No. 07-543

IN THE

Supreme Court of the United States

AT&T CORPORATION,
Petitioner,

v.

NOREEN HULTEEN, ET AL.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF THE NATIONAL WOMEN'S LAW CENTER, ET AL. AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

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QUESTIONS PRESENTED

1. Whether AT&T engaged in a current violation of Title VII when it implemented a facially discriminatory seniority system to set retiring workers' pensions.

2. Whether construing Title VII, as amended by the Pregnancy Discrimination Act of 1978 (PDA), to prohibit an employer from relying on pre-PDA service crediting decisions in making post-PDA pension calculations gives the PDA an impermissible retroactive effect.

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INTEREST OF AMICI CURIAE

The National Women's Law Center (NWLC) is a nonprofit legal advocacy organization dedicated to the advancement and protection of women's legal rights. Since 1972, NWLC has worked to secure equal opportunity for women in the workplace. Pregnancy discrimination and pension inequities are fundamentally at odds with workplace equality. NWLC has prepared or participated in the preparation of numerous amicus briefs in cases involving sex discrimination in employment before this Court.[1] It is joined in filing this brief by 35 organizations that share a longstanding commitment to civil rights and equality in the workplace for all. The individual organizations are described in Appendix A.

STATEMENT OF THE CASE

The individual respondents in this case are four women who were or are long-term employees of AT&T and its subsidiary PT&T who took pregnancy leave between 1968 and 1976. AT&T's policy during that time was to deny full service credit for pregnancy-related leaves even though it gave such credit for other disability leaves.

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[1] The parties have consented to the filing of this brief. No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amicus curiae*, its members, or its counsel made a monetary contribution to its preparation or submission.

Respondent Noreen Hulteen was required to begin her leave on November 11, 1968, two months before she gave birth, because her immediate supervisor told her that her "body was not 'hiding' the condition." (Testimony of Noreen Hulteen Before the Senate Judiciary Committee, September 23, 2008, attached hereto as Appendix B (hereinafter "Hulteen Testimony"); J.A. 40 (¶ 25). After her child was born, AT&T required her to also treat leave she needed for unrelated surgery as personal rather than disability leave. J.A. 40 (¶ 26-27). Had her leave been classified as disability leave, Hulteen would have received full or half pay, and her employer would have paid for her medical insurance. Hulteen Testimony; Upon her return to work, she lost 210 days of service credit that she would have received if she had been on disability leave. J.A. 40-41 (¶28).

Respondent Linda Porter was also required to begin her pregnancy leave two months before she gave birth on July 5, 1968. She took only six or seven weeks off following the birth. Porter lost 73 days of service credit that she would have received had she been allowed to work longer and/or had her leave been treated as disability leave. J.A. 44 (¶¶ 48-50).

Respondent Eleanora Collet had two children while working for AT&T's subsidiary, one on September 3, 1974, and one on December 11, 1975. She lost 261 days of service credit because of her two pregnancy leaves. J.A. 42-43 (¶¶ 36-39).

Respondent Elizabeth Snyder's child was born on July 26, 1974. She was not able to return to work

until November 3, 1974 because of medical complications related to her pregnancy. She lost 67 days of service credit that she would have received if her leave had been treated as disability leave. J.A. 45 (¶¶57-59).

After Hulteen, Collet and Snyder retired in 1994, 1998 and 2000 (Porter has not yet retired), J.A. 41-43, 46 (¶¶ 33, 45, 64), AT&T decided to use the service credits it had calculated after they took their pregnancy leave—the leave which the company treated less favorably than leave taken for other disabilities—in setting their pension benefits. It argues that it was not discriminating against the women in doing so because they took their pregnancy leave prior to the effective date of the Pregnancy Discrimination Act of 1978, 42 U.S.C. § 2000(e)(k) (PDA), before which, the company claims, the discrimination was lawful.

The Court of Appeals for the Ninth Circuit, sitting *en banc,* rejected AT&T's argument, re-affirmed its decision in *Pallas v. Pacific Bell*, 940 F.2d 1324 (9th Cir. 1991), that virtually identical conduct was unlawful, and concluded that AT&T violated Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, when it calculated pensions using a standard that gave less credit for pregnancy leave than for other kinds of leave. 498 F.3d 1001 (2007).

SUMMARY OF ARGUMENT

Pregnancy discrimination is one of the most basic and pervasive forms of sex discrimination faced

by working women. Respondents here have suffered such discrimination twice. First, when they took pregnancy leave they were denied the pay and other benefits that were allowed for all other forms of disability leave. Respondents were subjected to a second round of discrimination when, because of their pregnancy leave, they were awarded lower pension benefits than colleagues who had worked the same amount of time as they had. These discriminatory pension benefits will harm respondents for the rest of their lives.

AT&T seeks to evade liability for the second round of discrimination—the discrimination that is challenged here—by focusing on the technicalities of its pension calculations. Essentially, the company argues that it was "entirely lawful," Petr. Br. at 2, to reduce respondents' service credits when they returned from their pregnancy leave before the PDA. AT&T then asserts that the service credit determinations at those earlier dates made inevitable the reduction in respondents' pensions. But the company made a choice not to re-examine respondents' service credit reductions when it calculated their pensions years later, even though it acknowledges that they were unlawful under the PDA. It should not be allowed to circumvent the law in this fashion.

As an initial matter, AT&T's arguments are flawed because its treatment of respondents when they took their pregnancy leave was not "entirely lawful." In the years following the enactment of Title VII, a growing consensus among courts, state legislatures and the Equal Employment Opportunity

Commission (EEOC) recognized that women who were discriminated against because of pregnancy were subjected to illegal sex discrimination. It was during this time of emerging consensus that respondents took their pregnancy leaves.

Since AT&T's premise for the lawfulness of its pension calculations is not valid, it cannot support the validity of those calculations. Moreover, the challenged conduct in this case is the setting of pensions in 1994 and later, more than sixteen years after any possible doubt about the lawfulness of any form of pregnancy discrimination was ended by the passage of the PDA.

The law is clear that a facially discriminatory seniority system—like that of AT&T—may be challenged when a person is harmed by the application of the system. That is precisely what respondents have done here. They filed timely charges to challenge the current discrimination that is the subject of this case: AT&T's decision to rely on previously calculated service credits in calculating respondents' current pension benefits.

Especially in light of the continued prevalence of pregnancy discrimination in the workplace, it is critical that the laws prohibiting such discrimination be effectively enforced. Through enactment of the PDA, Congress intended to fully eradicate the existence and consequences of pregnancy discrimination. The technical end-run that AT&T attempts to make around the dictates of the law is inconsistent with Congressional intent and should not be permitted. Equal treatment in the workplace

demands no less, and the decision of the Ninth Circuit recognizing these principles should be affirmed.

ARGUMENT

I. AT&T Discriminated Against Respondents Both When They Took Their Pregnancy Leave and When It Set Their Pension Benefits

As Congress recognized in passing the PDA, "discrimination against pregnant women is one of the chief ways in which women's careers have been impeded and women employees treated like second-class employees." Comm. on Labor and Human Resources U.S. Senate, 96th Cong., Legislative History of the Pregnancy Discrimination Act of 1978, Pub. L. No. 95-555, at 25 (1980) (Testimony of Rep. Augustus Hawkins) (hereinafter "Legislative History of the PDA"). Accordingly, to be effective, legal protection for women against discrimination in the workplace must encompass a prohibition against pregnancy discrimination.

This commonsense understanding of pregnancy discrimination as a fundamental form of sex discrimination was widely recognized by the federal district courts, the courts of appeals and the EEOC after the passage of Title VII, and was quickly restored by Congress with the passage of the Pregnancy Discrimination Act in 1978 after the Supreme Court's ruling in *Gilbert v. General Electric Co.*, 429 U.S. 125 (1976). Even with this legal protection, discrimination against women when they become pregnant remains one of the most prevalent

forms of employment discrimination, and complaints about pregnancy discrimination are increasing. *See* National Partnership for Women and Families, THE PREGNANCY DISCRIMINATION ACT: WHERE WE STAND THIRTY YEARS LATER 10 (2008) (hereinafter "WHERE WE STAND"). Effective enforcement of Title VII, including its protection against discrimination on the basis of pregnancy, is therefore essential. Employers must not be permitted to penalize women for bearing children or to treat their long-term female employees as second-class citizens in setting their pension benefits.

A. Pregnancy Discrimination Was Pervasive Before And After Title VII Was Enacted

Women's child-bearing capacity has been used for many years to justify their unequal treatment at work. When the Supreme Court upheld a law prohibiting women from being lawyers in 1873, Justice Joseph Bradley explained in his concurring opinion that: "The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life. . . . The paramount destiny and mission of women are to fulfill the noble and benign offices of wife and mother." *Bradwell v. Illinois*, 83 U.S. 130, 141 (1873).

A century ago, in the landmark case of *Muller v. Oregon*, 208 U.S. 412 (1907), the Court upheld a law establishing maximum hours of work for women, explaining "that women's physical structure and the performance of maternal functions place her at a

disadvantage in the struggle for subsistence is obvious. This is especially true when the burdens of motherhood are upon her." *Id.* at 421.

By the middle of the twentieth century, when the number of women in the workforce was increasing steadily, women were still likely to leave their jobs when they became pregnant. Although some left voluntarily, many left either because they were forced to by their employers or because they knew that it would be only a matter of time before they would be required to leave. Courtni E. Molnar, *Has the Millenium Yet Dawned?: A History of Attitudes Toward Pregnant Workers in America*, 12 MICH. J. GENDER & L. 163, 170 (2005) (hereinafter "*Attitudes Toward Pregnant Workers*").

The stereotype that women could not and should not work when they were pregnant was deeply engrained. During the 1940s, even the Women's Bureau of the Department of Labor, which was intended to advocate for women in the workplace, recommended that women stop working six weeks before their due dates and continue to stay out of work for at least two months after the birth. Women's Bureau, Office of the Secretary, U.S. Dept. of Labor, Bulletin No. 240, *Maternity Protection of Employed Women*, at 7 (1952). Numerous states and employers based their mandatory policies on this and other similar recommendations, with the consequence that women's ability to make their own judgments about when and whether to leave or return to work was essentially eliminated. "Pregnant women were considered unavailable for work for a set period of time before and after

childbirth, whether or not they were willing to work." *Attitudes Toward Pregnant Workers*, at 172.

Many of the discriminatory attitudes toward pregnant women at work derived from a general social discomfort with visibly pregnant women in public places. "Having an obviously pregnant woman present in the workplace caused embarrassment and discomfort for other employees." *Id.* at 171. *See also* Sheila B. Kamerman, Alfred J. Kahn & Paul Kingston, MATERNITY POLICIES AND WORKING WOMEN, at 35 (1983) (hereinafter "MATERNITY POLICIES AND WORKING WOMEN"). One woman who was forced during the 1940s and 1950s to take leave with each of her pregnancies, often well before she wanted or needed to, explained "a lot of women I knew were made to leave as soon as they showed, often in their third month." *Id.* at 2. In a 1962 case, a visibly pregnant waitress was forced to take a leave of absence when her employer told her "that she could not continue working because her appearance was unseemly." *Leach v. Bd. Of Review of Unemployment Comp.*, 184 N.E. 2d 704, 705 (Ohio Ct. C.P. 1962).

Thus, during the decades immediately preceding enactment of Title VII, it was the norm for employers to impose mandatory leave policies that required women to leave work at a certain point in the pregnancy, regardless of the individual woman's interest in remaining at work, her financial need to work, or her ability to do her job. MATERNITY POLICIES AND WORKING WOMEN, at 4. In fact, "prior to the enactment of Title VII of the Civil Rights Act of 1964, most employers discharged a woman as soon

as she became obviously pregnant." Legislative History of the PDA, at 25.

This treatment continued after Title VII was passed, as illustrated by the cases that came before the Court in the 1970s. In Utah, the state unemployment compensation system declared pregnant women ineligible for benefits starting 12 weeks before their due dates and continuing until six weeks after the birth of the child. *Turner v. Department of Employment Security*, 423 U.S. 44, 44 (1975) (striking down the provision as a violation of Fourteenth Amendment due process). The Cleveland, Ohio Board of Education required pregnant school teachers to go on unpaid maternity leave beginning five months before their due dates. *Cleveland Board of Educ. v. LaFleur*, 414 U.S. 632, 634 (1974) (striking down the provision as a violation of due process). The Board also prohibited a teacher from returning "until the beginning of the next regular school semester which follows the date when her child attains the age of three months." *Id.* at 635. Moreover, the Board did not guarantee these new mothers re-employment, and it considered failure to comply with the mandatory leave policies a cause for dismissal. *Id.*

AT&T did not have analogous written policies, but two of the respondents here were forced onto maternity leave. In November 1968, two months before the birth of her child, Noreen Hulteen "was told by [her] immediate boss to begin [her] pregnancy Leave of Absence (LOA), as [her] body was not 'hiding' the condition." Hulteen Testimony. Another

respondent, Linda Porter, was also required to begin her leave two months early. J.A. 44 (¶¶ 48-50).

Discrimination against new mothers only exacerbated the harm caused by employers' hostile attitude towards pregnancy. Many new mothers would return to work to find themselves at the bottom of the career ladder, regardless of their previous experience. *See* MATERNITY POLICIES AND WORKING WOMEN, at 35-36. Indeed, it was just such a policy of removing accumulated seniority that this Court confronted and declared unlawful in *Nashville Gas Co. v. Satty*, 434 U.S. 136 (1977). When Nora Satty returned to work after her pregnancy leave, pursuant to company policy she had lost all of her seniority rights. *Id.* at 139. She was given a temporary position at a lower salary, and unsuccessfully bid on three permanent positions. *Id.* In each case, Satty would have been awarded the job if she had not lost her accumulated seniority. *Id.*

As shown by this history, one of the most obvious forms of workplace discrimination that women faced both before and after Title VII was passed was discrimination based on their capacity to bear children and their status as pregnant women and mothers.[2] "The fact that women bear children and

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[2] The legislative history of Title VII includes no discussion about the scope of the sex discrimination that was prohibited. The bill originally proposed did not include "sex"; the category was added on the floor of the House at the end of the deliberations by Representative Howard Smith of Virginia, who apparently hoped it would be sufficiently controversial that it would derail the entire bill. *See, e.g.*, Catharine A. MacKinnon, *Reflections on Sex Equality Under Law*, 100 YALE

men do not has been the major impediment to women becoming fully integrated into the public world of the workplace." Lucinda M. Finley, *Transcending Equality Theory: A Way Out of the Maternity and the Workplace Debate*, 86 COLUM. L. REV. 1118, 1119 (1986). Testifying before Congress in 1977, one scholar observed that:

> At the very core of the stereotypes which have resulted in irrational impediments to employment opportunity for women are assumptions about pregnancy—both its medical characteristics and physical effects, and, more broadly, assumptions about its implications for the role of women in society and in the labor force. Indeed, it is fair to say that most of the disadvantages imposed on women, in the work force and elsewhere, derive from this central reality of the capacity of women to become pregnant and the real and supposed implications of this reality.

Wendy W. Williams, associate professor, Georgetown University Law Center, Testimony, U.S. Senate, Subcommittee on Labor or the Committee on Human Resources, *Discrimination on the Basis of Pregnancy*, (1977) (Report of Hearings) (Washington, D.C.; GPO, 1977), at 123. As Justice Stevens recognized in his dissenting opinion in *Gilbert*, "it is the capacity to become pregnant which primarily differentiates the female from the male." 429 U.S. at 162.

L. J. 1281, 1283-84 (1991). Instead, the law passed, and sex discrimination became illegal.

B. Pregnancy Discrimination Was Widely Considered to Violate Title VII When Respondents Took Their Pregnancy Leave

Congressional action, court decisions, and guidance from the Equal Employment Opportunity Commission all informed employers by the early 1970s that sex discrimination was a problem to be given serious attention, and that pregnancy discrimination was most certainly part of that ill.

In 1972, when Congress amended Title VII to extend its coverage to government employees, it also made a strong statement that "discrimination against women is no less serious than other forms of prohibited employment practices and is to be accorded the same degree of social concern given to any type of unlawful discrimination." H.R. REP. NO. 92-238, at 5 (1971). Both the House and the Senate reports commended the efforts of the EEOC and noted that many people still viewed sex discrimination as "morally and physiologically justifiable." *Id.*; S. REP. NO. 92-415, at 8 (1971).

Close on the heels of this congressional affirmation of the EEOC's importance, the Commission issued guidelines stating clearly that discrimination based on pregnancy or related conditions was sex discrimination. The EEOC guidelines, the agency's formal statement on the issue, provided that:

> [d]isabilities caused or contributed to by pregnancy, miscarriage, abortion, childbirth, and recovery therefrom are, for all job-related purposes, temporary disabilities and should be treated as such under any health or temporary disability insurance or sick leave plan available in connection with employment. Written and unwritten employment policies . . . formal or informal, shall be applied to disability due to pregnancy or childbirth on the same terms and conditions as they are applied to other temporary disabilities.

29 C.F.R. § 1604.10 (1973).

All seven federal circuit courts that considered pregnancy discrimination claims under Title VII in the early 1970s understood that pregnancy discrimination was sex discrimination. By the time of the PDA's enactment, eighteen district court opinions had concluded that pregnancy discrimination claims were encompassed by the prohibition against sex discrimination. See H.R. REP. NO. 95-948, at 2 (1978). There was only one district court that reached a different conclusion. *See* Brief of the Center for Reproductive Rights as *Amicus Curiae* in Support of Respondent at 6 n.1 (collecting cases).

These decisions, from around the country, found many different forms of pregnancy discrimination to violate Title VII. For example, courts found violations of federal law when employers forced women to take mandatory pregnancy leave. *See,*

e.g., Singer v. Mahoning County Bd. Of Mental Retardation, 379 F.Supp. 986 (N.D. Ohio 1974), *aff'd*, 519 F.2d 748 (6th Cir. 1975). Employees who were fired when they became pregnant successfully challenged their terminations under Title VII. *See, e.g., Jacobs v. Martin Sweets Co.*, 550 F.2d 364 (6th Cir. 1977); *Holthaus v. Compton & Sons, Inc.*, 514 F.2d 651 (8th Cir. 1975). Denial of sick leave benefits to pregnant women was also found to violate the law. *EEOC v. Children's Hosp.* 415 F.Supp. 1345 (W.D. Pa. 1976); *Hutchison v. Lake Oswego School Dist.*, 519 F.2d 961 (9th Cir. 1975). Similarly, denial of regularly available disability leave for women temporarily out of work in connection with a pregnancy was found to be illegal. *Wetzel v. Liberty Mut. Ins. Co.*, 511 F.2d 199 (3d Cir. 1975). In all of the foregoing decisions, the courts assumed, generally without much discussion, that pregnancy discrimination was sex discrimination that was prohibited under Title VII.

In addition, by the 1970s, 25 states interpreted their fair employment practices laws to prohibit discrimination based on pregnancy and related conditions. Many states did so even though the particular state law, like Title VII at the time, did not specifically mention pregnancy. *See* S. REP. NO. 95-331, at 3 (1977).

Thus, by the early 1970s, state and federal courts around the country, as well as the EEOC, recognized that discrimination on the basis of pregnancy was unlawful sex discrimination. As Congress understood in considering the PDA, "[t]he assumption that women will become pregnant and

leave the labor force leads to the view of women as marginal workers, and is at the root of the discriminatory practices which keep women in low-paying and dead-end jobs." H.R. REP. 95-948 at 3. Given that this stereotyping was central to the discrimination women faced in the workplace, "failure to address discrimination based on pregnancy, in fringe benefits or in any other employment practice, would prevent the elimination of sex discrimination in employment." S. REP. 95-331, at 3.

It was against this legal backdrop, in which policymakers and courts around the country were developing a consensus understanding that pregnancy discrimination was a central aspect of sex discrimination against working women, that AT&T maintained its policy of treating pregnancy leave less favorably as "personal" leave, rather than as "disability" leave. As a result, when respondents returned from their mostly unpaid pregnancy leave in the late 1960's and the 1970's, the company recalculated their service credits to give them less accumulated seniority.

In 1976, when the Supreme Court examined the question of how to treat pregnancy discrimination under Title VII, it opted for a formalistic interpretation of the term "sex" that ignored the realities faced by working women. In *Gilbert*, the Court concluded that discrimination on the basis of pregnancy through the denial of pregnancy-related disability benefits was not sex discrimination. 429 U.S. at 145-46.

The congressional response to *Gilbert* was swift and direct: within just three months, legislation was proposed that would not only correct the Supreme Court's specific holding in that case, but also its formalistic approach to assessing whether employer conduct is illegal discrimination. *See, e.g.*, H.R. REP. 95-948, at 2, 4; *Newport News Shipbuilding and Dry Dock Co. v. EEOC*, 462 U.S. 669, 676 (1983). The PDA was enacted not long after, in 1978.

Moreover, just a year after deciding *Gilbert*, this Court narrowed its scope with its decision in *Satty*. In *Satty*, it concluded that a policy that denied accumulated seniority to women who were absent from work because of childbirth was unlawful because it had a disparate impact on women. 434 U.S. at 139. *Satty* distinguished *Gilbert* on the ground that the denial of accumulated seniority imposed a burden on women not felt by men, while the limitation on disability coverage at issue in *Gilbert* simply declined to offer to women a benefit that it did not and could not offer to men. *Id.* at 142.

C. Respondents Have Properly Challenged AT&T's Unlawful Setting of Their Pension Benefits

AT&T's argument to the Court rests on the premise that its reduction in respondents' pension benefits many years later was permissible because pregnancy discrimination was "entirely lawful" at the time respondents went on leave. But that premise does not hold up in light of the consensus that had developed before 1976 and the decision in

Satty. As discussed in Respondents' Brief, AT&T's policy of denying women on pregnancy leave the right to accumulate seniority is controlled by, and was prohibited by, the Court's decision in *Satty*. Resp. Br. at 45-46.

Even if AT&T is correct that its conduct fell under *Gilbert*, not *Satty*, then only for a very brief period—from December 1976, after *Gilbert* was decided, until the PDA's reversal of that decision went into full effect in April 1979—could AT&T's treatment of respondents even arguably have been considered to be lawful. None of the respondents here took their leave during that time.

Many years after the PDA, it is disingenuous for AT&T to claim that it should be allowed to discriminate in calculating respondents' pensions, because all it was doing was continuing its earlier "entirely lawful" treatment of them. Not only was the conduct not lawful at the time respondents took their pregnancy leave, it was not, as a separate matter, lawful to rely on service credit calculations that incorporated discrimination in setting pension benefits in 1994 and later. AT&T's conduct is particularly troubling in light of the Ninth Circuit's 1991 *Pallas* decision, which specifically disallowed the arguments that the company relied on in calculating respondents' pensions. *Pallas*, 940 F.2d at 1327.

AT&T contends that respondents should have challenged their reduced service credits when they were first notified about them after they returned from their leave. However, there is no evidence in

the record that the company's running service-credit tally, which was always subject to revision, had a concrete adverse impact at that time.[3] Indeed, had respondents filed a complaint when their credits were reduced, AT&T would undoubtedly have responded that any harm was merely speculative. It was only years later, when AT&T calculated the respondents' pensions to be lower than those of men who had worked the same amount of time as they had but had been credited for their disability leave, that the respondents' claims were triggered.

Moreover, even if respondents could have complained at an earlier point, they were not required to do so. Title VII gives those injured by facially discriminatory seniority systems, like the one applied in calculating respondents' pensions, more than a single opportunity to pursue a claim for the harm caused by the discriminatory system. *See Lorance v. AT&T Technologies, Inc.*, 490 U.S. 900, 912 n.5 (1989). To eliminate any doubt about when such a claim of discrimination must be made, and to overrule another aspect of the decision in *Lorance*, Congress provided in the Civil Rights Act of 1991 that an employee may challenge a discriminatory seniority system at three distinct points: 1) when it is adopted, 2) when the individual becomes subject to the system, or 3) when the individual is injured by application of the system. *See* 42 U.S.C. 2000e-5(e)(2). As explained in Respondents' Brief, Congress gave employees these choices to protect workers from discrimination and ensure that they would receive

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[3] There may be circumstances in which the setting of service credits could be an unfair employment practice. However, there is no evidence that this was the case here.

equal treatment if they did not complain until the discriminatory application of the system had an actual impact. Resp. Br. at 23.

D. The Continued Prevalence of Pregnancy Discrimination Makes Strong Enforcement of Title VII Essential

Data collected by the EEOC demonstrates that pregnancy discrimination is still very much a barrier to women's full equal employment opportunity. Between 1997 and 2007, the number of complaints of pregnancy discrimination filed with the agency increased by 65 percent. See Equal Employment Opportunity Commission, Pregnancy Discrimination Charges, EEOC & FEPAs Combined: FY1997–FY2007 (last modified on February 26, 2008), at http://www.eeoc.gov/stats/ pregnanc.html.

Recent pregnancy discrimination cases reveal that the stereotypes about women's abilities and proper roles have not changed much since the 1970s. Too often, acts of discrimination "seem to be fueled by a fundamental resistance to having pregnant women in the workplace, or having to accommodate the needs of pregnant women." WHERE WE STAND, at 10. Thus, employers continue to engage in blatant discrimination. For example, in 2007, the EEOC settled a suit with a maternity clothing specialty store after challenging the store's policy not to hire pregnant job applicants. Equal Employment Opportunity Commission, Maternity Store Giant to Pay $375,000 to Settle EEOC Pregnancy Discrimination and Retaliation Lawsuit (January 8, 2007), at http://www.eeoc.gov/press/1-8-07.html.

Discriminatory application of leave policies also continues, even three decades after the passage of the PDA. Thus, female police officers in Albuquerque, New Mexico have been seeking equal treatment of their pregnancy-related leave since 2000, and litigation over the city's policies continues to this day. *See Orr v. Albuquerque*, 531 F.3d 1210, 1212-1213 (10th Cir. 2008).

Research into attitudes about pregnant women provides further evidence of the continued pervasiveness of the stereotypes fueling discrimination against pregnant women. Studies have shown, for example, that pregnant women are viewed more negatively by male colleagues than non-pregnant women. *See, e.g.,* Jane A. Halpert, Midge L. Wilson & Julia L. Hickman, *Pregnancy as a Source of Bias in Performance Appraisals*, 14 J. OF ORGANIZATIONAL BEHAV. 649 (Dec. 1993). In one study "using pregnant (wearing a prosthesis) and non-pregnant testers, researchers found that pregnant women encountered more hostility when applying for jobs, particularly jobs in non-traditional fields." WHERE WE STAND, at 10. These studies and many others confirm that the treatment pregnant women face at work stems in large part from continued stereotyping and bias.

In light of the persistence of pregnancy discrimination, it is critical that Title VII, as amended by the PDA, be rigorously enforced to eliminate the myriad harms that this discrimination imposes on women. While much of the discrimination that pregnant women face occurs while they are still active in the workforce,

respondents here confront a form of pregnancy discrimination that emerged at the end of their careers. The calculation of pension benefits with a penalty for pregnancy-related leave is a form of discrimination that devalues women's role in the workplace and causes harm for the rest of a woman's life.

II. Pension Discrimination Has Serious Consequences for Women

When employers calculate pension benefits with a built-in penalty for periods of pregnancy-related leave, as AT&T did for respondents, those employers are discriminating on the basis of sex. Contrary to AT&T's argument, its present-day sex discrimination in calculation of pension benefits cannot be justified on the ground that its pregnancy-related leave discounting policy was not unlawful before the PDA. As described above, the notion that pregnancy discrimination was not sex discrimination in violation of Title VII had no legal support when respondent employees took their pregnancy leaves between 1968 and 1976. Thus, the decisions AT&T made at that time cannot be considered "entirely lawful when made," Petr. Br. at 2, and cannot justify discriminatory pensions.

Moreover, even accepting the argument that AT&T's pregnancy leave policy did not violate Title VII prior to 1979, the company unquestionably violated the law in and after 1994 when it calculated pensions to provide lesser benefits for women who had taken leave for pregnancy before the enactment

of the PDA. That decision about calculation of retirement benefits treated women who had worked for the company for years and were now entering retirement differently than men in the same position. Women like the respondents here had already faced discrimination because of pregnancy; AT&T's pension calculation discriminated against them yet again. Retired women continue to suffer the consequences of many forms of employment discrimination. The burdens they face should not be increased by a second round of discrimination when their pensions are set.

A. Women Live Longer And Have Fewer Retirement Resources Than Men

While economic security in retirement is fundamental to health and well-being, retired women live with fewer resources and significantly more uncertainty than their male counterparts. It is well-established that women, on average, live five to 10 years longer than men, and therefore need their financial resources to last considerably longer. *See, e.g.*, Cindy Hounsell, *The Female Factor 2008: Why Women Are at Greater Financial Risk in Retirement and How Annuities Can Help*, at 9 (2008). Unfortunately, however, women over 65 generally have less, rather than more, retirement income. Women draw lower Social Security benefits and receive less from employer-based retirement plans.

Among those who do receive pension income, women's benefits are significantly lower than men's benefits. Richard Johnson, *The Gender Gap in Pension Wealth: Is Women's Progress in the Labor*

Market Equalizing Retirement Benefits?, Urban Institute Brief Series No. 1 (March 1999). The most recent population surveys show that the median pension benefit for women over 65 is $8,110, compared to a $12,505 median for men in the same age range. U.S. Census Bureau, Current Population Survey, http://pubdb3.census.gov/macro/032008/pov/new01_100_01.htm (hereinafter "Current Population Survey").

Because women are paid less and take more time off for family responsibilities over the course of their careers, women's lifetime earnings lag substantially behind those of their male counterparts. Consequently, women in retirement generally receive significantly less in Social Security benefits than do their male counterparts. Moreover, they are less likely to have any pension at all, and the pensions they do receive are likely to be lower. Thus, women are more likely than men to rely on Social Security benefits as a primary source of retirement income. *See* Judith G. Gonyea & Nancy R. Hooyman, *Reducing Poverty Among Older Women: Social Security Reform and Gender Equity*, 86 FAMILIES IN SOCIETY: J. CONTEMP. HUM. SERVICE 338, 340 (2005).

In part as a consequence of the pension differential and lower Social Security benefits, "[w]omen are at a much greater risk of falling into poverty in later life than men." *Id.* at 339. In fact, the poverty rates for women over 65 are nearly double those of men the same age. About 6.6 percent of older men currently live in poverty compared to 12

percent of older women. *See* Current Population Survey.

B. Disparities In Retirement Income Exacerbate The Harm Women Suffer From Pay Discrimination

The discrimination suffered by respondents here is only one aspect of the continuing pay discrimination that causes women's salaries to be lower over their lifetimes than the salaries of similarly situated men. Pension discrimination exacerbates the harm caused by a lifetime of pay discrimination.

The gender-based wage gap in the United States is persistent and well-documented. Current estimates of the gender wage gap place it at about eighty percent—meaning that a woman working full-time, year-round, on average, earns 78 cents for every dollar earned by a man. *See* Carmen Denavas-Walt, Bernadette D. Proctor and Jessica C. Smith, U.S. Census Bureau, Current Population Reports, P60-235, *Income, Poverty and Health Insurance Coverage in the United States: 2007,* at 6 (U.S. Gov't Printing Office 2008). The pay gap is especially pronounced for African American women and Hispanic or Latino women, who earn even less on the dollar compared to white men. *See* Bureau of Labor Statistics, U.S. Dep't of Labor, *Highlights of Women's Earnings in 2007*, at 1 (Oct. 2008) (reporting median usual weekly earnings of $788 for white men, $626 for white women, $533 for black or African American women, and $473 for Hispanic or

Latino women).

The gender wage gap exists at every level of earnings. *Id.* Moreover, the disparity in men's and women's wages extends, with some variation, throughout the employment lifecycle. Women in their 40s and 50s earn salaries more disparate from their male counterparts than do women at the beginning of their careers. *See id.* at 8; Francine D. Blau *et al.*, THE ECONOMICS OF WOMEN, MEN, AND WORK 150 (5th ed. 2006) ("women earn less than men in all age categories," and the ratio of women's earnings to men's decreases as they age). When earnings over a longer period of time are aggregated, the gap is even starker. In their prime earning years, women earn only 38 percent of what men earn over a 15-year period. *See* Stephen J. Rose & Heidi I. Hartmann, Inst. for Women's Pol'y Res., STILL A MAN'S LABOR MARKET: THE LONG-TERM EARNINGS GAP 9 (2004).

Thus, by the time a woman's pension is calculated at the end of her work life, the accumulated years of pay disparities will significantly affect the resources she has to live on in retirement, as compared to those available to a male counterpart. The fact that women are more likely to take leave during the course of their careers to care for children or other family members only adds to this difference. Requiring women to take more leave than they themselves would have chosen, as was the case for Noreen Hulteen and Linda Porter, exacerbates the differences even further. And when companies like AT&T choose in the present day to treat pregnancy-related leave as less worthy of inclusion than other

disability leave in calculating benefits, they worsen the difficult circumstances of many female retirees. This is unlawful sex discrimination that older women will live with for the rest of their lives, and it should not be permitted.

CONCLUSION

This Court should affirm the Ninth Circuit and ensure that employers cannot discriminate on the basis of pregnancy-related circumstances in calculating the pension benefits that female employees will receive in their retirement.

Respectfully submitted,

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APPENDIX A

INDIVIDUAL STATEMENTS OF INTEREST OF *AMICI CURIAE*

Founded in 1915, the *American Association of University Professors* (AAUP) is an association of over 45,000 faculty members and other academic professionals in all academic disciplines. The AAUP has taken a strong stand against discrimination by institutions of higher education. *See*, *e.g.*, On Discrimination, POLICY DOCUMENTS & REPORTS 299 (10th ed. 2006). The AAUP has joined *amicus* briefs in several recent Supreme Court cases addressing anti-discrimination legislation, including *Crawford v. Metropolitan Government of Nashville and Davidson County* and *Engquist v. Oregon Department of Agriculture*. The AAUP is particularly concerned about discrimination against pregnant women, both in the academy and society at large. The AAUP's *Statement of Principles on Family Responsibilities and Academic Work,* issued in 2001, notes that pregnancy is an "event that interrupts the career of a higher percentage of professors than any other 'physical disability' or family obligation." POLICY DOCUMENTS & REPORTS 299 (10th ed. 2006) at 219-221. The *Statement* accordingly calls for the adoption of policies that "support[] family life" because "[w]ithout such support, the commitment to gender equity, for both women and men, will be seriously compromised."

For more than 125 years, the *American Association of University Women* (AAUW), an organization of over 100,000 members and 1,300

branches nationwide, has worked to break through educational and economic barriers so that all women have a fair chance. AAUW's 2007-09 member-adopted Public Policy Program states that AAUW is committed to supporting fairness in compensation and vigorous enforcement of employment antidiscrimination statutes. AAUW believes that pay equity is a simple matter of justice and continues to support initiatives that seek to close the persistent and sizable wage gap between men and women; appropriate application and enforcement of the Pregnancy Discrimination Act are crucial to these efforts. AAUW strongly believes that women's pensions should not be tainted by the discriminatory policies of the past, and that women should not in effect be punished because of their parental status.

The *American Nurses Association* (ANA) was founded over a century ago, and today it represents the interests of the Nation's 2.9 million registered nurses. The ANA is comprised of 54 constituent member associations, including one in every state of the United States. ANA has approximately 200,000 members. In addition, there are 21 specialty nursing organizations that are Organizational Affiliates of the ANA and that have a combined, additional membership of approximately 210,000 RNs. ANA not only develops the Code of Ethics for Nurses and the standards of nursing practice, it actively promotes patient safety, workplace rights, appropriate staffing, workplace and environmental health and safety, and the public health. The profession of nursing is a predominantly female profession, and as such, ANA's membership and the interests of all nurses for whom it speaks are directly affected by the

issues raised in this case. Further, ANA promotes the public health and supports women who take needed time during pregnancy and after child-birth to attend to their own health needs and those of their children. Mothers who take leave because of their commitment to health should not suffer from discriminatory employment policies. Lastly and quite fundamentally, ANA supports equal treatment under the law.

Business and Professional Women/USA (BPW/USA), founded in 1919, is a multi-generational, nonpartisan membership organization with a mission to achieve equity for all women in the workplace through advocacy, education, and information. Established as the first organization to focus on issues of workingwomen, BPW/USA is historically a leader in grassroots activism, policy influence and advocacy for millions of workingwomen. With members in every Congressional district and all 50 states and 4 U.S. territories, BPW/USA has become the leading advocate for millions of workingwomen on work-life effectiveness and workplace equity issues.

The *California Women's Law Center* (CWLC) is a private, nonprofit public interest law center specializing in the civil rights of women and girls. Established in 1989, the California Women's Law Center works in the following priority areas: Sex Discrimination, Women's Health, Race and Gender, Women's Economic Security, Exploitation of Women and Violence Against Women. Since its inception, CWLC has placed a strong emphasis on eradicating sex discrimination in employment. CWLC has

authored numerous amicus briefs, articles, and legal education materials on this issue. The AT&T v. Hulteen case raises questions within the expertise and concern of the California Women's Law Center. Therefore, the California Women's Law Center has the requisite interest and expertise to join in the amicus brief in this case.

The *Clearinghouse on Women's Issues* provides information on issues relating to women, including discrimination on the basis of gender, age, ethnicity, marital status or sexual orientation with particular emphasis on public policies that affect the economic, educational, health and legal status of women.

The Coalition of Labor Union Women (CLUW) is an AFL-CIO affiliate with over 20,000 members, a majority of whom are women. Since 1974, CLUW has advocated to strengthen the role and impact of women in every aspect of their lives. CLUW focuses on key public policy issues such as equality in educational and employment opportunities, affirmative action, pay equity, national health care, labor law reform, family and medical leave, reproductive freedom and increased participation of women in unions and in politics. Through its more than 80 chapters across the United States, CLUW members work to end discriminatory laws, and policies and practices adversely affecting women through a broad range of educational, political and advocacy activities. CLUW has frequently participated as *amicus curiae* in numerous legal cases involving issues of gender discrimination and pay equity. CLUW provides training and

educational support to its members on issues relating to Title VII enforcement and prevention of workplace harassment and discrimination, including discrimination based on pregnancy.

The *Connecticut Women's Education and Legal Fund* (CWEALF) is a non-profit women's rights organization dedicated to empowering women, girls and their families to achieve equal opportunities in their personal and professional lives. CWEALF defends the rights of individuals in the courts, educational institutions, workplaces and in their private lives. Since 1973, CWEALF has provided legal education and advocacy and conducted public policy work to ensure the enforcement of Title VII.

The *D.C. Employment Justice Center* (EJC) is a private, non-profit organization that advocates for the rights of frequently unprotected and vulnerable populations, specifically minority workers, domestic violence victims, immigrant workers, and other similarly vulnerable working populations through our legal services, advocacy, and education work. The EJC has achieved many legislative victories that have reformed the workers' compensation and unemployment compensation systems in the District, educated thousands of workers about their rights on the job, and built a vibrant community organizing program.

The *Feminist Majority Foundation* (the Foundation), is a non-profit organization with offices in Arlington, VA and Los Angeles, CA. The Foundation is dedicated to eliminating sex

discrimination and to the promotion of women's equality and empowerment. The Foundation's programs focus on advancing the legal, social, economic, and political equality of women with men, countering the backlash to women's advancement, and recruiting and training young feminists to encourage future leadership for the feminist movement. To carry out these aims, the Foundation engages in research and public policy development, public education programs, litigation, grassroots organizing efforts, and leadership training programs.

Hadassah, the Women's Zionist Organization of America, founded in 1912, is the largest women's and Jewish membership organization in the United States, with over 300,000 members nationwide. In addition to Hadassah's mission of maintaining health care institutions in Israel, Hadassah has a proud history of protecting the rights of women and the Jewish community in the United States. Hadassah strongly supports stricter enforcement of pay equity laws, improvements in restrictive pension policies, and support for measures that will reduce the wage gap and bring about real economic security for women.

Legal Momentum (formerly NOW Legal Defense and Education Fund) advances the rights of women and girls by using the power of the law and creating innovative public policy. Throughout its nearly forty-year history, as lead counsel and as *amicus curiae*, Legal Momentum has worked to enforce the laws prohibiting sex discrimination on the job so as to assure women's equality and economic security. Giving full effect to those laws

demands that past discriminatory acts not give rise to present-day discrimination with respect to any term or condition of employment, including pension benefits.

Myra Sadker Foundation is a non-profit organization dedicated to promoting equity in and beyond schools. Myra Sadker, educator, author, and Dean at American University, exposed both the subtle and blatant education biases that limit the academic, psychological, economic, and physical potential of both males and females. The foundation supports research, training and special programs to assist teachers, parents, children and other adults in eliminating such biases from America's schools.

Founded in 1996, the *National Asian Pacific American Women's Forum* (NAPAWF) is dedicated to forging a grassroots progressive movement for social and economic justice and the political empowerment of Asian Pacific American women and girls. The economic empowerment of all women is one of the central issues that forms the basis of NAPAWF's advocacy. NAPAWF supports the respondents in this case because the persistence of pregnancy discrimination prevents women from achieving equality and economic security in the workplace.

Established in 1955, the *National Association of Social Workers* (NASW) is the largest association of professional social workers in the world, with approximately 145,000 members and chapters throughout the United States, in Puerto Rico, Guam, the Virgin Islands, and an International Chapter in Europe. With the purpose of developing and

disseminating standards of social work practice while strengthening and unifying the social work profession as a whole, NASW provides continuing education, enforces the *NASW Code of Ethics,* conducts research, publishes books and studies, promulgates professional criteria, and develops policy statements on issues of importance to the social work profession. NASW recognizes that discrimination and prejudice directed against any group are not only damaging to the social, emotional, and economic well-being of the affected group's members, but also to society in general. NASW has long been committed to working toward the elimination of all forms of discrimination against women. The NASW Code of Ethics directs social workers to "engage in social and political action that seeks to ensure that all people have equal access to the resources, employment, services, and opportunities they require to meet their basic human needs and to develop fully" . . . and to "act to prevent and eliminate domination of, exploitation of, and discrimination against any person, group, or class on the basis of . . . sex." NASW policies support "breaking the…'maternal wall' that affects mothers in the paid labor force..." NATIONAL ASSOCIATION OF SOCIAL WORKERS, *Women's Issues*, SOCIAL WORK SPEAKS, 387, 390 (2006). Accordingly, given NASW's policies and the work of its members, NASW has expertise that will assist the Court in reaching a proper resolution of the questions presented in this case.

The *National Association of Women Lawyers* (NAWL), founded in 1899, is the oldest women's bar association in the country. NAWL is a national

voluntary organization with members in all fifty states, devoted to the interests of women lawyers, as well as all women. Through its members, committees and the Women's Law Journal, it provides a collective voice in the bar, courts, Congress and the workplace. NAWL stands committed to ensuring equality in the workplace.

The *National Council of Jewish Women* (NCJW) is a grassroots organization of 90,000 volunteers and advocates who turn progressive ideals into action. Inspired by Jewish values, NCJW strives for social justice by improving the quality of life for women, children, and families and by safeguarding individual rights and freedoms. NCJW's Resolutions state that the organization endorses and resolves to work to ensure that "discrimination on the basis of race, gender, national origin, ethnicity, religion, age, disability, marital status, sexual orientation or gender identity must be eliminated." In addition, NCJW believes "equal rights and equal opportunities for women must be guaranteed." Consistent with our Resolutions, NCJW joins this brief.

The *National Council of Women's Organizations* (NCWO) is a coalition of over 200 of the nation's largest and most influential women's groups. Representing 10 million women nationwide, NCWO groups support full enforcement of laws that prohibit sex discrimination in employment. NCWO groups recognize the long-term effects that pregnancy discrimination has on women's economic security.

The *National Education Association* (NEA) is a nationwide employee organization with approximately 3.2 million members, the vast majority of whom are employed by public school districts, colleges, and universities. NEA is strongly committed to ending gender discrimination by educational institutions and, to this end, firmly supports the vigorous enforcement of the Pregnancy Discrimination Act.

The *National Organization for Women* (NOW) is the largest feminist organization in the United States, with a contributing membership of over 500,000 women and men in more than 400 chapters in all 50 states and the District of Columbia. Since its inception in 1966, a major goal of NOW has been to achieve equal employment opportunity for women, including the eradication of discrimination. In furtherance of that goal, NOW has participated in numerous legal cases and in drafting related legislation. The Pregnancy Discrimination Act was drafted by a NOW Founder, Phineas Indritz, and NOW was active in promoting its passage. NOW has a strong interest in the fair treatment of women in retirement and pensions, and in the elimination of pregnancy discrimination and all of its vestiges.

The *National Partnership for Women & Families* is a non-profit, national advocacy organization founded in 1971 that promotes equal opportunity for women, quality health care, and policies that help women and men meet both work and family responsibilities. The National Partnership has devoted significant resources to combating sex, race, and other forms of invidious

workplace discrimination and has filed numerous briefs *amicus curiae* in the U.S. Supreme Court and in the federal circuit courts of appeal to advance the opportunities of women and people of color in employment.

National Women's Political Caucus (NWPC) is a bipartisan, multicultural grassroots organization dedicated to increasing women's participation in the political field and creating a political power base designed to achieve equality for all women. Founded in 1971, NWPC prides itself on increasing the number of pro-choice women elected and appointed into office every year. Through recruiting, training and financial donations, NWPC provides support to women candidates running for all levels of office regardless of political affiliation. In addition, hundreds of state and local chapters reach out to women in communities across the country to better assist them in their dreams of being elected into office. NWPC strives to break the glass ceiling, which restricts a woman's ability to climb the political ladder, one crack at a time.

9to5, National Association of Working Women is a national membership-based organization of low-wage women working to achieve economic justice and end discrimination. 9to5's members and constituents are directly affected by pay disparities, sex discrimination including pregnancy discrimination, the long-term negative effects on economic well-being of these disparities and discrimination, and the difficulties of seeking and achieving redress for all these issues. Our 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.

The *Northwest Women's Law Center* (NWWLC) is a non-profit public interest legal organization that works to advance the legal rights of women in the Pacific Northwest through litigation, education, legislative advocacy, and the provision of legal information and referral services. Since its founding in 1978, the NWWLC has been dedicated to protecting and securing equal rights for women and their families, including in the workplace, in educational institutions, and elsewhere. Toward that end, the NWWLC has participated as counsel and as *amicus curiae* in cases throughout the Northwest and the country, including serving as *amicus* in a recent Washington case confirming that pregnancy discrimination is sex discrimination, and in numerous other cases establishing women's rights to work free from sex discrimination and sexual harassment. The Law Center is currently involved in numerous other legislative and litigation efforts to protect equal opportunity in the workplace and continues to serve as a regional expert and leading advocate on women's legal rights.

The *Older Women's League* (OWL) is a non-profit, non-partisan organization that accomplishes its work through research, education, and advocacy

activities conducted through its chapter and at-large membership network. Now in its 28th year, OWL provides a strong and effective voice for more than 70 million women in America, age 40 and over. OWL has long advocated for equality and economic security, therefore we believe that all persons should be free from sex discrimination in the workplace. No one should be faced with discrimination for becoming pregnant. This type of discrimination has gone on for too long. It affects women at each step of their lives, resulting in older women living in poverty at a much higher rate than older men. OWL believes that AT&T's conduct is contrary to the purpose of Title VII and must not be allowed.

The *Sargent Shriver National Center on Poverty Law* (Shriver Center) champions economic opportunity through fair laws and policies so that people can move out of poverty permanently. Our methods blend advocacy, communication, and strategic leadership on issues affecting people living in poverty. National in scope, the Shriver Center's work extends from the Beltway to state capitols and into communities building strategic alliances. Through its Women's Law and Policy Project, the Shriver Center works on issues related to women's employment and economic security. Discriminatory workplace policies and practices have a negative impact on women's immediate and long-term economic security. The poverty rate among women 65 and older is 12 percent, more than 80 percent higher than the poverty rate for men 65 and older (6.6 percent). Non-discrimination in employment is the surest path out of poverty and toward economic well-being. The Shriver Center has a strong interest

in the eradication of unfair and unjust employment policies and practices, including discriminatory pension benefits, which serve as a barrier to economic equity.

Sociologists for Women in Society (SWS) is a non-profit scientific and educational organization of sociologists and others dedicated to maximizing the effectiveness of and professional opportunities for women in sociology; exploring the contributions which sociology can, does and should make to the investigation of and humanization of current gender arrangements; and improving women's lives and creating feminist social change. It is with the aim of improving women's lives that we sign on to this brief that addresses issues of discrimination around pension benefits.

The *Southwest Women's Law Center* is a nonprofit women's legal advocacy organization based in Albuquerque, New Mexico. Its mission is to create the opportunity for women to realize their full economic and personal potential by eliminating gender discrimination, helping to lift women and their families out of poverty, and ensuring that women have control over their reproductive lives. The Southwest Women's Law Center is committed to eliminating gender discrimination in all of its forms and ensuring broad and meaningful enforcement of anti-discrimination laws in the workplace.

Women Employed 's mission is to improve the economic status of women and remove barriers to economic equity. Women Employed promotes fair employment practices, helps increase access to

training and education, and provides women with information and tools to plan their careers. 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. Women Employed strongly opposes discrimination against women employees while on maternity leave, as well as compounding that discrimination by reducing their pension benefits based on the initial discriminatory action.

Women Work! The National Network for Women's Employment is the nation's largest network of programs that help women enter, re-enter, and advance in the workforce. The service providers who are our members and the women they serve frequently encounter sex and pregnancy discrimination and know first-hand how detrimental these practices are to women's ability to support themselves and their families. *AT&T v. Hulteen* is a test of women's right to be fairly compensated – in wages and in pension benefits – for the equal work they perform. Pregnancy discrimination is a barrier that continues to prevent women from achieving true equality in the workforce.

The *Women's Bar Association of the District of Columbia* (WBA-DC), founded in 1917, works to advance and protect the interests of women lawyers; to maintain the honor and integrity of the legal profession, and to promote the administration of justice. Among its many activities, WBA-DC develops and promotes the interests of women by monitoring

legislation and filing amicus briefs on issues vital to women. WBA-DC has an interest in protecting the legal rights of women, both within and outside of the legal profession, under Title VII of the Civil Rights Act of 1964 Therefore, WBA-DC files as an amicus in this matter in the interest of protecting the rights of women to equality in the workplace.

The *Women's Law Center of Maryland, Inc*. is a nonprofit, membership organization with a mission of improving and protecting the legal rights of women, particularly regarding gender discrimination, sexual harassment, employment law and family law. Through its direct services and advocacy, the Women's Law Center seeks to protect women's legal rights and insure gender equality in the workplace.

The *Women's Law Project* (WLP) is a non-profit public interest law firm with offices in Philadelphia and Pittsburgh, Pennsylvania. Founded in 1974, the WLP works to abolish discrimination and injustice and to advance the legal and economic status of women and their families through litigation, public policy development, public education and individual counseling. Throughout its history, the WLP has worked to eliminate sex discrimination, bringing and supporting litigation challenging discriminatory practices prohibited by federal civil rights laws. The WLP has a strong interest in the proper application of civil rights laws to provide appropriate and necessary redress to individuals victimized by discrimination.

Women's Research & Education Institute (WREI) has provided timely, nonpartisan data and issue analysis to the women of the U.S. Senate and House of Representatives since 1977. Every other year, WREI produces a detailed demographic profile of women's status as students, workers, voters, taxpayers, wives, mothers, widows, and retirees. This book focuses on education, employment, health, military participation, economic well-being, and family formation.

The *YWCA USA* is the nation's oldest women's organization. We represent more than two million women and girls, and can be found in many communities across the United States. With nearly 300 local associations, we serve thousands of women, girls, and their families annually through a variety of programs and services, including housing and nutrition programs, education and training services, violence prevention and recovery programs, and more. Our clients include elderly women, disabled women, women and girls escaping violence, and low-income and homeless women and their families. Throughout its 150 year history, the YWCA has been in the forefront of most major movements in the United States as a pioneer in race relations, labor union representation, and the empowerment of women.

APPENDIX B

TESTIMONY OF NOREEN HULTEEN BEFORE THE SENATE JUDICIARY COMMITTEE SEPTEMBER 23, 2008

In 1968, I was pregnant with my youngest child. I was employed by Pacific Telephone and Telegraph, a wholly was owned AT&T subsidiary, as an Assistant Manager.

In November, I was told by my immediate boss to begin my pregnancy Leave of Absence (LOA), as my body was not "hiding" the condition. At the time, a pregnancy leave was treated as unpaid personal leave by the company. My daughter was born on 1/12/69.

AT&T at that time required a doctor's certificate of fitness be provided before any employee could return to work following a pregnancy LOA.

My doctor told me that corrective surgery was needed before he could give me that document. A full laperotomy was required and it was scheduled for 6 weeks after the birth of my child. The surgery was not pregnancy related. Because I was on a "personal leave" for pregnancy and not a disability leave, the time I took off for the laperotomy was not considered by AT&T to be a disability LOA.

Recovery was long. I returned to work in either July or August 1969. If I had been male, I would have been absent on Disability Benefits for surgery. However, because I was on a personal leave, I could not take off additional time for the laperotomy as a

disability leave unless I returned to work first. I asked my supervisor if I could return for one day and then begin a disability leave. My employer refused this request and, as I stated above, my doctor would not authorize me to return to work without the surgery. If I had been on disability leave and not pregnancy leave, my medical insurance would have been paid in full by the company. If I had been on a disability LOA, I had enough service then to have my full salary paid for part of the time and I would have received half-pay for the remaining time. I had to pay for my own medical insurance for all the months I was on LOA. Due to the AT&T requirement that a person work 6 months after return from a personal LOA before becoming eligible for paid vacation, I lost my vacation benefit for 1969. I also lost my annual raise in pay.

Because AT&T treated pregnancy leave differently from any other kind of disability leave, I lost all of those benefits.

Upon my return to work, my Net Credited Service (NCS) date was adjusted to deduct all but 30 days of the time I had been out on leave. If I had been out on disability leave, I would not have had my date adjusted. AT&T uses this date to keep track of how long someone has worked at the company for seniority and other purposes. This made no difference to anything at that time. It was just a paper record.

Later on, I read that Pacific Bell had been sued successfully for discriminating in pension calculations against women who took pregnancy

leave by deducting that leave time from their NCS dates when it did not deduct that time for any other kind of disability leave. I asked my immediate boss to adjust my NCS date back to my original NCS date as required by the court ruling. He told me that I must write to the Benefits Committee for that.

I wrote the letter on my personal stationery and received no reply. I sent a second letter asking for a reply and received none. In June 1994, my early-retirement date (a force reduction) arrived without any disposition on my request. I signed the papers agreeing to the conditions, but noted "except my NCS date" in the margin, and signed that.

When AT&T calculated my pension, it reduced my annual pension benefit because of the pregnancy leave I had taken. I had actually worked for AT&T for 30 years and 8 months. I was credited with less than 30 years. A man hired on the same day as me, and retired on the same day as me, could have had several disabilities, and yet would retire with higher pension benefits than me. This is what I sued to have AT&T fix.

I waited some time for AT&T's response, but still received none. So, I made an appointment with the EEOC in San Francisco. My first communication there was difficult. The first contact rejected my complaint. Only after complaining was I finally connected to a supervisor who was helpful and understanding.

Eventually, I was issued a "Right To Sue" letter. I was referred to Judith Kurtz, the attorney on the

Pallas case. We met and reached an agreement that I would be a named plaintiff in a class action suit. My case is currently before the Supreme Court.

About two years later, AT&T offered me $5,000 cash to drop the case. By then, I was aware of a number of women whose loss was probably greater than mine was and whose need was more urgent. I refused to settle and let the other women down. I also felt strongly that AT&T was obligated to obey the law.

For the 14 years since I retired and attempted to have my lost credit reinstated, AT&T has employed many delaying tactics. My understanding is that they claim that they are not responsible for correcting that which happened before the law was changed. I am not claiming damages for any of the harm done to me in 1969, before the Pregnancy Discrimination Act. I am not asking AT&T to pay the medical insurance or lost disability pay they should have paid me, or to reimburse me for the raise or the vacation time I lost. I am claiming correction of the harm that was done to me in 1994 – after the law was changed. I am sure that during the 14 years of litigation, many AT&T pensioners who should have been entitled to fair treatment have died and can never benefit from this lawsuit.

I was very happy when the Ninth Circuit agreed with us in my case and held that AT&T was not allowed to reduce pensions for women who took pregnancy leave in the past. I was disappointed that rather than finally deciding to do the right thing and stop discriminating, AT&T decided to try to get the Ninth Circuit's decision reversed.

In my opinion, the problem is not in the laws, which exist to protect women. The problem is that they are not enforced properly. When my deposition was taken as part of the lawsuit, the AT&T lawyer asked why I had not filed a complaint in 1969. She was very young and did not understand that there was no way to complain in 1969. If I had complained to AT&T, my belief is that I would have been fired. Today, women still hesitate to start a proceeding like this because it is apparent that large corporations can flaunt the laws and not be challenged.

I am hopeful that the Supreme Court will recognize that Congress never intended to allow AT&T to discriminate against women like it has been doing. Frankly, the Supreme Court should not have to be involved in this case in the first place – it is a shame that a big and wealthy company like AT&T is working so hard, and spending so much money on its lawyers, to try to win the right to pay smaller pensions to women whose only offense was that they dared to try to work and have a family at the same time.