

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
WICHITA FALLS DIVISION

FRANCISCAN ALLIANCE, INC., *et al.*,

Plaintiffs,

v.

XAVIER BECERRA, *et al.*,

Defendants.

No. 7:16-CV-00108-O

**Plaintiffs' Unopposed Motion
to Clarify Deadline for
Filing Petition for Fees
and Expenses**

Plaintiffs Franciscan Alliance, Inc., Christian Medical and Dental Associations, and Specialty Physicians of Illinois, LLC (“Plaintiffs”), respectfully move to clarify their deadline for seeking attorneys’ fees as prevailing parties in this litigation. The Government consents to the requested relief.

Plaintiffs have prevailed on their claims under the Religious Freedom Restoration Act and Administrative Procedure Act and thus intend to seek reasonable attorneys’ fees and expenses. *See* 42 U.S.C. §1988; 28 U.S.C. §2412; *see also* ECF No. 193. This Court, exercising its authority under Rule 54 of the Federal Rules of Civil Procedure and on Plaintiffs’ motion, has set a deadline for Plaintiffs to file their fee petition of “thirty days after the final resolution of all claims, including any appeals.” ECF No. 206 at 23; *see also* ECF No. 193 (granting Plaintiffs’ motion to extend deadline from the default set out in Fed. R. Civ. P. 54(d)(2)(B)(i)).

On August 26, the Fifth Circuit resolved Defendants’ appeal of this Court’s order granting Plaintiffs a permanent injunction, affirming this Court’s injunction in full. *Franciscan All., Inc. v. Becerra*, ___ F.4th ___, 2022 WL 370044 (5th Cir. Aug. 26, 2022). Thirty days after the Fifth Circuit’s ruling would be September 26.

As Plaintiffs understand the Court’s fee deadline, however, the time for Plaintiffs to

file has not yet begun running. That is so for two reasons:

1. *First*, the Government has ninety days from the Fifth Circuit’s decision (*i.e.*, until November 25, 2022) to seek certiorari from the Supreme Court—meaning we do not yet know whether all appeals have been resolved.
2. *Second*, some of Plaintiffs’ claims—in particular, their non-RFRA and non-APA claims—remain pending before this Court. In October 2019, this Court “severed Plaintiffs’ APA and RFRA claims from their Title VII, Spending Clause, First Amendment, Tenth Amendment, and Eleventh Amendment claims,” “stay[ing]” the latter pending further action from the parties. ECF No. 177 (emphasis omitted). The severed and stayed claims have not yet been revisited or resolved.

Because it will soon have been thirty days since the Fifth Circuit’s decision, Plaintiffs respectfully request that the Court enter an order clarifying that the above-stated understanding of the fee deadline is correct—namely, that the deadline for Plaintiffs to file their fee petition does not begin to run until after resolution of the severed and stayed claims, and after the expiration of the Government’s time to petition for certiorari (even if it decides not to file such a petition).

To do so, Plaintiffs respectfully request that the Court adopt the proposed order submitted alongside this motion, which states that (1) “all claims” includes the claims severed and stayed by this Court in October 2019; and (2) a deadline triggered “after ... any appeals” is not triggered while the Government may be considering a further appeal that could result in additional compensable fees and expenses.

This relief will reduce uncertainty and foster judicial economy, as it ensures that Plaintiffs will only have to file—and this Court will only have to adjudicate—one petition covering all compensable fees and expenses arising out of this litigation. This relief also simply makes unmistakable what Plaintiffs already understand to be the Court’s intended deadline, since Plaintiffs’ prior motion to extend their time to seek fees—which this Court granted—expressly raised both the possibility of further appeals and the continuing pendency of the severed and stayed claims as reasons for the Court to set the current deadline. *See* ECF No. 184 at 4-5, 7-9; *see also* ECF No. 191 at 1, 4, 6-7.

* * *

The Court should grant this motion and enter an order clarifying the deadline for Plaintiffs to file any petition for fees and expenses, as set out in the attached proposed order.

Respectfully submitted this the 19th day of September, 2022.

/s/ Luke W. Goodrich

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CERTIFICATE OF CONFERENCE

On September 16, 2022, counsel for Plaintiffs conferred with counsel for the Government regarding the relief sought in this motion. The Government consents to the requested relief.

CERTIFICATE OF SERVICE

I hereby certify that on September 19, 2022, the foregoing was served on all parties via ECF.

/s/ Luke W. Goodrich

Luke W. Goodrich

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**[Proposed] Order Granting
Plaintiffs' Motion to Clarify**

Having considered Plaintiffs' motion to clarify, the motion is **GRANTED**. It is **ORDERED** that Plaintiffs shall file any petition for attorneys' fees and expenses arising out of this litigation by thirty (30) days after the final resolution of all claims, including any appeals. "All claims" includes the claims severed and stayed in this Court's October 15, 2019, order. ECF No. 177. Thirty days "after ... any appeals" means either (a) thirty days after the expiration of any deadline for appeal or petition for certiorari (if there is no appeal or petition); or (b) thirty days after the final resolution of all appeals or petitions for certiorari (if there is an appeal or petition), whichever is later.

SO ORDERED on this ___ day of _____, 2022.

HONORABLE REED O'CONNOR
UNITED STATES DISTRICT JUDGE