UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION

STATE OF LOUISIANA, *et al.*,
Plaintiffs,
v.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
Civil Action No. 2:24-cv-629 (Lead)

Defendant.

CONSOLIDATED WITH

UNITED STATES CONFERENCE OF CATHOLIC BISHOPS, *et al*.,
Plaintiffs,
Civil Action No. 2:24-cv-691
v.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, *et al*.,

Defendants.

BRIEF OF *AMICI CURIAE* AMERICAN CIVIL LIBERTIES UNION, AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF LOUISIANA, NATIONAL WOMEN'S LAW CENTER, AND ADDITIONAL 18 ORGANIZATIONS IN OPPOSITION TO PLAINTIFFS' MOTIONS FOR PRELIMINARY INJUNCTION

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INTEREST OF *AMICI*

Amici are 21 organizations dedicated to workers' rights, gender justice, and robust enforcement of anti-discrimination and labor laws. *Amici* include legal advocacy organizations, labor unions, organizations that counsel workers on their legal rights, including workers seeking protection under the Pregnant Workers Fairness Act (PWFA), and groups with a strong interest in the application of proper standards when evaluating constitutional challenges to civil rights laws. *Amici* and their constituencies have direct experience with the adverse health and economic consequences caused by employers' systemic failure to accommodate pregnancy, childbirth, and related medical conditions. They are committed to ensuring workers' access to all the PWFA's protections, including job-protected leave to access the full range of reproductive health care. A complete list of *Amici* is found in the Appendix to this brief.[1]

SUMMARY OF ARGUMENT

Congress enacted the PWFA to fill gaps in federal law that historically did not provide workers with essential pregnancy-related accommodations that could enable them to work safely. Congress directed the Equal Employment Opportunity Commission (EEOC) to adopt regulations that would explain the operation and application of the provisions of the new law. The Final Rule clarifies that abortion is a covered condition under the PWFA; explains certain terms with unique application under the PWFA, such as "known limitations" and "qualified"; explains the application of Americans with Disabilities Act (ADA) concepts such as "reasonable accommodation" in the PWFA context; and explains specific unlawful employment practices under the PWFA.

[1] Pursuant to Federal Rule of Civil Procedure 7.1, the undersigned counsel certifies that none of the *Amici* has a parent corporation and that no corporations hold any stock in the *Amici*.

It would frustrate Congress's intent in enacting the PWFA and do grave harm to the public interest to enjoin enforcement of the Final Rule. The confusion and ignorance about the PWFA displayed by employers since the law's enactment and the need for guidance to employers, workers, and the courts about the PWFA's place in the existing statutory regime militate against granting the sweeping preliminary relief Plaintiffs seek. Indeed, Plaintiffs' claimed concern for the well-being of the millions of pregnant and post-partum workers covered by the PWFA is contradicted by their effort to deprive those workers of the Final Rule's protections. The wholly speculative harm to Plaintiffs under the Final Rule[2] cannot and should not outweigh the very real—and very dire—health and economic consequences imposed by Plaintiffs' requested relief.

ARGUMENT

I. THE FINAL RULE IS NECESSARY TO ENSURE WORKERS' ACCESS TO THE FULL RANGE OF THE PWFA'S PROTECTIONS

Although Congress outlawed pregnancy discrimination more than four decades ago, 42 U.S.C. § 2000e(k) (PDA), workers did not enjoy an expressly protected right to pregnancy-related

[2] As the Fifth Circuit has repeatedly recognized, "speculative injury is not sufficient" to establish irreparable harm. *Holland Am. Ins. Co. v. Succession of Roy*, 777 F.2d 992, 997 (5th Cir. 1985) (citing *Carter v. Heard*, 593 F.2d 10, 12 (5th Cir. 1979)); *Keaton v. Ott*, No. 93-2761, 1994 WL 398033, at *1 (5th Cir. July 19, 1994) (quoting *Holland Am. Ins. Co.*, 777 F.2d at 997). Injunctive relief "will not be granted against something merely feared as liable to occur at some indefinite time." *Connecticut v. Massachusetts*, 282 U.S. 660, 674 (1931). Plaintiffs' alleged fears that their religious defenses to PWFA obligations may not succeed at some point in the future are unlikely to establish injury-in-fact, *see*, *e.g.*, Defendants' Memorandum in Opposition to Plaintiffs' Motion for Preliminary Injunction at 6-10, *U.S. Conf. Cath. Bishops v. Equal Emp. Opportunity Comm'n*, No. 2:24-cv-691 (W.D. La. June 5, 2024) (hereinafter "Defs.' Br."), let alone irreparable harm. *Cf. Associated Gen. Contractors of Am., Inc. v. Fed. Acquisition Regul. Council*, No. 6:24-CV-00037, 2024 WL 1078260, at *6 (W.D. La. Mar. 12, 2024) (finding Plaintiffs' injury insufficiently concrete or irreparable in challenge to agency regulations where Plaintiffs "presented no evidence that [available] exceptions [to the regulations] would not apply or be considered by the agencies. And while [the plaintiffs] argue that [few such exceptions would be granted], such conjecture is both highly speculative and, without any statistical data given the newness of the Rule, completely unsupported.").

accommodations until Congress enacted the PWFA, 42 U.S.C. §§ 2000gg *et seq*. Neither the PDA nor the Americans with Disabilities Act, as amended by the ADA Amendments Act of 2008, 42 U.S.C. §§ 12101 *et seq*. (ADA), proved adequate, and as Plaintiffs Louisiana and Mississippi recognize,[3] Congress intended the PWFA to fill gaps left by these earlier statutes. The PWFA's landmark provisions built on the PDA and ADA in critical ways. The use of terms and concepts from these statutes in the new law necessitated rulemaking, and Congress directed the EEOC, in doing so, to provide examples that would help effectuate the PWFA's distinct purpose[4]: to ensure that workers affected by pregnancy, childbirth, and related medical conditions may obtain the reasonable accommodations they need before, during, and after pregnancy to keep working safely, so they no longer are forced to choose between their well-being and their jobs.

The Final Rule[5] clarifies the PWFA's scope and application in four critical respects: (1) it explains the long-established meaning of "pregnancy, childbirth, and related medical conditions"; (2) it explains the statute's application of certain terms and concepts with unique meaning under the PWFA (*e.g.*, "known limitations" that need not rise to the level of ADA disabilities, and the temporary suspension of "essential job functions" as an accommodation); (3) it explains the statute's adoption of other terms and concepts from the ADA (*e.g.*, "reasonable accommodation," "undue hardship," and "interactive process") and illustrates their application in the context of accommodating pregnancy, childbirth, and related medical conditions; and (4) it explains unlawful employment practices under the PWFA.[6]

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[3] Memorandum of Law in Support of Plaintiffs' Motion for a § 705 Stay and Preliminary Injunction at 2, *Louisiana v. Equal Emp. Opportunity Comm'n*, No. 2:24-cv-629 (W.D. La. June 3, 2024) (hereinafter "States' Br.").
[4] 42 U.S.C. § 2000gg-3(a).
[5] 29 C.F.R. §§ 1636 *et seq.* (Apr. 19, 2024).
[6] *See* 42 U.S.C. §§ 2000gg-1 & 2000gg-2(f); 29 U.S.C. §§ 1636.4 & 1636.5(f).

Along with its Interpretive Guidance containing seventy-eight illustrative examples, the Final Rule gives employers concrete compliance advice, gives workers the tools to advocate for themselves,[7] and gives courts guidance on which to rely when deciding disputes when they arise—ensuring that workers obtain the fullest protection of the law. This guidance is sorely needed. Since the PWFA's June 27, 2023, effective date, workers have reported a wide range of employer refusals and failures to comply with the new law, resulting in adverse health consequences and workplace repercussions, including job loss. *See* Section II, *infra.* Numerous PWFA lawsuits by private litigants already have been filed around the country, magnifying the urgency of giving clarity to the courts tasked with deciding those claims. *Id.* Plaintiffs blithely wave away the Final Rule's significance to the PWFA's protections, asserting that the statute alone is sufficient to effectuate Congress's intent—notwithstanding the statute's express directive that the EEOC issue implementing regulations, including "illustrative examples," 42 U.S.C. § 2000gg-3(a)[8]— but the real-world experiences of workers tell a dramatically different story.

II. AN INJUNCTION WOULD HARM THE PUBLIC INTEREST BY DEPRIVING WORKERS OF THE PWFA'S PROTECTIONS

Enjoining the Final Rule, even in part, would cause devastating harm to workers, and therefore to the public interest. *See Nken v. Holder*, 556 U.S. 418, 435 (2009) (factors of hardship and public interest merge when the Government is the non-moving party). The EEOC issued the Final Rule to implement the PWFA and protect the public's interest in the health and economic

[7] Examples of the Final Rule's value in helping workers successfully self-advocate are detailed in Section II.B., *infra.*

[8] States' Br. 21; Plaintiffs' Memorandum in Support of Their Motion for Preliminary Injunction at 25, *U.S. Conf. Cath. Bishops v. Equal Emp. Opportunity Comm'n*, No. 2:24-cv-691 (W.D. La. May 22, 2024) (hereinafter "USCCB Br."). Given that Plaintiff USCCB was part of the broad, bipartisan coalition that lobbied for the PWFA's passage, its cavalier assertion that "the Final Rule is not necessary for pregnant workers to be protected by the PWFA," USCCB Br. 25, betrays breathtaking hypocrisy.

security of workers affected by pregnancy, childbirth, and related medical conditions. Since its publication, *Amici* and other groups have relied on the Final Rule to educate workers, employers, and medical professionals on the scope of the PWFA's protections. Enjoining it would create confusion about the statute's scope and undermine its implementation, and thus deprive workers of protections Congress sought to guarantee them.

A. An Injunction Would Create Confusion About the PWFA's Coverage of Abortion and Interfere with Pregnant Workers' Access to Abortion-Related Leave.

Critically, the Final Rule will ensure consistent interpretation of the phrase "pregnancy, childbirth, or related medical conditions." The EEOC's brief fully explicates the meaning of that phrase in the PDA, specifically that it encompasses abortion, and the confirmation of that understanding in EEOC regulations and judicial opinions for four decades. Defs.' Br. 2-3. The PWFA and the Final Rule simply codify the longstanding interpretation of these terms.

The Final Rule's affirmation that employers must provide workers seeking abortion care with reasonable accommodations is paramount. It ensures that those individuals can take job-protected leave rather than face the Hobson's choice of risking negative repercussions at work, up to and including termination for "absenteeism," or forgoing critically needed care. For example, Mylissa Farmer was working a low-wage job as a sales representative in Missouri when her water broke shortly before the eighteenth week of her pregnancy. Doctors at the hospital told Mylissa her fetus could not survive, and continuing her pregnancy would lead to a risk of serious infection, hemorrhage, the loss of her uterus, and even death. But the hospital refused to treat her, claiming its hands were tied because of the state abortion ban. Mylissa began a harrowing journey to obtain the care she needed. After being turned away from a second hospital in Kansas, she traveled by car for four hours *while in labor* to Illinois, where she was finally able to obtain abortion care four

days after the onset of her symptoms. Throughout Mylissa's ordeal, her employer repeatedly pressured her to return to work. Her physician prescribed two weeks of recovery time, but Mylissa begged to be cleared for work after only two days. Although she managed to keep her job, she was disciplined on multiple occasions for absences related to her pregnancy loss.[9]

Providers confirm the extent to which abortion is a critical part of the full spectrum of pregnancy-related care protected by the PWFA, and how the ability to secure job-protected leave informs workers' ability to access needed services. Dr. Erin King, an abortion provider in Illinois, recounted treating a local patient whose fetus had been diagnosed with a rare fatal condition. Dr. King advised the patient to take a week off from work after her procedure because the patient's warehouse job involved prolonged standing, heavy lifting, and other strenuous tasks. Notwithstanding the risks to her health, the patient told Dr. King that she had already taken so much time off for the specialist appointments that had revealed the fetal condition that she felt compelled to return to work the next day, rather than take more time off and risk being fired.

Pregnant workers who need an abortion but are denied leave from work also may be forced to delay obtaining care, which in turn carries financial and medical harms. Dr. King had a patient from Alabama who had to wait to undergo her abortion procedure for weeks because she was unable to get time off work, pushing her care into the second trimester and requiring that she receive a procedural abortion, rather than the medication abortion she had sought.[10] Such delays carry financial consequences because abortion care later in pregnancy can be more expensive.[11]

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[9] Complaint at 11-13, 14-16, 18-19, *Mylissa Farmer v. Freeman Health Sys. (U.S. Dep't of Health & Human Servs. Ctrs. For Medicare & Medicaid Servs.)*, https://perma.cc/TD99-P2A7; Nat'l Women's Law Ctr. Interview with M. Farmer (May 18–19, 2024).

[10] Erin King, M.D., Remarks at OIRA Meeting re: Regulations to Implement the Pregnant Workers Fairness Act (Feb. 15, 2024), https://perma.cc/7WU7-7REU.

[11] Rachel K. Jones *et al*., *Differences in Abortion Service Delivery in Hostile, Middle Ground and Supportive States in 2014*, 28 Women's Health Issues 212, 215-16 (Jan. 12, 2018).

And although abortion is extremely safe, the risk of medical complications increases as the pregnancy advances.[12] If too much time elapses, the abortion may be unattainable altogether.

Those who cannot take leave to obtain abortion care and are forced to continue a pregnancy face potentially dangerous health outcomes,[13] as well as the lifelong consequences that flow from being unable to choose whether and when to become a parent. Abortion is much safer than carrying a pregnancy—especially an unwanted pregnancy—to term.[14] And being forced to carry a pregnancy places substantial economic burdens on workers and their families. People who are able to obtain a desired abortion are less likely to experience economic hardship than those who are denied a desired abortion.[15] According to one landmark study, compared to women who obtained abortion care, those who were denied such care and subsequently gave birth were nearly four times more likely to live below the federal poverty line[16] and less likely to have a full-time job several months later.[17] Moreover, pregnant and parenting workers continue to face discrimination, job

[12] Caitlin Gerdts *et al*., *Side Effects, Physical Health Consequences, and Mortality Associated with Abortion and Birth After an Unwanted Pregnancy*, 26 Women's Health Issues 55, 58 (2016); Linda A. Bartlett *et al*., *Risk Factors for Legal Induced Abortion-Related Mortality in the United States*, 103 Obstetrics & Gynecology 729, 731 (Apr. 2004).

[13] Indeed, it must be noted that according to their own health departments, Louisiana and Mississippi have among the worst rates of maternal mortality in the nation; in both states, Black women die at four times the rate of white women. *See*, *e.g*., Sarah Owermohle, *Why Louisiana's Maternal Mortality Rates Are So High*, Politico (May 19, 2022), https://www.politico.com/news/2022/05/19/why-louisianas-maternal-mortality-rates-are-so-high-00033832; Pam Dankins, *'Incredibly Scary': UMMC Maternal Fetal Medicine Specialist on Maternal Death Rate in MS*, Mississippi Clarion Ledger (Dec. 22, 2023) https://www.clarionledger.com/story/news/2023/12/22/mississippi-maternal-mortality-state-health-department/71839440007/.

[14] Gerdts, *Side Effects*, *supra* n. 12, at 55.

[15] Diana Greene Foster *et al*., *Socioeconomic Outcomes of Women Who Receive and Women Who Are Denied Wanted Abortions in the United States*, 108 Am. J. Pub. Health 1290, 1290 (2018).

[16] *Id.* at 1293-94.

[17] *Id.* at 1292.

insecurity, wage inequality, and diminished opportunities.[18] Absent clear guidance about the PWFA's protections for abortion-related leave, pregnant workers who need abortion care will find their health, economic security, and equal employment opportunities in the crosshairs.

B. An Injunction Would Create Confusion Among Employers, Workers, and the Courts About the Scope of the PWFA's Protections.

Since the PWFA went into effect, employers and workers alike have needed considerable guidance on the most basic protections of the law. Indeed, organizations that operate legal hotlines have heard about a wide range of employer responses to accommodation requests that constitute glaring violations of the statute. PWFA lawsuits reflect the same trends. Enjoining the Final Rule will confuse employers about the extent of their obligations and embolden them to continue their pre-PWFA approach to accommodations—sowing uncertainty among workers about whether the law has changed at all.

1. Application of Unique PWFA Terms and Concepts.

The PWFA's application to "known limitations" that are not ADA-qualifying disabilities and its deeming workers "qualified" who temporarily cannot perform essential job functions are unique to the statute, and thus especially prone to misapplication. The Final Rule and Interpretive Guidance provide much-needed clarity. The Final Rule, for instance, explains that the statute's definition of a "known limitation"—a "physical or mental condition related to, affected by, or arising out of pregnancy," 42 U.S.C. § 2000gg(4)—applies to a condition that "may be modest, minor, and/or episodic," and need not even be an impairment; rather, it simply is a condition that interferes with work, including the need to undertake preventive measures to "maintain[] their health or the health of the pregnancy" and to attend health care appointments. 29 C.F.R. §

[18] *See* Brief of Nat'l Women's Law Ctr. *et al.* at 24-31, *Dobbs v. Jackson Women's Health Org.*, No. 19-1392 (U.S. Sept. 20, 2021), https://perma.cc/3NQB-VXDT.

1636.3(a)(2). The Interpretive Guidance provides even greater detail, including illustrative examples showing the wide range of "limitations" entitled to accommodation. *See* 29 C.F.R. § 1636, Appendix A (hereinafter "App. A"), Section III ¶¶ 3–22, 29.

Yet workers report routine denials of accommodations for "limitations" that plainly fall within the Final Rule's definition. For instance, A Better Balance (ABB), a national legal advocacy organization that operates a hotline, has assisted multiple pregnant workers who have been punished or threatened with punishment when they needed to leave work to obtain emergency care due to bleeding, fainting, or even miscarrying. [19] The Center for WorkLife Law (WLL), a nonpartisan research and policy organization that has a similar legal hotline, was contacted by a teacher in Illinois with a high-risk pregnancy who needed to be moved to a less active classroom to avoid strenuous physical work and injury.[20] Not understanding that *both* the PWFA and the ADA applied to her condition, her employer demanded that she complete onerous ADA medical documentation when she could have relied on the PWFA, which requires no documentation.

Court filings alleging PWFA violations arising after the statute's effective date, but prior to the Final Rule's issuance, reflect similar complaints:

- In Florida, a clerical worker alleged she was denied her requested accommodation of being excused from overtime due to a high-risk pregnancy, then fired.[21]

- In Tennessee, a pregnant school bus driver alleged she was denied a transfer to avoid exacerbating her migraines and endangering her high-risk pregnancy. Her employer terminated her employment instead.[22]

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[19] A Better Balance, Cmt. Letter (hereinafter "ABB comment"), at 43 (Oct. 10, 2023), https://perma.cc/DW6J-6UGF.
[20] Interview by ACLU with WLL (May 15, 2024).
[21] Complaint ¶¶ 14-21, *Borie v. Bluestone Nat'l, LLC*, No. 24-CV-939-CEH-CPT (M.D. Fla. Apr. 18, 2024).
[22] Complaint ¶¶ 22-26, 29, 39, *Bond v. RLCL Acquisition, LLC d/b/a Gray Line of Tenn.*, No. 3:24-cv-00596 (M.D. Tenn. May 11, 2024).

- In Minnesota, a pregnant retail store manager alleged her employer refused to allow her to leave to go to the emergency room when she experienced severe abdominal pain and other symptoms, and subsequently denied her requests for pregnancy-related leave.[23]

- In Illinois, a support staffer in a health care facility alleged her employer refused her request to stand up and move more frequently, due to her risk of edema, and was terminated for absences related to her high-risk pregnancy, including her miscarriage.[24]

- Also in Illinois, a warehouse worker alleged that after her physician counseled her to avoid the high temperatures in her work location, her employer refused her request for a temporary transfer, even after she experienced numerous medical emergencies on the job, resulting in preterm birth of her baby, who did not survive.[25]

Lactating workers also face their employers' ignorance about the fact that they qualify as having a covered "limitation." WLL received a call from a lactating worker whose employer told her that she needed to "make up" the time she spent pumping or risk discipline for failing to meet sales quotas even though the failures were caused by her breaks. WLL also was contacted by a teacher in California who had postpartum depression and requested, as a reasonable accommodation, that she be allowed to leave campus during her lunch break to visit her baby at a nearby daycare center because nursing can improve mothers' mental health. The employer denied the request.[26] In Indiana, a restaurant server alleged she was fired her first day on the job when she informed her supervisor of her need for regular breaks to express breast milk.[27]

Workers themselves also have evinced confusion about whether their pregnancy-related symptoms qualify as "limitations" eligible for accommodation. For example, ABB reported inquiries about whether they were protected from: a pregnant postal worker who wanted to reduce

[23] Complaint ¶¶ 22-37, *Kuehn v. Von Maur, Inc.*, No. 24:cv-01928 (D. Minn. May 23, 2024).
[24] Complaint ¶¶ 31-51, *Jones v. Oak St. Health MSO, LLC*, No. 1:24-cv-04397 (N.D. Ill. May 29, 2024).
[25] Complaint ¶¶ 23-42, *McBee v. Silgan Containers Mfg. Corp.*, No. 3:24-cv-50050 (N.D. Ill. Mar. 11, 2024).
[26] Interview by ACLU with WLL, *supra* n. 20.
[27] Complaint ¶¶ 17-25, *Corral v. Round the Clock Highland, LLC*, No. 2:24-cv-00159 (N.D. Ind., May 7, 2024).

the time she spent walking because she was experiencing discomfort and fatigue in the final months of her pregnancy[28]; a pregnant worker with attention deficit hyperactivity disorder (ADHD) whose work suffered when she followed her health care provider's advice to stop taking her ADHD medicine during pregnancy for risk of fetal heart defects[29]; and a lactating deputy sheriff asking if she was entitled to seek temporary reassignment, as recommended by her doctor, because the restrictiveness of her bulletproof vest threatened to decrease her milk supply.[30]

Importantly, with respect to another provision of the PWFA that departs from the ADA—defining employees as "qualified" despite their temporary inability to perform essential job functions, 42 U.S.C. § 2000gg(6)—the Interpretive Guidance also provides critical explication, including five illustrative examples. App. A, Section III ¶¶ 37-51 & Exs. 1-5. Unsurprisingly, given their years of familiarity with the ADA, which says people who cannot perform essential functions are not "qualified," 42 U.S.C. § 12111(8), employers need direction about this provision. A pregnant steelworker reported to WLL, for instance, that her employer forced her on leave, then demoted her, when she sought to be excused from the essential job function of operating heavy machinery, based on her doctor's advice during her second trimester.[31]

2. Application of ADA Terms and Concepts in the PWFA Context.

The Final Rule provides detailed explanations of ADA terms and concepts imported into the PWFA, such as "essential functions," 29 C.F.R. § 1636.3(g), "reasonable accommodation," *id.* §§ 1636.3(h) ("generally") & (i) ("examples"), "undue hardship," *id.* § 1636.3(j), and "interactive process," *id.* § 1636.3(k), and outlines how these ADA concepts are to be applied under the PWFA. It further explains the interaction between the PWFA and ADA, such as when a pregnant worker

[28] ABB comment, *supra* n. 19, at 12.
[29] *Id.* at 20.
[30] *Id.* at 12.
[31] Interview by ACLU with WLL, *supra* n. 20.

qualifies for an accommodation under both statutes. *See*, *e.g.*, App. A, Section III ¶¶ 146-48; *id*., Section VI ¶¶ 7-20 & Exs. 77-78. [32] The Interpretive Guidance provides invaluable explanations for all these concepts, with detailed examples that illustrate the right—and wrong—ways for employers to conduct the interactive process and reach mutual agreement with workers about workable accommodations. *See*, *e.g.*, App. A, Section III ¶¶ 105-17 & Exs. 51-53. Moreover, the Final Rule's identification of four "predictable assessments" that in "virtually all cases" will be considered reasonable accommodations that do not impose an undue hardship—permitting a worker to carry and drink water, take additional restroom breaks, sit or stand as needed, and take extra breaks to eat and stay hydrated—ensures that some of the most common needs during pregnancy will be met without delay. 29 C.F.R. § 1636.3(j)(4).

The Final Rule's detailed list of possible "reasonable accommodations" is a blueprint for managing the range of covered limitations. 29 C.F.R. §§ 1636.3(h)-(i). The Interpretive Guidance, in turn, provides thirty illustrative examples of reasonable accommodations at various intervals before, during and after pregnancy. These include telework, temporary job reassignment, assistive devices, appropriately sized uniforms and safety gear, relief from lifting and other tasks, excusal from penalties for failing to meet attendance or productivity requirements, and time off for medical appointments and to recover from childbirth. *See* App. A, Section III ¶¶ 53-55, 58-73, 81-82 & Exs. 12-22, 26-44. The Final Rule also illustrates effective interim accommodations during the interactive process. *Id.* ¶¶ 74-80 & Exs. 23-25.

Time off for medical appointments is especially critical for workers without access to leave under the FMLA or other statutes, and can help workers avoid preventable medical complications,

[32] *See also* 29 C.F.R. § 1636.7; App. A, Section VI ¶¶ 1-6, 22 (discussing PWFA's interaction with Title VII, ADA, FMLA, the Rehabilitation Act, the PUMP Act, Title IX, the OSH Act, and state and local statutes).

as intended by the PWFA. For example, one physician reported treating a pregnant worker who had initially sought abortion care, but the physician suspected that the patient might have been experiencing an ectopic pregnancy. Because the patient could not take any more time off from work, however, she was unable to get either an ultrasound or diagnostic lab work. By the time the ectopic pregnancy was confirmed two weeks later, the patient was at substantial risk of a ruptured fallopian tube and required surgery.[33]

Employers and employees alike will benefit from the Final Rule's explanations of how these ADA concepts operate in the PWFA context. And as litigation arises, courts will benefit from the Final Rule's guidance, as well.

3. Guidance on the Statute's Unlawful Employment Practices.

The Final Rule illuminates other fact patterns constituting violations of the PWFA's nondiscrimination provision pertaining to reasonable accommodations, as well as its ban on retaliation and coercion. 42 U.S.C. §§ 2000gg-1 & 2000gg-2(f); 29 U.S.C. §§ 1636.4 & 1636.5(f); App. A, Section IV ¶¶ 1-34 & Exs. 59-60; *id.*, Section V, ¶¶ 5-17 & Exs. 61-76. Especially critical are its explanations of when an employer's improper requests for medical certification—and delay in granting an accommodation based on a purported failure to provide such certification—can constitute failures to accommodate as well as retaliation and/or coercion. The Final Rule imposes "reasonableness" standards on certification requests and denies altogether the employer's right to seek certification in certain circumstances, including with respect to the minor "predictable assessments" that will generally not be found to impose an undue hardship, discussed *supra*, and with respect to pumping breastmilk—as well as how these standards differ from those under the

[33] Interview by NWLC with Dr. Rebecca Simon (May 15, 2024).

ADA. *See*, *e.g.*, App. A, Section III ¶¶ 118-48 & Exs. 54-55; *id.*, Section IV, ¶¶ 3-9; *id.*, Section V ¶¶ 14-16 & Exs. 68, 70, 72-73.

Indeed, in the first three months after the PWFA became effective, the majority of PWFA-related calls to the WLL legal hotline concerned employers' demands for excessive certification and consequent delays in responding to workers' requests for accommodations,[34] which the Final Rule clarifies may constitute an unlawful denial of accommodation, retaliation, and/or coercion. An employer's delay can make the difference between an employee being able to safely stay on the job and being forced to stop working altogether. For example, a hospital technologist reported to ABB that when she requested less strenuous duties on her doctor's advice, her employer required her to remain on unpaid leave for nearly two months while it considered her request. [35] ABB also heard from a pregnant security worker whose employer's delay in responding to her request for restroom accommodations resulted in her hospitalization for pre-term contractions that her doctor attributed to her lack of bathroom breaks.[36]

Some employers have subjected workers to Kafkaesque approval processes that make obtaining accommodation practically impossible. One employer instructed its pregnant worker to obtain a new doctor's note for each absence related to morning sickness.[37] Another employer, nonsensically, rejected its pregnant employee's doctor's note because it did not offer a projected delivery date *past* her estimated due date.[38] A third employer rejected a pregnant machine operator's doctor's note for failing to address why a pregnant worker should not be exposed to

[34] Center for WorkLife Law, Cmt. Letter (hereinafter "WLL comment"), at 2 (Oct. 10, 2023), https://perma.cc/645T-DQCU.
[35] ABB comment, *supra* n. 19, at 77.
[36] *Id.* at 76, 77.
[37] *Id.* at 68.
[38] *Id.*

toxic fumes, demanded and then rejected a new note, and finally pushed her onto leave without pay. [39] These onerous certification requirements disproportionately threaten access to accommodations for low-wage workers, who are more likely to live in areas without hospitals, birth centers, or providers offering obstetric care.[40]

Finally, the Final Rule addresses other forms of unlawful discrimination, retaliation, and coercion. For instance, far too many employers continue the common pre-PWFA practice of forcing workers on leave rather than engaging in the interactive process, a facial violation of the law. 42 U.S.C. § 2000gg-1(4). A pregnant mechanic contacted ABB after her employer forced her on leave when she requested temporary reassignment to an air-conditioned space to safeguard her health from dangerous heat. [41] A nurse told ABB that, after she requested office work to avoid exacerbating her pre-existing high blood pressure, her employer forced her onto leave instead. [42] WLL has heard similar accounts. The pregnant steelworker discussed above was compelled to take leave rather than provided the accommodation of being excused from operating heavy machinery; moreover, while her union was able to secure her return to work, and there was an open position consistent with her limitations for which she was qualified, the company instead forced her to take a data entry job that paid significantly less—a plainly retaliatory response.[43]

Amici note the regulations' power to change employer behavior has been shown in several instances. The lactating worker who was threatened with discipline because her pumping breaks caused her to fall short of sales quotas, discussed above, secured temporary exemption from the quota after WLL gave her the Notice of Proposed Rulemaking ("Proposed Rule") that included an

[39] *Id.*
[40] WLL comment, *supra* n. 34, at 25.
[41] ABB comment, *supra* n. 19, at 16.
[42] *Id.* at 12.
[43] Interview by ACLU with WLL, *supra* n. 20.

identical example. The Proposed Rule also helped the Illinois teacher who needed reassignment to a different classroom; after showing it to her employer, the employer withdrew its onerous paperwork request and granted the transfer. In the short time since the Final Rule came out, workers have used it, as well: the California teacher whose employer initially denied her request to leave campus to nurse her baby used the relevant portions of the Final Rule to eventually secure the accommodation,[44] and a pregnant hotel worker in Arkansas with a lifting restriction used the Final Rule to obtain a transfer to front desk duty instead of being forced onto leave.[45] These examples reflect just how critical the Final Rule is to ensure proper and consistent implementation of the PWFA nationwide for the full range of pregnancy-related needs.

III. PLAINTIFFS ARE NOT ENTITLED TO AN INJUNCTION BECAUSE THEIR RELIGIOUS LIBERTY ALREADY IS PROTECTED BY RELIGIOUS DEFENSES, WHICH ARE APPROPRIATELY ASSESSED ON A CASE-BY-CASE BASIS.

The Final Rule does not violate Plaintiffs' religious freedom.[46] The Rule explicitly recognizes and preserves any potential religious defenses, to be considered on a case-by-case basis. To the extent Plaintiffs claim that those defenses entitle them to a blanket exemption from the PWFA, they misstate applicable law. Plaintiffs will have opportunities to advance these defenses in individualized proceedings that can properly consider the facts, law, and interests of all parties. Accordingly, Plaintiffs do not face irreparable harm from possible violation of their religious liberty, and the balance of harms and public interest (as detailed above) weighs against an injunction.

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[44] Interview by ACLU with WLL, *supra* n. 20.
[45] *Id*.
[46] "Plaintiffs" here refers to USCCB and its co-plaintiffs in *U.S. Conf. Cath. Bishops v. Equal Emp. Opportunity Comm'n*, No. 2:24-cv-691 (W.D. La.). To the extent Plaintiffs Louisiana and Mississippi may assert such claims, the arguments raised in this Section are equally applicable.

A. Plaintiffs Manufacture Irreparable Harm by Misreading the PWFA Rule of Construction.

The PWFA references the existing protections for religious employers to employ "individuals of a particular religion" under Section 702 of Title VII as a "rule of construction." 42 U.S.C. 2000gg–5(b). The preamble to the Final Rule explains that the rule of construction, consistent with Section 702 of Title VII, exempts qualifying religious organizations from claims of *religious* discrimination only, and they are "still subject to the law's prohibitions against discrimination on the basis of race, color, sex, and national origin." 89 Fed. Reg. 29,146 (Apr. 19, 2024). Crucially, the rule of construction is explicit that it does not limit employers' other constitutional or statutory rights, and when invoked, entitles them to consideration as to the applicability of the exemption on a "case-by-case basis." App. A, Section VI ¶ 22. As a threshold matter, then, Plaintiffs are not harmed by the Final Rule because they are entitled to consideration of their religious defenses under Title VII, the Religious Freedom Restoration Act (RFRA), or the Free Exercise Clause, which are addressed further below. *See infra* Part III.B. The Final Rule thus maintains the full scope of protections for religious employers under the rule of construction, obviating any need for injunctive relief.

And Plaintiffs even go beyond seeking pre-enforcement exemption from the Final Rule to argue that the Final Rule errs by not "protect[ing] religious employers from *any* Title VII claim," including for discrimination based on sex or race. USCCB Br. 17. But such a sweeping construction would be inconsistent with the legislative text (as discussed above) as well as legal precedent and legislative history, and it would "leave all employees of religious institutions subject to forms of discrimination previously—and in every other circuit—prohibited by Title VII." *Billard v. Charlotte Cath. High Sch.*, 101 F.4th 316, 328 n.6 (4th Cir. 2024). When passing PWFA, Congress considered and squarely rejected an amendment that would have provided

religious employers the wholesale exemption from PWFA's and Title VII's protections that Plaintiffs now seek to advance. *See* H.R. 1065, 177th Cong. H2322 (2021); S. Amdt. 6577, H.R. 2617, 117th Cong. (2022); *see also Rayburn v. Gen. Conf. of Seventh-day Adventists*, 772 F.2d 1164, 1167 (4th Cir. 1985) (confirming that the Final Rule's rule of construction is consistent with Section 702's legislative history). The Final Rule, consistent with Congress's interpretation of the rule of construction, explains that religious institutions may prefer coreligionists in making pregnancy accommodations[47]; it simply provides that the exemption for religious employers under Title VII at the time the law was passed (and that still applies today) applies under the PWFA. Additionally, Plaintiffs' alternative construction would be unprecedented, as "[n]o federal appellate court in the country has embraced the . . . argument that Title VII permits religiously motivated sex discrimination by religious organizations." *Billard*, 101 F.4th at 328.[48] Nor does the rule of construction necessitate constitutional avoidance, as aptly explained by Defendant. Defs.' Br. 20. Accordingly, Plaintiffs are not harmed by the Final Rule, which already provides them the maximal protection afforded under the law.

[47] For example, under Defendant's interpretation of the rule of construction, a Buddhist organization wishing to hire only Buddhists can refuse to hire a pregnant worker who is not Buddhist. It could even favor a Buddhist who desires a particular accommodation over a non-Buddhist worker seeking that accommodation. It does not excuse the employer from the statutory obligation to reasonably accommodate the pregnant worker, unless doing so would impose an undue hardship, as is true for nonreligious employers. Nor does it permit the employer to coerce the non-Buddhist worker not to seek the protections of the PWFA, or to retaliate against the non-Buddhist worker who exercises their rights under the statute.

[48] *See, e.g.*, *Boyd v. Harding Acad. of Memphis, Inc.*, 88 F.3d 410, 413 (6th Cir. 1996) (explaining the exemption "merely indicates that such institutions may choose to employ members of their own religion without fear of being charged with religious discrimination. Title VII still applies, however, to a religious institution charged with sex discrimination."); *DeMarco v. Holy Cross High Sch.*, 4 F.3d 166, 173 (2d Cir. 1993); *EEOC v. Pac. Press Publ'g Ass'n*, 676 F.2d 1272, 1276 (9th Cir. 1982) *abrogation recognized by Alcazar v. Corp. of Cath. Archbishop of Seattle*, 598 F.3d 668 (9th Cir. 2010).

B. Plaintiffs Are Not Irreparably Harmed As RFRA Defenses Are Given Individualized Review Under Final Rule.

Nor can Plaintiffs show irreparable harm due to the Final Rule's individualized evaluation of defenses under RFRA. RFRA provides that the government may "substantially burden" a person's religious exercise if it "(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. § 2000bb-1(b). Consistent with that standard, the Final Rule commits the EEOC to "carefully consider" and "analyz[e] RFRA defenses to claims of discrimination on a case-by-case basis," Preamble, 89 Fed. Reg. 29,148, and Defendant elaborates on why that is the proper approach to address Plaintiffs' concerns, Def. Br. 21–22. Plaintiffs are thus not harmed by the Final Rule, because RFRA "requires a case-by-case, fact-specific inquiry." *Adkins v. Kaspar*, 393 F.3d 559, 571 (5th Cir. 2004).

Plaintiffs' request for a sweeping, blanket exemption from the Final Rule, USCCB Br. 1, 22, is not mandated by RFRA. Determining whether a pregnancy-related accommodation required under PWFA is the "least restrictive means" of furthering the government's interest requires a real factual scenario, so an adjudicator can determine if there are in fact alternative means for the EEOC to achieve its goals. In other words, Plaintiffs may raise a RFRA defense to actual and reasonable requests for accommodations by workers but are not entitled to preemptively opt out of providing specific pregnancy-related accommodations, such as abortion, entirely.

Plaintiffs rely on *Braidwood Management, Inc. v. EEOC*, 70 F.4th 914 (5th Cir. 2023), but the case actually weighs *against* injunctive relief here. In *Braidwood*, the Fifth Circuit agreed that "Title VII discrimination claims require a fact-specific inquiry," and determined that the plaintiffs' pre-enforcement claims against EEOC guidance were ripe *only* because "the EEOC

has already admitted that the specific policies violate its guidance; it has brought a successful suit against another violator for the same policies." *Id.* at 931. Plaintiffs here offer no comparable assurance of enforcement. Additionally, the Court declined to certify a class of objecting employers, noting that it "cannot determine the specifics of the . . . behavior that a general class member would object to or how they would enforce that objection." *Id.* at 935. There is thus no basis for staying the Final Rule when it comports with *Braidwood*'s requirement of individualized review and when the Fifth Circuit denied class relief that was even more limited than the expansive exemption Plaintiffs seek here.

Further, the Government's compelling interests in eliminating discrimination, and in enforcing Title VII specifically, are not limited to those described in the Final Rule, Preamble, 89 Fed. Reg. 29,148, n.252, but can be expressed to match the specific facts of a given claim, *id.* at 29,150, n.261. These include the EEOC's interest in ensuring accommodations for abortion—examples of which the EEOC offers, Defs.' Br. 23, and are further illustrated by the examples contained herein, *see supra* Part II. By contrast, Plaintiffs have not offered any narrowly tailored alternative to providing pregnancy-related accommodations, seeking only to be completely exempt from the requirement, with no protections for workers. But an exemption pursuant to RFRA may not be granted where it would harm others. *See, e.g.*, *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 734–35 (2014); *id.* at 739 (Kennedy, J., concurring). As described above, denial of such accommodations will unquestionably harm Plaintiffs' employees.[49]

[49] In a cursory final argument, Plaintiffs wrongly suggest that the Final Rule is subject to strict scrutiny because it purportedly is not neutral and generally applicable. USCCB Br. 23. Under Supreme Court precedent, "a law is not generally applicable if it invites the government to consider the particular reasons for a person's conduct by providing a mechanism for individualized exemptions" through "a formal system of entirely discretionary exceptions," or "prohibits religious conduct while permitting secular conduct that undermines the government's asserted interests in a

CONCLUSION

For all of the foregoing reasons, *Amici* urge the court to deny Plaintiffs' motions in their entirety.

Respectfully submitted,

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similar way." *Fulton v. City of Philadelphia*, 593 U.S. 522, 523–36 (2021) (cleaned up). Although the Final Rule (correctly) emphasizes that Plaintiffs' rights are protected by allowing case-by-case evaluations of their religious defenses, it also is generally applicable. USCCB Br. 23–34. The Final Rule sets out objective, categorical factors for considering requests for accommodations, and evaluating defenses. *See* 89 Fed. Reg. 29,205 ("undue hardship" standard "sets out factors to be considered"); *id.* at 29,151 (religious defenses evaluated based on underlying case law). *See also Roman Cath. Diocese of Albany v. Vullo*, No. 45, 2024 WL 2278222, at *7 (N.Y. May 21, 2024) ("The decision to grant or deny the exemption here is not 'at the sole discretion' of any single person or authority, but rather is determined by enumerated factors."). Nor does PWFA favor secular conduct, as it provides an exception just for religious employers under the rule of construction, *see* 42 U.S.C. 2000gg–5(b), while additional exemptions are equally available to religious employers, *see* 42 U.S.C. 2000gg(2)(B)(i), 2000e(b); 89 Fed. Reg. 29,205. Like Title VII, the PWFA and the Final Rule are therefore not subject to strict scrutiny, and easily overcome rational-basis review, especially when taking into account the weighty considerations of worker safety and economic well-being described above. *See supra* Parts I–II.

APPENDIX: *AMICI* STATEMENTS OF INTEREST

1. The **American Civil Liberties Union** (ACLU) is a nationwide, nonprofit, nonpartisan organization with more than three million members dedicated to the principles of liberty and equality embodied in the Constitution and our nation's civil rights laws, including the right of individuals to make their own reproductive decisions. The ACLU Women's Rights Project (WRP), co-founded in 1972 by Ruth Bader Ginsburg, has long been a leader in legal advocacy to ensure women and girls' full equality in society and ending workplace sex discrimination, including pregnancy discrimination. As direct counsel and amicus, WRP litigated the contours of the right to accommodation under the Pregnancy Discrimination Act, including in *Young v. United Parcel Serv., Inc.*, 135 S. Ct. 1338 (2015), *Durham v. Rural/Metro Corp.*, 955 F.3d 1279 (11th Cir. 2020) (*per curiam*), and *Legg v. Ulster Cnty.*, 832 Fed. App'x 727 (2d Cir. 2020), and played a leading role in securing the passage of the Pregnant Workers Fairness Act.

2. The **American Civil Liberties Union Foundation of Louisiana** (ACLU of Louisiana) is a statewide affiliate of the national ACLU. For more than 60 years, the ACLU of Louisiana has fought to vindicate the rights of all Louisianans through litigation, policy, and advocacy. In particular, the ACLU of Louisiana is a long-time advocate for gender justice, committed to challenging discrimination in all areas, including the workplace. This includes reproductive rights and supporting workers now seeking protection under the Pregnant Workers Fairness Act (PWFA). The need for reasonable accommodations for the full spectrum of reproductive care covered by the statute is especially important to their constituents in Louisiana, where such care is impacted by state prohibitions.

3. The **National Women's Law Center** (NWLC) is a nonprofit legal advocacy organization founded in 1972 dedicated to the advancement and protection of legal rights and

opportunities for women, girls, and all who face sex discrimination. NWLC focuses on issues including economic security, workplace justice, education, and health, including reproductive rights, with a particular focus on the needs of those who face multiple and intersecting forms of discrimination. NWLC played a leading role in advocating for the passage of the Pregnant Workers Fairness Act and has participated as counsel or amicus curiae in numerous cases to expand access to health care, including reproductive health care, and to ensure equal opportunities for women and LGBTQI+ individuals in the workplace, both of which are critical to gender equality.

4. **A Better Balance** (ABB) is a national legal advocacy organization using the power of the law to advance justice for workers, so they can care for themselves and their loved ones without jeopardizing their economic security. Through legislative advocacy, litigation, and public education, ABB is committed to advancing fair and supportive work-family policies for women and caregivers nationwide. A Better Balance's call for change inspired the introduction of the Pregnant Workers Fairness Act and the organization was a leader in the decade-long movement to pass the Pregnant Workers Fairness Act, including twice testifying in support before Congress and helping to draft the legislation. The organization runs a legal helpline in which the clarity provided by the EEOC's regulations for pregnant workers can be seen firsthand. ABB submitted an extensive comment to the EEOC, informed by hundreds of workers who had called the helpline after the Pregnant Workers Fairness Act effective date, urging robust regulations. In 2014, A Better Balance opened a Southern Office, headquartered in Tennessee, providing services to low-wage workers and pushing for policy change in the Southeast United States.

5. **Actors' Equity Association** (Equity), a labor organization that represents live theatrical actors and stage managers, is devoted to protecting live theatre as an essential component of a thriving civil society and the basis of its members' livelihoods. Since l 913, Equity has fought

to win its members a dignified workplace at the theatre, from pay guarantees and pension and welfare benefits to the rules governing auditions. With more than 51,000 members across the nation, Equity is among the oldest and largest labor unions in the performing arts in America. Broadway tours of America's favorite musicals come to every major market in the United States. Equity members live and work in every state in the United States and many members travel frequently throughout the country for work. Preserving protections for pregnant workers and preserving access to reproductive care is critical to the ability of Equity members to work in live theatre throughout the country. It is in defense of these protections, and for the reasons set out in the amicus brief, that Equity now urges this Court to deny the request for a preliminary injunction.

6. The **American Federation of Teachers** (AFT), an affiliate of the AFL-CIO, was founded in 1916 and today represents approximately 1.7 million members who are employed across the nation and overseas in K-12 and higher education, public employment, and healthcare. AFT has long supported the civil rights of our members and the communities they serve and regularly participates in litigation fighting bias and discrimination in the workplace. AFT considers ensuring the fair treatment of pregnant and postpartum workers as an important part of its mission to protect and advance the workplace rights of all employees.

7. The **American Postal Workers Union, AFL-CIO**, is a labor organization that represents over 200,000 workers in the postal industry. Our collective bargaining partners include the U.S. Postal Service as well as private sector transportation and logistics companies, and our bargaining unit members work in every U.S. state and territory, including Arkansas. We represent workers who balance their jobs with their pregnancy, childbirth or related medical conditions. The EEOC's final rule on PWFA is important to these workers for the recognition and consistent application of workers' rights during and after pregnancy and childbirth.

8. **Americans United for Separation of Church and State** (Americans United) is a national, nonsectarian public-interest organization based in Washington, D.C. Its mission is twofold: (1) to protect the right of individuals and religious communities to worship as they see fit, and (2) to preserve the separation of church and state as a vital component of democratic government. Americans United has more than 380,000 supporters across the country. Since its founding in 1947, Americans United has participated as a party, counsel, or amicus curiae in numerous church-state and religious liberty cases in federal and state courts across the country.

9. **Bend the Arc: A Jewish Partnership for Justice** (Bend the Arc) is the nation's leading progressive Jewish voice empowering Jewish Americans to be advocates for the nation's most vulnerable. Bend the Arc mobilizes Jewish Americans beyond religious and institutional boundaries to create justice and opportunity for all, through bold leadership development, innovative civic engagement, and robust progressive advocacy.

10. The **Center for WorkLife Law** at the University of California College of the Law, San Francisco (WorkLife Law), is a national research and advocacy organization that advances legal protections for employees and students who are pregnant, breastfeeding, and caregiving. WorkLife Law provides resources for employers, healthcare providers, and employees regarding the accommodation of pregnant workers. Through its free legal helpline, WorkLife Law has counseled scores of employees on accessing their legal rights under the Pregnant Workers Fairness Act in the 11 months since its enactment.

11. The **Communications Workers of America** (CWA) is the largest communications and media labor union in the United States. Its membership consists of workers in the communications and information industries, as well as the news media, the airlines, broadcast and cable television, public service, higher education, health care, manufacturing, video games, and

high tech. CWA takes an active role advocating for its members on workplace issues, which includes participating in litigation as a party or amicus.

12. **Interfaith Alliance** is a national organization bringing together people of diverse faiths and beliefs from across the country to build a resilient democracy and fulfill America's promise of religious freedom and civil rights not just for some, but for all. Interfaith Alliance mobilizes powerful coalitions to challenge Christian nationalism and religious extremism while fostering a better understanding of the healthy boundaries between religion and government. By advocating at all levels of government for an equitable and just America where the freedoms of belief and religious practice are protected, Interfaith Alliance seeks to achieve a democracy where all people are treated with dignity and have the opportunity to thrive.

13. **Legal Aid at Work** (formerly known as the Legal Aid Society – Employment Law Center) is a non-profit public interest law firm founded in 1916 whose mission is to help people understand and assert their workplace rights and to advocate for employment laws and systems that empower low-paid workers and marginalized communities. Legal Aid at Work frequently appears in state and federal courts to promote justice for workers and their families and is dedicated to ensuring that workers can care for their health and that of their family without having to sacrifice their jobs or income. Legal Aid at Work has been deeply involved in shaping and passing California's progressive workplace protections for pregnant workers and ensuring that the workers who need these protections the most can equitably access them. Legal Aid at Work was among the organizations that helped to shape the Pregnant Workers Fairness Act when it was first introduced in Congress, drawing on its experience advocating for and enforcing California's protections for pregnant workers over several decades.

14. **National Center for Law and Economic Justice** (NCLEJ) works across the country to advance racial and economic justice for low-income families, individuals, and communities through litigation, policy advocacy and support for grassroots groups. For more than sixty years, NCLEJ's mission has been to enforce the rule of law, protect entitlement to a wide range of public benefits and advance the rights and safety of low-wage workers. Our workers' rights project collaborates with worker centers on a wide range of issues affecting their members, including access to public benefits, wage justice, and health and safety, as well as supporting the Worker-driven Social Responsibility movement. NCLEJ has represented workers who were victims of pregnancy discrimination, including clients who suffered devastating consequences when their employers refused to accommodate their needs.

15. **National Council of Jewish Women** (NCJW) is a grassroots organization of volunteers and advocates who turn progressive ideals into action. Inspired by Jewish values, NCJW strives for social justice by improving the quality of life for women, children, and families and by safeguarding individual rights and freedoms.

16. The **National Employment Law Project** (NELP) is a national non-profit with over 50 years of experience advocating for the employment and labor rights of low-wage and unemployed workers. NELP seeks to ensure that all employees, and especially the most vulnerable ones, receive access to good jobs and the full protection of labor and employment laws, including protections from discrimination based on pregnancy and related conditions. NELP's community-based partners, including worker centers, unions, and other worker-support organizations in communities across the 50 states, have seen the kinds of impacts raised in this case, and would be harmed if the Court rules against the EEOC in this case. NELP has litigated and participated as

amicus curiae in countless cases in federal circuit and state courts and the U.S. Supreme Court addressing the importance of compliance with workplace protections.

17. The **National Partnership for Women & Families** (National Partnership) is a nonprofit, nonpartisan advocacy group that has over 50 years of experience in combating barriers to equity and opportunity for women. The National Partnership works for a just and equitable society in which all women and families can live with dignity, respect, and security; every person has the opportunity to achieve their potential; and no person is held back by discrimination or bias. In particular, the National Partnership has worked extensively on workplace protections to accommodate work-family and caregiving needs, including the full range of care needs before, during, and after pregnancy. In line with our mission, the National Partnership supports the Pregnant Worker Fairness Act (PWFA) and its regulations, which play a critical role in clarifying the law for employers and protecting pregnant working people. The PWFA protects health, safety and economic security of women and pregnant people, keeping them in the workforce for as long as possible and protecting their jobs when leave is required. The PWFA is good for our economy, businesses, and workers.

18. **One Fair Wage** is dedicated to raising wages and improving working conditions in the service sector and lifting millions of subminimum wage-earning employees out of poverty by advocating for all employers to pay the full minimum wage as a cash wage, with fair, non-discriminatory tips on top. In the face of low wages, workers often contend with wage theft, pervasive sexual harassment, and potential retaliation for using leave or sick time, organizing under the National Labor Relations Act, or filing claims with the Equal Employment Opportunity Commission. Given this, One Fair Wage is keenly focused on ensuring that this same workforce does not face discrimination based on race, gender, disability status, healthcare needs, pregnancy

status, or other categories. Workers should not have to choose between addressing crucial medical needs and keeping their jobs. Protecting workers who receive healthcare, including abortion and pregnancy-related care, is essential to maintaining workplaces free from all forms of discrimination and mistreatment. This protection is also crucial to One Fair Wage's mission to advocate for and protect workers' rights.

19. **Public Counsel** is a nonprofit public interest law firm dedicated to advancing civil rights and racial and economic justice, as well as to amplifying the power of our clients through comprehensive legal advocacy. Advancing equality for women, girls, and gender expansive people and investing in their futures strengthens the well-being of entire communities. The Audrey Irmas Gender Justice Project was founded in 2017 to build on Public Counsel's longstanding efforts to secure equal justice and opportunity for women, girls, and gender expansive people. Public Counsel represents individual clients in employment discrimination and gender equity matters and supports community-led efforts to transform unjust systems through policy advocacy and litigation in and beyond Los Angeles to secure equal opportunity for women, girls, and gender expansive people.

20. The **Service Employees International Union** (SEIU) is a labor organization of approximately two million people employed across the United States, Puerto Rico, and Canada in the healthcare, janitorial, security, airport, and fast food industries, and in the public sector. Its members and the workers it is organizing represent the swath of the workforce most likely to need accommodations related to pregnancy, childbirth, and related medical conditions: care workers and low-paid workers, many of whom are women of color, who work in physically demanding jobs. SEIU has significant familiarity with the critical need for and importance of robust,

enforceable regulations on the Pregnant Workers Fairness Act, and a strong interest in ensuring no worker has to choose between their job and their health or a healthy pregnancy.

21. The **United Food and Commercial Workers International Union** (UFCW) is a labor union that represents over 1.2 million workers. UFCW members stand hours on their feet each day behind a cash register, work in warehouses climbing ladders and stacking heavy boxes, work under stressful conditions in healthcare, and work on the line in meat and poultry processing. Pregnancy accommodations are critically important to UFCW members, who are 50% women. UFCW supports clear employment standards requiring employers to provide reasonable accommodations to pregnant and postpartum workers who need them, absent undue hardship. The Pregnant Workers Fairness Act and the Final Rule will help keep these workers healthy while allowing them to remain in the workforce. While our members benefit from the protection of a collective bargaining agreement, we believe these rules provide important clarity for both workers and employers and will fulfill the law's purpose of ensuring people with known limitations related to pregnancy, childbirth, or related medical conditions, including abortion care, can remain healthy and working.