

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

AMERICAN FREEDOM LAW CENTER, INC.,
Plaintiff,

v.

DANA NESSEL, in her official capacity as
Attorney General of Michigan; AGUSTIN V.
ARBULU, in his official capacity as Director,
Michigan Department of Civil Rights,
Defendants.

No. 1:19-cv-153

Hon. Paul L. Maloney

PLAINTIFF'S NOTICE OF SUPPLEMENTAL AUTHORITY

AMERICAN FREEDOM LAW CENTER
Robert J. Muise, Esq. (P62849)
P.O. Box 131098
Ann Arbor, Michigan 48113
(734) 635-3756
rmuise@americanfreedomlawcenter.org

Attorneys for Plaintiff

Christina M. Grossi (P67482)
Ann M. Sherman (P67762)
Kyla L. Ragatzki (P81082)
Michigan Department of Attorney General
P.O. Box 30754
Lansing, Michigan 48909
(517) 335-7573

*Attorneys for Defendant Attorney General
Dana Nessel*

Ron D. Robinson (P35927)
Michigan Department of Attorney General
Civil Rights Division
3030 W. Grand Boulevard, Suite 10-200
Detroit, Michigan 48202
(313) 456-0200

*Attorneys for Defendant MDCR Director
Agustin V. Arbulu*

Plaintiff hereby files this notice, bringing to the Court's attention the recent decision of *Buck v. Gordon*, No. 1:19-CV-286, 2019 U.S. Dist. LEXIS 165196, (W.D. Mich. Sep. 26, 2019),¹ which was decided after the parties completed their briefing on Defendants' pending motions to dismiss. (Doc. Nos. 12 & 14).

Buck v. Gordon is relevant because it provides additional evidence of Defendant Nessel's abuse of her authority as the Michigan Attorney General to target groups that hold political and religious views contrary to her own. *See, e.g.*, Pl.'s Resp. Br. in Opp'n to Defs.' Mot. to Dismiss at 22 (“[W]hen government officials target individuals or groups for disparate treatment based on their political views, as Defendants have done here, their actions violate the equal protection guarantee of the Fourteenth Amendment in addition to the First Amendment.”) (Doc. No. 19). As Chief Judge Robert J. Jonker noted in his opinion denying Defendant Nessel's request that she be dismissed from the case, “[The evidence] supports a strong inference that St. Vincent was targeted based on its religious belief, and that it was Defendant Nessel who targeted it.” *Buck*, U.S. Dist. LEXIS 165196 at *47.

Here, Defendant Nessel is similarly abusing her authority to target political opponents based on their political and religious views, specifically relying upon and endorsing the pejorative “hate group” label of the radically partisan Southern Poverty Law Center. *See, e.g., id.* at *50 (“Leading up to and during the 2018 general election campaign, she made it clear that she considered beliefs like St. Vincent's *to be the product of hate.*”) (emphasis added).

Providing supplemental authority to a court after the briefing has closed is a common and important practice. Indeed, in the federal appellate courts there is a specific rule that sets forth the procedure for doing so. Rule 28(j) of the Federal Rules of Appellate Procedure states as follows:

¹ A copy of the opinion is attached to this notice as Exhibit A.

(j) Citation of Supplemental Authorities. If pertinent and significant authorities come to a party's attention after the party's brief has been filed—or after oral argument but before decision—a party may promptly advise the circuit clerk by letter, with a copy to all other parties, setting forth the citations. The letter must state the reasons for the supplemental citations, referring either to the page of the brief or to a point argued orally. . . .

This rule makes sense. If there is *subsequent* authority, as in this case, that may assist the court with rendering its decision, it is entirely appropriate to bring this authority to the court's attention and to *briefly* explain why the party believes this authority is relevant, as Plaintiff has done here.

Respectfully submitted,

AMERICAN FREEDOM LAW CENTER

/s/ Robert J. Muise

Robert J. Muise

CERTIFICATE OF SERVICE

I hereby certify that on September 30, 2019, a copy of the foregoing was filed electronically. Notice of this filing will be sent to all parties for whom counsel has entered an appearance by operation of the court's electronic filing system. Parties may access this filing through the court's system. I further certify that a copy of the foregoing has been served by ordinary U.S. mail upon all parties for whom counsel has not yet entered an appearance electronically: None.

AMERICAN FREEDOM LAW CENTER

/s/ Robert J. Muise
Robert J. Muise, Esq.