees' win rates and awards in arbitration and in federal and state courts).

Worse still, explained the House report, the "secretive nature of arbitration" perpetuates a "culture of silence" that insulates wrongdoers from accountability. H.R. Rep. No. 117-234, at 4 (citation omitted). Because most arbitration remains

confidential, it prevents potential victims and the general public "from learning of widespread misconduct." *Id.* at 5. In addition, this confidentiality allows for "office cultures that ignore harassment and retaliate against those who report it." *Id.* at 4. As Representative Greg Stanton described the problem to his colleagues on the House Judiciary Committee: "Forced arbitration agreements are . . . designed to silence critical voices . . . . We are taught that light exposes truth, and it is clear to me that justice is rarely done in secret." *Silenced: How Forced Arbitration Keeps Victims of Sexual Violence and Sexual Harassment in The Shadows: Hearing Before the H. Comm. on the Judiciary*, 117th Cong. 153 (2021).

Legislative action was therefore necessary to restore the rights of survivors of sexual assault and sex-based harassment who would otherwise be forced out of court and into a "secretive, closed, and private system designed by corporate interests to evade oversight and accountability." H.R. Rep. No. 117-234, at 6. The EFAA is Congress's answer. As Senator Richard Durbin explained, the "premise of this legislation is simple: Survivors of sexual assault or harassment . . . . should be able to choose whether to bring a case forward [in court], instead of being forced into a secret arbitration proceeding where the deck is stacked against them." 168 Cong. Rec. at S626. To afford plaintiffs this choice, the EFAA directly amended the Federal Arbitration Act, 9 U.S.C. §§ 1 *et seq.* Now, a plaintiff cannot be forced to

arbitrate any "case which . . . relates to . . . [a] sexual harassment dispute," 9 U.S.C. § 402(a), which is defined broadly to encompass any "dispute relating to conduct that is alleged to constitute sexual harassment under applicable Federal, Tribal, or State law," *id.* § 401(4). By opening the courthouse doors, Congress sought to "fix a broken system that protects perpetrators and corporations and end the days of silencing survivors." 168 Cong. Rec. at S627 (statement of Sen. Kirsten Gillibrand).

## II. The legislative history confirms Congress intended the EFAA to exempt entire cases, not just individual claims, from arbitration.

The EFAA's legislative history reflects Congress's understanding that the EFAA would need to apply to an entire case, not just individual claims, in order to give plaintiffs a meaningful opportunity to air their allegations of sexual assault or harassment in court.

Responding to questions about the scope of the EFAA, several senators emphasized that plaintiffs must not be forced to split their claims and litigate their cases across two fora. In the words of a lead sponsor of the Act, keeping cases whole "is exactly what we intended the bill to do." *See* 168 Cong. Rec. at S627 (statement of Sen. Kirsten Gillibrand). As Senator Gillibrand explained, "[w]hen a sexual assault or sexual harassment survivor files a court case in order to seek accountability, her single case may include multiple claims." *Id.* Rather than force her to "relive that experience in multiple jurisdictions," her claims must be able to

"proceed together" so that she can "realize the rights and protections intended to be restored to her by this legislation." *Id.*

Senator Durbin, Chair of the Judiciary Committee, echoed that intent, stating that "survivors should be allowed to proceed with their *full case* in court regardless of which claims are ultimately proven. I am glad that is what this bill provides." 168 Cong. Rec. at S626-27 (emphasis added). To emphasize the importance of keeping cases whole rather than splitting them across fora, Senator Durbin drew from a real-world example: Ms. Taylor Gilbert was assaulted and raped by her manager and harassed by colleagues. *Id.* at S626. The company failed to respond to Ms. Gilbert's complaints and instead "bypassed" her "for promotions and raises." *Id.* As Senator Durbin explained, "it was essential that the company's conduct in enabling the abuse and harassment and *also retaliating against her* be brought to light, *not covered up by being separated* and forced into arbitration." *Id.* (emphases added). In other words, for the EFAA to be effective, plaintiffs must be permitted to exempt their whole case from arbitration, not just their claims of sexual assault or sex-based harassment.

The House was in accord. The House report, for example, emphasized that a "suit" by "an employee" who had been "assaulted or harassed at work" or by a "consumer" who had been "assaulted at a business" should be permitted access to a

"court of law." H.R. Rep. No. 117-234, at 3. The Chamber asserts that with this statement, the House Committee had in mind only "*claims* related to the assault or harassment," Chamber Br. at 18 (emphasis added); the report, however, was clearly focused on whole "suit[s]"—i.e., *cases*. *See* H.R. Rep. No. 117-234, at 3. Similarly, Representative Bobby Scott emphasized that "the best reading of the language in the bill that refers to 'a case . . . [that] relates to a sexual harassment dispute' is that it was meant to encompass [] scenarios" in which a plaintiff brings both harassment and other "negative employment action" claims. 168 Cong. Rec. at H991 (2022) (first two alterations in original).[2]

[2] The Chamber urges an unduly narrow interpretation of the EFAA in another way, implying that the statute covers only claims that are sexual in nature because the House report "exclusively" emphasizes "sexual assault" and "sexual coercion." Chamber Br. at 18 (citing H.R. Rep. 117-234, at 10). But this reading, too, is irreconcilable with both the EFAA's plain text and its fuller legislative history. An earlier version of the bill did focus on what Representative Scott described as "sexual harassment involving unwelcome sexual advances, propositions, and sexual attention." 168 Cong. Rec. at H991; *see also* H.R. 4445, 117th Cong. (Jan. 28, 2022) (defining a "sexual harassment dispute" as a dispute relating to, *inter alia*, "[u]nwelcome sexual advances" or "[u]nwanted sexual attention"). Members of Congress expressed concern that this focus "fail[ed] to account for the other, harmful, and common, forms of sex-based harassment that occurs in the workplace" that is "not sexual in nature but is motivated by a sex-based animus or hostility" and has "been recognized by the Supreme Court and the U.S. Equal Employment Opportunity Commission." 168 Cong. Rec. at H991 (statement of Rep. Bobby Scott). The House then amended the definition of "sexual harassment dispute" to "a dispute relating to conduct that is alleged to constitute sexual harassment under applicable Federal, Tribal, or State law." 9 U.S.C. § 401(4).

Defendants and the Chamber resist this obvious legislative intent, claiming instead that Congress intended to exempt from arbitration only claims related to alleged assault or harassment. *See* Chamber Br. at 17-20; *see also* Opening Br. at 19-20. In support of this argument, they cite Senators' general agreement that the EFAA would not "take unrelated claims out of the contract [for arbitration]." *See, e.g.*, Opening Br. at 20 (quoting 168 Cong. Rec. at S625 (statement of Sen. Lindsey Graham)); Chamber Br. at 19 (quoting same); *id.* at 19 (quoting 168 Cong. Rec. at S625 (statement of Sen. Joni Ernst)).

These legislative generalities do not reach as far as Defendants and the Chamber would stretch them. As explained in Ms. Diaz-Roa's brief and above, the Act's plain text and legislative history are clear that, for the Act to apply, the "case" as a whole—not each individual claim—must relate to the sexual assault or harassment dispute. 9 U.S.C. § 402(a). Of course, as a practical matter, a "case" can contain only those claims that are properly joined because they are brought against the same defendant, Fed. R. Civ. P. 18, "aris[e] out of the same transaction, occurrence, or series of transactions or occurrences," Fed. R. Civ. P. 20, or concern common questions of law or fact, *id*. Thus, of course the EFAA does not cover claims that are, in the Chamber's words, "wholly unrelated to the sexual-assault or sex-based harassment dispute," Chamber Br. at 9, because "wholly unrelated"

claims cannot be properly joined in a single case. However, as Senator Ernst emphasized, "harassment or assault claims" can be "joined" with other "employment claims" when there is a "key nexus" between the claims—that is, when the claims *are* properly joined. 168 Cong. Rec. at S625. So, while the Act was not intended to preclude arbitration of "*all* employment matters," it can do so where, as Senator Ernst acknowledged, "a sexual assault or harassment claim is brought forward in conjunction with another employment claim." *Id.* (emphasis added).

Senator Graham's comment about wage claims does not demonstrate otherwise. Defendants and the Chamber emphasize his comment that "if you have got an hour-and-wage dispute with the employer, you make a sexual harassment, sexual assault claim, the hour-and-wage dispute stays under arbitration unless it is related." Opening Br. at 20 (quoting 168 Cong Rec. at S625 (statement of Sen. Lindsey Graham)); Chamber Br. at 20 (quoting same). According to Defendants and the Chamber, Senator Graham's statement supports their position that an assault or harassment claim brought against the *same defendant* as a wage claim might not bring the whole case within the protections of the EFAA—even though those claims could be properly joined.

That reading requires putting words in Senator Graham's statement that just aren't there. Particularly coupled with the plain text of the Act, his comments cannot

mean that each and every claim must relate to a sexual assault or harassment dispute. Properly contextualized within the Senate's broader discussion, Senator Graham could have simply meant that tacked-on claims of sexual assault against a third party would not necessarily bring the whole case within the scope of the EFAA. *See* 168 Cong. Rec. at S625 (noting concern about "any subsequent litigation manipulat[ing] the text to game the system" (statement of Sen. Joni Ernst)); *id.* (similar statement of Sen. Lindsey Graham); *id.* at S625-26 (statement of Sen. Richard Durbin acknowledging Senator Ernst's concern). And indeed—a tacked-on claim of sexual assault against another defendant would *not* bring a plaintiff's case about wage-and-hour violations within the scope of the EFAA if it was unrelated: If the assault claim shared no common questions of law or fact with the plaintiff's wage claims, it could not be properly joined.[3] Senator Graham's statements therefore hardly establish that the EFAA operates on a claim-by-claim basis to carve out claims—whether wage-

[3] There are other guardrails against the Chamber's fear that "unscrupulous lawyers seeking to bring lawsuits in court" will simply tack on "unrelated sexual-harassment claims in order to evade enforcement of arbitration agreements." Chamber Br. at 25; *id.* at 26 (warning of plaintiffs' lawyers "throw[ing] in" assault or harassment claims to avoid arbitration). As Senator Graham recognized, Rule 11 and potential "disciplinary proceedings by courts" and state bars serve as a check against the risk that attorneys may otherwise be tempted to add frivolous sexual assault or sex-based harassment claims to cases to trigger the EFAA's protections. *See* 168 Cong. Rec. at S625.

and-hour, retaliation, or otherwise—properly joined to a sexual assault or sex-based harassment claim.

Indeed, Congress did not move forward on another bill during the same session that would have limited the legislation to "claim[s]" of sexual assault between employees and employers, while allowing for arbitration for other claims in a case. *See* Resolving Sexual Assault and Harassment Disputes Act of 2021, S.3143, 117th Cong. (2021). Instead, Congress enacted the EFAA, which rejects the notion of claim-splitting by exempting from arbitration "*any case* which . . . relates to . . . a sexual harassment dispute." 9 U.S.C. § 402(a) (emphasis added). Put simply, "for *cases* which involve conduct that is related to a sexual harassment dispute or sexual assault dispute, survivors should be allowed to proceed with their full case in court." 168 Cong. Rec. at S626 (statement of Sen. Richard Durbin); *id.* at S627 (explaining that the EFAA applies when a plaintiff is "alleging conduct constituting a sexual harassment dispute or a sexual assault dispute," not when each of their claims relates to such disputes (statement of Sen. Kirsten Gillibrand)).

Here, the district court correctly found that Ms. Diaz-Roa plausibly alleged a sexual harassment claim against Defendants. SPA-69. And Defendants have not argued that her remaining claims are not properly joined, nor could they. All of Ms. Diaz-Roa's claims—both harassment and "business related"—involve

contemporaneous events, implicate the same employer and actors, and turn on the nature of her employment relationship with Defendants, so the district court was correct to deny Defendants' motion to compel arbitration. *See* SPA-29. Keeping Ms. Diaz-Roa's case whole "is exactly what [Congress] intended the [EFAA] to do." 168 Cong. Rec. at S627 (statement of Sen. Kirsten Gillibrand).

In sum, when a plaintiff alleges a sexual assault or sex-based harassment dispute, all of her claims that are properly joined in one "case" are exempt from arbitration. That's what the plain language of the Act says, that was Congress's understanding and intent in enacting the EFAA, and that's the case here.

## III. Keeping Entire Cases Together Protects Survivors, Promotes Efficiency, and Accords with the Realities of Harassment.

Interpreting the EFAA, as Defendants and the Chamber do, to require claim splitting not only contravenes the Act's plain text and legislative history, but would also silence survivors of sexual assault and sex-based harassment—exactly the opposite of what Congress intended. When a case includes arbitrable and non-arbitrable claims, a court has discretion "to stay the balance of the proceedings pending arbitration." *Zachman v. Hudson Valley Fed. Credit Union*, 49 F.4th 95, 101 (2d Cir. 2022). For both legal and practical reasons, such a "split and stay" has the potential to preclude a plaintiff from having their claims related to a sexual

assault or sex-based harassment dispute heard in court even if those claims are not subject to arbitration.

This Court has recognized that res judicata and collateral estoppel can apply to preclude litigation of issues resolved by arbitration. *See State Farm Mut. Auto. Ins. Co. v. Tri-Borough NY Med. Prac.*, 120 F.4th 59, 81 (2d Cir. 2024). As a result, even if a survivor elects to keep her claim related to assault or harassment in court, under Defendants' and the Chamber's interpretation, she may not be able to litigate that claim because it turns on an issue also raised—and already resolved—in arbitration. For example, Defendants and the Chamber suggest that a plaintiff must still arbitrate a wage-and-hour claim brought against the same employer as her non-arbitrable sex-based harassment claim. But if the arbitrator determines that the survivor is an independent contractor for purposes of her wage-and-hour claim, that determination could preclude a federal harassment claim, too.

Moreover, even if non-arbitrable claims related to sex-based harassment are not legally precluded, they could still be more difficult to litigate as a practical matter. For example, to prove her sexual harassment claim in court, Ms. Diaz-Roa will require evidence and witnesses that necessarily overlap with those needed to prove her conversion claim in arbitration. Both claims involve the same employer and actors. Both claims relate to Ms. Diaz-Roa's experience as an employee for

Defendants. And both claims depend on events that occurred at around the same time. As the legislative record reflects, forced "bifurcation" and duplication would "only lead to unnecessary expense and an administrative burden" for the court, the parties who must defend against or advance overlapping allegations in different forums, and third parties who may have to appear to testify multiple times. *See* 168 Cong. Rec. at H991 (statement of Rep. Bobby Scott). For precisely these reasons, this Court has long emphasized that it is "fairer to require a plaintiff to present in one action all of his theories of recovery relating to a transaction, and all of the evidence relating to those theories, than to permit him to prosecute overlapping or repetitive actions in different courts or at different times." *AmBase Corp. v. City Investing Co. Liquidating Trust*, 326 F.3d 63, 73 (2d Cir. 2003). As a practical matter, these inefficiencies would likely force the party with fewer resources—typically the employee—to choose between litigating one claim or the other. Particularly where a court has stayed the litigation to allow the arbitration to proceed first, Defendants' and the Chamber's interpretation of the EFAA could therefore have the effect of discouraging, if not preventing, plaintiffs from pursuing their claims related to assault and harassment in court—exactly contrary to the Act's goals of *removing* barriers that prevent survivors from vindicating their rights.

Finally, keeping an entire case together instead of parsing individual claims is most consistent with the EFAA's goals for another reason: The reality of how workers experience harassment does not support drawing a bright line between sex-based harassment claims and other employment claims. For example, a worker may experience discrimination based on both their sex and other aspects of their identity, such as their race, ethnicity, or disability. *See Gorzynski v. JetBlue Airways, Corp.*, 596 F.3d 93, 110 (2d Cir. 2010) ("[W]here two bases of discrimination exist, the two grounds cannot be neatly reduced to distinct components."); *Frappied v. Affinity Gaming Black Hawk, LLC*, 966 F.3d 1038, 1049 (10th Cir. 2020) ("A failure to recognize intersectional discrimination [in Title VII] obscures claims that cannot be understood as resulting from discrete sources of discrimination." (internal quotation marks, citation omitted)); *see also, e.g.*, *Cruz v. Coach Stores, Inc.*, 202 F.3d 560, 572 (2d Cir. 2000) (holding that "the interplay between . . . two forms of harassment" can rightly serve as evidence about the severity of workplace harassment claims, because "a jury could find that . . . racial harassment exacerbate[s] the effect of . . . sexually threatening behavior and vice versa."). It can also be difficult if not "impossible to tease out," particularly at early stages of litigation, "sex discrimination" claims and non-discrimination claims, such as whistleblowing claims, *see Roy v. Correct Care Sols., LLC*, 914 F.3d 52, 64 (1st Cir.

2019) (citations omitted), or wage-and-hour claims. On the latter, recent studies have found that workers who depend on customers for tips experience not only more wage theft, but also more sex-based harassment and retaliation related to such harassment. *See* Debbie Elliott & Emma Bowman, *Tipped Service Workers Are More Vulnerable Amid Pandemic Harassment Spike*, NPR (Dec. 6, 2020), https://tinyurl.com/5eurhyyr (describing study). Forcing employees to litigate their harassment and wage claims in different fora would ignore the reality of how these abuses are connected.

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In sum, the EFAA's legislative purpose and history confirm what its text makes clear: When a lawsuit includes allegations that "relate[] to" a "sexual harassment dispute," the entire "case" cannot be forced into arbitration. Both the pitfalls of forced arbitration and the practical realities of workplace discrimination and litigation underscore why Congress made that choice.

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## CONCLUSION

For these reasons and the reasons stated in Ms. Diaz-Roa's brief, the Court should affirm the district court's order denying Defendants' motion to compel arbitration.

Respectfully submitted,

July 3, 2025

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## CERTIFICATE OF COMPLIANCE

This motion complies with the type-volume limitation of Federal Rules of Appellate Procedure 29(a)(5) and 32(a)(7)(B)(i) and Local Rules 29.1(c) and 32.1(a)(4)(A) because this brief contains 4,484 words, excluding the parts of the motion exempted by Federal Rule of Appellate Procedure 32(f), as calculated by Microsoft Office 365.

This brief complies with the typeface and type-style requirements of Federal Rules of Appellate Procedure 32(a)(5) and 32(a)(6) because this brief has been prepared in proportionally spaced typeface using Microsoft Office 365 in 14-point Times New Roman font.

July 3, 2025

/s/ Hannah M. Kieschnick
Hannah M. Kieschnick
*Counsel for* Amici Curiae
*Public Justice, NWLC, AAJ, and NELA*

## CERTIFICATE OF SERVICE

I certify that on July 3, 2025, I attempted to electronically filed the foregoing brief with the Clerk of the Court for the U.S. Court of Appeals for the Second Circuit via ACMS. I received an error message with Error ID # [2c1ed376-cd90-48eb-9ec2-1c5c6c3a2763]. I attempted to access the Court's ACMS multiple times. Then, because the Clerk's Office was closed on July 3, 2025, I emailed both the Clerk's Office and the E-Filer Help Desk for the U.S. Court of Appeals for the Second Circuit, copying all parties to the matter, informing them of the technical problems with ACMS and attaching the foregoing brief.

I certify that on July 7, 2025, the first business day since July 3, 2025, I electronically filed the foregoing brief via ACMS. I further certify that all participants in the case are registered ACMS and users and that service will be accomplished by ACMS.

/s/ Hannah M. Kieschnick
Hannah M. Kieschnick