

No. 25-30398

In the United States Court of Appeals for the Fifth Circuit

UNITED STATES CONFERENCE OF CATHOLIC BISHOPS; SOCIETY OF ROMAN
CATHOLIC DIOCESE OF LAKE CHARLES; SOCIETY OF THE ROMAN CATHOLIC
CHURCH OF THE DIOCESE OF LAFAYETTE; CATHOLIC UNIVERSITY OF
AMERICA,

Plaintiffs-Appellants,

v.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION; ANDREA R. LUCAS,

Defendants-Appellees.

On Appeal from the United States District Court
for the Western District of Louisiana (Lake Charles)
No. 2:24-cv-691, Hon. David C. Joseph

**BRIEF OF *AMICUS CURIAE*
ETHICS AND PUBLIC POLICY CENTER
IN SUPPORT OF PLAINTIFFS-APPELLANTS'
MOTION FOR INJUNCTION PENDING APPEAL**

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CERTIFICATE OF INTERESTED PERSONS

Undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

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STATEMENT OF INTEREST OF *AMICUS CURIAE*¹

The Ethics and Public Policy Center (EPPC) is a nonprofit research institution dedicated to applying the Judeo-Christian moral tradition to critical issues of public policy, law, culture, and politics. EPPC works to promote a culture of life in law and policy and to defend the dignity of the human being from conception to natural death. EPPC scholars write and submit public comments on federal agency rulemaking—including EEOC’s Pregnant Workers Fairness Act regulations—and urge the executive branch to follow the law and protect human fetal life.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

This case is about whether the Equal Employment Opportunity Commission (EEOC) has lawful authority under the PWFA, Title VII, and the First Amendment to coerce the Plaintiffs-Appellants (collectively, “Bishops”) to provide accommodations for their employees that wish to abort their unborn children.

The EEOC claims it does. Under its reading of the law, the PWFA imposes an abortion-accommodation mandate *sub silentio* on employers

¹ All parties received timely notice and consented to the filing of this brief. Only *Amicus* and its counsel authored any part of this brief and made a monetary contribution to fund its preparation or submission.

across the country. Under this mandate, employers are forced to facilitate their employees' abortions without limitation—including eugenic abortions, late-term abortions, and abortions unlawful under state law.

The Bishops—and *Amicus* EPPC—disagree. Congress passed the PWFA to provide women workplace accommodation protections for “pregnancy, childbirth, or related medical conditions.” 42 U.S.C. §2000gg-1(1). As the Bishops note, it does not mention abortion once. Mot. at 5. Congress did not and would not authorize such a controversial mandate. As one federal court explained, Congress could not “reasonably be understood to have granted the EEOC the authority to interpret the scope of the PWFA in a way that imposes a nationwide mandate on both public and private employers—irrespective of ... *Dobbs*—to provide workplace accommodation for the elective abortions of employees.” *Louisiana v. EEOC*, 705 F. Supp. 3d 643, 658-59 (W.D. La. 2024).

This amicus brief does not duplicate the Bishops' strong legal arguments but instead puts the EEOC's challenged abortion-accommodation mandate in its political context.

In *Dobbs v. Jackson Women's Health Organization*, the Supreme Court overturned *Roe v. Wade* and returned the issue of abortion “to the

people and their elected representatives.” 597 U.S. 215, 259 (2022). Rejecting the Supreme Court’s direction, President Biden announced “actions” the day *Dobbs* was issued that his administration would take in response.² He “committed to doing everything in his power” to “protect access” to abortion.³ The executive branch, following Biden’s lead, sought to unilaterally (and unlawfully) expand abortion access by reinterpreting federal laws, like the PWFA, to promote abortion.

This brief summarizes actions that federal agencies took post-*Dobbs*, conveniently discovering never-before-found authority to advance the Biden administration’s pro-abortion political agenda. This pattern makes it easier to see that the EEOC’s challenged abortion-accommodation mandate is not a lawful exercise of the legitimate authority delegated to it by Congress, but rather an unlawful attempt to advance policy goals that could not be accomplished through the legislative process.

² White House, FACT SHEET: President Biden Announces Actions in Light of Today’s Supreme Court Decision on *Dobbs v. Jackson Women’s Health Organization* (June 24, 2022), <https://perma.cc/66T6-BL87>.

³ White House, FACT SHEET: President Biden to Sign Executive Order Protecting Access to Reproductive Health Care Services (July 8, 2022), <https://perma.cc/F5ZZ-XGL8>.

For the reasons set out below, and those in the Bishops’ motion, this Court should grant the Bishops’ motion for an injunction pending appeal.

ARGUMENT

Post-*Dobbs* executive branch actions, like the PWFA Rule, weaponized federal law to unlawfully promote abortion.

After *Dobbs*, the Biden administration used federal agencies to promote its abortion-at-all costs agenda while sidestepping “the people and their elected representatives.” *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 259 (2022). In doing so, the executive branch, including the Equal Employment Opportunity Commission (EEOC), ignored federal limits on its authority to promote abortion. As documented below, the challenged PWFA Rule is just one example of this pattern.⁴

A. Turned Title X into an Abortion Counseling and Referral Mandate

Title X is a federal program that funds state and private health care organizations offering voluntary family planning services. Congress

⁴ Each example below is described in greater detail in EPPC’s amicus brief (EPPC Br.) in the ongoing Eighth Circuit PWFA Litigation, available at https://eppc.org/wp-content/uploads/2024/07/Tenn-v.-EEOC_EPPC-Amicus-Brief.pdf.

explicitly prohibited Title X funds from being used “in programs where abortion is a method of family planning.” Public Health Services Act, 42 U.S.C. §300a-6. But less than a week after *Dobbs*, the Department of Health and Human Services (HHS) announced nearly \$3 million in new Title X family planning grants to “increase training and technical assistance to address the challenges that the recent Supreme Court decision may have on” the Title X program.⁵ These grants were given to clinics that provide abortion, counsel in favor of abortion, refer for abortion, and fail to physically and financially separate their abortion services from federally funded family planning services.⁶ The grants were touted by the administration as part of its post-*Dobbs* campaign to “defend,” “protect,” and “expand access” to “reproductive care.”⁷

⁵ Press Release, HHS, HHS Announces New Grants to Bolster Family Planner Provider Training (June 30, 2022), <https://perma.cc/5MKN-W77R>.

⁶ Off. of Population Affs., Off. of the Assistant Sec’y for Health, HHS, Title X Family Plan. Program, <https://perma.cc/K9CD-MAAW>; *see also* EPPC Br. at 9 n.9.

⁷ White House, FACT SHEET: White House Task Force on Reproductive Healthcare Access Announces New Actions and Marks the 51st Anniversary of Roe v. Wade (Jan. 22, 2024), <https://perma.cc/3KC7-D4PD>; Report, HHS, Marking the 50th Anniversary of Roe: Biden-Harris Admin. Efforts to Protect Reprod. Health Care (Jan. 19, 2023), <https://perma.cc/8EB4-P7US>.

HHS also cut off Oklahoma’s and Tennessee’s Title X funding mid-grant, reallocating the funds to *out of state* pro-abortion groups, solely because the states will not counsel or refer for abortions that are illegal under state law. *See* EPPC Br. at 10-11.

HHS’s actions ignored Title X’s limits, violated the Constitution and the Administrative Procedure Act (APA), and ignored the Department’s obligations under the Weldon Amendment, which prohibits HHS (among others) from discriminating against funding recipients “on the basis that the health care entity does not provide, pay for, provide coverage of, or refer for abortions.”⁸

B. Turned Taxpayer Dollars into Abortion Funds

The Biden administration ignored federal law and mandated that taxpayer dollars fund abortion.

Hyde Amendment. The Hyde Amendment ensures no HHS funds “shall be expended for any abortion” or “for health benefits coverage that

⁸ Weldon Amendment, Consolidated Appropriations Act, 2023, Pub. L. No. 117-328, § 507(d), 136 Stat. 4459, 4908.

includes coverage of abortion.”⁹ But post-*Dobbs* the Department of Justice claimed taxpayer dollars could be used to fund abortion.¹⁰

Sick Leave. Three days after *Dobbs*, the Office of Personnel Management (OPM) claimed that paid sick leave for federal workers covers absences for necessary travel to obtain medical examinations or treatments. *See* EPPC Br. at 13. A subsequent White House Fact Sheet confirmed that this guidance authorizes sick leave for abortion travel. *See id.*

Medicaid. In August 2022, HHS Secretary Becerra invited governors, “in light of ... *Dobbs*,” to apply for Medicaid 1115 waivers to use federal funding to “expand access” to abortion.¹¹ Becerra said this was “a priority for HHS.”¹²

⁹ *See, e.g.*, Consolidated Appropriations Act, 2023, Pub. L. No. 117-328, § 506(a)-(b), 136 Stat. 4459, 4908.

¹⁰ Application of the Hyde Amend. to the Provision of Transp. for Women Seeking Abortions, 46 Op. O.L.C. ____ (Sept. 27, 2022), <https://perma.cc/QTQ3-TBT6>.

¹¹ Letter from Xavier Becerra, Sec’y, HHS, and Chiquita Brooks-LaSure, Adm’r, CMS, to Governors (Aug. 26, 2022), <https://perma.cc/9WRA-3DEU>.

¹² *Id.*

Military Funds. In October 2022, the Department of Defense (DOD) announced that, despite the statutory prohibition of using military funds for abortion, *see* 10 U.S.C. §1093, DOD would transport service members to obtain abortions and pay for its doctors to get abortion licenses. *See* EPPC Br. at 14. The Biden administration claimed a “foundational, sacred obligation” to ensure DOD personnel can access elective abortions.¹³

C. Turned Hospital Emergency Rooms into Abortion Clinics

Weeks after *Dobbs*, HHS’s Centers for Medicare and Medicaid Services (CMS) issued new guidance and Becerra sent a letter to healthcare providers claiming that the Emergency Medical Treatment and Labor Act (EMTALA) could require physicians to perform or complete abortions and preempt state abortion laws. *See* EPPC Br. at 16.

EMTALA never mentions abortion and no prior administration has declared that EMTALA mandates abortions. *See Texas v. Becerra*, 89 F.4th 529, 546 (5th Cir. 2024) (“EMTALA does not mandate medical

¹³ White House, Press Briefing by Press Sec’y Karine Jean-Pierre and NSC Coordinator for Strategic Communications John Kirby (July 17, 2023), <https://perma.cc/9ANX-XC5P>.

treatments, let alone abortion care, nor does it preempt [state] law.”), *cert. denied* No. 23-1076 (U.S. Oct. 7, 2024). In contrast, EMTALA explicitly acknowledges the “unborn child” four times, requiring hospitals to stabilize both the mother *and* her unborn child. 42 U.S.C. §§1395dd(c)(1)(A)(ii), (c)(2)(A), (e)(1)(A)(i), (e)(1)(B)(ii).

D. Turned VA Hospitals into Abortion Clinics

In September 2022, the U.S. Department of Veterans Affairs (VA) issued an Interim Final Rule (IFR), finalized March 2024, claiming that the VA could provide abortions at VA hospitals and clinics in any state, for any reason, through all nine months of pregnancy, regardless of any state abortion laws. *See* EPPC Br. at 19.

Never mind that the Veterans Health Care Act of 1992 bars the VA from providing abortions and the Assimilative Crimes Act affirms that state criminal laws (including laws prohibiting abortion and regulating the practice of medicine) apply to actions within federal government buildings. *See id.* at 20-21.

E. Turned the U.S. Postal Service into an Abortion Drug Delivery Service

After *Dobbs*, Biden directed Becerra to ensure women have “access” to abortion drugs “no matter where they live”¹⁴ and to make these drugs “as widely accessible as possible,” including by mail.¹⁵

Federal law prohibits using the mail to transport abortion drugs. 18 U.S.C. §§1461-62. Nevertheless, the Department of Justice claimed in December 2022 that federal law does not restrict mailing abortion drugs when the sender “lacks the intent that the recipient of the drugs will use them unlawfully.”¹⁶ As the Fifth Circuit rightly observed, HHS is essentially arguing that federal law “does not mean what it says it means.” *All. for Hippocratic Med. v. FDA*, No. 23-10362, 2023 WL 2913725, at *20–21 (5th Cir. Apr. 12, 2023) (per curiam), *overruled on*

¹⁴ White House, FACT SHEET: President Biden to Sign Memorandum on Ensuring Safe Access to Medication Abortion (Jan. 22, 2023), <https://perma.cc/U9Q8-S9QT>.

¹⁵ White House, FACT SHEET: President Biden Announces Actions in Light of Today’s Supreme Court Decision on *Dobbs v. Jackson Women’s Health Organization* (June 24, 2022), <https://perma.cc/53SQ-VM42>.

¹⁶ Application of the Comstock Act to the Mailing of Prescription Drugs That Can Be Used for Abortions, 46 Op. O.L.C. ___, slip op. at 1–2 (Dec. 23, 2022), <https://perma.cc/9VEU-L96K>.

other grounds, 602 U.S. 367, 374 (2024) (finding no standing and not weighing in on the merits).

F. Turned Pharmacies into Abortion Drug Dispensaries

Three days after Biden directed HHS “to protect and expand access to ... medication abortion,”¹⁷ HHS issued new guidance claiming pharmacies must stock and dispense abortion drugs under Section 1557 of the Affordable Care Act (ACA), which prohibits sex discrimination.¹⁸

HHS ignored that the ACA does not preempt state abortion laws, 42 U.S.C. §18023(c), and that Title IX, incorporated into Section 1557 by reference, does not require any entity to provide abortion services, 20 U.S.C. §1688.

As a federal district court reviewing Texas’ challenge to this guidance noted, the Biden administration “has, before and since *Dobbs*, openly stated its intention to operate by fiat to find non-legislative workarounds to Supreme Court dictates,” which amounts to “a breach of

¹⁷ Exec. Ord. No. 14,076, Protecting Access to Reprod. Healthcare Servs., 87 Fed. Reg. 42,053 (July 8, 2022).

¹⁸ Press Release, HHS, HHS Issues Guidance to the Nation’s Retail Pharmacies Clarifying Their Obligations to Ensure Access to Comprehensive Reproductive Health Care Services (July 13, 2022), <https://perma.cc/67LZ-JQTS>.

constitutional constraints.” *Texas v. HHS*, 681 F.Supp.3d 665, 684 (W.D. Tex. 2023).

G. Turned HIPAA’s Privacy Protections into a Shield Against Laws Regulating Abortion

Under HIPAA, “A covered entity may ... disclose [protected health information (PHI)] to the extent that such ... disclosure is required by law and the ... disclosure complies with and is limited to the relevant requirements of such law.” 45 C.F.R. §164.512(a)(1). But HHS’s post-*Dobbs* HIPPA Privacy Rule, finalized April 2024, created byzantine new procedures that covered entities must navigate before they can comply with lawful requests for PHI tangentially related to “reproductive health care.”¹⁹

For example, a hospital cannot comply with “a court ordered warrant demanding PHI potentially related to reproductive health care” unless law enforcement convinces the hospital that the “reproductive health care” at issue “was not lawful.”²⁰ If the police decline to elaborate

¹⁹ 89 Fed. Reg. 32,976.

²⁰ *Id.* at 33,032.

because “doing so would jeopardize an ongoing criminal investigation,” HHS says the hospital must refuse to comply.²¹

* * *

The Supreme Court’s direction in *Dobbs* was clear: the issue of abortion is returned “to the people and their elected representatives.” But, as documented above, the executive branch, including the EEOC, ignored that direction and weaponized federal law, like the PWFA, to promote a broad abortion-access agenda. As such, the Bishops are likely to succeed on the merits.

²¹ *Id.*

CONCLUSION

The Court should grant the Bishops' motion.

Respectfully submitted,

s/ Rachel N. Morrison

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CERTIFICATE OF COMPLIANCE

This brief complies with the word limit of Fed. R. App. P. 29(a)(5) because this brief contains 2,224 words, excluding parts of the brief exempted by Fed. R. App. P. 32(f) and 5th Cir. R. 32.2.

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in Microsoft Word for Mac Version 16.99.1 using a proportionally spaced typeface, 14-point Century Schoolbook.

Dated: July 28, 2025

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CERTIFICATE OF SERVICE

I hereby certify that on August 4, 2025, I electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit using the appellate CM/ECF system. I certify that all participants in the case are registered CM/ECF users, and that service will be accomplished by the CM/ECF system.

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