

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

**Bear Creek Bible Church, et al.,**

Plaintiffs,

v.

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

Defendants.

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

**NOTICE TO THE COURT AND PROPOSED ORDER**

The plaintiffs respectfully submit a proposed order to the Court granting in part and denying in part the plaintiffs' motion for class certification, which the Court granted in part and denied in part in its opinion and order of November 22, 2021 (ECF No. 124). The proposed order that we have attached complies with the requirements of Fed. R. Civ. P. 23.

We have conferred with counsel for the defendants and they do not intend to submit a competing proposed order on class certification. But the defendants oppose the plaintiffs' proposed class-certification order for the same reasons that they opposed the plaintiffs' motion for class certification.

Respectfully submitted.

H. DUSTIN FILLMORE III  
Texas Bar No. 06996010  
CHARLES W. FILLMORE  
Texas Bar No. 00785861  
The Fillmore Law Firm, L.L.P.  
201 Main Street, Suite 801  
Fort Worth, Texas 76102  
(817) 332-2351 (phone)

/s/ Jonathan F. Mitchell  
JONATHAN F. MITCHELL  
Texas Bar No. 24075463  
Mitchell Law PLLC  
111 Congress Avenue, Suite 400  
Austin, Texas 78701  
(512) 686-3940 (phone)  
(512) 686-3941 (fax)  
jonathan@mitchell.law

(817) 870-1859 (fax)  
dusty@fillmorefirm.com  
chad@fillmorefirm.com

Dated: December 12, 2021

*Counsel for Plaintiffs and  
the Proposed Classes*

**CERTIFICATE OF CONFERENCE**

I certify that on December 12, 2021, I conferred with Ben Takemoto, counsel for the defendants, and he informed me that the defendants oppose the plaintiffs' proposed class-certification order for the same reasons that they opposed the plaintiffs' motion for class certification.

/s/ Jonathan F. Mitchell  
JONATHAN F. MITCHELL  
*Counsel for Plaintiffs and  
the Proposed Classes*

**CERTIFICATE OF SERVICE**

I certify that on December 12, 2021, I served this document through CM/ECF

upon:

BENJAMIN T. TAKEMOTO  
Trial Attorney  
United States Department of Justice  
Civil Division, Federal Programs Branch  
P.O. Box No. 883, Ben Franklin Station  
Washington, DC 20044  
(202) 532-4252 (phone)  
(202) 616-8460 (fax)  
benjamin.takemoto@usdoj.gov

*Counsel for Defendants*

/s/ Jonathan F. Mitchell  
JONATHAN F. MITCHELL  
*Counsel for Plaintiffs and  
the Proposed Classes*

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

**Bear Creek Bible Church, et al.,**

Plaintiffs,

v.

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

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

Defendants.

**[PROPOSED] ORDER GRANTING IN PART AND DENYING IN  
PART PLAINTIFFS' MOTION FOR CLASS CERTIFICATION**

The plaintiffs' motion for class certification is granted in part and denied in part. The Court certifies the following two classes under Rule 23(b)(2) of the federal rules of civil procedure:

**I. THE OBJECTING RELIGIOUS-EMPLOYER CLASS**

The Court certifies the following class under FRCP 23(b)(2):

Every employer in the United States that: (1) opposes homosexual or transgender behavior for sincere religious reasons; and (2) is not exempt from Title VII's prohibition on sex discrimination under 42 U.S.C. § 2000e-1(a).

Braidwood Management Inc. is appointed class representative. Jonathan F. Mitchell, Gene P. Hamilton, Charles W. Fillmore, and H. Dustin Fillmore are appointed class counsel under FRCP 23(g). The class claims are:

1. Whether the Religious Freedom Restoration Act compels exemptions to *Bostock's* interpretation of Title VII;
2. Whether the Free Exercise Clause compels exemptions to *Bostock's* interpretation of Title VII;

3. Whether the First Amendment right of expressive association compels exemptions to *Bostock's* interpretation of Title VII;
4. Whether Title VII, as interpreted in *Bostock*, prohibits or allows employers to discriminate against bisexual employees;
5. Whether Title VII, as interpreted in *Bostock*, allows employers to establish sex-neutral rules of conduct that have the effect of excluding practicing homosexuals or transgender individuals from employment.

## II. THE OBJECTING RELIGIOUS AND NON-RELIGIOUS EMPLOYER CLASS

The Court certifies the following class under FRCP 23(b)(2):

Every employer in the United States that: (1) opposes homosexual or transgender behavior for religious or non-religious reasons; and (2) is not exempt from Title VII's prohibition on sex discrimination under 42 U.S.C. § 2000e-1(a).

Braidwood Management Inc. is appointed class representative. Jonathan F. Mitchell, Gene P. Hamilton, Charles W. Fillmore, and H. Dustin Fillmore are appointed class counsel under FRCP 23(g). The class claims are:

1. Whether Title VII, as interpreted in *Bostock*, prohibits or allows employers to discriminate against bisexual employees;
2. Whether Title VII, as interpreted in *Bostock*, allows employers to establish sex-neutral rules of conduct that have the effect of excluding practicing homosexuals or transgender individuals from employment.

Dated: \_\_\_\_\_, 2021

---

REED O'CONNOR  
UNITED STATES DISTRICT JUDGE