

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

The Religious Sisters of Mercy, et al.,)
)
 Plaintiffs,)
)
 vs.)
)
 Xavier Becerra, Secretary of the United)
 States Department of Health and Human)
 Services, et al.,)
)
 Defendants.)

ORDER
 Case No. 3:16-cv-386

Catholic Benefits Association, et al.,)
)
 Plaintiffs,)
)
 vs.)
)
 Xavier Becerra, Secretary of the United)
 States Department of Health and Human)
 Services, et al.,)
)
 Defendants.)

Case No. 3:16-cv-432

The Catholic Benefits Association (“CBA”), a plaintiff in Case No. 3:16-cv-432, moves to seal declarations of certain members to establish associational standing. Doc. 152. The Defendants oppose the motion. Doc. 156. A status conference was held on July 17, 2023. Doc. 150.

I. BACKGROUND

In these cases, a coalition of entities affiliated with the Catholic Church and the State of North Dakota challenged the implementation of Section 1557 of the Patient Protection and Affordable Care Act (“ACA”). The CBA sued on behalf of its unnamed members, along with three named-Plaintiff members, the Diocese of Fargo, Catholic Charities North Dakota, and Catholic Medical Association. They argued the Department of Health and Human Services and the Equal Employment Opportunity

Commission interpret Section 1557 and related antidiscrimination laws in a way that compels them to perform and provide insurance coverage for gender transitions and abortions.

This Court granted the Catholic Plaintiffs partial summary judgment on their Religious Freedom Restoration Act of 1993 (“RFRA”) claim and concluded that the RFRA entitled them to permanent injunctive relief from the provision or coverage of gender-transition procedures. Doc. 124. That order also found that the CBA had associational standing to sue on behalf of its unnamed members. *Id.* The Defendants appealed to the Eighth Circuit Court of Appeals. Doc. 136.

The Eighth Circuit affirmed the order, except as to the finding of associational standing. It held “that the CBA lacks associational standing to sue on behalf of unnamed members.” *See Religious Sisters of Mercy, et al. v. Becerra, et al.*, 55 F.4th 583, 602 (8th Cir. 2022). In its conclusion, the Eighth Circuit said: “Accordingly, we affirm the district court’s grant of permanent injunctive relief to the plaintiffs except to the extent it recognizes the associational standing of the CBA. We remand for further proceedings consistent with this opinion.” *Id.* at 609.

II. LAW AND ANALYSIS

The CBA now asks to revisit standing. It moves to allow it to offer declarations of certain members to establish its associational standing on behalf of its unnamed members. Doc. 152. The Defendants oppose the motion and the request to revisit standing. Doc. 156.

Standing is a matter of subject matter jurisdiction. *See Curry v. Regents of Univ. of Minn.*, 167 F.3d 420, 422 (8th Cir. 1999). Establishing standing is a jurisdictional prerequisite to reaching the merits of a lawsuit. *City of Clarkson Valley v. Mineta*, 495 F.3d 567, 569 (8th Cir. 2007). This is consistent with Federal Rule of Civil Procedure 12(h)(3), which states, “If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.” Fed. R. Civ. P. 12(h)(3).

What the parties dispute is the scope and meaning of the Eighth Circuit’s remand directive. The CBA argues that the Eighth Circuit issued a general remand that allows (according to CBA) this

Court to reconsider whether the CBA can establish associational standing as to its unnamed members. Doc. 155. But on the specific facts of this case, the Court declines to do so. The holding of the Eighth Circuit was clear—the CBA “lacks associational standing to sue on behalf of unnamed members.” Religious Sisters of Mercy, 55 F.4th at 602. The remand directive was also clear—“we affirm the district court’s grant of permanent injunctive relief to the plaintiffs except to the extent it recognizes the associational standing of the CBA. We remand for further proceedings consistent with this opinion.” Id. at 609. Because standing is jurisdictional, and the Eighth Circuit decided the CBA lacked associational standing to sue on behalf of its unnamed members, on remand, the claims by the CBA on behalf of its unnamed members must be dismissed for lack of subject matter jurisdiction. See Fed. R. Civ. P. 12(h)(3). Importantly, the dismissal is without prejudice, and nothing prevents the CBA from filing a new action, where associational standing is properly established.

III. CONCLUSION

The CBA’s motion to seal declarations to establish associational standing (Doc. 152) is **DENIED**. Consistent with the Eighth Circuit’s remand, the claims of the CBA on behalf of its unnamed members are **DISMISSED WITHOUT PREJUDICE**. The Court directs the parties to confer and submit a proposed amended judgment on or before September 22, 2023. The proposed amended judgment must be sent in Word format to ndd_J-Welte@ndd.uscourts.gov. The Clerk of Court shall enter the amended judgment once approved by the undersigned.

IT IS SO ORDERED.

Dated this 15th day of September, 2023.

/s/ Peter D. Welte
Peter D. Welte, Chief Judge
United States District Court