

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

THE CATHOLIC BENEFITS
ASSOCIATION, *et al.*

Plaintiffs,

V.

XAVIER BECERRA, *et al.*

Defendants.

No. 3:23-cv-00203-PDW-ARS

**DEFENDANTS' MOTION FOR LEAVE TO FILE
SUPPLEMENTAL RESPONSE BRIEF IN
OPPOSITION TO PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT**

Pursuant to Local Rule 7.1(C), Defendants hereby move for leave to submit the attached Supplemental Response Brief in Opposition to Plaintiffs’ Motion for Partial Summary Judgment. Leave to file a supplemental brief requires a “showing of good cause.” Local Rule 7.1(C). The Court granted Plaintiffs leave to file CBA Plaintiffs’ Supplemental Brief in Support of their Motion for Summary Judgment, ECF No. 69, and the accompanying Declaration of Douglas Wilson, ECF No. 69-1; *see* Order, ECF No. 68 (granting leave to file). The attached Supplemental Response Brief responds concisely to the arguments set forth in Plaintiffs’ Supplemental Brief and the factual assertions in the Wilson Declaration. Therefore, good cause exists for the filing of this Supplemental Response Brief. Accordingly, the Court should grant this motion and enter an order granting Defendants leave to file the attached Supplemental Response Brief.

Dated: January 10, 2025

Respectfully submitted,

BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General

MICHELLE R. BENNETT
Assistant Branch Director

/s/ Jeremy S.B. Newman

Jeremy S.B. Newman
Trial Attorney
United States Department of Justice
Civil Division, Federal Programs Branch
1100 L Street, NW
Washington, DC 20005
Tel: (202) 532-3114
Email: jeremy.s.newman@usdoj.gov

Counsel for Defendants

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

THE CATHOLIC BENEFITS
ASSOCIATION, *et al.*

Plaintiffs,

V.

XAVIER BECERRA, *et al.*

Defendants.

No. 3:23-cv-00203-PDW-ARS

**DEFENDANTS' SUPPLEMENTAL RESPONSE BRIEF IN
OPPOSITION TO PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT**

Defendants hereby submit this response to CBA Plaintiffs’ Supplemental Brief in Support of their Motion for Summary Judgment, ECF No. 69 (“Supplemental Brief” or “Suppl. Br.”), and the accompanying Declaration of Douglas Wilson, ECF No. 69-1 (“Wilson Decl.”). Neither the Supplemental Brief nor the Wilson Declaration support Plaintiffs’ Article III standing or show that the government has substantially burdened Plaintiffs’ religious exercise, as required for a claim under the Religious Freedom Restoration Act (“RFRA”).

In their Supplemental Brief, Plaintiffs contend that purportedly new facts set forth in the Wilson Declaration show that at least certain members of Plaintiff Catholic Benefits Association (“CBA”) are being harmed by HHS’s 2024 Rule and EEOC’s alleged interpretation of Title VII. Suppl. Br. 1. The Wilson Declaration asserts that since May 2024, four unnamed CBA members have been required by the third-party administrators (“TPAs”) of their employee health insurance plans to provide contractual indemnity for the TPAs to administer exclusions of coverage for gender-affirming care or abortion care. Wilson Decl. ¶ 7. The Wilson Declaration also contends that at an unspecified

time, an employee of an unnamed CBA member was denied coverage for gender-affirming care, filed a charge with the EEOC, obtained a Notice of Right to Sue from the EEOC, and initiated a private lawsuit under Title VII and Section 1557. *Id.* ¶ 8. HHS plays no role in processing employee discrimination claims, and the Supplemental Brief does not argue otherwise. The Wilson Declaration does not claim that either agency brought an enforcement action against a CBA member. It also does not claim that any of the unnamed CBA members referred to in the Declaration raised their religious objections with HHS or EEOC via HHS’s regulatory procedures to consider the application of federal religious freedom and conscience laws or EEOC’s enhanced procedures that encourage respondents to raise religious and other objections as early as possible after the filing of an EEOC charge.

At bottom, the Wilson Declaration complains about the actions of third parties not before the Court — TPAs and an employee — and fails to show that *Defendants* are harming Plaintiffs through the challenged actions. Yet for the causation or traceability element of Article III standing “to exist, ‘the injury has to be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court.’” *Agred Found. v. United States Army Corps of Eng’rs*, 3 F.4th 1069, 1073 (8th Cir. 2021) (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992)). “[T]raceability . . . requires the plaintiff to show a sufficiently direct causal connection between the challenged action and the identified harm. That connection cannot be overly attenuated.” *Id.* (quoting *Dantzler, Inc. v. Empresas Berríos Inventory & Operations, Inc.*, 958 F.3d 38, 47 (1st Cir. 2020)). Similarly, RFRA applies to actions of the federal government, providing that “Government shall not substantially burden a person’s exercise of religion” unless RFRA’s test is satisfied. 42 U.S.C. § 2000bb-1(a).

Although it is true that plaintiffs can “rely on ‘the predictable effect of Government action on the decisions of third parties’” to establish standing, *Murthy v. Missouri*, 603 U.S. 43, 72 (2024), the vague assertions in the Wilson Declaration provide no factual basis to determine that the third parties’

alleged actions predictably resulted from the 2024 Rule or EEOC's alleged interpretations of Title VII. The Wilson Declaration contains no supporting documentation and very little detail. For example, it contains neither the language of the contractual indemnification provisions purportedly required by the TPAs nor any correspondence from the TPAs that would indicate that indemnification was sought because of the 2024 Rule. Therefore, there is no basis to conclude that the TPAs acted as the "direct," *Agreed. Found*, 3 F.4th at 1073, and "predictable," *Murthy*, 602 U.S. at 72, result of Defendants' alleged interpretations of Section 1557 and Title VII. Similarly, the Wilson Declaration provides no detail about the employee's lawsuit. But it would appear likely that the employee sued because the employee wanted relief and believed the employee was entitled to relief under the governing statutes, which could have occurred even absent HHS's 2024 Rule or EEOC's alleged interpretations of Title VII.

Beyond the lack of causation, the Wilson Declaration also fails to show that the actions of third parties are causing, or imminently will cause, any injury or substantial burden to CBA members' religious exercise. Plaintiffs do not contend that any CBA member has had to pay anything because of the contractual indemnity required by TPAs or set forth any facts that would show that such payment is imminent or likely. Plaintiffs also do not indicate the procedural posture of the employee's lawsuit, but the CBA member will be able to assert all legal arguments and defenses in that lawsuit. Any judgment against that member could come only after an Article III court and/or a jury reject the member's arguments and defenses.

Finally, Plaintiffs fail to justify their request for a ruling by January 20, 2025. Suppl. Br. 2-3. As noted, Plaintiffs provide no evidence that any Plaintiff or CBA member will suffer imminent harm between now and January 20, 2025. Plaintiffs' summary judgment motion and Defendants' combined motion to dismiss and summary judgment motion are fully briefed, and the Court may issue a ruling whenever it is ready. But the Court should not be constrained by Plaintiffs' artificial deadline.

CONCLUSION

The Court should deny Plaintiffs' motion for partial summary judgment and grant Defendants' motion to dismiss or, in the alternative, cross-motion for summary judgment on Plaintiffs' RFRA claims.

Dated: January 10, 2025

Respectfully submitted,

BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General

MICHELLE R. BENNETT
Assistant Branch Director

/s/ Jeremy S.B. Newman
Jeremy S.B. Newman
Trial Attorney
United States Department of Justice
Civil Division, Federal Programs Branch
1100 L Street, NW
Washington, DC 20005
Tel: (202) 532-3114
Email: jeremy.s.newman@usdoj.gov

Counsel for Defendants