

**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 EXPEDITED MOTION TO
EXTEND DEADLINE TO RESPOND TO PLAINTIFF’S MOTION FOR
PARTIAL SUMMARY JUDGMENT**

Defendants hereby submit this reply memorandum in support of Defendants’ Expedited Motion to Extend Deadline to Respond to Plaintiff’s Motion for Partial Summary Judgment, ECF No. 73 (“Extension Motion”). Defendants ask the Court to extend their deadline to respond to Plaintiff’s Motion for Partial Summary Judgment, which is currently November 16, to 14 days after the Court rules on Defendants’ separate Motion to Stay Proceedings Pending Section 1557 Rulemaking, ECF No. 72 (“Stay Motion”).¹

The logic behind Defendants’ Extension Motion is straightforward. In their memorandum supporting their Stay Motion, Defendants argue that the merits of Plaintiff’s

¹ Defendants submit this reply memorandum in support of their Extension Motion today pursuant to the Court’s text order of November 1, 2023, granting Defendants’ request to expedite consideration of the Extension Motion. *See* ECF No. 74. Pursuant to Local Civil Rule 7.1(B), Defendants will separately submit a reply memorandum in support of the Stay Motion on November 14, 2023.

claims against the United States Department of Health and Human Services (HHS) should be resolved on the basis of HHS's forthcoming rule implementing Section 1557 of the Affordable Care Act. *See* ECF No. 72-1, at 4-7.² If the Court agrees with this argument and grants the Stay Motion, then it follows that summary judgment briefing should not occur until after the stay concludes. Granting this Extension Motion would provide the Court with the opportunity to decide whether it is appropriate to grant the relief sought in the Stay Motion.

Even if the Court ultimately denies the Stay Motion, the modest extension sought here would not prejudice any party. Plaintiff will not be prejudiced by an extension, and Plaintiff does not contend otherwise, because Plaintiff and its members are protected by the preliminary injunction entered by the Court in this case. *See* Order Granting Motion for Preliminary Injunction, ECF No. 39; Order Granting Motion to Amend/Correct, ECF No. 44; *cf.* ECF No. 72-1, at 6 (citing cases holding that a stay does not prejudice a party who is protected by a preliminary injunction). Plaintiff does not argue that the preliminary injunction insufficiently protects its interests or its members' interests.

Nor would the requested extension materially delay proceedings. Plaintiff indicates that it has no objection to a 14-day extension, to November 30, for Defendants to respond to Plaintiff's Motion for Partial Summary Judgment. *See* Plaintiff's Response in Opposition to Defendants' Motions to Stay and Extend Time, ECF No. 75, at 1 ("counsel for CEA offered to consent to a 14-day extension of time for Defendants to file their brief"); *id.* at 10 ("the Court could grant an extension to a specific date, such as 14 days"). The

² For the reasons explained in the stay memorandum, a stay should apply to Plaintiff's claims against the United States Equal Employment Opportunity Commission. *See id.* at 6.

Stay Motion will be fully briefed on November 14. If the Court rules on the Stay Motion reasonably promptly, there will be no significant difference between the extension Defendants requested and the extension to which Plaintiff consents. Alternatively, if the Court does not grant the Extension Motion in full, the Court should at a minimum grant the Extension Motion in part and extend Defendants' deadline to respond to Plaintiff's Motion for Partial Summary Judgment to November 30.

CONCLUSION

For the foregoing reasons, Defendants respectfully request that the Court grant Defendants' Extension Motion and extend Defendants' deadline to respond to Plaintiff's Motion for Partial Summary Judgment until 14 days after the Court rules on Defendants' Stay Motion.

Dated: November 8, 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