UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 95-30050

JUNE MANUEL,
Plaintiff-Appellant
v.
WESTLAKE POLYMERS CORPORATION,
Defendant-Appellee.

On Appeal From the United States District Court
For the Western District of Louisiana

BRIEF AMICI CURIAE ON BEHALF OF APPELLANT JUNE MANUEL FOR WOMEN'S LEGAL DEFENSE FUND; 9TO5, NATIONAL ASSOCIATION OF WORKING WOMEN; AMERICAN ASSOCIATION OF RETIRED PERSONS; AMERICAN ASSOCIATION OF UNIVERSITY WOMEN; AMERICAN CIVIL LIBERTIES UNION FOUNDATION; AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO; AMERICAN JEWISH CONGRESS; AMERICAN MEDICAL WOMEN'S ASSOCIATION, INC.; AMERICAN NURSES ASSOCIATION; ASSOCIATION OF FLIGHT ATTENDANTS, AFL-CIO; CANDLELIGHTERS CHILDHOOD CANCER FOUNDATION; COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO; ELDERCARE AMERICA, INC.; EQUAL RIGHTS ADVOCATES; GEORGETOWN UNIVERSITY LAW CENTER SEX DISCRIMINATION CLINIC; MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND; NATIONAL ASSOCIATION OF SOCIAL WORKERS, INC.; NATIONAL COALITION FOR CANCER SURVIVORSHIP; NATIONAL COUNCIL OF JEWISH WOMEN, INC.; NATIONAL COUNCIL OF SENIOR CITIZENS; NATIONAL COUNCIL ON FAMILY RELATIONS; NATIONAL EMPLOYMENT LAWYERS ASSOCIATION; NATIONAL WOMEN'S LAW CENTER; PARENT ACTION OF MARYLAND; SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO; UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION, AFL-CIO; WOMEN EMPLOYED; WOMEN IN COMMUNICATIONS INC.; WOMEN WORK!; WOMEN'S LAW CENTER; AND YWCA OF THE U.S.A.

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STATEMENT OF INTEREST OF AMICI CURIAE

Amici are women's groups, parents' organizations, senior citizens' groups, labor unions, professional associations, grassroots membership organizations, and public interest advocacy organizations dedicated to, inter alia, helping employees balance their work and family responsibilities. Amici represent the interests of employees who are likely to need the protections of the Family and Medical Leave Act -- working women and men who are parents, who have spouses or parents who may develop serious health conditions, or who may develop serious health conditions themselves. Led by the Women's Legal Defense Fund, amici worked together to secure enactment of the 1993 Family and Medical Leave Act, and continue to monitor its enforcement to ensure that the implementation of the Act is consonant with its purpose.

The case before the Court is of great interest to amici. The decision below, if allowed to stand, would greatly restrict the Act's application by denying employees family or medical leave based on the technicality that they did not invoke prescribed "magic words" when requesting leave.

The FMLA is a law in the earliest stages of development. In this, the first FMLA case to reach a federal Court of Appeals, the Court has the opportunity and responsibility to interpret the new law in keeping with its language and purpose.

Detailed statements of interest of the individual amici organizations are contained in the Appendix.

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SUMMARY OF THE ARGUMENT

The district court in this case held that the plaintiff did not provide adequate notice to her employer under the Family and Medical Leave Act ("FMLA") because she did not refer to the Act by name. In so holding, the district court distinguished between employees suffering from "obviously" serious injuries, who do not have to meet this heightened notice requirement, and employees suffering from serious injuries which are not obvious, who must explicitly refer to the FMLA.

This requirement that certain employees use the magic words "FMLA" in notifying their employer that they need to take leave has no foundation in the FMLA itself or in the regulations implementing the Act. The statutory provision governing notice prescribes only the timing of the notice; and the regulations explicitly state that employees are not required to refer specifically to the FMLA. 29 C.F.R. § 825.302(c) (1993). If an employer is uncertain whether the employee is suffering from a serious health condition under the FMLA, the statute creates a certification procedure which allows the employer to gather the information needed to make that determination. 29 U.S.C. § 2613(b) (1993). In other words, the statute and regulations place the burden of linking the employee's request for leave with the protections of the FMLA on the employer, not on the employee, as the district court has done.

Because the plaintiff suffered from a serious health condition, and because her notice was adequate under the statute and implementing regulations, her medical leave was protected under the FMLA and she was entitled to be returned to her former

position upon returning to work. Instead, as part of its "no-fault" absence program, the defendant took disciplinary action against her, and ultimately terminated her employment, in direct violation of the FMLA.

The FMLA was enacted to ensure that employees facing family or medical crises can take time off work without losing their jobs. The statute and regulations create a notice requirement in keeping with this intent. By imposing an additional notice requirement that employees affected by certain kinds of health conditions must refer to the FMLA by name, the district court has contravened the statute and regulations, and disrupted the balance struck by Congress between the employee's need to take time off work for a medical emergency and the employer's need for advance notice of absences. In this first FMLA case to be heard by a federal Court of Appeals, we urge the Court to overturn the district court's decision.

ARGUMENT

I. THE DISTRICT COURT ERRED BY IMPOSING A NOTICE REQUIREMENT THAT IS NOT FOUND IN THE STATUTE OR REGULATIONS IMPLEMENTING THE FAMILY AND MEDICAL LEAVE ACT.

The district court held that Ms. Manuel's leave for her serious health condition[1] was not protected by the FMLA because she did not specifically refer to the FMLA in requesting leave from her employer. It is undisputed that she informed her employer of her condition, and of her need to take medical leave. The district court based its holding instead on the nature of Ms. Manuel's serious health condition: because, in the district court's view, Ms. Manuel did not suffer from "an obviously serious injury," she should have supplemented her otherwise sufficient notice to her employer with an explicit reference to the FMLA. R. 153. The district court simply created its own notice requirement, dividing the world of serious health conditions into those that are "obviously serious," and would therefore "trigger an employer inquiry into whether the

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[1] Manuel suffered complications following the removal of an ingrown toenail. Such complications are a serious health condition under the statute because they are an impairment that requires "continuing treatment by a health care provider." 29 U.S.C. § 2611(11)(b) (1993). Indeed, the Senate Report on the FMLA expressly states that complications arising from medical procedures that would not otherwise qualify under the Act, because they do not involve hospitalization and require only a brief recovery period, may develop into serious health conditions. S. Rep. No. 3, 103rd Cong., 1st Sess. 28 (1993).

Furthermore, the district court referred to Manuel's problem as a serious medical condition, R. 152, and the defendant appears to concede, in its motion for summary judgment, that Manuel's medical problem constituted a serious health condition under the regulations implementing the FMLA, R. 79 n.4, 83-86.

employee intended to use FMLA leave," and those that are not "obviously serious," for which the employee must refer to the FMLA. Id. Neither this distinction nor the requirement that any employee make explicit reference to the FMLA is found anywhere in the statute.[2] To the contrary, the statutory language and scheme, the legislative history, and the Labor Department's interpretive regulations all make clear that Congress did not intend for employees to have to invoke "magic words" in order to exercise their rights under the FMLA.

A. The statute does not require an employee to refer specifically to the provisions of the FMLA in order to qualify for the Act's protections.

The district court's requirement that an employee invoke the magic words "FMLA" is made up out of whole cloth -- it appears nowhere in the statute and indeed is contrary to the statutory scheme. The FMLA contains only one reference to a notice requirement for employees who require leave due to their own serious health conditions. That section, which apparently applies only to leave that is foreseeable, reads:

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[2] The Superior Court of New Jersey, Appellate Division, confronted the same question under similar provisions in the New Jersey Family Leave Act. That court held that an employee's notice of her intent to take leave was sufficient even if it did not specifically refer to the statute:

> We deem the notice provision satisfied where the employee requests a leave of absence for any of the reasons identified in [the Family Leave Act]. . . . The precise form in which this information is conveyed is not dispositive and there are no magic words that must be used. . . . The Act does not require employees to have an encyclopedic knowledge of their legal rights in order to invoke the benefits of family leave and job protection.

D'Alia v. Allied-Signal Corp., 260 N.J. Super. 1, 9, 614 A.2d 1355, 1358-59 (1992).

> In any case in which the necessity for leave under subparagraph . . . (D) of subsection (a)(1) [referring to leave for employee's own serious health conditions] is foreseeable based on planned medical treatment, the employee . . . shall provide the employer with not less than 30 days' notice, before the date the leave is to begin, of the employee's intention to take leave under such subparagraph, except that if the date of the treatment requires leave to begin in less than 30 days, the employee shall provide such notice as is practicable (emphasis added).[3]

The Senate Report on the FMLA interprets the provision thus: "Section 102(e) is intended to require 30 days advance notice of the need for leave to the extent possible and practical."[4] Both the statutory language and this legislative history speak only of the timing of notice; neither requires explicit reference to the statute itself or to a particular subparagraph thereof.[5]

Here, the parties agree that Ms. Manuel's need for medical leave due to complications from a medical procedure was not foreseeable. Congress set out no express notice requirement for unforeseeable leave. However, the provision can fairly be read to require "such notice as is practicable" when an employee needs leave for an

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[3] The statutory provision cited in the text is entitled "Leave Requirement: Foreseeable Leave." 29 U.S.C. § 2612(e) (1993).

[4] S. Rep. No. 3, 103rd Cong., 1st Sess. 25 (1993). The House Report contains similar language: "section 102(e) states that an employee must provide the employer with at least 30 days notice of the need for leave . . . when the need for such leave is foreseeable." H. Rep. No. 8, 103rd Cong., 1st Sess. 38 (1993).

[5] Only a tortured reading of the statute could allow the result reached by the district court. Under such a reading, notice of the employee's intent to take leave "under such subparagraph" would have to include a citation to the applicable portions of the statute. Such an interpretation would place an unprecedented burden on the employee: the employee would be required not only to state that the statute applies, but also to give legal citations! This could not have been the intent of Congress.

unforeseen serious health condition.[6] Indeed, it would be nonsensical for Congress to have imposed more stringent notice requirements on employees taking unforeseeable leave than on those taking foreseeable leave.[7]

Furthermore, other FMLA provisions confirm that Congress did not intend that employees' notice of leave include a specific statutory citation. The statute creates a procedure by which employers can determine whether an employee suffers from a serious health condition within the meaning of the FMLA: an employer may require certification from a health care provider when an employee requests leave for his or her own serious health condition.[8] The statute explicitly states that this certification need contain only the following information: the date the condition began, the probable duration of the condition, the medical facts within the health care provider's knowledge regarding the condition, and a statement that the employee is unable to perform the functions of his or her position. 29 U.S.C. § 2613(b) (1993).

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[6] "Such 30-day advance notice is not required in cases of medical emergency or other unforeseen events . . . Section 102(e) is intended to require 30 days advance notice of the need for leave to the extent possible and practical. Employees who face emergency medical conditions or unforeseen changes will not be precluded from taking leave if they are unable to give 30 days' advance notice." S. Rep. No. 3, 103rd Cong., 1st Sess. 25 (1993).

The legislative history also teaches that the purpose of the 30-day notice requirement is to avoid undue disruption of the employer's operations, see id. at 2, not to penalize employees who are unaware of their rights under the law. In a case such as this, where the need for leave is unforeseeable, Congress has determined that the employee's legitimate need for leave supersedes the employer's desire for advance notice of absences.

[7] See footnote 14, infra.

[8] 29 U.S.C. § 2613 (1993).

Manuel provided much of this information in her notice to the defendant. She told the defendant when her medical problems began, their cause, and that she was unable to work. If the defendant required more information, the defendant should have followed the procedure clearly delineated in the statute and requested a complete certification from Manuel's health care provider.

Moreover, the Senate and House Reports make clear that the FMLA was intended to be a minimum labor standard, similar to the minimum wage or child labor laws.[9] The application of a minimum labor standard does not depend on the employee's diligence in legal research, or indeed on the employee's assertion of a legal right at all: the employer bears the responsibility for knowing what the law requires and meeting the standards set out in the law. The district court's determination that, in certain cases, "it is not inconvenient nor unduly burdensome to require an employee in some manner to refer, or attempt to refer, to the Act," R. 154, is therefore legally irrelevant. The FMLA sets forth a notice requirement that Manuel has met. The statute places the burden of determining the law's applicability on the defendant, not the plaintiff.

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[9] "The Family and Medical Leave Act (FMLA) accommodates the important societal interest in assisting families, by establishing a minimum labor standard for leave. . . . Federal labor standards take broad societal concerns out of the competitive process so that conscientious employers are not forced to compete with unscrupulous employers." S. Rep. No. 3, 103rd Cong., 1st Sess 4-5 (1993); see also H. Rep. No. 8, 103rd Cong., 1st Sess. 21-22 (1993).

B. The regulations implementing the FMLA explicitly reject the district court's requirement that certain employees refer specifically to the FMLA in notifying their employer of the need for leave.

The district court's decision that certain employees -- those not suffering from an obviously serious injury -- must refer to the FMLA is also contrary to the regulations implementing the FMLA. The regulations state explicitly that the employee need not specifically refer to the FMLA:

> An employee shall provide at least verbal notice sufficient to make the employer aware that the employee needs FMLA-qualifying leave, and the anticipated timing and duration of the leave. The employee need not expressly assert rights under the FMLA or even mention the FMLA, but may only state that leave is needed for an expected birth or adoption, for example. The employer should inquire further of the employee if it is necessary to have more information about whether FMLA leave is being sought by the employee, and obtain the necessary details of the leave to be taken. In the case of medical conditions, the employer may find it necessary to inquire further if the leave is because of a serious health condition . . . . (emphasis added).[10]

This regulation clearly requires the employer to inquire further as to whether the leave sought qualifies as FMLA leave, once the employee has met her initial burden of notifying the employer of her need for medical leave.

However, the district court turned this language on its head: instead of requiring the employer to inquire further in those cases where it is unclear whether the employee's

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[10] 29 C.F.R. § 825.302(c) (1993). This and other citations to the regulations herein refer to the U.S. Labor Department's Interim Final Rule implementing the Family and Medical Leave Act, which was published on June 4, 1993, and which governs the instant case. On January 6, 1995, the Labor Department promulgated a Final Rule implementing the Family and Medical Leave Act. 60 Fed. Reg. 2180 (Jan. 6, 1995). The Final Rule is scheduled to go into effect (and supersede the Interim Final Rule) on April 6, 1995. 60 Fed. Reg. 6658 (Feb. 3, 1995). The language of § 825.302(c) is the same in the Final Rule as it is in the Interim Final Rule.

medical condition is a serious health condition, as the regulation does, the district court required the employee to refer to the FMLA unless her condition is "obviously serious." Thus, the district court placed the burden of further clarification on the employee rather than the employer, in direct contradiction to the express language of the regulations. This holding flies in the face of the well-established rule that an agency's interpretation of the law it administers is entitled to substantial deference.[11]

While the provision cited above apparently applies to leave that is foreseeable,[12] there is nothing in the regulations that would indicate a different result for unforeseeable leave. In fact, the provision applying to unforeseeable leave states that after the employee has given notice of the need for leave as soon as practicable, the employer "will be expected to obtain any additional required information through informal means."[13] This confirms that the burden remains on the employer to make further inquiry if the employer is uncertain whether the leave qualifies under the FMLA.[14]

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[11] See Chevron, United States, Inc., v. Natural Resources Defense Council, Inc., 467 U.S. 837, 842-45 (1984) (if statute is silent on issue in question, regulation issued by agency administering statute is given controlling weight unless it is arbitrary, capricious, or manifestly contrary to the statute); First American Bank v. Resolution Trust Corp., 30 F.3d 644, 647 (5th Cir. 1994) (same).

[12] The regulation, 28 C.F.R. § 825.302 (1993), is entitled "What notice does an employee have to give an employer when the need for FMLA leave is foreseeable?"

[13] 29 C.F.R. § 825.303(b) (1993). This provision, too, is identical in the Interim Final and Final Rules.

[14] Indeed, it is difficult to understand why an employee would be required to invoke the FMLA by name for unforeseeable leave, but not for foreseeable leave. Congress recognized that medical emergencies and other unforeseen events requiring FMLA leave may render it impossible for an employee to give the notice otherwise required by the Act. S. Rep. No. 3, 103rd Cong., 1st Sess. 25 (1993). An employee facing a sudden medical crisis is even less likely to be able to give specific notice citing the FMLA than an employee who is planning to take FMLA leave and has sufficient time in advance to

C. The district court applied an erroneous legal standard in granting summary judgment in favor of the defendant.

The district court granted the defendant's motion for summary judgment based on Manuel's alleged lack of sufficient notice, after creating a notice requirement that is found nowhere in the Act. In so doing, the district court violated the established standards for granting summary judgment.

A grant of summary judgment should be affirmed only if the evidence, read in the light most favorable to the nonmoving party, demonstrates that there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). Because the district court applied an erroneous legal standard, the judgment must be reversed. See Nowlin v. Resolution Trust Corp., 33 F.3d 498, 506 (5th Cir. 1994); cf. D'Alia v. Allied-Signal Corp., supra n. 2, 260 N.J. Super. 1, 614 A.2d 1355 (1992) (reversing grant of summary judgment for employer who claimed, inter alia, that employee's family leave notice was inadequate).

Furthermore, the district court created a standard that by its own terms requires factual determinations: only plaintiffs who suffer from an obviously serious injury likely to trigger an employer inquiry regarding the employee's intention to use FMLA leave are excused from the district court's new notice requirement. Even if this wholly-created

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identify the statutory source of her right. In recognition of the heightened stress and other special circumstances involved in medical emergencies, the regulations provide special procedures for such an employee to provide notice to her employer; for example, a family member may notify the employer if the employee is unable to do so personally. 29 C.F.R. § 825.303(b) (1993). Requiring only these employees to comply with a heightened notice requirement defies not only the statutory and regulatory scheme, but also common sense.

notice requirement were not legal error, its application would require factual determinations that are particularly inappropriate for resolution on a motion for summary judgment. See Fed. R. Civ. P. 56(c).

Manuel provided adequate notice to her employer of her need to take leave, under both the statute and the regulations. Because there is no dispute that Manuel is an eligible employee, and because she suffered from a serious health condition under the statute and regulations,[15] the leave in question was protected under the FMLA. Accordingly, because there are no genuine issues as to any material fact under the appropriate legal standard, Manuel is entitled to summary judgment.

II. THE DISTRICT COURT ERRED BY ALLOWING THE DEFENDANT TO USE MANUEL'S FMLA LEAVE AGAINST HER AS PART OF A "NO-FAULT" ABSENCE POLICY.

When Manuel returned to her job following her medical leave, she was told by the defendant that this leave brought her to the brink of termination under the defendant's absentee control program.[16] Manuel received a final warning letter for unsatisfactory attendance and was suspended from work for four days. In addition, her emergency vacation privileges were revoked. Two months later, Manuel missed several days of work due to the flu and was fired. The defendant thus punished Manuel for

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[15] See footnote 1, supra.

[16] According to the defendant's motion for summary judgment, this program "was a 'no fault' program in which every absence, regardless of the cause, was counted. The program imposed a progressive discipline system. Step One resulted in an oral reprimand; Step Two resulted in a warning letter; Step Three resulted in a one-week suspension and a final warning; and Step Four resulted in termination." R. 67 (citations omitted).

utilizing the FMLA, first by suspending her and revoking her privileges, and ultimately by terminating her employment. These actions violate the express language of both the statute and the regulations.

A. The FMLA prohibits employers from punishing employees who exercise their rights under the FMLA.

29 U.S.C. § 2614(a) (1993) provides that an employee who takes FMLA leave is entitled to be restored to the position she held when the leave commenced or to an equivalent position with equivalent employment benefits and terms and conditions of employment. This provision clearly prohibits employers from taking away any employment benefits or other privileges of the employee's position simply because the employee has taken FMLA leave. Yet, that is precisely what the defendant did in this case. The defendant does not dispute that Manuel was suspended for four days and her emergency vacation privileges were revoked because of her leave. This is an explicit violation of the statute.

Furthermore, the Act declares that it is unlawful for an employer to interfere with the exercise of the rights guaranteed by the FMLA.[17] By disciplining and terminating Manuel for taking that leave, and terminating her therefor, Westlake Polymers has illegally interfered with her exercise of the right to take leave for her own serious health condition. The FMLA was enacted precisely so that employees would not be fired when they had to take time off work to tend to the serious health condition of themselves or a

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[17] 29 U.S.C. § 2615(a) (1993).

family member.[18] The defendant's unlawful acts violate the letter and the spirit of the FMLA.

B. The regulations implementing the FMLA explicitly prohibit employers from counting FMLA leave against an employee under a "no-fault" absence control program.

The regulations interpreting the FMLA specifically prohibit employers from counting an employee's use of FMLA leave against that employee under "no-fault" absence control programs: "employers cannot use the taking of FMLA leave as a negative factor in employment actions, such as promotions or disciplinary actions; nor can FMLA leave be counted under 'no-fault' attendance policies."[19] The defendant violated this express prohibition by counting Manuel's leave against her in its absence control program. Manuel was suspended, had her emergency vacation privileges revoked, and was ultimately fired because she took protected leave under the FMLA. The regulations do not countenance such a result.

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[18] Indeed, the statute contains findings to this effect: "there is inadequate job security for employees who have serious health conditions that prevent them from working for temporary periods." 29 U.S.C. § 2601(a)(4) (1993). And the legislative history notes that the "fundamental rationale for such a policy [allowing leave for an employee's own serious health condition] is that it is unfair for an employee to be terminated when he or she is struck with a serious illness and is not capable of working." S. Rep. No. 3, 103rd Cong., 1st Sess. 11 (1993).

[19] 29 C.F.R. § 825.220(c) (1993) (emphasis added). The Final Rule adds hiring to the list of protected employment actions, but is otherwise identical to the Interim Rule.

III. CONCLUSION

For the foregoing reasons, the district court's grant of summary judgment to the defendant should be REVERSED, and summary judgment in favor of plaintiff should be ENTERED.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this brief has been served by placing a copy in the United States mail, postage prepaid and properly addressed this ____ day of March, 1995, to counsel for plaintiff, June Manuel: Scott D. Wilson, 2644 So. Sherwood Forest Blvd., Suite 106, P.O. Box 86457, Baton Rouge, LA, 70879-6457, and counsel for defendant, Westlake Polymers Corporation: C. Eston Singletary, Robert E. Landry, Scofield, Gerard, Veron, Singletary & Pohorelsky, 1114 Ryan Street, P.O. Drawer 3028, Lake Charles, LA, 70602-3028.

VICTOR FARRUGIA

APPENDIX

The Women's Legal Defense Fund (WLDF), founded in 1971, is a national advocacy organization that develops and promotes policies to help women achieve equal opportunity, quality health care, and economic security for themselves and their families. Throughout its 24-year history, WLDF has worked to advance the rights of women in the areas of work and family through litigation of significant cases, public education, and lobbying efforts. WLDF led the national Family and Medical Leave Coalition, a diverse coalition of more than 250 groups that supported enactment of the FMLA, and continues to monitor its implementation.

9to5, National Association of Working Women is a nationwide membership organization that works to improve the status and conditions of women on the job. Since its founding in 1973, one of the main concerns of its constituents has been the difficulty of balancing work and family responsibilities. Its members, who are active in more than 350 cities and in every state, have worked for passage of state family leave laws as well as the federal FMLA.

The American Association of Retired Persons (AARP) is a nonprofit membership organization of persons age 50 and older that is dedicated to addressing the needs and interests of older Americans. More than one-thirds of AARP's thirty-three million members are employed; millions more depend on their employed sons, daughters, spouses, or other family members to help care for them when they have serious health conditions. Because the availability of family and medical leave policies affects so many of AARP's members, AARP worked long and hard in support of the FMLA's enactment.

The American Association of University Women (AAUW), comprised of 150,000 members, promotes education and equity for women and girls. The FMLA was a top AAUW priority throughout its lengthy legislative process.

The American Civil Liberties Union Foundation (ACLUF) is a nationwide, non-partisan organization of over 250,000 members. The Women's Rights Project of the ACLUF was established to work toward the elimination of the pervasive problem of gender-based discrimination. The Women's Rights Project supports the goals of the FMLA, and is opposed to judicial interpretations that unnecessarily narrow the statute's application.

The American Federation of State, County and Municipal Employees, AFL-CIO (AFSCME) is a labor organization representing approximately 1.5 million workers throughout the United States, Puerto Rico, and Panama. AFSCME develops, initiates, assists, and defends litigation in state and federal courts as well as before administrative agencies addressing questions of labor relations and workers' rights. AFSCME is committed to ensure job security and employment rights for working men and women.

The American Jewish Congress is a grassroots membership organization with regional offices across the nation. Founded in 1918, the American Jewish Congress specializes in combatting all forms of bigotry through law and legislation. Through our Commission on Women's Equality and our Commission on National Affairs, our organization has actively supported the FMLA since its inception, through both lobbying efforts on Capitol Hill and grassroots support from our nationwide membership.

The American Medical Women's Association, Inc. (AMWA) is a membership organization of 13,000 women physicians and medical students. Founded in 1915, AMWA's mission is to advance women in medicine and promote women's health. AMWA has supported the FMLA since 1987. AMWA believes that employees should not have to choose between caring for family members and maintaining the jobs they need in order to support their families.

The American Nurses Association (ANA), a national labor and professional organization for registered nurses, consists of 53 state and territorial constituent organizations with over 200,000 members. ANA has long supported the principles behind the FMLA; the issue before this court has direct impact on the working conditions of employees, including the registered nurse members of ANA.

The Association of Flight Attendants, AFL-CIO (AFA) is a labor union representing over 36,000 flight attendants on 21 airlines located across the United States, including Texas, Louisiana and Mississippi. Its membership is over 85 percent female. AFA's members are strong supporters of the FMLA and are very concerned over any diminution of their right to take FMLA leave for birth, adoption, illness and to take care of sick family members.

The Candlelighters Childhood Cancer Foundation (CCCF) is an international parent support network dedicated to the support, education and advocacy of childhood cancer survivors and their families. Key cancer treatment centers are located in Texas, and our local chapters support families at those centers. CCCF supports this amicus brief because the FMLA is vital to ensuring that families of children with cancer will have access to company health benefits and their parents will not lose their jobs because of their child's medical treatment. CCCF opposes "no-fault" attendance policies, whether in the workplace or in the schools, because such policies serve to exclude people with disabilities from participating fully in society.

The Communications Workers of America, AFL-CIO (CWA) is an international labor organization representing over 500,000 private and public workers in the United States including approximately 72,000 workers within the jurisdiction of the Fifth Circuit Court of Appeals. The vast majority of CWA-represented workers are covered by the FMLA.

Eldercare America, Inc. (Eldercare) believes that caregivers need to protect their rights under the FMLA, particularly since 53% of caregivers are employed outside the home.

Eldercare supports the appellant in the name of the millions of family members who care for their elder relatives at home.

Equal Rights Advocates (ERA) is a San Francisco-based public interest legal and educational corporation dedicated to working through the legal system to secure equality for women. ERA has sponsored California legislation similar to the FMLA and has commented extensively on the California regulations interpreting state law.

The Georgetown University Law Center Sex Discrimination Clinic is a clinical program in which law students have represented clients seeking protection against both gender-based employment discrimination and domestic violence. The Director and staff of the Clinic have been instrumental in the development of the FMLA through providing the initial research that led to the FMLA (through the Women's Law and Public Policy Fellowship Program at GULC, which the Clinic Director also directs), giving testimony before Congress, and writing about the FMLA and similar state statutes.

The Mexican American Legal Defense and Educational Fund (MALDEF) is a non-profit civil rights organization established in 1967 with offices in Texas and other states across the country. Its principal objective is to secure the civil rights of Latinos in the United States through litigation and education. It has frequently represented plaintiffs in matters involving employment benefits and other policies and appeared as counsel and amicus curiae in federal courts, including cases before this court.

The National Association of Social Workers, Inc. (NASW) is the largest association of professional social workers in the world with over 150,000 members in 55 chapters nationally and internationally. Founded in 1955, NASW is devoted to promoting the quality and effectiveness of social work practice. NASW has long supported the FMLA as an important step in the development of humane, family-friendly employment practices and work environments.

The National Coalition for Cancer Survivorship (NCCS), a coalition of 2,500 individuals and organizations, represents tens of thousands of members and constituents in the cancer survivorship movement in the United States. NCCS members include leaders of cancer survivor community organizations, regional and national cancer-related organizations, and many of the nation's most prestigious cancer treatment institutions. Through public education and advocacy, NCCS works to expand the employment opportunities of the nearly 9,000,000 cancer survivors in the United States.

The National Council of Jewish Women, Inc. (NCJW) is a volunteer organization, inspired by Jewish values, that works through a program of research, education, advocacy and community service to improve the quality of life for women, children and families and strives to ensure individual rights and freedoms for all. Founded in 1893, NCJW has 100,000 members in over 500 communities around the country. Based on NCJW's National Resolutions, we believe that employment policies should "safeguard the dignity,

rights, benefits, health and safety of all workers." Endorsing and resolving to work for continued job-protected family and medical leave, we join this brief.

The National Council of Senior Citizens (NCSC) wishes to see the FMLA administered in a straightforward manner providing workers with unambiguous rights. Thousands of NCSC's members find their work lives challenged by personal and family caregiving issues. This case is of importance to them and their families.

The National Council on Family Relations (NCFR) is a member- funded, non-partisan organization for multidisciplinary family professionals involved in the development and dissemination of information about families. NCFR provides a unique forum where researchers, educators, practitioners, and policymakers from all family fields and disciplines share their knowledge and identify future information needs. NCFR members support policies such as the FMLA that protect and enhance opportunities for family members to manage their work and family lives successfully.

The National Employment Lawyers Association (NELA) is the country's only professional bar association exclusively comprised of lawyers who represent employees in workplace matters. Our 2,300 members have litigated cases involving employment discrimination, wrongful termination, and other employment-related causes.

The National Women's Law Center is a legal and public policy organization which has worked since 1972 to advance and protect women's legal rights. Working to ensure equal opportunity for women in the workplace through the establishment and implementation of policies that enable women to balance their work and family responsibilities is a Center priority. The Center has had extensive experience in the development of legislation, regulations and judicial decisions affecting family leave and other employment policies that help women achieve fair and equal treatment.

Parent Action of Maryland, a statewide membership organization for parents, works to improve the quality of life for Maryland families raising children through advocacy of family issues, discounts and benefits to save families money, and information and resources to assist parents.

The Service Employees International Union, AFL-CIO (SEIU) represents over one million workers in the United States, working primarily in the building service, health care and amusements industries as well as in the public sector. Almost all of its U.S. membership are subject to the FMLA. Along with WLDF and the other amici, SEIU worked hard for the passage of the FMLA and has continued to monitor the enforcement of the Act on both a local and national level. SEIU believes that the decision in the court below will significantly and adversely impact its many members who from time to time need to take leave to which they are entitled under the FMLA, and who may lose their right to do so if the notice requirements imposed by the court below are allowed to stand.

The United Food and Commercial Workers International Union, AFL-CIO (UFCW) is a labor organization of 1,400,000 members, representing workers across the United States in the meat packing and other food processing, supermarket and other retail, nursing home and hospital, and insurance industries. The UFCW educates workers in these industries about their federal rights in order to promote opportunities and stability in employment. The UFCW is therefore deeply concerned about interpretations of the FMLA that subvert FMLA protection for fully qualified employees in times of medical crisis.

Women Employed is a national organization of working women, based in Chicago, with a membership of 2,000. Since 1973, the organization has assisted thousands of working women with problems of sex discrimination. Women Employed works to empower women to improve their economic status and to remove barriers to economic equity through advocacy, direct service and public education.

Women in Communications, Inc. (WICI) is a membership association of nearly 8,000 professionals who work together to advance women in communications careers, to protect free expression, free flow of information and First Amendment rights, to recognize distinguished professional achievements, and to promote high professional standards throughout the communications profession. WICI's mission is Leading Change. WICI supports the principles behind the FMLA.

Women Work! The National Network for Women's Employment is comprised of more than 1,300 local women's education and training programs across the nation, including 70 programs in Texas and Louisiana. The nearly 400,000 low income women served by these programs annually struggle to balance work and family and need the protections afforded by the FMLA in order to achieve and maintain economic self-sufficiency for themselves and their families.

The Women's Law Center is an advocacy organization whose membership consists of attorneys and judges in the State of Maryland. Since its inception in 1971, the goal of the Women's Law Center has been promoting the legal rights of women through litigation, legislation and education. The Women's Law Center has been particularly involved with cases of sex discrimination in employment, and the issues involved in this case fall clearly within its mission of equal rights for women. The Women's Law Center believes the interpretation by the courts of the FMLA is critical to the rights of all women employed today.

The YWCA of the U.S.A. provides a million women and their families with programs that help families stay together. Long before women had the right to vote, the YWCA was offering programs that helped them excel in their personal and professional lives. Additional services include family counseling, transitional housing, emergency shelter, legal advocacy, crisis hotlines and counseling for batterers.