No. 25-30398

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

UNITED STATES CONFERENCE OF CATHOLIC BISHOPS; THE SOCIETY OF THE ROMAN CATHOLIC CHURCH OF THE DIOCESE OF LAKE CHARLES; THE SOCIETY OF THE ROMAN CATHOLIC CHURCH OF THE DIOCESE OF LAFAYETTE; THE CATHOLIC UNIVERSITY OF AMERICA,

Plaintiffs-Appellants,

v.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION; ANDREA R. LUCAS, ACTING CHAIR OF THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, IN HER OFFICIAL CAPACITY,

Defendants-Appellees.

On Appeal from the United States District Court
for the Western District of Louisiana

OPPOSITION TO MOTION FOR INJUNCTION PENDING APPEAL

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CERTIFICATE OF INTERESTED PERSONS

A certificate of interested persons is not required under Fifth Circuit Rule 28.2.1 as appellees are all governmental parties.

s/Jack Starcher
Jack Starcher

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INTRODUCTION AND SUMMARY

Plaintiffs filed this appeal after the district court awarded partial final judgment under Federal Rule of Civil Procedure 54(b). In doing so, the district court resolved only plaintiffs' claim under the Administrative Procedure Act (APA) that the EEOC had exceeded its statutory authority in defining "[p]regnancy, childbirth, or related medical conditions" under the Pregnant Workers Fairness Act (PWFA) to include "termination of pregnancy, including via miscarriage, stillbirth, or abortion." 29 C.F.R. § 1636.3(b). The district court ruled in plaintiffs' favor and granted plaintiffs all of the relief they could ask for with respect to that claim—vacating the portion of the Final Rule that plaintiffs challenged. The court's order used language identical to that used in a preliminary injunction issued in plaintiffs' favor more than a year ago—which no party ever appealed or otherwise challenged as inadequate.

The district court did not, however, resolve any of plaintiffs' religious liberty claims, instead expressly retaining jurisdiction over those claims and setting a schedule to consider and rule on those remaining issues. And the district court provided that the preliminary injunction, which has governed the relationship between the parties for more than a year, remains in effect in the interim.

Given that background of uninterrupted rulings in their favor, it is difficult to apprehend any basis for plaintiffs' request for an extraordinary injunction pending appeal. Plaintiffs' motion principally seeks to litigate before this Court the merits of their religious liberty claims. Mot. 13-21. But, as noted, the district court retained

jurisdiction over those claims, and they are still being litigated in district court. On this appeal of a partial final judgment under Rule 54(b), this Court lacks jurisdiction over those claims. That alone warrants denial of plaintiffs' motion.

In any event, plaintiffs have shown no harm, let alone the type of imminent, irreparable injury necessary to justify an injunction pending appeal. The district court granted plaintiffs all of the relief they sought under the APA claim adjudicated by vacating the portion of the challenged Final Rule that they challenged. Furthermore, plaintiffs identify no instance in which the EEOC has ever sought to enforce the PWFA against any religious employer for failure to accommodate an abortion of any kind. And indeed, the EEOC has reviewed charges filed under the PWFA and confirmed that it has never even received any charges under the PWFA based on a failure to accommodate abortion for *any* employer. Furthermore, the EEOC has agreed not to enforce the PWFA or the Final Rule to require plaintiffs to accommodate abortions to which they have religious objections. And the district court explicitly left the June 2024 preliminary injunction undisturbed to the extent it gave plaintiffs greater protection than the partial summary judgment order.

Plaintiffs' conduct in this litigation confirms that they are under no threat. Plaintiffs waited almost two months to appeal the district court's decision, and they fail to take account of the preliminary injunction entered in their favor *over a year ago* that contained the same limitation—verbatim—that plaintiffs now challenge.

In short, plaintiffs' motion asks this Court to consider the merits of claims that were not resolved in the order they appeal and to disturb a *status quo* of plaintiffs' own making, without any showing that they face a threat of irreparable harm pending appeal. The motion should be denied.

STATEMENT

This case involves two consolidated challenges to the EEOC's Final Rule implementing the PWFA. *See* 42 U.S.C. § 2000gg-3; *Implementation of the Pregnant Workers Fairness Act*, 89 Fed. Reg. 29,096 (Apr. 19, 2024) (Final Rule). As relevant here, the Final Rule defined "[p]regnancy, childbirth, or related medical conditions" for which employers must generally provide workplace accommodations under the PWFA to include "termination of pregnancy, including via miscarriage, stillbirth, or abortion." 29 C.F.R. § 1636.3(b). The Final Rule was challenged in numerous cases, and two of those challenges were consolidated before the district court. One challenge was brought by a collection of States bringing only claims under the APA alleging that the Final Rule exceeded statutory authority. The other—brought by plaintiffs, four entities affiliated with the Roman Catholic church—raised similar claims but also raised independent religious liberty claims.

More than a year ago, the district court preliminarily enjoined the EEOC from "initiating any investigation into claims that" plaintiffs "failed to accommodate an elective abortion." *Louisiana v. EEOC* (*Louisiana I*), 705 F. Supp. 3d 643, 664 (W.D. La. 2024). At the same time, the court made clear that its preliminary injunction did

not extend to "terminations of pregnancy or abortions stemming from the underlying treatment of a medical condition related to pregnancy." *Id.* at 664 n.16. No party appealed that order.

Two months ago, the district court entered a partial final judgment resolving only claims under the APA that "the EEOC has exceeded its statutory authority to implement the PWFA" based on the plain meaning of the statute. *Louisiana v. EEOC* (*Louisiana II*), Nos. 2:24-cv-629, 2:24-cv-691, 2025 WL 1462583, at *1 (W.D. La. May 21, 2025). The district court therefore vacated the challenged portions of the Final Rule. *See id.* at *15. That judgment contained identical language limiting its applicability to only "purely elective abortions." *Id.* at *16; *see also id.* at *16 n.24.

Because plaintiffs' case had been consolidated with a case brought by various States, the district court declined to address plaintiffs' remaining religious liberty claims "at this juncture," as those claims were unique to plaintiffs. *Louisiana II*, 2025 WL 1462583, at *14; *see also id.* at *14 n.23 ("[T]he Court declines to address the remaining counts in the *Bishops* Plaintiffs' Complaint at this juncture."). The district court therefore expressly "retain[ed] jurisdiction over all remaining claims and issues not resolved" by its partial summary judgment and did not include those claims in its Rule 54(b) certification. Dkt. No. 114, at 3. The district court explained that its preliminary injunction "remain[s] in place" unchanged until final resolution of those remaining claims. *Louisiana II*, 2025 WL 1462583, at *16. The Court announced that it would conduct a status conference to address "resolution of additional [discrete]

issues raised by the *Bishops* Plaintiffs alone, and the creation of any necessary briefing schedule to address those issues." *Id.*

Fifty-five days later, plaintiffs filed this appeal, seeking to enjoin the EEOC from interpreting or enforcing the PWFA to require them to accommodate abortions undertaken to treat medical conditions pending an appeal. They requested immediate relief from the district court without further briefing from defendants. Dkt. No. 125. And when the district court instead set a schedule for fully briefing plaintiffs' motion, plaintiffs filed this motion in this Court.

ARGUMENT

An injunction pending appeal is "extraordinary relief" for which the moving party bears a "heavy burden." *Plaquemines Par. v. Chevron USA, Inc.*, 84 F.4th 362, 373 (5th Cir. 2023) (quotations omitted). For injunctive relief to be warranted, the movant must demonstrate (1) a strong showing that he is likely to succeed on the merits; (2) that he will suffer irreparable injury absent a stay; (3) that a stay will not substantially injure the other parties interested in the proceeding; and (4) that the public interest favors a stay. *See Nken v. Holder*, 556 U.S. 418, 434 (2009). And even upon making that showing, "[a] stay is not a matter of right"; "[i]t is instead an exercise of judicial discretion, and [t]he propriety of its issue is dependent upon the circumstances of the particular case." *Id.* at 433 (last alteration in original) (quotations omitted).

I. Plaintiffs' Religious Liberty Claims Are Not Properly Before This Court.

This is an interlocutory appeal from a partial final judgment entered pursuant to Federal Rule of Civil Procedure 54(b). This appeal concerns only the single claim that the district court resolved in that partial final judgment: plaintiffs' claim under the APA that the agency's definition of "pregnancy related condition" exceeded the scope of the PWFA to the extent it included abortion. *See Louisiana II*, Nos. 2:24-cv-629, 2:24-cv-691, 2025 WL 1462583, at *15-16 (W.D. La. May 21, 2025). The district court vacated that portion of the Final Rule based only on that holding. In doing so, the court declined to resolve any of plaintiffs' religious liberty claims "at this juncture," instead retaining jurisdiction over those claims pending further summary judgment briefing. *Id.* at *14; *see also id.* at *14 n.23 ("[T]he Court declines to address the remaining counts in the *Bishops* Plaintiffs' Complaint at this juncture."); Dkt. No 114 at 3 ("retain[ing] jurisdiction over all remaining claims and issues not resolved" by its partial summary judgment).

Because the district court retained jurisdiction over plaintiffs' religious liberty claims and did not resolve them in the judgment on appeal, this Court lacks jurisdiction to consider them. As this Court has recognized, "[i]n an interlocutory appeal certified by the district court under … Rule 54(b), we have no jurisdiction to consider orders of the district court outside the scope of certification." *United Indus., Inc. v. Eimco Process Equip. Co.*, 61 F.3d 445, 448 (5th Cir. 1995); *see also United States v.*

Stanley, 483 U.S. 669, 677 (1987) ("Even if the Court of Appeals' jurisdiction is not confined to the precise question certified by the lower court … , that jurisdiction *is* confined to the particular order appealed from.").

Plaintiffs disregard the jurisdictional limitations of Rule 54(b) and nowhere explain how their religious liberty claims—which are still pending in district court—could properly be considered as part of this appeal. Plaintiffs have therefore forfeited any argument that this Court has jurisdiction to consider those claims. And because plaintiffs' only merits arguments address claims over which this Court lacks jurisdiction, they have necessarily failed to establish that they are likely to succeed on the merits of their appeal.

Plaintiffs attempt to bypass these fundamental problems by suggesting in passing that this appeal should also be viewed as an interlocutory appeal challenging the denial or modification of an injunction. Mot. 4. But the order below neither denied injunctive relief of the kind plaintiffs now seek nor modified the existing preliminary injunction.[1] To the contrary, the district court expressly reserved judgment on whether to grant additional injunctive relief on plaintiffs' religious liberty claims, and emphasized that the existing preliminary injunction "remain[s] in place"

[1] Plaintiffs asked both for nationwide vacatur of the challenge provision of the Final Rule and a permanent injunction against that provision. Because the district court agreed to vacate that provision and concluded that vacatur fully remedied any harms it caused, it declined to also enter a permanent injunction "at this stage." *Louisiana II*, 2025 WL 1462583, at *15.

until final resolution of those remaining claims. *Louisiana II*, 2025 WL 1462583, at *16. Plaintiffs point to no language in the district court's order that purported to deny plaintiffs any relief on any claim or modify the existing injunction. To the extent plaintiffs have only just now decided they are dissatisfied with the terms of the preliminary injunction that was issued over a year ago, it is far too late for them to appeal it now.

II. Plaintiffs Fail to Establish any Irreparable Harm.

The purpose of an injunction pending appeal is to preserve the *status quo* and prevent irreparable injury until the Court renders a decision on the merits. *See, e.g., Canal Auth. of Fla. v. Callaway*, 489 F.2d 567, 576 (5th Cir. 1974). But plaintiffs' motion requests an injunction that would upset the *status quo*. And plaintiffs identify no injury—let alone any irreparable harm—that is even remotely likely to occur absent immediate relief.

A. The *status quo* for the past year plus has been set by the terms of the preliminary injunction that plaintiffs obtained—which plaintiffs never appealed or sought to modify. The district court's preliminary injunction opinion repeatedly relies on the distinction between purely elective and medically-necessary abortions that is the focus of plaintiffs' motion. Indeed, in the opening of that June 2024 preliminary injunction order, the district court explained that it understood plaintiffs' motion for preliminary injunction to "ask th[e c]ourt to [preliminarily] enjoin Defendants from enforcing an Equal Employment Opportunity Commission ("EEOC") Final Rule"

implementing the PWFA "to the extent that it requires employers to accommodate the purely elective abortions of employees." *Louisiana I*, 705 F.Supp.3d 643, 649 (W.D. La. 2024). And in the conclusion of its preliminary injunction order, the district court included the language plaintiffs now object to—explaining in an identical footnote that, "[t]o avoid any uncertainty, terminations of pregnancy or abortions stemming from the underlying treatment of a medical condition related to pregnancy are not affected by this preliminary injunction." *Id.* at 664 n.16; *cf. Louisiana II*, 2025 WL 1452583, at *16 n.24 (using identical language).

In its partial summary judgment order, the district court only confirmed what the plain text of its preliminary injunction had already established—that it had preliminarily enjoined "EEOC with respect to these entities from: (i) initiating any investigation into claims that a covered employer has failed to accommodate an elective abortion that is not necessary to treat a medical condition related to pregnancy; and (ii) issuing any Notice of Right to Sue with respect to the same." *Louisiana II*, 2025 WL 1452583, at *6. Thus, plaintiffs' complaints about the scope of their protection plainly seek to change the *status quo* that the parties have lived with for the past year.

Plaintiffs' significant delay—both in waiting 55 days to appeal this partial final judgment and in never appealing the preliminary injunction order—provides a sufficient basis, standing alone, to deny their motion. *See* 11A Wright & Miller's Federal Practice & Procedure § 2948.1 (3d ed.), Westlaw (database updated May 21,

2025) ("A long delay by plaintiff after learning of the threatened harm may be taken as an indication that the harm would not be serious enough to justify a preliminary injunction.").

B. Even if plaintiffs' delay was not alone insufficient to defeat their motion, plaintiffs fail to establish the kind of irreparable harm necessary to justify an injunction pending appeal. Plaintiffs do not assert that any of their employees have filed a charge with the EEOC alleging a failure to accommodate a medically necessary abortion. Nor do they establish that any employee is likely to do so. Although they speculate that an EEOC Commissioner might possibly initiate a charge on her own, plaintiffs do not assert that this has yet occurred or is otherwise likely. And if EEOC *were* ever to take any action against plaintiffs to which they object, plaintiffs offer no reason why they could not remedy any burden by simply raising a Religious Freedom Restoration Act objection (or any other religious liberty claim) at that time.

To the extent plaintiffs nevertheless fear they may face liability from failing to accommodate abortions (1) to which they have religious objections, but (2) that they think are somehow outside the scope of the district court's orders, EEOC has offered not to initiate investigation against plaintiffs under the PWFA or the Final Rule based on any allegation or claim that they have not accommodated an abortion to which they have religious objections for the pendency of this appeal. Despite plaintiffs' refusal to accept that offer, the EEOC still intends to abide by it. There is thus no dispute between the parties—and no need for injunctive relief—as to the underlying

substantive scope of what plaintiffs must accommodate during the pendency of their appeal.

Absent any showing that they are likely to experience any harm during the pendency of this appeal, plaintiffs' motion should be denied.

CONCLUSION

For the foregoing reasons, plaintiffs' motion should be denied.

Respectfully submitted,

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July 2025

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limit of Federal Rule of Appellate Procedure 27(d)(2)(A) because it contains 2,593 words. This brief also complies with the typeface and type-style requirements of Federal Rules of Appellate Procedure 27(d)(1)(E) and 32(a)(5)-(6) because it was prepared using Microsoft Word 365 in Garamond 14-point font, a proportionally spaced typeface.

s/Jack Starcher
Jack Starcher

CERTIFICATE OF SERVICE

I hereby certify that on July 31, 2025, I electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

s/ Jack Starcher
Jack Starcher