

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

AMY BRYANT, M.D., M.S.C.R.; BEVERLY)	CIVIL ACTION
GRAY, M.D.; ELIZABETH DEANS, M.D., on)	NO. 1:16-CV-01368-
behalf of themselves and their patients seeking)	UA-LPA
abortions; and PLANNED PARENTHOOD)	
SOUTH ATLANTIC, on behalf of itself, its staff)	
and its patients seeking abortions,)	
)	
Plaintiffs,)	
)	
)	
v.)	THE DEFENDANTS'
)	ANSWER TO THE
JIM WOODALL, in his official capacity as District)	PLAINTIFFS'
Attorney ("DA") for Prosecutorial District ("PD"))	<u>COMPLAINT</u>
15B; ROGER ECHOLS, in his official capacity as)	
DA for PD 14; ELEANOR E. GREENE, M.D.,)	
M.P.H., in her official capacity as President of the)	
North Carolina Medical Board; RICK BRAJER, in)	
his official as Secretary of the North Carolina)	
Department of Health and Human Services; and their)	
Employees, agents and successors,)	
)	
Defendants.)	

NOW COME the defendants, by and through the undersigned Special Deputy Attorney General of North Carolina, pursuant to Rule 12(a) of the Federal Rules of Civil Procedure and this Court’s Local Rules, and answer the plaintiffs’ Complaint for Injunctive and Declaratory Relief (the “Complaint”) as follows:

ANSWER TO COMPLAINT

1. The defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in the first sentence of paragraph 1 of the plaintiffs’ Complaint, and therefore deny said allegations. In response to the remaining allegations contained in paragraph 1 of the plaintiffs’ Complaint, the defendants admit that copies of N.C. Gen. Stat. §§14-44, 14-45 and 14-45.1 are attached as Exhibits 1-3 of the

plaintiffs' Complaint and refer the plaintiffs to those statutes, which are written documents that speak for themselves. The defendants also allege that the interpretation of said statutes is ultimately a matter for a court of competent jurisdiction to determine.

2. The defendants deny the allegations contained in paragraph 2 of the plaintiffs' Complaint.

3. The defendants are without knowledge or information sufficient to form a belief as to what the plaintiffs seek by their lawsuit and therefore deny the allegations contained in paragraph 3 of the plaintiffs' Complaint.

4. The defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 4 of the plaintiffs' Complaint, and therefore deny said allegations.

5. The defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 5 of the plaintiffs' Complaint, and therefore deny said allegations.

6. The defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 6 of the plaintiffs' Complaint, and therefore deny said allegations.

7. The defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 7 of the plaintiffs' Complaint, and therefore deny said allegations.

8. The defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 8 of the plaintiffs' Complaint, and therefore deny said allegations.

9. The defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 9 of the plaintiffs' Complaint, and therefore deny said allegations.

10. The defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 10 of the plaintiffs' Complaint, and therefore deny said allegations.

11. The defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 11 of the plaintiffs' Complaint, and therefore deny said allegations.

12. The defendants admit that Jim Woodall is the District Attorney for Prosecutorial District ("PD") 15B, which includes Chapel Hill, North Carolina, that said District Attorney's Office is responsible for criminal prosecutions in PD 15B and that defendant Woodall is sued solely in his official capacity. Except as expressly admitted herein, the defendants deny the allegations contained in paragraph 12 of the plaintiffs' Complaint.

13. The defendants admit that Roger Echols is the District Attorney for PD 14, which includes Durham, North Carolina, that said District Attorney's Office is responsible for criminal prosecutions in PD 14 and that defendant Woodall is sued solely in his official capacity. Except as expressly admitted herein, the defendants deny the allegations contained in paragraph 13 of the plaintiffs' Complaint.

14. The defendants admit that Eleanor E. Greene, M.D., M.P.H., is the President of the North Carolina Medical Board (the "Board"), that defendant Greene is sued solely in her official capacity and that the Board has various powers and duties that are conferred upon it by public laws. The defendants refer the plaintiffs to said public laws, all of which are published

documents, for a statement of their terms. Except as expressly admitted herein, the defendants deny the allegations contained in paragraph 14 of the plaintiffs' Complaint.

15. The defendants deny the first sentence of paragraph 15 of the plaintiffs' Complaint. The defendants admit the remaining allegations contained in paragraph 15 of the plaintiffs' Complaint.

16. North Carolina Gen. Stat. §§14-44 and 14-45 are public statutes which are memorialized in published documents. For their answer to the allegations contained in paragraph 16 of the plaintiffs' Complaint, the defendants refer the plaintiffs to those published documents for a full and complete statement of their terms. Except as expressly admitted herein, the defendants deny the allegations contained in paragraph 16 of the plaintiffs' Complaint.

17. North Carolina Gen. Stat. §§14-44 and 14-45 are public statutes which are memorialized in published documents. For their answer to the allegations contained in paragraph 17 of the plaintiffs' Complaint, the defendants refer the plaintiffs to those published documents for a full and complete statement of their terms. Except as expressly admitted herein, the defendants deny the allegations contained in paragraph 17 of the plaintiffs' Complaint.

18. North Carolina Gen. Stat. §§14-44 and 14-45 are public statutes which are memorialized in published documents. For their answer to the allegations contained in paragraph 18 of the plaintiffs' Complaint, the defendants refer the plaintiffs to those published documents for a full and complete statement of their terms. Except as expressly admitted herein, the defendants deny the allegations contained in paragraph 18 of the plaintiffs' Complaint.

19. North Carolina Gen. Stat. §§14-44 and 14-45 and N.C. Gen. Stat. §90-21.81(5) are public statutes which are memorialized in published documents. For their answer to the allegations contained in paragraph 19 of the plaintiffs' Complaint, the defendants refer the

plaintiffs to those published documents for a full and complete statement of their terms. Except as expressly admitted herein, the defendants deny the allegations contained in paragraph 19 of the plaintiffs' Complaint.

20. The statutes referred to by the plaintiffs in paragraph 20 of their Complaint, both the current version of those statutes and all past versions, are memorialized in published documents. For their answer to the allegations contained in paragraph 20 of the plaintiffs' Complaint, the defendants refer the plaintiffs to those published documents for a full and complete statement of their terms. Except as expressly admitted herein, the defendants deny the allegations contained in paragraph 20 of the plaintiffs' Complaint.

21. The statutes referred to by the plaintiffs in paragraph 21 of their Complaint, both the current version of those statutes and all past versions, are memorialized in published documents. For their answer to the allegations contained in paragraph 21 of the plaintiffs' Complaint, the defendants refer the plaintiffs to those published documents for a full and complete statement of their terms. Except as expressly admitted herein, the defendants deny the allegations contained in paragraph 21 of the plaintiffs' Complaint.

22. The defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 22 of the plaintiffs' Complaint, and therefore deny said allegations.

23. The defendants deny the unqualified, categorical allegations contained in paragraph 23 of the plaintiffs' Complaint.

24. The defendants admit the allegations contained in the first sentence of paragraph 24 of the plaintiffs' Complaint. The defendants are without knowledge or information sufficient

to form a belief as to the truth or falsity of the allegations contained in the second sentence of paragraph 24 of the plaintiffs' Complaint, and therefore deny said allegations.

25. The defendants admit the allegations contained in paragraph 25 of the plaintiffs' Complaint.

26. The defendants believe that the allegations contained in paragraph 26 of the plaintiffs' Complaint are overly simplistic and materially imprecise, such that the defendants deny said allegations as stated.

27. The defendants admit that the moment of fetal viability is determined by a licensed physician operating within the bounds of law, as prescribed by the State's duly authorized law makers. The defendants further admit that the moment of fetal viability varies from pregnancy to pregnancy, within limitations, depending on various factors. Except as expressly admitted herein, the defendants deny the allegations contained in paragraph 27 of the plaintiffs' Complaint.

28. Given the defendants' use of the term "fatal," the defendants admit the allegations contained in paragraph 28 of the plaintiffs' Complaint.

29. The defendants deny the allegations contained in paragraph 29 of the plaintiffs' Complaint.

30. The defendants deny the allegations contained in paragraph 30 of the plaintiffs' Complaint.

31. North Carolina Gen. Stat. §§14-44, 14-45, 14-45.1 and N.C. Gen. Stat. §90-21.81(5) are public statutes which are memorialized in published documents. For their answer to the allegations contained in paragraph 31 of the plaintiffs' Complaint, the defendants refer the plaintiffs to those published documents for a full and complete statement of their terms. Except

as expressly admitted herein, the defendants deny the allegations contained in paragraph 31 of the plaintiffs' Complaint.

32. The defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 32 of the plaintiffs' Complaint, and therefore deny said allegations.

33. The defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 33 of the plaintiffs' Complaint, and therefore deny said allegations.

34. The defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in the first two sentences of paragraph 34 of the plaintiffs' Complaint, and therefore deny said allegations. Responding to the balance of the allegations contained in paragraph 34 of the plaintiffs' Complaint, the defendants refer the plaintiffs to N.C. Gen. Stat. §90-21.81(5), which is memorialized in a published document, for a full and complete statement of its terms. Except as expressly admitted herein, the defendants deny the allegations contained in paragraph 34 of the plaintiffs' Complaint.

35. The defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 35 of the plaintiffs' Complaint, and therefore deny said allegations.

36. The defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 36 of the plaintiffs' Complaint, and therefore deny said allegations.

37. The defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 37 of the plaintiffs' Complaint, as stated, and therefore deny said allegations.

38. The defendants deny the allegations contained in paragraph 38 of the plaintiffs' Complaint.

39. The defendants admit that some women undergo prenatal screening to evaluate fetal development prior to giving birth. Except as expressly admitted herein, the defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 39 of the plaintiffs' Complaint, as stated, and therefore deny said allegations.

40. The defendants admit the allegations contained in paragraph 40 of the plaintiffs' Complaint.

41. The defendants believe that the allegations contained in paragraph 26 of the plaintiffs' Complaint are overly simplistic and materially imprecise, such that the defendants deny said allegations as stated.

42. The defendants admit that it can take several days to receive the results of the follow up testing referred to in paragraph 42 of the plaintiffs' Complaint. Except as expressly admitted herein, the defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 42 of the plaintiffs' Complaint, as stated, and therefore deny said allegations.

43. The defendants admit that the decision referred to in paragraph 43 of the plaintiffs' Complaint should be made following careful consideration and after having obtained opinions from various appropriate sources; however, the defendants deny that any of the statutes

referred to in the plaintiffs' Complaint prevent a pregnant woman from having sufficient time to obtain such opinions or to engage in such consideration. Except as expressly admitted herein, the defendants deny the allegations contained in paragraph 43 of the plaintiffs' Complaint.

44. The defendants deny the allegation that the statutes referred to in the plaintiffs' Complaint establish a "ban." Beyond this, the defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 44 of the plaintiffs' Complaint, as stated, and therefore deny said allegations.

45. The defendants deny the allegations contained in paragraph 45 of the plaintiffs' Complaint.

46. The defendants deny the allegations contained in paragraph 46 of the plaintiffs' Complaint.

47. The defendants deny the allegations contained in paragraph 47 of the plaintiffs' Complaint.

48. The defendants deny the allegations contained in paragraph 48 of the plaintiffs' Complaint.

49. The defendants deny the allegations contained in paragraph 49 of the plaintiffs' Complaint.

50. The defendants deny the allegations contained in paragraph 50 of the plaintiffs' Complaint.

51. The defendants deny the allegations contained in paragraph 51 of the plaintiffs' Complaint.

52. The defendants deny the allegations contained in paragraph 52 of the plaintiffs' Complaint.

53. The defendants here re-allege and incorporate by reference each of their answers set forth in paragraphs 1 through 52 above.

54. The defendants deny the allegations contained in paragraph 54 of the plaintiffs' Complaint.

AFFIRMATIVE DEFENSE

As and for their first affirmative defense, the defendants plead that the plaintiffs are barred from asserting any claim for equitable relief in this case by reason of the doctrine of laches, in that the plaintiffs failed to assert their equitable claims as regards the predecessor to the current statute for over 40 years after it was enacted, and in the plaintiffs failed to assert their equitable claims as regards the current statute for approximately one year after it was enacted.

WHEREFORE, the defendants respectfully pray that this Court dismiss the plaintiffs' Complaint, including each and every one of its purported claims for relief, with prejudice; that the Court deny the plaintiffs' request that the Court find N.C. Gen. Stat. §§14-44, 14-45 and 14-45.1(a)-(b) unconstitutional as applied to previability abortions, that the Court deny the plaintiffs' request that the Court find N.C. Gen. Stat. §§14-44, 14-45 and 14-45.1(a)-(b) in violation of 42 U.S.C. §1983 as applied to previability abortions; that the Court deny the plaintiffs' prayer for injunctive relief; that the Court deny the plaintiffs' prayer for an award of costs and/or attorneys' fees; and that the Court grant the defendants such other and further relief as it may deem just and proper.

Electronically filed this 13th day of January 2017.

Signature of counsel appears on the following page

/s/ I. Faison Hicks

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CERTIFICATE OF SERVICE

This is to certify that, on the 13th day of January 2017, I electronically filed the foregoing Motion with the Clerk of Court using the CM/ECF system, which will send a notice of electronic filing to all counsel of record who have appeared in this case.

/s/ I. Faison Hicks

I. Faison Hicks
Attorney for the Defendants