



July 17, 2026

Submitted Electronically via Regulations.gov Portal

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

Re: Draft Strategic Plan 2026–2030

Dear Equal Employment Opportunity Commission:

On behalf of Americans United for Life (AUL), I am writing in support of the strategic plan's goals to combat and prevent employment discrimination against pregnant workers under the Pregnant Workers Fairness Act (PWFA),¹ but with the recommendation that the Equal Employment Opportunity Commission (EEOC) update its rule and guidance implementing the PWFA to remove the unlawful abortion-accommodation mandate.

AUL is a national pro-life legal advocacy organization. Founded in 1971, AUL has committed over fifty years to protecting human life from conception to natural death. AUL attorneys are legal experts on constitutional law and bioethics and regularly testify before state legislatures and Congress on abortion and end-of-life issues.² Supreme Court opinions have cited AUL briefs and scholarship in major bioethics cases, including *Dobbs v. Jackson Women's Health Organization*.³

Congress passed the PWFA to provide reasonable workplace accommodations for pregnancy and childbirth. The Act had broad bipartisan support, even from pro-life Members of Congress. Yet under the Biden Administration, EEOC devised protections for abortion within the final rule.⁴ These abortion protections contradict

¹ 42 U.S.C. §§ 2000gg to 2000gg-6.

² See, e.g., *Revoking Your Rights: The Ongoing Crisis in Abortion Care Access Before the H. Comm. on the Judiciary*, 117th Cong. (2022) (testimony of Catherine Glenn Foster, President & CEO, Americans United for Life).

³ 597 U.S. 215, 271 (2022) (citing Clarke D. Forsythe, *Abuse of Discretion: The Inside Story of Roe v. Wade* 127, 141 (2012)).

⁴ Implementation of the Pregnant Workers Fairness Act, 89 Fed. Reg. 29,096, 29,183 (Apr. 19, 2024) (to be codified at 29 C.F.R. pt. 1636). AUL filed a comment in limited opposition to the proposed rule insofar as it protected abortion. Ams. United for Life, Comment Letter on Regulations to Implement the Pregnant Workers Fairness Act (Oct. 10, 2023), <https://www.regulations.gov/comment/EEOC-2023-0004-98293>.

the plain language of the statute and violate the major questions doctrine. In fact, a federal district court in *Louisiana v. EEOC* held that the abortion-accommodation mandate exceeded the EEOC's authority. The court thus vacated the abortion-accommodation mandate and remanded the final rule for further agency action.⁵ However, the EEOC has not yet changed the rule to remove the abortion-accommodation mandate. Thus, I ask the EEOC to update the PWFA rule and any implementing guidance.

I. The PWFA Final Rule Devised an Abortion-Accommodation Mandate.

Under the PWFA, “a covered entity . . . [must] make reasonable accommodations to the known limitations related to the pregnancy, childbirth, or related medical conditions of a qualified employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity.”⁶ A “known limitation,” is a:

[P]hysical or mental condition related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions that the employee or employee's representative has communicated to the employer whether or not such condition meets the definition of disability specified in section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102).⁷

The PWFA final rule defines “known limitation” in a similar manner and likewise requires employers to provide pregnancy- and childbirth- related accommodations.⁸

The statute does not define “related medical conditions.” However, it also says nothing about abortion. Regardless, in the PWFA final rule, the EEOC defined “[r]elated medical conditions” as “medical conditions relating to the pregnancy or childbirth of the specific employee in question. The following are examples of conditions that are, or may be, ‘related medical conditions’: termination of pregnancy, including via . . . abortion.”⁹ As such, the final rule contrives an abortion-accommodation mandate within the PWFA's nondiscrimination provisions.

II. Rulemaking Changes Will Provide Clarity Following the Vacatur of the Abortion-Accommodation Mandate in *Louisiana v. EEOC*.

In *Louisiana v. EEOC*, Mississippi and Louisiana, along with “four organizations affiliated with the Roman Catholic Church” challenged the validity of the abortion-accommodation mandate within the EEOC's final rule implementing the

⁵ 784 F. Supp. 3d 886, 911–12 (W.D. La. 2025).

⁶ 42 U.S.C. § 2000gg-1(1).

⁷ *Id.* § 2000gg(4).

⁸ Implementation of the Pregnant Workers Fairness Act, 89 Fed. Reg. at 29,183.

⁹ *Id.*

PWFA.¹⁰ Among other arguments, the plaintiffs contended the abortion-accommodation violates the Administrative Procedure Act (APA).¹¹

The Western District of Louisiana agreed with the plaintiffs “that the EEOC has exceeded its statutory authority to implement the PWFA and, in doing so, both unlawfully expropriated the authority of Congress and encroached upon the sovereignty of the Plaintiff States under basic principles of federalism.”¹²

The district court determined that the statutory text did not confer an abortion-accommodation mandate. The states-plaintiffs argued that “*pregnancy* and *childbirth*” indicate “the healthy and safe birth of a child” so for the EEOC to say that “*related medical conditions* . . . cover[s] a pregnancy-ending procedure would thus be directly contrary to ordinary ejusdem generis principles.”¹³ The court agreed, describing that “Congress was well aware of the implications of *Dobbs* when it passed the PWFA, and had it wanted to include an abortion-accommodation provision in the PWFA, it surely would have done so.”¹⁴

Next, the district court found that the abortion-accommodation mandate violated the major questions doctrine. Under this doctrine:

[I]n certain extraordinary cases, both separation of powers principles and a practical understanding of legislative intent make us ‘reluctant to read into ambiguous statutory text’ the delegation claimed to be lurking there. To convince us otherwise, something more than a merely plausible textual basis for the agency action is necessary.”¹⁵

Here, the district court found that the EEOC was unable to identify language within the PWFA that gave “‘clear congressional authorization’ for the power it claims in the Final Rule.”¹⁶

Finally, the district court noted that the legislative history of the PWFA was the “extra icing on a cake already frosted,” since Members of Congress had noted that the PWFA did not protect abortion.¹⁷ For example, Senator Bob Casey, the Democratic sponsor of the PWFA, stated “I want to say for the record . . . that under the [PWFA], the [EEOC] could not—could not—issue any regulation that requires

¹⁰ 784 F.Supp.3d at 892.

¹¹ *Id.* at 895–96; see 5 U.S.C. § 706.

¹² *Louisiana*, 784 F.Supp.3d at 892 (citing 42 U.S.C. § 2000gg *et seq.*).

¹³ *Id.* at 904.

¹⁴ *Id.* at 905.

¹⁵ *Id.* at 906 (quoting *West Virginia v. EPA*, 597 U.S. 697, 723 (2022)).

¹⁶ *Id.*

¹⁷ *Id.*

abortion leave, nor does the act permit the EEOC to require employers to provide abortions in violation of State law.”¹⁸

After holding that the abortion-accommodation mandate violated the APA, the district court vacated the PWFA “Final Rule, to the extent that it includes ‘abortion’ as a ‘related medical condition’ of pregnancy and childbirth,” vacated “any Implementing Regulations or Guidance that are inconsistent with this Order,” and remanded the final rule to EEOC for further action.¹⁹

EEOC has not yet revised the PWFA final rule to remove the abortion-accommodation mandate. Rulemaking changes will provide clarity of rights and obligations under the PWFA regulations, as well as rescind the unlawful abortion-accommodation mandate. As such, I urge the EEOC to update the PWFA rule and any implementing guidance.

III. The PWFA Final Rule is Based on a Flawed Reading of the Statute and Violates the Major Questions Doctrine.

The PWFA’s plain language does not support abortion protections. By creating a national workplace abortion policy without clear authorization from Congress, the PWFA final rule subverts the major questions doctrine.

A. The PWFA Final Rule Is Inconsistent with a Plain Language Reading of the Statute.

The PWFA final rule’s protections for abortion are inconsistent with the statute. The statute prevents workplace discrimination “related to the pregnancy, childbirth, or related medical conditions of a qualified employee.”²⁰ The final rule contends that abortion may be a “related medical condition.” Yet this reasoning contradicts the plain language of the statute.

An abortion is not a “related medical condition.” Congress has not defined abortion within the statute.²¹ However, abortion is a legal term of art.²² According to Black’s Law Dictionary, an abortion is “[a]n artificially induced termination of a pregnancy for the purpose of destroying an embryo or fetus.”²³ Since “abortion” is a

¹⁸ *Id.* at 906–07 (alteration in original) (quoting 168 Cong. Rec. S7050 (daily ed. Dec. 8, 2022)).

¹⁹ *Id.* at 911–12.

²⁰ 42 U.S.C. § 2000gg-1(1).

²¹ See 42 U.S.C. § 2000gg. See also Carolyn McDonnell, *Mail-Order Abortion Rules: Text, Context, and History of the Comstock Act’s Restrictions on Mailing Abortifacient Matter*, 23 Ave Maria L. Rev. 101, 111 (2025) (“Although many federal laws . . . have abortion-related provisions, they do not include a definition of the word.”).

²² See *id.* at 115.

²³ *Abortion*, Black’s Law Dictionary 6 (12th ed. 2024).

legal term of art, courts use its technical sense, not the “ordinary, everyday meaning[]” of the word abortion.²⁴

In legal terms, abortion requires an act and intent. As recent scholarship described, abortion laws in the United States “all require conduct *intended to cause a pregnancy to end* and do not apply to pregnancies that end due to natural causes occurring spontaneously.”²⁵ The intent element is essential, since abortion laws “apply only to intentional actions that *begin* the process of terminating a pregnancy, that is, to physician interventions *intended* to prevent an ongoing pregnancy from continuing and progressing to live birth.”²⁶

Translated to medical terms, abortion is an *intervention*, not a medical *condition*. Pregnancy is the woman’s medical condition.²⁷ A condition is distinguishable from an intervention. An intervention is “the act or fact or a means of interfering with the outcome or course esp. of a condition or process (as to prevent harm or improve functioning).”²⁸ Abortion involves “the use of any drug, device, surgery, or any procedure or intervention with the purpose of ensuring the death of the living human being in utero before, during, or in the process of separating the mother and her embryo or fetus.”²⁹ Medical professionals can use surgical interventions, such as dilation & evacuation (D&E, also known as dismemberment abortions),³⁰ or chemical intervention, such as the mifepristone drug regimen,³¹ to end the pregnancy for non-medical reasons. Regardless of the method, an abortion acts as an intervention to end the medical condition (*i.e.*, pregnancy). Accordingly, the PWFA final rule has contradicted the plain language of “related medical condition” by including abortion, an intervention intended to end the life of the unborn child.

B. The PWFA Final Rule Contravenes the Major Questions Doctrine.

Abortion is a contentious issue of national sociopolitical significance.³² Under the major questions doctrine, there is “reason to hesitate before concluding that Congress meant to confer [broad] authority” upon an administrative agency to impose

²⁴ Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 69 (2012).

²⁵ Maura K. Quinlan & Paul B. Linton, *Medically Necessary Abortions After Dobbs: What, If Anything, Has Changed?*, 39 Notre Dame J.L. Ethics & Pub. Pol’y 87, 97–98 (2025).

²⁶ *Id.* at 98.

²⁷ *Pregnancy*, Merriam-Webster’s Medical Dictionary 627 (2016) (“the condition of being pregnant”).

²⁸ *Intervention*, Merriam-Webster’s Medical Dictionary 388 (2016).

²⁹ Rsch. Comm., Am. Ass’n of Pro-Life Obstetricians & Gynecologists, *Ethical Considerations in Ending a Pre-Viable Pregnancy for Maternal-Fetal Vital Conflict*, Prac. Guideline No. 13, at 3 (2025).

³⁰ Rsch. Comm., Am. Ass’n of Pro-Life Obstetricians & Gynecologists, *State Restrictions on Abortion: Evidence-Based Guidance for Policymakers*, Comm. Op. No. 10, at 4–5 (2022).

³¹ *Questions and Answers on Mifepristone for Medical Termination of Pregnancy Through Ten Weeks Gestation*, U.S. Food & Drug Admin. (Apr. 8, 2026), <https://www.fda.gov/drugs/postmarket-drug-safety-information-patients-and-providers/questions-and-answers-mifepristone-medical-termination-pregnancy-through-ten-weeks-gestation>.

³² *Dobbs*, 597 U.S. at 231–32.

widespread policies relating to issues of great “economic and political significance.”³³ The PWFA final rule tries to institute a national abortion policy by protecting abortion under the guise of “related medical conditions” even though the PWFA does not mention abortion. Since the abortion issue has returned to the democratic process following the Supreme Court’s decision in *Dobbs v. Jackson Women’s Health Organization*,³⁴ Congress holds the federal power to legislate on the abortion issue. The EEOC must show that Congress has delegated that authority to the agency, but it cannot. Accordingly, the PWFA final rule has violated the major questions doctrine by contriving protections for abortion without the requisite authority from Congress to do so.

IV. Congress Passed the PWFA with Broad Bipartisan Support, Including from Pro-Life Members of Congress.

Congress passed the PWFA with broad bipartisan support to address pregnancy- and childbirth-related accommodations in the workplace.³⁵ This support included the votes of many pro-life Members, who publicly advocated to reduce the harms of abortion violence.³⁶

Senator Thom Tillis expressed concern that the bill would cover abortions, affirming that “I and a number of other people do not believe that abortion is healthcare. I believe it is a brutal procedure that destroys an innocent child. The Federal Government should not be promoting abortion, let alone mandating that pro-life employers and employers in States that protect life facilitate abortion-on-demand.”³⁷ In response, Senator Bill Cassidy stated, “I regret that my colleague has objected to this bill, but I reject the characterization that this would do anything to promote abortion.”³⁸ Likewise, Senator Bob Casey stated that “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.”³⁹

Senator Steve Daines separately indicated in the Congressional Record that:

[T]he purpose of the Pregnant Workers Fairness Act is to help pregnant mothers in the workplace receive accommodations so that they can

³³ *West Virginia*, 597 U.S. at 721 (cleaned up).

³⁴ 597 U.S. at 292.

³⁵ Implementation of the Pregnant Workers Fairness Act, 89 Fed. Reg. at 29,109.

³⁶ See, e.g., Brief Amici Curiae of 228 Members of Congress in Support of Petitioners, *Dobbs*, 597 U.S. 215 (No. 19-1392).

³⁷ 168 Cong. Rec. S7,049 (daily ed. Dec. 8, 2022).

³⁸ *Id.* at S7,050.

³⁹ *Id.*

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.⁴⁰

Senator Daines further stated that “[t]his 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.”⁴¹ The text does not discuss abortion, and the legislative history confirms that the PWFA does not cover abortions. Nevertheless, the PWFA final rule, as promulgated by the Biden Administration, creates an unlawful abortion-accommodation mandate.

V. Conclusion.

For the foregoing reasons, on behalf of AUL, I support the strategic plan’s goals to combat and prevent employment discrimination against pregnant workers under the PWFA but ask that the EEOC update the PWFA final rule and guidance by removing its devised protections for abortion.

Sincerely,

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Litigation Counsel
AMERICANS UNITED FOR LIFE

⁴⁰ 168 Cong. Rec. S10,081 (daily ed. Dec. 22, 2022).

⁴¹ *Id.*