

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

STATE OF CONNECTICUT, et al.,

Plaintiffs,

vs.

UNITED STATES OF AMERICA, et al.,

Defendants,

and

CHRISTIAN MEDICAL ASSOCIATION, on
behalf of its members,

AMERICAN ASSOCIATION OF PRO-LIFE
OBSTETRICIANS AND GYNECOLOGISTS,
on behalf of its members,

CATHOLIC MEDICAL ASSOCIATION, on
behalf of its members,

CONCERNED WOMEN FOR AMERICA, on
behalf of its individual members;

CHRISTIAN PHARMACISTS FELLOWSHIP
INTERNATIONAL, on behalf of its individual
members;

HEARTBEAT INTERNATIONAL, on behalf of
its individual members;

CARE NET, on behalf of its individual
members;

NEW JERSEY PHYSICIAN'S RESOURCE
COUNCIL, on behalf of its individual members;
and

ASSOCIATION OF AMERICAN
PHYSICIANS & SURGEONS, Inc., on behalf
of its individual members;

Proposed Defendant-Intervenors.

CIVIL ACTION NO. 3:09-CV-00054-RNC

March 19, 2010

**JOINT MOTION TO LIFT STAY
TO REASSERT MOTIONS TO INTERVENE**

COME NOW various Proposed Defendant-Intervenors, CHRISTIAN MEDICAL ASSOCIATION, AMERICAN ASSOCIATION OF PRO-LIFE OBSTETRICIANS AND GYNECOLOGISTS, CATHOLIC MEDICAL ASSOCIATION, CONCERNED WOMEN FOR AMERICA, CHRISTIAN PHARMACISTS FELLOWSHIP INTERNATIONAL, HEARTBEAT INTERNATIONAL, and CARE NET, NEW JERSEY PHYSICIANS RESOURCE COUNCIL (“Affected Health Organizations”), and they jointly move this Court to lift the stay entered in this action on April 27, 2009 for the purpose of granting the motions to intervene¹ in the above-captioned case.²

Affected Health Organizations ask this Court to lift the stay entered April 27, 2009 and allow them to intervene in this case. As discussed below, for more than a year, members of Affected Health Organizations have been left unprotected by the Defendants from unlawful discrimination due to the Defendant’s failure to enforce their own regulations requiring recipients of federal funds to certify that they will protect medical providers’ right to conscience. Defendants have had more than adequate time to either rescind the regulations or enforce them. They have done neither. Defendants have shown no interest in protecting the rights of the

¹ The Affected Health Organizations Hereby Incorporate by Reference the memoranda in support of their Motions to Intervene already on file with this Court, Christian Medical Assoc., American Assoc. of Pro-Life Obstetricians & Gynecologists, Catholic Medical Assoc., Dkt. ##14, 28, 30 (Jan. 21, 2009) (motions in each of the three cases prior to consolidation); Motion to Intervene as Defendants by Concerned Women for America, Christian Pharmacists Fellowship International, Care Net, Heartbeat International, New Jersey Physicians Resource Council, Dkt. #44 (Feb. 2, 2009); and the responses to Plaintiffs’ Second Motion for Extension of Time to File a Response to Motions to Intervene, Dkt. # 86-87.

² On August 24, 2009 this Court denied the motions to intervene without prejudice, permitting the intervenors to refile their motions. Dkt. #104.

Affected Health Organizations' members. To protect those interests, it is necessary to lift the stay and allow the Affected Health Organizations to intervene in this case, particularly for the purposes of protecting their interests in the enforcement of this regulation starting with the dismissal of this action which defendant has shown no interest in dismissing. At a minimum, the Court should lift the stay, grant the motions, and then continue the stay, allowing the intervenors to be noticed as parties in this case and to immediately participate in any future proceedings.

Affected Health Organizations filed timely motions seeking to intervene as a matter of right pursuant to the Federal Rule of Civil Procedure 24(a)(2) and Local Rule of Civil Procedure 7(a). At that time, the Affected Health Organizations explained that their members have multiple interests in the subject matter of this litigation, namely, a regulation protecting provider rights of conscience. *See* 45 C.F.R. 88.1 *et seq.* (2009). Dkt. #14, 28, 30, 44. The challenged regulation implements laws³ that protect the conscience rights of health care providers by requiring recipients of federal funds to certify compliance with the statutes, which prohibit discrimination against health care providers who refuse to perform certain procedures, such as abortion, to which they may object for religious, ethical, or other reasons.

Affected Health Organizations' members include individual health care providers who are within the class of beneficiaries that the executive branch intended to protect by promulgating this regulation. The Affected Health Organizations' members also have an interest in preserving their freedom of conscience under rights recognized by the First Amendment and

³ The Church Amendments, 42 U.S.C. 300a-7, section 245 of the Public Health Service Act, 42 U.S.C. 238n, and the Weldon Amendment, Consolidated Appropriations Act, 2008, Public Law 110-161, Div. G, Sec. 508(d), 121 Stat. 1844, 2209 (collectively referred to as the federal healthcare conscience protection statutes).

other laws – which this regulation implements. They face economic and professional injury should the regulation be invalidated or enjoined. The Affected Health Organizations therefore have strong interests in defending the rule against Plaintiffs’ challenge.

When Affected Health Organizations first moved to intervene, they noted that the existing parties may not adequately represent their interests, especially because the named Defendants represented a new administration that repeatedly had made public statements opposing the adoption of the regulation. When the Court stayed these actions, the named Defendants had proposed rescinding the regulation.⁴ But they never did. Instead, Defendants simply have not enforced the regulation. Defendants’ failure to enforce the regulation confirms that their interests are diametrically opposed to those of the Affected Health Organizations’ members.

Affected Health Organizations noted in their opposition to the stay that “[a] stay pending the outcome of the new rulemaking proceeding . . . could leave this matter on this Court’s docket indefinitely.”⁵ Indeed, this is what has happened. Just as the Affected Health Organizations foresaw, this limitless stay effectively gives plaintiffs what they want even though this action ought to be dismissed and undermines the public’s interest in seeing valid regulations enforced, and it prevents this Court from promptly disposing of matters on its docket.

⁴ Rescission of the Regulation Entitled “Ensuring That Department of Health and Human Services Funds Do Not Support Coercive or Discriminatory Policies or Practices in Violation of Federal Law”, 74 Fed. Reg. 10207-211 (proposed March 10, 2009).

⁵ Memorandum in Opposition to Federal Defendants’ Motion to Stay All Proceedings or in the Alternative Requesting that the Court Grant the Motions to Intervene Prior to Entering the Stay, Dkt. # 95 (March 19, 2009).

The risk for the Affected Health Organizations is especially acute because many recipients of federal funds are unaware of or flout the statutory protections for rights of conscience and have failed to comply with the statutes underlying this regulation.⁶

Affected Health Organizations therefore respectfully request that the Court lift the stay on these actions and grant their motions to intervene so that intervenors may promptly move to dismiss this action. Affected Health Organizations attach a proposed order for this purpose.

Dated this 19th Day of March, 2010.

⁶ Namely, the Church Amendments, *see* 42 U.S.C. § 300a-7(b)(1) (prohibiting officials from requiring any individual “to perform or assist in the performance of any . . . abortion if his performance or assistance in the performance of such procedure or abortion would be contrary to his religious beliefs or moral convictions”); *see also id.* § 300a-7(d); the Coats Amendment, *see* 42 U.S.C. § 238n (prohibiting discrimination against individuals and entities that “refuse[] to undergo training in the performance of induced abortions, to require or provide such training, to perform such abortions, or to provide referrals for such training or such abortions”); and the Weldon Amendment, *see* Consolidated Appropriations Act, 2008, Pub. L. 11-161, § 508(d), 121 Stat. 1844, 2209 (2008) (prohibiting federal funding to programs that discriminate against individuals or entities that do “not provide, pay for, provide coverage of, or refer for abortions”).

Respectfully submitted,

PROPOSED DEFENDANT-INTERVENORS,
CHRISTIAN MEDICAL ASSOCIATION,
AMERICAN ASSOCIATION OF PRO-LIFE
OBSTETRICIANS AND GYNECOLOGISTS, and
CATHOLIC MEDICAL ASSOCIATION, for
themselves and for CONCERNED WOMEN FOR
AMERICA; CHRISTIAN PHARMACISTS
FELLOWSHIP INTERNATIONAL;
HEARTBEAT INTERNATIONAL; CARE NET;
and NEW JERSEY PHYSICIAN'S RESOURCE
COUNCIL;

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CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of March, 2010, I electronically filed the foregoing Joint Motion with the Clerk of the Court for the United States District Court for the District of Connecticut by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system. Notice of this filing will be sent by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic filing. Parties may access this filing through the Court's CM/ECF System.

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