17-2861(L)

17-2863(XAP)

United States Court of Appeals

For the Second Circuit

ANN MARIE LEGG,
Plaintiff-Appellant,

PATRICIA WATSON,
Plaintiff-Appellant – Cross-Appellee,

PATRICIA MEADORS, NANCY REYES,
Plaintiffs,

v.

[CAPTION CONTINUED INSIDE COVER]

ON APPEAL FROM A JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF NEW YORK

BRIEF OF *AMICI CURIAE* AMERICAN CIVIL LIBERTIES UNION FOUNDATION; CENTER FOR WORKLIFE LAW; 9TO5, NATIONAL ASSOCIATION OF WORKING WOMEN; A BETTER BALANCE; CALIFORNIA WOMEN'S LAW CENTER; COALITION OF LABOR UNION WOMEN; EQUAL RIGHTS ADVOCATES; FAMILY VALUES @ WORK; GENDER JUSTICE; LEGAL AID AT WORK; LEGAL MOMENTUM; LEGAL VOICE; NATIONAL CENTER ON WOMEN & POLICING; NATIONAL EMPLOYMENT LAWYERS ASSOCIATION; NELA/NY; NATIONAL EMPLOYMENT LAW PROJECT; NATIONAL ORGANIZATION FOR WOMEN FOUNDATION; NATIONAL PARTNERSHIP FOR WOMEN & FAMILIES; NATIONAL WOMEN'S LAW CENTER; SOUTHWEST WOMEN'S LAW CENTER; WOMEN EMPLOYED; WOMEN'S LAW CENTER OF MARYLAND, INC.; and WOMEN'S LAW PROJECT
IN SUPPORT OF PLAINTIFF-APPELLANT ANN MARIE LEGG

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United States Court of Appeals

For the Second Circuit

[CAPTION CONTINUED FROM FRONT COVER]

ULSTER COUNTY, PAUL J. VANBLARCUM, *in his official capacity as Sheriff of the County of Ulster, and individually,*

Defendants-Appellees – Cross-Appellants,

RICHARD BOCKELMANN, *in his official capacity as Sheriff of the County of Ulster, and individually,*

BRADFORD EBEL, *in his official capacity as Sheriff of the County of Ulster, and individually,*

RAY ACEVEDO, *in his official capacity as Sheriff of the County of Ulster, and individually,*

Defendants,

RICHARD BOCKELMANN, *in his official capacity as Sheriff of the County of Ulster, and individually,*

BRADFORD EBEL, *in his official capacity as Sheriff of the County of Ulster, and individually,*

RAY ACEVEDO, *in his official capacity as Sheriff of the County of Ulster, and individually,*

Defendants.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, the undersigned counsel of record certifies that none of the *amici curiae* is a nongovernmental entity with a parent corporation or a publicly held corporation that owns 10% or more of its stock. This representation is made in order that the judges of this Court may evaluate possible disqualification or recusal.

Dated: January 11, 2018

s/ Gillian L. Thomas

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INTERESTS OF *AMICI CURIAE*[1]

Amici are a coalition of 23 civil rights groups and public interest organizations committed to preventing, combating, and redressing sex discrimination and protecting the equal rights of female workers in the United States. More detailed statements of interest are contained in the accompanying appendix.

Amici have a vital interest in ensuring that the Pregnancy Discrimination Act is interpreted so as to fulfill, not impede, the law's promise of equal employment opportunity for women affected by "pregnancy, childbirth, and related medical conditions," particularly women working in historically male-dominated occupations. *Amici* take no position on the other issues presented by this appeal.

[1] Pursuant to Rule 29(c)(5) of the Federal Rules of Appellate Procedure and Local Rule 29.1, counsel for *amici curiae* state that no counsel for a party authored this brief in whole or in part, and that no person other than *amici curiae*, their members, or their counsel made a monetary contribution to the preparation or submission of this brief. This brief is filed with the consent of all parties.

SUMMARY OF THE ARGUMENT

In *Young v. United Parcel Service, Inc.*, the Supreme Court reaffirmed the central purpose of the Pregnancy Discrimination Act: to assure that employers do not disadvantage pregnant workers as compared to their non-pregnant peers. Yet the court below, after finding that Appellee Ulster County's light duty policy does just that, refused to shift the burden to the County to explain how exclusion of pregnancy from its policy is necessary to its business. Instead, the court demanded that Appellant Ann Marie Legg go even further by proving that all or mostly all pregnant correctional officers will need light duty in order to continue working.

That onerous interpretation of the *prima facie* standard turns the disparate impact doctrine on its head. Disparate impact is intended to shield members of protected groups from the "built-in headwinds" created by neutral policies by requiring employers to justify using such measures notwithstanding their biased effect. Such headwinds blow especially fiercely in male-dominated, hazardous workplaces, like Ulster County's, that for decades never contemplated the presence of women, let alone pregnant women; indeed, disparate impact claims have been utilized time and again since Title VII's enactment to remedy barriers to women's entry into historically male occupations like law enforcement. Even though this Court previously found Ulster County's stated reasons for its light duty policy to be questionable at best, and even though the District Court concluded that no

pregnant guard needing light duty ever will receive it while guards injured on the job almost always will, the District Court did not subject the policy to further inquiry. That was clear error demanding reversal.

The District Court's application of the PDA in the disparate impact context also was clearly erroneous. The PDA, as recently reaffirmed by *Young*, makes plain that pregnant workers are entitled to the same benefits as those "similar in their ability or inability to work." Thus, the only individuals relevant to the disparate impact analysis here are those officers who need light duty, for whatever reason. Accordingly, the District Court should not have measured the disparity of the impact here as to *all* pregnant workers, but rather, only as to those workers in need of the benefit of Ulster County's policy. Because that policy excludes pregnancy, it was clear error for the Court not to find it imposes a *per se* disparate impact on pregnant guards.

The letter and the spirit of the PDA, as reaffirmed in *Young*, demand better. This Court should reverse.

ARGUMENT

I. THE DISTRICT COURT'S DECISION CONTRAVENES THE PDA'S ANIMATING PURPOSE OF ASSURING THAT PREGNANT WORKERS ARE TREATED THE SAME AS NON-PREGNANT CO-WORKERS SIMILAR IN THEIR ABILITY OR INABILITY TO WORK

A. The PDA was enacted to assure pregnancy does not force women out of the workforce or otherwise impose unequal burdens on them.

Congress passed the Pregnancy Discrimination Act, 42 U.S.C. § 2000e(k) ("PDA"), to guarantee pregnant women's equal participation in the labor force. Prior to the law's passage, a wide array of employer policies disadvantaged pregnant employees, none more so than policies that forced women to stop working when they became pregnant, regardless of their capacity to work. *See, e.g.*, *Cleveland Bd. of Educ. v. LaFleur*, 414 U.S. 632, 634-35 (1974) (forcing pregnant teachers to take unpaid leave five months before they were due to give birth, with no guarantee of re-employment); *EEOC v. Chrysler Corp.*, 683 F.2d 146, 147 (6th Cir. 1982) (requiring pregnant women to take leave in the fifth month of pregnancy); *Clanton v. Orleans Parish Sch. Bd.*, 649 F.2d 1084, 1086-87 (5th Cir. 1981) (placing teachers on leave in the beginning of the sixth month of their pregnancy); *Condit v. United Air Lines, Inc.*, 631 F.2d 1136, 1137 (4th Cir. 1980) (requiring that flight attendants "shall, upon knowledge of pregnancy, discontinue flying"). *See also Int'l Union, United Auto., Aerospace & Agric.*

Implement Workers of Am., UAW v. Johnson Controls, Inc., 499 U.S. 187, 204 (1991) (striking policy barring fertile women from holding lucrative jobs involving lead exposure, holding that PDA requires that "women as capable of doing their jobs as their male counterparts may not be forced to choose between having a child and having a job"); *Cal. Fed. Sav. & Loan Ass'n v. Guerra*, 479 U.S. 272, 289 (1987) (upholding state law requiring up to four months' job-protected leave for pregnant workers, observing that PDA enacted to afford women "the basic right to participate fully and equally in the workforce, without denying them the fundamental right to full participation in family life," quoting 123 Cong. Rec. 29658 (1977)).

The immediate trigger for the PDA was the Supreme Court's ruling, in 1976, that General Electric's exclusion of pregnancy from the medical conditions that qualified employees for temporary disability benefits did not constitute sex discrimination. *Gen. Elec. Co. v. Gilbert*, 429 U.S. 125 (1976). *See Newport News Shipbuilding & Dry Dock Co. v. EEOC*, 462 U.S. 669, 677-78 (1983) (Congress's "unambiguous" intent in enacting PDA was to correct "both the holding and the reasoning of the Court in the *Gilbert* decision"). Such faulty reasoning included the Court's conclusion that because not *all* female employees became pregnant, the disadvantage to pregnancy was not discrimination "because of sex." *Gilbert*, 429 U.S. at 129.

With the PDA, Congress intended to assure that pregnant workers would be restored to equal footing with employees whose temporary impairments did not result in job loss, or the consequent economic disadvantage. *See, e.g.*, S. Rep. No. 95-331, at 4 (1977) ("Pregnant women who are able to work must be permitted to work on the same conditions as other employees; and when they are not able to work for medical reasons, they must be accorded the same rights, leave privileges and other benefits, as other workers who are disabled from working."); H.R. Rep. No. 95-948, at 4 (1978) ("The bill would simply require that pregnant women be treated the same as other employees on the basis of their ability or inability to work."). Congress effected this purpose by amending Title VII not only to make explicit that discrimination "because of sex" included discrimination "because of . . . pregnancy, childbirth, and related medical conditions," but also by expressly mandating, in the PDA's second clause, that pregnant workers "be treated the same for all employment-related purposes . . . as other persons not so affected but similar in their ability or inability to work." 42 U.S.C. § 2000e(k).

B. The Supreme Court's ruling in *Young v. United Parcel Service, Inc.* reaffirmed the PDA's focus on equal treatment of pregnant workers needing accommodations.

By 2014, the scope of the PDA's second clause had become muddied with respect to women's right to "accommodations" for their pregnancy-related medical needs. Recognizing the "lower-court uncertainty about interpretation of the

[PDA]" in the accommodations context, the Supreme Court granted *certiorari* in *Young v. United Parcel Service, Inc.*, 135 S. Ct. 1338, 1348 (2015). All of the cases cited by the Court as giving rise to this "uncertainty" concerned employer policies that, in whole or in part, granted more favorable treatment to workers needing accommodations due to on-the-job injuries than to workers needing accommodation because of pregnancy. *Id.* (collecting cases). So, too, did the *Young* case itself. *See Young v. United Parcel Serv., Inc.*, 707 F.3d 437 (4th Cir. 2013) (denying light duty to pregnant delivery driver with lifting restriction, while granting it to workers with occupational injuries, as well as those entitled to accommodation under the Americans with Disabilities Act and those whose commercial driver's licenses had been revoked).

Although *Young* directly concerned a Title VII disparate treatment challenge to UPS's policies, the Court addressed a larger issue: namely, the extent to which "neutral" employer policies distinguishing pregnancy from other physical conditions continue to force women out of work, and how lower courts' applications of the PDA's "similarly situated" clause were allowing such policies to pass muster. Indeed, the Fourth Circuit had granted summary judgment to UPS precisely because it found the company's three categories of light duty eligibility to be "pregnancy blind" and "at least facially a 'neutral and legitimate business practice.'" *Id.* at 446.

At oral argument in the case, an exchange between Justice Breyer and Peggy Young's counsel took place that is instructive here: After some initial questions concerning the quantum of comparator evidence required to prove disparate treatment by UPS, Justice Breyer observed, "[I]t did seem to me there is a way, . . . it's quite a [sic] easy way for you to win, and that would be to bring a disparate impact claim, and that's what I thought disparate impact claims were about. . . . [It would be] such a beautiful vehicle to bring a claim of the kind you just articulated." Oral Argument at 5:45, *Young v. United Parcel Serv., Inc.*, 135 S. Ct. 1338 (No. 12-1226), https://www.oyez.org/cases/2014/12-1226.

Ultimately, the Court adopted a modified disparate treatment analysis that, it emphasized, sought to fulfill the PDA's goal of "respond[ing] directly to *Gilbert*" – that is, by assuring that an employer not "treat pregnancy less favorably than diseases or disabilities resulting in a similar inability to work." *Young*, 135 S. Ct. at 1353.[2] Ultimately, the Court decreed, the PDA accommodation inquiry rests on

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[2] In reversing the Fourth Circuit's grant of summary judgment, the Court went to great lengths to reaffirm that the *prima facie* standard is "not intended to be an inflexible rule," "not onerous," and "not as burdensome as succeeding on 'an ultimate finding of fact as to' a discriminatory employment action." *Id.* at 1353-54 (quoting *Furnco Constr. Corp. v. Waters*, 438 U.S. 567, 575-76 (1978)).

To this expansive reading, the Court also offered an alternate pretext analysis plaintiffs may rely on for claims under the PDA's second clause:

> We believe that the plaintiff may reach a jury on [the issue of pretext] by providing sufficient evidence that the employer's policies impose a *significant burden* on pregnant workers, and that the employer's "legitimate, nondiscriminatory" reasons are not *sufficiently strong* to justify the burden, but

the twin interests of feasibility and fairness: "[W]hy, when the employer accommodated so many, could it not accommodate pregnant women as well?" *Id.* at 1355.

The District Court's ruling here ignored these broad animating principles, distorting the "beautiful vehicle" of disparate impact and ignoring the "easy way" to invalidate Ulster County's policy. In its place, it imposed an improperly heavy *prima facie* burden on Legg that spared Ulster County from explaining why a policy that excludes pregnant workers – thereby forcing any woman who needs such accommodation onto leave – is a "business necessity."

II. THE DISTRICT COURT ERRED WHEN IT REQUIRED LEGG TO SHOW THAT ULSTER COUNTY'S POLICY HARMS ALL OR MOSTLY ALL PREGNANT WORKERS

The District Court's demand for evidence concerning the policy's effect on pregnant workers *as a group*, rather than on those who are "similar in their ability or inability to work" and thus need accommodation, misreads the PDA's express terms and is clear error. Moreover, the court's analysis rests on the premise that a plaintiff must present evidence that large numbers of employees are adversely affected in order to satisfy the *prima facie* standard. That premise not only is a faulty reading of the law; it poses distinct disadvantages to women seeking to enter

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> rather – when considered along with the burden imposed – give rise to an inference of intentional discrimination.

Id. (emphasis added).

male-dominated fields by, perversely, citing their underrepresentation – caused by decades of overt discrimination – to sustain neutral practices that perpetuate such exclusion.

A. The District Court misapplied the disparate impact framework in the PDA context.

As this Court has recognized, the Title VII disparate impact framework "seeks the removal of employment obstacles, not required by business necessity, which create built-in headwinds and freeze out protected groups from job opportunities and advancement." *Robinson v. Metro-North Commuter R.R. Co.*, 267 F.3d 147, 160 (2d Cir. 2001) (internal citations omitted). To establish a *prima facie* case of disparate impact, a plaintiff must: (1) identify a policy or practice; (2) demonstrate that a disparity exists; and (3) establish a causal relationship between the two." *Id.* According to this Court's precedent, the evidence required for this showing is *de minimis*. *See McLee v. Chrysler Corp.*, 109 F.3d 130, 134 (2d Cir. 1997).

The District Court found that Legg had indeed proven that "[t]he result of [Ulster County's light duty] policy is that pregnant women will *never* be afforded light-duty assignments and will instead be forced to use accrued sick, vacation, or personal time if they are no longer able to work full duty." *Legg v. Ulster Cty.*, No. 1:09-CV-550 (FJS/RFT), 2017 WL 3207754, at *6 (N.D.N.Y. July 27, 2017) (emphasis added). This factual conclusion – that *all* pregnant women who are

limited in their ability to work are denied light duty because of the challenged policy – alone should have been enough to satisfy both the first and second prongs of the *prima facie* standard as a matter of law.

Indeed, that is precisely the conclusion reached in 2009 by another district court in this Circuit when presented with a virtually identical policy in a law enforcement context. *Germain v. Cty. of Suffolk*, No. 07-CV-2523 (ADS)(ARL), 2009 WL 1514513 (E.D.N.Y. May 29, 2009). In *Germain*, the court considered a pregnant Suffolk County Park Police officer's PDA challenge to the department's light duty policy, which reserved accommodations to officers injured on the job. In denying summary judgment to the County, the court concluded that because "a pregnant officer unable to perform full-duty because of her pregnancy could *never* be eligible for a light-duty assignment," the plaintiff officer "ha[d] established a prima facie case that the . . . policy ha[d] a disparate impact on pregnant women." *Id.* at *4 (emphasis added). *See also Lehmuller v. Inc. Vill. of Sag Harbor*, 944 F. Supp. 1087, 1092 (E.D.N.Y. 1996) (pregnant police officer satisfied *prima facie* burden on PDA disparate impact claim where Village policy reserved light duty to officers injured on the job).

Notwithstanding this precedent or its own conclusions on the exclusionary effect of Ulster County's policy, the District Court proceeded to impose on Legg an additional *prima facie* burden – namely, to show that "pregnant women were

unable to perform full-duty at the Jail." *Legg*, 2017 WL 3207754, at *9 (emphasis in original). The court concluded that Legg had failed in fulfilling that burden, in part by observing that she herself, in in addition to two other female officers, worked full-duty until late in their pregnancies. *Id*. In contrast, the court noted facts that *would* have, in its view, militated in favor of satisfying the *prima facie* test: evidence that two pregnant officers who went on leave in their seventh month, rather than request light duty, did so "because they knew they would not be provided an accommodation"; evidence that, prior to the Ulster County's policy change limiting light duty to officers with occupational injuries, "pregnant women had used light duty in statistically higher proportions, compared to their total numbers on [Ulster County's] staff"; or "evidence showing that pregnant women would be more susceptible to injuries in full-duty because of their pregnancy." *Id.* In short, the District Court considered the relevant group, for purposes of assessing the disparity of the policy's impact, to be *all* pregnant officers – not those who actually need accommodations under the policy, as Ulster County did.

This analysis fundamentally misreads the PDA. By its plain terms, the statute demands that pregnant workers receive the same benefits as those "similar in their ability or inability to work." Assessing the harm inflicted by Ulster County's policy upon individuals who do not even need the benefit of that policy is simply the wrong inquiry. *See, e.g.*, *Chrisner v. Complete Auto Transit, Inc.*, 645

F.2d 1251, 1258 (6th Cir. 1981), citing *Payne v. Travenol Laboratories, Inc.*, 565 F.2d 895, 899 (5th Cir. 1978) ("The proper focus when determining the disparate impact of an employment condition is on those excluded by the requirement.") Put differently, just as Ulster County's light duty policy is of no moment to a male guard with a physical condition that does not interfere with his ability to perform his job duties, so too is it irrelevant to a female guard whose pregnancy does not require accommodation, either. Neither group's interests should be included in the disparate impact calculus.[3]

[3] It should be noted in this regard that Title VII jurisprudence long has recognized that the law's protections sometimes are needed only by certain subsets of women, or even subsets of pregnant women. *See*, e.*g.*, *Phillips v. Martin Marietta Corp.*, 400 U.S. 542 (1971) (invalidating employer's ban on hiring mothers of preschool-aged children, despite high rates of women's employment overall); *Chadwick v. WellPoint*, 561 F.3d 38, 42 n.4 (1st Cir. 2009) (inference of animus against mother of four children was not lessened by fact that successful candidate was mother of two); *Deneen v. Nw. Airlines, Inc.*, 132 F.3d 431, 437-38 (8th Cir. 1998) (pregnant employee who was denied accommodations and put out on leave after employer learned she was suffering "pregnancy complications" found to have suffered discrimination, even though employer had accommodated plaintiff's pregnant co-workers who did not have pregnancy complications); *Hicks v. Gates Rubber Co.*, 833 F.2d 1406, 1416 (10th Cir. 1987) ("discrimination against black females [can] exist even in the absence of discrimination against black men or white women") (quoting *Jefferies v. Harris Co. Comm. Action Ass'n*, 615 F.2d 1025, 1032 (5th Cir. 1980)).

Indeed, while certain jobs are more likely than others to necessitate accommodations for pregnancy, as discussed in Section II.B.2, *infra*, pregnancy is by nature individualized and evolving in a way that most other protected traits are not, resulting in a wide variety of workplace repercussions that depend on a women's job duties, location of work, and her specific physical condition. *See Reproductive Health*, Centers for Disease Control and Prevention, https://www.cdc.gov/reproductivehealth/maternalinfanthealth/pregcomplications.htm (last visited Dec. 13, 2017) ("Pregnancy symptoms and complications can range from mild and annoying discomforts to severe, sometimes life-threatening, illnesses."). *See also Blonder v. Evanston Hosp. Corp.*, No. 91 C 3846, 1992 WL 44404, at *3 (N.D. Ill. Mar. 2, 1992) (denying summary judgment on disparate impact claim brought by nurse fired for refusing rubella vaccine, a universal requirement of hospital staff; "Facially neutral employment practices, which for

This fatally flawed understanding of the PDA inquiry led the court below to ignore the squarely on-point *Germain* and *Lehmuller* rulings. In a footnote, the District Court cavalierly states that it "disregards [those cases] because . . . [they] provided no indication about what evidence the plaintiffs presented to support their cases." *Id.* at *9 n.6. But this is simply incorrect. In *Germain*, the opinion makes plain that the defendant County did not even raise as a defense any record evidence about the extent of the harm – or lack thereof – caused to pregnant officers by its light duty policy. Rather, its defense rested on the argument that because pregnant officers were treated no worse than officers with an injury or illness incurred off the job, a disparate impact because of pregnancy claim could not lie, as a matter of law. 2009 WL 1514513, at *4. Citing the plain terms of the PDA, the *Germain* court rejected this formulation:

> In the present context, the PDA only requires the Plaintiff to show that nonpregnant Park Department officers similarly unable to perform full-duty assignments were treated more favorably than her. . . . [A]lthough the pregnant officer and the non-pregnant officer are similarly situated in their inability to perform full-duty, the distinction the [Defendant's] policy draws between occupational and non-occupational injuries necessarily excludes pregnant women from light-duty.

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medical reasons fall more harshly on one group, can form the basis of a disparate impact claim.").

Id.[4] Further, in *Lehmuller*, the court's decision makes plain that the plaintiff was the first, and only, female police officer on the defendant's force, and thus constituted a class of one in terms of showing disparate impact due to pregnancy. 944 F. Supp. at 1089. Thus, as in *Germain*, the *Lehmuller* court's *prima facie* finding of disparate impact rested squarely on the policy's express terms, not any examination of the quantum of harm caused to individual pregnant officers. *Id.* at 1092 ("[Plaintiff] has shown that the [Defendant] adopted a light-duty policy that has an adverse impact on pregnant officers and, therefore, has established a prima facie case of disparate impact discrimination.").[5]

[4] At trial in *Germain*, a jury concluded that the County had not proved that the on-the-job/off-the-job distinction was a business necessity for its Park Police operations. *Germain*, 672 F. Supp. 2d at 321 (E.D.N.Y. 2009). Three years earlier, a jury considering a virtually identical policy maintained by the Suffolk County Police Department reached the same conclusion. *Lochren v. Cty. of Suffolk*, No. CV 01-3925, 2008 WL 3029458, at *1 (E.D.N.Y. May 9, 2008).

[5] The District Court's error as to evidence required to satisfy the *prima facie* standard also led it to mistakenly discount the ample precedent cited by Legg finding disparate impact, despite small numbers of impacted individuals, where group-wide, sex-based biological differences (besides pregnancy) were involved. *See Legg*, 2017 WL 320774, at *8 (collecting cases) ("What distinguishes this case from the sanitary bathroom cases . . . is that in those cases the courts relied on substantive evidence showing that exposure to unsanitary bathrooms (the adverse policy) disproportionately impacted women. Thus, the plaintiffs in those cases, through evidence, successfully connected the impact of the unsanitary working conditions to the immutable characteristics of the plaintiffs.) For similar reasons, the court also improperly rejected comparisons to *Bradley v. Pizzaco of Nebraska, Inc.*, 939 F.2d 610 (8th Cir. 1991), concerning the disparate impact of an employer's no-beard policy on African American men suffering from a certain skin condition. *Legg*, 2017 WL 3207754, at *8 ("[T]he [*Bradley*] court found that the plaintiff had established a prima facie case because he established through [expert medical testimony and studies] that individuals afflicted with [the condition], a condition that only affects black males, could not comply with the no-beard policy.").

In sum, the District Court's error in construing the PDA's plain terms resulted in its further erring as to the quantum of proof required to make out a *prima facie* case of disparate impact, and demands reversal.

B. Demanding numerical proof about the impact of Ulster County's policy on other pregnant guards unfairly disadvantages women in male-dominated fields and undermines the purpose of the disparate impact framework.

1. The disparate impact doctrine is essential to achieving women's full entry into formerly male-only occupations.

The District Court's misreading of the disparate impact framework is particularly dangerous precedent for women seeking access to historically male-dominated jobs. Women's entry into fields such as corrections, law enforcement, construction, and firefighting, to name just a few, was for decades barred by state "protective laws" that deemed such work too strenuous or dangerous for women to perform. *See*, *e.g*., Jo Freeman, "The Revolution for Women in Law and Public Policy," in Jo Freeman, ed., *Women: A Feminist Perspective*, 5th ed., at 356-404 (Mountain View, CA: Mayfield, 1995). Indeed, for decades prior to Title VII's passage, women's formal exclusion from various fields for which they were considered unsuited enjoyed the Supreme Court's imprimatur. *See, e.g., Goesaert v. Cleary*, 335 U.S. 464, 466 (1948) (upholding state law preventing women from working as bartenders unless their husband or father owned the bar, because "the oversight assured through [such] ownership . . . minimizes hazards that may

confront a barmaid without such protecting oversight"); *Muller v. Oregon*, 208 U.S. 412, 421 (1908) (sustaining state maximum-hours law for women laundry workers because "woman's physical structure and the performance of maternal functions place her at a disadvantage in the struggle for subsistence"); *Bradwell v. State*, 83 U.S. 130, 141 (1872) (Bradley, J., concurring) (in approving under the due process clause Illinois' law against admitting women to practice law, observing that "[t]he natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life"). The literal segregation of the labor force into "women's work" and "men's work" perhaps was brought into sharpest relief by newspapers' separating job advertisements by sex, a practice that persisted even after Title VII's enactment. *See Am. Newspaper Publishers Ass'n v. Alexander*, 294 F. Supp. 1100 (D.D.C. 1968).

Consequently, the earliest Title VII decisions sought to dismantle the most overt barriers to women's opportunities, such as by adopting a narrow reading of the statute's bona fide occupational qualification (BFOQ) exception. *See, e.g.*, *Rosenfeld v. S. Pac. Co.*, 444 F.2d 1219 (9th Cir. 1971) (striking down employer policy prohibiting women from becoming station agents due to job's physical demands); *Diaz v. Pan Am. World Airways, Inc.*, 442 F.2d 385 (5th Cir. 1971) (finding airline's women-only rule for flight attendants unlawful discrimination);

Weeks v. S. Bell Tel. & Tel. Co., 408 F.2d 228 (5th Cir. 1969) (prohibiting employer policy against women working as switchmen on grounds that job required heavy lifting). *See also City of L.A. Dep't of Water & Power v. Manhart*, 435 U.S. 702 (1978) (invalidating employer's policy requiring greater pension contributions by female employees based on actuarial data showing longer life expectancy).

Equally critical, however, were the disparate impact challenges to employer policies that, while facially neutral, operated to reify underlying sex stereotypes and keep certain jobs virtually male-only. *See*, *e.g.*, *Dothard v. Rawlinson*, 433 U.S. 321 (1977) (height and weight minimums for prison guards); *Chrisner*, *supra* (trucking company requirement that drivers have two years' experience and/or completed truck driving school); *Blake v. City of Los Angeles*, 595 F.2d 1367 (9th Cir. 1979) (height and weight requirements for police officers); *Berkman v. City of New York*, 536 F. Supp. 177 (E.D.N.Y. 1982) (fire department physical entrance exam). *See also* Yiyang Wu, *Scaling the Wall and Running the Mile: The Role of Physical Selection Procedures in the Disparate Impact Narrative*, 160 U. Penn. L. Rev. 1195, 1212-13 n.82 (2012) (noting that more than half of the legal challenges to police and fire departments' physical exams between 1977 and 2012 were successful).

Such challenges to neutral-but-discriminatory practices remain vital today. *See, e.g.*, *Ernst v. City of Chicago*, 837 F.3d 788 (7th Cir. 2016) (reversing bench trial verdict in favor of city in challenge to physical abilities test for fire department paramedics); *EEOC v. Dial Corp.*, 469 F.3d 735 (8th Cir. 2006) (invalidating strength test for sausage factory workers). *See also* Press Release, Off. of Pub. Affairs, U.S. Dep't of Justice, "Justice Department Files Lawsuit Against Corpus Christi, Texas Police Department for Sex Discrimination" (July 3, 2012), https://www.justice.gov/opa/pr/justice-department-files-lawsuit-against-corpus-christi-texas-police-department-sex (physical ability test for police officers).

As to corrections specifically, women today comprise just 30 percent of all "bailiffs, correctional officers, and jailers." Bureau of Labor Statistics, Household Data, Annual Averages, Table 11, "Employed Persons by Detailed Occupation, Sex, Race, and Hispanic or Latino Ethnicity" (2016), https://www.bls.gov/cps/cpsaat11.htm. Predictably, then, women like Legg will continue to function as one of just a few, if not the only, woman in a correctional environment. Policies such as Ulster County's are part and parcel of the

architecture that bars women's access to such jobs,[6] necessitating this Court's robust interpretation of disparate impact principles.

2. Pregnancy poses distinct barriers to women in law enforcement, including corrections, warranting close inspection of neutral policies that disadvantage pregnant officers.

While the District Court acknowledged that Legg was not required to present statistics in order to satisfy her *prima facie* burden, *Legg*, 2017 WL 3207754, at *9, it nevertheless resorted to punitive head-counting in measuring the impact of Ulster County's policy – specifically, by citing evidence that Legg, as well as two of her colleagues, worked full-duty into their third trimesters. *Id.* Notwithstanding the court's willful ignorance that Legg was forced to do so because Ulster County told her the only alternative was to lose all but a fraction of her paycheck for the duration of her pregnancy[7] – the court grossly underestimated that because of the real physical dangers posed to pregnancy by law enforcement work, as more

[6] This is not to suggest that ubiquitous, intentional discrimination does not also still pose a pernicious barrier. The $400,000 jury verdict below on Cross-Appellant/Cross-Appellee Patricia Watson's hostile work environment claim, JA 1181-82, offers just one such illustration.

[7] The District Court discredited the letter from Legg's doctor advising that Legg should not have contact with inmates because the same doctor wrote a subsequent letter clearing Legg to work full duty. *Legg*, 2017 WL 3207754, at *9 n.5. However, nothing changed about Legg's physical condition between the first and second notes – the intervening factor was Legg's supervisor told her that if she wanted to keep working she would have to produce a "revised doctor's letter" saying she was "ebel [*sic.*] to work full active duty." JA-000117:4-16. Legg testified at trial about the economic consequences of not working. JA-000134:11-25 (disability benefits reduced biweekly income by $600 to $700).

women gain entry to Ulster County's environment, their need for light duty (and the effect of harm inflicted by its denial) will only increase.[8]

Indeed, the District Court's decision fails to even address the significance of the dormitory fight between inmates, to which Legg was physically unable to respond, and which landed her in the medical unit, ultimately causing her to stop working. JA-000130-134. The risks inherent to working in close contact with inmates is clear not only from the dormitory fight, but also from Legg's trial testimony that she could not move around quickly or run, had difficulty getting out of a chair, and was concerned about working directly with inmates. JA-000128:6-23. Legg's apprehension makes sense given the inherent risks of working inside the facility. *See* JA-000191-92 (at the jail during the year Legg was pregnant there were 155 instances of inmate assaults on other inmates, 14 instances of inmate assaults on jail staff; 171 instances of abusive language or threats; and 34 instances

[8] It is well-settled that disparate impact can be found even among small sample sizes where the negative effect of a policy will predictably reoccur. *See, e.g.*, *Craig v. Alabama State Univ.*, 804 F.2d 682, 687 n.7 (11th Cir. 1986) (statistical proof not required in Title VII case if plaintiff offers evidence "to show that a facially neutral policy must *in the ordinary course* have a disparate impact on a protected group of which an individual plaintiff is a member") (emphasis added) (quoting *Mitchell v. Bd. of Trustees of Pickens Cty.*, 599 F.2d 582, 585 n.7 (4th Cir. 1979)); *Lewis v. N.Y. City Transit Author.*, 12 F. Supp. 3d 418, 447 (E.D.N.Y. 2014) (finding transit agency's ban on headwear had disparate impact where only four Muslim women and one Sikh man were affected because reasonable jury could conclude that any other Muslim or Sikh employees who donned head coverings would be subject to the same impact). *See also Hack v. President & Fellows of Yale Coll.*, 237 F.3d 81, 98 (2d Cir. 2000) ("A prima facie case of disparate impact housing discrimination is established by showing that a particularly facially-neutral practice actually or *predictably* imposes a disproportionate burden upon members of the protected class.") (emphasis added).

of throwing liquid at an officer or other inmate). Sheriff Van Blarcum confirmed the relative safety of light-duty work: employees on light duty "don't have inmate contact. They're not going to have [to] wrestle around with an inmate." JA-000174:1-2.

Legg's experience reflects the reality that pregnant law enforcement officers may be exposed to a number of occupational hazards that can jeopardize their health and pregnancy, including blunt trauma, falls, and other traumatic events. Fabrice Czarnecki, *The Pregnant Officer*, 3 Clinics Occupational & Envtl. Med. 641 (2003). Pregnant officers may need to avoid inmate contact due to the risk of physical confrontation and close contact that increases the risk of transmission of infectious diseases like HIV, hepatitis, or tuberculosis. Because pregnant officers may not have their full capacity, they should not be mandated to stop a crime. *Id.* It is recommended that pregnant officers be encouraged to involve their personal physicians in determining safety risks and solutions and be accommodated with light duty assignments. *Id.*

It is not only law enforcement officers who may need accommodations at work during pregnancy. Indeed, more than half of pregnant women need them, particularly those working in dangerous or physically demanding jobs. *Listening to Mothers: The Experience of Expecting and New Mothers in the Workplace*, National Partnership for Women & Families (2014),

http://www.nationalpartnership.org/research-library/workplace-fairness/pregnancy-discrimination/listening-to-mothers-experiences-of-expecting-and-new-mothers.pdf (majority of women reported they needed work accommodations during pregnancy); *It Shouldn't be a Heavy Lift: Fair Treatment for Pregnant* Workers, National Women's Law Center and A Better Balance, 5 (2013), https://www.nwlc.org/sites/default/files/pdfs/pregnant_workers.pdf ("Pregnant workers in physically demanding, inflexible, or hazardous jobs are particularly likely to need accommodations at some point during their pregnancies to continue working safely.") Working conditions that can cause stress, blunt force to the abdomen, or other trauma are more risky during pregnancy, and could jeopardize the health of the mother and pregnancy. *See, e.g.*, Vern L. Katz, MD, *Work and Work-related Stress in Pregnancy*, Clinical Obstetrics and Gynecology, http://journals.lww.com/clinicalobgyn/Abstract/2012/09000/Work_and_Work_related_Stress_in_Pregnancy.21.aspx (work that is stressful, physically, psychologically, or both has deleterious effects on pregnancy, including risk of miscarriage, preterm labor, preterm birth, low birth weight, and preeclampsia); Mirza FG, *et al.*, *Trauma in Pregnancy: a systematic approach*, 27 Am. J. Perinatology 579-86 (2010), https://www.ncbi.nlm.nih.gov/pubmed/20198552 (maternal falls, assaults, and gunshots are amongst the leading causes of trauma in

pregnancy, which is one of the major contributors to maternal and fetal morbidity and mortality).

Pregnant employees who need light duty or other accommodations that are not available to them may nonetheless choose to continue working out of economic necessity, but this does warrant the conclusion that an accommodation would have been preferable. In fact, women who need accommodations often do not request them, whether out of fear of refusal, negative repercussions, or other uncertainty about how their request would be received. *See Listening to Mothers* (providing percentages of women who do not ask for the accommodations they believe they need, ranging from 26 percent to 46 percent depending on type of accommodation needed).

The same reasoning might explain why the other two pregnant women working for Ulster County did not request accommodations and worked until they were seven months pregnant. JA-000209:21-23. Regardless, the fact that these other pregnant officers did not request light duty cannot support the conclusion that they did not *need* light duty where the very terms of Ulster County's policy exclude pregnant officers. *See Dothard*, 433 U.S. at 330 (court did not require evidence of job applicants' height and weight in disparate impact case challenging such standards "since otherwise qualified people might be discouraged from

applying because of a self-recognized inability to meet the very standards challenged as being discriminatory").

The only reasonable conclusion that can be drawn from the trial testimony is that Legg was not fit to safely perform full-duty work involving contact with inmates. Although Legg worked for months in close contact with inmates against her doctor's orders, the inmate fight finally proved too great a scare, and she decided to go out on leave in her seventh month of pregnancy, with significant economic consequences. JA-000132:7-134:25.

The PDA was enacted to protect against precisely the Hobson's Choice that Legg faced. She, like her colleagues hurt on the job, was entitled to have the option of continuing to work in a modified duty capacity for the duration of her pregnancy.

CONCLUSION

For all of the foregoing reasons, the District Court's decision should be reversed, and judgment entered for Appellant Ann Marie Legg.

Dated: January 11, 2018

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because it contains 6,006 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14-point Times New Roman type style.

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CERTIFICATE OF SERVICE FOR ELECTRONIC FILINGS

I hereby certify that on January 11, 2018 I electronically filed the foregoing Brief of *Amici Curiae* American Civil Liberties Union; Center for WorkLife Law; 9to5, National Association of Working Women; A Better Balance; California Women's Law Center; Coalition of Labor Union Women; Equal Rights Advocates; Family Values @ Work; Gender Justice; Legal Aid at Work; Legal Momentum; Legal Voice; National Center on Women & Policing; National Employment Lawyers Association; NELA/NY; National Employment Law Project; National Organization for Women Foundation; National Partnership for Women & Families; National Women's Law Center; Southwest Women's Law Center; Women Employed; Women's Law Center of Maryland, Inc. and Women's Law Project in Support of Plaintiff-Appellant Ann Marie Legg, with the United States Court of Appeals for the Second Circuit by using the appellate CM/ECF system. I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

APPENDIX A: INTEREST OF *AMICI CURIAE*

The **American Civil Liberties Union** (ACLU) is a nationwide, nonprofit, nonpartisan organization with more than 1.6 million members dedicated to the principles of liberty and equality embodied in the Constitution and our nation's civil rights laws. The ACLU, through its Women's Rights Project, has long been a leader in legal advocacy aimed at ensuring women's full equality and ending discrimination against women in the workplace, including pregnancy discrimination.

The **Center for WorkLife Law** (WorkLife Law) at the University of California, Hastings College of the Law is a national research and advocacy organization widely recognized as a thought leader on the issues of work-family conflict, work accommodations for pregnant and breastfeeding employees, and family responsibilities discrimination. WorkLife Law collaborates with employers, employees, and lawyers representing both constituencies to ensure equal treatment in the workplace for pregnant women, nursing mothers, and other caregivers.

9to5, National Association of Working Women (9to5) is a national membership organization of women in low-wage jobs dedicated to achieving economic justice and ending discrimination. 9to5's members and constituents are directly affected by workplace discrimination, including pregnancy discrimination, and poverty, among other issues. They experience first-hand the long-term

negative effects of discrimination on economic well-being, and the difficulties of seeking and achieving redress. 9to5's toll-free Job Survival Hotline fields thousands of phone calls annually from women facing these and related problems in the workplace. The issues of this case are directly related to 9to5's work to end workplace discrimination and our work to promote policies that aid women in their efforts to achieve economic self-sufficiency. The outcome of this case will directly affect our members' and constituents' rights in the workplace and their long-term economic well-being and that of their families.

A Better Balance is a national legal advocacy organization based in New York, NY and Nashville, TN dedicated to promoting fairness in the workplace and helping employees meet the conflicting demands of work and family. Through legislative advocacy, litigation, research, and public education, A Better Balance is committed to helping workers care for their families without risking their economic security. A Better Balance has been actively involved in advancing the rights of pregnant and breastfeeding women in the workplace. The organization runs a legal clinic in which the discriminatory treatment of pregnant women can be seen firsthand.

The **California Women's Law Center** (CWLC) is a statewide, nonprofit law and policy center dedicated to advancing the civil rights of women and girls through impact litigation, advocacy and education. CWLC's issue priorities

include gender discrimination, reproductive justice, violence against women, and women's health. Since its inception in 1989, CWLC has placed an emphasis on eliminating all forms of gender discrimination, including discrimination against pregnant and breastfeeding women. CWLC remains committed to supporting pregnancy rights and accommodations in the workplace.

The **Coalition of Labor Union Women** is a national membership organization based in Washington, DC with chapters throughout the country. Founded in 1974 it is the national women's organization within the labor movement which is leading the effort to empower women in the workplace, advance women in their unions, encourage political and legislative involvement, organize women workers into unions and promote policies that support women and working families. During our history we have fought against discrimination in all its forms, particularly when it stands as a barrier to employment or is evidenced by unequal treatment in the workplace or unequal pay.

Equal Rights Advocates (ERA) is a national women's advocacy organization based in San Francisco, California. Founded in 1974, ERA's mission is to protect and expand economic and educational access and opportunities for women and girls. ERA employs a three-pronged approach to achieving its mission: public education, policy advocacy, and litigation. ERA is committed to assisting working women who face a myriad of workplace challenges. In

furtherance of that objective, ERA has been involved in historic impact litigation, including two of the first pregnancy discrimination cases heard by the U.S. Supreme Court, Geduldig v. Aiello, 417 U.S. 484 (1974) and Richmond Unified Sch. Dist. v. Berg, 434 U.S. 158 (1977), as well as the more recent AT&T Corp. v. Hulteen, 556 U.S. 701 (2009). ERA also served as amicus curiae in Young v. UPS, 135 S. Ct. 1338 (2015). ERA's nationwide multi-lingual hotline serves hundreds of women every year and helps them navigate these challenges. Calls from workers facing pregnancy discrimination are on the rise, and ERA has a strong interest in ensuring that women are adequately protected by a fair application of the Pregnancy Discrimination Act (PDA) by courts.

Family Values @ Work is a national network of 27 state and local coalitions helping spur the growing movement for family-friendly workplace policies such as paid sick days and family leave insurance. Too many people have to risk their job to care for a loved one, or put a family member at risk to keep a job. We're made to feel that this is a personal problem, but it's political – family values too often end at the workplace door. We need new workplace standards to meet the needs of real families today. The result will be better individual and public health, and greater financial security for families, businesses and the nation. Our coalitions represent a diverse, nonpartisan group of more than 2,000 grassroots organizations, ranging from restaurant owners to restaurant workers, faith leaders

to public health professionals, think tanks to activists for children, seniors and those with disabilities.

Gender Justice is a non-profit advocacy organization based in the Midwest that works to eliminate gender barriers through impact litigation, policy advocacy, and education. Gender Justice helps courts, employers, schools, and the public better understand the root causes of gender discrimination, such as implicit bias and stereotyping. As part of its impact litigation program, Gender Justice acts as counsel in cases involving gender equality in the Midwest region, including providing direct representation of pregnant employees and new parents facing discrimination in the workplace. Gender Justice also participates as amicus curiae in cases that have an impact in the region. The organization has an interest in protecting and enforcing women's legal rights in the workplace, and in the proper interpretation of the Civil Rights Act of 1964 and the Pregnancy Discrimination Act of 1978.

Legal Aid at Work (formerly Legal Aid Society-Employment Law Center) is a public interest legal organization that advances justice and economic opportunity for low-income people and their families at work, in school, and in the community. Since 1970, Legal Aid at Work has represented low-wage clients in cases involving a broad range of employment-related issues, including discrimination on the basis of race, gender, age, disability, sexual orientation,

gender identity, gender expression, national origin, and pregnancy. Legal Aid at Work has extensive policy experience advocating for the employment rights of pregnant workers and new parents. Legal Aid at Work has a strong interest in ensuring that pregnant workers are granted the full protections of the Pregnancy Discrimination Act and other anti-discrimination laws.

Legal Momentum (formerly NOW Legal Defense and Education Fund) has been at the national forefront of the movement to advance women's rights for more than forty years. As part of this work, Legal Momentum has particularly focused on eliminating unjust barriers to women's economic security, such as pregnancy discrimination. To combat pregnancy discrimination, Legal Momentum advocates through the legal system and in cooperation with government agencies and policy makers. In addition, Legal Momentum routinely represents women working in nontraditional or low-wage jobs who have been denied light duty positions while pregnant, including appearing as amicus curiae in Young v. UPS, 135 S. Ct. 1338 (2015). It is Legal Momentum's position that interpreting the Pregnancy Discrimination Act to require employers to accommodate pregnant workers when such accommodations are available to other workers is vital to eradicating pregnancy-based workplace discrimination.

Legal Voice is a non-profit public interest organization that works to advance the legal rights of women in the Pacific Northwest through public impact

litigation, legislation, and legal rights education. Since its founding in 1978, Legal Voice has been dedicated to protecting and expanding women's legal rights. Toward that end, Legal Voice has pursued legislation and has participated as counsel and as amicus curiae in cases throughout the Northwest and the country, advocating for robust interpretation and enforcement of anti-discrimination and other laws protecting working women. Legal Voice serves a regional expert on the laws and policies impacting women in the workplace, including sex discrimination in the workplace, pregnancy discrimination, caregiver discrimination, and family leave policies.

The **National Center for Women & Policing** (NCWP), founded in 1995, promotes increasing the numbers of women at all ranks of law enforcement and educates criminal justice policy makers and the public about the impacts of increasing the representation of women in policing. To carry out these aims, NCWP engages in research and public policy development, public education programs, and leadership development programs for recruiting and retaining more women in law enforcement. In conjunction with its parent organization, the Feminist Majority Foundation, NCWP has filed numerous briefs amicus curiae in the United Sates Supreme Court, the federal circuit courts, and appellate courts to advance opportunities for women in law enforcement agencies strive for gender balancing their departments.

The **National Employment Lawyers Association** (NELA) is the largest professional membership organization in the country comprising lawyers who represent workers in labor, employment, and civil rights disputes. Founded in 1985, NELA advances employee rights and serves lawyers who advocate for equality and justice in the American workplace. NELA and its 69 circuit, state, and local affiliates have a membership of over 4,000 attorneys who are committed to working on behalf of those who have been treated unlawfully in the workplace. NELA's members litigate daily in every circuit, affording NELA a unique perspective on how the principles announced by the courts in employment cases actually play out on the ground. NELA strives to protect the rights of its members' clients, and regularly supports precedent-setting litigation affecting the rights of individuals in the workplace.

NELA/NY is the New York affiliate of the National Employment Lawyers Association, a national bar association dedicated to the vindication of the rights of individual employees. NELA is the nation's only professional organization comprised exclusively of lawyers who represent individual employees. NELA has over 4,000 member attorneys and 69 state and local affiliates who focus their expertise on employment discrimination, employee compensation and benefits and other issues arising out of the employment relationship. With approximately 400 members, NELA/NY is NELA's second largest affiliate. NELA/NY advances and

encourages the professional development of its members through networking, educational programs, publications and technical support. NELA/NY also promotes the workplace rights of individual employees through legislation, a legal referral service, filing briefs as amicus curiae and other activities, with an emphasis on the special challenges presented by New York's employment laws. NELA/NY is dedicated to advancing the rights of individual employees to work in an environment that is free of discrimination, harassment, and retaliation. Our members advance these goals through representation of employees who have been discriminated and retaliated against. NELA/NY has filed numerous amicus briefs in this Court and the New York State Court of Appeals in cases that raise important questions of anti-discrimination law. The aim of this participation has been to highlight the practical effects of legal decisions on the lives of working people.

The **National Employment Law Project** (NELP) is a nonprofit organization based in New York City with more than 45 years of experience advocating for the employment and labor rights or low wage and unemployed workers. NELP seeks to ensure that all employees, especially the most vulnerable, receive the full protection of labor and employment laws, including protections against discrimination, regardless of an individual's status. NELP program priorities include the rights of vulnerable workers like the plaintiff in this case. NELP's also prioritizes work equity and ensuring that workers are not

discriminated against due to their race, sex, gender, sexual orientation or other status. NELP has litigated and participated as amicus curiae in numerous cases in circuit and state and U.S. Supreme Courts addressing the importance of equal access to labor and unemployment protections for all workers.

The **National Organization for Women** (NOW) **Foundation** is a 501 (c)(3) entity affiliated with the National Organization for Women, the largest grassroots feminist activist organization in the United States with chapters in every state and the District of Columbia. NOW Foundation is committed to advancing women's health and reproductive rights, among other objectives, and works to assure that women are treated fairly and equally under the law. Discrimination by employers against pregnant workers is pervasive despite the 1978 Pregnancy Discrimination Act and the U.S. Supreme Court's 2015 decision in Young v. United Parcel Service, Inc. Accommodation claims by pregnant workers must not be made onerous and appellate court rulings that instruct lower courts to follow Young's pleading and liability standards are needed. This is particularly important for pregnant workers whose work responsibilities entail physical requirements that may invite temporary work-related limitations that often result in discriminatory treatment by employers.

The **National Partnership for Women & Families** (formerly the Women's Legal Defense Fund) is a national advocacy organization that promotes fairness in the workplace, reproductive health and rights, quality health care for all, and policies that help women and men meet the dual demands of their jobs and families. Since its founding in 1971, the National Partnership has worked to advance women's equal employment opportunities and health through several means, including by challenging discriminatory employment practices in the courts. The National Partnership has fought for decades to combat sex discrimination, including on the basis of pregnancy, and to ensure that all people are afforded protections against discrimination under federal law.

The **National Women's Law Center** is a nonprofit legal advocacy organization dedicated to the advancement and protection of women's legal rights and opportunities since its founding in 1972. The Center focuses on issues of key importance to women and their families, including economic security, employment, education, health, and reproductive rights, with special attention to the needs of low-income women and women of color, and has participated as counsel or amicus curiae in a range of cases before the Supreme Court and the federal Courts of Appeals to secure the equal treatment of women under the law, including numerous cases addressing the scope of Title VII's protections. The Center has long sought to ensure that rights and opportunities are not restricted on

the basis of pregnancy and gender stereotypes, and that all individuals enjoy the protection against such discrimination promised by federal law.

The **Southwest Women's Law Center** is a non-profit policy and advocacy Law Center that was founded in 2005 with a focus on advancing opportunities for women and girls in the state of New Mexico. We work to ensure that women have equal access to programs and opportunities to help ensure they can adequately care for their families. The Southwest Women's Law Center has been a strong advocate for pregnant worker accommodations in the workplace for many years. Accordingly, the Law Center is uniquely qualified to comment on the decision in Legg v. Ulster County.

Women Employed's mission is to improve the economic status of women and remove barriers to economic equity. Since 1973, the organization has assisted thousands of working women with problems of discrimination and harassment, monitored the performance of equal opportunity enforcement agencies, and developed specific, detailed proposals for improving enforcement efforts, particularly on the systemic level.
Women Employed is committed to protecting fair treatment of all working women, including workers who are pregnant and need an accommodation to allow them to keep working and have healthy pregnancies.

The **Women's Law Center of Maryland, Inc.** is a nonprofit membership organization established in 1971 with a mission of improving and protecting the legal rights of women, especially regarding gender discrimination in the workplace and in family law issues. Through its direct services and advocacy, and in particular through the operation of a statewide Employment Law Hotline, the Women's Law Center seeks to protect women's legal rights and ensure equal access to resources and remedies under the law. The Women's Law Center is participating as an amicus in Legg v. Ulster County because this brief is in line with the Women's Law Center's mission to eradicate pregnancy discrimination.

The **Women's Law Project** (WLP) is a non-profit legal advocacy organization with offices in Philadelphia and Pittsburgh, Pennsylvania. Founded in 1974, the WLP is dedicated to creating a more just and equitable society by advancing the rights and status of women through high-impact litigation, advocacy, and education. Throughout its history, the WLP has worked to eliminate sex discrimination by bringing and supporting litigation challenging discriminatory practices prohibited by federal civil rights laws. Through its telephone counseling service and direct legal representation, the WLP assists women who have been victims of pregnancy discrimination, including women who have been denied accommodations in the workplace. The WLP has a strong interest in the proper

application of the Title VII of the Civil Rights Act of 1964, as amended by the Pregnancy Discrimination Act, to ensure equal treatment in the workplace.