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.

_____/

2:19-CV-11661-DPH-DRG

Hon. Denise Page Hood

Hon. David R. Grand

REPLY IN SUPPORT OF PLAINTIFF'S MOTION TO STRIKE OR, ALTERNATIVELY, TO ALLOW A RESPONSE

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REPLY IN SUPPORT OF PLAINTIFF'S MOTION TO STRIKE OR, ALTERNATIVELY, TO ALLOW A RESPONSE

Defendants might believe that no additional briefing on Catholic Charities' motion for preliminary injunction is necessary—a belief that Catholic Charities shares—but that did not keep them from submitting an 18-page brief arguing that the court in *Buck v. Gordon* improperly

granted a similar request for preliminary injunction. And while Defendants assert they "simply apprised the Court of their public filing" and did "nothing more" (ECF No. 33 at 2, 3), there is a difference between notifying the Court of developments in another case and filing written argument submitted in that case. The former is proper, but the latter is improper. Defendants chose to do the latter. And it is obvious why: Defendants want this Court to consider their *arguments* for why the preliminary injunction in *Buck* should not have been granted.

Proposed Intervenors' notice is no better. While Proposed Intervenors contend that "courts in this circuit have found it 'instructive' to look to Federal Rule of Appellate Procedure 28(j)" in considering notices of supplemental authority (ECF No. 34 at 1), the case they cite in support simply encourages parties to bring "new precedent to the attention of the Court." *Young v. CACH, LLC*, No. 4:12CV0399, 2013 WL 999237, *5 (N.D. Ohio Mar. 13, 2013). That is exactly what Catholic Charities did with its filing. (*See* ECF No. 29.) In contrast, Proposed Intervenors submitted a letter *arguing* that the supplemental authority was wrongly decided. And even then, they did not abide by the rule they say applies, exceeding the 350 words permitted under FRAP 28(j).

Parties (and nonparties) should not be allowed to circumvent the general rule against submitting additional briefing after a motion has closed by providing "notice" (i.e., copies) of relevant briefs filed in other

cases or by filing letters arguing that a new case was wrongly decided. Otherwise, courts would face a never-ending deluge of "supplemental notices" like the ones filed by Defendants and Proposed Intervenors. Because their notices are nothing less than a transparent attempt to have this Court consider additional argument on the preliminary injunction issue, this Court should decline to consider them and strike them from the record.

Dated: November 13, 2019

Respectfully submitted,

/s/ Jeremiah Galus

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CERTIFICATE OF SERVICE

I hereby certify that on November 13, 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.

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