

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

IRISH 4 REPRODUCTIVE)	
HEALTH, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	Cause No. 3:18-CV-491-PPS-JEM
vs.)	
)	
UNITED STATES)	
DEPARTMENT OF HEALTH)	
AND HUMAN SERVICES, <i>et al.</i> ,)	
)	
Defendants.)	

ORDER

Plaintiffs filed a motion to hold in abeyance the Federal Defendants’ motion for partial summary judgment [DE 114], or for an extension of time to respond until after the Court rules on the pending motions to dismiss [DE 108, 109]. [DE 130.]

On September 21, 2020, the Federal Defendants and Defendant University of Notre Dame both filed motions to dismiss the second amended complaint. [DE 108, 109.] In their memorandum [DE 109-1 at 3 n.3], the Federal Defendants noted that they would release the administrative record and also concurrently file a motion for partial summary judgment for just one claim (the Rules are arbitrary and capricious), while briefing on the pending motions to dismiss was ongoing. On October 9, 2020, the Federal Defendants filed their motion for partial summary judgment [DE 114] and manually filed the Administrative Record [DE 115], which included approximately

800,000 pages of material.

Courts “routinely exercise their discretion to decline to reach the ultimate question of whether the agency’s decisionmaking process was arbitrary or capricious in the absence of the full administrative record,” in order to avoid the “dangers associated with proceeding with judicial review on the basis of a partial and truncated record without the consent of the parties.” *Banner Health v. Sebelius*, 797 F. Supp. 2d 97, 112 (D.D.C. 2011) (internal quotations and citations omitted). In this case, I don’t think it would be fair to ask the Plaintiffs to respond to the Federal Defendants’ motion for partial summary judgment without allowing adequate opportunity to review the extensive record. As such, I think it is equitable to grant Plaintiffs’ requested extension of time to respond to the motion for partial summary judgment, as it will give Plaintiffs the requisite opportunity for review. Additionally, just from an administrative standpoint, it seems like it would be more efficient to streamline this litigation by first ruling on the pending motions to dismiss, and then turning to the motion for partial summary judgment.

ACCORDINGLY: Plaintiffs’ request for an extension of time to respond to the motion for partial summary judgment [DE 130] is GRANTED. Plaintiffs should file their response to the motion for partial summary judgment [DE 114] no later than 60 days after the Court issues its decision on the pending motions to dismiss.

ENTERED: November 24, 2020.

/s/ Philip P. Simon
PHILIP P. SIMON, JUDGE
UNITED STATES DISTRICT COURT