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Testimony Supporting H. 3865
March 22, 2017

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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 so they can care for their families without sacrificing their financial security. We have heard from women across the country whose employers refused to make reasonable job adjustments while they were pregnant or nursing, even while sometimes accommodating workers with limitations arising out of disability or injury. This failure to accommodate often results in devastating economic and health consequences for working women and their families. Our Southern Office, which opened in 2014, has focused on this particular issue in the Southeast.

A Better Balance is recognized as a national leading expert on the issue of discrimination against pregnant women in need of reasonable accommodations, which H. 3865, the South Carolina Pregnancy Accommodations Act 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* 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,”ⁱⁱⁱ which garnered national media attention and shined a spotlight on this particular problem.

We thank Reps. Bernstein, Delleney, and Ridgeway for sponsoring this bill, which promotes fairness and equality for South Carolina’s women, while also strengthening the State’s economy.

The Pregnancy Accommodations Act (H. 3865), would ensure that South Carolina law protects pregnant workers, promoting better maternal and infant health statewide. Because South Carolina law does not explicitly ensure that pregnant women cannot be pushed out of their jobs when they need a modest change at work, employers are confused about their obligations. Pregnant women cannot afford to wait crucial months or years for much needed relief, and many are unable to obtain what they need for their health even after pursuing legal redress. The Pregnancy Accommodations Act uses a flexible standard borrowed from the Americans with Disabilities Act because employers are familiar with this decades-old law. The bill is not a mandate—if it would be an undue hardship for an employer to provide accommodations, then they need not do



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so. Small businesses are also exempt from the bill. The Americans with Disabilities Act already requires employers to provide reasonable accommodations to workers with disabilities, including pregnancy-related disabilities, but too many employers do not understand this obligation and far too many pregnant workers do not have disabilities, but still require accommodations to prevent health problems before they start. For example, someone may need frequent water breaks to prevent dehydration—an extremely serious problem for pregnant women.

The Pregnancy Accommodations Act 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. This bill is necessary to ensure equal treatment under the law. It will also clarify employers' obligations and allow pregnant women to secure the modest workplace adjustments they need as soon as possible to keep them employed. Women should not be forced to risk their health when a simple modification would allow them to stay healthy and on the job. 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 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.^{iv} 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.^v South Carolina has the 14th highest infant mortality rate in the country^{vi}--we must fight to reduce this number. Providing accommodations when requested by pregnant workers is a critical public health issue in this state.

The Pregnancy Accommodations Act will benefit working women, their families, businesses, and the public. South Carolinians overwhelmingly support requiring employers to provide reasonable accommodations to pregnant workers. In a recent poll conducted by Winthrop University, 81% of South Carolinians, including men and women, favored passing a law that would require employers to accommodate pregnant employees unless the accommodation imposed an undue hardship on the employer.^{vii}

Businesses will benefit from clarity regarding their obligations under the law. We can attest, from first-hand experience enforcing similar legislation in one state with a pregnant workers' accommodations law, such clarity helps immeasurably to resolve potential disputes before they fester and cause employers to incur significant legal fees. Employers would also benefit from reduced turnover and increased productivity by retaining trained employees.^{viii} Businesses will also see a healthier and more diverse workforce as a result of passing this legislation,^{ix} whereas the cost for providing such accommodations is usually negligible, given the temporary nature of pregnancy. Finally,



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The March of Dimes in one state has noted that employers spend more than \$12 billion annually on claims related to prematurity and complicated births nationwide.^x Improving the health of pregnant women and babies in South Carolina will result in employer healthcare savings. For these reasons, business groups and leaders across the country support legislation ensuring strong legal protections for pregnant workers.

The Pregnancy Accommodations Act 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 one state 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 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. Because of these findings, South Carolina need not fear increased costs or litigation post-enactment of the Pregnancy Accommodations Act.

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 living at home.^{xv} In fact, a Pew Research study found that women are the primary or sole breadwinner in 40 percent of American families.^{xvi} When pregnant women and mothers are forced out of work, the ripple effects impact their families as well.

All too often pregnant workers, especially low-wage workers or those in physically demanding jobs, are placed on unpaid leave or fired when they seek workplace modifications to stay healthy, 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, creating long-term financial and health consequences for them and their families.

Many states and localities already provide stronger pregnancy discrimination protections. Texas, Louisiana, North Dakota, Nebraska, Utah, West Virginia, Alaska, Minnesota, Connecticut, Colorado, Delaware, Hawaii, Illinois, Maryland, New Jersey, New York, Rhode Island, California, 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, Tennessee, New Mexico, Oklahoma, South Dakota,



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Georgia, and Massachusetts. Additionally, the federal PWFA, 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

South Carolina should strengthen its pregnancy discrimination laws by passing the Pregnancy Accommodations Act, 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>.

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} Renee Bischoff & Wendy Chavkin, *The Relationship between Work-Family Benefits and Maternal, Infant and Reproductive Health: Public Health Implications and Policy Recommendations*, (June 2008), pg. 13-17, http://otrans.3cdn.net/70bf6326c56320156a_6j5m6fupz.pdf; see also Mayo Clinic Staff, *Working During Pregnancy: Do’s and Don’ts*, <http://www.mayoclinic.com/health/pregnancy/WL00035>; see also Joanna L. Grossman, *Pregnancy, Work, and the Promise of Equal Citizenship*, 98 Geo. L.J. 567, 582-84 (March 2010); Brief amici curiae of Health Care Providers, et al., *Young v. UPS*, (September 11, 2014), available at:

http://www.americanbar.org/content/dam/aba/publications/supreme_court_preview/BriefsV4/12-1226_pet_amcu_hcp-et.al.authcheckdam.pdf.

^v 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).

^{vi} Kaiser Family Foundation, *Infant Mortality Rate (Deaths per 1,000 Live Births)*, <http://kff.org/other/state-indicator/infant-death-rate/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Infant%20Deaths%20per%201,000%20Live%20Births%22,%22sort%22:%22desc%22%7D>.

^{vii} Current Findings, Winthrop Poll February 2017 – General Population in South Carolina, <http://www.winthrop.edu/winthropoll/default.aspx?id=9804>.

^{viii} 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_uswcoc-et.al.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>.

^{ix} Job Accommodation Network, *Workplace Accommodations: Low Cost, High Impact*, pg. 3, <http://www.jan.wvu.edu/media/LowCostHighImpact.doc>.



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^x 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.

^{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>.