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## Testimony Supporting H. 136

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Submitted by Dina Bakst & Elizabeth Gedmark,

A Better Balance: The Work & Family Legal Center

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

A Better Balance is recognized as a national leading expert on the issue of discrimination against pregnant women in need of reasonable accommodations, which H. 136, the Vermont pregnant workers fairness act (VT PWFA) addresses. “Pregnant and Pushed Out of A Job,” an Op-Ed by Dina Bakst, Co-Founder & Co-President of A Better Balance, appeared in the *New York Times* in 2012 and inspired the introduction of the federal Pregnant Workers Fairness Act (PWFA).<sup>1</sup> We have assisted municipal, state, and federal lawmakers in drafting related legislation and have led campaigns and assisted others to pass such legislation in various localities. In October 2015 we published a report, “Pregnant and Jobless: 37 Years After Pregnancy Discrimination Act,

Pregnant Women Still Choose Between A Paycheck and A Healthy Pregnancy,”<sup>ii</sup> which garnered national media attention and shined a spotlight on this particular problem.

We thank Rep. George W. Till for sponsoring this bill, which promotes fairness and equality for Vermont’s women, while also strengthening the State’s economy.

**Working families rely on pregnant women’s and mothers’ salaries now more than ever.**

Women now make up almost half of the workforce<sup>iii</sup> and mothers bring home at least some income in 70 percent of all married couples with children living at home.<sup>iv</sup> In fact, a Pew Research study found that women are the primary or sole breadwinner in 40 percent of American families.<sup>v</sup> When pregnant women and mothers are forced out of work, the ripple effects impact their families as well.

All too often pregnant workers, especially low-wage workers or those in physically demanding jobs, are placed on unpaid leave or fired when they seek workplace modifications to stay healthy, such as relief from heavy lifting or a stool to sit on. These women lose not only much-needed income but also benefits, like health insurance, creating long-term financial and health consequences for them and their families.

**This bill, H. 136, would ensure that Vermont law protects pregnant women from all forms of employment discrimination.** Vermont law does not explicitly ensure that pregnant women are protected from being pushed out of their jobs when they need a modest change at work. In

fact, the Vermont Supreme Court denied legal protection to a pregnant woman seeking light duty due to her medical restrictions even though the company she worked for had a policy of allowing non-pregnant workers with work-related injuries to receive light duty.<sup>vi</sup> Without a clear legal standard, pregnant workers end up second-class citizens, treated less favorably than disabled workers and those with on-the-job injuries.

The VT PWFA ensures that, where a minor job modification would allow a woman to continue working, an employer must provide it unless doing so would pose an undue hardship. This bill is necessary to ensure equal treatment under the law. It will also clarify employers' obligations and allow pregnant women to secure the modest workplace adjustments they need as soon as possible to keep them employed, rather than waiting weeks or months for a legal determination.

**VT PWFA would save the state money by decreasing litigation costs.**

We have found that pregnancy accommodations laws have the positive fiscal impact of reducing the number of, and the costs associated with, pregnancy discrimination complaints.<sup>vii</sup> For example, after California passed similar legislation, litigation of pregnancy discrimination cases there actually decreased, even as the number of pregnancy discrimination cases around the country was increasing.<sup>viii</sup> In Tennessee, the state estimated that a similar bill would have no significant fiscal impact on the state.<sup>ix</sup> In addition, the proposed bill would save taxpayers money in the form of unemployment insurance and other public benefits incurred when women are forced out of their jobs. Because of these findings, Vermont need not fear increased costs or litigation post-enactment of the VT PWFA.

**The VT PWFA will benefit working women, their families, businesses, and the public.**

Women should not be forced to risk their health when a simple modification would allow them to stay healthy and on the job. Unfortunately, it is estimated that *more than one quarter million* pregnant workers are denied requests for accommodations each year, and many more do not even request changes at work, likely because they fear retaliation.<sup>x</sup> The VT PWFA would promote family economic security by ensuring that women can continue to work safely while pregnant.

Businesses will benefit from clarity regarding their obligations under the law. We can attest, from first-hand experience enforcing similar legislation in New York, such clarity helps immeasurably to resolve potential disputes before they fester and cause employers to incur significant legal fees. Employers would also benefit from reduced turnover and increased productivity by retaining trained employees.<sup>xi</sup>

**Many states and localities already provide stronger pregnancy discrimination protections.**

Alaska, California, Connecticut, Colorado, Delaware, Hawaii, Illinois, Louisiana, Maryland, Minnesota, Nebraska, New Jersey, New York, North Dakota, Rhode Island, Texas, Utah, West Virginia, New York City, NY, Philadelphia, PA, Providence, RI, Central Falls, RI, and Washington, DC all have strong legal protections explicitly requiring certain employers to provide some reasonable accommodations to pregnant employees. Sixteen of these laws were enacted in just the past four years, the majority passed with bipartisan support and unanimously.

Similar bills are being considered in other states, such as Kentucky, Massachusetts, New Mexico, Oklahoma, South Dakota, and Tennessee. Additionally, the federal PWFA, introduced in 2015,<sup>xii</sup> garnered bipartisan support in both houses of Congress, with over 140 cosponsors and almost 150 organizations supporting the bill.<sup>xiii</sup> This growing momentum demonstrates how much the issue of fairness for pregnant workers resonates with legislators and the public nationwide.

## CONCLUSION

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

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

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

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

<sup>iv</sup> Sarah Jane Glynn, *Breadwinning Mothers, Then and Now*, (June 2014) <https://cdn.americanprogress.org/wp-content/uploads/2014/06/Glynn-Breadwinners-report-FINAL.pdf>.

<sup>v</sup> Wendy Wang, Kim Parker, & Paul Taylor, *Breadwinner Moms: Mothers Are the Sole or Primary Provider in Four-in-Ten Households with Children; Public Conflicted about the Growing Trend*, (May 2013), [http://www.pewsocialtrends.org/files/2013/05/Breadwinner\\_moms\\_final.pdf](http://www.pewsocialtrends.org/files/2013/05/Breadwinner_moms_final.pdf).

<sup>vi</sup> See *Lavalley v. E.B. & A.C. Whiting Co.*, 166 Vt. 205, 215 (1997).

<sup>vii</sup> A Better Balance, *Pregnant and Jobless: Thirty-Seven Years After Pregnancy Discrimination Act, Pregnant Women Still Choose Between A Paycheck and A Healthy Pregnancy* 14-16 (Oct. 2015), <http://abetterbalance.org/web/images/stories/Documents/fairness/reports/PregnantandJobless.pdf>.

<sup>viii</sup> Equal Rights Advocates, *Expecting A Baby, Not A Lay-Off*, pg. 25, *Expecting a Baby, Not A Lay-Off*, pg. 25, <http://www.equalrights.org/wp-content/uploads/2013/02/Expecting-A-Baby-Not-A-Lay-Off-Why-Federal-Law-Should-Require-the-Reasonable-Accommodation-of-Pregnant-Workers.pdf>.

<sup>ix</sup> A Better Balance, *Pregnant and Jobless: Thirty-Seven Years After Pregnancy Discrimination Act, Pregnant Women Still Choose Between A Paycheck and A Healthy Pregnancy* 16 (Oct. 2015), <http://abetterbalance.org/web/images/stories/Documents/fairness/reports/PregnantandJobless.pdf> (“[A] proposed Tennessee Pregnant Workers Fairness Act was found to have no significant fiscal impact on the state because the

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Tennessee Human Rights Commission (the enforcing agency) anticipated that any increase in workload could be accommodated with the use of existing resources.”).

<sup>x</sup> Bryce Covert, “Why Are Workplaces Still Not Ready for Pregnant Workers?,” January 31, 2014, available at: <http://thinkprogress.org/economy/2014/01/31/3235471/pregnant-workers-survey/>.

<sup>xi</sup> Brief amici curiae of U.S. Women’s Chamber of Commerce, et al., *Young v. UPS*, (Sept. 2014), available at: [http://www.americanbar.org/content/dam/aba/publications/supreme\\_court\\_preview/BriefsV4/12-1226\\_pet\\_amcu\\_uswcoc-et-al.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publications/supreme_court_preview/BriefsV4/12-1226_pet_amcu_uswcoc-et-al.authcheckdam.pdf); Equal Rights Advocates, *Expecting a Baby, Not A Lay-Off*, pg. 25, <http://www.equalrights.org/wp-content/uploads/2013/02/Expecting-A-Baby-Not-A-Lay-Off-Why-Federal-Law-Should-Require-the-Reasonable-Accommodation-of-Pregnant-Workers.pdf>.

<sup>xii</sup> S.1512/HR 2654.

<sup>xiii</sup> Pregnant Workers Fairness Act Letter of Support (July 15, 2015). <http://www.nationalpartnership.org/research-library/workplace-fairness/pregnancy-discrimination/pregnant-workers-fairness-act-coalition-letter.pdf>.