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

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

Dear Mr. Windmiller:

The Pregnancy Workers Fairness Act (PWFA) was signed into law on December 29, 2022, through HR 2617, Consolidated Appropriations Act, 2023. It requires employers with fifteen or more employees to make *"reasonable accommodations to the known limitations related to the pregnancy, childbirth, or related medical conditions"* of an employee. The Equal Employment Opportunity Commission (EEOC) published a proposed rule on August 11, 2023 to implement the PWFA. The new rule establishes a definition of *"pregnancy, childbirth, or related medical conditions"* to include abortion, which was not in the original text of the PWFA. As a result, the rule imposes a mandate on employers by requiring them to accommodate abortion, clearly violating any religious, moral, conscience, scientific, health or other objection. The EEOC disregarded the clear legislative intent of the PWFA by incorporating abortion into the Act via the rule. Additionally, the rule contains several noteworthy contradictions that require answers. We oppose the proposed rule due to its broad definition of "*or related medical condition*s" as well as its lack of clear protections for employer objections.

In § 1636.3 (b) the proposed rule includes an expansive definition of *"related medical conditions."* The definition provides examples of related medical conditions to pregnancy and childbirth including, but not limited to, *"termination of pregnancy, including…abortion."* Put simply, the PWFA does not include abortion but was written to protect pregnant and postpartum women. Abortion is clearly not a medical condition, but rather a procedure that takes a life. Can the Commission provide any medical studies to the contrary - that identify abortion or "having had an abortion" as a condition? By including abortion in the definition of *"related medical conditions"* via the rule, employers with fifteen or more employees will now be required to accommodate abortions. Required reasonable accommodations include the use of paid leave or unpaid leave to attend health care appointments related to pregnancy, childbirth, or related medical conditions. Now that the *"related medical conditions"* definition includes abortion, employers would be required to provide paid or unpaid time-off for pregnant women to obtain abortions for any reason at any point in pregnancy, or else be subject to penalties. In addition to leave for abortion, the EEOC suggests employers could be required under the PWFA to provide a woman seeking an abortion with *"access to…employer-provided… transportation"* that is otherwise available to employees as a form of a reasonable accommodation.

As a result of this broad definition, the new EEOC rule forces employers to be complicit in abortion by requiring them to make accommodations for abortion. However, the EEOC does not provide an explicit exemption or objection process for the employers that are subject to the rule. Congress tied Title VII's religious organizations exemption to the entire PWFA through a rule of construction. Title VII defined religion broadly to include "*all aspects of religious observance and practice as well as belief.*" Yet, the

EEOC warns that the Commission will consider *"on a case-by-case basis"* whether an employer would qualify for a religious exemption under the PWFA or the Religious Freedom Restoration Act. The rule then narrows the statutory rule of construction to apply only to "those organizations whose purpose and character are primarily religious." There are no exemptions for any conscience, moral, ethical, scientific, health or other objection to the expansive demands of the rule. There needs to be further clarification that explicitly states the rights of employers. Many employers and organizations already support both women and their unborn children. The current version of the rule negates these efforts and forces the employers and organizations to be complicit in abortion.

Congress did not intend for the PWFA to include abortion. This bill was a groundbreaking bipartisan effort to close gaps in protections for pregnant workers. During floor debate, Sen. Bob Casey (D-PA), the Democratic co-lead of the PWFA, said that under the PWFA the EEOC *"could not issue any regulation that requires abortion leave"* and the act does not permit the EEOC *"to require employers to provide abortion leave in violation of state law."* According to Senator Bill Cassidy (R-LA), the lead Senate Republican cosponsor of the PWFA, the EEOC regulations *"completely disregard legislative intent and attempt to rewrite the law by regulation."* The EEOC is attempting to undermine the explicit language enacted through the PWFA by imposing an abortion mandate on American employers.

The proposed rule itself also contains several contradictions that need to be addressed. According to the Commission, the rule "*will not unduly burden the Federal court system*" because it was "*written to minimize litigation*." If there are no protections for conscience, moral, ethical, scientific, health or other objections for employers within the rule, this would likely increase the potential for litigation. Can the Commission state with certainty that there would be minimal litigation resulting from the lack of clear employer rights provided in the rule? The EEOC also certifies that "*the proposed rule would not adversely affect the well-being of families*." Studies have shown that abortion can contribute to mental health issues, substance abuse, and risk of suicide. Can the Commission state with certainty that if the rule were to accommodate abortion there would not be adverse effects on the well-being of women and their families? Lastly, the Commission has determined that the rule "will not have substantial direct effects 'on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'" As a result of the U.S. Supreme Court's *Dobbs* decision, a number of states across the nation have implemented protections for unborn children through state statute. If the proposed rule expands definitions to include abortion as a required accommodation, would the rule supersede state law? Would an employer have to violate their state's abortion law to accommodate an employee seeking an abortion?

Like many, we support women and their unborn children, and we support access to necessary medical care for them both. This rule does the opposite. It distorts the law to encourage abortion. The EEOC has exceeded its statutory authority by establishing a definition of "*related medical conditions*" to include abortion; has failed to include objections to the burden of abortion accommodations; and has entirely disregarded the legislative intent of the PWFA by including abortion in the rule. We urge the EEOC to remove abortion from its definition of "*related medical conditions,*" ensure that employers have moral, religious, scientific, health and other objections protected, and create a rule that encapsulates the original bipartisan legislative consensus in Congress that paved the way to authorize the PWFA.