

STATE OF MICHIGAN  
IN THE SUPREME COURT

**MOTHERING JUSTICE, MICHIGAN  
ONE FAIR WAGE, MICHIGAN TIME  
TO CARE, RESTAURANT OPPORTUNITIES  
CENTER OF MICHIGAN, JAMES HAWK,  
And TIA MARIE SANDERS,**

Plaintiffs-Appellants,

Supreme Court No. 165325  
Court of Appeals No. 362271  
Court of Claims No. 21-000095-MM

v.

**DANA NESSEL, in her official capacity  
as Attorney General and head of the  
Department of Attorney General, and the  
STATE OF MICHIGAN,**

Defendant-Appellants and Appellees.

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**AMICI CURIAE BRIEF OF A BETTER BALANCE, STATE SENATOR ERIKA  
GEISS, AAUW OF MICHIGAN, AFT MICHIGAN, CARING ACROSS GENERATIONS,  
DETROIT DISABILITY POWER, DETROIT JUSTICE CENTER, FAMILY VALUES @  
WORK, FEMS FOR DEMOCRACY, THE LEUKEMIA & LYMPHOMA SOCIETY,  
MICHIGAN LEAGUE FOR PUBLIC POLICY, MICHIGAN'S CHILDREN, MICHIGAN  
UNITARIAN UNIVERSALIST SOCIAL JUSTICE NETWORK, OAKLAND  
FORWARD, PLANNED PARENTHOOD OF MICHIGAN, RISING VOICES, STATE  
BAR OF MICHIGAN IMMIGRATION LAW SECTION, SEIU MICHIGAN, UNITED  
FOR RESPECT, AND WOMEN LAWYERS ASSOCIATION OF MICHIGAN**

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MCL 408.962(2)(g) ..... 9

MCL 408.962(2)(g)(iii) ..... 9

MCL 408.963(3)(5) ..... 10

**OTHER AUTHORITIES**

A Better Balance, *Overview of Paid Sick Time Laws in the United States* <<https://www.abetterbalance.org/paid-sick-time-laws//search>> (accessed Oct. 10, 2023) .... 6, 9

Abay Asfaw et al, *Paid Sick Leave and Nonfatal Occupational Injuries*, American Journal of Public Health <<http://ajph.aphapublications.org/doi/abs/10.2105/AJPH.2011.300482>> (posted June 21, 2012) (accessed Oct. 10, 2023) ..... 19

Alana Semuels, *Why Americans Want Part-Time Jobs Again*, TIME <<https://time.com/6284414/part-time-jobs-report/>> (posted June 2, 2023) (accessed Oct. 10, 2023) ..... 7, 8

Alina S. Schnake-Mahl et al., *Higher COVID-19 Vaccination and Narrower Disparities in US Cities With Paid Sick Leave Compared To Those Without*, 41 Health Affairs 11, available at

- <<https://www.healthaffairs.org/doi/full/10.1377/hlthaff.2022.00779>> (posted Nov. 2022) (accessed Oct. 10, 2023) ..... 20, 21
- Alison Thompson et al., *Benefits of Paid Sick Leave During the COVID-19 Pandemic*, Science Table: COVID-19 Advisory for Ontario <[https://covid19-sciencetable.ca/wp-content/uploads/2021/04/Science-Brief\\_Paid-Sick-Leave\\_20210504\\_version-1.1\\_published2.pdf](https://covid19-sciencetable.ca/wp-content/uploads/2021/04/Science-Brief_Paid-Sick-Leave_20210504_version-1.1_published2.pdf)> (posted Apr. 28, 2021) (accessed Oct. 10, 2023)..... 20
- Ann Huff Stevens, *The Human Downsides of Job Loss in Good Times and Bad*, Scholars Strategy Network <<https://scholars.org/contribution/human-downsides-job-loss-good-times-and-bad>> (posted June 5, 2018) (accessed Oct. 10, 2023) ..... 24, 25
- Candice Vander Weerd et al., *Is Paid Sick Leave Bad for Business? A Systematic Review*, 66 American Journal of Industrial Medicine 429, at 429, 438 <<https://onlinelibrary.wiley.com/doi/epdf/10.1002/ajim.23469>> (posted Feb. 3, 2023) (accessed Oct. 10, 2023) ..... 26
- Catherine Maclean et al., *Mandated Sick Pay: Coverage, Utilization, and Welfare Effects*, Washington Center for Equitable Growth <<https://equitablegrowth.org/working-papers/mandated-sick-pay-coverage-utilization-and-welfare-effects/>> (posted Jan. 12, 2022) (accessed Oct. 10, 2023) ..... 25
- Daniel Schneider, et al., *Essential and Vulnerable: Service-Sector Workers and Paid Sick Leave*, The SHIFT Project at Harvard Kennedy School <[https://shift.hks.harvard.edu/files/2020/04/Essential\\_and\\_Vulnerable\\_Service\\_Sector\\_Workers\\_and\\_Paid\\_Sick\\_Leave.pdf](https://shift.hks.harvard.edu/files/2020/04/Essential_and_Vulnerable_Service_Sector_Workers_and_Paid_Sick_Leave.pdf)> (posted April 2020) (accessed Oct. 10, 2023) ..... 18
- David Naimark, Juan David Rios, et al., *Health and Economic Consequences of Universal Paid Sick Leave Policies During the COVID-19 Pandemic* <<https://www.medrxiv.org/content/10.1101/2022.01.13.21268270v1.full.pdf>> (posted Jan. 14, 2022) (accessed Oct. 10, 2023) . 20
- Dina Bakst et al., *Misled & Misinformed: How Some U.S. Employers Use “No Fault” Attendance Policies to Trample on Workers’ Rights (And Get Away With It)*, A Better Balance, at 18 <[https://www.abetterbalance.org/wp-content/uploads/2020/06/Misled\\_and\\_Misinformed\\_A\\_Better\\_Balance-1-1.pdf](https://www.abetterbalance.org/wp-content/uploads/2020/06/Misled_and_Misinformed_A_Better_Balance-1-1.pdf)> (posted June 2020) (accessed Oct. 10, 2023)..... 11
- Economic Opportunity Institute, *Local Results of Paid Sick Days Laws*, <[https://www.opportunityinstitute.org/research/post/local-results-of-paid-sick-days-laws/#\\_edn2](https://www.opportunityinstitute.org/research/post/local-results-of-paid-sick-days-laws/#_edn2)> (posted Jan. 13, 2016) (accessed Oct. 10, 2023) ..... 30
- Eileen Appelbaum & Ruth Milkman, *No Big Deal: The Impact of New York City’s Paid Sick Days Law on Employers*, Center for Economic Policy Research and the Murphy Institute of the City University of New York, at 4 (Sept. 2016), available at <<http://cepr.net/images/stories/reports/nyc-paid-sick-days-2016-09.pdf>> (accessed at Oct. 10, 2023) ..... 29
- Elise Gould & Jessica Schieder, *Work Sick or Lose Pay? The High Cost of Being Sick When You Don’t Get Paid Sick Days*, Economic Policy Institute <<https://www.epi.org/publication/work-sick-or-lose-pay/>>

sick-or-lose-pay-the-high-cost-of-being-sick-when-you-dont-get-paid-sick-days/> (posted June 28, 2017) (accessed Oct. 10, 2023) .....	24
Evan Linskey et al., <i>Women in the Michigan Workforce</i> , Michigan Department of Technology, Management, and Budget < <a href="https://milmi.org/_docs/publications/Articles/Women-in-the-Michigan-Workforce-Report.pdf">https://milmi.org/_docs/publications/Articles/Women-in-the-Michigan-Workforce-Report.pdf</a> > (accessed Oct. 10, 2023) .....	7
<i>Federal Employees By State</i> , Governing < <a href="https://www.governing.com/gov-data/federal-employees-workforce-numbers-by-state.html">https://www.governing.com/gov-data/federal-employees-workforce-numbers-by-state.html</a> > (accessed Oct. 10, 2023) .....	14
Heather Boushey & Sarah Jane Glynn, <i>There Are Significant Business Costs to Replacing Employees</i> , Center for American Progress < <a href="https://www.americanprogress.org/wp-content/uploads/2012/11/CostofTurnover.pdf">https://www.americanprogress.org/wp-content/uploads/2012/11/CostofTurnover.pdf</a> > (posted Nov. 16, 2012) (accessed Oct. 10, 2023) .....	26
Heather D. Hill, <i>Paid Sick Leave and Job Stability</i> , 40 <i>Work and Occupations</i> 2, available at < <a href="https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3825168/">https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3825168/</a> > (posted Apr. 9, 2013) (accessed Oct. 10, 2023) .....	24
Human Impact Partners, <i>A Health Impact Assessment of the Healthy Families Act of 2009</i> < <a href="https://humanimpact.org/wp-content/uploads/2017/09/Healthy-Families-Act-2009-Full-Report-1.pdf">https://humanimpact.org/wp-content/uploads/2017/09/Healthy-Families-Act-2009-Full-Report-1.pdf</a> > (updated Sept. 3, 2009) (accessed Oct. 10, 2023).....	18
Ilana DeBare, <i>S.F. Sick Leave Law Celebrates 1 Year</i> , San Francisco Chronicle, (Feb. 6, 2008), available at < <a href="https://www.sfgate.com/business/article/S-F-sick-leave-law-celebrates-1-year-3229376.php">https://www.sfgate.com/business/article/S-F-sick-leave-law-celebrates-1-year-3229376.php</a> > (accessed Oct. 10, 2023).....	28
Institute for Women’s Policy Research, <i>The Impact of Exemptions on Worker Coverage Under Michigan’s Paid Sick Leave Law</i> (Dec. 14, 2018, Attachment A).....	4, 13, 14, 15
Jake G. Messersmith et al., <i>Bang for the Buck: Understanding Employee Benefit Allocation and New Venture Survival</i> , 36 <i>International Small Business Journal: Researching Entrepreneurship</i> 1, available at < <a href="https://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1255&amp;context=managementfacpub">https://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1255&amp;context=managementfacpub</a> > (posted 2018) (accessed Oct. 10, 2023).....	27
Jennifer Romich et al., <i>Implementation and Early Outcomes of the City of Seattle’s Paid Sick and Safe Time Ordinance</i> , University of Washington for the City of Seattle-Office of City Auditor, at 34 (Apr. 23 2014), available at < <a href="https://www.seattle.gov/Documents/Departments/CityAuditor/auditreports/PSSTOUWReportwAppendices.pdf">https://www.seattle.gov/Documents/Departments/CityAuditor/auditreports/PSSTOUWReportwAppendices.pdf</a> > (accessed Oct. 10, 2023) .....	30, 31
Jody Heymann, <i>The Widening Gap: Why America’s Working Families Are in Jeopardy—and What Can Be Done About It</i> , at 54-55 (New York: Basic Books, 2001).....	23
Katherine Gallagher Robbins, <i>People Need Paid Leave Policies that Cover Chosen Family</i> , Center for American Progress < <a href="https://www.americanprogress.org/article/people-need-paid-leave-policies-that-cover-chosen-family/">https://www.americanprogress.org/article/people-need-paid-leave-policies-that-cover-chosen-family/</a> > (posted Oct. 30, 2017) (accessed Oct. 10, 2023)..	10

- Kathleen Gray, *Michigan's OK of Minimum Wage Hike, Paid Sick Leave Has a Big Catch*, Detroit Free Press <<https://www.freep.com/story/news/politics/2018/09/07/minimum-wage-hike-paid-sick-leave-celebrations-would-premature/1216457002/>> (posted Sept. 7, 2018) (accessed Oct. 10, 2023)..... 3
- Kevin Miller & Sarah Towne, *San Francisco Employment Growth Remains Stronger with Paid Sick Days Law than Surrounding Counties*, Institute for Women's Policy Research, <<https://iwpr.org/wp-content/uploads/2021/01/C385.pdf>> (posted Sept. 2011) (accessed Oct. 10, 2023)..... 28
- Kevin Miller et al, *Paid Sick Days and Health: Cost Savings from Reduced Emergency Department Visits*, Institute for Women's Policy Research <<http://www.iwpr.org/publications/pubs/paid-sick-days-and-health-cost-savings-from-reduced-emergency-department-visits>> (posted June 11, 2020) (accessed Oct. 10, 2023)..... 22
- KFF, *COVID-19 Vaccine Monitor: April 2021* <<https://www.kff.org/coronavirus-covid-19/poll-finding/kff-covid-19-vaccine-monitor-april-2021/>> (posted May 6, 2021) (accessed Oct. 10, 2023)..... 21
- KFF, *Workers are More Likely to Get a COVID-19 Vaccine When Their Employers Encourage It and Provide Paid Sick Leave, Though Most Workers Don't Want Their Employers to Require It* <<https://www.kff.org/coronavirus-covid-19/press-release/workers-are-more-likely-to-get-a-covid-19-vaccine-when-their-employers-encourage-it-and-provide-paid-sick-leave-though-most-workers-dont-want-their-employers-to-require-it/>> (posted June 30, 2021) (accessed Oct. 10, 2023)..... 21
- LeaAnne DeRigne et al., *Working U.S. Adults without Paid Sick Leave Report More Worries about Finances*, 45 Journal of Social Service Research 570, available at <<https://www.tandfonline.com/doi/abs/10.1080/01488376.2018.1481176>> (posted Mar. 1, 2017) (accessed Oct. 10, 2023)..... 24
- Lindsay VanHulle, *Snyder Signs Bills that Weaken Michigan Minimum Wage, Sick Leave Laws*, Bridge Michigan <[https://www.bridgemi.com/michigan-government/snyder-signs-bills-weaken-michigan-minimum-wage-sick-leave-laws?gclid=Cj0KCQjwrfymBhCTARIsADXTabnrxJe\\_tGXNrtXOmHO6OF-D102z801SwW7JswPwZPqACyBAAtOwfgsEaAvRIELw\\_wcB](https://www.bridgemi.com/michigan-government/snyder-signs-bills-weaken-michigan-minimum-wage-sick-leave-laws?gclid=Cj0KCQjwrfymBhCTARIsADXTabnrxJe_tGXNrtXOmHO6OF-D102z801SwW7JswPwZPqACyBAAtOwfgsEaAvRIELw_wcB)> (posted Dec. 14, 2018) (accessed Oct. 10, 2023)..... 25
- Lucy A. Peipins et al., *The Lack of Paid Sick Leave as a Barrier to Cancer Screening and Medical Care-Seeking: Results from the National Health Interview Survey*, 12 BMC Public Health 520 <<http://www.biomedcentral.com/content/pdf/1471-2458-12-520.pdf>> (posted 2012) (accessed Oct. 10, 2023)..... 22
- Martin Anderson et al., *Paid Sick Leave and Physical Mobility: Evidence from the United States During a Pandemic*, National Bureau of Economic Research <[https://www.nber.org/system/files/working\\_papers/w27138/w27138.pdf](https://www.nber.org/system/files/working_papers/w27138/w27138.pdf)> (posted April 2021) (accessed Oct. 10, 2023)..... 20



- Mary Beth Maxwell et al., *2018 U.S. LGBTQ Paid Leave Survey*, Human Rights Campaign Foundation, <<https://assets2.hrc.org/files/assets/resources/2018-HRC-LGBTQ-Paid-Leave-Survey.pdf>> (accessed Oct. 10, 2023) ..... 10
- Michelle Miller, *The impact of paid sick leave laws on consumer and business bankruptcies*, 19 *Journal of Empirical Legal Studies* 4, available at <<https://onlinelibrary.wiley.com/doi/full/10.1111/jels.12329>> (posted Sept. 25, 2022) (accessed Oct. 10, 2023) ..... 25, 27
- Michigan Department of Technology, Management, and Budget Bureau of Labor Market Information and Strategic Initiatives, Quarterly Census of Employment and Wages (QCEW) <<https://milmi.org/DataSearch/Employment-by-Firm-Size>> (accessed Oct. 10, 2023). ..... 6
- National Opinion Research Center at the University of Chicago, *available at* <<https://nationalpartnership.org/wp-content/uploads/2023/02/paid-sick-days-attitudes-and-experiences.pdf>> (posted June 2010) (accessed Oct. 10, 2023) ..... 17
- National Partnership for Women & Families, *Paid Sick Days Improve Public Health* <<https://nationalpartnership.org/wp-content/uploads/2023/02/paid-sick-days-improve-our-public-health.pdf>> (posted Nov. 2022) (accessed Oct. 10, 2023) ..... 16, 18, 21
- National Partnership for Women & Families, *Working Women Need Paid Sick Days* <<https://www.nationalpartnership.org/our-work/resources/economic-justice/paid-sick-days/working-women-need-paid-sick-days.pdf>> (posted Apr. 2013) (accessed Oct. 10, 2023) ..... 15
- National Partnership for Women and Families, *Fact Sheet: Paid Sick Days are Good for Business* <<https://nationalpartnership.org/wp-content/uploads/2023/02/paid-sick-days-good-for-business-and-workers.pdf>> (posted May 2023) (accessed Oct. 10, 2023) ..... 26
- Office of Governor Ned Lamont, *Fact Sheet: HB 6668, An Act Modernizing the Paid Sick Leave Statute* <<https://portal.ct.gov/-/media/Office-of-the-Governor/2023-Legislative-Proposals/AA-Modernizing-the-Paid-Sick-Leave-Statutes.pdf>> (accessed Oct. 10, 2023) ..... 6
- Restaurant Opportunities Centers United, *Serving While Sick: High Risks & Low Benefits for the Nation's Restaurant Workforce, and Their Impact on the Consumer*, available at <[https://www.co.benton.or.us/sites/default/files/fileattachments/health\\_department/page/2139/servingwhilesick.pdf](https://www.co.benton.or.us/sites/default/files/fileattachments/health_department/page/2139/servingwhilesick.pdf)> (posted Sept. 30, 2010) (accessed Oct. 10, 2023) ..... 19
- Restaurant Opportunities Centers United, *The Impact of COVID-19 on Restaurant Workers Across America* <<https://stateofrestaurantworkers.com/covidimpact-report/>> (posted Feb. 2022) ..... 18
- Robert Drago & Vicki Lovell, *San Francisco's Paid Sick Leave Ordinance: Outcomes for Employers and Employees*, Institute for Women's Policy Research <[https://iwpr.org/wp-content/uploads/2021/02/A138\\_edited.pdf](https://iwpr.org/wp-content/uploads/2021/02/A138_edited.pdf)> (posted Feb. 2011) (accessed Oct. 10, 2023) .... 27

Robert Drago and Kevin Miller, <i>Sick at Work, Infected Employees in the Workplace During the H1N1 Pandemic</i> , Institute for Women’s Policy Research < <a href="https://iwpr.org/wp-content/uploads/wpallimport/files/iwpr-export/publications/B284.pdf">https://iwpr.org/wp-content/uploads/wpallimport/files/iwpr-export/publications/B284.pdf</a> > (posted Feb. 2010) (accessed Oct. 10, 2023) .....	17
Shira Gans, <i>NYC’s Paid Sick Leave Law: First Year Milestones</i> , New York City Department of Consumer Affairs, (June 2015), p 4. < <a href="http://www1.nyc.gov/assets/dca/downloads/pdf/about/PaidSickLeaveLaw-FirstYearMilestones.pdf">http://www1.nyc.gov/assets/dca/downloads/pdf/about/PaidSickLeaveLaw-FirstYearMilestones.pdf</a> > (accessed Oct. 10, 2023) .....	28
Small Business Majority, <i>Opinion Poll: California Small Business Owners Support Expanding Paid Family Leave Protections, Increasing Paid Sick Days</i> , (July 2023), available at < <a href="https://smallbusinessmajority.org/sites/default/files/research-reports/ca-small-business-support-paid-family-leave-and-paid-sick-days.pdf">https://smallbusinessmajority.org/sites/default/files/research-reports/ca-small-business-support-paid-family-leave-and-paid-sick-days.pdf</a> > (accessed Oct. 10, 2023) .....	32
Stefan Pichler et al., <i>COVID-19 Emergency Sick Leave Has Helped Flatten The Curve in The United States</i> , 39 Health Affairs 12, available at < <a href="https://www.healthaffairs.org/doi/10.1377/hlthaff.2020.00863">https://www.healthaffairs.org/doi/10.1377/hlthaff.2020.00863</a> > (posted Oct. 15, 2020) (accessed Oct. 10, 2023) .....	20
Steven Sumner et al, <i>Factors Associated with Food Workers Working While Experiencing Vomiting or Diarrhea</i> , Journal of Food Protection, 74(2) (2011), available at < <a href="http://www.cdc.gov/nceh/ehs/ehsnet/Docs/JFP_ill_food_workers.pdf">http://www.cdc.gov/nceh/ehs/ehsnet/Docs/JFP_ill_food_workers.pdf</a> > (accessed Oct. 10, 2023) .....	19
Supriya Kumar et al., <i>The Impact of Workplace Policies and Other Social Factors on Self-Reported Influenza-Like Illness During the 2009 H1N1 Pandemic</i> , 102 Am. J. Pub. Health 134, 139 < <a href="https://pubmed.ncbi.nlm.nih.gov/22095353/">https://pubmed.ncbi.nlm.nih.gov/22095353/</a> > (posted Nov. 28, 2011) (accessed Oct. 10, 2023) .....	18
Tom W. Smith and Jibum Kim, <i>Paid Sick Days: Attitudes and Experiences</i> , National Opinion Research Center at the University of Chicago, available at < <a href="https://nationalpartnership.org/wp-content/uploads/2023/02/paid-sick-days-attitudes-and-experiences.pdf">https://nationalpartnership.org/wp-content/uploads/2023/02/paid-sick-days-attitudes-and-experiences.pdf</a> > (posted June 2010) (accessed Oct. 10, 2023) .....	17, 22, 23
U.S. Bureau of Labor Statistics, <i>Alternative Measures of Labor Underutilization in Michigan—2022</i> , Midwest Information Office < <a href="https://www.bls.gov/regions/midwest/news-release/laborunderutilization_michigan.htm">https://www.bls.gov/regions/midwest/news-release/laborunderutilization_michigan.htm</a> > (posted March 2023) (accessed Oct. 10, 2023). 8	
U.S. Bureau of Labor Statistics, <i>Economy at a Glance: Michigan</i> < <a href="https://www.bls.gov/eag/eag.mi.htm">https://www.bls.gov/eag/eag.mi.htm</a> > (accessed Oct. 10, 2023) .....	13
U.S. Bureau of Labor Statistics, <i>Employee Benefits in the United States, March 2023</i> < <a href="https://www.bls.gov/news.release/pdf/ebs2.pdf">https://www.bls.gov/news.release/pdf/ebs2.pdf</a> > (posted Sept. 21, 2023) (accessed Oct. 10, 2023) .....	14
U.S. Bureau of Labor Statistics, <i>Paid Leave Benefits: March 2018; Table 46: Paid Leave Combinations</i> , available at < <a href="https://www.bls.gov/ncs/ebs/benefits/2018/ownership/private/table46a.pdf">https://www.bls.gov/ncs/ebs/benefits/2018/ownership/private/table46a.pdf</a> > (accessed Oct. 10, 2023) .....	15



U.S. Bureau of Labor Statistics, *Table 7. Leave benefits by work and bargaining status, private industry workers, March 2022*, in “National Compensation Survey: Employee Benefits in the United States, March 2022,” September 2022, Excel file (“private-work-and-bargaining-status-2022”), available at <<https://www.bls.gov/ncs/ebs/benefits/2022/home.htm>> (accessed Oct. 10, 2023). ..... 7

U.S. Bureau of Labor Statistics, *Table A-8. Employed Persons by Class of Worker and Part-time Status, July 2023*, in “Economic News Release – Employment Situation” <<https://www.bls.gov/news.release/empsit.t08.htm>> (accessed Oct. 10, 2023) (figure representing the total number of workers who are part-time for economic and non-economic reasons) ..... 8

U.S. Occupational Safety and Health Administration, *OSHA Fact Sheet: What Employers Can Do to Protect Workers from Pandemic Influenza* <<https://www.osha.gov/sites/default/files/publications/employers-protect-workers-flu-factsheet.pdf>> (accessed Oct. 10, 2023) ..... 17

Vanessa M. Oddo et al., *Changes in Precarious Employment and Health in the United States Amidst the COVID-19 Pandemic*, 31 Preventive Medicine Reports 102113 <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9841738/>> (posted Feb. 2023) (accessed Oct. 10, 2023) ..... 9

Yolanda Branch, *Audit of the Accrued Sick and Safe Leave Act of 2008*, Office of the District of Columbia Auditor at 19 (June 19, 2013), available at <<http://dcauditor.org/report/audit-of-the-accrued-sick-and-safe-leave-act-of-2008/>> (accessed Oct. 10, 2023)..... 30

Yusheng Zhai et al., *Paid Sick Leave Benefits, Influenza Vaccination, and Taking Sick Days Due to Influenza-like Illness Among U.S. Workers*, 36 Vaccine 19 <<https://www.sciencedirect.com/science/article/abs/pii/S0264410X18314051?via%3Dihub>> (posted Nov. 19, 2018) (accessed Oct. 10, 2023) ..... 17

Zoe Ziliak Michel, *During Healthy Families Act Days of Action, Business Owners Stress Benefits of Paid Sick Time*, CLASP, <<https://www.clasp.org/blog/during-healthy-families-act-days-action-business-owners-stress-benefits-paid-sick-time>> (posted May 16, 2016) (accessed Oct. 10, 2023) ..... 30

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## STATEMENT OF BASIS OF JURISDICTION

This Court has jurisdiction over the plaintiffs' appeal from a decision of the Court of Appeals rendered in three separate opinions dated January 26, 2023. This Court has jurisdiction under MCR 7.303, and this proposed amici curiae brief is timely pursuant to MCR 7.312.

## STATEMENT OF QUESTIONS PRESENTED

1. Does Article 2, § 9 of the Michigan Constitution of 1963 permit the Legislature to enact an initiative petition into law and then amend that law during the same legislative session?

*Amici curiae* A Better Balance, et al Answer: No

2. Where for the first time in the history of the 1963 Constitution, the Legislature has usurped the people's reserved right of initiative with an "adopt and amend" scheme, were 2018 PA 368 and 2018 PA 369 enacted in accordance with Article 2, § 9 of the Michigan Constitution of 1963?

*Amici curiae* A Better Balance, et al Answer: No

3. If 2018 PA 368 and 2018 PA 369 are unconstitutional, do 2018 PA 337 and 2018 PA 338 remain in effect?

*Amici curiae* A Better Balance, et al Answer: Yes

## STATEMENT OF INTEREST<sup>1</sup>

**A Better Balance (ABB)** is a national legal advocacy organization with offices in New York (NY), Denver (CO), Nashville (TN), and Washington D.C dedicated to promoting fairness in the workplace and helping workers meet the conflicting demands of work and family. Through legislative advocacy, litigation, research, public education and technical assistance to state and local campaigns, ABB is committed to helping workers care for their themselves and their families without risking their economic security. ABB has drafted model paid sick days legislation that has been used and adapted in the 55 jurisdictions that have enacted paid sick days laws, including Michigan, and is currently working with state-based coalitions in 3 states—Alaska, Missouri, and Nebraska—who have filed proposed paid sick leave ballot initiatives for the November 2024 election. ABB has served as co-counsel or filed amicus briefs in litigation challenging paid sick days legislation in Arizona, Massachusetts, Minnesota, and Pennsylvania, cases which affirmed the right of states and localities to enact paid sick days laws that improve the health and welfare of workers and their loved ones.

The following elected official and 18 organizations and law association affiliates are committed to securing economic justice for Michigan workers:

**State Senator Erika Geiss, Michigan Senate District 1:** Michigan State Senator Erika Geiss represents Michigan Senate District 1 and advocates for comprehensive paid sick time and paid family and medical leave for her constituents and all Michiganders.

**AAUW of Michigan:** The American Association of University Women of Michigan is the state affiliate of the national AAUW founded in 1884. Its mission is to advance gender

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<sup>1</sup> Pursuant to MCR 7.312(H)(5), A Better Balance, attorneys for *amici*, authored this brief in whole. Neither A Better Balance or local counsel, nor any other party, made any monetary contribution intended to fund the preparation or submission of this brief.

equity for women and girls through research, education, and advocacy. One of its important biennial public policy priorities is to assure greater availability of and access to a high standard of benefits and policies that promote work-life balance, including paid family, medical, and sick leave.

**AFT Michigan:** AFT Michigan is the state organization of the American Federation of Teachers (AFT), our national union. AFT Michigan is a union of 35,000 educators and healthcare providers working in K-12 and intermediate school districts, community colleges, universities, and hospitals across the state. AFT Michigan promotes public education and healthcare, strengthens worker voices, advances the institutions in which our members work, and builds a progressive movement committed to achieving these goals.

**Caring Across Generations:** Caring Across Generations is a national organization of family caregivers, care workers, disabled people, and aging adults working to transform the way we care in this country so that care is accessible, affordable and equitable—and our systems of care enable everyone to live and age with dignity. Caring Across Generations believes that all of Michigan’s family caregivers, older adults, disabled people, and care workers need and deserve comprehensive paid sick leave, so that families don't have to choose between their and their loved ones' health and their financial wellbeing.

**Detroit Disability Power:** Detroit Disability Power is a membership organization that works to build the political power of the disability community. Detroit Disability Power's mission is to leverage and build the organizing and political power of the disability community to ensure the full inclusion of people with disabilities in Metro Detroit.

**Detroit Justice Center:** The Detroit Justice Center (DJC) is a nonprofit social justice law firm that works alongside Detroit residents to combat economic inequities, transform the



criminal punishment system, and promote a "just city" free from racial and class discrimination. We consider paid sick leave to be a vital element in realizing this vision and support all endeavors to secure this right for the people of Michigan.

**Family Values @ Work:** Family Values @ Work is a movement network of grassroots organizers and coalitions in more than two dozen states working toward economic, racial and gender justice. We have built power in key states and localities focused on winning policies that support workers and families including paid family and medical leave, earned sick and safe days, and affordable, high-quality childcare at the state and national levels.

**Fems For Democracy:** Fems For Democracy is a 501c4 organization made up of over 6,000 members. Fems For Democracy has been working on economic justice issues since its inception in 2017. Paid sick leave is an economic justice issue and Fems For Democracy believes that all workers deserve paid sick leave.

**The Leukemia & Lymphoma Society (LLS):** The mission of LLS is to cure leukemia, lymphoma, Hodgkin's disease, and myeloma and improve the quality of life for the more than 1.3 million people in the United States living with blood cancer and their families. LLS supports strong paid sick time protections that afford blood cancer patients and their families the opportunity to pursue necessary medical treatment, care for their loved ones during their cancer journey, and protect both their physical and emotional well-being without fearing job loss or financial disaster.

**Michigan League for Public Policy:** The Michigan League for Public Policy ("MLPP") is a Michigan-based, nonpartisan research and advocacy organization that fights for policy solutions that undo historic and systemic racial and economic inequities to lift up Michiganders who have been left out of prosperity. Access to universal paid medical leave and sick time is

essential for families' health and economic wellbeing and is especially important for Michiganders with low-incomes and hourly wage earners who typically do not have access to paid leave policies.

**Michigan's Children:** Michigan's Children is a non-profit child policy and advocacy organization focused on the pursuit of public policies in the best interest of children and families, from cradle to career.

**Michigan Unitarian Universalist Social Justice Network (MUUSJN):** The mission of the Michigan Unitarian Universalist Social Justice Network (MUUSJN), a statewide faith based social justice network, is to “foster the worth and dignity of people by promoting social justice”. MUUSJN believes that families need a safety net of support when caring for their children or their elders when faced with life’s many challenges.

**Oakland Forward:** Oakland Forward is a non-profit organization based in Pontiac, Michigan that works to engage, educate and empower residents all throughout Oakland County. Oakland Forward is made up of grassroots, community centered activists, organizers, and changemakers who are passionate about making real change and improvement for Black and Brown communities that exist all over the county, and beyond.

**Planned Parenthood of Michigan:** Planned Parenthood of Michigan operates 14 health centers across the state, providing medical services and sexual health education for more than 60,000 Michiganders each year, and advocating for policies that support everyone’s right to access health care and build healthy, thriving families.

**Rising Voices:** Rising Voices, a project of the Center for Empowered Politics, organizes and builds power with the Asian American community in Michigan, with a focus on women, youth, and families. Rising Voices advocates for critical progressive policy change such as

universal access to paid sick time, paid family and medical leave, and wage reform, and work in close coalition and solidarity with BIPOC communities and other marginalized groups, knowing the disproportionate impact these policies have on our communities, our caretakers, and our children.

**State Bar of Michigan, Immigration Law Section:** The purpose of the Immigration Law Section is to foster awareness and appreciation of the area of immigration and nationality law; to study immigration and nationality law; to promote recognition of immigration and nationality law as a specialized area of practice; to promote throughout the State of Michigan the legal education of members of the Bar and the public on immigration and nationality law and policy; to sponsor, prepare, or assist the publication of legal writing in this field; and to otherwise further the interests of the State Bar of Michigan (SBM) and the legal profession as a whole in all ways related to immigration and nationality law. Stripping paid sick leave traditionally has a disproportionate negative impact on populations that are already traditionally marginalized. In particular, it impacts immigrant communities whose culture dictates greater responsibility for aging relatives and extended families and, typically, these are populations of color.

**SEIU Michigan:** SEIU Michigan is where SEIU's four local unions in Michigan come together to advocate on behalf of improving the lives of workers. SEIU Michigan represents nearly 35,000 workers in a variety of industries including janitors, custodians, librarians, nurses, healthcare workers, correction officers, and many, many others. SEIU Michigan believes all workers, regardless of where they work, who they work for, or what type of work they do, need access to earned sick leave—without it too many workers are forced to work while sick—risking their own health as well as the public health.

**United for Respect:** United for Respect (UFR) is a multiracial national nonprofit organization fighting for policy change that improve the lives of people who work in retail. UFR is advancing a movement for an economy where corporations respect working people and support a democracy that allows Americans to live and work in dignity.

**Women Lawyers Association of Michigan:** The Women Lawyers Association of Michigan is an affiliate section of the State Bar of Michigan made up of attorneys throughout the state. Our mission is to secure the full and equal participation of women in the legal profession in the furtherance of a just society. We believe that supporting access to paid family leave and paid sick days is in line with that mission as people, especially women and those of color or of low-income, face barriers in employment when they are a primary caregiver for another.

## INTRODUCTION

The Michigan Constitution reserves the power of initiative to the people under Art. 2, § 9. The Legislature is only granted limited, specific options secondary to this constitutionally-protected power of the people. As the Michigan Constitution makes explicit, none of those limited legislative options is to pass into law and then radically amend a validly proposed initiative. In 2018, the people of Michigan initiated by petition a new minimum wage law and the Michigan Earned Sick Time Act (MESTA). In response, the Legislature adopted both laws (2018 PA 337 and 2018 PA 338), thus keeping them off the ballot so that the voters of the State of Michigan did not have a chance to consider or vote on them. During the immediately following lame duck legislative session, the Legislature then enacted 2018 PA 368 and 2018 PA 369, measures substantially amending the minimum wage law and MESTA, respectively.

*Amici* submit this brief to outline how the changes made by the lame duck Legislature after adopting the MESTA ballot initiative drastically weakened the law's coverage and benefits and thus constituted a significant change to the substance of the law. The Legislature did not make small changes to the paid sick leave law; the amendments to MESTA (later renamed the Paid Medical Leave Act) significantly limited the applicability and scope of rights contained in the original initiative proposal it had adopted. The amended law stripped more than 1.8 million workers, or nearly 40% of the Michigan workforce, of coverage entirely. For those still included in the law, the amendments substantially undermined the employee protections contained in the original ballot initiative. The Legislature violated the Michigan Constitution by acting beyond the enumerated grants of power of Art. 2, § 9 because 2018 PA 369 functionally gutted the proposed initiative.

By dramatically decreasing the number of employees covered by the law and weakening the permissible uses of paid sick time, the Legislature undermined the two central purposes of MESTA: to provide economic security to Michigan workers who need to take time off to care for their health or that of their loved ones; and to ensure workers can seek preventative care, recover from short-term sicknesses, and care for ill loved ones—which in turn forestalls more serious illness and reduces the spread of contagion in the workplace and community. *Amici* contend that the Legislature gutted MESTA, changing the fundamental nature of the law, and thus the “adopt and amend” plan was an impermissible tactic to prevent the people of Michigan from exercising their constitutional initiative power and deciding whether or not they want the myriad benefits of a comprehensive, universal paid sick leave law.



## STATEMENT OF FACTS

In Fall 2017, Michigan One Fair Wage & Michigan Time to Care began to circulate initiative petitions to raise Michigan's minimum wage to \$12 and to establish an Earned Sick Time Act. Both initiative petitions garnered enough signatures to make it to the 2018 general election ballot. The Legislature, when faced with the choice to adopt the proposals as written or send the initiative to ballot, elected to adopt the initiatives. However, leadership in the Legislature publicly announced at the time that they adopted the initiatives in order to prevent them from appearing on the 2018 ballot, and that they planned to significantly amend them during the lame duck session that would follow the election. *See, e.g.,* Kathleen Gray, *Michigan's OK of Minimum Wage Hike, Paid Sick Leave Has a Big Catch*, Detroit Free Press <<https://www.freep.com/story/news/politics/2018/09/07/minimum-wage-hike-paid-sick-leave-celebrations-would-premature/1216457002/>> (posted Sept. 7, 2018) (accessed Oct. 10, 2023).

The Legislature indeed amended the initiatives during the lame duck session. The minimum wage increase was weakened by several major amendments, including delaying implementation by eight years, re-inserting a subminimum wage for tipped employees into the law, and removing the tie between the new minimum wage and inflation. The paid sick leave initiative was similarly gutted. The Legislature's amendments reduced the permissible uses of sick time for those covered, cut the amount of sick time that could be earned, and created a significant presumption of compliance for employers who provide 40 hours of any kind of paid leave, among other major changes. The sweeping amendments also decreased the number of covered employees by over a staggering 1.8 million workers (by exempting small employers and removing part-time and temporary workers from coverage), or nearly 40% of the Michigan workforce; other exclusions and weakening amendments negatively affected even more

Michiganders. Among all workers who did not already have access to voluntarily-provided paid sick leave at the time of the law's passage, 62% of those workers would remain ineligible under the amended law. As such, the Legislature's amendments eliminated coverage for nearly two-thirds of all workers who stood to gain new, protected paid sick leave from the comprehensive ballot initiative. Institute for Women's Policy Research, *The Impact of Exemptions on Worker Coverage Under Michigan's Paid Sick Leave Law* (Dec. 14, 2018, Attachment A).

In 2019, the Michigan House of Representatives and Michigan Senate asked this Court to resolve the issue of whether this "adopt and amend" scheme comports with article 2, § 9 of the Michigan Constitution of 1963. This Court declined to issue an advisory opinion on the matter at that time. *In re House of Representatives Request for Advisory Opinion Regarding Constitutionality of 2018 PA 368 & 369*, 505 Mich 884; 936 NW2d 241 (2019).

Plaintiffs-Appellants later filed the instant case in 2021. Judge Douglas Shapiro of the Court of Claims found the Legislature's choice to adopt the initiative proposals and later amend them during the lame duck legislative session unconstitutional. On appeal, however, the Court of Claims reversed Judge Shapiro's decision. This Court subsequently accepted Plaintiffs-Appellants' appeal.

## ARGUMENT

### I. **The Legislature’s Amendments to MESTA Undermine the Worker Protection and Public Health Purposes of the Law.**

The original Michigan Earned Sick Time Act (MESTA) had two purposes: to grant workers in Michigan the opportunity to earn paid sick time to care for themselves and their loved ones without having to compromise their economic security; and to protect the public health by preventing the spread of communicable disease. The Legislature’s amendments to MESTA severely undermined these twin purposes by drastically limiting the law’s scope. The amendments dramatically reduced the number of workers covered, restricted the purposes for which time could be taken, and assumed employer compliance when giving paid leave of any kind. Together, these changes by the Legislature totally deprived more than 1.8 million Michiganders, or nearly 40% of the Michigan workforce, of the benefits of this law while also making it less likely that marginalized and low-income workers could realize the benefits of MESTA. At the same time, the Legislature’s amendments also severely hampered the law’s public health benefits by making widespread community coverage an impossibility under the gutted law.

#### a. **The Legislature’s Amendments to MESTA Are Not Mere Tweaks; They Dramatically Reduce the Number of Workers Covered Under the Law and the Permissible Uses of Paid Sick Leave**

The Michigan Legislature’s many far-reaching amendments to MESTA significantly reduced the number of covered workers and limited the permissible uses of paid sick leave:

- *Excluding Employers with Fewer than 50 Employees:* The Paid Medical Leave Act, or amended version of MESTA, does not provide sick time to workers employed at a business with fewer than 50 employees. MCL 408.962(2)(f). The original law, based on

the ballot initiative, had no business size exclusion and therefore included all employees regardless of employer size. MESTA Ballot Initiative § 2(g). As of 2021, this change to the law alone removed over 1.2 million Michigan employees from coverage. Michigan Department of Technology, Management, and Budget Bureau of Labor Market Information and Strategic Initiatives, *Quarterly Census of Employment and Wages (QCEW)* <<https://milmi.org/DataSearch/Employment-by-Firm-Size>> (accessed Oct. 10, 2023). This amendment makes Michigan an outlier: of the 16 states with paid sick time laws (including Washington, D.C.), Michigan is one of only two states to exclude all businesses with fewer than 50 employees from coverage under the paid sick time law. A Better Balance, *Overview of Paid Sick Time Laws in the United States* <<https://www.abetterbalance.org/paid-sick-time-laws//search>> (accessed Oct. 10, 2023).

The only other state with an exemption of this scale, Connecticut, was the first state to pass a paid sick time law in the country—more than 12 years ago. Recognizing that this exclusion harms many workers, Connecticut’s Governor called during the 2023 legislative session to eliminate this exemption and to include more workers in coverage.

Office of Governor Ned Lamont, *Fact Sheet: HB 6668, An Act Modernizing the Paid Sick Leave Statute* <<https://portal.ct.gov/-/media/Office-of-the-Governor/2023-Legislative-Proposals/AA-Modernizing-the-Paid-Sick-Leave-Statutes.pdf>> (accessed Oct. 10, 2023).

- *Excluding Certain Kinds of Employees:* The amended version of MESTA eliminated coverage for any worker who is: exempt from overtime; covered by a collective bargaining agreement and not employed by a public agency; or who is defined as a “variable hourly employee” under federal law 26 C.F.R. 54.4980H-1. *Compare* MCL 408.962 (2)(e)(i); (ii); (xi) *with* MESTA Ballot Initiative § 2(f).

- *Excluding Part-Time and Temporary Workers:* The amended version of MESTA does not cover employees who work 25 weeks or fewer, *or* fewer than 25 hours per week during the preceding year. MCL 408.962(2)(e)(x).

The exclusion of part-time workers further heightens equity disparities in the workplace: for example, women are much more likely to work part-time jobs than men, amounting to over 460,000 more women part-time workers in Michigan in 2020 than men. Evan Linskey et al., *Women in the Michigan Workforce*, Michigan Department of Technology, Management, and Budget <[https://milmi.org/\\_docs/publications/Articles/Women-in-the-Michigan-Workforce-Report.pdf](https://milmi.org/_docs/publications/Articles/Women-in-the-Michigan-Workforce-Report.pdf)> (accessed Oct. 10, 2023). Furthermore, part-time workers are less likely to have sick time in the first place: only about 51% of part-time workers have access to paid sick time, compared to 86% of full-time workers. U.S. Bureau of Labor Statistics, *Table 7. Leave benefits by work and bargaining status, private industry workers, March 2022*, in “National Compensation Survey: Employee Benefits in the United States, March 2022,” September 2022, Excel file (“private-work-and-bargaining-status-2022”), available at <<https://www.bls.gov/ncs/ebs/benefits/2022/home.htm>> (accessed Oct. 10, 2023).

The number of part-time workers has also increased nationwide since COVID, in part because of increased caregiving responsibilities and changing economic forces.

Alana Semuels, *Why Americans Want Part-Time Jobs Again*, TIME <<https://time.com/6284414/part-time-jobs-report/>> (posted June 2, 2023) (accessed Oct. 10, 2023). As of August 2023, over 26 million Americans were working part-time. U.S. Bureau of Labor Statistics, *Table A-8. Employed Persons by Class of Worker and Part-time Status, July 2023*, in “Economic News Release – Employment Situation”

<https://www.bls.gov/news.release/empsit.t08.htm> (accessed Oct. 10, 2023) (figure representing the total number of workers who are part-time for economic and non-economic reasons). The number of part-time workers classified as part-time for “non-economic” reasons—such as family or personal obligations, school or training, and other non-economic reasons—has increased 15% over the last decade and 5% since last year alone. Semuels, *Why Americans Want Part-Time Jobs Again*. This category includes many workers who work part-time due to caregiving responsibilities. *Id.* A large number of workers are also part-time for involuntary or “economic” reasons, such as inability to find a full-time job. In 2022, nearly 100,000 workers in Michigan were employed part-time for involuntary or economic reasons, and many of these individuals are completely carved out of the amended paid sick time law. U.S. Bureau of Labor Statistics, *Alternative Measures of Labor Underutilization in Michigan—2022*, Midwest Information Office [https://www.bls.gov/regions/midwest/news-release/laborunderutilization\\_michigan.htm](https://www.bls.gov/regions/midwest/news-release/laborunderutilization_michigan.htm) (posted March 2023) (accessed Oct. 10, 2023).

The amended MESTA also excludes employees who work for fewer than 25 weeks per year for the same employer, therefore removing many part-time workers, temporary workers, and workers who work full time but not for just one employer. MCL 408.962(2)(e)(x); (xii). The removal of temporary workers from coverage disproportionately impacts low-income workers, workers of color, and women, all of whom who are more likely to experience precarious employment. Vanessa M. Oddo et al., *Changes in Precarious Employment and Health in the United States Amidst the COVID-19 Pandemic*, 31 Preventive Medicine Reports 102113



<<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9841738/>> (posted Feb. 2023)

(accessed Oct. 10, 2023). The original ballot initiative covered all non-federal employees in Michigan, including part-time and temporary employees, who would have accrued paid sick time based on hours worked. MESTA Ballot Initiative § 2(f).

- *Family Member Recognition*: The amended version of MESTA removed important relationships from the law’s definition of family. Under the Legislature’s amendments, workers cannot care for a domestic partner, an important relationship that was recognized in the proposed initiative. *Compare* MCL 408.962(2)(g)(iii) *with* MESTA Ballot Initiative § 2(h)(iii). The Legislature’s amendment also removed the ability for workers to care for extended relatives and close loved ones who are equivalent to family, regardless of whether they share a biological or legal relationship with the employee (such as a fiancé or significant other, an aunt who raised the employee, a best friend who is like a sibling and lives with the worker, etc.). These covered relationships, designed to reflect and support the diverse forms families can take, were included in the original ballot initiative and specifically removed by the Legislature. In doing so, the Legislature has again placed Michigan in the minority: of the 16 states (including Washington, D.C.) with paid sick leave laws, only four do not incorporate domestic partners or close loved ones equivalent to family into their definition of family. *A Better Balance, Overview of Paid Sick Time Laws in the United States* <<https://www.abetterbalance.org/paid-sick-time-laws//search>> (accessed Oct. 10, 2023); *compare* MCL 408.962(2)(g) *with* MESTA Ballot Initiative § 2(h).

Coverage of loved ones who lack a biological or legal relationship is especially important for people with disabilities and LGBTQ workers, who have been shown to

have higher rates of caring for—and receiving care from—loved ones in these important family-like relationships. Katherine Gallagher Robbins, *People Need Paid Leave Policies that Cover Chosen Family*, Center for American Progress

<<https://www.americanprogress.org/article/people-need-paid-leave-policies-that-cover-chosen-family/>> (posted Oct. 30, 2017) (accessed Oct. 10, 2023); *see also* Mary Beth Maxwell et al., *2018 U.S. LGBTQ Paid Leave Survey*, Human Rights Campaign Foundation, <<https://assets2.hrc.org/files/assets/resources/2018-HRC-LGBTQ-Paid-Leave-Survey.pdf>> (accessed Oct. 10, 2023).

- *Assumption of Compliance if an Employer Provides 40 hours of Paid Leave*: Under the original ballot initiative and law, an employer could satisfy their paid sick leave requirements if they provided “any paid leave, that may be used *for the same purposes and under the same conditions provided in this act* and that is accrued in total at a rate equal to or greater than the rate [in the law].” MESTA Ballot Initiative § 3(5)(emphasis added). This provision protected employer’s paid time off policies but *only* if those policies allowed leave use for sick time as prescribed by the statute. And, importantly, if there was a problem with provision of leave, including retaliation for taking leave, the employee could seek to enforce their rights under the law. MESTA Ballot Initiative § 7.

The amended version of MESTA provides: “There is a rebuttable presumption that an employer is in compliance with this act if the employer provides at least 40 hours of paid leave to an eligible employee each benefit year.” MCL 408.963(3)(5). By presuming compliance if an employer offers 40 hours of leave of any kind (eliminating the requirement that the leave must be for the same purposes and comply with all conditions as laid out in the statute), an employer will be presumed to be in compliance

even if the leave ignores the requirements of the statute. For example, an employer would likely be presumed to be in compliance with Michigan’s current paid sick leave law even if the employer provides 40 hours of paid leave that cannot be used for sickness or any of the other purposes covered in the statute, that does not allow use of the leave to care for family members, or that imposes penalties on the worker for taking the leave.

Many employers have no sick time policies but instead have time off policies that require specific notice in advance of the taking of leave. Such notice is, of course, impossible if there is a sudden illness or unexpected need for sick time. Such a policy would be presumptively compliant under the terms of this provision, as revised by the Legislature, even though one of the main purposes of the ballot initiative was to ensure that Michigan workers would have paid time off to deal with illnesses and injuries, sudden or otherwise. In addition, many employers that provide sick time voluntarily do not allow it to be taken to care for family members; such policies are also presumptively allowed under this revised provision, despite the fact that the ability to use sick time for family care was another key component of the ballot initiative. Dina Bakst et al., *Misled & Misinformed: How Some U.S. Employers Use “No Fault” Attendance Policies to Trample on Workers’ Rights (And Get Away With It)*, A Better Balance, at 18 <[https://www.abetterbalance.org/wp-content/uploads/2020/06/Misled\\_and\\_Misinformed\\_A\\_Better\\_Balance-1-1.pdf](https://www.abetterbalance.org/wp-content/uploads/2020/06/Misled_and_Misinformed_A_Better_Balance-1-1.pdf)> (posted June 2020) (accessed Oct. 10, 2023). Finally, many employers have absence control policies, specifically outlawed in the original ballot initiative, which punish workers with a system of negative “points,” when a worker is absent without giving required notice, again an impossibility for most emergency sick time needs. *Id.* at 8. These policies are widespread and effectively

deprive workers of sick time. Such policies also benefit from the presumption of compliance under the amended law.

The presumption of compliance—without any reference to sick leave purposes and conditions—effectively deprives many workers of the protection for taking sick time that the ballot initiative offered. Although this provision creates a presumption that could possibly be overcome when used to deny sick time, the revised provision places the onus on workers to challenge an employer’s policy. Including a rebuttable presumption in favor of employers ignores the fact that the vast majority of workers face power imbalances that make it challenging to overcome such presumptions: fear of retaliation, lack of information on legal requirements, and misinformation by employers make it extremely difficult for employees to rebut this presumption.

- *Outreach and Enforcement:* The Legislature made two additional amendments to MESTA that, while not explicitly limiting the number of employees eligible for sick time under the law, both restrict the ability of many Michigan employees to access and utilize the law. The first removed a program from the original law to provide multilingual outreach programs to educate workers on the new law; employers were required to post notices in English, Spanish, and any language spoken by 10% or more of their workforce informing employees of their rights under the law. MESTA Ballot Initiative, §9(4). Second, the Legislature limited the enforcement provisions of the law, including removing a private right of action for individuals whose rights have been infringed under the law and limiting the available forms of relief, such as reinstatement of a lost position due to one’s exercise of paid sick leave. *Id.* at §8. These omissions are particularly

concerning given the burden the amended law has placed on workers to rebut the presumption of compliance when an employer provides 40 hours of paid leave.

Together, these sweeping amendments all but functionally repealed the original legislation, which the Legislature adopted with the stated purpose of blocking Michigan voters from enacting a comprehensive paid sick time law. It eliminated coverage of the law for a huge swath of Michigan workers, removed critical worker protections for the diminished number of workers still covered by the law, and made it easier for employers to evade the legal requirements in the original MESTA initiative.

**b. The Legislature’s Amendments to MESTA Eliminate Coverage for the Workers Who Need It Most**

As previously described, the Institute for Women’s Policy Research (IWPR) estimated that just two of the Legislature’s amendments—the elimination of small employers and part-time and temporary workers—exclude nearly 40% of the Michigan workforce from coverage. Accordingly, all of the amendments imposed by the Legislature necessarily exclude an even greater number of Michiganders. IWPR, *The Impact of Exemptions on Worker Coverage Under Michigan’s Paid Sick Leave Law* (Dec. 14, 2018), Attachment A. Given the size of Michigan’s workforce (excluding federal government employees), IWPR estimated that approximately 1.8 million workers who would have been covered under the original ballot initiative are not included in the amended version, based on employer size and the number of full-time Michigan workers; other, smaller exemptions to coverage necessarily bring the figure of those excluded to more than 1.8 million workers. See U.S. Bureau of Labor Statistics, *Economy at a Glance: Michigan* <<https://www.bls.gov/eag/eag.mi.htm>> (accessed Oct. 10, 2023); *Federal Employees By State*, Governing <<https://www.governing.com/gov-data/federal-employees-workforce->

numbers-by-state.html> (accessed Oct. 10, 2023). Furthermore, IWPR found that, of all workers who did not already have access to some paid sick leave at the time of the law's passage, 62% of those workers would remain ineligible under the amended law. As such, the Legislature's amendments eliminated nearly two-thirds of all workers without paid sick time who stood to gain from a universal, comprehensive paid sick time law. IWPR, Attachment A.

In reducing the number of eligible employees and loosening the requirements for employers to comply with the law, these amendments contravened one of the main purposes and goals of the original ballot initiative, which was to establish a new minimum floor of paid sick leave for Michigan workers. Such a floor is critical in part because the people excluded by the amended law, particularly low-income and marginalized workers, were already the least likely to have access to paid sick time to begin with.

Low-wage workers, mothers, and workers of color are among those least likely to have access to paid sick leave, and the Legislature's sweeping carve-outs and amendments disproportionately harm these workers who need paid sick time the most. For example, though 96% of the top decile of earners in the United States have access to paid sick leave, only 40% of the lowest-paid decile of private-sector workers have access to this benefit. U.S. Bureau of Labor Statistics, *Employee Benefits in the United States, March 2023*

<<https://www.bls.gov/news.release/pdf/ebs2.pdf>> (posted Sept. 21, 2023) (accessed Oct. 10, 2023). While 41% of working White women in the private-sector lack paid sick leave, the figure is higher among women of color in the workforce; 54% of Latinas and 42% of Black women have zero access to paid sick time. Moreover, 54% of working mothers do not have access to paid sick leave, limiting their ability to care for themselves and their children. National Partnership for Women & Families, *Working Women Need Paid Sick Days*

<<https://www.nationalpartnership.org/our-work/resources/economic-justice/paid-sick-days/working-women-need-paid-sick-days.pdf>> (posted Apr. 2013) (accessed Oct. 10, 2023).

As previously stated, IWPR has estimated that the amended version of MESTA will not apply to approximately 62 percent of Michigan workers who already lack explicit paid sick days policies at work. IWPR, Attachment A. These numbers focus on the explicit exclusions of small employers (fewer than 50 employees) and part-time and temporary workers, and do not even take into account the number of workers who remain covered but are severely affected by the Legislature's other amendments that weakened the paid sick leave ballot initiative's protections, such as the narrowed family definition and weakened enforcement options. Finally, under the presumption that employers are in compliance with the amended MESTA if they provide 40 hours of any kind of paid leave, an overwhelming majority of employers will be considered in compliance with the law even if the leave provided cannot be used in the same way that leave could be accrued under MESTA;<sup>2</sup> as previously discussed, workers who want to challenge this rebuttable presumption will face challenges to doing so, including financial barriers, trouble accessing information maintained by the employer, and possible retaliation.

Overall, these amendments will deeply harm Michigan workers. Without the broad coverage envisioned in the original ballot initiative, millions of workers in Michigan will continue to face the unenviable choice of whether to take time off to care for their own health and that of their loved ones, or go to work to avoid the economic uncertainty that comes with giving up a paycheck or risking retaliation.

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<sup>2</sup> National data indicates that 79% of workers employed by employers with 50-99 workers and 91% of employees at businesses with 100 or more employees have access to some form of paid leave. U.S. Bureau of Labor Statistics, *Paid Leave Benefits: March 2018; Table 46: Paid Leave Combinations*, available at <<https://www.bls.gov/ncs/ebs/benefits/2018/ownership/private/table46a.pdf>> (accessed Oct. 10, 2023). Although this is national data, there is no reason to believe that Michigan's workforce differs appreciably.

## **II. The Benefits of Paid Sick Leave Are Well-Established, but Strong Public Health Outcomes Require Widespread Coverage.**

Access to paid sick leave is crucial for those workers able to take advantage of it to care for themselves or their loved ones. Beyond the individual benefits, however, widespread access to paid sick leave also has important public health benefits at the community level; such benefits cannot be realized under the amended version of MESTA, which weakened the ballot initiative proposal and carved out millions of workers and their families.

Widespread coverage is essential to the public health benefits of a paid sick leave law. The removal of so many workers from the law's protections greatly undermines one of the original law's central aims: to protect the public health. Implementation of paid sick leave is a clear public health measure, as a wide-reaching paid sick leave policy is empirically shown to improve the health of a community. The significant substantive changes imposed by the Legislature in 2018 not only exceeded the Legislature's permissible responses to a qualified ballot initiative but were also clearly contrary to the public health goals of this measure.

### **a. Paid Sick Leave Reduces the Spread of Contagious Illnesses, like Influenza and COVID-19, and Lowers Incidence of Occupational Injuries**

People are more likely to go to work sick when they do not have paid sick leave, which increases the chance they will spread illness in the workplace and larger community. Nearly one quarter of all private sector workers in the U.S. lack access to any paid sick leave and as a result, they have no choice but to go to work while sick, leading to a higher flu rate and more occupational injuries. National Partnership for Women & Families, *Paid Sick Days Improve Public Health* <<https://nationalpartnership.org/wp-content/uploads/2023/02/paid-sick-days-improve-our-public-health.pdf>> (posted Nov. 2022) (accessed Oct. 10, 2023). Overall, people



without paid sick leave are 1.5 times more likely than people with paid sick leave to go to work with a contagious illness like the flu. Tom W. Smith and Jibum Kim, *Paid Sick Days: Attitudes and Experiences*, National Opinion Research Center at the University of Chicago, available at <<https://nationalpartnership.org/wp-content/uploads/2023/02/paid-sick-days-attitudes-and-experiences.pdf>> (posted June 2010) (accessed Oct. 10, 2023).

Researchers have long recognized that paid sick leave policies are important for slowing the spread of contagious disease and facilitating flu vaccinations. Even when government officials request that sick workers stay home and keep sick children out of school or daycare to prevent the spread of illness, workers are often unable to comply if they do not have paid sick leave, thus increasing the spread of contagion among co-workers. See, e.g., U.S. Occupational Safety and Health Administration, *OSHA Fact Sheet: What Employers Can Do to Protect Workers from Pandemic Influenza* <<https://www.osha.gov/sites/default/files/publications/employers-protect-workers-flu-factsheet.pdf>> (accessed Oct. 10, 2023); Robert Drago and Kevin Miller, *Sick at Work, Infected Employees in the Workplace During the H1N1 Pandemic*, Institute for Women's Policy Research <<https://iwpr.org/wp-content/uploads/2020/11/B284.pdf>> (posted Feb. 2010) (accessed Oct. 10, 2023); see also Yusheng Zhai et al., *Paid Sick Leave Benefits, Influenza Vaccination, and Taking Sick Days Due to Influenza-like Illness Among U.S. Workers*, 36 Vaccine 19 <<https://www.sciencedirect.com/science/article/abs/pii/S0264410X18314051?via%3Dihub>> (posted Nov. 19, 2018) (accessed Oct. 10, 2023) (finding that lack of paid sick leave is associated with a lower likelihood of receiving a flu vaccine); Supriya Kumar et al., *The Impact of Workplace Policies and Other Social Factors on Self-Reported Influenza-Like Illness During the 2009 H1N1 Pandemic*, 102 Am. J. Pub. Health 134, 139

<<https://pubmed.ncbi.nlm.nih.gov/22095353/>> (posted Nov. 28, 2011) (accessed Oct. 10, 2023) (finding that widespread access to paid sick leave would have prevented up to 5 million cases of influenza during the H1N1 pandemic).

Lack of paid sick leave contributes to the spread of many illnesses throughout the workplace and larger community. For example, the majority of retail and fast-food workers—who have especially high public contact—do not have access to any amount of paid sick leave. Daniel Schneider, et al., *Essential and Vulnerable: Service-Sector Workers and Paid Sick Leave*, The SHIFT Project at Harvard Kennedy School <[https://shift.hks.harvard.edu/files/2020/04/Essential\\_and\\_Vulnerable\\_Service\\_Sector\\_Workers\\_and\\_Paid\\_Sick\\_Leave.pdf](https://shift.hks.harvard.edu/files/2020/04/Essential_and_Vulnerable_Service_Sector_Workers_and_Paid_Sick_Leave.pdf)> (posted April 2020) (accessed Oct. 10, 2023) (finding 55% of retail and fast-food workers do not have paid sick leave); *see also* Restaurant Opportunities Centers United, *The Impact of COVID-19 on Restaurant Workers Across America* <<https://stateofrestaurantworkers.com/covidimpact-report/>> (posted Feb. 2022) (accessed Oct. 10, 2023) (finding that 72% of surveyed restaurant workers reported having no access to paid sick leave). Faced with the false choice of losing their job or staying home sick, these workers are often forced to go to work when they are ill. As a result, they increase the risk of passing illnesses on to co-workers and customers while also jeopardizing their own health. Human Impact Partners, *A Health Impact Assessment of the Healthy Families Act of 2009* <<https://humanimpact.org/wp-content/uploads/2017/09/Healthy-Families-Act-2009-Full-Report-1.pdf>> (updated Sept. 3, 2009) (accessed Oct. 10, 2023); *see also* National Partnership for Women & Families, *Paid Sick Days Improve Public Health*. A peer-reviewed epidemiological study found that nearly one in five food service workers had come to work vomiting or with diarrhea in the previous year alone, creating dangerous health conditions. Steven Sumner et al, *Factors Associated with Food Workers Working While Experiencing*

*Vomiting or Diarrhea*, Journal of Food Protection, 74(2) (2011), available at <[http://www.cdc.gov/nceh/ehs/ehsnet/Docs/JFP\\_ill\\_food\\_workers.pdf](http://www.cdc.gov/nceh/ehs/ehsnet/Docs/JFP_ill_food_workers.pdf)> (accessed Oct. 10, 2023). The largest national survey of U.S. restaurant workers found that nearly two-thirds of restaurant waitstaff and cooks have come to work sick. Restaurant Opportunities Centers United, *Serving While Sick: High Risks & Low Benefits for the Nation's Restaurant Workforce, and Their Impact on the Consumer*, available at <[https://www.co.benton.or.us/sites/default/files/fileattachments/health\\_department/page/2139/servingwhilesick.pdf](https://www.co.benton.or.us/sites/default/files/fileattachments/health_department/page/2139/servingwhilesick.pdf)> (posted Sept. 30, 2010) (accessed Oct. 10, 2023).

Paid sick leave also prevents accidents at work. A study by researchers from the National Institute for Occupational Safety and Health at the Centers for Disease Control and Prevention found that workers with access to paid sick leave were 28 percent less likely than workers without access to paid sick leave to be injured on the job. Abay Asfaw et al, *Paid Sick Leave and Nonfatal Occupational Injuries*, American Journal of Public Health <<http://ajph.aphapublications.org/doi/abs/10.2105/AJPH.2011.300482>> (posted June 21, 2012) (accessed Oct. 10, 2023). The strongest connection between access to paid sick leave and a lower incidence of occupational injuries occurs in high-risk sectors and occupations. *Id.*

The ongoing COVID-19 pandemic has highlighted the importance of widespread paid sick leave like never before. Data from the COVID-19 pandemic showed that access to paid sick leave led to reduced viral transmission and fewer workplace outbreaks, higher vaccination rates among essential workers, workers being more likely to follow public health measures, increased work productivity, and decreased worker absences. As such, paid sick leave has been shown to protect “the larger public from harm by containing the spread of infectious diseases and optimizing economic stability.” Alison Thompson et al., *Benefits of Paid Sick Leave During the*

*COVID-19 Pandemic*, Science Table: COVID-19 Advisory for Ontario <[https://covid19-sciencetable.ca/wp-content/uploads/2021/04/Science-Brief\\_Paid-Sick-Leave\\_20210504\\_version-1.1\\_published2.pdf](https://covid19-sciencetable.ca/wp-content/uploads/2021/04/Science-Brief_Paid-Sick-Leave_20210504_version-1.1_published2.pdf)> (posted Apr. 28, 2021) (accessed Oct. 10, 2023); *see also* David Naimark, Juan David Rios, et al., *Health and Economic Consequences of Universal Paid Sick Leave Policies During the COVID-19 Pandemic* <<https://www.medrxiv.org/content/10.1101/2022.01.13.21268270v1.full.pdf>> (posted Jan. 14, 2022) (accessed Oct. 10, 2023) (finding that increased access to paid sick leave would lower the number of COVID-19 cases, decrease presenteeism among workers with COVID-19, and mitigate wage loss among workers).

Specifically, states that newly implemented paid sick leave under the temporary Families First Coronavirus Response Act reported 400 fewer COVID-19 cases per day, and sick leave was credited with an increase in the ability of workers to stay home when sick or exposed to COVID-19. Stefan Pichler et al., *COVID-19 Emergency Sick Leave Has Helped Flatten The Curve in The United States*, 39 *Health Affairs* 12, available at <<https://www.healthaffairs.org/doi/10.1377/hlthaff.2020.00863>> (posted Oct. 15, 2020) (accessed Oct. 10, 2023); Martin Anderson et al., *Paid Sick Leave and Physical Mobility: Evidence from the United States During a Pandemic*, National Bureau of Economic Research <[https://www.nber.org/system/files/working\\_papers/w27138/w27138.pdf](https://www.nber.org/system/files/working_papers/w27138/w27138.pdf)> (posted April 2021) (accessed Oct. 10, 2023). The benefits of paid leave also persisted through the vaccination stage, whereby cities with a paid sick leave policy had a roughly 17% higher vaccination coverage rate than cities without paid sick leave. Alina S. Schnake-Mahl et al., *Higher COVID-19 Vaccination and Narrower Disparities in US Cities With Paid Sick Leave Compared To Those Without*, 41 *Health Affairs* 11, available at <<https://www.healthaffairs.org/doi/full/10.1377/hlthaff.2022.00779>> (posted Nov. 2022) (accessed Oct. 10, 2023). The association between paid sick leave and vaccination

was stronger in the most socially vulnerable neighborhoods than in the least vulnerable ones. *Id.* Similarly, research from 2021 showed that workers with paid time off to get vaccines were more likely to be vaccinated against COVID-19, and among those who were not yet vaccinated, a major barrier cited was lack of paid sick leave and fear of missing work due to vaccine side effects. KFF, *Workers are More Likely to Get a COVID-19 Vaccine When Their Employers Encourage It and Provide Paid Sick Leave, Though Most Workers Don't Want Their Employers to Require It* <<https://www.kff.org/coronavirus-covid-19/press-release/workers-are-more-likely-to-get-a-covid-19-vaccine-when-their-employers-encourage-it-and-provide-paid-sick-leave-though-most-workers-dont-want-their-employers-to-require-it/>> (posted June 30, 2021) (accessed Oct. 10, 2023); KFF, *COVID-19 Vaccine Monitor: April 2021* <<https://www.kff.org/coronavirus-covid-19/poll-finding/kff-covid-19-vaccine-monitor-april-2021/>> (posted May 6, 2021) (accessed Oct. 10, 2023) (finding that logistical concerns remained a top reason people were not yet vaccinated, and that more Black and Hispanic workers delayed getting the vaccine than White workers because of concerns about missing work).

**b. Paid Sick Leave Leads to Reduced Recovery Times from Illness and Makes it More Likely that Workers will Care for Sick Children and Seek Preventive Care for Themselves**

Comprehensive access to paid sick leave has clear and significant health benefits for workers and their loved ones. Access to paid sick leave decreases the likelihood that a worker will put off needed care, thereby increasing the use of regular medical providers over visits to the emergency room, reducing recovery times from illnesses, and increasing the rates of preventive care among workers and their children. National Partnership for Women & Families, *Paid Sick Days Improve Public Health*.

Paid sick leave increases rates of preventive care by giving workers the freedom to address health concerns before they become dire. Nationally, providing all workers with paid sick leave would result in \$1.1 billion in annual savings in hospital emergency department costs, including more than \$500 million in savings to publicly funded health insurance programs such as Medicare, Medicaid, and SCHIP. Kevin Miller et al, *Paid Sick Days and Health: Cost Savings from Reduced Emergency Department Visits*, Institute for Women's Policy Research <<http://www.iwpr.org/publications/pubs/paid-sick-days-and-health-cost-savings-from-reduced-emergency-department-visits>> (posted June 11, 2020) (accessed Oct. 10, 2023). In fact, workers are twice as likely to use hospital emergency rooms or send a sick child to school or daycare when they do not have access to paid sick time. Tom W. Smith and Jibum Kim, *Paid Sick Days: Attitudes and Experiences*.

The Centers for Disease Control and Prevention (CDC) has found that workers who have access to paid sick leave are significantly more likely to undergo routine cancer screenings and to visit a doctor or obtain other medical care. Lucy A. Peipins et al., *The Lack of Paid Sick Leave as a Barrier to Cancer Screening and Medical Care-Seeking: Results from the National Health Interview Survey*, 12 BMC Public Health 520 <<http://www.biomedcentral.com/content/pdf/1471-2458-12-520.pdf>> (posted 2012) (accessed Oct. 10, 2023). Workers with paid sick leave are more likely to get preventive medical procedures and screenings at suggested intervals, such as mammograms, Pap tests, colonoscopies and sigmoidoscopies. *Id.* The CDC has concluded that workers' lack of paid sick leave is a potential barrier to obtaining cancer screenings and preventive medical care. *Id.*

Paid sick leave allows parents to provide care for their sick children as well. In the words of one Michigander, Kelly G. of Lathrup Village, this personal benefit to many workers cannot be overstated:

My son had sickle cell anemia. In 2004 he became very ill with acute chest syndrome and was sent to the ICU and connected to a respirator for two weeks. I was fortunate enough to be there with him every day, by his side as he went through blood transfusions.

What would I have done if I couldn't be by his side? I was one of the lucky moms who could earn paid sick time—I honestly didn't even know at the time that so many working moms don't get the same benefit.

No one should be forced to choose between economic security and family caretaking responsibilities. Having access to paid sick leave allowed Kelly to take invaluable time off to care for her son during his illness. However, her experience in the hospital also reflects the reality that countless other families need the same benefit. She continues:

I'll never forget how many small children I saw at the hospital by themselves. Not only did this seem unfair to those kids and their caregivers, but I noticed the nurses had to focus on childcare instead of just health care. That's just not right, we have to stand up for kids and families and ensure everyone has access to earn paid sick time at work.

Parental care makes children's recovery faster and can prevent future health problems. Jody Heymann, *The Widening Gap: Why America's Working Families Are in Jeopardy—and What Can Be Done About It*, at 54-55 (New York: Basic Books, 2001). Parents without paid sick leave are nearly twice as likely as parents with paid sick leave to send a sick child to school or daycare and are 2.6 times as likely to report taking their child or a family member to a hospital emergency room because they were unable to take time off work during their regular work hours. Tom W. Smith and Jibum Kim, *Paid Sick Days: Attitudes and Experiences*.

**c. Paid Sick Leave Provides Workers Financial Security, Improving Their Long-Term Health and Well-Being**

Paid sick leave grants workers much-needed economic security, which also translates into tangible health benefits. Paid sick leave has been shown to alleviate short- and long-term financial pressures facing families that range from affording rent, groceries and utilities, to paying off debt and regular medical costs. LeaAnne DeRigne et al., *Working U.S. Adults without Paid Sick Leave Report More Worries about Finances*, 45 *Journal of Social Service Research* 570, available at <<https://www.tandfonline.com/doi/abs/10.1080/01488376.2018.1481176>> (posted Mar. 1, 2017) (accessed Oct. 10, 2023); *see also* Ann Huff Stevens, *The Human Downsides of Job Loss in Good Times and Bad*, Scholars Strategy Network <<https://scholars.org/contribution/human-downsides-job-loss-good-times-and-bad>> (posted June 5, 2018) (accessed Oct. 10, 2023). For example, a worker making \$12 per hour—the average wage of workers who lack paid sick leave—may lose their ability to pay a month’s telephone or electric bill when forced to take an unpaid sick day. For these workers, three days of unpaid sick time can amount to a month’s worth of groceries. Elise Gould & Jessica Schieder, *Work Sick or Lose Pay? The High Cost of Being Sick When You Don’t Get Paid Sick Days*, Economic Policy Institute <<https://www.epi.org/publication/work-sick-or-lose-pay-the-high-cost-of-being-sick-when-you-dont-get-paid-sick-days/>> (posted June 28, 2017) (accessed Oct. 10, 2023). Without access to paid sick time, workers are also 25% more likely to experience job loss, further harming their long-term economic security. Heather D. Hill, *Paid Sick Leave and Job Stability*, 40 *Work and Occupations* 2, available at <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3825168/>> (posted Apr. 9, 2013) (accessed Oct. 10, 2023). Conversely, paid sick leave laws are shown to reduce consumer bankruptcy filings by 11%. Michelle Miller, *The*



*impact of paid sick leave laws on consumer and business bankruptcies*, 19 *Journal of Empirical Legal Studies* 4, available at <<https://onlinelibrary.wiley.com/doi/full/10.1111/jels.12329>> (posted Sept. 25, 2022) (accessed Oct. 10, 2023). The economic insecurity created by workers' lack of paid sick time also has serious effects on their health, as lost income "worsens mental health, aggravates chronic health conditions, and results in academic disruption for children." Stevens, *The Human Downsides of Job Loss in Good Times and Bad*.

### III. **Paid Sick Leave Laws Benefit Business, and Any Claims That the Amendments to MESTA Were Necessary to Foster a Healthy Business Community Are Unfounded.**

The legislators who adopted and amended MESTA made the false claim that the original ballot initiative would harm the business community. See Lindsay VanHulle, *Snyder Signs Bills that Weaken Michigan Minimum Wage, Sick Leave Laws*, Bridge Michigan <<https://www.bridgemi.com/michigan-government/snyder-signs-bills-weaken-michigan-minimum-wage-sick-leave-laws>> (posted Dec. 14, 2018) (accessed Oct. 10, 2023). There is no evidence that paid sick leave laws cause economic harm to businesses. Paid sick time is only estimated to cost employers an average additional 2.7 cents per hour per employee. Catherine Maclean et al., *Mandated Sick Pay: Coverage, Utilization, and Welfare Effects*, Washington Center for Equitable Growth <<https://equitablegrowth.org/working-papers/mandated-sick-pay-coverage-utilization-and-welfare-effects/>> (posted Jan. 12, 2022) (accessed Oct. 10, 2023). However, this small cost does not account for the various *benefits* and *savings* that sick time provides to businesses.

In November 2022, the American Journal of Industrial Medicine published a comprehensive review and meta-analysis of more than 20 years of paid sick leave research and

found “more evidence supporting the relationship between paid sick leave and favorable businesses conditions as compared with evidence supporting the relationship between paid sick leave and unfavorable business conditions.” Candice Vander Weerd et al., *Is Paid Sick Leave Bad for Business? A Systematic Review*, 66 *American Journal of Industrial Medicine* 429, at 429, 438 <<https://onlinelibrary.wiley.com/doi/epdf/10.1002/ajim.23469>> (posted Feb. 3, 2023) (accessed Oct. 10, 2023). The report cited evidence that increased absences due to paid sick time may reduce contagion and presenteeism, which in itself benefits businesses through increased worker productivity and a reduction in costly and disruptive illness outbreaks in the workplace. *Id.* The Journal also found that paid sick time benefits employers through improved job satisfaction, employment retention, better employee health and safety, and improved labor market performance. *Id.* Reduced worker turnover from increased employee satisfaction and retention benefits employers, as replacing workers can cost approximately 21 percent of an employee’s annual compensation due to costs incurred from advertising, interviewing, and training new hires. Heather Boushey & Sarah Jane Glynn, *There Are Significant Business Costs to Replacing Employees*, Center for American Progress <<https://www.americanprogress.org/wp-content/uploads/2012/11/CostofTurnover.pdf>> (posted Nov. 16, 2012) (accessed Oct. 10, 2023).

These improvements all translate to real savings by businesses: the Journal of Occupational and Environmental Medicine estimates that health-related lost productive time—a phenomenon known as “presenteeism”—costs employers \$273 billion per year and, importantly, *exceeds* the costs of employee absenteeism for businesses. National Partnership for Women and Families, *Fact Sheet: Paid Sick Days are Good for Business* <<https://nationalpartnership.org/wp-content/uploads/2023/02/paid-sick-days-good-for-business-and-workers.pdf>> (posted May 2023) (accessed Oct. 10, 2023) (citing Walter F. Stewart, et al., *Lost Productive Work Time Costs from*

*Health Conditions in the United States: Results from the American Productivity Audit*, 45 *Journal of Occupational and Environmental Medicine* 12 (unpublished calculation based on Bureau of Labor Statistics CPI Inflation Calculator, original estimate \$160.32 billion in 2002 dollars)). As a result of these benefits to employers, new businesses that offer paid sick leave are more likely to survive over time than new businesses that do not. Jake G. Messersmith et al., *Bang for the Buck: Understanding Employee Benefit Allocation and New Venture Survival*, 36 *International Small Business Journal: Researching Entrepreneurship* 1, available at <<https://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1255&context=managementfacpub>> (posted 2018) (accessed Oct. 10, 2023). Moreover, paid sick leave has not been shown to impact the likelihood that a business will declare bankruptcy. Miller, *The impact of paid sick leave laws on consumer and business bankruptcies*.

These wide-ranging benefits to businesses have been borne out in jurisdictions across the country. Beginning with San Francisco—which implemented the nation’s first paid sick leave ordinance, following a 2006 ballot initiative—evidence clearly shows the benefits of a comprehensive paid sick leave law. The San Francisco law covers all employees working in the city, regardless of employer size or part-time status.<sup>3</sup> There have been no adverse effects on San Francisco business, and two-thirds of employers reported being “supportive” or “very supportive” of the law four years after the paid sick leave law took effect. Robert Drago & Vicki Lovell, *San Francisco’s Paid Sick Leave Ordinance: Outcomes for Employers and Employees*, Institute for Women’s Policy Research <[https://iwpr.org/wp-content/uploads/2021/02/A138\\_edited.pdf](https://iwpr.org/wp-content/uploads/2021/02/A138_edited.pdf)> (posted Feb. 2011) (accessed Oct. 10, 2023). One year after the passage of San Francisco’s law, Kevin Westlye of the Golden Gate Restaurant Association told the *San*

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<sup>3</sup> The amount of paid sick time available and the accrual rate depend on one’s employer size, but even employees at small businesses are eligible for paid sick time.

*Francisco Chronicle* that “[s]ick leave is one issue where people just looked at adjusting their policies and moved on. It hasn’t been a big issue.” Ilana DeBare, *S.F. Sick Leave Law Celebrates 1 Year*, *San Francisco Chronicle*, (Feb. 6, 2008), available at <<https://www.sfgate.com/business/article/S-F-sick-leave-law-celebrates-1-year-3229376.php>> (accessed Oct. 10, 2023). In fact, four years after the law’s implementation, San Francisco’s employment growth still exceeded that of the surrounding counties. Kevin Miller & Sarah Towne, *San Francisco Employment Growth Remains Stronger with Paid Sick Days Law than Surrounding Counties*, Institute for Women’s Policy Research, <<https://iwpr.org/wp-content/uploads/2021/01/C385.pdf>> (posted Sept. 2011) (accessed Oct. 10, 2023).

New York City also experienced steady job growth in the year after the city’s paid sick leave law went into effect. This law, like San Francisco’s, covers all workers regardless of employer size or part-time status.<sup>4</sup> On the law’s first anniversary, the city reported that after the law went into effect, “the city has had steady job growth and the lowest unemployment in six years.” Shira Gans, *NYC’s Paid Sick Leave Law: First Year Milestones*, New York City Department of Consumer Affairs, (June 2015), p 4. <<http://www1.nyc.gov/assets/dca/downloads/pdf/about/PaidSickLeaveLaw-FirstYearMilestones.pdf>> (accessed Oct. 10, 2023). The city further found that “New York City’s economy has thrived since the enactment of PSL [paid sick leave]. Between January 2014 and January 2015, a period that covers the law’s implementation, economic indicators were a cause for celebration, not concern as many had predicted.” *Id.* at 6.

A 2016 report published by the Center for Economic and Policy Research and the Murphy Institute of the City University of New York also showed that New York City’s paid

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<sup>4</sup> The New York City law has one, much more limited exemption than Michigan’s law: workers for businesses that have fewer than five employees and earn less than \$1 million per year are only eligible for unpaid leave.

sick leave law has worked well for business. An overwhelming 98% of employers surveyed by the authors reported no known cases of abuse of paid sick leave. Eileen Appelbaum & Ruth Milkman, *No Big Deal: The Impact of New York City's Paid Sick Days Law on Employers*, Center for Economic Policy Research and the Murphy Institute of the City University of New York, at 4 (Sept. 2016), available at <<http://cepr.net/images/stories/reports/nyc-paid-sick-days-2016-09.pdf>> (accessed at Oct. 10, 2023). As one restaurant owner put it, the misuse he feared prior to the law's passage "didn't happen. No one has taken a paid sick day because they just didn't feel like coming in that day. There is no abuse." *Id.* at 18. The survey also found that employees are cautious in their use of paid sick leave; as one employer stated, "[p]eople ration it. People want to save it up in case something serious happens." *Id.* at 16. Most employers reported that they were able to cover absences with cost-free measures, such as temporarily reassigning duties to other employees or putting some work on hold. *Id.* at 19. Given these results, employers in New York City have a positive view of the earned sick leave law: 86% of employers surveyed now described themselves as supportive of the law, with more than half saying they were "very supportive." *Id.* at 28.

One employer, Tony Juliano, the former general manager of XES Lounge in New York City and former president of a local chamber of commerce, stated that before the city's paid sick leave law passed, "there were concerns that I and other small businesses had. But as it turns out, it hasn't had the kind of impact that I worried about. Not even close. And in fact, the impact that I saw in my business was a much stronger bond between ourselves and our employees, higher productivity, and a *more* successful business, not a *less* successful business." Zoe Ziliak Michel, *During Healthy Families Act Days of Action, Business Owners Stress Benefits of Paid Sick Time*,

CLASP, <<https://www.clasp.org/blog/during-healthy-families-act-days-action-business-owners-stress-benefits-paid-sick-time>> (posted May 16, 2016) (accessed Oct. 10, 2023).

Following implementation of their respective paid sick leave laws, Washington, D.C. and Seattle similarly saw no negative economic effects in either job loss or movement of businesses out of the city. In Washington, D.C., a report issued by the D.C. Auditor in 2013—five years after passage of the city’s paid sick leave law—found, based on interviews and responses to a questionnaire, that the law “did not have the economic impact of encouraging business owners to move a business from the District nor did the [law] have the economic impact of discouraging business owners to locate a business in the District of Columbia.” Yolanda Branch, *Audit of the Accrued Sick and Safe Leave Act of 2008*, Office of the District of Columbia Auditor at 19 (June 19, 2013), available at <<http://dcauditor.org/report/audit-of-the-accrued-sick-and-safe-leave-act-of-2008/>> (accessed Oct. 10, 2023).

Likewise, studies of the economic impact of Seattle’s paid sick leave law found no widespread negative economic impact as some opponents of the ordinance feared. Economic Opportunity Institute, *Local Results of Paid Sick Days Laws*, <[https://www.opportunityinstitute.org/research/post/local-results-of-paid-sick-days-laws/#\\_edn2](https://www.opportunityinstitute.org/research/post/local-results-of-paid-sick-days-laws/#_edn2)> (posted Jan. 13, 2016) (accessed Oct. 10, 2023). In fact, King County, which includes Seattle, continued to outpace the state in job growth and in employer growth following implementation of the law. Jennifer Romich et al., *Implementation and Early Outcomes of the City of Seattle’s Paid Sick and Safe Time Ordinance*, University of Washington for the City of Seattle-Office of City Auditor, at 34 (Apr. 23 2014), available at <<https://www.seattle.gov/Documents/Departments/CityAuditor/auditreports/PSSTOUWReportwAppendices.pdf>> (accessed Oct. 10, 2023). Seattle maintained its share of King County’s businesses and revenues,

including in the retail and food services sectors. No pattern of business flight from Seattle was evident. *Id.* Moreover, 70% of employers supported the ordinance. *Id.* at 5.

Recognizing these myriad benefits to workers, employers, and communities, multiple cities and states have expanded their paid sick leave laws following their initial adoption. The cities of San Francisco, Washington, D.C., Chicago, and New York City were all early jurisdictions to adopt paid sick leave laws and have all expanded their laws. New York City's paid sick leave law has been so successful that the City Council has expanded it *three* times to include broader coverage—including expansions to cover extended family members and other loved ones in its family definition and to allow workers to use paid sick leave to address various needs related to sexual assault and domestic violence. In 2023, Colorado expanded their sick leave law to allow workers to use their accrued time for additional purposes, including grieving the loss of a family member and evacuating one's residence due to natural disasters or other unexpected occurrences.

In California, one of the earliest states to pass a paid sick leave law, the Governor recently signed into law a bill to expand the State's paid sick leave law by increasing the amount of available time off. This statutory amendment follows a previous 2016 expansion whereby California expanded its paid sick time law to extend coverage to domestic workers. Cal. Lab. Code § 245 et seq., as amended by CA SB 616. A 2023 poll by Small Business Majority found that 85% of small businesses owners in California support paid sick leave as a policy, and support the law's expansion to entitle workers to a greater amount of paid sick time. Small Business Majority, *Opinion Poll: California Small Business Owners Support Expanding Paid Family Leave Protections, Increasing Paid Sick Days*, (July 2023), available at <<https://smallbusinessmajority.org/sites/default/files/research-reports/ca-small-business-support->

paid-family-leave-and-paid-sick-days.pdf> (accessed Oct. 10, 2023). Many small business owners cite the ability to compete with larger businesses, who may already offer such benefits to employees, as their reason for supporting the expansion of paid sick time. *Id.*

## CONCLUSION

The legislative amendments to MESTA transformed the ballot initiative from a robust paid sick leave law that would have provided needed economic security to workers and significant public health benefits into an anemic law that removes coverage from at least 1.8 million employees and greatly reduces the permissible uses of what little paid sick time it guarantees.

The amended version of MESTA, by removing many of the workers who need sick leave the most, cannot provide nearly the same kinds of public health benefits as one covering all employees in the state. Looking at both the sheer number of workers lacking paid sick leave under the amended version of MESTA and the specific kinds of workers who were excluded, it is clear that the amendments made by the Legislature undermined the entire purpose of the original law and robbed Michiganders of their constitutionally-protected initiative power to vote on an initiative that was intentionally designed to establish a baseline legal right to paid sick leave across Michigan. Specifically, the Legislature thwarted the ability of Michigan citizens to exercise their initiative power and to establish a robust paid sick leave law that would have provided broader coverage and significantly stronger worker protections. If the Court allows the Legislature's amendments to MESTA to stand, millions of Michigan voters will be denied access to the myriad health and economic benefits that a comprehensive paid sick leave law would bring.



The Legislature's unlawful amendments deprived Michigan voters of the opportunity to decide whether or not they wanted to adopt a comprehensive paid sick leave law, and this action impermissibly deprived Michiganders of their constitutionally protected initiative power. For the above reasons, *amici* respectfully urge this Court to determine that the Legislature's enactment of PA 369 violated the Michigan Constitution by acting beyond the enumerated grants of power of Article 2, § 9.

Dated: October 31, 2023

Respectfully submitted,

/s/ Sarah Howard

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## WORD COUNT STATEMENT

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**CERTIFICATE OF SERVICE**

I hereby certify that on October 31, 2023, I electronically filed the above document with the Clerk of the Court using the MiFILE system, through which notification of such filing was sent to all attorneys of record in this matter.

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## ATTACHMENT A



INSTITUTE FOR WOMEN'S POLICY RESEARCH  
*Informing policy. Inspiring change. Improving lives.*

December 14, 2018

To: Amy Steinhoff, State Policy Advisors  
From: Jessica Milli, Ph.D., Institute for Women's Policy Research  
Re: The Impact of Exemptions on Worker Coverage Under Michigan's Paid Sick Leave Law

IWPR used data from the 2016-2018 Current Population Survey's Annual Social and Economic Supplement (CPS ASEC) to calculate the share of workers in Michigan that met the major requirements for coverage under Michigan's amended paid sick leave law. The requirements that were evaluated were working for an employer of at least 50 employees, working at least 25 weeks in the past year for the employer, and working an average of 25 hours per week in the previous year for the employer.

We find that approximately 63 percent of Michigan workers meet all three criteria, and therefore 37 percent of workers would not be covered under the law. However, data limitations do not enable us to evaluate the impact of other exemptions such as workers exempt from overtime requirements under the FLSA, workers covered by collective bargaining agreements, and individuals working in specific occupations. Accounting for these exemptions would only increase the share of Michigan workers left uncovered by the law.

IWPR's previous research, however, indicates that part-time and part-year workers as well as workers at smaller businesses are more likely to lack access to paid sick time. An additional analysis of the 2015-2017 National Health Interview Survey (NHIS) indicates that nationally only about 45 percent of workers that do not meet the requirements for coverage under Michigan's law have access to paid sick days compared with 82 percent of the workers that do meet all three criteria. When this information is combined with the analysis above of the number and share of workers in Michigan that are left out by the law, we find that approximately 62 percent of workers that currently do not have explicit paid sick days policies at work would be left out under the current law.