

**IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

CHRISTIAN EMPLOYERS
ALLIANCE,
Plaintiff-Appellee,

v.

EEOC, et al.,
Defendant-Appellant.

No. 22-3018

MOTION TO PLACE APPEAL IN ABEYANCE

This case presents the same questions of law awaiting resolution by this Court in *Religious Sisters v. Becerra*, No. 21-1890 (8th Cir.). For the following reasons, the government respectfully requests that the Court hold this appeal in abeyance pending resolution of *Religious Sisters*. Plaintiff opposes this motion.

1. Plaintiff here and the plaintiffs in *Religious Sisters* bring challenges under the Religious Freedom Restoration Act of 1993, Pub. L. No. 103-141, 107 Stat. 1488 (codified at 42 U.S.C. § 2000bb et seq.) (RFRA) to hypothetical future enforcement actions of the U.S. Department of Health and Human Services (HHS) and the U.S. Equal Employment Opportunity Commission (EEOC). In both cases, plaintiffs seek to prevent HHS and EEOC from enforcing the prohibition of sex discrimination in Section 1557 of the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (2010) (Affordable Care Act) and Title VII of the Civil Rights Act of

1964, 42 U.S.C. § 2000e et seq. (Title VII) in a manner that would require plaintiffs' members to perform or provide insurance coverage for gender-transition procedures.

2. In *Religious Sisters* the district court issued a permanent injunction enjoining HHS and EEOC from enforcing the prohibition of sex discrimination in Section 1557 and Title VII in a manner that would require plaintiff's members to perform or provide insurance coverage for gender-transition procedures. *Religious Sisters of Mercy v. Azar*, 513 F. Supp. 3d 1113, 1153 (D.N.D. 2021), judgment entered sub nom. *Religious Sisters of Mercy v. Cochran*, No. 3:16-CV-00386, 2021 WL 1574628 (D.N.D. Feb. 19, 2021). The court concluded that plaintiffs had shown a credible threat of enforcement and that requiring the provision or coverage of gender-transition procedures would substantially burden the plaintiffs' religious exercise. *Id.* The government appealed to this Court, and argument was held on December 15, 2021. The issues on appeal are whether the district court erred in concluding that plaintiffs had demonstrated standing, ripeness, and imminent irreparable injury sufficient to justify injunctive relief.

3. In the present case, the district court issued a preliminary injunction enjoining HHS and EEOC from enforcing the prohibition of sex discrimination in Section 1557 and Title VII in a manner that would require plaintiff's members to perform or provide insurance coverage for gender-transition procedures. *Christian Emps. All. v. United States Equal Opportunity Comm'n*, No. 1:21-CV-195, 2022 WL 1573689, at *9 (D.N.D. May 16, 2022).

4. The government's opening brief in this appeal is presently due on November 14, 2022. Briefing of this appeal should be held in abeyance pending resolution of *Religious Sisters*. The district court decision at issue here presents the same issues of standing, ripeness, and imminent irreparable injury in the context of pre-enforcement RFRA challenges to the hypothetical future enforcement of Section 1557 and Title VII that are already under review by this Court in *Religious Sisters*. Accordingly, this Court's decision in *Religious Sisters* is very likely to control the outcome of this appeal. Any briefing the government submits in this case would be largely duplicative of that already filed in *Religious Sisters*, and any briefing submitted under the current briefing schedule is likely to be overtaken by the result of *Religious Sisters*.

5. Under the circumstances, it is in the interest of the parties and the Court for this appeal be held in abeyance pending this Court's resolution of the same legal issues in *Religious Sisters*. Abeyance will conserve the resources of the parties and the Court. At the same time, abeyance is unlikely to substantially prejudice plaintiff, as the district court's preliminary injunction remains in place.

6. Counsel for the plaintiff informs us that they oppose this motion.

CONCLUSION

For the foregoing reasons, the Court should hold this appeal in abeyance pending resolution of *Religious Sisters*.

Respectfully submitted,

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/s/ Ashley A. Cheung

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OCTOBER 2022

CERTIFICATE OF COMPLIANCE

I hereby certify that this motion complies Federal Rule of Appellate Procedure 27(d)(2) because it contains 621 words.

s/ Ashley A. Cheung

ASHLEY A. CHEUNG

CERTIFICATE OF SERVICE

I hereby certify that on October 7, 2022, I electronically filed the foregoing with the Clerk of the Court by using the appellate CM/ECF system. I further certify that the participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

s/ Ashley A. Cheung

ASHLEY A. CHEUNG