IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
DELTA DIVISION

STATES OF TENNESSEE, ARKANSAS, ALABAMA, FLORIDA, GEORGIA, IDAHO, INDIANA, IOWA, KANSAS, MISSOURI, NEBRASKA, NORTH DAKOTA, OKLAHOMA, SOUTH CAROLINA, SOUTH DAKOTA, UTAH, and WEST VIRGINIA, *Plaintiffs*, v. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, *Defendant.*	Civil Action No. 2:24-cv-84 DPM U.S. District Judge D. P. Marshall U.S. Magistrate Judge Edie R. Ervin

PLAINTIFFS' MOTION FOR A § 705 STAY AND PRELIMINARY INJUNCTION

In this case, the Plaintiff States challenge as unlawful a final rule issued by Defendant U.S. Equal Employment Opportunity Commission (EEOC). *See* EEOC, *Implementation of Pregnant Workers Fairness Act*, 89 Fed. Reg. 29,096 (Apr. 19, 2024). The challenged Final Rule purports to implement the Pregnant Workers Fairness Act of 2022, which requires employers "to make reasonable accommodations to the known limitations related to the pregnancy,

childbirth, or related medical conditions" of a pregnant worker. 42 U.S.C. § 2000gg-1(1). A broad, bipartisan coalition supported the PWFA's aim of ensuring no woman would be forced to decide between maintaining a healthy pregnancy and staying employed—a pro-family aim Plaintiff States fully support. *See generally* Complaint ¶¶ 49-61 (detailing this history).

The PWFA nowhere references accommodation for abortions, let alone requires employers to accommodate elective abortions that are illegal under state law. The operative text instead requires that employers accommodate "known limitations" related to "medical conditions." 42 U.S.C. § 2000gg-1(1). This language plainly excludes elective abortions performed to end fetal life rather than for any medical reason. Statutory context and structure likewise foreclose that the PWFA mandates abortion accommodations. The PWFA's history further indicts any view that the statute covers abortions: Throughout debate on the bill, sponsors and other lawmakers repeatedly disavowed that the PWFA could be read to permit EEOC to mandate accommodation for abortion procedures.

EEOC has acted against this uniform evidence showing that the PWFA cannot permissibly apply to abortion accommodations. By a divided 3-2 vote, the Final Rule challenged here requires Plaintiff States and other employers to accommodate their employees' decisions to obtain abortions irrespective of health need. During the comment period on the rule, Plaintiff Tennessee

joined more than 50,000 other commenters in urging EEOC not to smuggle abortion accommodations into the PWFA. *See* Ex. B to Complaint, Tennessee Comment. Tennessee pointed out that the statutory text, context, and history confirm the PWFA promotes healthy pregnancies and does not saddle employers with a novel obligation to accommodate elective abortions. *Id.* at 3-4. Such a rule, Tennessee noted, would raise significant constitutional problems under federalism limits, exceed the scope of Congress's authority to abrogate States' sovereign immunity under Section 5 of the Fourteenth Amendment, and uniquely generate grave First Amendment problems of compelled speech and religious exercise. *Id.* at 6-8. Tennessee lastly objected that EEOC's analysis omitted consideration of important aspects of the regulatory problem and severely understated the compliance impacts and costs of the proposed abortion-accommodation mandate. *Id.* at 8-9.

Yet, on April 19, 2024, EEOC proceeded to issue the Final Rule. Relevant here, the Final Rule requires employers—including the Plaintiff States—to accommodate all employees' abortions, even if illegal under state law. *See* 89 Fed. Reg. at 29,096. The Final Rule takes effect on June 18, 2024. *Id.* at 29,096.

Now that EEOC has finalized its abortion-accommodation mandate, the Plaintiff States seek judicial relief from the Final Rule's unlawful approach and harmful effects. Plaintiff States filed suit on April 25, 2024—a few days

after the Final Rule's issuance in the Federal Register. In the present motion, Plaintiffs seek preliminary relief against EEOC's Final Rule in the form of a stay under 5 U.S.C. § 705 or a preliminary injunction.

As further set out in Plaintiffs' accompanying memorandum in support of this motion, the requested interim and injunctive relief is warranted because: (1) Plaintiffs are likely to prevail on the merits of their challenge to EEOC's Final Rule because the Final Rule violates the PWFA, the Administrative Procedure Act, and the U.S. Constitution; (2) allowing the Final Rule to take effect during the course of the litigation would inflict a series of irreparable harms on Plaintiffs; (3) interim or preliminary injunctive relief would not harm EEOC; and (4) the public interest favors interim or preliminary relief.

Without this injunction, Plaintiffs' impending harm is imminent and irreparable. To prepare for the mid-June effective date, Plaintiffs will need to undertake preparations and expenses to inform and train state employees about the new abortion-accommodation requirements, including by addressing how those requirements interact with state laws that prohibit elective abortion procedures or funding abortions through state monies or programs. *See generally, e.g.*, Decl. of Craig Raymer ¶¶ 6-11. Because EEOC enjoys sovereign immunity, Plaintiffs could not recover these losses even should they prevail on the merits. As the memorandum sets out, the Final Rule also imposes public-health and sovereignty harms in spades, including by coercing

States to help accommodate abortion procedures they have made illegal and that end unborn lives.

To stave off this harm, Plaintiffs now move for preliminary relief under 5 U.S.C. § 705 and Federal Rule of Civil Procedure 65. Plaintiffs respectfully request a decision by **June 12, 2024**, to allow them to seek appellate intervention as necessary prior to the Final Rule's effective date. Specifically, Plaintiffs request entry of an order:

a) Declaring the Final Rule's abortion-accommodation mandate is likely unlawful under the PWFA, Administrative Procedure Act, and the U.S. Constitution;

b) Staying the effective date of EEOC's Final Rule under 5 U.S.C. § 705, thus denying it legally operative effect, during the pendency of these proceedings;

c) Preliminarily enjoining EEOC, and any other agency or employee of the United States, from enforcing, relying on, implementing, or otherwise acting pursuant to the Final Rule's abortion-accommodation mandate against the interests of Plaintiff States; and

d) Granting any and all other preliminary relief the Court deems just and proper.

Plaintiffs do not request a hearing on their motion but are available if the Court desires one.

Finally, Plaintiffs respectfully request that this Court exercise its discretion to waive the security requirement of Federal Rule of Civil Procedure 65(c). No security requirement attends a stay under 5 U.S.C. § 705.

Respectfully submitted,

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Tennessee Attorney General and Reporter

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*Motion for admission *Pro Hac Vice* under Local Rule 83.5(d) pending

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*Motion for admission *Pro Hac Vice* under Local Rule 83.5(d) pending

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*Motion for admission *Pro Hac Vice* under Local Rule 83.5(d) forthcoming

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*Motion for admission *Pro Hac Vice* under Local Rule 83.5(d) forthcoming

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*Motion for admission *Pro Hac Vice* under Local Rule 83.5(d) pending

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*Motion for admission *Pro Hac Vice* under Local Rule 83.5(d) pending

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*Motion for admission *Pro Hac Vice* under Local Rule 83.5(d) forthcoming

Counsel for Plaintiff State of West Virginia

Exhibit A

Declaration of Craig Raymer,

Assistant Commissioner for the Tennessee
Department of Human Resources

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
DELTA DIVISION

STATES OF TENNESSEE, ARKANSAS, ALABAMA, FLORIDA, GEORGIA, IDAHO, INDIANA, IOWA, KANSAS, MISSOURI, NEBRASKA, NORTH DAKOTA, OKLAHOMA, SOUTH CAROLINA, SOUTH DAKOTA, UTAH, and WEST VIRGINIA, *Plaintiffs*, v. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, *Defendant.*	Civil Action No. 2:24-CV-84 DPM

DECLARATION OF CRAIG RAYMER

Pursuant to 28 U.S.C. § 1746, I, Craig Raymer, duly affirm under penalty of perjury as follows:

INTRODUCTION

1. I am over 18 years of age, have personal knowledge of the matters set forth herein, and am competent to make this Declaration.

2. My name is Craig Raymer, and I serve as the Assistant Commissioner for the Tennessee Department of Human Resources (DOHR). I have served in this capacity since May 2023 and prior to that, I served on DOHR's Senior Leadership Team as the HR Business Solutions Administrator. My responsibilities include leading and overseeing DOHR's HR Business Solutions and Recruiting Divisions, as well as oversight of the human resources operations of 12

state agencies. In my role, I review and evaluate rules and regulations promulgated by federal agencies, including the Equal Employment Opportunity Commission ("EEOC" or "Commission"), to determine whether they necessitate policy changes for state agencies. Where such changes are necessary, I help to prepare and execute a plan for bringing DOHR and the state agencies it oversees into compliance.

3. I have reviewed the final EEOC rule entitled *Regulations to Implement the Pregnant Workers Fairness Act*, 89 Fed. Reg. 29,096 (April 19, 2024). I understand that the State of Tennessee is an employer subject to the Final Rule's requirements. Among those requirements, I understand that EEOC's Final Rule would require Tennessee to provide workplace accommodations to women the State employs who are seeking or who have received abortions.

4. I understand that Tennessee law currently generally prohibits the provision of abortions within the State unless the procedure relates to certain enumerated categories of medical conditions and diagnoses. *See* Tenn. Code. Ann. § 39-15-213 (2024).

5. The State of Tennessee has around 42,000 employees, including more than 21,000 female employees. At any given time, Tennessee has female employees who are pregnant.

6. Prior to the promulgation of the Rule, the State of Tennessee has generally offered a limited number of specified categories of leave time to its employees. These categories include administrative leave, sick leave, and annual leave, which employees accrue over the course of their tenure of employment. Generally, employees must follow the limits that govern each type of leave—*i.e.*, employees cannot use sick leave for non-medical related absences. Employees who exhaust their leave time must take unpaid absences in many cases. Unpaid leave is available only in certain instances, and an employee who takes unaccrued, unexcused leave, even if unpaid, may be subject to discipline, including but not limited to termination.

7. Under the Tennessee Pregnant Workers Act, *see* Tenn. Code Ann. § 50-10-101 *et seq.*, certain employers in Tennessee also have a legal obligation to accommodate certain conditions and limitations relating to "pregnancy, childbirth, or related medical conditions." *Id.* § 50-10-103(b)(1).

8. By contrast, the State of Tennessee does not currently accommodate or provide leave to employees for the express purpose of obtaining an elective abortion that violates state law.

9. If Tennessee were required to begin offering accommodations for such abortions, it would impose significant costs on the State, including but not limited to the following:

- associated lost productivity costs;
- associated overtime pay for shift-covering;
- costs associated with hiring interim employees, depending on the length of leave;
- costs associated with training hundreds of human relations staff on new benefits available to accommodate abortions; and
- costs associated with updating print and online benefits materials.

10. In addition, I understand that the Final Rule subjects an employer to EEOC enforcement and civil suit for failing to accommodate workers, including accommodations for the purpose of obtaining providing elective abortions. This would require the State to incur costs to implement new policies allowing accommodations for elective abortions or else face enforcement action by the EEOC or costly litigation for failure to provide reasonable accommodations under the Pregnant Workers Fairness Act.

11. Furthermore, the Final Rule makes it unlawful to "coerce, intimidate, threaten, harass, or interfere with" a person's rights under the Pregnant Workers Fairness Act. The Final Rule indicates that such coercion or harassment need not be severe, pervasive, adverse, or hostile

to the employee, nor need it meet the materially adverse standard of retaliation. Rather, any activity that "might have dissuaded a reasonable worker" from seeking an abortion accommodation may be considered harassment under the Final Rule. This prohibition would likewise require the State to incur costs to implement new policies and training for its employees and administrators.

I declare, under penalty of perjury, that the foregoing is true and correct.

Executed in Davidson County, TN
on April 30, 2024

Craig Raymer

Exhibit B

Declaration of Deborah Parsons,

Assistant Human Resources Director for
the Office of the Arkansas Attorney General

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
DELTA DIVISION

STATES OF TENNESSEE, ARKANSAS, ALABAMA, FLORIDA, GEORGIA, IDAHO, INDIANA, IOWA, KANSAS, MISSOURI, NEBRASKA, NORTH DAKOTA, OKLAHOMA, SOUTH CAROLINA, SOUTH DAKOTA, UTAH, and WEST VIRGINIA, *Plaintiffs*, v. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, *Defendant.*	Civil Action No. 2:24-CV-84 DPM

DECLARATION OF DEBORAH PARSONS

Pursuant to 28 U.S.C. § 1746, I, Deborah Parsons, duly affirm under penalty of perjury as follows:

INTRODUCTION

1. I am over 18 years of age, have personal knowledge of the matters set forth herein, and am competent to make this Declaration.

2. My name is Deborah Parsons, and I serve as the Assistant Director of Human Resources for the Office of the Arkansas Attorney General ("the Office"). The Office is a constitutional office under the laws of the State of Arkansas. Employees of the Office are employees of the State of Arkansas. In my role, I review and evaluate rules and regulations promulgated by federal agencies, including the Equal Employment Opportunity Commission

("EEOC" or "Commission"), to determine whether they necessitate policy changes for the Office. Where such changes are necessary, I help to prepare and execute a plan for bringing into compliance.

3. I am familiar with the final EEOC rule entitled *Regulations to Implement the Pregnant Workers Fairness Act*, 89 Fed. Reg. 29,096 (April 19, 2024) (the "Final Rule"). I understand that the State of Arkansas, including the Office of the Attorney General, are employers subject to the Final Rule's requirements. Among those requirements, I understand that EEOC's Final Rule would require the State of Arkansas to provide workplace accommodations to women the State employs who are seeking or who have received abortions.

4. I understand that Arkansas law currently prohibits the provision of abortions within the State unless the procedure is performed to save the life of a pregnant woman in a medical emergency. *See* Ark. Code Ann. 5-61-304. I also understand that the Arkansas Constitution prohibits public funds from being used to pay for any abortion, except to save the mother's life. Ark. Const. amend. 68, sec. 1. The Arkansas Constitution further provides that it is the policy of the State "to protect the life of every unborn child from conception until birth, to the extent permitted by the Federal Constitution." Ark. Const. amend. 68, sec. 2.

5. The Office of the Attorney General currently has 162 employees, 88 of whom are female. At any given time, the Office has female employees who are pregnant.

6. Prior to the promulgation of the Final Rule, the Office has generally offered a limited number of specified categories of leave time to its employees. These categories include sick leave and annual leave, which employees accrue over the course of their tenure of employment. Generally, employees are subject to limits that govern each time of leave—*i.e.*, employees cannot use sick leave for non-medical related absences. Employees who exhaust their

leave time must take unpaid absences in many cases. Unpaid leave is available only in certain instances, and an employee who takes unaccrued, unexcused leave, even if unpaid, may be subject to discipline, including but not limited to termination.

7. Under the Arkansas Civil Rights Act of 1993, employers in Arkansas—including the Office of the Attorney General and other State entities—are prohibited from engaging in discrimination because of sex. Ark. Code Ann. 16-123-107(a)(1). Arkansas law defines sex discrimination to include discrimination "on account of pregnancy, childbirth, or related medical conditions." Ark. Code Ann. 16-123-102.

8. By contrast, Arkansas state entities, including the Office of the Attorney General, do not currently accommodate or provide leave to employees for the express purpose of obtaining an elective abortion that violates State law.

9. If Arkansas were required to begin offering accommodations for such abortions, it would impose significant costs on the Office, including but not limited to the following:

- associated lost productivity costs;
- associated compensatory time to cover absences;
- costs associated with hiring interim employees, depending on the length of leave;
- costs associated with training human resources staff on new benefits available to accommodate abortions; and
- costs associated with updating benefits materials.

10. In addition, I understand that the Final Rule subjects an employer to EEOC enforcement and civil suit for failing to accommodate workers, including accommodations for the purpose of obtaining elective abortions. This would require the Office to incur costs to implement new policies allowing accommodations for elective abortions or else face enforcement action by

the EEOC or costly litigation for failure to provide reasonable accommodations under the Pregnant Workers Fairness Act.

11. Furthermore, the Final Rule makes it unlawful to "coerce, intimidate, threaten, harass, or interfere with" a person's rights under the Pregnant Workers Fairness Act. The Final Rule indicates that such coercion or harassment need not be severe, pervasive, adverse, or hostile to the employee, nor need it meet the materially adverse standard of retaliation. Rather, any activity that "might have dissuaded a reasonable worker" from seeking an abortion accommodation may be considered harassment under the Final Rule. This prohibition would likewise require the Office to incur costs to implement new policies and training for its employees and administrators.

I declare, under penalty of perjury, that the foregoing is true and correct.

Executed in Pulaski County, Arkansas
on May 3, 2024

Deborah Parsons

Deborah Parsons

Exhibit C

Declaration of Emily Roberson,

Oklahoma Chief Human Resources Officer and
Human Capital Management Administrator for
the State of Oklahoma

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
DELTA DIVISION

STATES OF TENNESSEE, ARKANSAS, ALABAMA, FLORIDA, GEORGIA, IDAHO, INDIANA, IOWA, KANSAS, MISSOURI, NEBRASKA, NORTH DAKOTA, OKLAHOMA, SOUTH CAROLINA, SOUTH DAKOTA, UTAH, and WEST VIRGINIA, *Plaintiffs*, v. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, *Defendant.*	Civil Action No. 2:24-CV-84-DPM

DECLARATION OF EMILY ROBERSON

Pursuant to 28 U.S.C. § 1746, I, Emily Roberson, duly affirm under penalty of perjury as follows:

INTRODUCTION

1. I am over 18 years of age, have personal knowledge of the matters set forth herein, and am competent to make this Declaration.

2. My name is Emily Roberson, and I serve as the Chief Human Resources Officer and Human Capital Management Administrator for the State of Oklahoma. I have served in this capacity since August 2023. My responsibilities include developing and executing human resources strategy, leadership, vision, and service delivery for the State of Oklahoma. In my role,

I develop and implement uniform statewide standards for professional human resources programs within the framework of statewide and federal laws, rules, and regulations.

3. I have reviewed the final EEOC rule entitled *Regulations to Implement the Pregnant Workers Fairness Act*, 89 Fed. Reg. 29,096 (April 19, 2024). I understand that the State of Oklahoma is an employer subject to the Final Rule's requirements. Among other things, I understand that EEOC's Final Rule would require Oklahoma to provide workplace accommodations to women the State employs who are seeking or who have received abortions.

4. I understand that Oklahoma law currently generally prohibits the provision of abortions within the State unless the procedure is necessary to save the woman's life. *See* 21 O.S. § 861.

5. The State of Oklahoma has around 33,000 employees, including more than 19,000 female employees. At any given time, Oklahoma has female employees who are pregnant.

6. Prior to the promulgation of the Rule, the State of Oklahoma has generally offered a limited number of specified categories of leave time to its employees. These categories include annual leave and sick leave that employees accrue over the course of their tenue of employment, compensatory time that is earned in lieu of overtime, and administrative leave that is granted under specific circumstances such as reduction in services due to inclement weather. As of November 1, 2023, six weeks of paid leave is also available to state employees following the birth or adoption of a child. *See* 74 O.S. § 2.20D.

7. By contrast, the State of Oklahoma does not currently accommodate or provide leave to employees for the express purpose of obtaining an elective abortion that violates state law.

8. If the State of Oklahoma were required to begin offering accommodations for such abortions, it would impose significant costs on the State, including but not limited to the following:

- associated lost productivity costs;
- associated overtime pay for shift-covering;
- costs associated with hiring interim employees, depending on the length of leave;
- costs associated with training hundreds of human relations staff on new benefits available to accommodate abortions; and
- costs associated with updating print and online benefits materials.

9. In addition, I understand that the Final Rule subjects an employer to EEOC enforcement and civil suit for failing to accommodate workers, including accommodations for the purpose of obtaining providing elective abortions. This would require the State to incur costs to implement new policies allowing accommodations for elective abortions or else face enforcement action by the EEOC or costly litigation for failure to provide reasonable accommodations under the Pregnant Workers Fairness Act.

10. Furthermore, the Final Rule makes it unlawful to "coerce, intimidate, threaten, harass, or interfere with" a person's rights under the Pregnant Workers Fairness Act. The Final Rule indicates that such coercion or harassment need not be severe, pervasive, adverse, or hostile to the employee, nor need it meet the materially adverse standard of retaliation. Rather, any activity that "might have dissuaded a reasonable worker" from seeking an abortion accommodation may be considered harassment under the Final Rule. This prohibition would likewise require the State to incur costs to implement new policies and training for its employees and administrators.

I declare, under penalty of perjury, that the foregoing is true and correct.

Executed in Oklahoma County, OK
on May 3, 2024

Emily Roberson

Exhibit D

Declaration of Grant Flynn,

Assistant Attorney General for
the South Dakota Attorney General's Office

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
DELTA DIVISION

STATES OF TENNESSEE, ARKANSAS, ALABAMA, FLORIDA, GEORGIA, IDAHO, INDIANA, IOWA, KANSAS, MISSOURI, NEBRASKA, NORTH DAKOTA, OKLAHOMA, SOUTH CAROLINA, SOUTH DAKOTA, UTAH, and WEST VIRGINIA, *Plaintiffs*, v. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, *Defendant.*	Civil Action No. 2:24-CV-84-DPM

DECLARATION OF GRANT M. FLYNN

Pursuant to 28 U.S.C. § 1746, I, Grant M. Flynn, duly affirm under penalty of perjury as follows:

INTRODUCTION

1. I am over 18 years of age, have personal knowledge of the matters set forth herein, and am competent to make this Declaration.

2. My name is Grant M. Flynn, and I serve as an Assistant Attorney General in the South Dakota Attorney General's Office. I have served in this capacity since since approximately April 1, 2024; and I previously served other roles within the Attorney General's Office between 2015 and 2021. My responsibilities include civil litigation, legal representation of state agencies, advising the Attorney General on policy matters. In my role, I have become familiar with the

employment practices of the State of South Dakota as well as South Dakota's statutes relevant to this lawsuit.

3. I have reviewed the final EEOC rule entitled *Regulations to Implement the Pregnant Workers Fairness Act*, 89 Fed. Reg. 29,096 (April 19, 2024). I understand that the State of South Dakota is an employer subject to the Final Rule's requirements. Among those requirements, I understand that EEOC's Final Rule would require South Dakota to provide workplace accommodations to women the State employs who are seeking or who have received abortions.

4. I understand that South Dakota law currently generally prohibits the provision of abortions within the State unless "there is appropriate and reasonable medical judgment that performance of an abortion is necessary to preserve the life of the pregnant female." SDCL 22-17-5.1.

5. The State of South Dakota has around 11,559 employees, including more than 5,496 female employees. At any given time, South Dakota has female employees who are pregnant.

6. Prior to the promulgation of the Rule, the State of South Dakota has generally offered a limited number of specified categories of leave time to its employees. These categories include vacation leave, sick leave, paid family leave, active-duty military leave, military training leave, and leave without pay. Each category of leave may only be utilized for designated purposes. Once an employee has exhausted their leave, they may be required to take unpaid leave which must be preapproved by the employee's supervisor. Failure to obtain such approval my result in termination of the employee.

7. By contrast, the State of South Dakota does not currently accommodate or provide leave to employees for the express purpose of obtaining an elective abortion that violates state law.

8. If South Dakota were required to begin offering accommodations for such abortions, it would impose significant costs on the State, including but not limited to the following:

- associated lost productivity costs;
- associated overtime pay for shift-covering;
- costs associated with hiring interim employees, depending on the length of leave;
- costs associated with training hundreds of human relations staff on new benefits available to accommodate abortions; and
- costs associated with updating print and online benefits materials.

9. In addition, I understand that the Final Rule subjects an employer to EEOC enforcement and civil suit for failing to accommodate workers, including accommodations for the purpose of obtaining providing elective abortions. This would require the State to incur costs to implement new policies allowing accommodations for elective abortions or else face enforcement action by the EEOC or costly litigation for failure to provide reasonable accommodations under the Pregnant Workers Fairness Act.

10. Furthermore, the Final Rule makes it unlawful to "coerce, intimidate, threaten, harass, or interfere with" a person's rights under the Pregnant Workers Fairness Act. The Final Rule indicates that such coercion or harassment need not be severe, pervasive, adverse, or hostile to the employee, nor need it meet the materially adverse standard of retaliation. Rather, any activity that "might have dissuaded a reasonable worker" from seeking an abortion accommodation may be considered harassment under the Final Rule. This prohibition would

likewise require the State to incur costs to implement new policies and training for its employees and administrators.

I declare, under penalty of perjury, that the foregoing is true and correct.

Executed in South Dakota
on May 3, 2024

Declarant

Exhibit E

Declaration of Michael Chopp,

Director of Human Resources for the
Office of the Indiana Attorney General

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
DELTA DIVISION

STATES OF TENNESSEE, ARKANSAS, ALABAMA, FLORIDA, GEORGIA, IDAHO, INDIANA, IOWA, KANSAS, MISSOURI, NEBRASKA, NORTH DAKOTA, OKLAHOMA, SOUTH CAROLINA, SOUTH DAKOTA, UTAH, and WEST VIRGINIA, *Plaintiffs*, v. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, *Defendant.*	Civil Action No. 2:24-CV-84-DPM

DECLARATION OF MICHAEL CHOPP

Pursuant to 28 U.S.C. § 1746, I, Michael Chopp, duly affirm under penalty of perjury as follows:

INTRODUCTION

1. I am over 18 years of age, have personal knowledge of the matters set forth herein, and am competent to make this Declaration.

2. My name is Michael Chopp, and I serve as Director of Human Resources for the office of the Indiana Attorney General. I have served in this capacity since January 11, 2021 and from February 6, 2004 to September 16, 2016. My responsibilities include, but are not limited to, managing the recruitment, benefits, training, onboarding and employee relations processes. In my

role, I have more than thirty-one years of progressively responsible experience in Human Resources.

3. I have reviewed the final EEOC rule entitled *Regulations to Implement the Pregnant Workers Fairness Act*, 89 Fed. Reg. 29,096 (April 19, 2024). I understand that the State of Indiana is an employer subject to the Final Rule's requirements. Among those requirements, I understand that EEOC's Final Rule would require Indiana to provide workplace accommodations to women the State employs who are seeking or who have received abortions.

4. I understand that Indiana law currently generally prohibits the provision of abortions within the State unless the abortion is necessary to prevent any serious health risk to the pregnant woman or to save the pregnant women's life; the pregnancy is a result of rape or incest; or the fetus is diagnosed with a lethal fetal anomaly. Ind. Code § 16-34-2-1. I also understand that Indiana law "prefer[s], encourage[s], and support[s]" childbirth "over abortion." Ind. Code § 16-34-1-1.

5. Prior to the promulgation of the Rule, the State of Indiana has generally offered a specified categories of leave time to its employees. Certain eligible employees may take leave for the following qualifying events: birth of employee's child; placement of a child with employee for adoption or foster care; care of employee's spouse, child or parent who has a serious health condition; a serious health condition of the employee which prevents the employee from performing the essential functions of his/her job; a qualifying exigency arising out of the fact that the employee's spouse, child or parent is on covered active duty or call to covered active-duty status; or the care of a covered servicemember with a serious injury or illness.

6. Indiana's Family & Medical Leave (FML) has three components. First, eligible employees may take up to 12 weeks of leave for specific events impacting specific family

members. Second, jobs are protected during an FMLA leave against discipline or dismissal related to the absence. Third, Benefits continue in the same manner as for employees on other unpaid leave.

7. Under the Pregnancy and Childbirth Accommodation Act, Ind. Code § 22-9-12, certain employers in Indiana also have a legal obligation to, within a reasonable time, respond to an employee's request for accommodation related to the employee's pregnancy. *Id.* at § 3. Also, an employer may not discipline, terminate, or retaliate against an employee because the employee requested such an accommodation. *Id.* at § 4.

8. By contrast, the State of Indiana does not currently accommodate or provide leave to employees for the express purpose of obtaining an elective abortion.

9. If Indiana were required to begin offering accommodations for such abortions, it would impose costs on the State. Costs would include costs associated with lost productivity, costs associated with ensuring compliance, and costs associated with training human relations staff. Depending on the length of leave and position, additional costs could include associated overtime pay for shift-covering and the costs of hiring interim employees.

10. Furthermore, the Final Rule makes it unlawful to "coerce, intimidate, threaten, harass, or interfere with" a person's rights under the Pregnant Workers Fairness Act. The Final Rule indicates that such coercion or harassment need not be severe, pervasive, adverse, or hostile to the employee, nor need it meet the materially adverse standard of retaliation. Rather, any activity that "might have dissuaded a reasonable worker" from seeking an abortion accommodation may be considered harassment under the Final Rule. This prohibition would likewise require the State to incur costs associated with compliance and training.

I declare, under penalty of perjury, that the foregoing is true and correct.

Executed on May 1, 2024

Declarant

Exhibit F

Declaration of Mark Scott,

Secretary of the West Virginia
Department of Administration

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
DELTA DIVISION

STATES OF TENNESSEE, ARKANSAS, ALABAMA, FLORIDA, GEORGIA, IDAHO, INDIANA, IOWA, KANSAS, MISSOURI, NEBRASKA, NORTH DAKOTA, OKLAHOMA, SOUTH CAROLINA, SOUTH DAKOTA, UTAH, and WEST VIRGINIA, *Plaintiffs*, v. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, *Defendant.*	Civil Action No. 2:24-CV-84-DPM

DECLARATION OF MARK SCOTT

Pursuant to 28 U.S.C. § 1746, I, Mark Scott, duly affirm under penalty of perjury as follows:

INTRODUCTION

1. I am over 18 years of age, have personal knowledge of the matters set forth herein, and am competent to make this Declaration.

2. My name is Mark Scott, and I serve as Secretary of the West Virginia Department of Administration. I have served in this capacity since November 1, 2021. My responsibilities include directing the Department of Administration, which involves, among other things, the oversight of the divisions and agencies within the Department. In my role, I routinely discuss

matters of state law and policy with the Division of Personnel, the Public Employees Insurance Agency, and the Consolidated Public Retirement Board.

3. I have reviewed the final EEOC rule entitled *Regulations to Implement the Pregnant Workers Fairness Act*, 89 Fed. Reg. 29,096 (April 19, 2024) (the "Final Rule"). I understand that the State of West Virginia is an employer subject to the Final Rule's requirements. Among those requirements, I understand that EEOC's Final Rule would require all state government agencies in West Virginia to provide workplace accommodations to women the State employs who are seeking or who have received abortions beyond those already in state law.

4. I understand that West Virginia law currently generally prohibits the provision of abortions within the State unless the embryo or fetus is nonviable, the pregnancy is ectopic, or a medical emergency exists or, under certain circumstances, if the pregnancy is the result of sexual assault or incest. W. Va. Code §16-2R-3.

5. The State of West Virginia had over 59,000 employees in 2023. At any given time, West Virginia state government has female employees who are pregnant.

6. Since well prior to the promulgation of the Final Rule, the State of West Virginia has generally offered a limited number of specified categories of leave time to its employees.

7. Under the West Virginia Pregnant Workers' Fairness Act, W. Va. Code §16B-19-1, *et seq.*, certain employers in West Virginia also have a legal obligation to reasonably accommodate known limitations specified by a health care provider relating to the pregnancy, childbirth, or related medical condition. W. Va. Code §16B-19-2.

8. By contrast, the State of West Virginia does not currently accommodate or provide leave to employees for the express purpose of obtaining an elective abortion that violates state law.

9. If West Virginia were required to begin offering accommodations for elective abortions that are otherwise illegal under state law, it would impose significant costs on the State, including but not limited to the following:

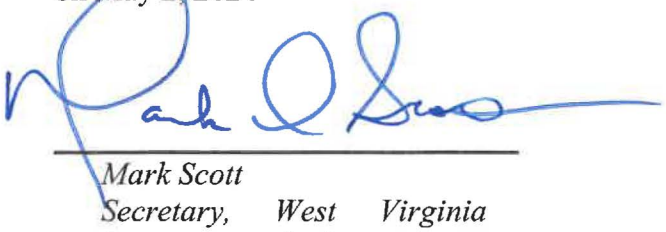
- costs associated with training human relations staff governmentwide on new benefits available to accommodate elective abortions that are illegal under state law; and
- costs associated with updating print and online benefits materials.

10. In addition, I understand that the Final Rule subjects an employer to EEOC enforcement and civil suit for failing to accommodate workers, including accommodations for the purpose of obtaining providing elective abortions. This would require the State to incur costs to implement new policies allowing accommodations for elective abortions or else face enforcement action by the EEOC or costly litigation for failure to provide accommodations under the federal Pregnant Workers Fairness Act.

11. Furthermore, the Final Rule makes it unlawful to "coerce, intimidate, threaten, harass, or interfere with" a person's rights under the Pregnant Workers Fairness Act. The Final Rule indicates that such coercion or harassment need not be severe, pervasive, adverse, or hostile to the employee, nor need it meet the materially adverse standard of retaliation. Rather, any activity that "might have dissuaded a reasonable worker" from seeking an abortion accommodation may be considered harassment under the Final Rule. This prohibition would likewise require the State to incur costs to implement new policies and training for its employees and administrators.

I declare, under penalty of perjury, that the foregoing is true and correct.

Executed in Charleston, West Virginia
on May 2, 2024



Mark Scott
Secretary, West Virginia Department of Administration

Exhibit G

Declaration of Laury Morgan,

Director of the Alabama State Personnel Department

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
DELTA DIVISION

STATES OF TENNESSEE, ARKANSAS, ALABAMA, FLORIDA, GEORGIA, IDAHO, INDIANA, IOWA, KANSAS, MISSOURI, NEBRASKA, NORTH DAKOTA, OKLAHOMA, SOUTH CAROLINA, SOUTH DAKOTA, UTAH, and WEST VIRGINIA, *Plaintiffs*, v. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, *Defendant.*	Civil Action No. 2:24-CV-84-DPM

DECLARATION OF LAURY MORGAN

Pursuant to 28 U.S.C. § 1746, I, Laury Morgan, duly affirm under penalty of perjury as follows:

INTRODUCTION

1. My name is Laury Morgan. I am over 18 years of age, have personal knowledge of the matters set forth herein, and am competent to make this Declaration. The statements contained in this declaration are based on my personal knowledge of the operations of the Alabama State Personnel Department ("SPD") and the Alabama State Personnel Board ("SPB") or on the official business records of those entities.

2. I serve as the Director of the SPD. I have served in this capacity since October 11, 2023, and I have worked for SPD for more than twenty years. I previously have served in multiple

capacities with SPD to include Deputy Director, General Counsel, and Deputy General Counsel. In my role, I serve as the executive head of the department for SPD, the state entity tasked with overseeing the administration of the Merit System Act, pursuant to Ala. Code § 36-26-1, *et seq.*

3. As State Personnel Director, my duties include: (1) establishing and maintaining a roster of all the officers and employees in the state service; (2) approving all payrolls or other compensations for personal services within the state service before they may be lawfully authorized for payment; (3) administering regulations for maintaining uniform and equitable hours of work required of all employees in the state service; (4) recommending to the SPB rules for the interpretation and application of the pay plan; and (5) overseeing the administration of training programs for state employees in the classified service.

4. I have reviewed the final EEOC rule entitled *Regulations to Implement the Pregnant Workers Fairness Act*, 89 Fed. Reg. 29,096 (April 19, 2024). I understand that the State of Alabama is an employer subject to the Final Rule's requirements. Among those requirements, it is my understanding that EEOC's Final Rule would require Alabama to provide workplace accommodations for female state employees related to abortions.

5. I understand that Alabama law currently generally prohibits abortions within the State unless the procedure relates to certain enumerated categories of medical conditions and diagnoses. *See* Ala. Code §§ 26-23H-3, 23H-4.

6. As of September 30, 2023, the State of Alabama employed 28,807 employees subject to the purview of the State Merit System, over half of which were females. At any given time, there are pregnant state employees.

7. Prior to the promulgation of the Rule, the State of Alabama has generally offered a limited number of specified categories of paid leave time to its employees. These categories

include sick leave and annual leave, both of which employees accrue over the course of their employment, and one personal leave day per year.

8. The State of Alabama does not currently provide accommodations for the express purpose of obtaining an elective abortion that violates state law.

9. If Alabama were required to begin offering accommodations for such abortions, it would impose significant costs on the State, including but not limited to the following:

- associated lost productivity costs;
- associated overtime pay or earned compensatory time for shift-coverage;
- burden to coworkers associated with temporary reassignment of duties;
- costs associated with training human relations staff on new benefits available to accommodate abortions; and
- costs associated with updating print and online benefits materials.

10. In addition, I understand that the Final Rule subjects an employer to EEOC enforcement and civil suit for failing to accommodate workers, including accommodations for the purpose of obtaining elective abortions. This would require the State to incur costs to implement new policies allowing accommodations for elective abortions or face enforcement action by the EEOC or costly litigation for failure to provide reasonable accommodations under the Pregnant Workers Fairness Act.

11. Furthermore, the Final Rule makes it unlawful to "coerce, intimidate, threaten, harass, or interfere with" a person's rights under the Pregnant Workers Fairness Act. The Final Rule indicates that such coercion or harassment need not be severe, pervasive, adverse, or hostile to the employee, nor need it meet the materially adverse standard of retaliation. Rather, any activity that "might have dissuaded a reasonable worker" from seeking an abortion accommodation may be considered harassment under the Final Rule. This prohibition would

likewise require the State to incur costs to implement new policies and training for its employees and administrators.

I declare, under penalty of perjury, that the foregoing is true and correct.

Executed in Montgomery County, Alabama
on May 3, 2024

Declarant

Exhibit H

Declaration of Janelle White,

Administrator for the Idaho Division
of Human Resources

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
DELTA DIVISION

STATES OF TENNESSEE, ARKANSAS, ALABAMA, FLORIDA, GEORGIA, IDAHO, INDIANA, IOWA, KANSAS, MISSOURI, NEBRASKA, NORTH DAKOTA, OKLAHOMA, SOUTH CAROLINA, SOUTH DAKOTA, UTAH, and WEST VIRGINIA, *Plaintiffs*, v. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, *Defendant.*	Civil Action No. 2:24-CV-84-DPM

DECLARATION OF JANELLE WHITE

Pursuant to 28 U.S.C. § 1746, I, Janelle White, duly affirm under penalty of perjury as follows:

INTRODUCTION

1. I am over 18 years of age, have personal knowledge of the matters set forth herein, and am competent to make this Declaration.

2. My name is Janelle White, and I serve as the Administrator for the Idaho Division of Human Resources. I have served in this capacity since October 2023 and have fifteen (15) years' experience in human resources. My responsibilities include managing and administering the State of Idaho personnel system. In my role, I ensure compliance with state and federal employment laws.

3. I have reviewed the final EEOC rule entitled *Regulations to Implement the Pregnant Workers Fairness Act*, 89 Fed. Reg. 29,096 (April 19, 2024). I understand that the State of Idaho is an employer subject to the Final Rule's requirements. Among those requirements, I understand that EEOC's Final Rule would require the State of Idaho to provide leave or certain workplace accommodations to women the State employs who are seeking or who have received abortions.

4. I understand that Idaho law currently generally prohibits the provision of abortions within the State unless the procedure relates to certain enumerated categories of medical conditions and diagnosis. *See* Idaho Code § 18-622.

5. The State of Idaho has around 25,000 employees, of which approximately 50% are female employees. At any given time, the State of Idaho has female employees who are pregnant.

6. Prior to the promulgation of the Rule, the State of Idaho has generally offered a limited number of specified categories of leave time to its employees. The State of Idaho provides employees with leave time as required by federal and state law. Idaho Code provides state employees with paid sick, vacation, and compensatory time off. To be eligible to use sick leave, employees must have an actual illness or disability necessitating their absence from work.

7. The State of Idaho does not currently accommodate or provide leave to employees for the express purpose of obtaining an elective abortion that violates Idaho law.

8. If the State of Idaho were to accommodate or provide leave to employees for elective abortions performed in other states, such accommodations or leave are reasonably anticipated to impose additional costs on the State of Idaho, including but not limited to the following:

- associated lost productivity costs;

- associated overtime pay for shift-covering;
- costs associated with hiring interim employees, depending on the length of leave;
- costs associated with training human resources staff on new benefits available to accommodate certain abortions; and
- costs associated with updating print and online benefits materials.

9. In addition, I understand that the Final Rule subjects an employer to EEOC enforcement and civil suit for failing to accommodate workers, including accommodations for the purpose of obtaining elective abortions. This would require the State to incur costs to implement new policies allowing accommodations for elective abortions or else face enforcement action by the EEOC or costly litigation for failure to provide reasonable accommodations under the Pregnant Workers Fairness Act.

10. Furthermore, the Final Rule makes it unlawful to "coerce, intimidate, threaten, harass, or interfere with" a person's rights under the Pregnant Workers Fairness Act. The Final Rule indicates that such coercion or harassment need not be severe, pervasive, adverse, or hostile to the employee, nor need it meet the materially adverse standard of retaliation. Rather, any activity that "might have dissuaded a reasonable worker" from seeking an abortion accommodation may be considered harassment under the Final Rule. This prohibition would likewise require the State to incur costs to implement new policies and training for its employees and administrators.

I declare, under penalty of perjury, that the foregoing is true and correct.

Executed in Ada County, ID
on May 3, 2024

/s/ Janelle White
Declarant