

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 01-B-1854

LAWRENCE GOLAN, et. al.,

Plaintiffs,

v.

JOHN ASHCROFT, in his official
capacity as Attorney General of the
United States,

Defendant.

MOTION FOR A PROTECTIVE ORDER STAYING DISCOVERY

Preliminary Statement

Pursuant to Federal Rule of Civil Procedure 26(c), the government respectfully moves the Court for a protective order staying discovery in this action pending the resolution of the government's motion for summary judgment [Docket #35].¹ Because the motion for summary judgment will, if granted, dispose of this lawsuit in its entirety, a stay of discovery until the motion is resolved will protect the parties against needless expenditure of time, money, and resources. Even if the motion for summary judgment is only partially granted, that areas of potential discovery will be narrowed, thereby preventing inefficient use of resources on discovery that later becomes irrelevant. This is particularly true given that no factual discovery

¹ In the alternative, the government requests an extension of 30 days in which to respond to Plaintiffs' discovery requests.

is needed in order to resolve the questions presented by the motion for summary judgment.

Issuing a temporary stay pending the resolution of the government's motion for summary judgment is well within this Court's powers under Federal Rule of Civil Procedure 26. Courts routinely stay discovery in situations such as this, and Plaintiffs would not be prejudiced by the requested stay. In advance of filing this motion, counsel for Defendant consulted with counsel for Plaintiffs regarding this motion. Counsel for Plaintiffs, Carolyn Fairless, has indicated that Plaintiffs do not consent to this motion.

Background

Plaintiffs have brought this action alleging that §514 of the Uruguay Round Agreements Act is unconstitutional. Specifically, Plaintiffs allege that the Constitution does not empower Congress to enact such legislation, and that the Act violates the First Amendment and the Due Process Clause of the Fifth Amendment. On June 22, 2004, the government moved for summary judgment.² On July 7, 2004, Plaintiffs served on Defendant a set of interrogatories, which, absent action from the Court, is returnable on August 9, 2004. On July 9, 2004, Plaintiffs served on Defendant a set of document requests, which, absent action from the Court, is returnable on August 11, 2004. As a result, the government seeks a protective order staying Defendant's obligation to respond substantively to these requests pending the Court's resolution of the motion for summary judgment.

² Plaintiffs have moved to delay responding to the motion for summary judgment under Federal Rule of Civil Procedure 56(f). See Docket #37.

Argument

Federal courts have broad authority pursuant to Federal Rule of Civil Procedure 26(c) to limit discovery as necessary to “protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.” Fed. R. Civ. P. 26(c). In recognition of this authority, the Supreme Court has directed that “judges should not hesitate to exercise appropriate control over the discovery process.” Herbert v. Lando, 441 U.S. 153, 177 (1979). See also Schwarz v. Federal Bureau of Investigation, 1998 WL 667643, *3 (10th Cir. 1998) (unpublished) (noting district courts’ “broad discretion to manage the scope of discovery”); Chagnon v. Bell, 642 F.2d 1248, 1266 (D.C. Cir. 1980) (district court should stay discovery where doing so would promote “just, speedy, and inexpensive determination” of action). As a result, courts of appeals routinely hold that it is appropriate to stay discovery where a dispositive motion is pending and where, as here, the dispositive motion raises purely legal issues, for which factual development is inappropriate. See, e.g., Diaz v. Paul J. Kennedy Law Firm, 289 F.3d 671, 674 (10th Cir. 2002) (stay of discovery appropriate because Plaintiffs did not persuade the Court that discovery was necessary in order to respond to the motion for summary judgment); Petrus v. Bowen, 833 F.2d 581, 583 (5th Cir. 1987) (courts should exercise their “broad discretionary and inherent power to stay discovery until preliminary questions which may dispose of the case are determined”); Transunion Corp. v. Pepsico, 811 F.2d 127, 130 (2d Cir. 1987) (stay of discovery appropriate where discovery was unnecessary to resolving the pending dispositive motion); Jarvis v. Regan, 833 F.2d 149, 155 (9th Cir. 1987) (discovery appropriate only as necessary to resolve factual

disputes raised in pending dispositive motion; all other discovery properly stayed); Feist v. Jefferson County Commissioners Court, 778 F.2d 250, 252 (5th Cir. 1985) (affirming district court decision to stay discovery until it could be determined whether the plaintiff stated a claim upon which relief could be granted); Florsheim Shoe Co. v. United States, 744 F.2d 787, 797 (Fed. Cir. 1984) (holding that, where a motion to dismiss raises questions of law, discovery is “not necessary or appropriate,” and a stay of discovery is proper).

Here, the reasons for staying discovery are straightforward. The government’s motion for summary judgment argues that this lawsuit advances a purely legal challenge to the validity of §514 of the URAA. See Gov’t MSJ, Docket #36. This is further explained in the government’s opposition to Plaintiffs’ Rule 56(f) motion. See Docket #41. The Court can resolve the pending motion for summary judgment by reference to the parties’ legal arguments, filed in their legal briefs. There are no relevant facts to establish; therefore no discovery is necessary. See Persons v. Runyon, 1999 WL 104427, *3 (10th Cir. 1999) (unpublished) (holding that discovery is inappropriate where legal issues determine the outcome of the lawsuit).

Should the government’s motion for summary judgment be granted, no discovery will be necessary, and the proposed stay will have spared the parties an unnecessary expenditure of time, money, and resources. Even if certain of Plaintiffs’ arguments were to survive the motion for summary judgment, good cause would exist for staying discovery now, because the ruling on the motion for summary judgment would narrow the issues in this case and thereby limit the scope of permissible discovery.

Conclusion

For the foregoing reasons, this Court should stay all discovery pending resolution of the government's motion for summary judgment.

Dated: August 5, 2004

Respectfully submitted,

PETER D. KEISLER
Assistant Attorney General

JOHN W. SUTHERS
United States Attorney

VINCENT M. GARVEY
Deputy Branch Director

JOSHUA Z. RABINOVITZ
Trial Attorney
United States Department of Justice
Civil Division, Room 7340
20 Massachusetts Ave, NW
Washington D.C. 20530
(202) 353-7633
(202) 616-8470, facsimile

Counsel for Defendant

Certificate of Service

I certify that, on August 5, 2004, I caused a copy of the foregoing Motion for a Protective Order Staying Discovery to be served by first-class mail, postage prepaid, upon counsel at the following address:

Carolyn Fairless, Esq.
WHEELER TRIGG KENNEDY LLP
1801 California Street, Suite 3600
Denver, CO 80202

Joshua Z. Rabinovitz