IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

ROMAN CATHOLIC DIOCESE OF FORT WORTH	§	
VS.	§	CIVIL ACTION NO. 4:12-CV-314-Y
KATHLEEN SEBELIUS, et al.	§	

ORDER DENYING MOTION TO RECONSIDER
OR, ALTERNATIVELY, TO CERTIFY FOR IMMEDIATE APPEAL

Before the Court is Defendants' Motion for Reconsideration or, Alternatively, for Certification Under 28 U.S.C. § 1292(b) Permitting Immediate Appeal (doc. 47). Defendants bring their motion for reconsideration under Federal Rule of Civil Procedure 59(e), which allows a party to "call[] into question the correctness of a judgment." *In re Transtexas Gas Corp.*, 303 F.3d 571, 581 (5th Cir. 2002). "Rule 59(e) serves the narrow purpose of allowing a party to correct manifest errors of law or fact or to present newly discovered evidence." *Templet v. HydroChem Inc.*, 367 F.3d 473, 479 (5th Cir. 2004) (quoting *Waltman v. Int'l Paper Co.*, 875 F.2d 468, 473 (5th Cir. 1989)). Therefore, "such a motion is not the proper vehicle for rehashing evidence, legal theories, or arguments that could have been offered or raised before the entry of judgment." *Id.* (citing *Simon v. United States*, 891 F.2d 1154, 1159 (5th Cir. 1990)).

With these principles in view, the Court concludes that Defendants have not given the Court an adequate reason to reconsider its January 31, 2013 Order Denying Motion to Dismiss (doc.

43). First, Defendants have not shown that the Court's January 31 order is the product of manifest errors of law. To the contrary, Plaintiff's motion acknowledges that the Fifth Circuit has not conclusively resolved the specific standing and ripeness issues presented in this case and that there does not exist complete uniformity among the lower district courts on those issues. Second, Plaintiff has not shown the presence of any manifest errors of fact in the January 31 order. Indeed, the Court made no factual findings in the January 31 order because Defendants raised only a facial challenge to Plaintiff's complaint. Finally, Defendants have not proffered any newly discovered evidence mitigating in favor of reconsideration. Although a notice of proposed rulemaking ("NPRM") has been issued since the January 31 order, the Court is not persuaded that the NPRM requires altering or amending the January 31 order, especially given that an advanced notice of proposed rulemaking had been issued at the time of the order. Despite Defendants' vigorous disagreement with the Court's position, the Court is not persuaded that its January 31 order should be altered or amended.

Turning to Defendants' alternative request, the Court concludes that it should not exercise its discretion under 28 U.S.C. § 1292(b) to certify the January 31 order for immediate interlocutory appeal. Under § 1292(b), a district court has the discretion to certify an otherwise unappealable interlocutory order

for immediate appeal if the "order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation." 28 U.S.C.A. § 1292 (West 2013). But Defendants do not challenge the January 31 order's purely legal conclusions concerning the doctrines of standing and ripeness or the legal tests to be employed in carrying out those doctrines. Rather, Defendants quarrel with the Court's application of those doctrines and legal tests to the subject regulations and the facts alleged in Plaintiff's complaint.

This does not strike the Court as a proper basis for certifying an order under § 1292. Certification for immediate appeal should not happen as a matter of course, but only in exceptional cases. *See Clark-Dietz & Associates-Engineers, Inc. v. Basic Construction Company*, 702 F.2d 67, (5th Cir. 1983) ("Section 1292(b) appeals are exceptional."). And in the Court's view, the instant case is not exceptional. The Court therefore declines to exercise its discretion to certify the January 31 order for immediate appeal.

Accordingly, Defendants' motion to reconsider or, alternatively, to certify for immediate appeal under § 1292(b) is DENIED.

SIGNED June 7, 2013.

Terry R. Means

TERRY R. MEANS
UNITED STATES DISTRICT JUDGE

TRM/dc