

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

BRIEF FOR APPELLEES

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CERTIFICATE OF INTERESTED PERSONS

A certificate of interested persons is not required, as defendants are governmental parties. 5th Cir. R. 28.2.1.

STATEMENT REGARDING ORAL ARGUMENT

The government does not believe oral argument is necessary in this appeal. This appeal arises from plaintiffs’ challenge to the Equal Employment Opportunity Commission’s (EEOC) 2024 rulemaking (and associated guidance) implementing the Pregnant Workers Fairness Act (PWFA). As explained in this brief, the district court vacated the challenged portions of the EEOC’s rule and thus fully remedied plaintiffs’ Administrative Procedure Act claims challenging the abortion-accommodation aspect of the rulemaking. The government has not appealed that decision; agrees that the EEOC lacked statutory authority to promulgate the challenged portions of the rule; and plans to revisit the rule. Plaintiffs now also press religious-liberty claims based on their concerns that the PWFA itself might be interpreted to require them to accommodate non-elective abortions. The government agrees that plaintiffs cannot be required to provide an accommodation related to an abortion or engage in other acts the plaintiffs identified that would violate their religious beliefs. But those claims are still pending in district court; they are not within the scope of the partial final judgment entered pursuant to Federal Rule of Civil Procedure 54(b); and in all events, the district court has preliminarily redressed those claims by granting separate injunctive relief that will remain in effect until the district court resolves all remaining claims before it.

For these reasons, the government does not believe argument is necessary to resolve this appeal. The government stands ready, however, to present argument if this Court deems it appropriate.

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INTRODUCTION

The parties now agree on a great deal. In the ruling under review, an array of plaintiffs led by the United States Conference of Catholic Bishops obtained vacatur of portions of a 2024 Equal Employment Opportunity Commission (EEOC) rule. That rule defined accommodations that employers generally must make for “known limitations related to the pregnancy, childbirth, or related medical conditions of a qualified employee” under the Pregnant Workers Fairness Act (PWFA), 42 U.S.C. §§ 2000gg-1, to encompass accommodations for *terminations* of pregnancy, including via abortion, *see* 29 C.F.R. § 1636.3(b); *see generally* 89 Fed. Reg. 29,096 (Apr. 19, 2024); 29 C.F.R. pt. 1636. Plaintiffs contended—and the district court agreed—that the EEOC vastly exceeded its statutory authority by defining medical conditions “related” to pregnancy or childbirth to include terminating pregnancy via abortion.

Now, the government also agrees that the EEOC’s prior interpretation is untenable, consistent with the EEOC’s already-announced plans to repeal those portions of its rule. The parties thus agree on the fate of the only order before this Court: The district court was right to grant partial summary judgment to plaintiffs, and the district court properly vacated this portion of the EEOC’s rule.

The Bishops’ appeal raises several additional issues—but there, too, the parties now appear to share significant common ground. The Bishops contend that a footnote of the district court’s partial summary-judgment opinion and partial final judgment erroneously interprets the PWFA itself to require employers to accommodate non-

elective abortions. But this Court need not consider, much less endorse, that vaguely worded footnote, which strays beyond the relief that the Bishops were entitled to under the Administrative Procedure Act (APA) (*i.e.*, vacatur of specific portions of the EEOC's rule). As the Bishops themselves emphasized in their briefing below, this category of non-elective abortions is "already vanishingly small," including because "[s]ome procedures that have the unintentional and undesired effect of ending pregnancy, such as removing a fallopian tube to treat ectopic pregnancy, are not abortions." ROA.5953. To the extent the Bishops are concerned about a vanishingly small hypothetical set of applications of the PWFA itself, that concern is untethered from the district court's judgment. That judgment grants the Bishops complete relief on their APA challenge to the EEOC's 2024 rule by vacating the challenged portions of that rule. Because the footnote does not present any live dispute and is irrelevant to the relief to which the Bishops are entitled, the government would have no objection were the Court to simply vacate the footnote.

Further, even if the district court's oblique footnote required the Bishops to accommodate non-elective abortions, the Bishops would be entitled to religious exemptions on multiple doctrinal bases. Put plainly, the government could not lawfully require the Bishops to provide an accommodation related to an abortion under any circumstances. Among other reasons, the government has no conceivable interest in substantially burdening the Bishops' sincerely held religious beliefs in that manner.

Indeed, the district court seems to have recognized as much. After issuing the partial final judgment that is the sole subject of this interlocutory appeal, the court granted the Bishops a further preliminary injunction that prohibits the EEOC from interpreting or enforcing the PWFA or EEOC rules or guidance in any way that would require the Bishops to “make accommodations for abortions, contraception, sterilization, artificial reproductive technologies, or surrogacy in violation of their sincerely held religious beliefs.” ROA.9393. That injunction lasts through this appeal or the disposition of the Bishops’ remaining claims in district court, whichever takes longer. *See* ROA.9394. At this juncture, though, the Bishops’ religious-liberty claims are not before this Court in this interlocutory appeal. The district court can appropriately enter final judgment on the Bishops’ religious-liberty claims in the first instance, including by granting permanent relief.

STATEMENT OF JURISDICTION

The Bishops invoked the district court’s jurisdiction under 28 U.S.C. § 1331. *See* ROA.34. The district court granted partial summary judgment to the Bishops on their APA claims on May 21, 2025. *See* ROA.9126-65. The district court also issued an order stating that its summary-judgment ruling “constitute[d]” a partial final judgment under Federal Rule of Civil Procedure 54(b) and “retain[ed] jurisdiction over all remaining claims and issues not resolved by” its initial summary-judgment ruling and partial final-judgment order. ROA.9166-68. The Bishops filed a notice of appeal from the district court’s partial summary-judgment ruling and partial final-judgment order on July 15,

2025. *See* ROA.9187. This Court’s jurisdiction under 28 U.S.C. § 1291 is limited to the claims resolved by the district court, as set forth in its partial final judgment.

STATEMENT OF THE ISSUES

In 2024, the EEOC finalized a rule that, *inter alia*, interpreted employers’ obligation under the PWFA to “make reasonable accommodations to the known limitations related to pregnancy, childbirth, *or related medical conditions* of a qualified employee” under 42 U.S.C. § 2000gg-1(1) to encompass accommodations for abortion. *See* 29 C.F.R. § 1636.3(b). The district court issued a preliminary injunction prohibiting the EEOC from enforcing that abortion-accommodation mandate, *see* ROA.886-917, then granted plaintiffs’ motion for summary judgment on their APA challenge to the abortion-accommodation aspect of the rule, *see* ROA.9126-65. The court entered a partial final judgment for plaintiffs under Federal Rule of Civil Procedure 54(b) and “retain[ed] jurisdiction over all remaining claims and issues not resolved by” its partial summary-judgment ruling. ROA.1968. The issues on appeal are as follows:

1. Whether the district court properly vacated the EEOC’s rule as to the abortion-accommodation mandate.

2. Whether, in this interlocutory appeal from a partial final judgment on the Bishops’ APA challenge under Federal Rule of Civil Procedure 54(b), this Court has jurisdiction to consider the Bishops’ religious-liberty claims and other claims that remain pending in district court.

PERTINENT STATUTES AND REGULATIONS

Pertinent statutes and regulations are reproduced in the addendum.

STATEMENT OF THE CASE

A. Statutory Background

1. The PWFA requires covered employers to “make reasonable accommodations to the known limitations related to the pregnancy, childbirth, or related medical conditions of a qualified employee,” unless the covered employer “can demonstrate that the accommodation would impose an undue hardship on the operation of [its] business.” 42 U.S.C. § 2000gg-1(1). “[T]he term ‘known limitation’ means physical or mental condition related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions” *Id.* § 2000gg(4). The statute also prohibits employers from denying employment opportunities based on the need to make a reasonable accommodation for a covered employee, *see id.* § 2000gg-1(3), or from taking adverse action against an employee based on her request for or use of a reasonable accommodation, *see id.* § 2000gg-1(5).

The PWFA was enacted in 2022 and took effect on June 27, 2023. The statute directed the EEOC to issue regulations to “carry out” the PWFA. *Id.* § 2000gg-3(a). Accordingly, the EEOC undertook a rulemaking under the PWFA, which took effect in June 2024. *See* 89 Fed. Reg. 29,096; 29 C.F.R. pt. 1636 & app. A. In relevant part, the EEOC’s rule defines “related medical conditions” as “medical conditions relating to the pregnancy or childbirth of the specific employee in question” and lists “examples

of conditions that are, or may be, ‘related medical conditions.’” 29 C.F.R. § 1636.3(b). That list includes “termination of pregnancy, including via miscarriage, stillbirth, or abortion.” *Id.* The rule further specifies that any requests for reasonable accommodations for the known limitations related to the pregnancy, childbirth, or related medical conditions of a qualified employee are subject to the defenses an employer might raise, including those based on undue hardship. *See* 89 Fed. Reg. at 29,104-05, 29,146-55.

2. The PWFA incorporates the enforcement procedures and remedies of Title VII of the Civil Rights Act of 1964. *See* 42 U.S.C. § 2000gg-2(a). An employee who believes her rights under the PWFA have been violated may file a charge with the EEOC. The statute provides that the employer may raise various defenses at this stage, including a defense that the accommodation “would impose an undue hardship on the operation of the business” of the employer. *Id.* § 2000gg-1(1). If the accommodation poses an undue hardship, there is no unlawful employment practice under the statute, *id.*, and the EEOC will dismiss the charge. The statute adopts the definitions of “reasonable accommodation” and “undue hardship” set forth in the Americans with Disabilities Act. *See id.* § 2000gg(7). If the EEOC is unable to determine that reasonable cause exists, the EEOC will dismiss the charge and notify the employee that she may file suit in district court within 90 days. *See id.* § 2000e-5(b), (f)(1).

The PWFA also incorporates Title VII’s religious-employer exemption, *see* 42 U.S.C. § 2000gg-5, which provides that the statute “shall not apply ... 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,” *id.* § 2000e-1(a). If the religious-employer exemption applies, the enforcement procedures, remedies, or other provisions in the subchapter governing the PWFA or Title VII “shall not apply.” *Id.*

B. Prior Proceedings

1. Plaintiffs in this case are the United States Conference of Catholic Bishops, the Society of the Roman Catholic Church of the Diocese of Lake Charles, the Society of the Roman Catholic Church of the Diocese of Lafayette, and the Catholic University of America, collectively referred to as the Bishops. The Bishops filed suit to challenge the rule, *see* ROA.29-85, and their suit was consolidated with a challenge filed by the States of Louisiana and Mississippi, *see* ROA.656-57.

Both suits alleged that the PWFA rule violates the APA insofar as it interprets the PWFA to cover abortion. *See* ROA.63-65; *Louisiana v. EEOC*, No. 23-629 (W.D. La.), Dkt. No. 1 at 19-21. In relevant part, the Bishops explained that “the PWFA requires an employer to reasonably accommodate an employee’s ‘known limitations related to ... pregnancy, childbirth, or related medical conditions,’ 42 U.S.C. § 2000gg-1(1),” ROA.63, and accordingly, the Bishops argued that the rule “exceed[s] the statutory authority granted under the PWFA, which does not cover abortion,” ROA.64, because the “[r]ule interprets ‘known limitations related to ... pregnancy, childbirth, or

related medical conditions’ to include abortion,” ROA.63. As the Bishops averred, ROA.48, the EEOC’s rule “asserts that ‘having or choosing not to have an abortion’ is a ‘readily apparent’ ‘medical condition’ related to pregnancy,” as set forth in the EEOC’s final rule, 89 Fed. Reg. at 29,100-01, 29,191, and the implementing regulation that lists examples of “related medical conditions” under the statute, 29 C.F.R. § 1636.3(b).

The Bishops further alleged that the rule violates their religious liberties under the U.S. Constitution, the Religious Freedom Restoration Act (RFRA), and provisions carving out specific exemptions for religious employers in Title VII and the PWFA, by requiring them to provide reasonable accommodations for employees seeking abortions contrary to the Bishops’ sincerely-held beliefs. *See* ROA.67-84.

The district court granted plaintiffs’ preliminary-injunction motions. The court found “a likelihood of success o[n] the merits that EEOC’s textual interpretation of the PWFA to include an abortion accommodation mandate exceeds that agency’s Congressional authorization.” ROA.909. The court reasoned that “Congress’s decision *not* to include any reference to abortion in the PWFA was intentional.” ROA.904. It rejected the argument that the EEOC had made in the prior Administration to the contrary. Specifically, the EEOC had argued that the PWFA could be construed to require accommodations for abortions because the PWFA required accommodations for the “known limitations related to ... pregnancy, childbirth, or related medical conditions” and the phrase “pregnancy, childbirth, or related medical conditions” in the Title VII context (namely, in 42 U.S.C. § 2000e(k)) had been construed by some courts

to cover discrimination on the basis of an individual’s decision to have (or not to have) an abortion. *See* ROA.903-04. As the district court explained, “no provision of the PWFA requires incorporation of the ‘pregnancy, childbirth, or related medical conditions’ language of 42 U.S.C. § 2000e(k).” ROA.904. And that was the case even though elsewhere in the PWFA, Congress had “directed that certain terms incorporated in PWFA from the [Americans with Disabilities Act] ‘shall be construed as such terms are construed’ thereunder, 42 U.S.C. § 2000gg(7).” ROA.904. The court also found that “the *States* and *Bishops* Plaintiffs have standing to challenge the abortion accommodation mandate” and “that the States will suffer specific and irreparable injuries if the abortion accommodation mandate is not enjoined.” ROA.915. Finally, the court concluded that the “balance of equities and public interest weigh in favor of the Plaintiffs.” ROA.915.

The court accordingly “postpone[d] the effective date of the Final Rule’s requirement that covered entities provide accommodation for the elective abortions of employees that are not necessary to treat a medical condition related to pregnancy” as to plaintiffs and related entities listed in the order. ROA.916. The court also preliminarily enjoined the EEOC from “initiating any investigation into claims that a covered employer has failed to accommodate an elective abortion that is not necessary to treat a medical condition related to pregnancy” and from issuing a right-to-sue notice with respect to the same. ROA.917.

2. The district court bifurcated summary-judgment proceedings, inviting briefing first on plaintiffs’ APA challenges to the rule regarding workplace accommodations for employees seeking abortions. The court anticipated a subsequent round of summary-judgment briefing regarding the Bishops’ religious-liberty claims.

3. In January 2025, after partial summary-judgment briefing on plaintiffs’ APA claims was already complete, the Administration changed, and (then-Acting) EEOC Chair Andrea Lucas issued a statement conveying, *inter alia*, that she had not voted to approve the rule “because it broadens the scope of the statute in ways that cannot be reconciled with the text.” EEOC, *Position of Acting Chair Lucas Regarding the Commission’s Final Regulations Implementing the Pregnant Workers Fairness Act*, <https://perma.cc/Y2FR-24FV>. “Specifically,” the statement explained, “the Acting Chair does not agree with the Commission’s interpretation of the phrase ‘pregnancy, childbirth, or related medical conditions’ and the contrivances the Commission used to arrive at its construction of the statute.” *Id.* Because “the Office of the Chair cannot unilaterally rescind or modify this (or any other) Final Rule under the APA, in whole or in part,” the statement explained that “Acting Chair Lucas intends for the Commission to reconsider portions of the Final Rule that she believes are unsupported by law” after such time as the EEOC reestablishes a quorum. *Id.* The EEOC has not yet begun the process of a new rulemaking but intends to do so.

4. In May 2025, the district court granted summary judgment in favor of plaintiffs on their APA claims—the ruling that is the subject of this appeal. In that

ruling, the court found that plaintiffs had standing to challenge the abortion-accommodation aspect of the rule and concluded that this provision exceeded the bounds of the EEOC's authority under the PWFA. ROA.9145, 9148, 9156. The court reiterated that "Congress's decision *not* to include any reference to abortion in the PWFA was intentional" and explained that "while the PWFA explicitly cross-references provisions of Title VII throughout, the PWFA does not incorporate Title VII's amended pregnancy provision" in 42 U.S.C. § 2000e(k). ROA.9151 (quotation marks omitted).

In so ruling, the court rejected the argument that "because Title VII protects employees who choose to have (or not to have) an abortion—and because Congress enacted the PWFA with identical language as Title VII for the express purpose of expanding Title VII's protections—the PWFA must also be understood to protect employees who choose to have (or not to have) an abortion." ROA.9150. And quoting its preliminary-injunction ruling, the court again explained, "no provision of the PWFA requires incorporation of the 'pregnancy, childbirth, or related medical conditions' language of 42 U.S.C. § 2000e(k)," the Title VII provision that has been construed to cover abortion. ROA.9151 (quoting ROA.904). The court underscored the salience of the issue of abortion, particularly in recent years, *see* ROA.9152-54, and concluded that the absence of "clear congressional authorization for the inclusion of abortion protection" in the PWFA was dispositive, ROA.9155.

The district court concluded that “the remedy for such violation is vacatur of the Final Rule’s abortion accommodation provision.” ROA.9156 & n.18. The court thus vacated the rule “to the extent that it includes ‘abortion’ as a ‘related medical condition’ of pregnancy and childbirth.” ROA.9163. The court’s order quoted the relevant portion of the rule, 29 C.F.R. § 1636.3(b), and specified the part of the rule that was being vacated as follows:

(b) *Pregnancy, childbirth, or related medical conditions.*

...

“Related medical conditions” are medical conditions relating to the pregnancy or childbirth of the specific employee in question. The following are examples of conditions that are, or may be ‘related medical conditions’: *termination of pregnancy, including via miscarriage, stillbirth, or abortion; ...*

ROA.9163 (quotation marks omitted). That vacatur effectively removes this language from the rule and prevents the EEOC from considering terminations of pregnancies—including abortion—to be a “related medical condition” under the rule.¹ The court further ruled that “any Implementing Regulations or Guidance that are inconsistent with this Order, that is, to the extent that they require or suggest to employers that they are required to provide employees with accommodation for purely elective abortions

¹ As explained below, *see infra* p. 23, the EEOC has not taken a position in this litigation as to whether the PWFA covers accommodations related to miscarriages or stillbirths, as this litigation has concerned accommodations related to terminations of pregnancy from abortions.

are not necessary to treat a medical condition related to pregnancy, are also hereby VACATED and immediately without effect.” ROA.9164 (footnote omitted).

In explaining the scope of its vacatur, the court included a footnote that states:

To avoid any uncertainty, terminations of pregnancy or abortions stemming from the underlying treatment of a medical condition related to pregnancy are not affected by this Order. Such procedures are clearly ‘related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions.’ 42 U.S.C. § 2000gg(4). Covered employers are therefore required to provide accommodation to the extent set forth in the PWFA.

ROA.9164 n.24. This clarification tracked the district court’s preliminary-injunction ruling, *see* ROA.916-17, which had similarly concluded that the rule exceeded the statute to the extent it required plaintiffs to provide accommodations for abortions “not necessary to treat a medical condition related to pregnancy,” ROA.9139.

Finally, the district court deferred ruling on the Bishops’ remaining claims, including the “lawfulness of [the] scope of the Final Rule’s religious exemption,” ROA.9159-60, 9160 n.23, based on (*inter alia*) EEOC Chair Lucas’s statement that the EEOC plans to revisit the PWFA rule following the change in administration. *See* ROA.9159.

The district court stated that its summary-judgment decision “constitutes a [Federal Rule of Civil Procedure] 54(b) partial final and appealable judgment as to the abortion accommodation mandate VACATED herein, and the FINAL RULE is therefore REMANDED to the EEOC for action consistent with the Court’s findings.” ROA.9165. The court entered partial final judgment mirroring its summary-judgment

ruling. *See* ROA.9166-68. The government did not appeal this partial final judgment in plaintiffs' favor.

5. Approximately two months later, the Bishops filed a motion seeking an injunction pending appeal that would prohibit the EEOC from interpreting or enforcing the PWFA "in a way that would require or pressure them to accommodate abortions in violation of the Bishops' sincerely held religious beliefs," from initiating investigations against the Bishops on such grounds, and from issuing right-to-sue notices against the Bishops on such grounds. ROA.9192.

Approximately one week later, and before the district court had ruled on the Bishops' motion, the Bishops filed a notice of appeal and sought the same relief in this Court. This Court granted an administrative stay of the district court's ruling as to the footnote in the district court's partial final judgment, *see* ROA.9294-95, but later lifted that stay after concluding that the Bishops had "not shown that waiting for the district court's ruling would be impracticable." ROA.9362.

On remand, the district court held a hearing and granted a broad interlocutory injunction. *See* ROA.9393-94. That injunction provides as follows:

- Consistent with the Bishops' request, the EEOC is "enjoined from interpreting or enforcing" the statute, rule, and any implementing regulations or guidance "against the Bishops in a way that would require them to make accommodations for abortions, contraception, sterilization, artificial reproductive technologies, or surrogacy in violation of their sincerely held religious beliefs." ROA.9393.

- The EEOC is “enjoined from initiating investigations against the Bishops ... regarding allegations that the Bishops have failed to make [the challenged] accommodations.” ROA.9393-94 (citation omitted).
- The order does not “restrict[] the EEOC’s ability to accept a charge, provide notice to the employer that a charge has been filed, or issue a notice of right to sue to the charging party,” consistent with its statutory obligations. ROA.9394.

The court clarified that this injunction “shall remain in effect during the pendency of th[is] appeal” and the court’s “consideration of the remaining claims, whichever is longer.” ROA.9394.

6. While the parties and the courts were addressing the Bishops’ request for an injunction pending appeal, the Bishops filed a motion for partial summary judgment on their remaining claims. *See* ROA.9312-17. Following the district court’s order granting the Bishops’ motion for an injunction prohibiting the EEOC from interpreting or enforcing the PWFA or its rule in a manner that would require the Bishops to make accommodations for abortions and various other procedures that would violate their religious beliefs, the EEOC filed a brief explaining that “[t]he parties are in firm agreement that the Bishops need not provide accommodations that conflict with their religious practice when a statutory or constitutional religious defense applies.” Dkt. No. 152 at 1. “Nor must they update their policies or workplace practices in response to the Final Rule in such circumstances.” *Id.* The EEOC argued, however, that the Bishops’ constitutional and statutory rights should be adjudicated in the context of actual requests for accommodations (if the Bishops ever received any). *See id.*

Briefing on the Bishops’ partial summary-judgment motion was completed in December 2025, but the district court has deferred ruling on those claims pending this Court’s en banc review of the panel decision in *Texas v. Bondi*, 164 F.4th 446 (5th Cir. 2026) (per curiam), which concerns the State of Texas’ claim that the PWFA was not lawfully enacted. *See* Dkt. No. 157.

SUMMARY OF ARGUMENT

I. There is no dispute in this appeal that the district court properly vacated the abortion-accommodation provision of the EEOC’s 2024 rule. In granting partial final judgment to the Bishops under Federal Rule of Civil Procedure 54(b), the district court correctly concluded that the EEOC had exceeded its statutory authority by defining “[p]regnancy, childbirth, or related medical conditions” under the PWFA to include terminations of pregnancy via abortion. 29 C.F.R. § 1636.3(b). The court accordingly ruled in the Bishops’ favor on their APA claim and vacated the relevant portion of the rule. That vacatur excises from the rule any requirement to treat terminations of pregnancies—including via abortion—as “related medical conditions” that employers must accommodate. *See* ROA.9163-64; ROA.9167.

The government did not appeal the partial final judgment in the Bishops’ favor. The government agrees with the district court’s order concluding that the EEOC exceeded its authority under the PWFA because the words “[p]regnancy, childbirth, or related medical conditions” cannot be construed to include terminations of pregnancy

via abortion. 29 C.F.R. § 1636.3(b). The EEOC has indicated that it plans to rescind those provisions of the rule.

In the meantime, the Bishops have no conceivable prospect of being required to provide any accommodation in connection with any type of abortion (whether classified as elective or otherwise). The district court's favorable final judgment on their APA claims vacates the portions of the rule purporting to require accommodations of pregnancy terminations, including abortions. In all events, the district court's separate interlocutory injunction—which is not presently before this Court—expressly protects the Bishops against being required to provide any accommodations regarding any type of abortion (as well as sterilization, contraception, surrogacy, etc.) insofar as doing so would violate their sincerely held religious beliefs. That injunction will remain in effect until after this appeal is resolved or the district court resolves remaining pending claims, whichever happens later. And the government agrees that RFRA and the undue-hardship defense protect the exercises of religious liberty covered by that injunction. Given that combination, there is no chance, much less a substantial or imminent risk, that the Bishops will be required to provide an accommodation related to an abortion under either the vacated portion of the rule or the PWFA itself.

The Bishops nonetheless seek further relief on appeal, contending that a footnote in the district court's partial summary-judgment opinion and partial final judgment clarifying the scope of the district court's APA ruling, *see* ROA.9164 n.24, improperly subjects the Bishops to an abortion-accommodation mandate. That is

incorrect. Though that footnote is cursory and somewhat oblique, the best reading of that footnote is that it does not impose any independent requirements on the Bishops. Now that the district court has vacated the abortion-accommodation provision of the rule—the subject of the Bishops’ challenge—the PWFA alone applies. To the extent that the district court’s footnote purports to independently interpret the scope of the PWFA, that interpretation was unnecessary to resolve the present dispute over the now-vacated portions of the EEOC’s 2024 rule. This Court should not and need not endorse that footnote in order to affirm the partial final judgment in the Bishops’ favor on their APA claim—a judgment that, again, all agree was proper. The Court could simply vacate the footnote.

II. Because the district court’s partial final judgment under Rule 54(b) is the sole order this Court has jurisdiction to review in this interlocutory appeal, the Bishops’ other claims on appeal are not properly before this Court. *See* Appellants’ Br. 31-58. Those claims are currently pending before the district court, which has not yet addressed them and should have the first opportunity to rule on them.

Beyond the jurisdictional issue, it would also be unnecessary for this Court to consider the Bishops’ religious-liberty claims at this juncture because the district court’s separate injunction—entered after the Bishops noticed this appeal—precludes the EEOC from enforcing the PWFA in any way that would require the Bishops to provide accommodations for abortions. Indeed, as outlined more fully below, *see infra* Part II.B, the government agrees that the Bishops would be entitled (at minimum) to an

exemption under RFRA or the PWFA's undue hardship provision if they were ever to face a PWFA claim or charge related to abortion. Because the Bishops face no meaningful risk that they could be required to provide an accommodation related to an abortion, this Court should decline the Bishops' invitation to address claims that are outside the scope of this interlocutory appeal, and should give the district court the first opportunity to afford the Bishops permanent relief on these claims.

STANDARD OF REVIEW

This Court reviews a district court's summary-judgment ruling de novo. *See Favela v. Collier*, 91 F.4th 1210, 1212 (5th Cir. 2024).

ARGUMENT

I. The district court properly granted partial summary judgment to the Bishops on their APA challenge to the abortion-accommodation aspect of the PWFA rule.

A. The district court's partial final judgment is correct.

In granting summary judgment to the plaintiffs on their APA claim, the district court correctly concluded that the rule exceeded the agency's authority under the PWFA to the extent it requires accommodations for employees seeking abortions. *See* ROA.9156. Although the government defended the abortion-accommodation aspect of the rule in the prior Administration, the government did not appeal the district court's order vacating that requirement and agrees that the district court correctly rejected the EEOC's prior interpretation of the PWFA. Further, the EEOC has since

indicated that it plans to revisit the rulemaking in the near future. EEOC, *Position of Acting Chair Lucas*, *supra*.

Because the parties agree that the district court's summary-judgment ruling was correct and that ruling provided all available relief under the APA by vacating the challenged portion of the EEOC's 2024 rule, this Court may deem it appropriate to dismiss the Bishops' appeal, which would leave the district court's judgment intact. *See Ward v. Santa Fe Indep. Sch. Dist.*, 393 F.3d 599, 603 (5th Cir. 2004) (“[A] prevailing party has standing to appeal only if it can demonstrate an adverse effect resulting from the judgment in its favor.” (citations omitted)).

If this Court nevertheless wishes to address the district court's summary judgment decision declaring the abortion-accommodation aspect of the rule unlawful under the APA, it should affirm. As explained, the PWFA requires covered employers to “make reasonable accommodations to the known limitations related to the pregnancy, childbirth, or related medical conditions of a qualified employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity.” 42 U.S.C. § 2000gg-1(1). In the prior Administration, the EEOC construed this language as requiring covered employers to provide accommodations for employees seeking abortions. Specifically, the EEOC's 2024 rule defined “related medical conditions” as “medical conditions relating to ... pregnancy or childbirth” and then provided a list of examples

of “related medical conditions” that included “termination of pregnancy, including via miscarriage, stillbirth, or abortion.” 29 C.F.R. § 1636.3(b).

The district court properly concluded that the EEOC violated the APA by construing abortion to be a “related medical condition” under the statute. The court emphasized that if Congress had intended for the PWFA to cover accommodations for employees seeking abortions, it would have said so expressly and deemed Congress’ omission of any such language dispositive. Explaining that it “must begin with the presumption that Congress’s decision *not* to include any reference to abortion in the PWFA was intentional,” ROA.9151 (quotation marks omitted), the court concluded that the absence of “clear congressional authorization for the inclusion of abortion protection” confirmed that Congress did not authorize the EEOC to require accommodations for employees seeking abortions, ROA.9155.

The district court also rejected the EEOC’s argument (in the prior Administration) that “because Title VII protects employees who choose to have (or not to have) an abortion—and because Congress enacted the PWFA with identical language as Title VII for the express purpose of expanding Title VII’s protections—the PWFA must also be understood to protect employees who choose to have (or not to have) an abortion.” ROA.9150. The court explained that “no provision of the PWFA requires incorporation of the ‘pregnancy, childbirth, or related medical conditions’ language of 42 U.S.C. § 2000e(k)” from Title VII, even though the “PWFA explicitly cross-references provisions of Title VII throughout” other statutory sections. ROA.9151

(quotation marks omitted). Thus, the court concluded, the rule was inconsistent with the PWFA, and thus violated the APA, to the extent it listed “abortion” as a “related medical condition.” ROA.9163.

To effectuate its ruling, the district court vacated the portions of the rule that violated the APA, and it did so by identifying the specific words in the regulation that it was vacating. The court quoted the relevant paragraph of the regulation, 29 C.F.R. § 1636.3(b), and identified the specific language being vacated. *See* ROA.9163-64 (specifying language vacated). Specifically, the vacatur eliminated any reference to “termination of pregnancy, including via miscarriage, stillbirth, or abortion” from the regulation’s list of examples of “related medical conditions.” In so doing, the district court provided complete relief to plaintiffs on their APA claim by vacating the rule to the extent the rule requires accommodations for abortions qua abortions—that is, to the extent the rule specifies that the “termination of pregnancy” can be a “related medical condition” under the statute.

The States of Louisiana and Mississippi did not appeal or otherwise challenge the district court’s ruling as providing inadequate relief on their APA claims. The government likewise did not appeal that decision and does not contest its reasoning on appeal. As the EEOC Chair publicly stated shortly after the Administration changed, in her view, the rule “broadens the scope of the statute in ways that cannot be reconciled with the text” and misinterprets “the phrase ‘pregnancy, childbirth, or related medical conditions.’” EEOC, *Position of Acting Chair Lucas, supra*. The Chair thus “intends for

the Commission to reconsider portions of the Final Rule that she believes are unsupported by law.” *Id.* The vacatur of the relevant portion of the regulation therefore remains on the books—or, stated differently, the district court’s elimination of the regulatory reference to “termination of pregnancy” as a “related medical condition” remains the law.

For avoidance of doubt—given the phrasing of the district court’s vacatur—the EEOC agrees that abortion is not a related medical condition for which an employer must provide an accommodation under the PWFA, but based on the Bishops’ presentation of the arguments, the EEOC does not believe that whether the PWFA’s protections encompass accommodations related to a miscarriage or stillbirth, which do not result from an intentional termination procedure, is an issue that is properly before the Court. Thus, given the uncertainty on the exact scope of the district court’s vacatur, the Commission is not expressing any view on the PWFA’s coverage of accommodations related to miscarriages or stillbirths.

B. Nothing in the district court’s partial final judgment subjects the Bishops to an unlawful abortion-accommodation mandate.

Although the district court’s summary judgment ruling granted all the relief available on the Bishops’ APA challenge by vacating the abortion-accommodation provision of the rule on a universal basis,² the Bishops now contend (at 27-30) that they

² The government acknowledges that this Court’s precedents identify universal vacatur as an available remedy under the APA, *see, e.g., Data Mktg. P’ship, LP v. U.S. Dep’t*
Continued on next page.

are entitled to additional relief based on a footnote in the district court’s order clarifying the scope of its vacatur, *see* ROA.9164 n. 24. As explained below, that footnote is best read to not impose any independent obligations on the Bishops (or anyone else) to provide accommodations for abortions, and does not negate the substantial relief provided to the Bishops in the court’s prior orders. Even were the Bishops correct in construing the footnote as misinterpreting what the PWFA itself may require, the footnote is irrelevant to the APA ruling that all agree was correct. Affirming the partial final judgment in the Bishops’ favor on their APA claim would provide complete relief on that claim. And the government would have no objection to the vacatur of the district court’s footnote.

1. The footnote in the district’s favorable APA ruling should not be interpreted to impose any new obligations on the Bishops. In granting summary judgment to plaintiffs on their APA challenge, the district court first stated, as explained above, that it was vacating the highlighted text in the relevant regulation—namely, the language that lists “termination of pregnancy, including via miscarriage, stillbirth, or abortion” as an example of a “related medical condition.” ROA.9163 (emphasis omitted) (quoting 29 C.F.R. § 1636.3(b)). In a subsequent paragraph of its summary-judgment order, which is repeated in its partial final judgment, the district court extended its ruling to

of Lab., 45 F.4th 846, 859-860 (5th Cir. 2022), but preserves its argument to the contrary. *See* Brief for the United States at 40-44, *United States v. Texas*, 599 U.S. 670 (2023) (No. 22-58), 2022 WL 4278395, at *40-44; Reply Brief for the United States at 16-20, *Texas*, 599 U.S. 670 (No. 22-58), 2022 WL 17170668, at *16-20.

any implementing regulations or guidance by the EEOC “that are inconsistent with this Order.” ROA.9164. In so ruling, the court summarized its ruling by saying that it was vacating such regulations or guidance “to the extent that they require or suggest to employers that they are required to provide employees with accommodation for purely elective abortions that are not necessary to treat a medical condition related to pregnancy” and that such regulations and guidance were “immediately without effect.” ROA.9164.

The district court also appended a footnote to this paragraph that stated:

To avoid any uncertainty, terminations of pregnancy or abortions stemming from the underlying treatment of a medical condition related to pregnancy are not affected by this Order. Such procedures are clearly “related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions.” 42 U.S.C. § 2000gg(4). Covered employers are therefore required to provide accommodation to the extent set forth in the PWFA.

ROA.9164 n.24. This paragraph of the district court’s ruling, including the footnote, neither expanded nor limited the reach of its vacatur. The district court had already declared that under the statute, no accommodation could be required for an abortion as a “related medical condition” to pregnancy. Read in context, the footnote does not alter the breadth of the district court’s ruling; instead, all it does is recognize that the relief afforded to the Bishops in this round of summary judgment corresponds to the scope of their APA challenge—which challenges the abortion-accommodation aspect of the rule to the extent it exceeds statutory authority. And the district court’s vacatur affords all available relief from the challenged portions of the rule under the APA.

Because the footnote is inessential and unrelated to any live dispute, however, the government has no objection if the Court simply wishes to vacate the footnote in the course of affirming the rest of the district court's judgment.

2. The Bishops read the footnote more broadly. But, to the extent the Bishops have raised additional legal challenges based on potential accommodation requests that they may receive in the future that arise out of other “related medical conditions,” those challenges are outside the scope of the Bishops’ APA challenge to the abortion-accommodation requirement, outside the scope of the partial final judgment on appeal, and still pending in district court. In other words, those are not challenges premised on the fact that the EEOC’s rule considered abortion to be a “related medical condition” under the statute—which was the focus of the APA challenge, and which the district court resolved in the Bishops’ favor.

Instead, invoking the district court’s footnote, the Bishops challenge (at 27-30) the possibility that they might be required, at some point in the future, to provide an accommodation for an abortion obtained in connection with a different “related medical condition” in response to a charge filed by an employee seeking such an accommodation (or that the Bishops’ speech and other rights might be affected by any such requirement). As the Bishops emphasized in their summary-judgment briefing below, such a category appears to be “vanishingly small,” and its contours are unclear. ROA.5953.

Regardless, as explained further below, *see infra* Part II, the government agrees that the Bishops would have religious defenses to any such charges. As the Bishops argued below, even if the PWFA “*could* be read to require coverage in narrow cases where direct abortion occurs for allegedly medical reasons,” that “only highlights the need” to recognize the Bishops’ religious defenses. ROA.5953. Those defenses have great force, but all of the Bishops’ religious claims remain pending in district court and are not before this Court in this appeal from the district court’s partial final judgment. And the Bishops remain fully protected by the injunction entered by the district court after the partial final judgment, which enshrines capacious religious-liberty protections and prevents the Bishops from having to provide abortion accommodations in any circumstance that would violate their sincerely held religious beliefs. That injunction enjoins the EEOC “from interpreting or enforcing” the PWFA, its implementing regulations, or guidance, “against the Bishops in a way that would require them to make accommodations for abortions, contraception, sterilization, artificial reproductive technologies, or surrogacy” and by its terms lasts through the duration of this appeal or when the district court resolves all remaining claims, whichever takes longer. ROA.9393.³

³ The Bishops did not challenge the EEOC’s statutory obligation to issue right-to-sue notices in their motion for partial summary judgment in district court, *see* ROA.5927-78, and accordingly, the district court’s partial summary-judgment ruling in favor of the Bishops on their APA challenge does not address this statutory obligation, *see* ROA.9126-65. The Bishops do not raise any such arguments on appeal either.

II. This Court should not address any other claims beyond the APA claim resolved in the district court's partial final judgment under Rule 54(b).

In this interlocutory appeal from a partial final judgment on the Bishops' APA challenge to the abortion-accommodation requirement in the PWFA rule under Federal Rule of Civil Procedure 54(b), this Court lacks jurisdiction to consider the religious-liberty and other related claims that the Bishops have attempted to raise in Part II of their opening brief (at 31-57). Those claims are fully briefed and pending in district court, which should address those claims in the first instance. There is no need for this Court to consider them, as the district court's interlocutory injunction precludes the EEOC from enforcing the PWFA in any way that would require the Bishops to violate their sincerely held religious beliefs, including by being forced to provide accommodations for abortions. As discussed, that injunction will remain in effect pending this appeal or the district court's resolution of the Bishops' remaining claims, whichever is later. Further, as discussed below, *see infra* Part II.B, the Bishops would be entitled to an exemption under RFRA and the PWFA's undue hardship provision if they were ever to face a PWFA claim or charge related to abortion.

A. This Court lacks jurisdiction over any claims aside from the APA claim the district court resolved in granting partial final judgment under Rule 54(b).

This interlocutory appeal is from a partial final judgment entered under Federal Rule of Civil Procedure 54(b). *See* ROA.9166. Rule 54(b) authorizes a district court to

direct entry of a final judgment as to fewer than all claims or parties if the court determines there is no just reason for delay.

Here, the district court granted summary judgment in the Bishops' favor solely on their APA challenge to the abortion-accommodation aspect of the PWFA rule. As explained above, the court (1) vacated the rule to the extent that it includes abortion as a related medical condition of pregnancy and childbirth, *see* ROA.9167, and (2) vacated any implementing regulations or guidance "to the extent that they require or suggest to employers that they are required to provide employees with accommodation for purely elective abortions that are not necessary to treat a medical condition related to pregnancy." ROA.9167-68. That order provided complete relief to the Bishops on their APA claim, and it would not ordinarily have been appealable had the district court not certified it as a partial final judgment under Rule 54(b). While the Bishops could properly appeal that order (to the extent they are adversely harmed by it), the interlocutory appeal does not encompass other claims that remain pending before the district court.

Specifically, the Bishops urge this Court to address a variety of religious-liberty claims (and a related First Amendment associational claim) that they believe will provide additional protections against the possibility that they might at some future point be asked to provide accommodations for abortions. *See* Appellants' Br. 36-57 (addressing the PWFA's religious-employer exemption, 42 U.S.C. § 2000gg-5(b); the church-

autonomy doctrine; RFRA; the Free Exercise Clause; and the First Amendment right of expressive association).

This Court lacks jurisdiction to consider those claims, because they were not part of the partial final judgment the district court certified for immediate appeal under Rule 54(b). *See United Indus., Inc. v. Eimco Process Equip. Co.*, 61 F.3d 445, 448 (5th Cir. 1995) (holding that “[i]n an interlocutory appeal certified by the district court under ... Rule 54(b), [this Court has] no jurisdiction to consider orders of the district court outside the scope of certification”). Indeed, the Rule 54(b) order expressly “retain[ed] jurisdiction over all remaining claims and issues not resolved by this Judgment.” ROA.9168. Those claims and issues include the Bishops’ religious-liberty claims seeking protection from having to provide any otherwise required accommodations of abortions that are “necessary to treat a medical condition related to pregnancy.” ROA.9167-68, 9168 n.1. The Bishops raised their religious-liberty claims below in a motion for partial summary judgment, which is fully briefed and remains pending. *See* ROA.9312-17; Dkt. Nos. 152, 153. The district court’s retention of jurisdiction over those claims confirms that this Court lacks jurisdiction to consider them in this appeal.

The Bishops’ argument (at 32) that this Court has jurisdiction over their religious-liberty claims and other related defenses under 28 U.S.C. § 1292(a)(1) is also incorrect. The district court’s partial summary-judgment ruling afforded full relief on the Bishops’ APA challenge to the abortion-accommodation requirement and directed that the preliminary injunction would “remain in place until final dismissal of these

matters or further order of the Court.” ROA.9165; *see Little Earth of United Tribes v. Department of Hous. & Urb. Dev.*, 738 F.2d 310 314 (8th Cir. 1984) (holding that 28 U.S.C. § 1292(a)(1) did not apply where the district court granted preliminary relief on other grounds). The district court’s decision to bifurcate proceedings and order separate summary-judgment briefing on the Bishops’ religious-liberty defenses did not modify or deny an injunction, *cf.* Appellants’ Br. 33, and as explained, the footnote in the Rule 54(b) opinion on which the Bishops rely is best read not to impose any independent obligations on the Bishops, *see supra* Part I. And in any event, the district court’s interlocutory injunction from September 2025 fully protects the Bishops as to any of the challenged accommodation requirements under the PWFA until the district court resolves their religious claims and defenses. *See* ROA.9393-94.

B. Even if jurisdiction exists, this Court need not address the Bishops’ religious-liberty claims because of existing relief.

1. Even if jurisdiction existed, this Court should allow the district court to conclusively resolve the Bishops’ religious-liberty claims in the first instance, since they are currently pending in district court. In the meantime, the district court’s preliminary injunction enshrining religious-liberty protections for the Bishops remains in effect and is not presently before this Court. As discussed, that injunction enjoins the EEOC from interpreting or enforcing the PWFA against the Bishops in any way that would “require [the Bishops] to make accommodations for abortions, contraception, sterilization, artificial reproductive technologies, or surrogacy in violation of their

sincerely held religious beliefs.” ROA.9393. The injunction also bars defendants from “initiating investigations against the Bishops (including pursuant to a commissioner charge, 42 U.S.C. § 2000e-5(b)), regarding allegations that the Bishops have failed to make accommodations for abortions, contraception, sterilization, artificial reproductive technologies, or surrogacy as required by [the PWFA].” ROA.9393-94.

Further, that injunction is not limited to accommodations for purely elective abortions. *See* ROA.9333. Accordingly, that injunction protects the Bishops from any possibility, however remote, that they might be required to provide an accommodation for any type of abortion during the pendency of this case. That injunction obviates any need for this Court to consider the Bishops’ other claims in this interlocutory appeal—while those claims are pending in district court.

Consistent with the district court’s injunction, the EEOC has also promised not to initiate any investigation against the Bishops under the PWFA or the rule based on any allegation or claim that they have failed to provide an abortion-related accommodation to which the Bishops have religious objections. *See* Opp’n to Mot. for Inj. Pending Appeal 10, 5th Cir. ECF No. 40 (July 31, 2025).

2. Further, if the Bishops were ever subject to a claim or charge for failing to provide an accommodation related to abortion under the PWFA or the rule, the government agrees that they would be protected (at a minimum) under both RFRA and the PWFA’s undue hardship provision. The government thus agrees that it could not lawfully attempt to impose such requirements on the Bishops.

a. RFRA provides that “[g]overnment may substantially burden a person’s exercise of religion only if it demonstrates that application of the burden to the person—(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest.” 42 U.S.C. § 2000bb-1(b). A person may assert RFRA “as a claim or defense in a judicial proceeding.” *See id.* § 2000bb-1(c). Because RFRA “applies to all [f]ederal law[] and the implementation of that law, whether statutory or otherwise,” *id.* § 2000bb-3(a), RFRA also “sets the standards binding every department of the United States to recognize and accommodate sincerely held religious beliefs.” *U.S. Navy Seals 1-26 v. Biden*, 27 F.4th 336, 346 (5th Cir. 2022) (per curiam); *see also Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 591 U.S. 657, 681-83 (2020).

The Bishops’ opening brief explains why requiring them to provide an accommodation related to an abortion would substantially burden their exercise of religion. As the Bishops explain, the Catholic Church “forbids the faithful from in any way supporting or encouraging direct abortion or being complicit in the actions of those who do.” Appellants’ Br. 10 (citing ROA.7371-73). The PWFA incorporates the remedies that Title VII provides, *see* 42 U.S.C. § 2000gg-2(a)(1), which can include injunctive relief; attorney’s fees; and, subject to a good-faith defense, *see id.* § 2000gg-2(g), compensatory damages for pecuniary losses, emotional pain suffering, inconvenience, mental anguish, and loss of enjoyment of life, and punitive damages for

intentional violations, *see id.* § 2000e-5(g); *Smith v. Texaco, Inc.*, 263 F.3d 394, 404 (5th Cir. 2001) (citing 42 U.S.C. § 1981a(a)(1)).

Having to face penalties of that nature is more than sufficient to substantially burden the Bishops' exercise of religion. *See Braidwood Mgmt., Inc. v. EEOC*, 70 F.4th 914, 937 (5th Cir. 2023) (holding that requiring an employer to choose between violating Title VII or following its religious convictions substantially burdens the employer's exercise of religion); *see also Burnell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 710 (2014) (noting that "a law that operates so as to make the practice of ... religious beliefs more expensive in the context of business activities imposes a burden on the exercise of religion" and finding the financial burdens there substantial) (alteration in original) (quotation marks omitted)).

Further, while the government generally has a compelling interest in prohibiting discrimination in the employment context, that interest would not apply here to the Bishops. *See, e.g., 303 Creative LLC v. Elenis*, 600 U.S. 570, 590 (2023). The Supreme Court has made clear that "[b]ecause RFRA operates as a kind of super statute, displacing the normal operation of other federal laws, it might supersede Title VII's commands in appropriate cases." *Bostock v. Clayton County*, 590 U.S. 644, 682 (2020) (citing 42 U.S.C. § 2000bb-3). Moreover, under RFRA, the court must "look[] beyond broadly formulated interests justifying the general applicability of government mandates and scrutinize[] the asserted harm of granting specific exemptions to particular religious

claimants.” *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 431 (2006).

If the Bishops were asked to provide accommodations to facilitate abortions, the government would plainly lack any compelling interest in refusing to exempt them from being forced to engage in such conduct. There is accordingly no need for this Court to pre-judge the Bishops’ religious-liberty claims in this interlocutory appeal—where the claims are not presented—based on the concerns expressed in their opening brief that they could be required to provide an accommodation related to “abortions obtained to treat ‘medical conditions’ such as ‘minor’ cases of ‘anxiety,’ ‘dehydration,’ ‘nausea or vomiting,’ ‘loss of balance,’ and ‘changes in hormone levels,’” Appellants’ Br. 14 (quoting 29 C.F.R. § 1636.3(a)(2), (b)); to “sanitize[]” their “statements regarding religious beliefs,’ ‘mission statements,’ and ‘code[s] of conduct’” of any “speech that might ‘dissuade’ an employee from requesting an accommodation,” Appellants’ Br. 45 (alteration in original); or to conduct “entangling investigations” of such matters, Appellants’ Br. 48. The government would be unable to defend any governmental action purporting to require the Bishops to make such accommodations.

b. In addition, the Bishops would be protected under the PWFA’s undue-hardship provision from having to engage in the specific conduct their opening brief identifies as inimical to their sincerely held religious beliefs. That provision states that the PWFA requires covered employers to make “reasonable accommodations to the known limitations related to pregnancy, childbirth, or related medical conditions of a

qualified employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of ... such covered entity.” 42 U.S.C. § 2000gg-1(1).

The PWFA requires the term “undue hardship” to be construed as it is under the Americans with Disabilities Act, 42 U.S.C. § 12111, *see id.* § 2000gg(7), and as the PWFA rule explains, the concept of undue hardship “refers to any accommodation that would be unduly costly, extensive, substantial, or disruptive, or that would fundamentally alter the nature or operation of the business.” 89 Fed. Reg. at 29,154 (quoting 29 C.F.R. pt. 1630 app. A (Section 1630.2(p)) (first citing S. Rep. No. 101-116, at 35 (1989), and then citing H.R. Rep. No. 101-485, pt. 2, at 67 (1990)).

As the EEOC explained below, “[c]onsideration of undue hardship includes hardships related to burdens on religion.” Dkt. No. 152 at 11 n.3. For the same reasons RFRA would protect the Bishops from having to take the actions they identified as violating their sincerely held religious beliefs, the PWFA’s undue-hardship defense would likewise shield them from such intrusions. Requiring such actions would be unduly disruptive and would fundamentally alter the nature of their organization.

c. Because the Bishops would have a statutory right under RFRA and the PWFA’s undue-hardship provision to an exemption for the conduct they identify as concerning here, this Court need not address whether the PWFA’s rule of construction, 42 U.S.C. § 2000gg-5(b), also would provide that protection. *Cf. Billard v Charlotte Cath. High Sch.*, 101 F.4th 316, 327 (4th Cir. 2024) (declining to reach Title VII religious-

corporation exception question as unnecessary). Principles of constitutional avoidance also obviate the need to reach the Bishops' church-autonomy and First Amendment claims. *See La Union del Pueblo Entero v. Abbott*, 167 F.4th 743, 755 (5th Cir. 2026).

CONCLUSION

For the foregoing reasons, the judgment of the district court should be affirmed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limit of Federal Rule of Appellate Procedure 32(a)(7)(B) because it contains 9,016 words. This brief also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5)-(6) because it was prepared using Word for Microsoft 365 in Garamond 14-point font, a proportionally spaced typeface.

s/ Lowell V. Sturgill Jr.

LOWELL V. STURGILL JR.

ADDENDUM

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42 U.S.C. § 2000gg-1	A1
29 C.F.R. § 1636.3	A2

42 U.S.C. § 2000gg-1 – Nondiscrimination with regard to reasonable accommodations related to pregnancy (excerpt)

It shall be an unlawful employment practice for a covered entity to—

(1) not make reasonable accommodations to the known limitations related to the pregnancy, childbirth, or related medical conditions of a qualified employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity;

* * *

29 C.F.R. § 1636.3 (excerpt)

* * *

(b) *Pregnancy, childbirth, or related medical conditions.* “Pregnancy” and “childbirth” refer to the pregnancy or childbirth of the specific employee in question and include, but are not limited to, current pregnancy; past pregnancy; potential or intended pregnancy (which can include infertility, fertility treatment, and the use of contraception); labor; and childbirth (including vaginal and cesarean delivery). “Related medical conditions” are medical conditions relating to the pregnancy or childbirth of the specific employee in question. The following are examples of conditions that are, or may be, “related medical conditions”: termination of pregnancy, including via miscarriage, stillbirth, or abortion; ectopic pregnancy; preterm labor; pelvic prolapse; nerve injuries; cesarean or perineal wound infection; maternal cardiometabolic disease; gestational diabetes; preeclampsia; HELLP (hemolysis, elevated liver enzymes and low platelets) syndrome; hyperemesis gravidarum; anemia; endometriosis; sciatica; lumbar lordosis; carpal tunnel syndrome; chronic migraines; dehydration; hemorrhoids; nausea or vomiting; edema of the legs, ankles, feet, or fingers; high blood pressure; infection; antenatal (during pregnancy) anxiety, depression, or psychosis; postpartum depression, anxiety, or psychosis; frequent urination; incontinence; loss of balance; vision changes; varicose veins; changes in hormone levels; vaginal bleeding; menstruation; and lactation and conditions related to lactation, such as low milk supply, engorgement, plugged ducts, mastitis, or fungal infections. This list is non-exhaustive.

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