

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN**

MELISSA BUCK et al.,

Plaintiffs,

v.

ROBERT GORDON, *in his official capacity
as Director of the Michigan Department of
Health and Human Services*, et al.,

Defendants.

Civil Action No. 19-0286

FEDERAL DEFENDANTS' RESPONSE TO SHOW CAUSE ORDER

This Court's September 23, 2022, order "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." ECF No. 117. The Court also stated, "If the parties agree with the proposed order, the Court invites submission of a stipulated order." The parties have conferred and were unable to reach an agreement.

Federal Defendants agree that the case should be dismissed without prejudice, but do not believe it appropriate to condition the dismissal "on the 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."

It is unclear to Federal Defendants whether "reinstatement" in this context means that Plaintiffs would refile a complaint or whether the case would reopen. Federal Defendants agree with the former and disagree with the latter. In general, courts lack jurisdiction over a case once it

is dismissed, and thus, reinstatement of the case would not be appropriate once the court is without jurisdiction. *See Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377–78 (1994). While in rare situations a court may retain jurisdiction to enforce a consent decree or settlement or when remanding a case to an agency, there is no reason for the Court to retain jurisdiction here. Were HHS to bring an enforcement action against Plaintiffs despite its commitment not to do so pursuant to the Notification of Noneforcement, Plaintiffs would be free to file a new complaint and a new motion for a preliminary injunction, as any similarly situated plaintiff would.

Even if the Court were to retain jurisdiction despite dismissal of the case, the Court cannot reissue a preliminary injunction without analyzing the requisite preliminary injunction factors at the time that Plaintiffs filed a new motion for a preliminary injunction. Among other reasons, it is impossible to assess at this juncture whether Plaintiffs would be irreparably harmed by the hypothetical enforcement action (e.g., What facts prompted HHS to take an enforcement action?). And, were a preliminary injunction to issue immediately upon reopening the case, the burden would inappropriately fall on Federal Defendants to explain why the facts prompting Plaintiffs to refile the case would *not* support a preliminary injunction. In the meantime, the preliminary injunction would unfairly encumber Federal Defendants, when it is the movant's burden to establish that it is entitled to a preliminary injunction. *See Memphis A. Philip Randolph Inst. v. Hargett*, 2 F.4th 548, 554 (6th Cir. 2021).

Accordingly, Federal Defendants submit that this case should be dismissed without prejudice and without the proposed condition.

Dated: October 7, 2022

Respectfully submitted,

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