

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

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MELISSA BUCK; CHAD BUCK; SHAMBER :  
 FLORE; ST. VINCENT CATHOLIC :  
 CHARITIES, :  
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 :  
 :  
 Plaintiffs, :  
 :  
 :  
 v. :  
 :  
 :  
 ROBERT GORDON, in his official capacity as :  
 the Director of the Michigan Department of :  
 Health and Human Services; JOOYEUN :  
 CHANG, in her official capacity as the :  
 Executive Director of the Michigan Children’s :  
 Services Agency; DANA NESSEL, in her :  
 official capacity as Attorney General of :  
 Michigan; ALEX AZAR, in his official capacity :  
 as the Secretary of the United States Department :  
 of Health and Human Services; UNITED :  
 STATES DEPARTMENT OF HEALTH AND :  
 HUMAN SERVICES, :  
 :  
 Defendants. :

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No. 1:19-cv-00286-RJJ-PJG

HON. ROBERT J. JONKER

**MOTION FOR RECONSIDERATION**

**EXPEDITED CONSIDERATION REQUESTED**

Kristy Dumont and Dana Dumont (collectively, “the Dumonts”) respectfully move this Court for reconsideration of the Court’s July 31, 2019 order (the “Order”), ECF No. 52, denying their motion to intervene as of right in the above captioned action for the reasons stated below and explained more fully in the brief filed in support of this motion.

1. A motion to reconsider may be granted for “mistake, inadvertence, surprise or excusable neglect” or “any other reason that justifies relief.” Fed. R. Civ. P. 60(b). A movant must demonstrate “a palpable defect by which the court and the parties have been misled” and

that “a different disposition of the case . . . result[s] from a correction thereof.” W.D. Mich. LCivR 7.1.

2. The Court denied the Dumonts’ motion to intervene as of right because the Dumonts “rest their claim for intervention as of right on their interest in maintaining the Settlement Agreement” in *Dumont v. Gordon*, 2:17-cv-13080-PDB-EAS (E.D. Mich.) and that this was “an insufficient basis to support intervention” because “Plaintiffs are not asking for any relief directed at the Settlement Agreement itself” and the “State is fully capable” of protecting the Dumonts’ interests. The Order failed to consider that the Dumonts have substantial legal interests in intervention independent of the settlement agreement, including: (i) their interest in fostering or adopting children from the Michigan child welfare system, which Plaintiffs would limit and (ii) their Constitutional interest in not bearing the stigma of state-funded programs assuming the Dumonts are not fit parents solely because of their sexual orientation. This is neither theoretical nor speculative: the Dumonts have twice attempted to adopt or foster a child from STVCC and are again “actively pursuing fostering and adopting . . . from the Michigan public child welfare system” and “want to have the full range of options available to [them].” Exs. A-1 at 3 and A-2 at 3 (previously filed as ECF No. 39-2 PageID.1518; ECF No. 39-3 PageID.1522). Binding Sixth Circuit precedent establishes that these interests are a “substantial legal interest” warranting intervention. *See Grutter v. Bollinger*, 188 F.3d 394 (6th Cir. 1999); *Jansen v. City of Cincinnati*, 904 F.2d 338 (6th Cir. 1990); *see also Coalition to Defend Affirmative Action v. Granholm*, 240 F.R.D. 368 (E.D. Mich. 2006).

3. Moreover, it is of no moment whether this action is to be construed as trying to “directly” overturn the Settlement Agreement in which the State committed to enforce the non-discrimination requirement in CPA contracts or seeking an injunction to compel the State to

allow CPAs to discriminate against same-sex couples, which would necessarily cause the State to abandon the promises made to the Dumonts. These are two sides of the same coin. The State has committed to the Dumonts that the State will enforce the non-discrimination requirement in CPA contracts, and if Plaintiffs are granted an injunction to compel the State to allow them to turn away same-sex couples like the Dumonts, there would be substantial uncertainty with respect to the State's ability to abide by the contractual promises it made to the Dumonts.

4. Where, as here, as the Court recognized in the Order, the interests of intervenors and existing parties may “diverge” and “certain defenses or counterclaims” are “uniquely available” to intervenors, binding Sixth Circuit precedent provides that intervenors are not adequately represented by existing parties. *See Grutter*, 188 F.3d at 398; *see also Bd. of Educ. of the Highland Local Sch. Dist. v. U.S. Dep't of Educ.*, 2016 WL 4269080 (S.D. Ohio Aug. 15, 2016); *Gulfport Energy Corp. v. Vill. of Barnesville*, 2015 WL 4068797 (S.D. Ohio July 2, 2015); *Oakland Cty. v. Fed. Nat. Mortg. Ass'n*, 276 F.R.D. 491 (E.D. Mich. 2011); *Great Amer. Assur. Co. v. Travelers Prop. Cas. Co.*, 2007 WL 184732 (S.D. Ohio Jan. 19, 2007).

5. Expedited consideration is necessary because the relief requested by the motion may be rendered moot with respect to the scheduled preliminary injunction hearing before the motion is briefed in accordance with the schedules set forth in the Local Rules. W.D. Mich. LCivR 7.1(e). A response to this motion is due within fourteen days on August 23, 2019. A hearing on Plaintiffs' motion for a preliminary injunction has been scheduled for August 22, 2019. While the Dumonts appreciate the Court's invitation to appear as amicus, that status will not allow the Dumonts to fully participate as a party to protect their rights.

Dated: August 9, 2019

Respectfully submitted,

*s/ Leila R. Siddiky*

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Jay Kaplan (P38197)  
Daniel S. Korobkin (P72842)  
American Civil Liberties Union  
Fund of Michigan  
2966 Woodward Avenue  
Detroit, MI 48201  
Telephone: (313) 578-6823  
jkaplan@aclumich.org  
dkorobkin@aclumich.org

Daniel Mach  
American Civil Liberties Union Foundation  
915 15th Street NW  
Washington, DC 20005  
Telephone: (202) 675-2330  
dmach@aclu.org

Leslie Cooper  
American Civil Liberties Union Foundation  
125 Broad Street, 18th Floor  
New York, NY 10004  
Telephone: (212) 549-2633  
lcooper@aclu.org

Garrard R. Beeney  
Ann-Elizabeth Ostrager  
Leila R. Siddiky  
Jason W. Schnier  
Lisa M. Ebersole  
Hannah M. Lonky  
James G. Mandilk  
SULLIVAN & CROMWELL LLP  
125 Broad Street  
New York, NY 10004-2498  
Telephone: (212) 558-4000  
beeneyg@sullcrom.com  
ostragerae@sullcrom.com  
siddikyl@sullcrom.com  
schnierj@sullcrom.com  
ebersolel@sullcrom.com  
lonkyh@sullcrom.com  
mandilkj@sullcrom.com

*Counsel for Proposed Intervenor Defendants*

**CERTIFICATE OF SERVICE**

I hereby certify that on this date, 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.

This the 9th day of August, 2019.

*s/ Leila R. Siddiky*

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Daniel S. Korobkin (P72842)  
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Detroit, MI 48201  
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dkorobkin@aclumich.org

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Hannah M. Lonky  
James G. Mandilk  
SULLIVAN & CROMWELL LLP  
125 Broad Street  
New York, NY 10004-2498  
Telephone: (212) 558-4000  
beeneyg@sullcrom.com  
ostragerae@sullcrom.com  
siddikyl@sullcrom.com  
schnierj@sullcrom.com  
ebersolel@sullcrom.com  
lonkyh@sullcrom.com  
mandilkj@sullcrom.com

*Counsel for Proposed Intervenor Defendants*

## **Exhibit A**

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

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	:	
MELISSA BUCK; CHAD BUCK; SHAMBER	:	
FLORE; ST. VINCENT CATHOLIC	:	
CHARITIES,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	No. 1:19-cv-00286-RJJ-PJG
	:	
ROBERT GORDON, in his official capacity as	:	HON. ROBERT J. JONKER
the Director of the Michigan Department of	:	
Health and Human Services; JOOYEUN	:	<b>DECLARATION OF KRISTY</b>
CHANG, in her official capacity as the	:	<b>DUMONT IN SUPPORT OF</b>
Executive Director of the Michigan Children’s	:	<b>[PROPOSED] REPLY BRIEF IN</b>
Services Agency; DANA NESSEL, in her	:	<b>SUPPORT OF MOTION TO</b>
official capacity as Attorney General of	:	<b>INTERVENE</b>
Michigan; ALEX AZAR, in his official capacity	:	
as the Secretary of the United States Department	:	
of Health and Human Services; UNITED	:	
STATES DEPARTMENT OF HEALTH AND	:	
HUMAN SERVICES,	:	
	:	
Defendants.	:	
	:	
-----	X	

I, Kristy Dumont, hereby declare under penalty of perjury that the following is true and correct:

1. My wife Dana Dumont and I are proposed intervenor defendants in the above-captioned action (the “*Buck Case*”). This Declaration is based on my personal knowledge, and I would be competent to testify to the following facts if called upon to do so.
2. Dana and I are ready, willing and able to provide a “forever family” to one or more children in the Michigan foster care system.

3. In summer 2016, Dana called Bethany Christian Services in East Lansing, Michigan and told them that she and I were interested in adopting a child from Michigan's foster care system. Bethany told her that the agency does not work with same-sex couples.
4. In summer 2016, I called St. Vincent Catholic Charities in Lansing, Michigan and told them that my wife Dana and I were interested in adopting a child from Michigan's foster care system. St. Vincent told me that the agency does not work with same-sex couples.
5. In March 2017, I called St. Vincent Catholic Charities again and told the person who answered the phone that I was calling to inquire about adopting a child from foster care, and I was transferred to the voicemail of someone in the child welfare department. I left a detailed message explaining that I had previously been told that the agency did not work with same-sex couples and asking if that was still the case, but St. Vincent never returned my call.
6. In March 2017, I also called Bethany Christian Services again and told them that my wife Dana and I were interested in adopting a child from the foster care system; the Bethany representative told me that Bethany does not work with same-sex couples.
7. On September 20, 2017, Dana and I, together with another same-sex couple who had been turned away by a State-contracted, taxpayer-funded child placing agency for religious reasons, filed a lawsuit in the Eastern District of Michigan (No. 17-cv-13080) (the "*Dumont Case*").
8. The *Dumont Case* challenged the State of Michigan's practice or policy of allowing State-contracted, taxpayer-funded child placing agencies to disqualify or exclude prospective families headed by same-sex couples based on agencies' religious beliefs, and the suit

sought to ensure that lesbian and gay individuals and couples are treated the same as heterosexual individuals and couples by State-contracted child placing agencies.

9. Soon after settlement of the *Dumont* Case, and prior to the initiation of the *Buck* Case, Dana and I resumed evaluating child placing agencies in our county and inquiring about fostering and adopting a child from the Michigan child welfare system.
10. My wife and I considered contacting St. Vincent a third time but did not do so because, in light of St. Vincent's public statements and its statements in the *Dumont* Case, we thought it would likely turn us away again. We did not want to again experience the sadness and frustration we felt each previous time we were rejected.
11. We are actively pursuing fostering and adopting one or more children from the Michigan public child welfare system. As we do so, we want to have the full range of options available to us that everyone else has.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: June 10, 2019



Kristy Dumont

## **Exhibit B**

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

----- X

MELISSA BUCK; CHAD BUCK; 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; JOOYEUN CHANG, in her official capacity as the Executive Director of the Michigan Children’s Services Agency; DANA NESSEL, in her official capacity as Attorney General of Michigan; ALEX AZAR, in his official capacity as the Secretary of the United States Department of Health and Human Services; UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES,

Defendants.

----- X

No. 1:19-cv-00286-RJJ-PJG

HON. ROBERT J. JONKER

**DECLARATION OF DANA DUMONT  
IN SUPPORT OF [PROPOSED]  
REPLY BRIEF IN SUPPORT OF  
MOTION TO INTERVENE**

I, Dana Dumont, hereby declare under penalty of perjury that the following is true and correct:

1. My wife Kristy Dumont and I are proposed intervenor defendants in the above-captioned action (the “*Buck Case*”). This Declaration is based on my personal knowledge, and I would be competent to testify to the following facts if called upon to do so.
2. Kristy and I are ready, willing and able to provide a “forever family” to one or more children in the Michigan foster care system.

3. In summer 2016, I called Bethany Christian Services in East Lansing, Michigan and told them that my wife Kristy and I were interested in adopting a child from Michigan's foster care system. Bethany told me that the agency does not work with same-sex couples.
4. In summer 2016, Kristy called St. Vincent Catholic Charities in Lansing, Michigan and told them that she and I were interested in adopting a child from Michigan's foster care system. St. Vincent told her that the agency does not work with same-sex couples.
5. In March 2017, Kristy called St. Vincent Catholic Charities again and told the person who answered the phone that she was calling to inquire about adopting a child from foster care, and she was transferred to the voicemail of someone in the child welfare department. She left a detailed message explaining that she had previously been told that the agency did not work with same-sex couples and asking if that was still the case, but St. Vincent never returned her call.
6. In March 2017, Kristy also called Bethany Christian Services again and told them that she and I were interested in adopting a child from the foster care system; the Bethany representative told her that Bethany does not work with same-sex couples.
7. On September 20, 2017, Kristy and I, together with another same-sex couple who had been turned away by a State-contracted, taxpayer-funded child placing agency for religious reasons, filed a lawsuit in the Eastern District of Michigan (No. 17-cv-13080) (the "*Dumont Case*").
8. The *Dumont Case* challenged the State of Michigan's practice or policy of allowing State-contracted, taxpayer-funded child placing agencies to disqualify or exclude prospective families headed by same-sex couples based on agencies' religious beliefs, and the suit

sought to ensure that lesbian and gay individuals and couples are treated the same as heterosexual individuals and couples by State-contracted child placing agencies.

9. Soon after settlement of the *Dumont* Case, and prior to the initiation of the *Buck* Case, Kristy and I resumed evaluating child placing agencies in our county and inquiring about fostering and adopting a child from the Michigan child welfare system.
10. My wife and I considered contacting St. Vincent a third time but did not do so because, in light of St. Vincent's public statements and its statements in the *Dumont* Case, we thought it would likely turn us away again. We did not want to again experience the sadness and frustration we felt each previous time we were rejected.
11. We are actively pursuing fostering and adopting one or more children from the Michigan public child welfare system. As we do so, we want to have the full range of options available to us that everyone else has.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: June 10, 2019

A handwritten signature in black ink, appearing to read "Dana Dumont", with a long horizontal flourish extending to the right.

Dana Dumont