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**No. 23-1360**

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

MICHAEL SHIPTON,

*Plaintiff-Appellant*

—v.—

BALTIMORE GAS & ELECTRIC Co., EXELON CORPORATION, EXELON BUSINESS SERVICES COMPANY, LLC, MICHAEL GROSSCUP, EDWARD WOOLFORD, JEANNE STORCK, AND BINDU GROSS,

*Defendants-Appellees,*

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ON APPEAL FROM THE UNITED STATES  
DISTRICT COURT FOR THE  
DISTRICT COURT OF MARYLAND, Case No. 1:20-cv-01926-LKG

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**MOTION FOR LEAVE TO FILE BRIEF OF NATIONAL INSTITUTE FOR  
WORKERS' RIGHTS, NATIONAL EMPLOYMENT LAWYERS  
ASSOCIATION AND A BETTER BALANCE AS *AMICI CURIAE* IN  
SUPPORT OF PLAINTIFF-APPELLANT**

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**Motion for Leave to File Brief in Support of Plaintiffs-Appellants**

Proposed *Amici* National Institute for Workers' Rights, National Employment Lawyers Association, and A Better Balance (hereafter "*amici*") respectfully move for leave to file a brief in support of the Plaintiffs-Appellants under Federal Rule of Appellate Procedure 27 and 29, and Fourth Circuit Rule 29(a)(2). All parties were notified of *amici*'s intent to file. Appellant's counsel consented to the filing. Appellees' counsel was unable to obtain their client's consent prior to filing. A true and correct copy of the proposed brief is attached to this Motion. In support of this Motion, *Amici* state as follows:

1. The National Employment Lawyers Association (hereafter "NELA") is the largest professional membership organization in the country comprising 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 69 circuit, state, and local affiliates have a membership of over 4,000 attorneys who are committed to working on behalf of those who have been illegally treated in the workplace. This membership includes residents of Fourth Circuit states who would be adversely impacted by a ruling against Plaintiffs-Appellants. 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.

2. The National Institute for Workers' Rights (hereafter "the Institute") is an employee rights advocacy think tank that influences the macro conversations that shape employment law, with particular attention to access to justice issues like summary judgment and forced arbitration. The Institute aspires to a future in which all workers are treated with dignity and respect; workplaces are equitable, diverse, and inclusive; and the wellbeing of workers is a priority in business practices. In conjunction with NELA, the Institute routinely offers insights on the national implications of precedent-setting litigation through its amicus practice in federal courts.

3. A Better Balance, a national nonprofit advocacy organization that works to combat discrimination against pregnant workers and caregivers and to advance supportive work-family policies like paid sick time, paid family and medical leave, fair scheduling, and accessible, quality childcare and eldercare so that workers can care for themselves and their loved ones without jeopardizing their economic security.

4. *Amici* are organizations dedicated to fighting for justice for workers and ensuring equal access to civil justice in the courts. The harms of this case are not merely theoretical: two-thirds of low-wage workers who forgo necessary medical

leave cite concerns about job-loss as a motivating factor in their decision. Scott Brown *et al.*, *Leave Experiences of Low-Wage Workers*, Dept. of Lab. (Nov. 2020), [https://www.dol.gov/sites/dolgov/files/OASP/evaluation/pdf/WHD\\_FMLA\\_LowWageWorkers\\_January2021.pdf](https://www.dol.gov/sites/dolgov/files/OASP/evaluation/pdf/WHD_FMLA_LowWageWorkers_January2021.pdf). The United States is unique among advanced economies in its failure to mandate any kind of paid medical or family leave for workers. Instead, the Family Medical Leave Act (“FMLA”) provides for twelve weeks of unpaid “reasonable” leave for medical reasons, the birth or adoption of a child, and for the care of a child, spouse, or parent who has a serious health condition.” 29 U.S.C. § 2601(b)(1)-(2). Only 56% of workers around the country are eligible for FMLA leave, and only 10% of private worksites are part of large enough firms to be subjected to the requirements of the FMLA. Brown *et al.*, *Employee and Worksite Perspectives of the Family and Medical Leave Act*, Dep’t of Lab. (July 2020) [https://www.dol.gov/sites/dolgov/files/OASP/evaluation/pdf/WHD\\_FMLA2018SurveyResults\\_ExecutiveSummary\\_Aug2020.pdf](https://www.dol.gov/sites/dolgov/files/OASP/evaluation/pdf/WHD_FMLA2018SurveyResults_ExecutiveSummary_Aug2020.pdf). Still, for those workers, the FMLA offers an essential backstop to preserve their ability to work despite temporary disability; a recent survey found that 15% of U.S. employees take qualifying FMLA leave each year, and 32% of those employees took leave for different qualifying FMLA reasons in the same year. *Id.* at 3. *Amici* have a compelling interest in ensuring that workers can vindicate their rights under the

FMLA without fear that they will lose their jobs, even where their underlying medical needs may change over time.

5. Leave to file a brief as *amici curiae* should be freely granted where the amici have an interest in the case and a relevant brief that addresses “the possible implications of the appeal.” *Neonatology Assocs., P.A. v. C.I.R.*, 293 F.3d 128, 132-33 (3d Cir. 2002). *Amici* submit that their experience in supporting and analyzing all stages of complex workplace class and collective action cases under the FLSA across the country offer a unique perspective that may benefit the court and warrants participation as *amici*.

For these reasons, *amici* NELA, the Institute, and A Better Balance respectfully move for leave to file the attached *amicus* brief.

Respectfully submitted,

/s/ Erica Jacobsen White

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**CERTIFICATE OF SERVICE**

I certify that on September 25, 2023, the foregoing document was filed with the Clerk of the United States Court of Appeals for the Fourth Circuit via the Court's CM/ECF system, which will send notice of such filing to all registered CM/ECF users.

September 25, 2023

/s/ Erica Jacobsen White

*Counsel for Amici*