24-2249

United States Court of Appeals for the Eighth Circuit

STATES OF TENNESSEE, ARKANSAS, ALABAMA, FLORIDA, GEORGIA, IDAHO, INDIANA, IOWA, KANSAS, MISSOURI, NEBRASKA, NORTH DAKOTA, OKLAHOMA, SOUTH CAROLINA, SOUTH DAKOTA, UTAH, and WEST VIRGINIA,

Plaintiffs-Appellants,

v.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Defendant-Appellee.

On Appeal from the United States District Court
for the Eastern District of Arkansas

BRIEF FOR STATES OF NEW YORK, ARIZONA, CALIFORNIA, COLORADO, CONNECTICUT, DELAWARE, HAWAI'I, ILLINOIS, MAINE, MARYLAND, MASSACHUSETTS, MICHIGAN, MINNESOTA, NEVADA, NEW JERSEY, NEW MEXICO, NORTH CAROLINA, OREGON, PENNSYLVANIA, RHODE ISLAND, VERMONT, WASHINGTON, AND WISCONSIN, AND THE DISTRICT OF COLUMBIA AS AMICI CURIAE IN SUPPORT OF APPELLEE AND AFFIRMANCE

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INTRODUCTION AND INTERESTS OF AMICI

Amici States of New York, Arizona, California, Colorado, Connecticut, Delaware, Hawai'i, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont, Washington, and Wisconsin, and the District of Columbia submit this brief in support of defendant-appellee Equal Employment Opportunity Commission and the challenged regulation, which implements the Pregnant Workers Fairness Act of 2022 (PWFA).[1] *See* Regulations to Implement the Pregnant Workers Fairness Act, 88 Fed. Reg. 54,714 (Aug. 11, 2023). Amici take no position as to whether plaintiffs-appellants have standing to bring this action. However, if the Court determines that plaintiffs have standing and chooses to reach the merits of their request for preliminary relief, it should deny such request.

The PWFA requires that employers provide pregnant and postpartum workers with reasonable accommodations to retain their employment and avoid health risks unless doing so would create an

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[1] *See* Pub. L. No. 117-328, 136 Stat. 6084 (2022) (codified at 42 U.S.C. § 2000gg–2000gg-6).

undue hardship to the employer. At Congress's direction, the Commission promulgated rules to implement the PWFA and provided interpretive guidance to employers.

The PWFA is a landmark law that was passed with bipartisan support. Nearly 57 percent of all women in the United States are part of the current labor force.[2] Approximately 85 percent of female workers will become pregnant at some point during their careers and most pregnant persons will work throughout their pregnancy. Moreover, nearly three-quarters of women will return to the workforce within months after giving birth. Supporting the ability of pregnant and postpartum workers to remain in the workforce through reasonable accommodations is critical to the nation's economy. Pregnant and postpartum employees fill important jobs in vital sectors and contribute to the public fisc by, among other things, purchasing goods and services and paying taxes. The economic contributions of pregnant and postpartum employees promote the long-

[2] Although much of the available statistical data focuses on women's participation in the workforce, amici recognize that transgender and nonbinary individuals may also become pregnant and underscore that all pregnant persons are entitled to the protections of the PWFA and the Commission's regulations.

term stability and well-being of families and communities, including millions of young children, disabled persons, and the elderly.

In this action, plaintiffs challenge one aspect of the Commission's implementing regulations—the requirement that employers provide reasonable accommodations to all persons whose pregnancies have terminated, including by miscarriage, stillbirth, or abortion. Plaintiffs, however, take issue only with the requirement that those accommodations extend to abortion. Contrary to plaintiffs' arguments, the Commission was not required to interpret the statutory term "pregnancy, childbirth, or related medical conditions" to encompass conditions related only to viable pregnancies or live births. Courts and the Commission have long interpreted an identical term in the Pregnancy Discrimination Act to prohibit discrimination based on a range of pregnancy-related conditions, including a person's decision to terminate or not to terminate a pregnancy, and plaintiffs offer no persuasive reason to depart from that interpretation here.

In addition, plaintiffs grossly overstate the consequences of the Commission's rule. Nothing in the regulation requires employers to pay for any employee to have an abortion or to enable abortions that are illegal under state law. All the rule requires is for employers to reasonably

accommodate workers whose pregnancies have terminated by abortion; such an accommodation is likely achieved in most instances by providing leave either to attend a medical appointment or for recovery. Plaintiffs do not contest that the PWFA requires comparable accommodations for a person whose pregnancy terminates by miscarriage or stillbirth and offer no statutory basis to distinguish between such individuals and a person whose pregnancy has terminated by abortion.

ARGUMENT

POINT I

THE PREGNANT WORKERS FAIRNESS ACT PROVIDES CRITICAL WORKPLACE PROTECTIONS

According to the U.S. Bureau of Labor Statistics, nearly 77 million women are currently in the national labor force.[3] Approximately 85 percent of women in the workforce will experience pregnancy at some point during their careers.[4] Nearly 70 percent of pregnant employees work throughout their pregnancy, and most people who give birth return to the workforce within months after childbirth.[5]

Notwithstanding state and federal efforts to address the issue, workplace pregnancy discrimination continues to be pervasive and

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[3] Bureau of Lab. Stat., U.S. Dep't of Lab., *Labor Force Participation for Women Highest in the District of Columbia in 2022* (Mar. 7, 2023). (For authorities available on the internet, full URLs appear in the Table of Authorities.)

[4] Nat'l P'ship for Women & Fams., Fact Sheet, *The Pregnant Workers Fairness Act* 3 (Feb. 2021).

[5] *See* Jessica Mason & Katherine Gallagher Robbins, Nat'l P'ship for Women & Fams., *Discrimination While Pregnant* (Oct. 2022); Nancy L. Marshall & Allison J. Tracy, *After the Baby: Work-Family Conflict and Working Mothers' Psychological Health*, 58 Fam. Rels. 380 (Sept. 24, 2009); Lynda Laughlin, U.S. Census Bureau, Household Econ. Studies No. 70-128, *Maternity Leave and Employment Patterns of First-Time Mothers, 1961-2008* (Oct. 2011).

harmful. Thousands of pregnant and postpartum persons struggle to obtain reasonable accommodations that would allow them to maintain their jobs while safely managing their pregnancies and childbirths. Many birthing parents have left or considered leaving their jobs due to the lack of accommodation or fear of discrimination.[6] Indeed, only 60 percent of women with children under the age of 3 are currently employed, with the remainder either unemployed or out of the labor force entirely.[7] By comparison, nearly 72 percent of women with children between the ages of 6 and 17 are currently employed.[8]

Job loss due to pregnancy discrimination not only impoverishes individual workers and their families when it happens, but can also affect their economic security for decades, as workers lose access to various benefits such as retirement contributions, disability benefits, seniority, pensions, social security contributions, and life insurance at a time when they need these benefits most. At the same time, pregnant workers who

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[6] Ben Gitis et al., Bipartisan Pol'y Ctr., *1 in 5 Moms Experience Pregnancy Discrimination in the Workplace* (Feb. 11, 2022).

[7] Bureau of Lab. Stat., U.S. Dep't of Lab., *Women in the Labor Force: A Databook*, tbl. 6 (Apr. 2023).

[8] *Id.*

remain in their jobs and work without reasonable accommodations face risks to their physical, mental, and emotional health, which can result in severe adverse medical impacts including death.

The consequences for workers forced to decide between keeping their jobs and protecting their health are acutely felt by low-income persons and workers of color. Nearly one in six pregnant workers work in low-paying jobs, with Black and Latinx pregnant workers disproportionately represented.[9] Low-paying jobs are more likely to be physically demanding and often have a higher need for accommodations.[10] Yet such jobs also offer far less flexibility in scheduling work shifts to accommodate pregnancy-related limitations, such as need for breaks, and are less likely to offer paid leave in connection with childbirth.[11] Due at least in part to these factors, poor workers and persons of color are much more

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[9] Jasmine Tucker et al., Nat'l Women's Law Ctr., *Pregnant Workers Need Accommodations for Safe and Health Workplaces* 4 (Oct. 2021).

[10] *See id.* at 3-4.

[11] *Id.* at 4.

likely to suffer negative health outcomes during pregnancy than white workers.[12]

Enacted in 2022, the PWFA is a landmark civil rights statute that requires covered employers to provide pregnant and postpartum workers with "reasonable accommodations to the known limitations related to . . . pregnancy, childbirth, and related medical conditions" unless doing so would pose an undue hardship to the employer. *See* 42 U.S.C. § 2000gg-1(1). The statute also prohibits employers from retaliating against workers who request or use a reasonable accommodation and requires employers to engage in an interactive process to determine the appropriate accommodation. *Id.* § 2000gg-1(2)-(5).

The PWFA provides substantial protections beyond those provided by preexisting federal law and fills in many gaps left by inconsistent state law protections.[13] For example, the federal Pregnancy Discrimination Act

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[12] U.S. Off. of the President, *Blueprint for Addressing the Maternal Health Crisis* 15 (June 2022); Kate Kennedy-Moulton et al., *Maternal and Infant Health Inequality: New Evidence from Linked Administrative Data* 5 (Nat'l Bureau of Econ. Rsch. No. 30,693, Nov. 2022).

[13] For a table of relevant state law protections, see Implementation of the Pregnant Workers Fairness Act, 89 Fed. Reg. 29,096, 29,170-71 (Apr. 19, 2024).

requires employers to provide temporary accommodations to pregnant workers only if the worker can identify nonpregnant employees who are "similar in their ability or inability to work" and have already received accommodations. 42 U.S.C. § 2000e(k); *see Young v. United Parcel Serv., Inc.*, 575 U.S. 206, 229-30 (2015). The federal Family and Medical Leave Act, 29 U.S.C. § 2601 et seq., requires employers to offer unpaid time off for pregnancy and childbirth, but millions of workers are statutorily ineligible for its protections and many others are simply unable to afford taking advantage of them.[14] The federal Americans with Disabilities Act requires employers to provide an accommodation to certain pregnant workers who have a disability related to the pregnancy, but the statute does not recognize pregnancy itself as a disability. *See* 42 U.S.C. § 12102(2), (4); 29 C.F.R. § 1630.2(h). Finally, various federal provisions require accommodations for lactating employees, but they provide specific and limited protections and do not apply equally across industries.[15]

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[14] *See* Scott Brown et al., *Employee and Worksite Perspectives of the Family and Medical Leave Act: Executive Summary for Results from the 2018 Surveys* 3 (July 2020).

[15] *See* Wage & Hour Div., U.S. Dep't of Lab., Fact Sheet No. 73, *FLSA Protections for Employees to Pump Breast Milk at Work* (Jan. 2023).

POINT II

THE COMMISSION REASONABLY INTERPRETED THE PREGNANT WORKERS FAIRNESS ACT TO REQUIRE REASONABLE ACCOMMODATIONS FOR ABORTION CARE

In the PWFA, Congress directed the Commission to promulgate implementing regulations, including "examples of reasonable accommodations addressing known limitations related to pregnancy, childbirth, or related medical conditions." 42 U.S.C. § 2000gg-3(a). In September 2023, the Commission issued a notice of proposed rulemaking addressing each of the relevant statutory terms and providing a nonexhaustive list of examples of reasonable accommodations for a variety of situations. *See* Regulations to Implement the Pregnant Workers Fairness Act, 88 Fed. Reg. 54,714. In April 2024, the Commission finalized the rule, which was scheduled to take effect on June 18, 2024. *See* Implementation of the Pregnant Workers Fairness Act, 89 Fed. Reg. 29,096 (Apr. 19, 2024).

In this lawsuit, plaintiffs challenge part of one definition contained in the rule—namely the Commission's explanation that the term "pregnancy, childbirth, or related medical conditions" includes, among other things, "termination of pregnancy, including via miscarriage, stillbirth, or abortion." 29 C.F.R. § 1636.3(b); *see also* 89 Fed. Reg. at 29,191 (portion

of interpretive guidance discussing abortion as a "related medical condition"). Contrary to plaintiffs' cursory argument (Br. for Appellants (Br.) at 46-51), the Commission's interpretation is entirely consistent with the PWFA's text and purposes, as well as with decades of case law interpreting that same term in the context of the Pregnancy Discrimination Act.

First, plaintiffs ignore that, in requiring reasonable accommodations for "known limitations related to the pregnancy, childbirth, or related medical conditions," the statutory text incorporates a definition of "limitations" as including any "physical or mental condition *related to, affected by, or arising out of pregnancy*," 42 U.S.C. § 2000gg(4) (emphasis added). An employee's limitation (i.e., the unavailability to work during usual hours) resulting from the need to attend medical appointments or physically recover from the termination of a pregnancy falls well within the plain language of this expansive statutory definition.

The Commission's interpretation is also consistent with the meaning of "related" as used in the term "related medical condition." As this Court has explained, the term "related" has a "common meaning[] sufficiently clear to be applied." *Highwoods Props., Inc. v. Executive Risk Indem., Inc.*, 407 F.3d 917, 924 (8th Cir. 2005). In *Highwoods Properties*, for example,

this Court looked to the *Merriam-Webster Collegiate Dictionary*, which defines "related" as "connected by reason of an established or discoverable relation" and defines "relation" as "an aspect or quality (as resemblance) that connects two or more things or parts as being or belonging or working together or as being of the same kind" to conclude that two lawsuits involving communications to shareholders arising from the same merger are sufficiently "related" for purpose of insurance coverage. *Id.; see also Gregory v. Home Ins. Co.*, 876 F.2d 602, 606 (7th Cir. 1989) ("[T]he common understanding of the word 'related' covers a very broad range of connections, both causal and logical"). As noted below (at 17-18), courts routinely interpret the meaning of "related" in the context of the Pregnancy Discrimination Act in accordance with this plain meaning.

Faced with the challenging task of explaining how the termination of a pregnancy is unrelated to that pregnancy, plaintiffs instead suggest (Br. at 47) that an abortion is not a "condition" but rather a "procedure." However, the PWFA's requirement to accommodate employees' "limitations" expressly incorporates any "physical or mental condition related to, affected by, or arising out of" pregnancy—which would plainly encompass limitations resulting from the need to obtain, as well as recover

from, a range of medical procedures or treatments for either the condition of pregnancy or the related medical condition of pregnancy loss (whether through miscarriage, stillbirth, or abortion). Indeed, plaintiffs do not contest that an employee is entitled to a reasonable accommodation in connection with a miscarriage or stillbirth but offer no statutory basis for treating persons whose pregnancies have terminated by abortion differently. In addition, plaintiffs fail to explain how the PWFA could possibly achieve its goals if employees cannot receive accommodations for pregnancy- or childbirth-related procedures or medical treatments. For example, if plaintiffs' reading of the statute were correct, an employee might not be able to ask for a reasonable accommodation to facilitate attendance at a prenatal ultrasound appointment or gestational diabetes screening.

Alternatively, plaintiffs contend that an abortion is not a "medical" condition, to the extent it is an "elective" procedure. Br. at 47; *see also id.* at 50-51. But this contention is a distinction without a difference. Numerous other routine procedures relating to pregnancy and childbirth could equally be characterized as "elective"—including certain prenatal screenings, caesarian deliveries, induction of labor, and episiotomy.

Plaintiffs do not challenge the Commission's determination that accommodations related to undergoing such procedures are encompassed within the PWFA. Ultimately, the term "elective abortion" is not recognized by the medical community,[16] and instead reflects plaintiffs' disapproval of certain reasons an individual might elect to terminate a pregnancy. But plaintiffs' policy-based decisions for incorporating certain limits on abortions within their States do not define accepted medical practice.

For example, people often obtain abortions for medical reasons that do not qualify for the narrow health exceptions offered by plaintiffs and similarly situated States.[17] As numerous widely reported stories have revealed, purported health exceptions to abortion bans fall far short of encompassing all of the medical reasons a person may choose to termi-

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[16] Am. Coll. of Obstetricians & Gynecologists, *ACOG Guide to Language and Abortion* 2 (Sept. 2023).

[17] Seven States, including plaintiffs Arkansas, Idaho, Oklahoma, and South Dakota, offer no express health exception at all. *See* Ivette Gomez et al., KFF, *Abortions Later in Pregnancy in a Post*-Dobbs *Era*, fig. 5 (Feb. 21, 2024). And as for the States that do have health exceptions to abortion bans, most are defined extremely narrowly in a way that chills providers from offering abortion care in all but the most dangerous instances. For example, plaintiff Georgia allows an abortion only "to prevent the death of the pregnant woman or the *substantial and irreversible* physical impairment of a major bodily function." Ga. Code Ann. § 16-12-141(a)(3) (emphasis added).

nate a pregnancy.[18] For example, a recent study of maternal morbidity at two Texas hospitals evaluated pregnant patients who presented at a hospital with severe complications but received observation-only care until they developed an immediate threat to their life, their fetus no longer had cardiac activity, or they spontaneously went into labor. The rate of serious maternal morbidity for these Texas patients (57 percent) was nearly double the rate for patients with similar complications in other States who were able to immediately terminate their pregnancies (33 percent).[19] *Cf. Moyle v. United States*, 144 S. Ct. 2015, 2017 (2024) (Kagan, J., concurring) (noting record evidence showing that "hospitals in Idaho have had to airlift medically fragile women to other States to receive abortions needed to prevent serious harms to their health . . .

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[18] *See* Daniel Grossman et al., ANSIRH, *Care Post-Roe*: *Documenting Cases of Poor-Quality Care Since the* Dobbs *Decision* 7-9 (May 2023); Kavitha Surana, *Doctors Warned Her Pregnancy Could Kill Her. Then Tennessee Outlawed Abortion*, ProPublica (Mar. 14, 2023) (identifying in "news articles, medical journal studies and lawsuits . . . at least 70 examples across 12 states of women with pregnancy complications who were denied abortion care or had the treatment delayed since Roe was overturned").

[19] Anjali Nambiar et al., Rsch. Letters, *Maternal Morbidity and Fetal Outcomes Among Pregnant Women at 22 Weeks' Gestation or Less with Complications in 2 Texas Hospitals After Legislation on Abortion*, 227 Am. J. Obstetrics & Gynecology 648, 649 (2022).

Those transfers measure the difference between the life-threatening conditions Idaho will allow hospitals to treat and the health-threatening conditions it will not . . . ."); *State v. Zurawski*, 690 S.W.3d 644 (Tex. 2024) (holding that medical conditions doctors deemed necessary due to risk to pregnant woman's health and future fertility did not fall within exception to state abortion ban).

More fundamentally, the consequence of plaintiffs' argument—that the PWFA requires accommodation of "medically-necessary" abortions but not "elective" abortions—would transform employers into auditors of their employees' medical treatment decisions. However, as the Commission explained, Title VII (which was modified by the PWFA) has long been interpreted to limit the nature of the inquiries an employer can pose to an employee about an accommodation request. 89 Fed. Reg. at 29,130 n.178. The Rule—in a portion unchallenged by plaintiffs—similarly prohibits employers from making unreasonable inquiries for documentation supporting the accommodation request. *See* 29 C.F.R. § 1636.3(*l*).

Second, as the Commission recognized (*see* 89 Fed. Reg. at 29,099), Congress's use of the term "pregnancy, childbirth, or related medical conditions" in the PWFA mirrors the use of the same term in the Preg-

nancy Discrimination Act. *See* 42 U.S.C. § 2000e(k). Congress's "repetition of the same language in a new statute indicates, as a general matter, the intent to incorporate its administrative and judicial interpretations as well." *Bragdon v. Abbott*, 524 U.S. 624, 645 (1998); *see also Texas Dep't of Hous. & Cmty. Affs. v. Inclusive Cmtys. Project, Inc.*, 576 U.S. 519, 536 (2015). This statutory-interpretation canon is especially salient here, where the PWFA was enacted to supplement the Pregnancy Discrimination Act's accommodation requirements.

Plaintiffs cannot dispute that the Pregnancy Discrimination Act's definition of "pregnancy, childbirth, or related medical condition" has long been interpreted to prohibit discrimination based on the decision to terminate (or not to terminate) a pregnancy, *see, e.g.*, *Doe v. C.A.R.S. Prot. Plus, Inc.*, 527 F.3d 358, 364 (3d Cir. 2008); *Turic v. Holland Hosp., Inc.*, 85 F.3d 1211, 1214 (6th Cir. 1996); *Ducharme v. Crescent City Déjà vu, LLC*, 406 F. Supp. 3d 548, 556 (E.D. La. 2019), and a range of other conditions and medical treatments relating to pregnancy and childbirth, *Hicks v. City of Tuscaloosa*, 870 F.3d 1253, 1260 (11th Cir. 2017) (lactation); *EEOC v. Houston Funding II, Ltd.*, 717 F.3d 425, 428 (5th Cir. 2013) (same); *Kocak v. Community Health Partners of Ohio, Inc.*, 400 F.3d

466, 470 (6th Cir. 2005) (potential pregnancy); *Reilly v. Revlon, Inc.*, 620 F. Supp. 2d 524, 544 (S.D.N.Y. 2009) (same). This broad interpretation is consistent with the statutory text and purpose of the Pregnancy Discrimination Act, which was "to clarify that the protections of Title VII 'extend to the whole range of matters concerning the childbearing process,' and 'to include the physiological occurrences peculiar to women.'" *Hicks*, 870 F.3d at 1260 (alteration marks omitted) (quoting H.R. Rep. No. 95-948, at 5 (1978); S. Rep. No. 95-331, at 4 (1977)); *see also International Union, United Auto., Aerospace & Agric. Implement Workers of Am., UAW v. Johnson Controls, Inc.*, 499 U.S. 187, 198-99 (1991) (discrimination based on capacity to become pregnant constituted prohibited discrimination based on sex and pregnancy under Title VII as amended by the Pregnancy Discrimination Act).

The only contrary authority cited by plaintiffs (Br. at 49) does not deal with abortion at all, and instead held that the Pregnancy Discrimination Act does not apply to discrimination based on infertility or an employer's decision to exclude insurance coverage for contraception. *See, e.g.*, *Krauel v. Iowa Methodist Med. Ctr.*, 95 F.3d 674, 679-80 (8th Cir. 1996); *In re Union Pac. R.R. Emp. Pracs. Litig.*, 479 F.3d 936, 942 (8th

Cir. 2007). But those decisions turned on facts showing that the conditions in question were not necessarily sex-linked. Indeed, other courts have readily found discrimination based on fertility-related considerations. *See, e.g.*, *Hall v. Nalco Co.*, 534 F.3d 644, 649 (7th Cir. 2008) (employer's practice of terminating employees who took leave for IVF treatment violated the Pregnancy Discrimination Act). As the Commission appropriately explained in this rulemaking, "whether infertility and fertility treatments are covered by the PWFA will be based on the particular circumstances of the situation" because such conditions and the need for related treatment may be experienced by individuals regardless of sex. 89 Fed. Reg. at 29,102.

Third, the Commission's inclusion of abortion in the definition of "related medical condition" reasonably provides equal protection for all employees whose pregnancies have terminated regardless of the reason for that termination. See *supra* at 10-11. Indeed, plaintiffs fail to explain why the requirement to accommodate abortion is so onerous given that employers have to offer comparable (if not more extensive) accommodations to persons who have lost a pregnancy due to miscarriage or stillbirth. *See id.* at 29,104 (explaining that "the type of accommodation that

most likely will be sought under the PWFA regarding an abortion is time off to attend a medical appointment or for recovery").

Finally, plaintiffs greatly overstate the rule's practical effects. (*See* Br. at 51-52.) The regulation specifies that, consistent with the statutory text, the PWFA does not require employers to pay for abortions or provide healthcare benefits for abortion in violation of state law. *See* 89 Fed. Reg. at 29,104, 29,109. Likewise, "[t]he rule does not prescribe when, where, or under what circumstances an abortion can be obtained or what procedures may be used." *Id.* at 29,112. An employer is not required to provide paid leave to an employee obtaining an abortion, and any request for an accommodation under the PWFA is subject to applicable exceptions and defenses, including, for example, those based on undue hardship. *Id.* at 29,104-05. Plaintiffs fail to explain why these protections are insufficient to address their concerns, or why case-by-case adjudication is unlikely to remedy a future hypothetical conflict between the regulation and state law.

CONCLUSION

If this Court determines that plaintiffs have standing to bring this action, it should deny any preliminary relief.

Dated: New York, New York
August 30, 2024

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COMBINED CERTIFICATIONS

Ester Murdukhayeva, an attorney in the Office of the Attorney General of the State of New York, hereby certifies that:

1. Pursuant to Rule 32(a) of the Federal Rules of Appellate Procedure, according to the word count feature of the word processing program used to prepare this brief, the brief contains 3,836 words and complies with the typeface requirements and length limits of Rules 29 and 32(a)(5)-(7) and corresponding local rules.

2. Pursuant to Rule 28A(h) of the Local Rules for the U.S. Court of Appeals for the Eighth Circuit, this document was prepared on a system using CrowdStrike Falcon Sensor antivirus software and no viruses were identified in the file.

3. On August 30, 2024, I electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the appellate CM/ECF system which caused it to be served on all parties.

Dated: New York, New York
August 30, 2024

/s/ Ester Murdukhayeva