

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ALABAMA

ETERNAL WORD TELEVISION
NETWORK, INC.,

and

STATE OF ALABAMA,

Plaintiffs,

v.

SYLVIA M. BURWELL, *et al.*,

Defendants

No. 1:13-cv-521

**EWTN'S MOTION FOR
INJUNCTION
PENDING APPEAL**

Pursuant to Fed. R. Civ. P. 7 and 62(c), and in accordance with Fed. R. App. P. 8(a)(1), EWTN respectfully requests that the Court enter an injunction pending appeal.

Twenty-three out of twenty-eight cases to reach the issue have granted preliminary or permanent relief against the Mandate as applied to nonprofit religious ministries such as EWTN. *See, e.g.*, Dkt. 30 at 20 n. 4 (listing decisions); Dkts. 56-58 (listing decisions); *see also* <http://www.becketfund.org/hhsinformationcentral/> (last visited June 17, 2014) (providing regularly updated list of decisions). EWTN respectfully submits that, notwithstanding this Court's ruling earlier today, an

injunction pending appeal is warranted in light of the significant contrary authority and the irreparable harm that will befall EWTN in only two weeks if it is forced to choose between taking actions that violate its religious beliefs or paying onerous penalties. Such an injunction—even if only for thirty days—would provide the Eleventh Circuit Court of Appeal adequate time to appropriately consider the weighty issues at stake in this litigation.

Further, in light of the government’s position that EBSA Form 700 is merely a “notice” of facts that it and EWTN’s third-party administrator already know, the government should not be permitted to claim that it or the public would suffer any harm from such temporary protection. Indeed, the government has chosen to implement the Mandate on a rolling basis, so non-profits with plan years beginning in August, September, October, November, or December of this year are not yet required to comply, and will not have to do so for weeks or months, until their next plan year begins. A short injunction is appropriate here to extend similarly temporary relief to EWTN, so that EWTN is not irreparably harmed while the parties seek expedited resolution of EWTN’s claims before the Eleventh Circuit.

For all the reasons advanced in EWTN’s prior filings, (1) EWTN is likely to succeed on the merits of its claims under the Religious Freedom Restoration Act (“RFRA”) and the First Amendment; (2) an injunction pending appeal is necessary

to prevent irreparable harm to its religious freedom and freedom of speech; (3) the balance of equities tips in favor of an injunction; and (4) an injunction would serve the public interest. *See* Dkt. 30; Dkt. 50.

For the foregoing reasons, EWTN respectfully requests that, during the pendency of EWTN's appeal, the Court enjoin the Defendants, their agents, officers, and employees, and others working in concert with them from any application or enforcement of the requirements imposed in 42 U.S.C. § 300gg-13(a)(4), Pub. L. 111-148, § 1563(e)-(f), the application of the penalties found in 26 U.S.C. §§ 4980D & 4980H and 29 U.S.C. § 1132, and any other requirement that EWTN or those acting in concert with them (including specifically EWTN's third party administrator) provide, facilitate, contract for, or otherwise enable access to the objectionable drugs or devices.

The Government has indicated that it opposes EWTN's request for an injunction pending appeal. The State of Alabama has indicated that it does not oppose this request.

Respectfully submitted this 18th day of June, 2014.

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CERTIFICATE OF SERVICE

I hereby certify that on June 18, 2014, the foregoing motion and memorandum was served via ECF.

/s/ Daniel Blomberg
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