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EWTN files second lawsuit against HHS mandate; Alabama is co-plaintiff

by Catholic News Service

Mobile, Ala. — The Eternal Word Television Network, joined by the state of Alabama, has filed another lawsuit challenging the federal mandate requiring most employers to provide coverage of contraceptives, sterilizations and some abortion-inducing drugs free of charge.

The suit was filed Monday in the U.S. District Court for the Southern District of Alabama in Mobile.

Last March, a U.S. District Court judge dismissed the Irondale-based television network's lawsuit against the Health and Human Services mandate, which is part of the Affordable Care Act.

Judge Sharon Lovelace Blackburn, of the U.S. District Court for the Northern District of Alabama in Birmingham, said in her March 25 ruling that EWTN had sufficient standing to file the suit because of the "real prospect" the global network could be harmed by "a concrete regulatory mandate."

However, she held the suit was not ripe for judicial review and she did not want to issue a final ruling because proposed rules governing the mandate had not yet been finalized. "At that point, if EWTN still has objections, it may then file suit," she said.

Final rules were issued by HHS June 28. EWTN and many other Catholic and religious employers said they still do not go far enough to accommodate their moral objections to complying with the mandate.

"EWTN has no other option but to continue our legal challenge," said Michael P. Warsaw, the network's chairman and CEO.

The final rules do "nothing to address the serious issues of conscience and religious freedom" that EWTN,

the U.S. Catholic bishops and many other religious institutions have raised since the mandate was first issued in January 2012, he said in a statement.

"The government has decided that EWTN is apparently not religious enough to be exempt from the rule," Warsaw said. "It has still placed us in a situation where we are forced to offer contraception, sterilization, and abortion-inducing drugs as part of our employee health plan or to offer our employees and their families no insurance at all.

"Neither of these options is acceptable. The mission of EWTN is not negotiable," he said.

Alabama Attorney General Luther Strange, who is representing the state as co-plaintiff in the suit, called it "unconscionable" that the federal government requires most religious employers to provide coverage to which they are morally opposed.

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"The freedom of religion, and to believe as one sees fit, is our 'first freedom' " under the U.S. Constitution," Strange said in a statement. "The people of Alabama have recognized the importance of this freedom and have enshrined it in their constitution as well. Alabama law does not allow anyone to be forced to offer a product that is against his or her religious beliefs or conscience."

The final rules include an exemption for some religious employers that fit the criterion for a nonprofit organization as specified by certain sections of the federal Internal Revenue Code, namely those referring to "churches, their integrated auxiliaries, and conventions or associations of churches, as well as to the exclusively religious activities of any religious order."

For religious employers who are not exempt under this criterion, HHS has provided an accommodation by which those employers can provide contraceptive coverage through a third-party administrator who must ensure that payments for contraceptive services come from outside the objecting organization's premiums.

For self-insuring institutions, a third-party administrator would provide or arrange the services, paid for through reductions in federally facilitated-exchange user fees associated with their health insurance provider.

The mandate does not include a conscience clause for employers who object to such coverage on moral grounds.

The final rules issued this June extended the deadline for nonexempt religious employers to implement the mandate, setting it for Jan. 1. If those employers do not comply, they will face IRS fines.

The EWTN and Alabama lawsuit was filed by the Becket Fund for Religious Liberty on behalf of the two entities.

According to the Becket Fund, more than 70 lawsuits challenging the HHS mandate have been filed against the government. Plaintiffs include Catholic colleges, dioceses and other entities, as well as individual employers.

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