

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' MOTION FOR LEAVE TO FILE SUPPLEMENTAL BRIEF IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT

The CBA Plaintiffs respectfully move for leave to file a short supplemental brief in support of their motion for summary judgment and a related declaration of the CEO of the CBA attached hereto. The supplemental brief and declaration identify new and ongoing harm from the Mandate to CBA and its members since the CBA filed its motion for summary judgment. These include requests that CBA members indemnify their third-party administrators for any enforcement action related to the Mandate, as well as a recently identified enforcement action by the Government Defendants against a CBA member. Good cause exists for this request as the Court has not yet

ruled on CBA's motion for summary judgment and these ongoing harms are actively abridging CBA members' First Amendment freedoms. For the foregoing reasons, CBA Plaintiffs respectfully request the Court grant leave for CBA to file the attached supplemental brief and related declaration.

Respectfully submitted,

/s/ L. Martin Nussbaum

L. Martin Nussbaum

Andrew Nussbaum

First & Fourteenth PLLC

2 N. Cascade Ave., Suite 1430

Colorado Springs, CO 80903

(719) 428-4937

martin@first-fourteenth.com

andrew@first-fourteenth.com

Attorneys for Plaintiffs

Dated: December 27, 2024

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 BURROWS, 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’ SUPPLEMENTAL BRIEF IN SUPPORT OF THEIR MOTION
FOR SUMMARY JUDGMENT**

The CBA Plaintiffs filed their motion for summary judgment on August 1, 2024. The government responded, and moved to dismiss and for summary judgment. This matter was fully briefed on October 30, 2024. In its response, the Government repeatedly contends that the CBA and its members have suffered no harm and no burden from HHS’s 2024 Rule and EEOC’s Title VII interpretation (collectively, the “Mandate”). But those harms and burdens on CBA and its members continue to accumulate, including after summary-judgment briefing was completed as set forth in the Declaration of Douglas Wilson, CBA’s Chief Executive Officer, attached as Exhibit B.

Mr. Wilson states, among other things, that the Mandate has, for four CBA members in three states, resulted in their respective TPAs requiring them to contractually indemnify the TPA before the TPA would administer the exclusion of immoral services required by the Mandate. *See* Wilson Declaration, Exhibit A, ¶ 7. It has also burdened one CBA member's religious exercise when the EEOC received and processed a charge of discrimination and issued a right to sue letter arising from an employee's claim of Title VII and Section 1557 discrimination when that member, through its TPA, denied the employee's request for health plan coverage of gender transition services. *Id.* ¶¶ 8-9. Regarding the Section 1557 discrimination suit, the member has asked that the CBA preserve its anonymity to avoid other adverse consequences arising from its practice of the Catholic faith.

Because of these new and continuing harms as well as others the CBA previously identified in its briefs, the CBA respectfully requests that the Court rule before the new presidential administration enters office on January 20, 2025. The CBA requests a ruling before January 20, 2025, to avoid more Government-requested delays as has been its pattern in this and the closely-related prequel lawsuit. In that prequel lawsuit filed eight years ago on December 28, 2016, the Government requested stays and delays fourteen times.¹ In this lawsuit, the Government has requested a stay

¹ *See Religious Sisters of Mercy et al. v. Becerra et. al.*, 3:16-cv-386 (D.N.D.), ECF No. 45 (May 26, 2017) (request to stay), ECF No. 45 (May 26, 2017) (request to extend stay), ECF No. 61 (May 21, 2018) (request to extend stay), ECF No. 62 (July 20, 2018) (request to extend stay), ECF No. 64 (Oct. 18, 2018) (request to extend stay), ECF No. 67 (Jan. 15, 2019) (request to stay), ECF No. 70 (Feb. 19, 2019) (request to extend stay), ECF No. 71 (May 31, 2019) (request to extend stay), ECF No. 76 (Oct. 4, 2019) (request to extend stay), ECF No. 78 (Jan. 2, 2020) (request to extend stay), ECF No. 81 (Apr. 3, 2020) (request to extend stay), ECF No. 83 (Jul. 6, 2020) (request to extend stay), ECF No. 86 (Aug. 5, 2020) (request to extend stay), ECF No. 88 (Oct. 5, 2020) (request to extend stay).

earlier this year.² By ruling before January 20, the Court will prevent the Government invoking a change of administration to support any future requests for delay during the ninth year of this litigation.

The CBA Plaintiffs respectfully requests that the Court consider this supplemental brief and Mr. Wilson's declaration and rule consistently with its order on the day before the current administration entered office, *Religious Sisters of Mercy v. Azar*, 413 F. Supp.3d 1113 (January 19, 2021).

Respectfully submitted,

/s/ L. Martin Nussbaum

L. Martin Nussbaum

Andrew Nussbaum

First & Fourteenth PLLC

2 N. Cascade Ave., Suite 1430

Colorado Springs, CO 80903

(719) 428-4937

martin@first-fourteenth.com

andrew@first-fourteenth.com

Attorneys for Plaintiffs

Dated: December 27, 2024

² *Catholic Benefits Assn. v. Becerra*, No. 3:23-cv-203-PDW-ARS (D.N.D.), ECF 26 (February 5, 2024) (requesting stay pending Section 1557 rulemaking).

**UNITED STATES DISTRICT COURT
DISTRICT OF NORTH DAKOTA
EASTERN DIVISION**

THE CATHOLIC BENEFITS
ASSOCIATION, on behalf of its members;
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
BURROWS, Chair of the United States
Equal Employment Opportunity
Commission; and UNITED STATES
EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Defendants.

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

DECLARATION OF DOUGLAS WILSON

1. My name is Douglas Wilson. I am over 21 and capable of making this declaration. I have not been convicted of a felony or crime involving dishonesty. The facts I state here are within my personal knowledge, and if I were called upon to testify to these facts, I could and would competently do so.

2. I have served as the Chief Executive Officer of the Catholic Benefits Association ("CBA") for almost ten years.

3. The CBA staff and I have daily contact with CBA members to assist them in finding solutions to various federal and state requirements that they—in their health plans and

in their employment and medical practices—would otherwise have to conduct their ministries and businesses in ways contrary to Catholic values.

4. For our members—each of whom is Catholic—one of the most vexing set of mandates are those related to abortion, gender transition, and so-called gender affirmation. These mandates may be rooted in section 1557 of the Affordable Care Act, Title VII’s prohibition of sex discrimination, HHS’s 2016 gender transition services coverage and performance mandate, HHS’s 2024 abortion and gender affirmation coverage and performance mandate, or EEOC’s interpretation of Title VII to require health plan coverage of gender affirming care.

The Burden on the Catholic Benefits Association’s Religious Exercise.

5. These mandates burden the religious exercise of CBA itself because CBA’s ministry consists of helping its members conduct their respective ministries and businesses consistently with Catholic values.

The Burden on CBA Members’ Religious Exercise by requiring them to violate their religious values or incur enforcement actions, damages, and penalties.

6. They also burden CBA members in several ways. First, they put our members to the choice of violating their religious beliefs or incurring government enforcement actions, private lawsuits, damages, fines, fees, and even the potential loss of government funding.

The Burden on CBA Members’ Religious Exercise by being required to indemnify their TPAs.

7. Second, because the section 1557 coverage mandates are often implemented by requiring third-party administrators (“TPA”) and group insurers to administer health plans of CBA members without complying with those plans’ exclusions of abortion or gender affirming

care, those mandates effectively foreclose any moral option for our members. Since May of this year when HHS issued its 2024 final rule, at least four CBA members in three states have been told by their respective TPAs that they must contractually indemnify and hold harmless those TPAs if our members wanted their TPAs to administer these exclusions in their health plans. These indemnification provisions exposed our members to substantial liability and burdened their religious exercise.

The Burden on a CBA Member's Religious Exercise by EEOC processing a charge of discrimination and issuing a right to sue letter.

8. Another CBA member was sued directly by an employee seeking to transition her gender after the member's plan had excluded the gender transition services from its health plan. The employee sued because the member, consistent with Catholic values, denied the employee's request for coverage of gender transition services and thereby allegedly violated the prohibitions of sex discrimination in Title VII and Section 1557 of the Affordable Care Act that align with interpretations of those statutes by EEOC and HHS.

9. During the administrative proceedings before this lawsuit was filed, the EEOC received the employee's charge discrimination, processed the employee's request for a right to sue letter, and issued a right to sue letter, thereby burdening [REDACTED] religious exercise.

Signed this 23rd day of December 2024.



Douglas Wilson