AMERICAN CENTER
*for* LAW & JUSTICE

October 10, 2023

Attn: Raymond Windmiller
Executive Officer, Executive Secretariat
U.S. Equal Employment Opportunity Commission
131 M Street NE
Washington, D.C. 20507

**RE: Proposed Rule: Regulations to Implement the Pregnant Workers Fairness Act, RIN 3046-AB30**

To Whom It May Concern,

The American Center for Law and Justice ("ACLJ") submits the following comments, on behalf of itself and nearly 567,000 of its supporters[1] opposing the adoption of the proposed Rule (hereinafter "Rule") issued by the U.S. Equal Employment Opportunity Commission (hereinafter "EEOC") on August 11, 2023. As currently written, the Rule incorrectly interprets the Pregnant Workers Fairness Act ("PWFA") to expand abortion.

The ACLJ is an organization dedicated to the defense of constitutional liberties secured by law, including the defense of the sanctity of human life. ACLJ attorneys have argued before the Supreme Court of the United States in a number of significant cases involving the freedoms of speech and religion and the right to life of the preborn and have submitted formal comments regarding proposed rulemaking on a wide variety of issues.

The Rule should not be adopted because the text and legislative history of the PWFA, without question, prevent the EEOC's proposed interpretation that the PWFA covers accommodations for

[1] These comments are joined by nearly 567,000 ACLJ supporters who have signed our petition to Defund Millions from Planned Parenthood. *Defund Millions From Planned Parenthood*, AMERICAN CENTER FOR LAW AND JUSTICE, https://aclj.org/pro-life/defund-millions-from-planned-parenthood (last visited Oct. 6, 2023).

abortion. By interpreting the PWFA to require accommodations for abortion, the EEOC has clearly stepped beyond the authority granted it by Congress to implement rules governing protections for female workers experiencing "pregnancy, childbirth, and related medical conditions."[2] Congress clearly addressed the fact that abortion is not a "related medical condition."[3] As written, the Rule hijacks the intent and purpose of Congress to protect pregnant women from workplace discrimination and instead attempts to expand abortion by requiring accommodations for workers seeking an abortion at the expense of employers.

## I. BACKGROUND

### a. The Legislative History of the Pregnant Workers Fairness Act

The PWFA was passed to promote human dignity, economic security, and equality. First introduced over a decade ago in 2012, it was not until the end of 2022 that the PWFA was ultimately passed by Congress and signed by President Biden. As the Pregnancy Discrimination Act of 1978 (PDA) does not provide an affirmative duty to accommodate pregnant or post-partum mothers, the PWFA was advanced as a gap-filler for the PDA to ensure pregnant women are properly cared for in the workforce. Accordingly, there is not a single reference to abortion in the Act.

The origins of the PWFA illustrate the fact that it was never meant to include accommodation for abortion. The very sponsors of the bill repeatedly denied that the PWFA covered abortion, and likewise denied that the PWFA would give EEOC the delegated authority to extend the law to cover abortion. In fact, Senator Cassidy stated, "I would argue the pro-life position is to make an accommodation for that woman who has those needs so she can safely carry the baby to term." [4]

Senator Casey stated,

> The Pregnant Workers Fairness Act is a very straightforward piece of legislation; it closes a loophole in the 1978 Pregnancy Discrimination Act to allow pregnant workers to request reasonable accommodations so that they can continue working safely during pregnancy and upon returning to work after childbirth. This is a commonsense bill that has broad, bipartisan support--everyone from the ACLU to the U.S. Conference of Catholic Bishops to the Chamber of Commerce.[5]

[2] Regulations to Implement the Pregnant Workers Fairness Act, 88 Fed. Reg. 54714, 54716 (proposed Aug. 11, 2023) (to be codified at 29 C.F.R. pt. 1636).
[3] *Id.*
[4] 168 CONG. REC. S7050 (daily ed. Dec. 8, 2022) (statement of Sen. Bill Cassidy).
[5] 168 CONG. REC. S10081–82 (daily ed. Dec. 22, 2022) (statement of Sen. Bob Casey).

He continued,

> I want to say for the record, however, that under the act, under the Pregnant Workers Fairness Act, **the Equal Opportunity Employment Commission, 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. [6]

As noted by Senator Daines, "Senator Casey's statement reflects the intent of Congress in advancing the Pregnant Workers Fairness Act . . . . [and this] legislation should not be misconstrued by the EEOC or Federal courts to impose abortion-related mandates on employers, or otherwise to promote abortions, contrary to the intent of Congress."[7]

In advocating for the Senate to pass the Act, Senator Daines also stated,

> Mr. President, the purpose of the Pregnant Worders Fairness Act is to help pregnant mothers in the workplace receive accommodations so that they can maintain a healthy pregnancy and childbirth. Therefore, **I want to make clear for the record that the terms "pregnancy" and "related medical conditions," for which accommodations to their known limitations are required under the legislation, do not include abortion.**[8]

A 2019 letter, signed by 200 liberal organizations in support of the Act, does not mention abortion, only helping women with pregnancies:

> The simple reality is that some of these women—especially those in physically demanding jobs—will have a medical need for a temporary job-related accommodation in order to maintain a healthy pregnancy . . . the Pregnant Workers Fairness Act will provide a clear, predictable rule: employers must provide reasonable accommodations for limitations arising out of pregnancy, childbirth, or related medical conditions, unless this would pose an undue hardship.[9]

[6] 168 CONG. REC. S7050 (daily ed. Dec. 8, 2022) (statement of Sen. Bob Casey).
[7] 168 CONG. REC. S10081–82 (daily ed. Dec. 22, 2022) (statement of Sen. Bob Casey).
[8] 168 CONG. REC. S10081 (daily ed. Dec. 22, 2022) (statement of Sen. Steve Daines).
[9] *2020 Letter of Support for the Pregnant Workers Fairness Act*, A BETTER BALANCE (Sept. 17, 2019), https://www.abetterbalance.org/resources/2020-letter-of-support-for-the-pregnant-workers-fairness-act-from-over-100-supporting-organizations/.

In December 2022, Senators Murray and Casey advocated for the PWFA as a bipartisan achievement. Senator Murray remarked,

> We are really not here asking for much. This is very simple. Give pregnant workers a break, give them a seat, and give them a hand. Give them the dignity, the respect, and basic workplace accommodations that they need. . . . This is way overdue, and I can't think of a more commonsense, less controversial bill, and I hope that we can get it done today.[10]

Likewise, Senator Cassidy, who co-sponsored the bill, commented that his colleague's, Senator Tillis, objection over concerns about the PWFA's effect on abortion were unwarranted.[11]

Not even one year later, Senator Tillis's concerns are a reality. The EEOC's proposed rule flies in the face of all the clear and stated intent of Congress that the PWFA not cover abortion as a "pregnancy related condition," and deliberately adds abortion to the coverage. The movement to ensure women have the resources they need to have a healthy pregnancy is an admirable cause. The movement to tie abortion to pregnancy resources is underhanded and must be corrected. The following paragraphs will expound further upon the EEOC's misguided justification for including abortion in the Act, how the rule conflicts with Congressional intent, and the implications of the rule as it currently reads.

## II. LEGAL ANALYSIS

### A. The EEOC's Misguided Justification for Including Abortion

To reiterate, the PWFA does not mention abortion, the Congressmen passing the Act specifically said it would not pertain to abortion, and yet, the EEOC has worked abortion in as a covered aspect of pregnancy.

Section 1636 is proposed as an amendment to 29 CFR chapter XIV which would include the following language:

> § 1636.3 Definitions—specific to the PWFA.
> (b) Pregnancy, childbirth, or related medical conditions:
> "Pregnancy" and "childbirth" include, but are not limited to, current pregnancy; past pregnancy; potential or intended pregnancy; labor; and childbirth (including vaginal and cesarean delivery).

[10] *Republican Senator Blocks Murray-Casey-Cassidy Effort to Pass Pregnant Workers Fairness Act*, U.S. SENATE COMM. ON HEALTH, EDUC., LAB., & PENSIONS (Dec. 8, 2022), https://www.help.senate.gov/chair/newsroom/press/republican-senator-blocks-murray-casey-cassidy-effort-to-pass-pregnant-workers-fairness-act.
[11] 168 CONG. REC. S7049-52 (daily ed. Dec. 8, 2022) (statement of Sen. Bill Cassidy).

> "Related medical conditions" are medical conditions which relate to, are affected by, or arise out of pregnancy or childbirth, as applied to the specific employee or applicant in question, including, but not limited to, **termination of pregnancy**, including via miscarriage, stillbirth, or **abortion**. . . .
>
> 1636.3(b) Pregnancy, Childbirth, or Related Medical Conditions
> The PWFA uses the term "pregnancy, childbirth, or related medical conditions," which appears in Title VII's definition of sex. Because Congress chose to write the PWFA using the same language as Title VII, in the rule the Commission gives the term "pregnancy, childbirth, or related medical conditions" the same meaning under the PWFA as under Title VII. . . .
>
> The list in the regulation for the definition of "pregnancy, childbirth, or related medical conditions" includes current pregnancy, past pregnancy, potential pregnancy, lactation (including breastfeeding and pumping), use of birth control, menstruation, infertility and fertility treatments, endometriosis, miscarriage, stillbirth, or **having or choosing not to have an abortion**, among other conditions.[11] The Commission emphasizes that the list in the regulation is non-exhaustive, and to receive an accommodation an employee or applicant does not have to specify a condition on this list or use medical terms to describe a condition.

The EEOC notes that both the PWFA and Title VII of the Civil Rights Act of 1964, as amended, reference "pregnancy, childbirth, or related medical conditions."

For a period, "Pregnancy, childbirth, or related medical conditions," in Title VII was interpreted because of now-overturned case law, like *Roe v. Wade,* to include abortion. A current interpretation should reflect the Supreme Court's decision in *Dobbs,* which overturned *Roe's* inaccurate finding that the Constitution of the United States protected a fundamental "right" to abortion. Thus, that previous interpretation is irrelevant here.

Additionally, the EEOC could, and perhaps should, use language other than that of Title VII to reinforce that abortion is not a covered provision.

The proposed rules Footnote 11 (Act)/51 (Preamble) reference the *Enforcement Guidance on Pregnancy Discrimination* (2015). This document cites two circuit court cases.

*Doe* v. *C.A.R.S. Prot. Plus, Inc.* is an employment discrimination case in which the court, in evaluating whether a woman had established a prima facie case, added, "[w]e now hold that the term 'related medical conditions' [in the PDA] includes an abortion." *Doe* v. *C.A.R.S. Prot. Plus, Inc.,* 527 F.3d 358, 364 (3d Cir. 2008). In *Turic* v. *Holland Hosp., Inc.* the court upheld the finding

that the PDA extended not only to abortion but also contemplation of terminating one's pregnancy. *Turic* v. *Holland Hosp., Inc.*, 85 F.3d 1211, 1214 (6th Cir. 1996). While these cases may currently hold precedential weight in their respective jurisdictions, they ought not be incorporated into the PWFA. The PDA's only refence to abortion is as follows:

> This subsection shall not require an employer to pay for health insurance benefits for abortion, except where the life of the mother would be endangered if the fetus were carried to term, or except where medical complications have arisen from an abortion: Provided, That nothing herein shall preclude an employer from providing abortion benefits or otherwise affect bargaining agreements in regard to abortion.[12]

Continued attempts to expand abortion through the PDA and now PWFA are not in keeping with the texts' actual statements. The words do not pertain to accommodations for abortion.

Additionally, reference to *Ducharme* to support the EEOC's proposed rule is misleading. While the court decided to reference the aforementioned circuit court cases to interpret Title VII's "because of or on the basis of pregnancy, childbirth, or related medical conditions" language to include abortion, it did so in a case where there was insufficient evidence to establish that the accused employer was actually discriminating against its employee for getting an abortion. The employer's stated reason for the employment termination was alcohol consumption on the job, for which there was evidence, and in addition to evidence the employer had fired other employees for as substance infractions as well. *Ducharme* v. *Crescent City Déjà Vu, L.L.C.*, 406 F. Supp. 3d 548, 556 (E.D. La. 2019).

Instead of affirming the attempt to steer these acts towards greater promotion of abortion, the EEOC should be using this rule to clarify that in keeping with Congress's own statements, the PWFA does not cover abortion.

The Rule states,

> To assist workers and covered entities, the proposed regulation includes a non-exhaustive list of examples of pregnancy, childbirth, or related medical conditions that the Commission has concluded generally fall within the statutory definition. These include conditions that Federal courts and the EEOC have already concluded are part of the definition under Title VII as well as other conditions that are based on the expertise of medical professionals.[13]

[12] The Pregnancy Discrimination Act of 1978, 42 U.S.C.S. § 2000e(k).
[13] Regulations to Implement the Pregnant Workers Fairness Act, 88 Fed. Reg. 54714, 54775 (proposed Aug. 11, 2023) (to be codified at 29 CFR pt. 1636).

As support for including abortion in the Title VII qualifying conditions, the Rule references a Joint Explanatory Statement of the Committee of Conference on the Civil Rights Act of 1964 regarding pregnancy discrimination that states, "Because the Conference Substitute applies to all situations in which women are 'affected by pregnancy, childbirth, and related medical conditions,' its basic language covers decisions by women who chose to terminate their pregnancies. Thus, no employer may, for example, fire or refuse to hire a woman simply because she has exercised her right to have an abortion."[14] The EEOC is attempting to use this reasoning to support including the "having or choosing not to have an abortion" in "pregnancy, childbirth, or related medical conditions that the Commission has concluded generally fall within the statutory definition."[15] This is an inappropriate application since the PWFA's sponsors have made it clear that the Act was not intended to include protection for abortion.

Furthermore, it is noteworthy that Congress has repeatedly refrained from passing abortion advancing legislation. Since the Supreme Court decided *Dobbs*, the following bills have been introduced in Congress, none of which have become law:

- Women's Health Protection Act of 2022 (HR 8296), aimed at preserving access to abortion nationwide at the federal level;
- Ensuring Access to Abortion Act of 2022 (HR 8297), intended to protect the right to travel to access to abortion and prohibit anyone from hindering an individual's ability to cross state lines to obtain an abortion in a state where it is legal to do so;
- Travel for Care Act (H.R.3132), attempting to secure a tax exemption for employer-reimbursed travel expenses for abortion-related care;
- Reproductive Health Travel Fund Act (S.2152), meant to authorize grants to employers to pay for travel-related expenses for individuals seeking abortions; and
- Protecting Service Members and Military Families' Access to Reproductive Care Act of 2023 (S.1610), initiated to grant Armed Forces members an administrative absence and an allowance for travel expenses when they or their spouses want an abortion.

None of these bills have passed into law. In fact, Congress has never passed a law explicitly promoting abortion. It has, however, passed both the Hyde Amendment and the Weldon Amendment. The former prohibits comprehensive health care services provided by the federal government, such as Medicaid, from including abortions (with limited exceptions for rape, incest, and medical emergencies) while the latter bans federal funds from going to federal agencies and programs or state and local governments that discriminate against health insurance plans, health care institutions or health care professionals that refuse to provide, pay for, or refer for abortions.

[14] H.R. Rep. No. 95–1786, at 4 (1978) (Conf. Rep.).
[15] Regulations to Implement the Pregnant Workers Fairness Act, 88 Fed. Reg. 54714, 54721 (proposed Aug. 11, 2023) (to be codified at 29 CFR pt. 1636).

On the other hand, this is not the first time the Biden Administration substantiated its undeniable loyalty to abortion advocates and their agenda. On June 23, 2023, Biden's White House released a fact sheet outlining its dedication to not only the pro-choice agenda, but the pro-abortion agenda (an agenda with which only a minority of Americans side).[16] In just one year, this administration has attempted to preempt state law and take the following actions:

- Categorize abortion as "emergency medical care" and ensure all patients experiencing pregnancy loss have access to full protections for emergency medical care;
- Defend FDA approval of mifepristone (also known as "the abortion pill") and secure its availability in pharmacies;
- Fight for "abortion counseling" and "abortion care" for veterans and VA beneficiaries
- Defend the "right to travel to get health care";
- Create the Reproductive Rights Task Force, which is meant to monitor any and all pro-life-based action at the state and local level and respond by fighting it.

### B. How the EEOC's Interpretation Conflicts with Congressional Intent

A host of Senators, namely Senators Casey, Cassidy, Daines, and Murray, are on the record establishing that the PWFA is a pro-pregnancy Act, categorically denying the Act's pertinence to or advancement of abortion. The Act was passed with clearly stated intentions of care for pregnant women, allowing them to healthily carry to term while contributing to the workforce.

Yet, less than six months after it went into effect, Senator Tillis's concerns that the Act would become a tool to advance abortion, noted above, are the basis for objection to this rule as written. Despite the PWFA's lack of reference to abortion, the EEOC's proposed rule defies Congress's intent, unnecessarily and wrongly adding abortion.

As emphasized, the PWFA does not mention abortion. This refrain is not room to add it in, it is intentional silence. When Congress wishes to speak it can and has. In drafting the FACE Act, Congress included a definition of "reproductive health services." This definition specifically states it includes "services relating to the human reproductive system, including services relating to pregnancy or the termination of a pregnancy." FACE Act 18 U.S.C. sec. 248. This is a significant distinction. In FACE, Congress agreed the Act should cover abortion. Here, Congress agreed the Act should not cover abortion and yet the EEOC has decided it should.

[16] *Fact Sheet: Biden-Harris Administration Highlights Commitment to Defending Reproductive Rights and Actions to Protect Access to Reproductive Health Care One Year After Overturning of Roe v. Wade,* THE WHITE HOUSE (June 23, 2023), https://www.whitehouse.gov/briefing-room/statements-releases/2023/06/23/fact-sheet-biden-harris-administration-highlights-commitment-to-defending-reproductive-rights-and-actions-to-protect-access-to-reproductive-health-care-one-year-after-overturning-of-roe-v-wade/.

Additionally, Senator Cassidy, quoted above defending the Act, has now publicly criticized the rule in his August 2023 press release which states,

> Despite no allowance present in the legislation, the Biden administration regulation attempts to categorize abortion as a "related medical condition" with the intention to afford legal protections in the workplace under the law. The legislation originally passed with overwhelmingly bipartisan support with the intent that abortion would not be included.
>
> "The Biden administration has gone rogue. These regulations completely disregard legislative intent and attempt to rewrite the law by regulation . . . . The Biden administration has to enforce the law as passed by Congress, not how they wish it was passed. The Pregnant Workers Fairness Act is aimed at assisting pregnant mothers who remain in the workforce by choice or necessity as they bring their child to term and recover after childbirth. The decision to disregard the legislative process to inject a political abortion agenda is illegal and deeply concerning."[17]

We concur with the Senator's remarks. Congress's clear intent was that the PWFA be a bi-partisan, pro-pregnancy act. Instead, the EEOC has rejected its duty to adhere to Congress's parameters in favor of the administration's personal interests in the promotion of abortion at any and every opportunity.

Additionally, the EEOC is intentionally overstepping its rightful, limited bounds by ignoring the drafters' statements that this Act does not pertain to abortion. By purposefully disregarding the intent of Congress and substituting its own agenda, the EEOC is encroaching on the powers of Congress. It is not the place of the federal government to preempt congressional intent through binding rulemaking authority. As we have noted before, "[a]gencies have only those powers given to them by Congress, and 'enabling legislation' is generally not an 'open book to which the agency [may] add pages and change the plot line.'" *West Virginia v. EPA*, 142 S. Ct. 2587, 2609 (2022). Moreover, "[a]n agency has no power to 'tailor' legislation to bureaucratic policy goals by rewriting unambiguous statutory terms." *Util. Air Regulatory Grp. v. EPA*, 134 S. Ct. 2427, 2445 (2014).

The Supreme Court affirmed that federal agencies may not step beyond the power granted to them by Congress in *Biden v. Nebraska*. In this case, the Court responded to the Biden Administration enacting the HEROES Act to put forward its mass debt cancellation program by holding that the Secretary of Education does not have the authority to waive or modify loans in the student loan

[17] *Ranking Member Cassidy Blasts Biden Administration for Illegally Injecting Abortion Politics into Enforcement of Bipartisan PWFA Law*, BILL CASSIDY, MD.: U.S. SENATOR FOR LA. (Aug. 8, 2023), https://www.cassidy.senate.gov/newsroom/press-releases/ranking-member-cassidy-blasts-biden-administration-for-illegally-injecting-abortion-politics-into-enforcement-of-bipartisan-pwfa-law.

forgiveness program and that any debt cancellation requires clear congressional authorization. The Court stated, "Congress did not unanimously pass the HEROES Act with such power in mind. "A decision of such magnitude and consequence" on a matter of "'earnest and profound debate across the country'" must "res[t] with Congress itself, or an agency acting pursuant to a clear delegation from that representative body. *Biden v. Nebraska*, 600 U.S. __, __ (2023) (citation omitted). Similarly, any decision regarding the potential expansion of abortion access will be of great consequence, as it conjures up so many heated debates and passionate opinions nationwide, and so if there is no clear congressional approval, no action should be taken. Therefore, the federal government and its agencies should not mandate that any employer aid in the facilitation of abortions against their will by requiring the employer provide abortion accommodations, as Congress never purposed to achieve that end.

### C. Implications

Additional obligations under the PWFA, not found in Title VII or the PDA, are that employers are prohibited from interfering with "any individual in the exercise or enjoyment of" any right secured under the PWFA. This would include any abortion-related accommodation. This broad language could be used to require promotion of abortion in the workplace and could expose employers in violation of the PWFA to potential investigations, expensive lawsuits, and civil penalties.[18]

Abortion, which the Supreme Court effectively legalized across the whole of the United States when it handed down its 1973 decision in *Roe v. Wade*, has consistently been at the center of contentious litigation. In fact, it is rare to find any point of consensus in this area of law. What is clear, is that it is hardly settled law, and abortion is a continued source of moral controversy for the American people.

Our nation was founded on the principle that human beings have God-given, inalienable rights. As stated in the Declaration of Independence:

> We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.[19]

Americans have always valued the right to life, and we should continue to do so. Although there is robust debate surrounding the issue of abortion in the United States, a recent poll revealed that a majority of Americans believe that abortion is a moral wrong.[20] In addition, a large majority of

[18] Rachel N. Morrison, *Pregnant Workers Fairness Act Protects Women but Promotes Abortion*, NATIONAL REVIEW (Dec. 9, 2022, 2:12 PM), https://www nationalreview.com/bench-memos/pregnant-workers-fairness-act-protects-women-but-promotes-abortion/.
[19] THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).
[20] *Where Do Americans Stand on Abortion?*, GALLUP, https://news.gallup.com/poll/321143/americans-stand-abortion.aspx (July 7, 2023).

Americans support restrictions on abortion, and "the finding that 70% of Americans either oppose abortion or favor limits on it rather than having it legal under any circumstances is echoed in the large majorities of Americans who have consistently said it should not be legal in the second (65%) and third (81%) trimesters."[21]

Indeed, abortion is one of the gravest offenses against human life and natural rights because it entails the deliberate killing of an innocent human being. It is a procedure that deliberately takes the life of a human being, ending the heartbeat of a living, preborn child. Such killing embodies disdain for human life and is incompatible with our Declaration of Independence.

At its core, abortion is a moral issue rather than an economic one. Nonetheless, the financial toll of abortion on the United States is significant. For example, the Joint Economic Committee estimates that the economic cost of abortion in 2019 alone was at least $6.9 trillion (32 percent of our nation's GDP) due to nearly 630,000 preborn babies being killed.[22] Further, abortions decrease the labor supply. "Since the *Roe* decision in 1973, an estimated 63 million abortions have occurred in the United States."[23] If all of those babies were given a chance to survive until today, they would add nearly 20 percent to the current U.S. population and about 45 million individuals of working age (18 to 64).[24] Thus, abortion has reduced the U.S. population, and in so doing, shrunk the labor force, prevented innovative ideas from improving American lives, and suppressed total economic output, not to mention increased the individual costs of social security and Medicare while decreasing the diversity of the U.S. population.

Furthermore, as written, the EEOC's rule appears to lack protections for religious freedoms and employer rights. Although employers may request an exemption from providing accommodations for abortion under the First Amendment, these requests will only be assessed on a case-by-case basis. Though the Title VII Religious Exemption has been incorporated into the Act, the EEOC fails to identify a clear standard for protecting employers' religious liberty. Additionally, the NPRM does not clarify whether abortion accommodations can qualify as an "undue hardship" for employers, religious or non-religious. The Administration's vow to expand abortion access at every opportunity makes me doubt whether the EEOC will broadly grant employers' exemption requests. It is unconscionable that employers could, against their conscientious objection, be forced to facilitate the procurement of abortions for employees under the current NPRM. The EEOC must clarify that religious freedom and employers' rights will be protected.

[21] *Id.*
[22] Staff of S. J. Economic Comm., 117th Cong., *The Economic Cost of Abortion* 1 (2022), https://www.jec.senate.gov/public/_cache/files/b8807501-210c-4554-9d72-31de4e939578/the-economic-cost-of-abortion.pdf.
[23] *Id.* at 6.
[24] *Id.*

## III. CONCLUSION

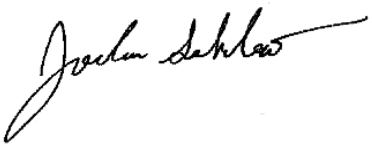
Pro-abortion advocates have pressured the Biden Administration into changing a bipartisan bill, created to protect the rights of pregnant women from being denied reasonable accommodations in their workplace, into a bill that would force employers to make the same type of accommodations for women to get abortions, even if that action goes against their deeply-held convictions.

The ACLJ and its supporters oppose the proposed Rule and urge EEOC to strike all references to and inclusions of abortion. The proposed Rule is inconsistent with the PWFA and Congressional intent and threatens the rights of employers protected under federal law the First Amendment to the Constitution.

Thank you for the opportunity to provide comment on this critical matter.

Very truly yours,

AMERICAN CENTER FOR LAW & JUSTICE



Jordan Sekulow
Executive Director