

No. 22-10145

In the United States Court of Appeals for the Fifth Circuit

BRAIDWOOD MANAGEMENT, INCORPORATED, ON BEHALF OF ITSELF
AND OTHERS SIMILARLY SITUATED; BEAR CREEK BIBLE CHURCH,
Plaintiffs-Appellants/Cross-Appellees,

v.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION; UNITED STATES
OF AMERICA; CHARLOTTE A. BURROWS; JOCELYN SAMUELS; JANET
DHILLON; ANDREA R. LUCAS; KEITH E. SONDERLING, IN THEIR
OFFICIAL CAPACITIES AS CHAIR, VICE-CHAIR, AND COMMISSIONERS
OF THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION;
MERRICK GARLAND, U.S. ATTORNEY GENERAL,
Defendants-Appellees/Cross-Appellants.

On Appeal from the United States District Court
for the Northern District of Texas, Fort Worth Division
Case No. 4:20-cv-00824-O

**REPLY BRIEF OF APPELLANTS/CROSS-APPELLEES
BRAIDWOOD MANAGEMENT INC., ET AL.**

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The EEOC attempts to defend the district court’s holdings that: (1) Title VII, as construed in *Bostock*, prohibits employers from discriminating against bisexual employees and job applicants;¹ and (2) Title VII, as construed in *Bostock*, prohibits employers from establishing and enforcing rules against hormone therapy and sex-change operations that apply on equal terms to men and women.² It also defends the district court’s decision to enter judgment in favor of the EEOC (rather than Bear Creek Bible Church) after concluding that the EEOC could not enforce *Bostock* against Bear Creek or other church employers on account of 42 U.S.C. § 2000e-1(a). ROA.1710-1713; ROA.1743-1744; ROA.1871-1873. We will address each of these issues below.³

I. THE DISTRICT COURT ERRED IN HOLDING THAT BOSTOCK PROHIBITS DISCRIMINATION AGAINST BISEXUAL EMPLOYEES

Bostock establishes a clear, formalistic rule: an employer engages in “sex” discrimination if he would treat an identically situated individual of the opposite biological sex differently from the way he treats the employee or job applicant in question. *See Bostock v. Clayton County*, 140 S. Ct. 1731, 1740 (2020) (“[F]iring [a] person for actions or attributes it would tolerate in an individual of another sex . . . discriminates against that person in violation of

1. ROA.1765-1766.

2. ROA.1770.

3. Our reply brief will address only the EEOC’s arguments in defense of the judgment below, *i.e.*, the issues that the plaintiffs-appellants have appealed, rather than the issues that the EEOC has appealed, which have already been fully briefed.

Title VII.”). The converse is equally true: An employer does *not* engage in “sex” discrimination if he would treat an identically situated member of the opposite biological sex the same as the individual in question. *See Bostock*, 140 S. Ct. at 1742 (“Take an employer who fires a female employee for tardiness or incompetence or simply supporting the wrong sports team. Assuming the employer would not have tolerated the same trait in a man, Title VII stands silent.”). In conducting this analysis, a court must imagine a hypothetical employee of the opposite biological sex, while holding *everything* else about the employee in question constant—including that employee’s particular sexual attractions, the identity of employee’s sexual or romantic partners, and the gender with which that employee identifies. *Compare Bostock*, 140 S. Ct. at 1739; *id.* 1742-43, *id.* at 1747-49 *with id.* at 1761-63 (Alito, J., dissenting). An employer who discriminates on account of an employee or job applicant’s bisexual orientation (or conduct) cannot engage in “sex” discrimination as defined in *Bostock*, because that employer would have taken the exact same action against an identically situated individual of the opposite biological sex.

The EEOC says this argument is “difficult to square” to our supposed “concession”⁴ that the district court “could not, consistent with *Bostock*’s

4. The plaintiffs have not “conceded”—at *any* point in this litigation—that *Bostock* prohibits employers from enforcing sex-specific restrooms or dress codes. *See* EEOC’s Br. at 46. The plaintiffs have simply declined to press a claim that *Bostock* categorically allows employers to establish separate restrooms and dress codes for men and women. The

reasoning, declare sex-specific bathrooms and dress-codes to be categorically exempt from Title VII.” EEOC’s Br. at 46. Not at all. An employer who disciplines a male employee for entering or using the women’s restroom would *not* take that disciplinary action against an identically situated female employee, making the employee’s sex a “but-for cause” of the adverse employment action. *Bostock*, 140 S. Ct. at 1739 (“[A] but-for test directs us to change one thing at a time and see if the outcome changes. If it does, we have found a but-for cause.”); *id.* (“So long as the plaintiff’s sex was one but-for cause of that decision, that is enough to trigger the law.”). The same goes for an employer who disciplines a male employee for wearing women’s clothes. If that employer would have tolerated a woman’s dressing in the same garb as the cross-dressing male employee, then its enforcement of a sex-specific dress code makes an employee’s sex a “but-for cause” of the ensuing disciplinary action. *See id.* at 1739.

None of this is true when an employer fires or refuses to hire bisexual employees or job applicants—so long as that employer discriminates against male and female bisexuals on equal terms. Changing the biological sex of the

plaintiffs have chosen instead to assert that RFRA and First Amendment allow religious employers to enforce these policies regardless of how *Bostock* is interpreted. *See* Br. of Appellants at 51-53. The plaintiffs have also candidly acknowledged that the holding and reasoning of *Bostock* are difficult to square with the idea that sex-specific restrooms and dress codes remain permissible under Title VII, even though the opinion in *Bostock* purports to leave those issues unresolved. *See id.* That is a far cry from a “concession” on this issue.

employee or job applicant would *not* in any way affect the employer's actions, and the EEOC does not argue to the contrary. *See* EEOC's Br. at 46-49. Instead, the EEOC claims that discrimination against bisexuals should qualify as "sex" discrimination under *Bostock* because changing the sex of one of the employee's *sexual partners*—rather than changing the sex of the employee himself—would alter or affect the employer's treatment of the employee:

Steve would not be fired under a policy prohibiting bisexual conduct if he engages in relationships with Samantha and Catherine. But changing the sex of one of those partners would change the result: Steve would be fired under such a policy if his relationships are with Samuel and Catherine.

EEOC's Br. at 47.

There is a major problem with this argument: The text of Title VII prohibits sex discrimination *only* with respect to the sex of the affected employee or job applicant:

It shall be an unlawful employment practice for an employer -

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, *because of such individual's* race, color, religion, *sex*, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, *because of such individual's* race, color, religion, *sex*, or national origin.

42 U.S.C. § 2000e-2(a) (emphasis added). There is nothing in Title VII that prohibits employers from discriminating because of the “sex” of an employee or job applicant’s sexual or romantic partners. So one cannot extend the holding of *Bostock* to the “Samuel and Catherine” hypothetical, because Title VII does not apply to discriminatory acts that turn on the “sex” of someone other than the affected employee or job applicant. And the *Bostock* opinion was careful to limit its holding and analysis to acts that turn on the sex of the employee–plaintiff, rather than anyone else. *See Bostock*, 140 S. Ct. at 1739 (“So long as the *plaintiff’s* sex was one but-for cause of that decision, that is enough to trigger the law.” (emphasis added)); *id.* at 1741 (“If the employer intentionally relies in part on *an individual employee’s sex* when deciding to discharge the employee—put differently, if changing *the employee’s sex* would have yielded a different choice by the employer—a statutory violation has occurred.” (emphasis added)); *id.* (“Title VII’s message is ‘simple but momentous’: An individual employee’s sex is ‘not relevant to the selection, evaluation, or compensation of employees.’” (citation omitted)).

The EEOC also claims that *Bostock* has already rejected the plaintiffs’ argument regarding bisexual employees or job applicants, because *Bostock* specifically held that employers could not escape Title VII by discriminating equally against both male and female employees who engage in *homosexual* or transgender conduct:

An employer musters no better a defense by responding that it is equally happy to fire male *and* female employees who are homo-

sexual or transgender. Title VII liability is not limited to employers who, through the sum of all of their employment actions, treat the class of men differently than the class of women. Instead, the law makes each instance of discriminating against an individual employee because of that individual's sex an independent violation of Title VII. So just as an employer who fires both Hannah and Bob for failing to fulfill traditional sex stereotypes doubles rather than eliminates Title VII liability, an employer who fires both Hannah and Bob for being gay or transgender does the same.

Bostock, 140 S. Ct. at 1742–43. But this passage in *Bostock* refers *only* to adverse employment actions that turn on the sex of the affected employee. See *id.* at 1742 (“[T]he law makes each instance of discriminating against an individual employee *because of that individual’s sex* an independent violation of Title VII.” (emphasis added)). That is why an employer who fires both male homosexuals and lesbians on equal terms violates Title VII—because it would not have fired *any* of those employees if their biological sex had been different but their sexual attractions remained the same. That is not the case when an employer discriminates against bisexual employees or job applicants—so long as it discriminates against male and female bisexuals on equal terms. Changing the sex of a bisexual employee or job applicant, while holding everything else about that individual constant, would not change or in any way alter the employer’s behavior, and the EEOC does not deny this point. That cannot qualify as “sex” discrimination under Title VII or *Bostock*.

II. THE DISTRICT COURT ERRED IN HOLDING THAT BOSTOCK BARS EMPLOYERS FROM ENFORCING SEX-NEUTRAL RULES OF CONDUCT THAT PROHIBIT HORMONE THERAPY AND SEX-CHANGE OPERATIONS

Bostock's formalism also allows employers to discriminate against employees and job applicants who take hormone therapy, so long as the employer would equally discriminate against a person of the opposite biological sex who takes the exact same hormones. An employer who fires or refuses to hire female employees who take testosterone therapy to appear masculine does not engage in "sex" discrimination if he would equally reject men who take the same testosterone supplements. *See Bostock*, 140 S. Ct. at 1742 ("Take an employer who fires a female employee for tardiness or incompetence or simply supporting the wrong sports team. Assuming the employer would not have tolerated the same trait in a man, Title VII stands silent."). The same is true for an employer who discriminates against transgender individuals who undergo surgeries to modify their appearance. An employer who refuses to employ biological men who have had breast implants or breast-augmentation surgery has not violated Title VII if he would equally refuse to employ women who obtained these treatments. *See id.*

The EEOC resists this conclusion by claiming that policies of this sort "*explicitly* target transgender individuals." EEOC's Br. at 48 (quoting ROA.1687) (emphasis added by EEOC). But there is nothing unlawful about employment policies that "target" homosexual or transgender individuals *unless* the employer is engaging in "sex" discrimination when doing so—and

it cannot be “sex” discrimination to treat a biological man in the same fashion as an identically situated biological woman. *See Bostock*, 140 S. Ct. at 1742.

The EEOC also suggests that policies of this sort are tantamount to firing individuals for “*being* homosexual or transgender.” *See* EEOC’s Br. at 48 (quoting *Bostock*, 140 S. Ct. at 1734). But an employer who refuses to employ someone simply for “being” homosexual or transgender is indisputably violating *Bostock* (and Title VII) because the provider would have acted differently toward an identically situated member of the opposite biological sex. *See Bostock*, 140 S. Ct. at 1737. Again, the key to determining whether “sex” discrimination has occurred is to keep *everything* about the affected employee or job applicant the same and change *only* his biological sex, and then ask whether the change in sex would alter the employer’s conduct. *See Bostock v. Clayton County*, 140 S. Ct. at 1739 (“[A] but-for test directs us to change one thing at a time and see if the outcome changes. If it does, we have found a but-for cause.”). That is *not* the case when an employer establishes rules of conduct that apply on equal terms to men and women. It is linguistically impossible to call policies of that sort “sex” discrimination—even when adopted for the purpose of excluding homosexual or transgender individuals from employment. Title VII does not prohibit employers from discriminating on account of “sexual orientation” or “gender identity,” and until Congress amends the statute the EEOC cannot target employment practices that adversely affect LGBTQ individuals unless those practices fall within *Bostock*’s definition of “sex” discrimination.

Finally, the plaintiffs are not attempting to “relitigate” or “quarrel” with *Bostock*’s interpretation of Title VII. *See* EEOC’s Br. at 48-49. The plaintiffs accept the holding of *Bostock*, and they do not intend to ask the Supreme Court to reconsider or overrule that decision if this case proceeds to the certiorari-petition stage. The plaintiffs are contending only that the EEOC is misinterpreting the scope of *Bostock*’s holding and refusing to acknowledge the extent to which RFRA limits the EEOC’s ability to enforce *Bostock* against religious employers. Our observation that the *Bostock* opinion “talks out of both sides of its mouth”⁵ is simply a candid acknowledgement that there is language in *Bostock* that appears to leave no room for employers to establish and enforce sex-specific restrooms or dress codes,⁶ even as the Court insists later in its opinion that it does not “purport to address” those issues.⁷ Yet this Court is bound by everything that appears in the *Bostock* opinion,⁸ and a litigant must alert this Court to all statements in Supreme Court precedent relevant to the issues on appeal.

5. EEOC’s Br. at 49 (quoting Br. of Appellants at 51).

6. *See Bostock*, 140 S. Ct. at 1739 (“So long as the plaintiff’s sex was one but-for cause of that decision, that is enough to trigger the law.”); *id.* at 1741 (“[I]f changing the employee’s sex would have yielded a different choice by the employer—a statutory violation has occurred.”).

7. *See Bostock*, 140 S. Ct. at 1753 (“[W]e do not purport to address bathrooms, locker rooms, or anything else of the kind.”).

8. *See Hutto v. Davis*, 454 U.S. 370, 375 (1982) (per curiam) (“[A] precedent of this Court must be followed by the lower federal courts”).

Our quarrel is not with *Bostock* but with the EEOC's implementation of that decision. The EEOC is bound to apply *Bostock*, as the Supreme Court held that *Bostock*'s interpretation of Title VII is the only reasonable interpretation of the statute and cannot be disregarded or supplanted by agencies under *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842–43 (1984), or *National Cable & Telecommunications Ass'n v. Brand X Internet Services*, 545 U.S. 967, 986 (2005). See *Bostock*, 140 S. Ct. at 1749 (“[N]o ambiguity exists about how Title VII’s terms apply to the facts before us.”). An agency that construes *Bostock* too broadly behaves as unlawfully as an agency that construes the decision too narrowly or ignores it entirely—and it is the Court’s responsibility to “decide all relevant questions of law” and hold the EEOC to its interpretations of Title VII and *Bostock*. See 5 U.S.C. § 706; see also *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803) (“It is emphatically the province and duty of the judicial department to say what the law is.”).

Nor is there any merit to the EEOC's insistence that the plaintiffs' claims should wait until the EEOC takes enforcement action. See EEOC's Br. at 49. The issues in the plaintiffs' appeal involve pure questions of law and turn entirely on the text of Title VII and the language of the *Bostock* opinion. The EEOC cannot announce an overbroad interpretation of a statute in the hopes that the *in terrorem* effects of its pronouncements will induce employers to comply, and then deprive employers of any avenue to obtain pre-enforcement review of the agency's statutory pronouncements. See Br. of

Appellants at 32-36 (addressing the EEOC’s “ripeness” objections). Congress did not give the EEOC substantive rulemaking powers,⁹ and the EEOC cannot circumvent that decision by issuing “guidance documents” backed by threats of enforcement action while simultaneously insisting that courts are powerless to review its edicts until an enforcement action is brought.

III. THE DISTRICT COURT ERRED BY ENTERING JUDGMENT AGAINST BEAR CREEK

The EEOC claims that the district court “dismiss[ed] Bear Creek’s claims for lack of jurisdiction,”¹⁰ and it defends the district court’s supposed decision to do so. *See* EEOC Br. at 52-55. But the district court did no such thing. The district court *denied* the defendants’ “[m]otion for summary judgment based on standing, ripeness, and sovereign immunity,”¹¹ and it did not enter a jurisdictional dismissal of Bear Creek’s claims. Instead, the district court resolved Bear Creek’s claims on the merits by denying its motions for summary judgment and class certification. ROA.1872 (“Plaintiffs’ Motion for Summary Judgment is denied as to Bear Creek Church and the Church-Type Employers Class is not certified, because these employers are not burdened by Title VII.”). That is a resolution on the merits, not a jurisdictional dismissal.

9. *See General Electric Co. v. Gilbert*, 429 U.S. 125, 141 (1976) (“Congress, in enacting Title VII, did not confer upon the EEOC authority to promulgate rules or regulations pursuant to that Title.”).

10. EEOC Br. at 52.

11. ROA.1871.

The EEOC appears to believe that the district court dismissed Bear Creek's claims on jurisdictional grounds because the final judgment says that Bear Creek is "not burdened by Title VII,"¹² which could be read to insinuate that Bear Creek had failed to establish Article III injury. But Bear Creek was not "challenging" the legality or constitutionality of Title VII; it was challenging the behavior and conduct of the EEOC. *See* Nicholas Quinn Rosenkranz, *The Subjects of the Constitution*, 62 Stan. L. Rev. 1209, 1221 (2010) ("Judicial review is not the review of statutes at large; judicial review is constitutional review of governmental action."); *see also Whole Woman's Health v. Jackson*, 141 S. Ct. 2494, 2495 (2021) ("[F]ederal courts enjoy the power to enjoin individuals tasked with enforcing laws, not the laws themselves."); *Okpalobi v. Foster*, 244 F.3d 405, 426 n.34 (5th Cir. 2001) (en banc) ("An injunction enjoins a defendant, not a statute."). To establish Article III standing, Bear Creek needed only to show an injury that was "fairly traceable" to the conduct of the EEOC officials, not an injury traceable to the language of Title VII. And Bear Creek established such an injury through the EEOC's threats to enforce *Bostock* against employers without acknowledging any exemptions for religious employers under RFRA or the First Amendment. *See* Br. of Appellants at 21-32; ROA.1717-1722. More importantly, the district court specifically held that *each* of the plaintiffs had established Article III standing and ripeness, and that each plaintiff had surmounted the gov-

12. ROA.1872.

ernment’s sovereign-immunity defenses. ROA.1717 (“Plaintiffs have standing, Plaintiffs’ claims are ripe, and the United States has waived sovereign immunity.”). One cannot construe the district court’s judgment as dismissing Bear Creek’s claims on jurisdictional grounds when its opinion explicitly rejects each of the government’s jurisdictional objections to those claims.¹³

Because the district court found that it had jurisdiction over Bear Creek’s claims,¹⁴ the only remaining question is whether the district court should have entered judgment in favor of Bear Creek or the EEOC once it concluded that Bear Creek was shielded from *Bostock* and the EEOC’s guidance documents on account of 42 U.S.C. § 2000e-1(a)’s statutory exemption for “religious corporations.” ROA.1710-1713; ROA.1743-1744. The EEOC suggests that Bear Creek “never asked for” declaratory relief on the section 2000e-1(a) issue,¹⁵ but that untrue. When the district court asked for supplemental

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13. The EEOC asks this Court to “affirm” the district court’s disposition of Bear Creek’s claims because it insists that the district court dismissed these claims on jurisdictional grounds. *See* EEOC’s Br. at 52-53. But if this Court agrees with the EEOC that Bear Creek lacks Article III standing or that its claims are unripe, *see* EEOC’s Br. at 4-30, then it should not “affirm” the district court’s resolution of these claims but vacate and remand with instructions to dismiss those claims for lack of subject-matter jurisdiction. We have already addressed EEOC’s jurisdictional objections in our previous brief, which concern EEOC’s cross-appeal rather than the limited issues presented in the plaintiffs’ appeal. *See* Br. of Appellants at 21-36.
 14. ROA.1717-1722.
 15. EEOC’s Br. at 53. The EEOC appears to qualify its statement by saying that Bear Creek never asked the district court to declare it “*categorically* immune” from Title VII on account of section 2000e-1(a). *Id.* (emphasis

briefing on this issue, Bear Creek argued vigorously that it qualified as a “religious corporation” under section 2000e-1(a),¹⁶ and that section 2000e-1(a) fully protects its right not to employ individuals engaged in homosexual or transgender conduct.¹⁷ It is true that Bear Creek did not request this declaratory relief in its *pleadings*, and it did not request this relief after until the district court raised the section 200e-1(a) issue *sua sponte*. ROA.1204-1225 (fourth amended complaint); ROA.1358-1378 (brief in support of summary judgment). But that does not disqualify Bear Creek from obtaining judgment in its favor when a district court *holds* that the EEOC is statutorily barred from enforcing its guidance documents (or *Bostock*) against Bear Creek Church. ROA.1710-1713; ROA.1743-1744; *see also* Fed. R. Civ. P. 54(c) (“A . . . final judgment should grant the relief to which each party is entitled, *even if the party has not demanded that relief in its pleadings.*” (emphasis added)).¹⁸

added). But no one in this case has ever suggested that section 2000e-1(a) confers a “categorical” immunity on religious corporations; the statute shields these corporations *only* with respect to their “employment of individuals of a particular religion,” and the disputed issues concern the scope of that statutory phrase. *See, e.g., Little v. Wuerl*, 929 F.2d 944, 951 (3d Cir. 1991); Stephanie N. Phillips, *A Text-Based Interpretation of Title VII’s Religious-Employer Exemption*, 20 *Tex. Rev. L. & Pol.* 295, 312 (2016).

16. ROA.1535 (“Bear Creek Bible Church indisputably qualifies as a ‘religious corporation’ under any possible construction of that language”).

17. ROA.1537-1538.

18. In a footnote, the EEOC records its disagreement with the district court’s interpretation of 42 U.S.C. § 2000e-1(a). *See* EEOC’s Br. at 54 n.6. But the EEOC did not appeal this portion of the district court’s judgment; its opening brief asked only for a jurisdictional dismissal of

The EEOC also argues that the district court was “not required” to enter judgment in Bear Creek’s favor once it had determined that section 2000e-1(a) bars the EEOC from enforcing its guidance documents (or *Bostock*) against Bear Creek, because it claims that Rule 54(c) merely gives district courts “discretion” to grant relief that was not expressly requested in the complaint. *See* EEOC’s Br. at 54-55. But Rule 54(c) is not phrased in discretionary terms. It says:

A . . . final 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). The word “should” confers a mandatory obligation rather than a discretionary one. *See, e.g., United States v. Alexander*, 100 F.3d 24, 26 (5th Cir. 1996) (concluding that “the word ‘should’ . . . imposes a mandatory obligation on the district court”); *see also* should, dictionary.com (defining “should” as “must; ought (used to indicate duty, propriety, or expediency)”), <https://bit.ly/3dALXAS>. And although the EEOC is right to observe that Rule 54(c) allows district courts to find that litigants have

Bear Creek’s claims and did not criticize the district court’s interpretation of section 2000e-1(a). Although the EEOC has fully preserved its jurisdictional objections to Bear Creek’s claims, it cannot pursue any other modification of the district court’s judgment with respect to Bear Creek’s claims—apart from a request to vacate the district court’s disposition of Bear Creek’s claims and remand for a jurisdictional dismissal of those claims.

waived or forfeited unmentioned claims or arguments,¹⁹ it does not allow a district court enter judgment for the *losing* party after the court raises and resolves a claim on its own initiative. The district court had discretion to find that Bear Creek had forfeited its claim for relief under section 2000e-1(a) by failing to present that claim in its pleading or summary-judgment filings. But once the district court had requested supplemental briefing and *ruled* on the section 2000e-1(a) issue, it was required to enter judgment for Bear Creek rather than the EEOC, because the Court had found that the EEOC was *statutorily prohibited* from enforcing its guidance documents against Bear Creek. It would be an abuse of discretion to enter any other type of judgment in response to a ruling of this sort.

Finally, the EEOC cites the district court's opinion that denied the plaintiffs' request to amend its judgment and enter declaratory and injunctive relief for Bear Creek. *See* EEOC's Br. at 55 (citing ROA.1869-1870). But the district court did not explain how it could justify awarding judgment to the EEOC on Bear Creek's claims, after concluding that the EEOC was statutorily prohibited from enforcing its guidance documents against Bear Creek and other churches. The district court observed that it had rejected the claims that Bear Creek had raised in its pleadings and summary-judgment fil-

19. *See* EEOC's Br. at 55 (quoting *Peterson v. Bell Helicopter Textron, Inc.*, 806 F.3d 335, 340 (5th Cir. 2015)).

ings,²⁰ but it did not address Rule 54(c), which provides that a final judgment “should grant the relief to which each party is entitled, even if the party has not demanded that relief in its pleadings,”²¹ and it did not explain how it could justify entry of judgment in favor of the EEOC after concluding that the EEOC could not lawfully enforce its guidance documents (or *Bostock*) against church employers.

CONCLUSION

The judgment of the district court should be affirmed to the extent it certified the plaintiff classes and entered judgment in favor of Braidwood and the certified classes. The judgment of the district court should be reversed to the extent it entered judgment in favor of the defendants on any of the claims asserted by Bear Creek or Braidwood.

Respectfully submitted.

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Dated: September 21, 2022

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20. ROA.1870 (“Because the Court rejected the Church’s Title VII claims entirely, it does not award declaratory or injunctive relief on this basis.”).

21. Fed. R. Civ. P. 54(c).

CERTIFICATE OF SERVICE

I certify that on September 21, 2022, this document was electronically filed with the clerk of the court for the U.S. Court of Appeals for the Fifth Circuit and served through CM/ECF upon:

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CERTIFICATE OF COMPLIANCE

with type-volume limitation, typeface requirements,
and type-style requirements

1. This brief complies with the type-volume limitation of Fed. R. App. P. 27(d)(2) because it contains 4,411 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).
2. This brief complies with the typeface and type-style requirements of Fed. R. App. P. 27(d)(1)(E), 32(a)(5), and Fed. R. App. P. 32(a)(6) because it uses Equity Text B 14-point type face throughout, and Equity Text B is a proportionally spaced typeface that includes serifs.

Dated: September 21, 2022

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CERTIFICATE OF ELECTRONIC COMPLIANCE

Counsel also certifies that on September 21, 2022, this brief was transmitted to Mr. Lyle W. Cayce, Clerk of the United States Court of Appeals for the Fifth Circuit, through the court's CM/ECF document filing system, <https://ecf.ca5.uscourts.gov>.

Counsel further certifies that: (1) required privacy redactions have been made, 5th Cir. R. 25.2.13; (2) the electronic submission is an exact copy of the paper document, 5th Cir. R. 25.2.1; and (3) the document has been scanned with the most recent version of VirusTotal and is free of viruses.

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