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Testimony before the New Jersey Assembly Regarding A4486

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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 when they accommodated 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.

A Better Balance is recognized as a national leading expert on the issue of discrimination against pregnant women in need of reasonable accommodations, which A4486 addresses. “Pregnant and Pushed Out of A Job,” an A Better Balance Op-Ed, appeared in the New York Times last year and inspired the introduction of the federal Pregnant Workers Fairness Act (PWFA)¹ as well as other bill introductions. We have assisted municipal, state, and federal lawmakers in drafting related legislation. We have also led campaigns and assisted other efforts to pass such legislation to strengthen pregnancy discrimination laws in various localities. Along with the National

¹ Dina Bakst, *Pregnant, and Pushed Out of a Job*, New York Times, (Jan. 31, 2011).



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Women’s Law Center, we published a report earlier this year documenting pregnancy discrimination nationwide.² The report garnered national media attention and shined a spotlight on this particular problem.

We thank Representative Lampitt and Representative Johnson for sponsoring this bill, which takes an essential step toward promoting fairness and equality for New Jersey’s women, while also strengthening the State’s economy.

PREGNANT WORKERS IN NEW JERSEY DESERVE STRONGER LEGAL PROTECTIONS

Shifting demographics mean that working families rely on pregnant women’s salaries now more than ever. Women now make up almost half of the workforce³ and are the primary or co-breadwinners in almost two-thirds of families.⁴ In fact, a recent Pew Research study found that women are the primary or sole breadwinner in 40% of American families.⁵ This demonstrates that the State’s economy and New Jersey families depend on a female labor force.

Unfortunately, all too often, pregnant workers, especially low-wage women or those in physically demanding jobs, are placed on unpaid leave or terminated when they seek a work

² *It Shouldn’t Be A Heavy Lift: Fair Treatment for Pregnant Workers*, (2013), available at: <http://www.abetterbalance.org/web/images/stories/ItShouldntBeAHeavyLift.pdf>.

³ Catalyst, *Statistical Overview of Women in the Workplace*, (Dec. 2011), <http://www.catalyst.org/publication/219/statistical-overview-of-women-in-the-workplace>.

⁴ Heather Boushey & Ann O’Leary, *The Shriver Report: A Woman’s Nation Changes Everything: Executive Summary*, (Oct. 2009), http://www.americanprogress.org/issues/2009/10/womans_nation.html.

⁵ 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.



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modification such as relief from heavy lifting, time off to recover from childbirth, or a stool to sit on. When a pregnant woman is denied a reasonable accommodation to keep her healthy and on the job, she does not just lose out on much-needed income. She also often loses benefits, like health insurance, and seniority. Many women who are pushed out have trouble getting hired while pregnant or as a new mother, further exacerbating the wage gap between men and women. Discrimination that prevents pregnant women from staying at their jobs or advancing at work poses a significant threat to family economic security.

A Better Balance hosts the Families at Work Legal Clinic, where we partner with the prominent New York employment law firm, Outten & Golden, to assist low-income workers with their legal needs, including pregnancy discrimination, caregiver discrimination, and other related issues. We receive calls from workers across the tri-state area, including New Jersey residents, as well as from individuals all over the nation in response to our advocacy efforts. One woman who came through A Better Balance's clinic wound up in a homeless shelter after being denied a modest workplace accommodation during her 17th week of pregnancy. These examples demonstrate the extent of the problem many women face while pregnant and on the job:

- A pregnant retail worker in Manhattan was rushed to the emergency room when she fainted on the job because her boss would not let her drink water.



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- A supermarket worker with a lifting restriction was sent home and onto disability insurance, which ended a month before she gave birth. She lost her health insurance and had to go on Medicaid.⁶
- An airline worker at JFK airport was pushed onto unpaid leave after her doctor gave her a lifting restriction, despite the fact that light duty was available for non-pregnant temporarily disabled employees.⁷

Sadly, this problem is occurring in New Jersey as well. This problem is occurring in New Jersey as well. For example, GERALYN MARIE LARSEN worked as a patrol officer for the Township of Branchburg Police Department in Somerset County for almost eight years when she became pregnant. In 2001, the police department eliminated its light-duty work policy. Six months later Officer Larsen found out she was pregnant and requested light duty. Instead of being accommodated, she was pushed onto an unpaid leave of absence. When she tried to apply for disability benefits, she was denied because she had a healthy pregnancy without complications—she simply needed to avoid situations that would put her baby at risk, such as running after assailants. She lost her disability discrimination claim in court because she was not deemed disabled, since she had a healthy pregnancy. She also lost her pregnancy discrimination claim since the police department’s decision to get rid of light duty was deemed to be gender-neutral

⁶ National Women’s Law Center & A Better Balance, *It Shouldn’t Be A Heavy Lift: Fair Treatment for Pregnant Workers*, pg. 11, 12 (June, 2013), <http://www.abetterbalance.org/web/images/stories/ItShouldntBeAHeavyLift.pdf>.

⁷ *Why We Need the Pregnant Workers Fairness Act: Stories of Real Women*, http://www.abetterbalance.org/web/images/stories/Documents/fairness/Why_We_Need_the_Pregnant_Workers_Fairness_Act_-_Stories_of_Real_Women-2.pdf; shortened link: <http://bit.ly/PHaDQT>.



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policy.⁸ No pregnant woman in New Jersey or across the country should be forced to choose between her job and a healthy pregnancy.

This vitally important bill would codify and clarify that the New Jersey Law Against Discrimination protects pregnant women from all forms of discrimination. There is currently no explicit legal protection in New Jersey law to ensure that pregnant women are not pushed out of their jobs when they need a modest change at work. Although the New Jersey Division on Civil Rights interprets New Jersey law to cover some instances of pregnancy discrimination,⁹ legislation is still necessary and desirable. Agency interpretation is not set in stone and could change with a new administration. In addition, ambiguities in the law often mean employers fail to understand their obligations. A4486 is necessary to provide a proactive tool for pregnant women and 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.

The amended bill accomplishes the goal of ensuring that pregnant workers are not pushed out of their jobs when they can continue working in a reasonable manner, proscribing unequal treatment for employees who are similar in their limitations at work. It states that it is unlawful “[f]or an employer to treat, for employment-related purposes, a woman employee that the employer knows, or should know, is affected by pregnancy in a manner less favorable than the

⁸ *Larsen v. Township of Branchburg*, No. L-480-03, 2007 WL 135706 (Jan. 22, 2007 N.J. Super. A.D.).

⁹ NJ Office of the Attorney General, Division on Civil Rights, *Pregnant Women & Discrimination – Your Rights*, http://www.nj.gov/lps/dcr/downloads/fact_preg.pdf.



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treatment of other persons not affected by pregnancy but similar in their ability or inability to work.” The next sentence in the bill provides clarification and specificity regarding this directive by stating that: “In addition, an employer of an employee who is a woman affected by pregnancy shall make available to the employee reasonable accommodation in the workplace, ... unless the employer can demonstrate that providing the accommodation would be an undue hardship on the business operations of the employer.” Since many employers have policies of accommodating certain classes of workers (such as those with disabilities or on-the-job injuries), but not pregnant workers, the second sentence of proposed subdivision (s) gives meaning to the principle of equal treatment addressed in the first sentence. Furthermore, the definition of “pregnancy” in the law explicitly includes recovery from childbirth, providing great reassurance to workers, particularly low-wage workers, who may need a reasonable recovery period after giving birth.

The New York City Pregnant Workers Fairness Act demonstrates the feasibility of this proposal – there is growing momentum for fairness for pregnant workers. The New York City Pregnant Workers Fairness Act, similar to A4486, passed with unanimous, bipartisan support earlier this year with no business opposition. It was signed by Mayor Bloomberg in October.¹⁰ The law will take effect on next month. The NYC PWFA will protect pregnant workers in all five boroughs who need temporary modifications to continue working safely during pregnancy. This vitally important public health measure will make it unmistakably clear

¹⁰ K.J. Dell’Antonia, *New York City Passes Law Defending Rights of Pregnant Workers*, The New York Times, September 24, 2013, http://parenting.blogs.nytimes.com/2013/09/24/new-york-city-passes-law-defending-rights-of-pregnant-workers/?_r=0.

that New York City employers are obligated to their engage with their pregnant employees and find a workable solution when they have limitations at work. New Jersey residents who work in New York City will be able to benefit from this law, but their neighbors who work in New Jersey will be out of luck. On the heels of the New York City victory, Philadelphia’s City Council introduced similar legislation. Momentum continues to build in municipalities and states across the country—Wisconsin recently introduced similar legislation that has already garnered bipartisan support.

The 2013 New York State Women’s Equality Act includes a similar provision that has also generated broad bipartisan support and passed the New York Senate and Assembly. As the Republican sponsor of the pregnancy discrimination provision stated in a letter supporting the federal Pregnant Workers Fairness Act: “My legislation simply requires that employers provide the same reasonable accommodations to women with verifiable pregnancy-related conditions as they do for other individuals in need of reasonable accommodations. This is a necessary, simple and logical approach to ensuring equality.”

A4486 will benefit working women, their families, employers, and the economy. Women who need income but lack accommodations are often forced to continue working under unhealthy conditions.¹¹ According to a letter in favor of the New York City Pregnant Workers

¹¹ 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).



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Fairness Act written by Dr. Wendy Chavkin, Professor of Public Health and Obstetrics and Gynecology at Columbia University, “...physically demanding work—including prolonged standing, long work hours, irregular work schedules, heavy lifting, and high physical activity—has consistently been shown to be associated with a statistically significant increased risk of preterm delivery and low birth weight. High levels of physical activity at work and work-related stress have also been found to be associated with increased risk for pregnancy-induced hypertension.”¹² Women should not be forced to risk their health when a simple modification would allow them to stay healthy and on the job. Other women may be deterred from even requesting needed changes at work for fear of retaliation: One woman in Michigan resorted to wearing a girdle at work while she was pregnant with twins in order to disguise her pregnancy.¹³

The proposed bill would save taxpayers money in the form of unemployment insurance and other public benefits as well. In fact, after California passed similar legislation, litigation of pregnancy discrimination cases actually decreased, even as the number of pregnancy discrimination cases around the country were increasing.¹⁴ The Hawaii Civil Rights Commission reported a similar reduction in pregnancy discrimination complaints and litigation after enactment.

Businesses will benefit from clear legislation, because they will be able to understand their obligations under the law, contrary to the confusing patchwork of laws and regulations that must

¹² Dr. Wendy Chavkin, Letter to Council Member James Vacca, (Nov. 29, 2012), available at: http://www.abetterbalance.org/web/images/stories/Chavkin_letter_FINAL.pdf.

¹³ Mark Nichols, “Light duty for some but not others,” American Police Beat, available at: <http://www.apbweb.com/featured-articles/840-light-duty-for-some-but-not-others.html>.

¹⁴ Equal Rights Advocates, *Expecting A Baby, Not A Lay-Off*, pg. 25, <http://www.equalrights.org/media/2012/ERA-PregAccomReport.pdf>.



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currently be interpreted. As Cynthia DiBartolo, chairperson of the Greater New York Chamber of Commerce, CEO of Tigress Financial Partners LLC, said in a recent Congressional briefing about the federal Pregnant Workers Fairness Act: “Gender parity is good business. Increasing women’s participation in the economy by creating an improved workplace will have a dramatic impact on the competitiveness and growth of our companies and our economy. Other benefits from treating pregnant workers fairly include reduced absenteeism, increased employee satisfaction and morale, improved workplace safety, savings in workers’ compensation and other insurance costs, reduced training costs, and increased diversity. Women control 73% of household spending—treating them fairly at work is supporting our consumers. Additionally, ensuring that every company is held to the same standard will make it easier to craft company policy and level the playing field, benefitting small businesses.”

Many states and localities already provide stronger pregnancy discrimination protections.

California’s law guaranteeing pregnant women reasonable accommodations in the workplace has been used countless times to help workers stay healthy and keep their jobs.¹⁵ In California, the law allows attorneys to informally advocate on behalf of their clients so that victims do not have to resort to litigation. Connecticut, Hawaii, Louisiana, Alaska, Texas, and Illinois also explicitly require certain employers to provide some accommodations to pregnant employees.¹⁶

¹⁵ Noreen Farrell, *Expecting A Baby, Not a Lay-Off: Executive Summary* (May 2012), <http://www.equalrights.org/media/2012/PWFA-ExecSummary.pdf>.

¹⁶ Conn. Gen. Stat. § 46a-60(a)(7); Haw. Admin. Rules § 12-46-107; La. R.S. 23:342(4); Alaska Stat. § 39.20.520(a); Tex. Local Gov’t Code § 180.004(b); Ill. Comp. Stat. Ann. § 775 5/2- 102(H).



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CONCLUSION

New Jersey should strengthen its pregnancy discrimination laws by passing A4486, which would provide critical protections for women and their families. We look forward to working with you on passing this legislation. Thank you for your consideration.