

No. 26-

IN THE
Supreme Court of the United States

ERIN A. SNIDER, PH.D.,

Petitioner,

v.

TEXAS A&M UNIVERSITY,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
TEXAS FIFTEENTH COURT OF APPEALS

PETITION FOR A WRIT OF CERTIORARI

GAINES WEST

Counsel of Record

JOHN “JAY” RUDINGER, JR.

ASHER K. GREGG

WEST, WEBB, ALLBRITTON

& GENTRY, P.C.

1515 Emerald Plaza

College Station, TX 77845

(979) 694-7000

gaines.west@westwebblaw.com

Counsel for Petitioner

QUESTION PRESENTED

The Family and Medical Leave Act (“FMLA”), 29 U.S.C. § 2601 *et seq.*, entitles eligible employees to leave for a family member’s serious health condition (“family-care”), 29 U.S.C. § 2612(a)(1)(C), or their own (“self-care”), 29 U.S.C. § 2612(a)(1)(D). This Court has held that Congress validly abrogated state sovereign immunity for family-care claims, *Nev. Dep’t of Hum. Res. v. Hibbs*, 538 U.S. 721, 724 (2003), but not for self-care claims, *Coleman v. Ct. of Appeals of Md.*, 566 U.S. 30, 33, 39 (2012). Against a state employer, this classification alone determines whether a plaintiff’s claim may proceed.

This case involves Petitioner’s FMLA leave to receive medical care for her unborn daughter, who had been diagnosed with a serious health condition distinct from Petitioner’s own. A Texas intermediate appellate court assumed, without deciding, that such leave could qualify as family-care leave but articulated no standard for what a plaintiff must prove to establish that her leave was for the child’s condition rather than her own.

The questions presented are:

1. Whether leave taken by a pregnant woman to care for her unborn child’s serious health condition can constitute family-care leave under 29 U.S.C. § 2612(a)(1)(C); and
2. If so, in determining if that leaves qualifies as family-care under 29 U.S.C. § 2612(a)(1)(C), whether a court may impose a heightened requirement on pregnant women—and only

pregnant women—to prove that the leave she took was for her child’s serious health condition rather than for her own serious health condition under § 2612(a)(1)(D).

PARTIES TO THE PROCEEDINGS

Petitioner Erin A. Snider, Ph.D., was the plaintiff in the 472nd Judicial District Court of Brazos County, Texas, the appellee in the Fifteenth Court of Appeals of Texas, and the petitioner in the Supreme Court of Texas.

Respondent Texas A&M University was the defendant in the 472nd Judicial District Court of Brazos County, Texas, the appellant in the Fifteenth Court of Appeals of Texas, and the respondent in the Supreme Court of Texas.

STATEMENT OF RELATED PROCEEDINGS

Snider v. Texas A&M University, No. 23-000631-CV-472, 472nd Judicial District Court, Brazos County, Texas. Order entered May 30, 2024.

Texas A&M University v. Snider, No. 15-24-00071-CV, Texas Fifteenth Court of Appeals. Opinion rendered June 24, 2025, and order entered on August 13, 2025.

Snider v. Texas A&M University, No. 25-0876, Supreme Court of Texas. Order entered March 27, 2026, and May 15, 2026.

TABLE OF CONTENTS

	<i>Page</i>
QUESTION PRESENTED	i
PARTIES TO THE PROCEEDINGS.....	iii
STATEMENT OF RELATED PROCEEDINGS	iv
TABLE OF APPENDICES	vii
TABLE OF CITED AUTHORITIES	viii
INTRODUCTION.....	1
OPINIONS BELOW.....	3
JURISDICTION.....	3
CONSTITUTIONAL PROVISIONS	4
STATEMENT.....	5
A. Factual Background.....	5
B. Procedural History.....	6
REASONS FOR GRANTING THE PETITION.....	8
I. This Case Presents a Substantive Question of First Impression Concerning How to Classify Leave That Implicates the Health of an Unborn Child	8

Table of Contents

	<i>Page</i>
II. Without a Governing Standard, Sovereign Immunity for an Entire Category of Claims Will Depend on <i>Ad Hoc</i> Classification Rather Than Consistent Interpretation of the Law. . . .	12
III. This Case Is a Suitable Vehicle Because Resolving the Question Presented Would Determine the Outcome	15
CONCLUSION	16

TABLE OF APPENDICES

	<i>Page</i>
APPENDIX A — OPINION OF THE FIFTEENTH COURT OF APPEALS OF TEXAS, FILED JUNE 24, 2025.....	1a
APPENDIX B — ORDER OF THE DISTRICT COURT OF BRAZOS COUNTY, TEXAS, 472ND JUDICIAL DISTRICT, DATED MAY 30, 2024	15a
APPENDIX C — EXCERPTS OF TRANSCRIPT OF MOTION HEARING, COURT OF APPEALS OF TEXAS, DATED MAY 30, 2024	17a
APPENDIX D — DENIAL OF MOTION FOR REHEARING OF THE FIFTEENTH COURT OF APPEALS FOR THE STATE OF TEXAS, DATED AUGUST 13, 2025.....	21a
APPENDIX E — DENIAL OF PETITION FOR REVIEW, DATED MARCH 27, 2026.....	23a
APPENDIX F — DENIAL OF MOTION FOR REHEARING, DATED MAY 15, 2026.....	24a
APPENDIX G — CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....	25a

TABLE OF CITED AUTHORITIES

	<i>Page</i>
Cases	
<i>Ames v. Ohio Dep’t of Youth Servs.</i> , 605 U.S. 303 (2025)	14
<i>Arbaugh v. Y & H Corp.</i> , 546 U.S. 500 (2006)	6
<i>Coleman v. Ct. of Appeals of Md.</i> , 566 U.S. 30 (2012).....	1, 2, 8
<i>Desert Palace, Inc. v. Costa</i> , 539 U.S. 90 (2003).....	14
<i>Halo Elecs., Inc. v. Pulse Elecs., Inc.</i> , 579 U.S. 93 (2016).....	14
<i>Issa v. Tex. Dep’t of Crim. Just.</i> , No. 1:22–CV–01107-ADA, 2023 WL 4923971 (W.D. Tex. Aug. 1, 2023), <i>report and</i> <i>recommendation adopted</i> , 2023 WL 5352319 (W.D. Tex. Aug. 18, 2023)	7, 14
<i>Nev. Dep’t of Hum. Res. v. Hibbs</i> , 538 U.S. 721 (2003).....	1, 2, 8, 11, 13
<i>Proctor v. Riley Indus., Inc.</i> , 579 F. Supp. 3d 1127 (D. Ariz. 2022)	7, 14
<i>Tex. Dep’t of Parks & Wildlife v. Miranda</i> , 133 S.W.3d 217 (Tex. 2004)	6

Cited Authorities

	<i>Page</i>
Statutes and Other Authorities	
U.S. Const. amend. XI	4
U.S. Const. amend. XIV, § 1.....	4
18 U.S.C. § 1841	2
28 U.S.C. § 1257(a).....	4
29 C.F.R. § 825.301(a)	13
29 C.F.R. § 825.301(b)	13
29 C.F.R. § 825.303(b).....	13
29 U.S.C. § 2601(a)(3).....	8
29 U.S.C. § 2601(a)(5)	10
29 U.S.C. § 2601(a)(6).....	11
29 U.S.C. § 2601(b)(1)	9
29 U.S.C. § 2601(b)(2)	8
29 U.S.C. § 2601(b)(4)	8, 11
29 U.S.C. § 2611(11).....	4

Cited Authorities

	<i>Page</i>
29 U.S.C. § 2611(12)(A)	4, 14
29 U.S.C. § 2612(a)(1)(C)	1, 4
29 U.S.C. § 2612(a)(1)(D)	1, 4
35 U.S.C. § 284	14
Federal Rule of Civil Procedure 12(b)(1)	6
Sup. Ct. R. 13.3	4
Tex. Civ. Prac. & Rem. Code § 71.001(3)–(4)	2
Tex. Penal Code § 1.07(26)	2

INTRODUCTION

Every plaintiff who sues under the FMLA—whether alleging interference or retaliation—must establish that she was entitled to, or took leave, under one of the FMLA’s two operative provisions: family-care leave (to address the serious health condition of a qualifying family member) or self-care leave (to address her own). 29 U.S.C. §§ 2612(a)(1)(C), (D). For a lawsuit against a state employer, that classification dictates the disposition of the entire claim because this Court has held that Congress validly abrogated state sovereign immunity for family-care claims but not for self-care claims. *Nev. Dep’t of Hum. Res. v. Hibbs*, 538 U.S. 721, 724 (2003); *Coleman v. Ct. of Appeals of Md.*, 566 U.S. 30, 33, 39 (2012). In an ordinary case, courts can easily distinguish between the two; for example, leave taken by an employee to care for her hospitalized husband would be family-care while leave taken by the employee to receive chemotherapy for herself would be self-care. However, the case at bar does not present the ordinary situation.

Petitioner took FMLA leave to receive medical care for her unborn child who had a serious health condition. The Fifteenth Court of Appeals of Texas recognized that this presented an unresolved legal question and assumed, without deciding, that leave taken to address an unborn child’s serious health condition could qualify as family-care leave. Pet. App. 10a. But having assumed that family-care coverage exists in principle, the court articulated no legal standard for what a plaintiff must provide to establish that her leave falls on the family-care side of the line of inquiry as opposed to the self-care side of that line. Pet. App. 11a. Instead, the court treated evidence of treatment

and care for her unborn child as evidence that the condition belonged to Petitioner alone and not to her unborn child. Pet. App. 11a.

This gap exists partly because Congress wrote the FMLA's family-care and self-care provisions around a different paradigm—one that treatment for pregnancy-related risk to the unborn child does not fit—and partly because this Court's sovereign-immunity holdings in *Hibbs* and *Coleman* attach entirely different consequences to whichever side of that line of inquiry a court finds itself. The gap also persists because the FMLA predates, and has never been reconciled with, a body of federal and state law that already treats an unborn child as a distinct legal subject in analogous contexts. *See, e.g.*, Unborn Victims of Violence Act, 18 U.S.C. § 1841 (recognizing an unborn child as a victim separate from the pregnant woman when injured by criminal conduct); *see also* Tex. Penal Code § 1.07(26) (defining “individual” to include “an unborn child at every stage of gestation from fertilization until birth”); *see also* Tex. Civ. Prac. & Rem. Code § 71.001(3)–(4) (recognizing a cause of action for the wrongful death of an unborn child distinct from any injury to the mother).

Absent a clear governing standard, the classification of this category of leave (family-care leave) will depend on what evidentiary standard any given court imposes on a plaintiff, in the moment, rather than on a rule of law that plaintiffs, employers, and courts can rely upon and apply consistently. This uncertainty not only creates inconsistency in the interpretation and application of the FMLA, but it also incentivizes litigation gamesmanship since a mother with an unborn child suffering from a serious health condition may be able to choose to file in

whichever state or federal forum has already signaled that it will characterize that evidence as family-care leave rather than self-care leave. Concomitantly, a state defendant has every reason to remove, transfer, or otherwise steer the same case toward a forum in that state inclined the other way. A jurisdictional bar that state employees can defeat or fall victim to based on venue selection is not sovereign immunity operating as a consistent rule of law. Both the FMLA's core promise of workplace equality for women, and the question of whether an unborn child's own medical needs are legally cognizable at all, hang on that same unanswered inquiry.

OPINIONS BELOW

The opinion of the Fifteenth Court of Appeals of Texas is reported at 721 S.W.3d 607 (Tex. App. (15th Dist.) June 24, 2025) and reproduced at Pet. App. A. The order of the Supreme Court of Texas denying Petitioner's petition for review is unreported and reproduced at Pet. App. E.

JURISDICTION

The Fifteenth Court of Appeals of Texas reversed the district court's denial of Respondent's plea to the jurisdiction and remanded the case for further proceedings. Pet. App. 14a. Petitioner petitioned the Supreme Court of Texas for review, which that court denied on March 27, 2026. Pet. App. E. Petitioner timely moved for rehearing, and the Supreme Court of Texas denied that motion on May 15, 2026. Pet. App. F. That denial rendered final the judgment of the Fifteenth Court of Appeals, the highest court of the State of Texas in which a decision could be had, as to Petitioner's FMLA claims.

This petition is timely filed within 90 days of that denial. *See* Sup. Ct. R. 13.3. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS

The Eleventh Amendment to the United States Constitution bars federal-court suits against a State by citizens of another state or of a foreign state. U.S. Const. amend. XI. The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution guarantees that no State shall deny any person equal protection of the laws. U.S. Const. amend. XIV, § 1.

The Family and Medical Leave Act entitles an eligible employee to leave “[i]n order to care for the spouse, or a son, daughter, or parent, of the employee, if such spouse, son, daughter, or parent has a serious health condition,” 29 U.S.C. § 2612(a)(1)(C), or “[b]ecause of a serious health condition that makes the employee unable to perform the functions of the position of such employee,” *id.* § 2612(a)(1)(D).

Section 2611(12)(A) limits “son or daughter” to a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing *in loco parentis*, who is under 18 years of age. Section 2611(11) defines “serious health condition” as an illness, injury, impairment, or physical or mental condition requiring inpatient care or continuing treatment by a health care provider.

STATEMENT

A. Factual Background

Petitioner began her employment with Respondent, a Texas state institution of higher education, in September 2013 as a tenure-track Assistant Professor. Pet. App. 3a. In order for her to earn tenure, she had to meet goals within a five-year probationary period, or “tenure clock,” that could be extended for medical leave, among other reasons. Pet. App. 3a.

Petitioner requested and received a one-year tenure-clock extension for the 2017–2018 academic year after suffering a second-trimester miscarriage of her unborn daughter. She informed her supervisor of the miscarriage of her unborn daughter and the resulting medical issues that inhibited her ability to work. She applied for and got an extension which reduced her course load and research requirements for that year. *Id.* Petitioner requested a second extension for the 2018–2019 academic year because she was beginning *in vitro* fertilization (“IVF”) treatment; she informed her supervisor and separately emailed Respondent’s human resources department, which provided her FMLA paperwork. *Id.* One embryo transfer succeeded, and Petitioner became pregnant again in the spring of 2019. Pet. App. 4a.

Petitioner testified in state district court that her doctors had concerns about this pregnancy given her previous miscarriage, the effects of drugs administered during IVF treatment, and her age, and that the pregnancy carried additional risks for both her and her unborn child. Petitioner ultimately suffered another miscarriage in

May 2019 and lost another daughter. *Id.* At the end of her probationary period, Petitioner applied for tenure, which Respondent denied based on a five-year review of her body of work instead of a review of her work based on the extensions to her “tenure clock” that had been granted by Respondent. *Id.* Petitioner asserted, among other allegations, that the denial of her tenure was illegal discrimination based on her claim that she was retaliated against based on her taking FMLA family-care leave. *Id.*

B. Procedural History

Thereafter, Petitioner filed suit in Texas state court, alleging, among other things, that Respondent retaliated against Petitioner for taking FMLA leave under both the family-care and self-care provisions. Pet. App. 4a. Respondent filed a partial plea to the jurisdiction,¹ arguing that Petitioner’s FMLA claims constitute self-care claims barred by sovereign immunity. *Id.* Following an evidentiary hearing, the district court denied Respondent’s plea to the jurisdiction. *Id.*

1. A plea to the jurisdiction is a Texas procedural device through which a defendant challenges the district court’s subject-matter jurisdiction, either on the face of the pleadings or by disputing the existence of jurisdictional facts. *Tex. Dep’t of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 225–27 (Tex. 2004). Its closest federal analogue is a motion to dismiss under Federal Rule of Civil Procedure 12(b)(1). The analogy is not exact, however, because federal law distinguishes true jurisdictional limitations from elements of a plaintiff’s claim that bear only on the merits. *See Arbaugh v. Y & H Corp.*, 546 U.S. 500, 510–16 (2006).

Respondent appealed to the Fifteenth Court of Appeals of Texas, which reversed. Pet. App. A. The intermediate appellate court recognized that “the specific question of whether an unborn child is covered by the FMLA” was “an issue of first impression in Texas,” but rather than resolve that question, the court assumed, without deciding, that treatment of a serious health condition for an unborn child could qualify as family-care under the FMLA. Pet. App. 10a. Having made that assumption, the court thereafter refused to articulate what a plaintiff must prove to establish that leave qualifies as family-care when the unborn child suffers from a serious health condition while *in utero*. As a result, the court left the question exactly as unresolved as the definitional one it declined to reach. The court expressly recognized the fact that federal courts from around the country have struggled to identify a consistent standard. *Id.* at n.2 (citing *Issa v. Tex. Dep’t of Crim. Just.*, No. 1:22–CV–01107-ADA, 2023 WL 4923971, at *1 (W.D. Tex. Aug. 1, 2023), *report and recommendation adopted*, 2023 WL 5352319, at *1 (W.D. Tex. Aug. 18, 2023) and *Proctor v. Riley Indus., Inc.*, 579 F. Supp.3d 1127 (D. Ariz. 2022)). Ultimately, and inexplicably, the court held that Petitioner’s claim fell under the self-care provision as a matter of law, that Respondent was, therefore, immune, and reversed and remanded the case for further proceedings. Pet. App. 14a. Petitioner timely moved the court for rehearing, which the court denied. Pet. App. D.

Thereafter, Petitioner petitioned the Supreme Court of Texas for review, which was denied on March 27, 2026. Pet. App. E. Petitioner timely moved the court for rehearing, and the Supreme Court of Texas denied that motion on May 15, 2026, leaving the intermediate appellate

court’s judgment as the final decision of the highest court of Texas in which a decision could be had on Petitioner’s FMLA claims. Pet. App. F.

REASONS FOR GRANTING THE PETITION

I. This Case Presents a Substantive Question of First Impression Concerning How to Classify Leave That Implicates the Health of an Unborn Child.

The FMLA’s family-care/self-care leave distinction is not a pleading formality but is, instead, the substantive line of inquiry this Court has drawn between claims a state employee may bring and claims she may not. *Compare Hibbs*, 538 U.S. at 735–36, *with Coleman*, 566 U.S. at 43–44. Congress drew that distinction to “entitle employees to take reasonable leave for medical reasons . . . and for the care of a child, spouse, or parent who has a serious health condition,” 29 U.S.C. § 2601(b)(2), on a basis that “minimizes the potential for employment discrimination on the basis of sex,” *id.* § 2601(b)(4).

In an ordinary FMLA case, that line of inquiry is more straightforward in application because the employee’s own condition, and a family member’s condition, are readily separable; the employee needs medical treatment or her family member does. Congress legislated considering only this separable paradigm—individuals with separate conditions, choosing between “job security and parenting,” *id.* § 2601(a)(3)—without anticipating a category of leave in which the two purposes converge on a single body, and without anticipating that a court might resolve that convergence by defaulting, category-wide, against the one class of employees for whom the convergence is even possible: pregnant women.

Serious health conditions suffered by an unborn child do not fit that model Congress utilized. In most pregnancy care issues, it is simply not possible to differentiate evidence of risk to the unborn child and evidence of the mother's own care. The court below recognized this reality when it acknowledged that Petitioner presented evidence and testimony that the health risks at issue may have belonged to her unborn child as opposed to herself. *See Pet. App. 12a.* No male employee, and no employee caring for any family member other than his or her own unborn child, can ever face that evidentiary overlap; the classification problem the court below created, and the burden of resolving it, falls on pregnant women alone.

The court below, accordingly, confronted a question this Court has never addressed and that the FMLA's text and regulations do not answer: when a course of treatment is administered to the employee to treat the serious health condition of her unborn child, what must a plaintiff establish to prove that her leave falls under the family-care provision rather than the self-care provision? The court below did not answer that question with a legal standard but, instead, resolved the case by treating the evidence as belonging entirely to the self-care side of the argument, without articulating why or what a plaintiff in a future case would need to prove differently to prevail. *Id.* That result sits uneasily with Congress's stated purpose of "promot[ing] the stability and economic security of families" and "preserving family integrity," 29 U.S.C. § 2601(b)(1), because it treats leave taken to protect an unborn child's health as indistinguishable from leave taken for any other personal illness, without regard to the family-care interest Congress separately sought to protect.

This Court should resolve that gap by holding that a pregnant employee's leave connected to a documented serious risk to her unborn child's health is presumptively family-care leave, with the burden falling on the employer to rebut that presumption with evidence that the treatment addresses only the employee's own condition.² That allocation of a presumption that a pregnant employee's leave related to a documented serious risk to her unborn child's health follows from the reality the court below itself recognized: because the treatment for serious health concern of the unborn child is given or applied to the child's pregnant mother, the employer—who controls the leave-designation process and has access to the medical certification submitted by the employee—is better positioned than the employee to isolate which condition a given treatment addresses.

This gap undermines the very discrimination-avoidance purpose the family-care/self-care structure was designed to serve. Congress found that “the primary responsibility for family caretaking often falls on women” and “affects the working lives of women more than it affects the working lives of men,” *id.* § 2601(a)(5), and that

2. The proposed presumption would not convert every pregnancy-related limitation into family-care leave. It would apply only where the evidence proves that the leave was connected to medical treatment, monitoring, testing, or physician-directed precautions for a documented risk to the unborn child. It would not cover ordinary personal-care or convenience tasks made difficult by pregnancy—such as assistance with grooming, household tasks, or mobility unconnected to any serious health condition of the child. The latter concerns the mother's ordinary personal needs; the former concerns medical care for the child, even though that care must necessarily be administered through the mother's body.

gender-specific leave policies risk “encouraging employers to discriminate against employees and applicants for employment who are of that gender,” *id.* § 2601(a)(6). Congress addressed that risk by making both self-care and family-care leave available “on a gender-neutral basis,” *id.* § 2601(b)(4), but a pregnant employee’s leave to treat the serious health condition of her unborn child is the one category of leave that, by biological necessity, only she can take, and that the statute does not clearly assign. Such a rule, if allowed to stand, would reintroduce, through judicial rule-making, rather than legislative action, the very sex-based burden on women’s employment that Congress enacted the FMLA to eliminate. *See Hibbs*, 538 U.S. at 736–37 (family-care provision responds to “stereotype-based beliefs” about the allocation of family duties that disadvantage women in employment).

Absent a clear governing standard, the classification of this category of leave will depend on how any given court analyzes and characterizes medical evidence as treatment for a pregnant mother’s unborn child, or treatment for the pregnant mother rather than on a rule of law that plaintiffs, employers, and courts can apply consistently. That uncertainty not only creates inconsistency in the interpretation of the FMLA, but it also shapes litigation strategy since a pregnant mother with an unborn child suffering from a serious health condition must choose to file in whichever state or federal forum has already signaled it will characterize that evidence as family-care leave rather than self-care leave, while a state defendant has every reason to remove, transfer, or otherwise steer the same case toward an in-state forum inclined to view the same evidence the other way.

II. Without a Governing Standard, Sovereign Immunity for an Entire Category of Claims Will Depend on *Ad Hoc* Classification Rather Than Consistent Interpretation of the Law.

The consequences of leaving this question unresolved extend well beyond Petitioner and this case. Public universities, school districts, and other state agencies employ substantial numbers of women of childbearing age, and any one of those employees who takes leave to receive treatment for the serious health condition of their unborn child may well face the same unanswered question Petitioner did: whether leave connected to treatment of the serious health condition of her unborn child qualifies as family-care leave, or whether it is self-care leave by default regardless of the fact that the treatment is for her sick, seriously ill unborn child.

Under the approach the court below took here, every one of those pregnant employees faces the same unanswered question. Because treatment of an unborn child's serious health condition will, by its nature, be treatment administered to the pregnant mother, an unstated default paradigm allows a court to *always* characterize that treatment as self-care leave. This result effectively creates an unannounced heightened burden of proof against pregnant mothers by requiring a pregnant mother to provide medical evidence establishing that the treatment is not for her, but for the serious health condition of her unborn child. That is precisely what happened here; the court of appeals credited testimony describing risk "for her and her unborn child" as establishing only Petitioner's own condition without explaining what was needed to prove that the treatment

was for the serious health condition of the unborn child. Pet. App. 12a. Because only biological women experience pregnancy, that heightened burden falls on women alone, reintroducing through an unstated evidentiary default the very sex-linked disadvantage that led Congress to enact the family-care provision and led this Court in *Hibbs* to treat that provision differently from ordinary self-care leave. 538 U.S. at 736–37 (family-care provision responds to “stereotype-based beliefs” about the allocation of family duties that disadvantage women in employment).

The court below’s unstated default paradigm is also incongruent with how this Court and the Department of Labor have instructed that the FMLA must be applied. The FMLA does not require an employee to invoke any “magic words” to trigger its protections; an employee need not mention the FMLA by name, cite a specific statutory provision, or herself characterize her leave as family-care or self-care at the time she requests it. 29 C.F.R. § 825.301(b), 825.303(b). Rather, once an employer has enough information to know that leave may be FMLA-qualifying, the regulations place the burden of determining which provision governs, and of designating the leave accordingly, on the employer—not on the employee. *Id.* § 825.301(a). The decision below inverts that allocation because it requires the employee to affirmatively prove which category her own leave fell into, while the employer that controlled the leave-designation process at the time bears no corresponding burden to explain why it had classified the treatment for her unborn child’s serious health condition—necessarily administered to the pregnant mother—one way rather than the other. Such a rule that requires the employee alone to resolve an ambiguity the employer is statutorily obligated to resolve,

cannot be reconciled with the FMLA’s liberal, employee-protective structure.

Nor can that default paradigm be reconciled with this Court’s repeated instruction that courts may not fashion a heightened evidentiary burden for a particular class of plaintiffs that the governing federal statute does not itself impose. *See Ames v. Ohio Dep’t of Youth Servs.*, 605 U.S. 303, 309–10 (2025) (axing the Sixth Circuit’s “background circumstances” rule as incongruent with Title VII); *see also Halo Elecs., Inc. v. Pulse Elecs., Inc.*, 579 U.S. 93, 106–07 (2016) (axing the Federal Circuit’s heightened evidentiary rule as incongruent with Section 284 of the Patent Act); *see also Desert Palace, Inc. v. Costa*, 539 U.S. 90, 98–100 (2003) (refusing to adopt heightened evidentiary standard where statute is silent). The approach of the court below does exactly that by requiring pregnant women—and only pregnant women, as a class defined by their own physiology—to satisfy an evidentiary burden that the FMLA’s text nowhere imposes and that no other category of FMLA claimant must satisfy.

This uncertainty is further compounded by the unresolved threshold question the court below also declined to reach, specifically whether an unborn child qualifies as a “son or daughter” at all. 29 U.S.C. § 2611(12) (A). Federal district courts in different circuits are already split on that question, with one holding the FMLA’s silence on fetal status permits a family-care claim to proceed, *Issa*, 2023 WL 4923971, at *13, and another holding the FMLA does not cover an unborn child at all, *Proctor*, 579 F. Supp. 3d at 1130. Pet. App. 10a n.2. A state employee’s ability to hold her employer accountable under the FMLA

should not depend on which of these approaches happens to govern in her jurisdiction, nor on how an individual court chooses to characterize medical evidence in the absence of any settled interpretation of the FMLA. Only this Court can supply the governing standard that will allow the classification of this recurring category of leave to be decided by law rather than by the happenstance of how any given court frames the evidence before it.

III. This Case Is a Suitable Vehicle Because Resolving the Question Presented Would Determine the Outcome.

This case squarely presents both questions. If this Court holds that care for an unborn child's serious health condition constitutes family-care leave and adopts a presumption that a pregnant employee's leave connected to a documented serious health condition of her unborn child is family-care leave unless the employer rebuts it, that standard would govern how the claims in this case must be evaluated on remand. The court below assumed the family-care theory could exist in principle and then resolved the case without stating what a plaintiff must prove to satisfy it, let alone what an employer must prove to rebut it. A ruling from this Court supplying that standard would require the courts below to apply a framework that has not yet been applied to the evidence presented below. If, instead, this Court holds that an unborn child categorically cannot qualify as a "son or daughter" under the family-care provision as a matter of law, that holding disposes of an important legal issue in this case, and the many others like it, directly.

Either answer determines whether Petitioner's FMLA claims may proceed. The court below decided this case without settling the classification question this Court would be answering, and its holding rests entirely on its construction of the FMLA and this Court's sovereign-immunity precedents. The Supreme Court of Texas left that holding undisturbed, denying both review and rehearing. Pregnant women were never intended by Congress to have a *greater* burden of proof to use family-care leave for the serious health condition of her unborn child. Yet this is exactly the result in Texas, sanctioned by the Supreme Court of Texas.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

GAINES WEST
Counsel of Record
JOHN "JAY" RUDINGER, JR.
ASHER K. GREGG
WEST, WEBB, ALLBRITTON
& GENTRY, P.C.
1515 Emerald Plaza
College Station, TX 77845
(979) 694-7000
gaines.west@westwebblaw.com

Counsel for Petitioner

DATE: August 13, 2026

APPENDIX

TABLE OF APPENDICES

	<i>Page</i>
APPENDIX A — OPINION OF THE FIFTEENTH COURT OF APPEALS OF TEXAS, FILED JUNE 24, 2025.....	1a
APPENDIX B — ORDER OF THE DISTRICT COURT OF BRAZOS COUNTY, TEXAS, 472ND JUDICIAL DISTRICT, DATED MAY 30, 2024	15a
APPENDIX C — EXCERPTS OF TRANSCRIPT OF MOTION HEARING, COURT OF APPEALS OF TEXAS, DATED MAY 30, 2024	17a
APPENDIX D — DENIAL OF MOTION FOR REHEARING OF THE FIFTEENTH COURT OF APPEALS FOR THE STATE OF TEXAS, DATED AUGUST 13, 2025.....	21a
APPENDIX E — DENIAL OF PETITION FOR REVIEW, DATED MARCH 27, 2026.....	23a
APPENDIX F — DENIAL OF MOTION FOR REHEARING, DATED MAY 15, 2026.....	24a
APPENDIX G — CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....	25a

1a

**APPENDIX A — OPINION OF THE
FIFTEENTH COURT OF APPEALS
OF TEXAS, FILED JUNE 24, 2025**

IN THE
FIFTEENTH COURT OF APPEALS

NO. 15-24-00071-CV

TEXAS A&M UNIVERSITY,

Appellant,

v.

ERIN A. SNIDER, PH.D.,

Appellee.

On Appeal from the 472nd District Court
Brazos County, Texas
Trial Court Cause No. 23-000631-CV-472

OPINION

This is an interlocutory appeal of an order denying Texas A&M University's plea to the jurisdiction on Dr. Erin Snider's retaliation claim under the Family and Medical Care Leave Act (FMLA). *See* 29 U.S.C. §§ 2601-54. The FMLA entitles eligible employees to a total of 12 workweeks of leave during any 12-month period for, as relevant here, the following reasons:

(C) In order to care for the spouse, or a son,
daughter, or parent, of the employee, if

Appendix A

such spouse, son, daughter, or parent has a serious health condition.

- (D) Because of a serious health condition that makes the employee unable to perform the functions of the position of such employee.

29 U.S.C. § 2612(a)(1)(C)-(D). Subsection (C) is known as a “family-care” provision, while subsection (D) is known as the FMLA’s “self-care” provision. *Coleman v. Court of Appeals of Md.*, 566 U.S. 30, 34, 132 S. Ct. 1327, 182 L. Ed. 2d 296 (2012). That distinction is important because it is undisputed that Congress abrogated Texas’s Eleventh Amendment immunity for claims under the FMLA’s family-care provisions, *Nevada Dep’t of Hum. Res. v. Hibbs*, 538 U.S. 721, 724, 123 S. Ct. 1972, 155 L. Ed. 2d 953 (2003), but not for claims under the self-care provision, *Coleman*, 566 U.S. at 33, 39; *Univ. of Tex. at El Paso v. Herrera*, 322 S.W.3d 192, 198-201 (Tex. 2010). In this case, Dr. Snider requested and received leave twice. Her first request was after she suffered a miscarriage, and the second request was because she was undergoing in vitro fertilization (IVF) treatment.

Because the evidence does not raise a fact question on whether Dr. Snider took leave to care for a son or daughter—even an unborn son or daughter—with a serious health condition, we conclude Dr. Snider’s FMLA leave was under the self-care provision and therefore the University is immune from suit. Accordingly, we reverse the trial court’s order.

*Appendix A***BACKGROUND**

In September 2013, Dr. Snider accepted a tenure-track assistant professor position at the University and was expected to submit her application for promotion to a tenured position at the end of a five-year probationary period. The probationary period, also referred to as a “tenure clock,” could be extended for several reasons, including for medical leave. For reasons discussed below, Dr. Snider requested and received one-year extensions to her tenure clock for the 2017-18 and 2018-19 academic years, both of which resulted in reduced leave schedules.

She first requested a tenure-clock extension for the 2017-18 academic year after suffering a second-trimester miscarriage. In the fall of 2017, Dr. Snider informed her supervisor of her miscarriage and the resulting medical issues that inhibited her ability to work, and her supervisor advised her that she could have a medical-leave extension to her tenure clock. The tenure-clock extension reduced her course load and research requirements for that year.

Dr. Snider sought another extension for the 2018-19 academic year because she was going to begin IVF treatment and was scheduled for an embryo transfer in the fall of 2018. She informed her supervisor about her upcoming IVF treatment and inquired about taking a second medical extension. Her supervisor was supportive of her request. She also emailed the University’s human resources department to inquire about taking a partial medical leave, and human resources responded by providing FMLA paperwork to Dr. Snider. She received

Appendix A

another one-year extension to her tenure clock, which reduced her teaching and research requirements again for that year. One embryo transfer was successful, and she became pregnant in the spring of 2019. Unfortunately, Dr. Snider suffered another miscarriage in May 2019.

At the end of her probationary period, Dr. Snider submitted her application for a tenure position. The University denied her application. Dr. Snider filed suit against the University claiming (1) violations of Chapter 21 of the Texas Labor Code and (2) violations of the FMLA. For the FMLA claim, Dr. Snider alleges she sought and took leave under both the family-care provision, 29 U.S.C. § 2612(a)(1)(C), and the self-care provision, *id.* § 2612(a)(1)(D). The petition alleges that Dr. Snider “suffered a serious health condition that required continuing treatment by a health care provider or was caring for a son or daughter with a serious health condition.” She alleges the University retaliated against her for taking FMLA leave.

The University filed a partial plea to the jurisdiction on Dr. Snider’s FMLA claim arguing (1) that Dr. Snider did not plausibly allege she sought and took FMLA leave and (2) that the University’s sovereign immunity from suit is not waived because Dr. Snider’s claims fall under the self-care provision of the FMLA, not the family-care provision.

After a hearing in which evidence was presented, the trial court denied the University’s partial plea to the jurisdiction. The University appealed.

*Appendix A***STANDARD OF REVIEW**

A plea questioning the trial court’s jurisdiction raises a question of law that is reviewed de novo. *State v. Holland*, 221 S.W.3d 639, 642 (Tex. 2007). When considering a plea to the jurisdiction, our analysis begins with the live pleadings. *Heckman v. Williamson Cnty.*, 369 S.W.3d 137, 150 (Tex. 2012). We first determine if the pleader has alleged facts that affirmatively demonstrate the court’s jurisdiction to hear the case. *Texas Dep’t of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226 (Tex. 2004). In doing so, we construe the pleadings liberally in favor of the plaintiff, and unless challenged with evidence, we accept all allegations as true. *Id.* at 226-27. The plea must be granted if the plaintiff’s pleadings affirmatively negate the existence of jurisdiction or if the defendant presents undisputed evidence that negates the existence of the court’s jurisdiction. *Heckman*, 369 S.W.3d at 150.

When, as is the case here, a “jurisdictional challenge implicates the merits of the [plaintiff’s] cause of action and the plea to the jurisdiction includes evidence, the trial court reviews the relevant evidence to determine if a fact issue exists.” *Miranda*, 133 S.W.3d at 227. In evaluating an evidentiary plea to the jurisdiction, the standard of review “generally mirrors that of a summary judgment under Texas Rule of Civil Procedure 166a(c).” *Id.* at 228. The evidence is reviewed in the light most favorable to the nonmovant to determine whether a genuine issue of material fact exists. *Town of Shady Shores v. Swanson*, 590 S.W.3d 544, 550 (Tex. 2019).

*Appendix A***DISCUSSION****I. Whether Dr. Snider sought and took leave under the FMLA**

In its first issue, the University argues Dr. Snider was not protected under the FMLA because she did not seek and take FMLA leave. An employee must give her employer notice of her intention to take FMLA leave. *Acker v. General Motors, L.L.C.*, 853 F.3d 784, 788 (5th Cir. 2017) (citing 29 U.S.C. § 2612(e)(1)-(2)). The notice, however, need not expressly assert rights under the FMLA or even mention the FMLA. *Lanier v. Univ. of Tex. Sw. Med. Ctr.*, 527 F. App'x 312, 316 (5th Cir. 2013); 29 C.F.R. § 825.301(b). Rather, the notice must be “sufficient to reasonably apprise her employer that her request to take time off could fall under the FMLA.” *Lanier*, 527 F. App'x at 316.

Here, the evidence shows Dr. Snider gave sufficient notice to inform the University that her leave request could fall under the FMLA. As explained above, she notified her supervisor of her miscarriage and her IVF treatment that gave rise to her requests for tenure-clock extensions that resulted in reduced leave schedules.¹ For

1. The FMLA allows an employee to take leave intermittently or on a reduced leave schedule for the care of a child with a serious health condition or for the employee's own serious health condition when such leave is medically necessary. 29 U.S.C. § 2612(b)(1); 29 C.F.R. § 825.202(b). The term “reduced leave schedule” means “a leave schedule that reduces the usual number of hours per workweek, or hours per workday, of an employee.” 29 U.S.C. § 2611(9). Leave

Appendix A

the 2018-19 academic year specifically, Dr. Snider also emailed the human resources department inquiring about taking partial medical leave, and the University provided FMLA paperwork to her.

The University agrees Dr. Snider's notice was sufficient to request leave based on the email she sent to the human resources department. The University argues, however, her leave was not actually taken under the FMLA, but rather under another type of leave. For this argument, the University relies on its own internal personnel document that reflects no FMLA hours were recorded as taken by Dr. Snider. The University also relies on the fact that the University's human resources department provided Dr. Snider a medical certification form for her doctor to complete as part of the FMLA paperwork, but a certification was never completed.

Under FMLA regulations, an employer is responsible for designating leave as FMLA-qualifying. 29 C.F.R. §§ 825.301(a), .300(d)(1). If an employer does not have sufficient information to determine the reason for an employee's use of leave, the "employer should inquire further . . . to ascertain whether leave is potentially FMLA-qualifying." *Id.* § 825.301(a). An employer has the option to require a medical certification if the employee requests leave due to a serious health condition. 29 U.S.C. § 2613(a); 29 C.F.R. §§ 825.302(c), .305(a). "Failure to respond to reasonable employer inquiries regarding the

taken intermittently or on a reduced leave schedule does not reduce the total amount of leave available to an employee under the FMLA. 29 U.S.C. § 2612(b)(1).

Appendix A

leave request may result in denial of FMLA protection if the employer is unable to determine whether the leave is FMLA-qualifying.” 29 C.F.R. §§ 825.302(c), .303(b); *see also id.* § 825.313(a) (“[I]f an employee fails to provide certification in a timely manner . . . then an employer may deny FMLA coverage until the required certification is provided.”). The employer must notify the employee if it determines the leave will not be designated as FMLA-qualifying. *Id.* § 825.300(d)(1).

In reviewing the evidence in the light most favorable to Dr. Snider, we conclude there is a fact question on whether her leave was taken under the FMLA. Her notices were sufficient to apprise the University that her request for medical extensions and reduced leave schedules could fall under the FMLA. Although Dr. Snider did not provide a medical certification, the University nevertheless granted her tenure-clock extension and allowed her to be on a reduced leave schedule for the 2018-19 academic year. Further, there is no evidence that the University required a medical certification when she requested a medical-leave extension after her miscarriage for the 2017-18 academic year, nor is there evidence the University ever notified Dr. Snider that her leave did not qualify under the FMLA.

Lastly, although the University’s internal personnel document reflects that no FMLA hours were taken by Dr. Snider in the relevant years, it was the University’s responsibility to determine whether Dr. Snider’s leave was FMLA-qualifying and to designate it accordingly. 29 C.F.R §§ 825.301(a), .300(d)(1); *see also* Dep’t of Labor Op. Letter, FMLA2019-1-A, 2019 WL 1514982, at *2 (Mar. 14,

Appendix A

2019) (“Once an eligible employee communicates a need to take leave for an FMLA-qualifying reason, neither the employee nor the employer may decline FMLA protection for that leave.”) (citing 29 C.F.R. § 825.220(d); *Strickland v. Water Works and Sewer Bd. of City of Birmingham*, 239 F.3d 1199, 1204 (11th Cir. 2001)). An employer’s failure to designate leave may “constitute interference with, restraint of, or denial of the exercise of an employee’s FMLA rights.” 29 C.F.R. § 825.301(e); 29 U.S.C. § 2615 (a)(1). Therefore, this evidence does not negate the fact question of whether Dr. Snider was protected under the FMLA.

Accordingly, we overrule the University’s first issue.

II. Whether Dr. Snider’s FMLA leave was for self-care or family-care

In its second issue, the University argues that because Dr. Snider’s leave was for post-miscarriage care, IVF treatment, and pregnancy related conditions, her FMLA claim falls under the FMLA’s self-care provision and therefore the University is immune from suit. *See Coleman*, 566 U.S. at 33, 39 (holding claims under FMLA self-care provision against states are barred by sovereign immunity); *Herrera*, 322 S.W.3d at 198-200 (same). Dr. Snider argues her claim falls under the family-care provision, for which immunity is waived, *Hibbs*, 538 U.S. at 735, because she took leave to care for her unborn daughters. The University takes the position that an unborn child is not covered under the FMLA.

Appendix A

The specific question of whether an unborn child is covered by the FMLA appears to be an issue of first impression in Texas. The family-care provision at issue in this case entitles eligible employees leave to care for a “son” or “daughter” who has a “serious health condition.” 29 U.S.C. § 2612(a)(1)(C). “Son” or “daughter” means “a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis who is . . . under 18 years of age.” *Id.* § 2611(12)(A); *see also* 29 C.F.R. § 825.102. The FMLA statutes and regulations do not expressly address whether an unborn child falls within this definition.²

2. The parties cited two federal district court cases that have addressed this question: *Issa v. Tex. Dep’t of Crim. Just.*, No. 1:22-CV-01107-ADA, 2023 U.S. Dist. LEXIS 132885, 2023 WL 4923971, at *1 (W.D. Tex. Aug. 1, 2023), *report and recommendation adopted*, 2023 U.S. Dist. LEXIS 146004, 2023 WL 5352319, at *1 (W.D. Tex. Aug. 18, 2023) and *Proctor v. Riley Indus., Inc.*, 579 F. Supp. 3d 1127 (D. Ariz. 2022). In *Issa*, the court denied defendant’s motion to dismiss because plaintiff, who was seven-months pregnant and requested to leave work to go to the hospital when she felt pain, plausibly alleged she sought leave to care for an unborn child who was suffering a serious health condition. *Issa*, 2023 U.S. Dist. LEXIS 132885, 2023 WL 4923971, at *13. The court reasoned that the FMLA does not define “child” and does not state whether an unborn child qualifies as a child, son, or daughter under 18 years of age. *Id.* By contrast, in *Proctor*, the court concluded the FMLA does not cover an unborn child and that an expectant father could not take leave to care for his pregnant fiancé. *Proctor*, 579 F. Supp. 3d at 1130. The court also relied on regulations that expressly provide that “an expectant mother is entitled to FMLA leave for incapacity due to pregnancy, for prenatal care, or for her own serious health condition following the birth of the child, but only ‘a spouse’ is entitled to FMLA leave ‘if needed to care for a pregnant spouse who is incapacitated or if

Appendix A

Ultimately, we need not decide whether an unborn child is covered under FMLA. Even assuming without deciding that treatment of a serious health condition for an unborn child qualifies as family care under the FMLA, the evidence in this case does not raise a fact issue on whether Dr. Snider took leave to care for an unborn child who had a “serious health condition” as opposed to leave for her own pregnancy-related condition. A “serious health condition” means “an illness, injury, impairment, or physical or mental condition that involves (A) inpatient care in a hospital, hospice, or residential medical care facility; or (B) continuing treatment by a health care provider.” 29 U.S.C. § 2611(11).

Here, Dr. Snider’s leave requests were initially for recovery after suffering a miscarriage and later for IVF treatment. Neither of those time periods involve the provision of health care for an unborn child in utero. The only evidence that there was an unborn child in utero during her leave was in the spring of 2019 when she

needed to care for her during her prenatal care.” *Id.* at 1131 (citing 29 C.F.R. § 825.120(a)(4)).

Dr. Snider also relies on Texas law that in general recognizes life begins at conception as support that the FMLA should be interpreted to include unborn children. *See e.g.*, Tex. Penal Code § 1.07(26) (defining “individual” to include “an unborn child at every stage of gestation from fertilization until birth”); Tex. Civ. Prac. & Rem. Code § 71.001(3)-(4) (Wrongful Death Act defining “individual” to include unborn children and “death” to include failure of unborn child “to be born alive”); Tex. Health & Safety Code §§ 171.201-.212 (Texas Heartbeat Act).

Appendix A

became pregnant after a successful embryo transfer.³ Dr. Snider testified that her doctors had concerns regarding her pregnancy given her previous miscarriage, the impact of various drugs administered during IVF, and because of her age. Due to those concerns, Dr. Snider testified this pregnancy carried additional risks for her and her unborn child. This evidence, however, does not raise a fact question that the unborn child herself had a serious health condition, as that term is defined by the FMLA. At most, it shows Dr. Snider had a pregnancy-related condition. FMLA regulations demonstrate that pregnancy-related illnesses are serious health conditions of the mother that fall under the self-care provision. *See* 29 C.F.R. §§ 825.115(b) (“serious health condition involving continuing treatment by a health care provider” includes “any period of incapacity due to pregnancy, or for prenatal care”), .120(a)(4) (“An expectant mother may take FMLA before the birth of the child for prenatal care or if her condition makes her unable to work.”). In *Coleman*, which held a state’s immunity is not waived for claims under the FMLA’s self-care provision, both the plurality and dissenting opinions of the United States Supreme Court recognized that pregnancy-related illnesses fall under the self-care provision. *Coleman*, 566 U.S. at 39 (“[T]he self-care provision offers some women a benefit by allowing them to take leave for pregnancy-related illnesses.”); *id.* at 58 (“The self-care provision . . . requir[es] employers to allow leave for ‘ongoing pregnancy, miscarriages, . . . the need for prenatal care, childbirth, and recovery from

3. Both parties agree that the legal status of embryos created through the IVF process is not an issue presented in this case.

Appendix A

childbirth.”) (quoting S.Rep. No. 103-3, p. 29 (1993), 1993 U.S.C.C.A.N. 3 at 31) (Ginsburg, J. dissenting).

There is no evidence in the record that Dr. Snider took leave because her unborn child was diagnosed with and treated for a serious health condition, as opposed to Dr. Snider’s pregnancy-related condition. At most, the evidence demonstrates that Dr. Snider had a high-risk pregnancy and was under a doctor’s care as a result. Her FMLA retaliation claim, therefore, falls under the self-care provision. 29 U.S.C. § 2612(a)(1)(D). Accordingly, the University is immune from Dr. Snider’s FMLA claim. *See Coleman*, 566 U.S. at 39; *Herrera*, 322 S.W.3d at 198-200.

III. Whether the University is immune from Dr. Snider’s FMLA claim seeking equitable remedies

Lastly, the University argues Dr. Snider cannot seek equitable remedies under the *Ex Parte Young* exception to immunity for her FMLA claim. The *Ex Parte Young* exception to immunity from suit in federal court is similar to the *ultra vires* doctrine in Texas and requires a party to sue individuals in their official capacities for prospective relief. *Stroman Realty, Inc. v. Wercinski*, 513 F.3d 476, 482 (5th Cir. 2008) (“*Ex Parte Young* subjects a state employee acting in her official capacity to suits for prospective relief that avoid the Eleventh Amendment bar, but the employee’s conduct remains state action under the Fourteenth Amendment.”); *see also Whole Woman’s Health v. Jackson*, 642 S.W.3d 569, 573 n.5 (Tex. 2022); *City of El Paso v. Heinrich*, 284 S.W.3d 366, 374-75 (Tex. 2009) (comparing *Ex Parte Young* and *ultra vires*

Appendix A

doctrines). Accordingly, neither the *Ex Parte Young* nor the *ultra vires* exception to immunity can apply as an exception to the University's immunity from suit.

In the trial court, Dr. Snider filed a motion for leave to add individual University employees in their official capacities, but the trial court did not rule on that motion before the University appealed. Because the motion for leave is pending before the trial court, the issue of whether the *ultra vires* or *Ex Parte Young* exceptions apply to those individuals is not before us.

CONCLUSION

Because Dr. Snider's FMLA claim falls under the self-care provision, 29 U.S.C. § 2612(a)(1)(D), the University is immune from her FMLA claim. *See Coleman*, 566 U.S. at 33, 39; *Herrera*, 322 S.W.3d at 198-200. We therefore reverse the trial court's denial of the University's partial plea to the jurisdiction on Dr. Snider's FMLA claim and remand the case for further proceedings consistent with this opinion.

/s/ Scott K. Field
Scott K. Field
Justice

Panel consists of Chief Justice Brister and Justices Field and Farris.

**APPENDIX B — ORDER OF THE DISTRICT COURT
OF BRAZOS COUNTY, TEXAS, 472ND JUDICIAL
DISTRICT, DATED MAY 30, 2024**

IN THE DISTRICT COURT OF
BRAZOS COUNTY, TEXAS
472nd JUDICIAL DISTRICT

CAUSE NO. 23-000631-CV-472

ERIN A. SNIDER, PH.D.,

Plaintiff,

v.

TEXAS A&M UNIVERSITY,

Defendant.

**PROPOSED ORDER DENYING DEFENDANT
TEXAS A&M UNIVERSITY'S SECOND AMENDED
PARTIAL PLEA TO THE JURISDICTION**

ON THIS DAY came to be considered Defendant Texas A&M University's Second Amended Partial Plea to the Jurisdiction ("Plea to the Jurisdiction"), filed in the above-numbered cause. After considering the Plea to the Jurisdiction, any responses or replies, and the arguments of counsel, the Court finds that the Plea to the Jurisdiction should be **DENIED**.

It is therefore **ORDERED, ADJUDGED, and DECREED** that Defendant Texas A&M University's Second Amended Partial Plea to the Jurisdiction is **DENIED**.

16a

Appendix B

SIGNED on May 30, 2024, 2024.

/s/
JUDGE PRESIDING

17a

**APPENDIX C — EXCERPTS OF TRANSCRIPT
OF MOTION HEARING, COURT OF APPEALS
OF TEXAS, DATED MAY 30, 2024**

**REPORTER'S RECORD
VOLUME 2 OF 2 VOLUMES
COURT OF APPEALS NO. 10-24-00182-CV
TRIAL COURT CAUSE NO. 23-000631-CV-472**

ERIN A. SNIDER, PH.D.

v.

TEXAS A&M UNIVERSITY

No. 10-24-00182-CV
appeal from the
472nd District Court
of Brazos County
(TC# 23-000631-CV-472)

MOTION HEARING

On the 30th day of May, 2024, the following proceedings came on to be held in the above-titled and numbered cause before the Honorable G. Jerrell Wise, Judge Presiding, held in Bryan, Brazos County, Texas.

Proceedings reported by computerized stenotype machine.

* * *

Appendix C

[84]can be argued ambiguous. And, so, we would turn to the legislative intent. The Senate report, which does make clear that it is for the day-to-day care of a son or daughter who cannot perform their regular activities, and, as such, an unborn child would not fall under the family care provision.

THE COURT: Thank you, Ms. Krominga.

Well, this has been a fun one. This has been one that I've been reading the pleadings for a little while now. My intern read the pleadings. I talked to some people about it -- not like experts, but, you know, just other jurists -- and I have to make my decision based on plea to the jurisdiction on the pleadings and the facts that were brought up to either maybe disprove a pleading -- is that the way to say it -- support a pleading; or if there was no factual support for a pleading, is the way to say it. And I'm not going into the merits of the case.

So, when I look at the family care, it is for care of a son or daughter. It is to be interpreted broadly because there's many kinds of sons and many kinds of daughters, and while it can be interpreted to be exclusive of unborn because that provision is also particularly -- or specifically addressed in the self-care of complications during pregnancy, I believe [85]there is a difference between self-care during pregnancy and care for the unborn son or daughter during pregnancy.

There's been very little evidence, but some evidence, that some of the time that Dr. Snider was off work, reduced

Appendix C

from work, reduced from her tenure requirements including research, it was for the care of her unborn second child, at least, meaning reduced stress, reduced effort, time exertions, kind of bedrest, if you will, to help that child grow and be. Unfortunately, it was not successful.

So, I find that plaintiff pled properly and have some evidence to support those pleadings, however thin. I wouldn't necessarily say that if Dr. Snider were still in the room; but just know that while you have escaped today, I'm not saying it's enough to get you across the finish line. But it does get you past the plea to the jurisdiction. Just barely.

Plea to the jurisdiction is denied.

Anything further we need to take up?

MR. RUDINGER: No, your Honor.

MS. SPINN: No, your Honor.

THE COURT: Is there an order in my queue?

MS. MCCALL: Yes, sir.

THE COURT: All right. I will sign it [86]later, denying the plea to the jurisdiction.

Excellent argument, excellent pleadings. I haven't read your latest one, but I think I got the gist. This is a tough one and I really appreciate going outside of Texas looking for case law on both sides trying to find some

Appendix C

direction, some path for the Court to take, and I appreciate that very much. I can't tell you.

MR. RUDINGER: Thank you, your Honor.

MS. SPINN: Thank you, your Honor.

MS. KROMINGA: Thank you.

THE COURT: All right. You're dismissed.

(Court recessed)

21a

**APPENDIX D — DENIAL OF MOTION FOR
REHEARING OF THE FIFTEENTH COURT OF
APPEALS FOR THE STATE OF TEXAS,
DATED AUGUST 13, 2025**

**THE STATE OF TEXAS
FIFTEENTH COURT OF APPEALS**

Wednesday, August 13, 2025

Brianna M. Krominga
Office of Attorney General
P.O. Box 12548, Capitol Station
Austin, TX 78711
College Station, TX 77845
* DELIVERED VIA E-MAIL *

Melissa Spinn Koelsch
West, Webb, Allbritton & Gentry, P.C.
1515 Emerald Plaza
College Station, TX 77845
* DELIVERED VIA E-MAIL *

Gaines F. West
West, Webb, Allbritton & Gentry, P.C.
1515 Emerald Plaza
College Station, TX 77845
* DELIVERED VIA E-MAIL *

Kenneth Paxton
Office of the Attorney General of Texas
Attorney General
P.O. Box 12548, Capitol Station
Austin, TX 78711-2548
* DELIVERED VIA E-MAIL *

22a

Appendix D

RE: Court of Appeals Number: 15-24-00071-CV
Trial Court Case Number: 23-000631-CV-472

Style: Texas A&M University
v. Erin A. Snider, Ph.D.

Please be advised that Appellee's motion for rehearing
was DENIED by this Court on the date noted above.

Sincerely,

/s/ Christopher A. Prine
Christopher A. Prine, Clerk

23a

**APPENDIX E — DENIAL OF PETITION FOR
REVIEW, DATED MARCH 27, 2026**

RE: Case No. 25-0876

DATE: 3/27/2026

COA #: 15-24-00071-CV
TC#: 23-000631-CV-472

STYLE: SNIDER v. TEXAS A&M UNIV.

Today the Supreme Court of Texas denied the petition
for review in the above-referenced case.

MR. GAINES F. WEST II
WEST WEBB ALLBRITTON &
GENTRY, P.C.
1515 EMERALD PLAZA
COLLEGE STATION, TX 77845-1515
* DELIVERED VIA E-MAIL *

24a

**APPENDIX F — DENIAL OF MOTION FOR
REHEARING, DATED MAY 15, 2026**

RE: Case No. 25-0876

DATE: 5/15/2026

COA #: 15-24-00071-CV
TC#: 23-000631-CV-472

STYLE: SNIDER v. TEXAS A&M UNIV.

Today the Supreme Court of Texas denied the motion
for rehearing of the above-referenced petition for review.

MR. GAINES F. WEST II
WEST WEBB ALLBRITTON &
GENTRY, P.C.
1515 EMERALD PLAZA
COLLEGE STATION, TX 77845-1515
* DELIVERED VIA E-MAIL *

**APPENDIX G — CONSTITUTIONAL AND
STATUTORY PROVISIONS INVOLVED**

U.S. Const. amend. XI

Suits Against States

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

*Appendix G***U.S. Const. amend. XIV**

CITIZENSHIP; PRIVILEGES AND IMMUNITIES;
DUE PROCESS; EQUAL PROTECTION;
APPOINTMENT OF REPRESENTATION;
DISQUALIFICATION OF OFFICERS; PUBLIC
DEBT; ENFORCEMENT

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Appendix G

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

28a

Appendix G

29 U.S.C. § 2611

Definitions

As used in this subchapter:

(1) Commerce

The terms “commerce” and “industry or activity affecting commerce” mean any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce, and include “commerce” and any “industry affecting commerce”, as defined in paragraphs (1) and (3) of section 142 of this title.

(2) Eligible employee

(A) In general

The term “eligible employee” means an employee who has been employed—

- (i) for at least 12 months by the employer with respect to whom leave is requested under section 2612 of this title; and
- (ii) for at least 1,250 hours of service with such employer during the previous 12-month period.

Appendix G

(B) Exclusions

The term “eligible employee” does not include—

- (i) any Federal officer or employee covered under subchapter V of chapter 63 of Title 5; or
- (ii) any employee of an employer who is employed at a worksite at which such employer employs less than 50 employees if the total number of employees employed by that employer within 75 miles of that worksite is less than 50.

(C) Determination

For purposes of determining whether an employee meets the hours of service requirement specified in subparagraph (A)(ii), the legal standards established under section 207 of this title shall apply.

(D) Airline flight crews

(i) Determination

For purposes of determining whether an employee who is a flight attendant or flight crewmember (as such terms are defined in regulations of the Federal Aviation Administration) meets the hours of service requirement specified in subparagraph (A)(ii), the employee will be considered to meet the

Appendix G

requirement if—

(I) the employee has worked or been paid for not less than 60 percent of the applicable total monthly guarantee, or the equivalent, for the previous 12-month period, for or by the employer with respect to whom leave is requested under section 2612 of this title; and

(II) the employee has worked or been paid for not less than 504 hours (not counting personal commute time or time spent on vacation leave or medical or sick leave) during the previous 12-month period, for or by that employer.

(ii) File

Each employer of an employee described in clause (i) shall maintain on file with the Secretary (in accordance with such regulations as the Secretary may prescribe) containing information specifying the applicable monthly guarantee with respect to each category of employee to which such guarantee applies.

(iii) Definition

In this subparagraph, the term “applicable monthly guarantee” means—

Appendix G

(I) for an employee described in clause (i) other than an employee on reserve status, the minimum number of hours for which an employer has agreed to schedule such employee for any given month; and

(II) for an employee described in clause (i) who is on reserve status, the number of hours for which an employer has agreed to pay such employee on reserve status for any given month, as established in the applicable collective bargaining agreement or, if none exists, in the employer's policies.

(E) GAO employees

In the case of an employee of the Government Accountability Office, the requirements of subparagraph (A) shall not apply with respect to leave under section 2612(a)(1)(A) or (B) of this title.

(3) Employ; employee; State

The terms “employ”, “employee”, and “State” have the same meanings given such terms in subsections (c), (e), and (g) of section 203 of this title.

(4) Employer

(A) In general

The term “employer”—

Appendix G

(i) means any person engaged in commerce or in any industry or activity affecting commerce who employs 50 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year;

(ii) includes—

(I) any person who acts, directly or indirectly, in the interest of an employer to any of the employees of such employer; and

(II) any successor in interest of an employer;

(iii) includes any “public agency”, as defined in section 203(x) of this title; and

(iv) includes the Government Accountability Office and the Library of Congress.

(B) Public agency

For purposes of subparagraph (A)(iii), a public agency shall be considered to be a person engaged in commerce or in an industry or activity affecting commerce.

(5) Employment benefits

The term “employment benefits” means all benefits provided or made available to employees by an

Appendix G

employer, including group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits, and pensions, regardless of whether such benefits are provided by a practice or written policy of an employer or through an “employee benefit plan”, as defined in section 1002(3) of this title.

(6) Health care provider

The term “health care provider” means—

- (A) a doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices; or
- (B) any other person determined by the Secretary to be capable of providing health care services.

(7) Parent

The term “parent” means the biological parent of an employee or an individual who stood in loco parentis to an employee when the employee was a son or daughter.

(8) Person

The term “person” has the same meaning given such term in section 203(a) of this title.

Appendix G

(9) Reduced leave schedule

The term “reduced leave schedule” means a leave schedule that reduces the usual number of hours per workweek, or hours per workday, of an employee.

(10) Secretary

The term “Secretary” means the Secretary of Labor.

(11) Serious health condition

The term “serious health condition” means an illness, injury, impairment, or physical or mental condition that involves—

(A) inpatient care in a hospital, hospice, or residential medical care facility; or

(B) continuing treatment by a health care provider.

(12) Son or daughter

The term “son or daughter” means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is—

(A) under 18 years of age; or

(B) 18 years of age or older and incapable of self-care because of a mental or physical disability.

Appendix G

(13) Spouse

The term “spouse” means a husband or wife, as the case may be.

(14) Covered active duty

The term “covered active duty” means—

(A) in the case of a member of a regular component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country; and

(B) in the case of a member of a reserve component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country under a call or order to active duty under a provision of law referred to in section 101(a)(13)(B) of Title 10.

(15) Covered servicemember

The term “covered servicemember” means—

(A) a member of the Armed Forces (including a member of the National Guard or Reserves) who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness; or

Appendix G

(B) a veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period of 5 years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.

(16) Outpatient status

The term “outpatient status”, with respect to a covered servicemember, means the status of a member of the Armed Forces assigned to—

(A) a military medical treatment facility as an outpatient; or

(B) a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.

(17) Next of kin

The term “next of kin”, used with respect to an individual, means the nearest blood relative of that individual.

(18) Serious injury or illness

The term “serious injury or illness”—

Appendix G

(A) in the case of a member of the Armed Forces (including a member of the National Guard or Reserves), means an injury or illness that was incurred by the member in line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in line of duty on active duty in the Armed Forces) and that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating; and

(B) in the case of a veteran who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during a period described in paragraph (15)(B), means a qualifying (as defined by the Secretary of Labor) injury or illness that was incurred by the member in line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in line of duty on active duty in the Armed Forces) and that manifested itself before or after the member became a veteran.

(19) Veteran

The term "veteran" has the meaning given the term in section 101 of Title 38.

38a

Appendix G

29 U.S.C.A. § 2612

Leave requirement

(a) In general

(1) Entitlement to leave

Subject to section 2613 of this title and subsection (d) (3), an eligible employee shall be entitled to a total of 12 workweeks of leave during any 12-month period for one or more of the following:

(A) Because of the birth of a son or daughter of the employee and in order to care for such son or daughter.

(B) Because of the placement of a son or daughter with the employee for adoption or foster care.

(C) In order to care for the spouse, or a son, daughter, or parent, of the employee, if such spouse, son, daughter, or parent has a serious health condition.

(D) Because of a serious health condition that makes the employee unable to perform the functions of the position of such employee.

(E) Because of any qualifying exigency (as the Secretary shall, by regulation, determine) arising out of the fact that the spouse, or a son, daughter,

Appendix G

or parent of the employee is on covered active duty (or has been notified of an impending call or order to covered active duty) in the Armed Forces.

(F) During the period beginning on the date the Emergency Family and Medical Leave Expansion Act takes effect, and ending on December 31, 2020, because of a qualifying need related to a public health emergency in accordance with section 2620 of this title.

(2) Expiration of entitlement

The entitlement to leave under subparagraphs (A) and (B) of paragraph (1) for a birth or placement of a son or daughter shall expire at the end of the 12-month period beginning on the date of such birth or placement.

(3) Servicemember family leave

Subject to section 2613 of this title, an eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered servicemember shall be entitled to a total of 26 workweeks of leave during a 12-month period to care for the servicemember. The leave described in this paragraph shall only be available during a single 12-month period.

(4) Combined leave total

Subject to subsection (d)(3), during the single 12-month period described in paragraph (3), an eligible employee

Appendix G

shall be entitled to a combined total of 26 workweeks of leave under paragraphs (1) and (3). Nothing in this paragraph shall be construed to limit the availability of leave under paragraph (1) during any other 12-month period.

(5) Calculation of leave for airline flight crews

The Secretary may provide, by regulation, a method for calculating the leave described in paragraph (1) with respect to employees described in section 2611(2)(D) of this title.

(b) Leave taken intermittently or on reduced leave schedule**(1) In general**

Leave under subparagraph (A) or (B) of subsection (a)(1) shall not be taken by an employee intermittently or on a reduced leave schedule unless the employee and the employer of the employee agree otherwise. Subject to paragraph (2), subsection (e)(2), and subsection (b)(5) or (f) (as appropriate) of section 2613 of this title, leave under subparagraph (C) or (D) of subsection (a)(1) or under subsection (a)(3) may be taken intermittently or on a reduced leave schedule when medically necessary. Subject to subsection (e)(3) and section 2613(f) of this title, leave under subsection (a)(1)(E) may be taken intermittently or on a reduced leave schedule. The taking of leave intermittently or on a reduced leave schedule pursuant to this paragraph shall not result

Appendix G

in a reduction in the total amount of leave to which the employee is entitled under subsection (a) beyond the amount of leave actually taken.

(2) Alternative position

If an employee requests intermittent leave, or leave on a reduced leave schedule, under subparagraph (C) or (D) of subsection (a)(1) or under subsection (a)(3), that is foreseeable based on planned medical treatment, the employer may require such employee to transfer temporarily to an available alternative position offered by the employer for which the employee is qualified and that—

(A) has equivalent pay and benefits; and

(B) better accommodates recurring periods of leave than the regular employment position of the employee.

(c) Unpaid leave permitted

Except as provided in subsection (d), leave granted under subsection (a) (other than certain periods of leave under subsection (a)(1)(F)) may consist of unpaid leave. Where an employee is otherwise exempt under regulations issued by the Secretary pursuant to section 213(a)(1) of this title, the compliance of an employer with this subchapter by providing unpaid leave shall not affect the exempt status of the employee under such section.

*Appendix G***(d) Relationship to paid leave****(1) Unpaid leave**

If an employer provides paid leave for fewer than 12 workweeks (or 26 workweeks in the case of leave provided under subsection (a)(3)), the additional weeks of leave necessary to attain the 12 workweeks (or 26 workweeks, as appropriate) of leave required under this subchapter may be provided without compensation.

(2) Substitution of paid leave**(A) In general**

An eligible employee may elect, or an employer may require the employee, to substitute any of the accrued paid vacation leave, personal leave, or family leave of the employee for leave provided under subparagraph (A), (B), (C), or (E) of subsection (a)(1) for any part of the 12-week period of such leave under such subsection.

(B) Serious health condition

An eligible employee may elect, or an employer may require the employee, to substitute any of the accrued paid vacation leave, personal leave, or medical or sick leave of the employee for leave provided under subparagraph (C) or (D) of subsection (a)(1) for any part of the 12-week period of such leave under such subsection, except

Appendix G

that nothing in this subchapter shall require an employer to provide paid sick leave or paid medical leave in any situation in which such employer would not normally provide any such paid leave. An eligible employee may elect, or an employer may require the employee, to substitute any of the accrued paid vacation leave, personal leave, family leave, or medical or sick leave of the employee for leave provided under subsection (a)(3) for any part of the 26-week period of such leave under such subsection, except that nothing in this subchapter requires an employer to provide paid sick leave or paid medical leave in any situation in which the employer would not normally provide any such paid leave.

(3) Special rule for GAO employees**(A) Substitution of paid leave**

An employee of the Government Accountability Office may elect to substitute for any leave without pay under subparagraph (A) or (B) of subsection (a)(1) any paid leave which is available to such employee for that purpose.

(B) Amount of paid leave

The paid leave that is available to an employee of the Government Accountability Office for purposes of subparagraph (A) is—

Appendix G

(i) the number of weeks of paid parental leave in connection with the birth or placement involved that corresponds to the number of administrative workweeks of paid parental leave available to employees under section 6382(d)(2)(B)(i) of Title 5; and

(ii) during the 12-month period referred to in subsection (a)(1) and in addition to the administrative workweeks described in clause (i), any additional paid vacation, personal, family, medical, or sick leave provided by such employer.

(C) Limitation

Nothing in this section shall be considered to require or permit an employer to require that an employee first use all or any portion of the leave described in subparagraph (B)(ii) before being allowed to use the paid parental leave described in clause (i) of subparagraph (B).

(D) Additional rules

Paid parental leave under subparagraph (B)(i)—

(i) shall be payable from any appropriation or fund available for salaries or expenses for positions with the Government Accountability Office;

Appendix G

(ii) if not used by the employee of such employer before the end of the 12-month period (as referred to in subsection (a)(1)) to which it relates, shall not accumulate for any subsequent use; and

(iii) shall apply without regard to the limitations in subparagraph (E), (F), or (G) of section 6382(d)(2) of Title 5 or section 2614(c)(2) of this title.

(4) Special rule for Library of Congress employees

Consistent with section 1301(a)(3)(J) of Title 2, the rights and protections established by sections 2611 through 2615 of this title, including section 2612(d)(3), shall apply to employees of the Library of Congress under section 1312 of Title 2.

(e) Foreseeable leave

(1) Requirement of notice

In any case in which the necessity for leave under subparagraph (A) or (B) of subsection (a)(1) is foreseeable based on an expected birth or placement, 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 birth or placement requires leave to begin in less than 30 days, the employee shall provide such notice as is practicable.

*Appendix G***(2) Duties of employee**

In any case in which the necessity for leave under subparagraph (C) or (D) of subsection (a)(1) or under subsection (a)(3) is foreseeable based on planned medical treatment, the employee—

(A) shall make a reasonable effort to schedule the treatment so as not to disrupt unduly the operations of the employer, subject to the approval of the health care provider of the employee or the health care provider of the son, daughter, spouse, parent, or covered servicemember of the employee, as appropriate; and

(B) 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.

(3) Notice for leave due to covered active duty of family member

In any case in which the necessity for leave under subsection (a)(1)(E) is foreseeable, whether because the spouse, or a son, daughter, or parent, of the employee is on covered active duty, or because of notification of an impending call or order to covered active duty, the employee shall provide such notice to the employer as is reasonable and practicable.

*Appendix G***(f) Spouses employed by same employer****(1) In general**

In any case in which a husband and wife entitled to leave under subsection (a) are employed by the same employer, the aggregate number of workweeks of leave to which both may be entitled may be limited to 12 workweeks during any 12-month period, if such leave is taken—

(A) under subparagraph (A) or (B) of subsection (a)(1); or

(B) to care for a sick parent under subparagraph (C) of such subsection.

(2) Servicemember family leave**(A) In general**

The aggregate number of workweeks of leave to which both that husband and wife may be entitled under subsection (a) may be limited to 26 workweeks during the single 12-month period described in subsection (a)(3) if the leave is —

(i) leave under subsection (a)(3); or

(ii) a combination of leave under subsection (a)(3) and leave described in paragraph (1).

48a

Appendix G

(B) Both limitations applicable

If the leave taken by the husband and wife includes leave described in paragraph (1), the limitation in paragraph (1) shall apply to the leave described in paragraph (1).