

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CATHOLIC CHARITIES
WEST MICHIGAN,

Plaintiff,

2:19-CV-11661-DPH-DRG

v.

Hon. Denise Page Hood

Hon. David R. Grand

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.

**MOTION TO STRIKE OR,
ALTERNATIVELY, TO
ALLOW A RESPONSE TO
DEFENDANTS' AND
PROPOSED
INTERVENORS' NOTICES**

Defendants.

/

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Plaintiff Catholic Charities West Michigan hereby moves this Court to strike Defendants' and Proposed Intervenors' notices (ECF Nos. 30, 30-1, and 31) as improperly submitting additional argument on the preliminary injunction issue after briefing was closed and without

leave of court. Alternatively, Plaintiff requests leave to file a short response to the same.

In accordance with Local Rule 7.1(a), counsel for Plaintiff conferred with Defendants' and Proposed Intervenors' counsel to determine whether Defendants and Proposed Intervenors oppose this motion. On October 29, 2019, Defendants' counsel stated that Defendants do not concur in the relief sought by the motion. And on the same day, Proposed Intervenors' counsel stated that Proposed Intervenors oppose a motion to strike but take no position on a request to allow Plaintiff a response to the filed notices.

Dated: October 31, 2019

Respectfully submitted,

/s/ Jeremiah Galus
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**BRIEF IN SUPPORT OF
MOTION TO STRIKE OR,
ALTERNATIVELY, TO
ALLOW A RESPONSE TO
DEFENDANTS' AND
PROPOSED
INTERVENORS' NOTICES**

Defendants.

_____ /

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On September 27, 2019, Plaintiff Catholic Charities West Michigan filed a notice of supplemental authority in support of its motion for preliminary injunction, notifying the Court that a preliminary injunction had issued in *Buck v. Gordon*, No. 1:19-cv-00286-RJJ-PJG (W.D. Mich.), a case arising out of common facts and involving

similar legal issues. (ECF No. 29.) Consistent with court rules, the notice was unaccompanied by any argument. The Defendants and Proposed Intervenor, however, have since responded with more than 20 pages of argument combined, asserting that the *Buck* court was wrong to temporarily preserve the status quo and that this Court should do the opposite and deny Catholic Charities' request for preliminary injunction. (See ECF Nos. 30, 30-1, and 31.)¹ Because the additional argument was filed without leave of court and therefore improper, this Court should not consider it.

Simply put, Catholic Charities' motion for preliminary injunction has been fully briefed and submitted for decision. Neither the Federal Rules of Civil Procedure nor this Court's local rules authorize a party to submit supplemental briefing on a motion after briefing has been concluded, much less after it has been submitted. But Defendants and Proposed Intervenor have done precisely that, using Catholic Charities' properly filed notice of supplemental authority, *see Lee v. McDonald*, No. 05-CV-60238-AA, 2008 WL 597287, *1 (E.D. Mich. Mar. 3, 2008) ("The filing of such notices of supplemental authority has

¹ Defendants submitted a purported "Notice of Supplemental Authority," which consisted of an 18-page brief that they filed in support of their unsuccessful motion to stay the preliminary injunction in *Buck*. Proposed Intervenor submitted a three-page letter containing additional argument for why a similar preliminary injunction should not issue in this case.

precedent in this district.”), as an excuse to circumvent page limits and to present additional argument opposing Catholic Charities’ motion.

Because Defendants’ and Proposed Intervenors’ additional argument was submitted after the motion for preliminary injunction had been fully briefed—and was submitted without leave of court—their filings should be stricken. Alternatively, Catholic Charities requests that it be allowed a short response.

Dated: October 31, 2019

Respectfully submitted,

/s/ Jeremiah Galus
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CERTIFICATE OF SERVICE

I hereby certify that on October 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
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