a better balance

the work and family legal center

Testimony in support of S.B. 221,
An Act Concerning Paid Family and Medical Leave
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I am submitting this testimony on behalf of my organization, A Better Balance, which is a legal advocacy organization whose mission is to fight for policies that will protect American workers from having to choose between caring for their families and maintaining their economic security. To that end, we have been working on paid family leave issues in states throughout the country for the last ten years. We were also co-authors of the report "Implementing Paid Family and Medical Leave Insurance in Connecticut" whose chief author was the Institute for Women's Policy Research. We are delighted that a paid family leave bill has been introduced in Connecticut and testify in support of this important bill.

I. The overwhelming need for Connecticut to pass a paid family leave program.

It comes as a shock to most Americans that the United States is the only developed country that does not provide paid leave to workers when a new child is born. Among industrialized nations, the United States stands alone in its failure to guarantee workers paid leave. As of 2011, 178 countries have national laws that guarantee paid leave to new mothers. Only three countries in the world provide absolutely no legal right to paid maternity leave — Papua New Guinea, Swaziland, and the United States.[i] With no right to paid family leave, workers must rely on their employers to provide these benefits, but because they are expensive most employers do not voluntarily provide them: as of March 2013, only 12% of American workers received paid family leave through their employers.[ii] Among the lowest wage earners in the country, only 4% of workers have access to paid family leave.[iii] Therefore, far too many workers are forced to choose between their jobs and their family's health and wellbeing.

The lack of paid family leave reflects the fact that our workplace laws and policies have failed to keep up with the changing nature and demographics of working families. The labor force participation rate of women and mothers has increased significantly during the past 40 years, and the number of dual-income families and single working parents has skyrocketed. Despite these changes, we have failed to pass laws and policies that allow workers to care for loved ones without risking their economic security. It is critical that we pass laws to guarantee paid family leave to bond with new children and care for seriously ill family members.

Americans are beginning to recognize the importance of this issue for our families. In his State of the Union message in both 2015 and 2016, our President recognized that the U.S. is "the only advanced country on Earth that doesn't guarantee paid sick leave or paid maternity leave to our workers." Through the Department of Labor, the President has made good on his pledge to "Lead on Leave" by making Federal money available to the states to study the issue and by having his Secretary of Labor and close advisors tour the country to advocate that states enact paid family leave policies. California, New Jersey and Rhode Island already have paid family leave programs that have been extremely successful and have caused no problems for employers. And this year, there are dozens of other states including Connecticut exploring the possibility of setting up their own paid family leave programs. Here in New York where my organization is based, the Governor has made paid family leave a top priority and intends to see it enacted this year.

The emergence of paid family leave as an important issue is a reflection that paid family leave is a win for everyone: workers, businesses, children, elders, and the economy. A paid family leave program would make it easier for new parents—both mothers and fathers—to care for their children without undue financial hardship. Research has shown that paid family leave helps parents to recover from childbirth, bond with newborn or newly adopted children, and better meet their children's health needs.[iv] Access to paid family leave also increases the likelihood and average duration of breastfeeding, which improves the health of newborn children and their mothers.[v] Seriously ill children benefit when their parents can afford time off to care for them. Research shows that ill children have better vital signs, faster recoveries, and reduced hospital stays when cared for by parents.[vi]

In addition, with paid family leave, workers would not have to sacrifice their economic security in order to care for ill or aging relatives. The benefits of family caregiving to elderly and sick individuals are clear: family caregivers can help these individuals recover more quickly and spend less time in hospitals.[vii] Policies that support family caregiving create savings that benefit all Connecticut taxpayers. Unpaid family caregivers not only help to ease the burden on our crowded hospitals and long-term care facilities but also create enormous financial savings. For example, recipients of family caregiving are less likely to have nursing home care or home health care paid for by Medicare.[viii] In 2007, unpaid family caregivers in the United States provided services valued at approximately $375 billion a year.[ix]

As noted above, California, New Jersey, and Rhode Island have adopted—and successfully implemented—similar paid family leave laws to those proposed in this law. Research shows that an overwhelming majority of California employers believe paid family leave has had a positive or neutral effect on their business operations.[x] Studies have also shown that paid family leave leads to business savings, by increasing employee retention, lowering turnover costs, improving productivity, and enhancing worker morale and loyalty.[xi] In today's economy, paid family leave is a low-cost way to keep workers employed and to help workers meet family needs. For example, women who take paid leave after a child's birth are more likely to be employed 9-12 months after the child's birth than working women who take no leave. New mothers who take paid leave are also more likely to report wage increases in the year following the child's birth.[xii] When forced to leave their jobs or take unpaid leave, many poorer workers must turn to public assistance programs for support. By keeping workers with caregiving needs attached to the workforce, paid family leave can decrease reliance on public assistance, in turn creating significant taxpayer savings.[xiii]

<u>II. This proposal contains the most important aspects of a good paid family leave program.</u>

The bill before you is an excellent bill that contains key policy elements for a strong paid family leave program. Crafted along the same lines as the successful programs in the states that have enacted paid family leave, it is an insurance program financed by small employee contributions that will enable workers who need to take time off when they have a new child or need to care for their own serious illness or that of a family member to do so. These are the key policy points in the current bill that should not be changed.

12 weeks is a minimum length of leave time to serve the purposes of this legislation and is in line with other laws around the country.

All current state paid family leave programs were expansions of existing Temporary Disability Insurance programs which give generous amounts of leave for one's own temporary disability (California allows a full year of benefits; NJ allows six months in any one year, Rhode Island gives 30 weeks). New York gives 26 weeks for one's own disability and the current proposal for paid family leave in New York is for 12 weeks of paid family leave in addition to the 26 weeks of disability leave. The family care programs in California and New Jersey provide an extra 6 weeks in addition to the 6 months of temporary disability leave for family care and Rhode Island provides an extra 4 weeks on top of the 30 weeks of care for one's own medical needs. Proposals around the country in Massachusetts, Colorado, Wisconsin, Hawaii, Minnesota and New York for family care provide for 12 weeks, most in addition to self care. Washington D.C. is proposing 16 weeks of leave in each benefit year.

The health benefits of providing 12 weeks of leave for bonding are overwhelming for children, mothers and fathers. Children whose mothers do not return to work full time in the first 12 weeks are more likely to receive medical checkups and critical vaccinations.[xiv] Mothers who take at least 12 weeks of leave are also more likely to breastfeed, with important lasting health benefits for their children.[xv*] Fathers who take longer leaves experience greater engagement in their children's lives;[xvi] greater paternal engagement has cognitive and developmental advantages for children.[xvii] For foster children, the first few months are a critical adjustment period in the transition to a new placement,[xviii] during which children need time to bond with their foster parents. Experts including the American Academy of Pediatrics recommend that healthy full-term infants should not be enrolled in child care until they are at least 12 weeks old due to rapid developmental changes and the risk of developing severe undetected illness.[xix]

For new birth mothers, having less than 12 weeks of family leave is associated with increased symptoms of postpartum depression.[xx] For working fathers, taking longer paid family leave means increased satisfaction in their contact with their children.[xxi]

Job protection is critical to the ability of a worker to take this benefit for which s/he is paying.

The need for paid family leave occurs at some of the most stressful times in a person's life: the arrival of a new child or dealing with a family member's serious illness. At these times, workers shouldn't have to worry whether they will have a job to return to after their leave. Without job protection, workers will pay for a program they can't use. Without a legal right to get their job back, many workers will be unable to take the leave they need—the risk to their long-term economic security will be too big. In one California study, fear of being fired was a commonly cited reason workers who were eligible for paid family leave under that state's program did not take it.[xxii] In Rhode Island, 45% of workers who took leave under their state's paid family leave law (which provides job protection) said that without the law they would not have taken leave for fear of losing their job.[xxiii]

Job protection keeps caregivers attached to the workforce. When workers are unable to take short-term leave and then return to their job, they are often pushed out of the workforce altogether. One study estimated that men who leave the labor force early due to caring for an aging parent lose almost $90,000 in wages, while women who do so lose over $140,000 in wages.[xxiv] Women who take paid leave after having a baby are more likely to be working 9 to 12 months after the birth than women who take no leave.[xxv] And keeping workers on the job saves taxpayers money. Both men and women who return to work after taking paid leave are much less likely to be receiving public assistance or food stamps in the year following their child's birth than those who return to work without taking family leave.[xxvi]

Workers need a decent wage replacement in order to be able to take time off, especially workers at the bottom of the economic spectrum.
The Connecticut bill would provide 100% wage replacement up to a cap of $1,000. The wage replacement level is an extremely important element of a paid family leave law. While higher wage workers can afford to take leave with less than their full salary, low wage workers who need every dollar they earn to pay rent and buy food cannot. Research in California indicates that the low wage replacement rates are unfair to low income workers skewing usage to higher wage workers who can better afford to live on a smaller percentage of their income.[xxvii] We applaud the recognition of the needs of lower wage workers and the balance of insuring solvency by having a reasonable cap of full wage replacement that is reflected in this bill.

For purposes of family care, all close family members should be covered.
We are happy to see the inclusion of the close family members for whom many workers will feel responsible and will therefore need leave to provide care should there be a serious illness. In today's families, many grandparents are raising grandchildren and both grandparents responsible for their grandchildren and grandchildren who owe their grandparents the care given them should be covered. Adult children with a serious illness are no less in need of care from their parents than any other adult to whom the worker is related. And many siblings look to their sisters or brothers as the first person to whom they would turn for care in the event of a serious illness.

Notice, outreach and education are important.
Especially in a program in which employees are paying for the benefit, it is very important that workers know about the benefit if there is a covered event in their lives. The provisions on notice as well as outreach and education are important parts of this bill.

<u>III. Privatization of a new paid family leave program would not relieve Connecticut of administrative responsibilities and would create many potential problems.</u>

We had done some exploration of the question of whether a private vendor could help administer a paid family leave program in Connecticut. Of the five states that have temporary disability insurance including the three that have paid family leave, none have contracted their program to private insurance companies. Although the idea of privatizing our major federal social insurance program, Social Security, has been raised, it has been consistently rejected. No paid family and medical leave proposal currently being considered by any state would do so. There is therefore no experience to draw on with respect to such a proposal. One reason this has not been a model that has been utilized is that when the potential advantages are examined, it is not clear that they exist and there are clear drawbacks or difficulties in such a system.

Some of the potential problems with this approach include:

- **There is currently no insurance product for the range of coverage contemplated by the Connecticut Paid Family and Medical Leave program.** No insurer currently has a paid family leave insurance product so they lack the expertise to better administer a paid family leave program than would a new state agency.
- **There would still be extensive administration necessary by the state and it is unclear that a program that entailed rigorous oversight would save the state time or money.** In order to outsource administration of this program, extensive state involvement would still be necessary. For example, the state will need to take responsibility for:
    - **Development of an RFP and insuring competitive bidding as well as details of contract.** Insuring that there will be providers capable of administering the program is a real challenge. Advantages for contracting out the program would rely in part at least on some competition among potential providers. Because currently there are no insurance providers who offer paid family leave insurance, it may be difficult to attract bidders.
    - **Oversight.** This model would require extensive oversight of delivery of benefits including promptness of resolving claims, review of supporting documentation required (to insure it is sufficient but not too burdensome), ensuring that no premiums are used for any other function (the current proposal contains a protection of premiums provision), and ensuring too much is not spent on administrative expenses. At present, administrative costs that insurance companies include in their premiums are not closely monitored by the state insurance agency so that oversight function would need to be enhanced significantly as it is one of the most important negative factors in privatization.
        - Oversight of private insurance plans in disability is an essential part of both California and NJ programs where businesses can satisfy their disability requirements by purchasing private plans even though in both states private insurance is not the norm (20% in NJ and only 3.6% in California). Despite the extremely small number of private plans in California, there are 12 employees charged with monitoring those plans and performing oversight.

  - Oversight would be even more important in a contract-based model, because, unlike in California and New Jersey, there would be no competition among insurance providers to act as an incentive to keep premiums low.
- **Functions that the state will still have to perform or closely monitor.**
  - **Determination of premiums and setting of benefit levels.** The current proposal gives the State the responsibility of determining premiums. If every worker in Connecticut is going to be assessed premiums for this program, the State will have to exercise oversight of the level of premiums. Who sets the premiums is an important question and it is unlikely that a private insurer will want the state to dictate premium limits. At the same time, a universal insurance program financed by payroll deductions needs to limit premiums to what is absolutely necessary.
  - **Insuring no discrimination or retaliation for use of benefits.** The proposal contains provisions insuring no discrimination or retaliation for use of the benefit. The state will need to have a system for taking complaints when this is violated.
  - **Supervision of collection of payroll tax premiums.**
  - **Ensuring notice to employees.** The proposal contains a notice requirement for employers. The state will need to administer that.
  - **Appeals of denials of claims or other violations of the statute.**

- **Cost.** The use of private insurers may also result in higher premium costs to employees.
  - In New York, employers can comply with the legal requirement to provide temporary disability insurance by purchasing insurance from either a private insurer of the state insurance fund (NYSIF). As a 2014 report indicated, NYSIF premiums are generally lower than those charged by competing private insurers. This is particularly true for women: NYSIF charges the same premiums for men and women, whereas private insurers generally charge more to insure women employees than men employees. An example is Nationwide which is the leading provider of disability insurance in New York state and charges $2.59 for males and $5.52 for females for monthly disability insurance benefits. In contrast, the NYSIF charges $2.00 a month for disability insurance regardless of gender. The difference is due to : higher administrative costs in the private system, lack of reserves dedicated specifically to disability insurance(which NYSIF has) and the need for profits in the private program.[xxviii]
  - Contrast in administrative costs between publicly administered Medicare and private insurance show similar extraordinary differences with administrative costs for private insurance about 12% of premiums in contrast to Medicare's steady 2% throughout the program. [xxix]

In light of the fact that it is not clear that there are any real advantages to privatization of paid family and medical leave rather than a state administered program, the serious problems with such an approach should be considered. The main issue is that the program proposed in Connecticut contemplates that all premiums will be paid by workers – the program will be primarily financed by payroll taxes levied on all workers in the state of Connecticut. The current draft of the legislation invests the state with the power to determine what those taxes will be in order to insure that the paid family and medical insurance system will be solvent. The state's interests include an interest in a solvent fund but also include a concern for not overtaxing workers. Delegating the determination of payroll taxes assessed on Connecticut citizens to a private entity is problematic in that there is no safety valve of accountability to the public for insurance rates. A private insurance will have the additional interest of insuring some profit for the company while having less interest in ensuring that premiums remain as low as possible. In states that permit businesses to use private insurance to fulfill their obligations to provide disability insurance, rates are higher than in the state run program. Generally, programs supported by taxes on workers do not delegate the determination and assessment of those taxes to a private entity.

In addition, the ways in which insurance companies determine premiums for coverage such as disability are not appropriate for a state run insurance program. For example, insurance carriers differentiate premium costs based on gender, a factor that should not be used in a public program, especially one that serves so many women. In fact, there may be legal issues raised in differentiating premiums by gender in a tax supported program. In addition, experience rating is used by most insurance companies. Although, experience rating has been used in worker's compensation programs, the idea behind that is that employers have some control over on the job safety. But that makes little sense with respect to benefits given for off the job illness or family needs.

Finally, there is also an issue with respect to how to manage surpluses in the program. All paid family leave programs have generated surpluses, a function of an appropriate conservatism with respect to insuring the fund's solvency and the need for some surplus to begin each year to ensure that obligations have been met.[xxx] In both California and New Jersey special laws were necessary to insure that there would be no raid on those funds by other agencies during economic downturns. With the system completely privatized, it would be difficult to insure that surpluses do not become profits for the insurance company or become folded into other functions that are not public functions.

It is difficult to see why a private insurance company would take on administration of this program unless they can be sure that premiums will cover their administrative costs and provide some profit. If the state retains the right to set or limit premiums, there will be little incentive for a private company to administer the program. It would therefore seem necessary for the state to insure those costs were covered as well as to provide additional resources for taking on the administration of the program. In that case, the expense of outsourcing would be significant. In addition, as noted above, there are some functions the state will still have to perform in terms of oversight and administrative process so that state expenditures will still be necessary.

Finally, the case of *Gobielle v. Liberty Mutual Insurance Company* (US Supreme Court, March 1, 2016) decided last week by the United States Supreme Court would seem to place limits on the data that can be required from an insurance company administering an ERISA plan with respect to that plan. Under that case, an insurance company has the right to refuse to honor reporting requirements imposed by a state. While it might be possible to have an insurance company waive that right in order to obtain a contract to administer a paid family and medical leave program, the case raises serious questions about the parameters of a state's right to documentation when an ERISA plan is involved.

Again, we congratulate the Connecticut legislature for entertaining this important bill and thank you for this opportunity to submit testimony in support of it.

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[i] *Failing its Families: Lack of Paid Leave and Work-Family Supports in the US*, Human Rights Watch (Feb. 2011), p. 1. There is insufficient information on paid leave in Bhutan, Liberia, Tuvalu, Samoa, Sierra Leone, Bosnia-Herzegovina, Marshall Islands, Micronesia, and Suriname.

[ii] U.S. Department of Labor, Bureau of Labor Statistics, *National Compensation Survey: Employee Benefits in the United States, March 2013* (September 2013), Civilian Workers Table 32, available at: www.bls.gov/ncs/ebs/benefits/2013/ebbl0052.pdf.

[iii] Ibid. (figure for the bottom 10% of wage earners)

[iv] Ibid., pp. 37-48.

[v] Ibid., pp. 37-38.

[vi] *See* S. J. Heymann, A. Earle & B. Egleston, *Parental Availability for the Care of Sick Children*, Pediatrics, Vol. 98 No. 2 (Aug. 1996), pp. 226-30; S.J. Heymann, *The Widening Gap: Why America's Working Families are in Jeopardy and What Can Be Done About It*, Basic Books (2000), p. 57.

[vii] See, e.g., A. Houser & M.J. Gibson, *Valuing the Invaluable: The Economic Value of Family Caregiving, 2008 Update*, AARP Public Policy Institute (Nov. 2008), pp. 1-2, 6; --, *Valuing the Invaluable: A New Look at the Economic Value of Family Caregiving*, AARP (June 2007), p. 6.

[viii] Houser and Gibson, *Valuing the Invaluable: A New Look at the Economic Value of Family Caregiving*, p. 6.

[ix] --, *Valuing the Invaluable: The Economic Value of Family Caregiving, 2008 Update*, pp. 1-2.

[x] E. Appelbaum & R. Milkman, *Leaves that Pay: Employer and Worker Experiences with Paid Family Leave in California*, CEPR (Jan. 2011), p. 4.

[xi] *See, e.g.*, Ibid, pp. 5, 8; E. Rudd, *Family Leave: A Policy Concept Made in America*, Sloan Work and Family Research Network (2004).

[xii] L. Houser & T. Vartanian, *Pay Matters: The Positive Economic Impacts of Paid Family Leave for Families, Businesses and the Public*, commissioned by the National Partnership for Women & Families and conducted by the Center for Women and Work at Rutgers University (Jan. 2012), pp. 6-7.

[xiii] *See, e.g.*, A. Dube & E. Kaplan, *Paid Family Leave in California: An Analysis of Costs and Benefits*, Labor Project for Working Families (July 2002), pp. 44-49 (estimating annual savings of $23.5 million in usage of food stamps and TANF).

[xiv] Lawrence M. Berger, Jennifer Lynn Hill, and Jane Waldfogel, "Maternity Leave, Early Maternal Employment and Child Health and Development in the US," *The Economic Journal* 115, no. 501 (2005).

[xv] *Id.*

[xvi] Maria del Carmen Huerta *et al.*, *Fathers' Leave, Fathers' Involvement and Child Development Are They Related? Evidence from Four OECD Countries* (2013).

[xvii] Ann Sarkadi *et al.*, "Fathers' involvement and children's developmental outcomes: a systematic review of longitudinal studies," *Acta Pediatrica* 97: 153-158 (2008).

[xviii] Annette Semanchin Jones and Susan J. Wells, *PATH/Wisconsin-Bremer Project: Preventing Disruptions in Foster Care* (2008).

[xix] American Academy of Pediatrics, American Public Health Association, and National Resource Center for Health and Safety in Child Care and Early Education, *Caring for Our Children: National Health and Safety Performance Standards*, Third Edition (2011).

[xx] Pinka Chatterji and Sara Makowitz, "Family Leave After Childbirth and the Mental Health of New Mothers," *The Journal of Mental Health Policy and Economics* 15, 61-76 (2012).

[xxi] Linda Haas & C. Phillip Hwang, "The Impact of Taking Parental Leave on Fathers' Participation in Childcare and Relationships with Children: Lessons from Sweden," *Community, Work & Family*, 11:1, 85-104.
[xxii] Eileen Appelbaum and Ruth Milkman, *Leaves That Pay: Employer and Worker Experience with Paid Family Leave in California* (2011), Center for Economic and Policy Research.
[xxiii] Barb Silver, Helen Mederer, and Emilija Djurdjevic, *Rhode Island's Temporary Caregiver Insurance Program: Findings from the First Year* (2015).
[xxiv] MetLife Mature Market Institute, *The Metlife Study of Caregiving Costs to Working Caregivers* (2011).
[xxv] Linda Houser and Thomas P. Vartanian, *Pay Matters: The Positive Economic Impacts of Paid Family Leave for Families, Businesses and the Public* (2012), Rutgers Center for Women and Work.
[xxvi] California State Office of Research, "California Paid Family Leave Program," July 1, 2014, p.6, http://sor.senate.ca.gov/sites/sor.senate.ca.gov/files/Paid_Family_Leave_FINAL_A1b.pdf ; Employment Development Department, "Paid Family Leave Market Research," July 13, 2015, p. 86, http://www.edd.ca.gov/Disability/pdf/Paid_Family_Leave_Market_Research_Report_2015.pdf
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[xxviii] Fiscal Policy Institute Report (June, 2014) http://fiscalpolicy.org/category/topics/economic-security-opportunity/sub-topics/family-and-medical-leave

[xxix] https://www.cbo.gov/sites/default/files/110th-congress-2007-2008/reports/12-18-keyissues.pdf; https://kaiserfamilyfoundation.files.wordpress.com/2013/01/7731-03.pdf
[xxx] NJ Department of Labor, The Temporary Disability Program and the Proposed Transfer of 23 million from the Program, FY 2001-2002, Budget Pages : c14, d306-309.