

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION**

DR. JAMES DOBSON FAMILY INSTI-  
TUTE and USATRANSFORM d/b/a  
UNITED IN PURPOSE,

Plaintiffs,

v.

Case No. 4:24-cv-00986-O

XAVIER BECERRA, Secretary of the  
United States Department of Health and  
Human Services; UNITED STATES  
DEPARTMENT OF HEALTH AND HU-  
MAN SERVICES; CHARLOTTE BUR-  
ROWS, Chair of the United States Equal  
Employment  
Opportunity Commission; and UNITED  
STATES EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION

Defendants.

---

**PLAINTIFFS' NOTICE OF SUPPLEMENTAL AUTHORITY  
IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT  
AND PERMANENT INJUNCTION**

**February 21, 2025**

---

**FIRST & FOURTEENTH PLLC**

L. Martin Nussbaum  
Andrew Nussbaum  
2 N. Cascade Ave., Suite 1430  
Colorado Springs, CO 80903  
(719) 428-2386  
martin@first-fourteenth.com  
andrew@first-fourteenth.com

**S|L LAW PLLC**

John C. Sullivan  
Jace R. Yarbrough  
610 Uptown Blvd., Suite 2000  
Cedar Hill, TX 75104  
(469) 523-1351  
john.sullivan@the-sl-lawfirm.com  
jace.yarbrough@the-sl-lawfirm.com

Plaintiffs, the Dr. James Dobson Institute (“JDIFI”) and USATransform d/b/a United in Purpose for itself and its employer members (“UIP”), respectfully submit this notice of supplemental authority, *Tennessee v. Equal Employment Opportunity Commission*, No. 24-2249 (8th Cir. Feb. 20, 2025), attached here as Exhibit A. There, the Eighth Circuit ruled that a coalition of states had standing to challenge EEOC’s Pregnant Workers Fairness Act Rule because the Rule creates an additional regulatory burden. *Id.* at 6. The Court reversed the decision of the court below to the contrary.

This newly issued opinion addresses Article III standing in a challenge to EEOC regulations implementing the Pregnant Workers Fairness Act (PWFA), 42 U.S.C. § 2000gg. The regulations at issue require employers to make reasonable accommodations for “termination of pregnancy, including via miscarriage, stillbirth, or abortion.” Slip op. at 3. Seventeen states challenged the regulation, arguing that it “requires them to make reasonable accommodations for state employees seeking an abortion in all circumstances,” contrary to their existing policies. *Id.* at 4.

The Eighth Circuit held that the states have standing because they “are the object of the EEOC’s regulatory action” and “are employers covered by the Act and the Rule.” *Id.* at 6. The court found that the states “are injured by the imposition of new regulatory obligations” where the Rule “compels them to provide accommodations to employees that the States otherwise would not provide, to change their employment practices and policies, and to refrain from pro-life messaging that arguably would be ‘coercive’ and thus proscribed by the Rule.” *Id.*

Significantly, the Court rejected the EEOC’s argument that any injury was speculative until an employee requests an accommodation, holding that “covered entities must comply with the Rule, and we presume that the States will follow the law as long as the Rule is in effect. An employer

cannot meet its obligations under the Rule without taking steps to ensure that its employees know their rights and obligations under the Rule.” *Id.* at 6-7.

The Eighth Circuit’s opinion is relevant in this case for two reasons. First, Plaintiffs, like the states in *Tennessee*, are objects of regulatory action of the federal government, including the PWFA Rule, the Harassment Guidance, the 1557 Rule, and EEOC’s concomitant interpretation of Title VII. They thus have standing to challenge these regulatory actions. Second, the errant decision of the district court in *Tennessee v. EEOC* adopted Plaintiffs’ theory in this case that no threat of prosecution is credible until an enforcement action occurs. Indeed, the errant decision of the district court in *Tennessee v. EEOC* is a keystone for Defendants’ arguments. *See* ECF No. 18, Defendants’ Combined Opposition to Plaintiffs’ Partial Motion for Summary Judgment and Memorandum in Support of Defendants’ Cross-Motion to Dismiss Plaintiffs’ RFRA and First Amendment Claims, or in the Alternative, for Summary Judgment, p. vii (Table of Authorities citing as “passim” *Tennessee v. EEOC*, -- F. Supp. 3d ---, 2024 WL 3012823 (E.D. Ark. June 14, 2024), appeal filed, No. 24-2249 (8th Cir. June 20, 2024)). That decision is no longer good law.

February 21, 2025

Respectfully submitted.

*/s/ John C. Sullivan*

Texas Bar No. 24083920

John.sullivan@the-sl-lawfirm.com

Jace R. Yarbrough

Texas Bar No. 24110560

Jace.yarbrough@the-sl-lawfirm.com

S|L LAW PLLC

610 Uptown Boulevard, Suite 2000

Cedar Hill, TX 75104

T: (469) 523-1351

F: (469) 613-0891

*/s/ Andrew Nussbaum*

L. Martin Nussbaum

*martin@first-fourteenth.com*

Andrew Nussbaum

*andrew@first-fourteenth.com*

FIRST & FOURTEENTH PLLC

2 N. Cascade Ave., Suite 1430

Colorado Springs, CO 80903

T: (719) 428-2386

*Attorneys for Plaintiffs*