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Coons v. Geithner - U.S. Motion to Stay Plaintiffs' Motion for Summary Judgement

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Nick Coons; et al., Plaintiffs, vs. Timothy Geithner; et al., Defendants	Case No.: CV-10-1714-PHX-GMS **DEFENDANTS' MEMORANDUM IN SUPPORT OF MOTION TO STAY AND IN OPPOSITION TO PLAINTIFFS' MOTION TO TREAT THE MOTION TO DISMISSAS A MOTION FOR SUMMARY JUDGMENT**

Defendants moved to dismiss this case in its entirety for lack of jurisdiction on May 31, 2011. That motion remains pending. If this Court grants it in full, this case will never reach the merits, and motions for summary judgment would be unnecessary. On

the other hand, if this Court were to deny the motion to dismiss, defendants would seek jurisdictional discovery. Either way, then, considerations of judicial economy and efficiency strongly suggest that motions for summary judgment should be filed only *after* this Court decides the motion to dismiss.

Nevertheless, instead of waiting for this Court to resolve the threshold jurisdictional issues presented in the motion to dismiss, plaintiffs have moved for summary judgment. And they have asked this Court to convert defendants' pending motion to dismiss into a motion for summary judgment. As explained in more detail below, this Court should stay plaintiffs' motion for summary judgment pending its decision on the motion to dismiss and, if this Court denies the motion to dismiss, pending the completion of any discovery. And it should deny plaintiffs' motion to convert the motion to dismiss into a motion for summary judgment.

BACKGROUND

On August 8, 2010, plaintiffs—Nick Coons, U.S. Representatives Trent Franks, Jeff Flake, and John Shadegg, and more than two dozen Arizona state legislators—sued defendants Timothy Geithner, Kathleen Sebelius, Eric Holder, and Barack Obama. Compl., ECF No. 1. More than three months later (nearly eight months after the Affordable Care Act was passed), plaintiffs sought an emergency preliminary injunction from this Court declaring a provision of the ACA unconstitutional. Pls.' Mot. For Prelim. Inj., ECF No. 26. On March 8, 2011, nearly two months after briefing was completed, plaintiffs decided to withdraw the motion for a preliminary injunction. Pls.' Mot. to

Withdraw Prelim. Inj., ECF No. 33. An amended complaint, which dropped the state legislators from the case, followed three days later. Am. Compl., ECF No. 35.

Defendants then moved to dismiss on April 18, 2011. Mot. to Dismiss, ECF No. 38. Instead of responding to the motion to dismiss, plaintiffs amended their complaint again on May 10, more than eight months after the lawsuit was originally filed, adding a new plaintiff. Second Am. Compl., ECF No. 41. Defendants filed a renewed motion to dismiss the third version of the complaint on May 31. Second Mot. to Dismiss, ECF No. 42. On June 20, instead of simply opposing the motion to dismiss, plaintiffs, citing the need to "conserv[e] judicial and the parties' resources," (1) responded to defendants' motion to dismiss, (2) moved for summary judgment, and (3) moved under Federal Rule of Civil Procedure 12(d) to convert defendants' motion to dismiss into a motion for summary judgment. ECF Nos. 48-50. Defendants' reply in support of the motion to dismiss is due on July 5. *See* Order, Mar. 17, 2011, ECF No. 37. Absent a stay, defendants' opposition to plaintiffs' motion for summary judgment would be due on July 20. *See* Local Rule 56.1(d).

ARGUMENT

This Court has inherent authority to "control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). As explained below, the fundamental jurisdictional issues that defendants have raised in their motion to dismiss, as well as interests of efficiency and judicial economy, make it appropriate for the Court to resolve defendants' motion to dismiss before beginning proceedings on plaintiffs' motion for

summary judgment.[1]

First, defendants have challenged every count of plaintiffs' complaint on threshold jurisdictional grounds. These questions must be resolved before any proceedings on the merits. *See Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94 (1998) ("Without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause.") (quoting *Ex parte McCardle*, 74 U.S. (7 Wall.) 506, 514 (1869)); *Newdow v. Lefevre*, 598 F.3d 638, 645 (9th Cir. 2010) ("After *Steel Co.*, a court cannot . . . address the merits of a case without ensuring it has jurisdiction over the case."). A decision in defendants' favor on the motion to dismiss would therefore render moot plaintiffs' motion for summary judgment or, at a minimum, focus any remaining issues. Because defendants' motion has requested relief that would put an end to the litigation, requiring the parties and the Court to address plaintiffs' summary judgment motion at this time, including preparation of opposition papers and argument, would result in a waste of the Court's and the parties' resources.

For this and related reasons, courts routinely defer consideration of motions for summary judgment while dispositive motions to dismiss remain pending. *See, e.g.*, *Ticor Title Ins. Co. v. FTC*, 625 F. Supp. 747, 749 n.2 (D.D.C. 1986) (holding in abeyance plaintiff's motion for summary judgment "pending resolution of threshold questions of

[1] Although defendants were aware of the possibility that plaintiffs would file a motion for summary judgment, defendants expressly stated in their March 16 motion to set a briefing schedule that "it is possible defendants will move to stay proceedings on the summary judgment motion pending this Court's resolution of the motion to dismiss." Defs.' Mot. to Set Briefing Schedule 2 n.1, ECF No. 36.

jurisdiction and justiciability"); *see also, e.g.*, *Pub. Citizen, Inc. v. Bomer*, 274 F.3d 212, 216 n.3 (5th Cir. 2001) (noting that district court stayed defendant's summary judgment response pending ruling on motion to dismiss); *Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wis. v. Salazar*, No. 08-CV-659-bbc, 2009 WL 2029790, at *1 (W.D. Wis. July 8, 2009) (noting that briefing on plaintiff's motion for summary judgment had been stayed pending resolution of defendants' motion to dismiss); *Hill v. Chalanor*, No. 9:06-CV-438, 2008 WL 907363, at *1 n.1 (N.D.N.Y. Mar. 31, 2008) ("[S]uch a decision makes sense because, if the Court were to grant Defendants' renewed motion to dismiss, [it] would moot Plaintiff's renewed motion for summary judgment."); *Ramirez v. Meli*, No. 04-C-0786-C, 2005 WL 984365, at *1 (W.D. Wis. Apr. 27, 2005) ("[U]ntil this court determines whether the claims raised in plaintiff's motion for partial summary judgment will survive defendants' motion to dismiss, it is reasonable to stay briefing on the motion."); *Hamrick v. Farmers Alliance Mut. Ins. Co.*, No. 03-4202, 2004 WL 723649, at *1 (D. Kan. March 11, 2004) ("[I]t is in the interest of judicial economy to defer briefing and determination of plaintiff's summary judgment motion until such time as the Court determines the jurisdictional issue raised in the motions to dismiss.").

Courts have done the same in Affordable Care Act cases. *See, e.g.*, Order Re: Stay of Briefing on Mot. for Summ. J., *Bellow v. HHS*, No. 1:10-cv-00165 (E.D. Tex. Mar. 15, 2011), ECF No. 20 ("Before this Court can exercise any authority to rule on the plaintiff's request for judgment, it is logical that the Court must resolve the issues presented in the motion to dismiss and determine whether the plaintiff has standing to bring suit in this federal court in the first place and whether this Court consequently has

jurisdiction over the proceeding."); Mem. Op., *Mead v. Holder*, No. 10-00950-GK, (D.D.C. Sept. 8, 2010), ECF No. 20 ("There can be no question that it is more logical and efficient for the Court to rule on Defendants' Motion to Dismiss before ruling on Plaintiffs' Motion for Summary Judgment. If the Court has no jurisdiction, then it would be a waste of everyone's time and resources to have concurrent briefing on both Motions."). Indeed, even in *Virginia* and *Florida*, upon which plaintiffs rely upon heavily, summary judgment motions were filed only after those courts had ruled on motions to dismiss.

Second, if this Court concludes that it has jurisdiction and denies the motion to dismiss, defendants will wish to seek jurisdictional discovery. Plaintiff Coons, for example, says that he "wish[es] to spend [his] financial resources for at least the next ten years on growing [his] small business," that the minimum coverage provision will require him to purchase insurance "which exceeds coverage that [he] need[s] and requires [him] to pay for services [he] may never use," and that he does "not otherwise qualify for exemption or waiver from the" minimum coverage provision. Coons Decl. at 2-3, ECF No. 50-1. But Coons provides no specific facts to support these vague and conclusory assertions. Without any specific facts—such as the nature of Coons' current employment, a description of his "financial resources," and his income and expenses—it is impossible to determine whether Coons will actually be subject to the minimum coverage provision when it takes effect in 2014.

Plaintiffs' approach of placing summary judgment before a motion to dismiss would therefore skew the course of this litigation in inappropriate ways. Rather than

having the Court rule on defendants' motion to dismiss, which would eliminate (or at a minimum narrow) the issues remaining in the litigation, defendants are forced to decide, at the present, whether they are able to respond to plaintiffs' motion for summary judgment or whether additional facts to be elicited through jurisdictional discovery are necessary to respond to that motion. *See* Fed. R. Civ. P. 56(f). Defendants, of course, believe that the second amended complaint is subject to dismissal on its face for the reasons stated in their motion to dismiss. But defendants should not at this time be forced to choose between undertaking discovery that will prove to be unnecessary if the Court grants their motion to dismiss and relinquishing any ability to take discovery in the event the Court does not entirely dismiss the Complaint. Thus, requiring defendants to respond to plaintiffs' motion for summary judgment before the Court has ruled on defendants' motion to dismiss would result in significant prejudice to defendants. On the other hand, deferring litigation of plaintiffs' motion for summary judgment until after a ruling on defendants' motion to dismiss would not prejudice plaintiffs, particularly because the protracted delays and the need for repeated filings in this litigation have been of plaintiffs' own making.[2]

This Court should also deny plaintiffs' motion to convert defendants' motion to dismiss into a motion for summary judgment. Plaintiffs object to consideration on a motion to dismiss of "numerous publications and surveys containing argument, opinion and purported statistics." Pls.' Mot. to Treat Mot. to Dismiss as Mot. for Summ. J. 2,

[2] If briefing were to proceed on plaintiffs' motion for summary judgment, defendants would likely need to seek an enlargement of the page limits and respectfully reserve the right to request such an enlargement.

ECF No. 48. But it is uncontroversial that this Court may take judicial notice of matters in the public record—such as the documents cited in defendants' motion to dismiss—without converting the motion to dismiss into one for summary judgment. *See Daniels-Hall v. Nat'l Educ. Ass'n*, 629 F.3d 992, 998-99 (9th Cir. 2010) ("[C]ourts ruling on 12(b)(6) motions to dismiss may take into consideration 'matters of which a court may take judicial notice'") (citing *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007)); *see also Coit v. Biltmore Bank*, No. CV-10-0382, 2010 WL 2036563, at *1 (D. Ariz. May 19, 2010) ("[M]atters of public record are the proper subject of judicial notice.") (internal citation omitted); *see also Anheuser-Busch, Inc. v. Schmoke*, 63 F.3d 1305, 1312 (4th Cir. 1995) ("For purposes of Rule 12(b)(6), the legislative history of an ordinance is not a matter beyond the pleadings but is an adjunct to the ordinance which may be considered by the court as a matter of law."), *vacated and remanded on other grounds*, 517 U.S. 1206 (1996) (mem.).

Indeed, plaintiffs' own cases confirm this point. *See Lazy Y Ranch Ltd. v. Behrens*, 546 F.3d 580, 588 (9th Cir. 2008) ("Defendants contend the district court abused its discretion in striking their exhibits because the exhibits were either referenced in the complaint, *or judicially noticeable*. Defendants appear correct . . .") (emphasis added); *Kanelos v. County of Mohave*, 2011 WL 587203, at *2 (D. Ariz. Feb. 9, 2011) (Snow, J.) ("The Court may, however, consider documents that are attached to the relevant pleading as exhibits *or are 'referenced extensively' in the pleading and*

'*accepted by all parties as authentic.*'") (emphasis added).[3]

CONCLUSION

Whatever the result on defendants' motion to dismiss, judicial economy would be served by staying plaintiffs' motion for summary judgment. Defendants therefore respectfully request such a stay pending a decision on the motion to dismiss and, if this Court denies the motion to dismiss, pending the completion of any discovery. Defendants also respectfully request that the Court deny plaintiffs' motion to convert the motion to dismiss into a motion for summary judgment.

DATED: June 23, 2011

Respectfully submitted,

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[3] Plaintiffs may take issue with the statistics and arguments contained within the documents that defendants cite, but this is irrelevant. "[C]ourts are not to scrutinize Congress's conclusions closely[]" but instead determine whether Congress had a "rational basis" for determining that the regulated activities "taken in the aggregate, substantially affect interstate commerce . . . ." *United States v. Stewart*, 451 F.3d 1071, 1075 (9th Cir. 2006) (internal citation and quotation marks omitted). The documents cited by defendants establish that Congress had a rational basis to conclude that the practice of obtaining health care without paying for it substantially affects interstate commerce. It is therefore the existence of the documents themselves that matters for purposes of the Commerce Clause analysis. *Cf. Lazy Y Ranch*, 546 F.3d at 588 (suggesting that consideration of extraneous materials was proper "because [defendants] do not offer the extraneous documents for their truth, but to show their articulated rationales for denying Lazy Y the leases"). As plaintiffs do not contend that the documents are inauthentic, the documents may be considered on a motion to dismiss.

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CERTIFICATE OF SERVICE

I hereby certify that on June 23, 2011, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF system for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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