No. 26-12240

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

PAMELA PATEL,
Plaintiff-Appellant,

v.

BAYCARE HEALTH SYSTEM, INC.,
Defendant-Appellee.

On Appeal from the United States District Court
for the Middle District of Florida
No. 8:24-cv-1886

BRIEF OF THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION AS AMICUS CURIAE IN SUPPORT OF APPELLANT ON THE ISSUES ADDRESSED HEREIN

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CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

Pursuant to Eleventh Circuit Rule 26.1-1, I hereby certify that, to the best of my knowledge, Plaintiff-Appellant's Certificate of Interested Persons, filed with her brief on October 21, 2026, is a complete list of the persons and entities who may have an interest in the outcome of this case except for the following individuals omitted from that list:

Equal Employment Opportunity Commission (EEOC) (amicus curiae)

Lage, Christopher (Deputy General Counsel, EEOC)

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Smith, Dara S. (Assistant General Counsel, EEOC)

EEOC is not aware of any publicly traded corporations or companies that have an interest in the outcome of this case or appeal. Pursuant to Federal Rule of Appellate Procedure 26.1, EEOC, as a government agency, is not required to file a corporate disclosure statement.

s/ Chelsea C. Sharon
CHELSEA C. SHARON

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STATEMENT OF INTEREST

Congress charged the Equal Employment Opportunity Commission ("the Commission") with administering and enforcing the Pregnant Workers Fairness Act, 42 U.S.C. § 2000gg *et seq.* ("PWFA"), and with interpreting the definition of "reasonable accommodation" under the Act, *id.* §§ 2000gg(7), 2000gg-3(a). In this case, the district court incorrectly imported standards from a different statute—the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 *et seq.* ("ADA")—in analyzing elements of Plaintiff's PWFA reasonable-accommodation claim that require a PWFA-specific analysis. And the district court also imposed atextual requirements for Plaintiff's PWFA coercion claim. Because the Commission has a strong interest in the proper interpretation of the statutes it enforces, it offers its views to the Court. *See* Fed. R. App. P. 29(a).

STATEMENT OF ISSUES[1]

1. Did the district court err in its analysis of the PWFA reasonable-accommodation claim by imposing atextual requirements for the prima facie case and by importing inapposite ADA standards?

[1] The Commission takes no position on any other issue in this appeal.

2. Did the district court err in its analysis of the PWFA coercion claim by requiring a showing that the employer's conduct was severe or pervasive and motivated by a plaintiff's exercise of protected activity?

PERTINENT STATUTORY PROVISIONS

Pertinent statutory provisions appear in the addendum.

STATEMENT OF THE CASE

A. Statutory and Regulatory Framework

Congress enacted the PWFA in 2023 to advance the rights of employees affected by pregnancy, childbirth, or related medical conditions. Congress recognized that while such employees have certain rights under existing civil rights laws—such as Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.* ("Title VII") and the ADA—the legal protections offered by those statutes were "insufficient to ensure that pregnant workers receive the accommodations they need." H.R. Rep. No. 117-27, pt. 1, at 12 (2021).

Accordingly, the PWFA requires covered entities to "make reasonable accommodations to the known limitations 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. 42 U.S.C. § 2000gg-1(1). The PWFA provides that "the terms 'reasonable accommodation' and 'undue hardship' have the meanings given such terms in section 101 of the [ADA]." 42 U.S.C. § 2000gg(7).

The PWFA also contains a prohibition against coercion, which makes it "unlawful to coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of such individual having exercised or enjoyed, or on account of such individual having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by this chapter." 42 U.S.C. § 2000gg-2(f)(2). This language mirrors that in the ADA's prohibition against interference. *See* 42 U.S.C. § 12203(b).

The PWFA directs the Commission to "issue regulations … to carry out" the Act, including by "provid[ing] examples of reasonable accommodations." 42 U.S.C. § 2000gg-3(a). It also provides that the term "'reasonable accommodation' … shall be construed … as set forth in the regulations required by this chapter, including with regard to the interactive process that will typically be used to determine an appropriate reasonable accommodation." *Id.* § 2000gg(7). The Commission has issued

regulations in accordance with this Congressional directive. *See* 29 C.F.R. § 1636.1-1636.8. And the Commission has also issued interpretive guidance providing further detail regarding its interpretation of the PWFA's provisions. 29 C.F.R. pt. 1636, app. A ("PWFA Interpretive Guidance").

B. Statement of the Facts[2]

Pamela Patel worked as an executive assistant at BayCare Health System, Inc. ("BayCare"). R.90 at 1. Patel gave birth in March 2023 and took 20 total weeks of leave. R.90 at 4. Before her leave expired, she sought various accommodations in anticipation of her return to work, including flexible scheduling and remote work to accommodate her dehydration, fatigue, back pain, delayed childbirth recovery, postpartum depression, separation anxiety, and concerns about exposure to pathogens and off-gassed toxins at the newly constructed hospital facility where she worked. *Id.* Patel's physician indicated on a company-provided form that Patel did not have a "physical or mental impairment that limits [her] ability to perform an essential function of [her] job." R.90 at 5 (alterations in

[2] We draw these facts from the district court's opinion and order granting summary judgment. The record must be viewed in the light most favorable to Patel. *Hardigree v. Lofton*, 992 F.3d 1216, 1223 (11th Cir. 2021).

original). The form did not indicate any work restrictions but stated that Patel could perform her duties if she worked from home. *Id.*

BayCare denied Patel's request to work remotely but engaged in discussions with Patel about other accommodations such as flexible scheduling, additional breaks, and services to find placement at another facility. R.90 at 5-7. Patel did not return to work in person, and BayCare terminated her. R.90 at 7-8.

C. District Court Decision

Patel brought this lawsuit asserting, in relevant part, PWFA claims for failure to accommodate and coercion.[3] R.32 at 12-14. BayCare moved for summary judgment, and the district court granted that motion. R.90.

The court began its PWFA discussion by explaining that "[t]he few federal courts that have considered PWFA claims have largely treated them as analogous to ADA claims," so the court would "apply the ADA's standards to Plaintiff's PWFA claims." R.90 at 24-25.

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[3] Patel's complaint and the district court decision refer to this latter claim as an "interference" claim. The relevant PWFA provision, "Prohibition Against Coercion," includes language prohibiting "interfere[nce] with" the exercise of PWFA-protected rights. 42 U.S.C. § 2000gg-2(f)(2). We use the PWFA term "coercion" here.

Turning to Patel's reasonable-accommodation claim, the court said Patel had to show "(1) she had a medical condition related to the pregnancy; (2) she was placed on work restrictions by a medical professional; (3) she is requesting reasonable accommodations; and (4) the defendant failed to accommodate those restrictions." R.90 at 25 (citations omitted). The court focused on whether BayCare had failed to provide a reasonable accommodation, stating that "[a]n accommodation is only reasonable if it allows the disabled employee to perform the essential functions of the job in question." R.90 at 28 (citation modified). And the court concluded that Patel's request for "extended remote work was unreasonable" because it would not allow her to perform the essential functions of her job "in the near future." R.90 at 29-31.

In addressing Patel's coercion claim, the court drew upon caselaw interpreting analogous interference claims under the ADA, looking to district court decisions stating that a plaintiff must show: "(1) he exercised a right protected by the ADA; (2) the defendant coerced, intimidated, threatened, and/or interfered with plaintiff's exercise or enjoyment of that right; and (3) the defendant's actions were motivated because the plaintiff exercised a right protected by the ADA." R.90 at 40 (citation omitted). The

court said that "[p]ersuasive authority" required plaintiffs in ADA interference cases to show "discriminatory conduct that is so severe or pervasive that it will have the effect of causing a protected person to abandon the exercise of his or her [statutory] rights." *Id.* (citations omitted). Applying this test, the court concluded that BayCare's conduct was not "severe or pervasive" in part because Patel went on to exercise her rights under the PWFA. R.90 at 41-42. This appeal followed.

SUMMARY OF ARGUMENT

The district court set out incorrect standards in its analysis of Patel's reasonable-accommodation and coercion claims. First, it incorrectly stated that a plaintiff must have a specific medical condition and physician-provided work restrictions to prove a PWFA reasonable-accommodation claim. Instead, the PWFA merely requires a plaintiff to show a "known limitation"—i.e., a pregnancy- or childbirth-related condition (whether medical or not) that was communicated to her employer. Additionally, the district court incorrectly imported ADA standards into its analysis of Patel's reasonable-accommodation claim. The PWFA differs from the ADA in several important ways, including the PWFA's unique definitions of

"qualified employee," and its treatment of accommodation requests involving the suspension of essential job functions.

Second, with respect to the coercion claim, the court erred by requiring that the employer's conduct be (1) "severe or pervasive" and (2) motivated by the plaintiff's exercise of protected activity. The PWFA's text requires neither showing.

ARGUMENT

I. The district court erred in analyzing Patel's PWFA failure-to-accommodate claim.

A. The district court incorrectly articulated the prima facie test.

The PWFA requires a covered entity to "make reasonable accommodations to the known limitations related to the pregnancy, childbirth, or related medical conditions of a qualified employee," unless doing so would impose an undue hardship. 42 U.S.C. § 2000gg-1(1). The district court appropriately cited one previous case breaking this statutory requirement down into a "prima facie case" that required the plaintiff to show: "(1) she is a qualified individual; (2) the employer was aware of her [pregnancy- or childbirth-related] limitation; and (3) the employer failed to reasonably accommodate the limitation." R.90 at 25-26 (quoting *Keiper v.*

CNN Am., Inc., No. 2:24-cv-875, 2024 WL 5119353, at *2 (E.D. Wis. Dec. 16, 2024)).

The court, however, then articulated a different prima facie test that required the plaintiff to show: "(1) she had a medical condition related to the pregnancy; (2) she was placed on work restrictions by a medical professional; (3) she is requesting reasonable accommodations; and (4) the defendant failed to accommodate those restrictions." R.90 at 25 (citation omitted). This test is incorrect in requiring the plaintiff to show (1) a "medical condition" related to pregnancy; and (2) that she was "placed on work restrictions by a medical professional." *Id.*

1. Medical condition related to pregnancy

The PWFA requires a plaintiff seeking a reasonable accommodation to show one or more "known limitations" related to pregnancy, childbirth, or a related medical condition. 42 U.S.C. § 2000gg-1(1). And the PWFA defines "known limitation" as a "physical or mental condition related to, affected by, or arising out of pregnancy, childbirth, or related medical

conditions … whether or not such condition meets the definition of disability" under the ADA.[4] *Id.* § 2000gg(4).

The Commission's regulations explain that such a condition is "an impediment or problem that may be modest, minor, and/or episodic" and includes situations where an employee simply "seek[s] health care related to pregnancy [or] childbirth." 29 C.F.R. § 1636.3(a)(2); *see also* PWFA Interpretive Guidance, 29 C.F.R. pt. 1636, app. A, § 1636.3(a)(2) ("known limitation" includes "a need or a problem related to *maintaining* [an employee's] health or the health of the pregnancy" (emphasis added)).

To describe known limitations as "medical conditions," as the court did here, suggests that employees must have a disorder or impairment, rather than the typical conditions associated with pregnancy and childbirth that the PWFA was designed to cover even when the ADA does not. *See* 42 U.S.C. § 2000gg(4).

[4] The ADA defines "disability" as "a physical or mental impairment that substantially limits one or more major life activities." 42 U.S.C. § 12102(1)(A).

2. Placed on work restrictions by a medical professional

Nor, under the PWFA, must an employee show "she was placed on work restrictions by a medical professional," as the district court said. R.90 at 25 (citation omitted).

First, a known limitation under the PWFA need not manifest in a need for "work restrictions." Many ordinary pregnancy- and childbirth-related needs call for simple workplace modifications such as carrying or keeping water nearby, restroom and food breaks, and wearing different-sized uniforms. *See* 29 C.F.R. § 1636.3(j)(4) (assessing water, restroom, and food-break accommodation requests "should be particularly simple and straightforward"); *id.* § 1636.3(i)(2) (listing examples of reasonable accommodations, including acquisition and modification of uniforms).[5]

[5] The Commission's regulations describing reasonable accommodations are entitled to deference because Congress expressly directed the Commission to issue regulations that "shall provide examples of reasonable accommodations addressing known limitations related to pregnancy, childbirth, or related medical conditions." 42 U.S.C. § 2000gg-3(a); *see also id.* § 2000gg(7) (providing that the term "'reasonable accommodation' … shall be construed … as set forth in the regulations required by this chapter"); *cf. Sutherland v. Peterson's Oil Serv., Inc.*, 126 F.4th 728, 738 n.5 (1st Cir. 2025) (concluding that Commission's definition of "disability" under the ADA was entitled to deference because "Congress 'expressly delegat[ed] to [the Commission] the authority to give meaning to [that]

Second, nothing in the PWFA suggests that an accommodation request must be communicated by a medical professional. A "known" limitation is merely one that is communicated to the employer by the employee or her representative—not necessarily by a medical professional. 42 U.S.C. § 2000gg(4); PWFA Interpretive Guidance, 29 C.F.R. pt. 1636, app. A, § 1636.3(c) (employer will usually engage directly with employee). "The communication may be made orally, in writing, or by another effective means" and "need not be in writing, be in a specific format, use specific words, or be on a specific form in order for it to be considered 'communicated to the employer.'" *Keiper*, 2024 WL 5119353, at *3 (quoting 29 C.F.R. § 1636.3(d)(1)-(2)).

The Commission's regulations also anticipate that employees will be able to communicate their need for many basic accommodations without involving a medical professional. *See* 29 C.F.R. § 1636.3(*l*); *Keiper*, 2024 WL 5119353, at *4 (citing examples from PWFA Interpretive Guidance of accommodation requests such as "I'm having trouble getting to work at my scheduled starting time because of morning sickness" or "tell[ing] a

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particular statutory term'" (quoting *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 394 (2024))).

supervisor that [the employee] needs time off to recover from childbirth" (emphasis omitted)). At a minimum, employers can understand conditions that are obvious (such as a visible pregnancy) or easily inferred (such as lactation immediately following pregnancy), without requiring physician-provided work restrictions. 29 C.F.R. § 1636.3(*l*)(1); *see also* PWFA Interpretive Guidance, 29 C.F.R. pt. 1636, app. A, § 1636.3(*l*)(1)(i) (explaining when limitations are obvious). Inserting a physician-provided-work-restrictions requirement into the PWFA would set courts on a path away from the statutory text.

B. The district court incorrectly imported certain standards from the ADA into the PWFA analysis.

The district court also erred by invoking ADA standards in areas where the PWFA's analytical framework diverges from its ancestor. The court correctly noted that because the PWFA's effective date is so recent, case law construing its requirements is scant. R.90 at 24. However, the court then went astray when it concluded that because of this scant case law it should simply "apply the ADA's standards" wholesale to Patel's PWFA claims. R.90 at 25.

The PWFA mirrors the ADA in many ways, but it draws on Title VII in other respects. *Cf. EEOC v. Sec. Assurance Mgmt., Inc.*, No. 25-00181, 2025 WL 2911781, at *4 n.4 (D.D.C. Oct. 14, 2025) ("Where the language of the PWFA mirrors that of the ADA or Title VII, the Court applies the legal standards governing ADA and Title VII claims to Plaintiff's corresponding PWFA claims …."). And the PWFA also charts its own definitional path in several important respects.

Here, the district court improperly transplanted ADA standards into its PWFA analysis when: (1) defining what it means to be a "qualified employee"; and (2) analyzing the reasonableness of Patel's proposed remote-work accommodation.

1. Qualified employee

Under the PWFA, an employee can be "qualified" in one of two ways. First, the employee can be one "who, with or without reasonable accommodation, can perform the essential functions of the employment position." 42 U.S.C. § 2000gg(6). Second, even where the employee cannot perform one or more essential functions, she can still "be considered qualified if—(A) any inability to perform an essential function is for a temporary period; (B) the essential function could be performed in the near

future; and (C) the inability to perform the essential function can be reasonably accommodated." *Id.*

Addressing this second definition, the Commission's regulations define the term "temporary" as "lasting for a limited time, not permanent, and may extend beyond 'in the near future.'" 29 C.F.R. § 1636.3(f)(2)(i). The Commission's interpretive guidance further explains that the phrase "in the near future" does not mean an entirely indefinite time period and can vary based on the condition at issue and the needs of the job. 29 C.F.R. pt. 1636, app. A, § 1636.3(f)(2)(ii).

Regarding pregnancy in particular, the Commission's regulations presume that a pregnant employee "could perform the essential function(s) in the near future because [she] could perform the essential function(s) within generally 40 weeks of its suspension." 29 C.F.R. § 1636.3(f)(2)(ii). Because "[p]regnancy is a temporary condition with an ascertainable end date[,] the request to temporarily suspend an essential function(s) due to a current pregnancy will never be indefinite and will not be more than generally 40 weeks." PWFA Interpretive Guidance, 29 C.F.R. pt. 1636, app. A, § 1636.3(f)(2)(ii). Conditions other than pregnancy are not subject to this presumption "because, unlike a current pregnancy, there is not a consistent

measure of how long these diverse conditions can generally last, and thus, what 'in the near future' might mean in different instances." *Id.*

The Commission's regulations also differentiate between situations where an employee is seeking leave as an accommodation as opposed to where the employee is working but seeks a time-limited suspension of essential functions. Where the employee seeks leave, the first definition of "qualified" applies, and the relevant inquiry is typically "whether the employee is reasonably expected to be able to perform the essential functions, with or without a reasonable accommodation, at the end of the leave, if time off is granted." 29 C.F.R. § 1636.3(f)(1); *see also* PWFA Interpretive Guidance, 29 C.F.R. pt. 1636, app. A, § 1636.3(f)(2)(ii) ("If an individual needs leave as a reasonable accommodation … only the first part of the definition of 'qualified' is relevant …."). In contrast, where an employee is working, or has returned to work after leave, but cannot perform all her essential functions, the second, PWFA-specific definition of "qualified" applies instead. 29 C.F.R. § 1636.3(f)(1), (2).

Thus, in analyzing a PWFA reasonable-accommodation claim, courts should determine under which definition of "qualified" they are proceeding. Here, however, the district court failed to do so. The district

court simply said that Patel was "likely a qualified individual since she 'can perform the essential functions of the employment position,' even if she was temporarily unable to do so." R.90 at 26 (quoting 42 U.S.C. § 2000gg(6)(A)-(C)). In doing so, the court failed to determine whether Patel was qualified because she could currently perform the essential functions of her job or instead because she had a temporary condition for which she needed an accommodation in which some essential functions were suspended until the near future. Indeed, the court did not identify the essential functions of the job. Without determining what the essential functions were—and thus, whether it was analyzing the reasonable-accommodation claim as one that required suspending those functions—the court foreclosed its ability to perform the proper analysis under the PWFA.

2. Reasonableness of proposed accommodation

The district court also erred in analyzing when an accommodation that involves suspension of essential job functions can be reasonable under the PWFA. The court appropriately cited the ADA's definition of "reasonable accommodation" as well as the corresponding definitions under the Commission's regulations. R.90 at 27-28; *see* 42 U.S.C. § 2000gg(7)

(incorporating ADA's definition of "reasonable accommodation" and directing that the term "shall be construed … as set forth in" the Commission's regulations). Then, however, the court stated that "[a]n accommodation is only reasonable if it allows the disabled employee to perform the essential functions of the job in question." R.90 at 28 (alteration in original) (quoting *Frazier-White v. Gee*, 818 F.3d 1249, 1255 (11th Cir. 2016)). While it is true under the ADA that an employer need not eliminate essential job functions, *Frazier-White*, 818 F.3d at 1255, the same is not always true under the PWFA. Instead, under the PWFA, if an employee is qualified by way of the second definition (i.e., a temporary inability to perform one or more essential functions of the position), it *must* be possible for an accommodation to be reasonable even if it involves temporarily suspending some essential functions. 42 U.S.C. § 2000gg(6)(A)-(C).

The district court acknowledged that temporary suspension of essential functions was an option if Patel could perform those essential functions "in the near future," but it again veered off course by aggregating Patel's period of leave after childbirth (20 weeks) with the time she proposed to work remotely after returning from leave (an estimated eight additional months). R.90 at 29-30. Those accommodations are distinct

(leave, as opposed to remote work after returning from leave), and their durations should be addressed separately, as discussed above. *Supra* p. 16; *see* PWFA Interpretive Guidance, 29 C.F.R. pt. 1636, app. A, § 1636.3(f)(2)(ii) ("Leave as a reasonable accommodation … does not count as time when an essential function(s) is suspended …."). Here, assuming Patel's 20 weeks of leave was an accommodation at all (and not merely a use of available leave already permissible under BayCare's policies), the court should have analyzed that leave separately from considering whether Patel's proposed remote-work accommodation following leave required the time-limited suspension of essential job functions.

In addressing the latter question, the first step is to examine whether the functions the employee seeks to have temporarily suspended are essential. If so, then the PWFA still requires a time-limited reasonable accommodation. 42 U.S.C. §§ 2000gg(6)(A)-(C), 2000gg-1(1). If the functions at issue are not essential, then, just as under the ADA, an employer may need to restructure the job to eliminate them, if doing so on a long-term basis is reasonable and not an undue hardship. *Holly v. Clairson Indus., L.L.C.*, 492 F.3d 1247, 1256 (11th Cir. 2007) (employer may need to

"restructure a particular job by altering or eliminating some of its marginal functions" (citation modified)).

Thus, the court's first step here should have been to determine the job's essential functions and whether Patel needed to be physically present to perform them, as BayCare contended. *See* 29 C.F.R. § 1636.3(g) (listing factors for essential-function analysis under PWFA). If not, then the court should have assessed the reasonableness of restructuring the job on a longer-term basis to exclude that function. *See Holly*, 492 F.3d at 1256. If Patel's physical presence *were* required to perform any essential functions of the position, then the court should have applied the PWFA-specific definition of "qualified" and assessed whether Patel was requesting the suspension of essential job function(s) for a temporary period, whether she would be able to perform those function(s) in the near future, and whether suspending those function(s) for that time period could be reasonably accommodated. 42 U.S.C. § 2000gg(6)(A)-(C).

Even assuming the court implicitly held that physical presence at the office was necessary for Patel to perform some essential functions of her position, its analysis did not properly address whether her conditions were temporary and whether she would be able to return to the office "in the

near future." It noted that "[f]or an active pregnancy, 'in the near future' is further defined as being able to perform an essential function 'within generally 40 weeks of its suspension'" and concluded that Patel's request was unreasonable because it far exceeded those 40 weeks. R.90 at 30 (quoting 29 C.F.R. § 1636.3(f)(2)(ii)). But after her leave, Patel's known limitations were not related to an active pregnancy; they were dehydration, fatigue, back pain, delayed childbirth recovery, postpartum depression, separation anxiety, and concerns about toxin exposure at the hospital. R.90 at 4. As noted, the 40-week presumption does not apply to any conditions other than pregnancy itself, because that duration is tied to the duration of pregnancy. PWFA Interpretive Guidance, 29 C.F.R. pt. 1636, app. A, § 1636.3(f)(2)(ii). In short, even assuming that Patel's job required her physical presence to perform essential job functions, and that her remote-work request thus sought suspension of those functions, the court did not apply the correct framework to analyze whether her request was reasonable under the PWFA's unique statutory structure.

II. The district court erred in its analysis of Patel's PWFA coercion claim.

The PWFA makes it "unlawful to coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of such individual having exercised or enjoyed, or on account of such individual having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by this chapter." 42 U.S.C. § 2000gg-2(f)(2). This language is nearly identical to the ADA's interference provision. 42 U.S.C. § 12203(b). Here, the district court correctly drew upon ADA interference caselaw in analyzing Patel's coercion claim but then imposed two requirements that exist for neither a PWFA coercion nor ADA interference claim, namely, that the employer's conduct: (1) was "so severe or pervasive that it will have the effect of causing a protected person to abandon the exercise of his or her ADA rights"; and (2) was "motivated because the plaintiff exercised a right protected by the ADA." R.90 at 40 (citations omitted).

A. There is no severe-or-pervasive-conduct requirement for a PWFA coercion claim.

This Court has not yet articulated the requirements for a PWFA coercion (or ADA interference) claim, but "the cause's requirements can be

derived from the statutory text." *Strife v. Aldine Indep. Sch. Dist.*, 138 F.4th 237, 251 (5th Cir. 2025) (discussing ADA interference provision). The PWFA's text gives no indication that the employer conduct must be severe or pervasive. Instead, it makes it unlawful to "coerce, intimidate, threaten, or interfere with" an individual. 42 U.S.C. § 2000gg-2(f)(2).

The Fourth Circuit has interpreted identical language in the ADA interference provision as broadly "captur[ing] 'all practices which have the effect of interfering with the exercise of rights' under the ADA." *Kelly v. Town of Abingdon*, 90 F.4th 158, 171 (4th Cir. 2024) (quoting *Brown v. City of Tucson*, 336 F.3d 1181, 1191 (9th Cir. 2003)). The Commission similarly interprets the PWFA coercion and ADA interference provisions as prohibiting all conduct that is "reasonably likely to interfere with the exercise or enjoyment of [PWFA or ADA] rights." PWFA Interpretive Guidance, 29 C.F.R. pt. 1636, app. A, § 1636.5(f)(2); EEOC Enforcement Guidance on Retaliation and Related Issues § III, No. 915.004, 2016 WL 4688886, at *27 (Aug. 25, 2016); *see also C.R. Dep't v. Grimmway Enters., Inc.*, 800 F. Supp. 3d 1084, 1118-19 (E.D. Cal. 2025) (collecting cases suggesting that ADA interference provision encompasses conduct likely to deter a reasonable employee from pursuing protected activity).

No circuit has adopted a severe-or-pervasive-conduct requirement for a PWFA coercion or ADA interference claim. This Court has reserved decision on the issue in the context of an ADA interference claim. *See Atchison v. Bd. of Regents of Univ. Sys. of Ga.*, 802 F. App'x 495, 508-09 (11th Cir. 2020) (declining to decide propriety of district court's severe-or-pervasive-conduct requirement because plaintiff's claims "fail[ed] under any potentially feasible standard"). And the Ninth Circuit, while declining to adopt a precise standard for actionable ADA interference, has rejected a "severity" standard. *See Brown*, 336 F.3d at 1189, 1191 (disagreeing with district court that employer's conduct must "rise to the necessary severity" required for a Title VII hostile-work-environment claim).

The court here arrived at a severe-or-pervasive standard by citing a line of district court cases within this Circuit that relied on caselaw concerning the Fair Housing Act (FHA)'s interference provision set forth at 42 U.S.C. § 3617. *See* R.90 at 40-41 (citing *Schwarcz v. Walt Disney Parks & Resorts U.S., Inc.*, No. 6:25-cv-640, 2026 WL 864829 (M.D. Fla. Mar. 30, 2026) (relying on *Mosley v. AM/NS Calvert, LLC*, No. 1:20-cv-517, 2022 WL 843773, at *9 (S.D. Ala. Mar. 21, 2022) (stating that "district courts within the circuit agree that Section 3617 [of the FHA] extends only to discriminatory

conduct that is so severe or pervasive that it will have the effect of causing a protected person to abandon the exercise of his or her … rights" (citation modified))))). This Court, however, has never required such a showing for an FHA interference claim. *See Noah v. Assor*, 379 F. Supp. 3d 1284, 1289 (S.D. Fla. 2019) (noting that "the Eleventh Circuit has not prescribed the precise magnitude of conduct required by § 3617" (citation omitted)). And, in any event, the rationale that these district courts articulated for requiring severe or pervasive conduct in the FHA context is inapplicable in the context of the ADA or PWFA.

Specifically, the reasoning of this line of district court cases rests on unique features of the FHA and its interference provision. The leading case—*Gourlay v. Forest Lake Estates Civic Association of Port Richey, Inc.*, 276 F. Supp. 2d 1222 (M.D. Fla. 2003), *vacated on settlement*, No. 8:02-cv-1955, 2003 WL 22149660 (M.D. Fla. Sep. 16, 2003)—observed that this Court, unlike others, permits an FHA interference claim to be brought as a standalone claim independent of claims of underlying housing discrimination in sale or rental under Sections 3603-3606 of the FHA. *Id.* at 1235. *Gourlay* expressed concern that if such standalone FHA interference claims were to encompass too broad a range of conduct, they could become

"an all purpose cause of action … to bring neighborhood feuds into federal court when the dispute has little or no actual relation to housing discrimination." *Id* at 1236. *Gourlay* thus concluded that, *for FHA interference claims brought "in the absence of a violation of sections 3603-3606,"* a showing of severe or pervasive conduct was necessary to guard against this possibility. *Id.* (emphasis added); *see Diaz v. P'ship, Inc.*, No. 1:21-cv-3661, 2023 WL 10447792, at *13 (N.D. Ga. Apr. 26, 2023) (characterizing *Gourlay* as "justifying such an approach so as to prevent the proliferation of FHA disputes untethered to underlying Section 3603-3606 discriminatory conduct"). In contrast, where plaintiffs instead bring FHA interference claims alongside claims of underlying housing discrimination under Sections 3603-3606 of the FHA, these same courts interpret the interference provision "broadly … to reach all practices which have the effect of interfering with housing rights." *Diaz*, 2023 WL 10447792, at *13 (citation omitted) (collecting cases that "recognize [this] distinction").

Here, Patel's PWFA coercion claim is certainly not "untethered to underlying" employment discrimination. *Cf. id.* And, as concerns PWFA coercion and ADA interference claims more generally, there is nothing to suggest a likely "proliferation of disputes" in the absence of a severe-or-

pervasive-conduct requirement. *Cf. id.* To the contrary, in the more than 35 years since the ADA's enactment, ADA interference claims have been so uncommon that many courts have still not even settled on the basic elements of such claims. *E.g.*, *Menoken v. Dhillon*, 975 F.3d 1, 10 (D.C. Cir. 2020) (declining to adopt particular standard for ADA interference claim); *Brown*, 336 F.3d at 1192-93 (same); *see also EEOC v. Day & Zimmerman NPS, Inc.*, 265 F. Supp. 3d 179, 204 (D. Conn. 2017) (recognizing that "case law interpreting [the ADA interference provision] is sparse" (citation modified)). There is no reason to think the PWFA's coercion provision will become an unwieldy "all purpose cause of action" without a severe-or-pervasive-conduct requirement. *Cf. Gourlay*, 276 F. Supp. 2d at 1236.

Gourlay also derived its severe-or-pervasive conduct requirement for FHA interference claims by analogizing to Title VII hostile-work-environment claims. *Id.*; *see Meritor Sav. Bank FSB v. Vinson*, 477 U.S. 57, 67 (1986) (establishing "severe or pervasive" standard for Title VII hostile-work-environment claims). Title VII hostile-work-environment claims, however, are grounded in the statute's general prohibition against discrimination in the terms or conditions of employment at 42 U.S.C. § 2000e-2(a)(1). *See Meritor*, 477 U.S. at 63-64. The ADA and PWFA have

similar general prohibitions where a hostile-work-environment claim could be grounded, apart from those statutes' prohibitions against interference and coercion. *See* 42 U.S.C. § 12112(a) (ADA) (prohibiting discrimination on the basis of disability in regard to terms or conditions of employment); 42 U.S.C. § 2000gg-1(5) (PWFA) (prohibiting discrimination in terms or conditions of employment based on requesting or using reasonable accommodations); *see also Sec. Assurance Mgmt.*, 2025 WL 2911781, at *5 & n.5 (explaining that discrimination in the terms or conditions of employment under § 2000gg-1(5) "is similar to Title VII's § 2000e-2(a)(1)" general prohibition against discrimination). Thus, there is no basis to import the severe-or-pervasive standard into the coercion or interference sphere.

Indeed, the Ninth Circuit rejected an effort to do just that for an ADA interference claim by reasoning that a hostile-work-environment theory would "seem to arise under the [ADA's] general prohibition against discrimination with respect to terms or conditions of employment" rather than the ADA's separate "bar on coercion, threats, intimidation, and interference." *Brown*, 336 F.3d at 1190 (citation omitted). And this Court has rejected an effort to superimpose the Title VII hostile-work-environment

standard onto claims brought under Title VII's retaliation provision. *See Monaghan v. Worldpay US, Inc.*, 955 F.3d 855, 862 (11th Cir 2020) (imposing "severe or pervasive" standard on retaliation claims would invoke "the wrong statute—§ 2000e-2(a)(1) instead of [Title VII's prohibition against retaliation at] § 2000e-3(a)").

To be sure, PWFA coercion and ADA interference claims are not "so broad as to prohibit any action whatsoever tha[t] in any way hinders a member of a protected class." *Brown*, 336 F.3d at 1192 (internal quotation marks omitted); *see* PWFA Interpretive Guidance, 29 C.F.R. pt. 1636, app. A, § 1636.5(f)(2) (recognizing similar principle for PWFA). But the touchstone of the analysis should be a deterrence-focused inquiry into whether the conduct is "reasonably likely to interfere with the exercise or enjoyment" of rights under the PWFA. PWFA Interpretive Guidance, 29 C.F.R. pt. 1636, app. A, § 1636.5(f)(2). Indeed, "[t]he purpose of [the coercion] provision is to ensure that employees are free to avail themselves of the protections of the statute." *Id.* Imposing a "severe or pervasive" requirement is not faithful to this central inquiry or to the statutory text.

The district court also went astray by suggesting that because Patel continued to exercise her rights under the PWFA, the employer's conduct

could not have risen to the necessary threshold to sustain a coercion claim. *See* R.90 at 42 (noting that Patel "did not abandon any rights, as she continued to demand accommodations … and threatened to file a discrimination charge"). Contrary to the court's analysis, "[a]n individual does not actually have to be deterred from exercising or enjoying rights under the PWFA for the coercion … to be actionable." 29 C.F.R. § 1636.5(f)(2)(ii); *see also Varney v. Health Carousel, LLC*, No. 1:24-cv-624, 2025 WL 2605783, at *7 (S.D. Ohio Sep. 9, 2025) (rejecting employer's argument that PWFA coercion claim failed because "Plaintiff did not allege that any harassment actually kept her from exercising her rights" under PWFA); *Day & Zimmerman NPS*, 265 F. Supp. 3d at 205 (describing in ADA interference context "an objective test that does not turn on whether any of the affected employees were actually deterred from exercising their rights"). The district court erred in suggesting otherwise.

B. The employer need not be motivated by the plaintiff's exercise of protected activity.

The text of the PWFA's prohibition on coercion does not require that the coercive conduct always be motivated by the plaintiff's exercise of protected activity. The statute prohibits three separate categories of

conduct, namely, interference with an individual: (1) "in the exercise or enjoyment of" a PWFA right; (2) "on account of such individual having exercised or enjoyed" a PWFA right; or (3) "on account of such individual having aided or encouraged any other individual in the exercise or enjoyment of" a PWFA right. 42 U.S.C. § 2000gg-2(f)(2). By its plain terms, the first prong does not require that the plaintiff have engaged in protected activity or that the employer was motivated by that protected activity. Instead, conduct that prevents or deters "the exercise or enjoyment of" PWFA rights in the first instance falls comfortably within that first prong. *Id.*; *see Colasanti v. City of Portland*, No. 3:19-cv-443, 2021 WL 4317286, at *4 (D. Or. Aug. 19, 2021) ("[U]nder the first prong of [the ADA interference provision], a plaintiff need not allege he was engaged in protected activity for a defendant to interfere with the exercise or enjoyment of that right."), *findings and recommendation adopted*, 2021 WL 4317667 (D. Or. Sep. 20, 2021).

Indeed, the Fifth Circuit relied on nearly identical language from the ADA interference provision to conclude that "interference can exist without the exercise of protected activity (or without an employer response that is 'on account of' protected activity)." *Strife*, 138 F.4th at 251 n.5. The Fifth Circuit gave the example of "an employer that instructs employees to

complete a particular form to request accommodations, and then makes that form completely inaccessible." *Id.* Such an employer, the Fifth Circuit observed, "interferes with an employee's 'exercise or enjoyment of' a right to a reasonable accommodation" within the meaning of the first prong "despite not ac[t]ing 'on account of' a protected action." *Id.*

In addition, other courts—as well as the Commission's guidance—indicate that similar conduct that obstructs the exercise of protected activity in the first instance is actionable. *E.g.*, *Brown*, 336 F.3d at 1193 (ADA interference provision prohibits threats aimed at convincing individual to "for[]go[] a statutorily protected accommodation"); *Kelly*, 90 F.4th at 171 (analyzing whether employer "engaged in [the relevant] behavior *in order to prevent*" the plaintiff from "pursuing … protected action under the ADA" (emphasis added)); *Varney*, 2025 WL 2605783, at *7 (conduct aimed at "intimidat[ing] and coerc[ing plaintiff] into taking shorter pumping breaks" could give rise to PWFA coercion claim); PWFA Interpretive Guidance, 29 C.F.R. pt. 1636, app. A, § 1636.5(f)(2) (giving example of employment agency that "dissuade[s] [an applicant] from requesting an accommodation" by saying that doing so "will be a 'black mark' on their application" (citation modified)).

The cases the district court relied upon here are not to the contrary. R.90 at 40 (citing *Collins v. Dekalb Cnty.*, 824 F. Supp. 3d 1306 (N.D. Ga. 2026) (collecting cases)). Those cases considered situations falling under the second prong of the statutory text, where the plaintiffs already engaged in protected activity by requesting reasonable accommodations, making it logical to analyze whether the relevant employer conduct was motivated by those requests. *E.g.*, *Collins*, 824 F. Supp. 3d at 1319-20, 1334 (listing motivation element as part of prima facie case in situation where plaintiff requested accommodation); *Mosley*, 2022 WL 843773, at *8, 10 (analyzing whether employer's actions were "motivated by [the] requests for accommodations" plaintiff made after surgery); *see also Frakes v. Peoria Sch. Dist. No. 150*, 872 F.3d 545, 548, 550-51 (7th Cir. 2017) (requiring showing of protected activity where plaintiff appeared to rely on third prong by arguing that she sought to "aid students in exercising their rights under" the Rehabilitation Act). Thus, these cases simply did not present the question of whether an interference claim could encompass an employer's preemptive conduct that discourages the exercise of rights in the first instance. *See Colasanti*, 2021 WL 4317286, at *5 (caselaw dealing with situations where plaintiff already engaged in protected activity did "not

foreclose an interference claim premised on the first prong" of ADA interference provision).

CONCLUSION

For the foregoing reasons, this Court should apply the standards articulated above to Patel's PWFA reasonable-accommodation and coercion claims.

Respectfully submitted,

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October 28, 2026

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Federal Rules of Appellate Procedure 29(a)(5) and 32(a)(7)(B) because it contains 6,491 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f) and Eleventh Circuit Rule 32-4.

This brief complies with the typeface requirements and type style requirements of Federal Rules of Appellate Procedure 32(a)(5) and 32(a)(6) because it was prepared in a proportionally spaced typeface using Microsoft Word in Book Antiqua 14 point font.

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42 U.S.C. § 2000gg – Definitions

As used in this chapter—

***

(4) the term "known limitation" means physical or mental condition related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions that the employee or employee's representative has communicated to the employer whether or not such condition meets the definition of disability specified in section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102);

***

(6) the term "qualified employee" means an employee or applicant who, with or without reasonable accommodation, can perform the essential functions of the employment position, except that an employee or applicant shall be considered qualified if—

(A) any inability to perform an essential function is for a temporary period;

(B) the essential function could be performed in the near future; and

(C) the inability to perform the essential function can be reasonably accommodated; and

(7) the terms "reasonable accommodation" and "undue hardship" have the meanings given such terms in section 101 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111) and shall be construed as such terms are construed under such Act [42 U.S.C. 12101 et seq.] and as set forth in the regulations required by this chapter, including with regard to the interactive process that will typically be used to determine an appropriate reasonable accommodation.

42 U.S.C. § 2000gg-1 – Nondiscrimination with regard to reasonable accommodations related to pregnancy

It shall be an unlawful employment practice for a covered entity to—

(1) not make reasonable accommodations to the known limitations related to the pregnancy, childbirth, or related medical conditions of a qualified employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity;

***

(5) take adverse action in terms, conditions, or privileges of employment against a qualified employee on account of the employee requesting or using a reasonable accommodation to the known limitations related to the pregnancy, childbirth, or related medical conditions of the employee.

42 U.S.C. § 2000gg-2 – Remedies and enforcement

***

(f) Prohibition against retaliation

***

(2) Prohibition against coercion

It shall be unlawful to coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of such individual having exercised or enjoyed, or on account of such individual having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by this chapter.

***

42 U.S.C. § 2000gg-3 – Rulemaking

(a) EEOC rulemaking

Not later than 1 year after December 29, 2022, the Commission shall issue regulations in an accessible format in accordance with subchapter II of chapter 5 of title 5 to carry out this chapter. Such regulations shall provide examples of reasonable accommodations addressing known limitations related to pregnancy, childbirth, or related medical conditions.

***

29 C.F.R. § 1636.3 Definitions—specific to the PWFA.

(a) ***Known limitation. Known limitation*** means a physical or mental condition related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions that the employee or the employee's representative has communicated to the covered entity, whether or not such condition meets the definition of disability specified in section 3 of the Americans with Disabilities Act of 1990, 42 U.S.C. 12102.

(1) ***Known,*** in terms of limitation, means the employee or the employee's representative has communicated the limitation to the employer.

(2) ***Limitation*** means a physical or mental condition related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions, of the specific employee in question. "Physical or mental condition" is an impediment or problem that may be modest, minor, and/or episodic. The physical or mental condition may be that an employee affected by pregnancy, childbirth, or related medical conditions has a need or a problem related to maintaining their health or the health of the pregnancy. The definition also includes when an employee is seeking health care related to pregnancy, childbirth, or a related medical condition itself. The physical or mental condition can be a limitation whether or not such condition meets the definition of disability specified in section 3 of the Americans with Disabilities Act of 1990, 42 U.S.C. 12102.

***

(f) ***Qualified employee. Qualified employee*** with respect to an employee with a known limitation under the PWFA means:

> **(1)** An employee who, with or without reasonable accommodation, can perform the essential functions of the employment position. With respect to leave as an accommodation, the relevant inquiry is whether the employee is reasonably expected to be able to perform the essential functions, with or without a reasonable accommodation, at the end of the leave, if time off is granted, or if the employee is qualified as set out in paragraph (f)(2) of this section after returning from leave.
>
> **(2)** Additionally, an employee shall be considered qualified if they cannot perform one or more essential functions if:
>
> > **(i)** Any inability to perform an essential function(s) is for a temporary period, where "temporary" means lasting for a limited time, not permanent, and may extend beyond "in the near future";
> >
> > **(ii)** The essential function(s) could be performed in the near future. This determination is made on a case-by-case basis. If the employee is pregnant, it is presumed that the employee could perform the essential function(s) in the near future because they could perform the essential function(s) within generally 40 weeks of its suspension; and
> >
> > **(iii)** The inability to perform the essential function(s) can be reasonably accommodated. This may be accomplished by temporary suspension of the essential function(s) and the employee performing the remaining functions of their position or, depending on the position, other arrangements, including, but not limited to: the employee performing the remaining functions of their position and other functions assigned by the covered entity; the employee performing the functions of a different job to

which the covered entity temporarily transfers or assigns the employee; or the employee being assigned to light duty or modified duty or participating in the covered entity's light or modified duty program.

***

29 C.F.R. § 1636.5 Remedies and enforcement

***

(f) ***Prohibition against retaliation –***

***

(2) ***Prohibition against coercion.*** It shall be unlawful to coerce, intimidate, threaten, harass, or interfere with any individual in the exercise or enjoyment of, or on account of such individual having exercised or enjoyed, or on account of such individual having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by the PWFA.

(i) An individual need not be a qualified employee with a known limitation under the PWFA to bring an action under this paragraph (f)(2).

(ii) An individual does not actually have to be deterred from exercising or enjoying rights under the PWFA for the coercion, intimidation, threats, harassment, or interference to be actionable.

***