UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA

IRISH 4 REPRODUCTIVE HEALTH, et al., *Plaintiffs*, v. UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, et al., *Defendants*.	Case No. 3:18-cv-491-PPS-MGG Judge Philip P. Simon

JOINT STATUS REPORT

Pursuant to the Court's April 15, 2020, order (ECF No. 93), the parties in the above-captioned action submit this joint status report.

On January 16, 2020, the Court granted in part and denied in part Defendants' motions to dismiss. ECF No. 80. On April 15, 2020, the Court stayed this action in light of the U.S. Supreme Court's grant of certiorari in *Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania, et al*. and related cases. *See* ECF No. 93; 140 S. Ct. 918 (Jan. 17, 2020). On July 8, 2020, the Supreme Court issued its decision in those cases. *Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania et al.,* 2020 WL 3808424 (July 8, 2020) ("*Little Sisters*").

The parties agree that the *Little Sisters* decision affects some of Plaintiffs' claims in this action. Below, the parties explain their respective positions concerning how this action should proceed following *Little Sisters*.

I. Plaintiffs' Position

Plaintiffs intend to file a notice of voluntary dismissal of certain claims following the Supreme Court's *Little Sisters* decision. Plaintiffs' review of *Little Sisters* is ongoing, and Plaintiffs can commit to filing such notice on or before July 31, 2020.

Plaintiffs respectfully request that the Court schedule a conference for August 14, 2020 (or a date set by the Court) to discuss next steps in this case, including a date for Defendants to answer the complaint, and a schedule for discovery and summary judgment motions on Plaintiffs' remaining claims. Plaintiffs further propose that Defendants should notify the Court at the August 14, 2020 conference if they believe that there are additional claims that should be dismissed at this juncture in light of *Little Sisters*. We would ask that the Court then determine whether those issues should be addressed in pre-discovery supplemental briefing or through summary judgment.

To the extent that Defendants seek briefing aimed at reconsideration of this Court's decision on Defendants' Motion to Dismiss (ECF No. 80), any such request should be denied to the extent that it goes beyond issues that are affected by the Supreme Court's decision in *Little Sisters*. But more than that, this case involves myriad claims and issues that are not affected, much less resolved, by *Little Sisters*, and Plaintiffs continue to suffer ongoing harm while this case continues. Additional briefing to reopen and revisit the Court's ruling on the motions to dismiss would only further delay this case, which is already over two years old and in which Defendants have not yet even filed Answers. Defendants' proposed approach would create needless expenditure of resources and delay by introducing yet another round of briefing in this case, only to address issues that can and should be resolved at summary judgment as contemplated by the applicable rules of procedure.

II. Federal Defendants' Position

Defendants do not object to Plaintiffs filing a notice of voluntary dismissal of certain claims on or before July 31, 2020. However, Defendants believe that a scheduling conference, including setting a deadline for Defendants to answer Plaintiffs' complaint or for any discovery (which Defendants do not believe is appropriate in any event), would be premature and inefficient prior to the resolution of any dispute between Defendants and Plaintiffs concerning which, if any, of Plaintiffs' claims survive the Supreme Court's decision in *Little Sisters*. Accordingly, instead of setting a scheduling conference, Defendants propose that, by August 21, 2020, they will either file a supplemental brief explaining what other claims should be dismissed in light of *Little Sisters* in addition to the claims identified by Plaintiffs or inform the Court that such briefing is not necessary. Defendants believe that the appropriate time for a scheduling conference would be after the resolution of any such supplemental briefing.

III. Notre Dame's Position

Notre Dame agrees with the Federal Defendants' position and joins it in full. Plaintiffs' voluntary dismissal of certain claims will not address the full impact of *Little Sisters* on these proceedings. Accordingly, supplemental briefing, whether in the form of motions for reconsideration or otherwise, is appropriate. *See, e.g.*, *Orange v. Burge*, 451 F. Supp. 2d 957, 961 (N.D. Ill. 2006) ("The Seventh Circuit has said that a motion to reconsider is appropriate where . . . there has been a controlling or significant change in law since the submission of the issue to the court"); *Wooten v. Loshbough*, 738 F. Supp. 314, 314–15 (N.D. Ind. 1990), *aff'd*, 951 F.2d 768 (7th Cir. 1991) (granting motion to reconsider where "the intervening months have seen the development of case law that leads the court to conclude its earlier opinion no longer reflects existing law").

This approach would best serve judicial economy and efficiency. It would allow the Court to decide, with the benefit of briefing, which claims and issues remain in the case before requiring Defendants to answer and proceed to discovery, thus conserving both the parties' and the Court's resources. Plaintiffs cannot claim to be irreparably harmed by any modest delay resulting from these efforts, as they have at no point sought a preliminary injunction.

Regardless of the approach adopted by the Court, considerations of judicial economy likewise suggest that, with the exception of the filings discussed above, the stay should remain in place through any proposed status conference. Defendants should not be required to answer, or to proceed with discovery, until it becomes clear which claims and issues remain after *Little Sisters*.

Dated: July 22, 2020

Respectfully submitted,

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