

No. 25-10651

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

CARROLL INDEPENDENT SCHOOL DISTRICT,

Plaintiff-Appellee,

v.

UNITED STATES DEPARTMENT OF EDUCATION; LINDA MCMAHON, Secretary, U.S. Department of Education; KIMBERLY RICHEY,* in her official capacity as Assistant Secretary for Civil Rights at the United States Department of Education; UNITED STATES DEPARTMENT OF JUSTICE; PAMELA BONDI, U.S. Attorney General; HARMEET DHILLON, in her official capacity as Assistant Attorney General for the Civil Rights Division of the United States Department of Justice,

Defendants-Appellees,

VICTIM RIGHTS LAW CENTER; JANE DOE; A BETTER BALANCE,

Movants-Appellants.

On Appeal from the United States District Court
for the Northern District of Texas
Case No. 4:24-CV-461
The Honorable Reed C. O'Connor

**BRIEF FOR *AMICUS CURIAE* MARCH OF DIMES
IN SUPPORT OF MOVANT-APPELLANT A BETTER BALANCE**

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** The caption reflects the recent confirmation of a new Assistant Secretary for Civil Rights.*

SUPPLEMENTAL STATEMENT OF INTERESTED PARTIES

Pursuant to Circuit Rule 29.2, the undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1, in addition to those listed in the parties' briefs, have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

Amicus Curiae

March of Dimes

Counsel for Amicus Curiae

Dana V. Bolger of Katz Banks Kumin LLP

Pursuant to Fed. R. App. P. 26.1, *Amicus Curiae* March of Dimes is a non-profit organization with no parent corporation, and no publicly held corporation holds an ownership interest of 10% or more in *Amicus*.

December 22, 2025

/s/ Dana V. Bolger

Dana V. Bolger

Counsel for Amicus Curiae

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 34 C.F.R. § 106.40(b)(3)(ii)(A)13
 34 C.F.R. § 106.40(b)(3)(ii)(C)13
 45 C.F.R. § 86.402
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Other Authorities

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 Stats. (2020)3, 14
 Carol H. Griswold, et al., *The Prenatal Care at School Program*, 29.3 J.
 Sch. Nurs. 196 (2013)14
 Eleanor B. Schwarz & Melissa Nothnagle, *The Maternal Health
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Keertana Jain et al., *Title IX Experiences of Pregnant & Parenting Youth in Chicago: A Qualitative Study*, 93.4 J. Sch. Health 289 (2023) passim

Kendra Fershee, *Hollow Promises for Pregnant Students: How the Regulations Governing Title IX Fail to Prevent Pregnancy Discrimination in School*, 43 Ind. L. Rev. 79 (2009)2

Ling Yan et al., *The Association Between Urinary Tract Infection During Pregnancy & Preeclampsia: A Meta-Analysis*, 97 Med. (Baltimore) 1 (2018)15

Louisville Dep’t of Pub. Health & Wellness, *Pregnant Workers Health Impact Assessment 1* (2019) 15, 16

Madelin E. Gardner, et al., *Prenatal Care & Infant Health Outcomes of Teenage Births: a Project WATCH Study*, 23 BMC Preg. & Childbirth 1 (2023)14

March of Dimes, *A Profile of Prematurity in United States* 15, 17

March of Dimes, *Long-Term Health Effects of Preterm Birth* (Feb. 2024)17

Margaret A. Nash & Margaret Dunkle, *The Need for a Warming Trend: A Survey of the School Climate for Pregnant & Parenting Teens*, Equal. Ctr. 1 (1989)2

Mary Kate M. Lane, et al., *What to Expect When Expecting in Lab: A Review of Unique Risks & Resources for Pregnant Researchers in a Chemical Laboratory*, 35.2 Chem. Res. Toxicol. 163 (2022)16

Mary Patrice Erdmans, *Title IX and the School Experiences of Pregnant and Mothering Students*, 36 J. Human. & Soc’y 50 (2012) 3, 7, 8, 9

Mary Welsch Bostick, et al., *Do American Colleges & Universities Support the Lactation Needs of Students?*, 11.7 Breastfeeding Med. 376 (2016)10

Michelle Gough, *Parenting & Pregnant Students: An Evaluation of the Implementation of the Other Title IX*, 17 Mich. J. Gender & L. 211 (2011)12

N.Y.C. Comm’n on Hum. Rts., *Lactation Accommodations: What NYC Employers Need to Know* (2025) 19, 20, 21

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Tetsuya Kawakita, *Adverse Maternal & Neonatal Outcomes in Adolescent Pregnancy*, 29.2 *J. Pediatric Adolesc. Gynecol.* 130 (2016) 14

The Pregnant Scholar, *List of Conditions & Accommodations*, The Ctr. for WorkLife Law 15, 16

Theresa Anderson et al., *The New Title IX Regulations Will Help More Than 180,000 Pregnant Students Every Semester and Millions of Parenting Students Long Term*, *Urban Wire* (Apr. 19, 2024) 6

U.S. Ctrs. for Disease Control & Prevention, *Breastfeeding Recommendations & Guidance* (2023)..... 20

U.S. Dep’t of Health & Hum. Res., *The Business Case for Breastfeeding* (2008) 20

U.S. OFF. FOR THE SURGEON GEN., *THE SURGEON GENERAL’S CALL TO ACTION TO SUPPORT BREASTFEEDING* (Rockville, MD 2011)..... 19

Wanda Pillow, *Teen Pregnancy & Education: Politics of Knowledge, Research & Practice*, 20.1 *Ed. Pol’y* 59 (2006) 10

William J. Hueston, et al., *Prenatal Care Initiation Among Pregnant Teens in the United States: An Analysis Over 25 Years*, 42.3 *J. Adolescent Health* 243 (2008) 14

INTEREST OF *AMICUS CURIAE*

*Amicus curiae*¹ March of Dimes is the nonprofit organization leading the fight for the health of mothers and babies. March of Dimes aims to end preventable maternal and infant death, preterm birth, and maternal health complications. For over eighty-five years, March of Dimes has carried out its mission through research, community service, education, and advocacy, benefiting families across the country, including in Texas, Louisiana, and Mississippi.

¹ No party's counsel authored this brief in whole or in part. No party, party's counsel, or any person other than *Amicus* or its counsel contributed money toward this brief. All parties consented to the filing of this brief.

INTRODUCTION

Each academic year, hundreds of thousands of students across the country navigate the challenges of pregnancy while attending school. Since 1975, Department of Education regulations have nominally protected these students' rights to learn free from pregnancy discrimination. *See, e.g.*, 45 C.F.R. § 86.40 (1975) (implementing Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.*). But the regulations have proven ineffective, vague, and confusing, depriving generations of students of the accommodations they need to continue learning without risk to their health or their pregnancy. *See, e.g.*, Keertana Jain et al., *Title IX Experiences of Pregnant & Parenting Youth in Chicago: A Qualitative Study*, 93.4 J. Sch. Health 289, 290 (2023) (hereinafter "Chicago Study"); Kendra Fershee, *Hollow Promises for Pregnant Students: How the Regulations Governing Title IX Fail to Prevent Pregnancy Discrimination in School*, 43 Ind. L. Rev. 79, 93 (2009); Margaret A. Nash & Margaret Dunkle, *The Need for a Warming Trend: A Survey of the School Climate for Pregnant & Parenting Teens*, Equal. Ctr. 1, 11 (1989).

As a result, pregnant students—including those in their early- to mid-teens—have struggled to secure even the most modest accommodations from their schools, such as the ability to leave class to use the restroom when needed, permission to take the elevator instead of the stairs, a change to their class schedule to accommodate morning sickness, or a modification to course sequencing to avoid chemical exposures in chemistry lab. *See, e.g.,* ROA.4919–4920 (¶¶ 17–19); *Chicago Study*, at 294; Mary Patrice Erdmans, *Title IX and the School Experiences of Pregnant and Mothering Students*, 36 *J. Human. & Soc’y* 50, 61–64 (2012) (hereinafter “School Experiences of Pregnant Students”). Pregnant adolescents face worse pregnancy outcomes than their adult counterparts, including increased risk of neonatal death, as well as preterm birth and low birth weight—adverse outcomes that can affect children throughout their lives. *See, e.g.,* Ashley M. Woodhall & Anne K. Driscoll, *Racial & Ethnic Differences in Mortality Rates of Infants Born to Teen Mothers*, *Nat’l Ctr. for Health Stats.* 1, 1 (2020), <https://www.cdc.gov/nchs/products/databriefs/db371.htm>.

The Department of Education’s new Title IX regulations were promulgated to change that and to assure pregnant students’ access to

necessary accommodations. *Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance*, 89 Fed. Reg. 33,474 (Apr. 29, 2024) (codified at 34 C.F.R. § 106.40) (the “Title IX Rule”). The regulations required schools to:

(1) Offer reasonable accommodations to pregnant and postpartum students, such as intermittent absences for prenatal care appointments and permission to use the restroom, 34 C.F.R. § 106.40(b)(3)(ii);

(2) Provide a clean, private space and breaks during class to express milk or breastfeed, *id.* §§ 106.40(b)(3)(ii), (v); and

(3) Inform pregnant students of their rights, *id.* §§ 106.40(b)(2), (b)(3)(i).

By guaranteeing students the right to the pregnancy and lactation accommodations they need—and the information necessary to access them—the regulations were poised to improve health outcomes for mothers and babies alike.

In vacating the entire Title IX Rule—including those portions protecting pregnant students, which no party even challenged—the district court’s decision eviscerated that promise. *Amicus* March of Dimes—the foremost organization fighting to end maternal and infant

mortality and morbidity in the United States—writes to clarify the potential serious health implications of the district court’s decision, and to urge this Court to restore the rights of hundreds of thousands of pregnant and postpartum students to the protections needed to safeguard their health and their pregnancies.²

² March of Dimes takes no position on other portions of the Title IX Rule.

ARGUMENT

I. School Attendance Poses a Range of Health-Related Challenges for Pregnant Students.

Jackie, an eighteen-year-old high school student, went into labor in her classroom. “I was on the floor, and I was cramping so bad I was crying, and I was like, ‘Can I please go home?’ and [my teacher] would not let me go home.” Jackie had to wait until the school day ended to go to the hospital. *Chicago Study*, at 293.³

Jackie is not alone. Each academic term, some 180,000 students give birth in the United States. Theresa Anderson et al., *The New Title IX Regulations Will Help More Than 180,000 Pregnant Students Every Semester & Millions of Parenting Students Long Term*, Urban Wire (Apr. 19, 2024), <https://www.urban.org/urban-wire/new-title-ix-regulations-will-help-more-180000-pregnant-students-every-semester>. At least 37,000 of them are under the age of eighteen.⁴ *Id.* One in five college students are parents. Inst. For Women’s Pol’y Res., *Parents in College*

³ “Jackie” is a pseudonym.

⁴ The number may be far higher. In 2019, more than 171,000 infants were born to women ages fifteen to nineteen, many of whom were likely high school or first-year college students. *Chicago Study*, at 289.

by the Numbers, <https://iwpr.org/parents-in-college-by-the-numbers/> (last accessed Dec. 3, 2025).

Both during and after their pregnancies, these students confront a range of barriers at school that threaten their health or the health of their pregnancies. Because middle and high school students are subject to significant monitoring and regulation of their movements during the school day, pregnant adolescents in particular often struggle to address their basic health needs. They cannot leave history class of their own accord to use the restroom. They cannot simply decide to take the elevator, instead of climbing three flights of stairs, to math class. And they are often not allowed to eat a snack at their desk to control their blood sugar or to reduce nausea. They have to seek permission for all these things. Too often, they are denied. *See, e.g.*, ROA.4919–4922 (Greenberg Decl. ¶¶ 17–19, 25–27); *Chicago Study*, at 294; *School Experiences of Pregnant Students*, at 61–64.

One recent study of pregnant students in the Chicago Public School system found that nearly half of study participants did not receive an accommodation they needed. *Chicago Study*, at 292, 294. One student recalled, for example, “I was always extremely nauseous, [and] whenever

I would ask to use the bathroom[,] they wouldn't let me. So, I would just be so sick, just sitting there in my seat and then I wouldn't want to participate in class because I felt so bad." *Id.* at 291.

Another pregnant student, Wanda, sixteen years old, recalled, "Nobody cared. If you tell them, 'Oh, Miss can I go to the bathroom because I feel like I got to throw up,' they wouldn't let you go. They would just say, 'You have to wait until the class is over because I have a lot of things to do today.'" *School Experiences of Pregnant Students*, at 61.

Another student, Cassandra, told her teachers she needed to use the restroom. "They was like no you can wait to the end of the [class period]." When Cassandra went to use the restroom anyway, her teachers wrote her up. *Id.* at 62.

Other pregnant students have described struggling to move around the physical space of their schools without accommodation. Donna, a seventeen-year-old student, recalled, "There's a bathroom every ten thousand miles and it's one huge maze that takes you about an hour to walk in-between classes. And if you were late then you couldn't get into class and with being pregnant and being slow and waddling and not

being able to get through people because they won't move and you're protecting your stomach, it was hard." *Id.* at 51.

An eighteen-year-old student recounted, "[A]ll my classes were . . . in the first floor, then the third floor[,] and the first floor again. And we had elevators, but nobody would give me the key . . . And [that] was the point where I just decided to just drop out of school." *Chicago Study*, at 292.

Heartbreakingly, one student described the school hallways being so "full" that she almost fell down the stairs "two or three times" because she was not given as modest an accommodation as the key to use the elevator. *School Experiences of Pregnant Students*, at 62.

Students have struggled to access lactation accommodations as well. Movant-Appellant A Better Balance reported "often" receiving calls on its legal helpline from students who are denied breaks and space to express milk and "forced to abandon their pumping schedules, which can result in a loss of milk supply." ROA.4921 (Greenberg Decl. ¶ 25). For instance, A Better Balance heard from one student whose instructor allowed her to pump only on her lunch break, causing a painful and embarrassing condition that resulted in milk leaking through her shirt.

ROA.4922 (Greenberg Decl. ¶ 27). Another student-caller A Better Balance served was told by her school that she could not take uninterrupted lactation breaks “without losing credits for the semester.”

ROA.4922 (Greenberg Decl. ¶ 26). As a result, she “lost a portion of her milk supply due to her inability to pump according to her needs.”

ROA.4922 (Greenberg Decl. ¶ 26). One survey of American colleges and universities found that a mere 3.6% of schools even had a policy for accommodating lactating students and/or mentioned lactation spaces in their student handbooks. Mary Welsch Bostick, et al., *Do American Colleges & Universities Support the Lactation Needs of Students?*, 11.7 *Breastfeeding Med.* 376, 379 (2016).

The problem is not limited to the refusal to accommodate these students. The Chicago Public School study concluded that, while “some [students] were denied accommodations . . . even more were unaware they had” any legal right to receive support, thwarting their ability to ask and advocate for what they needed. *Chicago Study*, at 294; see also Wanda Pillow, *Teen Pregnancy & Education: Politics of Knowledge, Research & Practice*, 20.1 Ed. Pol’y 59, 62 (2006) (finding that neither adolescent mothers nor school administrators “know that under Title IX

pregnant and mothering students have the right to equal education opportunity”). Indeed, half of the participants in the Chicago Public School study said they received no academic guidance or options. *Chicago Study*, at 294. One student recalled, “I feel like you don’t have a lot of . . . information that they can give you . . . [I]t’s like you have to go about your day like it was normal, you know, like, you’re not pregnant.” *Id.* at 291. Another student explained that not a single teacher or school employee talked to her about her options after returning from her six-week leave to give birth and recover. “When I came back . . . I’m trying to be a momma and then trying to do this work from all these classes. I was like . . . ‘I can’t do it,’ and I lost all my focus.” *Id.* Had this student received information about options to make up her assignments, receive extensions on her work, or obtain academic support like tutoring, perhaps she would have been able to graduate. Instead, she recalled, “I . . . sort of gave up.” *Id.*

Even staff participants in the study openly reported not informing pregnant students of their rights or options. *Id.* at 293–94. One stated, “Unless the family reaches out for support . . . they just kind of do whatever, and that really is the unfortunate part because someone really

should sit down” with the student to tell them their options. *Chicago Study*, at 293; *see also* Michelle Gough, *Parenting & Pregnant Students: An Evaluation of the Implementation of the Other Title IX*, 17 Mich. J. Gender & L. 211, 256 (2011) (“Research has indicated that school administrators are commonly unaware of the legal requirements that apply to the education of these students.”).

II. The Regulations Could Significantly Improve Health Outcomes for Pregnant Students and Their Infants.

The new Title IX regulations make three critical interventions to ameliorate the significant health challenges pregnant and postpartum students face at school. If allowed to go into effect, the regulations could significantly improve maternal and infant health outcomes.

1. Reasonable accommodations. First, the regulations require schools to offer pregnant and postpartum students reasonable accommodations. 34 C.F.R. § 106.40(b)(3)(ii). The regulations provide examples of common reasonable accommodations, including breaks during class to eat, drink, or use the restroom; intermittent absences to attend medical appointments; access to online or homebound education; changes in schedule or course sequence; rescheduling of tests and examinations; allowing the student to sit or stand, or keep water nearby;

and changes to physical spaces, like larger desks. *Id.* § 106.40(b)(3)(ii)(C). The regulations require schools to offer accommodations unless doing so would fundamentally alter the nature of their educational program or activity. *Id.* § 106.40(b)(3)(ii)(A).

Accommodations are essential interventions to protect the health of students and their pregnancies. Take prenatal care, for example. Pregnant students depend on accommodations like excused intermittent absences or modified class schedules to attend prenatal care appointments, since doctors' offices often maintain the same work hours as schools, and rigid school attendance policies punish students for arriving late or leaving during the school day.

Prenatal care is vital for maternal and fetal health. Mothers who receive inadequate prenatal care are more likely to experience poor pregnancy outcomes, including preterm birth, low birth weight, and infant mortality. *See, e.g.,* Reagan G. Cox, et al., *Prenatal Care Utilization in Mississippi: Racial Disparities & Implications for Unfavorable Birth Outcomes*, 15.7 *Mat. Child Health J.* 931, 931 (2011), <https://pubmed.ncbi.nlm.nih.gov/19943096/>; *see also* Madelin E. Gardner, et al., *Prenatal Care & Infant Health Outcomes of Teenage*

Births: A Project WATCH Study, 23 *BMC Preg. & Childbirth* 1, 2 (2023), <https://pmc.ncbi.nlm.nih.gov/articles/PMC10207650/>.

Adolescents are less likely than adults to seek prenatal care, in part because of the unique barriers facing students, such as punitive school attendance policies. *See, e.g.*, William J. Hueston, et al., *Prenatal Care Initiation Among Pregnant Teens in the United States: An Analysis Over 25 Years*, 42.3 *J. Adolescent Health* 243 (2008), [https://www.jahonline.org/article/S1054-139X\(07\)00428-4/fulltext](https://www.jahonline.org/article/S1054-139X(07)00428-4/fulltext); Carol H. Griswold, et al., *The Prenatal Care at School Program*, 29.3 *J. Sch. Nurs.* 196, 196 (2013), <https://pubmed.ncbi.nlm.nih.gov/23144051/>. It is no surprise, then, that pregnant youth experience higher rates than adults of a host of adverse health outcomes, including infant death, preterm birth, low birth weight, preeclampsia, and maternal anemia. *See, e.g.*, Woodhall & Driscoll, *supra*, at 1; Tetsuya Kawakita, *Adverse Maternal & Neonatal Outcomes in Adolescent Pregnancy*, 29.2 *J. Pediatric Adolesc. Gynecol.* 130, 130–31 (2016), <https://pmc.ncbi.nlm.nih.gov/articles/PMC4886236/pdf/nihms733171.pdf>

1. Preterm birth alone is among the leading causes of infant mortality nationwide, and the preterm birth rates of states within this Circuit are

particularly dire: Mississippi’s is 15%, Louisiana’s 14%, and Texas’s 11%—all higher than the overall U.S. rate of 10%. See March of Dimes, *A Profile of Prematurity in United States*, <https://www.marchofdimes.org/peristats/reports/united-states/prematurity-profile> (last visited Dec. 3, 2025).

Other modest accommodations for pregnant students, such as permission to leave class to use the restroom, are critical to prevent urinary tract infections and the corresponding risk of preeclampsia, premature labor, and preterm birth, and to accommodate morning sickness. See, e.g., Louisville Dep’t of Pub. Health & Wellness, *Pregnant Workers Health Impact Assessment* 1, 21 (2019), https://louisvilleky.gov/sites/default/files/migration/missing-files/health_impact_assessments/pregnant-workers-hia-final-02182019.pdf (hereinafter “Impact Assessment”); Ling Yan et al., *The Association Between Urinary Tract Infection During Pregnancy & Preeclampsia: A Meta-Analysis*, 97 *Med. (Baltimore)* 1, 2 (2018), <https://pmc.ncbi.nlm.nih.gov/articles/PMC6133609/>; see also The Pregnant Scholar, *List of Conditions & Accommodations*, The Ctr. for WorkLife Law, at 3, [15](https://thepregnantscholar.org/wp-</p></div><div data-bbox=)

content/uploads/Conditions-Accommodations.pdf (last accessed Dec. 3, 2025) (hereinafter “List of Accommodations”).

Permission to drink water or eat meals and snacks at various times throughout the school day can help students retain a healthy amount of amniotic fluid and mitigate the effects of gestational diabetes. *Impact Assessment*, at 6; *List of Accommodations*, at 2.

Allowing students to modify typical course sequencing, such as by permitting a student to delay a chemistry laboratory course until after giving birth, can reduce the risk of pregnancy loss by reducing exposure to harmful chemicals. Mary Kate M. Lane, et al., *What to Expect When Expecting in Lab: A Review of Unique Risks & Resources for Pregnant Researchers in a Chemical Laboratory*, 35.2 Chem. Res. Toxicol. 163, 178 (2022), <https://pmc.ncbi.nlm.nih.gov/articles/PMC8864617/>; see also *Pregnant Students in Undergraduate Chemistry Labs*, Purdue Univ., <https://www.chem.purdue.edu/chemsafety/PregnantStudents.html> (last accessed Dec. 3, 2025).

Indeed, so critical are accommodations like these that one recent study found that rates of miscarriage and stillbirth dropped 10 percent in the United States after the passage of new legal protections

guaranteeing accommodations in a similar context (employees in the workplace). Jessica Pac & Alejandra Ros, *Do Workplace Pregnancy Accommodations Affect Fertility & Infant Health? Evidence from the 2022 Pregnant Workers Fairness Act*, at 4 (2025), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5537138.

The adverse health effects of non-accommodation during pregnancy can follow a child for decades. For example, as *Amicus* has documented, preterm birth can lead to long-term consequences for a child's health and development. *See, e.g.*, March of Dimes, *Long-Term Health Effects of Preterm Birth* (Feb. 2024), <https://www.marchofdimes.org/find-support/topics/birth/long-term-health-effects-preterm-birth>. Preterm birth may also be linked to depression, anxiety, and attention deficit hyperactivity disorder later in life. *Id.* The annual societal cost of preterm birth is \$25.2 billion, a cost taxpayers shoulder through Supplemental Security Income and Medicaid. *See* March of Dimes, *Profile of Prematurity, supra*, at 2; Paul Gabrielsen, *U Economists Tally Societal Cost of Preterm Birth*, @THEU (Nov. 4, 2019), <https://attheu.utah.edu/facultystaff/u-economists-tally-societal-cost-of-preterm-birth/>. These expenses last far beyond the initial medical

expense of childbirth itself and include long-term care and therapy services, early intervention and special education services, and lost labor market productivity due to preterm-birth-associated disabilities and related caregiving. *See* PRETERM BIRTH: CAUSES, CONSEQUENCES, AND PREVENTION, ch. 12 (Richard E. Behrman & Adrienne Stith Butler eds., 2007), <https://www.ncbi.nlm.nih.gov/books/NBK11358/>.

The regulations' requirement that schools reasonably accommodate pregnant students will benefit students, infants, and society at large, by reducing poor health outcomes.

2. Lactation space and time. The regulations also require schools to provide a clean, private, non-bathroom space that is shielded from view and free from intrusion to express milk or nurse, as well as breaks during class in which to do so. 34 C.F.R. §§ 106.40(b)(3)(ii), (v). These are measures that nearly all schools must already provide to their lactating employees under federal law. *See* 29 U.S.C. § 218d.

Breastfeeding conveys a range of significant short-term and long-term health benefits to both parents and babies. It decreases the risk of breast cancer, ovarian cancer, diabetes, hypertension, and cardiovascular disease in parents. Eleanor B. Schwarz & Melissa

Nothnagle, *The Maternal Health Benefits of Breastfeeding*, 91 Am. Fam. Physician 603, 603–04 (2015), <https://www.aafp.org/pubs/afp/issues/2015/0501/p602.pdf>; Jodi R. Godfrey & Ruth A. Lawrence, *Toward Optimal Health: The Maternal Benefits of Breastfeeding*, 19.9 J. Women’s Health 1597, 1597–98 (2020), <https://journals.sagepub.com/doi/pdf/10.1089/jwh.2010.2290>; N.Y.C. Comm’n on Hum. Rts., *Lactation Accommodations: What NYC Employers Need to Know* 1, 2 (2025) https://www.nyc.gov/assets/cchr/downloads/pdf/Lactation%20Accommodation_WhatNYCEmployersNeedToKnow%20FINAL.pdf (hereinafter “Lactation FAQs”). And it strengthens young immune systems, supports brain development, and reduces ear infections, diarrhea, immune disorders, asthma, obesity, leukemia, diabetes, and death in children. *Lactation FAQs*, at 1–2; U.S. OFF. FOR THE SURGEON GEN., THE SURGEON GENERAL’S CALL TO ACTION TO SUPPORT BREASTFEEDING (Rockville, MD 2011), <https://www.ncbi.nlm.nih.gov/books/NBK52687/>. Indeed, breastfeeding so reduces infant illness that working mothers who breastfeed their babies use sick time at less than half the rate as those who formula feed their children—an outcome that almost certainly would

carry over into the school context as well. U.S. Dep't of Health & Hum. Res., *The Business Case for Breastfeeding* (2008), https://womenshealth.gov/sites/default/files/documents/bcfb_business-case-for-breastfeeding-for-business-managers.pdf.

The Centers for Disease Control and Prevention, American Academy of Pediatrics, and World Health Organization recommend breastfeeding exclusively for the first six months after birth and alongside other foods for up to two years after birth. U.S. Ctrs. for Disease Control & Prevention, *Breastfeeding Recommendations & Guidance* (2023), <https://www.cdc.gov/breastfeeding/php/guidelines-recommendations/index.html>. To produce enough food for their infants, students must express milk regularly. During an eight-hour school day, a student may need at least three breaks of fifteen to thirty minutes to pump or feed, as well as time to travel to the lactation space, set up and clean their pump, and store their milk. *Lactation FAQs*, at 3. If the student is deprived of sufficient time to express milk, they can quickly lose their milk supply, causing them to have to stop breastfeeding sooner than planned. *Id.* at 2. Insufficient lactation time can also cause breast

swelling or engorgement and lead to mastitis, a painful infection of the breast often accompanied by fever and even hospitalization. *Id.*

The regulations would ensure that no students would be put in the impossible situation of choosing between feeding their baby and completing their education.

3. Notice of rights. The final significant new requirement of the regulations is that schools must inform students of their rights, including their rights to medical leaves of absence to give birth and recover, non-discrimination protections, reasonable accommodations, and lactation space. 34 C.F.R. § 106.40(b)(3)(i).

As discussed above, although Title IX regulations have provided limited protections for pregnant students since 1975, few students have known they had any rights, rendering them unable to access them. For instance, the 1975 version of the regulation required schools to reinstate a student returning from childbirth leave to “the status which she held when the leave began.” 45 C.F.R. § 86.40(b)(5) (1975). Yet postpartum students’ schools have refused to reinstate them, or made it practically impossible to return, such as by failing to notify them of their rights to extensions on assignments or academic tutoring to help them catch up,

as in the case of the student described above. Movant-Appellant A Better Balance has fielded “calls from pregnant and postpartum students who do not know about the protections Title IX offers them or the accommodations or resources available to them at their schools.” ROA.4924 (Greenberg Decl. ¶ 32). Indeed, one student who contacted A Better Balance recalled that “[a]t no point after disclosing her pregnancy to her teachers and administrators was she told about Title IX . . . and that the law could protect her.” *Id.* When students do not even know they have rights to begin with, they cannot advocate for them to be respected, with potentially serious consequences for their health and the health of their babies.

CONCLUSION

Restoring the Title IX Rule’s protections for pregnant, postpartum, and lactating students would have immediate, life-changing effects: protecting pregnancies, reducing adverse health outcomes for both students and their babies, and ensuring that students can remain in school without jeopardizing their health. For these reasons, we respectfully urge this Court to reverse the district court’s order vacating the pregnancy provisions of the Title IX Rule. Doing so will reaffirm a

simple but critical principle: students should not have to forfeit their educations to protect their health or that of their pregnancies.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 22, 2025, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit via the CM/ECF system. All counsel of record are registered CM/ECF users, and service will be accomplished by the CM/ECF system.

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 29(a)(5) because it contains 3,931 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f) and Circuit Rule 32.2.

This brief complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5)–(6) and Circuit Rule 32.1 because it was prepared in a proportionally spaced typeface using Microsoft Word for Microsoft Office 365 in 14-point Century Schoolbook font.

December 22, 2025

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