

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

STATE OF CONNECTICUT, et al.,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
UNITED STATES OF AMERICA, et al.,	)	CIVIL ACTION NO. 3:09-CV-054-RNC
	)	
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,	)	
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 expressions of political opinion which do not require an 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 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 3.

4. Proposed defendant-intervenors are without knowledge or information sufficient to form a belief as to the truth of any factual allegations in paragraph 4.

5. The allegations in paragraph 3 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 5.

6. The allegations in paragraph 6 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 6.

7. The allegations in paragraph 7 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 7.

8. The allegations in paragraph 8 are conclusions of law which require no answer; proposed defendant-intervenors deny any factual allegations in paragraph 8.

9. The allegations in paragraph 9 are conclusions of law which require no answer; however, proposed defendant-intervenors deny that jurisdiction exists to hear this case.

10. Admit.

11. The allegations in paragraph 11 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 11.

12. The allegations in paragraph 12 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 12.

13. Admit.

14. Admit.

15. Admit.

16. Admit.

17. Admit.

18. Admit.

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 any factual allegations in paragraph 19; however, proposed defendant-intervenors deny that Plaintiffs have standing to bring this action.

20. The allegations in paragraph 20 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 20; however, proposed defendant-intervenors deny that the Regulation illegally interferes with Plaintiffs' exercise of their police powers.

21. The allegations in paragraph 21 are conclusions of law which require no answer; however, plaintiff defendant-intervenors deny that this action is legitimately brought against Defendants.

22. The allegations in paragraph 21 are conclusions of law which require no answer; however, plaintiff defendant-intervenors deny that this action is legitimately brought against Defendants.

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 any factual allegations in paragraph 23.

24. Proposed defendant-intervenors deny Plaintiffs' semantic redefinition of "pregnancy" and related terms, and their assertion that the medical community generally accepts their redefinitions; proposed defendant-intervenors are without knowledge or information sufficient to form a belief as to the truth of other factual allegations in paragraph 24.

25. The allegations in paragraph 25 include conclusions of law which require no answer; proposed defendant-intervenors deny that requiring health providers to participate in killing unborn children is a legitimate interest of the state, of patients, or of health entities; proposed defendant-intervenors are without knowledge or information sufficient to form a belief as to the truth of other factual allegations in paragraph 25.

26. The allegations in paragraph 26 include conclusions of law which require no answer; proposed defendant-intervenors deny that requiring health providers to participate in killing unborn children is a legitimate interest of the state, of patients, or of health entities; proposed defendant-intervenors are without knowledge or information sufficient to form a belief as to the truth of other factual allegations in paragraph 26.

27. The allegations in paragraph 27 include conclusions of law which require no answer; proposed defendant-intervenors deny that requiring health providers to participate in killing unborn children is a legitimate interest of the state, of patients, or of health entities; proposed defendant-intervenors are without knowledge or information sufficient to form a belief as to the truth of other factual allegations in paragraph 27.

28. The allegations in paragraph 28 include conclusions of law which require no answer; proposed defendant-intervenors deny that requiring health providers to participate in killing unborn children is a legitimate interest of the state, of patients, or of health entities; proposed defendant-intervenors are without knowledge or information sufficient to form a belief as to the truth of other factual allegations in paragraph 28.

29. The allegations in paragraph 29 include conclusions of law which require no answer; proposed defendant-intervenors deny that requiring health providers to participate in killing unborn children is a legitimate interest of the state, of patients, or of health entities; proposed defendant-intervenors are without knowledge or information sufficient to form a belief as to the truth of other factual allegations in paragraph 29.

30. The allegations in paragraph 30 include conclusions of law which require no answer; proposed defendant-intervenors deny that requiring health providers to participate in killing unborn children is a legitimate interest of the state, of patients, or of

health entities; proposed defendant-intervenors are without knowledge or information sufficient to form a belief as to the truth of other factual allegations in paragraph 30.

31. The allegations in paragraph 31 include conclusions of law which require no answer; proposed defendant-intervenors deny that requiring health providers to participate in killing unborn children is a legitimate interest of the state, of patients, or of health entities; proposed defendant-intervenors are without knowledge or information sufficient to form a belief as to the truth of other factual allegations in paragraph 31.

32. The allegations in paragraph 32 include conclusions of law which require no answer; proposed defendant-intervenors deny that requiring health providers to participate in killing unborn children is a legitimate interest of the state, of patients, or of health entities; proposed defendant-intervenors are without knowledge or information sufficient to form a belief as to the truth of other factual allegations in paragraph 32.

33. The allegations in paragraph 33 include conclusions of law which require no answer; proposed defendant-intervenors deny that requiring health providers to participate in killing unborn children is a legitimate interest of the state, of patients, or of health entities; proposed defendant-intervenors are without knowledge or information sufficient to form a belief as to the truth of other factual allegations in paragraph 33.

34. The allegations in paragraph 34 include conclusions of law which require no answer; proposed defendant-intervenors deny that requiring health providers to participate in killing unborn children is a legitimate interest of the state, of patients, or of health entities; proposed defendant-intervenors are without knowledge or information sufficient to form a belief as to the truth of other factual allegations in paragraph 34.

35. The allegations in paragraph 35 include conclusions of law which require no answer; proposed defendant-intervenors deny that requiring health providers to participate in killing unborn children is a legitimate interest of the state, of patients, or of health entities; proposed defendant-intervenors are without knowledge or information sufficient to form a belief as to the truth of other factual 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 deny that requiring health providers to participate in killing unborn children is a legitimate interest of the state, of patients, or of health entities; proposed defendant-intervenors are without knowledge or information sufficient to form a belief as to the truth of other factual allegations in paragraph 37.

38. The allegations in paragraph 38 include conclusions of law which require no answer; proposed defendant-intervenors deny that requiring health providers to participate in killing unborn children is a legitimate interest of the state, of patients, or of health entities; proposed defendant-intervenors are without knowledge or information sufficient to form a belief as to the truth of other factual allegations in paragraph 38.

39. The allegations in paragraph 39 include conclusions of law which require no answer; proposed defendant-intervenors deny that requiring health providers to participate in killing unborn children is a legitimate interest of the state, of patients, or of health entities, and they deny in particular that New Jersey has a legitimate interest in requiring pharmacies to fill prescriptions for all drugs, even those that kill unborn

children at late stages of pregnancy; proposed defendant-intervenors are without knowledge or information sufficient to form a belief as to the truth of other factual allegations in paragraph 39.

40. The allegations in paragraph 40 include conclusions of law which require no answer; proposed defendant-intervenors deny that requiring health providers to participate in killing unborn children is a legitimate interest of the state, of patients, or of health entities; proposed defendant-intervenors are without knowledge or information sufficient to form a belief as to the truth of other factual allegations in paragraph 40.

41. The allegations in paragraph 41 include conclusions of law which require no answer; proposed defendant-intervenors deny that requiring health providers to participate in killing unborn children is a legitimate interest of the state, of patients, or of health entities; proposed defendant-intervenors are without knowledge or information sufficient to form a belief as to the truth of other factual allegations in paragraph 41.

42. The allegations in paragraph 42 include conclusions of law which require no answer; proposed defendant-intervenors deny that requiring health providers to participate in killing unborn children is a legitimate interest of the state, of patients, or of health entities; proposed defendant-intervenors are without knowledge or information sufficient to form a belief as to the truth of other factual allegations in paragraph 42.

43. The allegations in paragraph 43 include conclusions of law which require no answer; proposed defendant-intervenors deny that requiring health providers to participate in killing unborn children is a legitimate interest of the state, of patients, or of health entities; proposed defendant-intervenors are without knowledge or information sufficient to form a belief as to the truth of other factual allegations in paragraph 43.

44. The allegations in paragraph 44 include conclusions of law which require no answer; proposed defendant-intervenors deny that requiring health providers to participate in killing unborn children is a legitimate interest of the state, of patients, or of health entities; proposed defendant-intervenors are without knowledge or information sufficient to form a belief as to the truth of other factual allegations in paragraph 44.

45. The allegations in paragraph 45 include conclusions of law which require no answer; proposed defendant-intervenors deny that requiring health providers to participate in killing unborn children is a legitimate interest of the state, of patients, or of health entities; proposed defendant-intervenors are without knowledge or information sufficient to form a belief as to the truth of other factual allegations in paragraph 45.

46. The allegations in paragraph 46 include conclusions of law which require no answer; proposed defendant-intervenors deny that requiring health providers to participate in killing unborn children is a legitimate interest of the state, of patients, or of health entities; proposed defendant-intervenors are without knowledge or information sufficient to form a belief as to the truth of other factual allegations in paragraph 46.

47. The allegations in paragraph 47 include conclusions of law which require no answer; proposed defendant-intervenors deny that requiring health providers to participate in killing unborn children is a legitimate interest of the state, of patients, or of health entities; proposed defendant-intervenors are without knowledge or information sufficient to form a belief as to the truth of other factual allegations in paragraph 47.

48. The allegations in paragraph 48 include conclusions of law which require no answer; proposed defendant-intervenors deny that requiring health providers to participate in killing unborn children is a legitimate interest of the state, of patients, or of

health entities; proposed defendant-intervenors are without knowledge or information sufficient to form a belief as to the truth of other factual allegations in paragraph 48.

49. The allegations in paragraph 49 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 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. The allegations in paragraph 51 are conclusions of law which require no answer.

52. The allegations in paragraph 52 are conclusions of law which require no answer; proposed defendant-intervenors deny any factual allegations in Plaintiffs' paraphrase of the law in paragraph 52.

53. The allegations in paragraph 53 include conclusions of law which require no answer; proposed defendant-intervenors deny any factual allegations in Plaintiffs' paraphrase of the law in paragraph 53; 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. The allegations in paragraph 54 include conclusions of law which require no answer; proposed defendant-intervenors deny any factual allegations in Plaintiffs' paraphrase of the law in paragraph 54; proposed defendant-intervenors are without knowledge or information sufficient to form a belief as to the truth of any factual allegations 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 Plaintiffs' paraphrase of the law in paragraph 55; 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 deny any factual allegations in Plaintiffs' paraphrase of the law in paragraph 56; 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 include conclusions of law which require no answer; proposed defendant-intervenors deny any factual allegations in Plaintiffs' paraphrase of the law in paragraph 57; proposed defendant-intervenors are without knowledge or information sufficient to form a belief as to the truth of any factual allegations in paragraph 57.

58. The allegations in paragraph 58 include conclusions of law which require no answer; proposed defendant-intervenors deny any factual allegations in Plaintiffs' paraphrase of the law in paragraph 58; 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 include conclusions of law which require no answer; proposed defendant-intervenors deny Plaintiffs' irresponsible speculative

assertions and are without knowledge or information sufficient to form a belief as to the truth of any other factual allegations 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 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 deny Plaintiffs' irresponsible speculative assertions and are without knowledge or information sufficient to form a belief as to the truth of any other 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. Proposed defendant-intervenors incorporate by reference their answers to paragraphs 1 through 63 above.

65. The allegations in paragraph 65 are conclusions of law which require no answer; proposed defendant-intervenors deny any factual allegations in Plaintiffs' characterization of HHS's actions in paragraph 65.

66. The allegations in paragraph 66 are conclusions of law which require no answer; proposed defendant-intervenors deny the allegation that the Regulation was not authorized by law, and deny any other factual allegations in paragraph 66.

67. The allegations in paragraph 67 are conclusions of law which require no answer; proposed defendant-intervenors deny the allegation that the Regulation was not authorized by law, and deny any other factual allegations in paragraph 67.

68. The allegations in paragraph 68 are conclusions of law which require no answer; proposed defendant-intervenors deny the allegation that the Regulation was not authorized by law, and deny any other factual allegations in paragraph 66.

69. The allegations in paragraph 69 are conclusions of law which require no answer; proposed defendant-intervenors deny the allegation that the Regulation was not authorized by law, and deny any other factual allegations in paragraph 69.

70. The allegations in paragraph 70 are conclusions of law which require no answer; proposed defendant-intervenors deny that the Regulation, violates the Administrative Procedures Act, causes Plaintiffs irreparable harm, or may be enjoined, and they deny any other factual allegations in paragraph 70.

71. Proposed defendant-intervenors incorporate by reference their answers to paragraphs 1 through 70 above.

72. The allegations in paragraph 72 are conclusions of law which require no answer; proposed defendant-intervenors deny 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 76 are conclusions of law which require no answer; proposed defendant-intervenors deny any factual allegations in paragraph 76.

77. Proposed defendant-intervenors incorporate by reference their answers to paragraphs 55 through 58 above

78. The allegations in paragraph 78 are conclusions of law which require no answer; proposed defendant-intervenors deny that the Regulation violates the Administrative Procedures Act, was arbitrary, capricious, an abuse of discretion, not in accordance with law, or contrary to Plaintiffs' constitutional rights, powers, privileges or immunities, and they deny any other factual allegations in paragraph 78.

79. The allegations in paragraph 79 are conclusions of law which require no answer; proposed defendant-intervenors deny that the Regulation causes Plaintiffs irreparable harm or may be enjoined, and they deny any other factual allegations in paragraph 79.

80. Proposed defendant-intervenors incorporate by reference their answers to paragraphs 1 through 65 and 72 through 79 above.

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

82. The allegations in paragraph 82 are conclusions of law which require no answer; proposed defendant-intervenors deny that the laws as interpreted and implemented by the Regulation violate the Spending Clause or are vague, and they deny any other factual allegations in paragraph 82.

83. The allegations in paragraph 83 are conclusions of law which require no answer; proposed defendant-intervenors deny that the Regulation is vague, and they deny any other factual allegations in paragraph 83.

84. The allegations in paragraph 84 are 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 that the Regulation causes Plaintiffs irreparable harm or may be enjoined, and they deny any other factual allegations in paragraph 85.

86. Proposed defendant-intervenors incorporate by reference their answers to paragraphs 1 through 85 above.

87. The allegations in paragraph 85 are conclusions of law which require no answer.

88. Proposed defendant-intervenors incorporate by reference their answer to paragraphs 63.

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

90. The allegations in paragraph 90 are conclusions of law which require no answer; proposed defendant-intervenors deny that the laws as interpreted and implemented by the Regulation violate the Spending Clause, and they deny any other factual allegations in paragraph 90.

91. The allegations in paragraph 91 are conclusions of law which require no answer; proposed defendant-intervenors deny that the Regulation causes Plaintiffs

irreparable harm or may be enjoined, and they deny any other factual allegations in paragraph 91.

92. Proposed defendant-intervenors incorporate by reference their answers to paragraphs 1 through 91.

93. The allegations in paragraph 93 are conclusions of law which require no answer.

94. The allegations in paragraph 94 are conclusions of law which require no answer; proposed defendant-intervenors deny that the laws as interpreted and implemented by the Regulation violate the Spending Clause, and they deny any other factual allegations in paragraph 94.

95. The allegations in paragraph 95 are conclusions of law which require no answer; proposed defendant-intervenors deny that the Regulation is beyond the scope of Congress's or HHS's enumerated powers or violates the Spending Clause, and they deny any other factual allegations in paragraph 95.

96. The allegations in paragraph 96 are conclusions of law which require no answer; proposed defendant-intervenors deny that the Regulation causes Plaintiffs irreparable harm or may be enjoined, and they deny any other factual allegations in paragraph 96.

97. Proposed defendant-intervenors incorporate by reference their answers to paragraphs 1 through 96.

98. The allegations in paragraph 98 are conclusions of law which require no answer; proposed defendant-intervenors deny that an actual controversy exists or that the Regulation is unconstitutional or violates the APA; 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 are conclusions of law which require no answer; proposed defendant-intervenors deny that declaratory relief for Plaintiffs is appropriate, and they deny any other factual allegations in paragraph 99.

100. The allegations in paragraph 99 are conclusions of law which require no answer; proposed defendant-intervenors deny that Plaintiffs are entitled to declaratory relief of any kind in this action, and they deny any other factual allegations in paragraph 100.

101. 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.

102. 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,

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*