



Riegel v. Medtronic, Inc., 128 S.Ct. 999, 1019 n.16 (Feb. 20, 2008).<sup>1</sup> Because I find that the plaintiffs are entitled to conduct discovery on the preemption issue before filing a response to the motion and the Supreme Court is scheduled to decide the Levine case this term, I will deny the motion without prejudice to being re-filed following discovery, if appropriate.

Accordingly,

**IT IS HEREBY ORDERED** that defendants' motion to dismiss [#336] is denied without prejudice.

**IT IS FURTHER ORDERED** that plaintiffs' motion for extension of time [#342] is denied as moot.



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RODNEY W. SIPPEL  
UNITED STATES DISTRICT JUDGE

Dated this 24th day of July, 2008.

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<sup>1</sup>The defendants cite to the FDA's amicus curiae briefs from Levine as evidence in support of their motion to dismiss.