UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ALABAMA

ETERNAL WORD TELEVISION NETWORK, INC., *and* STATE OF ALABAMA, *Plaintiffs*, v. KATHLEEN SEBELIUS, *et al*., *Defendants*	NO. 1:13-CV-521 **NOTICE OF SUPPLEMENTAL AUTHORITY**

EWTN respectfully submits this notice to alert the Court to four cases decided since the close of briefing which support EWTN's RFRA and Free Speech claims.

RFRA. Two of the cases, like twenty-one others before them, granted non-profit religious ministries relief from the HHS Mandate. *Roman Catholic Archdiocese of Atlanta v. Sebelius*, 2014 WL 11256373 (N.D. Ga. March 26, 2014) ("*Archdiocese*"); *Dobson v. Sebelius*, 2014 WL 1571967 (D. Colo. April 17, 2014).

These two cases held that government's "accommodation" scheme creates a substantial burden on sincerely held religious beliefs. *See Archdiocese* at *12-13 (finding that "[t]he accommodation . . . imposes substantial pressure on the

Plaintiffs to modify their behavior" and "forces the Plaintiffs to take action in direct contradiction to what they believe,"); *Dobson* at *9 (concluding that the accommodation "constitute[s] a substantial burden").

The cases also held that the government failed to justify this burden with a compelling interest and proof of least restrictive means. *See Archdiocese* at *17 (finding that the alleged interests "cannot be compelling because the contraceptive mandate does not apply to the insurance plans of millions of women"); *id.* at *18 (holding the government failed to offer "any evidence" that plaintiffs' alternatives "would be ineffective"); *id.* at *17 (holding EBSA was not appropriately tailored to the government's alleged "notice" interest); *Dobson* at *9 (finding that "the interests articulated by the government are insufficient").

The Supreme Court's recent decision in *McCutcheon v. Federal Election Comm'n*, 134 S. Ct. 1434 (2014), also supports EWTN's proffered less restrictive alternatives. *McCutcheon* found that the election laws in question failed scrutiny because they could be replaced with new laws and regulations that imposed fewer constraints on speech. *Id.* at 1458-59; *accord Archdiocese* at *18 ("HHS can request Congress" to grant the authority "to implement less restrictive means"). This counters the government's argument that the Court can only consider less restrictive alternatives drawn from existing "statutory authority." Dkt. 35 at 33.

Free Speech. *Archdiocese* became the second decision to strike down the Mandate's compelled silence provision, finding it a "presumptively invalid, content-based restriction on Plaintiffs' right to speak." *Id.* at *29.

And *Nat'l Ass'n of Mfrs. v. SEC*, __F.3d__, 2014 WL 1408274 (D.C. Cir. April 14, 2014), which held a federal reporting requirement unconstitutional, is instructive about the Mandate's compelled speech requirement. There, as here, the government argued that the compelled report was a "minimal" requirement that only required factual statements. *Id.* at *10-11. Rejecting this, the court noted that the mandated speech was arguably ideological and that, regardless, a "speaker has the right to tailor speech" to avoid undesired "statements of fact." *Id.* at *10. The court also found the suggestion that the compelled speakers can explain away their speech to be "an inadequate cure to a First Amendment violation." *Id.* at *11.

Respectfully submitted this 1st day of May, 2014.

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CERTIFICATE OF SERVICE

I hereby certify that on May 1, 2014, the foregoing notice was served via ECF.

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