

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN**

LEGATUS, et al.,)
)
Plaintiffs,) Case No.: 2:12-cv-12061-RHC-MJH
v.)
) Judge Robert H. Cleland
KATHLEEN SEBELIUS, et al.,)
) Magistrate Judge Michael Hluchaniuk
Defendants.)
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_____)

**PLAINTIFF LEGATUS’ OPPOSITION TO MOTION FOR A STAY OF
ALL DEADLINES AND MOTION FOR TEMPORARY RESTRAINING
ORDER**

1. On October 1, 2013, Defendants moved to stay all briefing deadlines ordered by this Honorable Court on August 28, 2013, (Doc. #68), for an indefinite amount of time “until Congress has restored appropriations to the Department.”
2. Plaintiff Legatus reasonably explained to Defendants that there would be no opposition to a stay, if Defendants would agree not to impose the regulations at issue in Plaintiff’s Motion for Preliminary Injunction, (Doc. # 68), until after the stay is lifted and the Court has a reasonable amount of time to issue its decision on Plaintiff’s motion.
3. Defendants oppose any stipulation for temporary relief and seek to halt their defense of the mandate, without halting the mandate itself.

If Defendants' request for a stay is granted without a corresponding stay of the mandate, the regulations Plaintiffs challenge will continue to be enforced, and Plaintiffs will face government sanction without an opportunity to be heard. This is contrary to our entire system of justice.

4. Due to Defendants' unreasonable position, which would both disturb the existing expedited briefing schedule rendering it exceedingly more difficult for the Court to prepare its decision on Plaintiff's Preliminary Injunction, (Doc. # 68) and which would disturb the status quo by *ipso facto* causing the enforcement of the Mandate on Plaintiff Legatus while prohibiting any opposition, Plaintiff Legatus has no choice but to oppose the Defendants' motion. A stay of Plaintiff's case without a corresponding temporary restraining order prejudices Plaintiff and may even directly subject Plaintiff to irreparable harm should the Mandate be implemented prior to a decision on Plaintiff's motion being made.

5. Therefore, Plaintiff Legatus moves for a temporary restraining order for the reasons articulated in (Doc. #68) until such time as Defendants are ready to defend Plaintiff's motion and the Court is allowed the necessary time to render its decision on Plaintiff's motion.

6. Defendants argue that they cannot defend Plaintiff's Motion for Preliminary Injunction as it does not involve "emergencies involving the safety of human life or the protection of property." 31 U.S.C. § 1342.

7. This seriously undermines any claim that the Mandate advances a “compelling interest” to the safety of women, as it is not “essential” to even defend.

8. Furthermore, 43 Op. Atty. Gen. 293 (Jan. 16, 1981) clarifies, that in 1950 Congress broadened its definition of an emergency under 31 U.S.C. § 1342 by replacing “a need to show absolute necessity” with only “a showing of reasonable necessity in connection with the safety of human life or the protection of property in general.” *Id.* at 19-20.

9. Since the Defendants do not believe defending the Mandate involves a “reasonable necessity in connection with the safety of human life or the protection of property in general” during the indefinite amount of time “until Congress has restored appropriations to the Department,” then the Court should accept this concession and enter the temporary restraining order.

Respectfully submitted this 1st day of October, 2013.

Attorneys for Plaintiffs:

THOMAS MORE LAW CENTER

s/ Erin Mersino

Erin Mersino, Esq. (P70886)
24 Frank Lloyd Wright Blvd.
P.O. Box 393
Ann Arbor, MI 48106
(734) 827-2001

CERTIFICATE OF SERVICE

I hereby certify that on October 1, 2013, a copy of the foregoing was filed electronically. Notice of this filing will be sent to all parties for whom counsel has entered an appearance by operation of the Court's electronic filing system. Parties may access this filing through the Court's system. I certify that a copy of the foregoing has been served by ordinary U.S. Mail upon all parties for whom counsel has not yet entered an appearance electronically: None

THOMAS MORE LAW CENTER

s/ Erin Mersino

Erin Mersino, Esq. (P70886)

CONTROLLING AUTHORITY

43 Op. Atty. Gen. 293 (Jan. 16, 1981)

31 U.S.C. § 1342

Religious Freedom Restoration Act of 1993 (“RFRA”), 107 Stat. 1488, as amended, 42 U.S.C. § 2000bb *et seq.*

Church of Lukumi Babalu Aye, Inc. v. City of Hialeah, 508 U.S. 520 (1993)

Elrod v. Burns, 427 U.S. 347 (1976)

Sherbert v. Verner, 374 U.S. 398 (1963)

Wisconsin v. Yoder, 406 U.S. 205 (1972)

Geneva College v. Sebelius, Case No. 2: 12-207, slip op. (W.D. Penn June 18, 2013)

ISSUE PRESENTED

I. Whether the Court should enter a Temporary Restraining Order until a decision can reasonably be rendered in order to prevent prejudice and irreparable harm to Plaintiff Legatus when the Defendants plan on implementing the Mandate and the delay is due to Defendants not defending the Mandate pursuant to this Court's August 28, 2013 order?

Plaintiffs answer: "Yes."

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**PLAINTIFF LEGATUS’ BRIEF IN SUPPORT OF MOTION FOR
TEMPORARY RESTRAINING ORDER**

In light of Defendants’ concessions and inability to defend Plaintiff’s Motion for Preliminary Injunction, but refusal to cease implementation of the Mandate against Plaintiff Legatus, it is appropriate to enter a temporary restraining order until the Defendants are able to brief an opposition and the Court is able to render its decision on Plaintiff’s Motion for Preliminary Injunction.

LR 65.1 and Fed. R. Civ. P. 65(b)(1) authorizes a Temporary Injunction to be entered. “The factors to be weighed before issuing a TRO are the same as those considered for issuing a preliminary injunction. *Monaghan v. Sebelius*, Case No. 2:12-cv-15488 (Dec. 30, 2012) (quoting *Workman v. Bredesen*, 486 F.3d 896, 904–05 (6th Cir. 2007)). Plaintiffs rely on the arguments and law articulated in their

Motion for Temporary Restraining Order, as well as their Motion for Preliminary Injunction filed on September 20, 2013, (Doc. #68).

Respectfully submitted this 1st day of October, 2013.

Attorneys for Plaintiffs:

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