

**IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

**CHRISTIAN EMPLOYERS
ALLIANCE,**

Plaintiff-Appellee,

v.

EEOC, et al.,

Defendants-Appellants.

No. 22-3018

**RESPONSE IN OPPOSITION TO APPELLANTS'
MOTION TO PLACE APPEAL IN ABEYANCE**

Defendants-Appellants (the Government) have moved to hold this appeal in abeyance pending the resolution of *Religious Sisters v. Becerra*, No. 21-1890 (8th Cir.). Plaintiff-Appellee CEA, the Christian Employers Alliance, respectfully opposes this motion, for the following reasons.

1. This is an interlocutory appeal of a preliminary injunction, and the Government has not filed an emergency motion to stay the injunction. Instead, the Government has done something like the opposite: moving to stay this appeal for an indefinite period pending *Religious Sisters*. If the Government's motion is granted, the injunction the District Court awarded to CEA will remain in effect at least until this Court resolves *Religious Sisters*.

Moreover, the Government would not receive relief for an even longer period. If the Government loses *Religious Sisters*, it is hard to see how that ruling could help the Government in this appeal. And if the Government wins *Religious Sisters*, it would still not be entitled to immediate relief here. Rather, CEA would be entitled to brief and argue why its factual and legal circumstances might lead to a different outcome than the one in *Religious Sisters*.

2. In either event, the Government's motion to place this appeal in abeyance is likely to lead to a significant delay before it could obtain a ruling reversing the preliminary injunction. And that delay suggests the Government's interlocutory appeal was completely unnecessary in the first place. This is especially true because once *Religious Sisters* issues, the government would be free to petition the District Court to modify or vacate CEA's preliminary injunction. The Government is likely to receive relief more quickly from the District Court than from pursuing this appeal. And if the District Court first applies *Religious Sisters* to the facts and legal issues in this case, this Court will be in a far better position to consider that eventual appeal than it is to consider this appeal after *Religious Sisters* without the benefit of the District Court's first look.

3. In the meantime, this appeal may become unnecessary entirely. The District Court could proceed to final judgment, mooting this appeal, or it could issue final judgment promptly after *Religious Sisters*. An appeal from final judgment would present this Court with a far more

thorough and updated record than trying to consider this interlocutory appeal after *Religious Sisters*.

4. Consequently, the appropriate approach here is *not* to hold the appeal in abeyance, but for the Government to withdraw the appeal.

5. Alternatively, CEA respectfully suggests that this Court exercise its discretion to dismiss this appeal without prejudice as a matter of docket management. “The grant of a preliminary injunction is reviewed for abuse of discretion.” *Dixon v. City of St. Louis*, 950 F.3d 1052, 1055 (8th Cir. 2020).

It is within this Court’s discretion to hold that the District Court did not abuse its discretion as a preliminary matter since the Government’s motion concedes that it is not actually seeking interlocutory relief for the moment (prior to a decision in *Religious Sisters*), and since this appeal could take many more months afterward.

Dismissing this appeal without prejudice would leave the Government free to pursue relief after the *Religious Sisters* decision, but at the District Court where it should seek that relief in the first instance. That approach would be far more efficient to this Court and to the litigating parties.

Dated: October 12, 2022

Respectfully submitted,

s/ Matthew S. Bowman

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CERTIFICATE OF COMPLIANCE

I hereby certify that this motion complies with the type-volume limit of Fed. R. of App. P. 27(d)(2) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f), this document contains 566 words.

This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word in 14 pt. Century Schoolbook.

Dated: October 12, 2022

s/ Matthew S. Bowman

MATTHEW S. BOWMAN

Counsel for Plaintiff-Appellee

CERTIFICATE OF SERVICE

I hereby certify that on October 12, 2022, a true and accurate copy of the foregoing was electronically filed with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the CM/ECF system. I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

s/ Matthew S. Bowman

MATTHEW S. BOWMAN

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