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October 10, 2023

U.S. Equal Employment Opportunity Commission
131 M Street NE
Washington, DC 20507

Subject: Equal Employment Opportunity Commission Regulations to Implement the Pregnant Workers Fairness Act, 29 CFR Part 1636, RIN 3046–AB30, Docket ID EEOC-2023-0004

Dear Sir or Madam:

On behalf of March for Life Education and Defense Fund and the millions of pro-life Americans who march to end abortion, I am writing to respectfully submit the following comments on the notice of proposed rulemaking issued by the Equal Employment Opportunity Commission (EEOC), published on August 11, 2023, to implement the Pregnant Workers Fairness Act (PWFA). Please note our strong opposition to the illegal inclusion of abortion mandates in the proposed rule, RIN 3046–AB30, and our request modify the rule to reflect the legislative intent of the PWFA, by removing any non life-affirming, abortion related mandates.

The landmark Supreme Court decision in *Dobbs v. Jackson Women's Health Organization* overturned the wrongly decided *Roe v. Wade*, returning the power to protect the unborn to the American people through their elected representatives. The *Dobbs* decision confirmed there is no federal constitutional right to abortion, further highlighting that abortion is not "health care," but rather the intentional taking of a human life. The proposed rule directly and purposefully interferes with the legislative intent of the PWFA, and both state and federal pro-life laws, in an effort by the Biden Administration to further expand abortion access through any means possible post *Dobbs*, whether legal or not.

On December 29, 2022, the PWFA, through HR 2617, Consolidated Appropriations Act, 2023, became law, serving a critically important goal of protecting expectant moms in the workforce by providing accommodations that empower and support her during and after her pregnancy. The PWFA passed with bipartisan support in Congress, after assurances were made by the bill's sponsors that the act had nothing to do with abortion. In fact, Senator Bob Casey (D-PA), the lead Democrat cosponsor in the Senate, during the floor debate said, "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 abortion leave in violation of state law"[1] (*emphasis added*). Furthermore, Senator Bill Cassidy (R-LA), the lead

[1] Senator Casey, speaking on S. 4431, 117th Cong., 2nd sess., Congressional Record Vol. 168, No. 191 (December 8, 2023): S 7049

Republican cosponsor, said, "I reject the characterization that [the PWFA] would do anything to promote abortion."[2]

Per the PWFA, employers with 15 or more employees are required to make "reasonable accommodations to the known limitations related to the pregnancy, childbirth, or related medical conditions" of an employee.[3] Under the EEOC's proposed rule, "related medical condition" has been interpreted to include accommodations for elective abortions - the intentional termination of the pregnancy by women. However, the legislatively intended "conditions" to be accommodated in this bill are pregnancy and childbirth with the goal of promoting healthy outcomes for both mom and baby, as well as to provide accommodations in the unfortunate situations of miscarriage, stillbirth, treatment of an ectopic pregnancy, or emergency treatment intended to preserve the life of the woman. The statutory text of the PWFA explicitly excluded any language with regards to elective abortion.

The EEOC's implementation of abortion mandates in its rule making process is a blatant violation of legislative intent, and the plain meaning of the statutory text. Therefore, the EEOC clearly exceeded its rule making authority, as delegated by the PWFA to develop regulations to implement the act's clearly defined goals.[4] The proposed regulations must be modified to remove any mandates as they relate to accommodations for abortions, as this is an overt, unlawful attempt to expand abortion access.

The EEOC's proposed rule's abortion mandate also creates religious liberty concerns for private employers, particularly for small or closely-held businesses, and does not account for other secular organizations with conscience objections to abortions. The proposed rule mandates that employers provide a "reasonable accommodation" for abortion, which includes paid or unpaid leave and interstate abortion travel for elective abortion through all 9 months of pregnancy, even for employers in states that have laws protecting the unborn, as well as potential accommodations for abortifacients and IVF.

The proposed rule creates a situation in which employers with religious, conscience, ethical, moral, or other objections to abortion, must choose to either violate their convictions or be subjected to costly litigation, creating a per se undue hardship on an employer. In particular, secular pro-life organizations, like the March for Life, have no protections under the proposed rule, and any accommodation related to abortion would be antithetical to our mission. The legislative intent is clear that this was not an intended result; therefore, an abortion mandate by the EEOC lacks statutory authority.

The EEOC's final rule must make clear, that any accommodation that creates a religious, conscience, or other objection creates an undue hardship defense, protecting all employers from having to make accommodations that would be contrary to their convictions and mission.

In conclusion, the EEOC has no legal authority to implement a nationwide elective abortion mandate on employers under the PWFA. The EEOC should instead use its rulemaking authority to further the

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[2] Senator Cassidy, speaking on S. 4431, 117th Cong., 2nd sess., Congressional Record Vol. 168, No. 191 (December 8, 2023): S 7050
[3] H.R.2617 - Consolidated Appropriations Act, 2023.
[4] Under the major questions doctrine, per the Supreme Court, administrative actions must point to "clear congressional authorization" when making decisions of vast "economic and political significance." *Utility Air Regulatory Group v. EPA*, 573 U.S. 302 (2014).

life-affirming legislative intent of the PWFA to support and help pregnant women in the workforce, not further an extreme abortion agenda.

Therefore, we submit these public comments in strong opposition to the illegal inclusion of abortion mandates in the proposed rule, RIN 3046–AB30, and submit our request that the EEOC modify the rule to reflect the life-affirming legislative intent of the PWFA.

Respectfully submitted,

Felicia Pricenor, Esq.

Vice President of Government Affairs

March for Life Education and Defense Fund