

**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.

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

**March 25, 2025**

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Plaintiffs hereby submits this Notice of Supplemental Authority to bring to the Court's attention a recent decision from the United States District Court for the Western District of Missouri in *The Stanley M. Herzog Foundation v. Equal Employment Opportunity Commission*, Case No. 4:24-cv-00651-RK (W.D. Mo. Mar. 18, 2025), a copy of which is attached as **Exhibit A**. In *Herzog Foundation*, the court granted a preliminary injunction against the Equal Employment Opportunity Commission's (EEOC) Pregnant Workers Fairness Act (PWFA) Final Rule as it pertains to abortion accommodations against a religious employer. The court's decision is particularly relevant to the issues in this case regarding standing and the scope of relief.

Specifically, the court addressed the following issues that bear directly on matters pending before this court:

1. **EEOC's Lack of Quorum and Inability to Revise the Rule:** The court noted that while "the EEOC's Acting Chair has indicated her intent to revisit the Final Rule once the EEOC regains a quorum of commissioners, the court notes that in the meantime the Final Rule remains the law as a result of the formal rulemaking process, and the EEOC cannot disavow enforcement or act to change the Final Rule at this time." Order at 10. The court distinguished this from "those where an administrative agency has a quorum to act, is actively engaged in the rule amendment process, and provides for non-enforcement of the challenged rule during the amendment process." *Id.*

2. **Detailed Analysis of Standing and Ripeness:** The court provided a comprehensive analysis of standing and ripeness despite the EEOC's arguments that the plaintiff's alleged injuries were "too speculative" and that judicial review should be delayed due to the EEOC's stated intention to revisit the rule once it regains a quorum. On standing, the court held that: (a) the plaintiff established injury-in-fact based on compliance costs with the Final Rule, including "revising

employment policies and implementing training programs for staff” which “are neither conjectural or abstract and would entail costs” (Order at 7); (b) the plaintiff demonstrated a “credible threat of enforcement” sufficient for injury-in-fact because the “EEOC has not made any promises that it will refrain from enforcing the abortion accommodation mandate against religious employers” (Order at 9); and (c) the plaintiff’s injuries were traceable to and redressable by the EEOC, despite the EEOC’s arguments that private enforcement actions could still proceed (Order at 10-11). On ripeness, the court rejected the EEOC’s arguments that: (a) delayed review would not cause any harm; (b) further factual development was warranted; and (c) judicial intervention would inappropriately interfere with further administrative action.

3. **Reliance on Eighth Circuit’s *Tennessee v. EEOC* Decision:** The court repeatedly cited and relied upon the Eighth Circuit’s February 2025 decision in *Tennessee v. EEOC*, No. 24-2249, 2025 WL 556191 (8th Cir. Feb. 20, 2025), which addressed similar issues of standing in a challenge to the same PWFA Final Rule. The court emphasized that this binding circuit precedent established standing for employers subject to the Final Rule: “In *Tennessee v. EEOC*, Tennessee and sixteen other states challenged the Final Rule as violating the APA, the First Amendment, and federalism principles. The Eighth Circuit found that the plaintiff-states had standing because the states were an object of the Final Rule, which imposed new regulatory obligations on the states as employers.” Order at 6. The court in *Herzog Foundation* treated the Eighth Circuit’s standing analysis as dispositive, stating: “The court finds this case binding on the question of whether a regulatory burden, such as compliance costs, is sufficient to establish injury-in-fact in this situation.” Order at 6.

4. **Scope of Injunction Includes Prohibition on Right-to-Sue Letters:** Notably, the court’s injunctive relief extended beyond merely enjoining enforcement of the Final Rule to specifically prohibit the EEOC from issuing right-to-sue letters: “[T]he EEOC and its agents are enjoined from (1) initiating any investigation into claims that the Foundation has failed to accommodate an abortion in violation of the PWFA and (2) issuing any Notice of Right to Sue with respect to the same.” Order at 22 (emphasis added). The court specifically followed the approach of previous courts that had enjoined the Final Rule with respect to abortion accommodations, noting: “In the two preceding district court cases enjoining the Final Rule as it relates to abortion accommodations, the courts determined that the injunction should include a prohibition of issuing a Notice of Right to Sue.” Order at 22 n.16.

In conclusion, *Herzog Foundation* provides significant authority relevant to this case.

Dated: March 25, 2025

Respectfully submitted.

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