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

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*.	)	

THE STATE OF ALABAMA AND ATTORNEY GENERAL LUTHER STRANGE'S MOTION TO INTERVENE

The State of Alabama and its Attorney General Luther Strange hereby move to intervene in this action, pursuant to Federal Rule of Civil Procedure 24(a) and (b), and show the Court as follows:

1. This action challenges the contraception coverage mandate promulgated by the U.S. Departments of Health & Human Services, Treasury, and Labor, as 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"). 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").

2. The Mandate requires that 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.

3. The only exemption for insurance companies and employers who object to the Mandate on religious or conscience-based grounds is for churches and other houses of worship. Employers such as the Plaintiff, Eternal Word Television

Network, Inc. ("EWTN"), must follow the Mandate, even though they object to it on religious or conscience-based grounds.

4. The Mandate violates the religious-freedom rights of EWTN and other employers and insurance companies.

5. The Mandate violates the First Amendment to the United States Constitution, the Religious Freedom Restoration Act ("RFRA"), 2 U.S.C. § 2000bb *et seq.*, and the Administrative Procedures Act, 5 U.S.C. § 553.

6. The Mandate violates 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.

7. 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.

8. The Mandate contravenes Article I, Section 3 to the Alabama Constitution of 1901. The Mandate contravenes the Alabama Religious Freedom Amendment ("ARFA") to the Alabama Constitution of 1901. Alabama law does not require insurance companies and employers to provide contraception coverage in violation of their religious beliefs or consciences; therefore, the Mandate violates Alabama law. The pharmaceutical insurance coverage article of the

Alabama Code provides that "The provisions of this article do 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.

9. 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', religious-freedom rights. These provisions also force the State of Alabama to violate Alabama law.

10. Under the ACA, and related regulations, States must establish Exchanges that facilitate the purchase of qualified health plans ("QHPs"). ACA, § 1311(b); *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).

11. As the Mandate applies to all non-grandfathered group health plans and health insurance issuers, the State must necessarily limit its Exchange to health insurance issuers that comply with the Mandate. *See also* 45 C.F.R. § 156.200, available at http://www.ofr.gov/OFRUpload/OFRData/2012-06125_PI.pdf (last visited 03/19/2012). If the State refuses to incorporate the Mandate into its health care exchange, then the United States will reject and take over the State's program. *See* 45 C.F.R. § 155.120, available at http://www.ofr.gov/OFRUpload/OFRData/2012-06125_PI.pdf (last visited 03/19/2012); 45 C.F.R. § 155.105, available at http://www.ofr.gov/OFRUpload/OFRData/2012-06125_PI.pdf (last visited 03/19/2012). 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.

12. The State of Alabama and its Attorney General seek to intervene in this action to protect two important State interests. First, the State seeks to preserve its ability to provide insurance coverage to its citizens in a manner that is consistent with Alabama law and the right of conscience. Second, the State seeks to minimize the number of uninsured Alabama citizens for whom the State bears the burden of providing healthcare. These interests are unique to the State, and the

State seeks to intervene as of right as the existing parties do not adequately represent these interests.

13. Alternatively, the State and Attorney General seek to intervene by permission as their complaint in intervention poses numerous questions of law and fact that are in common with the main action, and as the State's officers must implement and administer the Mandate through the State's Exchange. Additionally, the Attorney General is charged with advising state officials about how to accomplish that task, which will require the Attorney General to determine whether State law allows active participation in a federal program that does not respect the right to conscience. The Attorney General also has a special interest in the effect of the Mandate on religious not-for-profits because he is charged by State law with the supervision of such charities.

14. A proposed complaint in intervention is attached as Exhibit 1.

15. A brief in support of this motion is being filed contemporaneously herewith.

WHEREFORE, the State of Alabama and Attorney General Strange move to intervene in this action.

Respectfully submitted,

LUTHER STRANGE
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Attorney General

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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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