

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MELISSA BUCK, et al.,

Plaintiffs,

v.

ELIZABETH HERTEL, et al.,

Defendants.

CASE NO. 1:19-cv-286

HON. ROBERT J. JONKER

ORDER RE CASE PROGRESS

This Court directed the parties to show cause why this matter should not be dismissed without prejudice but subject to reinstatement, rather than proceed with jurisdictional or merits briefing on issues that are at the very least dormant, if not technically moot. ECF No. 117. As anticipated by the Court, the parties conferred on a possible Order. However, they were not able to agree. Plaintiffs state that dismissal is acceptable as long as the Court includes the reinstatement condition and expressly retains jurisdiction to enforce it. ECF No. 119. Defendant has no objection to an unconditional dismissal, but opposes any condition of reinstatement. ECF No. 118.

Defendant's position opposing anything other than unconditional dismissal is untenable. In fact, it would give the defendant what it wants without litigating the issue of mootness. But as the Court pointed out in its Show Cause Order, even though there does not appear to be much practical imminent risk of enforcement of 45 C.F.R. § 75.300, defendant has not rescinded it or followed through on promulgation of an alternative. At a minimum that means plaintiffs can reasonably argue a credible threat of enforcement remains. Granting an unconditional dismissal without litigating the justiciability dispute would be improper.

In light of the parties' positions, the Court will set a briefing schedule for adjudication of all remaining jurisdictional and merits issues. The Court continues to have doubts about whether that is the best use of resources for the remaining parties or the Court, but that appears to be the only way to move the case forward at this time. The parties do agree that discovery is unnecessary, beyond production of the Administrative Record for the challenged regulation, and that all issues can be addressed on cross motion for summary judgment. The Court sees no value to staging the jurisdictional and merits issues; rather, the Court will have the parties brief all issues simultaneously.

Accordingly, the Court sets the following deadlines:

1. Production and filing of the Administrative Record: November 30, 2022
2. Cross Motions addressing all jurisdiction and merits issues: January 13, 2023
3. Response Briefs: February 10, 2023
4. Reply Briefs: March 3, 2023

IT IS SO ORDERED.

Dated: October 13, 2022

/s/ Robert J. Jonker
ROBERT J. JONKER
UNITED STATES DISTRICT JUDGE