

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

HODES & NAUSER, M.D.'s, P.A.	)	
HERBERT C. HODES, M.D., and	)	
TRACI LYNN NAUSER,	)	
	)	
Plaintiffs,	)	
and	)	
	)	
CENTRAL FAMILY MEDICAL, LLC,	)	
dba AID FOR WOMEN, and	)	
RONALD N. YEOMANS, M.D.,	)	
	)	Civil Action
Plaintiffs/Intervenors,	)	
	)	
v.	)	No. 11-2365-CM-KMH
	)	
ROBERT MOSER, M.D., in his official capacity	)	
as Secretary of the Kansas Department of Health	)	PLACE OF TRIAL
and Environment; STEPHEN HOWE, in his	)	REQUESTED:
official capacity as District Attorney for Johnson	)	KANSAS CITY, KANSAS
County; JEROME GORMAN, in his	)	
official capacity as District Attorney for	)	
Wyandotte County; and DEREK SCHMIDT, in	)	
his official capacity as Attorney General for the	)	
State of Kansas,	)	
	)	
Defendants.	)	

**MOTION BY THE AMERICAN ASSOCIATION OF PRO-LIFE  
OBSTETRICIANS AND GYNECOLOGISTS (AAPLOG) TO INTERVENE FOR  
RECONSIDERATION OF THE PRELIMINARY INJUNCTION  
AND TO APPEAL**

The American Association of Pro-Life Obstetricians and Gynecologists (AAPLOG), by and through counsel, moves to intervene as of right under FED. R. CIV. P. 24(a), or, alternatively, for permissive intervention pursuant to FED. R. CIV. P. 24(b). Proposed Answers are attached, in compliance with FED. R. CIV. P. 24(c); a Declaration is attached as Exhibit A in support of this Motion, and an accompanying memorandum of law is being filed in support also.

1. Founded in 1973, AAPLOG is a Section 501(c)(3) organization based in Michigan and having members nationwide who practice in the medical and health professions. AAPLOG serves the interests of its members, who include Kansas health professionals practicing in fields related to obstetrics and gynecology and providing services to pregnant and post-abortive women in Kansas.

2. AAPLOG satisfies the requirements of intervention as of right because (1) its application for intervention is timely, (2) AAPLOG has members in Kansas who have an interest relating to the law at issue in this action; (3) the disposition of the action may, as a practical matter, impair or impede AAPLOG's ability to protect that interest; (4) the interest of AAPLOG is not inadequately represented by the existing parties to the suit. Each of these points is addressed below.

3. This motion is timely because this lawsuit was filed less than five weeks ago, and another party has been allowed to intervene in the interim. No party is prejudiced by the timing of this motion.

4. AAPLOG has members in Kansas who will be directly affected by the disposition of this lawsuit. Specifically, the reduced safety, less-than-ideal sanitary conditions, poorer accommodations and lack of follow-up care at abortion facilities in the absence of SB 36 inevitably exacerbates complications among post-abortive women, and shifts costs of abortions onto AAPLOG members who treat post-abortive women. In addition, AAPLOG members are put at a competitive disadvantage by the enjoining of SB 36: AAPLOG members provide costly follow-up care for their services while Plaintiffs often do not unless required by SB 36. From a purely economic perspective, Plaintiffs take patients and potential patients away from AAPLOG members, and SB 36

levels the competitive playing field by requiring Plaintiffs to meet standards that AAPLOG members already satisfy, such as providing full follow-up care and being available for post-operative complications in hospitals. AAPLOG has an interest in ensuring a level playing field for its members in providing services to pregnant women, and in not being subjected to cost-shifting by abortion clinics that fail to provide follow-up care. Often the follow-up care for post-abortive patients is uncompensated when shifted from abortion clinics to AAPLOG members. SB 36 reduces such cost-shifting by abortion clinics, and AAPLOG has an interest in defending its members against such cost-shifting.

5. The disposition of this lawsuit will, as a practical matter, impede the ability of AAPLOG and its members to defend their interests. If the preliminary injunction against SB 36 and its implementing regulations remains in effect, then as a practical matter AAPLOG and its members will be locked into an economically disadvantageous position, as they provide follow-up care and safe facilities while abortion clinics often do not. The preliminary injunction against SB 36 and its implementing regulations enables Plaintiffs to continue to shift costs of complications from inadequate facilities and poor follow-up care onto AAPLOG members. This cost-shifting imposes a legally cognizable injury on AAPLOG members in two ways. First, AAPLOG members provide care in hospitals and office settings for complications caused by abortion facilities, and such care is often uncompensated. Second, enjoining SB 36 enables clinics to continue to take patients at artificially depressed costs away from AAPLOG members who provide safe services with full follow-up care. The preliminary injunction against SB 36 and its implementing regulations is equivalent to an economic subsidy for abortion clinics, to the competitive

disadvantage of AAPLOG members who seek to provide childbirth services to those same patients.

6. Defendants do not adequately represent AAPLOG's interests, as already demonstrated by Defendants' failure to appeal the broad preliminary injunction against SB 36 and its implementing regulations. SB 36 includes a severability provision (Section 12) and many aspects of the law and its implementing regulations are clearly constitutional, and thus would likely be reinstated on appeal. Yet Defendants have failed to appeal the preliminary injunction to reinstate those provisions. This results in more abortions and fewer childbirths using services provided by AAPLOG members, and more post-abortive complications for AAPLOG members to be burdened with in the absence of the follow-up care required of Plaintiffs by SB 36. This injury to AAPLOG members will last for the duration of the preliminary injunction, which could be many months or even longer than a year. By failing to appeal the imposition of this burden, Defendants are clearly not representing AAPLOG's interests.

7. Alternatively, AAPLOG seeks permissive intervention for the same reasons cited above. AAPLOG satisfies the first criterion of permissive intervention (timeliness), and seeks to defend on the same law and facts raised by Plaintiffs' Complaints, thereby satisfying the second criterion of permissive intervention.

8. AAPLOG has associational standing to assert the interests of its members in Kansas because (a) its members would otherwise have standing to sue in their own right; (b) the interests AAPLOG seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit. Specifically, AAPLOG's members would have

standing to intervene in their own right to protect their medical practices against the preferential treatment of abortion clinics, and AAPLOG itself has associational standing to defend its members' interests. These interests are plainly germane to the purpose of AAPLOG, which includes the promotion of good healthcare for women. *See* Declaration of the AAPLOG Executive Director, Joe DeCook, M.D., ¶ 5 (Exhibit A). Individual participation by members of AAPLOG is not necessary to defend the constitutionality of a generally enacted economic legislation such as SB 36. In addition, AAPLOG members practicing in Kansas are competitors of Plaintiffs in seeking to provide services to pregnant women, and thus those members – and AAPLOG – have competitor standing.

9. Section 12 of SB 36 provides for the full severability of any unconstitutional provision, without affecting the provisions that are constitutional: “The provisions of sections 1 through 12, and amendments thereto, are declared to be severable, and if any provision, or the application thereof, to any person shall be held invalid, such invalidity shall not affect the validity of the remaining provisions of sections 1 through 12, and amendments thereto.” Accordingly, even subsections are severable from each other.

10. Despite the severability clause, the preliminary injunction did not preserve the many provisions of SB 36 that are plainly constitutional. For example, it is constitutional to authorize the secretary to “adopt rules and regulations to prescribe facility supplies and equipment standards, including supplies and equipment, that are required to be immediately available for use or in an emergency.” SB 36 Section 9(c). It is also clearly constitutional for SB 36 to mandate that “It shall be unlawful for a person to perform or induce an abortion in a facility unless such person is a physician, with clinical privileges at a hospital located within 30 miles of the facility, with no

requirement of culpable mental state.” SB 36 Section 8(b). These and other legislative and regulatory provisions promote the safety of women, and the preliminary injunction should be reconsidered to apply the severability clause and lift the injunction against the constitutional provisions. One of the Plaintiff-Intervenors, Ronald Yeoman, M.D., essentially admitted that, as of June 29, 2011, he does not have hospital admitting privileges as required by SB 36, and there may be other abortion providers who do not satisfy that requirement. (Doc. 14 Exh. A, at ¶ 5). No injunction should block enforcement of that requirement and other constitutional provisions in SB 36 and its implementing regulations.

11. SB 36, as economic legislation that enhances the safety of women, should be reviewed under the “rational basis” test, and it easily meets that level of scrutiny. None of SB 36 or its implementing regulations should be enjoined.

12. The Kansas Attorney General’s office indicated on July 28, 2011, that it would not be filing a Notice of Appeal to challenge the preliminary injunction, despite its breadth, and that Defendants are opposed to this type of intervention to defend SB 36.

13. In support of this Motion, AAPLOG attaches the Declaration of its Executive Director, Joseph DeCook, M.D. (Exhibit A).

WHEREFORE, AAPLOG respectfully requests that this Court grant this motion to intervene, and reconsider and vacate the preliminary injunction.

Dated: August 1, 2011

Respectfully submitted,

Local Counsel

/s/ Thomas M. Dawson  
Thomas M. Dawson  
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2300 South 4th Street  
Leavenworth, KS 66048  
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Lead Counsel

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\*Motion for Admission *Pro Hac Vice* to be filed

ATTORNEYS FOR PROPOSED DEFENDANT-INTERVENOR AAPLOG

**CERTIFICATE OF SERVICE**

I hereby certify that on August 1, 2011, I electronically filed a true and accurate copy of the foregoing Motion by the American Association of Pro-Life Obstetricians and Gynecologists (AAPLOG) to Intervene with the Clerk of the Court using the Electronic Case Filing system, which I understand to have caused service of all the counsel of record in this case.

/s/ Thomas M. Dawson





has members nationwide who practice in the medical and health professions.

4. AAPLOG serves the interests of its members, who include Kansas health professionals practicing in fields related to obstetrics and gynecology and providing services to pregnant and post-abortive women in Kansas.

5. AAPLOG's purpose includes the promotion of good healthcare for women and the protection of women who have pregnancies from harms caused by abortion.

6. AAPLOG has members practicing in Kansas who compete with abortion clinics by offering services to pregnant women.

7. The membership of AAPLOG in Kansas includes practitioners who, in the course of their duties, provide uncompensated or undercompensated care to post-abortive women suffering from complications due to abortion.

8. AAPLOG members in Kansas are affected by reduced safety, poorer accommodations, less-than-ideal sanitary conditions, and lack of follow-up care at abortion facilities, because AAPLOG members are sometimes burdened with the care of complications from abortions.

9. The lack of follow-up care by some abortion providers – including their lack of hospital privileges to handle hospitalizations resulting from abortions – results in a shifting of the costs and responsibilities of follow-up care to AAPLOG members in Kansas and others.

10. AAPLOG members in Kansas have a significant interest in reducing the cost-shifting that results from the lack of follow-up care by abortion providers.

11. AAPLOG seeks to intervene in this action in order to protect its members' interests and the healthcare of women.

12. Allowing abortion providers to shift the costs of care from abortion to others, including AAPLOG members in Kansas, puts those AAPLOG members at an unfair competitive disadvantage.

13. Allowing abortion providers to cut corners and avoid follow-up care gives them an unfair competitive advantage in offering their services to patients who are considering the alternative of childbirth by AAPLOG members in Kansas.

14. AAPLOG members in Kansas, by agreeing to the mission of AAPLOG to provide for the care and well-being of women, offer the follow-up care that some abortion clinics and abortionists avoid.

15. AAPLOG practicing physician members typically have privileges at local hospitals so that they can handle complications, in contrast with some abortion providers.

16. AAPLOG has an interest in ensuring a level playing field for its members in providing services to pregnant women, and in not being subjected to cost-shifting by abortionists and abortion clinics that fail to provide follow-up care for complications caused by their operations.

I am fully competent to testify at trial in the foregoing matters. I declare under penalty of perjury that the foregoing is true and correct. Executed on this 31 day of July, 2011.

  
Joseph DeCook, M.D.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

HODES & NAUSER, M.D.’s, P.A.	)
HERBERT C. HODES, M.D., and	)
TRACI LYNN NAUSER,	)
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Plaintiffs,	)
and	)
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CENTRAL FAMILY MEDICAL, LLC,	)
dba AID FOR WOMEN, and	)
RONALD N. YEOMANS, M.D.,	)
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Plaintiffs/Intervenors,	) Civil Action
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v.	) No. 11-2365-CM-KMH
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ROBERT MOSER, M.D., in his official capacity	)
as Secretary of the Kansas Department of Health	) PLACE OF TRIAL
and Environment; STEPHEN HOWE, in his	) REQUESTED:
official capacity as District Attorney for Johnson	) KANSAS CITY, KANSAS
County; JEROME GORMAN, in his	)
official capacity as District Attorney for	)
Wyandotte County; and DEREK SCHMIDT, in	)
his official capacity as Attorney General for the	)
State of Kansas,	)
	)
Defendants.	)

**ANSWER BY INTERVENOR AMERICAN ASSOCIATION OF PRO-LIFE  
OBSTETRICIANS AND GYNECOLOGISTS (“AAPLOG”) TO THE  
COMPLAINT BY PLAINTIFFS HODES & NAUSER, M.D.’s, P.A., et al.**

Defendant-Intervenor American Association of Pro-Life Obstetricians and Gynecologists (“AAPLOG”) denies each and every allegation contained in the Complaint by Plaintiffs Hodes & Nausser, M.D.’s, P.A., *et al.* (collectively, “Plaintiffs”), except as hereinafter may be expressly and specifically admitted. Defendant-Intervenor AAPLOG responds to the numbered paragraphs of Plaintiffs’ Complaint (docket item #1) as follows:

## **I. Preliminary Statement**

1. Deny, except to the extent it describes this to be an action under the U.S. Constitution and 42 U.S.C. § 1983.

2. Deny.

3. Deny.

## **II. Jurisdiction and Venue**

4. The averments contained in this paragraph are conclusions of law, to which no response is required; to the extent a response is required, deny, except to admit the existence of the statutory provisions, to which the Court is referred for a full and accurate statement of their contents.

5. The averments contained in this paragraph are conclusions of law, to which no response is required; to the extent a response is required, deny, except to admit the existence of the statutory provisions, to which the Court is referred for a full and accurate statement of their contents.

6. Admit.

## **III. Parties**

### **A. Plaintiffs**

7. Defendant-Intervenor AAPLOG is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph.

8. Defendant-Intervenor AAPLOG is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph.

9. Defendant-Intervenor AAPLOG is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph.

10. Defendant-Intervenor AAPLOG is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph.

11. Defendant-Intervenor AAPLOG is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph.

12. Defendant-Intervenor AAPLOG is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph.

13. Defendant-Intervenor AAPLOG is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph.

14. Defendant-Intervenor AAPLOG is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph.

15. Defendant-Intervenor AAPLOG is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph.

16. Deny that Plaintiffs may bring this action “on the behalf of their patients who seek abortion services presently or in the future”; admit that Plaintiffs bring this action on Plaintiffs’ own behalf.

**B. Defendants**

17. Defendant-Intervenor AAPLOG is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph.

18. Defendant-Intervenor AAPLOG is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph.

19. Defendant-Intervenor AAPLOG is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph.

#### **IV. Factual Allegations**

##### **A. Abortion Services**

20. Deny.

21. Deny.

22. Defendant-Intervenor AAPLOG is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph.

23. Deny.

24. Deny.

25. Deny.

26. Defendant-Intervenor AAPLOG is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph.

27. Defendant-Intervenor AAPLOG is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph.

##### **B. The Act**

28. The averments contained in this paragraph are conclusions of law, to which no response is required; to the extent a response is required, deny, except to admit the existence of the statutory provisions, to which the Court is referred for a full and accurate statement of their contents.

29. The averments contained in this paragraph are conclusions of law, to which no response is required; to the extent a response is required, deny, except to admit the existence of the statutory provisions, to which the Court is referred for a full and accurate statement of their contents.

30. The averments contained in this paragraph are conclusions of law, to

which no response is required; to the extent a response is required, deny, except to admit the existence of the statutory provisions, to which the Court is referred for a full and accurate statement of their contents.

31. The averments contained in this paragraph are conclusions of law, to which no response is required; to the extent a response is required, deny, except to admit the existence of the statutory provisions, to which the Court is referred for a full and accurate statement of their contents.

32. The averments contained in this paragraph are conclusions of law, to which no response is required; to the extent a response is required, deny, except to admit the existence of the statutory provisions, to which the Court is referred for a full and accurate statement of their contents.

### **C. Licensing Process**

33. Defendant-Intervenor AAPLOG is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph.

34. Defendant-Intervenor AAPLOG is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph.

35. Defendant-Intervenor AAPLOG is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph.

36. Defendant-Intervenor AAPLOG is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph.

37. Defendant-Intervenor AAPLOG is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph.

38. Defendant-Intervenor AAPLOG is without knowledge or information



sufficient to form a belief as to the truth of the averments contained in this paragraph.

39. Defendant-Intervenor AAPLOG is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph.

40. Defendant-Intervenor AAPLOG is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph.

41. Deny.

42. Deny.

43. Deny that there is anything “inappropriate” about this regulation.

44. Deny that there is anything “inappropriate” about this regulation.

45. Deny that there is anything “unclear” about the regulations.

46. Deny.

47. Deny that it may be “impossible” for Plaintiffs “to bring their facility into compliance with the Temporary Regulations.”

48. Defendant-Intervenor AAPLOG is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph.

49. Defendant-Intervenor AAPLOG is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph.

50. Defendant-Intervenor AAPLOG is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph.

51. Defendant-Intervenor AAPLOG is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph.

52. Defendant-Intervenor AAPLOG is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph.

53. Defendant-Intervenor AAPLOG is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph.

**D. Application of the Temporary Regulations to the Practice**

54. Defendant-Intervenor AAPLOG is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph.

55. Deny the allegation about what is “medically necessary”; as to the remainder of the averments in this paragraph, Defendant-Intervenor AAPLOG is without knowledge or information sufficient to form a belief as to the truth of them.

56. Deny the allegation about what is “unnecessary”; as to the remainder of the averments in this paragraph, Defendant-Intervenor AAPLOG is without knowledge or information sufficient to form a belief as to the truth of them.

57. Deny the allegation about “medical basis”; as to the remainder of the averments in this paragraph, Defendant-Intervenor AAPLOG is without knowledge or information sufficient to form a belief as to the truth of them.

58. Deny the allegation about “medical basis”; as to the remainder of the averments in this paragraph, Defendant-Intervenor AAPLOG is without knowledge or information sufficient to form a belief as to the truth of them.

59. Defendant-Intervenor AAPLOG is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph.

60. Deny the allegation about what is “needed”; as to the remainder of the averments in this paragraph, Defendant-Intervenor AAPLOG is without knowledge or information sufficient to form a belief as to the truth of them.

61. Deny the allegation about “medical basis”; as to the remainder of the

averments in this paragraph, Defendant-Intervenor AAPLOG is without knowledge or information sufficient to form a belief as to the truth of them.

62. Deny the allegation about what is “medically unnecessary”; as to the remainder of the averments in this paragraph, Defendant-Intervenor AAPLOG is without knowledge or information sufficient to form a belief as to the truth of them.

63. Deny the allegation about what is “medically necessary and unduly rigid”; as to the remainder of the averments in this paragraph, Defendant-Intervenor AAPLOG is without knowledge or information sufficient to form a belief as to the truth of them.

64. Defendant-Intervenor AAPLOG is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph.

65. Deny the allegation that there has been an “unconstitutional licensing process”; as to the remainder of the averments in this paragraph, Defendant-Intervenor AAPLOG is without knowledge or information sufficient to form a belief as to the truth of them.

66. Deny.

**E. Harms Imposed by the Temporary Regulations and the Licensing Process**

67. Deny the allegation that there would be any “unjustifiably delaying Plaintiffs’ patients in obtaining abortions”; as to the remainder of the averments in this paragraph, Defendant-Intervenor AAPLOG is without knowledge or information sufficient to form a belief as to the truth of them.

68. Defendant-Intervenor AAPLOG is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph.

69. Deny.

70. Deny to the extent it alleges that satisfactory medical care would not be available to pregnant women if the Temporary Regulations and Licensing Process were applied to Plaintiffs.

71. Deny.

72. Deny that there would be any irreparable harm to Plaintiffs if the Temporary Regulations and Licensing Process were enforced.

73. Deny.

**F. Lack of Harm from Maintaining the Status Quo**

74. Deny.

75. Deny.

**FIRST CLAIM FOR RELIEF (Patients' Right to Privacy)**

76. Defendant-Intervenor AAPLOG realleges and incorporates by reference the allegations contained in paragraphs 1 through 75.

77. Deny.

**SECOND CLAIM FOR RELIEF (Plaintiffs' Right to Procedural Due Process)**

78. Defendant-Intervenor AAPLOG realleges and incorporates by reference the allegations contained in paragraphs 1 through 77.

79. Deny.

**THIRD CLAIM FOR RELIEF (Plaintiffs' Right to Substantive Due Process)**

80. Defendant-Intervenor AAPLOG realleges and incorporates by reference the allegations contained in paragraphs 1 through 79.

81. Deny.

**FOURTH CLAIM FOR RELIEF (Plaintiffs' Right to Due Process –Vagueness)**

82. Defendant-Intervenor AAPLOG realleges and incorporates by reference the allegations contained in paragraphs 1 through 81.

83. Deny.

**FIFTH CLAIM FOR RELIEF (Plaintiffs' Right to Equal Protection)**

84. Defendant-Intervenor AAPLOG realleges and incorporates by reference the allegations contained in paragraphs 1 through 83.

85. Deny.

**REQUEST FOR RELIEF**

The remainder of Plaintiffs' Complaint constitutes the Plaintiffs' Request for Relief, to which no response is required; to the extent a response is required, denied. Defendant-Intervenor specifically denies all allegations in Plaintiffs' Complaint not otherwise answered or qualified herein. In addition, Defendant-Intervenor denies that Plaintiffs are entitled to the relief requested in the Request for Relief, or to any relief whatsoever.

**FIRST AFFIRMATIVE DEFENSE**

This Court lacks subject-matter jurisdiction to hear Plaintiffs' claims.

**SECOND AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred by Defendants' Eleventh Amendment Immunity.

**THIRD AFFIRMATIVE DEFENSE**

Plaintiffs lack constitutional and prudential standing to bring the claims that they assert.

**FOURTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are not constitutionally or prudentially ripe for review.

**FIFTH AFFIRMATIVE DEFENSE**

Plaintiffs' Complaint fails to state a claim upon which relief can be granted.

WHEREFORE, Defendant-Intervenor AAPLOG respectfully requests that the Court enter judgment in favor of Defendants, including Defendant-Intervenor, dismiss Plaintiffs' Complaint with prejudice, award Defendants and Defendant-Intervenor their costs, and grant such additional relief as the Court may deem appropriate.

Dated: August 1, 2011

Respectfully submitted,

Local Counsel

/s/ Thomas M. Dawson  
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Email: [aschlafly@aol.com](mailto:aschlafly@aol.com)  
\*Motion for Admission *Pro Hac Vice* to be filed

ATTORNEYS FOR PROPOSED DEFENDANT-INTERVENOR AAPLOG

**IN THE UNITED STATES DISTRICT COURT  
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v.	)	No. 11-2365-CM-KMH
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County; JEROME GORMAN, in his	)	
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Wyandotte County; and DEREK SCHMIDT, in	)	
his official capacity as Attorney General for the	)	
State of Kansas,	)	
	)	
Defendants.	)	

**ANSWER BY INTERVENOR AMERICAN ASSOCIATION OF PRO-LIFE  
OBSTETRICIANS AND GYNECOLOGISTS (“AAPLOG”) TO THE FIRST  
AMENDED INTERVENOR COMPLAINT BY CENTRAL FAMILY MEDICAL  
AND RONALD YEOMANS, M.D.**

Defendant-Intervenor American Association of Pro-Life Obstetricians and Gynecologists (“AAPLOG”) denies each and every allegation contained in the First Amended Intervenor Complaint by Plaintiff-Intervenors Central Family Medical, LLC, dba Aid for Women, and Ronald Yeomans, M.D. (collectively, “Plaintiff-Intervenors”), except as hereinafter may be expressly and specifically admitted. Defendant-Intervenor AAPLOG responds to the numbered paragraphs of Plaintiff-Intervenors’ First Amended

Complaint (docket item #33) as follows:

**I. Preliminary Statement**

1. Deny, except to the extent it describes this to be an action under the U.S. Constitution and 42 U.S.C. § 1983.

2. Deny.

3. Deny.

**II. Jurisdiction and Venue**

4. The averments contained in this paragraph are conclusions of law, to which no response is required; to the extent a response is required, deny, except to admit the existence of the statutory provisions, to which the Court is referred for a full and accurate statement of their contents.

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6. Admit.

**III. Parties**

**A. Plaintiffs-Intervenors**

7. Defendant-Intervenor AAPLOG is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph.

8. Defendant-Intervenor AAPLOG is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph.

9. Defendant-Intervenor AAPLOG is without knowledge or information



sufficient to form a belief as to the truth of the averments contained in this paragraph.

10. Defendant-Intervenor AAPLOG is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph.

11. Defendant-Intervenor AAPLOG is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph.

12. Defendant-Intervenor AAPLOG is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph.

13. Defendant-Intervenor AAPLOG is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph.

14. Defendant-Intervenor AAPLOG is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph.

15. Defendant-Intervenor AAPLOG is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph.

16. Deny that Plaintiffs may bring this action “on the behalf of their patients who seek abortion services presently or in the future”; admit that Plaintiffs bring this action on Plaintiffs’ own behalf.

**B. Defendants**

17. Defendant-Intervenor AAPLOG is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph.

18. Defendant-Intervenor AAPLOG is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph.

19. Defendant-Intervenor AAPLOG is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph.

**IV. Factual Allegations**

**A. Abortion Services**

20. Deny.

21. Deny.

22. Defendant-Intervenor AAPLOG is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph.

23. Deny.

24. Deny.

25. Deny.

26. Defendant-Intervenor AAPLOG is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph.

27. Defendant-Intervenor AAPLOG is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph.

**B. The Act**

28. The averments contained in this paragraph are conclusions of law, to which no response is required; to the extent a response is required, deny, except to admit the existence of the statutory provisions, to which the Court is referred for a full and accurate statement of their contents.

29. The averments contained in this paragraph are conclusions of law, to which no response is required; to the extent a response is required, deny, except to admit the existence of the statutory provisions, to which the Court is referred for a full and accurate statement of their contents.

30. The averments contained in this paragraph are conclusions of law, to

which no response is required; to the extent a response is required, deny, except to admit the existence of the statutory provisions, to which the Court is referred for a full and accurate statement of their contents.

31. The averments contained in this paragraph are conclusions of law, to which no response is required; to the extent a response is required, deny, except to admit the existence of the statutory provisions, to which the Court is referred for a full and accurate statement of their contents.

32. The averments contained in this paragraph are conclusions of law, to which no response is required; to the extent a response is required, deny, except to admit the existence of the statutory provisions, to which the Court is referred for a full and accurate statement of their contents.

### **C. Licensing Process**

33. Defendant-Intervenor AAPLOG is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph.

34. Defendant-Intervenor AAPLOG is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph.

35. Defendant-Intervenor AAPLOG is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph.

36. Defendant-Intervenor AAPLOG is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph.

37. Defendant-Intervenor AAPLOG is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph.

38. Defendant-Intervenor AAPLOG is without knowledge or information

sufficient to form a belief as to the truth of the averments contained in this paragraph.

39. Defendant-Intervenor AAPLOG is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph.

40. Defendant-Intervenor AAPLOG is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph.

41. Deny.

42. Deny.

43. Deny that there is anything “inappropriate” about this regulation.

44. Deny that there is anything “inappropriate” about this regulation.

45. Deny that there is anything “unclear” about the regulations.

46. Deny.

47. Deny that it may be “impossible” for Plaintiff-Intervenors “to bring their facility into compliance with the Temporary Regulations.”

48. Defendant-Intervenor AAPLOG is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph.

49. Defendant-Intervenor AAPLOG is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph.

50. Defendant-Intervenor AAPLOG is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph.

51. Defendant-Intervenor AAPLOG is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph.

52. Defendant-Intervenor AAPLOG is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph.

53. Defendant-Intervenor AAPLOG is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph.

**D. Application of the Temporary Licensing Regulations to the Practice**

54. Defendant-Intervenor AAPLOG is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph.

55. Deny the allegation about what is “medically necessary”; as to the remainder of the averments in this paragraph, Defendant-Intervenor AAPLOG is without knowledge or information sufficient to form a belief as to the truth of them.

56. Deny the allegation about what is “unnecessary”; as to the remainder of the averments in this paragraph, Defendant-Intervenor AAPLOG is without knowledge or information sufficient to form a belief as to the truth of them.

57. Deny the allegation about “medical basis”; as to the remainder of the averments in this paragraph, Defendant-Intervenor AAPLOG is without knowledge or information sufficient to form a belief as to the truth of them.

58. Deny the allegation about “medical basis”; as to the remainder of the averments in this paragraph, Defendant-Intervenor AAPLOG is without knowledge or information sufficient to form a belief as to the truth of them.

59. Defendant-Intervenor AAPLOG is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph.

60. Deny the allegation about what is “needed”; as to the remainder of the averments in this paragraph, Defendant-Intervenor AAPLOG is without knowledge or information sufficient to form a belief as to the truth of them.

61. Deny the allegation about “medical basis”; as to the remainder of the

averments in this paragraph, Defendant-Intervenor AAPLOG is without knowledge or information sufficient to form a belief as to the truth of them.

62. Deny the allegation about what is “medically unnecessary”; as to the remainder of the averments in this paragraph, Defendant-Intervenor AAPLOG is without knowledge or information sufficient to form a belief as to the truth of them.

63. Deny the allegation about what is “medically necessary and unduly rigid”; as to the remainder of the averments in this paragraph, Defendant-Intervenor AAPLOG is without knowledge or information sufficient to form a belief as to the truth of them.

64. Defendant-Intervenor AAPLOG is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph.

65. Deny.

66. Deny.

**E. Harms Imposed by the Temporary Regulations and the Licensing Process**

67. Deny the allegation that there would be any “unjustifiably delaying Plaintiffs’ patients in obtaining abortions”; as to the remainder of the averments in this paragraph, Defendant-Intervenor AAPLOG is without knowledge or information sufficient to form a belief as to the truth of them.

68. Defendant-Intervenor AAPLOG is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph.

69. Deny.

70. Deny to the extent it alleges that satisfactory medical care would not be available to pregnant women if the Temporary Regulations and Licensing Process were applied to Plaintiff-Intervenors.

71. Deny.

72. Deny that there would be any irreparable harm to Plaintiff-Intervenors if the Temporary Regulations and Licensing Process were enforced.

73. Deny.

**F. Lack of Harm from Maintaining the Status Quo**

74. Deny.

75. Deny.

**FIRST CLAIM FOR RELIEF (Patients' Right to Privacy)**

76. Defendant-Intervenor AAPLOG realleges and incorporates by reference the allegations contained in paragraphs 1 through 75.

77. Deny.

**SECOND CLAIM FOR RELIEF (Plaintiffs' Right to Procedural Due Process)**

78. Defendant-Intervenor AAPLOG realleges and incorporates by reference the allegations contained in paragraphs 1 through 77.

79. Deny.

**THIRD CLAIM FOR RELIEF (Plaintiffs' Right to Substantive Due Process)**

80. Defendant-Intervenor AAPLOG realleges and incorporates by reference the allegations contained in paragraphs 1 through 79.

81. Deny.

**FOURTH CLAIM FOR RELIEF (Plaintiffs' Right to Due Process – Vagueness)**

82. Defendant-Intervenor AAPLOG realleges and incorporates by reference the allegations contained in paragraphs 1 through 81.

83. Deny.

**FIFTH CLAIM FOR RELIEF (Plaintiffs' Right to Equal Protection)**

84. Defendant-Intervenor AAPLOG realleges and incorporates by reference the allegations contained in paragraphs 1 through 83.

85. Deny.

**REQUEST FOR RELIEF**

The remainder of Plaintiff-Intervenors' First Amended Complaint constitutes the Plaintiff-Intervenors' Request for Relief, to which no response is required; to the extent a response is required, denied. Defendant-Intervenor specifically denies all allegations in Plaintiff-Intervenors' First Amended Complaint not otherwise answered or qualified herein. In addition, Defendant-Intervenor denies that Plaintiff-Intervenors are entitled to the relief requested in the Request for Relief, or to any relief whatsoever.

**FIRST AFFIRMATIVE DEFENSE**

This Court lacks subject-matter jurisdiction to hear Plaintiff-Intervenors' claims.

**SECOND AFFIRMATIVE DEFENSE**

Plaintiff-Intervenors' claims are barred by Defendants' Eleventh Amendment Immunity.

**THIRD AFFIRMATIVE DEFENSE**

Plaintiff-Intervenors lack constitutional and prudential standing to bring the claims that they assert.

**FOURTH AFFIRMATIVE DEFENSE**

Plaintiff-Intervenors' claims are not constitutionally or prudentially ripe for review.



**FIFTH AFFIRMATIVE DEFENSE**

Plaintiff-Intervenors' First Amended Complaint fails to state a claim upon which relief can be granted.

WHEREFORE, Defendant-Intervenor AAPLOG respectfully requests that the Court enter judgment in favor of Defendants, including Defendant-Intervenor, dismiss Plaintiff-Intervenors' First Amended Complaint with prejudice, award Defendants and Defendant-Intervenor their costs, and grant such additional relief as the Court may deem appropriate.

Dated: August 1, 2011

Respectfully submitted,

Local Counsel

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\*Motion for Admission *Pro Hac Vice* to be filed

ATTORNEYS FOR PROPOSED DEFENDANT-INTERVENOR AAPLOG