UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CATHOLIC CHARITIES WEST MICHIGAN,

Plaintiff,

v.

MICHIGAN DEPARTMENT OF HEALTH AND HUMAN SERVICES; ROBERT GORDON, in his official capacity as Director of the Michigan Department of Health and Human Services; MICHIGAN CHILDREN'S SERVICES AGENCY; JENNIFER WRAYNO, in her official capacity as Acting Executive Director of Michigan Children's Services Agency; DANA NESSEL, in her official capacity as Attorney General of Michigan,

Defendants.

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2:19-CV-11661-DPH-DRG

Hon. Denise Page Hood

Hon. David R. Grand

PLAINTIFF CATHOLIC CHARITIES WEST MICHIGAN'S RESPONSE IN OPPOSITION TO MOTION TO INTERVENE

James R. Wierenga (P48946)
Attorney for Plaintiff
David, Wierenga & Lauka, PC
99 Monroe Ave., NW
Ste. 1210
Grand Rapids, MI 49503
(616) 454-3883
jim@dwlawpc.com

David A. Cortman (GA Bar #188810)
Attorney for Plaintiff
Alliance Defending Freedom
1000 Hurricane Shoals Rd. NE
Ste. D-1100
Lawrenceville, GA 30043
(770) 339-0774
dcortman@ADFlegal.org

Roger Brooks (NC Bar #16317)*
Jeremiah Galus (AZ Bar #030469)
Attorneys for Plaintiff
Alliance Defending Freedom
15100 N. 90th Street
Scottsdale, AZ 85260
(480) 444-0020
rbrooks@ADFlegal.org
jgalus@ADFlegal.org

**Admission pending*

Toni L. Harris (P63111)
Joshua S. Smith (P63349)
Precious S. Boone (P81631)
Elizabeth R. Husa Briggs (P73907)
Attorneys for Defendants
Michigan Department of Attorney General
Health, Education & Family Services Division
P.O. Box 30758
Lansing, MI 48909
(517) 335-7603
HarrisT19@michigan.gov
Smithj46@michigan.gov

_____/

PLAINTIFF CATHOLIC CHARITIES WEST MICHIGAN'S RESPONSE IN OPPOSITION TO MOTION TO INTERVENE

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CONCISE STATEMENT OF ISSUES PRESENTED

1. Whether the Dumonts have satisfied the requirements for intervention as of right when they have not overcome the presumption of adequacy of representation when the government Defendants have the same ultimate objective, have no support for the claim that they have a substantial legal interest in this case, and have not shown how their alleged interests are implicated by Catholic Charities' relationship with the State of Michigan.

2. Whether the Dumonts have satisfied the requirements for permissive intervention when their involvement would unduly delay or prejudice the adjudication of the original parties' rights.

CONTROLLING OR MOST APPROPRIATE AUTHORITY

Blount-Hill v. Zelman,
636 F.3d 278 (6th Cir. 2011)

Bradley v. Milliken,
828 F.2d 1186 (6th Cir. 1987)

Grubbs v. Norris,
870 F.2d 343 (6th Cir. 1989)

Jordan v. Michigan Conference of Teamsters Welfare Fund,
207 F.3d 854 (6th Cir. 2000)

Meyer Goldberg, Inc. v. Goldberg,
717 F.2d 290 (6th Cir. 1983)

United States v. Michigan,
424 F.3d 438 (6th Cir. 2005)

INTRODUCTION

The proposed intervenors, Kristy Dumont and Dana Dumont, do not attest that they have sought or ever will seek to foster or adopt through Catholic Charities West Michigan. Instead, they seek the right to defend an action the government is already defending and police the relationships between the State and child welfare agencies they have never contacted.

To accomplish this goal, the Dumonts are attempting to use a settlement agreement brokered with the State Defendants in other litigation as a means to intervene in any case where a faith-based child welfare agency is exercising the rights granted to it under the U.S. Constitution and Michigan law. In fact, the Dumonts filed another intervention motion in a case pending in the Western District of Michigan. That motion was recently denied for the same reasons it should be denied here.

The Michigan Attorney General, Michigan Department of Health and Human Services, and the Michigan Children's Services Agency adequately represent any interest the Dumonts might have. And further, the Dumonts have not shown they have a substantial legal interest, nor that their ability to protect that alleged interest would be impaired unless they are permitted to intervene. Permitting intervention would only clutter this action, creating undue delay and prejudice to the original parties.

BACKGROUND

In 2015, the Michigan Legislature passed proactive legislation to ensure that faith-based providers could continue to serve foster children consistently with their religious beliefs while at the same time ensuring that no legally qualified person's ability to adopt or participate in foster care is denied. *See* Mich. Comp. Laws §§ 722.124e, 722.124f; *see also* Pl.'s Mot. for Prelim. Inj. 7-9, ECF No. 11. But shortly after passage, the ACLU of Michigan began preparations to challenge these laws.

The Dumonts were recruited by the ACLU to file a lawsuit against the Michigan Department of Health and Human Services and the Michigan Children's Services Agency (collectively "State Defendants") alleging that the agencies' practice of contracting with faith-based foster care and adoption providers violated the Constitution. *See* Pls.' Resp. to Mot. to Intervene Ex. 3, *Buck v. Gordon*, No. 1:19-cv-00286 (W.D. Mich. June 4, 2019), ECF No. 37-3, attached here as Ex. 1; s*ee also* Complaint at ¶ 19, *Dumont v. Lyon,* No. 17-cv-13080 (E.D. Mich. Sept. 20, 2017), ECF No. 1. They sought a court order prohibiting the agencies from contracting with faith-based providers whose religious beliefs prohibit them from recommending or licensing same-sex couples as foster and adoptive parents. Compl. ¶ 126, ECF No. 1-2. Catholic Charities was not a party to that lawsuit.

During the pendency of the *Dumont* lawsuit, Defendant Dana Nessel campaigned to be Michigan's attorney general. And during that time frame, she asserted that the "only purpose" of Michigan's statutory protections for faith-based foster care and adoption providers was "to discriminate against people" and that those protections were "a victory for the hate mongers." Compl. ¶¶ 141-42, ECF No. 1-2. She then promised that if elected, she would not defend such laws. Compl. ¶ 127, ECF No. 1-2.

Upon taking office, Defendant Nessel fulfilled her promise by instructing the State Defendants to settle the *Dumont* lawsuit. *Id*. The settlement agreement between the State and *Dumont* plaintiffs states that, "[u]nless prohibited by law or court order," Defendants will maintain a nondiscrimination provision in their foster care and adoption agency contracts prohibiting, among other things, sexual orientation discrimination. *See* Settlement Agreement at 2, ECF No. 1-2 (PageID.193). The settlement agreement further states that, "[u]nless prohibited by law or court order," Defendants will enforce the nondiscrimination provision, up to and including contract termination, against a child placing agency that "is in violation of, or is unwilling to comply with, such provisions." *Id.* at PageID.193-94.

Following settlement, the intervenors in the *Dumont* lawsuit who were not parties to that agreement filed suit against the State Defendants in the Western District of Michigan. *See* Complaint, *Buck v.*

Gordon, No. 1:19-cv-00286 (W.D. Mich. Apr. 15, 2019), ECF No. 1. The Dumonts moved to intervene in that case, but were recently denied such relief. *See* Order, *Buck v. Gordon*, No. 1:19-cv-00286 (W.D. Mich. July 31, 2019), ECF No. 52, attached here as Ex. 2.

ARGUMENT

Federal Rule of Civil Procedure 24 requires courts to permit intervention only when that individual "claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest." Fed. R. Civ. P. 24(a)(2). It further states that courts "may permit" intervention when an individual "has a claim or defense that shares with the main action a common question of law or fact." Fed. R. Civ. P. 24(b)(1)(B). But in exercising this discretion, a court "must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." Fed. R. Civ. P. 24(b)(3).

Here, the Dumonts cannot establish the requirements for intervention as of right. Nor can they establish that permissive intervention is appropriate because their involvement would unduly delay litigation and prejudice the original parties' rights.

I. The Dumonts cannot justify intervention as of right.

To intervene, a potential intervenor must establish that: (1) the motion to intervene is timely; (2) the proposed intervenor has a substantial legal interest in the subject matter of the case; (3) the proposed intervenor's ability to protect their interest may be impaired in the absence of intervention; and (4) the parties already before the court cannot adequately protect the proposed intervenor's interest. *Blount-Hill v. Zelman*, 636 F.3d 278, 283 (6th Cir. 2011). "Each of these elements is mandatory, and therefore failure to satisfy any one of the elements will defeat intervention under the Rule." *Id.* (citing *United States v. Michigan*, 424 F.3d 438, 443 (6th Cir. 2005)). Here, the Dumonts cannot satisfy the second, third, or fourth elements.

A. The Michigan Attorney General, Michigan Department of Health and Human Services, and Michigan Children's Services Agency adequately represent the Dumonts' alleged interests.

"[T]he applicant for intervention bears the burden of demonstrating inadequate representation." *Meyer Goldberg, Inc. v. Goldberg*, 717 F.2d 290, 293 (6th Cir. 1983). The Sixth Circuit "presum[es]" there is adequate representation "when the proposed intervenor and a party to the suit have the same ultimate objective." *Bradley v. Milliken*, 828 F.2d 1186, 1192 (6th Cir. 1987) (cleaned up). Here, the Dumonts' "ultimate objective" is the same as the existing Defendants'—they want to prevent a preliminary injunction from

issuing, and for the State to cancel Catholic Charities' contracts or penalize it for acting consistently with its religious beliefs.

The Sixth Circuit has held that a "movant fails to meet his burden of demonstrating inadequate representation when 1) no collusion is shown between the existing party and the opposition; 2) the existing party does not have any interests adverse to the intervener; and 3) the existing party has not failed in the fulfillment of its duty." *Jordan v. Mich. Conference of Teamsters Welfare Fund*, 207 F.3d 854, 863 (6th Cir. 2000); *Intercontinental Elecs., S.P.A. v. Roosen*, No. 03-72424, 03-72584, 2006 WL 846763, at *2-3 (E.D. Mich. Mar. 30, 2006). Given the strong hostility expressed by the Attorney General to the faith-based views and practices of Catholic Charities, and the resources of the State Attorney General's office, the Dumonts cannot remotely satisfy this requirement.

First, there is no collusion between Catholic Charities and the existing Defendants, as their positions are clearly adversarial. If anything, it is the State and the Dumonts that appear to be working hand in hand.

Second, the Dumonts have not shown that the existing Defendants have any interest that is adverse to the Dumonts. At most, they contend that the State Defendants did not concur with the Dumonts when they filed a motion to dismiss in the *Dumont* litigation. Mot. to Intervene 18, ECF No. 20 ("MTI"). But that was before

Defendant Nessel took office, refused to defend the agencies in that case, and instructed the agencies to settle. Compl. ¶ 127, ECF No. 1-2. The fact that the State has concurred in the Dumonts' requested intervention in this case underscores that they are now playing on the same team. *See, e.g, United Nuclear Corp. v. Cannon*, 696 F.2d 141, 144 (1st Cir. 1982) ("[I]t is significant that [the proposed intervenor] seeks to intervene on the side of the state."). The Dumonts have simply not "shown how their interests differ in the current litigation." *Roosen*, No. 03-72424, 03-72584, 2006 WL 846763 at *3.

Third, the Dumonts have not claimed that the existing Defendants have failed in the fulfillment of their duties. Instead, the Dumonts merely suggest that the Defendants may not make certain arguments based on positions taken in prior litigation under a different Attorney General. But again that is not enough.

On the contrary, there is an assumption of adequacy when the government is advocating for the interest represented by the proposed intervenor. *Arakaki v. Cayetano*, 324 F.3d 1078, 1086 (9th Cir. 2003) ("[I]t will be presumed that a state adequately represents its citizens when the applicant shares the same interest. . . . Where parties share the same ultimate objective, differences in litigation strategy do not normally justify intervention.") (citation omitted).

Here, the Dumonts' only argument is that they plan to introduce Establishment and Equal Protection arguments that the State may not

raise. But the Dumonts are not part of any relationship between Catholic Charities and the State, and thus have no substantial legal interest in asserting such a defense. While the Dumonts have knowledge about the private settlement agreement between them, the Busk-Suttons, and the State Defendants, those details do not matter here. What matters is whether Catholic Charities can continue to operate consistent with its beliefs. And on that question, the existing Defendants are fully equipped to make all appropriate arguments.

In sum, any interests the Dumonts may have in the questions raised by this lawsuit are more than adequately represented by the existing Defendants. *See* 07/31/19 *Buck* Order, Ex. 2 ("[T]he State is fully capable of protecting any interest the Dumonts have in the terms of the Settlement Agreement . . . . The State Defendants and the Dumonts are fundamentally aligned at this time in not only their views of the Settlement Agreement, but also their views of the merits (or more accurately, the demerits) of Plaintiffs' claims."). Because the Dumonts cannot "overcome the presumption of adequate representation," their request should be denied. *Michigan*, 424 F.3d at 443-44.

B. The Dumonts do not have a substantial legal interest justifying intervention.

To intervene as of right, proposed intervenors must also and separately demonstrate that they have a "significant legal interest in the subject matter of the pending litigation." *Jansen v. City of*

Cincinnati, 904 F.2d 336, 340 (6th Cir. 1990). Although the Sixth Circuit subscribes to "a rather expansive notion of the interest sufficient to invoke intervention of right," this "does not mean that any articulated interest will do." *Coal. To Defend Affirmative Action v. Granholm*, 501 F.3d 775, 780 (6th Cir.2007) (citations omitted). To the contrary, the movants must show "a direct, significant legally protectable interest," *United States v. Detroit International Bridge Co.,* 7 F.3d 497, 501 (6th Cir. 1993), in the subject matter of the litigation, sufficient "to make it a real party in interest in the transaction which is the subject of the proceeding." *Providence Baptist Church v. Hillandale Committee, Ltd.*, 425 F.3d 309, 317 (6th Cir. 2005) (citation omitted).

Here, this case is about Catholic Charities' decades-long relationship with the State and Catholic Charities' constitutional right to continue to receive reimbursements of foster-care expenses from the State on a nondiscriminatory basis. The Dumonts are not parties to that relationship, nor could they be. But despite those facts, the Dumonts assert two interests they contend warrant intervention.

First, the Dumonts contend they have "an interest in protecting the hard-fought Settlement Agreement they obtained in [the *Dumont* litigation]," which they believe would be "vitiate[d]" if this Court protects Catholic Charities. MTI at 10, ECF No. 20. But that settlement agreement was entered into between the Dumonts, the

Busk-Suttons, and the State Defendants. *See* Settlement Agreement, ECF No. 1-2 (PageID.192). Catholic Charities was not a party to that agreement; it cannot violate its terms, nor is Catholic Charities challenging it. *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.").

In their briefing, the Dumonts suggest that their settlement agreement was a court-endorsed consent decree. MTI at 10, ECF No. 20. Not so. "Consent decrees typically have two key attributes that make them different from private settlements." *Pedreira v. Sunrise Children's Servs., Inc.*, 802 F.3d 865, 871 (6th Cir. 2015). First, a court retains jurisdiction to enforce the consent decree. *Id.* And second, a consent decree incorporates the settlement agreement's terms into the dismissal order. *Id.* But in *Dumont*, the settlement agreement terms were not incorporated into the court's dismissal order. Order on Stipulation of Dismissal, *Dumont v. Lyon,* No. 17-cv-13080 (E.D. Mich. Mar. 22, 2019),, ECF No. 83. Instead, citing *RE/MAX International, Inc. v. Realty One, Inc.*, 271 F.3d 633, 641 (6th Cir. 2001), the court dismissed the case "pursuant to the terms of the settlement agreement." Order on Stipulation of Dismissal at 2, *Dumont v. Lyon,* No. 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.*, 271 F.3d at 642 (citation omitted).

Moreover, the Sixth Circuit has held that "[b]efore entering a consent decree," the district court must (1) "determine, among other things, that the agreement is 'fair, adequate, and reasonable, as well as consistent with the public interest[,]'" and must (2) "allow anyone affected by the decree to 'present evidence and have its objections heard[.]'" *Pedreira*, 802 F.3d at 872. None of that occurred in the *Dumont* lawsuit. *See* Stipulation of Voluntary Dismissal with Prejudice and Order on Stipulation of Dismissal, *Dumont v. Lyon,* No. 17-cv-13080 (E.D. Mich. Mar. 22, 2019), ECF Nos. 82-83, attached here as Ex. 3.

The Dumonts cite *Jansen* as support, but that decision weighs against intervention here. In that case, intervention was appropriate because the "subject matter of the litigation require[d] an interpretation of [a] consent decree" to which the intervenors were parties. *Jansen*, 904 F.2d at 342. This case, however, does not require interpretation of any consent decree, nor even of the private settlement entered into by the Dumonts.

The Dumonts also cite *Blount-Hill v. Board of Education of Ohio* to argue that Catholic Charities' requested relief would infringe on their "existing contractual rights," MTI at 12, ECF No. 20, but *Blount-Hill* undercuts the Dumonts' claimed right to intervene. There, the Sixth

Circuit held that a movant's indirect financial interest in the outcome of litigation concerning charter school funding was *insufficient* to justify intervention because the movant was "not a party to any challenged contract nor [wa]s it directly targeted by plaintiffs' complaint." *Blount-Hill v. Bd. of Educ.,* 195 F. App'x 482, 486 (6th Cir. 2006).

Here, the Dumonts are likewise not directly targeted by Catholic Charities' complaint, nor do they have any interest in reimbursement payments for foster care expenses that may or may not be paid by the State to Catholic Charities. *United States v. Tennessee*, 260 F.3d 587, 595 (6th Cir. 2001) (denying intervention because "[the proposed intervenor'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" tangential to the constitutional challenges at issue). As such, the Dumonts' alleged interest is insufficient. *See* 07/31/19 *Buck* Order, Ex. 2 (stating that the Dumonts' settlement agreement was "an insufficient basis to support intervention").

Second, the Dumonts contend that they have a "substantial interest in avoiding the injury that would result from the relief sought by [Catholic Charities]." MTI at 14, ECF No. 20. But what harm will the Dumonts suffer if Catholic Charities' religious freedom is protected? They are not part of any relationship between Catholic Charities and the State. Indeed, the Dumonts do not claim to have done anything

more than "evaluat[e]," "inquir[e]," and "pursu[e]" fostering and adopting a child from the Michigan child welfare system—activities that Catholic Charities' assertions of constitutional rights in this litigation do not threaten. Mot. to Intervene Ex. B at ¶¶ 9-10, ECF No. 20-3; Mot. to Intervene Ex. C at ¶¶ 9-10, ECF No. 20-4. That is simply not enough. *Grubbs v. Norris*, 870 F.2d 343, 346 (6th Cir. 1989) (holding that an interest must be direct and substantial, not peripheral or speculative).

The Dumonts cite *Grutter v. Bollinger* for the principle that if Catholic Charities is successful their settlement would be "eviscerated." MTI at 15, ECF No. 20. But their analysis misses the mark. The Court in *Grutter* held that the movants had a substantial legal interest in gaining admission to the University of Michigan. *Grutter v. Bollinger*, 188 F.3d 394, 399 (6th Cir. 1999). Here, however, the issue is whether Catholic Charities has a constitutional right to continue to receive reimbursements for foster care costs from the State on a nondiscriminatory basis. Catholic Charities' requested relief does not threaten the Dumonts' ability to adopt or foster.

At most, the Dumonts have alleged nothing more than a "general ideological interest in the lawsuit—like seeing that the government zealously enforces [the new State policy that they] support[]."*Granholm*, 501 F.3d at 782 . But that is insufficient. *Id*. If it were not, nothing would prevent other Michigan taxpayers from intervening in a suit like

this one. *Ark Encounter, LLC v. Stewart*, 311 F.R.D. 414, 419 (E.D. Ky. 2015); *see also Dillard v. Chilton Cty. Comm'n*, 495 F.3d 1324, 1331 (11th Cir. 2007) ("An interest shared generally with the public at large in the proper application of the Constitution and laws" is not sufficient for intervention) (citation omitted); *Keith v. Daley*, 764 F.2d 1265, 1269 (7th Cir. 1985) (explaining that in the context of "public law" cases "the governmental bodies charged with compliance can be the only defendants") (citation omitted).

C. The Dumonts' legal interests are not impaired.

For the same reason the Dumonts have failed to identify a significant legal interest, they have failed to show how such an interest would be impaired. The Dumonts contend that "*Jansen* is directly on point." MTI at 16, ECF No. 20. But as discussed before, the "subject matter of [that] litigation require[d] an interpretation of the consent decree" to which the intervenors were a party. *Jansen*, 904 F.2d at 342. This case does not require interpretation of any consent decree, nor the *Dumont* settlement.

While one can construct entirely speculative sets of facts in which the outcome of the present litigation might peripherally affect the Dumonts (though in no event could this litigation actually impair their ability to adopt or foster), such a generalized interest does not justify intervention, and no legal interest of the Dumonts is at issue here. The

Dumonts' generalized interest in this case can be adequately addressed by filing an amicus brief, which Catholic Charities will not oppose.

II. The Dumonts are not entitled to permissive intervention.

"Intervention balances two competing interests—judicial economy resulting from the disposition of related issues in a single lawsuit and focused litigation resulting from the need to govern the complexity of a single lawsuit." *Jansen*, 904 F.2d at 339-40. Here, that balance weighs against intervention.

A. The Dumonts' involvement would unduly delay the litigation and prejudice Catholic Charities.

Permissive intervention is improper where it would cause undue delay or prejudice to the original parties. Fed. R. Civ. P. 24(b)(3). Courts often deny permissive intervention due to delay and prejudice if allowing intervention would add disputed factual questions and prolong or complicate discovery. *S. Carolina v. N. Carolina*, 558 U.S. 256, 287-88 (2010) ("Intervenors do not come alone—they bring along more issues to decide" and "more discovery requests.") (Roberts, J., concurring and dissenting); *Michigan*, 424 F.3d at 445; *Kasprzak v. Allstate Ins.* Co., No. 12-CV-12140, 2013 WL 1632542, at *4 (E.D. Mich. Apr. 16, 2013) (unreported) (denying permissive intervention where "[t]he parties would suffer the costs of extending discovery along with other costs associated with prolonged litigation").

Allowing the Dumonts to join this case would lead to precisely that result. In fact, in an order denying the Dumonts' motion for leave to file a reply brief in support of intervention in the *Buck* litigation, Chief Judge Jonker stated that "[b]etween the filing of th[at] case on April 15 [2019] and [June 12, 2019], the parties have already generated a record of over 1,500 pages." Order, *Buck v. Gordon*, No. 1:19-cv-00286 (W.D. Mich. June 12, 2019), ECF No. 41, attached here as Ex. 4. Chief Judge Jonker ultimately denied the Dumonts' motion to intervene, but the same is proving true here.

Expert reports, declarations, and discovery from another case were all included in the Dumonts' proposed response to the motion for preliminary injunction. *See* [Proposed] Intervenor Defs.' [Proposed] Resp. in Opp'n to Pl.'s Mot. for Prelim. Inj. Exs. A & B, ECF Nos. 23-2, 23-3. Those materials are irrelevant to that motion and the underlying issues in this case. But should the Court grant intervention, Catholic Charities would be forced to respond in many ways, including bringing in experts, and evaluating and responding to discovery from a different case. That exercise will cost this Court, Catholic Charities, and the Defendants valuable time and resources in the process.

In sum, the Dumonts' presence will not add value to this case as the existing Defendants' interests in this case align perfectly with the Dumonts. *See* 07/31/19 *Buck* Order, Ex. 2 ("The State Defendants and the Dumonts are fundamentally aligned . . . ."); *Bay Mills Indian Cmty.*

v. Snyder, 720 F. App'x 754, 759 (6th Cir. 2018) ("The fact that [a proposed intervenor's] position is being represented counsels against granting permissive intervention."). And they have already demonstrated that they will clutter the litigation. *See Arney v. Finney*, 967 F.2d 418, 421-22 (10th Cir. 1992) (denying an applicant's intervention as it "would only clutter the action unnecessarily").

B. Catholic Charities has no objection to the Dumonts participating in this case as amicus curiae.

The Dumonts have not satisfied the requirements for intervention as of right or for permissive intervention. But should this Court desire to allow the Dumonts to present their arguments, Catholic Charities has no objection to them participating in this case as amicus curiae. *Stupak-Thrall v. Glickman*, 226 F.3d 467, 472 (6th Cir. 2000) (noting with approval *Bradley*, 828 F.2d at 1194, and explaining that in that case the court affirmed the denial of motions to intervene permissively and as of right in part because "the district court has already taken steps to protect the proposed intervenors' interests by inviting [their counsel] to appear as amicus curiae in the case").

CONCLUSION

For the foregoing reasons, Catholic Charities asks this Court to deny the motion to intervene.

Dated: July 31, 2019

Respectfully submitted,

/s/ Jeremiah Galus

James R. Wierenga (P48946)
David, Wierenga & Lauka, PC
99 Monroe Ave., NW, Ste. 1210
Grand Rapids, MI 49503
(616) 454-3883
jim@dwlawpc.com

Roger Brooks (NC Bar 16317)*
Jeremiah Galus (AZ Bar 030469)
Alliance Defending Freedom
15100 N. 90th Street
Scottsdale, AZ 85260
(480) 444-0020
rbrooks@ADFlegal.org
jgalus@ADFlegal.org
**Admission pending*

David A. Cortman (GA Bar 188810)
Alliance Defending Freedom
1000 Hurricane Shoals Rd. NE, Ste. D-1100
Lawrenceville, GA 30043
(770) 339-0774
dcortman@ADFlegal.org

CERTIFICATE OF SERVICE

I hereby certify that on July 31, 2019, I caused the foregoing to be filed with the Clerk of the Court using the ECF system, which will provide electronic copies to counsel of record.

/s/ Jeremiah Galus
Jeremiah Galus (AZ Bar 030469)
Alliance Defending Freedom
15100 N. 90th Street
Scottsdale, AZ 85260
(480) 444-0020
jgalus@ADFlegal.org

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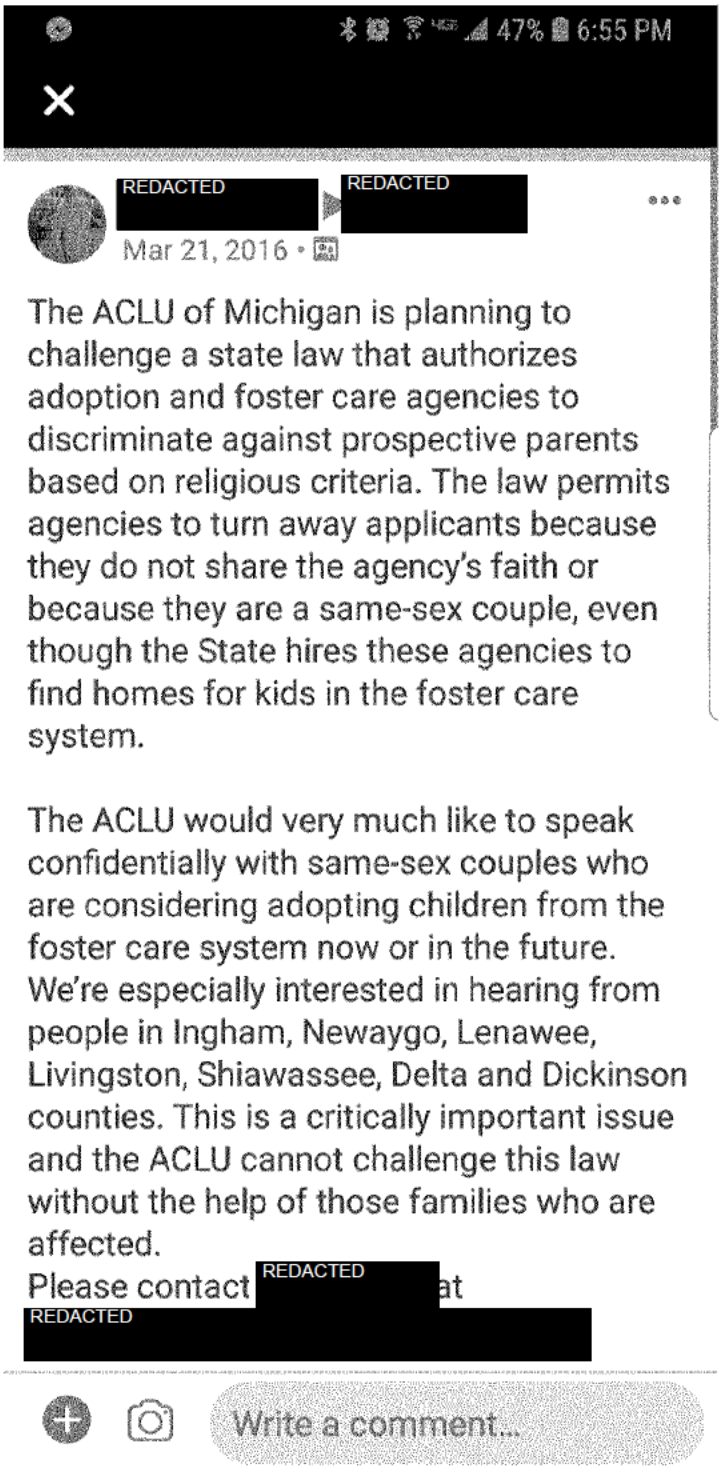
EXHIBIT 1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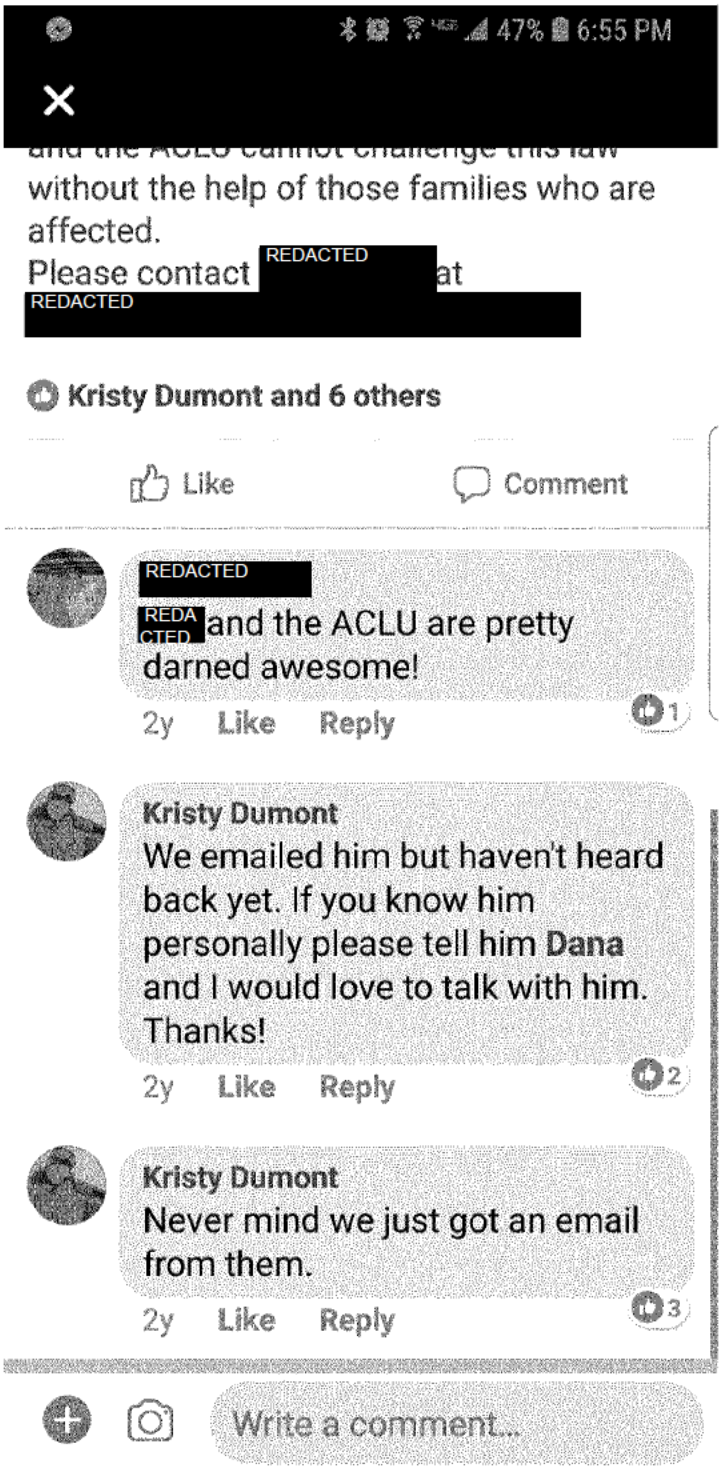
REDACTED
REDACTED
Mar 21, 2016 •
The ACLU of Michigan is planning to challenge a state law that authorizes adoption and foster care agencies to discriminate against prospective parents based on religious criteria. The law permits agencies to turn away applicants because they do not share the agency's faith or because they are a same-sex couple, even though the State hires these agencies to find homes for kids in the foster care system.
The 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. We're especially interested in hearing from people in Ingham, Newaygo, Lenawee, Livingston, Shiawassee, Delta and Dickinson counties. This is a critically important issue and the ACLU cannot challenge this law without the help of those families who are affected.
Please contact REDACTED at
REDACTED
Write a comment...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without the help of those families who are affected.
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Kristy Dumont and 6 others
Like
Comment
REDACTED
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
Write a comment...

EXHIBIT 2

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MELISSA BUCK, *et al.*,

Plaintiffs,

v.

ROBERT GORDON, *et al.*,

Defendants.
_____/

CASE NO. 1:19-CV-286

HON. ROBERT J. JONKER

ORDER

Plaintiffs Melissa Buck, Chad Buck, Shamber Flore, and St. Vincent Catholic Charities bring this lawsuit alleging violations of their rights under the First and Fourteenth Amendments of the Constitution and under the Religious Freedom and Restoration Act, 42 U.S.C. § 20000bb. (Compl., ECF No. 1.) Defendants Robert Gordon, Director of the Michigan Department of Health and Human Services; Herman McCall, Executive Director of the Michigan Children's Services Agency; and Dana Nessel, Attorney General of Michigan (collectively, the "State Defendants") contend that the case belongs in the Eastern District of Michigan and move to transfer the case. (ECF No. 29). Movants Kristy Dumont and Dana Dumont (collectively, the "Dumonts") seek leave to intervene. (ECF No. 18.) Defendant Alex Azar, Secretary of the United States Department of Health and Human Services, takes no position as to the propriety of transfer or intervention. The Court heard oral argument on the Motion to Transfer and Motion to Intervene during the Rule 16 scheduling conference held on June 26, 2019. This is the decision of the Court.

BACKGROUND[1]

A. St. Vincent and the Michigan Foster and Adoptive Process

Plaintiff St. Vincent Catholic Charities ("St. Vincent") is a Michigan non-profit corporation organized for charitable and religious purposes and affiliated with the Catholic Diocese of Lansing, Michigan. (*Id.*, Page ID.2, 4.) St. Vincent "exercises its faith and carries out [its] religious mission … through its foster care and adoption ministries." (*Id.*, PageID.4.) St. Vincent serves as a foster care and adoption agency under foster and adoptive services contracts with Defendant Michigan Department of Health and Human Services ("MDHHS"). (*Id.*, PageID.2, 4.)[2] In Michigan, only agencies that contract with MDHHS to perform foster care placements and public adoptions may perform these services. (*Id.*, PageID.13.) "St. Vincent would not be able to provide its foster care or adoption ministry without a license and contract from the State…." (*Id.*)

St. Vincent is one of over ninety different private child placing agencies ("CPA") operating throughout the State of Michigan. (*Id.*, PageID.11.) Among other things, CPAs assist prospective adoptive or foster parents in becoming certified to foster or adopt children.[3] As part of the certification process, a prospective foster or adoptive must participate in a home study with either MDHHS or a private agency, "to assess whether the applicant's home is appropriate and suitable for the placement of foster or adoptive children." (*Id.*, PageID.14, 16.) After conducting a home study, the CPA assisting a prospective family with the certification process prepares a report and licensing recommendation for MDHHS that "analyzes the relationships in the home and provides

[1] The Court is reciting the allegations of the complaint for the purpose of framing the motions to transfer and to intervene. The Court makes no factual findings here.

[2] St. Vincent has helped Plaintiffs Chad and Melissa Buck foster and then adopt five children with special needs and trauma from past abuse. (*Id.*, PageID.2.) The Bucks contribute to St. Vincent by, among other things, recruiting and supporting other foster and adoptive parents. (*Id.*, PageID.3.) Plaintiff Shamber Flore was adopted as a result of St. Vincent's work. (*Id.*) She serves St. Vincent by providing mentoring and support for children and families healing from past trauma. (*Id.*)

[3] To adopt a child in Michigan, a family must become a certified pre-adoptive home. (*Id.*, PageID.14.)

a recommendation regarding placing children in that home." (*Id.*, PageID.18.) It is up to the State to provide final approval and licensing. (*Id.*) St. Vincent understands the report and licensing recommendation it provides to the State to be "a written approval of the relationships in the home and confirmation that the agency has determined the home is suitable for the placement of children." (*Id.*)

"St. Vincent shares the religious beliefs and teachings of the Catholic Church regarding same-sex marriage." (*Id.*, PageID.25.) St. Vincent states that it "would never stop a family who wants to foster or adopt from having the opportunity to complete the application and home study process." (*Id.*) If St. Vincent is not able to work with a prospective adoptive foster or adoptive family -- including an unmarried or same-sex couple -- because of St. Vincent's religious beliefs, St. Vincent provides the couple with the list of other area agencies who do not share its religious beliefs and could assist them in becoming foster or adoptive parents." (*Id.*, PageID.14.) Through the State's central adoption portal, the Michigan Adoption Resource Exchange (M.A.R.E.), "any foster family, including a same-sex or unmarried couple, can be connected to a private child placing agency, become a certified pre-adoptive home, and then adopt a child that is currently placed in a foster home serviced by a different agency, including St. Vincent." (*Id.*) Prospective parents, including same-sex and unmarried couples, who are "interested in adopting a child in St. Vincent's care need not work directly with St. Vincent to adopt that child, but may work with another agency." (*Id.*) "[N]o same-sex couple has been prevented from fostering or adopting a child by St. Vincent." (*Id.*, PageID.14.)

The State's adoptive services contract with St. Vincent includes a provision that states:

> The Contractor shall comply with the DHHS non-discrimination statement:

> Michigan Department of Health and Human Services (DHHS) will not discriminate 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.
>
> The above statement applies to all applications filed for adoption of DHHS supervised children, including DHHS supervised children assigned to a contracted agency.

(ECF No. 34-6, PageID.1022.) The State's foster care services contract with St. Vincent likewise provides that the Contractor "shall comply with the MDHHS non-discrimination statement." (ECF No. 34-7, PageID.1048.)

B. The Dumont Litigation

Historically, the State of Michigan has permitted St. Vincent to refer prospective parents to other agencies if St. Vincent's sincerely held religious beliefs prevented it from assisting with the certification and licensing recommendation process. In 2017, the ACLU on behalf of two same-sex couples sued MDHHS for permitting this practice, alleging violations of the Establishment and Equal Protection clauses of the Constitution. (*Id.*, PageID.29.) The lawsuit, *Dumont v. Lyon*, No. 17-cv-13080 (E.D. Mich. Sept. 20, 2017), "alleged that these couples had approached Bethany Christian Services and St. Vincent Catholic Charities seeking to adopt a child, but were referred to another agency based on their sexual orientation." (*Id.*) Plaintiffs St. Vincent, Chad and Melissa Buck, and Shamber Flore sought and were granted leave to intervene in the *Dumont* case on the side of the State defendants in that case. (*Id.*, PageID.29-30.) As intervenors, St. Vincent, the Bucks, and Ms. Flores argued that "the State's decision to contract with St. Vincent and other faith-based agencies did not violate the Constitution and was protected under state and federal law." (*Id.*)

Following the general election in November of 2018, new leaders took over in Michigan, and the position of the State defendants changed from that of St. Vincent, the Bucks, and Ms.

Flore. In January 2019, the State of Michigan and ACLU entered into settlement discussions in the *Dumont* case. (*Id.*, PageID.32.) The ACLU and the State announced a settlement on March 22, 2019. (*Id.*) Intervenor defendants St. Vincent, the Bucks, and Ms. Flores were not party to the settlement negotiations or eventual agreement. (*Id.*) In a joint motion for a stipulated dismissal of the *Dumont* case, the ACLU and State noted that the intervenor defendants had neither asserted claims nor had claims asserted against them. (*Id.*) The court granted the motion for stipulated dismissal, dismissing the plaintiffs' claims against the State "with prejudice pursuant to the terms of the Settlement Agreement" and retaining jurisdiction over the enforcement of the Settlement Agreement under *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375 (1994) and its progeny. ECF No. 31-6, PageID.746-47.) The court was not asked to approve or disapprove the terms of settlement. Nor did the court reach a final merits determination one way or the other on the issues.[4]

Among other things, the Settlement Agreement provides:

> 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….
>
> 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;
>
> ….

[4] The court denied a motion to dismiss filed by the State defendants and intervening defendants St. Vincent, Chad and Melissa Buck, and Shamber Flore. *Dumont v. Lyon*, 341 F.Supp.3d 706 (E.D. Mich. 2018). In denying the motion, the court allowed the Dumont plaintiffs' claims under the Establishment Clause of the First Amendment and Due Process Clause of the Fourteenth Amendment to proceed. The court explicitly described as "premature" and based on "contested matters outside the pleadings" St. Vincent's attempt to assert as an affirmative defense that an order preventing the State from permitting faith-based CPAs would violate St. Vincent's rights under the First Amendment. *Id.* at 548-49. The court explained that at the motion to dismiss stage, "the only issue before the Court [is] whether Plaintiffs have adequately pleaded cognizable Establishment Clause and Equal Protection claims." *Id.* at 749.

> 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
>
> ….
>
> 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 … up to and including termination of the Subcontracts … 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."

(ECF No. 31-5, PageID.719-720.)

C. The Federal Defendant

Michigan relies on both state and federal funds to administer its foster care and adoption programs. (*Id.*, PageID.21.) Federal regulations impose conditions on the federal funds, including a condition that "'no person otherwise eligible will be excluded from participation in, denied the benefits of, or subjected to discrimination in the administration of HHS programs and services based on non-merit factors such as age, disability, sex, race, color, national origin, religion, gender identity, or sexual orientation.'" (*Id.*, PageID.22, quoting 45 C.F.R. § 75.300(c)). St. Vincent alleges on information and belief that the State Defendants recently have interpreted federal regulations to "operate to require the State to force St. Vincent to violate its sincere religious beliefs by providing home studies for same-sex relationships." (*Id.*, PageID.22-23.) St. Vincent alleges that if it fails to comply, "MDHHS will cut St. Vincent's funding and refuse to continue contracting with the agency." (*Id.*, PageID.23.) Plaintiffs assert that Attorney General Nessel interprets State

policies and federal regulations "to require the State to deny agencies like St. Vincent religious exemptions from allegedly applicable anti-discrimination laws." (*Id.*, PageID.34.) St. Vincent notes that its adoption contract with the State is up for renewal in October 2019 and that it fears the State will refuse to renew the contract because of St. Vincent's religious beliefs and practices. (*Id.*, PageID.37.)

D. The Relief Requested in this Case

In this lawsuit, Plaintiffs claim that: (1) Defendants have violated the Free Exercise Clause of the First Amendment by "adopting a policy requiring the State to discriminate against child placing agencies with religious objections to same-sex marriage" and granting individualized exemptions from child placing agency requirements selectively (*Id.*, PageID.42-46); (2) Defendants have violated the Free Speech Clause of the First Amendment by "conditioning St. Vincent's license, its contracts with MDHHS, and the ongoing ability to engage in the religious exercise of helping children in need, on St. Vincent's willingness to make [affirmative statements that contradict St. Vincent's religious beliefs];" (3) Defendants have retaliated against Plaintiffs for protected speech and religious exercise, in violation of the Free Exercise and Free Speech clauses of the First Amendment; (4) Defendants have violated the Free Exercise and Establishment Clauses of the First Amendment by applying laws in a manner that selectively penalizes Plaintiffs for their religious beliefs; (5) Defendants have violated the Equal Protection Clause of the Fourteenth Amendment by penalizing Plaintiffs because of their religious beliefs while allowing contractors espousing contrary religious beliefs to maintain contractual relationships with the State; and (6) Defendants have violated the RFRA by enforcing federal law in a manner that substantially burdens Plaintiffs' sincere religious exercise without a compelling government

interest and through a means more restrictive than necessary to achieve the stated interest. Plaintiffs seek declaratory and injunctive relief.

The State Defendants disagree with Plaintiffs on the merits of their claims. But for present purposes, the key claim of the State Defendants is that this case amounts to an attack on the *Dumont* settlement and should be transferred to the Eastern District of Michigan.[5] Proposed Intervenors Kristy and Dana Dumont seek leave to intervene principally to preserve their interests under the Settlement Agreement. They also disagree with Plaintiffs on the merits and support a transfer of venue. The Court considers the motions in turn.

1. MOTION TO TRANSFER

The State Defendants seek transfer of the case to the Eastern District of Michigan under 28 U.S.C. § 1404(a), which provides that "[f]or the convenience of parties and witnesses, and in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought or to any district or division to which all parties have consented." Plaintiffs oppose the motion to transfer. For the following reasons, the Court finds that transfer under § 1404(a) is not appropriate.

A. Legally Proper Venue

First, venue in the Eastern District of Michigan would be improper, and so the case could not have been brought there in the first instance. This case includes as a defendant an officer or employee of the United States acting in his or her official capacity, and so 28 U.S.C. § 1391(e) controls proper venue. Any such action

> may, except as otherwise provided by law, be brought in any judicial district in which (A) a defendant in the action resides, (B) a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or

[5] The State Defendants move, in the alternative, for dismissal of the case altogether. If this Court retains the case, it will address those issues as part of the preliminary injunction proceedings.

> (C) the plaintiff resides if no real property is involved in the action. Additional persons may be joined as parties to any such action and in accordance with the Federal Rules of Civil Procedure and with such other venue requirements as would be applicable if the United States or one of its officers, employees, or agencies were not a party.

28 U.S.C. § 1391(e)(1). All parties agree that the controlling provision is section 1391(e)(1)(A), but they disagree on how it applies here. The State Defendants agree no federal defendant resides in the Eastern District, but they contend that at least one State Defendant does, and that is enough under the plain language of the statute. Plaintiffs posit that "a defendant" refers only to a federal defendant, none of whom reside in the Eastern District. If Plaintiffs are correct, transfer to the Eastern District would be legally improper.

The Court finds that the reference in § 1391(e)(1)(A) to "a defendant" refers only to a federal defendant. Any other construction would make the reference to "additional persons" who may be joined as parties subject to "such other venue requirements as would be applicable if the United States or one of its officers, employees, or agencies were not a party" entirely superfluous. The authoritative commentary on federal procedure agrees. Wright and Miller state explicitly that § 1391(e)(1)(A) "applies only to proper federal defendants." 14D Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 3815 (4th ed. 2013). Venue is determined separately for non-federal defendants. *Id.* Courts concur: *See, e.g., A.J. Taft Coal Co., Inc. v. Barnhart*, 291 F. Supp. 2d 1290, 1300-1301 (N.D. Ala. 2003) (noting that § 1391(e) does not confer venue as to non-federal defendants) (citing *Lamont v. Haig*, 590 F.2d 1124, 1128-29 (D.C. Cir. 1978)); *Reuben H. Donnelly Corp. v. F.T.C.*, 580 F.2d 264, 266-67 (1978) (noting that venue under § 1391(e)(1) "is proper in any district in which 'a (federal) defendant resides.'"); *Rogers v. Civil Air Patrol*, 129 F.Supp. 1334, 1338 (M.D. Ala. 2001) ("This court … holds that the term 'a defendant' in section 1391(e)(1) refers only to a federal officer or agency defendant in the case, and not to 'any'

defendant, including a non-federal one. Non-federal defendants are governed by the 'additional persons' provisions of the section.").[6]

Accordingly, the Court finds that 28 U.S.C. § 1391(e)(1)(A) limits venue to the districts in which a federal defendant resides, which does not include the Eastern District of Michigan for any federal defendant in this case. The State Defendants identify no other basis in § 1391(e) for venue in the Eastern District of Michigan. Under these circumstances, transfer under § 1404(a) is legally improper, because the case could not have been brought there properly in the first instance.

B. The Focus of the Case and the Dumont Settlement

The State Defendants contend that transfer is warranted because this case amounts to an attack on the *Dumont* Settlement Agreement. This at least implicitly suggests that venue might be supported under section 1391(e)(1)(B), though no party has made that explicit claim. With or without consideration of the *Dumont* settlement, the Western District of Michigan is properly the venue for this case because the parties, the proposed intervenors, and the issues have their roots here, and because the *Dumont* settlement is not under attack in this case.

The Plaintiffs themselves are all residents of the Western District of Michigan. St. Vincent was originally incorporated by the Roman Catholic Bishop of Lansing; is affiliated with the Catholic Diocese of Lansing; and provides foster and adoption services in Lansing, which is in the Western District of Michigan. (ECF No. 1, PageID.4-5; ECF No. 1-1, PageID.62.) Chad and Melissa Buck live in Holt, Michigan, near Lansing. (*Id.*, PageID.6.) Ms. Flore resides in Lansing. (ECF No. 46, PageID.1727.) Moreover, the seat of government for the State of Michigan is the City of Lansing. All the State Defendants maintain offices in Lansing. Even the proposed

[6] To the extent the State Defendants argue that these cases lack precedential value because the cases pre-date the 2011 amendments to § 1391(e), the argument is unpersuasive. *See* 14D Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 3815 (4th ed. 2013) (noting that the 2011 amendments "change[d] subheadings and made no substantive changes" in the four choices § 1391(e) provides).

intervenors reside in the Western District of Michigan.[7] The constitutional and statutory rights Plaintiffs seek to vindicate involve their ability to speak and practice their religion freely in this District without interference or retaliation by the governmental Defendants, as alleged in the Complaint. And the proposed intervenors say they were improperly turned away in the Western District. The Western District of Michigan is the natural focus of the case for venue purposes.

Nothing in the *Dumont* litigation or settlement changes that. In the first place, Plaintiffs have not asked for any relief directed toward to the Settlement Agreement itself. Nor have Plaintiffs sought any relief that calls for interpretation of the Settlement Agreement's terms. Second, if Plaintiffs ultimately prevail on their constitutional and statutory claims here, and if that relief calls for the State Defendants to take action or refrain from acting in some manner covered by the Settlement Agreement, the parties to the Settlement Agreement already contemplated and provided for that by building an escape clause into their agreement: **"Unless prohibited by law or court order**…[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…." (ECF No. 31-5, PageID.719) (emphasis added). All sides recognize that law will trump any contrary contractual provisions. Third, the Plaintiffs never had the incentive or opportunity to raise their claims in *Dumont* because until the settlement happened, they were aligned with the State defendants. When the position of the State Defendants changed after the 2018 general election, the settlement occurred without the input of Plaintiffs or approval of the court. Subsequent litigation like this was the inevitable next step following the

[7] *See* ECF No. 31-2, Exhibits to Mot. to Transfer, at PageID.628 (the Dumonts assert in their Eastern District of Michigan Complaint (¶ 19) that they reside in Dimondale, Michigan). Dimondale is in Eaton County, which is part of the Western District of Michigan. 28 U.S.C. § 102(b)(1).

private settlement. The proper and natural venue for that inevitable next step was the Western District of Michigan.

C. Public and Private Interest Factors

As the case could not have been brought in the Eastern District of Michigan, where venue would be improper under § 1391(e), the Court lacks discretion to transfer the case under § 1404(a). Even assuming it had such discretion, the Court would not transfer the case. Courts in the Sixth Circuit consider six private interest factors in deciding the propriety of transfer under § 1404(a): (1) convenience of the parties and witnesses; (2) accessibility of evidence; (3) availability of process to require reluctant witnesses to testify; (4) the costs of obtaining willing witnesses; (5) the practicalities of trying the case "expeditiously and inexpensively"; and (6) the interests of justice. *Reese v. CNH America LLC*, 574 F.3d 315, 320 (6th Cir. 2009). Public interest factors include (1) the enforceability of the judgment; (2) practicalities of trial management; (3) docket congestion; (4) the local interest in deciding local controversies; (5) public policy of the fora; and (6) the familiarity of the trial judge with applicable state law. *Steelcase, Inc. v. Smart Technologies, Inc.*, 336 F.Supp.2d 714, 719 (W.D. Mich. 2004). Unless the balance of factors strongly favors the defendant, a plaintiff's choice of forum "should rarely be disturbed." *Reese*, 574 F.3d at 320 (quotation marks omitted).

The balance of factors disfavors transfer. All the factors either weigh in favor of keeping the case in the Western District of Michigan or are neutral. The Western District of Michigan is the more convenient forum, because Plaintiffs, State Defendants, and Dumonts all reside or maintain offices in the Western District. The most likely witnesses, including, without limitation, the individual plaintiffs, St. Vincent's employees, and State employees, generally reside or are based in or around Lansing, Michigan, in the Western District. For this reason, the cost of obtaining

their testimony is likely to be lower in the Western District than in the Eastern District, and this Court's subpoena power is more likely to reach unwilling witnesses. The practicalities of trying the case expeditiously and inexpensively do not favor transfer. The State Defendants argue that the Eastern District court has greater familiarity with the issues, but Plaintiffs are bringing different claims in this case. The interests of justice favor keeping the case in the Western District, which is where the alleged unconstitutional conduct occurs. Injunctive relief and a judgment in this case would be more easily enforced in the Western District of Michigan, where State agencies and St. Vincent reside. Docket congestion is a neutral factor here, as are the public policies of the fora and familiarity with state law.

The State Defendants suggest that Plaintiffs' bringing the lawsuit in the Western District amounts to forum shopping. The Court disagrees. There is nothing unusual about plaintiffs bringing a case in the judicial district in which they reside, especially when that is also the district where all State Defendants, and the proposed intervenors reside or maintain offices. The private Settlement Agreement in the earlier litigation does not convert this natural choice to forum selection. Plaintiffs are not parties to the Settlement Agreement. They were not asked to be part of the Settlement Agreement. And their claims do not challenge the Settlement Agreement.

2. MOTION FOR LEAVE TO INTERVENE

FED. R. CIV. P. 24 provides for intervention of right for a proposed intervenor who "claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest." To intervene as of right, a proposed intervenor must establish "(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). FED. R. CIV. P. 24 provides for permissive intervention if a proposed intervenor "has a claim or defense that shares with the main action a common question of law or fact."

The proposed intervenors rest their claim for intervention as of right on their interest in maintaining the Settlement Agreement. But that is an insufficient basis to support intervention as of right for at least two reasons. First, Plaintiffs are not asking for any relief directed at the Settlement Agreement itself. They do not seek to interpret its terms. Nor do they seek to invalidate any of its terms. From Plaintiffs' point of view, the Settlement Agreement is beside the point and irrelevant to the constitutional and statutory claims asserted. Second, the State is fully capable of protecting any interest the Dumonts have in the terms of the Settlement Agreement in any event. The State Defendants and the Dumonts are fundamentally aligned at this time in not only their views of the Settlement Agreement, but also their views of the merits (or more accurately, the demerits) of Plaintiffs' claims.

It is possible to imagine a basis for permissive intervention if the interests of the State Defendants and the proposed intervenors diverge; or if the Court grants some or all of the preliminary injunctive relief Plaintiffs seek in a way that potentially affects the Dumonts in some way it does not affect the State Defendants; or if later developments in the case create a basis for defenses or counterclaims – Establishment Clause theories, for example – that may be uniquely available to the Dumonts. But that is not where the case presently is. At this point the proposed intervenors and the State Defendants are aligned in all material respects. The unique contribution of the Dumonts can be fully provided through their participation as amicus parties, which the Court welcomes.

CONCLUSION

For these reasons, the Court concludes that neither the requested transfer nor the requested leave to intervene is warranted.

ACCORDINGLY, IT IS ORDERED:

1. The State Defendants' Motion to Transfer (ECF No. 29) is **DENIED**.

2. The Motion to Intervene (ECF No. 18) is **DENIED** without prejudice to the ability to renew the motion at a later point in the case. The Proposed Motion to Transfer Case (ECF No. 21) is **DISMISSED AS MOOT**.

3. Movants Kristy and Dana Dumont may participate as amici curiae in the case.

4. A hearing on Plaintiffs' Motion for Preliminary Injunction (ECF No. 5) is set for **August 22, 2019 at 2:00 p.m.**, 699 Federal Building, Grand Rapids, Michigan, before the undersigned.

Dated: July 31, 2019

/s/ Robert J. Jonker
ROBERT J. JONKER
CHIEF UNITED STATES DISTRICT JUDGE

EXHIBIT 3

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[1] (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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[1] 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

Jay Kaplan (P38197)
Michael J. Steinberg (P43085)
American Civil Liberties Union
Fund of Michigan
2966 Woodward Avenue
Detroit, MI 48201
Telephone: (313) 578-6823
jkaplan@aclumich.org
msteinberg@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
Jason W. Schnier
SULLIVAN & CROMWELL LLP
125 Broad Street
New York, NY 10004-2498
Telephone: (212) 558-4000
beeneyg@sullcrom.com
ostragerae@sullcrom.com
schnierj@sullcrom.com

Counsel for Plaintiffs

/s/ Joshua S. Smith

Joshua S. Smith (P63349)
Assistant Attorney General
Attorneys for State Defendants
Health, Education &
Family Services Division
P.O. Box 30758
Lansing, MI 48909
(517) 335-7603
Smithj46@michigan.gov

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

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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[1] (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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[1] 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
jkaplan@aclumich.org
msteinberg@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
Jason W. Schnier
SULLIVAN & CROMWELL LLP
125 Broad Street
New York, NY 10004-2498
Telephone: (212) 558-4000
beeneyg@sullcrom.com
ostragerae@sullcrom.com
schnierj@sullcrom.com

Counsel for Plaintiffs

Joshua S. Smith (P63349)
Assistant Attorney General
Attorneys for State Defendants
Health, Education &
Family Services Division
P.O. Box 30758
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,[1] 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*]

[1] 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

UNITED STATES DISTRICT COURT
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

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,[1] 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.

Dated: MAR 22 2019

PAUL D. BORMAN
UNITED STATES DISTRICT JUDGE

[1] 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."

EXHIBIT 4

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MELISSA BUCK, et al.,

Plaintiffs,

v.

ROBERT GORDON, et al.,

Defendants.
_____/

CASE NO. 1:19-CV-286

HON. ROBERT J. JONKER

ORDER

Prospective intervenors move for leave to file a reply brief in support of intervention. The Local Rules of the Court do not ordinarily provide for reply briefs on non-dispositive motions. The Court sees no need for one here, and so the motion for leave to file (ECF No. 39) is **DENIED**.

The Court naturally appreciates thorough presentation of the issues. But the parties need to understand there is a point of diminishing returns. Between the filing of this case on April 15 and today, the parties have already generated a record of over 1,500 pages. That's an average of more than 25 pages a day—and we haven't even had the initial Rule 16 yet. Meanwhile, the Court has drawn over 40 other new cases, continued to address several hundred other pending cases, and tended to the management responsibilities of Chief Judge.

Brevity and focus have their own rewards.

Dated: June 12, 2019

/s/ Robert J. Jonker
ROBERT J. JONKER
CHIEF UNITED STATES DISTRICT JUDGE