

STATE OF MAINE  
CUMBERLAND, ss.

SUPERIOR COURT  
CIVIL ACTION  
Docket No. AP-14-39

TDW-CUM-12-22-14

MAINE MUNICIPAL ASSOCIATION,  
et al,

Plaintiffs

v.

ORDER

MAINE DEPARTMENT OF HEALTH AND HUMAN  
SERVICES,

STATE OF MAINE  
Cumberland, ss, Clerk's Office

DEC 22 2014

Defendant

RECEIVED

Based on the conference with counsel held on the record on December 18, 2014, the court issues the following order on the municipal plaintiffs' order to specify the course of future proceedings:

1. The municipal plaintiffs' motion to file a supplemental pleading adding Counts III and IV to the First Amended Petition for Review is granted without objection. This is without prejudice to the position of defendant DHHS that Counts III and IV are not ripe for adjudication at the present time.

2. The court has considered the pleadings, the positions taken by counsel at the December 18 conference, and the statutes and portions of the General Assistance Manual cited in the pleadings and in the December 19 letter from counsel for DHHS. It concludes that the municipal plaintiffs are entitled to proceed on a motion for a preliminary injunction on the claim set forth in Count II of the First Amended position and on the claims set forth in Counts III and IV that, without having issued any notice of noncompliance after program review, DHHS has failed or

refused to process Portland's claims for reimbursement on a monthly basis and has failed or refused to process Westbrook's claims for reimbursement on a quarterly basis.<sup>1</sup>

3. Accordingly, the municipal plaintiffs shall proceed with their motion for a preliminary injunction, which they have proposed to file on or before December 31, 2014.

4. If the municipal plaintiffs file their motion by December 31, 2014, DHHS shall have until January 15, 2015 to file opposing papers to the motion for a preliminary injunction and may seek an extension of that deadline depending on the papers filed by the municipal plaintiffs.

5. The court shall schedule a hearing on the motion as promptly as possible and in any event before the end of January, and the parties shall advise the court as soon as practicable whether they anticipate an evidentiary hearing.

6. The court reserves decision at this time whether a trial on the merits should be consolidated with the hearing on the motion for the preliminary injunction. M.R.Civ.P. 65(b)(2). This may depend in part on whether there are claims in this case that will not be the subject of the preliminary injunction hearing.<sup>2</sup>

7. At this time, based on counsel's assertion that DHHS is not contending that the constitutionality of 5 M.R.S. § 8058(1)(A) and (B) is being drawn into question, the court does not see a need to notify the Attorney General to allow intervention pursuant to M.R.Civ.P. 24(d).

8. As discussed on December 19, plaintiffs City of Portland and City of Westbrook have not yet filed replies to the counterclaims asserted by DHHS. At the December 18 conference counsel for the municipal plaintiffs proposed that those be filed by December 22, 2014. Because

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<sup>1</sup> The latter claims may be subject to a ripeness defense as noted above.

<sup>2</sup> In this connection there is currently an equal protection claim brought by intervenors Rehma Rebecca Juma and Suavis Furaha that the court concludes should be asserted in a separate action. See ¶¶ 10-12 below.

counsel may not receive this order until after December 22, replies to the counterclaims shall be served and filed on or before December 26, 2014.

9. While the case was pending in federal court, the court (Nivison, Magistrate Judge) issued an order pursuant to Fed.R.Civ.P. 72 granting the motion to intervene by Rehma Rebecca Juma and Suavis Furaha. At the December 19, 2014 conference counsel for the municipal plaintiffs and for DHHS agreed that Juma and Furaha should be allowed to intervene, and the court sees no reason to revisit Magistrate Judge Nivison's order.

10. However, there is an issue as to the scope of their intervention. Juma and Furaha, in addition to joining the municipal plaintiffs in count I of their Intervenor Complaint, have asserted an entirely new cause of action, a claim under the equal protection clause of the Maine Constitution, in count II of the Intervenor Complaint. The normal rule is that intervenors are entitled to be heard on all the issues in the pending action but may not change the action by introducing their own additional claims. 2 C. Harvey, Maine Civil Practice § 24:1, citing *Morris v. Resolution Trust Corp.*, 622 A.2d 708, 714-15 (Me. 1993).

11. On December 19 both counsel for the municipal plaintiffs and counsel for DHHS expressed reservations about including the equal protection claim asserted by Juma and Furaha in this action because of the potential that the equal protection claim could delay entry of final judgment.<sup>3</sup> The court shares these concerns given that it expects that is highly likely that either the municipal plaintiffs or DHHS will want to seek prompt appellate review by the Law Court.

12. Accordingly, while the motion to intervene has been granted and Juma and Furaha shall be heard on all the issues raised by the other parties, Juma and Furaha shall not be entitled to assert an additional cause of action. This order is without prejudice to their right to commence

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<sup>3</sup> Counsel for DHHS also expressed concerns that went to other issues, including standing.

a separate action to assert an equal protection claim and to seek to have that action heard jointly with this action pursuant to M.R.Civ.P. 42.

13. An issue that was not addressed at the December 18 conference was the municipal plaintiffs' Rule 80C claim and the preparation of the administrative record on that cause of action. Once the preliminary injunction motion has been filed, the court will schedule another conference to address that issue and to set a firm date for the preliminary injunction hearing.

The entry shall be:

The municipal plaintiffs' motion for leave to file a supplemental pleading is granted. The motion to intervene by Rehma Rebecca Juma and Suavis Furaha has previously been granted by the federal court, but intervention shall be limited to the claims raised by the municipal plaintiffs in this action. Procedural order entered. The clerk is directed to incorporate this order in the docket by reference pursuant to Rule 79(a).

Dated: December 22, 2014



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Thomas D. Warren  
Justice, Superior Court

CLERK OF COURTS  
Cumberland County  
205 Newbury Street, Ground Floor  
Portland, ME 04101

CLIFFORD RUPRECHT ESQ  
ROACH RUPRECHT SANCHEZ BISCHOFF PC  
66 PEARL STREET SUITE 200  
PORTLAND ME 04101

Defendants Counsel

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CLERK OF COURTS  
Cumberland County  
205 Newbury Street, Ground Floor  
Portland, ME 04101

RUSSELL PIERCE ESQ  
NORMAN HANSON & DETROY  
PO BOX 4600  
PORTLAND ME 04112-4600

Plaintiff's Counsel

CLERK OF COURTS  
Cumberland County  
205 Newbury Street, Ground Floor  
Portland, ME 04101

ZACHARY HEIDEN ESQ  
ACLU OF MAINE FOUNDATION  
121 MIDDLE STREET SUITE 301  
PORTLAND ME 04101

Intervenor's Counsel

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CLERK OF COURTS  
Cumberland County  
205 Newbury Street, Ground Floor  
Portland, ME 04101

JACK COMART ESQ  
MAINE EQUAL JUSTICE PARTNERS  
126 SEWALL STREET  
AUGUSTA ME 04330-6822

Intervenor's Counsel