

IN THE UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF ALABAMA
 SOUTHERN DIVISION

ETERNAL WORD TELEVISION)	
NETWORK, INC.,)	
)	
Plaintiff,)	
)	
v.)	Case No. 2:12-cv-00501-SLB
)	
KATHLEEN SEBELIUS,)	
<i>et al.</i> ,)	
)	
Defendants.)	
_____)	

DEFENDANTS’ RESPONSE TO PROPOSED INTERVENORS’ NOTICE OF RECENT FACTUAL AND LEGAL DEVELOPMENTS IN ALABAMA

In its Notice of Recent Factual and Legal Developments in Alabama (“Notice”), ECF No. 72, the State of Alabama informs the Court that, as of November 2012, the State has determined it will *not* be establishing a “state-run health insurance exchange,” *id.* at 1. As concerns Alabama’s motion to intervene in this lawsuit, therefore, the State has abandoned its purported interest in structuring its exchange in a manner consistent with its interpretation of state constitutional provisions and federal law. *See* Intervenors’ Mem. of Law in Supp. of Mot. to Intervene at 9-11 (“Intervenors’ Mem.”), ECF No. 15; *id.* at 5-6, 11-12, 17-18; Mot. to Intervene at ¶ 11, ECF No. 14. Although that interest never warranted intervention to begin with, *see* Defs.’ Mem. in Opp’n to Mot. to Intervene at 14-20, 22-24 (“Defs.’ Opp’n.”), ECF No. 27; Defs.’ Resp. to Proposed Intervenors’ Resp.

to *Nebraska v. HHS* at 2-3 (“Defs.’ Resp.”), ECF No. 45, this Court need not decide that question. Alabama is no longer “in the process of establishing its Exchange,” and therefore need not “conform the state-run Exchange” to anything. Intervenor’s Mem. at 5, 17.

The State also alerts the Court of the November 2012 adoption of a state constitutional amendment intended “to preserve the freedom of all residents of Alabama to provide for their own health care” by prohibiting compelled participation in a “health care system,” Notice at 2, as if such an amendment relates to the issues before the Court. It does not. The preventive services coverage regulations at issue in this case do not regulate Alabamans’ ability to provide for their own health care, nor do the regulations compel participation in a health care system. Rather, they require all group health plans and health insurance issuers offering non-grandfathered group or individual health coverage to provide coverage for certain recommended preventive services without cost-sharing. *See, e.g.*, 45 C.F.R. § 147.130. The state constitutional amendment, therefore, is not “contradicted” by the preventive services coverage regulations, Notice at 2, nor does the amendment help Alabama’s bid to intervene in this case.

Notwithstanding the State’s decision not to establish a state exchange, Alabama urges that its intervention remains justified because of its “sovereign prerogative to regulate its insurance market . . . without being contradicted by

unlawful federal regulations.” Notice at 2 (internal quotations omitted). But no conflict exists between federal and state law, as defendants have demonstrated already. *See* Defs.’ Opp’n at 14-15, 18-19; Defs.’ Resp. at 2-3. A policy disagreement with the federal government over the proper scope and content of regulation does not entitle a state to intervene to prevent the federal government from regulating entities that are within the sphere of federal power. *See, e.g., Massachusetts v. Mellon*, 262 U.S. 447, 484-85 (1923); *Va. ex rel. Cuccinelli v. Sebelius*, 656 F.3d 253, 269 (4th Cir. 2011); *see also* Defs.’ Opp’n. at 15-20.

For these reasons, and those set out in defendants’ earlier filings, *see* Defs.’ Opp’n; Defs.’ Resp., this Court should deny Alabama’s motion to intervene in this case.

Respectfully submitted on this 1st day of March, 2013,

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CERTIFICATE OF SERVICE

I hereby certify that on March 1, 2013, I caused a true and correct copy of this Notice to be served on counsel by means of the Court's ECF system.

/s/ Jacek Pruski
JACEK PRUSKI