

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN**

MELISSA BUCK; CHAD BUCK;  
and SHAMBER FLORE;  
ST. VINCENT CATHOLIC  
CHARITIES,

*Plaintiffs,*

v.

ROBERT GORDON, in his official  
capacity as the Director of the  
Michigan Department of Health  
and Human Services; HERMAN  
MCCALL, in his official capacity  
as the Executive Director of the  
Michigan Children's Services  
Agency; DANA NESSEL, in her  
official capacity as Michigan  
Attorney General; ALEX AZAR, in  
his official capacity as Secretary of  
Health and Human Services;  
UNITED STATES DEPARTMENT  
OF HEALTH AND HUMAN  
SERVICES,

*Defendants.*

No. 1:19-cv-00286

HON. ROBERT J. JONKER

**PLAINTIFFS' RESPONSE TO KRISTY AND DANA DUMONT'S  
MOTION TO INTERVENE**

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## CONCISE STATEMENT OF ISSUES PRESENTED

1. The Proposed Intervenors have failed to satisfy the requirements for either intervention as of right or permissive intervention. Proposed Intervenors present no evidence to support the claim that they have a substantial legal interest in this case, nor have they explained how their personal interests are at all implicated by St. Vincent's contract with the State of Michigan.

## PRELIMINARY STATEMENT

St. Vincent is providing adoptions and finding families for Lansing's most vulnerable children today, and it wants to continue doing so. This lawsuit is about St. Vincent and its relationship with the State Defendants, who in turn claim that federal regulations govern certain aspects of that relationship.

Proposed Intervenors are not party to either of those relationships. And, crucially, they do not even claim they wish to adopt through St. Vincent. Instead, they seek a right to police the contractual relationships between the State and child welfare agencies they show no interest in working with. Their intervention would not protect any legal interest; no interest of theirs is impaired, and the State could adequately represent any interests they might have. Permitting intervention will only complicate the case and create unnecessary delays.

Adoptive families like the Bucks, volunteers like Shamber Flore, and St. Vincent itself need urgent relief from the government's unlawful actions. The Plaintiffs would not object to Proposed Intervenors acting as *amicus curiae* in the case, provided that doing so does not delay consideration of Plaintiffs' urgent preliminary injunction motion.

## BACKGROUND

St. Vincent is one of the oldest and most effective adoption agencies in Michigan. ECF No. 6-1 at PageID.228. St. Vincent has served children and families for over 70 years, helping those in crisis find hope and safety. *Id.* at PageID.229. As a nonprofit, faith-based organization, St. Vincent’s mission is “to share the love of Christ by performing the corporal and spiritual works of mercy.” *Id.* Today, St. Vincent provides a range of charitable services, including foster care and adoption. *Id.* As it has for many years, St. Vincent provides these services pursuant to contracts with the State Defendants. It is illegal to provide adoption or foster care services to children in Michigan’s child welfare system without a MDHHS contract. *Id.* at PageID.237. Therefore, if the State refuses to work with St. Vincent, the agency would be forced to shut down its foster and adoption ministries. *Id.* at PageID.237.

In order to ensure that “[p]rivate child placing agencies, including faith-based child placing agencies, have the right to free exercise of religion under both the state and federal constitutions,” Michigan enacted a law in 2015 to protect religious child welfare providers. MCL 722.124(e). As the State explained: “Under well-settled principles

of constitutional law, this right includes the freedom to abstain from conduct that conflicts with an agency’s sincerely held religious beliefs.” *Id.* As the State explained further, “[e]nsuring that faith-based child placing agencies can continue to provide adoption and foster care services will benefit the children and families who receive publicly funded services.” *Id.* at 722.124(g).

Shortly after the law passed, the ACLU of Michigan began “more than two years of work” to file a lawsuit to challenge the law. Ex. 9. On March 21, 2016, a Facebook group for a local LGBTQ community posted a message explaining that “[t]he ACLU of Michigan is planning to challenge a state law that authorizes adoption and foster care agencies to discriminate against prospective parents based on religious criteria,” and that “[t]he ACLU would very much like to speak confidentially with same-sex couples who are considering adopting children from the foster care system now or in the future.” Ex. 3. As a result, Proposed Intervenor Kristy and Dana Dumont began communicating with the ACLU. Ex. 4 at 6. Roughly two months later, the Dumonts reached out to two—and only two—adoption agencies: St. Vincent and Bethany Christian. *Id.* at 3. The Dumonts admitted that they had not contacted a

single adoption agency before they spoke with the ACLU, and they did not attempt to contact any other adoption agencies after their outreach to Bethany Christian and St. Vincent. *See id.*; Ex. 10 at 3-4. When asked under oath why they had not pursued adoption with other agencies, the Dumonts stated “they have not begun the adoption process with another agency because through this litigation they seek to better understand the full scope of their constitutional rights and the options available to them with respect to fostering and/or adopting in Michigan.” *Id.* at 4.

The Dumonts also put the ACLU in touch with another couple, the Busk-Suttons, who were parties to *Dumont v. Gordon* but have not sought to intervene here. Ex. 4 at 6. In June 2016, they inquired about one child on MARE and reached out to two different offices of Bethany. *Id.* at 4. Privately, Busk-Suttons said in January 2017 that “[w]e’ve considered [adoption], but between our concerns about same sex marriage under a Trump administration and the continuing renovations, this year isn’t the year.” Ex. 5. The Busk-Suttons further admitted that they “weren’t in a huge rush to adopt” and “could probably go to another agency.” Ex. 6.

The Dumonts and Busk-Suttons then sued the State of Michigan, not in the Dumonts' home forum of the Western District, but in the Eastern District of Michigan, on September 20, 2017. Complaint, *Dumont v. Gordon*, 17-cv-13080 (E.D. Mich. Sept. 20, 2017), ECF No. 1. The lawsuit sought to force the State to change its policy of partnering with private, faith-based child placing agencies like St. Vincent. *Id.* The Dumont plaintiffs did not assert any claims directly against St. Vincent or any other adoption agency. *See id.* As plaintiffs suing state agencies in federal court, the Plaintiffs sought only prospective injunctive and declaratory relief based primarily on their status as taxpayers in Michigan. *Id.*

The Bucks, Ms. Flore, and St. Vincent feared that their ministry would be threatened by the ACLU's lawsuit. They sought to protect their rights by intervening. In response to the lawsuit, the State defended its decision to partner with St. Vincent, stating that "some child-placing agencies have a sincerely held religious belief that prevents them from licensing or adopting to same-sex couples, which is protected by PA 53," the state law passed to protect religious child welfare agencies. Def. Answer at PageID.1189, *Dumont v. Gordon*, 17-cv-13080, (E.D. Mich. Dec. 15, 2017), ECF No. 52.

On January 1, 2019, Defendant Nessel took office. On January 23, the State and the ACLU sought a stay of the case so that they could engage in settlement discussions. Neither St. Vincent nor the other intervenors were invited to participate in these discussions. Then, on March 22, 2019, the State and ACLU filed a stipulated voluntary dismissal with prejudice, explaining that they had entered into a settlement agreement and that dismissal of the case was appropriate as “Intervenor Defendants [the Plaintiffs in this action] . . . are not party to the Settlement Agreement.” Ex. 1 at 22.

The District Court then—within the hour—entered the stipulated dismissal “pursuant to the terms of the settlement agreement” and retained jurisdiction over the enforcement of the private settlement agreement. *Id.* at PageID.1445. And as the agreement itself notes, it is only valid to the extent it is not “prohibited by law or court order.” *Id.*

After settling that lawsuit with the Dumonts, the State of Michigan issued a memorandum that applied to all child placing agencies in the State. Ex. 7. The State did not claim that the settlement was the exclusive reason for its sudden enforcement of this policy; it claimed that its policy had actually been required by state contracts all along, and that

this policy was necessary to comply with federal regulations from 2016. See Department of the Attorney General's *Summary Statement of Dumont v. Gordon Settlement Agreement*, available at [https://www.michigan.gov/documents/ag/03.22.19\\_FINAL\\_Dumont\\_settlement\\_summary\\_650097\\_7.pdf](https://www.michigan.gov/documents/ag/03.22.19_FINAL_Dumont_settlement_summary_650097_7.pdf) and reproduced as Ex. 8 (“In compliance with this federal requirement, MDHHS contracts mandate that . . . all agencies must comply with MDHHS’s non-discrimination statement when providing state-contracted services.”); ECF No. 34 at PageID.925 (“The Department has always enforced an agency contract’s non-discrimination clause; the *Dumont* settlement did not result in a ‘new’ policy. It merely reaffirmed the Department’s long-standing practice.”).<sup>1</sup>

The State’s allegedly “long-standing” policy violates Plaintiffs’ First Amendment rights, as explained in their Preliminary Injunction Motion. See ECF No. 5. Plaintiffs need urgent relief to ensure that St. Vincent can keep its agency open and the Bucks, Shamber Flore, and others like

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<sup>1</sup> The Plaintiffs dispute that this policy was in place prior to 2019, but cite Michigan’s statements here in order to note a rare area of agreement: neither the Plaintiffs nor the State believe that the settlement agreement was the sole source of or reason for the State’s current policy.

them are not harmed by the State's and the federal government's unlawful policies, regulations, and actions.

## ARGUMENT

### I. The Dumonts are not entitled to intervention as of right.

The Dumonts are not entitled to intervention as of right. To intervene as of right, a proposed intervenor must demonstrate “(1) that the motion to intervene was timely; (2) that they have a substantial legal interest in the subject matter of the case; (3) that their ability to protect that interest may be impaired in the absence of intervention; and (4) that the parties already before the court may not adequately represent their interest.” *Grutter v. Bollinger*, 188 F.3d 394, 397–98 (6th Cir. 1999). “Each of these elements is mandatory, and therefore failure to satisfy any one of the elements will defeat intervention under the Rule.” *Blount-Hill v. Zelman*, 636 F.3d 278, 283 (6th Cir. 2011) (citing *United States v. Michigan*, 424 F.3d 438, 443 (6th Cir. 2005)). While Proposed Intervenors’ motion is timely, they have failed to satisfy the remaining three factors: they have not demonstrated a substantial legal interest; they have not shown that such interest will be impaired; and they have failed to rebut the

presumption that the State can adequately represent any interest they have.

**A. The Dumonts have not alleged a substantial legal interest in this litigation.**

This case is about the Plaintiffs' longstanding relationship with the State and the State's policy that threatens to end that relationship—to the detriment of St. Vincent, the Bucks, Ms. Flore, and other children and families who depend on St. Vincent for support. The Proposed Intervenor is not a party to that relationship. The Plaintiffs are challenging an unconstitutional policy which impairs *their* contract with the State and *their* constitutional rights. The Dumonts—who no longer make any claim that they want to work with St. Vincent—have no legal interest in whether or how that relationship continues, nor have they presented any evidence of such an interest. *Grutter*, 188 F.3d at 398 (“The proposed intervenors *must show* that they have a substantial interest in the subject matter of this litigation.”).

*First*, the Dumonts claim an interest as a “party to a court-endorsed settlement agreement that is directly challenged in a separate litigation.” ECF No. 19 at PageID.463. The settlement agreement is not court-endorsed—more on that later—and neither is that agreement “directly

challenged” here. Proposed Intervenors are correct to note that their settlement agreement created only “contractual rights” enforceable by them against the State. *Id.* The settlement says nothing about, nor could it be enforced against, Plaintiffs here. Indeed, Plaintiffs cannot violate the settlement agreement as they are not a party to it, nor were they ever invited to be. Instead, Plaintiffs challenge the State’s discriminatory policy, one which even the State insists exists separately from that agreement, and which is now being enforced to prevent the State from continuing to work with St. Vincent. *See* ECF No. 34 at PageID.925 (State’s claims); ECF No. 6 at PageID.188-189, 221-222 (describing Plaintiffs’ harms from this policy).

In Proposed Intervenors’ lengthy arguments about the settlement, two words are conspicuously absent: “consent decree.” The Proposed Intervenors and State Defendants *could* have sought to have their settlement entered on the docket as a binding order of the court. That would have given the private agreement the force of a court order and—crucially—required a fairness hearing and subjected its terms to legal review on appeal. *See Pedreira v. Sunrise Children’s Servs., Inc.*, 802 F.3d 865, 872 (6th Cir. 2015) (remanding consent decree for fairness hearing).

Instead, they elected to enter into a private, two-party settlement, which by its very nature cannot adjudicate the rights of third parties. *See Bamerilease Capital Corp. v. Nearburg*, 958 F.2d 150, 152 (6th Cir. 1992) (“Settlement agreements are a type of contract and are therefore governed by contract law.”); *E.E.O.C. v. Frank’s Nursery & Crafts, Inc.*, 177 F.3d 448, 460 (6th Cir. 1999) (“[I]t is axiomatic that courts cannot bind a non-party to a contract, because that party never agreed to the terms set forth therein.”); *Original Brooklyn Water Bagel Co. v. Bersin Bagel Grp., LLC*, 817 F.3d 719, 727 (11th Cir. 2016) (“It defies both logic and common sense to suggest as a general matter that a defendant settling one case may bind all future plaintiffs to an agreement they had no part in negotiating *and* from which they derived no benefit.”) (emphasis in original).

The hallmarks of a consent decree are (1) “retain[ed] jurisdiction to enforce the decree” and (2) a court order which “incorporate[d] the parties’ terms.” *Pedreira*, 802 F.3d at 871. The Eastern District did not incorporate the settlement agreement’s terms into its dismissal order. Instead, the court dismissed the case “pursuant to the terms of the settlement agreement,” specifically citing *RE/MAX Int’l, Inc. v. Realty*

*One, Inc.*, 271 F.3d 633 (6th Cir. 2001). Order on Stip. of Dismissal at PageID.1469, *Dumont v. Gordon*, 17-cv-13080 (E.D. Mich. Mar. 22, 2019), ECF No. 83. And as *RE/MAX* states: “[t]he phrase ‘pursuant to the terms of the [s]ettlement’ ***fails to incorporate*** the terms of the [s]ettlement agreement into the order.” *RE/MAX Int’l, Inc.* at 642 (emphasis added). Thus, the Eastern District’s order makes clear that the settlement agreement was not incorporated in the court’s order, and Sixth Circuit law makes it clear that the Dumonts and the State *only* have a private settlement. The Dumonts cannot enforce that settlement against Plaintiffs here.

The caselaw they cite only further undermines their claim. In *Jansen*, the protected interest was clear: the “subject matter of the litigation requires *an interpretation of the consent decree* negotiated by the proposed intervenors and the City.” *Jansen v. City of Cincinnati*, 904 F.2d 336, 342 (6th Cir. 1990) (emphasis added). The *Buck* litigation, however, does not require interpretation of any consent decree. The settlement does not bind the Plaintiffs, nor can it limit their rights. What is more, the settlement explicitly states that it is valid “[u]nless prohibited by law or court order.” Ex. 1 at 9. This further confirms that the settlement does

not have the force of a court order, nor does it purport to limit the ability of other Article III courts to enter orders related to other parties' rights related to their own contracts concerning foster care and adoption. The settlement agreement does not need to be applied by this Court, as it is a mere private contract between the State and a non-party to this litigation. Even the State claims that the policy challenged here did not originate with the settlement agreement. *See* ECF No. 34 at PageID.925.

*City of St. Louis* is similarly unpersuasive, as it addresses arguments unique to the federal government as a repeat litigator whose interests in future claims and "other bankruptcy trusts established across the country" are a far cry from the Dumonts' purported interest. *City of St. Louis v. Velsicol Chemical Corp.*, 708 F. Supp. 2d 632, 667 (E.D. Mich. 2010).

*Second*, having no right to enforce their settlement against the Plaintiffs, the Dumonts fail to answer the key question: What harm will the Dumonts suffer as a result of this litigation? They claim that if St. Vincent is allowed to continue serving children in Michigan, this will "expose the Dumonts to unconstitutional 'unequal treatment' and thus further practical and stigmatic injury." ECF No. 19 at PageID.465. But

they nowhere claim that they want to adopt from St. Vincent, or tell the Court anything about their own plans to foster or adopt, whether those plans still exist, and whether or how they would be hampered by allowing St. Vincent to continue its religious exercise. They have not even attached a declaration, so there is no evidence before the Court regarding their interests. This fact alone should be sufficient to defeat their motion.

This also distinguishes their situation from *Grutter*, in which the Sixth Circuit held that intervention was appropriate for “individuals who have *applied or intend to apply* to the University” (emphasis added), because they had a substantial legal interest in the “educational opportunity” of attending college. *Grutter*, 188 F.3d at 397. Proposed Intervenors have not pointed to any such interest here.

Nor do Proposed Intervenors cite any case suggesting that mere stigmatic injuries are a sufficient legal interest for purposes of intervention.<sup>2</sup> In the related (although not identical) analysis of cognizable legal interests for standing, the Supreme Court has held that

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<sup>2</sup> Given that Proposed Intervenors did not reach out to adoption agencies before speaking with the ACLU about a legal challenge, only reached out to faith-based adoption agencies, and did not attempt to adopt or foster during the pendency of their litigation, any claim of stigmatic harm is questionable.

“abstract stigmatic interest” is not enough. *Allen v. Wright*, 468 U.S. 737, 755–56 (1984), *abrogated on other grounds by Lexmark Int’l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118 (2014) (“If the abstract stigmatic injury were cognizable, standing would extend nationwide to all members of the particular racial groups against which the Government was alleged to be discriminating . . . .”). Similarly, the Dumonts are claiming a stigmatic interest in the application of state policy to child welfare agencies, regardless of whether they actually have any plans to work with that agency. Such an interest would be boundless.

At bottom, Proposed Intervenors seek to use a private agreement obtained through separate litigation to act as private attorneys general, roving the State to intervene in any case where a religious child welfare agency is exercising the rights granted to it under the U.S. Constitution and state law. This Court should not sanction such conduct.

*Third*, the Proposed Intervenors allege that “the relief the *Buck* Plaintiffs seek would, if granted, infringe on the Dumonts’ existing contractual rights.” ECF No. 19 at PageID.463. But as explained above, Plaintiffs challenge the State’s official policy of excluding faith-based agencies like St. Vincent. Put another way: the private settlement

agreement cannot bind St. Vincent in its contractual relationship with the State, nor diminish its constitutional rights under the First Amendment. It is the State's implementation of a policy (or, as in this case, its unlawful reinterpretation and enforcement of existing anti-discrimination provisions) that impacts St. Vincent. *See Ex. 7.*

This difference is key—as even the cases cited by the Proposed Intervenors recognize. In *Blount-Hill*, the Sixth Circuit explained that White Hat did not have a sufficient legal interest at stake to intervene because its legal interest concerned a tangential threat to the funding structure underlying its contracts. As the court explained, “White Hat seeks to preserve the constitutionality of the community school’s funding structure *so that it might continue to contract* with community schools.” *Blount-Hill v. Bd. of Educ. of Ohio*, 195 F. App’x 482, 486 (6th Cir. 2006) (emphasis added). The court found this interest insufficient because it “does not concern the constitutional and statutory violations alleged in the litigation.” *Id.* The court then concluded that White Hat did not have any other legal interest in the case because it was not “a party to any challenged contract nor is it directly targeted by plaintiffs’ complaint.” *Id.* Similarly, the Dumonts are not directly targeted by Plaintiffs’

complaint and are not a party to the contracts involved in this case—the contracts between the State and St. Vincent. The Dumonts’ interest in protecting its private settlement with the State does not give it an interest in this litigation challenging the constitutionality of the State’s foster care and adoption provider policies applied against St. Vincent. *See United States v. Tennessee*, 260 F.3d 587, 595 (6th Cir. 2001) (denying intervention because “CMRA’s claimed interest does not concern the constitutional and statutory violations alleged in the litigation” but instead concerned only “contractual rights in agreements with the State to provide community-based services” tangential to the constitutional challenges at issue).

**B. The Dumonts’ legal interests are not impaired.**

For the same reason that the Proposed Intervenors have failed to identify a significant legal interest, they have failed to show how such an interest would be impaired. Proposed Intervenors’ generalized interest in this case can be adequately addressed by filing an amicus brief, which Plaintiffs do not oppose.

**C. The existing Defendants can adequately defend the Dumonts' legal interests.**

The Proposed Intervenors' only argument here is that they plan to raise Establishment and Equal Protection arguments that the State may not raise. But that can be done in an *amicus* brief. The State is also likely to raise identical arguments, as the State and Proposed Intervenors have acted in lockstep since the *Buck* litigation began.

Proposed Intervenors claim that they don't think the State Defendants will adequately represent their interests. But they simultaneously argue that the settlement agreement they obtained from the State is a crucial bulwark protecting those same interests. Proposed Intervenors point to no evidence suggesting that the State's representation of their supposed interests would be inadequate and thus fail to overcome the presumption of adequate representation. *See Bradley v. Milliken*, 828 F.2d 1186, 1192 (6th Cir. 1987) (“[T]he applicant for intervention bears the burden of demonstrating inadequate representation. This requires overcoming the presumption of adequacy of representation[.]”) (citations and internal quotation marks omitted).

**II. The Dumonts should not be granted permissive intervention.**

Proposed Intervenors should not be granted permissive intervention. Permissive intervention requires Proposed Intervenors to “establish that the motion is timely” and to allege “at least one common question of law or fact.” *United States v. Michigan*, 424 F.3d 438, 445 (6th Cir. 2005) (citation omitted). “Once these two requirements are established, the district court must then balance undue delay and prejudice to the original parties, if any, and any other relevant factors to determine whether, in the court’s discretion, intervention should be allowed.” *Id.* at 445.

Allowing Proposed Intervenors to join the case will only lead to additional, unnecessary motions practice (as their actions have already demonstrated). They are also attempting to create undue delay and prejudice to Plaintiffs by seeking to have their intervention motion heard prior to Plaintiffs’ urgent preliminary injunction motion and seeking to have this Court transfer the case outside Plaintiffs’ and State Defendants’ home forum (which is also the home forum of Proposed Intervenors).

Neither have Proposed Intervenors explained how intervention would better protect their alleged interest in this case than filing an *amicus* brief, especially given that the only way in which they claim the State

will not adequately represent their interest is in not making the same legal arguments that they want to make. ECF No. 19 at PageID.17-18; *South Carolina v. North Carolina*, 558 U.S. 256, 288 (2010) (“Courts often treat *amicus* participation as an alternative to intervention.”); *Brewer v. Republic Steel Corp.*, 513 F.2d 1222, 1225 (6th Cir. 1975) (similar); *Bush v. Viterna*, 740 F.2d 350, 359 (5th Cir. 1984) (“In acting on a request for permissive intervention, it is proper for the court to consider the fact that the Association has been granted *amicus curiae* status.”).

In short, Proposed Intervenors have no legally protected interest in St. Vincent’s contract with the State, nor have they explained how their personal interests are *at all implicated* by St. Vincent’s contract with the State of Michigan. There is thus no shared or common question of law arising in this case between the relief Plaintiffs request and the interests Proposed Intervenors seek to assert.

## CONCLUSION

Plaintiffs face the imminent threat that their religious ministry could be shut down by the State *at any time* based on the State’s unconstitutional policy. What is more, their adoption contract is set to expire in *four months*—September 30, 2019. This uncertainty is already

having a serious impact on St. Vincent's foster families, employees, and the agency as a whole. Injunctive relief is urgently needed to ensure continuity of care for the children and families St. Vincent serves. This Court should not permit third parties with no direct interest in St. Vincent's continued operation to delay or impair Plaintiffs' ability to vindicate their rights.

Dated: June 4, 2019

Respectfully submitted,

/s/ Lori Windham

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## CERTIFICATE OF COMPLIANCE

This memorandum complies with the word limit of L. Civ. R. 7.3(b)(i) because, excluding the parts exempted by L. Civ. R. 7.3(b)(i), it contains 4,125 words. The word count was generated using Microsoft Word 2019.

*/s/ Lori Windham*

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## CERTIFICATE OF SERVICE

I hereby certify that on June 4, 2019, I electronically filed the above document(s) with the Clerk of the Court using the ECF System, which sends an electronic notification to all counsel who have entered an appearance on the Docket.

*/s/ Lori Windham*

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# **EXHIBIT 1**

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

KRISTY DUMONT; DANA DUMONT;  
ERIN BUSK-SUTTON; and REBECCA  
BUSK-SUTTON,

Plaintiffs,

v.

ROBERT GORDON, in his official  
capacity as the Director of the Michigan  
Department of Health and Human  
Services; and JENNIFER WRAYNO, in  
her official capacity as the Acting  
Executive Director of the Michigan  
Children’s Services Agency,

Defendants,

and

ST. VINCENT CATHOLIC  
CHARITIES; MELISSA BUCK; CHAD  
BUCK; and SHAMBER FLORE,

Intervenor Defendants.

No. 2:17-cv-13080-PDB-EAS

HON. PAUL D. BORMAN

MAG. ELIZABETH A. STAFFORD

**STIPULATION OF  
VOLUNTARY DISMISSAL  
WITH PREJUDICE**

Plaintiffs Kristy Dumont, Dana Dumont, Erin Busk-Sutton, and  
Rebecca Busk-Sutton (collectively, “Plaintiffs”) and Defendants Robert Gordon and

Jennifer Wrayno<sup>1</sup> (collectively, “State Defendants”) file this stipulation of dismissal of the above-captioned action (the “Action”) under Rule 41(a)(2) of the Federal Rules of Civil Procedure. Plaintiffs and State Defendants state as follows:

On September 20, 2017, Plaintiffs filed the complaint in the Action with the U.S. District Court for the Eastern District of Michigan against the State Defendants. (ECF No. 1.)

On December 18, 2017, St. Vincent Catholic Charities, Melissa and Chad Buck, and Shamber Flore (“Intervenor Defendants”) moved to intervene in this case (ECF No. 18), which motion was granted on March 22, 2018. (ECF No. 34.)

On September 14, 2018, this Court denied in substantial part the motions to dismiss filed by State Defendants and Intervenor Defendants. (ECF No. 49 at 93.)

On September 17, 2018, the Court entered a schedule for discovery and briefing to “manage the progress of the case” (the “September 17 Scheduling Order”). (ECF No. 51 at 1.)

On October 31, 2018, all Parties jointly moved to modify the September 17 Scheduling Order. (ECF No. 61.) On November 2, 2018, this Court granted in part and denied in part that motion. (ECF No. 62.)

---

<sup>1</sup> Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, this stipulation reflects the substitution of Herman McCall, a party in his official capacity who has ceased to hold office during the pendency of the Action, for Jennifer Wrayno, who is “automatically substituted as a party.”

On November 13, 2018, this Court issued an Amended Scheduling Order. (ECF No. 63.)

The Parties have engaged in substantial discovery, including the exchange of written discovery and document production.

On January 23, 2019, Plaintiffs and State Defendants moved this Court to stay proceedings as Plaintiffs and State Defendants actively worked to reach a resolution. (ECF No. 74.) On that same day, Plaintiffs filed a Joint Motion for Immediate Consideration of the Motion to Stay Proceedings. (ECF No. 75.)

On January 24, 2019, this Court granted in part Plaintiffs' and State Defendants' Joint Motion to Stay Proceedings, entering a thirty (30) day stay of proceedings. (ECF No. 76.)

On February 22, 2019, State Defendants moved this Court to stay proceedings as Plaintiffs and State Defendants actively worked to reach a resolution. (ECF No. 79.) On that same day, State Defendants filed a Motion for Immediate Consideration of the Motion to Stay Proceedings (ECF No. 80) and this Court granted State Defendants' Motion to Stay Proceedings, entering a thirty (30) day stay of proceedings (ECF No. 81).

Plaintiffs and State Defendants have since entered into a Settlement Agreement, disposing of all claims asserted in the Action. An executed copy of the Settlement Agreement is attached hereto as Exhibit A. Intervenor Defendants,

who have asserted no claims and against whom no claims have been asserted, are not party to the Settlement Agreement.

Plaintiffs and State Defendants have agreed that all costs and attorneys' fees are the responsibility of the party incurring same. For the foregoing reasons, Plaintiffs and State Defendants respectfully request that the Court enter an order to dismiss all of Plaintiffs' claims in the Action.

Dated: March 22, 2019

/s/ Ann-Elizabeth Ostrager

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Michael J. Steinberg (P43085)  
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*Counsel for Plaintiffs*

*/s/ Joshua S. Smith* \_\_\_\_\_

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*Counsel for State Defendants*

**EXHIBIT A**  
**Settlement Agreement**

## **SETTLEMENT AGREEMENT**

*Dumont et al. v. Gordon et al.*  
USDC EDMI Case No. 2:17-cv-13080-PDB-EAS

This Settlement Agreement (the “Agreement”) between Kristy Dumont, Dana Dumont, Erin Busk-Sutton and Rebecca Busk-Sutton (collectively, the “Plaintiffs”), and Robert Gordon, in his official capacity as the Director of the Michigan Department of Health and Human Services (“MDHHS”), and Jennifer Wrayno, in her official capacity as the Acting Executive Director of the Michigan Children’s Services Agency (“MCSA”) (Gordon, Wrayno, MDHHS and MCSA collectively referred to herein as the “Department”), resolves Plaintiffs’ claims against the Department in the case captioned *Dumont et al. v. Gordon et al.*, Case No. 2:17-cv-13080-PDB-EAS, pending in the United States District Court for the Eastern District of Michigan (the “Litigation”), as stated herein. Throughout this Agreement, Plaintiffs and the Department may be referred to as a “Party” or collectively referred to as “Parties.”

WHEREAS, the Department contracts with licensed child placing agencies (“CPAs”) to provide adoption-related services for permanent wards placed with the Department for care, supervision, and adoption (“Adoption Services Contracts”).

WHEREAS, the Department contracts with licensed CPAs to provide foster care case management related services for children placed with the Department for care, supervision, and foster care placement (“PAFC Services Contracts”). Throughout this Agreement, the Adoption Services Contracts and the PAFC Services Contracts are collectively referred to as “Contracts.”

WHEREAS, the Department may contract with one or more licensed CPAs (“Contractors”) to subcontract with other licensed CPAs to provide adoption related services, in substantial compliance with the terms of the Adoption Services Contract, for permanent wards placed with the Department for care, supervision, and adoption (“Adoption Services Subcontracts”).

WHEREAS, the Department may contract with one or more Contractors to subcontract with other licensed CPAs to provide foster care case management related services, in substantial compliance with the terms of the PAFC Services Contracts, for children placed with the Department for care, supervision, and foster care placement (“PAFC Services Subcontracts”). Throughout this Agreement, Adoption Services Subcontracts and PAFC Services Subcontracts are collectively referred to as “Subcontracts.”

WHEREAS, the Contracts and the Subcontracts include a non-discrimination provision mandating that contracted CPAs comply with the Department’s non-discrimination statement prohibiting discrimination “against any individual or group because of race, sex, religion, age, national origin, color, height, weight, marital status, gender identity or expression, sexual orientation, political beliefs, or disability” in the provision of services under contract with the Department (the “Non-Discrimination Provision”).

WHEREAS, on September 20, 2017, Plaintiffs filed a complaint asserting claims against the Department in the Litigation. Thereafter, St. Vincent Catholic Charities, Melissa Buck, Chad Buck, and Shamber Flore intervened as defendants (collectively, “Intervening Defendants”) in the Litigation. Plaintiffs have asserted no claims, and have no current intention to assert any claims,

against Intervening Defendants in the Litigation. Likewise, the named Defendants have asserted no claims, and have no current intention to assert any claims, against Intervening Defendants in the Litigation. Intervening Defendants have not asserted any claims, counter-claims or cross-claims against Plaintiffs, Defendants, or any third party in the Litigation.

WHEREAS, Plaintiffs and the Department wish to resolve the Litigation; the Parties agree that they are entering into this Agreement for that purpose only and it is not to be construed as an admission of any liability or wrongdoing.

THEREFORE, in addition to the foregoing, and in the interest of resolving the Litigation, the Parties agree as follows:

Section 1. Unless prohibited by law or court order:

- a. The Department shall continue including in Contracts, and shall continue requiring all Contractors to include in Subcontracts, the Non-Discrimination Provision, or a materially and substantially similar provision (“Similar Provision”).
- b. For the avoidance of doubt, policies and practices prohibited under the Non-Discrimination Provision include, without limitation,
  - i. turning away or referring to another contracted CPA an otherwise potentially qualified LGBTQ individual or same-sex couple that may be a suitable foster or adoptive family for any child accepted by the CPA for services under a Contract or a Subcontract;
  - ii. refusing to provide orientation or training to an otherwise potentially qualified LGBTQ individual or same-sex couple that may be a suitable foster or adoptive family for any child accepted by the CPA for services under a Contract or a Subcontract;
  - iii. refusing to perform a home study or process a foster care licensing application or an adoption application for an otherwise potentially qualified LGBTQ individual or same-sex couple that may be a suitable foster or adoptive family for any child accepted by the CPA for services under a Contract or a Subcontract; and
  - iv. refusing to place a child accepted by the CPA for services under a Contract or a Subcontract with an otherwise qualified LGBTQ individual or same-sex couple suitable as a foster or adoptive family for the child;

in each case, without regard to whether such individual or couple has identified any particular child for foster placement or adoption.

- c. The Department shall enforce the Non-Discrimination Provision or Similar Provision against a CPA that the Department determines is in violation of, or is unwilling to comply with, such provisions (collectively, a “Contract”).

Violation”), up to and including termination of the Contracts in accordance with the termination provisions therein, including without limitation:

- i. In the event a CPA refuses to comply with the Non-Discrimination Provision or Similar Provision within a reasonable time after notification by the Department of a Contract Violation, the Department will terminate the CPA’s Contracts.
  - ii. The Department will initiate an investigation when made aware of an alleged Contract Violation. In the event the Department determines that a CPA has committed a Contract Violation, the Department will provide the CPA with notice and a reasonable opportunity to implement a Department-approved corrective action plan mandating immediate, regular, and continuous provision of foster care case management services or adoption services, as applicable, in compliance with the Non-Discrimination Provision or Similar Provision; where the CPA fails to demonstrate compliance after a reasonable opportunity to implement the approved corrective action plan, the Department will terminate the CPA’s Contracts.
- d. The Department shall require all Contractors to enforce the Non-Discrimination Provision or Similar Provision against a CPA that the Contractor or the Department determines is in violation of, or is unwilling to comply with, such provisions (collectively, a “Subcontract Violation”), up to and including termination of the Subcontracts in accordance with the termination provisions therein, including without limitation:
- i. In the event a CPA refuses to comply with the Non-Discrimination Provision or Similar Provision within a reasonable time after notification by the Contractor or the Department of a Subcontract Violation, the Department will require the Contractor to terminate the CPA’s Subcontracts.
  - ii. The Department will require a Contractor to initiate an investigation when made aware of an alleged Subcontract Violation. In the event the Contractor or the Department determines that a CPA has committed a Subcontract Violation, the Department will require the Contractor to provide the CPA with notice and a reasonable opportunity to implement a Contractor-approved corrective action plan mandating immediate, regular, and continuous provision of foster care case management services or adoption services, as applicable, in compliance with the Non-Discrimination Provision or Similar Provision; where the CPA fails to demonstrate compliance after a reasonable opportunity to implement the approved corrective action plan, the Department will require the Contractor to terminate the CPA’s Subcontracts.

- e. The Department shall provide ongoing training as part of the Department's existing training programs to Department employees, Contractors, and contracted CPAs with respect to:
  - i. the Litigation and the obligations under this Agreement;
  - ii. the obligations of, and reporting channels available to, the Department's employees and Contractors to report any Contract or Subcontract Violation or suspected Contract or Subcontract Violation by contracted CPAs, including, without limitation, to the Department's Division of Child Welfare Licensing via the "Online Complaint Form" accessible on the Department's website;
  - iii. the Department's obligations to investigate any Contract Violation or suspected Contract Violation reported verbally or in writing to the Department and to enforce the Non-Discrimination Provision or Similar Provision; and
  - iv. a Contractor's obligations to investigate any Subcontract Violation or suspected Subcontract Violation by contracted CPAs reported verbally or in writing to the Contractor, and to enforce the Subcontracts.
- f. The Department shall publish and maintain a hyperlink to the Department's Division of Child Welfare Licensing "Online Complaint Form" in a prominent place on the landing page of the Department's website; and
- g. The Department shall make a public announcement in substantially the following form:

The Department's contracts with child placing agencies prohibit discrimination against any individual or group because of race, religion, age, national origin, color, height, weight, marital status, sex, sexual orientation, gender identity or expression, political beliefs or disability.

Examples of prohibited discriminatory conduct include:

- turning away or referring to another contracted CPA an otherwise potentially qualified LGBTQ individual or same-sex couple that may be a suitable foster or adoptive family for any child accepted by the CPA for contracted services;
- refusing to provide orientation or training to an otherwise potentially qualified LGBTQ individual or same-sex couple that may be a suitable foster or adoptive family for any child accepted by the CPA for contracted services;

- refusing to perform a home study or process a foster care licensing application or an adoption application for an otherwise potentially qualified LGBTQ individual or same-sex couple that may be a suitable foster or adoptive family for any child accepted by the CPA for contracted services; and
- refusing to place a child accepted by the CPA for contracted services with an otherwise qualified LGBTQ individual or same-sex couple suitable as a foster or adoptive family for the child.

If you are aware of a violation or suspected violation of these nondiscrimination provisions, a complaint may be made via the Online Complaint Form accessible on the Department's website.

- Section 2. For the avoidance of doubt, nothing in this Agreement shall require the Department to take adverse action against any CPA on the basis that such CPA has decided to accept or not accept a referral from the Department of a particular child for services under a contract with the Department.
- Section 3. Subject to Section 1, nothing in this Agreement shall affect the Department's obligations, authority, or discretion to audit, train, diligently investigate, or vigorously enforce the terms of the Contracts or Subcontracts in accordance with applicable laws, rules, regulations, policies, court orders, and contract terms.
- Section 4. Subject to Section 1, the Department retains sole authority and sole discretion on all matters pertaining to all Contracts and Subcontracts, including without limitation all training, all aspects of investigating an alleged Contract or Subcontract Violation, determining whether a Contract or Subcontract Violation occurred, and all enforcement measures.
- Section 5. Subject to Section 1, nothing in this Agreement expands the Department's obligation to monitor CPA compliance with Contracts and Subcontracts beyond that which is required under applicable law, rules, regulations, and policies.
- Section 6. This Agreement is intended for the direct benefit of the following individuals injured by a breach of this Agreement: (i) the Parties hereto, (ii) any LGBTQ individual or same-sex couple that seeks to foster a child accepted by a CPA for foster care case management services or adoption services under a Contract or Subcontract and the CPA is alleged to have committed a Contract Violation or Subcontract Violation directly involving the individual or couple, (iii) any LGBTQ individual or married same-sex couple that seeks to adopt a child accepted by a CPA for foster care case management services or adoption services under a Contract or Subcontract and the CPA is alleged to have committed a Contract Violation or Subcontract Violation directly involving the individual or couple, and (iv) any child accepted by a CPA for foster care case management services or adoption services under a Contract or Subcontract and the CPA is alleged to have committed a Contract Violation or Subcontract Violation directly involving the

child. Each person described in subclauses (ii), (iii) and (iv) of the immediately preceding sentence shall be a direct third-party beneficiary of, and may, to the extent of their injury and ability to satisfy standing requirements, independently enforce the terms of this Agreement as if it were a party hereto.

Section 7. In the event any Party or a third-party beneficiary asserts that another Party is not in compliance with one or more of its obligations in this Agreement, the Parties and any third-party beneficiaries shall address such alleged breach in good faith and act promptly in an attempt to resolve it. The asserting Party or third-party beneficiary shall provide the other Party with written notice of such assertion and a ninety (90) day opportunity to cure such noncompliance prior to taking legal action. Notice shall be made via certified mail, return receipt requested as follows:

**Michigan Department of Health  
and Human Services  
State of Michigan**  
Director, Bureau of Legal Affairs  
333 South Grand Avenue  
Lansing, MI 48909  
517.241.0048

**American Civil Liberties Union  
Fund of Michigan**  
Jay D. Kaplan / Michael J. Steinberg  
2966 Woodward Avenue  
Detroit, MI 48201  
(313) 578-6823  
jkaplan@aclumich.org  
msteinberg@aclumich.org

Section 8. Specific performance shall be the sole and exclusive remedy available to each Party and each third-party beneficiary asserting any claim relating to the Department's failure to meet its obligations under this Agreement. Each Party and each third-party beneficiary asserting any claim relating to the Department's obligations under this Agreement waives all rights to recover any damage, loss, attorney fees, costs, or any other expense arising out of asserting such claims. The Parties also agree that, regardless of the failure of the sole and exclusive remedy, the Department will not be liable to any Party or third-party beneficiary asserting any claim relating to the Department's obligations under this Agreement for any incidental or consequential damages of whatsoever kind or nature. The Parties intend the exclusion of incidental and consequential damages as an independent agreement apart from the sole and exclusive remedy herein. The limitations of this Section 8 apply only to claims relating to the Department's obligations under this Agreement.

Section 9. Upon signing this Agreement, Plaintiffs shall file a Stipulation of Voluntary Dismissal with Prejudice substantially in the form attached to as Annex A and submit a Proposed Order on Stipulation of Dismissal substantially in the form attached hereto as Annex B. This Agreement becomes effective upon entry of the Proposed Order on Stipulation of Dismissal by the district court.

Section 10. The Parties shall bear their own attorneys' fees and costs associated with the Litigation.

- Section 11. The Parties understand that this Agreement is a public record that may be disclosed in response to a proper request under Michigan’s Freedom of Information Act.
- Section 12. The Parties acknowledge and agree that this Agreement shall be governed by and construed in accordance with the laws of the State of Michigan without giving effect to conflict of laws, rules or statutes.
- Section 13. The Parties acknowledge, understand, and agree that they are entering into this Agreement knowingly, voluntarily, and of their own free will and volition, without coercion or undue influence.
- Section 14. Each Party has been represented by counsel and cooperated in the drafting and preparation of this Agreement. Hence, this Agreement shall not be construed against any Party on the basis that the Party was the drafter.
- Section 15. This Agreement may be executed in any number of counterparts, and each such counterpart shall be deemed to be an original instrument, but all such counterparts shall constitute one Agreement.
- Section 16. The undersigned represent that they are authorized to sign this Agreement.
- Section 17. Each Party represents that they believe there is no state or federal law, rule, regulation, policy, contract term, or other obligation that prevents it from complying with its obligations under this Agreement; *provided*, that solely for purposes of this Section 17, the obligations in Section 1 shall be read without the introductory phrase “Unless prohibited by law or court order.”
- Section 18. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. No Party may assign this Agreement or any rights or obligations hereunder without the prior written consent of each other Party hereto.
- Section 19. No modification or waivers of any provision of this Agreement shall be valid or binding unless made in writing and signed by each Party or by a person authorized to sign on behalf of such Party.

*[Signature Page Follows]*

IN WITNESS WHEREOF, this Agreement is executed as of March 22, 2019.

**PLAINTIFFS**

  
\_\_\_\_\_  
Kristy Dumont

  
\_\_\_\_\_  
Dana Dumont

\_\_\_\_\_  
Erin Busk-Sutton

\_\_\_\_\_  
Rebecca Busk-Sutton

**DEFENDANTS**

\_\_\_\_\_  
Robert Gordon, in his official capacity as  
Director, Michigan Department  
of Health and Human Services

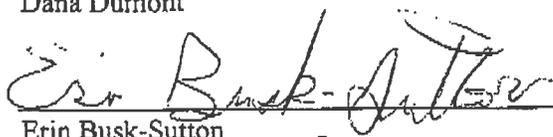
\_\_\_\_\_  
Jennifer Wrayno, in her official capacity  
as Acting Executive Director, Michigan  
Children's Services Agency

IN WITNESS WHEREOF, this Agreement is executed as of March 22, 2019.

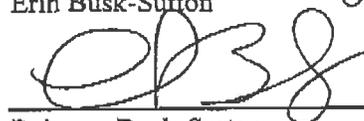
**PLAINTIFFS**

\_\_\_\_\_  
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\_\_\_\_\_  
Dana Dumont

\_\_\_\_\_  


Erin Busk-Sutton

\_\_\_\_\_  


Rebecca Busk-Sutton

**DEFENDANTS**

\_\_\_\_\_  
Robert Gordon, in his official capacity as  
Director, Michigan Department  
of Health and Human Services

\_\_\_\_\_  
Jennifer Wrayno, in her official capacity  
as Acting Executive Director, Michigan  
Children's Services Agency

*{Signature Page to Settlement Agreement}*

IN WITNESS WHEREOF, this Agreement is executed as of March 22, 2019.

**PLAINTIFFS**

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Kristy Dumont

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Dana Dumont

---

Erin Busk-Sutton

---

Rebecca Busk-Sutton

**DEFENDANTS**



---

Robert Gordon, in his official capacity as  
Director, Michigan Department  
of Health and Human Services



---

Jennifer Wrayno, in her official capacity as  
Acting Executive Director, Michigan  
Children's Services Agency

**Annex A**

**Stipulation of Voluntary Dismissal with Prejudice**

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

KRISTY DUMONT; DANA DUMONT;  
ERIN BUSK-SUTTON; and REBECCA  
BUSK-SUTTON,

Plaintiffs,

v.

ROBERT GORDON, in his official  
capacity as the Director of the Michigan  
Department of Health and Human  
Services; and JENNIFER WRAYNO, in  
her official capacity as the Acting  
Executive Director of the Michigan  
Children’s Services Agency,

Defendants,

and

ST. VINCENT CATHOLIC  
CHARITIES; MELISSA BUCK; CHAD  
BUCK; and SHAMBER FLORE,

Intervenor Defendants.

No. 2:17-cv-13080-PDB-EAS

HON. PAUL D. BORMAN

MAG. ELIZABETH A. STAFFORD

**STIPULATION OF  
VOLUNTARY DISMISSAL  
WITH PREJUDICE**

Plaintiffs Kristy Dumont, Dana Dumont, Erin Busk-Sutton, and  
Rebecca Busk-Sutton (collectively, “Plaintiffs”) and Defendants Robert Gordon and

Jennifer Wrayno<sup>1</sup> (collectively, “State Defendants”) file this stipulation of dismissal of the above-captioned action (the “Action”) under Rule 41(a)(2) of the Federal Rules of Civil Procedure. Plaintiffs and State Defendants state as follows:

On September 20, 2017, Plaintiffs filed the complaint in the Action with the U.S. District Court for the Eastern District of Michigan against the State Defendants. (ECF No. 1.)

On December 18, 2017, St. Vincent Catholic Charities, Melissa and Chad Buck, and Shamber Flore (“Intervenor Defendants”) moved to intervene in this case (ECF No. 18), which motion was granted on March 22, 2018. (ECF No. 34.)

On September 14, 2018, this Court denied in substantial part the motions to dismiss filed by State Defendants and Intervenor Defendants. (ECF No. 49 at 93.)

On September 17, 2018, the Court entered a schedule for discovery and briefing to “manage the progress of the case” (the “September 17 Scheduling Order”). (ECF No. 51 at 1.)

On October 31, 2018, all Parties jointly moved to modify the September 17 Scheduling Order. (ECF No. 61.) On November 2, 2018, this Court granted in part and denied in part that motion. (ECF No. 62.)

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<sup>1</sup> Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, this stipulation reflects the substitution of Herman McCall, a party in his official capacity who has ceased to hold office during the pendency of the Action, for Jennifer Wrayno, who is “automatically substituted as a party.”

On November 13, 2018, this Court issued an Amended Scheduling Order. (ECF No. 63.)

The Parties have engaged in substantial discovery, including the exchange of written discovery and document production.

On January 23, 2019, Plaintiffs and State Defendants moved this Court to stay proceedings as Plaintiffs and State Defendants actively worked to reach a resolution. (ECF No. 74.) On that same day, Plaintiffs filed a Joint Motion for Immediate Consideration of the Motion to Stay Proceedings. (ECF No. 75.)

On January 24, 2019, this Court granted in part Plaintiffs' and State Defendants' Joint Motion to Stay Proceedings, entering a thirty (30) day stay of proceedings. (ECF No. 76.)

On February 22, 2019, State Defendants moved this Court to stay proceedings as Plaintiffs and State Defendants actively worked to reach a resolution. (ECF No. 79.) On that same day, State Defendants filed a Motion for Immediate Consideration of the Motion to Stay Proceedings (ECF No. 80) and this Court granted State Defendants' Motion to Stay Proceedings, entering a thirty (30) day stay of proceedings (ECF No. 81).

Plaintiffs and State Defendants have since entered into a Settlement Agreement, disposing of all claims asserted in the Action. An executed copy of the Settlement Agreement is attached hereto as Exhibit A. Intervenor Defendants,

who have asserted no claims and against whom no claims have been asserted, are not party to the Settlement Agreement.

Plaintiffs and State Defendants have agreed that all costs and attorneys' fees are the responsibility of the party incurring same. For the foregoing reasons, Plaintiffs and State Defendants respectfully request that the Court enter an order to dismiss all of Plaintiffs' claims in the Action.

Dated: , 2019

Jay Kaplan (P38197)  
Michael J. Steinberg (P43085)  
American Civil Liberties Union  
Fund of Michigan  
2966 Woodward Avenue  
Detroit, MI 48201  
Telephone: (313) 578-6823  
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Daniel Mach  
American Civil Liberties Union  
Foundation  
915 15th Street NW  
Washington, DC 20005  
Telephone: (202) 675-2330  
dmach@aclu.org

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Leslie Cooper  
American Civil Liberties Union  
Foundation  
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New York, NY 10004  
Telephone: (212) 549-2633  
lcooper@aclu.org

Garrard R. Beeney  
Ann-Elizabeth Ostrager  
Jason W. Schnier  
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*Counsel for Plaintiffs*

---

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Family Services Division  
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Lansing, MI 48909  
(517) 335-7603  
Smithj46@michigan.gov

*Counsel for State Defendants*

**EXHIBIT A**  
**Settlement Agreement**

## CERTIFICATE OF SERVICE

I hereby certify that, on March 22, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

Dated:                   , 2019

---

SULLIVAN & CROMWELL LLP  
125 Broad Street  
New York, NY 10004-2498  
Telephone: (212) 558-4000  
ostragerae@sullcrom.com

**Annex B**

**Proposed Order on Stipulation of Dismissal**

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

KRISTY DUMONT; DANA DUMONT;  
ERIN BUSK-SUTTON; and REBECCA  
BUSK-SUTTON,

Plaintiffs,

v.

ROBERT GORDON, in his official  
capacity as the Director of the Michigan  
Department of Health and Human  
Services; and JENNIFER WRAYNO, in  
her official capacity as the Acting  
Executive Director of the Michigan  
Children's Services Agency,

Defendants,

and

ST. VINCENT CATHOLIC  
CHARITIES; MELISSA BUCK; CHAD  
BUCK; and SHAMBER FLORE,

Intervenor Defendants.

No. 2:17-cv-13080-PDB-EAS

HON. PAUL D. BORMAN

MAG. ELIZABETH A. STAFFORD

**[PROPOSED] ORDER ON  
STIPULATION OF DISMISSAL**

After considering the Stipulation of Voluntary Dismissal with Prejudice and the Settlement Agreement, attached thereto, provided by Plaintiffs Kristy Dumont, Dana Dumont, Erin Busk-Sutton, and Rebecca Busk-Sutton (collectively,

“Plaintiffs”) and Defendants Robert Gordon and Jennifer Wrayno,<sup>1</sup> it is hereby ORDERED that Plaintiffs’ claims in the above-captioned action (the “Action”) are dismissed with prejudice pursuant to the terms of the Settlement Agreement.

The Court retains jurisdiction over the enforcement of the Settlement Agreement in the Action. *See Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 381 (1994) (“If the parties wish to provide for the court’s enforcement of a dismissal-producing settlement agreement, they can seek to do so.”); *RE/MAX Int’l, Inc. v. Realty One, Inc.*, 271 F.3d 633, 641 (6th Cir. 2001) (“[A] district court [has] the authority to dismiss pending claims while retaining jurisdiction over the future enforcement of a settlement agreement.”).

All costs and attorneys’ fees are the responsibility of the party incurring same.

---

PAUL D. BORMAN  
UNITED STATES DISTRICT JUDGE

Dated: [date]

---

<sup>1</sup> Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, this order reflects the substitution of Herman McCall, a party in his official capacity who has ceased to hold office during the pendency of the Action, for Jennifer Wrayno, who is “automatically substituted as a party.”

### **CERTIFICATE OF SERVICE**

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on *[date]*.

---

Case Manager

## CERTIFICATE OF SERVICE

I hereby certify that, on March 22, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

Dated: March 22, 2019

/s/ Ann-Elizabeth Ostrager

SULLIVAN & CROMWELL LLP  
125 Broad Street  
New York, NY 10004-2498  
Telephone: (212) 558-4000  
ostragerae@sullcrom.com

# **EXHIBIT 2**

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**DEPARTMENT OF**  
**ATTORNEY GENERAL**



**MENU**

AG

## State Settles Same-Sex Adoption Case

LANSING - Michigan Attorney General Dana Nessel today announced a settlement with the plaintiffs in Dumont et al. v Gordon et al. (Case No. 2:17-cv-13080), a case centering on some state-contracted foster care and adoption agencies' (agencies) refusal to work with same-sex couples or LGBTQ individuals wanting to foster or adopt children referred to the agencies by the state Department of Health and Human Services (MDHHS). **A summary of the settlement can be found here. A copy of the settlement can be found here.**

"Discrimination in the provision of foster care case management and adoption services is illegal, no matter the rationale," said Nessel. "Limiting the opportunity for a child to be adopted or fostered by a loving home not only goes against the state's goal of finding a home for every child, it is a direct violation of the contract every child placing agency enters into with the state."

Two same-sex couples (plaintiffs) filed a complaint in September 2017 challenging MDHHS's contracts with taxpayer-funded, state-contracted foster care and adoption agencies that refuse to provide contract services involving same-sex couples. The complaint alleged that the plaintiffs approached St. Vincent Catholic Charities and Bethany Christian Services directly to adopt children the agencies had accepted through referrals from MDHHS. The plaintiffs claimed the agencies refused to work with them in violation of the non-discrimination provisions in the agencies' contracts with MDHHS.

According to MDHHS, each agency was providing foster care case management or adoption services for one or more children referred to them by MDHHS. Because the plaintiffs were not seeking direct-placement or private adoption services and because they were not referred to the agencies through MDHHS, the agencies could not reject them under existing state law.

When AG Nessel took office Jan. 1, 2019, she reviewed the facts of the case with her team of legal experts and determined that MDHHS could be subject to liability on the claims of the plaintiffs. As a result, the Attorney General strongly recommended resolving the case on terms consistent with the law and existing agency contracts and that best serve the health, safety and well-being of children in need of state-contracted foster care case management and adoption services.

The plaintiffs and the Michigan Department of Attorney General, on behalf of its client MDHHS, entered into negotiations and agreed to settle the case. Under the terms of the settlement agreement, MDHHS agrees to maintain non-discriminatory provisions in its foster care and adoption agency contracts. MDHHS also agrees to enforce the non-discrimination provisions up to and including termination when a state-contracted agency discriminates against same-sex couples or LGBTQ individuals that may otherwise be qualified foster care or adoptive parents for any child accepted by the agency for services under contract with MDHHS. The agreement also specifies that MDHHS is not required to take adverse action against an agency on the basis that the agency has decided not to accept a referral from MDHHS.

MDHHS has established an online complaint form for individuals who believe they've been a victim of illegal practices by an adoption facility, agency or provider. Individuals can **fill out a complaint here**.

###

[View a video statement from Attorney General Nessel here.](#)



**Michigan Department of Attorney  
General Written Public Summary of  
the Department's Freedom of  
Information Act Procedures and  
Guidelines**

**Michigan Department of Attorney  
General Freedom of Information Act  
Procedures and Guidelines**

**FOIA**

**Office of Regulatory Reinvention**

**AG Privacy Policy**

**AG Web Disclaimer**

**MICHIGAN.GOV HOME**

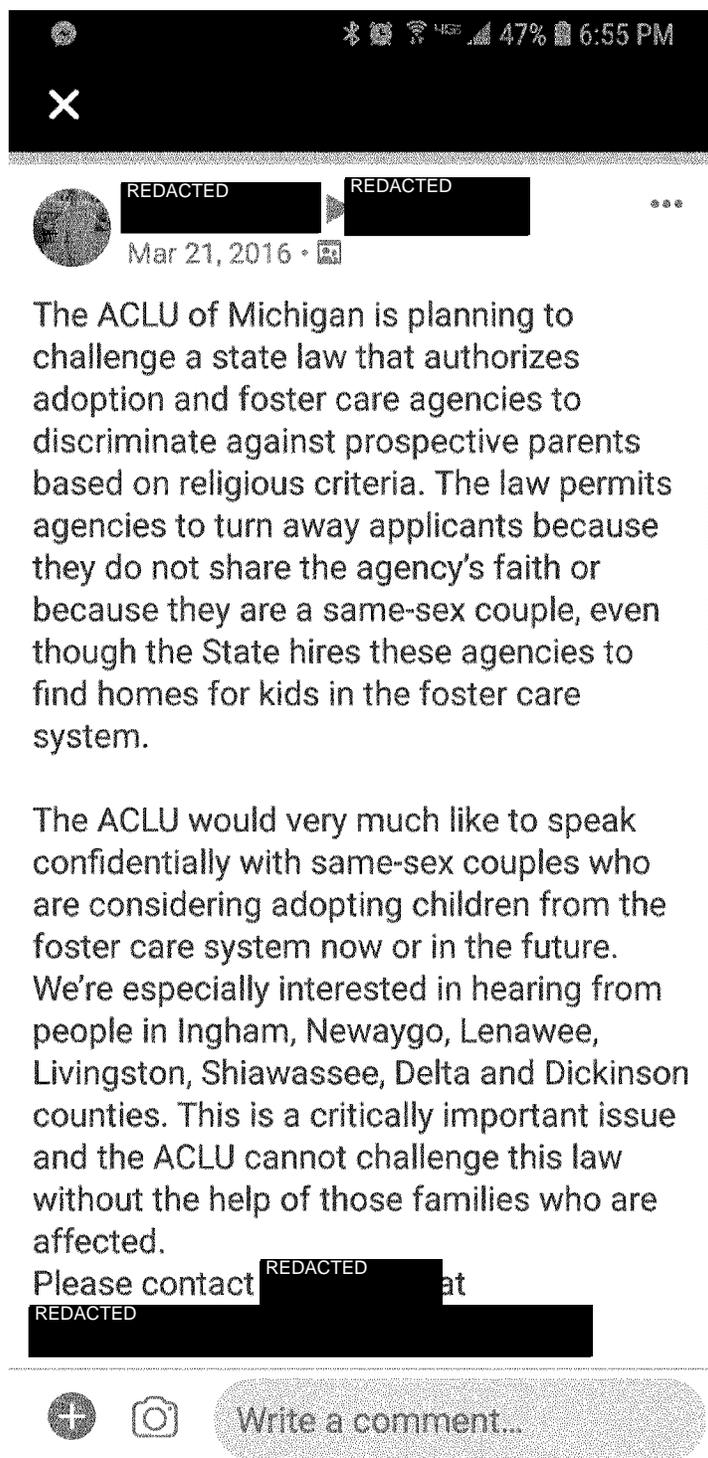
**ADA**

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**POLICIES**

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# **EXHIBIT 3**



and the ACLU cannot challenge this law without the help of those families who are affected.  
Please contact [REDACTED] at [REDACTED]  
[REDACTED]

**Kristy Dumont and 6 others**

Like Comment

[REDACTED] and the ACLU are pretty darned awesome!  
2y Like Reply 1

**Kristy Dumont**  
We emailed him but haven't heard back yet. If you know him personally please tell him Dana and I would love to talk with him. Thanks!  
2y Like Reply 2

**Kristy Dumont**  
Never mind we just got an email from them.  
2y Like Reply 3

+ [camera icon] Write a comment...

# **EXHIBIT 4**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

----- X  
:  
KRISTY DUMONT; DANA DUMONT;  
ERIN BUSK-SUTTON; and REBECCA  
BUSK-SUTTON,  
:

*Plaintiffs,*  
:

v.  
:

NICK LYON, in his official capacity  
as the Director of the Michigan  
Department of Health and Human  
Services; and HERMAN MCCALL,  
in his official capacity as the  
Executive Director of the Michigan  
Children’s Services Agency,  
:

*Defendants,*  
:

and  
:

ST. VINCENT CATHOLIC CHARITIES;  
MELISSA BUCK; CHAD BUCK; and  
SHAMBER FLORE,  
:

*Intervenor Defendants.*  
:  
:  
----- X

No. 17-cv-13080-PDB-EAS  
HON. PAUL D. BORMAN  
MAG. ELIZABETH A. STAFFORD

**PLAINTIFFS’ RESPONSES AND OBJECTIONS TO  
INTERVENOR DEFENDANTS’ FIRST SET OF INTERROGATORIES**

Plaintiffs Kristy Dumont, Dana Dumont, Erin Busk-Sutton, and Rebecca Busk-Sutton (collectively, “Plaintiffs”), by and through their undersigned counsel, pursuant to Federal Rules of Civil Procedure 26 and 33 and the Local Rules of the United States District Court for the Eastern District of Michigan (together, the “Rules”), answer

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ambiguous because it does not provide a time period or date for the information it seeks. Plaintiffs further object to Interrogatory No. 2 to the extent that it seeks information that is not relevant to the claims or defenses of any party to the Action.

Subject to and without waiving the foregoing general and specific objections, Plaintiffs are willing to meet and confer regarding Interrogatory No. 2.

**INTERROGATORY NO. 3:**

Describe all communications between yourself and the child placing agencies you contacted when seeking to foster or adopt a child; include in your answer anything you were told by that agency regarding referrals or transfers to another agency, or regarding your ability to work with that agency.

**RESPONSE TO INTERROGATORY NO. 3:**

Plaintiffs incorporate their General Objections as if set forth fully herein. Plaintiffs further object to Interrogatory No. 3 on the grounds that it is overbroad and unduly burdensome.

Subject to and without waiving the foregoing general and specific objections, Plaintiffs state as follows:

In the summer of 2016, the Dumont Plaintiffs called St. Vincent in Lansing and Bethan Christian Services in East Lansing to express that they were interested in adopting a child from foster care. St. Vincent in Lansing and Bethany Christian Services in East Lansing each separately told the Dumont Plaintiffs that they do not work with same-sex couples. In March 2017, Kristy Dumont again called both agencies. Representatives at St. Vincents in Lansing and Bethany Christian Services in East Lansing again told Kristy Dumont that they did not work with same-sex couples.

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and Bethany Christian Services seemed to be viable options. In addition, the Dumont Plaintiffs recognized the names of both St. Vincent and Bethany Christian Services from billboards and word of mouth.

The Busk-Sutton Plaintiffs first learned of Bethany Christian Services from a member of Erin Busk-Sutton's Bible study who was an employee at Bethany Christian Services at the time. When the Busk-Sutton Plaintiffs began to research child placing agency options and reviewed the MARE website, they recognized the name of Bethany Christian Services from Erin's friend from Bible study and found the agency's website on Google. They decided to contact Bethany Christian Services because it had two convenient locations, in Detroit and in Madison Heights, and because they were interested in working with someone who was as dedicated to their job as a social worker as their personal friend who worked at Bethany Christian Services.

**INTERROGATORY NO. 5:**

Explain why you have not begun the adoption process with a foster agency other than St. Vincent or Bethany.

**RESPONSE TO INTERROGATORY NO. 5:**

Plaintiffs incorporate their General Objections as if set forth fully herein. Plaintiffs further object to Interrogatory No. 5 to the extent that it seeks information that is protected from disclosure under the attorney-client privilege, the work-product doctrine, or any other applicable privilege, immunity, discovery protection, law or rule. Plaintiffs further object to Interrogatory No. 5 on the grounds that it seeks information that is not relevant to the claims or defenses of any party to the Action.

**INTERROGATORY NO. 6:**

Describe how the State Defendants' actions have prevented you from becoming an adoptive parent.

**RESPONSE TO INTERROGATORY NO. 6:**

Plaintiffs incorporate their General Objections as if set forth fully herein. Plaintiffs further object to Interrogatory No. 6 on the grounds that it seeks information that is not relevant to the claims or defenses of any party to the Action.

Subject to and without waiving the foregoing general and specific objections, Plaintiffs state that the State Defendant's practice of permitting state-contracted and taxpayer-funded child placing agencies to use religious criteria to screen prospective foster and adoptive parents for children in the foster care system denies Plaintiffs, and other families headed by same-sex couples, the same opportunities to work with a child placing agency that are available to every other family in Michigan seeking to adopt. Plaintiffs further state that the State Defendant's practice results in both stigma and practical barriers to same-sex couples who wish to adopt a child out of the state-run foster care system.

**INTERROGATORY NO. 7:**

Describe how you became involved in this lawsuit.

**RESPONSE TO INTERROGATORY NO. 7:**

Plaintiffs incorporate their General Objections as if set forth fully herein. Plaintiffs further object to Interrogatory No. 7 to the extent that it seeks information or documents that are protected from disclosure under the attorney-client privilege, the work-product doctrine, or any other applicable privilege, immunity, discovery protection,

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law or rule. Plaintiffs further object to Interrogatory No. 7 to the extent that it seeks information that is not relevant to the claims or defenses of any party to the Action.

Subject to and without waiving the foregoing general and specific objections, Plaintiffs state as follows:

The Dumont Plaintiffs are both members of a Facebook page called [REDACTED] for lesbians in the Lansing area. In March 2016, the administrator of the page posted that the ACLU of Michigan was looking to speak with couples in their area who were considering adopting children from the foster care system, and that interested couples should contact [Confidential Information] at the ACLU of Michigan in Detroit. The Dumont Plaintiffs emailed Mr. [Confidential Information] and spoke with him and [Confidential Information] at the ACLU.

The Busk-Sutton Plaintiffs were put in touch with Jay Kaplan at the ACLU of Michigan in Detroit by Kristy Dumont.

**INTERROGATORY NO. 8:**

Describe your involvement with any political or social advocacy organizations during the Relevant Period.

**RESPONSE TO INTERROGATORY NO. 8:**

Plaintiffs incorporate their General Objections as if set forth fully herein. Plaintiffs further object to Interrogatory No. 8 on the grounds that it is overbroad and unduly burdensome, including the phrases “[d]escribe your involvement” and “any political or social advocacy organizations.” Plaintiffs further object to Interrogatory No. 8 on the grounds that it is vague and ambiguous, including the phrases “involvement with” and “political or social advocacy organizations.” Plaintiffs further object to

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VERIFICATION

I, Kristy Dumont, hereby verify, under penalty of perjury and pursuant to 28 U.S.C. § 1746, that my foregoing responses to Intervenor Defendants' First Set of Interrogatories to Plaintiffs, dated October 18, 2018, are true and correct to the best of my knowledge.

This is the 19th day of November, 2018.

/s/ Kristy Dumont

---

Kristy Dumont

VERIFICATION

I, Dana Dumont, hereby verify, under penalty of perjury and pursuant to 28 U.S.C. § 1746, that my foregoing responses to Intervenor Defendants' First Set of Interrogatories to Plaintiffs, dated October 18, 2018, are true and correct to the best of my knowledge.

This is the 19th day of November, 2018.

/s/ Dana Dumont

---

Dana Dumont

# **EXHIBIT 5**

Jan 17, 2017 9:13am

Erin Elizabeth Busk-Sutton commented on REDACTED post.

I know a lot of families who made the decision to adopt the "first waiting child" which often ends up being a Black child. They go to church with me, which means their children will grow up with other kids in similar situations as well as some Black families. We've considered it, but between our concerns about same sex marriage under a Trump administration and the continuing renovations, this year isn't the year.

Jan 17, 2017 8:52am

Erin Elizabeth Busk-Sutton replied to REDACTED comment.

Actually, insurance companies are now required to pay out 80% of premiums directly to care (not advertising or CEO bonuses), which wasn't true before the ACA, so clearly insurance companies haven't always been efficient or had the best interest of customers at heart. Medicare is actually the most cost effective insurance despite its higher risk pool, so the simplest solution would be to drop the age requirement for Medicare and allow anyone to sign up for it and transfer their premiums over. The majority of those with Medicare are happy with their coverage, so making it a full public option could make a lot of sense.

Jan 16, 2017 10:41pm

Erin Elizabeth Busk-Sutton commented on REDACTED post.

Yeah I mean, let's be honest: even Detroit is considered flyover country. A LOT of Michiganders have seen really tough times (Flint Water Crisis, anyone? Detroit foreclosure crisis, perhaps?) and still the state barely went to Trump, not to mention that I saw the highest proportion of Trump signs in wealthy suburbs, not rural areas. I'm not mad at people who voted McMullin or Stein or Johnson. I don't believe those votes caused these election results. I'm angry with those who felt their grudges or unhappiness justified making my family less safe by voting for Trump or who decided to stay home from the polls. I'm not going to stop being angry at them because it's been a few months since the election or because they've explained one more time how Trump's misogyny, bigotry, ignorance, and selfishness are rationalized.

Jan 16, 2017 9:58pm

Erin Elizabeth Busk-Sutton replied to REDACTED comment.

Actually, Medicare, which is single payer but for a restricted, high risk population (the elderly and the disabled) is the most cost effective and evidence based form of insurance in the US, and when done properly, reducing expensive visits to specialists and increasing primary care results in BETTER health outcomes. The government could increase access to Medicare (essentially allowing individuals of any age to shift their premiums from private insurance to Medicare) which for many people would improve coverage, and this would also keep Medicare funded for decades since it would decrease the average risk of the covered pool.

Jan 16, 2017 4:06pm

Erin Elizabeth Busk-Sutton replied to REDACTED comment.

# **EXHIBIT 6**

Hi Aunt [REDACTED]

So funny you should ask. We've been meaning to update you. Not only did Kristy and I take classes together during my PhD program at MSU, but we're actually involved in the lawsuit:

[http://www.fox2detroit.com/news/local-news/michigan-sued-after-gay-couples-are-rejected-for-adoption\\_\[fox2detroit.com\]](http://www.fox2detroit.com/news/local-news/michigan-sued-after-gay-couples-are-rejected-for-adoption_[fox2detroit.com]) You can see an interview between me and the local press at this link (play the video).

I thought this NPR story also provided a lot of good background:

[http://www.npr.org/2017/09/23/552873416/aclu-sues-michigan-after-same-sex-couples-seeking-to-adopt-are-rejected?utm\\_source=facebook.com&utm\\_medium=social&utm\\_campaign=npr&utm\\_term=nprnews&utm\\_content=20170923](http://www.npr.org/2017/09/23/552873416/aclu-sues-michigan-after-same-sex-couples-seeking-to-adopt-are-rejected?utm_source=facebook.com&utm_medium=social&utm_campaign=npr&utm_term=nprnews&utm_content=20170923) [npr.org]

Bethany Christian Services in both Detroit and Madison Heights turned us down as foster parents when we called to get information about the application process. We aren't in a huge rush to adopt but thought that knowing more about the home study might help inform our choices about our renovation process. The situation isn't as dire for us because we could probably go to another agency, but there are entire Michigan counties without an agency that allows same-sex couples to foster (including the Dumonts' - Ingham), which is really harmful especially to older children, groups of siblings trying to stay together, children of minority races, and children with special needs, as same-sex couples are statistically more likely to foster and adopt children from these groups (we're certainly planning on it when the time comes). That's why the lawsuit is filed against the state, not any individual agencies. It's the state's job to protect foster children and take a state-wide approach to finding them homes (also not to provide taxpayer funds to agencies that aren't complying with equal protection and due process and such). There are additional legal reasons that it benefited the ACLU to have us and Jennifer Ludolph on the filing, also.

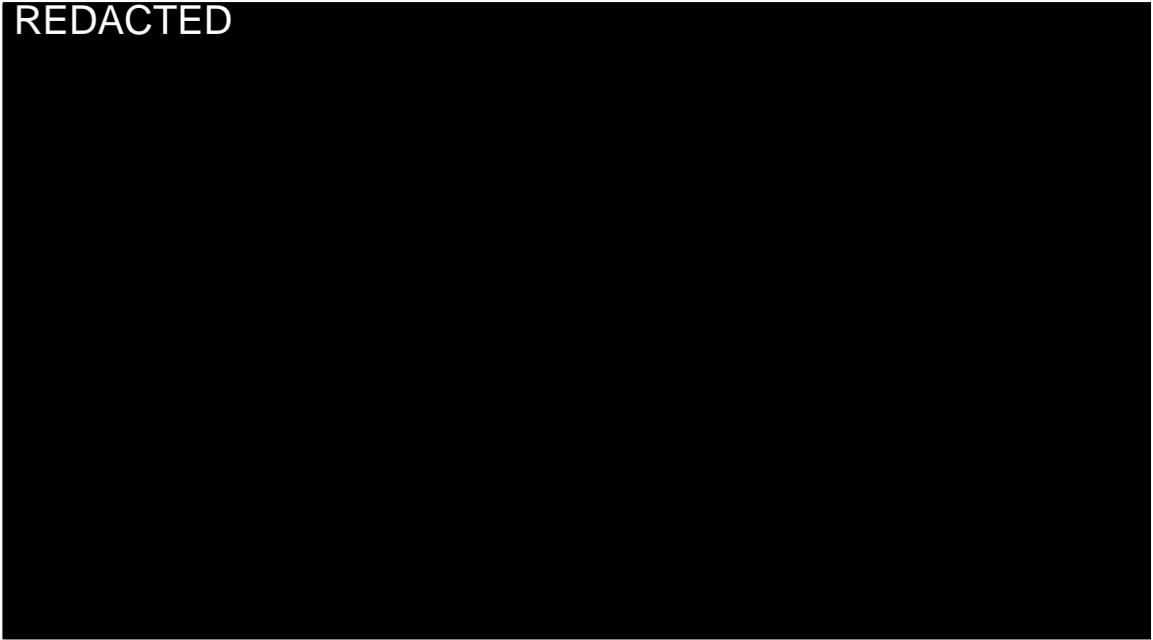
We were encouraged to keep a low profile on this until the case became public for a variety of legal and press-related reasons. I haven't told my family yet, not sure if I will or if they're even up enough on civil rights to hear about it or understand. [REDACTED] know but we haven't yet figured out how to explain it to [REDACTED] without causing her undue worry. While we're obviously being careful about what types of comments we make online and we're keeping certain things more private than usual, it hasn't otherwise been intrusive, and the ACLU is very good at protecting plaintiffs from any of the things [REDACTED] would find to worry about. The feedback we've been getting has been overwhelmingly supportive, and attention has probably fizzled for the most part, until the hearings start (in a few months) and then when the decision is made (several months away). I can't say that I'm looking forward to the depositions, but we have really no skeletons in the closet or anything that would reasonably disqualify us from fostering, and it's the least we can do to help the 13,000 foster children in Michigan awaiting forever families.

Much love,

Regards,

Erin Busk-Sutton  
Michigan State University:  
MA Teaching English to Speakers of Other Languages  
BA Education, BA Spanish

**REDACTED**



# **EXHIBIT 7**

 <p><b>Children's Services Agency</b></p> <p><b>Communication Issuance</b></p> <p><b>19-041</b></p>	Subject/Title	Settlement Agreement – Dumont v. MDHHS
	Type	<input checked="" type="checkbox"/> Informational Memorandum <input checked="" type="checkbox"/> Program Instruction <input type="checkbox"/> Policy Guide
	Issuance Date	04/10/2019
	Obsolete Date	N/A
	Contact Name	Office of Child Welfare Policy & Programs
	Email	<a href="mailto:Child-Welfare-Policy@michigan.gov">Child-Welfare-Policy@michigan.gov</a>
	Due Date	N/A
	Due to	N/A
<i>Distribution</i>	<input checked="" type="checkbox"/> CSA Central Office Managers/Staff <input checked="" type="checkbox"/> MDHHS BSC and County Directors <input checked="" type="checkbox"/> MDHHS Juvenile Justice Managers/Staff <input checked="" type="checkbox"/> MDHHS Child Welfare Managers/Staff <input checked="" type="checkbox"/> Native American Tribes <input checked="" type="checkbox"/> Office of Workforce Development and Training <input checked="" type="checkbox"/> Private Agency Child Welfare Managers/Staff <input checked="" type="checkbox"/> Private Residential Abuse/Neglect Managers/Staff <input checked="" type="checkbox"/> Private Residential Juvenile Justice Managers/Staff <input type="checkbox"/> Other:	

On March 22, 2019, MDHHS entered into a settlement agreement with the plaintiffs in a lawsuit pertaining to non-discrimination in the delivery of foster care and adoption services. The settlement agreement requires MDHHS to:

- Release a public announcement regarding the department's non-discrimination provision.
- Include specific language pertaining to non-discrimination in all Adoption and Placement Agency Foster Care (PAFC) Services Contracts/Subcontracts and applicable policies.
- Include in all Adoption Services Contracts/Subcontracts and all PAFC Services Contracts/Subcontracts a requirement that agencies comply with the MDHHS non-discrimination statement.
- Investigate reports of alleged non-compliance with the non-discrimination provision.
- Initiate contract action when violations occur or when an agency expresses unwillingness to comply.
- Provide ongoing training regarding MDHHS contract obligations and enforcement, settlement agreement obligations, and mechanisms to report alleged non-compliance.
- Maintain a link on the MDHHS website to the Division of Child Welfare Licensing (DCWL) Online Complaint Form.

Adoption and PAFC Services contracts prohibit discrimination *“against any individual or group because of race, sex, religion, age, national origin, color, height, weight, marital status, gender identity or expression, sexual orientation, political beliefs, or disability”* in the provision of services under contract with MDHHS.

In every case, regardless of whether the individual or couple being considered has identified a particular child for foster or adoptive placement, policies and practices prohibited under the non-discrimination provision include, among others:

- Turning away or referring to another contracted Child Placing Agency (CPA) an otherwise potentially qualified LGBTQ individual or same-sex couple that may be a suitable foster or adoptive family for any child accepted by the CPA for services under a contract or a subcontract.
- Refusing to provide orientation or training to an otherwise potentially qualified LGBTQ individual or same-sex couple that may be a suitable foster or adoptive family for any child accepted by the CPA for services under a contract or a subcontract.
- Refusing to perform a home study or process a foster care licensing application or an adoption application for an otherwise potentially qualified LGBTQ individual or same-sex couple that may be a suitable foster or adoptive family for any child accepted by the CPA for services under a contract or a subcontract.
- Refusing to place a child accepted by the CPA for services under a contract or a subcontract with an otherwise qualified LGBTQ individual or same-sex couple suitable as a foster or adoptive family for the child.

MDHHS is required to investigate allegations of non-compliance with the non-discrimination provision and enforce the contract/subcontracts when violations are established. If MDHHS determines a CPA has committed a contract violation, it will provide the agency with notice and a reasonable opportunity to implement a MDHHS-approved corrective action plan mandating immediate, regular, and continuous provision of foster care case management services or adoption services in compliance with the non-discrimination provision. If the agency refuses to comply or fails to demonstrate compliance after a reasonable opportunity to implement the approved corrective action plan, MDHHS will terminate the agency's contract. MDHHS must also require all contractors to enforce the non-discrimination provision with any subcontractors.

If a MDHHS employee or contractor employee is aware of a violation or suspected violation of these non-discrimination provisions, a complaint should be made and utilizing the Division of Child Welfare Licensing (DCWL) Online Complaint Form accessible on the MDHHS website:  
[https://www.michigan.gov/mdhhs/0,5885,7-339-71551\\_27716-82239--,00.html](https://www.michigan.gov/mdhhs/0,5885,7-339-71551_27716-82239--,00.html)

Applicable contracts and policies will be updated to reflect these requirements. Additionally, training regarding these provisions is required to be completed by all MDHHS and private agency child welfare staff by June 30, 2019. A recorded webinar to complete this requirement is available on the learning management system, *Non-discrimination Settlement Agreement Training*. Completion of training will be monitored.

Questions regarding the settlement provisions can be directed to: [Child-Welfare-Policy@michigan.gov](mailto:Child-Welfare-Policy@michigan.gov).

# **EXHIBIT 8**

## *Summary Statement of Dumont v. Gordon Settlement Agreement*

The Michigan Department of Health and Human Services (MDHHS) contracts with agencies for foster care case management and adoption services, for which a significant portion of funding comes from the federal Title IV-E program. As a condition of receiving these federal funds, the United States Department of Health and Human Services requires that states' Title IV-E-funded programs prohibit discrimination on the basis of sexual orientation or gender identity. 45 CFR 75.300(c). In compliance with this federal requirement, MDHHS contracts mandate that, except for an agency's sole discretion to decide whether to accept a referral from MDHHS, all agencies must comply with MDHHS's non-discrimination statement when providing state-contracted services. This exception is grounded in the Michigan Legislature's finding in MCL 722.124e(h) that an agency does not receive public funding with respect to a particular child or a particular individual referred by MDHHS unless the agency affirmatively accepts the referral. Otherwise, the contracts prohibit discrimination "against any individual or group because of race, sex, religion, age, national origin, color, height, weight, marital status, *gender identity or expression*, *sexual orientation*, political beliefs, or disability" in the provision of services under contract with MDHHS.

On September 20, 2017, two same-sex couples (Plaintiffs) filed a complaint challenging MDHHS's contracts with taxpayer-funded, state-contracted foster care and adoption agencies that refuse to provide contracted services involving same-sex couples. As alleged in the complaint, Plaintiffs approached St. Vincent Catholic Charities (SVCC) and Bethany Christian Services (Bethany) directly, rather than through a referral from MDHHS, for the purpose of adopting through the State's foster care system, i.e., for children the agency had accepted through referrals from MDHHS. The process of becoming a licensed foster care provider or prospective adoptive parent typically begins with an agency processing an application for licensure as a foster care provider and, if qualified, determining whether placement with the licensed provider and prospective adoptive parent is in the best interest of any child accepted by the agency through an MDHHS referral.

Plaintiffs claimed that, because of their sexual orientation, SVCC and Bethany refused to work with them when providing state-contracted services for children accepted by the agencies, in violation of the federally-mandated non-discrimination provisions in the agencies' contracts with MDHHS. According to MDHHS, on the dates that SVCC and Bethany turned away Plaintiffs, each agency was providing foster care case management services or adoption services for one or more children for whom the agency had accepted an MDHHS referral. Plaintiffs were not seeking direct-placement or private adoption services, and they did not approach the agencies through an MDHHS referral that the agencies could accept or reject under existing state law. Consequently, each agency was contractually prohibited from discriminating against Plaintiffs as potential qualified foster care or adoptive families for any child for whom the agencies were providing services under contract with MDHHS.

MDHHS is represented in this lawsuit by the Michigan Department of Attorney General, led by Attorney General Dana Nessel, who took office on January 1, 2019. After reviewing the facts of this case, MDHHS's contracts with foster care and adoption agencies, and applicable law, the Department of Attorney General determined that MDHHS may be subject to liability on Plaintiffs' claims. To avoid this liability, the Department of Attorney General strongly

recommended resolving the case on terms that are consistent with the law and existing agency contracts and that serve the health, safety, and well-being of children in need of state-contracted foster care case management and adoption services.

Plaintiffs and MDHHS, through counsel, entered into negotiations and, as explained below, agreed to settle the case on terms that satisfy the recommended criteria.

2015 PA 53 added two new sections to the Child Care Organizations Act. Under MCL 722.124e(2), an agency shall not be required to provide “any services” that conflict with its sincerely held religious beliefs. And, MDHHS is prohibited from taking adverse action against an agency that declines to provide “any services” that conflict with its sincerely held religious beliefs. MCL 722.124e(3). For purposes of Section 124e, the term “services” is defined as “includ[ing] any service that a child placing agency provides” but expressly excludes “foster care case management services and adoption services provided under contract with the Department.” MCL 722.124e(7)(b).

Contracted agencies provide state-contracted foster care case management services and adoption services for a particular child or individual upon accepting an MDHHS referral of the child or individual. According to MCL 722.124e(1)(h), agencies do not receive public funding relative to the referred child or individual prior to accepting the referral. And, an agency is not engaged in state action prior to accepting a referral or when performing private-adoption or direct-placement services. MCL 722.124e(1)(i). Under, MCL 722.124f(1) and (2), agencies have sole discretion to decide whether to accept an MDHHS referral to provide foster care case management or adoption services, and the state cannot take adverse action against an agency that rejects a referral based on its sincerely held religious beliefs. Upon accepting a referral, however, the law does not provide an agency with discretion to refuse to provide the accepted child or individual with state-contracted foster care case management or adoption services that conflict with its sincerely held religious beliefs. On the other hand, the terms of the agency’s contract with the State expressly prohibit discrimination in the provision of these contracted services.

When an agency accepts a referral for a child or an individual needing foster care case management or adoption services under contract with MDHHS, MCL 722.124f no longer applies to the agency’s provision of these services to the accepted child or individual. Likewise, because MCL 722.124e(7)(b) exempts foster care case management and adoption services provided under contract with MDHHS from the definition of “services” as used in Section 14e, an agency that accepts a particular child or individual through a referral from MDHHS cannot invoke the statute to refuse to provide contracted services that conflict with the agency’s sincerely held religious beliefs. And, the statute does not prohibit MDHHS from taking adverse action against an agency that refuses to provide state-contracted services for accepted referrals based on its sincerely held religious beliefs. Rather, the statute prohibits MDHHS from taking adverse action against private agencies when they are engaged in “private action” and refuse to provide other non-state-contracted services that conflict with their sincerely held religious beliefs, such as private-adoption or direct-placement services.

The same analysis applies to 2015 Public Acts 54 and 54. Like PA 53, related amendments to the Probate Code, 2015 PA 54, MCL 710.23g, and the Social Welfare Act, 2015 PA 55, MCL 400.5a, prohibit MDHHS from taking adverse action against an agency that refuses to provide “services” that conflict with the agency’s sincerely held religious beliefs. The Probate

Code, MCL 710.23g, also provides that an agency shall not be required to provide adoption services that conflict with its sincerely held religious beliefs. However, each amended statute expressly incorporates the language in MCL 722.124e and 722.124f, i.e., “[i]n accordance with section 14e and 14f of 1973 PA 116, MCL 722.124e and MCL 722.124f.” Thus, these statutes clearly exclude foster care case management and adoption services under contract with MDHHS.

Under the terms of the settlement agreement, MDHHS agrees to maintain federally required non-discrimination provisions in its foster care and adoption agency contracts. And, MDHHS agrees to enforce the non-discrimination provisions, up to and including termination, when a state-contracted agency discriminates against same-sex couples or LGBTQ individuals that may otherwise be qualified foster care or adoptive parents for any child accepted by the agency for services under contract with MDHHS. In essence, MDHHS must take action to enforce its existing contracts where an agency has accepted a referral and later violates the non-discrimination provisions by refusing to work with LGBTQ individuals interested in fostering or adopting any of the children it has accepted. The agreement also specifies that MDHHS is not required to take adverse action against an agency on the basis that the agency has decided to not accept a referral from MDHHS consistent with MCL 722.124f. In return, Plaintiffs agree to dismiss their claims with prejudice and pay their own attorney fees and costs, which eliminates liability for MDHHS on Plaintiffs’ claims.

In summary, resolving this lawsuit on the terms in the settlement agreement allows MDHHS to avoid liability on Plaintiffs’ claims and remain compliant with federal and state law. In addition, the terms of the settlement agreement do not conflict with existing state law, are consistent with federal law and existing agency contracts, and serve the health, safety, and well-being of the State’s most vulnerable children in need of state-contracted foster care case management and adoption services.

As explained above, the Department’s contracts with foster care and adoption agencies prohibit discrimination against any individual or group because of race, religion, age, national origin, color, height, weight, marital status, sex, sexual orientation, gender identity or expression, political beliefs or disability.

Examples of prohibited discriminatory conduct include:

- turning away or referring to another contracted agency an otherwise potentially qualified LGBTQ individual or same-sex couple that may be a suitable foster or adoptive family for any child accepted by the agency for contracted services;
- refusing to provide orientation or training to an otherwise potentially qualified LGBTQ individual or same-sex couple that may be a suitable foster or adoptive family for any child accepted by the agency for contracted services;
- refusing to perform a home study or process a foster care licensing application or an adoption application for an otherwise potentially qualified LGBTQ individual or same-sex couple that may be a suitable foster or adoptive family for any child accepted by the agency for contracted services; and

- refusing to place a child accepted by the agency for contracted services with an otherwise qualified LGBTQ individual or same-sex couple suitable as a foster or adoptive family for the child.

If you are aware of a violation or suspected violation of these nondiscrimination provisions, a complaint may be made via the Online Complaint Form accessible on the Department's website.

# **EXHIBIT 9**



We have attached talking points in the event you receive media calls about the case. Of course, feel free to contact me or to send inquiries to me **Confidential Client Information** or my cell **Confidential Client Information** should there be questions that you are unsure about.

Filing this suit is the result of more than two years of work by my colleagues and this community—thank you for making this kind of work possible.

**Confidential Client Information**

Staff Attorney

**Confidential Client Information**

American Civil Liberties Union of Michigan

2966 Woodward Avenue, Detroit, MI 48201

**Confidential Client Information**

[www.aclumich.org](http://www.aclumich.org)  



BECAUSE FREEDOM CAN'T PROTECT ITSELF

# **EXHIBIT 10**



seemed to be viable options. In addition, the Dumont Plaintiffs recognized the names of both St. Vincent and Bethany Christian Services from billboards and word of mouth.

The Busk-Sutton Plaintiffs first learned of Bethany Christian Services from a member of Erin Busk-Sutton's Bible study who was an employee at Bethany Christian Services at the time. When the Busk-Sutton Plaintiffs began to research child placing agency options and reviewed the MARE website, they recognized the name of Bethany Christian Services from Erin's friend from Bible study and found the agency's website on Google. They decided to contact Bethany Christian Services because it had two convenient locations, in Detroit and in Madison Heights, and because they were interested in working with someone who was as dedicated to their job as a social worker as their personal friend who worked at Bethany Christian Services.

**INTERROGATORY NO. 5:**

Explain why you have not begun the adoption process with a foster agency other than St. Vincent or Bethany.

**SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 5:**

Plaintiffs incorporate their General Objections as if set forth fully herein. Plaintiffs further object to Interrogatory No. 5 to the extent that it seeks information that is protected from disclosure under the attorney-client privilege, the work-product doctrine, or any other applicable privilege, immunity, discovery protection, law or rule. Plaintiffs further object to Interrogatory No. 5 on the grounds that it seeks information that is not relevant to the claims or defenses of any party to the Action.

Subject to and without waiving the foregoing general and specific objections, Plaintiffs refer to their response to Interrogatory No. 4. Plaintiffs further state

that they have not begun the adoption process with another agency because through this litigation they seek to better understand the full scope of their constitutional rights and the options available to them with respect to fostering and/or adopting in Michigan.

**INTERROGATORY NO. 6:**

Describe how the State Defendants' actions have prevented you from becoming an adoptive parent.

**RESPONSE TO INTERROGATORY NO. 6:**

Plaintiffs incorporate their General Objections as if set forth fully herein. Plaintiffs further object to Interrogatory No. 6 on the grounds that it seeks information that is not relevant to the claims or defenses of any party to the Action.

Subject to and without waiving the foregoing general and specific objections, Plaintiffs state that the State Defendant's practice of permitting state-contracted and taxpayer-funded child placing agencies to use religious criteria to screen prospective foster and adoptive parents for children in the foster care system denies Plaintiffs, and other families headed by same-sex couples, the same opportunities to work with a child placing agency that are available to every other family in Michigan seeking to adopt. Plaintiffs further state that the State Defendant's practice results in both stigma and practical barriers to same-sex couples who wish to adopt a child out of the state-run foster care system.

**INTERROGATORY NO. 7:**

Describe how you became involved in this lawsuit.

**RESPONSE TO INTERROGATORY NO. 7:**

Plaintiffs incorporate their General Objections as if set forth fully herein. Plaintiffs further object to Interrogatory No. 7 to the extent that it seeks information or

VERIFICATION

I, Kristy Dumont, hereby verify, under penalty of perjury and pursuant to 28 U.S.C. § 1746, that my foregoing supplemental responses to Intervenor Defendants' First Set of Interrogatories to Plaintiffs, dated October 18, 2018, are true and correct to the best of my knowledge.

This is the 11th day of January, 2019.

/s/ Kristy Dumont

Kristy Dumont

VERIFICATION

I, Dana Dumont, hereby verify, under penalty of perjury and pursuant to 28 U.S.C. § 1746, that my foregoing supplemental responses to Intervenor Defendants' First Set of Interrogatories to Plaintiffs, dated October 18, 2018, are true and correct to the best of my knowledge.

This is the 11th day of January, 2019.

/s/ Dana Dumont

Dana Dumont