

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FT. WORTH DIVISION**

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U.S. PASTOR COUNCIL, et al.,

Plaintiffs,

v.

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION, et al.,

Defendants.

Case No. 4:18-cv-00824-O

**MOTION FOR LEAVE TO FILE JOINT STATUS REPORT OUT OF TIME**

Defendants hereby respectfully request that the Court accept the Joint Status Report attached herewith out of time, on this date, March 12, 2019. Undersigned counsel regrets any inconvenience caused to the Court by this belated filing, and apologizes for failing to meet the schedule set by the Court. This error occurred when undersigned counsel erroneously recorded the task as completed on his “to-do” list upon completing the preparation of the Joint Status Report (a task that counsel for the parties had agreed would be assigned to him), rather than upon filing of the document, as should have occurred.

Undersigned counsel acknowledges that this Court takes the deadlines it sets seriously and will ensure that subsequent filings are timely.

A proposed order, and the Joint Status Report for which leave to file is sought, are attached.

Dated: March 12, 2019

Respectfully submitted,

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Assistant Attorney General

JOSHUA GARDNER  
Senior Litigation Counsel

/s/  
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UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

**U.S. Pastor Council**, et al.

Plaintiffs,

v.

**Equal Employment Opportunity  
Commission**, et al.,

Defendants.

Case No. 4:18-cv-00824-O

**[PROPOSED] ORDER GRANTING MOTION FOR LEAVE TO FILE  
OUT OF TIME**

Defendants' motion for leave to file the joint status report out of time is granted.

The joint status report attached to Defendants' motion is hereby **DEEMED FILED**.

Dated: \_\_\_\_\_, 2019

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REED O'CONNOR  
UNITED STATES DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT  
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**JOINT REPORT REGARDING CONTENTS OF SCHEDULING  
ORDER**

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Pursuant to this Court’s Order of December 18, 2018, ECF No. 10 (“Order”), the Court’s further Order of January 29, 2019, ECF No. 15, and Rule 26(f) of the Federal Rules of Civil Procedure, the attorneys for the parties conducted conferences, by both telephone and e-mail, in accordance with Rule 26(f).<sup>1</sup> The parties conferred regarding the topics set forth in the Order, and report as follows, first with an overall statement regarding the litigation, then with the separate numbered paragraphs required by the Order.

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<sup>1</sup> Mindful of the Court’s encouragement that “a personal face-to-face meeting is usually . . . most productive,” counsel are continuing to discuss the scheduling of an in-person meeting in light of their respective schedules, geography, and the cost in time and treasure of a meeting. Counsel remain optimistic that an in-person meeting may be arranged in the near future.

### **Overall Statement Regarding this Litigation**

This case poses exclusively legal questions that are not readily amenable to resolution through agreement. The parties therefore do not believe that there is currently a possibility of settlement, either through direct discussions or alternative dispute resolution. Because the parties agree that these matters are legal, not factual, they do not foresee, at this time, significant factual disputes or the need for extensive discovery. Plaintiffs are considering whether to amend their complaint, and in light of the possibility of amendment and the threshold jurisdictional questions presented in Defendants' motion to dismiss, the parties believe it would be more efficient and beneficial for the Court if the parties submitted a proposal containing further case-management deadlines following the resolution of Defendants' motion to dismiss and any Rule 12 motion brought with regard to an amended complaint. The parties respectfully request that they be permitted to confer and offer a further proposed schedule no later than 30 days after the resolution of such motion.

### **Numbered Paragraphs Addressing Specific Topics**

1. Brief Statement of Claims and Defenses.
  - a. Claims. There are two categories of Plaintiffs in this action: (1) an organization comprising approximately 1,000 member churches, and a putative class of such churches; and (2) a religiously-operated business, and a putative class of such businesses. Each of these categories of Plaintiffs presents two claims, both individually and as class claims. The first claim is that, on the basis of sincere religious

beliefs, the Religious Freedom Restoration Act (“RFRA”) requires that plaintiffs be exempted from the application of Title VII to sexual orientation or gender identity discrimination. The second claim is identical to the first claim, except that it relies on the First Amendment, rather than RFRA, as the basis for relief.

- b. Defenses. As to the Attorney General, there is no standing, because the long-held position of the Department of Justice is that Title VII does not reach discrimination based on sexual orientation and does not prohibit discrimination based on gender identity, and because the Department of Justice does not enforce Title VII against private employers such as Plaintiffs. As to the EEOC, there is no standing because Plaintiffs have not established an injury based on a past or imminently-likely enforcement action, have not established that there is a substantive rule issued by EEOC that imposes an obligation on Plaintiffs, have not established that any injury would be traceable to the single EEOC policy document identified in the Complaint. In addition, Plaintiffs’ claims against the EEOC are not ripe because there is, as yet, no actual and immediate controversy between the EEOC and Plaintiffs.

2. Proposed Time Limit for Motions for Leave to Join Other Parties.

May 31.

3. Proposed Time Limit to Amend Pleadings.

June 30.

4. Proposed Time Limits for Future Motions, Including Dispositive Motions.

As set forth above, the parties propose to confer and offer a further proposed schedule no later than 30 days after the resolution of Defendants' motion to dismiss and any Rule 12 motion brought with regard to an amended complaint.

5. Time Limit for Initial Designation of Experts.

The parties do not anticipate expert designations will be necessary in this action.

6. Time Limit for Initial Designation of Experts.

The parties do not anticipate expert discovery will occur in this action.

7. Time Limit for Objections to Experts.

The parties do not anticipate expert discovery will occur in this action.

8. Plan and Schedule for Discovery.

Because this action presents legal and not factual issues, the parties do not anticipate that merits discovery will occur in this action. Defendants reserve the right to seek a 60-day extension of briefing regarding any jurisdictional defense for the purpose of limited jurisdictional discovery or a 90-day extension of briefing regarding any class-certification motion for the purpose of limited discovery regarding class certification.

9. Changes to the Limitations on Discovery.

No changes in discovery limitations are necessary.

10. Proposed means for disclosure or discovery of electronically stored information ("ESI").

The parties do not anticipate any ESI discovery in this action.

11. Proposals regarding the handling and protection of privileged material.

The parties do not anticipate that any privileged material will be at issue in this litigation.

12. Proposed trial date, estimated number of days required for trial, and whether a jury has been demanded.

As set forth above, the parties respectfully request that they be permitted to confer and offer a further proposed schedule no later than 30 days after the resolution. However, because this case presents legal, not factual, issues, the parties anticipate that this case is likely to be resolved through motions practice, rather than through a trial. In the event of a trial, no jury has been demanded.

13. Proposed Date for Further Settlement Negotiations.

As set forth above, the parties do not believe that there is currently a possibility of settlement, either through direct discussions or alternative dispute resolution.

14. Rule 26(a) disclosures.

The parties do not believe there are materials to be disclosed pursuant to Rule 26(a).

Dated: March 5, 2019

Respectfully submitted,

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ERIN NEALY COX  
United States Attorney

/s/ Eric J. Soskin

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