

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

**NARRAGANSETT INDIAN TRIBE,  
ACTING BY AND THROUGH THE  
NARRAGANSETT INDIAN TRIBAL  
HISTORIC PRESERVATION OFFICE**

*Plaintiff,*

v.

**BRANDYE L. HENDRICKSON in her  
Official capacity as  
Deputy  
Administrator of the  
FEDERAL  
HIGHWAY  
ADMINISTRATION,**

**and**

**STATE OF RHODE ISLAND  
AND AGENCIES,  
INCLUDING THE  
RHODE ISLAND  
DEPARTMENT OF  
TRANSPORTATION**

**and**

**CLAIRE RICHARDS, Individually  
(Executive Counsel at the Rhode Island  
Office of the Governor)**

*Defendants.*

Civil Action No. 1:20-cv-576 (RC)

**STATE DEFENDANTS' RESPONSE REGARDING PLAINTIFF'S MOTION FOR  
SUMMARY JUDGMENT AND/OR STATE DEFENDANTS' MOTION TO STAY  
BRIEFING AS TO STATE DEFENDANTS**

Defendants State of Rhode Island ("State"), Rhode Island Department of Transportation

(“RIDOT”), and Claire Richards, individually and in her official capacity, (collectively, “State Defendants”) submit this response regarding Plaintiff’s Motion for Summary Judgment, ECF 53.

As an initial matter, the State Defendants construe Plaintiff’s Motion for Summary Judgment as only moving for summary judgment regarding the claims against the *Federal* Defendant. The State Defendants’ Motion to Dismiss remains pending and this Court previously ruled that briefing with regard to the claims involving the *Federal* Defendant could proceed while the State Defendants’ Motion to Dismiss was pending. *See* February 24, 2021 Minute Order (“It is hereby ORDERED that the parties shall meet, confer, and, on or before March 10, 2021, submit a proposed briefing schedule for the claims against the *federal* government.”) (emphasis added). This Court recently denied Plaintiff’s Motion to stay briefing as to the Federal Defendant while the State Defendants’ Motion to Dismiss was resolved because the “pending motion to dismiss by the Rhode Island defendants will not impact the issues to be briefed against the *federal* defendant.” *See* May 19, 2021 Minute Order (emphasis added). Additionally, the content of Plaintiff’s Summary Judgment Motion appears to be directed to Plaintiff’s claims against the Federal Defendant. For all these reasons, the State Defendants reasonably believe that Plaintiff’s Motion for Summary Judgment pertains to the *Federal* Defendant and not to them.

However, because Plaintiff’s Proposed Order and portions of the Motion for Summary Judgment refer generally to “Defendants” without specifying which Defendants, in an abundance of caution, counsel for the State Defendants emailed Plaintiff’s counsel on June 7, 2021 to seek clarification and to confirm that Plaintiff’s Motion for Summary Judgment and Proposed Order were not directed to the State Defendants. *See* Exhibit A (attached email chain). Having not received a response, State Defendants’ counsel followed up on June 9, 2021, asking if Plaintiff’s counsel could “confirm that Plaintiff’s Summary Judgment Motion and Proposed Order regard

the Federal Defendants and not the State Defendants?” *See* Exhibit A. On June 9, 2021, Plaintiff’s counsel responded by stating:

“i saw it i have no comment. i have an amended complaint. you haven't been dismissed yet. that is why you get electronic copies. the motion speaks for itself.”

*See* Exhibit A.

Based on the response of Plaintiff’s counsel, the State Defendants remain unsure about whether or not Plaintiff’s Motion for Summary Judgment and Proposed Order, which both seem to pertain to the Federal Defendant but which vaguely reference “Defendants,” was intended to pertain to them. The State Defendants submit this response to note that they do not construe Plaintiff’s Summary Judgment Motion as pertaining to them based on its content and the context in which it was filed. If the Court does construe Plaintiff’s Summary Judgment Motion as pertaining to the State Defendants, then the State Defendants respectfully request that this Court clarify that, and if that is the case, the State Defendants move to stay any briefing on Plaintiff’s Summary Judgment Motion, but only to the extent it is construed as pertaining to the State Defendants. This Court has already been very clear that briefing with regard to the *Federal* Defendant can and should proceed while the State Defendants’ Motion to Dismiss remains pending.

A stay would be appropriate because it is inappropriate and inefficient for a summary judgment motion with regard to the State Defendants to be filed and briefed while the State Defendants’ Motion to Dismiss remains pending. This is even more so because the State Defendants have asserted in their Motion to Dismiss, and continue to assert, that this Court lacks jurisdiction over them. There is substantial precedent finding that summary judgment briefing should be deferred until after dispositive motions are ruled on, particularly where a defendant has asserted lack of jurisdiction. *See, e.g., Furniture Brands Int'l, Inc. v. U.S. Int'l Trade Comm'n,*

No. CIV.A. 1:11-00202, 2011 WL 10959877, at \*1 (D.D.C. Apr. 8, 2011) (noting how when a Rule 12 motion presents a threshold challenge to the Court’s jurisdiction, “suspending briefing of the summary judgment motion pending the Court’s resolution of the motions to dismiss will not prejudice plaintiff; staying further briefing of the plaintiff’s summary judgment motion will allow the parties to avoid the unnecessary expense, the undue burden, and the expenditure of time to brief a motion that the Court may not decide. Moreover, suspending briefing of the summary judgment motion will allow the Court to manage the orderly disposition of this case.”). As such, it would be inappropriate to proceed with a motion for summary judgment regarding the claims against the State Defendants while the Motion to Dismiss remains pending.

For all these reasons, the State Defendants believe that Plaintiff’s Motion and Proposed Order are not intended to pertain to them, but only to the Federal Defendant, but if this Court does construe the Motion for Summary Judgment as pertaining to the State Defendants, then State Defendants move the Court to stay briefing on that Motion only as to the State Defendants until after resolution of the State Defendants’ pending Motion to Dismiss.

Respectfully submitted,

DEFENDANTS,  
STATE OF RHODE ISLAND,  
RHODE ISLAND DEPARTMENT OF  
TRANSPORTATION, and CLAIRE  
RICHARDS, Individually and in Her  
Official Capacity as Executive Counsel  
at the Rhode Island Office of the  
Governor

By:

PETER F. NERONHA  
ATTORNEY GENERAL

/s/ Katherine Connolly Sadeck  
Katherine Connolly Sadeck, RI Bar No.  
8637  
Special Assistant Attorney General  
150 South Main Street  
Providence, RI 02903  
Tel: (401) 274-4400, Ext. 2480  
Fax: (401) 222-3016  
KSadeck@riag.ri.gov

**CERTIFICATE OF SERVICE**

I certify that on June 10, 2021, I caused a copy of the foregoing document to be filed electronically and that this document is available for viewing and downloading from the ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

/s/ Katherine Connolly Sadeck