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## Wal-Mart Sex Discrimination Class Action Plaintiffs Urge Supreme Court To Uphold Historic Civil Rights and Workers' Laws in Brief Filed Today

WASHINGTON, Feb. 22, 2011 /PRNewswire-USNewswire/ -- In a brief filed today in the United States Supreme Court, Plaintiffs in the *Dukes v. Wal-Mart Stores, Inc.*, sex discrimination case argued that overwhelming evidence supports the lower court's class certification order and that overturning that decision would dismantle the "fundamental pillars" of the Civil Rights Act employment discrimination laws.

At issue is whether hundreds of thousands of women who work or have worked in Wal-Mart retail stores since Dec. 26, 1998, can collectively seek an injunction and lost pay against the nation's largest retailer for discriminatory wages and career advancement. The U.S. District Court, Northern District of California, granted class certification of the case in June 2004 after an exhaustive review of the evidence. This decision was upheld by the United States Court of Appeals, Ninth Circuit, *en banc* in April 2010. Wal-Mart appealed that decision to the Supreme Court in August 2010 and the Court will hear the oral arguments on March 29.

"Wal-Mart is attempting to dismantle the Supreme Court's employment discrimination class action jurisprudence," says Plaintiffs' counsel Jocelyn Larkin, an attorney with the Impact Fund. "Such far-reaching changes to the law would require the Court to overrule 45 years of civil rights and class action precedent. This would rule out certification of all but the smallest employment discrimination cases — and that's not what Congress intended."

Plaintiffs' brief argues:

- Wal-Mart's uniform pay and promotion policies for its retail store employees fail to provide any application or posting process for promotions to store management or job-related criteria for setting pay or making promotion decisions—standard practices in the American workplace. Instead, Wal-Mart has chosen to adopt and maintain highly subjective policies, which are implemented, monitored, and enforced on a daily basis by its Home Office to ensure consistency in results.
- Personnel decisions are exercised within a corporate culture that is rife with gender stereotypes demeaning to female employees: Wal-Mart executives refer to women employees as "Janie Qs," approve holding business meetings at Hooters restaurants, and attribute the absence of women in top positions to men being more aggressive in seeking advancement. For example, women like named Plaintiff Christine Kwapnoski were told men need to be paid more than women because "they have families to support."
- As Wal-Mart has long recognized, its female workforce has borne the brunt of these subjective policies. Even though its own data shows that its female employees are, on average, better performers and more experienced than their male counterparts, women's pay lags far behind that of male employees in every major job in each of the company's 41 regions. Women at Wal-Mart also face a classic glass ceiling – while women comprise more than 80 percent of hourly supervisors, they hold only one-third of store management jobs and their ranks steadily diminish at each successive step in the management hierarchy.

Arcelia Hurtado, executive director of Equal Rights Advocates, Plaintiffs' co-counsel, asserts, "Equal pay for equal work is a basic civil right in this country. Every day across the country women are denied this right and effectively told their work has less value. This case stands for the collective right of every working woman to be paid what her work is worth. The reality is that without this class action, the working women at Wal-Mart will never have their day in court and all working women across the country will lose. The women have been treated unequally as a class and they should be able to assert their rights as a class."

Co-lead Plaintiffs' counsel Joseph M. Sellers, of Cohen Milstein Sellers & Toll, PLLC, will urge the Court to uphold the lower court's decision during oral arguments in March.

For a copy of the Plaintiffs' brief or more information on the case, visit [www.walmartclass.com](http://www.walmartclass.com).

*Dukes v. Wal-Mart Stores, Inc.*, Plaintiffs are represented by the Impact Fund, Berkeley, Calif.; Cohen Milstein Sellers & Toll, PLLC, Washington, D.C.; Equal Rights Advocates (ERA), San Francisco, Calif.; Davis Cowell & Bowe, San Francisco, Calif.; Public Justice Center, Baltimore, Md.; and Tinkler Law Firm and Merit Bennett, Santa Fe, N.M.

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