NO. A15-0396

State of Minnesota

In Supreme Court

Nicole LaPoint,

Respondent,

v.

Family Orthodontics, P.A.,

Appellant.

BRIEF OF AMICUS CURIAE GENDER JUSTICE

Marshall H. Tanick (#108303)
Teresa J. Ayling (#157478)
HELLMUTH & JOHNSON, PLLC
8050 West 78th Street
Edina, MN 55439
(952) 941-4005

Attorneys for Appellant
Family Orthodontics, P.A.

Jill R. Gaulding (#388751)
Lisa C. Stratton (#236858)
Christy L. Hall (#392627)
GENDER JUSTICE
550 Rice Street
St. Paul, MN 55103
(651) 789-2090

Attorneys for Amicus Curiae
Gender Justice

Steven Andrew Smith (#260836)
Bonnie M. Smith (#391915)
NICHOLS KASTER, PLLP
4600 IDS Center
80 South Eighth Street
Minneapolis, MN 55402
(612) 256-3200

Attorneys for Respondent
Nicole LaPoint

(Additional counsel listed on following page)

2016 – BACHMAN LEGAL PRINTING – FAX (612) 337-8053 – PHONE (612) 339-9518 or 1-800-715-3582

Margaret R. Ryan (#331181)
Jacalyn N. Chinander (#388266)
MEAGHER & GEER, PLLP
33 South Sixth Street, Suite 4400
Minneapolis, MN 55402
Tel: (612) 228-0661

and

William J. Davidson (#201777)
LIND, JENSEN, SULLIVAN
& PETERSON, PA
1300 AT&T Tower
901 Marquette Avenue South
Minneapolis, MN 55402
(612) 333-3637

Attorneys for Amicus Curiae
Minnesota Defense Lawyers Association

Margaret Jacot (#346755)
Assistant Attorney General
OFFICE OF THE ATTORNEY
GENERAL STATE OF MINNESOTA
445 Minnesota Street, Suite 900
St. Paul, MN 55101
(651) 757-1467

Attorneys for Amicus Curiae
The Commissioner of the Minnesota
Department of Human Rights (Pending)

Brian Rochel (#391497)
Douglas A. Micko (#299364)
TESKE MICKO KATZ KITZER
& ROCHEL, PLLP
222 South Ninth Street, Suite 4050
Minneapolis, MN 55402
(612) 746-1558

and

Frances E. Baillon (#28435X)
BAILLON THOME JOZWIAK
& WANTA, LLP
100 South Fifth Street, Suite 1200
Minneapolis, MN 55402
(612) 252-3570

Attorneys for Amicus Curiae
National Employment Lawyers Association-
Minnesota Chapter

Leslie L. Lienemann (#230194)
CULBERTH & LIENEMANN, LLP
1050 UBS Plaza
444 Cedar Street
St. Paul, MN 55101
(651) 290-9300

and

Justin D. Cummins (#276248)
CUMMINS & CUMMINS, LLP
1245 International Centre
920 Second Avenue South
Minneapolis, MN 55402
(612) 465-0108

Attorneys for Amicus Curiae Employee
Lawyers Association of the Upper Midwest

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

INTRODUCTION

The Court of Appeals concluded that Family Orthodontics discriminated against Nicole LaPoint because of her pregnancy, in violation of the Minnesota Human Rights Act. Pursuant to the Order of this Court dated April 1, 2016, granting Gender Justice and others leave to file briefs as *amici curiae*, Gender Justice submits this *amicus curiae* brief to urge this Court to affirm the decision of the Court of Appeals.[1]

INTEREST OF *AMICUS CURIAE* GENDER JUSTICE

Gender Justice is a nonprofit law firm based in the Midwest that eliminates gender barriers through impact litigation, policy advocacy, and education. As part of its mission, Gender Justice helps courts, organizations, and the public better understand the role that implicit bias and stereotyping play in perpetuating gender discrimination. Gender Justice promotes research-based remedies to gender discrimination that can help ensure equality of opportunity for all. As part of its impact litigation program, Gender Justice acts as counsel in cases involving gender equality in the Midwest region, including providing direct representation of pregnant individuals facing discrimination in the workplace. Gender Justice also participates as *amicus curiae* in cases that have an impact both regionally and nationally. Gender Justice has an interest in the proper interpretation of the Minnesota Human Rights Act and in protecting and enforcing women's and pregnant individuals' legal rights.

---

[1] This brief was not authored in whole or in part by counsel for any party. Further, no one other than the *amicus curiae* or its counsel made a monetary contribution to the preparation or submission of this brief.

In focusing on pregnancy discrimination, Gender Justice joins national advocacy groups such as such as Human Rights Watch, the Center for American Progress, and the Center for Work Life Law, all of which have sounded alarms on the issue. These groups have documented widespread and continuing discrimination against pregnant and parenting women and the serious economic damage it causes American families.

Gender Justice recognizes that pregnant women continue to face discrimination in all facets of the employment market. Employers make inappropriate inquiries regarding marital status and whether applicants have children or plan to get pregnant. In some cases, as alleged here, employers revoke job offers after learning of pregnancies. On the job, pregnant workers may be targeted for unlawful harassment by supervisors and coworkers. Some employers still seek to prohibit pregnant women from holding certain positions when pregnant despite their ability to do so. Other employers refuse to provide reasonable accommodation a pregnant worker needs to continue working, even though they offer the same types of accommodations to other workers due to injuries or illnesses. Employers frequently force their employees to take leave or unjustly demote or discharge pregnant workers after learning that they are pregnant. In other cases, workers face harassment or adverse employment consequences for taking the leave to which they are entitled.

Gender Justice is committed to enforcing the state and federal laws that protect the essential economic rights of pregnant workers and prohibit all forms of workplace discrimination against women based on pregnancy or parenting-related stereotypes and biases.

STATEMENT OF FACTS

Gender Justice adopts the statement of facts submitted to this Court in the brief of Respondent Nicole LaPoint.

ANALYSIS

I. THE MHRA PROVISION BARRING EMPLOYERS FROM REQUIRING JOB APPLICANTS TO STATE WHETHER THEY ARE PREGNANT (MINN. STAT. § 363A.08, SUBD. 4(a)(1)) IS A CRITICAL COMPONENT OF GENDER EQUALITY LAW WHICH SHOULD BE INTERPRETED BROADLY TO EFFECT ITS REMEDIAL PURPOSE

A. Pregnancy Discrimination Remains Prevalent

Federal and state laws have barred pregnancy discrimination in the workplace for decades. The federal Pregnancy Discrimination Act made clear in 1978 that discrimination on the basis of sex necessarily includes discrimination on the basis of pregnancy. *See* Title VII, 42 U.S.C. § 2000e, as amended by P.L. 95-555, 92 Stat. 2076. The Minnesota legislature had already enacted a similar clarification for the MHRA one year earlier, in 1977. *See* MHRA, Minn. Stat. § 363A.03, as amended by 1977 c 408 s 1. Legislators enacted these clarifications because they recognized that "discrimination against pregnant women is one of the chief ways in which women's careers have been impeded and women employees treated like second class employees." Comm. on Labor and Human Resources U.S. Senate, 96th Cong., Legislative History of the Pregnancy Discrimination Act of 1978, Pub. L. No. 95-555, at 25.

But even with these clear provisions in place for nearly forty years, discrimination against pregnant individuals remains one of the most prevalent forms of employment

discrimination. *See* National Partnership for Women and Families, THE PREGNANCY DISCRIMINATION ACT: WHERE WE STAND THIRTY YEARS LATER 10 (2008) (hereinafter "WHERE WE STAND").

The research findings have been consistent over years. A 1984 study found that employers tend to devalue pregnant employees' competence, while a 1991 study found evidence that employers devalue pregnant employees' career potential. M. Butensky, *Devaluation of the competence of pregnant women, 45* Dissertation Abstracts International 718 (1984); H.G. Gueutal & E.M. Taylor, *Employee pregnancy: The impact on organizations, pregnant employees, and co-workers*, 5 J. of Business and Psychology 459 (1991).

In 2002, researchers found that participants in a mock-hiring study were significantly less likely to hire pregnant candidates. J. Bragger et al., *The effects of the structured interview on reducing biases against pregnant job applicants*, 46 Sex Roles 215 (2002) (hereinafter "Structured interview") (noting "[p]articipants…rate[d] pregnant applicants significantly lower in their recommendation for hiring").

More recently, in 2007, researchers found the same results in a naturalistic field study: female confederates posing as job applicants, with or without a pregnancy prosthesis, encountered a significantly greater negative reaction when perceived as pregnant. *See* M. Hebl et al., *Hostile and Benevolent Reactions Toward Pregnant Women: Complementary Interpersonal Punishments and Rewards That Maintain Traditional Roles*, 92 J. of Applied Psychology 1499 (2007) (hereinafter "Hostile and benevolent reactions"); *see also* J.L. Cunningham & T. Macan, *Effects of applicant pregnancy on hiring decisions and ratings of applicants.* 57 Sex Roles 497 (2007) (hereinafter "Effects of applicant pregnancy") (finding that in spite of being viewed as

equally qualified and well-suited for the job, pregnant applicants received significantly lower hiring recommendation ratings); B. Masser et al., *"We like you, but we don't want you" – The impact of pregnancy in the workplace*, 57 Sex Roles 703 (2007) (hereinafter "We like you, but we don't want you") (finding similar results).

The 2007 Hebl field study finding was replicated and extended in 2013. Retailers who had confirmed that they were in a hiring process encountered job applicants (study confederates) with or without a pregnancy prosthesis. Applicants presenting as pregnant were more likely to experience negative responses in the job search process. *See* W.B. Morgan et al., *A field experiment: Reducing interpersonal discrimination toward pregnant job applicants*, 98 J. of Applied Psychology 799 (2013) (hereinafter "A field experiment").

Consistent with these research findings, agency complaints about pregnancy discrimination have actually been increasing. *See* WHERE WE STAND at 2 (2008). Data from the EEOC reveals that pregnancy discrimination charges increased by 65% from 1997-2007, *id.*, and by 23% from 2005 to 2011, V. Elmer, *Workplace Pregnancy Discrimination Cases on the Rise,* The Washington Post, April 9, 2012.

The MHRA is meant to serve as a bulwark against this trend, reducing the prevalence of pregnancy discrimination in the workplace and increasing equal opportunity. As such, it is a remedial statute, which courts should interpret "broadly to better effectuate its purpose." *Current Tech. Concepts v. Irie Enters.*, 530 N.W.2d 539, 543-44 (Minn. 1995). This is difficult to do, however, without a solid understanding of the actual mechanisms of pregnancy discrimination, including implicit bias and gender stereotypes.

B. Pregnancy Discrimination Arises from Implicit Bias and Stereotypes and Can Occur Even When the Decisionmaker Evinces Apparently Benevolent Views

The district court's analysis of the evidence emphasized several points: that the decisionmaker, Dr. Ross, "was not upset by the pregnancy"; that she "did not demonstrate any animus or hostility toward Plaintiff because of her pregnancy" and instead "congratulated Plaintiff" and "was happy for [her]"; that she was focused on the possible harm to the business should LaPoint take a leave longer than six weeks; and finally that she had previously "hir[ed] two employees while they were pregnant." *See* Add. 028, 031.

The district court's emphasis on these points suggests a misunderstanding about the typical mechanisms of pregnancy discrimination. According to numerous studies, pregnancy discrimination does not tend to arise because decisionmakers *dislike* pregnant people; rather, it arises when decisionmakers – male or female – view pregnant applicants or employees through a gendered lens, treating them not as individuals but as exemplars of the stereotype of "nurturing mother but unambitious/uncommitted/incompetent worker." *See* Structured interview, *supra*; Hostile and benevolent reactions, *supra*; Effects of applicant pregnancy, *supra*; We like you, but we don't want you, *supra*; A field experiment, *supra*.

While pregnant workers or job applicants may be liked, they are often viewed – without any additional evidence beyond the pregnancy itself – as being less competent and more likely to need time off, miss work, or quit. *See* Effects of applicant pregnancy, *supra;* A field experiment, *supra* (noting particular influence of stereotypes about pregnant individuals' lack of commitment and inflexibility).

Gender discrimination – and pregnancy discrimination in particular – simply cannot be explained by a simple "animus" or "hostility" model. Indeed, much of the research on gender discrimination has focused on the relationship between "hostile sexism" and a phenomenon known as "benevolent sexism." *See* P. Glick & S. Fiske, *The Ambivalent Sexism Inventory: Differentiating Hostile and Benevolent Sexism*, 70 J. Personality & Soc. Psychol. 491 (1996). Hostile sexism equates to classic misogyny, while benevolent sexism (or "pedestal sexism") involves attitudes that glorify women's presumed warmth and nurturing tendencies – while expecting women to exercise those traits at home rather than in a workplace. *Id.*

These views – whether hostile or benevolent – are not limited to men; studies show women may harbor them too, and they are particularly likely to endorse benevolent sexism. *See* P. Glick & S. Fiske, *An ambivalent alliance: Hostile and benevolent sexism as complementary justifications for gender inequality*, 56 American Psychologist 109 (2001).

Nor are the two forms mutually exclusive. To the contrary, they tend to be strongly correlated – people who endorse one also tend to endorse the other, resulting in a phenomenon known as "ambivalent sexism." *Id.* Ambivalent sexism at hiring can result in the otherwise puzzling phenomena of "We like you, but we don't want you": that is, we are not upset that you are pregnant (indeed, we celebrate it) but we simultaneously assume your pregnancy marks you as a bad employee. *See* We like you, but we don't want you, *supra*; *see also* Hostile and benevolent reactions, *supra* (discussing the related notion of demands for "role congruity").

Ambivalent sexism is also linked to "flexibility stigma" or stigma against employees who actually wish to make use of employer options like part time hours, parental leave, or telecommuting:

> For women, this stigma originates in prescriptive stereotypes that expect women to prioritize childrearing over their careers, which makes them ideal parents but bad employees. Women who are mothers or who use flexibility benefits at work are seen as fulfilling their proper gender role by engaging in caregiving but deviating from proper workplace performance. In many workplaces, women are actually praised for opting out of the workplace entirely to care for their children but are punished if they stay at work and make use of flexibility policies.

Andrea Miller, *Evidence, Social Psychology, and Health Care: The Use (and Misuse) of the Same-Actor Inference In Family Responsibilities Discrimination Litigation: Lessons from Social Psychology on Flexibility Stigma*, 41 Wm. Mitchell L. Rev. 1033, 1041-42 (2015) (internal citations omitted) (hereinafter "The Use (and Misuse) of the Same-Actor Inference"). Flexibility stigma can result in wage penalties, lower performance evaluations, fewer promotions, and lower status assignments. *Id.*

With these realities in mind, none of the facts emphasized by the district court bears the weight given to them. Dr. Ross may have discriminated against Nicole LaPoint even if she "was not upset by the pregnancy"; "did not demonstrate any animus or hostility toward Plaintiff because of her pregnancy"; and seemed focused on the possible harm to the business should LaPoint take a leave longer than six weeks. Indeed, these facts are entirely consistent with researchers' findings regarding typical forms of pregnancy bias in the workplace, stemming from ambivalent sexism, concerns about role congruity, and flexibility stigma.

Nor is it telling that Dr. Ross is the "same actor" who previously "hir[ed] two employees while they were pregnant." There is simply no empirical basis for application of a same actor inference. "The same actor inference rests on the faulty assumption that individuals' stereotypes and prejudices are consistently expressed in a conscious, discrete manner against all individuals from a protected class." *See* The Use (and Misuse) of the Same-Actor Inference*, supra.* This faulty assumption is "contradicted by decades of empirical psychological research." *Id.* If anything, her prior experience may have primed Dr. Ross for discrimination against applicants like LaPoint, since it appears that people who have supervised pregnant employees tend to hold more negative perceptions of pregnant employees generally. *See* Effects of applicant pregnancy, *supra.*

C. The MHRA Can Only Effect Its Purpose If Courts Interpret It in Light of the Reality of Pregnancy Discrimination

Because pregnancy discrimination continues to be so prevalent, and because it so blatantly violates our norms of gender equality, it is critical that courts rigorously enforce the rule in Minn. Stat. § 363A.08 that bars employers from requiring applicants to reveal information about their pregnancy status. Respecting what decades of studies have taught us about the reality of pregnancy discrimination, courts should not impose a "hostility" requirement not found in the rule, nor should they rely on faulty "same actor" inferences. Instead, they should enforce the rule as written. Under the facts of this case, this means asking one simple question: Did LaPoint's choice not to reveal her pregnancy before receiving an offer actually motivate – or play a role in – Family Orthodontics' decision to rescind the offer?

II. LAPOINT PROVED HER PREGNANCY DISCRIMINATION CLAIM UNDER MINN. STAT. § 363A.08, SUBD. 4(a)(1)

A. The District Court Erred When It Held that LaPoint Did Not Prove Her Claim Using "the Direct Method of Proof"

Gender Justice supports the legal analysis submitted to this Court by Respondent Nicole LaPoint, analyzing her pregnancy discrimination claim under the "direct method of proof." Following long-standing Minnesota precedent, the direct method of proof uses "a motivating factor" as the standard of causation, rather than requiring proof that the illegitimate motive was a but-for cause or the sole cause of the employer's adverse action. *See Goins v. West Group*, 635 N.W.2d 717 (Minn. 2001); *Ali v. Electrolux Home Products, Inc.*, No. CIV. 12-2826 MJD/LIB, 2014 WL 2945794 (D. Minn. June 30, 2014); *Anderson v. Hunter, Keith, Marshall & Co.*, 417 N.W.2d 619 (Minn. 1988); *see also McGrath v. TCF Bank Savings*, 509 N.W.2d 365, 366 (Minn. 1993). Under this direct method, LaPoint sought to answer the simple question just identified: Did her choice not to reveal her pregnancy before receiving an offer actually motivate – or play a role in – Family Orthodontics' decision to rescind her offer?

Given the factual record in this matter, the answer to this question must be yes. To conclude otherwise would require the court to ignore Dr. Ross's multiple, recorded admissions to the contrary. *See* Add. 024-025 (noting that Dr. Ross stated three different times – in a voicemail, in her own handwritten notes, and in an email to LaPoint – that one of the two concerns which caused her to rescind the offer was that LaPoint did not tell her in the interview that she was pregnant).

Nonetheless, the district court in this matter held, erroneously, that LaPoint failed to prove her claim. To prevent similar errors in the future, this Court could take this opportunity to clarify two issues that might have led the district court astray: first, the relevance of stereotyping or implicit bias evidence in disparate treatment cases; and second, the true relationship between the direct and indirect methods of proof.

B. The District Court Might Have Avoided Error If It Were Not Seeking Evidence of Hostility by the Decisionmaker

The district court looked to whether Dr. Ross was motivated by hostility. However, it should be clear from the broader civil-rights-law landscape that the MHRA does not actually require proof of a specific, conscious intent to harm pregnant job applicants. This principle was established as early as 1989, in the Supreme Court's decision in *Price Waterhouse v. Hopkins,* 490 U.S. 228 (1989). Many later courts have reiterated and expanded upon the *Price Waterhouse* principle. *See, e.g., Hazen Paper Co. v. Biggins*, 507 U.S. 604, 610 (1993) (holding that it is an unlawful employment practice under federal age discrimination law to make decisions on "basis of inaccurate and stigmatizing stereotypes"); *Thomas v. Eastman Kodak Co.,* 183 F.3d 38, 58-60 (1st Cir. 1999) (stating, in a race discrimination case, that the ultimate question is whether an employer acted "because of" an employee's protected class, "regardless of whether the employer consciously intended to base the evaluation on race, or simply did so because of unthinking stereotypes or bias"); *Lipchitz v. Raytheon Co*., 434 Mass. 493, n.16 (2001) (following *Thomas,* 183 F.3d at 64-65, and holding that "[e]mployment decisions that are made *because of* stereotypical thinking about a protected characteristic or members of a protected class, whether conscious or unconscious, are actionable under [state human rights law]"); *Bolmer v. Olivieira*, 570 F. Supp. 2d 301, 318-19 (D. Conn. 2008) (rejecting "too

cramped a view" of discrimination allegations in disability case, since law is meant to address unequal treatment resulting from stereotypes and stigma); *Kimble v. Wisconsin Dept. of Workforce Dev.*, 690 F. Supp. 2d 765, 768 (E.D. Wisc. 2010) ("Nor must a trier of fact decide whether a decision-maker acted purposively or based on stereotypical attitudes of which he or she was partially or entirely unaware."); *Samaha v. Washington State Dept. of Transportation*, 2012 U.S. Dist. LEXIS 190352, No. CV-10-175-RMP, *9 (finding evidence regarding "implicit bias and stereotypes" relevant to the issue of intentional discrimination).

Minnesota cases have also long recognized the possibility that stereotyping or implicit bias, rather than hostility, will underlie disparate treatment cases. *See, e.g., Pullar v. Independent Sch. Dist. No. 701*, 582 N.W.2d 273, 276 (Minn. Ct. App. 1998) (finding sufficient evidence for a prima facie case of discrimination under the MHRA where allegations permitted an inference that the school district was influenced by "stereotypical characterizations of the proper domestic role of women"); *Hamblin v. Alliant Techsystems, Inc.*, 636 N.W.2d 150, 154 (Minn. Ct. App. 2001) (noting that "discrimination is often the result of subtle, unconscious predispositions" and that actionable "age discrimination may simply arise from an unconscious application or stereotyped notions of ability rather than from deliberate desire to remove older employees from the workforce").

Nonetheless, it may help avoid errors if this Court could take this opportunity to restate this aspect of MHRA doctrine: nothing in the statute requires proof of a particular state of mind, such as hostility toward all pregnant individuals. Instead, what the statute requires is proof of causation – that is, that the protected factor "played a role" in the

adverse outcome. Evidence that decisionmakers were influenced by gender stereotyping or implicit bias is evidence of causation in disparate treatment cases.

C. The District Court Might Have Avoided Error Had It Been Able to Analyze LaPoint's Claim Under a Unified "Motivating Factor" Framework

The district court seemed to discount its application of the direct method of proof – that is, it did not take seriously the question, "Did LaPoint's choice not to reveal her pregnancy before receiving an offer actually motivate Family Orthodontics' decision to rescind her offer?" – because it concluded that "[t]he evidence…falls short of what courts have held to be *direct evidence* of discrimination." Add. 028 (emphasis added). The Court of Appeals held otherwise, treating Dr. Ross's admissions as sufficiently "direct" to permit use of the direct method of proof. Add. 008-009. But both courts could have addressed the issue more straightforwardly and efficiently if they were permitted to simply ask the "motivating factor" question without reference to separate proof frameworks.

This suggestion for a doctrinal evolution under the MHRA is less radical than it sounds; in fact, it is the opposite of radical since it would bring the MHRA back to its text and its roots. Nothing in the MHRA itself requires courts to sort disparate treatment cases into "direct method" and "indirect method" cases. *See* MHRA, Minn. Stat. ∫ 363A.001 et seq. Nor, using related older terminology, are courts required by statute to sort MHRA cases into "mixed motive" and "pretext" cases. *See generally* Brief Amicus Curiae of the National Employment Lawyers Association in Support of Petition for a Writ of Certiorari, *Gross v. FBL Financial Servs. Inc.,* No. 08-441 (2008) (hereinafter "*Gross* Brief") (discussing doctrinal development of frameworks).

These proof methods or frameworks were originally borrowed by state courts from federal law. *See id.* at 4-5 (describing development of framework and widespread adoption). Over time, unfortunately, they have developed a reputation for "fundamental incoherence" – due, in part, to the arbitrariness of linking a distinction between direct and circumstantial evidence to the number of motives alleged, and due in part to the difficulty of determining objectively whether evidence is, in fact, direct or circumstantial. *See id.* at 6. n.2, 25; *see also Desert Palace, Inc, v. Costa*, 539 U.S. 90 (2003) (rejecting the logic of a distinction in proof schemes based on the difference between direct and indirect evidence). Although it might not have seemed possible, the proof scheme for federal anti-discrimination statutes became even more "incoherent and impractical" after the decision in *Gross v. FBL Financial Services, Inc.,* 557 U.S. 167 (2009). *See* Mark Deethardt, *Life After* Gross: *Creating a New Center for Disparate Treatment Proof Structures*, 72 La. L. Rev. 187, 188 (2011).

Minnesota need not follow federal courts down this path. Minnesota law already differs from federal law, in that it has adopted an across-the-board causation standard of "a motivating factor," with no "same decision" defense. *Anderson* at 627. Minnesota law already permits plaintiffs to prove their case using both direct and circumstantial evidence. *Friend v. Gopher Co. Inc.*, 771 N.W.2d 33, 40 (Minn. Ct. App. 2009). Minnesota can easily adopt a unified framework, simply by treating all cases as "direct method" cases. Where a plaintiff can cast doubt on an employer's proffered "legitimate nondiscriminatory reason," it will qualify as circumstantial evidence of discrimination, and contribute to the sum total of evidence compiled. There is no reason to continue to ask parties and courts to separately analyze "pretext" evidence under *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). *See*

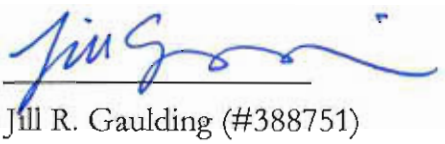
Gross Brief at 8-9, n.3 (noting that "*McDonnell Douglas*" no longer serves as a "burden-shifting framework," if it ever did; rather, it "merely reinforces a truism regarding the possible inference one could draw from the plaintiff's disproof of the employer's proffered reason(s)"). If this Court took the opportunity at this juncture to clarify MHRA doctrine in this way – expressly adopting a unified proof framework – it would help ensure that MHRA policy would be enforced effectively and efficiently. Moreover, it would help ensure the law's transparency to the public and increase trust in our laws and courts.

CONCLUSION

For the reasons set forth above, Gender Justice supports Respondent's request that this Court affirm the decision of the Court of Appeals.

Respectfully submitted,

Dated: 6/17/16



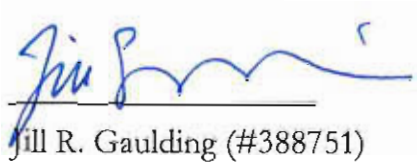
Jill R. Gaulding (#388751)
Lisa C. Stratton (#236858)
Christy L. Hall (#392627)
GENDER JUSTICE
550 Rice Street
St. Paul, MN 55103
(651) 789-2090
Attorneys for Amicus Curiae Gender Justice

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this brief complies with the following requirements:

1. The brief was drafted using Microsoft Word 2010 word-processing software.
2. The brief was drafted using Garamond, 13-point font, compliant with the typeface requirements; and
3. There are 4570 words in this brief.

Dated: 6/17/16



Jill R. Gaulding (#388751)
Lisa C. Stratton (#236858)
Christy L. Hall (#392627)
GENDER JUSTICE
550 Rice Street
St. Paul, MN 55103
(651) 789-2090
Attorneys for Amicus Curiae Gender Justice