

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.

No. 2:19-CV-11661-DPH-DRG

HON. DENISE PAGE HOOD

MAG. DAVID R. GRAND

**STATE DEFENDANTS'
RESPONSE TO
PLAINTIFF'S MOTION TO
STRIKE OR,
ALTERNATIVELY, TO
ALLOW A RESPONSE TO
DEFENDANTS' AND
PROPOSED INTERVENORS'
NOTICES (R.32)**

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**STATE DEFENDANTS' RESPONSE TO PLAINTIFF'S
MOTION TO STRIKE OR, ALTERNATIVELY, TO ALLOW A
RESPONSE TO DEFENDANTS' AND PROPOSED
INTERVENORS' NOTICES (R.32)**

Plaintiff Catholic Charities West Michigan's motion should be denied. By its own admission, any additional briefing is superfluous. Indeed, Plaintiff proclaims "Catholic Charities' motion for preliminary injunction has been fully briefed and submitted for decision." (Pl.'s Br. R.32, Page ID # 1525.)

The State Defendants agree. It was Plaintiff that brought legal arguments from *Buck v. Gordon*, No. 1:19-cv-00286 (W.D. Mich.) into this case on September 27, 2019 by filing the *Buck* opinion, which granted the *Buck* plaintiffs' motion for a preliminary injunction, as supplemental authority. (R.29.) Shortly thereafter, on October 11, 2019, the State Defendants filed a notice that they moved to stay the preliminary injunction granted in *Buck*. (R.30, 30-1.) Three weeks later, Plaintiff's motion to strike the State Defendants' notice of a public filing rings hollow. Since then, the district court denied the motion to stay, and State Defendants filed an emergency motion to stay with the Sixth Circuit. See R.16-1, *Buck v. Gordon*, No. 19-2185 (6th Cir. 2019).

The State Defendants' notice did not provide any new argument or analysis in opposition to Plaintiff's motion for preliminary injunction – as Plaintiff suggests. (*Contra* Pl.'s Mot., R.32, Page ID # 1524-25.)

The State Defendants simply apprised the Court of their public filing in *Buck* following the *Buck* opinion that Plaintiff filed in this Court.

Plaintiff provides no legal authority to support its claim that apprising the Court of this public filing is inappropriate. In fact, in *Lee v. McDonald*, No. 05-CV-60238, the unpublished opinion on which Plaintiff relies, the magistrate judge denied the motion to strike and accepted the filing as a notice of supplemental authority. 2008 U.S. Dist. LEXIS 15877 (E.D. Mich. Mar. 3, 2008).

The State Defendants respectfully request that this Court deny Plaintiff's motion to strike. No additional briefing is necessary.

Nevertheless, if this Court is inclined to grant Plaintiff's alternate request for leave to file additional briefing on the decision made in *Buck*, the State Defendants should be provided the same opportunity to file a response to address the applicability of the *Buck* decision to Plaintiff's pending motions.

In sum, Plaintiff's claim that the State Defendants provided additional arguments in opposition to Catholic Charities' pending motions is unfounded. The State Defendants provided notice of a publicly available filing, requesting the Western District stay a

preliminary injunction entered in a separate case—and nothing more.

Plaintiff's motion should be denied.

CONCLUSION AND RELIEF REQUESTED

For the reasons explained above, the State Defendants respectfully request this Court deny Plaintiff Catholic Charities West Michigan's Motion to Strike Or, in the Alternative, to Allow a Response to Defendants' and Proposed Intervenors' Notices (R. 32).

Respectfully submitted,

Dana Nessel
Attorney General

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Dated: November 6, 2019

CERTIFICATE OF SERVICE (E-FILE)

I hereby certify that on November 6, 2019, I electronically filed State Defendants' Response to Plaintiff's Motion to Strike or, Alternatively, to Allow a Response to Defendants' and Proposed Intervenor's Notices (R.32) with the Clerk of the Court using the ECF System, which will provide electronic copies to counsel of record.

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