

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CHAVIES <i>et al.</i> ,	:	CIVIL ACTION
Plaintiffs,	:	NO. 13-1645
	:	
v.	:	
	:	
CATHOLIC HEALTH EAST <i>et al.</i>	:	
Defendants.	:	

ORDER

AND NOW, this 28th day of March, 2014, upon consideration of Defendants’ Motion to Dismiss (Dkt. No. 33), Plaintiffs’ Motion to Strike (Dkt. No. 36), the parties subsequent responses, and the arguments made before the Court during oral argument on March 25, 2014 it is hereby ORDERED that the Motions are DENIED WITHOUT PREJUDICE.

It is further ORDERED that the parties shall have 120 days from the date of this order to take jurisdictional discovery on the issue of whether Catholic Health East is a “church,” pursuant to 29 U.S.C. § 1002(33)(A).¹ Upon completion of discovery, moving Defendants are free to re-

¹ Defendants moved to dismiss the Complaint under Rule 12(b)(1). Such challenges fall into two categories: facial and factual challenges. Defendants have made a “factual attack” as to the Court’s jurisdiction to hear this case. It is well-settled that:

Because at issue in a factual 12(b)(1) motion is the trial court's jurisdiction--its very power to hear the case--there is substantial authority that the trial court is free to weigh the evidence and satisfy itself as to the existence of its power to hear the case. In short, no presumptive truthfulness attaches to plaintiff's allegations, and the existence of disputed material facts will not preclude the trial court from evaluating for itself the merits of jurisdictional claims. Moreover, the plaintiff will have the burden of proof that jurisdiction does in fact exist.

Mortensen v. First Fed. Sav. & Loan Ass’n, 549 F.2d 884, 891 (3d Cir. 1977).

Under rule 12(b)(1), a “[f]actual evaluation may occur at any stage of the proceedings, from the time the answer has been served until after the trial has been completed.” *Id.* at 891. For the court to avail itself of its right to hear this matter, jurisdictional discovery is warranted. *Prakash v. American Univ.*, 727 F.2d 1174, 1179-80 (D.C.Cir.1984) (“When subject matter jurisdiction is questioned, the court must, of course, satisfy itself of its authority to hear the case, and in so doing, it may resolve factual disputes. The court

challenge subject matter jurisdiction on this basis via another motion to dismiss or a motion for summary judgment.

BY THE COURT:

/s/ C. Darnell Jones, II

C. DARNELL JONES II J.

has considerable latitude in devising the procedures it will follow to ferret out the facts pertinent to jurisdiction, and normally it may rely upon either written or oral evidence. The court must, however, afford the nonmoving party ‘an ample opportunity to secure and present evidence relevant to the existence of jurisdiction.’ ”)