

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA**

THE RELIGIOUS SISTERS OF
MERCY, *et al.*,

Plaintiffs,

v.

NORRIS COCHRAN, Acting
Secretary of the United States
Department of Health and Human
Service, *et al.*,

Defendants.

No. 3:16-cv-386

CATHOLIC BENEFITS
ASSOCIATION, *et al.*

Plaintiffs,

v.

NORRIS COCHRAN, Acting
Secretary of the United States
Department of Health and Human
Service, *et al.*,

Defendants.

No. 3:16-cv-432

**PLAINTIFFS' UNOPPOSED MOTION FOR ENTRY OF FINAL JUDGMENT
AND FOR EXTENSION OF TIME TO FILE FOR FEES AND COSTS**

In light of this Court's summary-judgment decision and issuance of a permanent injunction (ECF No. 124), Plaintiffs, by and through their respective counsel, respectfully move this Court to enter final judgment in accordance with Fed. R. Civ. P. 58. Plaintiffs also request an extension of the time to file a motion for fees and costs until 60 days after the expiration of any deadline for appeal (if there is no appeal) or

after final resolution of all appeals (if there is an appeal). Defendants do not oppose this motion.

In support of this motion, Plaintiffs state:

1. On January 19, 2021, this Court granted summary judgment and a permanent injunction to Plaintiffs on their claims under the Religious Freedom Restoration Act (*i.e.* Counts I-II of the Amended Complaint for the Plaintiffs in Case No. 16-386 (ECF No. 95)), and Counts XI and XII of the Amended Complaint for the Plaintiffs in Case No. 16-432 (ECF No. 97)), to the extent those claims challenge the interpretations of Section 1557 and Title VII that require Plaintiffs to perform and provide insurance coverage for gender-transition procedures. ECF No. 124 at 55. To the extent those claims relate to abortion or “Title IX and other unidentified federal laws,” the Court dismissed them without prejudice. *Id.* The Court also dismissed without prejudice the claims under the Administrative Procedure Act alleged by the Plaintiffs in Case No. 16-386 (*i.e.*, Counts III-V of those Plaintiffs’ Amended Complaint).

2. Plaintiff North Dakota had also moved for summary judgment on its claims under the Spending Clause (*i.e.*, Counts XIII and XV of the Amended Complaint for the Plaintiffs in Case No. 16-432 (ECF No. 95)). In its January 19 order, the Court held it had jurisdiction to consider these claims, ECF No. 124 at 43, but it resolved the claims in Defendants’ favor as a matter of law, *id.* at 48-53. Although Defendants had not moved for summary judgment, the order was, “in sum and substance, a grant of summary judgment to” Defendants on these claims, since the order “made no reference to any factual disputes that required resolution at trial.” *Acton v. City of Columbia*, 436 F.3d 969, 974 (8th Cir. 2006); *see* ECF No. 124 at 48-49 (“The answer is yes” that Congress “furnish[ed] clear notice regarding the liability at issue.” (internal quotation marks omitted)); *id.* at 52 (the “conditions on funds” at issue “do not implicate the coercion doctrine”); *see also* Fed. R. Civ. P. 56(f) (permitting

summary judgment independent of a motion). In this Circuit, such a denial is “final” for purposes of appeal. *Acton*, 436 F.3d at 973-75.

3. On February 18, 2021, Plaintiffs voluntarily dismissed without prejudice all claims not resolved in the Court’s January 19 order. Because that dismissal, combined with the January 19 order, leaves “nothing ... for the district court to resolve,” it “thereby creat[es] a final judgment.” *Hope v. Klabal*, 457 F.3d 784, 790 (8th Cir. 2006).

4. Rule 58 of the Federal Rules of Civil Procedure provides that “[e]very judgment and amended judgment must be set out in a separate document.” Fed. R. Civ. P. 58(a). Now that all claims have been resolved, Plaintiffs respectfully “request that judgment be set out in a separate document as required by Rule 58(a).” Fed. R. Civ. P. 58(d).

5. Once the Court enters judgment under Rule 58, Plaintiffs ordinarily would have 14 days from that date to seek fees and expenses as prevailing parties in this action. Fed. R. Civ. P. 54(d)(2)(B)(i); *Cardinal Health 110, Inc. v. Cyrus Pharm., LLC*, 560 F.3d 894, 902 (8th Cir. 2009). In the interests of judicial economy and avoiding duplicative fee litigation, however, Plaintiffs respectfully request that the Court extend the time to file a motion for fees and expenses until 60 days after the expiration of the deadline to appeal (if there is no appeal) or after final resolution of all appeals (if there is an appeal). *See* Fed. R. Civ. P. 54(d)(2)(B) (default deadline applies “[u]nless a ... court order provides otherwise”); *see also, e.g.*, Order Disposing of Remaining Claims at 3, *Business Leaders in Christ v. Univ. of Iowa*, No. 3:17-cv-00080-SMR-SBJ (S.D. Iowa Feb. 19, 2019), ECF No. 123 (granting similar extension); Order, *E. Tex. Baptist Univ. v. Sebelius*, Civil No. 12-cv-3009 (S.D. Tex. Feb. 4, 2014), ECF No. 138 (extending time “for filing a petition for fees and expenses” to a date to be set “after the resolution of the appeal in this case, if any”).

6. Plaintiffs have submitted a proposed judgment alongside this motion. In accordance with Rule 58, that judgment “sets forth the relief granted,” *i.e.*, the relief

as set out in this Court's January 19 order. *See Local Union No. 1992 of Int'l Brotherhood of Elec. Workers v. Okonite Co.*, 358 F.3d 278, 285 (3d Cir. 2004). The proposed judgment also reflects the extension of the time to file for costs and fees. *Accord id.* (“[T]he succinct statement in a judgment that an attorneys’ fee motion is deferred for future resolution is perforce consistent with Rule 58”).

7. The proposed judgment also includes clarifying language regarding Defendants’ compliance with the Court’s order prior to and upon becoming aware of an entity’s status as a member of Plaintiff The Catholic Benefits Association. This clarifying language was negotiated and agreed upon by counsel for Plaintiffs in Case No. 16-432 and counsel for Defendants, and is the same as the language previously submitted by Defendants as a proposed clarification of the Court’s injunction in Defendants’ Motion to Modify Order (ECF No. 130). Thus, if the Court grants this motion and enters the proposed judgment, the parties agree that Defendants’ motion would become moot.

8. In accordance with the Court’s desire to facilitate “resolution of the remaining claims,” ECF No. 124 at 57, granting this motion and entering final judgment will conclude this litigation before this Court and clarify the time for the filing of any appeals and requests for fees and expenses.

Respectfully submitted this 18th day of February, 2021.

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CERTIFICATE OF SERVICE

I hereby certify that on February 18, 2021, the foregoing was served on all parties via ECF.

/s/ Luke W. Goodrich

Luke W. Goodrich

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[Proposed] FINAL JUDGMENT

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The Court by previous order granted Plaintiffs' motions for summary judgment in part, entering a permanent injunction against Defendants, and granted Defendants' motion to dismiss in part. ECF 124. In accordance with that order, and in light of the dismissal of all claims not previously resolved in the Court's order, the Court enters the following final judgment:

JUDGMENT IS ENTERED in favor of Plaintiffs Religious Sisters of Mercy, Sacred Heart Mercy Health Care Center (Alma, MI), SMP Health System, University

of Mary, Catholic Benefits Association (“CBA”), Diocese of Fargo, Catholic Charities North Dakota, and Catholic Medical Association (collectively, the “Catholic Plaintiffs”) as to their claims under the Religious Freedom Restoration Act (“RFRA”) challenging the interpretations of Section 1557 and Title VII that require the Catholic Plaintiffs to perform and provide insurance coverage for gender-transition procedures.

JUDGMENT IS ENTERED in favor of Defendants as to Plaintiff the State of North Dakota’s claims under the Spending Clause. *See* Fed. R. Civ. P. 56(f).

The Court **DECLARES** that Defendant the U.S. Department of Health & Human Services’ (“HHS”) interpretation of Section 1557 that requires the Catholic Plaintiffs to perform and provide insurance coverage for gender-transition procedures* violates their sincerely held religious beliefs without satisfying strict scrutiny under the RFRA. Accordingly, the Court **PERMANENTLY ENJOINS AND RESTRAINS** HHS, Acting Secretary Cochran, their divisions, bureaus, agents, officers, commissioners, employees, and anyone acting in concert or participation with them, including their successors in office, from interpreting or enforcing Section 1557 of the Affordable Care Act, 42 U.S.C. § 18116(a), or any implementing regulations thereto against the Catholic Plaintiffs in a manner that would require them to perform or provide insurance coverage for gender-transition procedures, including by denying federal financial assistance because of their failure to perform or provide insurance coverage for such procedures or by otherwise pursuing, charging, or assessing any penalties, fines, assessments, investigations, or other enforcement actions.

The Court further **DECLARES** that Defendant the Equal Employment Opportunity Commission’s (“EEOC”) interpretation of Title VII that requires the CBA and its members to provide insurance coverage for gender-transition procedures

* As used in this judgment, the term “gender-transition procedures” includes surgery, counseling, provision of pharmaceuticals, or other treatments sought in furtherance of a gender transition.

violates their sincerely held religious beliefs without satisfying strict scrutiny under the RFRA. Accordingly, the Court **PERMANENTLY ENJOINS AND RESTRAINS** the EEOC, Chair Burrows, their divisions, bureaus, agents, officers, commissioners, employees, and anyone acting in concert or participation with them, including their successors in office, from interpreting or enforcing Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., or any implementing regulations thereto against the CBA and its members in a manner that would require them to provide insurance coverage for gender-transition procedures, including by denying federal financial assistance because of their failure to provide insurance coverage for such procedures or by otherwise pursuing, charging, or assessing any penalties, fines, assessments, investigations, or other enforcement actions.

The relief provided in this order shall be restricted to the Catholic Plaintiffs, their present and future members, anyone acting in concert or participation with them, and their respective health plans and any insurers or third-party administrators in connection with such health plans. To come within the scope of this order, a CBA member must meet the following criteria:

- (a) The employer is not yet protected from interpretations of Section 1557 and Title VII that require the provision or coverage of gender transitions by any other judicial order;
- (b) The CBA has determined that the employer meets the CBA's strict membership criteria;
- (c) The CBA's membership criteria have not changed since the CBA filed its initial complaint on December 28, 2016; and
- (d) The employer is not subject to an adverse ruling on the merits in another case involving interpretations of Section 1557 and Title VII that require the provision or coverage of gender transitions.

Neither HHS nor EEOC violates this order by taking any of the above-described actions against any CBA member, anyone acting in concert or participation with a CBA member, or a CBA member's health plans and any insurers or TPAs in connection with such health plans, if the agency officials directly responsible for taking these actions are unaware of that entity's status as a CBA member or relevant relationship to a CBA member.

However, if either agency, unaware of an entity's status as a CBA member or relevant relationship to a CBA member, takes any of the above-described actions, the CBA member and the CBA may promptly notify a directly responsible agency official of the fact of the member's membership in the CBA (and the CBA member's satisfaction of the (a)-(d) criteria, described above) or the entity's relevant relationship to a CBA member and its protection under this order. Once such an official receives such notice from the CBA member and verification of the same by CBA, the agency shall promptly comply with this order with respect to such member or related entity.

Nothing in this Order shall prevent EEOC from:

- (1) taking any action in connection with the acceptance of a charge for filing regardless of the source, including receiving an online inquiry via the agency's Public Portal or requesting or receiving a questionnaire or other correspondence from the charging party, when the charge concerns an allegation against a Catholic Benefits Association (CBA) member concerning the exclusion of gender-transition procedures from its insurance coverage;
- (2) accepting a charge alleging that a CBA member does not provide insurance coverage for gender-transition procedures, and from entering the charge into EEOC's computer systems;
- (3) serving notice of the charge upon a CBA member within ten days as required by 42 U.S.C. § 2000e-5(b); or

(4) issuing a right-to-sue notice to a charging party who has filed a charge against a CBA member concerning the exclusion of gender-transition procedures from its insurance plan in accordance with the requirements and procedures set forth in 42 U.S.C. § 2000e-5(b) & (f)(1) and 29 C.F.R. § 1601.28(a)(1) & (2).

The injunction contained in this final judgment replaces the injunction issued in the Court's January 19, 2021 Memorandum and Order.

It is hereby **ORDERED** that any motion for attorneys' fees and expenses filed by any prevailing Plaintiff shall be filed within 60 days after the expiration of the deadline to appeal or after final resolution of all appeals, whichever is later.

Peter D. Welte, Chief Judge
United States District Court