No. 11-1059

In The
Supreme Court of the United States

GENESIS HEALTHCARE CORP., *ET AL.*,
Petitioners,

v.

LAURA SYMCZYK, ON BEHALF OF HERSELF AND OTHERS SIMILARLY SITUATED, *Respondent*.

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

BRIEF OF *AMICI CURIAE* THE NATIONAL EMPLOYMENT LAWYERS ASSOCIATION, *ET AL.*, IN SUPPORT OF RESPONDENT

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QUESTION PRESENTED

Can defendants, in a case brought as a collective action under section 16(b) of the Fair Labor Standards Act (FLSA), render the case moot by making an offer of judgment that is not accepted and that offers relief only to the representative plaintiff?

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STATEMENT OF INTEREST

The **National Employment Lawyers Association (NELA)** is the largest professional membership organization in the country comprised of lawyers who represent workers in labor, employment, and civil rights disputes. Founded in 1985, NELA advances employee rights and serves lawyers who advocate for equality and justice in the American workplace. NELA and its 68 circuit, state, and local affiliates have a membership of over 3,000 attorneys who are committed to working on behalf of those who have been illegally treated in the workplace. NELA's members litigate daily in every circuit, affording NELA a unique perspective on how the principles announced by the courts in employment cases actually play out on the ground. NELA strives to protect the rights of its members' clients, and regularly supports precedent-setting litigation affecting the rights of individuals in the workplace. [1]

The **National Employment Law Project (NELP)** is a nonprofit legal organization with over 40 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

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[1] Pursuant to Sup. Ct. R. 37.6, *Amici* submit that no counsel for any party participated in the authoring of this document, in whole or in part. In addition, no other person or entity, other than *Amici*, has made any monetary contribution to the preparation and submission of this document. Pursuant to Sup. Ct. R. 37.2, letters consenting to the filing of this Brief have been filed with the Clerk of the Court.

under federal 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 the Fair Labor Standards Act and related state fair pay laws. Our national three-city survey, *Broken Laws, Unprotected Workers,* and its New York state counterpart show the dire conditions of jobs in these growth sectors.

NELP works to ensure that *all* workers receive the basic workplace protections guaranteed in our nation's labor and employment laws; this work has given us the opportunity to learn up close about job conditions around the country in the low-wage jobs where basic fair pay violations persist. These non-payments create terrible hardships for workers and their families, and reward employers who fail to play by the rules. These same workers face severe barriers to enforcing their rights to fair pay, making collective and class action mechanisms vital to upholding the wage floor. Most low-wage workers we work with and on behalf of could not enforce their rights to fair pay without the protection of collective action.

AARP is a nonpartisan, nonprofit organization with a membership that strives to enable people age 50+ to secure independence, choice and control in ways beneficial and affordable to them and to society as a whole. A significant percentage of AARP's members are in the workforce and the protections available to them under the Age Discrimination in Employment Act (ADEA) are of the utmost importance to their economic security and self-esteem. In addition to establishing the right to legal and equitable relief, the ADEA also provides for

private enforcement through collective actions under Section 16(b) of the FLSA, 29 U.S.C. 216(b). In a variety of ways, including legal advocacy as an *amicus curiae*, AARP supports the rights and protections afforded older workers under federal and state employment laws. Because the court's decision in this case may have a material impact on the rights and protections of older Americans under the ADEA it is of vital concern to AARP.

California Rural Legal Assistance Foundation (CRLAF) is a nonprofit legal services provider which advocates for the rural poor in California and promotes the interests of low-wage workers, particularly farm workers. Since 1986 CRLAF has recovered wages and other compensation for thousands of low-wage workers. CRLAF has served as counsel for plaintiffs in multiple cases involving FLSA collective actions on behalf of workers subjected to a variety of schemes intended to defraud them of the minimum wages, contract wages and overtime wages. CRLAF has litigated numerous workforce-wide and class cases for low-wage workers in both state and federal courts. CRLAF relies on the ability of workers to bring class and collective cases as this is often the only effective means to improving working conditions in agriculture and other low-wage industries.

The **D.C. Employment Justice Center (EJC)** is a nonprofit organization whose mission is to secure, protect, and promote workplace justice in the D.C. metropolitan area. EJC provides legal assistance on employment law matters to the working poor and supports a local workers' rights movement, bringing together low-wage workers and

advocates for the poor. Having served as counsel for low-wage workers in many cases brought under the FLSA, EJC has first-hand experience of the vital importance of the collective action process in remedying widespread abuse of low-income workers through the non-payment of wages. We have seen workers denied justice due to an offer of judgment made by a defendant as a tactic to avoid liability to the rest of the putative class. FLSA collective actions must be preserved and strengthened, so that all low-income workers can protect their rights.

The Legal Aid Society (The Society) is the oldest and largest provider of legal assistance to low-income families and individuals in the United States. The Society's Civil Practice operates trial offices in all five boroughs of New York City providing comprehensive legal assistance in housing, public assistance, and other civil areas of primary concern to low-income clients. The Society's Employment Law Unit represents low-wage workers in employment-related matters such as claims for unpaid wages, claims of discrimination, and unemployment insurance hearings. The Unit conducts litigation, outreach and advocacy projects designed to assist the most vulnerable workers in New York City, among them, workers who participate in wage and hour collective actions but who would not, for fear of retaliation, bring an action themselves.

SUMMARY OF THE ARGUMENT

"The case or controversy requirement is a constitutional imperative; however, the boundaries of Article III's dictates are notoriously murky." *Lucero v. Bureau of Collection Recovery, Inc.*, 639 F.3d 1239, 1242 (10th Cir. 2011) (*citing Flast v. Cohen*, 392 U.S. 83, 95 (1968)). *Amici* agree with Respondent that dismissal pursuant to an unaccepted Offer of Judgment prior to the Court having a reasonable opportunity to rule on collective action certification is inappropriate. We write to stress the practical, negative impact a ruling in Petitioner's favor will have on the ability of America's workers to seek redress for wage and hour violations.

First, Congress affirmatively granted workers the right to proceed collectively in enforcing their rights under the FLSA. This right to "maintain" an action on behalf of "others similarly situated" is critical to the FLSA's goals. A collective action protects workers from retaliation and encourages compliance with the FLSA.

Second, validating the "pick off" tactic attempted by Petitioners would encourage (and often require) repetitive litigation. Rather than simply being permitted to join an existing action, where common issues among employees with similar complaints are resolved in a single action, workers would be required to file a series of lawsuits, raising similar issues, *seriatim*. This runs counter to the purposes the Section 16(b) *and* Rule 68 (which is designed to limit litigation).

Third, private collective actions are the primary means for enforcement of the FLSA's substantive requirements. The purpose of a "private attorney

general" is to ensure enforcement of basic rights (such as the right to be paid) regardless of the whims of agency funding. Action by the Department of Labor touches a tiny fraction of America's employers. Collective actions fill that gap.

Because it is a vital part of the FLSA's comprehensive remedial scheme, the Court should reject Petitioners' effort to create a unilateral right for employers to opt-out of the collective action process by "picking off" an FLSA lead plaintiff.

ARGUMENT

I. The FLSA Is A Remedial Statute Designed To Empower Workers

Congress passed the FLSA in order to "correct and as rapidly as practicable to eliminate" detrimental labor conditions. 29 U.S.C.A. § 202(b) (West). Given its broad remedial purposes, this Court has "consistently construed the [FLSA] 'liberally to apply to the furthest reaches consistent with congressional direction.'" *Tony & Susan Alamo Found. v. Sec'y of Labor*, 471 U.S. 290, 296 (1985) (quoting *Mitchell v. Lublin, McGaughy & Associates*, 358 U.S. 207, 211 (1959)).

The collective action provision is integral to the FLSA's comprehensive remedial scheme and is a statutory right in and of itself. *See Skirchak v. Dynamics Research Corp.*, 508 F.3d 49, 60 (1st Cir. 2007) (the FLSA "statutorily created [an] interest in [collective] actions"). Collective actions empower workers by putting "directly into the hands of the employees who are affected by violation the means

and ability to assert and enforce their own rights[.]" 83 Cong.Rec. 9264 (1938) (statement of Rep. Keller).

The 1947 Portal-to-Portal Amendments to the FLSA did not alter the right of employees to bring representative suits on behalf of others similarly situated. It did "not repeal an existing provision of the FLSA so as to prohibit collective actions by an employee who is a real party in interest." 93 Cong. Rec. 2085 (1947). Rather, it prevented employees from designating uninterested third parties to bring suit on their behalf. While the collective action process requires those who wish to participate to affirmatively "opt-in," the right granted to a *plaintiff* employee—the right to "maintain an action" on behalf of others similarly situated—has remained unchanged since 1938. 29 U.S.C.A. § 216(b) (West).

II. Violations Of The FLSA Are Common

Collective action enforcement remains essential because wage and hour violations are common, particularly in low-wage sectors of our economy. *See generally, Winning Wage Justice: A Summary of Research on Wage and Hour Violations in the United States*, Nat'l Employment Law Project (January 2012) (compiling dozens of studies from across the country);[2] *and* Annette Bernhardt *et al., Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America's Cities*, Center for Urban Economic Development at the University of Illinois-Chicago, Nat'l Employment

[2] *Available at* http://nelp.3cdn.net/509a6e8a1b8f2a64f0_y2m6bhlf6.pdf (last visited Oct. 25, 2012).

Law Project & UCLA Institute for Research on Labor and Employment (September 2009).[3] "Numerous investigations have documented shocking rates of noncompliance with the minimum standards established in the FLSA, particularly in low-wage industries such as the janitorial, food service, garment, and hospitality industries." Craig Becker & Paul Strauss, *Representing Low-Wage Workers in the Absence of A Class: The Peculiar Case of Section 16 of the Fair Labor Standards Act and the Underenforcement of Minimum Labor Standards*, 92 Minn. L. Rev. 1317, 1318 (2008). For example, the *Broken Laws* study surveyed "4,387 low-wage workers in Chicago, New York City, and Los Angeles, [and] found that nearly two-thirds of low-wage workers had not been paid their complete wages the previous week, and that on average these workers were losing $2,634 annually to wage theft." Sebastian Amar & Guy Johnson, *Here Comes the Neighborhood: Attorneys, Organizers, and Immigrants Advancing A Collaborative Vision of Justice*, 13 N.Y. City L. Rev. 173 n.4 (2009).

An important reason why FLSA violations persist is because of the economic advantages gained by those who violate the Act. In passing the FLSA, Congress declared that violating the FLSA constitutes "an unfair method of competition in commerce." 29 U.S.C. § 202(a). As the Court has long recognized, failing to comply with the FLSA "would undoubtedly give petitioners and similar organizations an advantage over their competitors. It is exactly this kind of 'unfair method of

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[3] *Available at* http://www.nelp.org/page/-/brokenlaws/BrokenLawsReport2009.pdf?nocdn=1 (last visited Oct. 25, 2012).

competition' that the [FLSA] was intended to prevent.'" *Tony & Susan Alamo Found.*, 471 U.S. at 299. Aside from the inherently negative effects of substandard labor conditions on workers, violations of the FLSA are themselves "injurious to the commerce." *U.S. v. Darby*, 312 U.S. 100, 115 (1941). Given the continued and widespread nature of FLSA violations, effective FLSA enforcement is as important today as it was when Congress enacted the FLSA 74 years ago.

The FLSA is "remedial and humanitarian in purpose" because it protects "the rights of those who toil, of those who sacrifice a full measure of their freedom and talents to the use and profit of others." *Tennessee Coal, Iron & R. Co. v. Muscoda Local No. 123*, 321 U.S. 590, 597 (1944). Rampant wage theft like that documented in the above-mentioned studies precludes the FLSA from "insuring to all our able-bodied working men and women a fair day's pay for a fair day's work." *A.H. Phillips v. Walling*, 324 U.S. 490, 493 (1945) (quoting Message of the President to Congress, May 24, 1934).

III. The FLSA's Collective Action Process Is Vital To Eliminating Substandard Working Conditions

Collective actions under Section 216(b) provide underrepresented workers a crucial mechanism for recovering their unpaid minimum and overtime wages. Plaintiffs are able to lower their individual costs, and judicial economy is served by resolving common issues arising out of the same allegedly unlawful conduct, in a single proceeding. *Hoffmann-La Roche Inc. v. Sperling*, 493 U.S. 165, 170 (1989)

(discussing the FLSA's collective action procedure as incorporated by the Age Discrimination in Employment Act).

These benefits, however, "depend on employees receiving accurate and timely notice concerning the pendency of the collective action, so that they can make informed decisions about whether to participate." *Sperling*, 493 U.S. at 170. The receipt of a court-approved notice is often the first time a worker learns of his/her FLSA rights. Because of the FLSA's opt-in requirement, it is only after workers learn of their rights that they can stop the running of the statute of limitations. 29 U.S.C. § 256.

In order to reach other workers who may be interested in opting in, an FLSA collective action plaintiff often must take discovery from the employer. *Sperling*, 493 U.S. at 170. And a court-approved notice "does not issue unless a court conditionally certifies the case as a collective action." *McKnight v. D. Houston, Inc.*, 756 F. Supp. 2d 794, 800 (S.D. Tex. 2010). Therefore, the FLSA plaintiff must be permitted a reasonable amount of time in which to pursue a collective action without the fear of being picked off by a unilateral "offer" from the company.

IV. If An Employer Can "Pick Off" The Lead Plaintiff In An FLSA Collective Action, Vulnerable Employees Are Even Less Likely To Assert Their Rights

For all workers, "the right to *file* a lawsuit in the future is materially different than . . . the right to *join* a lawsuit that is already pending." *Woods v. RHA/Tennessee Group Homes, Inc.*, 803 F. Supp. 2d

789, 801 (M.D. Tenn. 2011). "In the former situation, an employee who wishes to pursue a claim must undertake the potentially time-consuming and expensive process of finding and hiring an attorney; in the latter, all an employee must do is sign and return a Notice of Consent form." *Id.*

But "[e]specially for the poor, it is difficult to find lawyers of the private bar who are able and willing to take on what seems like an insignificant minimum wage violation." Susan Miloser, *Picking Pockets for Profit: Wage Theft and the Fair Labor Standards Act*, WASH. & LEE SCH. L. CAPSTONE PAPER at 34 (Spring 2011). After all, an employee who is not paid for an hour's worth of minimum wage work, each week, for 6 months, has a claim of less than $380. "To a private attorney, who bills that much or more per hour, the remedy seems hardly worth his time." *Id.*

The policy of providing representation in such circumstances is "at the very core" of the collective action device. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 617 (1997) (quoting *Mace v. Van Ru Credit Corp.,* 109 F.3d 338, 344 (7th Cir. 1997)) (discussing class actions under Federal Rule of Civil Procedure 23). As with class actions under Rule 23, Section 216(b) "solves this problem by aggregating the relatively paltry potential recoveries into something worth someone's (usually an attorney's) labor." *Id.* Representative actions are most important for the "vindication of the rights of groups of people who individually would be without effective strength to bring their opponents into court at all." *Amchem*, 521 U.S. at 617 (internal quotations and citations omitted).

Most working Americans fit this bill. The FLSA's structure and enforcement mechanism is premised

on the common-sense recognition that there is "unequal bargaining power as between employer and employee[.]" *Brooklyn Sav. Bank v. O'Neil*, 324 U.S. 697, 706 (1945). Thus, a principal purpose of the FLSA is "to aid the unprotected, unorganized and lowest paid of the nation's working population; that is, those employees who lacked sufficient bargaining power to secure for themselves a minimum subsistence wage." *Id.* at 707. Such workers are, by definition, unlikely to oppose an employer's violation of the wage and hour laws. *Cf. Mitchell v. Robert DeMario Jewelry, Inc.*, 361 U.S. 288, 292 (1960) ("it needs no argument to show that fear of economic retaliation might often operate to induce aggrieved employees quietly to accept substandard conditions").

Individual litigation also exposes a worker to retaliation—a particularly pointed concern for unorganized workers. Few things focus an employer's attention on an employee more sharply than the filing of a lawsuit. The risk of retaliation faced by a worker who opposes unlawful conditions "is no imaginary horrible given the documented indications that fear of retaliation is the leading reason why people stay silent instead of voicing their concerns[.]" *Crawford v. Metro. Gov't of Nashville & Davidson County, Tenn.*, 555 U.S. 271, 279 (2009) (internal punctuations and citations omitted). These employees live "paycheck-to-paycheck" and can ill-afford the interruption or reduction in pay that often accompanies retaliation.

Thus, the fact even a single worker is prepared to serve as a lead plaintiff is often miraculous. David Weil & Amanda Pyles, *Why Complain? Complaints, Compliance, and the Problem of Enforcement in the U.S. Workplace*, 27 Comp. Lab. L. & Pol'y J. 59, 83

(2005) ("Studies suggest that, despite explicit retaliation protections under various labor laws, being fired is widely perceived to be a consequence of exercising certain workplace rights."). Collective actions provide these workers with at least some measure of protection from "individualized retaliation." *Bonilla v. Las Vegas Cigar Co.*, 61 F. Supp. 2d 1129, 1139 (D. Nev. 1999); *see also* Alba Conte & Herbert Newberg, *Newberg on Class Actions,* § 24.61 (4th Ed. 2002).

Collective actions also encourage compliance with the FLSA by raising the stakes for employers who break the law. An employer who violates the FLSA knows it may have to answer to more than a single, brave lead plaintiff. Collective actions therefore serve the "prophylactic function" encouraging employers to comply with the FLSA. *Amalgamated Workers Union of Virgin Islands v. Hess Oil Virgin Islands Corp.*, 478 F.2d 540, 543 (3d Cir. 1973). If an employer can "opt-out" of a collective action prior to the issuance of notice, "the enforcement of [FLSA] remedies for violations which victimize a group of people will be limited only to those victims who are already known to their 'champion,' . . . or who are fortunate enough to hear and heed 'the vagaries of rumor and gossip,' . . . or who are courageous enough to recognize the wrong done them and sue on their own." *Sperling v. Hoffmann-La Roche, Inc.*, 118 F.R.D. 392, 403 (D.N.J. 1988) *aff'd in part, appeal dismissed in part sub nom. Sperling v. Hoffman-La Roche Inc.*, 862 F.2d 439 (3d Cir. 1988*) aff'd and remanded sub nom. Hoffmann-La Roche Inc. v. Sperl*ing, 493 U.S. 165 (1989). This simply does not comport with the broad remedial goals of the FLSA.

V. Permitting "Pick Offs" Encourages Repetitive Litigation

The collective action process is supposed "to avoid multiple lawsuits where numerous employees have allegedly been harmed by a claimed violation or violations of the FLSA by a particular employer." *Prickett v. DeKalb County*, 349 F.3d 1294, 1297 (11th Cir. 2003). Moreover, Rule 68 is designed to reduce, not increase, the need for litigation. *See Marek v. Chesny*, 473 U.S. 1, 5 (1985) ("The plain purpose of Rule 68 is to encourage settlement and avoid litigation."); *cf. Zinni v. ER Solutions, Inc.*, 692 F.3d 1162, 1168 (11th Cir. 2012) (finding that an offer that does not include an offer of judgment is insufficient to moot an action, because a judgment is necessary to prevent the need for a second lawsuit if the defendant fails to pay). But, in many instances, the rule proposed by Petitioners would serve neither of these goals.

Petitioners instead demand an approach which foments more lawsuits. Rather than resolving the claims of the similarly situated workers in a single action, Petitioner wants to pay a single worker in a transparent effort to keep the wages it owes to the rest. Picking off named plaintiffs through unaccepted Rule 68 offers impedes judicial economy and forces multiple individual lawsuits stemming from the same allegations (or worse, encourages workers to simply give up trying to recover the wages they are owed). Courts should discourage defendants' attempts to buy off individual claims of named plaintiffs that "encourage a 'race to pay off' named plaintiffs very early in litigation.'" *Liles v. Am. Corrective Counseling Services, Inc.*, 201 F.R.D.

452, 455 (S.D. Iowa 2001). Rejecting this tactic "restore[s] Rule 68 to the role it should have—a means of facilitating and encouraging settlements, rather than a clever disguise for gaining an advantage by racing to the courthouse." *Asch v. Teller, Levit & Silvertrust, P.C.*, 200 F.R.D. 399, 401 (N.D. Ill. 2000).

VI. Government Enforcement Is Not Enough

The Chamber of Commerce suggests the Court need not worry about robbing employees of their private attorneys general because "government enforcement" will "ensure that truly meritorious FLSA cases are pursued in the best interests of employees[.]" *See* Brief for the Chamber of Commerce as *Amicus Curiae*, p. 15. The Department of Labor does, indeed, do much good on behalf of America's workers. But there can be no real dispute that the overwhelming majority of FLSA enforcement comes from private litigation.

The Department of Labor estimated that 70% of employers were not in full compliance with the FLSA and management-side lawyers called this as a "gross understatement" of the actual rate of non-compliance. *See* Steve Bruce, *70% Not in FLSA Compliance? 'A Gross Understatement,'* HR Daily Advisor (March 24, 2010).[4] Another study, however, estimates that the annual probability of a Department of Labor inspection of one of the seven million workplaces covered by the FLSA is well

[4] *Available at* http://hrdailyadvisor.blr.com/archive/2010/03/24/FLSA_Wages_Compliance_Class_Action.aspx (last visited Oct. 25, 2012).

below 0.1%. *See Why Complain?* 27 Comp. Lab. L. & Pol'y J. at 62. Therefore, while the Department of Labor often does good work on the cases it investigates, the low chance of an investigation is easily discounted by employers.

The wages lost to FLSA violations are staggering. The Employer Policy Foundation, a business-funded think tank, has estimated that nationwide, employers unlawfully fail to pay $19 billion annually in wages owed to employees. Craig Becker, *A Good Job for Everyone: Fair Labor Standards Act Must Protect Employees in Nation's Growing Service Economy*, Legal Times, Vol. 27, No. 36 (Sept. 6, 2004). But, as noted by the Chamber of Commerce, the Department of Labor's efforts resulted in the recovery of a tiny fraction (approximately 1%) of these unpaid wages.

While the Department of Labor's efforts are laudable, it lacks the resources necessary to protect all workers currently covered by the FLSA. In 1941, when the FLSA covered 15.5 million American workers, the Department of Labor's Wage and Hour Division employed 1,769 investigators and launched 48,449 investigations. Kim Bobo, *Wage Theft in America: Why Millions of Working Americans Are Not Getting Paid – And What We Can Do About It* 121 (The New Press 2009). By contrast, in 2007, when 130 million American workers were protected by the FLSA, the Division employed *fewer* investigators—only 750—and conducted only 24,950 investigations.

Given this resource deficit, it is unsurprising that most FLSA enforcement falls to private plaintiffs. James C. Duff, Administrative Office of the U.S. Courts, *Judicial Business of the United States*

Courts, 2010 Annual Report of the Director at 146, tbl. C-2 (2010) (noting that in 2007 the Department of Labor filed approximately 2% of the FLSA cases in federal court).[5] Given the number of FLSA cases filed each year, "government enforcement" represents only a tiny fraction of the total enforcement required to recover workers' unpaid wages and encourage employers to comply with the FLSA. And without effective enforcement, rules like the FLSA "are but words on paper."[6]

Congress envisioned the collective action provision as a way of "minimizing the cost of enforcement by the Government" by giving employee's direct rights to enforce FLSA compliance, thus avoiding the assumption by Government of the sole responsibility to enforce the act." 83 Cong.Rec. 9264 (1938) (statement of Rep. Keller). At the very least, FLSA collective actions serve as an essential "supplement" to the Department of Labor's enforcement efforts. *Ervin v. OS Rest. Services, Inc.*, 632 F.3d 971, 978 (7th Cir. 2011).

CONCLUSION

FLSA collective actions are vital to the effective enforcement and implementation of the FLSA's broad remedial goals. Permitting defendants to "pick off" lead plaintiffs and effectively preclude collective actions allows those engaging in wage theft to avoid the full measure of the consequences of their actions.

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[5] *Available at* http://www.uscourts.gov/uscourts/Statistics/JudicialBusiness/2020/JudicialBusinespdfversion.pdf (last visited Oct. 25, 2012).

[6] *Cf.* Elinor Ostrom, *Rules Without Enforcement are But Words on Paper*, IHDP Newsletter 2:8-10 (2004).

The right to "maintain" a collective action for "others similarly situated" is congressionally mandated, prevents wasteful serial litigation, and allows the most vulnerable sectors of the American workforce to enjoy the benefits of acting collectively. For these reasons and those set forth herein, *Amici* believe that the decision of the Third Circuit Court of Appeals should be affirmed in its entirety.

Respectfully Submitted,

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