

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JUN 01 2023

Nathan Ochsner, Clerk of Court

John J. Dierlam
Plaintiff
versus
Joseph R. Biden, in his official capacity
as President of the United States et. al.
Defendants

Plaintiff's Motion For Summary Judgment

Background

On February 4, 2016, I, John J. Dierlam, a citizen of Texas, the United States, and a life long Catholic, filed a complaint in the Southern District Court of Texas against the government, which includes the President of the U.S. and departments of Treasury, Labor, HHS, and their Secretaries. I challenged the constitutionality of defendant's implementation of provisions of the Patient Protection and Affordable Care Act (ACA). In other claims, I challenged the constitutionality of the minimum essential coverage provision, shared responsibility payment provision, and the ACA in general. In the final claim, I request clarification of the term direct taxes so that the principle of the Consent of the Governed is preserved.

This case is in its seventh year and remains in the pleading stage. It was initially dismissed in its entirety which was reversed and vacated on Appeal. Most recently, it was dismissed in part on 12/15/2021. A third amended Complaint was then filed. The defendants filed a PMTD in response to the third amended Complaint, which was dismissed on 12/12/2022 except for the retrospective portion of an RFRA claim.

Issues Presented

This document concerns only the RFRA claim, which is claim 3, in the Third Amended Complaint as all other claims were dismissed by the court on 12/12/2022. FRCP 56 determines the conditions for Summary Judgment:

The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court should state on the record the reasons for granting or denying the motion...a party may file a motion for summary judgment at any time until 30 days after the close of all discovery.

The last condition listed above is fulfilled as the Court has allowed no Discovery in this case. As previously mentioned in other documents filed by the plaintiff and to be repeated infra, there is no genuine dispute of essential fact and an entitlement to judgment for the plaintiff exists for Claim 3.

Argument

I. Evidence of No genuine dispute of fact and Entitlement to Judgment

This Court has divided the RFRA claim into separate retrospective and prospective claims. The Third Amended Complaint (3AC) contains no such division. Contrary to the decision of this Court, *Korte v. Sebelius*, 735 F.3d 654, 672 (7th Cir. 2013) indicates “RFRA applies retrospectively and prospectively...” See pp.3-5 of the Opposed Motion For Vacatur of PMTD, a New Order granting PMTD with Interlocutory Certification, and a Stay Pending the Appeals Court Decision. (Dkt#140)

A. No genuine dispute of fact

FRCP 56(c) provides the means to demonstrate no genuine dispute exists,

(c) Procedures. (1) Supporting Factual Positions. A party asserting that a fact cannot be or is genuinely disputed must support the assertion by: (A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or (B) showing that the materials cited do not establish the

absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

Perhaps the most compelling evidence the government has violated RFRA is the admission contained in the DEFENDANTS' RESPONSE TO MAGISTRATE JUDGE'S REPORT & RECOMMENDATION (Dkt#73). On p.4 of this document the defendants admit, "...the [Contraceptive] Mandate imposes a substantial burden on the religious beliefs of individual employees who oppose contraceptive coverage..." Under 42 U.S. Code § 2000bb-1(c) "Judicial relief. A person whose religious exercise has been burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against a government," which establishes the entitlement to relief. Although other facts exist, this "admission" is sufficient to indicate a violation of RFRA on the part of the government has occurred which "cannot be" "genuinely disputed" and an entitlement to relief exists which can as well not be "genuinely disputed." The government can no longer produce evidence to the contrary if any existed without violating Judicial Estoppel.

B. Entitlement to Judgment

It is the contention of the court and the defendants I have no prospective injuries. Just as it was the position of the defendants before the DEFENDANTS' RESPONSE TO MAGISTRATE JUDGE'S REPORT & RECOMMENDATION (Dkt#73) no substantial burden on religion existed despite several Court rulings indicating an attack upon the sincerity of a belief is not permitted to a court. See ¶¶53-66 of the 3AC. These arguments were not persuasive to the 5th Circuit Appeals Court, which vacated and remanded the decision in this case. The current contention requires a denial of reality of a similar order of magnitude as overwhelming evidence even to the present day exists contrary to it.

1 Injuries in 3AC

¶67-70 of the 3AC lists retrospective, current and prospective injuries. However, I make a couple of mistakes in this list, which have been presented in prior submissions. Expense and time for litigation should not be listed as an injury. I also use the term “false proxy” in most claims interchangeably with the term “State Actor.” While these terms have a relationship they are legally distinct and are appropriate for this case but in different claims. Aside from Claims 7 and 13 in the 3AC, all Claims which use the term “false proxy” should use the term “State Actor” only. “State Actor” was first employed in reference to States in the Union who violated the 14th amendment, which was intended to extend the Bill of Rights to all States. As the federal government is bound by the U.S. Constitution, the term applies to it as well. Therefore, the words “false proxy” in ¶70 should instead read “state actor.” Otherwise, the injuries presented are still applicable.

2 New HHS Rules

From the list of injuries mentioned above, the prospective injury in (b) of ¶70 has occurred or is eminent. On 7/25/2022, HHS announced interim rules¹ to include LGBTQI+ as protected classes under titles proscribing discrimination based upon sex as well as other changes which will extend its control over health care under the ACA. A proposed change in definitions in this document will allow HHS to extend the HHS Mandate to Medicare and require the same contraceptive, abortion, sterilization, and related counseling services of ALL participating insurance companies. See the Opposed Motion For Temporary Injunction and Expedited Consideration on Defendant’s Partial Motion To Dismiss for more information. (Dkt#130)

3 Hostility toward Catholics is indicated by past, present, and prospective actions of Democrat Administrations

¹ *United States, Department of Health and Human Services, “Nondiscrimination in Health Programs and Activities.” Vol. 87 Fed. Reg. 47,824 (August 4, 2022)*

Hostility toward a religion by government is evidence of a 1st amendment violation. See ¶¶147-151 of the 3AC, which provides evidence of the government's hostility toward Christians especially Catholics. The new HHS Mandate/Rules mentioned above represent ultra vires continuation of this hostility. Remember, as mentioned above the government has admitted to a violation of RFRA with the original HHS Mandate. No religious exemption exists for the new rules, which will extend the original Mandate as well as violate additional Catholic prohibitions. It is IMPOSSIBLE for the government to produce any evidence that the new Mandate/Rules does not violate RFRA (as well as other Law) in the same manner as the original Mandate to which they admit a violation. See pp.3-10 of the Opposed Motion For Temporary Injunction and Expedited Consideration on Defendant's Partial Motion To Dismiss for more information.

(Dkt#130)

However, the evidence for hostility to traditional Catholic practice does not end here. More recently, the FBI has been investigated by the US House for targeting Catholics as potential terrorists and racists in violation of the 1st Amendment.² The Biden administration attempted to end a centuries old traditional religious practice in a Catholic Hospital Chapel, but backed down after the threat of an RFRA Lawsuit.³ Catholic pro-life activists exercising their rights of freedom of speech and assembly have been targeted with brutal and violent FBI raids and prosecution.⁴ As mentioned above, once HHS enforces their New Rules, I will be unable to enjoy a government benefit, Medicare, because of my beliefs.

Democrat bureaucrats and administrations have and continue to harm Catholics because

2 <https://judiciary.house.gov/media/press-releases/documents-reveal-fbi-sought-develop-sources-local-catholic-churches>

3 https://www.lifesitenews.com/news/biden-admin-orders-catholic-hospital-to-extinguish-small-candle-or-lose-all-federal-funds/?utm_source=daily-usa-2023-05-05&utm_medium=email

4 <https://www.washingtontimes.com/news/2023/jan/30/mark-houck-acquitted-federal-jury-win-pro-life-mov/>

of traditional beliefs and principals established by God over 2000 years ago and which has formed the underpinnings of Western Civilization. The government did not “discontinue a challenged practice,” but has repeated and expanded it to criminalize and harm their religious and political enemies.⁵ Clearly, “unchecked by [] litigation, the defendant’s” behavior has and will continue.⁶ If this court believes the Constitution, the Laws of this country, and legal precedent should have any meaning, I am surely entitled to retrospective AND prospective relief.

II Requested relief

¶294 of the 3AC requests the following relief for the RFRA claim,

If the court finds Claim 3 valid, then I will ask the court to award me the return of all payments of the IMP, currently \$5626.22. For prospective relief I would also ask the court to provide an injunction against the [defendants] to prevent them from imposing the IMP or any similar penalty on myself at any time in the future. If the damage to the market can be quantified at 50% or greater, I would also ask for a permanent court injunction against the defendants from imposing the IM on myself.

As the Court will not allow discovery, the damage to the market can not be determined, therefore I request a permanent injunction forbidding the government to ever impose the IM or an IMP against myself. In addition, especially since the New HHS Rules were proposed after the writing of the 3AC, I would request a permanent injunction against the defendants from including in “minimum essential coverage” or similar coverage Mandate any coverage or requirement in violation of traditional Catholic faith, such as the new HHS Rules. The Code of Cannon Law as well as a TRADITIONAL Catechism such as the one authored by Spirago as mentioned on p.7 of REPLY TO DEFENDANTS’ OPPOSITION TO PLAINTIFF’S MOTION FOR PRELIMINARY INJUNCTION (Dkt#133) should be used to determine a violation of traditional

5 *Fantasy Ranch Inc. v. City of Arlington, Tex.*, 459 F.3d 546, 564 (5th Cir. 2006)

6 *Friends of Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc.*, 528 U.S. 167, 120 S. Ct. 693, 145 L. Ed. 2d 610 (2000). p.190

Catholic principles. Otherwise, I may be exposed to the crippling costs of health care without insurance including Medicare, which is a government subsidized benefit, unless I compromise my religious beliefs.

The relief requested in the previous paragraph should be considered the minimum. Anything less is unacceptable as it will not address all the harm caused by the government for the retrospective and prospective violations of the RFRA as indicated supra. I should not be forced to accept retrospective relief alone or anything similar which is contrary to my often stated position that retrospective relief can not be separated from prospective relief.

Conclusion

For the reasons stated above I request the relief mentioned in the previous section. No relief short of BOTH retrospective and prospective relief can repair the past, present and future harm the government has and will cause. Finally, I request the defendants pay all legal costs associated with this litigation.



Certificate of Service

I certify I have on 5/30/2023 mailed a copy of the above document to the clerk of the court at:

United States District Clerk
Southern District of Texas
515 Rusk, Room 5300
Houston, TX 77002

as I do not have access to the Court's electronic filing system. I have also mailed a copy to Defendant's Counsel at:

Rebecca M. Kopplin
United States Department of Justice
Civil Division, Federal Programs Branch
1100 L Street NW
Washington, DC 20005

I have emailed a courtesy copy to the defendant's counsel at
Rebecca.M.Kopplin@usdoj.gov as well as the Case Manager for the Judge of the
Court at Arturo_Rivera@txs.uscourts.gov.



Date: 5/30/2023
John J. Dierlam
5802 Redell Road
Baytown, TX 77521
Phone: 281-424-2266

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

John J. Dierlam	§
Plaintiff	§
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versus	§
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	§
Joseph R. Biden, in his official capacity as President of the United States et. al.	§
	§
	§
Defendants	§

[Proposed] Order

Having found no genuine dispute of essential facts exist and the Plaintiff is entitled to summary judgment as a matter of law this Court GRANTS Plaintiff's Motion for Summary Judgment. The defendants are hereby enjoined from ever imposing any Individual Mandate, 26 U.S.C. § 5000A(a), or Individual Mandate Penalty as per 26 U.S.C. § 5000A(b) upon the Plaintiff. Further, this Court permanently enjoins the defendants from creating or propagating any Rule in violation of Catholic traditional teaching including the New Rules as they relate to any health care coverage. The defendant's are to pay to the Plaintiff the sum of \$5626.22 and all legal costs.

The Honorable Keith P. Ellison
United States District Judge

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