

LAW MATTERS

August 2023

Volume XXXV No. 2

An Appeal to You from

JAMES FARMER Congress of Racial Equality	MARTIN LUTHER KING Southern Christian Leadership Conference	JOHN LEWIS Student Non-violent Coordinating Committee
A. PHILLIP RANDOLPH Negro American Labor Council	ROY WILKINS National Association for the Advancement of Colored People	WHITNEY YOUNG National Urban League

to
MARCH ON WASHINGTON
WEDNESDAY AUGUST 28, 1963

America Faces a crisis...

Millions of Negroes are denied freedom...

Millions of citizens, black and white, are unemployed...

Discrimination and economic deprivation plague the nation and rob all people, Negro and white, of dignity and self-respect. As long as black workers are disenfranchised, ill-housed, denied education and economically depressed, the fight of white workers for a decent life will fail.

Thus we call on all Americans to join us in Washington:

- ♦ to demand the passage of effective civil rights legislation which will guarantee to all
 - ... decent housing
 - ... access to all public accommodations
 - ... adequate and integrated education
 - ... the right to vote
- ♦ to prevent compromise or filibuster against such legislation
- ♦ to demand a federal massive works and training program that puts all unemployed workers, black and white, back to work
- ♦ to demand an FEP Act which bars discrimination by federal, state and municipal governments, by employers, by contractors, employment agencies and trade unions
- ♦ to demand a national minimum wage, which includes all workers, of not less than \$2.00 an hour.

JOIN THE MARCH ON WASHINGTON FOR JOBS AND FREEDOM
and become part of the great American revolution for human freedom and justice Now.

Bus \$5.00 round trip --- train \$7.00 round trip. Order now by calling or writing
Congress of Racial Equality, 2229 North Broad Street, Poplar 5-2229

MARCH ON WASHINGTON FOR JOBS AND FREEDOM

 2229 N. Broad St. PO 5-2229

60 Years Ago—Circular promoting the March on Washington in 1963.
Collection of the Smithsonian History and Culture.
National Museum of African American History and Culture.

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PRESIDENT'S MESSAGE

by Emily Warth



As I sit and write this President's message, my children are on the verge of starting another school year. This is always a time of great anticipation, and a little sadness and anxiety, as we look back on a summer well spent but that flew by too fast; and we worry about how the next year will go. That's true for us as lawyers, as well. Meetings are scheduled a little earlier and a little later; traffic into work gets heavier; the next vacation seems far away. Those things we were putting off until everyone is back from vacation can't be put off any longer. Everything gets a little more harried and stressful, as we juggle more at work and at home, regardless of the stage of life we're in.

As we embark on this next slightly crazier stage of the year, I'm trying to sit in gratitude for the summer. We had a wonderful and relaxing week at our favorite beach destination. We spent way too much money and took our kids out of town to see Taylor Swift's Eras Tour (totally worth it). We spent time with extended family. We often spent Tuesday evenings eating dinner out of food trucks at Sevier Park Farmers' Market. We actually went to the theater and saw a movie together. (Barbie movie – 10/10 would recommend). Everything felt a little slower and easier and spontaneous. And I hope everyone reading this equally got to bask in the joys of a slow and fun-filled summer, and had adventures with family and friends.

I'm also filled with anticipation for the fall ahead. I look forward to the routine. I look forward to football being back. I look forward to crisper air and pumpkin everything and being able to take a walk outside after 9 am without melting. I'll also put a plug in for some LAW activities to look forward to, including book club in September, some really interesting and topical CLE programs, happy hours, and much more (check your weekly emails – our committee chairs are planning lots of fun events). All in all, I'm ending this summer season grateful for the memories and the chance to slow down, and rested and ready for what's to come. I hope you are too, and that I see you soon at an LAW event!

Save The Date and Spread The Word!

The Annual New Admittees' Breakfast November 7th. All new attorneys who passed the bar in 2023 are invited to the breakfast as guests of LAW the morning of the fall swearing-in ceremony before the TN Supreme Court.

Encourage all New Admittees you know to attend and celebrate with their friends and families. Reservations can be made [Here](#).

Recap of June Membership Meeting and One Hour General Credit CLE

by Leighann Ness, Newsletter Editor, Senior Operations Counsel, HCA Healthcare

On June 20, 2023, LAW held its annual Legislative Update at the Nashville City Club. Our reliable, well-informed, and entertaining speakers, Mandy Haynes Young, Erica Vick Penley, and Kim Adkins, did not disappoint. It is nice to get the download of how bills came to be and the dynamics that led to the ultimate outcome! And, as always, the main topics were guns, alcohol, and abortion, with a sprinkling of other issues.

Most notable:

COMMERCE

SB 661 by Niceley/HB 1306 by Kumar - Payment if quick response code or credit or debit card machine fails: Requires parking vendors to accept multiple forms of payment by various methods (QR, phone call, machine on site) with prominent signage as to how to pay, and allows the consumer to leave the property if the payment mechanisms fail to work properly.



From Left, Kim Adkins, Mandy Young and Erica Vick Penley

SB 1295 by Bailey/HB 1310 by Kumar - Genetic Information Privacy Act.: Related to genetic testing, consumers must be made aware if their private information is being sold, and law enforcement can use genetic testing databases.

CRIMINAL LAW

Eliza Fletcher Bill SB 14 by Lamar/HB 24 by Freeman - Sexual assault evidence collection kit analysis requirements: Aimed at reducing the 3-year backlog of rape kit testing since another woman had a rape kit pending for the same perpetrator as attacked Eliza Fletcher while she was running in Memphis.

SB 378 by Briggs/HB 403 by Lamberth - Regulates the production and sale of hemp-derived cannabinoids: Delta 8 products can be sold in Tennessee to ages 21+ as of July 1, 2023, and more regulation on sellers and packaging will start on July 1, 2024, including a 25-mg limit per serving!

SB 591 by Pody/HB 764 by Davis - Abolishes community oversight boards and creates police advisory and review committees. The Community Oversight Board for the Metro Nashville Police Department has been stripped of its investigative power and must adopt statewide standards for such a board.

SB 720 by Massey/HB 458 by Carr - Penalty for boating under the influence (BUI). Allows boat operators to be charged with Class A misdemeanor BUI for refusal to submit to such testing. Authorizes courts to use same sentencing guidelines for BUI as DUI. Increases from six months to 12 months, the required suspension of boating privileges for BUI or BUI-related implied consent violation. Be careful on the water, folks!

EDUCATION

SB 300 by Lundberg/HB 437 by White – Third Grade Retention: Explanation of appeals process to be posted on website for student who is identified for retention. There are options for appeal, summer school, and tutoring.

SB 315 by Niceley/HB 1456 by Faison - School resource officers provided to private schools. Local governments can contract with private schools to have school resource officers at private schools.

SB 466 by Rose/HB 1269 by Cochran - Student pronouns. Public school teachers do not have to use a student's preferred pronoun if it does not match their biological sex.

SB 834 by Lundberg/HB 1445 by Faison - Internet restrictions for public institutions of higher education. Public universities must ban TikTok (or any side operated by a company based in the People's Republic of China) from being accessed on the university's internet network.

SB 1325 by Bailey/HB 1202 by Williams - Authorization of a school staff member to carry a concealed handgun on school grounds. This did not pass. It will be revisited next year.

ENTERTAINMENT

SB 3 by Johnson/HB 9 by Todd - Adult cabaret performances – prohibitions: No drag shows are allowed on public property or if they could be viewed by someone under 18.

SB 1043 by Campbell/HB 1231 by Hemmer - Third-party ticket sales: On a third-party ticket sales site, the price you ultimately pay must be the first price viewable, and deceptive practices are banned.

ABORTION

SB 745 by Briggs/HB 883 by Helton-Haynes – Providers cannot be criminally prosecuted for performing abortions of ectopic pregnancies.

GENDER

SB 1440 by Roberts/HB 239 by Bulso - Construction of statutes - definition of sex. Redefines "sex" in entire TCA to mean birth sex only.

SB 1 by Johnson/HB 1 by Lamberth - Prohibited medical procedures for minors. People under the age of 18 are not permitted to have medical procedures or hormone treatments, etc. that are inconsistent with the person's birth sex.

LABOR LAW

SB 1410 by Jackson/HB 1212 by Sexton - Employment of minors - places that sell intoxicating beverages. Removes the prohibition that a person 16 or 17 years of age may not be employed in any place where the average monthly gross receipts from the sale of intoxicating beverages exceed 25 percent of the total gross receipts of the place of employment if the person is not permitted to take orders for or serve intoxicating beverages.

OTHER

SB 87 by Watson/HB 48 by Lamberth - Elected members of governing body of a metropolitan or municipal government capped. Metro Nashville Council had 40 representatives, but can now only have 20.

SB 93 by Lamar/HB 103 by Parkinson - Creates an eyelash specialist license!

SB 275 by Johnson/HB 323 by Lamberth: Gives us a 3-month holiday from sales tax on groceries from August 1 to October 31, 2023!!!

SB 273 by Johnson/HB 321 by Lamberth: To raise more road construction funds, one measure is to increase the vehicle registration fee for electric vehicles to go from \$100 to \$200 per year starting in 2024, and increase to \$274 in 2027, and increase or decrease with inflation each year thereafter. There will be a fee increase for hybrid vehicles as well.

For recaps of several more bills and more details on the above, see the full list at: <https://www.law-nashville.org/resources/FINAL%202023%20L.A.W.%20Legislative%20Update%206.20.2023.pdf>

Recap of July Membership Meeting

Legal Developments for Women in the Workplace

by Morgan Bernard, Newsletter Editor, Staff Attorney for the Davidson County Chancery Court, Part II

On July 18th, LAW held a virtual CLE regarding updates to the PUMP Act, Pregnant Workers Fairness Act, and the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act with panelists Anne Hunter, Melody Fowler-Green, and Elizabeth Gedmark.



Our first panelist, [Elizabeth Gedmark](#), an attorney who has worked for A Better Balance since 2011, discussed the federal Providing Urgent Maternal Protections for Nursing Mothers Act (“PUMP Act”) and Pregnant Workers Fairness Act (“PWFA”). A Better Balance is a national legal advocacy organization with an office in Nashville with a mission to “use the power of the law to advance justice for workers without jeopardizing their economic security,” including conducting policy and legislative advocacy work and handling strategic litigation.

The PWFA went into effect on June 27, 2023 and provides a clear right for employees to receive reasonable accommodations for known limitations related to pregnancy, childbirth, or related medical conditions. Examples of such reasonable accommodations include more frequent breaks, avoiding heavy lifting, temporary inside duty, such as avoiding extreme heat or air quality issues, and time off to recover from childbirth, regardless of whether or not you qualify for FMLA, as well as lactation accommodations such as a private space that is not a bathroom. Notably, Tennessee does have its own PWFA that was passed a few years ago, mirrors the federal law, and is not preempted.

As for the PUMP Act, it became effective December 29, 2022 and expands the right to receive reasonable break time and a clean, private space for pumping to nearly 9 million more workers. The act almost entirely closes the coverage gap that left a quarter of women of childbearing age without federal protection of their right to break time and a private space to pump during the workday. While this does overlap to some degree with the PWFA, it is a different statute in terms of what is required. The Act applies to all employers who are required to provide a reasonable amount of break time and a clean, private space for lactation up to one year following the birth of the employee’s child.



The next panelist, [Anne Hunter](#), of the Hunter Law Firm, specializes in complex civil rights mainly in workplace discrimination and Title IX. She discussed the newly enacted Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act (the “EFAA”) signed into law on May 3, 2022 and amending the Federal Arbitration Act, codified at 9 U.S.C. § 402. Specifically, the EFAA prohibits forced arbitration and class and collective action waivers in a case that relates to a sexual harassment dispute. The purpose of the EFAA is to prevent the silencing of those who speak up about sexual harassment, including assault, and ensure that perpetrators and corporations are held accountable, as well as end the silencing of vic-

tims by allowing these disputes to be held in a public forum. The plain language of the state provides that the EFAA applies to any case that relates to a sexual harassment dispute; thus, if there are additional claims, such as race discrimination, then the entire case is subject to the EFAA. The phrase “sexual harassment dispute” in the EFAA is defined as “any dispute relating to conduct that is alleged to constitute sexual harassment under applicable Federal, Tribal, or State law,” and is likely not limited to only sexual harassment claims.



The final panelist, [Mel Fowler-Green](#), is an attorney with Yezbak Law Offices, and she focuses on wage and hour work and individual discrimination cases. She discussed the Equal Pay Act, part of the Fair Labor Standards Act that requires “equal pay for equal work regardless of sex,” codified at 29 U.S.C. §206(d). The Equal Pay Act of 1963 is part of the Fair Labor Standards Act and protects against wage or benefit discrimination because of sex and applies to all kinds of compensation, including benefits. However, it is subject to four affirmative defenses: an employer can pay differently if there is a seniority system, merit system, a system which measures earnings by quantity or quality of production, or a differ-

ential based on any factor other than sex, the “catch-all loophole.” As a result, the effects of the act have not made as significant of an impact as one would think in closing the pay gap between men and women over time. In 1963, women earned \$.59 to every dollar earned by men, and by 2020, women earned only \$.83 to every dollar earned by men. Even bleaker, Black women in 2020 earned \$.64 for every dollar earned by white, non-Hispanic men, and Hispanic women, who experience the largest pay gap, earned just \$.57 to every dollar earned by white, non-Hispanic men. Some of the major factors that hinder the success of the Equal Pay Act include using prior salary information, the catch-all loophole, and lack of wage transparency. Progress continues to be made, however, as several states have enacted legislation requiring more wage transparency, and reintroduction of the Paycheck Fairness Act would address several of these EPA loopholes including the catch-all provision to strengthen workplace protections for women.

KUDOS



Effective September 1st, Courtney Orr will become the Deputy Attorney General overseeing the Criminal Appeals Division for the Tennessee Attorney General’s Office.

Women Changemakers

by Ellen Bowden McIntyre, Newsletter Editor, Deputy Civil Chief,
Affirmative Civil Enforcement, at the United States Attorney's Office



On May 10th, LAW hosted “Women Changemakers: Bold Innovative Risk Taking and Inspired Leadership around the Globe” at the Nashville Public Library. Alyse Nelson, founder and CEO of the non-profit Vital Voices in Washington, DC, spoke about how women are on the forefront leading change throughout the world. Vanderbilt law and political science Professor Samar Ali moderated a lively discussion, in which Nelson explained how Vital Voices cultivates women leaders internationally.

According to Nelson, women lead differently than men and bring a new model of leadership. She described the five key lessons she has learned through 26 years with Vital Voices. First, women come to leadership through a driving force or sense of mission. Women step into leadership for a reason, not for the sake of power. Second, women leaders have deep roots in the community. Third, women leaders put aside their ego for the bigger vision that they hope to achieve. Fourth, women leaders have bold ideas and take bold actions. Fifth, women leaders pay it forward. Nelson gave examples of women leaders who exemplify each of these lessons, and each of these women were truly inspiring.

One example Nelson shared is Malala Yousafzai, the Pakistani education activist and Nobel laureate who was shot in the head by the Taliban in 2012. When Malala’s family asked Vital Voices for help, Vital Voices raised \$1 million for Malala to open a foundation. Vital Voices administered the first 40 grants to girls in Pakistan, but Vital Voices stayed the behind the scenes and then turned over the foundation to Malala, which is now called the “Malala Fund.” Through efforts like these, Vital Voices aims to be “venture catalysts,” and help open doors for women and validate that they can be leaders in their countries.

Nelson got started on her own leadership path by attending the United Nations’ Fourth World Conference on Women when she was a college student in 1995. This helped Nelson realize her mission, which was to spread women’s voices. Nelson believes there is a collective power when women come together for a cause.



Bar and Beyond: July Happy Hour for Recent Grads and Bar Takers



On Thursday, July 27th, LAW hosted the “Bar and Beyond” happy hour with Polsinelli and Lewis Thomason for recent bar takers and summer interns at local bar Mother’s Ruin, with a complimentary photo booth and the chance to win prizes playing “networking” bingo. The event took place in the upstairs bar and lounge area, and the bartenders changed the menu to re-name their classic drinks to be more on theme: “Liquidated Damages,” “Standard of Proof,” “Barmageddon,” and my favorite but anxiety-inducing, “Pencils Down.” Accomplished lawyers reminisced about their bar taking experience while those who had just taken the bar celebrated their newfound freedom and reassured those summer interns still in law school that they would (most likely) survive. Below are pictures from the event, excluding some photos that may or may not have involved pickleback shots (made from their house pickles—highly recommend!).



LAW Foundation

Become a Legacy Circle Donor

For the rest of 2023, we are holding a “Creating a Legacy Campaign.” Any donation of \$100 or more will be a Legacy Circle Donor.

Please make checks payable to the LAW Foundation and mail to P. O. Box 210436, Nashville, TN 37221 or use the QR code and pay with PayPal.



Book Report:

I Swear Politics is Messier than my Minivan by Katie Porter

Book Club Event: 6:00 p.m. Tuesday, September 12th, 2023
@ Tennessee Brew Works

The Health & Wellness and Practicing Parents Committees are hosting a book club to discuss Congresswoman Katie Porter's recent memoir on the realities of life as a legislator and single mother of three young children.

Katie Porter currently represents the 47th congressional district in Orange County, California since 2023, previously representing the 45th congressional district from 2019 to 2023, notably as the first Democrat to be elected to represent that district. She graduated from Yale University and Harvard Law School and taught law at several universities, including bankruptcy law at the University of California, Irvine School of Law, and University of Iowa, her home state.

She garnered national attention upon her fearless questioning during congressional hearings and use of her signature whiteboards to hold those in power accountable, including various CEOs of Equifax, Wells Fargo and JP Morgan Chase, and government officials, such as directors of the CDC and the Consumer Financial Protection Bureau. Before coming to Congress, she focused on consumer and commercial law, mortgage foreclosure, debt collection, and bankruptcy. As a law professor, she worked on a groundbreaking study to expose predatory mortgage practices. As a congresswoman, she has authored several laws to increase accountability in government, raise fees on polluters, improve mental health coverage, and make health care more affordable.

Her new book provides further insight into her journey as the only single working mom in Congress and details her efforts to fight relentlessly for fairness and accountability in government for her constituents. Her determinedness and wit shines through in her self-deprecating and satirical writing style, and she recounts various monumental moments, such as how she hid Alexandria Ocasio-Cortez in her office during the January 6 riots. She also illustrates the difficulties in raising young children as a politician, and the honesty and vulnerability she shows in her book makes her incredibly engaging and relatable.

If you like a quick read about politics or strong women, give this one a try and come hang out on Tuesday, September 12th at 6:00 p.m. for an informal discussion and meet other Katie Porter fans.

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