

## INTERPRETING THE PREGNANT WORKERS FAIRNESS ACT: WHY ABORTION IS A PROTECTED CONDITION

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### ABSTRACT

*The Pregnant Workers Fairness Act (“PWFA”) was enacted in 2023 with the intention of providing stronger protections for workers facing workplace discrimination due to pregnancy. However, the current legal landscape threatens the protections for one group of workers: those having an abortion. The PWFA requires that employers provide reasonable accommodations for employees experiencing limitations associated with pregnancy, childbirth, or related medical conditions. However, ambiguity in the Act, especially about what constitutes a “related medical condition,” has led to disagreement over whether having an abortion should be included as a protected medical condition.*

*After the PWFA was signed into law, the Equal Employment Opportunity Commission (“EEOC”) issued guidance on the statute’s interpretation as instructed by Congress. In this guidance, the EEOC confirmed that abortion is a protected condition under the PWFA. However, this interpretation faces significant opposition from anti-abortion activists, in addition to judicial challenges. Although this interpretation is supported by the evolution of pregnancy-related employment discrimination protections, it is threatened by the present condition of the administrative state; specifically, the Supreme Court decision overturning Chevron deference, and the current EEOC leadership. This Note will demonstrate that the correct statutory interpretation of the PWFA, regardless of the EEOC’s guidance, supports the*

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*inclusion of having an abortion as a related medical condition. Thus, courts should uphold the EEOC's original interpretation, ensuring that the reproductive health decisions of workers, whether elective or medically indicated, are not impacted by workplace discrimination.*

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## INTRODUCTION

“Today women serve as doctors, lawyers, soldiers, and astronauts. They run big corporations,” and “[t]hey are police chiefs and baseball umpires and electricians—jobs once reserved exclusively for men.”<sup>1</sup> The Pregnant Workers Fairness Act (“PWFA”) is the latest legislative act intended to protect women<sup>2</sup> from workplace discrimination.<sup>3</sup> However, recent Supreme Court decisions on abortion rights and agency rulemaking authority have created a perfect storm that threatens the rights of pregnant workers.<sup>4</sup> Specifically, the rights of workers choosing to have an abortion.<sup>5</sup> The PWFA was enacted to ensure that workers never have to choose between economic security and reproductive health<sup>6</sup> because employment status should *never* be a factor in reproductive decisions; whether that decision is breathing in dangerous chemicals at the risk of miscarriage or birth defects, quitting your job because there is

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1. Liz Shuler, *Our Days, Our Lives: Working Women Need a Voice on the Job*, AFL-CIO (Oct. 27, 2015), <https://aflcio.org/speeches/our-days-our-lives-working-women-need-voice-job> [<https://perma.cc/9QCD-VPLL>].

2. Throughout this Note, “woman” and “workers” are used interchangeably, I mainly use the term “woman” to refer to those who can get pregnant and give birth and “workers” to refer to those protected under the PWFA. However, “woman” is a self-defined category, and this Note acknowledges that not everyone who can get pregnant and have children is a woman, and not all women can or do get pregnant and give birth.

3. See Pregnant Worker Fairness Act (PWFA) of 2023, 42 U.S.C. §§ 2000gg–2000gg-6.

4. See *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 231–33 (2022); *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412–13 (2024).

5. See Press Release, Virginia Foxx, Chairwoman, Education and the Workforce Committee, Foxx Slams Biden’s Rule Covering Abortions (Apr. 15, 2024), <https://edworkforce.house.gov/news/documentsingle.aspx?DocumentID=410447> [<https://perma.cc/7KR7-K5D4>] (“Adding this controversial provision into the PWFA is wrong. Period. Abortion is not a medical condition related to pregnancy; it is the opposite. Leave it to the Biden administration to think terminating a pregnancy and ending the life of an unborn child addresses the needs of pregnant workers.”).

6. See generally Mikaela Wells, *The Pregnant Workers Fairness Act After Dobbs*, REGUL. REV. (July 8, 2025), <https://www.theregreview.org/2025/07/08/wells-the-pregnant-workers-fairness-act-after-dobbs/> [<https://perma.cc/Y8GH-YEMQ>] (“Despite the patchwork of pregnancy discrimination protections, pregnant employees have continued to be denied temporary job accommodations . . . . To protect women . . . Congress passed the PWFA with strong bipartisan support in 2022.”).

nowhere for you to pump breast milk, or not getting an abortion because you were unable to take time off work.<sup>7</sup>

Since 1972, all three branches of the government—with the Equal Employment Opportunity Commission (“EEOC”) at the forefront—have had a hand in the pot trying to create an even playing field for all workers, specifically by protecting women from pregnancy discrimination.<sup>8</sup> Pregnancy, childbirth, miscarriages, abortion, stillbirth, lactation, etc. have consistently fallen under the umbrella of pregnancy-related protections.<sup>9</sup> This interpretation has been the same since 1972, and has been agreed upon by all three branches of government.<sup>10</sup>

Although pregnancy discrimination laws typically have bipartisan support, the inclusion of protections for workers who choose to have an abortion is more controversial.<sup>11</sup> Therefore, a

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7. See DINA BAKST, ELIZABETH GEDMARK, SARAH BRAFMAN & MEGHAN RACKLIN, *LONG OVERDUE: THE PREGNANT WORKERS FAIRNESS ACT IS A CRITICAL MEASURE TO REMOVE BARRIERS TO WOMEN’S WORKPLACE PARTICIPATION AND PROMOTE HEALTHY PREGNANCIES* 5–6, 27 n.43 (2021) [hereinafter *LONG OVERDUE*], <https://www.abetterbalance.org/wp-content/uploads/2021/06/Long-Overdue-June-2021-Update-Final-1.pdf> [<https://perma.cc/Q55K-YT6H>]; *Statement: A Better Balance Celebrates Pregnant Workers Fairness Act & PUMP Act Inclusion in Omnibus as a Momentous Victory for Moms, Moms-to-Be, Working Families*, A BETTER BALANCE (Dec. 23, 2022), <https://www.abetterbalance.org/statement-a-better-balance-celebrates-pregnant-workers-fairness-act-pump-act-inclusion-in-omnibus-as-a-momentous-victory-for-moms-moms-to-be-working-families> [<https://perma.cc/GKZ5-YVJ8>].

8. Title VII did not originally state that pregnancy discrimination was protected, but in 1972, the EEOC issued guidance stating under Title VII, pregnancy discrimination was sex discrimination. 29 C.F.R. § 1604.10 (1972). This protection was later codified in the Pregnancy Discrimination Act. 42 U.S.C. § 2000e.

9. See 29 C.F.R. § 1604.10 (1972); 29 C.F.R. § 1636 (2024).

10. See 29 C.F.R. § 1604.10 (1972); *Turic v. Holland Hosp.*, 85 F.3d 1211, 1213–14 (6th Cir. 1996).

11. The PWFA had significant support from the public; in 2022, 22% of voters said they were much more likely to vote for a candidate who supported the PWFA, 33% of voters said they were somewhat more likely. *Voter Opinions on the Pregnant Workers Fairness Act*, NAT’L WOMEN’S L. CTR. (Oct. 2022), <https://nwlc.org/wp-content/uploads/2022/10/NWLC-Pregnant-Workers-Fairness-Act-Morning-Consult-PPT-10.21.pdf> [<https://perma.cc/G7FV-YBKZ>]. However, many people who supported the passage of the PWFA, did not support the inclusion of abortion. See Andrea Lucas, *Statement re: Vote on Final Rule to Implement the Pregnant Workers Fairness Act*, U.S. EQUAL EMP. OPPORTUNITY COMM’N (Apr. 3, 2024), [https://www.eeoc.gov/statement-re-vote-final-rule-implement-pregnant-workers-fairness-act#\\_](https://www.eeoc.gov/statement-re-vote-final-rule-implement-pregnant-workers-fairness-act#_) [<https://perma.cc/S2ZP-434Y>] (“Pregnant women in the workplace deserve regulations that implement the Act’s provisions in a clear and reliable way. It is unfortunate that the elements of the final rule serving this purpose are inextricably tied to a needlessly expansive foundation that does not.”).

lot of judicial challenges that have arisen since the passage of the PWFA in 2023 have been regarding the issue of abortion.<sup>12</sup> The Act requires employers to provide reasonable accommodations to a worker's "known limitation[] related to . . . pregnancy, childbirth, or related medical conditions."<sup>13</sup> The issue is: the Act does not define the phrase, "related medical condition."<sup>14</sup> However, EEOC guidance clarifies that choosing to have an abortion is one of many related medical conditions that are protected.<sup>15</sup> Nevertheless, many anti-abortion activists disagree with this interpretation, and argue that the law does not require employers to provide accommodations to workers choosing to have an abortion.<sup>16</sup> Given that courts going forward no longer need to give deference to the EEOC when deciding this issue, and that the EEOC may even reconsider its inclusion of abortion in the Final Rule, the interpretation is in a highly vulnerable position.<sup>17</sup>

This Note argues that the correct interpretation of the PWFA is one that recognizes that choosing to have an abortion is a related medical condition and, therefore, employers must provide reasonable accommodations to workers with limitations related to having an abortion. By applying a statutory interpretation analysis, any court should reach this same conclusion. Furthermore, this Note covers all abortions—elective and medically indicated alike—because the reason a worker has an abortion

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12. See, e.g., *Louisiana v. EEOC*, 705 F. Supp. 3d 643, 648–49 (W.D. La. 2024); *Tennessee v. EEOC*, 129 F.4th 452, 456 (8th Cir. 2025); Brief in Support of Motion for Preliminary Injunction at 1–2, *Stanley M. Herzog Found. v. EEOC*, 24-CV-651, 2025 WL 2017715 (W.D. Mo. Jan. 7, 2025); Brief in Support of Motion for Preliminary Injunction at 1, *Brandon & Clark, Inc. v. EEOC*, 24-CV-173 (N.D. Tex. 2024).

13. 42 U.S.C. § 2000gg-1(1).

14. See *id.* § 2000gg.

15. 29 C.F.R. § 1636.3(b) (2024).

16. Implementation of the Pregnant Workers Fairness Act, 89 Fed. Reg. 29096 (Apr. 19, 2024) (to be codified at 29 C.F.R. § 1636) ("Many of the comments urging the Commission to exclude abortion from the definition of 'pregnancy, childbirth, or related medical conditions' expressed the view that abortion is the destruction of a human life, that it is objectionable for moral or religious reasons, and that it is not health care.").

17. See *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 392 (2024).

should not affect whether an employer should provide the accommodation or not.<sup>18</sup> Part I of this Note covers the reasons why the PWFA is necessary and important, in addition to the EEOC's current final rule on the Act's meaning. Part II walks through a brief history of the administrative state to set the stage as to how the EEOC got the authority to make a final rule on the PWFA, along with an overview of the recent Supreme Court decision impacting its authority. Part III lays out the problem: workers having an abortion deserve the protections that the PWFA affords other pregnant workers, but there is a threat that courts will not interpret the Act to provide those protections. Finally, Part IV is a statutory interpretation analysis that should be used by courts to conclude that choosing to have an abortion is a related medical condition under the PWFA.

## I. THE PREGNANT WORKERS FAIRNESS ACT

### A. *The PDA and ADA Failed Pregnant Workers*

Pregnancy discrimination in the workplace has been a constant issue in America, and legal protections against it have evolved over time.<sup>19</sup> The Pregnant Workers Fairness Act

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18. Most opposition to the inclusion of abortion specified they were against accommodations for "elective abortions." See, e.g., Cba Plaintiffs' Combined Reply in Support of Their Motion for Summary Judgment and Response in Opposition to Defendants' Motion to Dismiss at 19, *Cath. Benefits Ass'n v. Burrows*, No. 24-CV-142, 2025 WL 1126928 (D.N.D. Jan. 2, 2025) ("Elective abortion is not a 'medical condition' related to pregnancy; it is 'better described as a medical "procedure," sought to terminate a pregnancy.") (quoting *Louisiana v. EEOC*, 705 F. Supp. 3d 643, 658 (W.D. La. 2024)). Although this may impact what policies employers are okay with implementing (i.e., accommodating emergent abortions but not elective abortions), this does not have a huge impact on the argument in this Note because all abortions should be accommodated regardless of the reason, and the reason has no impact on the interpretation of the statute.

19. See Jessica Silver-Greenberg & Natalie Kitroeff, *Miscarrying at Work: The Physical Toll of Pregnancy Discrimination*, N.Y. TIMES (Oct. 21, 2018) [hereinafter *Miscarrying at Work*], <https://www.nytimes.com/interactive/2018/10/21/business/pregnancy-discrimination-miscarriages.html> [https://perma.cc/Q2DL-H3QG]; Jessica Silver-Greenberg & Natalie Kitroeff, *Pregnancy Discrimination Is Rampant Inside America's Biggest Companies*, N.Y. TIMES (Feb. 8, 2019) [hereinafter *Pregnancy Discrimination Is Rampant*], <https://www.nytimes.com/interactive/2018/06/15/business/pregnancy-discrimination.html> [https://perma.cc/SC5N-H5ZM]

(“PWFA”) is the most recent attempt to protect pregnant workers, following in the footsteps of Title VII of the Civil Rights Act of 1964.<sup>20</sup> The original text of Title VII did not expressly state that pregnancy discrimination was sex discrimination; however, in 1978 the Pregnancy Discrimination Act (“PDA”) amended Title VII to prohibit sex discrimination on the basis of pregnancy.<sup>21</sup> Furthermore, the Americans with Disabilities Act (“ADA”) of 1990, which was amended in 2008 with added protections for American workers, has been used to protect pregnant workers when Title VII failed to do so.<sup>22</sup> Despite these various federal laws, and many state laws, there remained gaps that consistently failed pregnant workers.<sup>23</sup> No federal law “explicitly and affirmatively” guaranteed pregnant workers the right to “reasonable accommodations,” allowing them to continue working without risking their pregnancy’s health.<sup>24</sup> Based on the narrow nature of the PDA, the ADA, and other state laws, it was difficult for wronged pregnant workers to successfully bring a pregnancy discrimination claim.<sup>25</sup> The PWFA was passed in hopes of bridging the gaps between the PDA and ADA.<sup>26</sup>

The limited scope of pre-PWFA protections was deeply consequential to pregnant workers and their families.<sup>27</sup> Pregnant

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(highlighting the stories of pregnant workers who experienced pregnancy discrimination across several American businesses).

20. Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, amended by, Pregnancy Discrimination Act of 1978; 42 U.S.C. § 2000gg.

21. 42 U.S.C. § 2000e.

22. Americans with Disabilities Act of 1990, 42 U.S.C. § 12101.

23. See Deborah A. Widiss, *New Federal Law Ensures Pregnant Employees Can Get Support at Work*, 49 HUM. RTS. 42, 42 (2023) [hereinafter Widiss, *New Federal Law*].

24. Juliet S. Burgess, *The Pregnant Workers Fairness Act: Reasonable Accommodations for Pregnant Workers*, ARIZ. ATT’Y, Jan. 2021, at 50, 51.

25. LONG OVERDUE, *supra* note 7, at 10 (“[T]he PDA continues to fail pregnant workers. In fact, the analysis in *Long Overdue* found that, in two-thirds of cases that brought accommodations claims under the PDA after *Young*, pregnant workers were still losing their claims.”).

26. See 42 U.S.C. § 2000gg (2023).

27. See, e.g., *Miscarrying at Work*, *supra* note 19 (describing how Erica Hayes lost her baby in the second trimester of her pregnancy after lifting heavy boxes in the warehouse all day despite asking her supervisor to work with lighter boxes).

workers who are not provided reasonable accommodations endure risks to their health and the health of their pregnancy.<sup>28</sup> Physicians often recommend that pregnant workers avoid heavy lifting or prolonged periods of sitting or standing; however, when employers refuse to provide accommodations, women are forced to endure these risks anyway.<sup>29</sup> According to the American College of Obstetricians and Gynecologists, “[a] national survey of pregnant working women showed that although 53% felt the need to change their job duties, 37% never requested such changes,” and even more alarming, “of those who did request accommodations, at least 9% were denied.”<sup>30</sup> In a 2018 investigation, the New York Times described how “[w]omen in strenuous jobs lost their pregnancies after employers denied their requests for light duty, even ignoring doctors’ notes.”<sup>31</sup> Before the passage of the PWFA, employers would refuse to provide appropriate accommodations, even when they were necessary to attend a doctor’s appointment or prevent miscarriages.<sup>32</sup> These refusals were often completely legal because under the PDA, employers did not have to provide

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28. A woman who worked at a factory in Silicon Valley manufacturing semiconductors had miscarriages like many of her coworkers because of the harmful chemicals used in making the chips. Justine Calma, *The Women Who Made America’s Microchips and the Children Who Paid for It*, THE VERGE (Feb. 19, 2025, at 09:00 ET), <https://www.theverge.com/features/611297/manufacturing-workers-semiconductor-computer-chip-birth-defect> [<https://perma.cc/J3VP-PYZD>]. She eventually gave birth to her son Mark; however, he was born with a severe intellectual disability. *Id.*

29. The Committee on Obstetric Practice, *Employment Considerations During Pregnancy and the Postpartum Period*, 131 OBSTET. & GYNECOL. e115, e119–20 (2018).

30. *Id.* at e117.

31. *Miscarrying at Work*, *supra* note 19.

32. See, e.g., Emily Martin, *Pregnant Workers Are Pushed Out of Work, And It’s Time to Finally Protect Them*, THE HILL (Oct. 21, 2022, at 16:30 ET), <https://thehill.com/opinion/finance/3698877-pregnant-workers-are-pushed-out-of-work-and-its-time-to-finally-protect-them/> [<https://perma.cc/T527-BULG>] (“When a worker in South Carolina requested accommodation so she could attend doctors’ appointments during her high-risk pregnancy, her employer told her ‘[y]ou don’t get special treatment just for being pregnant.’ Shortly thereafter, she was fired.”).

accommodations unless they were providing the same accommodations to similarly situated non-pregnant employees.<sup>33</sup>

An example of the failure of the PDA and ADA is the story of Victoria Serednyj.<sup>34</sup> Serednyj was the activity director at a nursing home when she learned she was pregnant for a second time after suffering a miscarriage a year prior.<sup>35</sup> Because she was experiencing pregnancy complications, her doctor advised her to avoid strenuous activities to reduce the risk of miscarriage.<sup>36</sup> She informed her employer of her situation, provided a doctor's note, and requested light duty; however, her employer said "she could not return to work unless [her doctor] released her back to full duty."<sup>37</sup> Serednyj's choice to prioritize the health of her pregnancy over her job and tell her employer that she could not complete certain strenuous tasks, resulted in her eventually being let go from her job.<sup>38</sup> Serednyj's PDA claim failed because she was unable to prove she was treated differently than another similarly situated non-pregnant employee, and her ADA claim failed because she was unable to prove she suffered from a disability.<sup>39</sup> Thus, the employer faced no consequences for their actions, and Serednyj lost her job because she prioritized the health of her pregnancy.<sup>40</sup>

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33. To establish a prima facie case under the PDA, a pregnant employee must show that they were treated differently than a similarly situated non-pregnant employee which resulted in an adverse impact on them. *See, e.g., Adduci v. Fed. Express Corp.*, 298 F. Supp. 3d 1153, 1156, 1162–63 (W.D. Tenn. 2018) (granting FedEx's motion for summary judgment on the pregnant worker's PDA claim after she was denied lighter duty and placed her on unpaid medical leave).

34. *Serednyj v. Beverly Healthcare, LLC*, 656 F.3d 540 (7th Cir. 2011).

35. *Id.* at 545. Serednyj's job duties were "to plan, implement, and participate in morning and/or afternoon activities for the residents at the nursing home facility." *Id.* Although not all her job entailed physical activity, she did have to transport residents to activities in their wheelchairs, rearrange tables and chairs to accommodate activities, shop for supplies for the activities, and maintain the large monthly calendar mounted on the wall. *Id.* Other employees gladly assisted her in these jobs even before her pregnancy. *Id.*

36. *Id.* at 545–46.

37. *Id.* at 546.

38. *Id.* at 546–47.

39. *Id.* at 550, 552, 556.

40. *Serednyj*, 656 F.3d at 546, 557.

In addition to the obvious unfairness of Serednyj's situation, and the many workers who have had similar experiences, there are a lot of ethical and practical reasons why stronger legislation was needed in this area of law.<sup>41</sup> According to the EEOC, the purpose of the PWFA is to "keep pregnant workers in the workforce," even if it comes at the cost of the employer.<sup>42</sup> Studies show that pregnancy accommodations do have an impact on whether a worker stays at a job or not; in 2022, 23% of parents said that they "considered leaving a job because of discrimination or lack of reasonable accommodations during a pregnancy."<sup>43</sup> Keeping parents—specifically mothers—in the workforce is extremely important, because, as the U.S. House of Representatives Committee on Education & Labor noted, "women [have] increasingly become the primary breadwinners in American households."<sup>44</sup> Although men remain the main breadwinner in a majority of hetero-marriages, "the share of women who earn as much as or significantly more than their husband has roughly tripled over the past 50 years."<sup>45</sup> More women work later into their pregnancies, and return to work earlier post-partum, to maintain their family's financial security.<sup>46</sup> This shift highlights the necessity of overt pregnancy

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41. See *infra* notes 48–53 and accompanying text.

42. Regulations to Implement the Pregnant Workers Fairness Act, 88 Fed. Reg. 54714, 54717 (proposed Aug. 11, 2023) (to be codified at 29 C.F.R. § 1636).

43. *Voter Opinions on the Pregnant Workers Fairness Act*, *supra* note 11.

44. H. COMM. ON EDUC. & LAB., PREGNANT WORKERS FAIRNESS ACT FACT SHEET, H.R. 1065, at 1 [hereinafter FACT SHEET].

45. RICHARD FRY, CAROLINA ARAGÃO, KILEY HURST & KIM PARKER, PEW RSCH. CTR., IN A GROWING SHARE OF U.S. MARRIAGES, HUSBANDS AND WIVES EARN ABOUT THE SAME 1, 4 (2023), <https://www.pewresearch.org/wp-content/uploads/sites/20/2023/04/Breadwinner-wives-full-report-FINAL.pdf> [<https://perma.cc/A3AJ-E55W>] ("In 29% of marriages today, both spouses earn about the same amount of money. Just over half (55%) of marriages today have a husband who is the primary or sole breadwinner and 16% have a breadwinner wife.").

46. FACT SHEET, *supra* note 44, at 1. The most recent data shows that "88 percent of first-time mothers worked" into their third trimester, when physical changes and complications more often arise. *Id.* (citing LYNDA LAUGHLIN, U.S. CENSUS BUREAU, MATERNITY LEAVE & EMPLOYMENT PATTERNS OF FIRST-TIME MOTHERS: 1961–2008, at 6 (2011), <https://www2.census.gov/library/publications/2011/demo/p70-128.pdf> [<https://perma.cc/G9UG-B7F5>]); Wen-Jui Han, Christopher J. Ruhm, Jane Waldfogel & Elizabeth Washbrook, *The Timing of Mothers' Employment After Childbirth*, MONTHLY LAB. REV., June 2008, at 15.

protections to preserve maternal health and familial financial stability.

As for ethical reasons for stronger legislation, historically, denying workers accommodations for their pregnancy has led to health issues and perpetuated inequality.<sup>47</sup> The brave women who advocated for the PWFA best demonstrate this inequality.<sup>48</sup> Armanda Legros worked for an armored truck company and was the sole breadwinner of her family.<sup>49</sup> While pregnant, she asked her employer to avoid heavy lifting after pulling a muscle in her back, but instead of granting her this accommodation, her employer pushed her out.<sup>50</sup> Lyndi Trischler was a police officer in Kentucky; her healthcare provider recommended she request light duty, but the city denied her request because she was not injured on the job.<sup>51</sup> Eventually, Trischler was also forced out of work.<sup>52</sup> These stories highlight the inequality that existed before the PWFA, where women were forced to choose between their health and their jobs. Unfortunately, many similar stories exist.<sup>53</sup>

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47. See, e.g., Natasha Jackson, *I Faced Pregnancy Discrimination Thirteen Years Ago — I Won't Wait Any Longer for Congress to Take Action*, MEDIUM: BETTER BALANCE (Apr. 28, 2021), <https://abetterbalance.medium.com/i-faced-pregnancy-discrimination-thirteen-years-ago-i-wont-wait-anylonger-for-congress-to-take-3845018a3fd5> [<https://perma.cc/725X-6G9H>].

48. See *The Women Who Inspired the Movement for the Pregnant Workers Fairness Act*, A BETTER BALANCE, <https://www.abetterbalance.org/pregnant-worker-stories/> [[perma.cc/TH8B-3JT2](https://perma.cc/TH8B-3JT2)] (last visited Mar. 14, 2026).

49. See *id.*

50. See *id.* (“Once my baby arrived, just putting food on the table for him and my four-year-old was a challenge. I was forced to use water in his cereal at times because I could not afford milk. I was scared every time I looked in my empty fridge.”).

51. See *id.*

52. See *id.* (“I returned to work a mere eight weeks after giving birth and after my son passed away. As heartbreaking as this experience was it was made all the worse by having to face workplace discrimination too.”).

53. A Better Balance tells the stories of Natasha Jackson, Tasha Murrell, Takirah Woods, and many more. See *id.*

B. *The PWFA Filled Gaps Left by the PDA and ADA*

As demonstrated, the failures of the PDA and ADA put the health and financial stability of pregnant workers and their families at risk.<sup>54</sup> Thus, the PWFA was introduced in 2012 as a proposal to upgrade the dated legislation.<sup>55</sup> Since 2012, the bill has maintained significant bipartisan support.<sup>56</sup> This bipartisanship is exemplified by the bill's cross-the-aisle sponsorship.<sup>57</sup> It gained traction in 2015 after the Supreme Court ruled in favor of a pregnant worker who was forced to take an extended, unpaid leave of absence because she was no longer able to lift over twenty pounds.<sup>58</sup> This case brought a lot of attention to the issue of pregnancy discrimination, but, despite the issue once again being in the headlines, the momentum fell and the bill stalled.<sup>59</sup>

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54. See *supra* Section I.A.

55. See Pregnant Workers Fairness Act of 2012, H.R. 5647, 112th Cong. (2012); see also Reconnecting Congress with America Act of 2011, H.R. 3565, 112th Cong. (2011) (reducing congressional members' salaries in the event of a "federal budget deficit").

56. See *Senator Murray Calls for Passage of Pregnant Workers Fairness Act This Congress*, U.S. SENATOR PATTY MURRAY (Dec. 1, 2022), <https://www.murray.senate.gov/senator-murray-calls-for-passage-of-pregnant-workers-fairness-act-this-congress/> [<https://perma.cc/9QRJ-4772>] ("This is a commonsense, bipartisan bill that will make sure that no one is forced to choose between a job and their pregnancy."); see also Lucas, *supra* note 11 ("The PWFA was a tremendous, bipartisan legislative achievement.").

57. In the House, the bill was introduced by Rep. Jerrold Nadler (D-N.Y.), with Rep. John Katko (R-N.Y.) as an original cosponsor; in the Senate, the bill was introduced by Sen. Bob Casey (D-PA), with Sen. Bill Cassidy (R-LA) as an original cosponsor. See H.R. 1065, 117th Cong. (2021); Cosponsors: H.R.1065 - Pregnant Workers Fairness Act, CONGRESS.GOV, <https://www.congress.gov/bill/117th-congress/house-bill/1065/cosponsors> [<https://perma.cc/CJ7D-SMGN>] (last visited Mar. 13, 2026); S. 1486, 117th Cong. (2021); Cosponsors: S.1486 - Pregnant Workers Fairness Act, CONGRESS.GOV, <https://www.congress.gov/bill/117th-congress/senate-bill/1486/cosponsors> [<https://perma.cc/5XVQ-K2F5>] (last visited Mar. 13, 2026); Pregnant Workers Fairness, A BETTER BALANCE, <https://www.abetterbalance.org/our-issues/pregnant-workers-fairness/> [<https://perma.cc/MWA6-PTZM>] (last visited Mar. 13, 2026).

58. *Young v. United Parcel Serv.*, 575 U.S. 206, 211 (2015); see H.R. 2654, 114th Cong. (2015); H.R. 1065, 117th Cong. (2021).

59. Despite the House proposing a bill in 2015 and 2017, there was no major movement, and it was not proposed again until 2021. See, e.g., H.R. 2654, 114th Cong. (2015); H.R. 2417, 115th Cong. (2017); H.R. 1065, 117th Cong. (2021).

The House finally passed the PWFA in 2021, quickly followed by the Senate doing the same.<sup>60</sup> President Joe Biden then signed it into law, and the PWFA took effect on June 27, 2023.<sup>61</sup> The PWFA is a standalone statute, not an amendment to Title VII, and both the PDA and ADA are still good law.<sup>62</sup> The Act's core mandate requires that employers "make reasonable accommodations to the known limitations," including mental or physical conditions, "related to the pregnancy, childbirth, or related medical conditions of a qualified employee," unless the employer "can demonstrate that the accommodation would impose an undue hardship on the" employer's business.<sup>63</sup>

The PWFA bridges the gaps between the ADA and PDA, with a lot of the language in the PWFA regarding "reasonable accommodations" or "undue hardship" coming from the ADA.<sup>64</sup> However, although the ADA provides an avenue for a pregnant worker to qualify for accommodations under the Act, to do so, the pregnant worker needs to show that their condition meets the law's definition of disability.<sup>65</sup> Now, under the

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60. See *Roll Call Vote No. 143*, CLERK U.S. HOUSE OF REP. (May 14, 2021, at 11:03 ET), <https://clerk.house.gov/Votes/2021143> [<https://perma.cc/VL47-SBPY>] (315 YEAs and 101 NAYs); *Roll Call Vote 117th Congress, 2nd Session*, U.S. SENATE (Dec. 22, 2022, at 12:31 ET), [https://www.senate.gov/legislative/LIS/roll\\_call\\_votes/vote1172/vote\\_117\\_2\\_00416.htm](https://www.senate.gov/legislative/LIS/roll_call_votes/vote1172/vote_117_2_00416.htm) [<https://perma.cc/FY5E-N4EJ>] (73 YEAs and 24 NAYs).

61. Consolidated Appropriations Act, 2023, Pub. L. No. 117-328, div. II, 136 Stat. 4459, 6084–89 (2022) (codified at 42 U.S.C. §§ 2000gg–2000gg-6); *What You Should Know About the Pregnant Workers Fairness Act*, U.S. EQUAL EMP. OPPORTUNITY COMM'N, <https://www.eeoc.gov/wysk/what-you-should-know-about-pregnant-workers-fairness-act> [<https://perma.cc/YKE7-ML92>] (last visited Mar. 13, 2026); see Matthew Loughran, *Was the Consolidated Appropriations Act, 2023 Legitimately Passed by the House?*, REED SMITH: HEALTH INDUS. WASH. WATCH (Mar. 11, 2024), <https://www.healthindustrywashingtonwatch.com/2024/03/articles/legislative-developments/was-the-consolidated-appropriations-act-2023-legitimately-passed-by-the-house/#> [<https://perma.cc/T285-H8U7>].

62. See 42 U.S.C. §§ 2000gg–2000gg-6 (enacted as part of the Consolidated Appropriations Act of 2023); 42 U.S.C. § 2000e(k); 42 U.S.C. § 12101 et seq.

63. 42 U.S.C. § 2000gg-1.

64. Compare 42 U.S.C. § 2000gg(7), with 42 U.S.C. § 12111(9)–(10) (reflecting Congress's adoption of the ADA's accommodations terminology and hardship limitation).

65. See *What You Should Know About the Pregnant Workers Fairness Act*, supra note 61 ("Some pregnancy-related conditions may be disabilities under the law, but pregnancy itself is not a disability under the ADA."). The burden of proof is on the plaintiff. See, e.g., *U.S. Airways, Inc.*

PWFA, employers are obligated to make accommodations for any employee with pregnancy-related conditions, regardless of whether their condition is a “disability” under the ADA.<sup>66</sup> This creates a significantly lighter burden for the pregnant worker because they no longer need to establish that their pregnancy or related condition is a disability.<sup>67</sup>

Additionally, the PWFA imposes broader accommodation requirements than the ADA by mandating temporary adjustments to essential job functions for employees with pregnancy-related limitations.<sup>68</sup> Unlike the ADA, a qualified employee under the PWFA also includes an employee or applicant whose “inability to perform an essential function is for a temporary period” if “the essential function could be performed in the near future; and the inability to perform the essential function can be reasonably accommodated.”<sup>69</sup> Therefore, under the PWFA, employers may be required to temporarily suspend one or more essential functions of an employee’s job to reasonably accommodate their pregnancy-related disability.<sup>70</sup> The ADA is less demanding.<sup>71</sup>

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v. Barnett, 535 U.S. 391, 405–06 (2002) (describing how the plaintiff, here the employee, has the burden of proving that the requested accommodation is reasonable in their circumstance).

66. 42 U.S.C. § 2000gg-1(1).

67. Although the burden of proof is similar to the ADA because the employee still must show that the accommodation is reasonable, an employer must show that they would face an “undue hardship” to deny it. Many cases exemplify the barrier that pregnant workers face in getting coverage under the ADA for their pregnancy-related conditions. *See, e.g.,* Israel v. U.S. Bank, NA, 653 F. Supp. 3d 685, 704–05 (D. Ariz. 2023) (finding that the plaintiff did not establish a disability under the ADA because her pregnancy-related anemia did not continue postpartum and temporary conditions during pregnancy do not typically qualify as a disability under the ADA); Gorman v. Wells Mfg. Corp., 209 F. Supp. 2d 970, 976 (S.D. Iowa 2022) (concluding that the employee’s pregnancy-related symptoms, including nausea and fatigue, were too finite and therefore not considered a disability under the ADA).

68. 42 U.S.C. § 2000gg(6)(A).

69. *Id.* § 2000gg(6).

70. *See id.*

71. *Compare id.* (specifying that those who cannot perform their essential job temporarily are still qualified employees), *with* 42 U.S.C. § 12111(8) (not including any language about temporarily suspending essential functions if the employee can return to the function in the future).

The PWFA is also an expansion of the PDA, which unlike the ADA was specifically for pregnant workers.<sup>72</sup> The PDA *prohibited* discrimination, harassment, or retaliation whereas the PWFA *requires* reasonable accommodations.<sup>73</sup> Essentially, the PWFA strengthens the PDA's protections by incorporating the framework of the ADA and applying it to pregnant workers.<sup>74</sup> Now, pregnant workers do not need to prove that they were treated differently than a similarly situated non-pregnant employee.<sup>75</sup> Instead, to be entitled to reasonable accommodations, an employee must demonstrate a "known limitation[]" related to pregnancy.<sup>76</sup> This change makes it much easier for pregnant workers to get the support they need and there is more pressure on employers to engage with the pregnant workers to determine what accommodations are necessary rather than wait for a pregnant worker to be wrongfully treated.<sup>77</sup>

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72. The Pregnancy Discrimination Act was enacted in direct response to *General Electric v. Gilbert*, when the Supreme Court concluded that sex discrimination does *not* include pregnancy discrimination. 429 U.S. 125, 145–46 (1976); 42 U.S.C. § 2000e(k).

73. Compare 42 U.S.C. § 2000e-2(a)(1) ("It shall be an unlawful employment practice for an employer to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual . . ."), with 42 U.S.C. § 2000gg-1(1) ("It shall be an unlawful employment practice for a covered entity to not make reasonable accommodations to the known limitations related to the pregnancy, childbirth, or related medical conditions of a qualified employee . . .").

74. "Framework" refers to the way that the ADA requires employers to provide reasonable accommodations to employees with disabilities. 42 U.S.C. § 12111(9).

75. See, e.g., *Holmes v. E. Spire. Communs., Inc.*, 135 F. Supp. 2d 657, 663–64 (D. Md. 2001) (finding that the plaintiff was unable to provide enough evidence that non-pregnant workers were treated more favorably); *Horton v. Am. Railcar Indus.*, 214 F. Supp. 2d 921, 923, 932 (E.D. Ark. 2002) (finding that when the pregnant worker was denied a light duty work assignment that was given to those with occupational injuries, she failed to prove she was qualified to receive the benefit of light duty and that the same benefit was available to others with similar qualifications; therefore, there was no discrimination under the PDA).

76. 42 U.S.C. § 2000gg-1(1).

77. *What You Should Know About the Pregnant Workers Fairness Act*, *supra* note 61 ("Once the employer knows, it should engage in the 'interactive process' with the employee or applicant.").

*C. Guidance from the Equal Employment Opportunity  
Commission*

Although the PWFA is a huge advancement for pregnant workers, it means nothing if the EEOC does not enforce it.<sup>78</sup> The PWFA granted the EEOC rulemaking authority to issue and implement regulations to carry out the Act.<sup>79</sup> Specifically, “[s]uch regulations [issued by the EEOC] shall provide examples of reasonable accommodations addressing known limitations related to pregnancy, childbirth or related medical conditions.”<sup>80</sup> By passing the law and instructing the EEOC to regulate a certain area of the law, Congress set the rulemaking process in motion.<sup>81</sup>

Using this authority, the EEOC published its proposed regulations, which provided a plethora of guidance for the interpretation of the PWFA.<sup>82</sup> In the proposal, the EEOC provided examples of “reasonable accommodation[s],” including but not limited to frequent breaks, schedule changes, part-time work, and job restructuring.<sup>83</sup> Additionally, to clarify what type of conditions could require accommodations, the EEOC provided a “non-exhaustive list of examples of pregnancy, childbirth, or related medical conditions that the Commission has concluded generally fall within the statutory definition.”<sup>84</sup> This list includes “current pregnancy, past pregnancy, potential

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78. See 42 U.S.C. § 2000gg-3(a).

79. *Id.* (“Not later than 1 year after December 29, 2022, the [Equal Employment Opportunity] Commission shall issue regulations in an accessible format [per] subchapter II of chapter 5 of Title 5 to carry out this chapter.”).

80. *Id.*

81. Administrative Procedure Act (APA), 5 U.S.C. § 553.

82. See Regulations to Implement the Pregnant Workers Fairness Act, 88 Fed. Reg. 54714 (proposed Aug. 11, 2023) (codified at 29 C.F.R. pt. 1636 (2024)). The EEOC listed four accommodations that, “in virtually all cases, will be found to be reasonable accommodations that do not impose undue hardship[.]” *Id.* These include access to drinking water; allowing additional restroom breaks; allowing those who need to sit, to sit, and those who need to stand, to stand; and giving breaks to eat and drink water. *Id.*

83. *Id.*

84. *Id.*

pregnancy, lactation (including breastfeeding and pumping), use of birth control, menstruation, infertility and fertility treatments, endometriosis, miscarriage, stillbirth, or having or choosing not to have an abortion.”<sup>85</sup> This list was one of the more controversial aspects of the EEOC’s guidance because many critics felt that it was too broad of an interpretation.<sup>86</sup>

The EEOC’s inclusion of abortion as a “related medical condition,” sparked significant public debate. Following the proposed regulations, the EEOC invited public comment, which resulted in approximately 100,000 total comments.<sup>87</sup> The area that received the most attention was the inclusion of “having or choosing not to have an abortion” as a “related medical condition.”<sup>88</sup> The abortion accommodation was the subject of more than 96,000 out of the 100,000 comments.<sup>89</sup> Roughly 54,000 of the comments advocated against the inclusion of the abortion accommodation and 40,000 in support of the inclusion.<sup>90</sup> For example, the U.S. Senate Committee on Health, Education, Labor, and Pensions, led by Republican Senator Bill Cassidy wrote:

[T]he Equal Employment Opportunity Commission has ignored the statute and substituted its views on abortion for those of Congress. I am gravely concerned by the Commission’s decision

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85. *Id.*

86. Deborah A. Widiss, *The Federal Pregnant Workers Fairness Act: Statutory Requirements, Regulations, and Need (Especially in Post-Dobbs America)*, 27 *EMP. RTS. & EMP. POL’Y J.* 84, 117 (2024) (“The regulation’s specific reference to abortion is controversial, and it will certainly be challenged by some employers. Indeed, within days of the final rule being published[,] . . . seventeen states filed a lawsuit arguing that the agency exceeded its authority.”).

87. Press Release, EEOC, EEOC Issues Final Regulation on Pregnant Workers Fairness Act (Apr. 15, 2024), <https://www.eeoc.gov/newsroom/eeoc-issues-final-regulation-pregnant-workers-fairness-act> [<https://perma.cc/4N85-GNLB>].

88. Implementation of the Pregnant Workers Fairness Act, 89 Fed. Reg. 29096, 29101 (Apr. 19, 2024) (codified at 29 C.F.R. pt. 1636).

89. *Id.*; Riddhi Setty, *Abortion Dominates Response to EEOC’s Pregnant Worker Proposal*, BLOOMBERG L. (Oct. 16, 2023, at 12:24 ET), <https://news.bloomberglaw.com/daily-labor-report/abortion-dominates-response-to-eeocs-pregnant-worker-proposal> [<https://perma.cc/QT8G-2ZMY>].

90. Implementation of the Pregnant Workers Fairness Act, 89 Fed. Reg. 29096, 29101 (Apr. 19, 2024) (codified at 29 C.F.R. pt. 1636).

to inject abortion politics into the definition of “pregnancy, childbirth, or related medical conditions,” rather than implement the Act consistent with the bipartisan goal to provide reasonable accommodations to pregnant and postpartum workers.<sup>91</sup>

In contrast, the Leadership Conference on Civil and Human Rights submitted a comment, strongly supporting the inclusion of abortion.<sup>92</sup> The coalition, “which champions policy that strengthens and expands protections against discrimination and harassment in the workplace,” argued that “abortion’s place among the full range of statutorily protected ‘related medical conditions’ is rooted in decades of legislative, administrative, and judicial authority.”<sup>93</sup>

The EEOC’s final rule on the PWFA was published in the Federal Register on April 19, 2024 after approval by a 3-2 vote of the Commission.<sup>94</sup> Despite what might have been the majority of public comments criticizing the inclusion of abortion in the non-exhaustive list of “related medical conditions,” the

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91. Letter from Bill Cassidy, Chairman, Committee on Health, Education, Labor, and Pensions, PWFA Comment (Sep. 29, 2023), [https://www.help.senate.gov/imo/media/doc/pwfa\\_comment\\_letter.pdf](https://www.help.senate.gov/imo/media/doc/pwfa_comment_letter.pdf) [<https://perma.cc/YD7G-DPRE>].

92. JUDITH M. CONTI & YONA ROZEN, THE LEADERSHIP CONF. ON CIV. AND HUM. RTS., THE LEADERSHIP CONFERENCE COMMENTS TO THE EEOC ON THE IMPLEMENTATION OF THE PREGNANT WORKERS FAIRNESS ACT 1, 21 (2023), <https://civilrights.org/wp-content/uploads/2023/10/10.10.23-PWFA-Comments-Website.pdf> [<https://perma.cc/RKK8-ZN8U>].

93. *Id.* at 1, 15.

94. *Commissioning Votes: April 2024*, U.S. EQUAL EMP. OPPORTUNITY COMM’N (Apr. 2024), <https://www.eeoc.gov/commission-votes-april-2024> [<https://perma.cc/AY7V-FGU6>]. The two votes of disapproval came from Commissioners Andrea Lucas and Keith Sonderling. *Id.* Two out of three commissioners who voted to approve the final rule—Commissioners Burrows and Samuels—were recently fired by President Trump. Matthew Goldstein & Emily Steel, *Trump Fired EEOC Commissioners in Late-Night Purge*, N.Y. TIMES (Jan. 28, 2025), <https://www.nytimes.com/2025/01/28/business/trump-eeoc-commissioners-fired.html> [<https://perma.cc/8VTS-U84X>]. Andrea Lucas is now the Acting Chair of the EEOC, joined by Commissioner, Kalpana Kotagal who also voted to approve the final rule. *Id.*; *Commissioning Votes: April 2024*, *supra* note 94; Kalpana Kotagal: Commissioner, U.S. EQUAL EMP. OPPORTUNITY COMM’N, <https://www.eeoc.gov/kalpana-kotagal-commissioner> [<https://perma.cc/SVY6-TMRR>] (last visited Jan. 23, 2026). Keith Sonderling is now the U.S. Deputy Secretary of Labor. Office of the Deputy Secretary, U.S. DEP’T LAB., <https://www.dol.gov/agencies/osec/keith-sonderling> [<https://perma.cc/69WD-RQDN>] (last visited Mar. 9, 2026).

EEOC included it in the final rule.<sup>95</sup> Addressing the controversy, the EEOC explained that many of the comments urging the exclusion of abortion “expressed the view that abortion is the destruction of a human life, that it is objectionable for moral or religious reasons, and that it is not health care.”<sup>96</sup> However, “many comments [also] expressed deeply held beliefs that abortion is a necessary part of health care and that an employer’s religious beliefs should not dictate an employee’s ability to receive a reasonable accommodation under the PWFA.”<sup>97</sup> The EEOC defended the inclusion of abortion in its final rule as “consistent with the Commission’s and courts’ longstanding interpretation of the same phrase in Title VII.”<sup>98</sup>

## II. THE EEOC OR THE COURT: WHO INTERPRETS THE PWFA

The Administrative Procedure Act (“APA”),<sup>99</sup> grants the EEOC the power to issue final rules interpreting the PWFA. Before 2024, if any language in a statute was interpreted by an agency and challenged in court, the court would have to give a significant amount of deference to the agency’s interpretation, so long as the interpretation is permissible.<sup>100</sup> Therefore, if someone were to argue that “having or choosing not to have an

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95. Implementation of the Pregnant Workers Fairness Act, 89 Fed. Reg. 29096, 29104 (Apr. 19, 2024) (codified at 29 C.F.R. pt. 1636).

96. *Id.*

97. *Id.*

98. *Id.* The EEOC maintains that statutory history and prior court rulings support the inclusion of abortion, and any different interpretation would create inconsistencies between the PWFA and Title VII and lead to complications in enforcement and litigation. *Id.* The interpretation aligns with the plain statutory text, longstanding Title VII precedent, and congressional intent. *Id.* Furthermore, the interpretation does not mandate employers provide leave for abortion in all cases, require employers to fund abortions, or promote abortion-related benefits. Instead, it requires accommodations, which are still subject to the prior existing exceptions. *Id.*

99. See generally 5 U.S.C. § 553 (outlining the required procedures for agency rule making); see also 89 Fed. Reg. 29096, 29165 (Apr. 19, 2024) (to be codified at 29 C.F.R. pt. 1636) (issuing the final rule “following the procedures codified at 5 U.S.C. 553(b)”).

100. See *Chevron U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 865 (1984), *overruled by*, *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412 (2024).

abortion” is or isn’t a “related medical condition,” per the PWFA, the court would have to give deference to the EEOC’s textually permissible interpretation.<sup>101</sup> This would lead the court to conclude that, as understood in the PWFA, a worker having an abortion is to be given the same accommodations as a pregnant worker.<sup>102</sup> However, courts no longer need to provide that much deference, and this interpretation is therefore in danger.<sup>103</sup> This Note argues that when a court interprets the PWFA, even without giving deference to the EEOC’s interpretation, the phrase “related medical condition,” should be construed to include having an abortion to ensure all women are equally protected in the workplace.<sup>104</sup>

#### A. EEOC Has Rulemaking Authority Under the APA

When Congress passes a law and instructs an agency to make rules, it provides an agency with an “intelligible principle” to which it must conform.<sup>105</sup> This “intelligible principle” governs and guides the agency in its authority, and sets out a

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101. See *id.*; 16 C.F.R. pt. 1636.3(b)(18). *Chevron’s* framework would have required a reviewing court to first determine if the statute was ambiguous. *Chevron*, 467 U.S. at 865. If the statute was ambiguous, then the court would defer to the EEOC’s interpretation of the statute if it was “reasonable.” *Id.*

102. If a statute, like the PWFA, is silent or ambiguous on a specific issue, and if the agency’s interpretation of the statute was reasonable, then the court must give deference to their interpretation. *Id.* at 842–43. Statutes are often ambiguous, and when Congress passes a statute, they delegate authority to an *agency* to fill in the details. *Id.* at 843–44. The role of the court is not to question the agency’s interpretation but instead to police the outer bounds and ensure they are not overstepping their authority. *Id.* There are currently no examples of a court concluding that the EEOC’s interpretation of “related medical conditions,” including “having or choosing not to have an abortion,” in the PWFA is reasonable. However, it is almost certain that under *Chevron*, this interpretation would have been upheld. See *id.* at 844.

103. See *Loper Bright*, 603 U.S. at 412–13 (“*Chevron* is overruled. Courts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority, as the APA requires.”).

104. See 16 C.F.R. § 1636.3(b) (2025).

105. See *J.W. Hampton, Jr. & Co. v. United States*, 276 U.S. 394, 409 (1928) (“If Congress shall lay down by legislative act an intelligible principle to which the person or body authorized to fix such rates is directed to conform, such legislative action is not a forbidden delegation of legislative power.”).

framework with boundaries.<sup>106</sup> This is important because political appointees and career civil servants run agencies, *not* elected officials; therefore, to protect democracy, it is necessary to confine their power.<sup>107</sup> “[W]hen Congress ha[s] legislated and indicated its will,” it empowers agencies to “fill up the details[,]”<sup>108</sup> by specifically naming an agency to enforce and make rules concerning that law.<sup>109</sup> However, agencies are not permitted to “go[] beyond [their] statutory authority or violate[] the Constitution.”<sup>110</sup>

The EEOC, established by the Civil Rights Act of 1964 to combat workplace discrimination, has long been entrusted with “fill[ing] up the details” of employment-related laws.<sup>111</sup> The purpose of the EEOC is to enforce “federal laws that make it illegal to discriminate against a job applicant or an employee because of the person’s race, color, religion, sex[,] . . . national origin, age[,] . . . disability or genetic information.”<sup>112</sup> Since the 1960s, the EEOC has overseen a variety of work related situations.<sup>113</sup> Furthermore, the EEOC has been authorized to enforce twelve different laws, including all the precursors to the PWFA—Title VII, PDA, and ADA.<sup>114</sup> Importantly, it was given

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106. *Loving v. United States*, 517 U.S. 748, 771 (1996) (“The intelligible-principle rule seeks to enforce the understanding that Congress may not delegate the power to make laws and so may delegate no more than the authority to make policies and rules that implement its statutes.”).

107. See Daniel E. Walters, *The Administrative Agon: A Democratic Theory for a Conflictual Regulatory State*, 132 *YALE L.J.* 1, 9 (2022).

108. *United States v. Grimaud*, 220 U.S. 506, 517 (1911).

109. OFF. OF THE FED. REG., A GUIDE TO THE RULEMAKING PROCESS 1, 2 (2013), <https://uploads.federalregister.gov/uploads/2013/09/The-Rulemaking-Process.pdf> [<https://perma.cc/UZ79-QHTS>].

110. *Id.*

111. See 42 U.S.C. § 2000e-4(a); *Grimaud*, 220 U.S. at 517.

112. *Overview*, U.S. EQUAL EMP. OPPORTUNITY COMM’N, [hereinafter *EEOC Overview*] <https://www.eeoc.gov/overview> [<https://perma.cc/P8AD-CSGA>] (last visited Mar. 10, 2026); see 42 U.S.C. § 2000e-4(a); *Grimaud*, 220 U.S. at 517.

113. This “include[s] hiring, firing, promotions, harassment, training, wages, and benefits.” *EEOC Overview*, *supra* 112.

114. See 42 U.S.C. § 2000e; 42 U.S.C. § 12111. Essentially any law that involves employment discrimination is delegated to the EEOC, the most recent being the PWFA. See *Equal Employment*

this authority because it employs experts who have specialized knowledge in the field of employment law, policy, and civil rights.<sup>115</sup> Given the extensive experience and knowledge at its disposal, the EEOC is uniquely equipped to interpret and implement the intricacies of employment discrimination law that Congress could not possibly address in detail.<sup>116</sup>

### B. *Judicial Review of Rulemaking Under the APA*

Despite agencies, including the EEOC, having the authority to implement final rules, it is common for individuals, states, or corporate entities, to go into court and argue that the regulations imposed by an agency's final rule will adversely affect them.<sup>117</sup> In these situations, the APA says, "the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action."<sup>118</sup> Furthermore, the court shall "hold unlawful[,] and set aside agency action, findings, and conclusions" deemed as "arbitrary, capricious, an

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*Opportunity Laws*, U.S. EQUAL EMP. OPPORTUNITY COMM'N, <https://www.eeoc.gov/equal-employment-opportunity-laws> [<https://perma.cc/9SVA-383T>] (last visited Mar. 9, 2026).

115. The EEOC's expertise is demonstrated through its comprehensive resources, data collection, and initiatives aimed at preventing employment discrimination. See U.S. EQUAL EMP. OPPORTUNITY COMM'N, <https://www.eeoc.gov/overview> [<https://perma.cc/P8AD-C5GA>] (last visited Mar. 9, 2026). For example, the agency offers guidance on best practices for employers and HR professionals to promote equal employment opportunities. See *Best Practices for Employers and Human Resources/EEO Professionals*, U.S. EQUAL EMP. OPPORTUNITY COMM'N, <https://www.eeoc.gov/initiatives/e-race/best-practices-employers-and-human-resourceseeo-professionals> [<https://perma.cc/BR2G-EPEL>] (last visited Mar. 9, 2026).

116. See *Systemic Enforcement at the EEOC*, U.S. EQUAL EMP. OPPORTUNITY COMM'N, <https://www.eeoc.gov/systemic-enforcement-eeoc> [<https://perma.cc/GW9U-U85T>] (last visited Mar. 9, 2026).

117. To be entitled to judicial review under the APA, a plaintiff must show that they suffered a "legal wrong" or were "adversely affected or aggrieved" by the agency action. 5 U.S.C. § 702. See, e.g., *Texas v. Equal Emp. Opportunity Comm'n*, 933 F.3d 433, 448 (5th Cir. 2019) (Texas challenged EEOC's guidance on employers' use of criminal records in hiring because the guidance pressured Texas "to change its laws and policies or risk referral to the Attorney General by EEOC").

118. 5 U.S.C. § 706.

abuse of discretion, or otherwise not in accordance with [the] law.”<sup>119</sup>

This section of the APA has been subject to much litigation, the question coming down to how much deference courts have to give agency rules.<sup>120</sup> The answer was previously a significant amount of deference, but that is no longer the case.<sup>121</sup> If the EEOC’s inclusion of abortion as a related medical condition is challenged in court, this question of “how much deference” would have to be answered, and there is a significant risk that it will be answered in a way that is unfavorable to the pregnant worker.

Before 2024, courts would apply *Chevron* deference to an issue of statutory interpretation, which directs courts to defer to administrative agencies’ interpretations of ambiguous statutory language when Congress has granted them rulemaking authority.<sup>122</sup> Under *Chevron*’s two-step test, courts first determine if Congress has directly addressed the issue, and if not, the court would assess whether the agency’s interpretation is reasonable.<sup>123</sup> Applying this to the PWFA, since Congress delegated authority to the EEOC and did not define “related medical conditions,” courts would defer to the agency’s interpretation,

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119. *Id.* § 706(2)(A).

120. *See, e.g.,* *United States v. Texas*, 599 U.S. 670, 690–91 (2023) (questioning whether Section 706(2) authorizes courts to issue vacatur orders because it permits reviewing courts to set aside agency action); *Kisor v. Wilkie*, 588 U.S. 558, 561 (2019) (“Section 706, when enacted, was understood to restate the present law of judicial review—which would have included deference under *Seminole Rock*.”); *United States v. Mead Corp.*, 533 U.S. 218, 227 (2001) (clarifying that under Section 706, an agency’s actions are “binding . . . unless procedurally defective, arbitrary or capricious”).

121. *Compare* *Chevron U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 842–43 (1984) (“[I]f the statute is silent or ambiguous[,] . . . the question for the court is whether the agency’s answer is based on a permissible construction of the statute.”), *with* *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412–13 (2024) (“[U]nder the APA[,] [courts] may not defer to an agency interpretation of the law simply because a statute is ambiguous.”).

122. *See* *Chevron*, 467 U.S. at 863.

123. *Id.* at 842–43.

finding that having an abortion is a protected condition under the PWFA.<sup>124</sup>

Today, *Chevron* deference is no longer the rule, and now courts, not agencies, must determine the meaning of ambiguous statutory provisions.<sup>125</sup> In 2024, the Supreme Court overturned *Chevron* in *Loper Bright Enters. v. Raimondo*.<sup>126</sup> The *Loper Bright* Court held that the APA requires that courts “exercise their independent judgment in deciding whether an agency has acted within its statutory authority,” and “may not defer to an agency interpretation of the law simply because a statute is ambiguous.”<sup>127</sup> Therefore, “*Chevron* is overruled.”<sup>128</sup>

According to the majority, a statute’s meaning was fixed at the time of enactment, and, therefore, there can only one interpretation of the statute.<sup>129</sup> To find the “best” meaning, courts should apply the “traditional tools of statutory construction.”<sup>130</sup>

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124. See 42 U.S.C. § 2000gg-3(a). Historically, courts rarely overturned agency interpretations unless they were extreme, as seen in *Michigan v. EPA*, where the EPA’s costly regulation was deemed unreasonable. See 576 U.S. 743, 752 (2015). In contrast, the EEOC’s interpretations impose limited costs and provide significant protections, making it very likely to withstand judicial review under *Chevron*. See *id.* This Note assumes that courts would follow *Chevron* deference in their review of the EEOC final rule and not find that the rule is arbitrary and capricious or a violation of the “major question doctrine.” See *West Virginia v. EPA*, 597 U.S. 697, 716 (2022). There are many legal theories that support that this may not be the case, and that *Chevron* deference had no teeth and was becoming increasingly weaker. However, since *Chevron* deference no longer exists, this Note will not focus on its faults. See *Loper Bright*, 603 U.S. at 412 (overruling *Chevron*).

125. See *Loper Bright*, 603 U.S. at 400–01.

126. *Id.* at 412.

127. *Id.* at 412–13.

128. *Id.* at 412. The decision relies heavily on Article III of the Constitution, the legislative history of the APA, and decisions preceding *Chevron* to support its holding that statutory ambiguity is not a delegation of law-interpreting power to administrative agencies. See *id.* at 384–410.

129. *Id.* at 400.

130. *Id.* at 401. In this decision, the Court ignores several major factors. First, sometimes there is not a fixed meaning at the time of enactment; laws pass through hundreds of individuals and many rounds of edits and, therefore, it is naïve to believe that there are not multiple meanings of a statute. See Ryan D. Doerfler, *Can a Statute Have More Than One Meaning?*, 94 N.Y.U. L. REV. 213, 228 (2019). Additionally, the challenge in finding that meaning is vast. Applying traditional tools of statutory construction is not an easy task when many of those tools contradict each other; furthermore, the Supreme Court makes no effort to clarify what tools to use. Benjamin Eidelson & Matthew C. Stephenson, *The Incompatibility of Substantive Canons and Textualism*, 137 HARV. L. REV. 515, 521–22 (2023). Finally, by labeling statutory ambiguities as

This decision is still very fresh, and it is not clear what weight Courts will assign to agency interpretation moving forward.<sup>131</sup> *Loper Bright* did not articulate a clear test, unlike *Chevron*.<sup>132</sup> This leads many scholars to speculate how much of an effect this will have on litigation.<sup>133</sup> While the breadth of *Loper Bright's* impact is unknown, it is clear that the end of *Chevron* could affect current and future litigants who challenge an agency's rulemaking pursuant to a statute it administers.<sup>134</sup>

One of the major risks of the *Loper Bright* decision is that it opens the door for more partisan opinions in federal court. Additionally, without *Chevron* and the expertise of agencies, judges are more likely to reach conflicting interpretations of the same statutory provision.<sup>135</sup> Justice Kagan's dissent in *Loper*

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"questions of law" the Court ignores the longstanding presumption that agencies have expertise in a specific area that makes them uniquely qualified to interpret ambiguities in a way that the legislative or judicial branches are not. See Anita S. Krishnakumar, *Longstanding Agency Interpretations*, 83 *FORDHAM L. REV.* 1823, 1850 (2015).

131. Since *Loper Bright*, scholars and lower courts have expressed significant uncertainty about how the decision will alter administrative law in practice. See Robin Kundis Craig, *The Impact of Loper-Bright v. Raimondo: An Empirical Review of the First Six Months*, 109 *MINN. L. REV.* 2671, 2678 (2025). One explanation is that courts will revert to "Skidmore respect," giving weight to agency interpretations based on their persuasiveness rather than deferring categorically. See, e.g., *Chavez v. Bondi*, 134 F. 4th 207, 220-21 (4th Cir. 2025). With this view, courts will rely more heavily on agency expertise in highly technical domains compared to agency interpretations that appear to rest on policy judgments rather than specialized knowledge (i.e., whether the PWFA should cover workers having an abortion).

132. Compare *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984) (laying out a clear three-part test), with *Loper Bright*, 603 U.S. at 412 (not providing any methodology other than directing judges "to exercise their independent judgment").

133. See Aaron Baum, *How Much of the Regulatory State is Safe Post-Loper Bright?*, *HARV. L. REV. BLOG* (Dec. 20, 2024), <https://harvardlawreview.org/blog/2024/12/how-much-of-the-regulatory-state-is-safe-post-loper-bright/> [<https://perma.cc/7S3T-KT6M>]; Hani A. Habbas, *Loper Bright Enterprises v. Raimondo: The Future of Chevron Deference and its Impact on Americans*, 66 *ORANGE CNTY. LAW*, Sep. 2024, at 46, 48.

134. See generally Baum, *supra* note 133 (citing *Loper Bright*, 603 U.S. at 408) ("The number of regulations at risk will balloon if appeals courts decide that statutory stare decisis applies only to Supreme Court precedent.").

135. I would be remiss not to mention that there are also pathways to inconsistency in an agency's interpretation because they can change their interpretations over time. Before *Chevron* was overturned, administrative law scholars debated "whether courts ought to defer less to agency statutory interpretations that are inconsistent with the agency's own prior interpretations." See Yehonatan Givati & Matthew C. Stephenson, *Judicial Deference to Inconsistent Agency Statutory Interpretations*, 40 *J. LEGAL STUD.* 85, 90-91 (2011). A perfect example is what might happen with the EEOC's interpretation of the PWFA, if Commissioner Lucas gets what she

*Bright* highlights this risk, saying, “compared with de novo review, use of the *Chevron* two-step framework fosters agreement among judges.”<sup>136</sup> Moreover, *Chevron* had a “powerful constraining effect on partisanship in judicial decision making,” which is particularly important when it comes to controversial issues like abortion.<sup>137</sup> Now, instead of relying on *one* agency’s interpretation of statutory language, courts are free to interpret the language as they see fit, which could result in a range of different interpretations of the same statute.<sup>138</sup> Furthermore, the partisan beliefs of judges may influence them to make policy decisions rather than strictly legal decisions.<sup>139</sup>

This is where the issue addressed in this Note—the threat to the EEOC’s final rule on the PWFA, which includes workers having an abortion within the purview of the protections it provides<sup>140</sup>—becomes extremely relevant. *Chevron* deference restrained judges from pushing the envelope in their statutory interpretation to reach the result they wanted, but those restraints no longer exist.<sup>141</sup> For non-partisan issues this could be viewed as a good thing: a healthy check on agency power and giving some of that power back to the judiciary who are experts in the

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wants, the current interpretation of the PWFA may change soon. *See id.* Just like courts may have inconsistent interpretations, agencies can also have inconsistent interpretations. *See id.*

136. *Loper Bright*, 603 U.S. at 474 (Kagan, J., dissenting).

137. *Id.* at 474–75 (Kagan, J., dissenting) (quoting Kent Barnett, Christina L. Boyd & Christopher J. Walker, *Administrative Law’s Political Dynamics*, 71 VAND. L. REV. 1463, 1463, 1502 (2018)).

138. *See id.* (Kagan, J., dissenting) (“*Chevron* is an especially puzzling decision to criticize on the ground of generating too much judicial divergence. There’s good empirical—meaning, non-impressionistic—evidence on exactly that subject.”).

139. Studies show that in 2018, the *Chevron* test created national uniformity and political accountability as effectively as it did when the Supreme Court issued the opinion. Richard J. Pierce, Jr., *The Combination of Chevron and Political Polarity Has Awful Effects*, 70 DUKE L.J. 91, 95–96 (2021). However, some critics felt that as political polarity grew post-2018, *Chevron* deference became much less effective and had adverse effects and inconsistent interpretations. *Id.* at 96. Now that *Chevron* deference is gone, the path to a partisan decision has a lot fewer obstacles than ever before. *See* Cass R. Sunstein, *Chevron as Law*, 107 GEO. L.J. 1613, 1672 (2019).

140. 29 C.F.R. § 1636.3(b) (2024).

141. *See Chevron U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 863 (1984), *overruled by*, *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412 (2024).

law.<sup>142</sup> However, for partisan issues such as abortion, this change is alarming. The group of experts who research ways to ensure women are treated equally at work, promote a safe working environment for pregnant employees, and assess the practical effect of their decisions, no longer receive deference in their interpretations.<sup>143</sup> Now it is a judge, who might only see one employment discrimination or abortion case a year, who gets to decide.<sup>144</sup>

### III. WORKERS HAVING ABORTIONS SHOULD GET HEALTHCARE

#### A. *Abortion Is a Human Right, and Employers Should Not Get in the Way*

To some, it is obvious that women having an abortion deserve similar accommodations to workers who suffer a stillbirth or a miscarriage. For others it is not as clear.<sup>145</sup> The PWFA

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142. In the words of Justice Kavanaugh, “a judge should engage in appropriately rigorous scrutiny of an agency’s interpretations of a regulation.” *Kisor v. Wilkie*, 588 U.S. 558, 633 (2019). Since the creation of the administrative state, many legal scholars have felt that it increasingly violated the separation of powers. See Ilan Wurman, *Constitutional Administration*, 69 STAN. L. REV. 359, 371 (2017) (“The core of American constitutionalism has been sacrificed to administrative governance.”). Because of the administrative state, the executive branch exercises executive power *and* legislative power when they create and enforce their own rules. *Id.* To properly preserve the separation of powers, the judiciary must be allowed to act as a check on agencies. See *id.* at 372.

143. The EEOC’s expertise has long been recognized and applauded; President Carter in a message to Congress said, “[i]ts experience and broad scope make the EEOC suitable for the role of principal Federal agency in fair employment enforcement . . . . [T]he EEOC has developed considerable expertise in the field of employment discrimination since Congress created it by the Civil Rights Act of 1964 [.]” Reorg. Plan No. 1 of 1978, 3 C.F.R. 321 (1979), reprinted in 5 U.S.C. app. at 145 (2024).

144. Judges, unlike agencies, often do not specialize in a certain area of law and therefore do not have the same level of expertise. See Lawrence Baum, *Probing the Effects of Judicial Specialization*, 58 DUKE L.J. 1667, 1669 (2009). Expertise can improve efficiency, help apply the law to the facts properly, and ensure decisions are made that reflect good public policy. *Id.* at 1676 (“What commentators generally mean when they talk about expertise seems to be the possibility that expertise will enhance the quality of court decisions . . .”).

145. Rep. Mary Miller (R-Ill.) on April 3, 2025, introduced a bill called the “Love Them Both Act” that would prohibit regulations implementing the PWFA from applying to abortion or abortion-related services. H.R. 2644, 119th Cong. (2025). She posted on X, “Allowing abortion under this law directly contradicts its purpose. My bill will restore its original intent, protect

received broad, bipartisan support in Congress, demonstrating the Act's appeal to both sides of the aisle.<sup>146</sup> However, the application of the PWFA's protections to workers having abortions is much more partisan.<sup>147</sup> While abortion presents significant legal questions, it is often intertwined with personal and moral judgments.<sup>148</sup> Therefore, for you, as the reader, to fully buy into the idea that this topic is important, this section of the Note argues that accommodations for workers receiving abortions are essential for the health, well-being, and equality of women in the workplace.

The inclusion of abortion in the PWFA protects women from discrimination at work, based on their choice to have or not have a child.<sup>149</sup> If a woman chooses to have an abortion, the goal should be to ensure that her care is safe, private, and accessible.<sup>150</sup> This can be achieved by providing reasonable accommodations, which is directly related to allowing a woman to maintain personal bodily autonomy and to choose when or when not

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unborn babies, and stand for the sanctity of life." Rep. Mary Miller (@RepMaryMiller), X (Apr. 3, 2025, at 20:13 ET), <https://x.com/RepMaryMiller/status/1907949697433502008> [<https://perma.cc/5CD4-DCJY>]. In support of the Bill, Rep. August Pfluger (R-Tex.) said, "No one should be forced to choose between their conscience and complying with federal law." *Id.*

146. See *supra* note 56 and accompanying text.

147. Riddhi Setty, *New EEOC Proposal's Broad Pregnancy-at-Work Rights Draw Ire*, BLOOMBERG L. (Aug. 11, 2023, at 16:58 ET), <https://news.bloomberglaw.com/daily-labor-report/new-eeoc-proposals-broad-pregnancy-at-work-rights-draw-some-ire> [<https://perma.cc/CL5Y-A52S>]. This is because abortion has long been a partisan issue in the United States. See Andy Sullivan, *Explainer: How Abortion Became a Divisive Issue in U.S. Politics*, REUTERS (June 24, 2022, at 23:49 ET), <https://www.reuters.com/world/us/how-abortion-became-divisive-issue-us-politics-2022-06-24/> [<https://perma.cc/TF4P-9ZKE>].

148. PEW RSCH. CTR., *SOCIAL AND MORAL CONSIDERATIONS ON ABORTION* 50 (2022), <https://www.pewresearch.org/religion/2022/05/06/social-and-moral-considerations-on-abortion/> [<https://perma.cc/HRJ4-BUA8>].

149. See 42 U.S.C. § 2000gg-1 (prohibiting employers from not making reasonable accommodations to limitations related to pregnancy or "related medical conditions"); 29 C.F.R. § 1636.3(b) (including abortion as one of the "related medical conditions").

150. See CTR. FOR REPROD. RTS., *SAFE AND LEGAL ABORTION IS A WOMAN'S HUMAN RIGHT 1* (2004), <https://reproductiverights.org/wp-content/uploads/2020/12/Safe-and-Legal-Abortion-is-a-Womans-Human-Right.pdf> [<https://perma.cc/D4GR-5EAC>] ("It is widely acknowledged that in countries in which abortion is restricted by law, women seek abortions clandestinely, often under conditions that are medically unsafe and therefore life-threatening.").

to have children.<sup>151</sup> Furthermore, the PWFA advances reproductive justice by ensuring that all workers with a capacity for pregnancy get the accommodations they need without discriminating based on their decision to keep or end the pregnancy.<sup>152</sup> Without the PWFA, employers can limit access to abortion, which in turn, reduces a worker's ability to choose a procedure that is a human right, whether elective or medically necessary.<sup>153</sup> Importantly, the PWFA is essential in helping marginalized groups get the care they need because women working labor intensive jobs or women who cannot afford to take unpaid time off are more likely to need the accommodations provided under the law.<sup>154</sup>

Although some women may be able to have an abortion without extensive travel and time off work, this is increasingly less possible in the post-*Roe* era, making the PWFA and its inclusion of abortion within the definition of "related medical condition[s]" even more important.<sup>155</sup> In its final rule on the PWFA, the EEOC explained that "the type of accommodation that most likely will be sought under the PWFA regarding an

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151. Accommodations like having time off, ensures that individuals make the decision to have an abortion based on their reproductive health and desire to give birth without coercion or an undue burden. See Sara Estep, *Protecting and Increasing Abortion Access*, CTR. AM. PROGRESS (Mar. 14, 2024), <https://www.americanprogress.org/article/playbook-for-the-advancement-of-women-in-the-economy/protecting-and-increasing-abortion-access/> [https://perma.cc/6D4Z-4CE8].

152. See 42 U.S.C. § 2000gg-1; *Reproductive Justice*, SISTER SONG, <https://www.sister-song.net/reproductive-justice> [https://perma.cc/VB3K-82R2] (last visited Mar. 13, 2026).

153. There are a multitude of instances when an abortion is necessary health care and the only measure that will preserve a pregnant worker's health or save their life, such as the tragic cases of placental abruption, bleeding from placenta previa, preeclampsia or eclampsia, and cardiac or renal conditions. *Facts are Important: Abortion is Healthcare*, AM. COLL. OF OBSTETRICIANS & GYNECOLOGISTS, <https://www.acog.org/advocacy/facts-are-important/abortion-is-healthcare> [https://perma.cc/G3GF-H6NP] (last visited Mar. 14, 2026 ).

154. *The Labor and Delivery of Reproductive Justice for Workers: The Post-Dobbs Workforce*, 136 HARV. L. REV. 1676, 1681 (2023) ("The negative effects resulting from avoiding compliance with [pregnancy discrimination laws] are especially severe for minimum-wage and temporary workers.").

155. Widiss, *New Federal Law*, *supra* note 23, at 42, 43 ("[G]iven the reality of limited access to abortion, the PWFA can play a key role in addressing maternal and infant health conditions.").

abortion is time off to attend a medical appointment or for recovery.”<sup>156</sup> Since *Roe v. Wade* was overturned by *Dobbs v. Jackson Women’s Health Org.* in 2022, thirteen states have enacted total abortion bans which has made it increasingly more difficult for women to get the care they need.<sup>157</sup> For example, in 2023, over 3,400 women in Louisiana had to travel to another state to get an abortion.<sup>158</sup> Consequently, women now not only have to take a day off to have an abortion, thanks to *Dobbs*, they also need time off to travel to the clinic.<sup>159</sup> In some states, patients need additional time off to comply with mandated in-person counseling, waiting periods, or multiple appointments before the procedure.<sup>160</sup> If a woman’s workplace refuses to give her time off, she will be faced with the choice of having an abortion—which may be necessary to protect her health—or potentially losing her job.

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156. Implementation of the Pregnant Workers Fairness Act, 89 Fed. Reg. 29096, 29104 (Apr. 19, 2024) (codified at 29 C.F.R. pt. 1636).

157. The thirteen states are Idaho, South Dakota, Texas, Oklahoma, Louisiana, Arkansas, Indiana, Kentucky, West Virginia, Tennessee, Mississippi, Alabama, and most recently, North Dakota. *After Roe Fell: Abortion Laws by State*, CTR. FOR REPROD. RTS. (Nov. 25, 2025), <https://reproductiverights.org/maps/abortion-laws-by-state/> [<https://perma.cc/AL67-TGVC>].

158. Specifically, 930 of those women travelled to Illinois, and 1,640 travelled to Florida. See Isaac Maddow-Zimet, Jesse Philbin, Isabel DoCampo, Rachel Jones, Mariah Menanno, Aisiri Murulidhar, Priscille Osias & Lauren Mitchell, *Monthly Abortion Provision Study*, GUTTMACHER (Jan. 4, 2026, at 22:48 ET), <https://www.guttmacher.org/monthly-abortion-provision-study> [<https://perma.cc/7ZT8-37V3>] (LA to IL is over a ten-hour drive or two-hour flight).

159. In addition to the abortion bans making access more difficult, “[e]ven in those state where abortions remain legal, medically unnecessary abortion restrictions, financial barriers, and anti-abortion extremism make it challenging for many clinics to keep their doors open at all.” *Communities Need Clinics, The New Landscape of Independent Abortion Clinics in the United States*, ABORTION CARE NETWORK 1, 11, 19 (2022), <https://abortioncarenetwork.org/wp-content/uploads/2022/12/communities-need-clinics-2022.pdf> [<https://perma.cc/Z4PW-RHMP>]. Between 2017 and 2022, 133 independent abortion clinics were forced to close. *Id.* Since *Dobbs*, seventy-six more independent clinics were forced to close or stop offering abortion care. *Id.* at 11; *Communities Need Clinics: There Is No Access Without Independent Abortion Care Providers*, ABORTION CARE NETWORK 1, 13 (2024), [https://abortioncarenetwork.org/wp-content/uploads/2024/12/CommunitiesNeedClinics2024\\_WEB-FINAL.pdf](https://abortioncarenetwork.org/wp-content/uploads/2024/12/CommunitiesNeedClinics2024_WEB-FINAL.pdf) [<https://perma.cc/EY4S-BE6Z>].

160. Currently, twenty-four states, excluding the states with total abortion bans, require those seeking abortion to receive counseling before the abortion is performed. Talia Curhan, *Counseling and Waiting Period Requirements for Abortion*, GUTTMACHER (Dec. 1, 2025), <https://www.guttmacher.org/state-policy/explore/counseling-and-waiting-periods-abortion> [<https://perma.cc/95G2-N4P2>] (“These [] requirements can increase costs and complicate scheduling, jeopardizing people’s ability to get the abortion care they need.”).

On top of time off for the abortion itself, women typically require some time off for recovery or to attend follow-up appointments.<sup>161</sup> Recovery after an abortion varies, and some normal side effects are bleeding, discharge, pain and cramps.<sup>162</sup> Most of these side effects are managed through rest, and to avoid complications, Planned Parenthood recommends that women avoid strenuous exercise for the first week, and advises that increased activity, “such as returning to work,” will likely heighten symptoms such as cramping and bleeding.<sup>163</sup> In addition to physical recovery, there is also the emotional recovery some patients require after ending a pregnancy.<sup>164</sup> If an employer refuses to give a worker time off or light duty, these employees will be forced to make a choice between their physical or emotional health and their career, which is not a choice anyone deserves to make.

While most of the PWFA’s supporters appreciate the importance of supporting women who have a miscarriage or stillbirth by giving them time off to go to doctors’ appointments and recover physically and emotionally,<sup>165</sup> many do not see the same necessity for women having an abortion or for abortion-

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161. After an abortion, doctors typically recommend patients return for a follow-up appointment after 2–4 weeks. See *What Can I Expect After Having an In-Clinic Abortion?*, PLANNED PARENTHOOD, <https://www.plannedparenthood.org/learn/abortion/in-clinic-abortion-procedures/what-can-i-expect-after-having-an-in-clinic-abortion> [https://perma.cc/FLS6-7W9H] (last visited Mar. 14, 2026).

162. *Medical Abortion*, CLEV. CLINIC, <https://my.clevelandclinic.org/health/treatments/21899-medical-abortion> [perma.cc/VRH5-8Y5D] (last visited Mar. 14, 2026).

163. *Caring for Yourself After an Abortion*, PLANNED PARENTHOOD OF MICHIGAN, <https://www.plannedparenthood.org/planned-parenthood-michigan/healthcare/abortion-services/caring-for-yourself-after-an-abortion> (last visited Mar. 14, 2026).

164. See Priscilla K. Coleman, *Negative Abortion Experiences: Predictors and Development of the Post-Abortion Psychological and Relational Adjustment Scale*, 33 *ISSUES L. & MED.* 133, 134 (2018) (“[F]or a significant percentage of women, abortion marks the beginning of a tumultuous journey colored by feelings of regret, loss, sadness, depression, anxiety, suicidal behaviors, and alienation from others.”).

165. See, e.g., *Supporting an Employee Before, During, and After a Loss*, MISCARRIAGE ASS’N, <https://www.miscarriageassociation.org.uk/miscarriage-and-the-workplace/employers-and-managers-information-and-support/supporting-an-employee-before-during-and-after-a-loss/> [https://perma.cc/XJ7V-7VDH] (last visited Mar. 13, 2026) (discussing ways that employers can help support employees having a miscarriage).

related care.<sup>166</sup> However, all women who experience a termination of their pregnancy, regardless of whether it is by choice or not, need support from their employers along with time to recover. An employer's disagreement with their choice or reason for termination does not change that fact. Moreover, an employer's disagreement with their choice does not give them the authority to punish them for their decision by refusing to provide necessary accommodations. The PWFA was passed to ensure equality in the workplace,<sup>167</sup> and equality means covering abortion-related care *and* postpartum care *and* pregnancy care. To be fully inclusive and to actually further the purpose of equality in the workplace, an employment discrimination act should not discriminate based on a worker's choice to end or continue a pregnancy.

*B. The Status of the Administrative State Is a Threat to This Protection*

Although the foregoing arguments might be compelling as a matter of policy, they are insufficient to resolve the statutory issue at hand. Therefore, this Note will lay the groundwork for a court decision, rooted in doctrine, on whether the inclusion of "having or choosing not to have an abortion" as a "related medical condition" under the PWFA is proper.<sup>168</sup> There are multiple scenarios in which this issue could likely be challenged in court. First, a litigant—likely an employer or a state—could sue the

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166. Rep. Virginia Foxx (R-N.C.) said, "Abortion is not a medical condition related to pregnancy; it is the opposite." Nathaniel Weixel, *New Rules Say Pregnant Workers Fairness Act Covers Accommodations for Abortion*, THE HILL (Apr. 13, 2024, at 13:33 ET), <https://thehill.com/policy/4597539-new-rules-pregnant-workers-fairness-act-covers-accommodations-for-abortion/> [<https://perma.cc/JSS4-QJW8>]. Foxx, the Chairwoman of the House Education and Workforce Committee, further said, "[t]he PWFA does not apply to abortions. The term 'abortion' is not once mentioned in the law." *Id.*

167. See S. REP. NO. 1486-117, at 1 (2021) ("A Bill to eliminate discrimination and promote women's health and economic security by ensuring reasonable workplace accommodations for workers whose ability to perform the functions of a job are limited by pregnancy, childbirth, or a related medical condition.").

168. See 29 C.F.R. § 1636.3(b) (2026).

EEOC and challenge its rule or the agency's rulemaking authority. These challenges have already come up and will likely continue.<sup>169</sup>

Another scenario is if an employee alleges pregnancy discrimination under the PWFA and claims that they were not afforded reasonable accommodations in relation to having an abortion.<sup>170</sup> Their first step would be to file a charge with the EEOC, who would investigate the claim.<sup>171</sup> Depending on the outcome of its investigation, the EEOC can (1) pursue litigation; (2) choose not to pursue litigation and issue the employee a "right-to-sue" on her own behalf; or (3) issue a "dismissal and notice of rights."<sup>172</sup> Notably, the likelihood of the current EEOC—under the leadership of Trump-appointed chair, Andrea Lucas—bringing a lawsuit against an employer who does

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169. See, e.g., *Louisiana v. EEOC*, 705 F. Supp. 3d 643, 649 (W.D. La. 2024); *Tennessee v. EEOC*, 129 F.4th 452, 456 (8th Cir. 2025).

170. In 2021, while pregnant, Victoria Felts discovered that her uterus had two severe hemorrhages, and her physician "determined that a medically prescribed surgery to end her pregnancy was the safest decision." *Felts v. Nat'l Indoor RV Ctr.*, No. 3:22-CV-00531, 2024 WL 3381265, at \*2 (M.D. Tenn. July 11, 2024). After the procedure and after returning to work, Felts had to take an ambulance to the hospital, she later found out she had a septic infection from her abortion. *Id.* at \*2–3. When the ambulance arrived, the Director of Sales at the company learned that Felts had recently had an abortion. *Id.* A few days later, when Felts returned to work, she was fired. *Id.* at \*3–4. Felts believed the only reason she was fired was because of her pregnancy and abortion, and she brought a claim against her employer for violation of the PWFA among other things. *Id.* at \*4. The court denied defendant's motion for summary judgment, reasoning "[t]here is ample evidence in the record demonstrating that Felts requested leave due to pregnancy-related complications." *Id.* at \*18–19. Felts also "point[ed] to evidence that [her employer] terminated her the day she returned from leave and offered changing rationale for her termination." *Id.* at 18. This claim is still ongoing. Most recently, the parties were instructed to participate in mediation. Order Granting Joint Motion to Continue the Pretrial Conf., *Felts v. Nat'l Indoor RV Ctr.*, No. 3:22-CV-00531, 2025 WL 320956 (M.D. Tenn. Jan. 18, 2025).

171. *Pregnancy Discrimination and Pregnancy-Related Disability Discrimination*, U.S. EQUAL EMP. OPPORTUNITY COMM'N, <https://www.eeoc.gov/pregnancy-discrimination> [<https://perma.cc/E89Q-CECM>] ("If you are a job applicant or an employee who believes that an employer has discriminated against you because of your pregnancy or your pregnancy-related disability, you can file a charge of discrimination with the EEOC.") (last visited Mar. 14, 2026).

172. *Frequently Asked Questions*, U.S. EQUAL EMP. OPPORTUNITY COMM'N, <https://www.eeoc.gov/youth/frequently-asked-questions> [<https://perma.cc/8PL6-R5BM>] ("Because of limited resources, we cannot file a lawsuit in every case where we find discrimination. If the EEOC does not file a lawsuit, we provide you a notice closing the case. You then have 90 days to file your own lawsuit.") (last visited Mar. 14, 2026).

not provide reasonable accommodations to a worker receiving an abortion is low.<sup>173</sup> In fact, Lucas has done almost the opposite in the past, by initiating charges against companies that “provide [their employees with] abortion travel benefits,” arguing that “such policies and benefits result in discrimination against pregnant employees who choose to continue their pregnanc[y].”<sup>174</sup> On top of that, it is unclear if the EEOC can even enforce the PWFA against employers for abortion-related accommodations because Executive Order 14,182 states that “[i]t is the policy of the United States . . . to end the forced use of Federal taxpayer dollars to fund or promote elective abortion.”<sup>175</sup> Nevertheless, employees can still sue on their own behalf if the EEOC chooses not to pursue litigation.<sup>176</sup>

There is a developing third scenario where this Note may find a new importance, which is that soon, the EEOC’s final rule on the PWFA may no longer exist in the way it does now. Andrea Lucas has expressed that she “intends for the Commission to reconsider portions of the [PWFA] Final Rule that she believes are unsupported by law[,]” which most likely includes the inclusion of abortion.<sup>177</sup> On October 7, 2025, the Senate

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173. See Julian Mark, *Trump Appoints Commissioner Andrea Lucas to Oversee EEOC*, WASH. POST (Jan. 21, 2025), <https://www.washingtonpost.com/business/2025/01/21/trump-appoints-eeoc-commission-andrea-lucas/> [<https://perma.cc/Z3RG-9XL9>].

174. Brenda Baumgart, Karen O’Connor & Madeline Hueske, *Expect a Big Shake Up at the EEOC Under 2nd Trump Admin*, LAW360 (Jan. 10, 2025, at 16:47 ET), <https://www.law360.com/articles/2280270/expect-a-big-shake-up-at-the-eeoc-under-2nd-trump-admin> [<https://perma.cc/M8CN-SKZQ>].

175. Executive Order No. 14182, *Enforcing the Hyde Amendment*, 90 Fed. Reg. 8751 (2025). If the EEOC argues that an employer is violating the PWFA by not providing accommodation to their employee to get an abortion, that could be seen as using taxpayer dollars to promote an abortion.

176. *Frequently Asked Questions*, *supra* note 172.

177. *Position of Acting Chair Lucas Regarding the Commission’s Final Regulations Implementing the Pregnant Workers Fairness Act*, U.S. EQUAL EMP. OPPORTUNITY COMM’N [hereinafter *Position of Acting Chair Lucas*], <https://www.eeoc.gov/wysk/position-acting-chair-lucas-regarding-commissions-final-regulations-implementing-pregnant> [<https://perma.cc/LKS9-H7HR>] (last visited Mar. 20, 2026). Andrea Lucas was one of the commissioners who originally voted against the final rule, stating, “[i]t is unfortunate that the elements of the final rule serving this purpose are inextricably tied to a needlessly expansive foundation that does not. I cannot support the Commission’s final product.” Lucas, *supra* note 11.

confirmed Commissioner Brittany Bull Panuccio, restoring the EEOC's quorum with a 3-2 Republican majority, giving it full authority to hold a vote on official action.<sup>178</sup> The EEOC has not yet taken any action to revise the PWFA rule; however, many employment law experts are expecting the change to come.<sup>179</sup>

Ultimately in a couple weeks, months, or years, the final rule on the PWFA, specifically the inclusion of abortion as a "related medical condition," will likely no longer exist.<sup>180</sup> However, the solution in Part IV will still apply because even without the EEOC's final rule, if a court interprets the statute to include coverage for workers having abortions, then those workers are still entitled to the same accommodations as pregnant workers.<sup>181</sup>

Although there are few cases where a worker claims pregnancy discrimination for being denied accommodations related to having an abortion, the issue is likely to come up following

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178. Press Release, Brittany Bull Panuccio Begins Tenure as EEOC Commissioner, U.S. Equal Emp. Opportunity Comm'n (November 17, 2025), <https://www.eeoc.gov/newsroom/brittany-bull-panuccio-begins-tenure-eeoc-commissioner> [https://perma.cc/76RR-EFZW]. Under Title VII, the EEOC needs at least three commissioners serving on the board to hold a vote on official action, and without this, they lack a quorum. 42 U.S.C. § 2000e-4(c). Between January 2025 when Trump fired two EEOC commissioners, and October 2025, the EEOC did not have a quorum and therefore could not take any official action. Alexandra Olson & Claire Savage, *Trump Fires Two Democratic Commissioners of Agency That Enforces Civil Rights Laws in the Workplace*, ASSOCIATED PRESS (Jan. 29, 2025, at 12:22 ET), <https://apnews.com/article/trump-eeoc-commissioners-firings-crackdown-civil-rights-c48b973cb32bad97e9da9e354ba627db> [https://perma.cc/FCF4-XJNT].

179. See, e.g., T. Scott Kelly, James J. Plunkett & Nonnie L. Shivers, *EEOC Realigned: Panuccio Confirmation Ushers in New Era*, OGLETREE DEAKINS (Oct. 7, 2025), <https://ogletree.com/insights-resources/blog-posts/eeoc-realigned-panuccio-confirmation-ushers-in-new-era> [https://perma.cc/DC5M-GKWH]; *A New Era Begins at the EEOC*, ORR & RENO (Feb. 6, 2026), <https://orr-reno.com/a-new-era-begins-at-the-eeoc/> [https://perma.cc/T66Y-VG86].

180. See *Position of Acting Chair Lucas*, *supra* note 177.

181. See *infra* Part IV. This exemplifies how *Chevron* deference being overturned could end up being a good thing for this specific group of workers. *Id.* If the Final Rule of the PWFA changes, then it is beneficial that courts can make independent decisions on statutory interpretation rather than giving deference to an agency's interpretation. *Id.* Clearly, agency interpretations are subject to change based on the administration change and are not safe from bipartisanship. See *generally* *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412–13 (2024) (ruling that courts no longer need to "defer to an agency[']s interpretation of the law simply because a statute is ambiguous").

*Dobbs*.<sup>182</sup> As previously established, many women have to travel to have an abortion.<sup>183</sup> A woman's right to choose has been encumbered in thirteen states, making it more important than ever to ensure women are given the time needed to get necessary reproductive care.<sup>184</sup> It is completely foreseeable that a pregnant worker will face obstacles related to travel soon, and it is essential that our justice system is ready to address the issue.<sup>185</sup>

A woman's ability to receive unimpeded reproductive care, including an abortion, under the PWFA is at risk because of the *Loper Bright* decision, and even more so because of the current leadership of the EEOC.<sup>186</sup> To fully understand how courts can come to a favorable decision for employees claiming pregnancy discrimination because of a lack of "reasonable accommodations" to have an abortion, it is important to consider what arguments have been made in court thus far on the topic, and how courts have decided the issue.

### 1. *Lawsuits against the EEOC*

Currently, the best evidence of likely arguments and potential court decisions comes from direct challenges to the EEOC.<sup>187</sup> These lawsuits are a window into the minds of those who want to deny accommodations to workers having abortions, and how judges, especially conservative judges, are responding.<sup>188</sup> Two courts—one in Louisiana and one in Arkansas—have issued

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182. *Felts v. Nat'l Indoor RV Ctr.*, No. 22-cv-00531, 2024 WL 3381265, at \*1-2 (M.D. Tenn. July 11, 2024).

183. See *supra* notes 155-159 and accompanying text.

184. See *After Roe Fell: Abortion Laws by State*, *supra* note 157.

185. See Widiss, *New Federal Law*, *supra* note 23, at 43 (highlighting the importance of judicial action in light of *Dobbs*).

186. See *Position of Acting Chair Lucas*, *supra* note 177 and accompanying text.

187. See, e.g., *Louisiana v. EEOC*, 705 F. Supp. 3d 643, 649 (W.D. La. 2024); *Tennessee v. EEOC*, 129 F.4th 452, 456-57 (8th Cir. 2025).

188. See, e.g., *Cath. Benefits. Ass'n v. Burrows*, 732 F. Supp. 3d 1014, 1029 (D.N.D. 2024); *The Bishops Case*, 705 F. Supp. 3d 643, 649 (W.D. La. 2024); *Tennessee*, 129 F.4th at 456.

decisions on the validity of the EEOC's final rule and the inclusion of abortion as a medical condition.<sup>189</sup>

In *Tennessee v. EEOC*, Tennessee and sixteen other states filed a lawsuit less than a week after the EEOC issued its final rule on the PWFA, "challeng[ing] the aspects of the regulation dealing with abortion."<sup>190</sup> On June 14, 2024, the U.S. District Court for the Eastern District of Arkansas rejected their bid for a preliminary injunction, finding the plaintiff states lacked standing to challenge the EEOC's rule implementing the PWFA because there was no credible threat of enforcement against states for denying accommodations for elective abortions.<sup>191</sup> However, on February 21, 2025, the Eighth Circuit overturned the District Court's decision that dismissed the case, concluding, "[b]ecause the States are the object of an agency action, they are injured by the imposition of new regulatory obligations . . . . a judicial decision setting aside the action would remedy the injury."<sup>192</sup> The three-judge panel clearly stated that they were not deciding on the merits of their claim that the regulations are invalid or unconstitutional.<sup>193</sup> The case was remanded for further proceedings.<sup>194</sup>

In *Louisiana v. EEOC United States Conf. of Cath. Bishops*, the States of Louisiana and Mississippi and four entities affiliated with the Roman Catholic Church filed a similar lawsuit.<sup>195</sup> Just

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189. See *Louisiana*, 705 F. Supp. 3d at 649 (granting injunctive relief); *Tennessee*, 129 F.4th 452 at 456 (reversing and remanding district court denial of preliminary injunction). In addition to these decisions, there have been challenges to the validity of the PWFA. In Texas, the District Court found that the EEOC was enjoined from enforcing the PWFA because it was passed in violation of the Constitution's Quorum Clause. *Texas v. Garland*, 719 F. Supp. 3d 521, 599 (N.D. Tex. 2024).

190. *Tennessee v. EEOC* (*Tennessee v. EEOC II*), 737 F. Supp. 3d 685, 692 (E.D. Ark. 2024).

191. *Id.* at 696, 702 ("[The States] 'cannot manufacture standing merely by inflicting harm on themselves based on their fears of hypothetical future harm that is not certainly impending.'" (quoting *Clapper v. Amnesty International USA*, 568 U.S. 398, 416 (2013))).

192. *Tennessee*, 129 F.4th at 458.

193. *Id.*

194. *Id.*

195. *Louisiana v. EEOC U.S. Conf. of Cath. Bishops* (*The Bishops Case*), 705 F. Supp. 3d 643, 648–49 (W.D. La. 2024).

three days after the Eastern District of Arkansas' decision, the U.S. District Court for the Western District of Louisiana issued a preliminary injunction against the EEOC, finding it had "exceeded its statutory authority to implement the PWFA and, in doing so, both unlawfully expropriated the authority of Congress and encroached upon the sovereignty of the *States* Plaintiffs."<sup>196</sup> This preliminary injunction prohibited the EEOC from investigating claims or issuing right-to-sue notices related to failures to accommodate elective abortions.<sup>197</sup> On May 21, 2025, Judge David Joseph issued a ruling vacating the EEOC's final rule under the PWFA, "to the extent that it includes 'abortion' as a 'related medical condition' of pregnancy and childbirth."<sup>198</sup> Thus, in the Fifth Circuit, the abortion portion of the rule is unenforceable.<sup>199</sup>

A few other employers have filed lawsuits challenging the final rule. In North Dakota, a district court enjoined the EEOC and its agents from interpreting or enforcing the PWFA against the Diocese of Bismarck and the Catholic Benefits Association.<sup>200</sup> Additionally, Brandon & Clark, Inc., an industrial sales and service company,<sup>201</sup> and the Dr. James Dobson Family

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196. *Id.* at 649.

197. *Id.* at 664.

198. *Louisiana v. EEOC*, 784 F. Supp. 3d 886, 911 (W.D. La. 2025).

199. Based on Andrea Lucas's previous statements, the EEOC will unlikely appeal this decision. See Lucas, *supra* note 11; but see *Louisiana*, 784 F. Supp. 3d 886, *appeal filed*, No. 25-30398 (5th Cir. Jul. 17, 2025). Moreover, the entire PWFA is currently unenforceable in the Fifth Circuit. See Tiffany Cox Stacy & Leah Shepherd, *Where the PWFA Stands Today: Key Legal Lessons for Employers*, JD SUPRA (Mar. 6, 2026), <https://www.jdsupra.com/legalnews/where-the-pwfa-stands-today-key-legal-8832775> [<https://perma.cc/U726-6NJJN>].

200. *Cath. Benefits Ass'n v. Burrows*, 732 F. Supp. 3d 1014, 1023, 1029 (D.N.D. 2024) (finding that "the CBA has shown accommodating an abortion . . . would violate its religious beliefs," and that the EEOC's "Final Rule gave no guidance to religious organizations on what speech or conduct based on sincerely held beliefs would or would not violate the coercion provision. Even though it could have.").

201. Plaintiff's Brief Supporting Motion for a Preliminary Injunction and Relief Under 5 U.S.C. § 705, *Brandon & Clark, Inc. v. EEOC*, No. 5:24-CV-00173-C (N.D. Tex. July 24, 2024). In addition to arguing against the EEOC's inclusion of abortion in their final rule for the PWFA, Brandon & Clark also argued that the PWFA was never enacted because the House of Representatives lacked a quorum when it voted to pass the Act. *Id.* at 22. On August 18, 2025, the District Court decided to stay and administratively close the case following a Fifth Circuit

Institute, a Christian nonprofit with thirty employees, both requested preliminary injunctions against the EEOC in the Northern District of Texas.<sup>202</sup> The range of complaints against the EEOC and its enforcement of the PWFA is wide. Opponents raise several objections: that the PWFA is an invalid law,<sup>203</sup> that abortions are medical procedures, not a medical condition,<sup>204</sup> and that the EEOC failed to consider Title VII's religious exemptions in promulgating the final rule.<sup>205</sup>

The takeaways from these lawsuits are that employers—especially those with religious affiliations—are preemptively pushing back against the final rule before they are sued for

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opinion on the quorum issue. *Brandon & Clark, Inc. v. EEOC*, No. 5:24-CV-00173-H (N.D. Tex. Aug. 18, 2025) (ordering a stay and the administrative closing of the case pending further action by the Fifth Circuit). Most recently, Plaintiff filed a notice requesting a decision on summary judgment after Fifth Circuit developments on the quorum issue. Plaintiff's Third Notice of Supplemental Authority, *Brandon & Clark, Inc. v. EEOC*, No. 5:24-CV-00173-H (N.D. Tex. Jan. 15, 2026). This litigation is still ongoing.

202. Plaintiffs' Combined Motion for Preliminary Injunction and Motion for Partial Summary Judgment at 50, *Dr. James Dobson Fam. Inst. v. Becerra*, No. 4:24-CV-00986-O (N.D. Tex. Nov. 11, 2024) ("The relief requested declares that Section 1557, Title VII, and the PWFA do not require Plaintiffs and their members to cover or provide gender affirming care, or accommodate employee abortions . . . . The relief requested will enjoin Defendants from pursuing an enforcement action under the challenged interpretations."). The District Court issued an order enjoining the EEOC from "interpreting or enforcing" Section 1557, Title VII, and the PWFA to cover gender affirming care or accommodate abortions. *Dr. James Dobson Fam. Inst. v. Becerra* at 24–25, No. 4:24-CV-00986-O (N.D. Tex. Aug. 8, 2025) (ordering the grant of a preliminary injunction and partial summary judgment). The District Court entered judgment in December 2024 and the case has concluded. *Dr. James Dobson Fam. Inst. v. Becerra*, No. 4:24-CV-00986-O (N.D. Tex. Dec. 23, 2025) (ordering judgment).

203. The State of Texas argues that the passage of the PWFA is in violation of the Constitution's quorum clause because it was passed during COVID-19 with more than half of the members of the Senate voting by proxy. *Texas v. Garland*, 719 F. Supp. 3d 521, 535, 540 (N.D. Tex. 2024). In February 2024, the U.S. District Court for the Northern District of Texas blocked enforcement of the PWFA against the State of Texas as an employer. *Id.* at 599. The decision was appealed to the Fifth Circuit, who reached a split decision and reversed the district court's order, allowing the EEOC to enforce the PWFA. *Texas v. Bondi*, 149 F.4th 529, 545–46 (5th Cir. 2025). Now, the Fifth Circuit has agreed to rehear the decision en banc. *Texas v. Bondi*, 164 F.4th 446 (5th Cir. 2026).

204. See CBA Plaintiff's Combined Reply in Support of their Motion for Summary Judgment and Response in Opposition to Defendant's Motion to Dismiss at 19, *Cath. Benefits Ass'n v. Burrows*, No. 1:24-CV-142 (D.N.D. Jan. 2, 2025) ("Elective abortion is not a 'medical condition' related to pregnancy; it is 'better described as a medical 'procedure,'" sought to terminate a pregnancy." (quoting *Louisiana v. EEOC*, 705 F. Supp. 3d 643, 658 (W.D. La. 2024))).

205. *Id.* at 21 ("The PWFA incorporates Title VII's religious exemptions. The PWFA Final Rule improperly limits this exemption to claims of religious discrimination.").

discrimination under the PWFA.<sup>206</sup> Furthermore, there is now existing precedent of courts issuing a preliminary injunction against the EEOC for its inclusion of abortions as a related medical condition under the PWFA.<sup>207</sup>

## 2. *Added risk of Loper Bright*

In all the above lawsuits, *Loper Bright* was referenced only a few times.<sup>208</sup> However, undoubtedly, the decision to overturn *Chevron* deference will have an impact on the EEOC's ability to uphold its final rule on the PWFA, if it even wishes to do so.<sup>209</sup> Previously, under *Chevron*, any court hearing a case challenging the EEOC's final rule on the PWFA would not have much leeway because, even if they disagreed with the EEOC's interpretation, they would have to afford the rule-making authority significant deference.<sup>210</sup> However, now that courts do not have to give deference to agencies, they can decide for themselves whether abortion is a medical condition under the law.<sup>211</sup> Instead of relying on the analysis previously done by the EEOC, any court that hears this challenge can conduct a statutory interpretation analysis of the PWFA and determine for itself the scope of the term "related medical condition."<sup>212</sup> While some

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206. See *infra* notes 201–05 and accompanying text.

207. See *Louisiana v. EEOC*, 705 F. Supp. 3d 643, 649 (W.D. La. 2024).

208. The decision in *Tennessee v. EEOC II* came just fourteen days before the *Loper Bright* decision was published. The court did mention that the rule requiring courts to "defer to the agency's interpretation of an ambiguous statute so long as the interpretation is reasonable," might be changing soon because the Supreme Court granted certiorari to *Loper Bright Enters. v. EEOC* (*Tennessee v. EEOC II*), 737 F. Supp. 3d 685, 699 (E.D. Ark. 2024). The fact that the court had to give deference to the EEOC's decision did play a part in granting the EEOC's dismissal of the case. See *id.* at 701. However, when the 8th Circuit reversed and remanded that decision, they did not reference *Loper Bright* or *Chevron*. See *Tennessee v. EEOC*, 129 F.4th 452 (8th Cir. 2025). In *The Bishops Case*, the decision by the district court came out just eleven days before *Loper Bright* and does not reference *Chevron* or *Loper Bright* at all. See 705 F. Supp. 3d at 643.

209. See *supra* note 139 and accompanying text.

210. See *Chevron U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 865 (1984).

211. See *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 401 (2024).

212. See *id.*

courts will reach the same conclusion as the EEOC—finding that abortion is a covered “medical condition” for which employers must provide accommodations—others, like the Court in *Louisiana v. EEOC United States Conf. of Cath. Bishops*, will find that the EEOC overstepped its authority.<sup>213</sup> As Justice Kagan warned in dissent, the powerful constraint of judicial partisanship that existed under *Chevron* is not so strong under *Loper Bright*.<sup>214</sup>

#### IV. CONSISTENT WITH THE PWFA: ABORTION IS A MEDICAL CONDITION

The availability of reproductive care and the health of workers are at risk without a way to ensure that employers and courts interpret “related medical condition” in the PWFA to include having an abortion. Although the EEOC no longer gets the same deference it once did under *Chevron*, this does not give courts the power to “actively legislat[e] from the bench by sidestepping both agency guidance and Congressional intent of a federal law.”<sup>215</sup> This Part will walk through a statutory interpretation analysis that courts should apply to the issue, which will lead the court to the same conclusion as the EEOC: “having or choosing not to have an abortion” is a “medical condition” under the PWFA and, therefore, women having an abortion should receive all the protections granted under the Act, including reasonable accommodations.<sup>216</sup>

No matter who the argument comes from, or what the argument is, this discussion will apply. The analysis could apply when a plaintiff employee accuses an employer of violating the

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213. See *Louisiana v. EEOC*, 705 F. Supp. 3d 643, 650, 660–61 (W.D. La. 2024).

214. *Loper Bright*, 603 U.S. at 474 (Kagan, J., dissenting).

215. Sarah Prazeau, Is Abortion Care Included in Pregnancy-related Health Care? *EEOC Says Yes, but Conservative Courts Say No*, AMERICAN UNIV. J. OF GENDER, SOCIAL POL’Y & L. (Apr. 14, 2025), <https://jgspl.org/is-abortion-care-included-in-pregnancy-related-health-care-eec-says-yes-but-conservative-courts-say-no/> [https://perma.cc/KR24-2S83].

216. See 29 C.F.R. § 1636.3(b) (2025).

PWFA or when an employer defends their lack of accommodation to an employee. The EEOC-opponent's argument could focus on *Loper Bright*, accusing the agency of acting arbitrarily and capriciously in its final rule on the PWFA, or point out that the rule violates certain constitutional principles.<sup>217</sup> In all these circumstances, including where the EEOC'S final rule on the PWFA no longer exists in the way it does today, all roads lead to a statutory interpretation analysis. Any court that follows this statutory interpretation analysis will come to the same finding, which ultimately is correct from a legal and public policy standpoint.

A key aspect in the art of statutory interpretation is picking and choosing which tools to use.<sup>218</sup> However, the problem is that different tools lead to different outcomes and there is no consensus as to what tools to use and which to leave behind.<sup>219</sup> Ultimately, it is up to the court to determine which tools they want to apply to each case based on their theory of statutory interpretation and current trends.<sup>220</sup> Nevertheless, this Note demonstrates that for the issue at hand, no matter what tools the court chooses, it will lead to the same conclusion—that

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217. See *Loper Bright*, 603 U.S. at 412–13 (majority opinion).

218. See VALERIE C. BRANNON, CONG. RSCH. SERV., R45153, STATUTORY INTERPRETATION: THEORIES, TOOLS, AND TRENDS 2 (2023).

219. See *id.* at 1. As a younger Brett Kavanaugh once pointed out, “[s]tatutory interpretation has improved dramatically over the last generation . . . . But more work remains.” Brett Kavanaugh, *Fixing Statutory Interpretation*, 129 HARV. L. REV. 2118, 2118 (2016) (reviewing ROBERT A. KATZMANN, *JUDGING STATUTES* (2014)). In support of this proposition, he points out the consistent divide in statutory interpretation cases by the Supreme Court. *Id.* at 2118 n.4. (citing *King v. Burwell*, 576 U.S. 473, 498 (2015) (Scalia, J., dissenting); *Bond v. United States*, 572 U.S. 844, 866–68 (2014) (Scalia, J., concurring in the judgment); *EPA v. EME Homer City Generation, L.P.*, 572 U.S. 489, 524–25 (2014) (Scalia, J., dissenting); *Yates v. United States*, 575 U.S. 528, 552–53 (2015) (Kagan, J., dissenting)). Now that Justice Kavanaugh sits on the Court, this divide still exists. See *Wooden v. United States*, 595 U.S. 360, 376 (2022) (Sotomayor, J., concurring); *Fischer v. United States*, 603 U.S. 480, 506 (2024) (Barrett, J., dissenting).

220. See H. Miles Foy, III, *On Judicial Discretion in Statutory Interpretation*, 62 ADMIN. L. REV. 291, 292–93 (2010) (arguing that “the courts must acknowledge that when the conventional methods are indeterminate, statutory interpretation requires the exercise of judicial discretion—prudent choice within legal bounds”).

having or choosing not to have an abortion is a related medical condition under the PWFA.

*A. Start with the Statutory Text*

“As always, we start with the statutory text.”<sup>221</sup> When beginning a statutory interpretation analysis, courts start with the “ordinary public meaning” before considering any other tool of interpretation,<sup>222</sup> often relying on dictionary definitions.<sup>223</sup> Let’s consider the ordinary meaning of “medical condition”<sup>224</sup> and “having or choosing not to have an abortion,”<sup>225</sup> because these are the two phrases in which the interpretation likely turns on. At first glance it seems that in common speech, abortions are a medical procedure, not a medical condition, but looking deeper, there is a strong argument against that.

The statute, as passed by Congress, does not define “related medical condition.”<sup>226</sup> Therefore, courts should assume that Congress uses the word as it would be used in everyday speech.<sup>227</sup> The Merriam-Webster Dictionary defines “condition” as “a usually defective state of health,” or “a state of physical fitness or readiness for use.”<sup>228</sup> Similarly, the Oxford English

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221. *Garland v. Cargill*, 602 U.S. 406, 415 (2024).

222. *Bostock v. Clayton Cnty.*, 590 U.S. 644, 654–55 (2020) (“This Court normally interprets a statute in accord with the ordinary public meaning of its terms at the time of its enactment. After all, only the words on the page constitute the law adopted by Congress and approved by the President. If judges could add to, remodel, update, or detract from old statutory terms inspired only by extratextual sources and our own imaginations, we would risk amending statutes outside the legislative process reserved for the people’s representatives.”).

223. *See Garland*, 602 U.S. at 415–16 (2024).

224. 42 U.S.C. § 2000gg-1(1).

225. 29 C.F.R. § 1636.3(b)(18).

226. *See generally* 42 U.S.C. § 2000gg (defining several terms seen throughout the Act but not defining “related medical condition”).

227. *See BP p.l.c. v. Mayor of Balt.*, 593 U.S. 230, 237 (2021) (“When called on to interpret a statute, this Court generally seeks to discern and apply the ordinary meaning of its terms at the time of their adoption.”).

228. *Condition*, MERRIAM-WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/condition> [<https://perma.cc/JUE9-6MEF>] (last visited Mar. 11, 2026).

Dictionary defines “condition” as “a particular mode of being of a person or thing,” or “a state of health.”<sup>229</sup>

In the EEOC’s final rule on the PWFA, when discussing what is included as a related medical condition, it states, “[t]here are some medical conditions where the relation to pregnancy will be readily apparent. They can include, but are not limited to . . . having or choosing not to have an abortion.”<sup>230</sup> “Abortion” is a commonly used term that people often assume they know the definition of; however, almost every state has a different definition, that has changed over time, and is different in every context—medical, legal, and ordinary use.<sup>231</sup> The most basic definition is that abortion is “an act performed with the intent to terminate pregnancy.”<sup>232</sup> When it comes to legal issues, most jurisdictions apply a definition along the lines of “the use or prescription of any instrument, medicine, drug, or other substance or device to terminate [a] pregnancy . . . with [the] intent[] other than to increase the probability of a live birth, . . . or to remove a dead unborn child.”<sup>233</sup> As for the medical use, Merriam-Webster’s medical dictionary defines abortion as “the termination of a pregnancy after, accompanied by, resulting in, or closely followed by the death of the embryo or fetus: such as (a) spontaneous expulsion of a human fetus during the first 12

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229. *Condition*, OXFORD ENG. DICTIONARY [hereinafter *Condition*, OXFORD DICTIONARY], [https://www.oed.com/dictionary/condition\\_n?tab=meaning\\_and\\_use](https://www.oed.com/dictionary/condition_n?tab=meaning_and_use) [<https://perma.cc/2L6D-MC72>] (last visited Jan 24, 2026).

230. 29 C.F.R. § 1636.3(b)(18) (2024).

231. See Greer Donley & Caroline Kelly, *Abortion Disorientation*, 74 DUKE L.J. 1, 3 (2024).

232. *Id.*

233. Hodes & Nauser, MDs, *P.A. v. Kobach*, 551 P.3d 37, 57 (Kan. 2024) (Wilson, J., concurring) (quoting KAN. STAT. ANN. § 65-6742(a) (2015)); see also *Choice v. Paxton*, 658 F. Supp. 3d 377, 385 (2023) (quoting TEX. HEALTH & SAFETY CODE ANN. § 245.002(1) (1989) (defining abortion as “the act of using or prescribing an instrument, a drug, a medicine, or any other substance, device, or means with the intent to cause the death of an unborn child of a woman known to be pregnant”)).

weeks of gestation . . . , [and] (b) induced expulsion of a human fetus.”<sup>234</sup>

By simply comparing the dictionary definitions of medical condition and abortion, “the termination of a pregnancy . . . closely followed by the death of the embryo or fetus,”<sup>235</sup> is “a state of health.”<sup>236</sup> If you look at it narrowly, it is easy to come to the conclusion that “having” an abortion is a medical procedure, but by considering the totality of the term, abortion can be both a medical procedure and a medical condition.<sup>237</sup> The procedure is the act of terminating the pregnancy and the condition is the resulting state of health—namely, the physiological state following the death of an embryo or fetus that was previously developing.

However, importantly, the issue is not whether an “abortion” is a medical condition, but rather if “*having or choosing not to have an abortion*” is a medical condition related to pregnancy or childbirth.<sup>238</sup> It is impossible to define the whole phrase through dictionary definitions or ordinary meaning, but it is essential to understand that the interpretation must consider more than just the definition of “abortion.” For a court to conclude that abortion is not a medical condition because it is a medical procedure, and, therefore, not covered by the PWFA, is an oversimplification. Having or choosing not to have an abortion encompasses induced abortions, emergent abortions, medically indicated abortions, and all the reproductive health care

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234. *Abortion, Medical Definition*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/abortion#medicalDictionary> [<https://perma.cc/EQ8P-8NX5>] (last visited Mar. 14, 2026).

235. *Id.*

236. *Condition*, OXFORD DICTIONARY, *supra* note 229.

237. See *In-Clinic Abortion*, PLANNED PARENTHOOD, <https://www.plannedparenthood.org/learn/abortion/in-clinic-abortion-procedures> [<https://perma.cc/LS67-6FMT>] (last visited Mar. 14, 2026) (“Abortion is a medical procedure that ends a pregnancy.”).

238. Regulations to Implement the Pregnant Workers Fairness Act, 88 Fed. Reg. 54714, 54774 (Aug. 11, 2023) (to be codified at 29 C.F.R. pt. 1636).

that overlaps with abortions.<sup>239</sup> All of these situations involve both medical conditions and procedures, and it is impossible to parse the difference through dictionary definitions and ordinary meanings.<sup>240</sup> For example, a medical condition, such as cancer or cardiac disease, could necessitate an abortion,<sup>241</sup> or an abortion could lead to a medical condition such as a septic infection or an ovarian cyst.<sup>242</sup>

Regardless of if an employee requires accommodations from the employer before, during, or after the abortion, the PWFPA—and courts' interpretation of it—should require that employers provide those accommodations because at all points the employee is experiencing a medical condition related to pregnancy.<sup>243</sup> The most faithful reading of the statutory text, based on ordinary meaning, supports the conclusion that having or choosing not to have an abortions is a “related medical condition,” and courts should adopt that interpretation. However, if a court declines to adopt that reading, the statutory text and its ordinary use do not compel the opposite conclusion—that abortion is excluded because it is not a related medical

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239. Although a lot of arguments against the inclusion of abortion in the final rule are specifically focused on “elective abortions,” all abortions should be protected to the same degree no matter the justification for care. It is illogical to parse the legally required accommodations based on why an individual is choosing to have an abortion. Moreover, “[t]he motivation behind the decision to get an abortion should not be judged as ‘elective’ or ‘not elective’ by an external party.” *ACOG Guide to Language and Abortion*, AM. COLL. OF OBSTETRICIANS & GYNECOLOGISTS, <https://www.acog.org/contact/media-center/abortion-language-guide> [<https://perma.cc/KZ6V-SFFF>] (last visited Mar. 14, 2026).

240. See Donley & Kelly, *supra* note 231, at 29 (“Abortion has never been fully distinct from other types of reproductive health care. As scholars warned before *Dobbs*, miscarriage care, ectopic pregnancy treatment, and certain types of fertility care have always overlapped with abortion as defined by states.”).

241. Whitney Arey, Klaira Lerma, Emma Carpenter, Ghazaleh Moayedi, Lorie Harper, Anitra Beasley, Tony Ogburn & Kari White, *Abortion Access and Medically Complex Pregnancies Before and After Texas Senate Bill 8*, 141 *OBSTETRICS & GYNECOLOGY* 995, 996 (2023) (identifying conditions that may necessitate an abortion).

242. Erica Parks & Christopher L. Martinez, *Abortion Complications*, NAT'L LIBR. OF MED. (June 22, 2025), <https://www.ncbi.nlm.nih.gov/books/NBK430793/> [<https://perma.cc/8EVA-ZSCD>].

243. See 42 U.S.C. § 2000gg-1(1) (requiring employers to provide necessary accommodations “to the known limitations related to the pregnancy, childbirth, or related medical conditions of a qualified employee”).

condition. Thus, courts should conclude, at a minimum, that the text does not lead to a single, clear interpretation, and therefore the statute is ambiguous.

### B. *Statutory Text Is Not the End All Be All*

Whether a court concludes that (1) having or choosing not to have an abortion *is not* a medical condition based on the ordinary meaning of the text, (2) having or choosing not to have an abortion *is* a medical condition based on the ordinary meaning of the text, or (3) the language of the statute is ambiguous, all three conclusions create paths for additional analysis.<sup>244</sup> If a court came to the first conclusion, there is precedent that courts will recognize that “a literal interpretation” of a word would lead to one result, but still choose to go with another interpretation that is better aligned with the legislative purpose.<sup>245</sup> If courts came to the third conclusion—that the language is ambiguous and an analysis of the text does not help discern the meaning of a statute, or that the terms of the statute give rise to two mutually exclusive, yet reasonable constructions—it would have to consider legislative history and intent.<sup>246</sup>

### C. *Legislative History and Purpose*

The use of legislative history and purpose is an important tool in discovering evidence of the underlying purpose of an

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244. This Note argues that the court should conclude (2) or (3). *See supra* Section IV.A. However, to have a comprehensive argument, the Note covers situations in which the court concludes (1).

245. *See* *United Steelworkers v. Weber*, 443 U.S. 193, 201 (1979). The Supreme Court considered whether Title VII prohibited a private employer from adopting an affirmative action plan intended to increase the number of Black employees. *Id.* at 201–08. Although the Court recognized that, under the literal meaning of the statutory provision, the affirmative action plan would violate Title VII since it would constitute “discriminat[ion] against white employees solely because they [were] white,” the Court ultimately concluded that such a literal interpretation would be “misplaced.” *Id.* at 201. Instead, the Court relied on legislative history and found that the employer’s plan was legal *id.* at 207–08.

246. *See* ANTONIN SCALIA & BRYAN A. GARNER, *READING LAW: THE INTERPRETATION OF LEGAL TEXTS* 39 (2012).

ambiguous statute.<sup>247</sup> To start, let's recall the purpose of the PWFA: to protect workers affected by pregnancy, childbirth, or other related medical conditions from discrimination by their employers.<sup>248</sup> The goal of these protections is to ensure the health and safety of women, and to support the U.S. workforce.<sup>249</sup> Moreover, the PWFA is a building block on top of many past pregnancy discrimination laws.<sup>250</sup> The law was passed with the intention of creating stronger protections, *not* to take any protections away.<sup>251</sup> The inclusion of "having or choosing not to have an abortion" within the PWFA's list of "related medical conditions" is consistent with the Act's purpose because, just as workers with pregnancy complications like stillbirth or miscarriage deserve accommodations, so do those who have an abortion.<sup>252</sup> Furthermore, if workers who have an abortion are legally protected from workplace discrimination—like they always have been—they also deserve reasonable accommodations.<sup>253</sup>

Additionally, let's not forget the bottom-line purpose of Title VII, the PDA, and the PWFA: to prevent sex discrimination

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247. See *Milner v. Dep't of the Navy*, 562 U.S. 562, 572 (2011) ("Those of us who make use of legislative history believe that clear evidence of congressional intent may illuminate ambiguous text.").

248. S. REP. NO. 1486-117, at 1 (2021) ("A Bill to eliminate discrimination and promote women's health and economic security by ensuring reasonable workplace accommodations for workers whose ability to perform the functions of a job are limited by pregnancy, childbirth, or a related medical condition.").

249. See *id.*

250. See Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e(k), *amended by*, Pregnancy Discrimination Act (PDA) of 1978, Pub. L. No. 95-555, 92 Stat. 2076.

251. When discussing the PWFA, Senator Shaheen stated, "[t]he [PWFA] is a critical step forward to end pregnancy discrimination and provide protections for expectant mothers in accessing accommodations at work without fear of retaliation, bias, or being unfairly forced out of their jobs." Press Release, Bill Cassidy, U.S. Sen. for La., Cassidy, Casey Introduce Bipartisan Pregnant Workers Fairness Act, Propose Protections Against Workplace Discrimination (Apr. 29, 2021), <https://www.cassidy.senate.gov/newsroom/press-releases/cassidy-casey-introduce-bipartisan-pregnant-workers-fairness-act-propose-protections-against-workplace-discrimination/> [<https://perma.cc/6TGJ-6Y8K>].

252. See 29 C.F.R. § 1636(b)(18).

253. See *Turic v. Holland Hosp.*, 85 F.3d 1211, 1214 (6th Cir. 1996) ("[T]he panel concludes that an employer who discriminates against a female employee because she has 'exercised her right to have an abortion' violates Title VII.").

in the workplace.<sup>254</sup> The same logic used to determine that pregnancy is encompassed in sex discrimination can be used to determine that abortion is encompassed as well. Although the Supreme Court has, in the equal protection context, at times declined to treat pregnancy classifications as sex-based, pregnancy is inextricably tied to sex because it is a biological condition that only persons with the capacity to become pregnant can experience.<sup>255</sup> Any adverse employment action based on pregnancy, therefore, operates on the basis of sex under Title VII and the PDA.<sup>256</sup> In the same way, abortion is tied to the biological capacity for pregnancy and only persons who can become pregnant can undergo an abortion. Accordingly, adverse treatment based on having an abortion or needing accommodations related to abortion care operates on the basis of sex.

To a court's benefit, there is *a lot* of legislative history to rely on for this issue because the PWFA is the latest of many legislative steps taken to protect this subgroup of workers.<sup>257</sup> From the moment sex discrimination included the protection of pregnant workers, abortion was understood to go along with it.<sup>258</sup> The

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254. See *Price Waterhouse v. Hopkins*, 490 U.S. 228, 239 (1989) (“Congress’ intent to forbid employers to take gender into account in making employment decisions appears on the face of the statute.”). Implementation of the Pregnant Workers Fairness Act, 89 Fed. Reg. 29096, 29106 (Apr. 19, 2024) (“Congress’ express purpose in enacting the PWFA was to supplement Title VII’s protections for qualified employees affected by pregnancy, childbirth, or related medical conditions . . .”).

255. *Geduldig v. Aiello*, 417 U.S. 484, 494 (1974). However, some legal scholars argue that *Geduldig* was wrongly decided, explaining that pregnancy classifications are inextricably sex-based because they target a uniquely sex-linked capacity and enforce traditional sex-role expectations. See Reva Siegel, Serena Mayeri & Melissa Murray, *Equal Protection in Dobbs and Beyond: How States Protect Life Inside and Outside of the Abortion Context*, 43 COLUM. J. GENDER & L. 67, 68–9 (2023); see also Bradley A. Areheart, *Accommodating Pregnancy*, 67 ALA. L. REV. 1125, 1176 (2016) (“The capacity to reproduce is the thing about women which most view as essentially different from men.”).

256. See *Int’l Union, United Auto., Aerospace & Agr. Implement Workers of Am., UAW v. Johnson Controls, Inc.*, 499 U.S. 187, 199 (1991) (“[D]iscrimination based on a woman’s pregnancy is, on its face, discrimination because of her sex.”).

257. See generally 42 U.S.C. §§ 2000e -17 (codifying Title VII of the Civil Rights Act of 1964); 42 U.S.C. §§ 2000gg-6 (codifying the Pregnant Workers Fairness Act).

258. See *infra* note 259–63 and accompanying text.

idea that pregnancy discrimination encompasses childbirth, abortions, and miscarriages has been constant since the 1970s.<sup>259</sup>

The original text of Title VII did not include language on pregnant workers, but in 1972 the EEOC published rules and regulations on the interpretation of Title VII that indicated pregnant workers were protected.<sup>260</sup> Section 1604.10(a), stated, “[a] written or unwritten employment policy or practice which excludes from employment applicants or employees because of pregnancy is [a] prima facie violation of Title VII.”<sup>261</sup> This is the first piece of evidence that the EEOC interpreted sex discrimination to include pregnancy.<sup>262</sup> The same rule stated, “[d]isabilities caused or contributed to by pregnancy, miscarriage, abortion, childbirth, and recovery therefrom are, for all job-related purposes, temporary disabilities and should be treated as such . . .”<sup>263</sup> Here, the EEOC is clearly stating that Title VII prohibits employment discrimination based on sex and that this includes disabilities caused by abortion among other things.<sup>264</sup>

This interpretation lasted until 1976 when the Supreme Court found in *General Electric Co. v. Gilbert*, that Section 1604.10 of Title VII was not controlling because it conflicted with other regulations and legislative history governing Title VII.<sup>265</sup> However, Congress quickly repudiated the Supreme Court’s decision that sex discrimination under Title VII *does not* include pregnancy, childbirth, and related medical conditions by

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259. Compare 37 Fed. Reg. 6835, 6835–37 (Apr. 5, 1972) (proposing guidance on “discrimination because of sex”), with 29 C.F.R. § 1604 (2025) (codifying the guidance on “discrimination because of sex”). See also 29 C.F.R. § 1604 (1978) (“The basic principle of the [PDA] is that women affected by pregnancy and related conditions must be treated the same as other applicants and employees on the basis of their ability or inability to work. A woman is therefore protected against such practices as being fired, or refused a job or promotion, merely because she is pregnant or has had an abortion.”).

260. 29 C.F.R. § 1604.10(a).

261. *Id.*

262. *See id.*

263. *Id.* § 1604.10(b).

264. *Id.*

265. *Gen. Elec. Co. v. Gilbert*, 429 U.S. 125, 142 (1976).

passing the PDA.<sup>266</sup> The PDA was an amendment to Title VII, intended to “codify the EEOC’s original interpretation of Title VII.”<sup>267</sup> This was the first time the exact phrase, “pregnancy, childbirth, or related medical conditions” appeared in employment discrimination legislation.<sup>268</sup> Congress’s response to *Gilbert* indicates a strong legislative will to include broad protections against sex discrimination for pregnant workers as the EEOC interpreted, which includes abortion.

Furthermore, when it came time to pass the PDA, members of Congress explicitly said that the Act’s protections extended to abortion.<sup>269</sup> A conference report filed in the House in 1978 states

Because the [PDA] applies to all situations in which women are “affected by pregnancy, childbirth, and related medical conditions,” its basic language covers women who chose to terminate their pregnancies. Thus, no employer may, for example, fire or refuse to hire a woman simply because she has exercised *her right to have an abortion*.<sup>270</sup>

Therefore, when Congress codified the EEOC’s interpretation of Title VII, it codified the *whole rule*, including the protections for workers having an abortion.<sup>271</sup>

In 2014, a ruling by the Supreme Court once again sent Congress back to the drawing board to find the best way to ensure pregnant workers are protected.<sup>272</sup> *Young v. United Parcel*

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266. See 42 U.S.C. § 2000e(k).

267. H.R. REP. NO. 117-27, pt. 1, at 13 (2021); see also H.R. REP. NO. 95-948, at 4750 (1978) (explaining how the EEOC interpreted Title VII to include discrimination based on pregnancy).

268. 42 U.S.C. § 2000e(k).

269. H.R. REP. NO. 95-1786, at 4766 (1978) (Conf. Rep.) (emphasis added).

270. *Id.* (emphasis added).

271. See 42 U.S.C. § 2000e(k); see also H.R. REP. NO. 95-1786, at 4749–50 (1978) (Conf. Rep.) (explaining the legislature’s intent to codify EEOC’s guidance).

272. See *Young v. United Parcel Serv., Inc.*, 575 U.S. 206 (2015).

*Service, Inc.*, highlighted gaps in the PDA's coverage,<sup>273</sup> and the House felt that to "remedy the shortcomings of the PDA, Congress must step in and act."<sup>274</sup> The outcome of this Supreme Court case prompted Congress to start developing the PWFA to build upon the protections of Title VII and the PDA.<sup>275</sup>

Throughout the process of passing the PWFA, lawmakers acknowledged that the Act would include protections for those having an abortion.<sup>276</sup> Although they were bringing it up because they were against it, they clearly understood abortion protections to be a part of it.<sup>277</sup> For example, the Report, together with Minority Views, that accompanied the House Report on the PWFA, stated, "if an employee working for a religious organization requests time off to have an abortion procedure, [the PWFA] could require the organization to comply with [the] request."<sup>278</sup> This demonstrates that during the legislative process, Congress clearly understood the statute to include protections for workers having an abortion.<sup>279</sup>

In the decades following the EEOC's determination that sex discrimination protects pregnant workers and workers having an abortion alike, Congress drafted multiple new laws building

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273. See *id.* at 223–26.

274. H.R. REP. NO. 117-27, pt. 1, at 17 (2021).

275. See *id.*; *The Young v. UPS Anniversary Serves as Reminder for Why We Need the Pregnant Workers Fairness Act*, A BETTER BALANCE (Mar. 25, 2022), <https://www.abetterbalance.org/the-young-v-ups-anniversary-serves-as-reminder-for-why-we-need-the-pregnant-workers-fairness-act/> [<https://perma.cc/X4R5-94PF>].

276. See, e.g., 117 CONG. REC. S7049–50 (2022); H.R. REP. NO. 117–27, at 60.

277. 117 CONG. REC. S7049 (2022) ("However, in its current form, this legislation before us would give Federal bureaucrats at the EEOC authority to mandate that employers nationwide provide accommodations such as leave to obtain abortions on demand under the guise of a pregnancy-related condition.").

278. H.R. REP. NO. 117-27, pt. 1, at 60.

279. Additionally, Congressman Nadler and eighty-two House Democrats wrote a letter to the EEOC, urging the agency to include abortion in the definition of "related medical conditions." Press Release, Nadler Applauds EEOC Finalized Rule Implementing the Pregnant Workers' Fairness Act that Include Abortion Related Accommodations (Apr. 15, 2024), <https://nadler.house.gov/news/documentsingle.aspx?DocumentID=395143> [<https://perma.cc/TQ2D-H8MU>]. After the EEOC's final rule was published, several members of Congress applauded the moves, one stating, "[t]he [EEOC] was right to include abortion explicitly in its final regulation." *Id.*

upon this idea.<sup>280</sup> None of these laws disturbed the EEOC's original interpretation of Title VII, and instead, were passed to cement the interpretation when courts tried to change it.<sup>281</sup> This demonstrates the legislature's desire to leave the agency's interpretation intact.<sup>282</sup> Each new law was an opportunity for Congress to exclude abortion, but they did not, which implies that the interpretation was consistent with the statute.<sup>283</sup> Both the PDA and the PWFA were prompted by judicial decisions and in response, the executive and legislative branches have made it clear that sex discrimination *does* include discrimination based on a worker's choice to have an abortion.<sup>284</sup>

#### D. Judicial Precedent

In addition to the traditional tools of statutory interpretation, courts often rely on judicial precedent in statutory cases, even if that precedent does not fully address the issue at hand.<sup>285</sup> Although it may not be binding for this specific issue relating

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280. See Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e(k), *amended by*, Pregnancy Discrimination Act of 1978, 42 U.S.C. § 2000gg(6).

281. See H.R. REP. NO. 117-27, pt. 1, at 13; see also H.R. REP. NO. 95-948, at 4750 (1978) (discussing the EEOC's interpretation of pregnancy and abortion).

282. This follows the logic of the congressional acquiescence theory, where "[u]nder this approach, the fact that a branch has engaged in a certain practice over time is indicative of that practice's constitutionality only if the other branch is deemed to 'acquiesce' in that practice." Shalev Roisman, *Constitutional Acquiescence*, 84 GEO. WASH. L. REV. 668, 676 (2016). The executive branch, through the EEOC, engaged in the practice of interpreting pregnancy discrimination laws to include protections for workers having abortions, and Congress demonstrated that they accepted this practice by historically never stepping in and declaring the EEOC's interpretation to be incorrect. See *id.*; H.R. REP. NO. 117-27, pt. 1, at 13.

283. See *First Nat'l City Bank v. United States*, 557 F.2d 1379, 1384 (Ct. Cl. 1977) ("Congress, if it had considered the [agency's] interpretation erroneous, would have amended the section when it reenacted the statute; its failure to do so implies that the administrative pronouncement was not inconsistent with the intent of the statute.").

284. See *Young v. United Parcel Serv., Inc.*, 575 U.S. 206, 223–26 (2015); see *Gen. Elec. Co. v. Gilbert*, 429 U.S. 125, 131–35 (1976). See also *supra* notes 71, 72–81 and accompanying text (noting the legislature's reactions to the *Young* and *Gilbert* decisions).

285. Lawrence M. Solan, *Precedent in Statutory Interpretation*, 94 N.C. L. REV. 1165, 1185 (2016) ("[R]esolving uncertainty in light of decisions in cases that construed a similar statute or resolved a similar interpretive problem in a dissimilar statute can add coherence to the *corpus juris*, to use Justice Scalia's term." (citing *W. Va. Univ. Hosps. v. Casey*, 499 U.S. 83, 100–01 (1991))).

to the PWFAs, there is judicial precedent that courts have interpreted abortions to be a “related medical condition,” covered by federal labor laws.<sup>286</sup> Before the PWFAs, in 2019, the Louisiana Eastern District Court concluded that “abortion is encompassed within the statutory text” of the PDA, which prohibits “adverse employment actions ‘because of or on the basis of pregnancy, childbirth, or related medical conditions.’”<sup>287</sup> The Court recognized that, on the statute’s face, abortion is not a medical *condition* related to pregnancy, but instead is a medical *procedure* used to treat a pregnancy-related medical condition.<sup>288</sup> The Court found that “the need for breaks to pump breast milk or requiring an employee to have a normal menstrual cycle before they can return to work” is similar to “termination of a pregnancy, whether medically necessary or not,” because all three situations “impose on [women] a burden which male employees need not suffer.”<sup>289</sup> For this reason, the court agreed with the EEOC’s interpretation and held that “Title VII as amended by the [PDA] extends to abortions.”<sup>290</sup>

This was not the first time a court considered the issue. In 1996 in *Turic v. Holland Hospitality*, the Sixth Circuit concluded that the language of the PDA, the legislative history, and the EEOC’s guidelines indicate that an employer cannot discriminate against a woman for exercising her right to have an abortion.<sup>291</sup> According to the Court, this type of discrimination would violate Title VII and the PDA.<sup>292</sup> Clearly, courts in the past have interpreted pregnancy discrimination and the phrase

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286. See, e.g., *Ducharme v. Crescent City Déjà Vu, L.L.C.*, 406 F. Supp. 3d 548, 558 (E.D. La. 2019); see also *Turic v. Holland Hosp.*, 85 F.3d 1211, 1213–15 (6th Cir. 1996) (affirming a lower court ruling that concluded “that pregnancy ‘related medical conditions’ included the right to an abortion”).

287. *Ducharme*, 406 F. Supp. 3d at 556.

288. *Id.*

289. *Id.* at 557 (citing *Harper v. Thiokol Chem. Corp.*, 619 F.2d 489, 491–92 (5th Cir. 1980)).

290. *Id.* at 556.

291. *Id.* (citing *Turic*, 85 F.3d at 1214).

292. *Id.*

“related medical conditions” to include protection for workers having an abortion; therefore, going forward, courts should continue this interpretation in order to “avoid making a muddle out of a statutory regime,” and “the set of interpretative devices used to interpret statutes.”<sup>293</sup>

### E. *Canons of Construction*

Another tool of statutory interpretation is the “whole code rule.”<sup>294</sup> As Justice Scalia described it, when a court is presented with a statutory term, they should “construe it to contain that permissible meaning which fits most logically and comfortably into the body of both previously and subsequently enacted law.”<sup>295</sup> Title VII, as amended by the PDA, and the PWFA all use the same phrase, “pregnancy, childbirth, or related medical conditions,” to protect workers from sex discrimination.<sup>296</sup> Furthermore, we know that the EEOC, Congress, and several courts have expressed significant agreement in the fact that abortion is considered a “medical condition” for the purpose of the PDA.<sup>297</sup> According to the “whole code rule,” each individual statute should be construed in a manner that is “compatible with previously enacted laws.”<sup>298</sup> Therefore, the PWFA should be construed as compatible with the PDA, meaning “related

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293. Solan, *supra* note 285, at 1185.

294. See Anita S. Krishnakumar, *Cracking the Whole Code Rule*, 96 N.Y.U. L. REV. 76, 85 (2021).

295. *W. Va. Univ. Hosps., Inc. v. Casey*, 499 U.S. 83, 100 (1991).

296. Compare 42 U.S.C. § 2000e(k) (“The terms ‘because of sex’ or ‘on the basis of sex’ include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions . . .”), with 42 U.S.C. § 2000gg-1(1) (“It shall be an unlawful employment practice for a covered entity to not make reasonable accommodations to the known limitations related to the pregnancy, childbirth, or related medical conditions of a qualified employee . . .”).

297. See, e.g., *Ducharme v. Crescent City Déjà Vu, L.L.C.*, 406 F. Supp. 3d 548, 558 (E.D. La. 2019); *Turic v. Hollands Hosp.*, 85 F.3d 1211, 1213–14 (6th Cir. 1996); Implementation of the Pregnant Workers Fairness Act, 89 Fed. Reg. 29096, 29106 (2024); see also *supra* notes 267–71, 276–78 and accompanying text (citing to House of Representatives bills that acknowledge this agreement).

298. Antonin Scalia, *Common-Law Courts in a Civil-Law System: The Role of United States Federal Courts in Interpreting the Constitution and Laws*, in A MATTER OF INTERPRETATION: FEDERAL COURTS AND THE LAW 3, 16 (Amy Gutmann ed., 1997).

medical condition” should be construed the same in the PWFA as it historically has been construed in the PDA to include workers having or choosing not to have an abortion.<sup>299</sup>

#### F. Counterarguments

Finally, because there is evidence of the likely arguments against the interpretation of abortion as a “related medical condition,” let’s consider the strength of these arguments.<sup>300</sup> In *Louisiana v. EEOC*, the court stated that “[i]f Congress had intended to mandate that employers accommodate elective abortions under the PWFA, it would have spoken clearly when enacting the statute, particularly given the enormous social, religious, and political importance of the abortion issue in our nation at this time.”<sup>301</sup> There were two main reasons why the court came to this decision. First, the PWFA does not specifically state that “pregnancy, childbirth, and related medical conditions” should be construed in the same way as in Title VII and the PDA, despite stating that “reasonable accommodation” and “undue hardship” should have the same meaning as they do in the ADA.<sup>302</sup> Second, the phrase “pregnancy, childbirth, and related medical condition” should be interpreted differently than it is in Title VII and the PDA in the wake of *Dobbs*.<sup>303</sup>

Considering all the prior stated evidence, these arguments are weak.<sup>304</sup> First, “pregnancy, childbirth, or related medical conditions,” should be considered a term of art because it has been used and interpreted in the past; therefore, it is not necessary for Congress to state that it should be interpreted the same

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299. See generally 42 U.S.C. § 2000gg-1(1) (providing protections for employees experiencing limitations related to “pregnancy, childbirth, or related medical conditions”).

300. See *supra* Section III.B.1.

301. *Louisiana v. EEOC*, 705 F. Supp. 3d 643, 658 (W.D. La. 2024).

302. *Id.* at 649–50, 658.

303. *Id.* at 657–59.

304. See *supra* Sections IV.A–C.

way in the future.<sup>305</sup> This phrase has been interpreted many times, and when Congress has had multiple opportunities to act and offer a different interpretation, and failed to do so, courts should interpret this as approving of the existing interpretation.<sup>306</sup>

As for the second half of the reasoning in *Louisiana v. EEOC*, the Supreme Court's decision in *Dobbs*—which allows states to limit a woman's right to an abortion—does not influence the federal legislature's ability to pass a law addressing sex discrimination in the workplace.<sup>307</sup> Furthermore, regardless of the legality of abortion under state law, federal law can, and should, still protect workers who choose to have an abortion by providing them with the necessary accommodations.<sup>308</sup> In *Dobbs*, Chief Justice Roberts spoke to the concern that the decision would have immense impacts on other laws, like the PDA or the PWFA; he felt that the decision to overturn *Roe v. Wade* was narrow and, therefore, should have little impact on other areas of law.<sup>309</sup>

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305. See 42 U.S.C. § 2000e(k). Title VII, as amended by the PDA, set “pregnancy, childbirth, or related medical conditions” as a “term of art” that was “transplanted” into the PWFA. See *George v. McDonough*, 596 U.S. 740, 746 (2022). According to *George v. McDonough*, establishing a term of art takes not “a few stray decisions,” but a “mountain” of “regulatory authority” that “captures ‘the state of [a] body of law.’” *Id.* at 749–50. Here, there is a “mountain of . . . regulatory authority” supporting this interpretation. *Id.* at 749. See *supra* Sections IV.A–C.

306. See *supra* notes 283–84 and accompanying text.

307. *Louisiana v. EEOC*, 705 F. Supp. 3d 643, 657–59 (W.D. La. 2024) (citing *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022)).

308. Despite there being multiple states with abortion bans, employees in those states are still able to travel to other states to have an abortion. See *supra* note 156 and accompanying text. Because of the abortion ban, it is arguably more important for employees in those states to have protections than anywhere else.

309. *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 357 (2022) (Roberts, C.J., concurring in judgment) (“The Court’s decision to overrule *Roe* and *Casey* is a serious jolt to the legal system—regardless of how you view those cases. A narrower decision rejecting the misguided viability line would be markedly less unsettling, and nothing more is needed to decide this case.”).

## CONCLUSION

When the EEOC issued its final rule in 2024 and filled in the details of the PWFA as it was instructed to do by Congress, it was correct to interpret “related medical conditions” to include “having or choosing to not have an abortion.”<sup>310</sup> The intention of the Act was to provide stronger protections from workplace pregnancy discrimination.<sup>311</sup> From the moment the concept of “pregnancy discrimination” existed in our country, it was understood to include protection for abortion among many other conditions.<sup>312</sup> The reason pregnancy discrimination protections are in place is because pregnancy is unique to women, as are abortion, lactation, miscarriage, and childbirth.<sup>313</sup> Our country has an interest in protecting women from discrimination based on conditions unique to them, because sex-based experiences should never have a negative impact on someone’s treatment or their opportunities in life.<sup>314</sup> When Congress passed the PWFA, it wanted to further this interest by ensuring pregnant workers get accommodations for their known limitations related to their pregnancy.<sup>315</sup> Courts should interpret having an abortion to be a condition related to pregnancy, in line with a long line of legislative history and judicial precedent.<sup>316</sup>

Even three years after the PWFA’s passage, pregnant workers are still being denied accommodations, underscoring that

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310. 42 U.S.C. § 2000gg-1(1); 29 C.F.R. § 1636.3(b)(18).

311. See *supra* note 248 and accompanying text.

312. See *supra* notes 260–64 and accompanying text.

313. See Regulations to Implement the Pregnant Workers Fairness Act, 88 Fed. Reg. 54714 (Aug. 11, 2023); Sex-Based Discrimination, U.S. EQUAL EMP. OPPORTUNITY COMM’N, <https://www.eeoc.gov/sex-based-discrimination> [https://perma.cc/R69T-6PXY] (last visited Oct. 5, 2025).

314. See *Women and Gender in Public Policy*, U.S. GOV. ACCOUNTABILITY OFF., <https://www.gao.gov/women-and-gender-public-policy> [https://perma.cc/88J8-K6DG] (last visited Mar. 11, 2026).

315. See 42 U.S.C. § 2000gg-1; *supra* notes 274–79 and accompanying text.

316. See *supra* Sections IV.C–D.

these protections remain urgently necessary.<sup>317</sup> Major employers like Amazon have been accused of systematically failing to comply with the law by denying even the most basic accommodations, such as the ability to sit.<sup>318</sup> These realities make clear that pregnancy discrimination is not a relic of the past, but instead an ongoing and pervasive problem in today's workplaces. A narrow interpretation of the PWFA would only exacerbate existing harms. This Note demonstrates that, regardless of the administrative state, courts can, and should, interpret the statute broadly through traditional tools of statutory interpretation to ensure that all conditions related to pregnancy, including abortion, receive the full protection Congress intended.<sup>319</sup>

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317. Maggie Astor, *3 Years After a Landmark Law, Some Pregnant Workers Still Don't Get Basic Accommodations*, N.Y. TIMES (Apr. 14, 2026), <https://www.nytimes.com/2026/04/14/well/live/pregnant-workers-amazon-speedway.html> [<https://perma.cc/KBJ2-9Y2L>].

318. *Id.*

319. *See supra* Part IV.