UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

DIOCESE OF FORT WAYNE-SOUTH BEND, INC., *et al.*,	)	
Plaintiffs,	)	
v.	)	Case No. 1:12-CV-159 JD
KATHLEEN SEBELIUS, in her official capacity as Secretary of the U.S. Department of Health and Human Services, *et al.*,	)	
Defendants.	)	

ORDER

On May 21, 2012, Plaintiffs filed a 9-count complaint against the U.S. Departments of Treasury, Labor, and Health and Human Services and their respective Secretaries seeking relief from government action (the Patient Protection and Affordable Care Act) requiring Plaintiffs, all nonprofit entities who adhere to the tenants of the Catholic faith, to provide or facilitate abortion-inducing drugs, contraceptive services and sterilization (characterized as "preventative care") through its health plans [DE 1]. The complaint asserts various claims under the Religious Freedom Restoration Act, the First Amendment, and the Administrative Procedures Act. *Id*. Plaintiffs, who are primarily self-insured (with the exception of coverage provided for some employees of the Franciscan Alliance, Inc.), have health benefit plans that have not been providing coverage for these preventative care services. *Id.* Assuming the Plaintiffs meet the safe-harbor provision, the Plaintiffs' next insurance plans begin January 2014, with the exception of Our Sunday Visitor, Inc. which has an insurance renewal date of October 2013. *Id.* Defendants have moved for dismissal of the complaint on the basis that the Court lacks jurisdiction because Plaintiffs lack standing and the case is not ripe [DE 26]. The motion is fully

briefed, including the filing of an amici curiae brief in support of Plaintiffs by the American Center for Law & Justice and various congressional members [DE 30-36, 40, 42].

However, since the complaint was filed and the briefing on the motion to dismiss ran its course, two events have occurred which will likely alter the landscape of this case and decide the issues raised. First, an appeal has been filed in a related case—*University of Notre Dame v. Kathleen Sebelius, et al.*, No. 3:12-cv-253-RLM, 2012 WL 6756332 (N.D. Ind. Dec. 31, 2012), on appeal at No. 13-1479 ("the Notre Dame case")—contesting this Court's dismissal of the lawsuit on the ground that the Court had no jurisdiction because it did not present a ripe case or controversy involving a plaintiff with standing [3:12-cv-253-RLM, DE 46]. By way of background, University of Notre Dame, a nonprofit Catholic institution, filed its lawsuit against the same government Defendants named in the underlying complaint, contested the same government action relative to the provision of preventative care via a self-insured employee plan and a fully insured student plan through Aetna, and similarly argued that the action violated the Religious Freedom Restoration Act, the First Amendment, and the Administrative Procedures Act [3:12-cv-253-RLM, DE 1]. As mentioned, dismissal of the Notre Dame case was granted on the same grounds that Defendants believe dismissal is appropriate in the present action. In fact, the briefing on the motion to dismiss in both cases is virtually identical, including the amici curiae briefs. *Compare* 1:12-cv-159-JD, DE 27, 30, 40, 42 *with* 3:12-cv-253-RLM, DE 17, 21, 23, 25. It is clear that the issues presented in the Notre Dame case are nearly indistinguishable from the issues raised in the present case. Thus, the outcome of the appeal in the Notre Dame case would most certainly affect the outcome of this case by narrowing the issues and assisting in a determination of the questions of law involved—which are novel questions in this Circuit.

Second, proposed rules relative to the preventative care coverage final regulations, 77 Fed. Reg. 8725 (Feb. 15, 2012), recently issued, which simplified the definition of "religious employer" and created accommodations for nonprofit religious organizations, including religious institutions of higher learning. *See* 78 Fed. Reg. 8456 (Feb. 6, 2013); http://cciio.cms.gov/resources/factsheets/womens-preven-02012013.html (last visited March 12, 2013). Comments on the proposed rules are due on or before April 8, 2013. *Id*. These proposed rules, if adopted, would likely spill into every aspect of the present case and necessitate a substantively different legal analysis than if the case were decided now. *See e.g., Geneva College v. Sebelius,* No. 2:12-cv-00207, 2013 WL 838238, *14 (W.D. Pa. Mar. 6, 2013) (holding that the proposed rules appear to exempt Geneva College, a nonprofit religious organization, and determining that its claims, although ripe when the case was filed, are not ripe now).

In light of the recent events and given the time and expense involved in such complex litigation, moving forward on the present case seems inefficient for all involved and a stay pending the outcome of these matters might be appropriate. *See e.g., Finova Capital Corp. v. Ryan Helicopters U.S.A., Inc*., 180 F.3d 896, 898 (7th Cir. 1999) (noting that "[a]lthough federal courts have a 'virtually unflagging obligation' to exercise the jurisdiction conferred on them by Congress, in exceptional cases, a federal court should stay a suit and await the outcome of parallel proceedings as a matter of 'wise judicial administration, giving regard to the conservation of judicial resources and comprehensive disposition of litigation.'") (citations omitted). However, in order to make this determination, it is necessary to consider the input of counsel regarding the appropriateness of an extended stay of the proceedings given that identical issues now pend before the Seventh Circuit and given the issuance of the proposed rules relative

to the preventative care regulations.

Accordingly, counsel shall file a joint report with the Court on or before **April 12, 2013** indicating their respective positions concerning a stay of the case. While the Court awaits the joint report, the Court STAYS the case for a period of no more than 45 days from today's date. *See e.g., Landis v. N. Am. Co.,* 299 U.S. 248, 254-55 (1936) (noting that the power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants; and, how this can best be done calls for the exercise of judgment, which must weigh competing interests and maintain an even balance). Such stay may be extended by order of the Court after consideration of the parties' joint report addressing the issue.

SO ORDERED.

ENTERED: March 14, 2013

/s/ JON E. DEGUILIO
Judge
United States District Court