DFLA
DEMOCRATS FOR LIFE OF AMERICA

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October 10, 2023

Filed Electronically Via Federal eRulemaking Portal

Mr. Raymond Windmiller
Executive Officer
Executive Secretariat
U.S. Equal Employment Opportunity Commission
131 M Street, NE
Washington, DC 20507

Re: EEOC's Pregnant Workers Fairness Act Regulations,
RIN 3046-AB30

Dear Mr. Windmiller,

On behalf of Democrats for Life of America, we respectfully submit the following comments on the Equal Employment Opportunity Commission's ("EEOC") proposed "Regulations To Implement the Pregnant Workers Fairness Act" ("Proposal"), published at 88 Fed. Reg. 54714 (Aug. 11, 2023).

Democrats for Life of America ("DFLA"), is the preeminent national organization for pro-life Democrats. DFLA believes that the protection of human life at all stages is the foundation of human rights, authentic freedom, and good government. These beliefs animate DFLA's opposition to abortion, euthanasia, capital punishment, embryonic stem cell research, poverty, genocide, and all other injustices that directly and indirectly threaten human life. DFLA shares the Democratic Party's historic commitments to supporting women and children, strengthening families and communities, and striving to ensure equality of opportunity, reduction in poverty, and an effective social safety net that guarantees that all people have sufficient access to food, shelter, health care, and life's other basic necessities.

The comments below focus on the EEOC's Proposal to promulgate rules under the Pregnant Workers Fairness Act ("PWFA"), 42 U.S.C. 2000gg, which attempt to define "related medical conditions" within the PWFA to include "birth control...or having or choosing not to have an abortion, among other conditions," creating the possibility for DFLA and other pro-life advocacy organizations to be undermined by their own employees through an overly broad interpretation of the statutory language by the PWFA. The interpretation of the PWFA proposed by the EEOC will directly impact pro-life nonprofit advocacy organizations with over fifteen employees; frustrate the will that Congress expressed when the PWFA was passed; and create an

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issue of lack of consensus that has caused serious bitterness and erosion of civility between Americans, as recognized by the Supreme Court of the United States ("SCOTUS") in *Dobbs v. Jackson Women's Health Organization*, 597 U.S.__, 142 S. Ct. 2228, 213 L. Ed. 2d 545 (2022).

1. **The Proposal will directly impact the functions of DFLA negatively regarding hiring and advocacy, and potentially force the organization to support actions by its employees that it actively campaigns against.**

First formed in 1999, DFLA is a 501(c)(4) tax-exempt organization currently made up of over seven-hundred members, and have over nine-thousand individuals who are subscribed to our email listserv. DFLA is currently comprised of one full-time staff member and three part-time staff members, and seeks to continue to grow the organization as the need for robust pro-life advocacy increases in all fifty states in a post-*Dobbs* environment. Though DFLA currently has under fifteen employees, it hopes and plans to hire more individuals in the future, and maintain a robust staff that will undertake the cause of advocating for both women and children throughout the United States of America, which in the future will most likely make it subject to the PWFA.

The text of the PWFA states that "It shall be an unlawful employment practice for a covered entity to...not 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"[1] Additionally, under the PWFA, a covered entity cannot "take adverse action in terms, conditions, or privileges of employment against a qualified employee on account of the employee requesting or using a reasonable accommodation to the known limitations related to the pregnancy, childbirth, or related medical conditions of the employee.[2] The Proposal from the EEOC wishes to interpret the term "related medical conditions" to include among other conditions, the "use of birth control...or *having or choosing not to have an abortion*, among other conditions." (*Emphasis added*).

DFLA vigorously opposes the EEOC's attempt to describe "abortion" or "birth control," as "related medical conditions" to a pregnancy. The former takes life in all situations, while the latter takes life in others. Both are elective medical procedures, and are never required to be taken by an individual. To say abortion is a related medical condition is a patent insult to all women who endure real medical conditions, such as gestational diabetes, preclampsia, cesarean sections, miscarriages, and other related medical conditions, when attempting and successfully bearing children.

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1 42 U.S. Code § 2000gg–1(1)
2 42 U.S. Code § 2000gg–1(5)

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As a pro-life organization, DFLA opposes all forms of taking human life. These include abortion, abortifacients, stem cell research, euthanasia, assisted suicide, and other forms that extinguish human life. Should this Proposal be put into effect by the EEOC, DFLA could be subject to a variety of legal requirements that would undermine its very existence as a pro-life organization. This would include:

1. Employment "adverse action" lawsuits for refusing to hire female employees who get pregnant and choose to have an abortion, in violation of the organization's stated beliefs and purposes.
2. Requiring pro-life employers to give paid leave to their employees specifically seeking an abortion in the form of "abortion leave."
3. Forced payment of employee benefits packages that would fund contraceptives, abortifacients, elective abortion procedures, and other medical procedures that would actively destroy human life as a "reasonable accommodation" to "known limitations" related to obtaining an abortion.

To subject DFLA and other pro-life organizations to such requirements would be to effectively allow a rulemaking procedure by an administrative agency undercut the will of Congress, and throw scores of nonprofit advocacy organizations like DFLA into ethical quandaries related to its current and future employees. This clearly was not the intent of Congress, and is not good public policy.

2. <u>The Proposal frustrates and directly opposes the will of Congress</u>

DFLA supports the original intent of the PWFA that Congress had when passing the PWFA. We are supportive of any piece of legislation that has the intent of assisting pregnant mothers and new mothers with having paid leave from their employer. Paid leave provides new mothers with time to heal from pregnancy, breastfeed their children, and provides them financial stability and community support so that they may always choose life as an alternative to abortion. DFLA championed the policy that no taxpayer funding of abortion be included during the passage of the Affordable Care Act ("ACA").[3] According to former U.S. Congressman Bart Stupak, this assurance of no taxpayer funding in the ACA was key to the final passage of the legislation.[4] And attempts to backdoor abortion and abortifacient funding through the ACA have also been subject to significant rule changes and litigation, to the detriment of the overall health and well-being of the nation..[5]

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[3] *See, e.g.* https://obamawhitehouse.archives.gov/the-press-office/executive-order-patient-protection-and-affordable-care-acts-consistency-with-longst

[4] *See, e.g.* Bart Stupak, For All Americans (The Dramatic Story Behind the Stupak Amendment and the Historic Passage of Obamacare) Covenant Books (2017)

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We think the same principles should apply to the PWFA. To attempt to backdoor abortion funding requirements for private individuals, private employers, and taxpayers through the administrative rulemaking process destroys the balance that allowed for the PWFA to pass with bipartisan support in the first place, and erodes trust in the government.

The PWFA was passed by Congress specifically because it promoted a goal that a majority of states already include in their state laws: That employers should be mandated to provide paid leave for pregnant and new mothers. Such laws are not construed to spend taxpayer dollars, or force private healthcare individuals to pay for abortions, abortifacients, contraceptives, and other medical procedures that a great number of Americans have moral and ethical oppositions against. Members of Congress recognized this when crafting the PWFA, and said as much during the time the PWFA was slated to be passed. For example, Senator Bob Casey of Pennsylvania stated that "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."[6] Additionally, Senator David Cassidy of Louisiana similarly stated that "I reject the characterization that this [the Pregnant Workers Fairness Act] would do anything to promote abortion."[7] Furthermore, Senator Steve Daines stated that "Senator Casey's statement reflects the intent of Congress in advancing the Pregnant Workers Fairness Act today. As a result, 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 and will of Congress."[8]

In summary, to issue these proposed regulations directly contradicts the comments of multiple U.S. Senators, and ultimately deceives the American people.

3. **The Proposal would prevent consensus from being reached on Life issues, at the State Level, as held in *Dobbs v. Jackson Women's Health Organization***

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5 *See, e.g. Burwell v. Hobby Lobby Stores, Inc.,* 573 U.S. 682 (2014); *Zubik v. Burwell,* 578 U.S. ____ (2016); *Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania,* 140 S.Ct. 2367 (2020).

6 Senator Casey, Senate Democratic sponsor, speaking on S. 4431, 117th Cong., 2nd sess., Congressional Record Vol. 168, No. 191 (December 8, 2023): S 7049 https://www.congress.gov/congressional-record/volume-168/issue-191/senate-section/article/S7049-2

7 Senator Cassidy, Senate Republican sponsor, speaking on S. 4431, 117th Cong., 2nd sess., Congressional Record Vol. 168, No. 191 (December 8, 2023): S 7050 https://www.congress.gov/congressional-record/volume-168/issue-191/senate-section/article/S7049-2

8 168 Cong. Rec. S10081 (daily ed. Dec. 22, 2022), at https://www.congress.gov/congressional-record/volume-168/issue-200/senate-section/article/S10081-2.

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In the United States, there is a robust legal tradition that has seen the government create both constitutional and statutory exemptions to individuals being required to take human life against his or her conscience.[9] In 2022, SCOTUS decided the case *Dobbs v. Jackson Women's Health Organization*, 597 U.S.__, 142 S. Ct. 2228, 213 L. Ed. 2d 545 (2022), which overturnedg its prior decisions in *Roe v. Wade* and *Casey v. Planned Parenthood.* In the majority opinion in *Dobbs*, *supra,* Justice Samuel Alito wrote that to do anything but to overturn *Roe v. Wade* would be to exacerbate the turmoil caused by the decision. "The turmoil wrought by *Roe* and *Casey* would be prolonged. It is far better—for this Court and the country—to face up to the real issue without further delay." *Dobbs* ultimately reasoned that "Abortion presents a profound moral question. The Constitution does not prohibit the citizens of each State from regulating or prohibiting abortion. Roe and Casey arrogated that authority. We now overrule those decisions and return that authority to the people and their elected representatives."

Contrary to the holding and reasoning in *Dobbs supra*, to now use the PWFA as a backdoor to require an abortion-on-demand regime to be implemented by the nation's employers completely disregards the holding of SCOTUS in *Dobbs,* and its intent that any right to abortion be returned to the States

Additionally, establishing an inherent intent to provide abortion and abortion-related services under the guise of the PWFA undermines the benign intent of the PWFA by creating an environment to not only challenge the definition of "… and related services…" it would also necessarily challenge the benevolent intent of the PWFA. The EEOC must therefore approach implementation of the PWFA, as a tool primarily to promote the health and safety of working women with these essential healthcare resources.

In summary, there is little area of disagreement among opponents and proponents of abortion rights to the necessity of providing timely pregnancy, childbirth, and natal care for women and their children. The insertion now of a controversial and emotionally charged ability to tie the intent of the PWFA to that of controversial rights of women without consideration to the care of the rights of the child involved, will create roadblocks to implementation of the PWFA through litigation and judicial rulemaking, thus usurping the role of Congress to legislate for healthcare. Moreover, judicial involvement will ensure continual delays in implementing the regulatory framework and will make the PWFA unnecessarily in effectuate from its initiation.

4. **Substantively, "related medical conditions" should not include pre-pregnancy, abortion, abortifacients, contraception or other things our organization is opposed to.**

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[9] Thomas C. Berg, Carolyn McDonnell, & Christian Matozzo, Conscience Rights and the Taking of Life in the United States, 57 REVISTA GENERAL DE DERECHO CANÓNICO Y DERECHO ECLESIÁSTICO DEL ESTADO (2021).

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The bipartisan intent for the PWFA was to ensure the proper provision of health services for women in their childbearing role. By providing for the provision of any services under the "related medical conditions" rubric, which is contrary to Congresses 'childbearing and childrearing intent, will further upset the ongoing efforts of Congress to build health policy for the promotion of the healthy development of America's future populace. Moreover, to do so would be contrary to the employers and organization's First Amendment Rights, which are guaranteed by the U.S. Constitution. As a result, the definition of "related medical conditions" must only reference those conditions and treatments that are intended to only build up the healthy development of Americans, and not those conditions which are those that are not.

CONCLUSION

We urge the EEOC to abandon and withdraw the Proposed Rule for the aforementioned reasons. Thank you for the opportunity to comment on the proposed regulations.

Respectfully Submitted,

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