

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

STACIE RAY *et al.*,

Plaintiffs,

v.

**Civil Action 2:18-cv-272
Judge Michael H. Watson
Magistrate Judge Chelsey M. Vascura**

**DIRECTOR, OHIO DEPARTMENT
OF HEALTH, *et al.*,**

Defendants.

RULE 26(f) REPORT

Pursuant to Federal Rule of Civil Procedure 26(f), a meeting was held on **June 25, 2018** and was attended by:

Freda J. Levenson, counsel for plaintiffs

Peter Renn, counsel for plaintiffs

Susan J. Becker, counsel for plaintiffs

Kim Moses, counsel for defendants

Albert Lucas, counsel for defendants

Jason Blake, counsel for defendants

Counsel represent that, during the meeting, they engaged in a meaningful attempt to meet and confer on the matters outlined below.

1. **CONSENT TO MAGISTRATE JUDGE**

Do the parties consent to Magistrate Judge jurisdiction pursuant to 28 U.S.C. § 636(c)?

___ Yes **X** No

2. **INITIAL DISCLOSURES**

Have the parties agreed to make initial disclosures? **No.**

Plaintiffs' position is that the exchange should take place without delay, and proposed that the exchange of initial disclosures be July 9, 2018, 14 days from the date of this conference.

Defendants have filed a motion to dismiss that, if granted, will dispose of the entire case. Accordingly, and in the interest of judicial economy, it is Defendants' position that all discovery, including initial disclosures, should be stayed until the Court rules on the pending motion.

3. VENUE AND JURISDICTION

Are there any contested issues related to venue or jurisdiction?

No.

4. PARTIES AND PLEADINGS

- a. The parties agree that any motion or stipulation to amend the pleadings or to join additional parties shall be filed within **30 days after an Answer is filed.**

5. MOTIONS

- a. Are there any pending motion(s)?

Yes, Defendants have filed a motion to dismiss Plaintiffs' Complaint.

- b. Are the parties requesting expedited briefing on the pending motion(s)? **No.**

6. ISSUES

Jointly provide a brief description of case, including causes of action set forth in the complaint, and indicate whether there is a jury demand:

Plaintiffs' description of the case: This case challenges Ohio's policy of refusing to allow transgender individuals to correct their Ohio birth certificates to reflect their gender identity. Plaintiffs bring three constitutional causes of action: (1) a First Amendment claim; (2) a Due Process claim; and (3) an Equal Protection claim. Plaintiffs have not submitted a jury demand.

Defendants' description of the case: This case is a facial challenge to Ohio's birth record laws, which do not permit transgender individuals to change their Ohio birth certificates to reflect their "gender identity." Plaintiffs bring three constitutional causes of action: (1) a First Amendment claim; (2) a Due Process claim; and (3) an Equal Protection claim. Plaintiffs have not submitted a jury demand.

7a. DISCOVERY PROCEDURES

The parties agree that all fact discovery shall be completed within six months of the Court's ruling on the Motion to Dismiss. The Plaintiffs intend to commence discovery immediately, noting that their plan is to file a Motion for Summary Judgment.

Defendants assert that, in the interests of judicial economy, all discovery should be stayed pending their motion to dismiss.

- b. Do the parties anticipate the production of ESI? **Yes**

If yes, describe the protocol for such production:

The parties will agree upon the parameters for search and the format and protocol for production when they learn the extent and nature of ESI that is responsive to their discovery requests.

- c. Do the parties intend to seek a protective order or clawback agreement? **Yes**

If yes, such order or agreement shall be produced to the Court by:

The Plaintiffs believe that such an order and agreement should be produced to the Court within 45 days of the date of this conference (which will be August 9).

Defendants believe that a protective order should not be filed with the Court until 45 days after the ruling on Defendants' pending motion to dismiss.

8. DISPOSITIVE MOTIONS

- a. Any dispositive motions shall be filed **within 45 days after the close of all discovery.**
- b. Are the parties requesting expedited briefing on dispositive motions? **No**

If yes, identify the proposed expedited schedule: **None.**

9. EXPERT TESTIMONY

- a. **Plaintiffs' position is that primary expert reports must be produced at least 60 days prior to the close of fact discovery. Defendants' position is that primary expert reports must be produced within 30 days after the close of fact discovery.**
- b. **Plaintiffs' position is that rebuttal expert reports must be produced at least 30 days prior to the close of fact discovery. Defendants' position is that rebuttal expert reports must be produced within 60 days after the disclosure of primary expert reports.**

10. SETTLEMENT

Plaintiffs are prepared to discuss settlement of this matter.

Defendants' position is that Ohio law does not allow the relief sought by Plaintiffs, so Defendants are not in a position to discuss settlement at this time.

The parties agree to make a good faith effort to settle this case. The parties understand that this case will be referred to an attorney mediator, or to the Magistrate Judge, for a settlement conference during this Court's settlement week. The parties request the following week:

March 2019

In order for the conference to be meaningful, the parties agree to complete all discovery that may affect their ability to evaluate this case prior to the beginning of settlement week. The parties understand that they will be expected to comply fully with the settlement week orders which require, *inter alia*, that settlement demands and offers be exchanged prior to the conference and that principals of the parties attend the conference.

11. RULE 16 PRETRIAL CONFERENCE

The Court has ordered a Pretrial Conference on July 18, 2018. The parties request that it take place by telephone.

12. OTHER MATTERS

At the Pretrial Conference, Plaintiffs would like to discuss an efficient format for the briefing schedule on their anticipated Motion for Summary Judgment.

Dated July 9, 2018

Respectfully submitted,

/s/ Freda J Levenson

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