

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

THE CATHOLIC DIOCESE OF BILOXI, INC., <i>et al.</i>	§ § § § § §	PLAINTIFFS
v.		Civil No. 1:12CV158-HSO-RHW
KATHLEEN SEBELIUS, <i>et al.</i>		DEFENDANTS

**ORDER DENYING PLAINTIFFS’
MOTION TO ALTER OR AMEND THE JUDGMENT**

BEFORE THE COURT is the Motion to Alter or Amend the Judgment [64] pursuant to Federal Rule of Civil Procedure 59(e) filed on January 8, 2013, by Plaintiffs The Catholic Diocese of Biloxi, Inc., Catholic Social and Community Services, Inc., De L’Epee Deaf Center, Inc., The Catholic Diocese of Jackson, Vicksburg Catholic School, Inc., St. Joseph Catholic School, Catholic Charities, Inc., and St. Dominic-Jackson Memorial Hospital. This Motion is now fully briefed. After consideration of the parties’ submissions, the record, and relevant legal authorities, and for the reasons discussed below, the Court finds that Plaintiffs’ Motion [64] should be denied.

I. BACKGROUND

Plaintiffs filed their Complaint [1] in this Court on May 21, 2012. Defendants moved the Court to dismiss the Complaint pursuant to FED. R. CIV. P. 12(b)(1), on grounds that Plaintiffs lacked standing to pursue these claims, and that this dispute was not yet ripe for judicial review. Defs.’ Mem. in Supp. of Mot. to Dismiss [16], at pp. 11–22. In a Memorandum Opinion and Order [62] entered on

December 20, 2012, the Court determined that this dispute was not yet ripe for judicial review, granted Defendants' Motion to Dismiss [15], and dismissed this case without prejudice. The Court entered a Final Judgment [63] the same date.

Plaintiffs now ask the Court to alter or amend the Final Judgment, and related Memorandum Opinion and Order, (1) to "hold this case in abeyance pending Defendants' final promulgation of the promised regulations," and (2) to "require Defendants to file regular status reports every 60 days detailing the progress of the regulatory process," in lieu of a dismissal without prejudice. Pls.' Mem. in Supp. of Their Mot. [65], at p. 7.

II. DISCUSSION

A. Legal Standard

Under Rule 59(e), amending a judgment is appropriate (1) where there has been an intervening change in the controlling law; (2) where the movant presents newly discovered evidence that was previously unavailable; or (3) to correct a manifest error of law or fact.

Demahy v. Schwarz Pharma, Inc., 702 F.3d 177, 182 (5th Cir. 2012). Also included under the third prong of this standard is the need to "prevent manifest injustice," *In re Benjamin Moore & Co.*, 318 F.3d 626, 629 (5th Cir. 2002), which Plaintiffs' Motion implicates.

A motion under Federal Rule of Civil Procedure 59(e) "calls into question the correctness of a judgment" and "is not the proper vehicle for rehashing evidence, legal theories, or arguments that could have been offered or raised before the entry of judgment." *Templet v. HydroChem Inc.*, 367 F.3d 473, 478–79 (5th Cir. 2004) (citations omitted). "Reconsideration of a judgment after its entry is an

extraordinary remedy that should be used sparingly.” *Id.* at 479 (citation omitted).

B. Analysis

Plaintiffs request that the Court alter or amend its Final Judgment in order to prevent manifest injustice. They contend that, “[r]ather than dismiss the case in its entirety, a *more appropriate* order would: (1) hold Plaintiffs’ lawsuit in abeyance pending the issuance of the new regulations promised by Defendants, and (2) require Defendants to file with the Court regular reports concerning the status of the new regulations.” Pls.’ Mem. in Supp. of Their Mot. [65], at pp. 1–2 (emphasis added) (citing *Wheaton Coll. v. Sebelius*, 703 F.3d 551 (D.C. Cir. 2012)). According to Plaintiffs, without such an order, “there is nothing holding Defendants to the very ‘commitments’ on which their ripeness victory depends.” *Id.* at p. 3. An amended order would “protect Plaintiffs in the event that Defendants fail to deliver the promised regulations.” *Id.* at p. 5 (citing *Am. Petroleum Inst. v. EPA*, 683 F.3d 382, 389-90 (D.C. Cir. 2012)). Plaintiffs ask the Court to exercise its “considerable discretion” under Rule 59(e) to amend the Final Judgment to hold this case in abeyance, instead of dismissing it without prejudice. *Id.*, at p. 2; *see also* Pls.’ Rebuttal [71], at p. 7.

Defendants respond that Plaintiffs’ Motion “offers nothing new,” and “relies on arguments that plaintiffs either already raised or could have raised prior to the dismissal of this lawsuit for lack of subject matter jurisdiction.” Defs.’ Mem. in Opp’n to Pls.’ Mot. [69], at p. 2. They also argue that any risk of repetitive litigation is outweighed by the disadvantages of premature review, such that the cost or

burden of re-filing suit does not rise to the level of manifest injustice. *Id.* at pp. 7–8 (citations omitted). Defendants also point out that this Court “joined the overwhelming majority of courts that have accepted [their] jurisdictional arguments in similar regulatory challenges and dismissed for lack of jurisdiction.” *Id.* at p. 2 (collecting cases). They have submitted Notices of Supplemental Authority [70], [72], citing two recent district court opinions which dismissed similar actions for lack of ripeness and which expressly declined to hold these cases in abeyance, Notice [70], at p. 1 (citing *Roman Catholic Archbishop of Washington v. Sebelius*, No. 12-0815 (ABJ), 2013 WL 285599 (Jan. 25, 2013); *Most Reverend Lawrence T. Persico v. Sebelius*, No. 1:12-cv-00123-SJM, 2013 WL 228200 (W.D. Pa. Jan. 22, 2013)), and a district court opinion which dismissed a similar case for lack of jurisdiction, rather than holding it in abeyance, Notice [72], at p. 1 (citing *Archdiocese of St. Louis v. Sebelius*, No. 4:12-cv-00924-JAR, 2013 WL 328926 (E.D. Mo. Jan. 29, 2013)).

Plaintiffs could have asked this Court prior to judgment that, in the alternative, if it found that the case was not ripe for adjudication, it hold the case in abeyance. They did not do so, and Rule 59(e) is not the proper vehicle to present this new argument post judgment. *See id.* Even if it were, Plaintiffs have not identified any manifest injustice that needs to be corrected. *See* FED. R. CIV. P. 59(e). To the extent that they argue that they will suffer manifest injustice from the case being dismissed without prejudice because there is nothing requiring Defendants to “deliver the promised regulations,” Pls.’ Mem. in Supp. of Their Mot.

[65], at p. 5, the Court is not persuaded that Plaintiffs have shown that relief under Rule 59 is appropriate, *see Sossamon v. Lone Star State of Tex.*, 560 F.3d 316, 325 (5th Cir. 2009) (“Without evidence to the contrary, we assume that formally announced changes to official governmental policy are not mere litigation posturing.”). While Plaintiffs may feel that holding the case in abeyance may have been a “more appropriate” disposition, Pls.’ Mem. in Supp. of Their Mot. [65], at pp. 1–2, the Court is not persuaded that the dismissal without prejudice worked any “manifest injustice” upon Plaintiffs such as to warrant Rule 59(e) relief.

III. CONCLUSION

For the foregoing reasons, the Court finds that Plaintiffs’ Motion to Alter or Amend the Judgment should be denied.

IT IS, THEREFORE, ORDERED AND ADJUDGED that, for the reasons stated more fully herein, the Motion to Alter or Amend the Judgment [64] pursuant to Federal Rule of Civil Procedure 59(e) filed by Plaintiffs The Catholic Diocese of Biloxi, Inc., Catholic Social and Community Services, Inc., De L’Epee Deaf Center, Inc., The Catholic Diocese of Jackson, Vicksburg Catholic School, Inc., St. Joseph Catholic School, Catholic Charities, Inc., and St. Dominic-Jackson Memorial Hospital, on January 8, 2013, is **DENIED**.

SO ORDERED AND ADJUDGED, this the 15th day of February, 2013.

s/ Halil Suleyman Ozerden

HALIL SULEYMAN OZERDEN
UNITED STATES DISTRICT JUDGE