

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

**PLAINTIFFS' OPPOSED MOTION TO ENTER A CLASS-
CERTIFICATION ORDER THAT COMPLIES WITH THE
REQUIREMENTS OF RULE 23**

The Court's memorandum opinion and order of November 21, 2021 (ECF No. 124) granted in part and denied in part the plaintiffs' motion for class certification. The plaintiffs respectfully ask the Court to enter a separate order on its class-certification ruling that complies with the requirements of Rule 23.

The plaintiffs respectfully believe that Rule 23(c)(1)(B) requires the Court to appoint class counsel in its certification order. *See* Fed. R. Civ. P. 23(c)(1)(B) ("An order that certifies a class action must define the class and the class claims, issues, or defenses, and must appoint class counsel under Rule 23(g)."). The plaintiffs also respectfully ask the Court to include language that explicitly defines the two certified classes as well as the "class claims, issues, or defenses," as required by Rule 23(c)(1)(B), to avoid any possible collateral attack on the classwide judgment that the Court has issued. *See, e.g., Lewis v. City of Chicago, Illinois*, 702 F.3d 958, 962 (7th Cir. 2012) (holding that class-certification orders must include all material required by Rule 23(c)(1)(B)).

We have attached a proposed order to this motion that includes the language that the plaintiffs believe should be included in the class-certification order under Rule

23(c)(1)(B). We respectfully ask the Court to issue an order that includes this or similar language. We have conferred with counsel for the defendants and they continue to oppose the plaintiffs' proposed class-certification order for the same reasons that they opposed the plaintiffs' motion for class certification and because the Court has entered final judgment and this case is closed.

Respectfully submitted.

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Dated: December 22, 2021

*Counsel for Plaintiffs and
the Proposed Classes*

CERTIFICATE OF CONFERENCE

I certify that on December 22, 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 22, 2021, I served this document through CM/ECF

upon:

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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