

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

MELISSA BUCK, et al.,

Plaintiffs,

v.

ROBERT GORDON, et al.,

Defendants.

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CASE NO. 1:19-CV-286

HON. ROBERT J. JONKER

**ORDER TO SHOW CAUSE**

In this matter, St. Vincent Catholic Charities (“St. Vincent”) brought a series of federal constitutional and statutory claims against several state and federal defendants regarding St. Vincent’s provision of adoption and foster services in Michigan under contracts with the State. On September 26, 2019, the Court granted preliminary injunctive relief to St. Vincent, enjoining Federal Defendants from “tak[ing] any enforcement action against the State under 45 C.F.R. § 75.300(c) based upon St. Vincent’s protected religious exercise.” (ECF No. 70). The Court granted Plaintiffs’ motion to stay the case on May 5, 2020. (ECF No. 98). Since then, all claims against the State Defendants have been resolved. The injunction against the Federal Defendants remains in place and the claims underlying them unresolved. The Court ordered the parties to file a joint status report on the remaining issues between the parties (ECF No. 114) and the parties did so (ECF No. 116).

In that Joint Status Report, the parties disagree on how to proceed currently. Plaintiff asks the court to lift the stay and set a briefing schedule. Defendants ask the Court to leave the stay in place until HHS completes repromulgation of 45 C.F.R. § 75.300(c) and (d). In the alternative,

Defendants ask to separately brief jurisdiction, as the Defendants believe there are “serious questions” about the Court’s jurisdiction. (ECF No. 116 at PageID.3139).

Having reviewed the Joint Status Report and for the following reasons, the Court now directs parties to show cause why the Court should not dismiss the case without prejudice but on the condition of immediate reinstatement to the current position of the case, including the order of preliminary injunction, if the Federal Defendants decide to take any action to enforce 45 C.F.R. § 75.300 against Plaintiffs or the State of Michigan. This would seem to remove an inactive case from the docket of all concerned without putting any party at risk of losing ground if, contrary to current expectations, the federal defendants decide to enforce the regulation at issue. If the parties agree, the Court invites them to submit a stipulated order. If they disagree, the Court expects them to outline their reasons not later than October 7, 2022.

At issue in this case is 45 C.F.R. § 75.300 as promulgated in 2016. (Hereinafter, “the 2016 Rule”). Since this case was initially filed, the U.S. Department of Health and Human Services (“HHS”) issued a Notification of Nonenforcement, which provides that the 2016 Rule “will not be enforced pending a repromulgation” of a new rule. 84 Fed. Reg. 63,809 (Nov. 19, 2019). HHS also promulgated a new regulation (hereinafter, “the 2021 Rule”) that would replace the 2016 Rule. *Id.* The effective date of the 2021 Rule has been postponed several times. *See* ECF No. 116 at PageID.3137; *see also Facing Foster Care in Alaska v. HHS*, No. 1:21-cv-308 (D.D.C.), ECF No. 17 (stipulated motion to delay effective date of final rule), ECF No. 23 (granting stipulated order for further abeyance), Nov. 3, 2021 minute order (same), ECF No. 30 (same), ECF No. 36 (same), ECF No. 38 (same). Since the Joint Status Report was filed, the 2021 Rule has been vacated and remanded to the U.S. Department of Health and Human Services. *See Facing Foster Care in Alaska v. HHS*, No. 1:21-cv-308 (D.D.C.), ECF No. 44. An entirely new rulemaking process has

now commenced, which could take an unknown amount of time to promulgate a third Rule. Depending on the outcome of that process, Plaintiffs' alleged injury may be moot or the nature of their objection could change. In the interim, this matter remains in limbo.

The record suggests to the Court that the Plaintiffs are at no serious risk of injury, but it is true the regulation remains on the books, and the Federal Defendants could theoretically change their mind and try to enforce it. But regardless of whether that is enough for Article III case or controversy jurisdiction, from a pragmatic view the Court doubts whether proceeding to formal litigation of the issue, or of the merits, is the best use of judicial resources for anyone right now. As long as any change of heart by Defendants gives Plaintiffs the ability to reinstate the action, it would seem all interests are reasonably protected.

**ACCORDINGLY, IT IS ORDERED** that all parties shall have **FOURTEEN (14) DAYS** to **SHOW CAUSE** why the Court should not dismiss without prejudice but on the reinstatement condition described. If the parties agree with the proposed order, the Court invites submission of a stipulated order.

DATED: September 23, 2022

/s/ Robert J. Jonker

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ROBERT J. JONKER  
UNITED STATES DISTRICT JUDGE