

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

**AVE MARIA UNIVERSITY,**

**Plaintiff,**

**v.**

**Case No: 2:12-cv-88-Ftm-99SPC**

**KATHLEEN SEBELIUS, U.S.  
DEPARTMENT OF HEALTH AND  
HUMAN SERVICES, HILDA SOLIS,  
UNITED STATES DEPARTMENT OF  
LABOR, TIMOTHY GEITHNER, and  
UNITED STATES DEPARTMENT OF  
TREASURY,**

**Defendants.**

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**ORDER**

This case involves a challenge to regulations issued under the Patient Protection and Affordable Care Act of 2010. The challenged regulations require that “group health plan[s] and . . . health insurance issuer[s] offering group or individual health insurance coverage’ provide all FDA-approved contraceptive methods and sterilization procedures.” (Compl. ¶ 69 (citing 76 Fed. Reg. 46621 (published Aug. 3, 2011); 45 C.F.R. § 147.130)). Plaintiff contends that it cannot comply with this contraceptive-coverage mandate without violating its religious beliefs, (*id.* ¶ 34), and it argues that the mandate violates the First Amendment, the Religious Freedom Restoration Act, and the Administrative Procedure Act. Defendants have filed a Motion to Dismiss (Doc. 21) for lack of subject-matter jurisdiction, arguing that Plaintiff’s alleged injury is too speculative to confer standing and that the case is also not ripe for decision.

The case is now before the Court on Defendants' Objections to Magistrate Judge's July 31, 2012 Order Denying a Stay of Discovery (Doc. 37). The Order (Doc. 36), rendered by the assigned magistrate judge, denied Defendants' Motion to Stay Discovery Pending Resolution of Motion to Dismiss (Doc. 31). Plaintiff has filed an Opposition to Defendants' Objections (Doc. 43) and Defendants filed a Reply (Doc. 48) thereto. Defendants' Objections are ripe for the Court's review.

Under 28 U.S.C. § 636(b)(1)(A), a district judge may reconsider a pretrial matter decided by a magistrate judge where it has been shown that the magistrate judge's order is contrary to law. The Order at issue here correctly explains that a court deciding a motion to stay discovery pending resolution of another motion "must balance the harm produced by a delay in discovery against the possibility that the motion will be granted and entirely eliminate the need for such discovery." (Doc. 36 at 2 (quoting Feldman v. Flood, 176 F.R.D. 651, 652 (M.D. Fla. 1997))). However, Defendants object that the challenged Order fails to apply these factors. Defendants' objection is well taken. In this Court's view, the Order is contrary to law. Balancing the omitted factors, the Court finds that discovery should be stayed until the Court rules on Defendants' Motion to Dismiss.

The Order states that "[d]ue to the fact that there are a large number of other challenges' by similarly situated plaintiffs . . . the Defendants will still have to conduct nearly identical discovery in numerous other cases." (Doc. 36 at 3). In turn, the Order denies the Motion to Stay Discovery on the basis that "the Defendant will conduct discovery on the issue in this case whether or not the Defendants succeed on their Motion to Dismiss." (Id.). The Order does not address the likelihood that the Motion to

Dismiss will be granted and eliminate the need for discovery in *this* case, nor does the Order address “harm produced by a delay in discovery.” Instead, the Order focuses solely on whether the Defendants would nonetheless have to proceed with similar discovery in other cases.

Having considered the omitted factors, the Court finds that discovery should be stayed until the Court rules on the Motion to Dismiss. There is a significant possibility that the Court will grant Defendants’ Motion to Dismiss for lack of subject-matter jurisdiction, eliminating the need for discovery in this case. It is also evident that delaying discovery until the Court rules on whether it has jurisdiction will cause Plaintiff little, if any, harm.

There is a significant possibility that the Court will grant Defendants’ Motion to Dismiss on the grounds that Plaintiff’s alleged injury is too speculative to confer standing and that the case is not ripe for decision. The contraception-coverage mandate Plaintiff challenges in its Complaint will not be enforceable until January 1, 2014, (Compl. ¶ 116); meanwhile, Defendants are in the process of amending the relevant regulations to address Plaintiff’s concerns. In particular, Defendants have published in the Federal Register their plan to amend the challenged regulations:

Before the end of the temporary enforcement safe harbor, the Departments will work with stakeholders to develop alternative ways of providing contraceptive coverage without cost sharing with respect to non-exempted, non-profit religious organizations with religious objections to such coverage. Specifically, the Departments plan to initiate a rulemaking to require issuers to offer insurance without contraception coverage to such an employer (or plan sponsor) and simultaneously to offer contraceptive coverage directly to the employer’s plan participants (and their beneficiaries) who desire it, with no cost-sharing.

77 Fed. Reg. 8728. Moreover, Defendants have already issued an Advance Notice of Proposed Rulemaking to initiate this amendment process. 77 Fed. Reg. 16503. The Court is also aware that other courts have found a lack of subject-matter jurisdiction in similar cases against the Defendants. See Wheaton Coll. v. Sebelius, Civil Action No. 12-1169 (ESH), 2012 WL 3637162 (D.D.C. Aug. 24, 2012); Belmont Abbey Coll. v. Sebelius, Civil Action No. 11-1989 (JEB), 2012 WL 2914417 (D.D.C. July 18, 2012).

As for “harm produced by a delay in discovery,” Feldman 176 F.R.D. at 652, the Court finds that staying discovery until it resolves the Motion to Dismiss will not cause Plaintiff any significant harm. Plaintiff asserts that “a stay of discovery delays the resolution of the case, and Plaintiff is burdened *now*, as it considers how to manage the ramifications of ceasing to offer insurance to its employees and of paying a crippling annual fine to the government.” (Doc. 43 at 5). But staying discovery will only delay the resolution of the case if the Motion to Dismiss is denied, and there is a significant possibility that it will be granted. Furthermore, whatever burden Plaintiff faces in preparing for enforcement of the mandate must be assessed in light of the fact that such enforcement is speculative given the amendments underway to accommodate Plaintiff’s religious concerns.

Therefore, given the possibility that the Court will grant Defendants’ Motion to Dismiss and the fact that staying discovery until the Court resolves the Motion to Dismiss will not cause the Plaintiff any significant harm, a stay is appropriate.

In accordance with the foregoing, Defendants’ Objections to Magistrate Judge’s July 31, 2012 Order Denying a Stay of Discovery (Doc. 37) are **SUSTAINED**. The ruling in that Order is overturned, and Defendants’ Motion to Stay Discovery Pending

Resolution of Motion to Dismiss (Doc. 31) is **GRANTED**. Discovery in this case is stayed until the Court rules on Defendants' Motion to Dismiss (Doc. 21).

**DONE** and **ORDERED** in Orlando, Florida on November 28, 2012.



JOHN ANTOON II  
United States District Judge

Copies furnished to:

Counsel of Record