

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
KNOXVILLE DIVISION**

THE STATE OF TENNESSEE, *et al.*,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
EDUCATION, *et al.*,

Defendants.

Case No. 3:21-cv-00308

District Judge Charles E. Atchley, Jr.

**DEFENDANTS' REPLY TO PLAINTIFFS' RESPONSE
TO NOTICE OF SUPPLEMENTAL AUTHORITY**

Plaintiffs have filed a response to the Notice of Supplemental Authority regarding *Arizona v. Biden*, No. 22-3272, 2022 WL 1090176, 31 F.4th 469 (6th Cir. 2022). *See* ECF Nos. 78 (“Notice”), 79 (“Response”). Because Plaintiffs’ response raises new arguments that Defendants have not previously had an opportunity to address, Defendants respectfully provide this reply.

Plaintiffs’ response argues that “a central aspect of the harm to Plaintiff States in this case” is the purported preemption of local lawmaking authority and direct regulation of States, which were not at issue in *Arizona*. *See* Response at 1. But even though months have now passed, Plaintiffs still identify no state statute that is actually preempted by the challenged documents, nor any enforcement action that has, or imminently will, occur in any Plaintiff state. *See, e.g.*, Defs.’ Opp to Pls.’ Mot for a Prelim. Inj. (“Defs.’ PI Opp.”), ECF No. 48 at 12-23. Instead, Plaintiffs merely quote White House materials commemorating Transgender Day of Visibility, and provide an “example” of their purported harm in the form of proposed state legislation that never made its way

out of committee. *See* Response at 1-2. If anything, these new arguments merely underscore that Plaintiffs have presented unripe claims, and have suffered no irreparable injury.

Plaintiffs also point out that the Sixth Circuit’s analysis in *Arizona* noted the Government’s statutory discretion when making immigration-related decisions, and argue that here, in contrast, “Congress never gave Defendants authority to rewrite” Titles VII and IX. *See* Response at 3 (quoting *Arizona*, 2022 WL 1090176 at *2). But the challenged documents do not “rewrite” the statutes—they express the agencies’ interpretations of those statutes in light of the Supreme Court’s reasoning in *Bostock*. *See, e.g.*, Defs.’ PI Opp. at 27. Just because the challenged documents here do not set priorities for immigration enforcement does not render the *Arizona* reasoning any less relevant, particularly because the documents are mere interpretations without the force of law. Any ruling that disincentivizes or hampers agencies from making even non-binding public statements informing the public of their views of the laws that Congress has directed them to enforce would be to the public’s detriment.

Finally, Plaintiffs raise Chief Judge Sutton’s concurrence, arguing that the concurrence would not disallow an injunction outside the geographic bounds of the Sixth Circuit. *See* Response at 3-4. The concurrence is silent, however, as to whether a Plaintiff state that is precluded from obtaining relief within its home circuit may nevertheless obtain an injunction conflicting with home circuit precedent by filing suit elsewhere. *See Arizona*, 2022 WL 1090176 at *10-*12. For all the reasons Defendants have previously presented, it may not. *See* Defs.’ PI Opp. at 40 (arguing that the Court should not issue an injunction as to Plaintiff states that fall in the Fourth and Seventh Circuits in light of conflicting precedent in those circuits). The concurrence expresses legal and practical concerns with the issuance of nationwide injunctions, particularly those issued against the Federal Government. *See Arizona*, 2022 WL 1090176 at *10-*12. It does not at all support the notion that the Plaintiffs’ requested nationwide injunction should issue.

Dated: May 6, 2022

Respectfully submitted,

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