

**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

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**CONDITIONAL MOTION TO STAY PROCEEDINGS**

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Pursuant to this Court’s direction and Order at the April 9, 2019 Status Conference, the parties have completed briefing on Defendants’ Motion to Dismiss for Lack of Jurisdiction. *See* ECF Nos. 27, 28. Consistent with the undisputed and venerable principle that “[w]ithout jurisdiction the court cannot proceed at all in any cause,” *e.g.*, *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 94 (1998), the court is now positioned to consider whether jurisdiction exists over this action in light of the issues set forth in Defendants’ Motion.

However, during the pendency of the briefing schedule (and as noted in the parties’ filings), the Supreme Court granted certiorari to consider whether the prohibition in Title VII on “sex” discrimination encompasses discrimination based on sexual orientation or gender identity. The questions before the Court in those cases are closely related to the claims presented by Plaintiffs here, and—even if this Court concludes that

jurisdiction currently exists over this action—it is likely that the nature of the legal questions in this case as well as the contours of further proceedings will be affected by the outcome of the certiorari proceeding. Accordingly, for the reasons set forth below, Defendants hereby move for a conditional stay, *i.e.*, a stay of these proceedings in the event that the Court determines that it has jurisdiction.<sup>1</sup>

**I. The Supreme Court Is Reviewing Questions That Are Central to This Action.**

On April 22, 2019, the Supreme Court granted certiorari in three separate cases related to the interpretation of Title VII: *Harris Funeral Homes v. EEOC*, No. 18-107, 2019 WL 1756679; *Altitude Express v. Zarda*, No. 17-1623, 2019 WL 1756678 (Apr. 22, 2019), and *Bostock v. Clayton County, Ga.*, No. 17-1618, 2019 WL 1756677 (Apr. 22, 2019). In *Harris Funeral Homes*, the Court’s grant is to address “the following question: Whether Title VII prohibits discrimination against transgender people based on (1) their status as transgender or (2) sex stereotyping under *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989).” The petitions in *Altitude Express* and *Bostock* have been consolidated for briefing and oral argument. In *Altitude Express*, the Court’s grant is to address the question whether “the prohibition in Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(a) (1), against employment discrimination ‘because of . . . sex’ encompasses discrimination based on an individual’s sexual orientation,” and in *Bostock*, the question presented is “[w]hether discrimination against an employee because of sexual orientation constitutes prohibited employment discrimination ‘because of... sex’ within the meaning of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2.”

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<sup>1</sup> Counsel for Defendants has consulted with Plaintiffs’ counsel regarding this motion and Plaintiffs oppose the requested relief and plan to file a response setting forth their position in further detail.

From the outset, Plaintiffs have highlighted the importance of the questions that are now before the Supreme Court to this action. The first sentence of the Amended Complaint, ECF No. 19, alleges that “[t]he Equal Employment Opportunity Commission claims that Title VII outlaws employment discrimination on account of sexual orientation or gender identity.” ECF No. 19 at 1. The Amended Complaint continues by setting forth a “Statement of Facts” that quotes extensively from the text of Title VII, explains the EEOC’s position regarding Title VII’s application to “sexual orientation or gender identity,” *id.* at ¶ 11, and notes that the EEOC interprets these provisions to support its “demands that employers recognize same-sex marriage on the same terms as opposite-sex marriage,” its insistence “that employers allow employees into restrooms that correspond to the ‘gender identity’ that they assert,” and its requirement “to post notices describing the provisions of Title VII that govern their workplace” (potentially including gender identity and sexual orientation). *Id.* at ¶¶ 12-13, 18. And while Plaintiffs’ specific claims do not include a direct challenge to EEOC’s Title VII interpretations, each of their claims for a religious exemption rooted in RFRA and/or the First Amendment derives from EEOC’s “interpretation of Title VII.” ECF No. 19 at ¶ 44; *see id.* at ¶¶ 46, 49, 59, 70-71.

The parties’ briefing on Defendants’ motion to dismiss for lack of jurisdiction underscores the centrality of the Title VII interpretations subject to certiorari review to this action. *See generally* Br. in Support of Defendants’ Renewed Motion to Dismiss, ECF No. 29 (“MTD Br.”); Br. in Opp. to Defendants’ Renewed Motion to Dismiss, ECF No. 31 (“Opp. Br.”). The first four post-introductory pages of Defendants’ brief are dedicated to explaining the inclusion of “sex” discrimination in Title VII and the history of various interpretations of this provision by Defendants and the Judicial Branch. *See*

MTD Br. at 3-6. The Defendants further discuss these interpretations in several of the argument sections, including Part I.A, Part I.C, and Part II. *See id.* Meanwhile, Plaintiffs address the interpretations of Title VII as to same-sex marriage and gender identity in the very first sentence and again at numerous points in the arguments presented therein. *See, e.g.,* Opp. Br. at 1, 3, 7-8. Indeed, Section I.B of Plaintiffs' brief posits that Plaintiffs' alleged injury from their perceived duty to comply with the EEOC's Title VII interpretation would last only until such time as that interpretation is "repudiated by a higher source of civil authority," such as the Supreme Court. *Id.* at 12. And Section II of Plaintiffs' brief speculates about possible future changes in interpretation of Title VII by the Department of Justice. The parties' briefs make clear that the questions currently pending before the Supreme Court will play a key role in this case.

Indeed, depending on how the Supreme Court resolves the certiorari proceedings, it is possible that Plaintiffs may obtain a substantial portion of the relief sought in this action without the need for any action by this Court. For example, Plaintiffs seek an order that would "enjoin the EEOC from enforcing Title VII in a manner that prohibits the plaintiffs . . . from operating their churches and businesses in accordance with their sincere religious beliefs that homosexual behavior is immoral." ECF No. 19 at ¶ 88(d). The Amended Complaint explains that this injunction is needed in part because the EEOC has interpreted Title VII's prohibition on "'sex' discrimination to include discrimination on account of sexual orientation." *Id.* at ¶ 11; *see id.* at ¶ 12 (explaining that EEOC treats a failure to "recognize same-sex marriage on the same terms as opposite-sex marriage" as an "[e]xample[] of sex discrimination involving sexual orientation"). If the Supreme Court were to resolve the question granted in *Altitude*

*Express* by holding that Title VII’s prohibition against employment discrimination “because of . . . sex” does not encompass discrimination based on an individual’s sexual orientation, that would provide Plaintiffs with a significant portion of the relief sought because the EEOC could no longer interpret or enforce Title VII in a contrary manner. Likewise, if the Supreme Court were to resolve the question granted in *Harris Funeral Homes* by determining that Title VII does not prohibit discrimination against transgender people on the basis of transgender status or sex stereotyping under *Price Waterhouse*, that would provide Plaintiffs with another significant portion of the relief sought.<sup>2</sup>

## **II. If the Court Has Jurisdiction Over This Action, a Stay Is Appropriate.**

### **A. The District Court Has Broad Discretion to Stay Proceedings**

“The district court has a general discretionary power to stay proceedings before it in the control of its docket and in the interests of justice.” *McKnight v. Blanchard*, 667 F.2d 477, 479 (5th Cir. 1982). This authority derives from “the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel and for litigants.” *Landis v. N Am. Co.*, 299 U.S. 248, 254 (1936). When determining whether a stay is appropriate, “it is the district court’s responsibility to weigh the competing interests of the parties relating to the appropriateness of a stay.” *Wolf Designs, Inc. v. Donald McEvoy Ltd., Inc.*, 341 F. Supp. 2d 639, 642 (N.D. Tex. 2004); see *Franciscan Alliance, Inc. v. Burwell*, Case No. 7:16-cv-00108-O, 2016 WL 9281524 at \*2 (N.D. Tex. Nov. 1, 2016) (“District courts are to

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<sup>2</sup> As explained in Defendants’ jurisdictional brief, such an outcome is well within the range of likely possibilities, given that it is the “longstanding position of the Department of Justice,” MTD Br. at 5, and was, “[f]or four decades . . . the uniform law of the land.” *Wittmer v. Phillips 66 Co.*, 915 F.3d 328, 333 (5th Cir. 2019) (Ho, J., concurring).

‘weigh competing interests and maintain an even balance’ in deciding whether to issue a stay” (citing *Landis*, 299 U.S. at 254)); *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1110 (9th Cir. 2005) (courts may consider “the possible damage which may result from the granting of a stay, the hardship or inequity . . . in being required to go forward, and the orderly course of justice measured in terms of the simplifying or complicating of issues, proof, and questions of law which could be expected to result from a stay”).

Significantly, “[a] court is within its discretion to grant a stay when a related case with substantially similar issues is pending before a court of appeals.” *Greco v. Nat’l Football League*, 116 F. Supp. 3d 744, 761 (N.D. Tex. 2015); see *Hisler v. Gallaudet Univ.*, 344 F. Supp. 2d 29, 35 (D.D.C. 2004) (“a trial court has broad discretion to stay all proceedings in an action pending the resolution of independent proceedings elsewhere”). Generally, a stay pending resolution of proceedings elsewhere is appropriate because “a trial court may, with propriety, find it is efficient for its own docket and the fairest course for the parties to enter a stay of an action before it, pending resolution of independent proceedings which bear upon the case.” *Leyva v. Certified Grocers of Cal., Ltd.*, 593 F.2d 857, 863–64 (9th Cir. 1979).

**B. A Stay is Appropriate Where Supreme Court Proceedings May Significantly Shape Further Proceedings in District Court.**

In light of these principles, “[i]t is not uncommon for lower courts to stay proceedings in pending matters when cases containing material issues are awaiting determination by the United States Supreme Court.” *Burke v. Alta Colleges, Inc.*, No. 11-cv-02990-WYD-KLM (D. Colo. Feb. 15, 2012) (granting stay where “it is reasonable to conclude that the [Supreme Court’s] decision will likely impact [the] case in some fashion”). Such stays are appropriate where the certiorari grant involves an issue

“squarely implicated” in the case at bar. *Larson v. Trans Union, LLC*, 2015 WL 3945052 at \*8 (N.D. Cal. June 26, 2015) (determining that if a stay were not granted, the court and the parties “would all face the risk of dedicating resources to proceedings” needlessly); *see also Coombs v. Diguglielmo*, No. Civ. 04-1841, 2004 WL 1631416 at \*1-\*2 (E.D. Pa. July 21, 2004) (stay granted in light of pending petition for certiorari in case that may have “significant impact” on case before the court). District courts also stay merits proceedings based on the grant of certiorari in another case where the Supreme Court’s actions “will likely provide substantial clarity for lower courts” with respect to the legal issues involved. *Versata Software, Inc., v. Dorado Software, Inc.*, 2014 WL 1330652 at \*3 (E.D. Cal. Mar. 28, 2014). In such a situation, “it would be a waste of judicial resources for the case to move forward” while those questions are pending before the Supreme Court. *See id.*; *see also Tax Analysts and Advocates v. IRS*, 405 F. Supp. 1065, 1067-68 (D.D.C. 1975) (stay of proceedings warranted because pending certiorari petition could result in binding precedent being effectively overruled).

Here, a “stay will facilitate guidance by the ultimate arbiter” of the meaning of Title VII and thereby “assist this Court in resolving” the questions before it. *Centeno v. Inslee*, 310 F.R.D. 483, 491 (W.D. Wash. 2015) (granting stay pending Supreme Court resolution of issue described as “central open legal question in the case”). In particular, as noted above, if the Supreme Court determines that Title VII’s prohibition on sex discrimination does not include discrimination on the basis of gender identity or sexual orientation, Plaintiffs will obtain at least a significant portion of the relief they are seeking. To the extent that Plaintiffs would be able to establish standing for any further relief, proceedings in this matter would still be streamlined by the Supreme Court’s decision.

**C. A Conditional Stay Would Significantly Enhance the Efficient Adjudication of This Matter.**

A stay pending resolution by the Supreme Court of the questions before it will advance the efficient resolution of this matter. First, the legal questions in this case turn on the EEOC's interpretation of the meaning of Title VII's prohibition on "sex" discrimination, the issue before the Supreme Court. Plaintiffs are not seeking a religious exemption from *all* of Title VII, but rather, from "[EEOC's] interpretation of Title VII." ECF No. 19 at ¶¶ 44-46; 49-50; 58-61. When recognizing the existence of a ministerial exception to Title VII in its opinion in *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*, 565 U.S. 171 (2012), the Supreme Court emphasized that evaluations of exceptions in similar contexts will involve careful consideration of the "circumstances if and when they arise," and whether this case presents such circumstances will be affected by any decision by the Supreme Court.

Other legal questions raised by Plaintiffs will likewise be shaped by any decision: for example, Plaintiffs challenge the requirement that Title VII posters be placed in their workplaces, in part based on the logic that "[e]mployees . . . will assume . . . that [Plaintiffs are] legally required to extend[] spousal employment benefits to same-sex couples, and allow[] employees into restrooms reserved for the opposite biological sex." ECF No. 19 at ¶ 60. But whether employees "will [so] assume" is likely to change based on any Supreme Court decision on this subject.

Further, the next procedural step in this litigation is likely to be class certification. *See* ECF No. 19 at ¶ 88 (seeking certification of three classes of plaintiffs); Fed. R. Civ. P. 23(c)(1)(A) (specifying that class certification be resolved "[a]t an early practicable time"). Although Plaintiffs' proposed classes are defined without reference to the

interpretation of Title VII, one of Plaintiffs' three classes is defined in part by reference to the Supreme Court's decision in *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015), *i.e.*, as "private employers . . . that object to the constitutional reasoning in *Obergefell*." That characteristic appears to be relevant to Plaintiffs' claims only to the extent that Title VII is interpreted to include discrimination on the basis of sexual orientation. Thus, the certification process expected to unfold at the next stage of litigation is also likely to be shaped by a Supreme Court decision addressing the current questions presented.

Under these circumstances, it would advance the "economy of time and effort," *Landis*, 299 U.S. at 254, for the parties and this Court to await action by the Supreme Court before proceeding to brief and resolve legal issues in the instant action. A stay of proceedings will avoid the likelihood of repetitive briefing in which the parties find it necessary to reframe and reargue the same issues in a new set or supplemental set of briefs that address any developments in controlling law. Likewise, it would "disrupt the ordinary course of justice," *Mirant*, 398 F.3d 1110, and potentially waste resources, for the Court to opine on the legal issues presented by the current state of the law, only to revisit its analysis shortly thereafter in light of any opinion by the Supreme Court.<sup>3</sup>

**D. The Other Pertinent Factors Support The Grant of Defendants' Conditional Motion For a Stay.**

In addition to ensuring the efficient adjudication of this matter, the "competing interests of the parties," *Wolf Designs*, 341 F. Supp. 2d at 64, favor, or at a minimum, are neutral with regard to the proposed stay. As one district court explained, "because [a] stay will last no longer than the year or so it will take the Supreme Court to decide," any

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<sup>3</sup> This consideration may also affect the detail which this Court may judge it efficient to provide in acting on the pending motion to dismiss. Defendants have provided a proposed order that would address both of Defendants' motions in a combined fashion.

harm to Plaintiffs will be limited. This is particularly true where, as here, the EEOC interpretation being challenged already has been public for several years, and Plaintiffs have not alleged that the EEOC has attempted to enforce, or threatened to enforce, that interpretation against them in the intervening time. *See* ECF No. 19 at ¶ 12 (citing *Macy v. Holder*, 2012 WL 1435995 (Apr. 20, 2012); *Baldwin v. Foxx*, 2015 WL 4397641 (July 16, 2015); MTD Br. at 5 (discussing EEOC’s website posting of its interpretation in 2016). Nor would there be any prejudice in the event that the Supreme Court does not act in a manner that affects this litigation: in that case, there will be no change in the parties’ respective legal positions.

Here, the interests of both parties counsel for avoiding any need for uneconomical or duplicative briefing. In addition, Defendants’ interest in a stay pending Supreme Court action on the interpretation of Title VII’s prohibition on “sex” discrimination is heightened by the divergent interpretations of this provision among Defendants. *See generally* MTD Br. at 3-6. Should the Supreme Court provide a definitive interpretation of Title VII, that would likely facilitate the activities of Defendants during further proceedings. And the “economy of time and effort” that would be served by a stay would inure to the benefit of both parties. For these reasons, the “competing interests of the parties” support, and do not mitigate against, the grant of a stay.

### CONCLUSION

For the foregoing reasons, in the event that this Court determines that jurisdiction exists over this action, it should stay further proceedings pending resolution of the Supreme Court proceedings in *Harris Funeral Homes*, *Altitude Express*, and *Bostock*.

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Respectfully submitted,

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