

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT
HARTFORD DIVISION

PLANNED PARENTHOOD OF AMERICA,)
INC., and PLANNED PARENTHOOD OF)
CONNECTICUT, INC.,)

Plaintiffs,)

vs.)

CIVIL ACTION NO. 3:09-CV-057-RNC

MICHAEL O. LEAVITT, Secretary of the)
United States Department of Health and Human)
Services, in his official capacity,)

Defendants,)

January 22, 2009

and)

CHRISTIAN MEDICAL ASSOCIATION, On)
behalf of its individual members,)

AMERICAN ASSOCIATION OF PRO-LIFE)
OBSTETRICIANS AND GYNECOLOGISTS,)
On behalf of its individual members, and)

CATHOLIC MEDICAL ASSOCIATION, On)
behalf of its individual members, and)

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 are without knowledge or information sufficient to form a belief as to the truth of any factual allegations in paragraph 1.

2. The allegations in paragraph 2 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 2.

3. The allegations in paragraph 3 are conclusions of law which require no answer; proposed defendant-intervenors deny 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; however, proposed defendant-intervenors deny that jurisdiction exists to hear this case.

6. The allegations in paragraph 6 are conclusions of law which require no answer; however, proposed defendant-intervenors deny that jurisdiction exists to hear this case.

7. The allegations in paragraph 7 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 7.

8. Proposed defendant-intervenors are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 8.

9. Proposed defendant-intervenors are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 9.

10. Proposed defendant-intervenors are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 10.

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. The allegations in paragraph 14 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 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. 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 allegations in paragraph 17 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 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 allegations in paragraph 20 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 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. The allegations in paragraph 22 are conclusions of law which require no answer.

23. The allegations in paragraph 23 are conclusions of law which require no answer; proposed defendant-intervenors deny any factual allegations in Plaintiffs' paraphrase of the law in paragraph 23.

24. The allegations in paragraph 24 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 24.

25. The allegations in paragraph 25 are conclusions of law which require no answer; proposed defendant-intervenors deny any factual allegations in Plaintiffs' paraphrase of the law in paragraph 25.

26. The allegations in paragraph 26 are conclusions of law which require no answer.

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; proposed defendant-intervenors are without knowledge or information sufficient to form a belief as to the truth of any factual allegations in paragraph 29.

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 are without knowledge or information sufficient to form a belief as to the truth of any factual allegations in paragraph 32.

33. The allegations in paragraph 33 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 33.

34. The allegations in paragraph 34 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 34.

35. Proposed defendant-intervenors are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 35.

36. The allegations in paragraph 36 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 36.

37. The allegations in paragraph 37 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 37.

38. Proposed defendant-intervenors deny the allegations in paragraph 38, including but not limited to Plaintiffs' semantic redefinitions of "pregnancy" and related terms.

39. 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 39.

40. Proposed defendant-intervenors are without knowledge or information sufficient to form a belief as to the truth of allegations in paragraph 40.

41. Proposed defendant-intervenors deny the allegations in paragraph 41 to the extent that Plaintiffs are severely confusing the "Draft Regulations" with the "Proposed Regulations," which are completely different documents; the allegations in paragraph 41 also 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 41.

42. Proposed defendant-intervenors are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 42.

43. Proposed defendant-intervenors are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 43.

44. The allegations in paragraph 44 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 44.

45. The allegations in paragraph 45 are conclusions of law which require no answer; proposed defendant-intervenors deny any factual allegations in Plaintiffs' paraphrase of the law in paragraph 45.

46. The allegations in paragraph 46 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 46.

47. Proposed defendant-intervenors are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 47.

48. The allegations in paragraph 48 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 48.

49. Proposed defendant-intervenors are without knowledge or information sufficient to form a belief as to the truth of the 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 factual allegations in paragraph 50.

51. Proposed defendant-intervenors are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 51.

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 are without knowledge or information sufficient to form a belief as to the truth of any factual allegations in paragraph 53.

54. Proposed defendant-intervenors are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 54.

55. The allegations in paragraph 55 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 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 any factual allegations in paragraph 56.

57. The allegations in paragraph 57 are conclusions of law which require no answer; proposed defendant-intervenors deny any factual allegations in paragraph 57.

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. The allegations in paragraph 59 are conclusions of law which require no answer; proposed defendant-intervenors deny any factual allegations in Plaintiffs' paraphrase of the law in paragraph 59.

60. The allegations in paragraph 60 are conclusions of law which require no answer; proposed defendant-intervenors deny any factual allegations in Plaintiffs' paraphrase of the law in paragraph 60.

61. The allegations in paragraph 61 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 61.

62. The allegations in paragraph 62 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 62.

63. The allegations in paragraph 63 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 63.

64. 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.

65. The allegations in paragraph 65 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 65.

66. The allegations in paragraph 66 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 66.

67. The allegations in paragraph 67 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 67.

68. Proposed defendant-intervenors are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 68.

69. The allegations in paragraph 69 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 69.

70. The allegations in paragraph 70 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 70.

71. The allegations in paragraph 71 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 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 73 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 73.

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 deny any factual allegations in paragraph 75.

76. The allegations in paragraph 75 include conclusions of law which require no answer; proposed defendant-intervenors deny any factual allegations in paragraph 76.

77. Proposed defendant-intervenors deny Plaintiffs' semantic redefinitions of "abortion" and related terms; the allegations in paragraph 77 also 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 77.

78. The allegations in paragraph 78 include conclusions of law which require no answer; proposed defendant-intervenors deny any 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 deny any factual allegations in paragraph 79.

81. The allegations in paragraph 81 include conclusions of law which require no answer; proposed defendant-intervenors deny any factual allegations in paragraph 81.

82. The allegations in paragraph 82 include conclusions of law which require no answer; proposed defendant-intervenors deny any factual allegations in paragraph 82.

83. The allegations in paragraph 83 include conclusions of law which require no answer; proposed defendant-intervenors deny any factual allegations in paragraph 83.

84. The allegations in paragraph 84 include conclusions of law which require no answer; proposed defendant-intervenors deny any factual allegations in paragraph 84.

85. The allegations in paragraph 85 are 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 are without knowledge or information sufficient to form a belief as to the truth of any factual allegations in paragraph 86.

87. The allegations in paragraph 87 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 87.

88. The allegations in paragraph 88 are conclusions of law which require no answer; proposed defendant-intervenors deny any factual allegations in Plaintiffs' paraphrase of the law in paragraph 88.

89. The allegations in paragraph 89 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 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. Proposed defendant-intervenors are without knowledge or information sufficient to form a belief as to the truth of allegations in paragraph 91.

92. Proposed defendant-intervenors are without knowledge or information sufficient to form a belief as to the truth of allegations in paragraph 92.

93. Proposed defendant-intervenors deny that HHS engaged in “purposeful obfuscation of what constitutes ‘abortion’ and deny Plaintiffs’ semantic redefinition of “pregnancy,” “abortion,” and related terms; and proposed defendant-intervenors are without knowledge or information sufficient to form a belief as to the truth of the other allegations in paragraph 93.

94. Proposed defendant-intervenors are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 94.

95. Proposed defendant-intervenors are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 95.

96. The allegations in paragraph 96 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 96.

97. Proposed defendant-intervenors deny that “abortion is a very safe medical procedure,” or that complications from abortion are “rare”; proposed defendant-intervenors are without knowledge or information sufficient to form a belief as to the truth of any other allegations in paragraph 97.

98. The allegations in paragraph 98 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 98.

99. The allegations in paragraph 99 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 99.

100. Proposed defendant-intervenors are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 100.

101. The allegations in paragraph 101 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 101.

102. The allegations in paragraph 102 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 102.

103. The allegations in paragraph 103 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 103.

104. The allegations in paragraph 104 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 104.

105. The allegations in paragraph 105 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 105.

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

107. The allegations in paragraph 107 are 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; proposed defendant-intervenors deny any factual allegations in paragraph 108.

109. The allegations in paragraph 109 are conclusions of law which require no answer; proposed defendant-intervenors deny any factual allegations in paragraph 109.

110. Proposed defendant-intervenors incorporate by reference their answers to paragraphs 1 through 109 above.

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

112. Proposed defendant-intervenors incorporate by reference their answers to paragraphs 1 through 111 above.

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

114. Proposed defendant-intervenors incorporate by reference their answers to paragraphs 1 through 113 above.

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

116. Proposed defendant-intervenors incorporate by reference their answers to paragraphs 1 through 115 above.

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

118. Proposed defendant-intervenors incorporate by reference their answers to paragraphs 1 through 117 above.

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

120. Proposed defendant-intervenors incorporate by reference their answers to paragraphs 1 through 119 above.

121. The allegations in paragraph 121 are conclusions of law which require no answer; proposed defendant-intervenors deny any factual allegations in paragraph 121

122. 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.

123. 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 Procedures 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.

Respectfully submitted,

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

/s/ Andrew S. Knott

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* *Pro Hac Vice Admission Pending*