No. 25-30398

In the United States Court of Appeals for the Fifth Circuit

UNITED STATES CONFERENCE OF CATHOLIC BISHOPS; SOCIETY OF THE ROMAN CATHOLIC CHURCH OF THE 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

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May 26, 2026

CERTIFICATE OF INTERESTED PERSONS

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.

1. Ethics and Public Policy Center, *Amicus Curiae*

2. Rachel N. Morrison, Counsel for *Amicus Curiae*

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s/ Rachel N. Morrison
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Dated: May 26, 2026

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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 law, culture, and public policy. 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 Pregnant Workers Fairness Act (PWFA), Title VII, the First Amendment, and the Religious Freedom Restoration Act to coerce the Plaintiffs-Appellants (collectively, "Bishops") to accommodate their employees who wish to abort their unborn children, retain employees who violate Catholic Church teaching on abortion, "police" their employees' abortion-related speech, and

[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.

change their workplace policies, practices, and "atmosphere" on abortion. Bishops' Br. at 1, 42, 46.

The EEOC claims it does. Under its reading of the law, the PWFA imposes an abortion-accommodation mandate *sub silentio* on employers across the country. Under the EEOC's mandate, employers are forced to facilitate their employees' abortions without limitation—including eugenic abortions, late-term abortions, and abortions unlawful under state law. (The district court below cabined the mandate to exclude "purely elective" abortions but wrongly held that the mandate covers "abortions stemming from the underlying treatment of a medical condition related to pregnancy." Bishops' Br. at 27.)

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 "even once." Bishops' Br. at 1, 27. Congress did not and would not authorize such a controversial mandate. As even the court below acknowledged, 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, 292 (2022). But, as this Court recently noted, the Biden Administration responded to *Dobbs* by "direct[ing] federal agencies to 'expand access to … abortion.'" *Louisiana by & through Murrill v. FDA*, No. 26-30203, 2026 WL 1194924, at *1 (5th Cir. May 1, 2026) (quoting Exec. Order 14076, 87 Fed. Reg. 42,053 (July 8, 2022)). Just hours after the Supreme Court released its decision, President Joe Biden announced "actions" that his administration would take to counter *Dobbs*.[2] He "committed to doing

[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.

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 through novel interpretations of federal laws, including the PWFA.

This brief summarizes actions that federal agencies took post-*Dobbs* to conveniently discover 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.

For the reasons set out below, and those in the Bishops' brief, this Court should grant the Bishops' request to vacate the abortion-accommodation mandate and enter permanent injunctive relief.

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[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.

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, 292 (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 abortion-accommodation mandate is just one example of this pattern.

A. Turned Workplace Pregnancy Accommodations into an Abortion Mandate.

As detailed more fully in the Bishops' brief, Congress passed the Pregnant Workers Fairness Act (PWFA) with broad bipartisan support after *Dobbs* in December 2022.[4] The "pro-mother, pro-baby" Act[5] filled a gap in employment law by requiring employers, including states, to

[4] Consolidated Appropriations Act, 2023, Pub. L. No.117-328, Division II, 136 Stat. 4459, 6084 (2022) (codified at 42 U.S.C. 2000gg–2000gg-6).

[5] 168 Cong. Rec. S7050 (daily ed. Dec. 8, 2022) (statement of Sen. Cassidy).

provide their employees with "reasonable accommodations" for "the known limitations related to the pregnancy, childbirth, or related medical conditions" unless it poses "an undue hardship" on the employer. 42 U.S.C. § 2000gg-1(1).

When abortion concerns were raised on the Senate floor, both Democrat and Republican Senate co-sponsors Bob Casey and Bill Cassidy rejected the notion that the PWFA required abortion accommodations.[6] Democrat Senator Patty Murray said, "I can't think of a more commonsense, less controversial bill."[7]

Yet, under the EEOC's PWFA Rule, employers—including those who are pro-life—are required to accommodate their employees' abortions, even when unlawful under state law or against the conscience of the employer, and ensure that employees' speech and workplace policies, practices, and atmosphere do not dissuade employees from

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[6] *Id.* (statement of Sen. Casey) ("I want to say for the record, however, that under the act, under the Pregnant Workers Fairness Act, the Equal Opportunity Employment Commission, 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 abortions in violation of State law."); *id.* (statement of Sen. Cassidy) ("I reject the characterization that this would do anything to promote abortion.").

[7] *Id.* at S7049 (statement of Sen. Murray).

seeking an abortion accommodation.[8] The Rule is divorced from the intent of Congress and the text of the PWFA; a recent DOJ report notes that the Act "does not reference abortion" and that the EEOC's rule was "expansive" and went "far beyond the underlying text of the law."[9] Abortion is not a medical condition, much less a pregnancy- or childbirth-related medical condition. *See* Bishops' Br. at 19-23. As the court below noted, the EEOC "exceeded its statutory authority to implement the PWFA and, in doing so, both unlawfully expropriated the authority of Congress and encroached upon the sovereignty of the Plaintiff States under basic principles of federalism." ROA.887.

B. 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 explicitly prohibited Title X funds from being used "in programs where abortion is a method of family planning." Public Health Services Act, 42

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[8] *See* Bishops' Br. at 7, 45-46 (citing EEOC, Implementation of the Pregnant Workers Fairness Act, 89 Fed. Reg. 29,096 (Apr. 19, 2024)).

[9] Task Force to Eradicate Anti-Christian Bias, *Eradicating Anti-Christian Bias within the Federal Government*, at 100 (Apr. 30, 2026), https://perma.cc/SJ5C-TKUN.

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.[10] 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.[11] The grants were touted by the Biden administration as part of its post-*Dobbs* campaign to "defend," "protect," and "expand access" to "reproductive care."[12]

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

[11] Office of Population Affs., Office of the Asst. Sec'y for Health, HHS, Title X Family Plan. Program, https://perma.cc/K9CD-MAAW; *see also* Press Release, HHS, HHS Awards $256.6 Million to Expand and Restore Access to Equitable and Affordable Title X Family Planning Services Nationwide (Mar. 30, 2022), https://perma.cc/LM9A-NFPU; HHS, Ensuring Access to Equitable, Affordable, Client-Centered, Quality Family Plan. Servs., 86 Fed. Reg. 56,144, 56,145 (Oct. 7, 2021) (removing physical and financial separation requirement for abortion and federally funded family planning services).

[12] White House, FACT SHEET: White House Task Force on Reproductive Healthcare Access Announces New Actions and Marks the

In 2023, HHS 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 would not counsel or refer for abortions that are illegal under state law. *See* Tenn. Br. at 15, *Tennessee v. Becerra*, 117 F.4th 348 (6th Cir. 2024) (No. 24-5220) (cleaned up), *vacated and rem'd sub nom. Tennessee v. Kennedy*, No. 25-162 (U.S. Jan. 20, 2026); *Oklahoma v. HHS*, 107 F.4th 1209, 1231 (10th Cir. 2024) (Federico, J., dissenting), *cert. granted, judgment vacated sub nom. Oklahoma v. HHS*, No. 24-437 (2025). Particularly egregious, the termination came shortly after HHS determined that Tennessee's Health Department was "the only agency in the state capable of administering Title X funds with integrity." Tenn. Br. at 14-15, *Tennessee*, 117 F.4th 348.

In April 2023, HHS issued a Notice of Funding Opportunity to "establish a safe and secure national hotline" to provide information about abortion to Title X patients—all on the taxpayer's dime.[13]

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.

[13] White House, FACT SHEET: Biden-Harris Administration Announces Actions to Protect Patient Privacy at the Third Meeting of

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."[14] *See Oklahoma*, 107 F.4th at 1233-37 (Federico, J., dissenting) (concluding termination of Oklahoma's Title X grant under HHS's interpretation of the Title X rule violated the Weldon Amendment); *but see id.* at 1228 (majority op.) (holding Oklahoma did not show likelihood of success on claims involving violations of Spending Clause, Weldon Amendment, and APA). Ironically, HHS is tasked with enforcing violations of the Weldon Amendment (as well as other health care conscience protection laws).[15]

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the Task Force on Reproductive Healthcare Access (Apr. 12, 2023), https://perma.cc/3DV5-G8DH.

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

[15] *See* Off. for Civ. Rts., HHS, *Conscience and Religious Nondiscrimination* (last reviewed Jan. 10, 2023), https://perma.cc/Y94J-KHDG.

C. Turned Taxpayer Dollars into Abortion Funds

The Biden administration ignored federal law by mandating that taxpayer dollars fund abortion.

Hyde Amendment. The Hyde Amendment, a yearly appropriations rider since 1976, ensures no HHS funds "shall be expended for any abortion" or "for health benefits coverage that includes coverage of abortion."[16] But post-*Dobbs*, the Department of Justice claimed taxpayer dollars could be used to fund abortion.[17]

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

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

[17] *Application of the Hyde Amendment to the Provision of Transportation for Women Seeking Abortions*, 46 Op. O.L.C. ___ (Sept. 27, 2022), https://perma.cc/QTQ3-TBT6.

treatments.[18] A subsequent White House Fact Sheet confirmed that this guidance authorizes sick leave for abortion travel.[19]

Medicaid. In August 2022, HHS Secretary Xavier Becerra invited governors, "in light of … *Dobbs*," to apply for Medicaid 1115 waivers to use federal funding to "expand access" to abortion.[20] Becerra said this was "a priority for HHS."[21]

Military Funds. In October 2022, the Department of Defense (DOD) announced that, despite the statutory prohibition on 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

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[18] OPM, Availability of Sick Leave for Travel to Access Med. Care (June 27, 2022), https://perma.cc/J4U8-MHDD; *see also* Letter from Marco Rubio, U.S. Sen., to Kiran Ahuja, Dir., OPM (July 5, 2022), https://perma.cc/YL64-GXGY (stating paid sick leave for abortion would violate the Hyde Amendment, and asking for clarification that the policy does not cover travel for abortion).

[19] White House, FACT SHEET: President Biden to Sign Executive Order Protecting Access to Reproductive Health Care Services (July 8, 2022), https://perma.cc/NHE6-D5J9.

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

[21] *Id.*

abortion licenses.[22] The Biden administration claimed a "foundational, sacred obligation" to ensure DOD personnel can access elective abortions.[23]

TANF. In October 2023, HHS proposed regulations for the Strengthening Temporary Assistance for Needy Families (TANF) program that singled out pro-life pregnancy centers as an example of organizations that are ineligible for TANF funding because they likely do not accomplish a TANF purpose.[24] Pregnancy centers, however, can and do readily accomplish TANF's four statutorily defined purposes: (i) providing "assistance to needy families so that children may be cared for in their own homes or in the homes of relatives"; (ii) ending "the dependence of needy parents on government benefits by promoting job preparation, work, and marriage"; (iii) preventing and reducing "the

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[22] Mem. from Lloyd Austin, Sec'y of Def., DOD, to Senior Pentagon Leadership, Commanders of the Combatant Commands, Def. Agency and DOD Field Activity Dirs., on Ensuring Access to Reprod. Health Care (Oct. 20, 2022), https://perma.cc/R4PY-R2AS.

[23] 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.

[24] HHS, Strengthening Temp. Assistance for Needy Families (TANF) as a Safety Net and Work Program, 88 Fed. Reg. 67,697, 67,705 (Oct. 2, 2023).

incidence of out-of-wedlock pregnancies" and establishing "annual numerical goals for preventing and reducing the incidence of these pregnancies"; and (iv) encouraging "the formation and maintenance of two-parent families." 42 U.S.C. § 601(a). Public comments challenged the administration's mischaracterization of pregnancy centers.[25] Days before President Biden left office, HHS withdrew its proposal.[26]

D. 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), 42 U.S.C. § 1395dd, could require physicians

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[25] *See, e.g.*, Press Release, EPPC Scholars and Others Submit Comments on HHS's Proposed TANF Program Rule that Targets Pro-Life Pregnancy Centers (Dec. 6, 2023), https://perma.cc/Y8YS-UGTG (collecting comments including from EPPC, members of Congress, Advancing American Freedom, Family Research Council, National Institute of Family and Life Advocates, and Susan B. Anthony Pro-Life America).

[26] HHS, Strengthening Temporary Assistance for Needy Families (TANF) as a Safety Net and Work Program; Withdrawal, 90 Fed. Reg. 3,131 (Jan. 14, 2025), https://perma.cc/SN3E-Z575.

to perform or complete abortions and preempt state abortion laws.[27] Secretary Becerra personally sent a letter to healthcare providers reiterating these purported obligations under EMTALA.[28]

EMTALA, enacted by Congress in 1986, ensures patients can receive emergency services even if they are unable pay by requiring Medicare-funded hospitals to medically screen, stabilize, and appropriately transfer an individual with an "emergency medical condition." 42 U.S.C. § 1395dd. 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 treatments, let alone abortion care, nor does it preempt [state] law."). 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).

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[27] Mem. from CMS, HHS, on Reinforcement of EMTALA Obligations Specific to Patients Who Are Pregnant or Are Experiencing Pregnancy Loss (July 11, 2022) (rev. Aug. 25, 2022), https://perma.cc/ND68-86SK.

[28] Letter from Xavier Becerra, HHS Sec'y, to Health Care Providers (July 11, 2022), https://perma.cc/3DD4-RWVP.

Nevertheless, under HHS's novel theory, DOJ sued the State of Idaho, claiming the state's abortion law was preempted by EMTALA. *United States v. Idaho*, 623 F. Supp. 3d 1096 (D. Idaho 2022); *see also Moyle v. United States*, 603 U.S. 324, 348 (2024) (Alito, J., dissenting) (EMTALA "clearly ... does not require hospitals to perform abortions in violation of Idaho law."). In 2025, HHS withdrew its EMTALA guidance and Becerra's letter,[29] explaining that "[b]y its own terms, EMTALA applies when the health of the 'pregnant woman' or 'her unborn child' is 'in serious jeopardy.'"[30]

E. 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.[31] The VA claimed it had "good cause" to issue an IFR

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[29] CMS, HHS, CMS Statement on Emergency Medical Treatment and Labor Act (EMTALA) (Jun. 3, 2024), https://perma.cc/J9T4-4Y8M.

[30] Letter from Robert F. Kennedy, HHS Sec'y, to Health Care Providers (June 13, 2025), https://perma.cc/3WQG-LW8P.

[31] VA, Reprod. Health Servs., 87 Fed. Reg. 55,287 (Sept. 9, 2022).

and skip advance notice and comment because state pro-life laws allegedly created "serious threats" and "urgent risks" to the lives and health of veterans and their beneficiaries.[32] The VA, however, failed to cite a single case of any woman who faced these alleged "serious threats" or "urgent risks" in either its IFR or final rule, likely because no state abortion law prohibits saving a mother's life.

The VA disregarded Section 106 of the Veterans Health Care Act of 1992, Pub. L. No. 102-585, 106 Stat. 4943 (1992), which bars the VA from providing abortions, and the Assimilative Crimes Act, which affirms that state criminal laws (including laws prohibiting abortion and regulating the practice of medicine) apply to actions within federal government buildings. 18 U.S.C. § 13(a). The Biden DOJ rubberstamped the VA's legal theories; it agreed with the VA that Section 106 was "effectively overt[aken]"—a legal standard the Supreme Court has never before recognized—by a subsequent amendment that neither referenced abortion nor claimed to repeal Section 106.[33]

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[32] *Id.* at 55,288.

[33] *Id.* at 55,289; *see Intergovernmental Immunity for the Department of Veterans Affairs & Its Employes When Providing Certain Abortion Services*, 46 Op. O.L.C. ___, slip op. at 7–8 (Sept. 21, 2022),

DOJ later rescinded its opinion because of its "legal errors" and its reasoning that "was conspicuously shallow in its attention to the text and scope of section 106, among other flaws."[34] The VA subsequently rescinded its rule, explaining that "Congress has never mandated or legislated that VA provide abortions" and that abortion benefits are not necessary to provide life-saving treatment.[35]

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https://perma.cc/7TA2-HBES ("In its recent rule, VA also explained that ... section 106 has effectively been overtaken by subsequent legislation. ... We agree."); *Application of the Assimilative Crimes Act to Conduct of Federal Employees Authorized by Federal Law*, 46 Op. O.L.C. ___, slip op. at 1 (Aug. 12, 2022), https://perma.cc/HR9Q-T5CF.

[34] *Reconsidering the Authority of the Department of Veterans Affairs to Provide Abortion Services*, 49 Op. O.L.C. ___, at 2, 12 (Dec. 18, 2025), https://perma.cc/M5TW-4US2 (withdrawing and superseding portion of opinion that held VA may provide abortion services, but not reconsidering portion of opinion relating to intergovernmental immunity).

[35] VA, Reprod. Health Servs., 90 Fed. Reg. 61,310 (Dec. 31, 2025), https://perma.cc/N7S4-9WNP.

F. 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"[36] and to make these drugs "as widely accessible as possible," including by mail.[37]

Federal law prohibits using the mail to transport abortion drugs. 18 U.S.C. §§ 1461-62. Nevertheless, DOJ 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."[38] 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), *rev'd on other grounds*, 602 U.S. 367, 374 (2024) (finding no standing and not weighing in on the merits);

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

[37] 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.

[38] *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.

see also Br. of EPPC as Amicus Curiae Supporting Resp'ts., *FDA v. All. for Hippocratic Med.*, 602 U.S. 367 (2024) (Nos. 23-235, 23-236) (explaining DOJ's opinion is "poorly supported and unsound").

Following DOJ's post-*Dobbs* novel interpretation of federal law, the U.S. Food and Drug Administration (FDA) formally changed the Risk Evaluation and Mitigation Strategy (REMS) for mifepristone in January 2023 to effectuate its December 2021 decision and allow abortion drugs to be ordered via telehealth without an in-person medical examination, dispensed by retail pharmacies, and shipped nationwide through the mail or common carrier. *See All. for Hippocratic Med. v. FDA.*, 78 F.4th 210, 267-68 (5th Cir. 2023) (Ho, J., concurring in part and dissenting in part) ("The FDA's 2021 Mail-Order Decision violates" section 1461 and section 1462, and the 2023 REMS "doubles down on this violation by permanently eliminating the in-person dispensing requirement."), *rev'd on other grounds and rem'd*, 602 U.S. 367 (2024) (holding, without reaching the merits, that "unregulated parties" plaintiff doctors and medical associations did not have standing). HHS touted the FDA's new REMS in a report marking the 50th Anniversary of *Roe* as one of the

actions the Biden-Harris administration took since *Dobbs* to protect access to abortion.[39]

As Justice Alito recently recognized, the FDA's 2023 REMS were based on "inadequate consideration to patient safety" and part of the Biden administration's "schemes to undermine *Dobbs*" and state abortion laws. *Danco Laboratories, LLC v. Louisiana*, No. 25A1207, 2026 WL 1355522, at *2 (U.S. May 14, 2026). Indeed, a recent and the largest-known study of the health effects of mifepristone-induced abortions by EPPC scholars demonstrated that mifepristone-induced abortion presents severe health risks that are more than 22 times higher than the FDA has acknowledged, and the FDA's elimination of the in-person dispensing requirement makes those risks even higher.[40]

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[39] 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 (listing FDA decision-making as one of HHS's six strategic focuses).

[40] Jamie Bryan Hall & Ryan T. Anderson, *The Abortion Pill Harms Women: Insurance Data Reveals Repeated Abortion Attempts Due to High Failure Rate*, Ethics & Public Policy Center (May 12, 2025), https://perma.cc/3BJJ-833B.

G. Turned Pharmacies into Abortion Drug Dispensaries

Three days after Biden directed HHS "to protect and expand access to … medication abortion,"[41] HHS issued new guidance claiming pharmacies must stock and dispense abortion drugs under Section 1557 of the Affordable Care Act (ACA), 42 U.S.C. § 18116, and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, which prohibit sex and disability discrimination.[42] According to HHS, a pharmacy "may be discriminating" on the basis of sex or disability if it refuses to provide contraception that could act as an abortifacient or fill drugs that can be used for or in conjunction with chemical abortion.[43]

HHS ignored that neither statute nor its regulations state pharmacies are required to stock and dispense abortion drugs. Indeed, the ACA expressly does not preempt state abortion laws, 42 U.S.C.

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[41] Exec. Order 14076, Protecting Access to Reprod. Healthcare Servs., 87 Fed. Reg. 42,053 (July 8, 2022).

[42] HHS, Off. for Civ. Rts., Guidance to Nation's Retail Pharmacies: Obligations under Fed. Civ. Rts. L. to Ensure Access to Comprehensive Reprod. Health Care Servs. (July 13, 2022), https://perma.cc/KTQ5-M7FP.

[43] *Id.*

§ 18023(c), and 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 constitutional constraints." *Texas v. HHS,* 681 F. Supp. 3d 665, 684 (W.D. Tex. 2023). HHS later rescinded its pharmacy guidance because it was "not based on the best reading" of the nondiscrimination statutes.[44]

H. 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* HIPAA Privacy Rule, finalized April 2024, created byzantine new

[44] HHS, Rescission of Guidance to Nation's Retail Pharmacies: Obligations Under Federal Civil Rights Laws To Ensure Nondiscriminatory Access to Health Care at Pharmacies (Issued September 29, 2023), 91 Fed. Reg. 3520 (Jan. 27, 2026), https://perma.cc/XW2G-KBXA.

procedures that covered entities must navigate before they can comply with lawful requests for PHI tangentially related to "reproductive health care."[45]

For example, a hospital could not 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."[46] If the police declined to elaborate because "doing so would jeopardize an ongoing criminal investigation," HHS said the hospital must refuse to comply.[47]

The repercussions of HHS's rule were profound. Given its broad definitions, HIPAA regulations made it unlawful for a covered entity to readily cooperate with police efforts to track down human traffickers and pimps that are "paying for" and "arranging" abortions, including for minors.[48]

This is not hyperbole. HHS admitted that its new rule will "make it more difficult for law enforcement officials to investigate whether

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[45] 89 Fed. Reg. at 32,976.

[46] *Id.* at 33,032.

[47] *Id.*

[48] *Id.* at 33,063.

reproductive health care was unlawful under the circumstances in which it was provided."[49] The proposed rule was even more transparent, citing to a report from a "reproductive justice" group that lamented states are using reports from "designated mandatory reporters" to enforce laws against second and third trimester abortions.[50]

In June 2025, a federal district court vacated the rule finding that it was "'contrary to law' because it unlawfully 'limit[ed]' state public health laws," contravened federal law and statutory authority, and "arrogate[d] to HHS authority not expressly delegated by Congress." *Purl v. HHS*, 787 F. Supp. 3d 284, 296 (N.D. Tex. 2025). As the court recognized, "HHS harnessed HIPAA to constrain *Dobbs*." *Id.* at 299.

I. Turned Clinic Access Protections into Weapon Against Pro-Lifers

The Freedom of Access to Clinic Entrances Act (FACE Act) protects access to both abortion clinics and pro-life pregnancy centers, as well as religious institutions. 18 U.S.C. § 248. After the leak of the Supreme

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[49] *Id.* at 33,018.

[50] HHS, HIPAA Priv. Rule to Support Reprod. Health Care Priv., 88 Fed. Reg. 23,506, 23,509 n.11 (Apr. 17, 2023) (citing Laura Huss, Farah Diaz-Tello, Colleen Samari, *Self-Care, Criminalized: August 2022 Preliminary Findings*, If/When/How (Aug. 1, 2022), at 2-3, https://perma.cc/8ZRQ-D8H8).

Court's *Dobbs* decision in May 2022, attacks on pro-life pregnancy centers and churches increased significantly.[51] Nevertheless, as documented in an April 2026 DOJ report, the Biden administration "weaponized" the FACE Act against pro-lifers resulting in "unfair[] target[ing]" and "biased enforcement."[52] The report reveals that the Biden DOJ: (a) "provided extensive support to abortion clinics, while ignoring and downplaying vandalism and attacks against pregnancy resource centers"; (b) "collaborated with pro-abortion groups to track pro-life activists' First Amendment activity"; (c) "engaged in inappropriate conduct and comments" in FACE Act cases against pro-life defendants; (d) "pursued more severe charges and significantly harsher sentences for peaceful pro-

[51] Investigative reporting by one Catholic news organization documented "a massive uptick in violence against pregnancy care centers": from the *Dobbs* leak in early May through the end of July, the group identified "62 pro-abortion attacks on pregnancy centers," across "26 states." CatholicVote, *CatholicVote Clocks Massive Uptick in Violence Against Pro-Life Clinics* (Aug. 1, 2022), https://perma.cc/WQ7S-8SCZ. "In 2021, by comparison, there was only one such attack reported in the entire year." *Id.*

[52] Office of Legal Policy, DOJ, The Biden Administration's Weaponization of the Freedom of Access to Clinic Entrances Act (Apr. 14, 2026), at 1, 4, https://perma.cc/SJ5C-TKUN.

life defendants than violent pro-abortion defendants"; and (e) "sought to provide funding to pro-abortion groups."[53] These actions were "wrong."[54]

* * *

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 and contravene state pro-life laws. While some of these actions have been corrected, others like the EEOC's abortion-accommodation mandate remain, burdening the Bishop's religious beliefs.

[53] *Id.* at 2-3.

[54] *Id.* at 4.

CONCLUSION

The Court should grant the relief the Bishops seek.

Respectfully submitted,

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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 4,988 words, excluding parts of the brief exempted by Fed. R. App. P. 32(a)(7).

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 16.108.3 using a proportionally spaced typeface, 14-point Century Schoolbook.

Dated: May 26, 2026

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CERTIFICATE OF SERVICE

I hereby certify that on May 26, 2026, I electronically filed the foregoing brief with the Clerk off 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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