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U.S. DISTRICT COURT
N.D. OF ALABAMA

Exhibit 1 to Motion to Intervene

Intervenors' Complaint

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

STATE OF ALABAMA, by and through Luther Strange, Attorney General of the State of Alabama, LUTHER STRANGE, in his official capacity as Attorney General of the State of Alabama, *Plaintiffs-Intervenors*,	)	
ETERNAL WORD TELEVISION NETWORK, INC. *Plaintiff*,	)	2:12-cv-00501-SLB
v.	)	
KATHLEEN SEBELIUS, Secretary of the United States Department of Health and Human Services, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, HILDA SOLIS, Secretary of the United States Department of Labor, UNITED STATES DEPARTMENT OF LABOR, TIMOTHY GEITHNER, Secretary of the United States Department of the Treasury, and UNITED STATES DEPARTMENT OF THE TREASURY, *Defendants*.	)	

INTERVENORS THE STATE OF ALBAMA AND ATTORNEY GENERAL LUTHER STRANGE'S COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Intervenors, the State of Alabama and its Attorney General, Luther Strange, in his official capacity, (hereinafter "the State") submits its complaint against the Defendants. The State requests that the Court declare the Defendants' Final Rules, Group Health Plans and Health Insurance Issuers Relating to Coverage of Preventive Services Under the Patient Protection and Affordable Care Act, (the "Mandate"), to be in violation of the First Amendment of the U.S. Constitution and of the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb et seq. ("RFRA"), and the State requests that the Court enjoin application and enforcement of the Mandate.

The Mandate was promulgated pursuant to the Patient Protection and Affordable Care Act, Public Law 111-148 and the Health Care and Education Reconciliation Act of 2010, Public Law 111-152 (collectively, the "Affordable Care Act" or "ACA").

Jurisdiction and Venue

1. The Court has subject-matter jurisdiction pursuant to 28 U.S.C. § 1331 because this action arises under the Constitution and laws of the United States. The Court may render declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201 and 2202 and 42 U.S.C. § 2000b et seq.

2. Venue is proper in this district pursuant to 28 U.S.C. § 1391(e)(1)(C) because the Defendants are officers and agencies of the United States acting in their official capacities, the Plaintiff Eternal Word Television Network, Inc. ("EWTN") has its principal place of business in this district, and there is no real property involved in this action.

Parties

3. Intervenor the State of Alabama is a sovereign State of the United States of America. The State of Alabama has the responsibility to protect the rights, including the religious freedom rights, of the organizations and individuals that reside within its borders or are organized under its laws.

4. Intervenor Attorney General Luther Strange, in his official capacity as the Attorney General of the State of Alabama, is authorized to bring this action on behalf of the State and office.

5. Plaintiff EWTN is an Alabama corporation organized under section 501(c)(3) of the Internal Revenue Code, with its principal operations located in Jefferson County, Alabama.

6. Defendant Secretary Kathleen Sebelius is the Secretary of the U.S. Department of Health and Human Services, and is responsible for promulgation of the Mandate, and other regulations relating to the ACA.

7. Defendant U.S. Department of Health and Human Services is an agency of the United States of America, and is responsible for promulgation of the Mandate, and other regulations relating to the ACA.

8. Defendant Secretary Hilda Solis is the Secretary of the U.S. Department of Labor, and is responsible for promulgation of the Mandate, and other regulations relating to the ACA.

9. Defendant U.S. Department of Labor is an agency of the United States of America, and is responsible for promulgation of the Mandate, and other regulations relating to the ACA.

10. Defendant Secretary Timothy Geithner is the Secretary of the U.S. Department of Treasury, and is responsible for promulgation of the Mandate, and other regulations relating to the ACA.

11. Defendant U.S. Department of Treasury is an agency of the United States of America, and is responsible for promulgation of the Mandate, and other regulations relating to the ACA.

Nature of the Action

12. Plaintiff EWTN brought this action to maintain its right to subscribe to insurance coverage for its employees that is consistent with the teachings, beliefs, and religious practices of the Catholic Church.

13. EWTN is the largest Catholic media network in the world, and transmits programming via television, radio, the internet, and other mediums, to millions of people in at least 144 countries and territories. Doc. 1 at 6. EWTN "is dedicated to the advancement of truth as defined by the Magisterium of the Roman Catholic Church. The mission of [EWTN] is to serve the orthodox belief and

teaching of the Church as proclaimed by the Supreme Pontiff and his predecessors." *Id.* at 7.

14. EWTN has the inculcation of religious values as one of its purposes, but this is not the sole purpose. EWTN does not primarily employ persons who share its religious tenets. EWTN does not primarily serve persons who share its religious tenets. EWTN is not a nonprofit organization as described in section 6033(a)(1) and section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code of 1986, as amended.

15. Among the teachings and beliefs of the Catholic Church, which EWTN's mission is to serve and promote, is that contraception and sterilization are sins, and that contraception and sterilization violate the teachings that each human being bears the image and likeness of God and that all human life is sacred and precious from the moment of conception. Doc. 1 at 7. Also among these teachings and beliefs is that abortion is a grave sin. *Id.*

16. Food and Drug Administration ("FDA") approved contraceptive methods include abortifacients such as prescription drugs known as the "morning after pill" or the "week after pill." Abortifacients are substances that induce abortion by, for example, preventing implantation of an embryo on the wall of the uterus, or removing an implanted embryo from the uterine wall. The FDA-approved contraceptive methods also include intrauterine devices ("IUDs"), which induce abortion in the same manner as abortifacient prescription drugs.

17. Alabama's Constitution, laws, and public policy recognize EWTN's right, and the right of all Alabama organizations and individuals, to subscribe to insurance coverage for themselves and their employees that is consistent with their religious beliefs.

18. Indeed, Alabama's government and people have a long tradition of respect for religious freedom and the right to conscience. Alabama's Constitution has always declared "that the civil rights, privileges, and capacities of any citizen shall not be in any manner affected by his religious principles." Ala. Const. art. I, sec. 3 (1901); Ala. Const. art. I, sec. 4 (1875); Ala. Const. art. I, sec. 4 (1865); Ala. Const. art I, sec. 6 (1861); Ala. Const. art. I, sec. 6 (1819). And, in the 1998 election, Alabama voters ratified the Alabama Religious Freedom Amendment

("ARFA") to the Constitution, which tracks the language and intent of the federal RFRA. Alabama is one of only a dozen states that have enacted such a law, and it is the only State to have done so by an amendment to its constitution.

19. Alabama law does not mandate that insurers provide contraception or sterilization coverage such that Alabama citizens enjoy the freedom to contract for an insurance plan that does not cover these services. The pharmaceutical insurance coverage article of the Alabama Code provides expressly that the article "do[es] not mandate that any type of benefits for pharmaceutical services, including without limitation, prescription drugs, be provided by a health insurance policy or an employee benefit plan." Ala. Code § 27-45-5. The Mandate contravenes this provision of the Alabama Code.

20. The United States Constitution, laws, and public policy also recognize the rights of organizations and individuals to subscribe to insurance coverage for themselves and their employees that is consistent with their religious beliefs.

21. These provisions include the First Amendment to the United States, the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb et seq. ("RFRA"), and laws and regulations that prohibit the federal funding of abortions, such as [the Hyde Amendment and the ACA's provision banning federal funding of abortions].

22. The Administrative Procedure Act, 5 U.S.C. § 500 et seq. ("APA"), provides that for administrative rules, such as the Mandate, to be valid, they must be promulgated according to certain procedures. Defendants failed to follow these procedures, and the Mandate is therefore invalid.

23. Defendants failed to follow proper notice-and-comment procedures. Defendants did not take into account the full implications of the Mandate by completing a meaningful consideration of the relevant matter presented. Defendants did not consider or respond to the voluminous comments they received in opposition to the interim final rule.

24. Defendants' issuance of the interim final rules was arbitrary and capricious because the rules fail to consider the full extent of their implications and they do not take into consideration the evidence against them.

25. The Mandate is contrary to the provisions of the Weldon Amendment of the Consolidated Security, Disaster Assistance, and Continuing Appropriations

Act of 2009, Public Law 110 329, Div. A, Sec. 101, 122 Stat. 3574, 3575 (Sept. 30, 2008), which provides that certain funds may not be used to fund abortion.

26. The Mandate is contrary to the provisions of the ACA which state that qualified health plans should not be required to provide coverage for abortion services. *See* Section 1303(b)(1)(A) of the ACA.

27. In violation of these federal provisions, and in contravention of Alabama's religious-freedom laws and policies, the Defendants have established the Mandate requiring that all insurance companies and plans (except those given ACA waivers or those that are "grandfathered") cover, without cost sharing, "[a]ll Food and Drug Administration [(FDA)] approved contraceptive methods, sterilization procedures, and patient education and counseling for all women with reproductive capacity," as prescribed by a doctor. Group Health Plans and Health Insurance Issuers Relating to Coverage of Preventive Services Under the Patient Protection and Affordable Care Act, 77 Fed. Reg. 31, 8725 (to be codified at 26 C.F.R. pt. 54, 29 C.F.R. pt. 2590, and 45 C.F.R. pt. 147) (quoting Health Resources and Services Administration ("HRSA") Guidelines, available at: http://www.hrsa.gov./womensguidelines) (internal quotation marks omitted). *See also* 45 C.F.R. § 147.130(a)(1) ("[A] group health plan, or a health insurance issuer offering group or individual health insurance coverage, must provide coverage for all of the following items and services, and may not impose any cost-sharing requirements (such as a copayment, coinsurance, or deductible) with respect to those items or services: … With respect to women …, preventive care and screenings provided for in binding comprehensive health plan coverage guidelines supported by the Health Resources Services Administration.").

28. The Mandate contains an exemption for organizations qualifying as a "religious employer." In order to qualify as a "religious employer," however, the organization must meet all of the following criteria:

(1) The inculcation of religious values is the purpose of the organization.

(2) The organization primarily employs persons who share the religious tenets of the organization.

(3) The organization serves primarily persons who share the religious tenets of the organization.

(4) The organization is a nonprofit organization as described in section 6033(a)(1) and section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code of 1986, as amended.

45 C.F.R. § 147.130. This definition of "religious employer" is restrictive. Beyond houses of worship and some of their schools, it covers few (if any) organizations and individuals. For example, this definition would not include Catholic schools, as they are open to enrollment by persons who do not share Catholic religious tenets.

29. There are many organizations and individuals in Alabama who, similar to EWTN, maintain deeply held religious beliefs that the Mandate would force the organizations and individuals to violate. These organizations and individuals do not meet the criteria defining who is a "religious employer."

30. The Defendants have refused to provide ACA waivers for religious organizations and individuals in Alabama who will be forced to drop insurance coverage or subscribe to insurance coverage that violates their right to conscience.

31. Yesterday, on March 21, 2012, the Departments published as advance notice of proposed rulemaking, Certain Preventive Services Under the Affordable Care Act, 77 Fed. Reg. 55, 16501 (to be codified at 26 C.F.R. pt. 54, 29 C.F.R. pt. 2590, and 45 C.F.R. pt. 147), ("ANPRM"). The ANPRM seeks an "accommodation" for religious organizations that do not qualify as a "religious employer." The ANPRM states that for such organizations, health insurance issuers (or third party administrators) may have a role in covering the mandated services. However, the ANPRM does nothing to change the Mandate's requirement that persons and entities with religious and conscience-based objections are forced to subscribe to insurance coverage that violates their beliefs and consciences.

32. As a Result of the Mandate's violation of religious beliefs, many religious organization employers, insurers, and individuals will cease to provide or

subscribe to health insurance coverage, rather than subsidize conduct and services in violation of their beliefs.

33. The result of individuals and entities ceasing to purchase or provide health insurance will be an increase in the number of enrollments in the State's Medicaid programs and an increase in the number of uninsured Alabama citizens.

34. State-funded hospitals will see an increase in uninsured patients who would have otherwise had health insurance prior to the Mandate. Costs incurred treating these patients will necessarily be absorbed by the State.

35. Under the Mandate as written and promulgated, EWTN, and similar organizations and individuals, must subscribe to insurance coverage for their employees that is in direct violation of their teachings, beliefs, and religious practices, for plan/policy years beginning on or after August 1, 2012. 77 Fed. Reg. 31, 8725-8726.

36. Through the Mandate, the Defendants are violating EWTN's, and similar organizations' and individuals', rights under the First Amendment to the U.S. Constitution and under RFRA.

37. The ACA, and related regulations, force the State of Alabama to be used as an instrument of the Defendants in the violation of EWTN's, and similar organizations' and individuals', rights under the First Amendment to the U.S. Constitution and under RFRA. Section 1311 of the ACA requires that "[e]ach State shall, not later than January 1, 2014, establish an American Health Benefit Exchange ('Exchange') that facilitates the purchase of qualified health plans; [and] provides for the establishment of a Small Business Health Options Program ('SHOP Exchange') that is designed to assist qualified employers in the State who are small employers in facilitating the enrollment of their employees in qualified health plans offered in the small group market in the State." *See also* Patient Protection and Affordable Care Act; Establishment of Exchanges and Qualified Health Plans, 76 Fed. Reg. 136, 41866 (to be codified at 45 C.F.R. pts. 155 and 156); Patient Protection and Affordable Care Act; Establishment of Exchanges and Qualified Health Plans; Exchange Standards for Employers, FR Doc. 2012-6125 Filed 03/12/2012 at 11:15 am; Publication Date: 03/27/2012 (to be codified at 45 C.F.R. pts. 155, 156, and 157), available at

http://www.ofr.gov/OFRUpload/OFRData/2012-06125_PI.pdf (last visited 03/19/2012).

38. As, under the Mandate, all insurance companies and plans (except those that are "grandfathered") must cover, without cost sharing, all FDA-approved contraceptive methods and sterilization procedures and related education and counseling, Alabama's State-based Exchange can include only insurance companies and plans that cover all of these items. 77 Fed. Reg. 31, 8725.

39. If the State refuses to incorporate the Mandate into the criteria it sets for its health care exchange, then the United States will reject and take over the State's program. *See* 76 Fed. Reg. 136, 41914 (to be codified at 45 C.F.R. § 155.120(a) ("An Exchange must not establish rules that conflict with or prevent the application of regulations promulgated by HHS under subtitle D of title I of the Affordable Care Act."); 76 Fed. Reg. 136, 41913 (to be codified at 45 C.F.R. § 155.105(f)) (July 15, 2011) (If a State elects not to establish an Exchange, or its Exchange is not approved by HHS, "HHS must … establish and operate such Exchange within the State."). Thus, through its State-based Exchange, Alabama cannot allow EWTN or similar organizations and individuals to subscribe to insurance coverage for their employees that is *not* in direct violation of their teachings, beliefs, and religious practices. *Id.*

40. Article I, Section 3 of the Alabama Constitution of 1901, the Alabama Constitution's ARFA, and Ala. Code § 27-45-5 cannot be enforced because the Mandate, as federal law, is supreme.

41. Alabama is in the process of establishing its State-based Exchange. The State has received a federal grant to develop the Exchange. A working group of State officials has made formal recommendations about the structure and nature of the Exchange to the Governor after which the Alabama Department of Insurance established an Office of the Alabama Health Insurance Exchange. On February 23, 2012, the Office published a Request for Information to identify vendors and contracting partners that can provide viable solutions that best fit the State of Alabama. State exchanges must seek certification from the federal government by January 2013, and they must be able to determine eligibility and enroll individuals in coverage by October 2013.

Causes of Action

Count I
Declaratory Judgment

42. The State realleges, adopts, and incorporates by reference the above paragraphs as if fully set forth herein.

43. There is an actual controversy between the State of Alabama and the Defendants.

44. Alabama is uncertain as to what its rights and obligations are with regard to Defendants' actions and the ACA and related regulations.

45. Alabama is harmed by Defendants' actions and the ACA and related regulations.

46. If the Mandate is valid, Alabama's Constitution, laws, and public policy will not be enforced, injuring the State of Alabama and Alabama organizations and individuals who wish to subscribe to insurance coverage for themselves and their employees that is *not* in direct violation of their teachings, beliefs, and religious practices.

47. If the Mandate is valid, Alabama will be forced to establish a State-based Exchange that cannot allow religious organizations and individuals to subscribe to insurance coverage for their employees that is *not* in direct violation of their teachings, beliefs, and religious practices.

48. If the Mandate is valid, Alabama will be forced to absorb the costs of providing healthcare to citizens that currently are provided health insurance from religious employers or through insurance plans that do not cover contraception.

49. A declaration from this Court would enable Alabama to comply with federal law and its own State law.

50. Without a declaration from this Court, Alabama cannot fully comply with federal law and its own State law.

51. The Mandate is unlawful, null, void, and unenforceable under the First Amendment to the U.S. Constitution.

52. The Mandate is unlawful, null, void, and unenforceable under the federal RFRA.

53. The Mandate is unlawful, null, void, and unenforceable under the APA.

54. The Mandate is unlawful, null, void, and unenforceable under the Weldon Amendment.

55. The Mandate is unlawful, null, void, and unenforceable under the ACA.

Count II
Injunctive Relief

56. The State realleges, adopts, and incorporates by reference the above paragraphs as if fully set forth herein.

57. Alabama suffers irreparable harm from Defendants' actions and the ACA and related regulations each day that the Mandate is not enjoined.

58. Alabama is likely to succeed on the merits of its claims that the Mandate violates the First Amendment, the RFRA, the APA, and that the Mandate (and the ACA and other related regulations) forces the State of Alabama to be used as an instrument of the Defendants in the violation of EWTN's, and similar organizations' and individuals', rights under the First Amendment to the U.S. Constitution, RFRA, and the APA.

59. The equities favor an injunction against the Defendants and the Mandate.

60. An injunction would not harm Defendants because they have no interest in the enforcement of the Mandate as it violates the First Amendment and RFRA.

61. Not granting an injunction would continue to severely and irreparably harm the State of Alabama as described above, and would harm EWTN and similar Alabama organizations and individuals who wish to subscribe to insurance

coverage for themselves and their employees that is *not* in direct violation of their teachings, beliefs, and religious practices.

62. An injunction would serve the public interest, as the public has an interest in the vindication of the First Amendment, RFRA, the APA, and Alabama's Constitution, laws and public policy which protect religious belief and expression. Alabama organizations and individuals have an interest in insurance coverage for themselves and their employees that is *not* in direct violation of their teachings, beliefs, and religious practices.

WHEREFORE, the State of Alabama requests the following relief from the Court:

A. Declare that the Mandate violates the First Amendment to the U.S. Constitution, the federal RFRA, the APA, the Weldon Amendment, and the ACA.

B. Declare that Alabama's State-based Exchange may allow EWTN or similar organizations and individuals to subscribe to insurance coverage for their employees that is *not* in direct violation of their teachings, beliefs, and religious practices.

C. Preliminarily and permanently enjoin application and enforcement of the Mandate.

D. Grant such other relief as the Court may deem just and proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this the 22nd day of March, 2012, I filed the foregoing document via the CM/ECF system which will send electronic notice of such filing to the following counsel of record:

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I further certify that I mailed the foregoing document to the following parties for whom no counsel has appeared:

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