No. 25-30398

In The United States Court of Appeals for the Fifth Circuit

UNITED STATES CONFERENCE OF CATHOLIC BISHOPS; SOCIETY OF ROMAN CATHOLIC DIOCESE OF LAKE CHARLES; SOCIETY OF THE ROMAN CATHOLIC CHURCH OF THE DIOCESE OF LAFAYETTE; CATHOLIC UNIVERSITY OF AMERICA,

Plaintiffs-Appellants,

v.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION; ANDREA R. LUCAS,

Defendants-Appellees.

On Appeal from the United States District Court
for the Western District of Louisiana (Lake Charles)
No. 2:24-cv-691, Hon. David C. Joseph

BRIEF OF FIFTY MEMBERS OF CONGRESS AS AMICI CURIAE IN SUPPORT OF APPELLANTS

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SUPPLEMENTAL STATEMENT OF INTERESTED PERSONS

United States Conference of Catholic Bishops, et al. v. EEOC, et al.

No. 25-30398

The undersigned counsel of record certifies that, in addition to the persons and entities listed in Plaintiffs-Appellants' Certificate of Interested Persons, the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made so the judges of this Court may evaluate possible disqualification or recusal.

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INTEREST OF *AMICI CURIAE*[1]

Amici Curiae are fifty members of Congress, who have a strong interest in ensuring that the Pregnant Workers Fairness Act ("PWFA"), 136 Stat. 4459, 6084–89, 42 U.S.C. § 2000gg–2000gg-6 (2022), is implemented in accordance with Congress's goals and that unelected agency officials do not subvert the legislative process to accomplish their own controversial policy goals. *Amici* include Senator Bill Cassidy, who was an original co-sponsor of the PWFA and serves as Chairman of the Health, Education, Labor, and Pensions Committee, which was primarily responsible for developing the PWFA in the Senate. *Amici* also include Senator James Lankford, Representative Christopher H. Smith, and Representative Erin Houchin, who co-led a Congressional letter to the EEOC urging it to modify regulations implementing the PWFA to remove the abortion accommodations mandate. *Amici* are listed in full in the accompanying Appendix.

SUMMARY OF ARGUMENT

"Congress does not 'hide elephants in mouseholes.'" *Cyan, Inc. v. Beaver Cnty. Emps. Ret. Fund*, 583 U.S. 416, 431 (2018) (quoting *Whitman v. Am. Trucking Ass'ns, Inc.*, 531 U.S. 457, 468 (2001)). The bipartisan PWFA was designed to accomplish a simple, uncontroversial goal: ensuring that pregnant and postpartum women receive the accommodations they need at work. It was *not* designed to take sides in controversial

[1] All parties consented to the filing of this brief. No counsel for a party authored this brief in whole or in part, and no person other than *Amici* and their counsel made any monetary contribution intended to fund the preparation or submission of this brief.

abortion policy debates. But that is exactly what the Biden Administration's EEOC did.[2] Flouting the law Congress passed, the EEOC transformed the PWFA into a draconian national abortion-accommodations mandate that tramples the conscience rights of those who object to abortion, including some of the very faith-based organizations that supported the PWFA.[3]

Although the district court partially invalidated the Final Rule, the terms of its ruling and the Final Rule's expansive definition of "medical condition" leave religious employers with an ongoing duty to accommodate abortions obtained to address "modest" or "minor" cases of anxiety, nausea, or even "changes in hormonal levels" and to radically transform their employment policies, practices, and even "atmosphere" accordingly. *See* 29 C.F.R. § 1636.3(a)(2), (b); 89 Fed. Reg. 29,199, 29,214, 29,218. Indeed, the expansive invocation of "health" to impose abortion-related obligations is no new phenomenon. *See, e.g.*, *Doe v. Bolton*, 410 U.S. 179, 192 (1973), *abrogated by Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022).

Congress never intended that. Quite the opposite. Congress included a religious exemption in the PWFA, guaranteeing that no religious employer would have to violate its faith. But by interpreting the religious exemption narrowly and medical justifications

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[2] *See* Implementation of the Pregnant Workers Fairness Act, 89 Fed. Reg. 29,096 (Apr. 19, 2024) (to be codified at 29 C.F.R. pt. 1636).

[3] *See, e.g.*, 168 Cong. Rec. S7050 (daily ed. Dec. 8, 2022) (statement of Sen. Cassidy) (noting that the U.S. Conference of Catholic Bishops, the lead plaintiff in this case, endorsed the PWFA); Letter from U.S. Conference of Catholic Bishops to Members of Congress (Aug. 9, 2021), https://www.usccb.org/resources/PWFA_letter.pdf.

for abortion broadly, the Final Rule fundamentally repurposes the PWFA into an unprecedented instrument of radical abortion policy. The Constitution reserves to *Congress*—not unelected bureaucrats—the authority to decide such major questions of national policy, and for good reason. *Amici* urge the Court to reject the EEOC's overreach.

ARGUMENT

I. Mandating Workplace Abortion Accommodations is a Major Question Requiring Clear Congressional Authorization.

Mandating abortion accommodations in workplaces across the nation, including in religious organizations who conscientiously object to abortion, implicates exactly the sort of major question that requires clear Congressional authorization to regulate. The "solemn responsibility" of "determin[ing] our nation's public policy" belongs to Congress. *Cargill v. Garland*, 57 F.4th 447, 472 (5th Cir. 2023). Accordingly, courts "expect Congress to speak clearly if it wishes to assign to an agency decisions of vast 'economic and political significance.'" *Util. Air Regul. Grp. v. EPA*, 573 U.S. 302, 324 (2014) (quoting *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 160 (2000)); *Ala. Ass'n of Realtors v. HHS*, 594 U.S. 758, 764 (2021). This is necessary to prevent administrative agencies from assuming power that Congress never intended to delegate. *West Virginia v. EPA*, 597 U.S. 697, 743 (2022) (Gorsuch, J., concurring). Here, in the PWFA, Congress did *not* address abortion policy. In fact, Congress explicitly refrained

from doing so. But the EEOC contorted the PWFA into a radical revision of national policy on one of the most contentious issues in America today.

Requiring a clear statement from Congress before an agency may assert sweeping authority to settle such major political questions supports a reliable legislative process. The Constitution's vesting of federal legislative power in Congress ensures "that those who make our laws would better reflect the diversity of the people they represent and have an 'immediate dependence on, and an intimate sympathy with, the people.'" *Id.* at 737 (Gorsuch, J., concurring) (quoting The Federalist No. 52, at 327 (J. Madison)). Requiring the consensus of competing interests to legislate is integral to protecting individual liberty from the grave threat of unchecked regulatory power. *Id.* at 738 ("By effectively requiring a broad consensus to pass legislation, the Constitution sought to ensure that any new laws would enjoy wide social acceptance, profit from input by an array of different perspectives during their consideration, and thanks to all this prove stable over time."). The major questions doctrine operates "to protect the Constitution's separation of powers" by ensuring that "'important subjects . . . must be entirely regulated by the legislature itself,' even if Congress may leave the Executive 'to act under such general provisions to fill up the details.'" *Id.* at 737 (quoting *Wayman v. Southard*, 10 Wheat. 1, 42–43 (1825)). This "core administrative-law principle that an agency may not rewrite clear statutory terms to suit its own sense of how the statute should operate," ensures that laws are given the effect that Congress intends. *Util. Air Regul. Grp.*, 573 U.S. at 328; *Restaurant L. Ctr. v. U.S. Dep't of Labor*, 120 F.4th 163, 174

(5th Cir. 2024). This is critical to the business of legislating, because the diverse members of Congress cannot strike bipartisan compromises if they cannot rely on the law meaning what they write it to mean.

Abortion policy has been a major, controversial political question for over fifty years, increasing in intensity after the Supreme Court's decision in *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022). After *Dobbs*, the Biden–Harris administration strove to create a federal abortion right by wrongfully reinterpreting federal laws that have nothing to do with abortion. *See* Br. *Amici Curiae* of 121 Members of Congress at 31–36, *Moyle v. United States*, 144 S. Ct. 2015 (2024) (Nos. 23-726, 23-727) (summarizing post-*Dobbs* executive actions). The EEOC's abortion-accommodations mandate cannot be removed from this context, which counsels a court to greet the EEOC's assertion of "'extravagant statutory power' . . . with 'skepticism.'" *See West Virginia*, 597 U.S. at 724 (quoting *Utility Air Regul. Grp.*, 573 U.S. at 324). "[N]o matter how thin patience wears," the executive cannot assign itself the power to "definitively resolve one of today's most hotly debated political issues" where Congress has not clearly spoken. *BST Holdings, L.L.C. v. OSHA*, 17 F.4th 604, 617–18 (5th Cir. 2021).

II. Congress Intentionally Withheld from the EEOC the Authority to Mandate Abortion Accommodations, Especially upon Religious Employers.

The EEOC included abortion in the definition of "pregnancy, childbirth, or related medical conditions," 42 U.S.C. § 2000gg(4), on the basis that three lower court decisions interpreted the Civil Rights Act to include abortion, all in decisions that predate the

Supreme Court's ruling in *Dobbs*, 597 U.S. 215 (2022).[4] *See* Regulations to Implement the Pregnant Workers Fairness Act, 88 Fed. Reg. 54,714, 54,721 (proposed Aug. 11, 2023) (to be codified at 29 C.F.R. pt. 1636) (citing *Turic v. Holland Hosp., Inc.*, 85 F.3d 1211, 1214 (6th Cir. 1996); *Doe v. C.A.R.S. Prot. Plus, Inc.*, 527 F.3d 358, 364 (3d Cir. 2008); *Ducharme v. Crescent City Deja Vu, L.L.C.*, 406 F. Supp. 3d 548, 556 (E.D. La. 2019); 89 Fed. Reg. 29,110 (discussing cases). In each case, these courts were interpreting another statute, and thus their decisions are of limited—if any—relevance.

Three decisions interpreting another statute do not compel the EEOC to include abortion in its enacting regulations for the PWFA, and the EEOC has identified nothing to indicate that Congress considered these decisions relevant to the legislation, much less was legislating against the background of them. *See BP P.L.C. v. Mayor & City Council of Baltimore*, 593 U.S. 230, 244 (2021) ("It seems most unlikely to us that a smattering of lower court opinions could ever represent the sort of 'judicial consensus so broad and unquestioned that we must presume Congress knew of and endorsed it.' And it certainly cannot do so where, as here, 'the text and structure of the statute are to the contrary.'") (citation omitted) (quoting *Jama v. Immigration and Customs Enforcement*, 543 U. S. 335, 349 (2005)). The EEOC's regulations are not entitled to any deference on what the PWFA means. *See Loper Bright Enters. v. Raimondo*, 144 S. Ct. 2244, 2273 (2024). Moreover, the

[4] The EEOC also cites an unpublished, pre-*Dobbs* Title VII case in which the defendant did not contest at the motion to dismiss stage that Title VII encompassed abortion. 89 Fed. Reg. 29,105, 29,110 (citing *DeJesus v. Fla. Cent. Credit Union*, No. 8:17–CV–2502, 2018 WL 4931817, at *3 (M.D. Fla. Oct. 11, 2018)).

earliest decision cited by the EEOC, and which the other two decisions cite, relies on the "right to have an abortion" established by *Roe v. Wade*. *See Turic*, 85 F.3d at 1214; *Doe*, 527 F.3d at 363 (citing *Turic*); *Ducharme*, 406 F. Supp. 3d at 555 (same). These court decisions are of no value after *Dobbs* declared that "the Constitution does not confer a right to abortion." *See Dobbs*, 597 U.S. at 292.

Contrary to the EEOC's interpretation, Congress specifically chose not to link the PWFA's definition of "medical condition" to the definitions in other statutes. While the PWFA cross-references Title VII of the Civil Rights Act of 1964 eleven times, Congress deliberately did *not* cross-reference those provisions of the Pregnancy Discrimination Act of 1978 that related to "pregnancy, childbirth, or related medical conditions," evincing no intent that those provisions of the PWFA be interpreted in the same way. *See* 136 Stat. 4459, 6084–89 (2022); *compare* 42 U.S.C. §§ 2000gg(2)(A), (2)(B)(i), (2)(B)(iv), (3)(A), (3)(E), (5); 2000gg-3(a)(1), (e), (e)(1), 2000gg-6(b) *with id.* § 2000gg(4).

The ordinary meaning of "condition" does not encompass abortion. Obtaining an elective abortion through a surgical procedure or chemical abortion pills intentionally ends the life of an unborn child and obviously does not constitute a "medical condition."[5] A procedure or medication is distinct from the underlying condition it aims

[5] *See, e.g.*, *Condition*, Cambridge Dictionary, https://dictionary.cambridge.org/us/dictionary/english/condition (last visited Nov. 5, 2024) (defining "condition" as "the particular state that something or someone is in," and "any of different types of diseases").

to treat—heart surgery and statins are not synonymous with a heart condition. *See* Senator Bill Cassidy, Comment Letter on Proposed Regulations to Implement the Pregnant Workers Fairness Act (Sept. 29, 2023), https://www.help.senate.gov/imo/media/doc/pwfa_comment_letter.pdf. Likewise, an abortion is not a pregnancy-related medical condition, but rather an action taken in response to a pregnancy. *See id.* Indeed, in a list of conditions that the EEOC provides in its preamble and appendix, abortion is the only one preceded by "having or choosing not to have," *see* 89 Fed. Reg. 29,101, 29,191, reinforcing that abortion should not be treated like gestational diabetes, preeclampsia, endometriosis, incontinence, morning sickness, or other medical conditions that inherently arise from pregnancy or childbirth. The EEOC tried to shoehorn abortion into the definition of "medical conditions" that are related to pregnancy or childbirth, but it does not fit. As written, the PWFA is about promoting and protecting healthy pregnancies—not about promoting abortion.

While the EEOC imported language into the PWFA that Congress omitted, the EEOC also nullified language Congress included: Title VII's religious exemption. The PWFA explicitly cross-references Title VII's religious exemption. 42 U.S.C. § 2000gg-5(b). Congress intended to ensure that religious employers, many of whom supported the PWFA,[6] are not required to provide accommodations that are directly contradictory to their religious principles. But the EEOC unlawfully limited the scope of the religious

[6] *See supra* n. 3.

exemption, "contend[ing] that the PWFA exemption protects religious entities from claims of religious discrimination only" and only on a case-by-case basis determined during an investigation. *Louisiana v. EEOC*, 705 F. Supp. 3d 643, 656, 662 (W.D. La. 2024) (citing 89 Fed. Reg. at 29,146). The EEOC's justification for limiting the religious exemption, *see* 88 Fed. Reg. 54746; 89 Fed. Reg. 29,148–51, creates a false choice: there is no trade-off between protecting both a religious employer's right to make an employment decision based on religious beliefs and a religious employer's right to be free from making accommodations that are inconsistent with their religious beliefs.

The legislative record reinforces that Congress intentionally drafted the PWFA to include a strong religious exemption and not to authorize an abortion-accommodation mandate. The specific question arose during the Senate debate when a senator questioned whether the PWFA would permit the EEOC to force abortion accommodations nationwide, particularly on pro-life organizations such as churches and religious organizations. 168 Cong. Rec. S7049 (daily ed. Dec. 9, 2022) (statement of Sen. Tillis). Both the Democrat and Republican leading co-sponsors answered that question in the emphatic negative. *See* 168 Cong. Rec. S7049–50. Senator Cassidy (the leading Republican co-sponsor) stated specifically, "I reject the characterization that this would do anything to promote abortion." 168 Cong. Rec. S7050 (daily ed. Dec. 8, 2022) (statement of Sen. Cassidy) (hereinafter "Cassidy Statement"). Rather, the intention of this bill "is to make an accommodation for that woman who has those needs [for an accommodation] so she can safely carry the baby to term." *Id.* Senator

Bob Casey, the leading Democrat co-sponsor, reiterated this unified understanding of the PWFA's operation:

> I want to say for the record, however, that under the act, under the Pregnant Workers Fairness Act, the . . . EEOC, could not—could not—issue any regulation that requires abortion leave, nor does the act permit the EEOC to require employers to provide abortions in violation of State law.

168 Cong. Rec. S7050 (daily ed. Dec. 8, 2022) (statement of Sen. Casey).

Senator Cassidy also emphasized that the PWFA operates against the backdrop of Title VII's religious exemption:

> Is it possible that this law would permit someone to impose their will upon a pastor, upon a church, upon a synagogue, if they have religious exemptions? The answer is absolutely no. . . . The [T]itle VII exemption, which is in Federal law, remains in place. It allows employers to make employment decisions based on firmly held religious beliefs. This bill does not change this.

Cassidy Statement. The EEOC's decision to create an abortion-accommodation mandate while minimizing the applicable religious exemption completely rewrites the PWFA to force a controversial political policy upon those who deeply and morally disagree with abortion.[7] This is not what Congress passed.

* * *

[7] *See* Comment Letter from 62 Members of Congress to EEOC Executive Officer Raymond Windmiller, Oct. 10, 2023, *available at* https://www.lankford.senate.gov/wp-content/uploads/2023/10/10.10.23-Lankford-Smith-Houchin-Congressional-Comment-Letter-PWFA-with-signatures.pdf.

The intent and text of the PWFA are clear: to ensure healthy pregnancies by supporting women with pregnancy-related medical conditions both during and after their pregnancy. The EEOC ignored the statute and substituted its views on abortion for those of Congress, injecting abortion politics into a law designed to help mothers healthily carry their child to term. Allowing the EEOC to reinterpret a law that ensures a safe workplace for pregnant mothers and their unborn children into a sweeping instrument of abortion policy undermines Congress's ability to legislate in a bipartisan fashion. The EEOC's Final Rule renders the PWFA "unrecognizable to the Congress that passed it," *see Util. Air Regul. Grp.*, 573 U.S. at 324, and should be invalidated.

CONCLUSION

For the foregoing reasons, *Amici* urge the Court to rule in favor of Appellants and invalidate the EEOC's abortion-accommodation mandate.

Dated: May 26, 2026

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This document complies with the type-volume limit of Fed. R. of App. P. 27(d)(2)(a) and 29(a)(5), because, excluding the parts of the document exempted by Fed. R. App. P. 32(f), this document contains 2,711 words. This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Garamond font.

Dated: May 26, 2026

/s/ Lea E. Patterson
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CERTIFICATE OF SERVICE

I certify that on May 26, 2026, I electronically filed the foregoing with the Clerk of Court for the U.S. Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system. I certify that all participants in the case are registered CM/ECF users, and that service will be accomplished by the CM/ECF system.

/s/ Lea E. Patterson
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APPENDIX

The Members of Congress joining this brief as *amici curiae* are:

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