

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' MOTION TO AMEND FINAL JUDGMENT

The Court's amended memorandum opinion and order of November 22, 2021, granted in part and denied in part the plaintiffs' motion for class certification, and it granted in part and denied in part the parties' competing motions for summary judgment (ECF No. 124). On December 14, 2021, the Court entered final judgment (ECF No. 126). The plaintiffs respectfully ask the Court to consider amending its final judgment in the following respects.

First, the plaintiffs respectfully believe that the Court's ruling on the class-certification issues should be memorialized in an order that complies with the requirements of Rule 23. We filed a motion for entry of such an order earlier today (ECF No. 129). The plaintiffs also respectfully request that the Court define the scope of the certified classes in its judgment, because a judgment should be self-contained and should not require resort to documents outside the judgment. *See Local Union No. 1992 of the Int'l Brotherhood of Electrical Workers v. The Okonite Co.*, 358 F.3d 278, 284 (3d Cir. 2004) (“[A] judgment must, generally speaking, ‘be a self-contained document, saying who has won and what relief has been awarded’” (quoting James Wm. Moore et al., *Moore's Federal Practice* ¶ 58.05[4][a] (3d ed. 2003) (internal quotation marks

omitted)); *Soo Line Railroad Co. v. Escanaba & Lake Superior Railroad Co.*, 840 F.2d 546, 549 (7th Cir. 1988) (“[A] judgment must be self-contained . . . ; it is not enough to refer parties to the court’s opinion.”).

Second, the Court’s judgment describes its rulings on the parties’ motions for summary judgment, but it does not specify the declaratory or injunctive relief to which the plaintiffs are entitled. *See* Fed. R. Civ. P. 54(c) (“Every . . . final judgment should grant the relief to which each party is entitled”); *Soo Line Railroad*, 840 F.2d at 549 (“The judgment entered in this case is defective because it does not specify the relief to which the prevailing parties are entitled. The Soo could not execute on a judgment saying that its motion for summary judgment is granted.”); *Bethune Plaza, Inc. v. Lumpkin*, 863 F.2d 525, 527 (7th Cir. 1988) (“[I]f the opinion contains language awarding declaratory relief, but the judgment does not, the opinion has been reduced to dictum; only the judgment need be obeyed.”); *Bates v. Johnson*, 901 F.2d 1424, 1427–28 (7th Cir. 1990) (“When a judge does not record an injunction or declaratory judgment on a separate document, the defendant is under no judicial compulsion.”); *Rush University Medical Ctr. v. Leavitt*, 535 F.3d 735, 737 (7th Cir. 2008) (“Unless the plaintiff loses outright, a judgment must provide the relief to which the winner is entitled. That motions have been granted is beside the point.”). The proposed judgment that we have attached to this motion awards declaratory and injunctive relief in accordance with the Court’s ruling of November 22, 2021, and it specifies what the defendants may and may not do under this Court’s ruling. *See generally* Fed. R. Civ. P. 65(d)(1)(B)–(C) (requiring every injunction to “state its terms specifically” and “describe in reasonable detail—and not by referring to the complaint or other document—the act or acts restrained or required.”).

Third, the plaintiffs respectfully submit that Bear Creek Bible Church is entitled to a declaratory judgment that section 702(a) of Title VII (42 U.S.C. § 2000e-1(a)) exempts it from the interpretation of Title VII adopted by the EEOC and by the

Supreme Court in *Bostock v. Clayton County*, 140 S. Ct. 1731 (2020), as well as an injunction that restrains the EEOC from enforcing that interpretation of Title VII against Bear Creek. Although the plaintiffs did not ask for this relief in their complaint, a court’s judgment should grant “the relief to which each party is entitled, even if the party has not demanded that relief in its pleadings.” Fed. R. Civ. P. 54(c) (emphasis added); *see also Whole Woman’s Health v. Hellerstedt*, 136 S. Ct. 2292, 2307 (2016). The Court’s opinion of November 22, 2021, unequivocally holds that Bear Creek Bible Church cannot be subjected to the EEOC’s *Bostock*-related edicts under section 702(a); indeed, that is the very *reason* why the Court denied relief on the Bear Creek’s RFRA and First Amendment claims, as well as Bear Creek’s motion for class certification. *See* Amended Memorandum Opinion and Order, ECF No. 124, at 9–12; 42–43; *id.* at 43 (“Because Bear Creek Church is exempt from Title VII pursuant to its terms, its RFRA claim—and all four remaining claims under Title VII—must be dismissed.”). The final judgment should reflect this holding of the Court.

Finally, the plaintiffs respectfully ask the Court to include in its judgment an order that the EEOC amend its existing brochures, guidance documents, technical-assistance documents, interpretative rules, general statements of policy, websites and web pages, and any other agency-created or agency-issued documents regarding Title VII’s application to lesbian, gay, bisexual, or transgender employees, and to include in those documents an explicit acknowledgement of the protections conferred by this Court’s final judgment.

We have attached to this motion a proposed amended final judgment for the Court’s consideration. We have also conferred with counsel for the defendants and they are opposed to this request.

Respectfully submitted.

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Dated: December 22, 2021

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*Counsel for Plaintiffs and
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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 this motion.

/s/ Jonathan F. Mitchell
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CERTIFICATE OF SERVICE

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

upon:

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

Equal Employment Opportunity
Commission, et al.,

Defendants.

[PROPOSED] JUDGMENT

I. BEAR CREEK BIBLE CHURCH

The Court enters judgment in favor of plaintiff Bear Creek Bible Church and against defendants Equal Employment Opportunity Commission; Charlotte A. Burrows, Jocelyn Samuels, Janet Dhillon, Keith E. Sonderling, and Andrea R. Lucas, in their official capacities as chair, vicechair, and commissioners of the Equal Employment Opportunity Commission, and the United States of America. The Court **DECLARES** that section 702(a) of Title VII (42 U.S.C. § 2000e-1(a)) exempts Bear Creek Bible Church from any provision or requirement in Title VII or *Bostock v. Clayton County*, 140 S. Ct. 1731 (2020), that limits an employer's right to:

- (a) Refuse to employ individuals who engage in homosexual behavior or who have a homosexual or bisexual orientation;
- (b) Refuse to employ individuals who are engaged in gender non-conforming behavior, including cross-dressing, transvestism, efforts to change or transition one's gender, or asserting a gender identity that departs from one's biological sex;
- (c) Refuse to recognize same-sex marriage or offer benefits to same-sex partners of their employees;

(d) Enforce sex-specific dress and grooming codes; or

(e) Prohibit employees from entering or using restrooms designated for the opposite biological sex.

It is therefore **ORDERED** that:

1. Defendants Equal Employment Opportunity Commission, Charlotte A. Burrows, Jocelyn Samuels, Janet Dhillon, Keith E. Sonderling, Andrea R. Lucas, and their officers, agents, servants, employees, attorneys, designees, subordinates, and successors in office, as well as any person acting in concert or participation with them, are **ENJOINED** from enforcing or threatening to enforce Title VII in a manner that limits the right of Bear Creek Bible Church to:

(a) Refuse to employ individuals who engage in homosexual behavior or who have a homosexual or bisexual orientation;

(b) Refuse to employ individuals who engage in gender non-conforming behavior, including cross-dressing, transvestism, efforts to change or transition one's gender, or asserting a gender identity that departs from one's biological sex;

(c) Refuse to recognize same-sex marriage or offer benefits to same-sex partners of their employees;

(d) Enforce sex-specific dress and grooming codes; or

(e) Prohibit employees from entering or using restrooms designated for the opposite biological sex.

2. Defendants Equal Employment Opportunity Commission, Charlotte A. Burrows, Jocelyn Samuels, Janet Dhillon, Keith E. Sonderling, Andrea R. Lucas, and their officers, agents, servants, employees, attorneys, designees, subordinates, and successors in office, as well as any person acting in concert or participation with them, are **ORDERED** to amend their existing brochures, guidance documents, technical-assistance documents, interpretative rules, general statements of policy, websites and web pages, and any other agency-created or agency-issued documents regarding Title VII's

application to lesbian, gay, bisexual, or transgender employees, and to include an explicit acknowledgement in each of those documents that section 702(a) of Title VII exempts religious employers, including churches and religious nonprofits, who refuse to employ an individual because of sexual orientation or gender expression, so long as the employer's refusal to employ that individual is based on religious observance, practice, or belief. This acknowledgement must also be included in any future brochures, guidance documents, technical-assistance documents, interpretative rules, general statements of policy, web sites and web pages, and other agency-created or agency-issued documents regarding Title VII's application to lesbian, gay, bisexual, or transgender employees.

II. BRAIDWOOD MANAGEMENT INC. AND THE OBJECTING RELIGIOUS-EMPLOYER CLASS

The Court also enters judgment in favor of plaintiff Braidwood Management Inc. and the following certified plaintiff class that Braidwood represents, consisting of:

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).

The Court **DECLARES** that the Religious Freedom Restoration Act, the Free Exercise Clause of the First Amendment, and the right of expressive association protected by the First Amendment protects the rights of plaintiff Braidwood Management Inc. and the members of the objecting religious-employer class described above to:

- (a) Refuse to employ individuals who engage in homosexual behavior or who have a homosexual or bisexual orientation;
- (b) Refuse to employ individuals who are engaged in gender non-conforming behavior, including cross-dressing, transvestism, efforts to change or transition one's gender, or asserting a gender identity that departs from one's biological sex;

(c) Refuse to recognize same-sex marriage or offer benefits to same-sex partners of their employees;

(d) Enforce sex-specific dress and grooming codes; or

(e) Prohibit employees from entering or using restrooms designated for the opposite biological sex.

It is therefore **ORDERED** that:

1. Defendants Equal Employment Opportunity Commission, Charlotte A. Burrows, Jocelyn Samuels, Janet Dhillon, Keith E. Sonderling, Andrea R. Lucas, and their officers, agents, servants, employees, attorneys, designees, subordinates, and successors in office, as well as any person acting in concert or participation with them, are **ENJOINED** from enforcing or threatening to enforce Title VII in a manner that limits the right of the objecting religious-employer class members to:

(a) Refuse to employ individuals who engage in homosexual behavior or who have a homosexual or bisexual orientation;

(b) Refuse to employ individuals who engage in gender non-conforming behavior, including cross-dressing, transvestism, efforts to change or transition one's gender, or asserting a gender identity that departs from one's biological sex;

(c) Refuse to recognize same-sex marriage or offer benefits to same-sex partners of their employees;

(d) Enforce sex-specific dress and grooming codes; or

(e) Prohibit employees from entering or using restrooms designated for the opposite biological sex.

2. Defendants Equal Employment Opportunity Commission, Charlotte A. Burrows, Jocelyn Samuels, Janet Dhillon, Keith E. Sonderling, Andrea R. Lucas, and their officers, agents, servants, employees, attorneys, designees, subordinates, and successors in office, as well as any person acting in concert or participation with them, are

ORDERED to amend their existing brochures, guidance documents, technical-assistance documents, interpretative rules, general statements of policy, websites and web pages, and any other agency-created or agency-issued documents regarding Title VII's application to lesbian, gay, bisexual, or transgender employees, and to include an explicit acknowledgement in each of those documents that the Religious Freedom Restoration Act and the First Amendment allows members of the objecting religious-employer class to make any of the employment decisions or policies described in paragraph II(1), notwithstanding any provision or requirement of Title VII, the Supreme Court's opinion in *Bostock*, or any document created or issued by the EEOC. This acknowledgement must also be included in any future brochures, guidance documents, technical-assistance documents, interpretative rules, general statements of policy, web sites and web pages, and other agency-created or agency-issued documents regarding Title VII's application to lesbian, gay, bisexual, or transgender employees.

III. BRAIDWOOD MANAGEMENT INC. AND THE OBJECTING RELIGIOUS OR NON-RELIGIOUS EMPLOYER CLASS

The Court also enters judgment in favor of plaintiff Braidwood Management Inc. and the following certified plaintiff class that Braidwood represents, consisting of:

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).

The Court **DECLARES** that the defendants' interpretation of Title VII is incompatible with the statute, as interpreted by the Supreme Court in *Bostock*, to the extent that it limits the rights of the objecting religious or non-religious employer class members to establish sex-neutral rules of conduct that apply equally to members of both biological sexes. The Court further **DECLARES** that the defendants' interpretation of Title VII is incompatible with the statute, as interpreted by the Supreme Court in *Bostock*, to the extent that it limits the rights of the objecting religious or non-religious

employer class members to establish and enforce sex-specific dress codes and rules that require employees to use the restroom that corresponds with their biological sex.

It is therefore **ORDERED** that:

1. Defendants Equal Employment Opportunity Commission, Charlotte A. Burrows, Jocelyn Samuels, Janet Dhillon, Keith E. Sonderling, Andrea R. Lucas, and their officers, agents, servants, employees, attorneys, designees, subordinates, and successors in office, as well as any person acting in concert or participation with them, are **ENJOINED** from enforcing or threatening to enforce Title VII in a manner that limits the right of the objecting religious or non-religious employer class members to establish and enforce:

(a) sex-neutral rules of conduct that apply equally to members of both biological sexes;

(b) Sex-specific employee dress codes that correspond to the employee's biological sex;

(c) Rules that require employees to use the restroom that corresponds with their biological sex.

2. Defendants Equal Employment Opportunity Commission, Charlotte A. Burrows, Jocelyn Samuels, Janet Dhillon, Keith E. Sonderling, Andrea R. Lucas, and their officers, agents, servants, employees, attorneys, designees, subordinates, and successors in office, as well as any person acting in concert or participation with them, are **ORDERED** to amend their existing brochures, guidance documents, technical-assistance documents, interpretative rules, general statements of policy, web sites and web pages, and any other agency-created or agency-issued documents regarding Title VII's application to lesbian, gay, bisexual, or transgender employees, and to include an explicit acknowledgement in each of those documents that Title VII allows employers to establish and enforce any of the policies described in paragraph III(1). This acknowledgement must also be included in any future brochures, guidance documents,

technical-assistance documents, interpretative rules, general statements of policy, web sites and web pages, and other agency-created or agency-issued documents regarding Title VII's application to lesbian, gay, bisexual, or transgender employees.

IV. THE DEFENDANTS

The Court enters judgment in favor of defendants Equal Employment Opportunity Commission; Charlotte A. Burrows, Jocelyn Samuels, Janet Dhillon, Keith E. Sonderling, and Andrea R. Lucas, in their official capacities as chair, vicechair, and commissioners of the Equal Employment Opportunity Commission, and the United States of America, and against plaintiff Braidwood Management Inc. and the following certified plaintiff class that Braidwood represents, consisting of:

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).

The Court **DECLARES** that members of the objecting religious or non-religious employer class who refuse to hire or discriminate against employees or job applicants simply for being bisexual are discriminating “because of such individual’s . . . sex” within the meaning of Title VII. The Court further **DECLARES** that members of the objecting religious or non-religious employer class who refuse to hire or discriminate against employees or job applicants for taking hormone therapy, or for undergoing surgery to modify their genitals, are discriminating “because of such individual’s . . . sex” within the meaning of Title VII.

Dated: _____, 2021

REED O’CONNOR
UNITED STATES DISTRICT JUDGE