

No. 18-42

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT

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TIONN DAVIS,

*Appellant,*

v.

KATRINA KAROLEK,

*Appellee.*

On Appeal from The United States District Court for  
the Southern District of Illinois

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**BRIEF FOR THE [APPELLANT]**

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### QUESTIONS PRESENTED

- 1) Whether the district court erred concluding that Ms. Davis failed to show a prima facie case of disparate treatment discrimination under 42 U.S.C. § 2000e(k) when her employer accommodated a similarly situated male employee but denied Ms. Davis the same accommodation.
- 2) Whether Karolek Arts carried its burden of demonstrating a legitimate, non-discriminatory reason for the difference in treatment—namely that Ms. Davis alone was essential to the project—and whether that asserted rationale was mere pretext for unlawful pregnancy discrimination. Yes – tell the reader what the facts are here that show it was pretext, bring in some facts to curate a QP that shows it was pretextual

### PRELIMINARY STATEMENT

This case presents a clear instance of unlawful sex discrimination under the Pregnancy Discrimination Act (PDA). The Appellant, Ms. Davis, a highly skilled Master Sculptor, was denied a reasonable accommodation when her employer, Appellee Ms. Karolek, insisted she travel to Panama despite serious health risks associated with the Zika virus—a known danger to women trying to conceive. In contrast, Ms. Karolek accommodated a similarly situated male employee, Mr. Eduardo Berto, who was excused from travel due to a knee condition.

Lacking any alternative, Ms. Davis traveled to Panama under protest. After completing the physically demanding installation, she tested positive for the virus and was medically advised to

delay pregnancy. The consequence of her employer's selective denial was not theoretical—it directly affected Ms. Davis's health and reproductive choices.

This appeal arises from the District Court's grant of summary judgment in favor of the Appellee, dismissing Ms. Davis's claims without a trial. The District Court erred by improperly assessing whether Ms. Davis and Mr. Berto were "similar in their ability or inability to work," as required under the PDA. The court focused solely on physical incapacity rather than the actual limitations relevant to the job assignment—a crucial misinterpretation of the law. The Appellee's justification for forcing Ms. Davis to travel—claiming she was "indispensable"—rings hollow when a comparable accommodation was granted to Mr. Berto. The evidence suggests that Ms. Karolek's refusal to accommodate Ms. Davis was not based on legitimate business necessity, but rather on discriminatory attitudes toward pregnancy-related concerns.

Ms. Davis seeks reversal of the summary judgment ruling and a remand for trial, where the full extent of the discrimination she faced can be properly examined. The law guarantees her the right to present her case before a jury and to seek the remedies to which she is entitled under federal anti-discrimination protections.

#### STATEMENT OF FACTS

Both Ms. Tionn Davis and Mr. Eduardo "Ed" Berto, Master Sculptors at Karolek Arts, independently sought medical accommodations to avoid a June 2023 installation trip to Panama. R. at 6–8, 12. Ms. Davis, a rising talent under the mentorship of Ms. Katrina "Kate" Karolek, took charge of constructing Karolek Arts' major commission, "Waterways," overseeing everything from fabrication and assembly techniques to surface finishes. R. at 6–7, 9–10. Meanwhile, Mr. Berto—a more senior Master Sculptor—was responsible for presentation, including lighting and maintenance. R. at 6–7, 9–10. Although his supervisory authority could override any part of Ms.

Davis's work, Ms. Davis was indisputably the project's chief architect, absorbing the bulk of responsibility for its success. R. at 6, 10.

As Ms. Davis prepared for her upcoming trip, a health crisis unfolded in March/April 2023. The Zika virus, known to cause serious birth defects, was detected in Aedes mosquitoes in Panama. R. at 11. In light of her ongoing efforts to conceive, Ms. Davis's physician explicitly advised her against travel to Zika-endemic regions. R. at 11. On April 4, 2023, Ms. Davis conveyed her doctor's warning to Ms. Karolek, proposing viable alternatives—among them, sending Mr. Berto (who had fully resumed his duties by late February) or another qualified studio artist to oversee installation. R. at 7, 10. Yet, despite her awareness of the Zika risks and the feasibility of reassigning other skilled team members, Ms. Karolek categorically dismissed Ms. Davis's request and insisted, "the success of the project rested entirely on [her]." R. at 14–16.

In stark contrast, when Mr. Berto requested a similar accommodation to remain in Illinois for more convenient whirlpool treatments on his rehabilitated knee—speculating that a latent infection "might" resurface—the request was immediately granted. R. at 6–7. By that time, his post-surgery infection was reportedly under control, and he had already returned to a full-time schedule. R. at 6–7. Regardless, his request was treated as pressing enough to warrant an accommodation. Ms. Davis's doctor-issued directives, grounded in the heightened risk of birth defects posed by Zika, were met with outright refusal. R. at 12.

On December 1, 2023, the Appellant, Ms. Tionn Davis, filed a Complaint against the Appellee, Ms. Katrina Karolek, alleging sex discrimination in the workplace under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e et seq., and the Pregnancy Discrimination Act (PDA), 42 U.S.C. § 2000e(k). R. at 1–3. The Appellee filed an Answer on December 14, 2023, raising the affirmative defense that she had a legitimate, non-discriminatory reason for not accommodating

Ms. Davis because she was the leader of the project and the most knowledgeable person to do the work. R. at 4, 16. On June 13, 2024, the Appellee filed a motion for summary judgment pursuant to Fed. R. Civ. P. 56(a), asserting that the Complaint should be dismissed because there was no genuine dispute of fact. R. at 5. The United States District Court for the Southern District of Illinois granted the Appellee's motion on October 1, 2024, finding that Ms. Davis had not demonstrated that she was "similar in her ability or inability to work" to the male employee who received the accommodation, and concluding that the Appellee's stated business reason for assigning Ms. Davis to Panama was not pretext for unlawful discrimination. R. at 17–20.

On October 15, 2024, the Appellant filed a Notice of Appeal seeking to appeal the district court's decision to the instant Court. On November 17, 2024, the United States Court of Appeals for the Seventh Circuit granted the Appellant's Notice of Appeal, and limited argument to the following two issues: (1) whether the Plaintiff has met her burden of proving a prima facie case of sex discrimination under the Pregnancy Discrimination Act by showing the Appellee accommodated another employee who was "similar in his ability or inability to work," and (2) whether the Appellee demonstrated a legitimate, non-discriminatory reason for any disparate treatment that was not mere pretext. R. at 21–22. Ms. Davis now appeals the summary judgment entered in favor of Ms. Karolek, contending that the disparate treatment she endured under the Pregnancy Discrimination Act demands reversal. R. at 17, 21.

## ARGUMENT

### **THE DISTRICT COURT ERRED IN GRANTING SUMMARY JUDGMENT TO KAROLEK ARTS.**

#### **A. Ms. Davis Established a Prima Facie Case of Pregnancy Discrimination Because Her Employer Accommodated a Similarly Situated Male Employee.**

The Defendant (Karolek Arts) contends that summary judgment was appropriate because Ms. Davis failed to demonstrate that her comparator, Mr. Berto, was “similar in his ability or inability to work,” as required under Title VII of the Civil Rights Act of 1964, and amended by the Pregnancy Discrimination Act (PDA). 42 U.S.C. § 2000e(k). Karolek Arts argues that because Mr. Berto was recovering from surgery, while Ms. Davis was merely trying to avoid a potential pregnancy-related health risk, the two were not similarly situated. See *Order Granting Summary Judgment*, R. at 19. This Court reviews de novo the district court’s grant of summary judgment. See *Hall v. Nalco Co.*, 534 F.3d 644, 646 (7th Cir. 2008); *Healy v. City of Chicago*, 450 F.3d 732, 738 (7th Cir. 2006). Summary judgment is proper only where no genuine dispute of material fact exists and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a).

Karolek Arts’ argument mischaracterizes both the statutory standard and the record. *Order Granting Summary Judgment*, R. at 19-20. Under the PDA, the relevant question is not whether two employees have identical health conditions, but whether they are similarly limited in their ability to work. *Young v. United Parcel Serv.*, 575 U.S. 206, 229 (2015). The PDA specifically prohibits employers from treating pregnant employees—or those affected by pregnancy-related conditions—less favorably than other employees with similar work limitations on their "ability or inability to work." 42 U.S.C. § 2000e(k).

Here, Ms. Davis sought an accommodation from a work-related travel requirement to Panama City due to serious pregnancy-related health risks associated with the Zika virus, following her doctor’s advice. See *Davis Dep.*, R. at 11–12 (describing the Zika risk, her doctor’s warning, and her decision to tell Karolek Arts she could not travel). While Ms. Davis sought to avoid travel to preserve her ability to safely conceive, her male colleague, Mr. Berto, also requested not to travel to Panama due to his concern of triggering another knee infection. See *Berto Aff.*, R.

at 7–8 (¶¶ 13–19). Both requested the same accommodation—to not travel abroad—and both were similarly able to perform their regular work duties domestically. The employer granted Mr. Berto’s request but denied Davis’s, forcing her to choose between continued employment and safeguarding her reproductive health. See *Davis Dep.*, R. at 12 (“Kate was adamant that I go... She said Ed had a medical condition. She also said... the success of the project rested entirely on me.”)

This disparity in treatment satisfies the fourth prong of the modified *McDonnell-Douglas* framework as set forth in *Young*. See *Young*, at 216; see also *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). Ms. Davis was denied an accommodation that was afforded to a non-pregnant employee with comparable limitations. That showing is sufficient to establish a prima facie case of pregnancy discrimination. Although Karolek Arts later attempted to justify its decision based on business necessity, the district court’s conclusion that no comparator existed ignores both the factual similarities and the PDA’s statutory command. Accordingly, the district court’s decision should be reversed and remanded. See *Order Granting Summary Judgment*, R. at 19–20.

#### **B. Ms. Davis and Mr. Berto Were Similarly Situated in Their Ability or Inability to Work Under the PDA’s Comparable-Limitations Provision.**

Karolek Arts insists that Ms. Davis cannot show a male comparator “similar in their ability or inability to work” as required by the Pregnancy Discrimination Act (PDA). But that contention implodes. Because Ms. Davis identified a male coworker, Mr. Berto, whose medical restriction (avoiding travel) was virtually identical to hers—and because Karolek Arts accommodated only him—Ms. Davis readily establishes a prima facie case under *Young v. United Parcel Serv.*, 575 U.S. 206 (2015).

As the Supreme Court instructed in *Young*, courts applying the PDA compare the pregnant employee’s ability or inability to work with that of nonpregnant employees who face a similar level of restriction—regardless of the cause of those limitations. *Young*, at 221–23; see also *Legg*

*v. Ulster Cty.*, 820 F.3d 67, 71–72, 76 (2d Cir. 2016). This does not require identical job titles, nor does it allow employers to cherry-pick comparators who conveniently exclude pregnant workers. See *McQuistion v. City of Clinton*, 872 N.W.2d 817, 827, 830 (Iowa 2015). A pregnant employee raises a triable claim under the PDA when her employer accommodates nonpregnant workers who have medically based work restrictions, but refuses a comparable accommodation for pregnancy-related reasons. *Brown v. Metro. Dental Assocs.*, No. 21-cv-851 (CM), 2023 U.S. Dist. LEXIS 139354, at \*13–15 (S.D.N.Y. Aug. 10, 2023). As the Southern District of New York clarified in *Brown v. Metro. Dental Assocs.*, once an employer extends an accommodation to a nonpregnant employee for a medical condition, it cannot lawfully deny that same accommodation to a pregnant employee facing a comparable limitation. *Brown*, at \*11. The analysis in *Brown* centers not on job titles or perceived irreplaceability, but on functional equivalence—whether both employees are similarly restricted in their ability to perform work tasks. *Id.* at \*5, \*13. Moreover, *Brown* rejected the notion that an employer can justify disparate treatment by invoking an employee’s “Bonafide” expertise where a nonpregnant employee with similar limitations was accommodated nonetheless. *Id.* at \*13. In much the same way, the *Gilbert v. Kroger Co.*, No. 19-0496, 2020 U.S. Dist. LEXIS 88176 (W.D. La. May 19, 2020) court reasoned that “similar ability” and “similar inability” turn on whether other employees outside the protected class, or with non-pregnancy-related limitations, have restrictions comparable to the pregnant worker’s restrictions. *Gilbert*, at \*12, \*15. The point is whether those non-pregnant employees are limited in the same or closely similar manner—for example, whether they also needed light duty, lifting restrictions, or schedule modifications. *Id.*

Because Ms. Davis’s medically based travel restriction aligns squarely with Mr. Berto’s medically based travel restriction, Karolek Arts cannot refuse her the accommodation it granted him. See *Bernard v. Sweetwater Sound, Inc.*, No. 1:21-cv-00384-SLC, 2023 U.S. Dist. LEXIS

175296, at \*24–28, \*34–37 (N.D. Ind. Sep. 29, 2023) (employer cannot accommodate a nonpregnant employee’s limitation while denying the same accommodation to a pregnant employee).

### **1. Both Ms. Davis And Mr. Berto Had Comparable Travel Restrictions.**

Under *Young*’s modified *McDonnell-Douglas* standard, Ms. Davis must show a comparator with a similar limitation. *Young*, at 219–23. She did exactly that. Her physician advised her not to travel to Panama due to the risk of contracting the Zika virus while she attempted conception. Davis Dep. at 9–10; Compl. ¶ 76. In turn, Mr. Berto requested—and received—clearance to stay in Illinois to avoid a potential knee infection. Berto Aff. ¶¶ 16–19. Because both faced medically driven travel restrictions, they stood in precisely the same posture for purposes of the PDA.

This is no different from *Bernard*, where a pregnant employee restricted from lifting more than 25 pounds identified a nonpregnant coworker with a similar lifting restriction—and the court found them comparable. *Bernard*, 2023 U.S. Dist. LEXIS 175296, at \*24–28, \*34–37. Here, too, Ms. Davis identified a nonpregnant employee who, like her, needed to forgo travel due to medical concerns.

### **2. The Cause Of The Restriction Is Irrelevant.**

Karolek Arts tries to distinguish Ms. Davis’s pregnancy-related travel restriction from Mr. Berto’s post-surgery restriction, but that argument falls flat. Karolek Dep. at 16–17. Under the PDA, pregnant employees must be treated the same as others “not so affected but similar in their ability or inability to work.” 42 U.S.C. § 2000e(k). As *Legg* and *Gilbert v. Kroger Co.*, No. 19-0496, 2020 U.S. Dist. LEXIS 88176 (W.D. La. May 19, 2020) make clear, the origin of the limitation—pregnancy, injury, illness—is irrelevant; it is the functional limitation that matters. See *Legg*, at 71–72; *Gilbert*, at \*12, \*15.

Thus, it does not matter if Ms. Davis's restriction stemmed from pregnancy-related risks and Mr. Berto's from knee infection-related risks. Both were medically excused from performing an essential function—travel abroad—and both requested the same accommodation. Davis Dep. at 11. Berto Aff. at 7.

### **3. Ms. Davis's Additional Expertise Does Not Defeat Comparability.**

Karolek Arts also hints that Ms. Davis was better qualified—or had unique expertise—necessitating her presence in Panama. Kinney Aff. ¶2; Davis Dep. at 8–9. This quibble is a red herring. *Young* rejects the notion that “similar in their ability or inability to work” hinges on identical titles, roles, or credentials. *Young*, at 219–23. An employer cannot “narrow” the comparator pool by pointing to differences unrelated to the actual restriction, nor may it circumvent the PDA by deeming pregnant employees too essential to avoid the risk that leads to their restriction. See *McQuistion* at 830. Regardless of Ms. Davis’s expertise, her functional inability to travel was parallel to Mr. Berto’s—and Karolek Arts’ accommodation of him but not her is what violates the PDA.

In short, Ms. Davis and Mr. Berto were identically situated in their medically imposed travel limitations. By privileging the nonpregnant worker and refusing Ms. Davis the same accommodation, Karolek Arts contravened 42 U.S.C. § 2000e(k). Because the record conclusively shows Ms. Davis met the PDA’s “similar in their ability or inability to work” criterion, this Court should reverse.

### **4. Karolek Arts’ Selective Willingness To Accommodate Medical Needs Proves Disparate Treatment.**

Karolek Arts’ treatment of Ms. Davis mirrors the unlawful disparity at the heart of *Brown*. The court in *Brown* reasoned that when a nonpregnant employee’s medically based restriction is

promptly accommodated, but the pregnant worker’s identical restriction is dismissed, the employer has engaged in disparate treatment under the PDA.

In *Brown v. Metro. Dental Assocs.*, a pregnant dental assistant who was instructed by her physicians to avoid x-ray radiation and nitrous oxide requested a temporary accommodation. Both Ms. Davis and her male colleague, Mr. Berto, faced medical conditions that constrained their ability to travel for work—Ms. Davis due to the serious, pregnancy-related risk of Zika virus, Mr. Berto due to a knee infection risk. Davis Dep. at 9–10; Berto Aff. at 7–8, ¶¶ 13–19. Yet only Mr. Berto’s limitation was met with compassion and accommodation, while Ms. Davis’s limitation was met with contemptuous disregard. Karolek Dep. at 15–16.

This stark contrast exemplifies the very discrimination the *Brown* court condemned. *Brown*, at \*16. The argument that Ms. Davis was “uniquely qualified” for the Panama installation rings hollow in light of *Brown*’s guidance: a pregnant employee’s health cannot be subordinated to an employer’s preferences when comparable accommodations have already been granted to others. Karolek Dep. at 16. Ms. Davis and Mr. Berto were each “similarly limited in their ability to work”—and under the PDA, that mandates similar treatment; anything less is not just unfair—it is unlawful.

Karolek Arts’ starkly different treatment of Ms. Davis and Mr. Berto demonstrates textbook discrimination. That is exactly what happened here. Karolek Arts granted Mr. Berto’s request to stay in Illinois, yet forced Ms. Davis to go to Panama against her doctor’s warnings. Davis Dep. at 10–12; Karolek Dep. at 15–16. That selective generosity is precisely what the PDA forbids.

## **II. THE KAROLEK ARTS’S PROFFERED REASON FOR REQUIRING MS. DAVIS TO TRAVEL TO PANAMA IS PRETEXTUAL.**

Discrimination claims under the Pregnancy Discrimination Act follow the familiar *McDonnell-Douglas* burden-shifting framework, as clarified in *Young v. United Parcel Serv.*, 575

U.S. 206 (2015). Once an employee makes a *prima facie* showing, the employer must advance a legitimate, non-discriminatory reason. *Id.* at 206, 208. The employee then bears the burden of demonstrating that this reason is a mere cover for discrimination—i.e., pretext. *Id.* at 213. “Pretext” exists where the employer’s explanation is either *false* or so suspect that a jury could conclude discrimination was the real motive. *Id.* at 208. Here, Ms. Davis has put forth ample evidence that the rationale offered by her employer, Ms. Katrina Karolek—namely, that only Ms. Davis could install the Waterways sculpture—was concocted to hide pregnancy-based discrimination.

In *Fuentes v. Perskie*, 32 F.3d 759, 764–65 (3d Cir. 1994), the Third Circuit held that to survive summary judgment, a plaintiff must produce evidence sufficient for a factfinder to either disbelieve the employer’s purported reason or conclude that discrimination more likely than not motivated the adverse action. *Id.* This can be established by uncovering “weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions” in the employer’s explanation. *Id.* at 764. Although the plaintiff in *Fuentes* could not prevail on suspicious timing and self-serving statements alone, the court recognized that such factors can be decisive where they raise substantial doubt about the employer’s account. *Id.* at 766. Likewise, *Jackson v. J.R. Simplot Co.*, 666 F. App’x 739 (10th Cir. 2016), emphasized that pretext may be shown either (1) by direct proof that discredits the employer’s rationale or (2) by revealing that the employer treated similarly situated employees more favorably, in a manner suggesting the stated reason was “unworthy of credence.” *Id.* at 742, 746–47. In *Jackson*, the plaintiff’s ambiguous medical letters undermined her claim of discriminatory denial of accommodation. *Id.* at 741–42. But the Tenth Circuit made clear that when an employer’s claimed justification is undercut by strong

evidence—especially evidence of disparate treatment among similarly situated employees—a genuine dispute over pretext arises. *Id.* at 742.

In *Forrester v. Rauland-Borg Corp.*, 453 F.3d 416 (7th Cir. 2006), the Seventh Circuit underscored that the central pretext question is whether the employer honestly believed its stated explanation, not whether the employer was factually correct. *Id.* at 417–19. If that explanation shifts, conflicts with the facts, or otherwise appears contrived, a factfinder may reasonably deem it pretextual. *Id.* at 418–19. *Peifer v. Pennsylvania*, 106 F.4th 270 (3d Cir. 2024), reiterates this principle in the context of pregnant employees, holding that when an employer refuses an accommodation it has granted to non-pregnant workers with roughly equivalent limitations, a factfinder may reasonably infer discrimination. *Id.* at 278–80. And *Lilly v. District of Columbia*, 657 F. Supp. 3d 65 (D.D.C. 2023), echoes that a “clear and reasonably specific” rationale can still fail if contradictions or unequal treatment surface that render it “unworthy of credence.” *Id.* at 87–91.

#### **A. Discriminatory Animus May Be Inferred Where the Employer’s Explanation Shifts or Fails to Square with the Facts.**

*Forrester v. Rauland-Borg Corp.* directs courts not to second-guess whether an employer was merely mistaken; rather, the question is whether the employer’s stated reason was honestly believed. 453 F.3d 416, 417–19 (7th Cir. 2006). Here, the flimsy premise that Ms. Davis alone had to make the trip—when Mr. Berto undisputedly had the expertise—belies any honest belief in that rationale. *Id.* at 418–19. Notably, the court in *Peifer v. Pennsylvania*, 106 F.4th 270 (3d Cir. 2024) emphasized that an employer’s changing or selectively applied justifications can raise a fact question on pretext, particularly when the employer grants comparable accommodations to non-pregnant employees while denying them to pregnant workers of roughly equivalent limitations. *Id.* at 278–79.

That is exactly what happened here: the record shows that Karolek Arts indulged Mr. Berto’s fear of possible reinfection yet rebuffed Ms. Davis’s far more pressing Zika concerns—despite global public-health warnings. Just as in *Peifer*, a reasonable factfinder would consider this glaring double standard a strong sign that pregnancy-based discrimination lurked beneath Karolek Arts’s supposed “business need.”

**B. Ms. Davis Presents Strong Evidence of Unequal Treatment Compared to a Similarly Situated Male Colleague.**

In *Jackson v. J.R. Simplot Co.*, 666 F. App’x 739, 742 (10th Cir. 2016), the plaintiff could not demonstrate pretext because her own ambiguous medical letters left the employer uncertain about whether accommodation was even required. *Id.* at 741–42. Here, there is no such ambiguity: Ms. Davis provided a concrete physician warning about Zika’s severe impact on pregnant women. Davis Dep. at 10. Meanwhile, her male colleague secured the exact same non-travel accommodation based on a “chance” his knee infection might recur—even though by late February 2023, he was “working full-time again,” rendering the threat of reinjury no more certain than Ms. Davis’s legitimate Zika concerns. Berto Aff. ¶ 15, R. at 6.

That stark contrast goes well beyond “suspicious timing” and cuts to the heart of whether Karolek Arts was selectively granting accommodations in a manner that indicates bias. See *Jackson*, at 746–47 (treating similarly situated colleagues differently suggests an employer’s justification is “unworthy of credence”).

**C. The “Legitimate, Non-Discriminatory” Excuse Fails the *Lilly* Standard for Specificity and Credibility.**

Finally, in *Lilly v. District of Columbia*, 657 F. Supp. 3d 65 (D.D.C. 2023), the court stressed that a legitimate explanation must be “clear and reasonably specific,” and that any inconsistency or unequal treatment may show the reason is “unworthy of credence.” *Id.* at 87–91.

Here, Karolek Arts's claim that "no one else" could fill Ms. Davis's role crumbles under the undisputed testimony that Mr. Berto was sufficiently qualified to "sign off" on Ms. Davis's final decisions. Berto Aff. ¶ 12, R. at 7; Davis Dep. at 10–11. Indeed, while Ms. Davis was compelled to travel to Panama at great personal risk, Berto remained safe in Illinois, undercutting the employer's one-size-fits-all business-necessity refrain. Such contradictions easily permit an inference that Karolek Arts's reason is little more than a mask for unlawful animus. *See Lilly*, 657 F. Supp. 3d at 87–91.

**D. Severe Harm to Ms. Davis Counsels Against Accepting Employer's "Business Necessity" at Face Value.**

Ms. Davis was not simply inconvenienced—she was forced to delay family building until after age forty and now bears a dramatically reduced likelihood of conceiving naturally, all due to a risk the employer could have prevented with minimal disruption. Davis Dep. at 12. As the court in *Forrester* recognized that while an employer need not act as a super-personnel department revisiting each scheduling choice, the law requires that such decisions be free from dissembling or favoritism. *Forrester*, at 417.

Given Karolek Arts's readiness to accommodate Mr. Berto's personal medical concerns and refusal to accommodate Ms. Davis's pregnancy-related vulnerability, a rational trier of fact could infer that the reason proffered—"only Ms. Davis could install this sculpture"—was never honestly believed or was at least insufficient to justify the stark difference in treatment.

CONCLUSION

In sum, Ms. Davis has presented compelling evidence that she was denied the same work accommodation granted to a similarly situated male colleague, thereby establishing a *prima facie* case of pregnancy discrimination under *Young v. UPS* and *McDonnell Douglas*. By showing that

her employer's stated business justification may be a "deliberate falsehood" in *Forrester*, riddled with "weaknesses, implausibilities, or inconsistencies" in *Fuentes*, and selectively applied to favor non-pregnant employees in *Jackson*, Ms. Davis raises a genuine dispute of material fact regarding pretext. Thus, when viewed through the lens of *Bernard* and *Brown*, the totality of the record supports the conclusion that Ms. Karolek violated the Pregnancy Discrimination Act by treating Ms. Davis less favorably than her male counterpart, warranting denial of summary judgment and entitlement to relief under Title VII.