

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

STATE OF INDIANA, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 1:13-cv-1612-WTL-TAB
	)	
INTERNAL REVENUE SERVICE, <i>et al.</i> ,	)	
	)	
Defendants.	)	

**JOINT NOTICE REGARDING FURTHER PROCEEDINGS**

In its Entry Regarding Pending Motions dated January 26, 2015 (Dkt. No 89), the Court directed the parties to “confer with one another and file a notice setting forth how they wish to proceed in this case” in light of the Supreme Court’s ruling in *King v. Burwell*, No. 14-114 (U.S. June 25, 2015). Having so conferred, the Parties now so notify the Court and make the following recommendations:

1. In its January 26, 2015 Entry, the Court stated that it would “wait to address the issues raised in the pending motions for summary judgment pending the Supreme Court’s ruling in *King v. Burwell*.” Dkt. No. 89 at 1. Thus, “[i]n order to permit an orderly presentation of any issues that remain to be decided after that ruling,” the court denied the pending motions for summary judgment (Dkt. Nos. 44, 46, and 61) without prejudice. *Id.*

2. The Plaintiffs’ Amended Complaint for Declaratory and Injunctive Relief and Judicial Estoppel (Dkt. No. 22) alleged the following claims:

- Count I: Rulemaking in violation of the Administrative Procedure Act
- Count II: Unconstitutional exercise of federal power and violation of the Tenth Amendment for employer mandate

- Count III: Unconstitutional exercise of federal power and violation of the Tenth Amendment for reporting requirements
- Count IV: Partial severability
- Count V: Judicial estoppel against federal enforcement of employer mandate in 2014

3. In its August 12, 2014 Entry on Motion to Dismiss (Dkt. No. 77), the Court both dismissed Count V in its entirety and dismissed, on claim preclusion grounds, the State's Counts II-IV. However, it granted the School Districts' motion to join the State's motion for summary judgment and briefs in support thereof (which covered Counts II-IV), while also reserving for summary judgment consideration of whether the School Districts were in privity with the State and thereby also precluded from raising Counts II-IV.

4. Thus, at the time of the Supreme Court's decision in *King v. Burwell*, No. 14-114 (U.S. June 25, 2015), only Counts I through IV remained in contention before this Court.

5. All Parties agree that the Supreme Court's decision in *King* fully resolves Count I of Plaintiffs' amended complaint. Accordingly, the parties agree that judgment should be entered in favor of Defendants on that claim.

6. All parties agree that *King* does not resolve Counts II-IV of Plaintiffs' amended complaint, which remain pending as to the School Districts.

7. Accordingly, as to Counts II-IV, the parties recommend that the Court vacate its order denying all motions for summary judgment (Dkt. No. 89) and treat the cross-motions for summary judgment filed by the School Districts (Dkt. No. 46) and by the Defendants (Dkt. No. 61) as renewed motions as to the School Districts' claims with respect to Counts II-IV. The parties further recommend that the Court proceed with full consideration of those claims, based

on all briefs already filed (including the State's briefs, as joined by the School Districts, and including the parties' briefing at the motion to dismiss stage), of the claims and defenses presented in each.

8. It is the view of the parties that no further briefing or oral argument is needed concerning any claims or defenses presented by the summary judgment motions and memoranda.

WHEREFORE, Plaintiffs request that the Court (1) vacate its order denying all motions for summary judgment (Dkt. No. 89), (2) enter judgment in favor of Defendants as to Count I of Plaintiffs' amended complaint, and (3) proceed with full consideration on cross-motions for summary judgment of the claims and defenses presented as to Counts II, III, and IV.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on July 21, 2015, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which sent notification of such filing to the following:

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