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 Division

BRIEF FOR THE STATE OF TEXAS AS AMICUS CURIAE IN SUPPORT OF APPELLANTS

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Certificate of Interested Persons

No. 25-30398

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.

Under the fourth sentence of Fifth Circuit Rule 28.2.1, the State of Texas, as a governmental entity, need not furnish a certificate of interested persons.

/s/ Beth Klusmann
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Introduction and Interest of Amicus Curiae[1]

"No human authority ought, in any case whatever, to control or interfere with the rights of conscience in matters of religion." Tex. Const. art. I, § 6. The People of Texas enshrined this principle in their Constitution in 1845, Tex. Const. of 1845, art. I, § 4, and it has been present ever since. The People have also added to the Texas Constitution's religious guarantees, Tex. Const. art. I, § 6-a, and the Legislature has enacted laws to ensure that the religious freedoms of Texans are protected, Tex. Civ. Prac. & Rem. Code ch. 110. Accordingly, Texas has a well-established interest in safeguarding the religious liberties of its citizens.

The EEOC's rules implementing the Pregnant Workers Fairness Act (PWFA) threaten those freedoms by mandating that religious organizations accommodate employees who choose to have abortions, even if abortion is contrary to the religious tenets of those organizations. As described by Appellants, the rules cause grave concerns that they will be forced to violate their beliefs, which will raise any number of constitutional questions regarding the rights of those organizations to freely practice their faith. One way that the Court can, and should, avoid those questions is by correctly interpreting the religious-organization exemption found in Title VII and incorporated into the PWFA. By its terms, the exemption prohibits the application of the PWFA to religious organizations that make employment decisions based on an

[1] As a State, Texas does not need the consent of the parties or leave of court to file an amicus brief. Counsel for Texas authored this brief in whole. No party or any party's counsel authored any part of this brief, and no person or entity, other than Texas contributed to the preparation and submission of this brief.

individual's religious observances, practices, or beliefs. Properly understood (and assuming the PWFA even applies to abortion), this exemption allows religious organizations opposed to abortion to refuse to accommodate an employee whose practice and beliefs allow her to obtain an abortion.

The EEOC's interpretation, however, renders the religious-organization exemption without effect. According to the EEOC, the religious-organization exemption prohibits only claims of religious discrimination, making it useless with respect to the PWFA, which concerns the failure to accommodate pregnancy, childbirth, and related medical conditions. Thus, to state the EEOC's position is to refute it. The EEOC's reading of the religious-organization exemption offers religious organizations no protection, despite Congress explicitly commanding otherwise.

Religious organizations like Appellants should not have to compromise their religious beliefs by being forced to accommodate employees who violate them. Congress has not mandated such surrender of beliefs but has instead created an exemption for those organizations to freely and fully practice their faiths. The Court should give effect to what Congress has said and hold that the religious-organization exemption applies to all claims under the PWFA.

STATEMENT OF THE CASE

I. Legal Background

The PWFA was passed as part of the Consolidated Appropriations Act of 2023, Pub. L. No. 117-328, 136 Stat. 4459, 6084-89 (2022).[2] It prohibits covered employers from, among other things, failing to "make reasonable accommodations to the known limitations related to the pregnancy, childbirth, or related medical conditions of a qualified employee," unless the accommodation would pose an undue hardship. 42 U.S.C. § 2000gg-1. An employer who fails to accommodate may be liable for damages. *Id.* § 2000gg-2.

Of importance here, Congress provided that "[t]his chapter," that is, the PWFA, "is subject to the applicability to religious employment set forth in section 2000e-1(a) of this title." *Id.* § 2000gg-5(b). Section 2000e-1(a) of title 42 refers to Title VII's exemptions. Title VII, of course, prohibits employment discrimination on the basis of race, color, religion, sex, and national origin. 42 U.S.C. § 2000e-2(a). But Congress exempted certain entities and circumstances from Title VII's coverage. Specifically, section 2000e-1(a) provides that

> This subchapter shall not apply to an employer with respect to the employment of aliens outside any State, or to a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.

[2] As the Court is aware, Texas has challenged whether the Consolidated Appropriations Act was passed with a quorum of the House of Representatives. *Texas v. Blanche*, No. 24-10386. Texas does not repeat those arguments in this brief.

Congress defined "religion" in Title VII to include "all aspects of religious observance and practice, as well as belief." 42 U.S.C. § 2000e(j).

Bringing section 2000e-1(a) into the context of the PWFA, *id.* § 2000e-5(b), means that the PWFA "shall not apply" to a religious organization that acts "with respect to the employment of individuals of a particular religion." *Id.* § 2000e-1(a) (as incorporated by § 2000e-5(b)).[3] Thus, if a religious organization takes an action based on an employee's religious observance, practice, or belief, *id.* § 2000e(j), the PWFA and any accommodation requirement it imposes should not apply.

II. Relevant Procedural History

In 2024, the EEOC finalized rules to implement the PWFA. Implementation of the Pregnant Workers Fairness Act, 89 Fed. Reg. 29,096 (Apr. 19, 2024). The underlying lawsuit challenges the EEOC's rules to the extent they add abortion to the PWFA's protections and require religious organizations to accommodate employees who seek abortions.

As far as the religious-organization exemption goes, the text of the rules breaks no new legal ground: "The PWFA and this part are subject to the applicability to religious employment set forth in section 702(a) of the Civil Rights Act of 1964, 42 U.S.C. 2000e-1(a)." 29 C.F.R. § 1636.7(b). But the EEOC's comments demonstrate that it has an unduly narrow understanding of the scope of the religious-organization exemption. According to the EEOC, Title VII's religious-organization exemption exempts religious organizations only from claims of religious discrimination, but

[3] For readability, this brief will refer to "a religious corporation, association, educational institution, or society" as a "religious organization."

those organizations "are still subject to the law's prohibitions against discrimination on the basis of race, color, sex, and national origin, and they may not engage in related retaliation." 89 Fed. Reg. at 29,146-47 (footnote omitted). Applying that limited interpretation to the PWFA, the EEOC concluded that "the PWFA does not fully exempt qualifying religious organizations from making reasonable accommodations," *Id.* at 29,146, which includes accommodating abortion under the EEOC's rules. Thus, the EEOC will not give a blanket exemption for a religiously motivated refusal to accommodate abortion but will rather consider the merits of any "religious defense" "on a case-by-case basis consistent with the facts presented and applicable law." *Id.* at 29,146-47. The EEOC did not explain the statutory grounds for the assertion of a religious defense or what an employer must demonstrate to be entitled to the defense.

Summary of the Argument

As Appellants have aptly demonstrated, the EEOC's rules implementing the PWFA have many legal flaws. Texas will focus on one: the EEOC's erroneous limitation of the religious-organization exemption. According to the EEOC, when Congress said that "this subchapter" shall not apply, it meant "the part of this subchapter that prohibits religious discrimination" shall not apply. While that atextual reading makes little sense in the context of Title VII, it makes no sense with respect to the PWFA, which contains no prohibition on religious discrimination from which an entity would need to be exempted.

Properly interpreted, the religious-organization exemption prohibits application of Title VII or the PWFA when a religious organization makes an employment decision on the basis of an individual's religion—which includes how an individual chooses to observe or practice his religion or his specific beliefs. This interpretation is not only consistent with the text chosen by Congress, it avoids the constitutional problems that would be raised if religious organizations were required to accommodate employee conduct that is antithetical to their beliefs. It also gives religious organizations the protections intended by Congress, rather than reading the exemption largely out of existence.

The EEOC's reasoning ignores the text and relies on legislative history rather than the words Congress enacted. Its limited approach to the exemption is contrary to the robust freedoms guaranteed by the Constitution and Congress. The Court should reject the EEOC's restricted approach to religious freedom and interpret the religious-organization exemption to apply to claims brought under the PWFA.

ARGUMENT

I. The PWFA's Religious-Organization Exemption Is Not Limited to Claims of Religious Discrimination.

The scope of the religious-organization exemption is broad: "This subchapter shall not apply." 42 U.S.C. § 2000e-1(a). The EEOC's rules narrow it to the point of uselessness, exempting religious organizations from religious-discrimination claims that cannot be brought under the PWFA in the first place. But the EEOC offers no principled reason to read the exemption out of the PWFA or to narrow the language that Congress used to guarantee that religious organizations are not required to violate their religious beliefs. Text, context, and other interpretive doctrines all counsel in favor of a broad protection for religious organizations to act in accordance with their beliefs, not the anemic protection described by the EEOC.

A. The text of section 2000e-1(a) exempts religious organizations from all claims of discrimination under Title VII.

The EEOC's primary error in interpreting section 2000e-1(a), as incorporated into the PWFA, is that it failed to begin with the text of the statute. But that is where the Court must begin: "The preeminent canon of statutory interpretation requires [courts] to 'presume that [the] legislature says in a statute what it means and means in a statute what it says there.'" *BedRoc Ltd., LLC v. United States*, 541 U.S. 176, 183 (2004) (quoting *Conn. Nat. Bank v. Germain*, 503 U.S. 249, 253-54 (1992)). As a result, "[s]tatutory interpretation always begins with the text of the statute," *United States v. Joseph*, 102 F.4th 686, 689 (5th Cir. 2024), and if the statute is unambiguous, it ends there, too, *Kovac v. Wray*, 109 F.4th 331, 335 (5th Cir. 2024).

There is no ambiguity here, as the ordinary meaning of the text is plain. Breaking the religious-organization exemption into manageable pieces, the exemption provides that (1) "[t]his subchapter shall not apply" (2) "to a religious corporation, association, educational institution, or society" (3) "with respect to the employment of individuals of a particular religion" (4) "to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities." The second and fourth pieces are not in dispute in this case, as no one disputes that Appellants are religious organizations that employ individuals to carry out their work. Rather, the questions that require an answer concern the first and third phrases. Properly interpreted, they give Appellants and other religious organizations far more protection than the EEOC asserts.

1. The exemption prohibits application of the entirety of Title VII and the PWFA.

"When interpreting acts of Congress, courts seek the ordinary meaning of the enacted language." *Barr v. SEC*, 114 F.4th 441, 448 (5th Cir. 2024). The ordinary meaning of the first few words in section 2000e-1(a) is not particularly difficult to divine: "This subchapter shall not apply." "This subchapter" is subchapter VI, which is generally referred to as Title VII.[4] 42 U.S.C. §§ 2000e to 2000e-17. And "shall not apply" is categorical—it contains no limitations or exceptions. Thus, when Congress stated that "[t]his subchapter shall not apply," the ordinary meaning

[4] The Civil Rights Act of 1964 contained eleven titles. Pub. L. No. 88-352, 78 Stat. 241 (1964). Title VII concerned "Equal Employment Opportunity," and its provisions, as amended, now exist in subchapter VI. *See* 42 U.S.C. §§ 2000e to 2000e-17.

of the text leads to only one conclusion: When the exemption is triggered, none of the provisions of Title VII apply, including its prohibition on race, color, religion, sex, and national-origin discrimination. *See* 42 U.S.C. § 2000e-2(a).

Words in a statute are also "read in their context and with a view to their place in the overall statutory scheme." *West Virginia v. EPA*, 597 U.S. 697, 721 (2022) (quoting *Davis v. Mich. Dep't of Treasury*, 489 U.S. 803, 809 (1989)). Here, that context confirms the plain meaning when the statutory language is considered with respect to other exemptions found, presently or previously, in section 2000e-1(a).

First, the exemption also provides that "[t]his subchapter shall not apply to an employer with respect to the employment of aliens outside any State[.]" 42 U.S.C. § 2000e-1(a). Courts have treated this alien exemption as broadly as the plain text requires: Aliens employed outside any State do not receive any protection from Title VII. *See, e.g.*, *Rabé v. United Air Lines, Inc.*, 636 F.3d 866, 869 (7th Cir. 2011) (collecting authorities for this proposition); *Shekoyan v. Sibley Int'l*, 409 F.3d 414, 417 (D.C. Cir. 2005) (affirming because the "the district court correctly interpreted Title VII not to apply to an alien employed outside the United States"); *Boustany v. Xylem Inc.*, 235 F. Supp. 3d 486, 497 (S.D.N.Y. 2017) (citing 42 U.S.C. § 2000e–1(a) and stating that "[i]n Title VII, Congress clearly stated that non-U.S. citizens should not be able to avail themselves of the protections of the statute if they were employed outside of any state").

Second, as originally enacted, section 2000e-1(a) also did not apply "to an educational institution with respect to the employment of individuals to perform work connected with the educational activities of such institution." Civil Rights Act of

1964, *supra*, 78 Stat. at 255 (section 702). Courts considering the educational-institution exemption prior to its repeal in 1972 applied it to all forms of discrimination. *Abramson v. Univ. of Haw.*, 594 F.2d 202, 208 (9th Cir. 1979) ("[P]rior to 1972 universities were free, as far as Title VII was concerned, to discriminate in their employment practices and actions."); *Weise v. Syracuse Univ.*, 522 F.2d 397, 410 (2d Cir. 1975) (explaining that employees of educational institutions "were absolutely exempt from the Act's coverage").

As Judge Easterbrook has reasoned, "[w]hat is true for the alien exemption must be true for the religious exemption as well." *Starkey v. Roman Catholic Archdiocese of Indianapolis, Inc.*, 41 F.4th 931, 947 (7th Cir. 2022) (Easterbrook, J., concurring). Likewise for the prior educational-institution exemption. "This subchapter shall not apply" means the entirety of Title VII, not some subset of its provisions. The same reasoning holds for its incorporation into the PWFA—none of the PWFA applies if the exemption is applicable.

2. The exemption applies when a religious organization acts because of an individual's religious observance, practice, or beliefs.

The other relevant statutory language is that the subchapter shall not apply "with respect to the employment of individuals of a particular religion." 42 U.S.C. § 2000e-1(a). Because Congress has provided a definition of "religion," the Court uses that definition when interpreting the statute. *United States v. Transocean Deepwater Drilling, Inc.*, 767 F.3d 485, 490 (5th Cir. 2014). Under Title VII, "religion" includes "all aspects of religious observance and practice, as well as belief." 42 U.S.C. § 2000e(j).

This language, therefore, describes the circumstances in which Title VII "shall not apply," namely, when an employment decision is made on the basis of an individual's religious observance, practice, or belief. Thus, a religious organization that desires to employ only those whose religious observances, practices, and beliefs align with the organization's may do so, and no part of Title VII "shall [] apply" to that decision.

As the Sixth Circuit explained, this provision "has been interpreted to include the decision to terminate an employee whose conduct or religious beliefs are inconsistent with those of its employer." *Hall v. Baptist Mem'l Health Care Corp.*, 215 F.3d 618, 624 (6th Cir. 2000) (citing *Little v. Wuerl,* 929 F.2d 944, 951 (3rd Cir. 1991); *Killinger v. Samford Univ.,* 113 F.3d 196, 198 (11th Cir. 1997)). So, for example, an employee of a Catholic school who is terminated after remarrying in a manner disapproved of by the Catholic church has no Title VII claim. *Little*, 929 F.2d at 951. Similarly, a divinity school is free to terminate a professor who does not share its doctrines and beliefs. *Killinger*, 113 F.3d at 198. And a gymnasium owned by the Church of Jesus Christ of Latter-Day Saints is free to discharge an employee if he does not "observe the Church's standards in such matters as regular church attendance, tithing, and abstinence from coffee, tea, alcohol, and tobacco." *Corp. of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints v. Amos*, 483 U.S. 327, 330 & n.4 (1987).

This broad understanding of religion is appropriate in the Title VII context. While ensuring that employees are protected from discrimination on the basis of their religious observances, practices, and beliefs, 42 U.S.C. § 2000e-2(a), Title VII's definition of religion also protects religious organizations by allowing them to

hire those who share their beliefs, *id.* § 2000e-1(a). The Supreme Court has explained that this section has the "purpose of alleviating significant governmental interference with the ability of religious organizations to define and carry out their religious missions." *Amos*, 483 U.S. at 339; *see also Little*, 929 F.2d at 951 ("Congress intended the explicit exemptions to Title VII to enable religious organizations to create and maintain communities composed solely of individuals faithful to their doctrinal practices."); *Curay-Cramer v. Ursuline Acad. of Wilmington, Delaware, Inc.*, 450 F.3d 130, 141 (3d Cir. 2006) (same).

Understood this way, Title VII's framework offers a mirror-image set of protections to employers and employees. It protects an employee against discrimination from a nonreligious employer on the basis of that employee's religion. 42 U.S.C. § 2000e-2(a). And it protects a religious employer from governmental interference in its employment decisions that are animated by religious belief. *Id.* § 2000e-1(a).

3. Title VII and the PWFA do not apply when a religious organization acts on the basis of an individual's religion.

Combining the provisions of section 2000e-1(a) demonstrates the breadth of its coverage. When a religious organization makes an employment decision on the basis of an individual's religious observance, practice, or belief, none of Title VII shall apply—including its prohibition on other forms of discrimination (race, color, sex, and national origin). To take a straightforward example, under this exemption, Title VII's prohibition on sex discrimination does not apply to a religious school's decision to refuse to hire a transgender employee when the school's religious doctrine teaches that there are only two genders. The decision is rooted in the observance, practice,

and beliefs of the individual—who does not practice his religion in the same way as the school—so under section 2000e-1(a), Title VII "shall not apply." *See also Starkey*, 41 F.4th at 946 (Easterbrook, J., concurring) ("A religious school is entitled to limit its staff to people who will be role models by living the life prescribed by the faith, which is part of 'religion' as § 2000e(j) defines that word.").

This Court reached a very similar conclusion in *EEOC v. Mississippi College*, holding that if a religious organization "presents convincing evidence that the challenged employment practice resulted from discrimination on the basis of religion," then section 2000e-1(a) prevents the EEOC from "investigat[ing] further to determine whether the religious discrimination was a pretext for some other form of discrimination." 626 F.2d 477, 485 (5th Cir. 1980). That case concerned claims of race and sex discrimination, but not religious discrimination. *Id.* at 479-80. So the Court's ruling appears to have construed section 2000e-1(a) as Texas does here—to prohibit application of all of Title VII when the employment action is taken for a religious reason. At least one district court in this Circuit has agreed, concluding that "[t]he plain text of [the religious] exemption" bars sex-discrimination claims "when [a religious employer] refuses to employ an individual . . . based on religious observance, practice, or belief." *Bear Creek Bible Church v. EEOC*, 571 F. Supp. 3d 571, 591 (N.D. Tex. 2021), rev'd in part on other grounds, *Braidwood Mgmt., Inc. v. EEOC*, 70 F.4th 914, 936 (5th Cir. 2023).

As incorporated into the PWFA, the religious-organization exemption prohibits application of any portion of the PWFA to a religious-organization that makes an employment decision for a religious reason. Thus, while the EEOC erred in ruling

that the PWFA requires accommodating abortion, the religious-organization exemption should undoubtedly permit a religious organization whose beliefs are antithetical to abortion to refuse to accommodate an employee whose religious practice allows her to seek an abortion. The EEOC's restriction of the exemption to religious-discrimination claims fails to account for the broad text of the exemption—"[t]his subchapter shall not apply"—and wrongly reads in limitations that Congress did not enact.

B. Other interpretive tools support a broad interpretation of the religious-organization exemption.

1. Interpreting section 2000e-1(a) in Title VII and as incorporated in the PWFA to bar application of those statutes when a religious organization acts on the basis of religion avoids significant constitutional questions. Thus, even if the Court is not convinced that section 2000e-1(a) unambiguously applies to all discrimination claims, it should "shun an interpretation that raises serious constitutional doubts and instead [] adopt an alternative that avoids those problems." *Jennings v. Rodriguez*, 583 U.S. 281, 286 (2018).

Appellants' brief raises multiple constitutional questions regarding the ministerial exception, the church-autonomy doctrine, and a religious organization's free-exercise rights under the First Amendment. Those questions can be avoided under a proper interpretation of section 2000e-1(a). *See Billard v. Charlotte Catholic High Sch.*, 101 F.4th 316, 333 (4th Cir. 2024) (King, J., dissenting in part and concurring in the judgment). But they will have to be addressed if section 2000e-1(a) does not exempt religious organizations from compliance with the PWFA when doing so

would be contrary to their doctrine. Texas's and Appellants' interpretation of the religious-organization exemption avoids these very issues. The EEOC's interpretation invites them.

The application of anti-discrimination statutes to religious entities has already resulted in multiple decisions from the Supreme Court and this Court regarding the First Amendment's impact on such claims. *E.g.*, *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732 (2020); *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171 (2012); *Starkman v. Evans*, 198 F.3d 173, 175 (5th Cir. 1999). Moreover, forcing religious organizations to rely solely on the ministerial exception found within the First Amendment in order to avoid liability will put courts in the position of weighing matters of church doctrine, authority, and governance, in an effort to determine who is a "minister." Yet courts are to "take care to avoid 'resolving underlying controversies over religious doctrine." *Our Lady of Guadalupe Sch.*, 591 U.S. at 751 n.10 (quoting *Presbyterian Church in U. S. v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 449 (1969)). "First Amendment values are plainly jeopardized when . . . litigation is made to turn on the resolution by civil courts of controversies over religious doctrine and practice." *Presbyterian Church*, 393 U.S. at 449.

Exempting religiously motivated decisions made by religious organizations from judicial challenge would avoid these thorny First Amendment issues, and the Supreme Court has already indicated section 2000e-1(a) may do just that. After concluding in *Bostock v. Clayton County* that discrimination on the basis of transgender status is sex discrimination under Title VII, the Supreme Court addressed the

concerns of employers with sincere religious convictions on the matter. 590 U.S. 644, 681-82 (2020). The Court pointed to Title VII itself as "preserving the promise of the free exercise of religion enshrined in our Constitution," because "[a]s a result of its deliberations in adopting the law, Congress included an express statutory exception for religious organizations. § 2000e–1(a)." *Id.* This reference to Title VII in the context of a sex-based discrimination claim strongly suggests that Title VII's religious-organization exemption is not limited to religious-discrimination claims but rather will protect from any claim brought under Title VII.

Congress has not expressly required that religious organizations accommodate employees who seek abortions but has, instead, protected religious organizations from governmental rules that would infringe their constitutional rights. The Court should not read the religious-organization exemption in a manner that would invite the constitutional problems Congress sought to avoid.

2. Another interpretive tool that applies here is the premise that "Congress presumably does not enact useless laws." *Garland v. Cargill*, 602 U.S. 406, 427 (2024) (quoting *United States v. Castleman*, 572 U.S. 157, 178 (2014) (Scalia, J., concurring in part and concurring in judgment)). But under the EEOC's theory, incorporating section 2000e-1(a) into the PWFA was a useless act. The EEOC purported to limit the religious-organization exemption to religious-discrimination claims. 89 Fed. Reg. at 29,146-47. The PWFA, however, contains no provision allowing an individual to sue for religious discrimination—its focus is entirely on pregnancy, childbirth, and related medical conditions. 42 U.S.C. § 2000gg-1. Because no employee could bring a religious-discrimination claim under the PWFA, exempting religious-organizations

from religious-discrimination claims under the PWFA is a pointless exercise. Congress presumably intended its words to have an effect. The EEOC has given them none. Instead, the EEOC refers to a vague religious defense that a religious employer could raise, but the EEOC offers no details of where such a defense comes from, what its elements are, and how it will be judged. 89 Fed. Reg. at 29,147.

While courts have debated the meaning of section 2000e-1(a) in the Title VII context, there should be no debate as to what it means as applied to the PWFA. For this additional reason, the EEOC's limited interpretation of the religious-organization exemption is erroneous and should be rejected.

II. The EEOC Wrongly Limited the PWFA's Religious-Organization Exemption.

Despite the plain language interpretation described above, the EEOC nevertheless cabined the religious-organization exemption to religious-discrimination claims. But because no deference is owed to the EEOC's interpretation, *see Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412-13 (2024), its statutory analysis must stand on its own. The EEOC has failed to make its case.

The EEOC does not undertake a textual analysis of sections 2000e-1(a) or 2000gg-5(b). Instead, it cites "U.S. courts of appeals" and a flawed analysis from the Department of Labor for its conclusion that the exemption applies only to claims of religious discrimination. 89 Fed. Reg. at 29,146-47 & n.239.

The EEOC, and the precedents on which it relies, are wrong for three general reasons.

First, many of the cases cited offer no reason for their decision to cabin section 2000e-1(a) to claims of religious discrimination. They simply assert their view of the law and offer no textual analysis of why section 2000e-1(a) should be limited contrary to its text. *See, e.g.*, *Kennedy v. St. Joseph's Ministries, Inc.*, 657 F.3d 189, 192 (4th Cir. 2011) ("Section 2000e–1(a) does not exempt religious organizations from Title VII's provisions barring discrimination on the basis of race, gender, or national origin."); *Boyd v. Harding Acad. of Memphis, Inc.*, 88 F.3d 410, 413 (6th Cir. 1996) ("Title VII still applies, however, to a religious institution charged with sex discrimination."). Unexplained legal conclusions do little to persuade in the light of the text of section 2000e-1(a).

Second, the cases that do explain their reasoning focus almost exclusively on legislative history. *DeMarco v. Holy Cross High Sch.*, 4 F.3d 166, 173 (2d Cir. 1993); *EEOC v. Fremont Christian Sch.*, 781 F.2d 1362, 1366 (9th Cir. 1986); *Rayburn v. Gen. Conf. of Seventh-Day Adventists*, 772 F.2d 1164, 1166 (4th Cir. 1985). But "[w]hen it comes to interpreting the law, speculation about what Congress may have intended matters far less than what Congress actually enacted." *Medina v. Planned Parenthood S. Atl.*, 606 U.S. 357, 381 (2025). "[L]egislative history is not the law." *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 523 (2018). Nor should it be used to overcome the plain meaning of the text Congress chose to enact.

The legislative-history analysis is not even persuasive. The Fourth and Ninth Circuits begin with a presumption that section 2000e-1(a) covered only religious discrimination to begin with. *Fremont Christian Sch.*, 781 F.2d at 1366 (stating that the Civil Rights Act of 1964 "excluded such employers only with respect to

discrimination based on religion"); *Rayburn*, 772 F.2d at 1166 (same). They then fault Congress for failing to expand the exemption. *Fremont Christian Sch.*, 781 F.2d at 1366; *Rayburn*, 772 F.2d at 1166 (same). Their best piece of history is a 1972 conference committee report that states that religious organizations "remain subject to the provisions of Title VII with regard to race, color, sex or national origin." *Fremont Christian Sch.*, 781 F.2d at 1366 (quoting Section-by-Section Analysis of H.R.1946, the Equal Employment Opportunity Act of 1972); *Rayburn*, 772 F.2d at 1166 (same). But even that does not contradict the interpretation offered by Texas. Religious organizations remain subject to the provisions of Title VII when they do not act on the basis of an individual's religion, as required for the exemption to apply.

Third, the EEOC relies on a prior analysis by the Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) that rejects the broader view of section 2000e-1(a). 89 Fed. Reg. at 29,147 n.239 (citing Rescission of Implementing Legal Requirements Regarding the Equal Opportunity Clause's Religious Exemption Rule, 88 Fed. Reg. 12,842, 12,852-54 (Mar. 1, 2023)). The OFCCP's analysis identifies the textual arguments Texas makes here, as well as Judge Easterbrook's concurring opinion offering similar reasoning. 88 Fed. Reg. at 12,852. And then OFCCP simply states, "After careful consideration, OFCCP has concluded that that is neither a common nor a compelling understanding of Title VII's religious exemption." *Id.* The explanation that follows remains contrary to the text.

The OFCCP argues that the definition of "religion" in Title VII does not apply to "religion" as used in section 2000e-1(a), despite the definition's explicit application to "this subchapter," *i.e.*, Title VII. 42 U.S.C. § 2000e(j). Accordingly, the

OFCCP reasons that the religious-organization exemption does not allow religious-organizations to employ only those who agree with their religious beliefs. 88 Fed. Reg. at 12,852-53; *but see supra* p. 11 (discussing cases holding otherwise). The remainder of OFCCP's reasoning is not text-based but cites to prior precedents (which are flawed for the reasons described above), executive orders (which cannot reveal congressional intent), and general notions of what seems right. *Id.* at 12,852-54.

But statutory interpretation does not work that way. Agencies do not get to substitute their view of the law for what Congress explicitly enacted. And what Congress enacted here was a protection for religious organizations from compliance with the PWFA when compliance would violate those organizations' religious beliefs. The EEOC's unsupported and cramped version of the religious-organization exemption is contrary to its text, raises numerous constitutional issues, and renders useless the protection offered by Congress. The Court should reject this view.

Conclusion and Prayer

For these reasons, this Court should hold that the religious-organization exemption applies to all claims under the PWFA and allows a religion organization to refuse to accommodate an employee's decision to have an abortion when such decision is contrary to the religious beliefs of the organization.

Respectfully submitted.

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Certificate of Compliance

This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 29(a)(5) because it contains 5,151 words, excluding the parts of the brief exempted by Rule 32(f) and Fifth Circuit Rule 32.2, according to the word count of Microsoft Word. This brief complies with the typeface requirements of Rule 32(a)(5) and the type-style requirements of Rule 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word for Microsoft 365 in 14-point Equity font.

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