

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
WESTERN DIVISION**

Christian Employers Alliance,)	
)	
<i>Plaintiff,</i>)	
)	
v.)	Case No. 1:21-cv-195-DMT-CRH
)	
United States Equal Employment)	
Opportunity Commission, <i>et al.</i> ,)	
)	
<i>Defendants.</i>)	
)	

**REPLY MEMORANDUM IN SUPPORT OF
MOTION TO STAY DISTRICT COURT PROCEEDINGS**

Defendants submit this Reply Memorandum in support of their Motion to Stay District Proceedings. ECF No. 50. As Defendants explained in their supporting Memorandum, ECF No. 51 (“Mem.”), a stay pending issuance of the mandate in *Religious Sisters of Mercy v. Azar*, No. 21-1890 (8th Cir.), would preserve resources of the parties and the Court and would not prejudice any party or provide any party with a tactical advantage. Plaintiff’s Opposition, ECF No. 53 (“Opp.”) provides no persuasive reason to deny a stay.

First, Plaintiff argues against a stay based on its suggestion that “the odds of a successful government appeal of *Religious Sisters* seem to be low,” Opp. 3, either because the government will decide not to seek rehearing or the Eighth Circuit will deny it. But Plaintiff’s predictions about future actions of the government and the Eighth Circuit are speculative. Moreover, if the government does not seek rehearing in *Religious Sisters*, or if the Eighth Circuit denies rehearing, the duration of the stay is likely to be short and cause no appreciable delay to these proceedings. Relatedly, Plaintiff’s suggestion that “[b]y the time the government answers or moves to dismiss,

the mandate in *Religious Sisters* may have issued,” Opp. 2, depends on its speculation that the Eighth Circuit will not grant any rehearing petition. But if the government seeks and the Eighth Circuit grants rehearing, then Plaintiff’s proposed schedule would have the parties submitting dispositive motion briefing at the same time that the parties in *Religious Sisters* would be submitting rehearing briefs to the Eighth Circuit. That would be wasteful, as the parties to this case would inevitably need to brief the merits anew once the Eighth Circuit decided *Religious Sisters* on rehearing. Plaintiff does not dispute that if the Eighth Circuit grants rehearing in *Religious Sisters*, then a stay would conserve judicial resources and simplify presentation of the issues in this case.

Second, Plaintiff’s argument that it would be prejudiced by a stay, *see* Opp. 4-5, is unpersuasive. As Plaintiff concedes, “CEA and its members are protected under the [P]reliminary [I]njunction.” Opp. 4. Plaintiff correctly notes that the Preliminary Injunction is temporary, but a stay would only extend the duration of that Preliminary Injunction, providing Plaintiff with further protection. Plaintiff is simply wrong when it asserts that it is under a “sword of Damocles” of being subjected to “illegal mandates.” Opp. 4-5. The Preliminary Injunction enjoins Defendants from taking adverse actions against Plaintiff or its members, and lasts until the Court finally resolves the merits of Plaintiff’s claims. *See* ECF No. 39, at 17-18; ECF No. 44, at 4-5. Therefore, Plaintiff and its members face no possibility of any adverse action unless and until the Court determines that Plaintiff has not succeeded on the merits of its claims or the Court’s Preliminary Injunction is reversed on appeal. Notably, Plaintiff does not respond to or even acknowledge the authority cited in Defendants’ Memorandum concluding that a party with the protection of a preliminary injunction would not be prejudiced by a stay. *See* Mem. 5 (collecting cases).

Finally, Plaintiff does not dispute Defendants' showing that a stay would not provide a tactical advantage to any party. *See* Mem. 5. Therefore, all of the factors that this Court has identified for the consideration of a stay favor granting a stay in this case. *See Johnson v. N. Dakota Guar. & Title Co.*, No. 1:17-cv-120, 2018 WL 6706672, at *2 (D.N.D. Dec. 20, 2018) ("Factors for the court's consideration include but are not limited to the conservation of judicial resources, whether the stay would unduly prejudice or give a clear tactical advantage to one party, and whether a stay will simplify the issues in question and the trial of the case.").

CONCLUSION

For the foregoing reasons, the Court should grant Defendants' Motion to Stay and should stay further proceedings pending issuance of the mandate in *Religious Sisters*, except as to any issue that may arise from any alleged noncompliance with the Preliminary Injunction.

Dated: January 10, 2023

BRIAN M. BOYNTON
Principal Deputy Assistant Attorney
General

MICHELLE R. BENNETT
Assistant Branch Director

/s/ Jeremy S.B. Newman
Jeremy S.B. Newman
Trial Attorney
United States Department of Justice
Civil Division, Federal Programs Branch
1100 L Street, NW
Washington, DC 20005
Tel: (202) 532-3114
Email: jeremy.s.newman@usdoj.gov
Counsel for Defendants