UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

Bear Creek Bible Church, et al., Plaintiffs, v. **Equal Employment Opportunity Commission**, et al., Defendants.	Case No. 4:18-cv-00824-O

PLAINTIFFS' RESPONSE TO THE DEFENDANTS' MOTION FOR RECONSIDERATION

The plaintiffs acknowledge the transcription error described in the defendants' motion for reconsideration, and we agree that the defendants did not concede in their briefing or oral presentation that the EEOC's actions aggrieved the plaintiffs within the meaning of 5 U.S.C. § 702. The plaintiffs therefore do not oppose the defendants' motion to the extent it asks the Court to remove its claim that the defendants conceded this point.

The plaintiffs, however, believe that the Court's conclusion that the plaintiffs are "adversely affected or aggrieved" by the EEOC's actions remains sound and should not be disturbed. The EEOC's adjudications and guidance documents announcing that Title VII outlaws employment discrimination on account of sexual orientation or gender identity, as well as the lawsuit that the EEOC brought against Harris Funeral Homes, "affect" the plaintiffs by threatening them with possible enforcement action if they fail to comply with the EEOC's announced interpretations of Title VII. *See* Salvesen Decl. (ECF No. 90-4) at ¶ 17; Hotze Decl. (ECF No. 90-5) at ¶ 18. And the plaintiffs are "adversely affected or aggrieved" by the *in terrorem* effects of these

challenged agency actions. So the Court correctly held that the United States waived sovereign immunity under 5 U.S.C. § 702 and *Alabama-Coushatta Tribe of Texas v. United States*, 757 F.3d 484 (5th Cir. 2014).

CONCLUSION

The defendants' motion for reconsideration should be granted to the extent it asks the Court to remove the citation of the transcript, which mistakenly recorded Mr. Takemoto as conceding that the plaintiffs have been aggrieved by the EEOC's actions, and well as the Court's claim that defendants' counsel conceded this point. The Court should reaffirm its conclusion that the defendants waived sovereign immunity under 5 U.S.C. § 702.

Respectfully submitted.

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CERTIFICATE OF SERVICE

I certify that on November 19, 2021, I served this document through CM/ECF upon:

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