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**Testimony before the Massachusetts Joint Committee on Labor and Workforce
Development Supporting Bill S. 1023/H. 1038**

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A Better Balance: The Work & Family Legal Center**

A Better Balance is a non-profit legal organization that advocates for workers across the economic spectrum so they can care for their families without sacrificing their financial security. We have heard from dozens of women across the country whose employers refused to make reasonable job adjustments while they were pregnant, even while sometimes accommodating workers with limitations arising out of disability or injury. This failure to accommodate often results in devastating health and economic consequences for working women and their families.

A Better Balance is recognized as a national leading expert on the issue of discrimination against pregnant women in need of reasonable accommodations, which Bill S.1023/H.1038, the Massachusetts Pregnant Workers' Fairness Act (MA PWFA), addresses. "Pregnant and Pushed Out of A Job," an Op-Ed by Dina Bakst, Co-Founder & Co-President of A Better Balance, appeared in the *New York Times* in 2012 and inspired the introduction of the federal Pregnant Workers Fairness Act (PWFA).ⁱ We have assisted municipal, state, and federal lawmakers in drafting related legislation and have led campaigns and assisted others to pass such legislation in various localities. In October 2015 we published a report, "Pregnant and Jobless: 37 Years After Pregnancy Discrimination Act, Pregnant Women Still Choose Between A Paycheck and A Healthy Pregnancy,"ⁱⁱ which garnered national media attention and shined a spotlight on this particular problem.

We thank Representative Rogers and Senator Lovely for sponsoring this bill, which takes an essential step toward promoting fairness and equality for Massachusetts's women, while also strengthening the Commonwealth's economy.

The MA PWFA would codify and clarify that Massachusetts law protects pregnant women from all forms of discrimination. Because Massachusetts law does not explicitly ensure that pregnant women may not be pushed out of their jobs when they need a modest change at work, employers are confused about their obligations. This bill is necessary to ensure equal treatment under the law. Pregnant women cannot afford to wait crucial weeks or months for an agency investigation that may or may not afford them much needed relief.

Unfortunately, it is estimated that more than *one quarter million pregnant workers* nationwide are denied requests for accommodations each year, and many more do not



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even request changes at work, likely because they fear retaliation.ⁱⁱⁱ Women who need income but lack accommodations are often forced to continue working under unhealthy conditions, risking their own health as well as the health of their babies. Physically demanding work, where accommodations are more necessary but too often unavailable, has been associated with an increased risk for preterm birth and low birth weight.^{iv}

The MA PWFA ensures that where a minor job modification would allow a woman to continue working, an employer must provide it unless doing so would pose an undue hardship. Moreover, under the law, an employer cannot take adverse action against an employee for requesting or using reasonable accommodations.^v

The MA PWFA will benefit working women, their families, employers, and the public.

Women should not be forced to risk their health when a simple modification would allow them to stay healthy and on the job. The MA PWFA would promote family economic security by ensuring that women can continue to work safely while pregnant.

Businesses would benefit from this legislation because it will clarify their obligations under the law. We can attest, from first-hand experience enforcing the New York City PWFA, that such clarity helps immeasurably to resolve potential disputes before they fester and cause employers to incur significant legal fees.^{vi} Employers would also benefit from reduced turnover and increased productivity by retaining trained employees.^{vii} Businesses will also see a healthier and more diverse workforce as a result of passing this legislation,^{viii} whereas the cost for providing such accommodations is usually negligible, given the temporary nature of pregnancy. The March of Dimes in New York has noted that employers spend more than \$12 billion annually on claims related to prematurity and complicated births nationwide. Improving the health of pregnant women and babies in Massachusetts will result in employer healthcare savings.^{ix}

For these reasons, business groups and leaders across the country support legislation ensuring strong legal protections for pregnant workers. In fact, the Associated Industries of Massachusetts worked closely with advocates to come to an agreement on legislative language and are here today supporting this bill.^x

The MA PWFA would save the state money by decreasing litigation costs.

We have found that pregnancy accommodations laws have the positive fiscal impact of reducing the number of, and the costs associated with, pregnancy discrimination complaints.^{xi} For example, after California passed similar legislation, litigation of pregnancy discrimination cases there actually decreased, even as the number of pregnancy discrimination cases around the country was increasing.^{xii} In Tennessee, the state estimated that a similar bill would have no significant fiscal impact on the state.^{xiii} In



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addition, the proposed bill would save taxpayers money in the form of unemployment insurance and other public benefits incurred when women are forced out of their jobs.

Working families rely on pregnant women's and mothers' salaries now more than ever. Women now make up almost half of the workforce^{xiv} and mothers bring home at least some income in 70 percent of all married couples with children under age 18 living at home.^{xv} In fact, a recent Pew Research study found that women are the primary or *sole* breadwinner in 40 percent of American families.^{xvi}

Unfortunately, all too often, pregnant workers, especially those in low-wage or physically demanding jobs, are placed on unpaid leave or terminated when they seek a work modification, such as relief from heavy lifting or a stool to sit on. These women lose not only much-needed income but also benefits, like health insurance, and seniority, which may have long-term consequences for them and their families.

Many states and localities already provide stronger pregnancy discrimination protections. Alaska, California, Connecticut, Colorado, Delaware, Hawaii, Illinois, Louisiana, Maryland, Minnesota, Nebraska, New Jersey, New York, North Dakota, Rhode Island, Texas, Utah, West Virginia, New York City, NY, Philadelphia, PA, Providence, RI, Central Falls, RI, and Washington, DC all have strong legal protections explicitly requiring certain employers to provide some reasonable accommodations to pregnant employees. Sixteen of these laws were enacted in just the past four years, the majority passed with bipartisan support and unanimously. Similar bills are being considered in other states, such as Kentucky, New Mexico, Oklahoma, Nevada, South Carolina, South Dakota, Tennessee and Vermont. Additionally, the federal PWFAs, introduced in 2015,^{xvii} garnered bipartisan support in both houses of Congress, with over 140 cosponsors and almost 150 organizations supporting the bill.^{xviii} This growing momentum demonstrates how much the issue of fairness for pregnant workers resonates with legislators and the public nationwide.

CONCLUSION

Massachusetts should strengthen its pregnancy discrimination laws by passing the MA PWFAs, which would provide critical protections for women and their families. Thank you for your consideration.

ⁱ Dina Bakst, *Pregnant, and Pushed Out of a Job*, New York Times, (Jan. 30, 2012).

ⁱⁱ A Better Balance, *Pregnant and Jobless: Thirty-Seven Years After Pregnancy Discrimination Act, Pregnant Women Still Choose Between A Paycheck and A Healthy Pregnancy* (Oct. 2015), <http://abetterbalance.org/web/images/stories/Documents/fairness/reports/PregnantandJobless.pdf>.



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- ⁱⁱⁱ Bryce Covert, “Why Are Workplaces Still Not Ready for Pregnant Workers?,” January 31, 2014, available at: <http://thinkprogress.org/economy/2014/01/31/3235471/pregnant-workers-survey/>.
- ^{iv} See, e.g., Monique van Beukering et al., *Physically Demanding Work and Preterm Delivery: A Systematic Review and Meta-Analysis*, Int’l Archives of Occupational & Env’tl. Health (2014) (discussing association of prolonged standing, lifting and carrying, physical exertion, and a combination of those tasks with preterm birth).
- ^v S.1023/H.1038, 190th Gen. Court, Reg. Sess. (Ma. 2017). <https://malegislature.gov/Bills/190/S1023>.
- ^{vi} A Better Balance, *Pregnant and Jobless: Thirty-Seven Years After Pregnancy Discrimination Act, Pregnant Women Still Choose Between A Paycheck and A Healthy Pregnancy* (Oct. 2015), <http://abetterbalance.org/web/images/stories/Documents/fairness/reports/PregnantandJobless.pdf>.
- ^{vii} Brief amici curiae of U.S. Women’s Chamber of Commerce, et al., *Young v. UPS*, (Sept. 2014), available at: http://www.americanbar.org/content/dam/aba/publications/supreme_court_preview/BriefsV4/12-1226_pet_amcu_uswoc-etal.authcheckdam.pdf; Equal Rights Advocates, *Expecting a Baby, Not A Lay-Off*, pg. 25, <http://www.equalrights.org/wp-content/uploads/2013/02/Expecting-A-Baby-Not-A-Lay-Off-Why-Federal-Law-Should-Require-the-Reasonable-Accommodation-of-Pregnant-Workers.pdf>.
- ^{viii} Job Accommodation Network, *Workplace Accommodations: Low Cost, High Impact*, pg. 3, <http://www.jan.wvu.edu/media/LowCostHighImpact.doc>.
- ^{ix} March of Dimes—New York Chapter, *Protect New York’s Moms From Pregnancy Discrimination*, http://www.marchofdimes.org/pdf/newyork/Pregnancy_Discrimination_Fact_Sheet.pdf.
- ^x Brad MacDougall, AIM, *Advocates Reach Deal on Protections for Pregnant Workers*, Mar. 1, 2017, <http://blog.aimnet.org/aim-issueconnect/aim-lawmakers-advocates-reach-deal-on-protections-for-pregnant-workers>.
- ^{xi} A Better Balance, *Pregnant and Jobless: Thirty-Seven Years After Pregnancy Discrimination Act, Pregnant Women Still Choose Between A Paycheck and A Healthy Pregnancy* 14-16 (Oct. 2015), <http://abetterbalance.org/web/images/stories/Documents/fairness/reports/PregnantandJobless.pdf>.
- ^{xii} Equal Rights Advocates, *Expecting A Baby, Not A Lay-Off*, pg. 25, *Expecting a Baby, Not A Lay-Off*, pg. 25, <http://www.equalrights.org/wp-content/uploads/2013/02/Expecting-A-Baby-Not-A-Lay-Off-Why-Federal-Law-Should-Require-the-Reasonable-Accommodation-of-Pregnant-Workers.pdf>.
- ^{xiii} A Better Balance, *Pregnant and Jobless: Thirty-Seven Years After Pregnancy Discrimination Act, Pregnant Women Still Choose Between A Paycheck and A Healthy Pregnancy* 16 (Oct. 2015), <http://abetterbalance.org/web/images/stories/Documents/fairness/reports/PregnantandJobless.pdf> (“[A] proposed Tennessee Pregnant Workers Fairness Act was found to have no significant fiscal impact on the state because the Tennessee Human Rights Commission (the enforcing agency) anticipated that any increase in workload could be accommodated with the use of existing resources.”).
- ^{xiv} Catalyst, *Statistical Overview of Women in the Workplace*, (Dec. 2011), <http://www.catalyst.org/publication/219/statistical-overview-of-women-in-the-workplace>.
- ^{xv} Sarah Jane Glynn, *Breadwinning Mothers, Then and Now*, (June 2014) <https://cdn.americanprogress.org/wp-content/uploads/2014/06/Glynn-Breadwinners-report-FINAL.pdf>.
- ^{xvi} Wendy Wang, Kim Parker, & Paul Taylor, *Breadwinner Moms: Mothers Are the Sole or Primary Provider in Four-in-Ten Households with Children; Public Conflicted about the Growing Trend*, (May 2013), http://www.pewsocialtrends.org/files/2013/05/Breadwinner_moms_final.pdf.
- ^{xvii} S.1512/HR 2654.
- ^{xviii} Pregnant Workers Fairness Act Letter of Support (July 15, 2015). <http://www.nationalpartnership.org/research-library/workplace-fairness/pregnancy-discrimination/pregnant-workers-fairness-act-coalition-letter.pdf>.