

No. 24-10386

**In the United States Court of Appeals
for the Fifth Circuit**

STATE OF TEXAS,

Plaintiff-Appellee,

v.

PAMELA BONDI, U.S. Attorney General, in her official capacity as United
States Attorney General, et al.,

Defendants-Appellants.

On appeal from the United States District Court for the
Northern District of Texas (Case No. 5:23-cv-00034-H)

**AMICUS BRIEF OF THE AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES IN SUPPORT OF
DEFENDANTS-APPELLANTS**

CALLIE DYDO
MCGILLIVARY STEELE ELKIN LLP
1101 Vermont Ave. NW, Suite 1000
Washington, DC 20005
(202) 292-1829
CED@mselaborlaw.com

TEAGUE PATERSON
MATTHEW BLUMIN
GEORGINA YEOMANS
AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES,
AFL-CIO (AFSCME)
1625 L Street, N.W.
Washington, D.C. 20036
(202) 775-5900
Counsel for Amicus Curiae

CERTIFICATE OF INTERESTED PERSONS AND DISCLOSURE STATEMENT

Undersigned counsel certifies that, in addition to the named parties, their counsel, and prior *amici*, the following listed persons and entities as described in Fifth Circuit Rule 28.2.1 have an interest in the outcome of this case.

- American Federation of State, County and Municipal Employees
- Counsel for amicus curiae:
 - Matthew Blumin
 - Callie Dydo
 - Teague Paterson
 - Georgina Yeomans
 - McGillivary Steele Elkin LLP

Pursuant to Federal Rule of Appellate Procedure 26.1, Amicus Curiae American Federation of State, County and Municipal Employees discloses that it is a national labor organization and unincorporated membership association headquartered in Washington, D.C. It is the largest trade union of public service employees in the United States. It has no parent corporation and no publicly held company owns 10% or more of its stock.

Dated: February 20, 2026

Respectfully submitted,

/s/ Georgina Yeomans
Georgina Yeomans

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	iii
INTEREST OF AMICUS CURIAE	1
INTRODUCTION	2
ARGUMENT	3
I. Enjoining PWFA enforcement inflicts irreparable harm on state employees, including many who are essential to public safety, as well as their families. .3	
<i>a. Delia</i>	4
<i>b. Kara</i>	7
<i>c. Sofia</i>	10
II. The PWFA is essential to maintaining safe workplaces for pregnant workers, especially those in public safety jobs.	12
<i>a. Pregnancy in the Workforce</i>	12
<i>b. The Need for the PWFA</i>	14
<i>c. The PWFA’s benefits</i>	16
CONCLUSION.....	21
CERTIFICATE OF SERVICE	23
CERTIFICATE OF COMPLIANCE	24

TABLE OF AUTHORITIES

Cases

<i>Gen. Elec. Co. v. Gilbert</i> , 429 U.S. 125 (1976).....	14
--	----

Statutes

29 U.S.C. § 2601.....	14
29 U.S.C. § 2612.....	14, 15
42 U.S.C. §2000e.....	14
42 U.S.C. § 2000gg-1.....	7, 10
42 U.S.C. § 2000gg-2.....	10
42 U.S.C. § 12102.....	15
42 U.S.C. § 12112.....	15

Regulations

28 C.F.R. § 115.15.....	3
29 C.F.R. § 1636.3.....	6, 7, 9, 10
29 C.F.R. pt. 1636, app’x A (2024).....	11

Other Authorities

Brady E. Hamilton et al., Nat’l Ctr. for Health Statistics, <i>Vital Statistics Rapid Release No. 012, Births: Provisional Data for 2020</i> (2021).....	20
Brady E. Hamilton et al., Nat’l Ctr. for Health Statistics, <i>Vital Statistics Rapid Release No. 38, Births: Provisional Data for 2024</i> (2025).....	20
Brianna L. Eaton, <i>Pregnancy Discrimination: Pregnant Women Need More Protection in the Workplace</i> , 64 S.D. L. Rev. 244 (2019).....	13

Caroline Kitchener, <i>White House Assesses Ways to Persuade Women to Have More Children</i> , N.Y. Times (Apr. 21, 2025).....	20
David Cooper & Julia Wolfe, <i>Cuts to the State and Local Public Sector Will Disproportionately Harm Women and Black Workers</i> , Econ. Pol’y Inst. (July 9, 2020).....	13
Deborah Widiss, <i>The Federal Pregnant Workers Fairness Act: Statutory Requirements, Regulations, and Need (Especially in Post-Dobbs America)</i> , 27 Emp. Rts. & Emp. Pol’y J. 84 (2024).....	14, 16, 18
<i>Fighting for Fairness: Examining Legislation to Confront Workplace Discrimination</i> , Hearing of the H. Comm. on Educ. & Lab., Subcomm. on Civil Rights & Human Servs. & Subcomm. on Workforce Protections, 117th Cong. 18 (2021).....	19
Harvard Med. Sch., <i>Mastitis: What to Do When Your Breasts Are Painfully Inflamed</i> (May 5, 2025).....	9
H.R. 2694, <i>Pregnant Workers Fairness Act</i> , Cong. Budget Off. (Sept. 9, 2020).....	19
Jessica Pac & Alejandra Ros Pilarz, <i>Do Workplace Pregnancy Accommodations Affect Births? Evidence from the 2022 Pregnant Workers Fairness Act</i> (Sept. 18, 2025).....	21
<i>Long Over Due: Exploring the Pregnant Workers’ Fairness Act (H.R. 2694)</i> , Hearing Before the Subcomm. on Civil Rights & Human Servs. of the H. Comm. on Educ. & Lab., 116th Cong. 7 (2019).....	15, 17, 19, 20
Maleaha A. Brown, <i>The Unfair Choice: A Call for Reasonable Accommodations for Pregnant Workers</i> , 1 How. Hum. & Civ. Rts. L. Rev. 133 (2016–2017).....	13, 15, 16, 17 18
Morgan Harwood & Sarah David Heydemann, Nat’l Women’s Law Ctr., <i>By the Numbers: Where Do Pregnant Women Work?</i> (Aug. 2019).....	2
Nat’l PREA Resource Ctr., <i>Frequently Asked Questions</i> (Feb. 7, 2013).....	18

Pooja Salhotra, *Texas Prison System’s Staffing Crisis and Outdated Technology Endanger Guards and Inmates*, Tex. Trib. (Oct. 1, 2024).....17

Ryan Chandler, *Texas Prison “Staffing Crisis” Harms Public Safety, Lawmakers Say*, KXAN (Nov. 9, 2024).....18

Stephanie Bornstein, *The Politics of Pregnancy Accommodation*, 14 Harv. L. & Pol’y Rev. 293 (2020).....15

Texas Dep’t of Crim. Just., *Unit Directory*.....2

The Unfair Choice; Economic Security for Working Women: A Roundtable Discussion, Hearing of the S. Comm. on Health, Educ., Labor & Pensions, 113th Cong. 2 (2014).....17

UpToDate, *Patient Education: Pumping Breast Milk (Beyond the Basics)* (Sept. 25, 2025).....9

INTEREST OF AMICUS CURIAE¹

The American Federation of State, County and Municipal Employees (“AFSCME”) is a union of approximately 1.4 million members employed in the public service across the nation. The vast majority of AFSCME members work in the public sector for state and local government employers in all manner of professions providing essential public services, often in dangerous situations or under extreme conditions.

AFSCME’s membership includes nearly 10,000 members of AFSCME’s Texas Correctional Employees Council (“TCEC”), which represents Texas state employees who work for the Texas Department of Criminal Justice (“TDCJ”) as correctional officers, administrative clerks, maintenance staff, food services staff, laundry managers, and parole officers. Nearly half of TCEC’s members are female. TCEC’s members lost their Pregnant Workers Fairness Act (“PWFA”) protections as a direct consequence of the injunction under review in this case. AFSCME has a strong interest in its members’ continued protection under the PWFA, which strengthens their ability to perform and remain serving in their critical public safety positions.

¹ No party’s counsel authored this brief in whole or in part. No party, party’s counsel, or any person other than amicus curiae or their counsel contributed money toward this brief. No party opposes the filing of this brief.

INTRODUCTION

A safe and accommodating workplace is essential to public workers and to the communities they serve. Without the protections of the PWFPA, pregnant Texas state employees may be forced to choose between their employment and their pregnancy, with the result often pushing pregnant workers out of their jobs at a time when they most need their income and health benefits.²

Pregnant workers are most likely to be employed in public service and caretaking roles, jobs that are essential parts of our community.³ The people in these roles, who keep our communities safe, deserve to be able to work safely and comfortably during their pregnancy. AFSCME's members who work as correctional officers and other corrections personnel in Texas are no exception.

The injunction at issue applies to all employees of the State of Texas, meaning it has a direct impact on thousands of critical public safety employees, including on AFSCME's TCEC members. Nearly half of TCEC's membership is female and many work in TDCJ's twelve female-only prisons.⁴ Under the Prison Rape Elimination Act ("PREA"), these prisons "shall not conduct cross-gender

² Morgan Harwood & Sarah David Heydemann, Nat'l Women's Law Ctr., *By the Numbers: Where Do Pregnant Women Work?* (Aug. 2019), <https://nwlc.org/wp-content/uploads/2019/08/Pregnant-Workers-by-the-Numbers-v3-1.pdf>.

³ *Id.* at 2.

⁴ Texas Dep't of Crim. Just., *Unit Directory*, https://www.tdcj.texas.gov/unit_directory/

strip searches” and must take other related precautions concerning sensitive cross-gender interactions, 28 C.F.R. § 115.15, meaning recruitment and retention of female corrections officers is essential. In AFSCME’s firsthand experience, these female correctional officers are equally capable and high-performing as their male counterparts, and have risen through the ranks of TDCJ to become correctional unit wardens, majors, captains, and lieutenants.

Since the district court entered its injunction, state employees in Texas have been without the protections of the PWFA. As a direct consequence of the injunction, AFSCME members performing critical public safety jobs have been harmed at work. AFSCME submits this brief to underscore how Texas state employees’ inability to enforce their PWFA rights has hurt pregnant workers and endangered the health of their pregnancies, to illustrate the irreparable injury that AFSCME’s members are suffering each day the PWFA is not enforceable, and to highlight the negative impact on public safety that results.

ARGUMENT

I. Enjoining PWFA enforcement inflicts irreparable harm on state employees, including many who are essential to public safety, as well as their families.

AFSCME has as members nearly 10,000 employees of the Texas Department of Criminal Justice, who perform critical public safety jobs as correctional officers, administrative clerks, maintenance staff, food services staff,

laundry managers, and parole officers. Many of these public service workers and their families will be, or already have been, harmed by an injunction constraining enforcement of the PWFA. The experiences of individual union members illustrate the irreparable harm to AFSCME members each day they cannot enforce their PWFA rights. Their experiences span the full range of protections the PWFA was meant to afford, from offering low-cost and common-sense accommodations like bathroom breaks to pregnant workers, to ensuring that workers do not have to endanger their own lives or their pregnancies for fear of losing their jobs. These stories are merely demonstrative of the widespread harm that the PWFA was meant—but is currently powerless—to prevent on behalf of Texas state employees.

a. Delia⁵

Delia is a correctional officer employed by TDCJ at Rogelio Sanchez State Jail (“Sanchez”) in El Paso, Texas. She was hired to work the night shift around four years ago. In February 2025, Delia gave birth to her baby after working, with limited accommodation and with great difficulty, throughout her entire pregnancy. Had the PWFA not been enjoined during that time, Delia would have benefited from its protections.

A typical shift for Delia constitutes twelve to sixteen hours “on the floor,” where she works directly with inmates throughout the facility. Shifts “on the floor”

⁵ Members’ names have been changed to protect their privacy.

require correctional officers to walk throughout the “block” and to conduct frequent headcounts of up to 250 inmates. Delia’s job entails significant amounts of standing and walking and requires her continued presence at her post.

In August 2024, when she was about four months pregnant, Delia’s doctor told her she needed to reduce her long work hours and move to “light duty” to protect her health during her pregnancy. “Light duty” at Sanchez consists of desk work at the front of the jail, including answering phones and completing paperwork. Delia’s doctor issued a note memorializing these recommendations, which Delia shared with Human Resources at TDCJ.

Despite this note, Delia’s supervisors refused to place her on light duty and began to threaten discipline when she asked for accommodations. Her supervisors refused to release her from work for critical doctor’s appointments related to her pregnancy. Delia’s supervisors also continued to order her to travel to other TDCJ facilities, often requiring four to six hours of travel, to facilities with no air conditioning and large amounts of stairs—a feat difficult for Delia during her pregnancy.

In response, Delia’s doctor issued another note, mandating that Delia be exempt from travel assignments during her pregnancy due to the travel distances and difficult conditions at the other facilities. Instead of accommodating these needs, Delia’s supervisors continued to threaten discipline. Delia felt constantly ill

at work. When she asked to be relieved from her post to adhere to her doctor's directives, however, supervisors threatened disciplinary action again and even told Delia's coworkers to refuse to help her. Later in her pregnancy, a supervisor issued written discipline when Delia did not stay at her post to do a headcount—even after a replacement arrived—because she was feeling too sick to work because of her pregnancy, which can be a qualifying medical condition related to pregnancy under the PWFA, 29 C.F.R. § 1636.3(b).

The conditions on the job became so difficult for Delia that she consulted Human Resources, where she was told that her only immediate alternative to full duty was to take a leave of absence. As a result, Delia was forced to take unpaid leave, even as her employer could have offered her light duty. As a result, Delia remained unpaid for three weeks and was forced to file for unemployment insurance to partially offset her lost income.

During her last month of pregnancy, Delia was able to return to work on light duty, as she had requested five months earlier. Still, the warden repeatedly called her a “liability” for being pregnant, and her coworkers were ordered not to help her. Delia felt alienated at work and anxious about her livelihood. Delia's supervisors refused, on many occasions, to grant reasonable, time-limited accommodation requests that were supported by her doctor's recommendations.

Had the PWFA been enforceable during Delia’s pregnancy, she would have been protected against much of her employer’s harmful actions. For example, the PWFA implementing regulations specifically contemplate “assignment to light duty” as a reasonable accommodation. 29 C.F.R. § 1636.3. They likewise contemplate the use of paid or unpaid leave to “attend healthcare appointments.” *Id.* Delia could not have been forced to take unpaid leave when light duty was available because the PWFA prohibits forcing employees to take leave where other reasonable accommodations are possible. 42 U.S.C. § 2000gg-1(4). And the PWFA would have protected her right to recover from childbirth and to engage in important postpartum activities like lactation upon her return to work. *See* 29 C.F.R. § 1636.3(i)(4).

b. Kara

Kara is a Correctional Officer at Young Medical Facility (“Young”) in Dickinson, Texas, and an employee of TDCJ. Kara was a correctional officer at Young for about four years before she learned she was pregnant. Kara’s pregnancy, though free from medical complications, required her to use the restroom frequently.

Shortly after learning she was pregnant, Kara’s supervisor assigned her to assist in the transportation of an inmate to another TDCJ unit that was about a two-hour drive away, and where she would be unable to use the restroom before

making the return trip. TDCJ prohibits officers from making stops during such transfers to account for security concerns.

Kara, aware of this rule, informed her supervisor that because of her pregnancy, she would not be able to make the drive between units without access to a restroom. In response, Kara was sent to the Warden's office, where she again informed supervisory staff of her pregnancy and explained the minor accommodation she needed as a result. The Warden, rather than working with her to find a solution, told Kara she was "incapable" of doing her job and sent her home for the day. The Warden did not allow Kara to return to her normally scheduled post; Kara was not paid for the hours she lost as a result of being sent home; and the Warden initiated disciplinary proceedings against her, placing a letter in her personnel file finding she disobeyed and refused mandatory overtime.

Kara gave birth in October and returned to work in December. When she returned to work, Kara requested a place and time to pump breast milk to feed her infant. Her employer initially agreed to provide that accommodation, but in practice took no steps to allow her to pump. Kara did not receive relief frequently enough, usually just once during a nine-hour shift. Often, her employer would send people to cover for her pumping breaks extremely late, causing issues with her breast milk supply as well as pain and the risk of infection from irregular

pumping.⁶ Because of these hindrances, Kara stopped breastfeeding her baby and switched to formula after three weeks.

Kara would have been entitled to bathroom breaks had the PWFA been in effect. The PWFA's implementing regulations list "breaks for use of the restroom" as an example of a reasonable accommodation, and state that "allowing an employee to take additional restroom breaks, as needed," is a type of accommodation that "in virtually all cases . . . will not impose undue hardship." 29 C.F.R. §§ 1636.3(i)(2) (first quotation), 1636.3(j)(4)(ii) (second quotation). The PWFA also declares that it is unreasonable for an employer to require supporting documentation (such as a doctor's note) when a pregnant employee asks for more frequent bathroom access. *Id.* § 1636.3(l)(1)(iii).

Kara could also not have been required to take leave when the patently reasonable accommodation of bathroom access was available. As discussed above,

⁶ If nursing mothers are denied the opportunity to express milk on a regular schedule, the amount of milk they produce decreases. UpToDate, *Patient Education: Pumping Breast Milk (Beyond the Basics)* (Sept. 25, 2025), <https://www.uptodate.com/contents/pumping-breast-milk-beyond-the-basics> ("To maintain a plentiful milk supply, the two most important factors are breast stimulation and removing milk from the breasts.").

Moreover, waiting too long between expression sessions allows milk to build up in the breast, causing discomfort and risking infection. *See* Harvard Med. Sch., *Mastitis: What to Do When Your Breasts Are Painfully Inflamed* (May 5, 2025), <https://www.health.harvard.edu/womens-health/mastitis-what-to-do-when-your-breasts-are-painfully-inflamed> (noting "missed feedings" as a factor leading to mastitis, a "painful infection of the breast").

the PWFA prohibits forcing employees to take leave when another reasonable accommodation is available. 42 U.S.C. § 2000gg-1(4). And it prohibits retaliation against employees who request reasonable accommodations. *Id.* §§ 2000gg-1(5), 2000gg-2(f).

Finally, the PWFA would have protected Kara’s right to pump at work. *See* 29 C.F.R. § 1636.3(i)(4). But because the PWFA’s enforcement was enjoined as to Texas state employees, Kara was denied the law’s protections.

c. Sofia

Sofia was seven months pregnant and a correctional officer at John Middleton Unit (“Middleton”) in Abeline, Texas—a TDCJ prison—when, in November 2021, she felt pain similar to a contraction while on duty. Sofia called her immediate supervisor, who instructed her to go directly to the hospital. Due to TDCJ policy, however, Sofia could not leave until a replacement for her post arrived.

A few minutes later, another supervisor informed Sofia the Warden would not allow her early departure, and therefore she was not permitted to leave her post. Sofia told the supervisor that she was in severe pain and felt that she needed to go to the hospital immediately, but the supervisor still refused her request. Over a period of several hours, Sofia repeatedly called supervisors informing them that

she was in intense pain and needed to go to the hospital. She waited nearly three hours before a replacement finally arrived.

Sofia then drove to the closest hospital. During the initial exam, doctors were unable to find the baby's heartbeat. She was rushed into surgery to attempt to save the baby but, tragically, the baby was stillborn. Hospital personnel told Sofia that if she had arrived sooner, they would likely have been able to save her child.

Throughout this experience, supervisors repeatedly ignored the urgency of the situation, which ultimately led to the baby's death. Sofia's supervisors minimized Sofia's complaints; refused to grant a reasonable, one-time accommodation; and failed to treat Sofia's condition as a medical emergency. Sofia's story is a somber illustration of how PWFA protections can mean, for some, the difference between life and death.

Sofia's pregnancy ended tragically before the PWFA was signed into law. Had Sofia benefited from the PWFA's protections, the outcome should have been different. The EEOC's interpretive guidance issued shortly after the PWFA went into effect explains that providing an interim reasonable accommodation in response to a sudden-onset limitation or an "emergency" that "makes it unsafe, risky, or dangerous to continue performing the normal tasks of the job" is a "best practice" for compliance. 29 C.F.R. pt. 1636, app'x A ¶¶ 74-75 (2024).

There is no accounting for the callousness that cost Sofia’s baby its life, and no law should have been required to prevent that unnecessary death. But had the PWFA been in effect at the time, Sofia’s request for early release would have been legally protected. Today, Sofia’s story painfully illustrates the need for the PWFA to protect public safety workers like Sofia from suffering the same tragic fate.

II. The PWFA is essential to maintaining safe workplaces for pregnant workers, especially those in public safety jobs.

Failing to enforce the PWFA exposes workers across the state of Texas—including public safety workers like Delia, Kara, and Sofia—to unfair treatment at work. Without the PWFA, employers are beholden only to the inadequate requirements of anti-discrimination statutes preceding the PWFA and often fail to provide reasonable accommodations to their pregnant employees. This forces many pregnant workers to choose between their employment and their health at a time when their paychecks and health insurance are more important than ever.

a. Pregnancy in the Workforce

Women’s representation in the labor market has grown significantly in recent decades, and their responsibility as family breadwinners has grown as well.

Women nonetheless continue to face inequalities in the workplace. Women make up two-thirds of workers in low wage jobs, such as retail, education, health

services, and leisure and hospitality work.⁷ Additionally, the state and local workforces across the country are disproportionately women, constituting 60.1% of the workforce in 2020.⁸ The disproportionality of the wage discrepancies weighs most heavily on women of color, particularly Black and Hispanic women who tend to work in lower-paying jobs.⁹ Lower-wage workers, who have less bargaining power and leverage to demand accommodations, file the majority of pregnancy discrimination claims at the EEOC.¹⁰

Working women thus bear significant financial responsibilities and face inequality in the workplace. These burdens are only exacerbated during pregnancy. Pregnancy-based complaints consistently allege termination, disparate treatment at work, medical exams unrelated to the job, and forced leave.¹¹ Each year, approximately 250,000 pregnant workers are denied pregnancy-related accommodations, the most common of which was simply the ability to take more

⁷ Maleaha A. Brown, *The Unfair Choice: A Call for Reasonable Accommodations for Pregnant Workers*, 1 How. Hum. & Civ. Rts. L. Rev. 133, 137 (2016-2017) (48% retail; 74% education and health services; 51% leisure and hospitality).

⁸ David Cooper & Julia Wolfe, *Cuts to the State and Local Public Sector Will Disproportionately Harm Women and Black Workers* (Econ. Pol’y Inst. July 9, 2020), <https://www.epi.org/blog/cuts-to-the-state-and-local-public-sector-will-disproportionately-harm-women-and-black-workers/>.

⁹ Brown, *supra* note 7, at 137.

¹⁰ *Id.*

¹¹ Brianna L. Eaton, *Pregnancy Discrimination: Pregnant Women Need More Protection in the Workplace*, 64 S.D. L. Rev. 244, 255 (2019).

frequent restroom breaks.¹² As a result, many pregnant workers each year—Delia and Kara included—who need basic, low-cost accommodations are not able to get them and instead are forced to take unpaid leave or face termination.¹³

b. The Need for the PWFA

After pregnancy discrimination was declared to be divorced from sex, and therefore not covered by Title VII as originally enacted, *see Gen. Elec. Co. v. Gilbert*, 429 U.S. 125 (1976), lawmakers attempted to address pregnancy discrimination through the 1978 Pregnancy Discrimination Act (“PDA”). The PDA outlaws discrimination based on pregnancy, childbirth, or related medical conditions, but generally does not require employers to affirmatively accommodate pregnancy-related conditions.¹⁴

Similarly, the federal Family Medical Leave Act (“FMLA”), passed by Congress in 1993, offers limited protection to pregnant and post-partum workers.¹⁵ The FMLA provides certain employees with up to twelve weeks of unpaid, job-protected leave each year.¹⁶ The FMLA, however, fails to cover approximately

¹² Deborah Widiss, *The Federal Pregnant Workers Fairness Act: Statutory Requirements, Regulations, and Need (Especially in Post-Dobbs America)*, 27 *Emp. Rts. & Emp. Pol’y J.* 84, 89–90 (2024).

¹³ *Id.* at 90.

¹⁴ 42 U.S.C. §§ 2000e *et seq.*

¹⁵ 29 U.S.C. §§ 2601 *et seq.*

¹⁶ 29 U.S.C. § 2612(a)(1).

forty percent of the American workforce.¹⁷ For those it does cover, it provides only unpaid leave.¹⁸ As a result, many pregnant workers cannot afford to use all, or even some, of their allotted FMLA leave.¹⁹ Additionally, many pregnant workers may only need limited accommodations, such as restroom breaks or snacks at work, but may be forced to use their limited FMLA leave time if their employer refuses to accommodate them.²⁰ Use of FMLA leave during pregnancy then shortens the amount of time the worker can spend at home postpartum, while recovering from childbirth and caring for and bonding with the infant.²¹

Finally, the Americans with Disabilities Act (“ADA”) applies only to pregnancy-related conditions that qualify as a “disability” under that law.²² Pregnancy itself is not a disability under the ADA, and thus the ADA generally does not require reasonable accommodation of routine pregnancy-related conditions.²³

¹⁷ Stephanie Bornstein, *The Politics of Pregnancy Accommodation*, 14 Harv. L. & Pol’y Rev. 293, 314 (2020).

¹⁸ 29 U.S.C. § 2612(c).

¹⁹ Bornstein, *supra* note 17, at 304.

²⁰ Brown, *supra* note 7, at 138.

²¹ *Id.*

²² 42 U.S.C. §§ 12102(1), 12112(a).

²³ *Long Over Due: Exploring the Pregnant Workers’ Fairness Act (H.R. 2694)*, Hearing Before the Subcomm. on Civil Rights and Human Servs., Comm. on Educ. and Labor, U.S. House of Representatives, 116th Cong. 7 (2019) (testimony of Rep. Jerrold Nadler).

The data shows that this constellation of laws—the PDA, FMLA, and ADA—was insufficient; workers needed more protection. Congress responded in 2022 with the PWFA, which passed with overwhelming bipartisan support in Congress and broad coalition support from the public.²⁴ The law is a “commonsense, reasonable response to a specific concrete problem.”²⁵ It provides much-needed clarity to employers and employees alike regarding their rights and responsibilities.

c. The PWFA’s benefits

Although the PWFA has not been in effect for long, it is already apparent that the law benefits workers, employers, the economy, and society.

The law promotes healthy pregnancies and supports a work-life balance and economic security for pregnant workers and their families.²⁶ The Act allows workers, especially low-wage workers, to continue to support their families throughout pregnancy, and does not tie a worker’s financial security to an employer’s “goodwill and cooperation.”²⁷ And if enforceable, it protects workers from the discrimination that Kara, Delia, and Sofia faced at work.

²⁴ Widiss, *supra* note 12 at 94.

²⁵ *Id.* at 92.

²⁶ Brown, *supra* note 7, at 151.

²⁷ *Id.* at 154.

The PWFA benefits employers. When employers are required to accommodate pregnant workers under the PWFA, their accommodation reduces employee turnover, which in turn saves costs on hiring and training new employees.²⁸ Additionally, research shows that PWFA protections improve employee morale, engagement, satisfaction, and productivity; absenteeism concomitantly goes down, as workers feel more loyal to their accommodating employers.²⁹

These employee retention benefits are particularly important for correctional officers like AFSCME’s members in Texas: some prisons are operating with up to 70% of prison guard positions unfilled, and the turnover rate for TDCJ staff is 26%.³⁰ This staffing shortage threatens the safety of staff, inmates, and the public.

²⁸ *Id.* at 153-54.

²⁹ *Id.* at 154; *The Unfair Choice; Economic Security for Working Women: A Roundtable Discussion, Hearing of the Comm. on Health, Educ., Labor, and Pensions, U.S. Senate, 113th Cong. 2* (2014) (statement of Sen. Harkin) (“We know that there have been successful policies around the country to help do this, and the businesses that I’ve come across that do these things have more loyal workers. People tend to stay there longer, because they know that they’ll have the ability to take leave for a child, either for birth or for sickness or illness.”); *Long Over Due*, *supra* note 23, at 25 (testimony of Iris Wilbur) (“The Act includes pro-business safeguards to ensure these accommodations will not cause financial harm to a business or significantly interfere with day to day operations. While most pregnancy accommodations are low cost . . . the law includes an undue hardship standard that would exempt employers if the accommodation would cause significant difficulty or expense.”).

³⁰ Pooja Salhotra, *Texas Prison System’s Staffing Crisis and Outdated Technology Endanger Guards and Inmates*, *Tex. Trib.* (Oct. 1, 2024),

The need to recruit and retain female correctional officers is especially acute because, as noted *supra*, federal law places important limitations on cross-gender searches and other interactions between guards and inmates, impacting staffing.³¹ Moreover, 40% of correctional staff report feeling unsafe at work, exacerbating retention problems.³² Laws like the PWFA eliminate the need to choose between giving birth or remaining employed, especially in high-stress public safety jobs.

The PWFA does not hurt employers' bottom line. Business leaders across the country have testified that laws similar to the PWFA are not onerous and are, in fact, helpful.³³ Pregnancy accommodations are typically short-term and no-or-low-cost, such as more restroom breaks or allowing an employee to have water at their station.³⁴ A majority of employers that provided ADA accommodations to employees who needed them reported that the accommodations did not impose any new costs on the employer, and if they did, it was usually a one-time cost of \$500

<https://www.texastribune.org/2024/10/01/texas-department-of-criminal-justice-sunset-report/>.

³¹ Nat'l PREA Resource Ctr., *Frequently Asked Questions* (Feb. 7, 2013), <https://www.prearesourcecenter.org/frequently-asked-questions/please-explain-adult-cross-gender-viewing-and-searches-standard>.

³² Ryan Chandler, *Texas Prison "Staffing Crisis" Harms Public Safety, Lawmakers Say*, KXAN (Nov. 9, 2024), <https://www.kxan.com/news/texas/texas-prison-staffing-crisis-harms-public-safety-lawmakers-say/>.

³³ Widiss, *supra* note 12, at 93.

³⁴ Brown, *supra* note 7, at 154.

or less.³⁵ The PWFA is also likely to save employer legal fees—at least two states with laws similar to the PWFA reported reduced pregnancy-related litigation after the laws went into effect.³⁶ And the PWFA creates predictability, clarifying employers’ obligations.

The PWFA is also good for the U.S. economy. The PWFA itself costs very little to implement.³⁷ And when workplace accommodations are available for workers who become pregnant, those workers are more likely to stay in their jobs.³⁸ The PWFA, in effect, boosts the country’s workforce participation among women.³⁹ As a counter-example, in Kentucky, where only 58% of the workforce is female, evidence shows the low rate of participation is in part due to the lack of reasonable pregnancy accommodations.⁴⁰

Additionally, the PWFA reduces healthcare costs by requiring employers to accommodate for “preventative measures” that address smaller issues before they escalate to larger, more costly health problems.⁴¹ When pregnant workers who

³⁵ *Fighting for Fairness: Examining Legislation to Confront Workplace Discrimination, Hearing of the House Comm. on Educ. & Labor, Subcomm. on Civil Rights and Human Servs. and Subcomm. on Workforce Protections, U.S. House of Representatives, 117th Cong. 18 (2021) (statement of Fatima Goss Graves).*

³⁶ *Long Over Due, supra* note 23, at 24 (testimony of Iris Wilbur).

³⁷ *H.R. 2694, Pregnant Workers Fairness Act, Cong. Budget Off. (Sept. 9, 2020).*

³⁸ *Long Over Due, supra* note 23, at 25 (testimony of Iris Wilbur).

³⁹ *Id.*

⁴⁰ *Id.* at 24-25.

⁴¹ *Id.* at 78 (testimony of Dina Bask).

require small accommodations to reduce the risk of pregnancy complications receive them, they are less likely to actually have those complications, which might otherwise result in difficult, expensive deliveries and follow-up care.⁴² For instance, it costs far more to deliver and care for a premature baby than to take early, preventative prenatal measures at work.⁴³ The law's economic benefits thus far outweigh its costs.

Finally, the PWFA benefits society. It is an important measure in addressing the United States' declining birthrate. According to the Centers for Disease Control and Prevention's National Center for Health Statistics, in 2020 the number of births in the United States reached its lowest point since 1979, after 6 consecutive years of decline.⁴⁴ In 2024, birth rates climbed 1% from the 2023 numbers, though it still remains far lower than previous decades.⁴⁵ Concerns about the declining birth rate have reached the White House, as President Trump has made it a priority to increase the country's number of babies born each year.⁴⁶ The PWFA is a vital, and

⁴² *Id.*

⁴³ *Id.*

⁴⁴ Brady E. Hamilton, et al., Nat'l Ctr. for Health Statistics, *Vital Statistics Rapid Release; No. 012, Births: Provisional Data for 2020* (2021).

⁴⁵ Brady E. Hamilton, et al., Nat'l Ctr. for Health Statistics, *Vital Statistics Rapid Release; No. 38, Births: Provisional Data for 2024* (2025).

⁴⁶ Caroline Kitchener, *White House Assesses Ways to Persuade Women to Have More Children*, N.Y. Times (Apr. 21, 2025), <https://www.nytimes.com/2025/04/21/us/politics/trump-birthrate-proposals.html> (reporting on Trump administration proposal to increase the birth rate, including reserving Fulbright scholarships for married applicants or applicants with children,

effective, component of that effort. A recent study shows that, in states newly covered by the PWFA, the birth rate rose 3.2% after the law became effective. The study tied that jump specifically to a reduction in pregnancy loss due to safer work conditions.⁴⁷

The law is therefore an important, long overdue measure to protect pregnant workers' health and dignity, to guide employers, to bolster the economy, and to fortify the strength of generations to come. Enjoining its enforcement undermines all these goals.

CONCLUSION

The Pregnant Workers' Fairness Act is essential to eradicating pregnancy discrimination. The PWFA is good for the U.S. economy and businesses and allows pregnant workers to remain in the workforce. It keeps people from having to choose between their financial security and a healthy pregnancy, usually at very little cost to the employer. And evidence shows that it is effective. Texas state employees, who work to serve the public, should benefit from the protections

providing a \$5,000 cash "baby bonus" for American mothers after delivery, and funding programs to educate women on menstrual cycles to better understand when conception is possible).

⁴⁷ Jessica Pac & Alejandra Ros Pilarz, *Do Workplace Pregnancy Accommodations Affect Births? Evidence from the 2022 Pregnant Workers Fairness Act* (September 18, 2025), <https://ssrn.com/abstract=5537138>.

Congress intended to provide them. This Court should reverse the district court's injunction.

Respectfully submitted,

s/ Georgina Yeomans
GEORGINA YEOMANS
TEAGUE PATERSON
MATTHEW BLUMIN
AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES,
AFL-CIO (AFSCME)
1625 L Street, N.W.
Washington, D.C. 20036
(202) 775-5900

CALLIE DYDO
MCGILLIVARY STEELE ELKIN LLP
1101 Vermont Ave. NW, Suite 1000
Washington, DC 20005
(202) 292-1829
CED@mnelaborlaw.com

Counsel for Amicus Curiae

Dated: February 20, 2026

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of February, 2026, I electronically filed the foregoing amicus curiae brief with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Dated: February 20, 2026

/s/ Georgina Yeomans

CERTIFICATE OF COMPLIANCE

This brief complies with Federal Rule of Appellate Procedure 29 because it contains 4,688 words. This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font.

Dated: February 20, 2026

/s/ Georgina Yeomans