

UNITED STATES DISTRICT COURT  
DISTRICT OF NORTH DAKOTA  
EASTERN DIVISION

THE CATHOLIC BENEFITS ASSOCIATION; SISTERS OF ST. FRANCIS OF THE IMMACULATE HEART OF MARY; ST. ANNE'S GUEST HOME; and ST. GERARD'S COMMUNITY OF CARE,

*Plaintiffs,*

v.

XAVIER BECERRA, Secretary of the United States Department of Health and Human Services; UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES; CHARLOTTE BURREWS, Chair of the United States Equal Employment Opportunity Commission; and UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

*Defendants.*

No. 3:23-cv-203-PDW-ARS

**CBA PLAINTIFFS' NOTICE OF UNPROTECTED NEW MEMBERS AND RENEWED  
MOTION FOR TEMPORARY RESTRAINING ORDER AND  
PRELIMINARY INJUNCTION**

1. On November 22, 2023, CBA Plaintiffs filed a motion for temporary restraining order and preliminary injunction, respectfully requesting the Court reenter its injunction of January 19, 2021 from *Religious Sisters of Mercy v. Becerra*, 16-cv-386-PDW-ARS (D.N.D.) that protected CBA's present and future members from the Government's gender-transition services mandate. Doc. 3.

2. The CBA's motion for emergency relief was necessitated by the Government's refusal to agree to re-entry of the Court's January 19, 2021 injunction on a preliminary basis while the

parties briefed cross-motions for summary judgment. Although the Government has promised in pleadings to this Court that it would not enforce the mandate against CBA members as of the date CBA Plaintiffs filed the instant suit on October 13, 2023, it would not agree to non-enforcement against CBA's members who joined after that date. This is despite the facts that (1) all CBA members must attest that they adhere to Catholic teaching on the subject matter here as a condition of membership, ECF 22 at 6-8; (2) failure to protect future members will cripple the ministry of CBA itself, as an expressive association protected by the First Amendment, *id.* at 10-11; and (3) the Government has already litigated and lost this issue against CBA, *id.*

3. In its reply in support of its motion for preliminary injunction, CBA notified the Court that new members had recently joined CBA who were unprotected by the Government's promise of non-enforcement against CBA members as of the date the complaint was filed on October 13, 2023. ECF 22-4 at ¶ 3; *see also* ECF 22 at 12-13. Those members remain unprotected.

4. Today, an additional member joined the CBA, who is similarly unprotected from enforcement of the Mandate. Declaration of Martin Nussbaum, attached here, at ¶ 4.

5. For all the reasons stated in its motion for preliminary injunction and related reply brief, CBA respectfully requests the Court enter a preliminary injunction at the earliest possible time, protecting CBA's members. Without relief for its members, CBA will be forced to file a new suit each time a new member joins, as one did today. As Judge Traynor explained in a related case, "a limitation [to present members only] would result in continuous litigation and be a waste of judicial resources as well as the time and resources of the litigants." *Christian Emps. All. v. Azar*, 2019 WL 2130142, at \*5 (D.N.D. May 15, 2019).

DATED: February 23, 2023.

Respectfully submitted,

/s/ Andrew Nussbaum

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**DECLARATION OF L. MARTIN NUSSBAUM**

1. My name is Martin Nussbaum. I am over the age of 21 and am capable of making this declaration pursuant to 28 U.S.C. §1746. I have not been convicted of a felony or crime involving dishonesty. The facts contained herein are within my personal knowledge. If I were called upon to testify to these facts, I could and would competently do so.

2. I have served as General Counsel for the Catholic Benefits Association ("CBA") it was formed in 2013.

3. The CBA's first member joined on March 21, 2014. Since then, Catholic employers of all types have steadily become members. When the CBA filed the complaint in this action, it had over

1,350 employers as members plus 7,100 Catholic parish employers. The number of CBA employer members grew by 20 through December 20, 2023.

4. Today, an additional employer joined the CBA.

5. Thus, the CBA has averaged adding 12 new regular employer members plus 61 new parish employer members every month since March 2014.

6. This declaration is being submitted in support of the motion for temporary restraining order and preliminary injunction filed by the CBA and the other named plaintiffs in this case.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 23, 2024.

/s/ L. Martin Nussbaum