

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

Christine Mills et. al.)
)
 Plaintiffs)
)
 v.)
)
 James Billington, Librarian)
 Library of Congress)
)
 Defendant)

Civil Action No. 04-2205 (HHK/AK)

DEFENDANT’S OPPOSITION TO PLAINTIFFS’ MOTION FOR AN INJUNCTION

Plaintiffs have filed a motion for an injunction to require Defendant to compile and publish annual Equal Employment Opportunity plans and related reports.¹ However, Plaintiffs’ Motion provides no standard for determining how or why this Court should grant their injunction. In determining whether to grant or deny Plaintiffs’ request for an injunction, this Court is required to balance four factors: (1) plaintiffs’ likelihood of success on the merits; (2) irreparable harm to the plaintiffs if the injunction is not granted; (3) substantial harm to the defendants if the injunction is granted; and (4) the public interest. Chaplaincy of Full Gospel Churches v. England, 454 F. 3d 290, 297 (D.C. Cir. 2006) (“CFGC”). The Court is to weigh the foregoing factors on a “sliding scale”, such that if Plaintiffs make an exceptionally strong showing with respect to one of the above factors, they need not make as strong a showing on the

¹Plaintiffs styled their motion as one for injunctive relief to compel Defendant to produce reports. Defendant notes that a motion for injunctive relief is actually intended to preserve the status quo, see, e.g. Consarc Corp. v. United States Treasury Dep’t, Office of Foreign Assets Control, 71 F.3d 909, 913 (D.C. Cir. 1995), which is not in danger of being compromised here. On this basis, Plaintiffs’ motion should be denied. Nevertheless, Defendant addresses the motion as styled.

remaining factors. Fraternal Order of Police v. Library of Congress, XX F. 3d XX (D.D.C. 2009), citing to Davenport v. Int'l Bhd. of Teamsters, 166 F. 3d 356, 361 (D.C. Cir. 1999). In the alternative, if the harm to the defendants would be substantial if the injunction is granted and the irreparable harm to the plaintiffs is low if the injunction is denied, then the Plaintiffs must show a much greater likelihood of success on the merits. Ibid at XX. Thus, the Court is to balance all four factors against each other in determining whether to grant or deny the injunction. Ibid. Most importantly, Plaintiffs bear the burden of establishing that all four factors, when considered together, weigh in favor of granting their request for an injunction. CFGC, 454 F. 3d at 297.

Plaintiffs' Motion fails to explain or show how any of the foregoing factors for granting an injunction are present in the instant case. Instead, Plaintiffs merely state that they have "standing to seek information that should be filed and published annually..." and that this somehow entitles them at this juncture in the proceedings (i.e., pre-class certification) to prevail on their request for an injunction requiring the Defendant to produce EEO reports for the years from 2005-2009. Plaintiffs' Motion at 12. For purposes of their requested relief, however, Plaintiffs have not provided a scintilla of explanation as to the likelihood of succeeding on the merits or what (if any) irreparable harm they will suffer as a result of their motion not being granted. Indeed, Defendant would posit that Plaintiffs cannot establish any irreparable harm and that this factor, in addition to that stated above, merits denial of Plaintiffs' motion. See Sampson v. Murray, 415 U.S. 61, 88 (1974)("the basis of injunctive relief in the federal courts has always been irreparable harm,"); CityFed Fin. Corp v. Office of Thrift Supervision, 58 F. 3d 738, 747 (D.C. Cir. 1995)(a court may deny a motion for preliminary injunction and not address the

remaining three factors where a plaintiff fails to establish irreparable harm). Plaintiffs themselves admit that, “[T]hey may not suffer a direct injury from the Defendant’s repeated failures to comply with his statistical duties to file such plans and progress reports...”. Plaintiffs’ Motion at 14. Considering Plaintiffs’ failure to establish that any supposed present or perceived injury to them cannot be remedied by corrective relief at a later date (assuming they meet the requirements for class certification and a trial on the merits finds in their favor) “weighs heavily against [their] claim of irreparable harm,” and therefore, warrants denial of their motion. *CFCG*, 454 F. 3d at 297-98.²

CONCLUSION

Plaintiffs have failed to provide this Court with any reason why an injunction is warranted. Moreover, Plaintiffs cannot show any irreparable injury that would result should their Motion be denied (and that cannot be remedied should they prevail on the merits of their case). Wherefore, this Court should deny Plaintiffs’ Motion.

² Defendant denies several factual assertions and conclusions made by the Plaintiffs in their Motion. Plaintiffs assertion that, “in 2007, the Inspector General [of the Library] concluded that Defendant was not conducting necessary affirmative action analyses,” is incorrect. See, Plaintiffs’ Motion at 7 & 11. The Inspector General’s report’s reference to “making statistical data available to all staff,” was a recommendation for the Library to follow the reporting requirements under the “No Fear Act,” P.L. 107-174, a law that is not applicable to the Library. Therefore, the assertion that somehow the Library’s Inspector General’s report was opining or making a conclusion regarding the reporting requirements under Title VII is misplaced. Second, Plaintiffs’ assertion that, “Plaintiffs have been advised by defense counsel that the Library has no plans to compile data or to publish reports pursuant to the statutory monitoring and publication requirements,” is incorrect. Plaintiffs’ Motion at 4 & 11. At the hearing before Judge Kay on October 20, 2009, defense counsel was merely responding to a question regarding whether the Library had any “applicant flow data” regarding its selection process and not as to the Library’s intentions with respect to the reporting requirements under Title VII, or whether the Library would or had adhered to such requirements.

Respectfully Submitted,

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