

STATE OF MAINE
MAINE SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

LAW DOCKET NO. KEN-25-53

**MAINE STATE CHAMBER OF COMMERCE and
BATH IRON WORKS CORPORATION,**

Plaintiffs/Appellants,

v.

**STATE OF MAINE DEPARTMENT OF LABOR and
LAURA A. FORTMAN, in her official capacity as Commissioner of the State
of Maine Department of Labor**

Defendants/Appellees.

On Questions Reported by the Kennebec County Superior Court
Docket No. AUGSC-CCV-2025-00007

BRIEF OF AMICI CURIAE

Dated: April 23, 2025
(resubmitted April 25, 2025)

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STATEMENTS OF INTEREST

A Better Balance (ABB) is a national legal advocacy organization with offices in New York, Colorado, Tennessee, and Washington, D.C. ABB is dedicated to promoting fairness in the workplace and helping workers meet the conflicting demands of work and family. Through legislative advocacy, litigation, research, public education and technical assistance to state and local campaigns, ABB is committed to helping workers care for themselves and their families without risking their economic security. ABB co-drafted model state paid family and medical leave legislation that has been used and adapted by states around the country that have enacted paid family and medical leave laws, including Maine. The organization has also provided extensive technical assistance on implementation of paid family and medical leave. In addition to ABB's advocacy and implementation work, the organization runs a free legal helpline for workers regarding work-family issues, such as paid leave, and provides legal assistance to workers in states around the country.

The National Partnership for Women & Families is a nonprofit, nonpartisan advocacy group that has over 50 years of experience in combating barriers to equity and opportunity for women. The National Partnership works for a just and equitable society in which all women and families can live with dignity, respect, and security; every person has the opportunity to achieve their potential; and

no person is held back by discrimination or bias. This amicus addresses critical priority issues for the National Partnership, which has been deeply involved in the fight for paid family and medical leave for decades. We wrote the first draft of the Family and Medical Leave Act (FMLA) – which provides unpaid, job-protected family and medical leave – and built and led the coalition that won its passage in 1993. In the decades since the FMLA passed, we have worked alongside state and national partners to advance the issue of paid leave. We have testified at congressional and state hearings, listened to workers, worked with business partners and carried out extensive research on and analysis of the implementation of state paid leave laws and the benefits of paid leave.

The Maine Employment Lawyers Association (MELA) represents over 50 attorneys with the mission to promote and protect the interests and legal rights of Maine workers. For decades, MELA has taken a leadership role in drafting and advocating for legislation that advances the human rights and well-being of workers, including the right to paid family leave. Its members meet quarterly to carefully analyze developments in state and federal employment law and to formulate and work toward needed reforms. MELA has an established record of submitting helpful amicus curiae briefs and participating at oral argument before this Court and in the

United States Court of Appeals for the First Circuit.¹ We are an affiliate of the National Employment Lawyers Association (NELA), which has over 2,000 members and is the largest plaintiffs’ employment bar association in the country.

SUMMARY OF THE ARGUMENT

Through the Paid Family and Medical Leave Act,² the Maine legislature established a carefully researched and designed program that supports businesses and working families while strengthening the state’s economy. Far too many Mainers are forced to choose between their own or their families’ health and their livelihood—a difficult choice that can be avoided through this access to the crucial benefit of paid family and medical leave.

The Paid Family and Medical Leave Program, including its funding structure, works to ensure long-term sustainability of the public fund while balancing employers’ flexibility to substitute private plans. Funded by premiums shared by employers and employees beginning on January 1, 2025, the state fund is intended to build for one year prior to disbursing benefits. According to the Maine Department of Labor’s rules for the program, covered employers are to contribute to the state fund unless they are approved for private plans, applications for which are accepted

¹ See, e.g., *Vargas v. Riverbend Mgmt. LLC*, 2024 ME 27, 314 A.3d 241 (amicus brief); *Gorham v. Androscoggin County*, 2011 ME 63, 21 A.3d 115 (amicus brief and participated in oral argument); *Whitney v. Wal-Mart Stores*, 2006 ME 37, 895 A.2d 309 (amicus brief and participated in oral argument); *Harrison v. Granite Bay Care, Inc.*, 811 F.3d 36 (1st Cir. 2016) (amicus brief); *Rucker v. Lee Holding Co.*, 471 F.3d 6 (1st Cir. 2006) (amicus brief).

² 26 M.R.S. §§ 850-A-850-R.

beginning April 1, 2025.³ This approach is essential to maintaining the financial integrity and sustainability of the program and ensuring equitable participation among employers of all sizes. Plaintiffs' challenge to these rules, therefore, would harm the integrity and equity of the program, and therefore it should be denied. The program's investment in Maine's working families will promote a healthier and more stable workforce, strengthening all businesses and the state's economy as a whole.

ARGUMENT

I. Paid Family and Medical Leave is a proven social insurance program that will benefit Maine

Maine's Paid Family and Medical Leave program is a social insurance program that will benefit Maine's workers, businesses, and the state as a whole. It will allow all Mainers to take the time they need to care for their health and their loved ones. In Maine, a typical worker who takes four weeks of unpaid leave loses more than \$3,800 in income.⁴ As the cost of living rises, this kind of income loss hits families especially hard. This program will ensure workers who are ineligible for or unable to afford *unpaid* family and medical leave can take needed time and maintain their financial security.

³ See 12-702 C.M.R. Ch. 1 § XIII(A)(2), (4)(b).

⁴ Author's calculation based on U.S. Bureau of Labor Statistics. (2023, March). May 2024 State Occupational Employment and Wage Estimates (Median Income, All Occupations). Figure is for a full-time worker. Retrieved 16 April 2025, from <https://data.bls.gov/oes/#/area/23000000>

While many leading employers provide paid leave, the private sector has been unable to provide an adequate paid leave solution to meet workers' needs; in 2022, about 73 percent — or 493,000 workers — in Maine did not have paid family leave through their jobs.⁵ In addition, most employers' voluntary programs do not support workers taking leave for the comprehensive reasons workers can take leave under Maine's program, including related to military deployment and safe leave after abuse or violence. Finally, many small businesses want to provide their workers leave but are unable to, creating a competitive disadvantage for them in recruiting and retaining workers.

Maine's Paid Family and Medical Leave program is a cost-effective solution, with the program funded equally by employer and employee contributions of 0.5 percent of wages each (except for employers with less than 15 employees, who would not be required to contribute their portion of the premiums). For a Mainer making annual median wages, that means they and their employer will each contribute just \$247 per year,⁶ or less than \$5 a week, in exchange for the peace of

⁵ National Partnership for Women & Families, "Paid Leave Means A Stronger Maine," Jan. 2023, available at <https://nationalpartnership.org/wp-content/uploads/2023/02/paid-leave-means-a-stronger-maine.pdf>

⁶ Author's calculation based on U.S. Bureau of Labor Statistics. May 2024 State Occupational Employment and Wage Estimates (Median Income, All Occupations). Retrieved 16 April 2025, from <https://data.bls.gov/oes/#/area/23000000>.

mind and financial stability that comes with being able to take up to 12 weeks of paid leave for medical, caregiving, deployment and safe leave purposes.⁷

Family care needs in Maine are increasing. Nearly thirty percent of Maine’s workers are 55 and older, and in the next 25 years, the number of Mainers who are 65 and older will grow by 19,000.⁸ Paid leave means older adults and people with disabilities can provide and receive care, and the state’s care workforce is more resilient. Overall, Maine’s paid leave program will benefit all taxpayers, the state economy, and support young Mainers to stay in Maine to build their families and grow their businesses.

A. *Paid Family and Medical Leave is good for businesses*

1. Paid Family and Medical Leave produces positive economic outcomes

Maine’s Paid Family and Medical Leave program will be good for business. Businesses reap significant gains from paid leave programs, which improve productivity and employee satisfaction; improve morale; and reduce turnover. Firm-level analysis of employers in California before and after paid family leave was implemented confirmed that for the average firm, wage costs had not increased and

⁷ Paid Family and Medical Leave, Maine Department of Labor, last accessed Apr. 17, 2025, <https://www.maine.gov/paidleave/>

⁸ National Partnership for Women & Families, “Paid Leave Means A Stronger Maine,” Feb. 2025, available at <https://nationalpartnership.org/wp-content/uploads/2023/02/paid-leave-means-a-stronger-maine.pdf>

turnover rates had decreased.⁹ Another recent study, which compared outcomes of businesses in states with paid leave programs to those located in nearby counties in states without paid leave, found that productivity increased by about 5 percent at businesses in paid leave states compared to those in non-paid leave states.¹⁰

Paid leave particularly improves retention for new mothers, low-wage workers, and workers in lower quality jobs. Research shows, for example, that paid leave decreases turnover and increases the likelihood new mothers return to their previous jobs.¹¹ Research in California found that for workers in lower quality jobs who needed time off, the share who reported returning to their same employer was nearly 10 percentage points higher among those who used the state paid leave program compared to those who did not.¹²

Employer profitability and employee performance also improve with paid leave. An analysis of firms' outcomes after implementing paid leave found that on average, they experienced 4.6 percent greater revenue and 6.8 percent greater profit per full-time equivalent employee, and a significant human capital return on

⁹ Kelly Bedard and Maya Rossin-Slater. The Economic and Social Impacts of Paid Family Leave in California: Report for the California Employment Development Department. Technical Report, 2016.

¹⁰ Bennett, B., Erel, I., Stern, L. H., & Wang, Z. (2023, March). *Paid Leave Pays Off: The Effects of Paid Family Leave on Firm Performance*. Fisher College of Business Working Paper Series. Retrieved 1 April, 2025, from: https://www.ecgi.global/sites/default/files/working_papers/documents/paidleavepayoff.pdf

¹¹ *Id.*

¹² Appelbaum, E., & Milkman, R. (2013). *Unfinished Business: Paid Family Leave in California and the Future of U.S. Work-Family Policy*. Ithaca, NY: Cornell University Press.

investment: manufacturing companies saw a \$2.57 return for every \$1.00 invested in their workforce, on average, and tech companies a \$2.64 return per \$1.00 invested.¹³

2. Paid Family and Medical Leave supports small businesses

Paid leave is particularly beneficial for small businesses, which often have trouble matching the more generous leave benefits offered by larger employers – potentially resulting in a hiring and retention disadvantage. In a national scientific opinion poll, 80 percent of small business owners said they would like to offer more paid leave than they can currently afford.¹⁴ When paid leave is administered through a public paid leave insurance program, it levels the playing field and helps small businesses compete for talent. Small employers benefit because the cost of leave is shared. Notably, when asked to choose between two approaches, small business owners are about twice as likely to support a universal paid family and medical leave

¹³ Panorama and American Sustainable Business Council. (2019, October). The Business Impacts of Paid Leave: A financial analysis of the return on investment of paid family and medical leave. Retrieved 1 April 2025, from:

https://www.asbcouncil.org/sites/main/files/file-attachments/panorama_report_-_business_impacts_of_paid_leave.pdf

¹⁴ Small Business Majority and National Partnership for Women & Families. (2024, October). Small Businesses Support a National Paid Family and Medical Leave Program. Retrieved 1 April 2025, from <https://nationalpartnership.org/report/small-businesses-support-national-paid-family-medical-leave-program/>

program (61%) than a voluntary insurance program that businesses could choose to buy into (31%).¹⁵

Small business owners also believe that offering paid family and medical leave is the right thing to do and their preferences are further supported by evidence from other states. After nearly 20 years of experience with California's paid leave policy, more than 70 percent of small business owners said state benefit programs such as paid leave contributed to retention and helped them stay competitive with larger business, and more than 80 percent supported proposals to expand the program.¹⁶

B. Paid Family and Medical Leave is good for workers

Supporting workers' caregiving and health needs through paid leave has tremendous positive impacts for individuals and families. Numerous studies show that paid leave programs go a long way to redress long-standing inequities for workers, especially women of color.

Paid leave also has positive benefits for children and parents. Paid leave programs increase the time new mothers take to bond with new children and recover

¹⁵ Small Business Majority and National Partnership for Women & Families. (2024, October). Small Businesses Support a National Paid Family and Medical Leave Program. Retrieved 1 April 2025, from <https://nationalpartnership.org/report/small-businesses-support-national-paid-family-medical-leave-program/>

¹⁶ National Partnership for Women & Families. (2023, October). *Paid Family and Medical Leave Is Good for Business*. Retrieved 1 April 2025, from <https://nationalpartnership.org/wp-content/uploads/2023/02/paid-leave-good-for-business.pdf>

from birth,¹⁷ and reduce the incidence of low birthweight and preterm births¹⁸ – with both benefits especially pronounced for Black mothers. Research also links state paid leave programs to improved physical¹⁹ and mental health for new mothers, including lower postpartum distress,²⁰ improved on-time vaccination rates,²¹ greater initiation and duration of breastfeeding,²² fewer infant hospitalizations²³ and more. Paid leave increases new fathers’ leave-taking,²⁴ which supports greater

¹⁷ Rossin-Slater, M., Ruhm, C., & Waldfogel, J. (2013). The Effects of California’s Paid Family Leave Program on Mothers’ Leave-Taking and Subsequent Labor Market Outcomes. *Journal of Policy Analysis and Management*, 32(2), 224–245. doi: 10.1002/pam.21676

¹⁸ Stearns, J. (2015, September). The effects of paid maternity leave: Evidence from Temporary Disability Insurance. *Journal of Health Economics*, 43, 85-102. doi: 10.1016/j.jhealeco.2015.04.005

¹⁹ Pal, I. (2016). Work, Family and Social Policy in the United States - Implications for Women’s Wages and Wellbeing. Doctoral thesis, Columbia University. Retrieved 1 April 2025, from <https://academiccommons.columbia.edu/doi/10.7916/D87W6C74>

²⁰ Doran, E. L., Bartel, A. P., Ruhm, C. J., & Waldfogel, J. (2020, July). California’s paid family leave law improves maternal psychological health. *Social Science & Medicine*, 256, 113003. doi: 10.1016/j.socscimed.2020.113003

²¹ Choudhury, A. R., & Polachek, S. W. (2019, July). The Impact of Paid Family Leave on the Timing of Infant Vaccinations. I. Z. A. Institute of Labor Economics, No. 12483. Retrieved 1 April 2025, from <http://ftp.iza.org/dp12483.pdf>

²² Pac, J., Bartel, A., Ruhm, C., & Waldfogel, J. (2023, December). Paid family leave and parental investments in infant health: Evidence from California. *Economics and Human Biology*, 51. doi: 10.1016/j.ehb.2023.101308. See also Hamad, R., Modrek, S., & White, J. S. (2019, January). Paid Family Leave Effects on Breastfeeding: A Quasi-Experimental Study of US Policies. *American Journal of Public Health*. 109(1): 164-166. doi: 10.2105/AJPH.2018.304693

²³ Pihl, A. M., & Basso, G. (2019). Did California Paid Family Leave Impact Infant Health? *Journal of Policy Analysis and Management*. 38(1), 155-180. doi: 10.1002/pam.22101; Klevens, J., Luo, F., Xu, L., Peterson, C., & Latzman, N. (2016). Paid family leave’s effect on hospital admissions for pediatric abusive head trauma. *Injury Prevention*, 22, 442-445. doi: 10.1136/injuryprev-2015-041702

²⁴ Bartel, A. P., Rossin-Slater, M., Ruhm, J., Stearns, J., & Waldfogel, J. (2018). Paid Family Leave, Fathers’ Leave-Taking, and Leave-Sharing in Dual-Earner Households. *Journal of Policy Analysis and Management*, 37(1), 10-37. doi: 10.1002/pam.22030

involvement in parenting,²⁵ including for fathers who do not live in the same household as their children.²⁶ And paid leave for parents supports economic security as well as health; research on the nation's longest-running paid leave program in California shows increases in income and decreases in poverty because of paid leave,²⁷ as well as reductions in food insecurity.²⁸

Paid leave has even been shown to reduce elder nursing home utilization,²⁹ which can benefit those adults' health (for example, by lessening exposure to infections common in congregate settings), improve staffing ratios for those patients who remain in institutional care and keep more older adults in their homes and communities.

²⁵ Petts, R. J., Knoester, C., & Waldfogel, J. (2020). Fathers' Paternity Leave-Taking and Children's Perceptions of Father-Child Relationships in the United States. *Sex Roles*, 82, 173-188. doi:10.1007/s11199-019-01050-y

²⁶ Pilkauskas, N. V., & Schneider, W. J., (2020, October). Father Involvement Among Nonresident Dads: Does Paternity Leave Matter? *Journal of Marriage and Family*, 82(5), 1606-1624. doi: 10.1111/jomf.12677

²⁷ Romig, K. & Bryant, K. (2021, April). A National Paid Leave Program Would Help Workers, Families. Retrieved April 1 2025, from Center on Budget and Policy Priorities website: <https://www.cbpp.org/research/economy/a-national-paid-leave-program-would-help-workers-families>

²⁸ Lenhart, O. (2021). The effects of paid family leave on food insecurity—evidence from California. *Review of Economics of the Household*. 19, 615–639. doi:10.1007/s11150-020-09537-4

²⁹ Arora, K., & Wolf, D. A. (2017, November). Does Paid Family Leave Reduce Nursing Home Use? The California Experience. *Journal of Policy Analysis and Management*, 37(1), 38-62. doi: 10.1002/pam.22038

Finally, paid leave allows self-employed individuals to maintain financial stability.³⁰ For Maine, the return on public investment in paid leave will be significant – including by allowing women to stay connected to the workforce when they experience common health and caregiving needs, including childbirth and early infant care,³¹ as well as supporting spousal and elder care.³²

C. Paid Family and Medical Leave is good for the State of Maine

Maine’s paid leave program will benefit taxpayers, the economy, and support young Mainers to stay in Maine to build their families and grow their businesses. Research on paid family and medical leave shows that it leads to savings for taxpayer-funded programs.³³ For example, it can reduce reliance on social safety net programs, such as the Supplemental Nutrition Assistance Program (also known as food stamps), benefiting taxpayers.³⁴ Workers without access to paid leave are also

³⁰ Molly Weston Williamson, Why Self-Employed Workers Need Paid Leave, Center for American Progress, Sept. 21, 2023, available at <https://www.americanprogress.org/article/why-self-employed-workers-need-paid-leave/>

³¹ Rossin-Slater, M., Ruhm, C., & Waldfogel, J. (2013). The Effects of California’s Paid Family Leave Program on Mothers’ Leave-Taking and Subsequent Labor Market Outcomes. *Journal of Policy Analysis and Management*, 32(2), 224–245. doi: 10.1002/pam.21676

³² Saad-Lessler, J. (2020, October). How does paid family leave affect unpaid care providers? *The Journal of the Economics of Ageing*, 17, 100265. doi: 10.1016/j.jeoa.2020.100265; Anand, P., Dague, L., & Wagner, K. L. (2022, May). The role of paid family leave in labor supply responses to a spouse’s disability or health shock. *Journal of Health Economics*, 83, 203632. doi: 10.1016/j.jhealeco.2022.102621

³³ A Better Balance, “The Business Case for Paid Family and Medical Leave,” Feb. 2025, available at <https://www.abetterbalance.org/resources/the-business-case-for-paid-family-and-medical-leave/>

³⁴ Washington Center for Equitable Growth, “Paid Family Leave in the US: Research Agenda.” Oct. 2018, <https://equitablegrowth.org/research-paper/paid-family-and-medical-leave-in-the-united-states/?longform=true>

more likely to experience food insecurity, participate in Medicaid or the Children's Health Insurance Program, and receive rental assistance.³⁵ By increasing availability of family caregiving, paid family and medical leave can also reduce some burdens on hospitals and nursing homes³⁶ and result in potential Medicare and Medicaid savings.³⁷

Studies from California's long-running paid family program illustrate how Maine's program can also improve workforce attachment and long-term wages for lower-income households. Increased labor force participation, particularly for women, can improve families' economic security and strengthen the overall economy.³⁸ This is particularly true for Maine, where women make up almost half of Maine's labor force and more than a quarter of its business owners.³⁹ In sum,

³⁵ Chantel Boyens, Michael Karpman, Jack Smalligan, "Access to Paid Leave is Lowest Among Workers Who Need it Most," Urban Institute, July 2022, <https://www.urban.org/sites/default/files/2022-07/Access%20to%20Paid%20Leave%20Is%20Lowest%20among%20Workers%20with%20the%20Greatest%20Needs.pdf>

³⁶ Arora, K., & Wolf, D. A. (2017, November). Does Paid Family Leave Reduce Nursing Home Use? The California Experience. *Journal of Policy Analysis and Management*, 37(1), 38-62. doi:10.1002/pam.22038

³⁷ Jessica Mason, "Paid Leave Would Reduce Healthcare Costs," National Partnership for Women and Families, Oct. 2021, available at <https://nationalpartnership.org/wp-content/uploads/2023/02/paid-leave-would-cut-health-care-costs.pdf>

³⁸ Joelle Saad-Lessler and Kate Bahn, *The Importance of Paid Leave for Caregivers: Labor Force Participation Effects of California's Comprehensive Paid Family and Medical Leave*, Center for American Progress, 2017, <https://www.americanprogress.org/issues/women/reports/2017/09/27/439684/importance-paid-leave-caregivers/>.

³⁹ National Partnership for Women & Families, "Paid Leave Means a Stronger Maine," Feb. 2025, <https://nationalpartnership.org/wp-content/uploads/2023/04/paid-leave-means-a-stronger-maine.pdf>

Maine’s paid leave social insurance program will help improve health outcomes and help working people remain economically secure and connected to their jobs, supporting Maine’s broader economy.

II. Requiring employers to make nonrefundable contributions to Maine’s Paid Family and Medical Leave fund for the first quarter of 2025 would promote the integrity and sustainability of the program

Though the option of private plans provides an alternative way for employers to comply with Maine’s paid family and medical leave law, the state fund must be sufficiently funded to cover administrative costs, provide benefits, and protect the fund’s financial stability until private plans are approved and fully implemented. Maine’s paid family and medical leave law states plainly that “an employer with an *approved* private plan” is not required to contribute premiums to the paid family and medical leave fund. 26 M.R.S. § 850-F(8) (emphasis added). Approval, including development and certification that a private plan meets the requirements of a state law, is a process that takes time and resources.

In Maine, the review and approval process for private plans may require more work and oversight for the State, since Maine’s Paid Family and Medical Leave program has more flexible standards for private plan approval in comparison to other states, requiring private plans to merely be “substantially equivalent” to the State plan. 26 M.R.S. § 850-H(1). Meanwhile, other states typically require that private plans provide benefit parameters such as duration and wage replacement rate that

are each at least as high as those provided by the state plan, rather than merely “substantially equivalent.” *See, e.g.*, Mass. Gen. Laws, tit. 22, ch. 175M, § 11(a); Col. Rev. Stat. § 8-13.3-521(1). Given the relative flexibility of Maine’s private plan substitutions, the process for approval and oversight of private plans may be more resource intensive for the state.

A. Employees covered by private plans are part of the State Paid Family and Medical Leave program, receiving important benefits and protections from the State

Private plans have been an established part of state paid leave programs since the 1940s.⁴⁰ Today, most of the other comprehensive state paid family and medical leave programs are structured in largely the same way as Maine’s law: a default state fund, with the option to provide the required cash benefits through an approved private plan subject to specific rules.⁴¹

As they are in other states, private plans in Maine will be a critical part of the state’s overall Paid Family and Medical Leave program, alongside the state-run fund as well as other key components operated by the state. By law, an employer can seek permission from the state to “meet its obligations under [the paid leave law] through a private plan.” 26 M.R.S. § 850-H(1). The law provides a strong baseline of

⁴⁰ *See* Molly Weston Williamson, *Structuring Paid Family and Medical Leave: Lessons from Temporary Disability Insurance*, 17 Conn. Pub. Int. L.J. 1 (2017), 13-27.

⁴¹ *See* “Interactive Overview of Paid Family and Medical Leave Laws in the United States,” A Better Balance (last accessed Apr. 18, 2025), <https://www.abetterbalance.org/family-leave-laws/>.

minimum criteria a private plan must meet to be eligible for approval, including that the plan “must confer rights, protections and benefits substantially equivalent to those provided to employees” through the state fund. *Id.* Collectively, these requirements outline the substantive protections that workers covered through a private plan are entitled to by law, reflecting private plans’ role as one of the ways through which the paid leave commitments the State of Maine has made to its workers are fulfilled.

While they will receive their monetary benefits through the private plan rather than the state fund, employees covered by private plans also have important protections directly through the state in relation to paid leave—protections that will require state resources and funds to provide. For example, employees covered under a private plan have the right to appeal determinations by that plan to the state, just as those who receive their benefits through the state fund do. 26 M.R.S. § 850-H(5); 26 M.R.S. § 850-K.

Similarly, employees receiving benefits through private plans will have the same rights to employment protections as those receiving benefits through the state fund. 26 M.R.S. § 850-H(4). Those protections include employees’ rights to be restored to their prior position or an equivalent position following leave and prohibition against retaliation. 26 M.R.S. § 850-J(1)-(2). Just as they are for employees receiving benefits through the state fund, those employment protections

for employees receiving benefits through private plans are enforced by the Department of Labor. 26 M.R.S. § 850-J(3).

In order to ensure employees' substantive rights guaranteed by statute are protected under private plans, the state also must engage in continuing oversight of private plans requiring state resources, such as conducting audits. *See* 12-702 C.M.R. Ch. 1 § XII.A.7. Collectively, these provisions reinforce private plans' role as an integral component part within the holistic State program.

B. There is no guarantee that employees or employers will remain with a private plan and never join the State fund

In addition, the benefits provided by the state fund and those provided by private plans are tied together, reflecting the decisions by state lawmakers to make benefits portable. This reflects the decision by state lawmakers to make benefits portable: workers qualify based on income earned across all covered employers and keep their benefits as they move from job to job, regardless of whether a particular employer uses a private plan or the state fund.

For example, consider a worker whose employer has an approved private plan who leaves that job for one with an employer who provides benefits through the state fund. Shortly after starting that new job, the worker has a serious health need. Because Maine's paid leave eligibility standards recognize wages across all employers, *see* 12-702 C.M.R. Ch. 1 § II.A.1(1); 12-702 C.M.R. Ch. 1 § IV.A, that worker would likely qualify for leave benefits through the state plan based on her

income with the prior, private plan employer, even though she had not contributed to the state plan on that income.

Similarly, if a private plan fails to meet its obligations to employees, the state is required by law to withdraw approval for the private plan, 26 M.R.S. § 850-H(3). In that event, workers would need to be able to rely on the state plan, to which they had not previously been contributing, should a need for leave arise.

Additionally, there is no guarantee that an employer who is initially approved to use a private plan will remain with that private plan for all time. Approval of private plans must be revoked if the required terms and conditions of the private plan agreement are violated, such as if the employer fails to submit required wage reports. *See* 26 M.R.S. § 850-H(3). Employers may also choose to leave a private plan and begin providing benefits through the state fund at the end of the three-year period of the private plan approval.

Maine's state paid leave program will operate as one system with multiple parts that work together. Within this system, individual employers and workers move in and out of private plans and the state fund over time while remaining in the program. It is therefore appropriate and necessary that employers and employees who may later use a private plan initially contribute to the state fund, recognizing the ways they benefit from and are connected to state-provided portions of the program.

III. Requiring employers to make nonrefundable contributions to Maine’s Paid Family and Medical Leave fund for the first quarter of 2025 would promote equity among different sized employers, because Maine’s statutory program structure makes it unlikely that small firms will use private plans

Contributions to the paid family and medical leave fund by all covered employers for the first quarter of 2025 would create a more level playing field by more equitably distributing the responsibility of funding the program. Once an employer has an approved private plan, they are no longer required to make contributions to the state fund, but in the first quarter of the leadup period, all employers covered by the law contribute to the fund’s stability. This leadup period before the program begins disbursing benefits is a critical phase in establishing the state’s paid family and medical leave fund and giving it a strong financial base in order to support administrative costs, build reserves, and ensure future benefits payments. All but one state⁴² with paid family and medical leave laws began to collect premium contributions before benefits payments from the fund began.

Allowing employers to receive refunds for their earlier contributions may cause imbalances between employers who use the state fund and those who are

⁴² See “Paid Leave Implementation Timelines”, A Better Balance (last accessed Apr. 2, 2025), <https://www.abetterbalance.org/resources/paid-leave-program-implementation-timelines>. In the one state that did not require contributions during this start-up period, Minnesota, the state paid family and medical leave fund has been initially funded by an infusion from the state’s General Fund, allowing payment of benefits to begin as soon as the program goes into effect. See Carlon Doyle Fontaine and Hannah Grunewald Noeldner, *Fiscal Issue Brief: Minnesota Paid Leave Law*, Minnesota Senate Counsel, Research, and Fiscal Analysis (Mar. 12, 2025), <https://assets.senate.mn/publications/topics/MN-Paid-Leave-Program-2025.pdf>

approved to use private plans, who are mostly larger, wealthier employers. Rulemaking already provides that employers can submit applications for private plan approval beginning in April 2025, but after the plan is approved, they are not required to start paying benefits through the plan until May 1, 2026. *See* 12-702 C.M.R. Ch.1, § XIII (2025). This means that for the time of the approval of the private plan until the time the private plan begins disbursing benefits, the employer is not contributing to Maine’s state paid family and medical leave fund.

During that same period, employers without approved private plans continue to contribute, though benefits under the state plan also would not begin until the same date, May 1, 2026. Maine’s contribution requirements will help to ensure that the fund is adequately capitalized at the outset and to safeguard workers’ access to benefits by preventing gaps in coverage. Paid Family and Medical Leave programs are a public good designed to support workers and their families during times of need, and employers benefit from the healthier workforce and wider economic benefits⁴³ regardless of whether they participate in the state fund or a private plan.

Maine’s statutory program structure makes it especially unlikely that small firms will use private plans. Specific policy choices made by Maine lawmakers will likely make the use of private plans, compared to use of the state fund, more expensive for small employers. Recognizing the specific needs of small business

⁴³ *See supra* Part I.A.; Part I.C.

owners, Maine's law exempts employers with fewer than fifteen employees from contributing to the program. 26 M.R.S. § 850-F(5). As a result, Maine small employers get the documented benefits of paid leave, as described above, at *zero* out-of-pocket cost through the state fund. This represents a substantial subsidy provided by the state plan to small employers, which is effectively absorbed by all other contributors to the plan, because employees of small employers pay the same percentage of their income as employees of larger employers. *Compare* 26 M.R.S. § 850-F(5)(A) *with* 26 M.R.S. § 850-F(5)(B).

This makes it extremely unlikely that Maine small businesses would be able to find a commercial insurance policy or self-insure less expensively than participating in the state program. By statute, employers cannot withhold more from employees to pay for a private plan than employees would contribute to the state plan. 26 M.R.S. § 850-H(1)(H). Currently, this amount is 0.5% of wages up to a cap.⁴⁴ Therefore, for smaller employers, any amount that a private plan costs above 0.5% of wages represents an out-of-pocket cost *increase* for that employer above what they would pay for the state plan. In the unlikely event that a small employer found a private plan for 0.5% of wages or less, that plan would not *save* the employer any out-of-pocket dollars compared to the state plan.

⁴⁴ *First Quarter Filing for Paid Family & Medical Leave to Begin April 1*, Maine Dep't of Labor (Mar. 30, 2025), https://www.maine.gov/labor/news_events/article.shtml?id=13164995.

CONCLUSION

The Paid Family and Medical Leave Act is set to improve the health, safety, and economic wellbeing of Maine’s workers, businesses, and the state as a whole. The program has been crafted with the needs of Mainers at its center and is informed by lessons learned in similar programs in other states. While still providing the flexible option of private plans, the program’s statutory language and contribution structure help to maintain the sustainability of the state fund and ensure all employers, big and small, have the opportunity to provide a strong and much-needed benefit to their workers.

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CERTIFICATE OF SERVICE

I, Laura H. White, hereby certify that on this 25th day of April, 2025, an electronic copy of the foregoing Amici Curiae Brief was electronically served on all parties to this appeal at the email addresses set forth below, and a hard copy will be served once the Clerk has accepted the format pursuant to M.R. App. P. 7(c)(4):

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