NOT YET SCHEDULED FOR ORAL ARGUMENT

No. 18-7004

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

D.L., *et al.*,
Plaintiffs-Appellants,
v.
DISTRICT OF COLUMBIA, *et al.*,
Defendants-Appellees.

On Appeal from the United States District Court
for the District of Columbia

BRIEF OF AMICI CURIAE PUBLIC CITIZEN, INC., HOWARD UNIVERSITY SCHOOL OF LAW CIVIL RIGHTS CLINIC, NATIONAL HEALTH LAW PROGRAM, WASHINGTON LAWYERS' COMMITTEE FOR CIVIL RIGHTS AND URBAN AFFAIRS, COUNCIL OF PARENT ATTORNEYS AND ADVOCATES, INC., ANIMAL LEGAL DEFENSE FUND, JUDGE DAVID L. BAZELON CENTER FOR MENTAL HEALTH LAW, DEFENDERS OF WILDLIFE, LEGAL AID SOCIETY OF THE DISTRICT OF COLUMBIA, NATIONAL WOMENS LAW CENTER, AARP, AARP FOUNDATION, AND ELECTRONIC PRIVACY INFORMATION CENTER IN SUPPORT OF APPELLANTS AND REVERSAL

Michael T. Kirkpatrick
Allison M. Zieve
Public Citizen Litigation Group
1600 20th Street NW
Washington, DC 20009
Phone: (202) 588-1000
Counsel for Amici Curiae

May 29, 2018

CERTIFICATE AS TO PARTIES, RULINGS UNDER REVIEW, RELATED CASES, AND CORPORATE DISCLOSURE STATEMENT

(1) Parties and Amici. All parties appearing in this Court and in the district court are listed in the Brief for Appellants. The amici curiae joining this brief are:

1. Public Citizen, Inc.
2. Howard University School of Law Civil Rights Clinic
3. National Health Law Program
4. Washington Lawyers' Committee for Civil Rights and Urban Affairs
5. Council of Parent Attorneys and Advocates, Inc.
6. Animal Legal Defense Fund
7. Judge David L. Bazelon Center for Mental Health Law
8. Defenders of Wildlife
9. Legal Aid Society of the District of Columbia
10. National Women's Law Center
11. AARP
12. AARP Foundation
13. Electronic Privacy Information Center

(2) Rulings Under Review. The rulings under review appear in the Brief for Appellants. The district court's August 25, 2017, memorandum opinion is published. *See D.L. v. District of Columbia*, 267 F. Supp. 3d 55 (D.D.C. 2017).

(3) Related Cases. There have been three related proceedings before this Court, as set forth in the Brief for Appellants. Counsel for amici are not aware of any pending related cases.

(4) Corporate Disclosure Statement. Amici curiae Public Citizen, Inc., Howard University School of Law Civil Rights Clinic, National Health Law Program, Washington Lawyers' Committee for Civil Rights and Urban Affairs, Council of Parent Attorneys and Advocates, Inc., Animal Legal Defense Fund, Judge David L. Bazelon Center for Mental Health Law, Defenders of Wildlife, Legal Aid Society of the District of Columbia, National Women's Law Center, AARP, AARP Foundation, and Electronic Privacy Information Center are nonprofit organizations that have not issued shares or debt securities to the public and have no parents, subsidiaries, or affiliates that have issued shares or debt securities to the public. All thirteen amici curiae are public interest organizations that support the use of fee-shifting statutes as a means of promoting access to justice.

/s/ Michael T. Kirkpatrick
Michael T. Kirkpatrick

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GLOSSARY

The following abbreviations have the same meaning as used in Appellants' Brief.

LSI *Laffey* Matrix	1989 update of the original schedule of rates for *Laffey v. Northwest Airlines*, 572 F. Supp. 354 (D.D.C. 1983), adjusted for passage of time by using the Legal Services Index (LSI); referred to as the LSI Matrix by the district court
USAO-ALM Matrix	Fee matrix adopted by the United States Attorney's Office (USAO) in 2015, based on a custom report from the 2011 ALM Survey of Law Firm Economics, adjusted based on the Producer Price Index for Office of Lawyers; referred to as the USAO Matrix by the district court

INTEREST OF AMICI[1]

Amici are thirteen non-profit organizations that support fee shifting to ensure access to justice for their clients and members. Many of the amici engage in public-interest litigation and rely on fee-shifting statutes to promote enforcement of the law as private attorneys general. Amici are concerned that the district court's decision, if affirmed, would have a negative impact on public-interest legal organizations that do not bill their clients for market-rate attorneys' fees and instead rely on a fee matrix to establish reasonable hourly rates for attorneys engaged in complex federal litigation. Amici are particularly well qualified to help the Court understand the substantial public interest served by the establishment of appropriate fee matrices and the effect of such matrices on access to justice. Amici have extensive knowledge of the history of fee-shifting statutes in general and the challenges that have confronted public-interest organizations seeking market-rate attorneys' fees in particular. Additional information about each of the amici is set forth in the addendum to this brief. All parties have consented to the filing of this brief.

[1] No counsel for a party authored this brief in whole or in part, and no person other than the amici curiae, their members, or their counsel contributed money that was intended to fund the preparation or submission of this brief. *See* Fed. R. App. P. 29(a)(4)(E).

SUMMARY OF ARGUMENT

As Appellants explain, the district court erred when, having concluded that Appellants are entitled to attorneys' fees based on prevailing market rates for complex federal litigation in the relevant community, it applied the rates set forth in the United States government's new USAO-ALM Matrix created in 2015. Those rates do not reflect prevailing rates for complex federal litigation in the District of Columbia. Instead, they are based on a survey of billing rates in a four-state region for all types of legal services. The USAO-ALM Matrix has never been reviewed or accepted by this Court as a proxy for rates charged in the District of Columbia for complex federal litigation. In contrast, this Court has found that the LSI *Laffey* Matrix is an appropriate source of such information. *See Salazar v. District of Columbia*, 809 F.3d 58, 64–65 (D.C. Cir. 2015). Thus, the district court should have used the LSI *Laffey* Matrix, not the new USAO-ALM Matrix, to calculate the fee award in this case.[2] *See* Appellants' Br. at 11–25.

Amici submit this brief to add three points that are of particular importance to public-interest advocacy organizations. First, the district court's use of the

[2] Indeed, Appellants submitted substantial evidence to the district court showing that the rates set forth in the LSI *Laffey* Matrix are lower than the market rates for complex federal litigation in the District. Based on similar evidence in *Salazar*, this Court approved a district court decision finding that the LSI *Laffey* Matrix "'is probably a *conservative* estimate of the actual cost of legal services in this area.'" *Salazar*, 809 F.3d at 65 (quoting *Salazar v. District of Columbia*, 991 F. Supp. 2d 39, 48 (D.D.C. 2014) (emphasis in original)).

USAO-ALM Matrix in this case contravenes the statutory mandate that attorneys' fees be based on the prevailing market rate in the community for complex federal litigation and, if affirmed, will impede access to justice through the courts in a wide range of subject matters. Second, this Court should endorse an appropriate fee matrix for determining presumptively reasonable rates because nonprofit legal organizations that do not bill their clients lack a readily-available source of billing-rate information. Requiring the compilation of such information in the absence of a fee matrix, or requiring parties to engage in a "duel between experts" over which matrix is appropriate in every case (*see* Mem. Op., JA 2210), would run counter to the Supreme Court's repeated admonition that "determination of fees 'should not result in a second major litigation.'" *Fox v. Vice*, 563 U.S. 826, 838 (2011) (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983)). Third, this Court should clarify that reasonable hourly rates are based on billing rates—as opposed to collection rates as suggested by the district court—and any adjustments to account for billing judgment should be made on the side of the lodestar equation that considers the reasonable number of hours worked.

ARGUMENT

I. The District Court's Decision Threatens to Undermine the Use of Fee Shifting to Promote Access to Justice.

A. Fee shifting is critical to enforcing important constitutional and statutory rights.

Congress enacts fee-shifting statutes to ensure access to the judicial process for those whose rights have been violated, to encourage plaintiffs to serve as private attorneys general to enforce important public policies, and to deter misconduct. *See*, *e.g.*, *Fox*, 563 U.S. at 833; *Hensley*, 461 U.S. at 429; *Newman v. Piggie Park Enter., Inc.*, 390 U.S. 400, 402 (1968). Fee-shifting statutes promote public-interest litigation by allowing a court to order a losing party to pay the prevailing party's legal fees.

The Supreme Court has long recognized the importance of fee shifting to encourage socially beneficial litigation. In *Piggie Park*, for example, the Court upheld fee shifting in a case of racial discrimination in public accommodations under Title II of the Civil Rights Act of 1964, finding that Congress included a fee-shifting provision in the statute "to encourage individuals injured by racial discrimination to seek judicial relief." 390 U.S. at 402. Such plaintiffs, the Court explained, act as private attorneys general to enforce the law and vindicate important public policy: "If successful plaintiffs were routinely forced to bear their own attorneys' fees, few aggrieved parties would be in a position to advance the

public interest by invoking the injunctive powers of the federal courts." *Id.* Congress corrected this problem by adding fee shifting to "the arsenal of remedies available to combat violations of civil rights." *Evans v. Jeff D.*, 475 U.S. 717, 732 (1986).

In enacting the Civil Rights Attorney's Fee Award Act of 1976, 42 U.S.C. § 1988, Congress recognized that, without fee shifting, many individuals with meritorious civil rights claims would be unable to afford a lawyer, and civil rights laws, which rely heavily on private enforcement, would become "mere hollow pronouncements." S. Rep. 94-1011, at 6 (1976). This concern is especially salient in cases brought against government officials to vindicate constitutional and statutory rights where, as here, the focus is on injunctive relief rather than damages. *See* Julie Davies, *Federal Civil Rights Practice in the 1990's: The Dichotomy Between Reality and Theory*, 48 Hastings L.J. 197 (1997) (describing the reluctance of attorneys to take cases seeking only injunctive relief, where the clients were not capable of paying a fee in the event statutory fees were unavailable). In such cases, fee shifting provides one of the only paths by which plaintiffs can secure competent representation, and the need to incentivize the provision of legal services is at its apex.

This Court has reiterated that the purpose of fee shifting is to provide a way for litigants to attract counsel experienced and talented enough to effectively

enforce federal law and the Constitution. *See Save Our Cumberland Mountains, Inc. v. Hodel (SOCM)*, 857 F.2d 1516, 1521 (D.C. Cir. 1988) (en banc) ("Congress after all did not simply express its intent that the fees would attract counsel, but rather that they would be adequate to attract *competent* counsel.") (emphasis by this Court) (citation omitted); *Covington v. District of Columbia*, 57 F.3d 1101, 1112 (D.C. Cir. 1995) (explaining that Congress intended that fee awards be sufficient to attract counsel capable of litigating complex federal cases); *see also Reed v. District of Columbia*, 843 F.3d 517, 529 (D.C. Cir. 2016) (Tatel, J., concurring) (finding that "a reasonable fee is one adequate to attract competent counsel, … thereby advancing Congress's goal.") (citations and internal quotation marks omitted).

Both before and since enacting 42 U.S.C. § 1988, Congress has promoted access to justice by including fee-shifting provisions in federal statutes covering a wide range of subject matters, including environmental and consumer protection, workers' rights including employment discrimination, open government, and the right to fair compensation for public takings. There are now more than 150 fee-shifting statutes. *See* Federal Judicial Center, *Manual for Complex Litigation (Fourth)* § 14.11 at 185 (2004). Those statutes include the two at issue in this case: the Individuals with Disabilities Education Act, 20 U.S.C. § 1415(i)(3)(B)(i)(I), and the Rehabilitation Act, 29 U.S.C. § 794a(b). The Supreme Court's "case law

construing what is a 'reasonable' fee applies uniformly to all" such fee-shifting statutes. *City of Burlington v. Dague*, 505 U.S. 557, 562 (1992) (citation omitted); *Hensley*, 461 U.S. at 433 n.7 (noting that the standards for awarding fees "are generally applicable in all cases in which Congress has authorized an award of fees to a 'prevailing party'"). Such statutes are all guided by the same underlying principle—ensuring that federal law is enforced and that plaintiffs can both vindicate their rights and advance the public interest even when they are unable to pay an attorney or where potential damages are not sufficient to attract competent counsel.

B. Fee awards should be based on market rates regardless of the fee arrangement between the prevailing party and counsel.

It is well-settled that attorneys' fees awarded pursuant to a fee-shifting statute should be based on market rates regardless of whether the prevailing party is represented at no charge by public interest or pro bono counsel, or is charged a reduced rate for public-spirited reasons or based on the client's ability to pay. *See Blum v. Stenson*, 465 U.S. 886, 895 (1984) (holding that market rates should be used to calculate attorneys' fees under fee-shifting statutes where the prevailing plaintiffs are represented by public interest lawyers at no cost to the plaintiffs); *SOCM*, 857 F.2d at 1524 (holding that the analysis in *Blum* with respect to fees sought for work performed by salaried attorneys at a non-profit legal services organization applies equally to the work of attorneys who practice privately and for

profit but at reduced rates reflecting non-economic goals and their clients' ability to pay); *Covington*, 57 F.3d at 1107; *see also Blanchard v. Bergeron*, 489 U.S. 87, 93 (1989) (holding that fee-shifting statutes "allowing a 'reasonable attorney's fee'" contemplate "reasonable compensation, in light of all the circumstances, for the time and effort expended by the attorney for the prevailing plaintiff, no more and no less. Should a fee arrangement provide less than a reasonable fee calculated in this manner, the defendant should nevertheless be required to pay the higher amount").

Indeed, fee awards are critical to public-interest organizations that rely on fee-shifting statutes to ensure access to justice for their clients and to pursue important public policies through private enforcement of the law. *See* Catherine R. Albiston and Laura Beth Nielsen, *Funding the Cause: How Public Interest Law Organizations Fund Their Activities and Why It Matters for Social Change*, 39 Law & Social Inquiry 62, 76, 83, 91 (Winter 2014); *see also SOCM*, 857 F.2d at 1521 (noting that public interest lawyers "'provide the specialization, freedom from conflicts with private clients, readiness to take on unpopular cases, and willingness to carry the cost of protracted cases that is indispensable to full enforcement'" of the law) (quoting Samuel R. Berger, *Court Awarded Attorneys' Fees: What Is "Reasonable"?*, 126 U. Pa. L. Rev. 281, 323 (1977)). Calculating a fee that is based on private market rates does not result in a windfall to the public-

interest organization; rather, it implements congressional intent and allows the organization to continue to serve its clients by providing the types of legal services that fee shifting is supposed to encourage. *See SOCM*, 857 F.2d at 1521 ("It is not inconsistent with the avoidance of windfalls to pay attorneys at rates commensurate with prevailing community standards of attorneys of like expertise doing the same sort of work in the same area.").

Market rates are "those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience and reputation." *Blum*, 465 U.S. at 895 n.11. Awarding fees based on anything other than prevailing market rates undermines Congress's efforts to use fee shifting to improve access to justice and encourage private enforcement of federal law. *See Fox*, 563 U.S. at 834 (explaining that a prevailing plaintiff in a fee-shifting case "has corrected a violation of federal law and, in so doing, has vindicated Congress's statutory purposes"); *see SOCM*, 857 F.2d at 1521. Additionally, awarding below-market rates reduces the number of people a public-interest organization can afford to represent.

Because the rates contained in the U.S. government's new USAO-ALM Matrix are not representative of rates charged for complex federal litigation in the District of Columbia (as explained in Appellants' Brief at 18–21), the district court erred in basing its fee award on that matrix. This Court should reject the district

court's application of the USAO-ALM Matrix and direct the use of a matrix based on prevailing market rates for complex litigation in the District of Columbia.

II. The Use of a Fee Matrix to Establish Presumptively Reasonable Rates is of Special Importance to Public-Interest Organizations and Avoids "Major Litigation" Over Fee Requests.

"A request for attorney's fees should not result in a second major litigation." *Hensley*, 461 U.S. at 437. A fee matrix that establishes presumptively reasonable rates for a particular type of legal services in a particular community—such as the LSI *Laffey* Matrix for complex federal litigation in the District of Columbia—is efficient for courts, parties, and lawyers in establishing reasonable attorneys' fees. Establishment of an accepted fee matrix is of special importance for public-interest lawyers who lack evidence of their own market rates because, due to their non-profit nature, they generally do not charge clients for their legal work. The Supreme Court and this Court have firmly established that public-interest lawyers who prevail under fee-shifting statutes are entitled to market-based rates for the relevant work in the relevant community, *Blum*, 465 U.S. at 895; *SOCM*, 857 F.2d at 1524, and the LSI *Laffey* Matrix establishes such rates for complex federal litigation in the District. By reiterating that the LSI *Laffey* Matrix is the standard, this Court can eliminate the need for parties to re-invent this wheel in every case.

Although a judgment in its favor entitles a party to attorneys' fees, the prevailing plaintiff must still establish the reasonableness of the fees sought. With

regard to hourly rates, this "entails a showing of at least three elements: the attorneys' billing practices; the attorneys' skill, experience, and reputation; and the prevailing market rates in the relevant community." *Covington*, 57 F.3d at 1107 (citing *Blum*, 465 U.S. at 896 n. 11). Public-interest lawyers working at nonprofit organizations lack evidence as to the first element. They do not have regular billing practices or ordinary billing rates because it would be inconsistent with their nonprofit status to charge a client a market rate.[3]

In the absence of a fee matrix that has earned broad judicial acceptance, prevailing parties represented by public-interest lawyers will need to devote substantial time and resources to gathering declarations from lawyers in private practice detailing the fees that attorneys with comparable qualifications bill their fee-paying clients in similar cases. That burden will fall most heavily on public-interest organizations whose salaried lawyers lack billing histories and will tax the resources of organizations that are already stretched thin to represent underserved client communities.

[3] Public-interest law firms recognized as exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code may not accept client-paid fees that exceed the actual costs allocable to the case, such as salaries, overhead, and expenses. Rev. Proc. 92-59 (1992). Legal services organizations that serve the indigent and are recognized as exempt under section 501(c)(3) may accept fees paid by their clients only if the fees are based on the clients' limited ability to pay. Rev. Rul. 78-428 (1978). In either situation, the amount of any client-paid fees will be a small fraction of the prevailing market rate for the legal services provided. Both types of organizations may, however, accept market-rate attorneys' fees paid by the opposing party pursuant to a fee-shifting statute.

This case illustrates the potential burden of establishing prevailing market rates in the absence of a fee matrix that has earned the clear endorsement of this Court. Appellants not only submitted to the district court the LSI *Laffey* Matrix and its supporting documentation, they also submitted voluminous additional fee data, surveys, expert declarations, and attorney declarations. Indeed, the Joint Appendix in this appeal totals more than 2,000 pages, the vast majority of which is rates evidence. Yet the district court required that they further win a "battle of the experts" concerning both the statistical reliability of the LSI *Laffe*y Matrix and the collection rates of the attorneys who submitted declarations. JA 2210–14. Requiring such demanding analysis in every case—even where the district court has already found the case involves complex federal litigation—will turn the resolution of every fee petition into the "second major litigation" condemned by the Supreme Court. *See Fox*, 563 U.S. at 838; *Hensley*, 461 U.S. at 437. To avoid this burden, and to streamline the fee-shifting process and encourage settlement of fee disputes, this Court should reiterate that the rates set forth in the LSI *Laffey* Matrix are presumptively reasonable rates for complex federal litigation in the District of Columbia, and the rates set forth in the USAO-ALM Matrix are not. *See Salazar*, 809 F.3d at 64–65; *see also Electronic Privacy Information Center v. U.S. Dep't of Homeland Security*, 218 F. Supp. 3d 27, 47–49 (D.D.C. 2016) (utilizing the LSI *Laffey* Matrix to establish prevailing market rates for complex federal

litigation in the District of Columbia for public interest attorneys who do not have a standard billing rate).

III. This Court Should Clarify that Prevailing Market Rates Are Those Charged to Fee-Paying Clients.

Appellants submitted declarations in the district court to show that the rates set forth in the LSI *Laffey* Matrix are comparable to rates charged to fee-paying clients by attorneys in the District of Columbia for comparable work. The district court criticized this evidence by observing that "many of the affidavits and declarations discuss rates billed or charged, not rates actually *received*." JA 2215; *see also id*. ("It is unclear whether such rates were charged/billed *and* received."). The district court's criticism is not well-taken because market rates are best represented by the rates that consumers of legal services are willing to pay for a particular kind and quality of representation. *See Perdue v. Kenny A.*, 559 U.S. 542, 551 (2010) (noting that by looking to "the prevailing market rates in the relevant community," "the lodestar method produces an award that roughly approximates the fee that the prevailing attorney would have received if he or she had been representing a paying client who was billed by the hour in a comparable case") (citations and internal quotations omitted). The fee-paying clients of the lawyers who submitted declarations below contracted to pay the rates charged, demonstrating that such rates reflect the market. That some of those clients may

have later negotiated reductions in their bills or breached the contract by failing to pay all they owed is irrelevant to the question of the rates the market commands.

The district court's apparent concern about overbilling is typically—and best—addressed on the side of the lodestar equation that considers the reasonable number of hours worked.[4] Both private-practice lawyers paid by their clients and public-interest lawyers seeking attorneys' fees under a fee-shifting statute often write off some amount of time in an exercise of billing judgment. *Hensley*, 461 U.S. at 434. Similarly, a losing party in a fee-shifting case will often seek a discount when negotiating a settlement with regard to fees, just as a fee-paying client may ask for a reduction in the amount of her bill. Where a fee petition is submitted to a court for resolution, the court will evaluate the reasonableness of the number of hours and strike those found to be excessive, duplicative, or unnecessary. Such reductions are typically made at the end of the fee analysis—by adjusting the number of hours expended or by applying an across-the-board adjustment. *See*, *e.g.*, JA 2223–27; *but see Hensley*, 461 U.S. at 435 ("Where a plaintiff has obtained excellent results, his attorney should recover a fully compensatory fee. Normally this will encompass all hours reasonably expended on the litigation …."). They are not made by reducing the hourly rate. Indeed,

[4] The lodestar is calculated by multiplying the number of hours reasonably expended by the reasonable hourly rate. *Blum*, 465 U.S. at 897; *Hensley*, 461 U.S. at 433; *see Blanchard*, 489 U.S. at 94 ("[W]e have adopted the lodestar approach as the centerpiece of attorney's fee awards.").

discounting rates at the beginning of the analysis based on notions of future collectability, and then adjusting the number of hours at the end to reflect "billing judgment," would result in double-discounting fees, pushing the rates below those that willing buyers and sellers of legal services contract for in the market place, and reducing the lawyer's rate in all future cases.

To avoid this problem, the two sides of the lodestar equation should be considered separately. The market rate should be the billing rate in the community for the type and quality of legal service at issue. The fact that the total amount collected can be less than the product of the market rate times the total number of hours expended does not indicate that the market rate is lower than the rate billed. Rather, it indicates that the number of hours billed may need to be reduced in an exercise of billing judgment.

CONCLUSION

For the foregoing reasons and those set forth in Appellants' Brief, this Court should reverse the judgment of the district court and hold that the rates set forth in the LSI *Laffey* Matrix are presumptively reasonable rates for complex federal litigation in the District of Columbia.

Dated: May 29, 2018

Respectfully submitted,

/s/ Michael T. Kirkpatrick
Michael T. Kirkpatrick
Allison M. Zieve
Public Citizen Litigation Group
1600 20th Street NW
Washington, DC 20009
(202) 588-1000
mkirkpatrick@citizen.org

Counsel for Amici Curiae Public Citizen, et al.

CERTIFICATE OF COMPLIANCE

This document complies with the word limit of Federal Rule of Appellate Procedure 29(a)(5) because, excluding the material referenced in Federal Rule of Appellate Procedure 32(f) and Circuit Rule 32(e), it contains 3,656 words. This document complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word 2013 in 14-point Times New Roman.

/s/ Michael T. Kirkpatrick
Michael T. Kirkpatrick

ADDENDUM

DESCRIPTIONS OF AMICI CURIAE

Public Citizen, Inc., a consumer-advocacy organization founded in 1971 with members in all 50 states, works before Congress, administrative agencies, and courts for the enactment and enforcement of laws protecting consumers, workers, and the general public. Public Citizen has represented plaintiffs in litigation over federal fee-shifting statutes in a wide variety of cases. Public Citizen has participated as amicus curiae on attorneys' fee issues in cases including *Perdue v. Kenny A*., 559 U.S. 542 (2010); *Sole v. Wyner*, 551 U.S. 74 (2007); and *Buckhannon Board & Care Home, Inc. v. West Virginia Department of Health & Human Resources*, 532 U.S. 598 (2001).

Howard University School of Law has a long tradition of fighting for human rights and civil rights and using litigation to advance these interests. The work of the **Howard University School of Law Civil Rights Clinic** reinforces the principles ingrained in the law school's history. Central to the Clinic's work is providing legal services to indigent clients and those from minority backgrounds, such as African Americans. As part of its work, the Clinic regularly files amicus briefs before the United States Supreme Court, various federal circuit and district courts, and state appellate courts. These briefs have concerned various issues

related to, among other things, the availability of remedies for civil rights violations.

For nearly fifty years, the **National Health Law Program (NHeLP)** has engaged in legal and policy advocacy on behalf of limited-income people, people with disabilities, older adults, and children. NHeLP's litigation includes class action litigation on behalf of individuals who are being similarly harmed by ongoing government practices, particularly as they involve Medicaid and the Americans with Disabilities Act. As such, NHeLP is interested in the issues raised by this case.

The Washington Lawyers' Committee for Civil Rights and Urban Affairs is a non-profit civil rights organization established to eradicate discrimination and poverty by enforcing civil rights laws through litigation and public policy advocacy. In furtherance of this mission, the Committee represents extremely vulnerable persons and populations, primarily in Washington, D.C., Maryland, and Virginia, seeking to prevent housing discrimination, ensure humane and constitutionally adequate conditions for incarcerated juveniles and adults, remediate inequities in the criminal justice system, and protect the rights of immigrants and persons with disabilities. Recovery of attorneys' fees enables the Committee to protect a wide range of legal rights for those who would otherwise

lack meaningful access to the justice system and to achieve systemic change on their behalf.

Council of Parent Attorneys and Advocates, Inc. (COPAA) is a not-for-profit organization for parents of children with disabilities, their attorneys, and advocates. COPAA believes effective educational programs for children with disabilities can only be developed and implemented with collaboration between parents and educators as equal parties. COPAA's attorney members represent children in civil rights matters. COPAA also supports individuals with disabilities, their parents, and advocates in attempts to safeguard the civil rights guaranteed to those individuals under federal laws, including the Civil Rights Act of 1871, ch. 22, 17 Stat. 13 (codified as amended at 42 U.S.C. §1983) (Section 1983), Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act. COPAA brings to this Court the unique perspective of parents and advocates for children with disabilities. COPAA has filed as *amicus curiae* in the United States Supreme Court in *Endrew F. v. Douglas County School District RE-1*, 137 S. Ct. 988 (2017); *Fry v. Napoleon Community Schools*, 137 S. Ct. 743 (2017); *Forest Grove School District v. T.A.*, 557 U.S. 230 (2009); *Board of Education of New York v. Tom F.*, 552 U.S. 1 (2007); *Arlington Central School District Board of Education v. Murphy*, 548 U.S. 291 (2006); *Schaffer v. Weast*, 546 U.S. 49 (2005);

and *Winkelman v. Parma City School District*, 550 U.S. 516 (2006), and in numerous cases in the United States Courts of Appeals.

Animal Legal Defense Fund (ALDF) is a nonprofit corporation that advocates for the interests of animals through the legal system, and is actively involved in matters relating to the protection and humane treatment of animals nationwide. ALDF represents clients without charge. ALDF relies on its ability to recover attorneys' fees to ensure it can represent those who would otherwise not have access to meaningful judicial relief, and it seeks attorneys' fees for cases where it has prevailed in courts within the D.C. Circuit and elsewhere.

Judge David L. Bazelon Center for Mental Health Law is a national legal advocacy organization founded in 1972 to advance the rights of individuals with mental disabilities. The Bazelon Center advocates for laws and policies that provide people with mental illness or intellectual disability the opportunities and resources they need to participate fully and with dignity in their communities. In its litigation work the Center frequently seeks remedies under fee-shifting statutes, including the Americans with Disabilities Act, as it works to protect its clients' rights to non-discrimination, equal opportunity, and community integration.

Defenders of Wildlife is a non-profit conservation organization headquartered in Washington, D.C. with offices in Arizona, California, Colorado, Florida, Idaho, Montana, New Mexico, North Carolina, and Washington. Founded

in 1947, Defenders is dedicated to the protection of all native wild animals and plants in their natural communities and to the preservation of habitats on which such species depend. Defenders is one of the nation's leading advocates for endangered species, and frequently litigates in federal court under the citizen-suit provision of the Endangered Species Act. The ability to recover market-rate attorneys' fees for successful litigation pursuant to the fee-shifting provision of the Endangered Species Act is critical to Defenders' ability to vindicate its organizational mission of protecting endangered species and their habitats under this flagship environmental statute.

Legal Aid Society of the District of Columbia is the oldest and largest provider of free civil legal services to people living in poverty in the District of Columbia. In addition to providing direct legal representation primarily in the areas of family, landlord-tenant, consumer, and public benefits law, Legal Aid also engages in systemic reform advocacy, including affirmative litigation. Legal Aid's Barbara McDowell Appellate Advocacy Project, founded in 2004, has represented parties or amici in more than 100 cases before the District of Columbia Court of Appeals and the United States Court of Appeals for the District of Columbia Circuit. Fee shifting in appropriate cases and at an appropriate rate enables Legal Aid to obtain justice for individuals who would otherwise be unrepresented and unable, as a practical matter, to vindicate their legal rights.

National Women's Law Center (NWLC) is a non-profit legal advocacy organization dedicated to the advancement and protection of women's legal rights. NWLC has played a leading role in the enforcement of the Constitution and federal laws prohibiting discrimination, including through litigation before the United States Supreme Court, lower federal courts, and state courts. The ability to recover attorneys' fees allows NWLC to represent women and girls who may otherwise not be able to vindicate their legal rights and to achieve systemic change.

AARP is the nation's largest nonprofit, nonpartisan organization dedicated to empowering Americans 50 and older to choose how they live as they age. With nearly 38 million members and offices in every state, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands, AARP works to strengthen communities and advocate for what matters most to families, with a focus on health security, financial stability, and personal fulfillment. AARP's charitable affiliate, **AARP Foundation**, works to end senior poverty by helping vulnerable older adults build economic opportunity and social connectedness. Among other things, AARP and AARP Foundation advocate for access to justice and representation of older people in our nation's courts, including through participation as amici curiae in state and federal courts. AARP and AARP Foundation submit this brief because the decision below inappropriately limits attorneys' fees for advocates that are usually

representing low-income vulnerable people who, but for the willingness of these advocates to take their cases, would not have equal access to justice. AARP Foundation regularly seeks attorneys' fees under fee-shifting statutes in cases it brings to protect the civil rights of older persons.

The **Electronic Privacy Information Center (EPIC)** is a public-interest research center in Washington, D.C., established in 1994 to focus public attention on emerging civil liberties issues and to protect privacy, the First Amendment, and other constitutional values. EPIC is also a leading advocate for government transparency, frequently requesting records under the Freedom of Information Act (FOIA), pursuing FOIA cases, and educating the public about the importance of open government. EPIC has frequently obtained fees under the LSI *Laffey* Matrix, in accordance with the fee award provisions of the FOIA.

CERTIFICATE OF SERVICE

I certify that on May 29, 2018, I caused the foregoing to be filed with the Clerk of the Court through the Court's ECF system, which will serve notice of the filing on all filers registered in the case.

/s/ Michael T. Kirkpatrick
Michael T. Kirkpatrick