

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT
NEW HAVEN DIVISION

NATIONAL FAMILY PLANNING &)
REPRODUCTIVE HEALTH ASSOCIATION,)
INC. and FAIR HAVEN COMMUNITY) CIVIL ACTION NO. 3:09-CV-0055-CFD
HEALTH CLINIC, INC.,)
)
Plaintiffs,)
)
vs.) January 22, 2009
)
MICHAEL O. LEAVITT, Secretary of the) PROPOSED ANSWER OF DEFENDANT-
United States Department of Health and Human) INTERVENORS
Services, in his official capacity,)
)
Defendants,)
)
and)
)
CHRISTIAN MEDICAL ASSOCIATION, On)
behalf of its individual members,)
)
CATHOLIC MEDICAL ASSOCIATION, On)
behalf of its individual members, and)
)
AMERICAN ASSOCIATION OF PRO-LIFE)
OBSTETRICIANS AND GYNECOLOGISTS,)
On behalf of its individual members,)
)
Proposed Defendant-Intervenors.

PROPOSED DEFENDANT-INTERVENORS' ANSWER

Answering the specific numbered paragraphs of plaintiffs' complaint, the proposed defendant-intervenors state as follows:

1. The allegations in paragraph 1 include conclusions of law which require no answer; proposed defendant-intervenors deny any factual allegations in paragraph 1.

2. The allegations in paragraph 2 include conclusions of law which require no answer; proposed defendant-intervenors admit the factual allegations in paragraph 2.

3. The allegations in paragraph 3 are conclusions of law which require no answer; proposed defendant-intervenors are without knowledge or information sufficient to form a belief as to the truth of any factual allegations in paragraph 3.

4. The allegations in paragraph 4 are conclusions of law which require no answer; proposed defendant-intervenors deny any factual allegations in paragraph 4.

5. The allegations in paragraph 5 are conclusions of law which require no answer; proposed defendant-intervenors deny any factual allegations in paragraph 5.

6. The allegations in paragraph 6 are conclusions of law which require no answer; proposed defendant-intervenors deny any factual allegations in paragraph 6.

7. The allegations in paragraph 7 are conclusions of law which require no answer; proposed defendant-intervenors deny any factual allegations in paragraph 7.

8. The allegations in paragraph 8 are conclusions of law which require no answer.

9. The allegations in paragraph 9 are conclusions of law which require no answer. However, the Proposed defendant-intervenors deny that this Court has jurisdiction to hear this case.

10. The allegations in paragraph 9 are conclusions of law which require no answer. However, the Proposed defendant-intervenors deny that this Court has jurisdiction to hear this case.

11. Proposed defendant-intervenors are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 11.

12. Proposed defendant-intervenors are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 12.

13. The allegations in paragraph 13 include conclusions of law which require no answer; proposed defendant-intervenors are without knowledge or information sufficient to form a belief as to the truth of any factual allegations in paragraph 13.

14. Proposed defendant-intervenors are without knowledge or information sufficient to form a belief as to the truth of any factual allegations in paragraph 14.

15. Proposed defendant-intervenors are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 15.

16. The allegations in paragraph 16 include conclusions of law which require no answer. Proposed defendant-intervenors are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 16.

17. The proposed defendant-intervenors are without knowledge or information sufficient to form a belief as to the truth of the factual allegations in paragraph 17.

18. The allegations in paragraph 18 are conclusions of law which require no answer; proposed defendant-intervenors are without knowledge or information sufficient to form a belief as to the truth of any factual allegations in paragraph 18.

19. The allegations in paragraph 19 include conclusions of law which require no answer; proposed defendant-intervenors are without knowledge or information sufficient to form a belief as to the truth of the factual allegations in paragraph 19.

20. The proposed defendant-intervenors are without knowledge or information sufficient to form a belief as to the truth of any factual allegations in paragraph 20.

21. The allegations in paragraph 21 include conclusions of law which require no answer; proposed defendant-intervenors are without knowledge or information sufficient to form a belief as to the truth of the factual allegations in paragraph 21.

22. Proposed defendant-intervenors are without knowledge or information sufficient to form a belief as to the truth of the factual allegation in paragraph 22.

23. The allegations in paragraph 23 include conclusions of law which require no answer; proposed defendant-intervenors are without knowledge or information sufficient to form a belief as to the truth of the factual allegations in paragraph 23.

24. Proposed defendant-intervenors are without knowledge or information sufficient to form a belief as to the truth of the factual allegations in paragraph 24.

25. The allegations in paragraph 25 include conclusions of law which require no answer; proposed defendant-intervenors deny any factual allegations in paragraph 25.

26. The allegations in paragraph 26 are conclusions of law which require no answer; however proposed defendant-intervenors deny that Plaintiff has standing.

27. The allegations in paragraph 27 include conclusions of law which require no answer; proposed defendant-intervenors are without knowledge or information sufficient to form a belief as to the truth of any factual allegations in paragraph 27.

28. The allegations in paragraph 28 include conclusions of law which require no answer; proposed defendant-intervenors are without knowledge or information sufficient to form a belief as to the truth of any factual allegations in paragraph 28.

29. The allegations in paragraph 29 include conclusions of law which require no answer.

30. The allegations in paragraph 30 are conclusions of law which require no answer; proposed defendant-intervenors deny any factual allegations in Plaintiffs' paraphrase of the law in paragraph 30.

31. The allegations in paragraph 31 are conclusions of law which require no answer.

32. The allegations in paragraph 32 include conclusions of law which require no answer; proposed defendant-intervenors deny any factual allegations in Plaintiffs' paraphrase of the law in paragraph 32.

33. The allegations in paragraph 33 include conclusions of law which require no answer; proposed defendant-intervenors deny any factual allegations in Plaintiffs' paraphrase of the law in paragraph 33.

34. The allegations in paragraph 34 include conclusions of law which require no answer; proposed defendant-intervenors deny any factual allegations in Plaintiffs' paraphrase of the law in paragraph 34.

35. The allegations in paragraph 35 include conclusions of law which require no answer; proposed defendant-intervenors deny any factual allegations in paragraph 35.

36. The allegations in paragraph 36 include conclusions of law which require no answer; proposed defendant-intervenors deny any factual allegations in Plaintiffs' paraphrase of the law in paragraph 36.

37. The allegations in paragraph 37 include conclusions of law which require no answer; proposed defendant-intervenors deny any factual allegations in Plaintiffs' paraphrase of the law in paragraph 37.

38. The allegations in paragraph 38 include conclusions of law which require no answer; proposed defendant-intervenors deny any factual allegations in Plaintiffs' paraphrase of the law in paragraph 38.

39. Proposed defendant-intervenors are without knowledge or information sufficient to form a belief as to the truth of allegations in paragraph 39.

40. The allegations in paragraph 38 include conclusions of law which require no answer; proposed defendant-intervenors deny any factual allegations in Plaintiffs' paraphrase of the law in paragraph 40.

41. The proposed defendant-intervenors admit the factual allegations in paragraph 41.

42. The allegations in paragraph 42 include conclusions of law which require no answer; proposed defendant-intervenors deny any factual allegations in Plaintiffs' paraphrase of the law in paragraph 42.

43. The allegations in paragraph 38 include conclusions of law which require no answer; proposed defendant-intervenors deny any factual allegations in paragraph 43.

44. The proposed defendant-intervenors are without knowledge or information sufficient to form a belief as to the truth of allegations in paragraph 44.

45. The proposed defendant-intervenors deny the factual allegations in Plaintiffs' paraphrase of the attached exhibit referenced in paragraph 45. The exhibit speaks for itself.

46. The proposed defendant-intervenors deny the factual allegations in Plaintiffs' paraphrase of the attached exhibit referenced in paragraph 46. The exhibit speaks for itself.

47. Proposed defendant-intervenors deny the allegations in paragraph 47, including but not limited to Plaintiffs' semantic redefinitions of "pregnancy" and related terms.

48. Proposed defendant-intervenors deny Plaintiffs' semantic redefinitions of "pregnancy" and related terms; proposed defendant-intervenors are without knowledge or information sufficient to form a belief as to the truth of other allegations in paragraph 48.

49. Proposed defendant-intervenors are without knowledge or information sufficient to form a belief as to the truth of allegations in paragraph 49.

50. The allegations in paragraph 50 include conclusions of law which require no answer; proposed defendant-intervenors are without knowledge or information sufficient to form a belief as to the truth of any other factual allegations in paragraph 50.

51. The allegation in paragraph 51 is a conclusion of law which requires no answer.

52. Proposed defendant-intervenors are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 52.

53. The allegations in paragraph 53 include conclusions of law which require no answer; proposed defendant-intervenors admit that the challenged regulation is similar to the underlying laws it implements, but deny any remaining factual allegations in paragraph 53.

54. The allegations in paragraph 54 are conclusions of law which require no answer; proposed defendant-intervenors deny any factual allegations in Plaintiffs' paraphrase of the law in paragraph 54.

55. The allegations in paragraph 55 include conclusions of law which require no answer; proposed defendant-intervenors deny any factual allegations in paragraph 55.

56. The allegations in paragraph 56 include conclusions of law which require no answer; proposed defendant-intervenors are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 56.

57. The allegations in paragraph 57 include conclusions of law which require no answer.

58. The allegations in paragraph 58 include conclusions of law which require no answer; proposed defendant-intervenors are without knowledge or information sufficient to form a belief as to the truth of any factual allegations in paragraph 58.

59. Proposed defendant-intervenors are without knowledge or information sufficient to form a belief as to the truth of any factual allegations in paragraph 59.

60. Proposed defendant-intervenors are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 60.

61. Proposed defendant-intervenors are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 61.

62. The allegations in paragraph 62 include conclusions of law which require no answer; proposed defendant-intervenors deny any factual allegations in paragraph 62.

63. Proposed defendant-intervenors are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 63.

64. Proposed defendant-intervenors are without knowledge or information sufficient to form a belief as to the truth of any factual allegations in paragraph 64; the regulation speaks for itself.

65. The allegations in paragraph 65 are legal conclusions that require no answer; proposed defendant-intervenors are without knowledge or information sufficient to form a belief as to the truth of any factual allegations in paragraph 65.

66. The allegations in paragraph 66 are conclusions of law which require no answer; proposed defendant-intervenors deny any factual allegations in paragraph 66.

67. The allegations in paragraph 67 include conclusions of law which require no answer; proposed defendant-intervenors deny any factual allegations in Plaintiffs' paraphrase of the law in paragraph 67.

68. The allegations in paragraph 68 include conclusions of law which require no answer; proposed defendant-intervenors deny any factual allegations in paragraph 68.

69. The allegations in paragraph 69 are conclusions of law which require no answer; proposed defendant-intervenors deny any factual allegations in paragraph 69.

70. Proposed defendant-intervenors are without knowledge or information sufficient to form a belief as to the truth of any factual allegations in paragraph 70. Further, it is unclear what Plaintiffs mean by the terms "emergency circumstances," "refuse to provide care," "urgently needed," or "serious risks to her health or life."

71. Proposed defendant-intervenors are without knowledge or information sufficient to form a belief as to the truth of any factual allegations in paragraph 71.

72. The allegations in paragraph 72 include conclusions of law which require no answer; proposed defendant-intervenors are without knowledge or information sufficient to form a belief as to the truth of any factual allegations in paragraph 72.

73. The allegations in paragraph 64 include conclusions of law which require no answer; proposed defendant-intervenors are without knowledge or information sufficient to form a belief as to the truth of any factual allegations in paragraph 64.

74. The allegations in paragraph 74 include conclusions of law which require no answer; proposed defendant-intervenors are without knowledge or information sufficient to form a belief as to the truth of any factual allegations in paragraph 74.

75. The allegations in paragraph 75 include conclusions of law which require no answer; proposed defendant-intervenors are without knowledge or information sufficient to form a belief as to the truth of any factual allegations in paragraph 75.

76. Proposed defendant-intervenors are without knowledge or information sufficient to form a belief as to the truth of any factual allegations in paragraph 76.

77. Proposed defendant-intervenors are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 77; the exhibit speaks for itself. To the extent that paragraph 77 states conclusions of law these require no answer.

78. The allegations in paragraph 78 include conclusions of law which require no answer; proposed defendant-intervenors deny the factual allegations in paragraph 78.

79. The allegations in paragraph 79 include conclusions of law which require no answer; proposed defendant-intervenors deny any factual allegations in paragraph 79.

80. The allegations in paragraph 80 include conclusions of law which require no answer; proposed defendant-intervenors are without knowledge or information sufficient to form a belief as to the truth of any factual allegations in paragraph 80.

81. The allegations in paragraph 81 include conclusions of law which require no answer; proposed defendant-intervenors are without knowledge or information sufficient to form a belief as to the truth of any factual allegations in paragraph 81.

82. Proposed defendant-intervenors are without knowledge or information sufficient to form a belief as to the truth of any factual allegations in paragraph 82.

83. Proposed defendant-intervenors are without knowledge or information sufficient to form a belief as to the truth of any factual allegations in paragraph 83.

84. The allegations in paragraph 84 include conclusions of law which require no answer; the Secretary's statements speak for themselves.

85. The allegations in paragraph 85 include conclusions of law which require no answer; proposed defendant-intervenors deny any factual allegations in Plaintiffs' paraphrase of the law in paragraph 85.

86. The allegations in paragraph 86 include conclusions of law which require no answer; proposed defendant-intervenors deny any factual allegations in paragraph 86.

87. The allegations in paragraph 87 include conclusions of law which require no answer; proposed defendant-intervenors deny any factual allegations in paragraph 87.

88. The allegations in paragraph 88 include conclusions of law which require no answer; proposed defendant-intervenors are without knowledge or information sufficient to form a belief as to the truth of any factual allegations in paragraph 88.

89. The allegations in paragraph 89 include conclusions of law which require no answer; proposed defendant-intervenors deny any factual allegations in paragraph 89

90. The allegations in paragraph 90 include conclusions of law which require no answer; proposed defendant-intervenors are without knowledge or information sufficient to form a belief as to the truth of any factual allegations in paragraph 90.

91. The allegations in paragraph 91 include conclusions of law which require no answer; proposed defendant-intervenors deny any factual allegations in paragraph 91.

92. The allegations in paragraph 92 include conclusions of law which require no answer; proposed defendant-intervenors deny any factual allegations in paragraph 92.

93. The allegations in paragraph 93 are conclusions of law which require no answer; proposed defendant-intervenors deny any factual allegations in paragraph 93.

94. The allegations in paragraph 94 are conclusions of law which require no answer; proposed defendant-intervenors deny any factual allegations in paragraph 94.

95. The allegations in paragraph 95 are conclusions of law which require no answer; proposed defendant-intervenors deny any factual allegations in paragraph 95.

96. The allegations in paragraph 96 are conclusions of law which require no answer; proposed defendant-intervenors deny any factual allegations in paragraph 96.

97. The allegations in paragraph 97 are conclusions of law which require no answer; proposed defendant-intervenors deny any factual allegations in paragraph 97.

98. The allegations in paragraph 98 are conclusions of law which require no answer; proposed defendant-intervenors deny any factual allegations in paragraph 98.

99. The allegations in paragraph 99 are conclusions of law which require no answer; proposed defendant-intervenors deny any factual allegations in paragraph 99.

100. The allegations in paragraph 100 are conclusions of law which require no answer; proposed defendant-intervenors deny any factual allegations in paragraph 100.

101. The allegations in paragraph 101 are conclusions of law which require no answer; proposed defendant-intervenors are without knowledge or information sufficient to form a belief as to the truth of any factual allegations in paragraph 101.

102. The allegations in paragraph 102 are conclusions of law which require no answer; proposed defendant-intervenors are without knowledge or information sufficient to form a belief as to the truth of any factual allegations in paragraph 102.

103. The allegations in paragraph 103 are conclusions of law which require no answer; proposed defendant-intervenors deny any factual allegations in paragraph 103.

104. The allegations in paragraph 104 include conclusions of law which require no answer; proposed defendant-intervenors deny any factual allegations in paragraph 104.

105. The allegations in paragraph 105 include conclusions of law which require no answer; proposed defendant-intervenors deny any factual allegations in paragraph 105.

106. The allegations in paragraph 106 include conclusions of law which require no answer; proposed defendant-intervenors deny any factual allegations in paragraph 106.

107. The allegations in paragraph 107 include conclusions of law which require no answer; proposed defendant-intervenors deny any factual allegations in paragraph 107.

108. The allegations in paragraph 108 are conclusions of law which require no answer.

109. The allegations in paragraph 109 are conclusions of law which require no answer.

110. The allegations in paragraph 110 include conclusions of law which require no answer; proposed defendant-intervenors deny any factual allegations in paragraph 110.

Specifically, proposed defendant-intervenors deny that protecting their healthcare providers from discrimination will harm Plaintiffs or their patients.

111. The allegations in paragraph 111 include conclusions of law which require no answer; proposed defendant-intervenors deny any factual allegations in paragraph 111.

112. The allegations in paragraph 112 include conclusions of law which require no answer; proposed defendant-intervenors deny any factual allegations in paragraph 112.

113. The allegations in paragraph 113 include conclusions of law which require no answer; proposed defendant-intervenors deny any factual allegations in paragraph 113.

114. Proposed defendant-intervenors deny any factual allegations in paragraph 114.

115. The allegations in paragraph 115 include conclusions of law which require no answer; proposed defendant-intervenors deny any factual allegations in paragraph 115.

Specifically, proposed defendant-intervenors deny that the challenged regulation's requirement that grantees not discriminate against employees on the basis of their conscientious objection to referring for abortions conflicts with the Title X mandate that the grantee itself provide such referrals when requested. See 65 Fed. Reg. 41273-41275 (Secretary Shalala noting that the Church Amendment has always prohibited Title X grantees from requiring their employees to provide abortion counseling and referrals); *NFPRHA v. Gonzales*, 468 F.3d 826, 829 (rejecting this same argument).

116. The allegations in paragraph 116 include conclusions of law which require no answer; proposed defendant-intervenors deny any factual allegations in paragraph 116.

117. The allegations in paragraph 117 include conclusions of law which require no answer; proposed defendant-intervenors deny any factual allegations in paragraph 117.

118. The allegations in paragraph 118 include conclusions of law which require no answer; proposed defendant-intervenors deny any factual allegations in paragraph 118.

119. The allegations in paragraph 119 include conclusions of law which require no answer; proposed defendant-intervenors deny any factual allegations in paragraph 119.

120. Proposed defendant-intervenors deny any factual allegations in paragraph 120.

121. The allegations in paragraph 121 are conclusions of law which require no answer.

122. Proposed defendant-intervenors incorporate by reference their answers to paragraphs 1 through 121 above.

123. The allegations in paragraph 123 are conclusions of law which require no answer; proposed defendant-intervenors deny any factual allegations in paragraph 123.

124. Proposed defendant-intervenors incorporate by reference their answers to paragraphs 1 through 124 above.

125. The allegations in paragraph 125 are conclusions of law which require no answer; proposed defendant-intervenors deny any factual allegations in paragraph 125.

126. Proposed defendant-intervenors incorporate by reference their answers to paragraphs 1 through 125 above.

127. The allegations in paragraph 127 are conclusions of law which require no answer; proposed defendant-intervenors deny any factual allegations in paragraph 127.

128. Proposed defendant-intervenors incorporate by reference their answers to paragraphs 1 through 127 above.

129. The allegations in paragraph 129 are conclusions of law which require no answer; proposed defendant-intervenors deny any factual allegations in paragraph 129.

130. Proposed defendant-intervenors incorporate by reference their answers to paragraphs 1 through 129 above.

131. The allegations in paragraph 131 are conclusions of law which require no answer; proposed defendant-intervenors deny any factual allegations in paragraph 131.

132. Proposed defendant-intervenors incorporate by reference their answers to paragraphs 1 through 131 above.

133. The allegations in paragraph 133 are conclusions of law which require no answer; proposed defendant-intervenors deny any factual allegations in paragraph 133.

134. Proposed defendant-intervenors incorporate by reference their answers to paragraphs 1 through 133 above.

135. The allegations in paragraph 135 are conclusions of law which require no answer; proposed defendant-intervenors deny any factual allegations in paragraph 135.

136. The remainder of the complaint constitutes Plaintiffs' prayer for relief, to which no response is required, but to the extent a response is deemed necessary, proposed defendant-intervenors deny that Plaintiffs are entitled to the relief requested, or to any relief whatsoever.

137. Proposed defendant-intervenors deny all of the allegations of the complaint not otherwise answered above.

AFFIRMATIVE DEFENSES

1. The court lacks subject matter jurisdiction over this action.
2. Plaintiffs lack standing to sue.
3. Plaintiffs' claims are not ripe.
4. Plaintiffs have not presented an actual case or controversy.
5. Plaintiffs and their patients have not suffered any injury in fact.
6. Plaintiffs have not challenged the statutes the challenged regulation implements and thus this Court cannot provide effective relief for the Plaintiffs' asserted injuries.
7. Plaintiffs have failed to state a claim upon which relief can be granted.
8. Plaintiffs' complaint fails because they did not exhaust their administrative remedies under the Administrative Procedures Act, including seeking clarification from HHS or seeking a new rulemaking proceeding with HHS to obtain a remedy before they filed this action.
9. HHS's rulemaking was not arbitrary, capricious, an abuse of discretion, or without observance of procedure required by law, and it did not violate the Administrative Procedure Act.
10. HHS did not violate the Regulatory Flexibility Act, the Congressional Review Act, or Executive Order 12866.

11. The Regulation does not violate the First or Fifth Amendments of the United States Constitution.

12. The First Amendment to the United States Constitution, and also many state constitutions and laws, forbid state governments from imposing civil or criminal penalties on doctors or other medical professionals, including the proposed defendant-intervenors' members, because of their conscientious objection to providing or referring for abortions; therefore the HHS Regulations will ensure that these laws are not violated, and will not cause the violation of any legitimate state law.

13. The relief Plaintiffs request, facial invalidation of the challenged regulation or an injunction preventing its enforcement *in toto* is overbroad.

Having fully answered, proposed defendant-intervenors respectfully request that Plaintiffs' claims be dismissed with prejudice, that costs be taxed against Plaintiffs, and that the Court award proposed defendant-intervenors such other and further relief as the Court may deem just and proper.

DATED: This 22nd day of January, 2009.

Proposed Defendant- Intervenors,

CHRISTIAN MEDICAL ASSOCIATION
AMERICAN ASSOCIATION OF PRO-
LIFE OBSTETRICIANS AND
GYNECOLOGISTS, and
CATHOLIC MEDICAL ASSOCIATION

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* *Pro Hac Vice Admission Pending*