



the work and family legal center

80 Maiden Lane, Suite 606, New York, NY 10038 | t: 212.430.5982 | f: 212.430.5983 | info@abetterbalance.org | abetterbalance.org

staff

Dina Bakst
Co-President

Elizabeth Gedmark
Law Fellow

Sherry Leiwant
Executive Director

Jared Make
Staff Attorney

Jaclyn Stoll
Development Director

Phoebe Taubman
Senior Staff Attorney

Yolanda Wu
Co-President

board

Dina Bakst
Board Chair, Co-President

Risa Kaufman
Treasurer

Roslyn Powell
Secretary

Martha Baker

Eric Berger

Ariel Devine

Penn Dodson

Lisa Gilinsky

Gary Phelan

advisory board

Ann Crittenden
Author

Martha Davis
*Professor, Northeastern
University School of Law*

Marlene Debel
*Managing Director,
Bank of America*

Deborah Ellis
*Asst. Dean for Public Interest
Law, NYU School of Law*

Janet Gornick
*Professor, Baruch College,
City University of New York*

Deborah Epstein Henry
*President, Flex-Time
Lawyers LLC*

Susan Butler Plum
*Director, Skadden
Fellowship Program*

Richard Revesz
Dean, NYU School of Law

Joan Williams
*Professor, UC Hastings
College of Law & Director,
Center for WorkLife Law*

Daniel O. Bernstein, President and CEO
Law School Admission Council
662 Penn Street
Newtown PA 18940

October 5, 2011

Dear Mr. Bernstein

As you know, every accredited law school in the United States requires that students take the Law School Admissions Test (LSAT) to gain admission to their school. Performing well on the test could mean going to a top tier law school or having a great scholarship for a legal education. Doing poorly could mean not being admitted to any law school at all, which is a requirement for practicing law in almost every state.

Test takers are already fraught with anxiety over test day. Women should not have one extra thing to worry about, something men never have to worry about—confronting the pain, discomfort, and health risk that comes with not being able to pump breast milk for several hours.

Ashley, who sought help from the ACLU Women's Rights Project, had to deal with this exact scenario last Saturday when she had to take the LSAT without accommodations. Her request was reasonable—extend the standard 15-minute break in the middle of the exam to 30 minutes so that she would have enough time to pump breast milk and clean her equipment. LSAC denied Ashley this minimal accommodation; in response to her inquiry, LSAC staff suggested that her options were to take the test under standard procedure, wean her baby in time for the exam, or defer the test to a time when she is no longer breastfeeding. In doing so, you have hampered Ashley's chance at success as a law school applicant.

Waiting too long in between breast pumping sessions causes severe pain and can reduce a mother's precious milk supply. It also risks infection, which is dangerous for the health of the mother and the breastfeeding baby. Weaning a baby early deprives the child of irreplaceable health benefits, including strengthened resistance to disease. And deferring the test until a later date can significantly alter a woman's career plans. Although the test is offered four times each year, students who take the December and February LSAT face a disadvantage for entrance to law school the following fall.

Your organization has said that you have a categorical policy against accommodating breastfeeding women for the test. This is not in line with your stated mission of increasing underrepresented minorities in the legal field. While 47% of law students are women, only 32% of lawyers are women, and women represent merely 19% of law firm partners and 23% of federal district and

circuit court judges.¹ Mothers are especially underrepresented in the upper echelons of the profession. By denying simple accommodations to breastfeeding mothers, you are contributing to their underrepresentation in the field and deterring key talent from pursuing a legal career to the detriment of the profession and the clients these women might someday serve. It is your responsibility, as gatekeepers for this profession, to do better.

Your mission should require you to accommodate new mothers. As a tax-exempt not-for-profit institution, you have an obligation not to violate the public policy of this country. It is against public policy to accommodate some individuals and not others on the basis of sex. Public policy also increasingly supports the right of breastfeeding mothers to express breast milk when they are away from their babies. Last year, the Fair Labor Standards Act was amended to require employers to provide nonexempt nursing mothers with a reasonable time and space to pump breast milk. The rationale for this amendment was based on the benefits of breastfeeding to working families and businesses. In addition, twenty-four states and the District of Columbia have all passed laws related to breastfeeding in the workplace, many of which require reasonable break time and a private place to pump.² Moreover, your member institutions, many of whom we are currently contacting, are at risk of a Title IX lawsuit for requiring a test that disadvantages women for admission to their schools.

A barrier to the LSAT is a barrier to becoming a lawyer. We urge you to change your policy of categorically refusing to even consider accommodating any breastfeeding women. Your organization must do the right thing and accommodate mothers of newborns who simply want to be able to take an admissions test on a level playing field with other applicants.

Sincerely,

Dina Bakst, Co-President
dbakst@abetterbalance.org

Phoebe Taubman, Senior Staff Attorney
ptaubman@abetterbalance.org

Elizabeth Gedmark, Law Fellow
egedmark@abetterbalance.org

cc: Joan Van Tol, General Counsel

¹ See Catalyst, *Women in the Law in the U.S.*, 1-2 (May 2010), available at http://www.catalyst.org/file/516/qt_women_in_law_in_the_us.pdf; see also Elena Kagan, *Women and the Legal Profession—A Status Report*, 61 THE RECORD 37, 42 (2006), available at http://www.law.yale.edu/documents/pdf/women_and_the_legal_profession_a_status_report.pdf.

² See National Conference of State Legislatures, *Breastfeeding Laws* (May 2011), available at <http://www.ncsl.org/default.aspx?tabid=14389>.