

**IN THE CIRCUIT COURT FOR THE SEVENTH JUDICIAL CIRCUIT  
SANGAMON COUNTY, ILLINOIS**

CATHOLIC CHARITIES OF THE )  
DIOCESE OF SPRINGFIELD-IN-ILLINOIS, )  
an Illinois non-profit corporation, )  
CATHOLIC CHARITIES OF THE )  
DIOCESE OF PEORIA, an Illinois non-profit )  
corporation, CATHOLIC CHARITIES OF )  
THE DIOCESE OF JOLIET, INC., an Illinois )  
non-profit corporation, and CATHOLIC )  
SOCIAL SERVICES OF SOUTHERN )  
ILLINOIS, DIOCESE OF BELLEVILLE, an )  
Illinois non-profit corporation, )

Plaintiffs, )

v. )

STATE OF ILLINOIS, LISA MADIGAN, in )  
her official capacity as the Attorney General )  
of the State of Illinois, ERWIN McEWEN, in )  
his official capacity as Director of the )  
Department of Children and Family Services, )  
State of Illinois, and the DEPARTMENT OF )  
CHILDREN AND FAMILY SERVICES, )  
State of Illinois, ROCCO J. CLAPPS in his )  
official capacity as Director of the )  
Department of Human Rights, State of )  
Illinois, and the DEAPRTMENT OF )  
HUMAN RIGHTS, State of Illinois, )

Defendants, and )

SUSAN TONE PIERCE, as Next Friend and )  
on behalf of a certified class of all current and )  
future foster children in custody of DCFS in a )  
federal case titled *B.H. v. McEwen*, No. 88 C )  
5589 (N.D. Ill.); SARAH RIDDLE and )  
KATHERINE WESEMAN, )

Proposed Intervening Defendants. )

Case No. 11-MR-254

Hon. John Schmidt  
Presiding Judge

**MOTION TO DISMISS, OR IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT  
BY INTERVENORS**

Susan Tone Pierce and Katherine Weseman and Sarah Riddle (“Intervenors”), by their counsel and pursuant to 735 ILCS 5/2-619(a)(1) and 5/2-1005, respectfully move to dismiss, or in the alternative, for summary judgment in favor of Intervenors. In support of this Motion, Intervenors state as follows:

1. Susan Tone Pierce, as the appointed Next Friend of all present and future foster children in the custody of DCFS in *B.H. v. McEwen*, No. 88 C 5589 (N.D. Ill.), represents the interests of state wards, including the more than 2000 wards currently in Catholic Charities’ care.

2. Katherine Weseman and Sarah Riddle are a couple joined by a civil union and living in Champaign, Illinois. They intend to become foster parents, but they do not want to be discriminated against based on their sexual orientation.

3. Plaintiffs Catholic Charities of Springfield, Peoria, Joliet and Belleville (“Catholic Charities” or “Plaintiffs”) contract with the Department of Children and Family Services (“DCFS”) to provide foster care placement and supervision services for adjudicated state wards and state licensing services for foster parents

4. In carrying out their contract with DCFS, Catholic Charities presently maintain a policy of refusing to place DCFS state wards in their care with unmarried foster parents, including gay men and lesbians joined in civil unions, and refuse to process the licensing applications of unmarried foster parents. *See* Order Granting Preliminary Injunction (July 18, 2011). Under this policy, Catholic Charities violate, *inter alia*, the constitutional rights of foster children, a federal consent decree and DCFS regulations requiring that the best interests of each child dictate the child’s foster care placement.

5. DCFS currently is bound by a federal consent decree that sets the standards of care that the agency must provide to children in foster care. *See B.H. v. McEwen*, No. 88 C 5589

(N.D. Ill.); Mem. in Support of Intervenors' Motion to Intervene, Ex 1. (Pierce Decl.), Ex. A (“*B.H. Consent Decree*”). The *B.H. Consent Decree* requires DCFS to place wards in foster care placements based on the best interests of the children. *See, e.g., B.H. Consent Decree* ¶ 34. Catholic Charities' requested relief is in direct conflict with the terms of the *B.H. Consent Decree*. Catholic Charities are preempted under the Supremacy Clause from collaterally attacking the Consent Decree in state court.

6. Susan Tone Pierce, as Next Friend, moves this Court to dismiss Catholic Charities' Second Amended Complaint because it is preempted by a federal Consent Decree.

7. In the alternative, all Intervenors move for summary judgment.

8. The State has constitutional obligations to the foster children and foster parents. Catholic Charities, in performing the exclusive government function of placing adjudicated abused and neglected children who have been removed from their homes, are state actors and also owe constitutional duties to foster children and foster parents.

9. As state actors, Catholic Charities may not assert religious defenses under state law because the State could not assert those defenses. Therefore, they are not exempt from the Illinois Human Rights Act and the Civil Union Act and may not raise claims under the Illinois Religious Protection and Freedom Act (“RFRA”). In any case, the exemptions do not apply and the RFRA claim fails.

10. On the basis of these undisputed facts, Intervenors are entitled to summary judgment.

11. In further support of this Motion, Intervenors submit a Memorandum of Law, which is incorporated by reference as if fully set forth herein.

WHEREFORE, Intervenors respectfully request that this Court grant their Motion to Dismiss, or in the alternative, for Summary Judgment.

Respectfully submitted,

Dated: July 29, 2011

By: \_\_\_\_\_  
One of the Attorneys for Intervenors

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