

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
WICHITA FALLS DIVISION**

FRANCISCAN ALLIANCE, INC.;
SPECIALTY PHYSICIANS OF
ILLINOIS, LLC.;
CHRISTIAN MEDICAL &
DENTAL ASSOCIATIONS;

- and -

STATE OF TEXAS;
STATE OF WISCONSIN;
STATE OF NEBRASKA;
COMMONWEALTH OF
KENTUCKY, by and through
Governor Matthew G. Bevin;
STATE OF KANSAS; STATE OF
LOUISIANA; STATE OF
ARIZONA; and STATE OF
MISSISSIPPI, by and through
Governor Phil Bryant,

Plaintiffs,

v.

ALEX M. AZAR, II, Secretary of the
United States Department of Health
and Human Services; and UNITED
STATES DEPARTMENT OF HEALTH
AND HUMAN SERVICES,

Defendants.

Civ. Action No. 7:16-cv-00108-O

**OBJECTIONS TO THE
DECLARATIONS OF CHERYL
NEWCOMB AND ALLISON
ANDREWS FILED BY PUTATIVE
INTERVENORS IN SUPPORT OF
THEIR RENEWED MOTION TO
INTERVENE**

Plaintiffs file these Objections to the Declarations of Cheryl Newcomb and Allison Andrews submitted by the putative intervenors in support of their renewed motion to intervene.

LEGAL STANDARD

While a court must accept as true all non-conclusory allegations made in support of a motion to intervene, those allegations, and any declarations in support, must contain admissible evidence. *Sw. Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 819–20 (9th Cir. 2001). Thus, Plaintiffs make the following objections to the Declarations of Cheryl Newcomb and Allison Andrews:

OBJECTIONS TO EVIDENCE

A. Declaration of Cheryl Newcomb

	TESTIMONY	OBJECTION	EXPLANATION
Objection No. 1	“If Plaintiffs succeed in permanently striking down the U.S. Department of Health and Human Service’s final rule, . . . the ACLU of Texas’s members will be stripped of critical protections from discrimination in healthcare.” Newcomb ¶ 3.	Lacks foundation	Witness does not testify about the basis for her conclusory testimony regarding the beliefs of unidentified third parties. Fed. R. Evid. 601–602.
Objection No. 2	“If Plaintiffs succeed in permanently striking down the U.S. Department of Health and Human Service’s final rule, . . . the ACLU of Texas’s members will be stripped of critical protections from discrimination in healthcare.” Newcomb ¶ 3.	Calls for speculation	Witness speculates about the beliefs of unidentified third parties without providing a basis for her testimony. Fed. R. Evid. 601–602.
Objection No. 3	“If Plaintiffs succeed in permanently striking down the U.S. Department of Health and Human Service’s final rule, . . . the ACLU of Texas’s members will be stripped of critical	Hearsay	Witness relies on beliefs held and statements made by unidentified third parties, and offers these statements for the truth of the matter

	TESTIMONY	OBJECTION	EXPLANATION
	protections from discrimination in healthcare.” Newcomb ¶ 3.		asserted. Fed. R. Evid. 801–802.
Objection No. 3	“The ACLU of Texas has multiple members who are transgender and seeking transition-related care for gender dysphoria.” Newcomb ¶ 4.	Lacks foundation	Witness does not testify about the basis for her conclusory testimony regarding the beliefs of unidentified third parties. Fed. R. Evid. 601–602.
Objection No. 4	“The ACLU of Texas has multiple members who are transgender and seeking transition-related care for gender dysphoria.” Newcomb ¶ 4.	Calls for speculation	Witness speculates about the beliefs of unidentified third parties without providing a basis for her testimony. Fed. R. Evid. 601–602.
Objection No. 5	“The ACLU of Texas has multiple members who are transgender and seeking transition-related care for gender dysphoria.” Newcomb ¶ 4.	Hearsay	Witness relies on beliefs held and statements made by unidentified third parties, and offers these statements for the truth of the matter asserted. Fed. R. Evid. 801–802.
Objection No. 6	“For example, one member who is insured through Texas Medicaid’s Star Plus plan requires medically necessary surgery related to his transition, but that surgery is not covered under his Medicaid plan.” Newcomb ¶ 4.	Lacks foundation	Witness does not testify about the basis for her conclusory testimony regarding the beliefs of an unidentified third party. Fed. R. Evid. 601–602.
Objection No. 7	“For example, one member who is insured through Texas Medicaid’s Star Plus	Calls for speculation	Witness speculates about the beliefs of an unidentified third party

	TESTIMONY	OBJECTION	EXPLANATION
	plan requires medically necessary surgery related to his transition, but that surgery is not covered under his Medicaid plan.” Newcomb ¶ 4.		without providing a basis for her testimony. Fed. R. Evid. 601–602.
Objection No. 8	“For example, one member who is insured through Texas Medicaid’s Star Plus plan requires medically necessary surgery related to his transition, but that surgery is not covered under his Medicaid plan.” Newcomb ¶ 4.	Hearsay	Witness relies on beliefs held and statements made by an unidentified third party, and offers these statements for the truth of the matter asserted. Fed. R. Evid. 801–802.
Objection No. 9	“The ACLU of Texas has multiple members who anticipate requiring reproductive care within the next year.” Newcomb ¶ 5.	Lack of foundation	Witness does not testify about the basis for her conclusory testimony regarding the beliefs of unidentified third parties. Fed. R. Evid. 601–602.
Objection No. 10	“The ACLU of Texas has multiple members who anticipate requiring reproductive care within the next year.” Newcomb ¶ 5.	Calls for speculation	Witness speculates about the beliefs of unidentified third parties without providing a basis for her testimony. Fed. R. Evid. 601–602.
Objection No. 11	“The ACLU of Texas has multiple members who anticipate requiring reproductive care within the next year.” Newcomb ¶ 5.	Hearsay	Witness relies on beliefs held and statements made by unidentified third parties, and offers these statements for the truth of the matter asserted. Fed. R. Evid. 801–802.

	TESTIMONY	OBJECTION	EXPLANATION
Objection No. 12	“For example, one member has informed me that she has a history of high-risk pregnancies requiring emergency miscarriage management, including abortion care. This member terminated a past pregnancy after being informed by her doctor that, because of serious hemorrhaging, carrying the pregnancy to term would put her own life at risk. This past year, she had a pregnancy loss, as well as a tubal pregnancy that required termination. She remains fertile and could be at serious risk if a public or religiously affiliated hospital denied her emergency healthcare.” Newcomb ¶ 5.	Lacks foundation	Witness does not testify about the basis for her conclusory testimony regarding the beliefs of an unidentified third party. Fed. R. Evid. 601–602.
Objection No. 13	“For example, one member has informed me that she has a history of high-risk pregnancies requiring emergency miscarriage management, including abortion care. This member terminated a past pregnancy after being informed by her doctor that, because of serious hemorrhaging, carrying the pregnancy to term would put her own life at risk. This past year, she had a pregnancy loss, as well as a tubal pregnancy that required termination. She	Calls for speculation	Witness speculates about the beliefs of an unidentified third party without providing a basis for her testimony. Fed. R. Evid. 601–602.

	TESTIMONY	OBJECTION	EXPLANATION
	remains fertile and could be at serious risk if a public or religiously affiliated hospital denied her emergency healthcare.” Newcomb ¶ 5.		
Objection No. 14	“For example, one member has informed me that she has a history of high-risk pregnancies requiring emergency miscarriage management, including abortion care. This member terminated a past pregnancy after being informed by her doctor that, because of serious hemorrhaging, carrying the pregnancy to term would put her own life at risk. This past year, she had a pregnancy loss, as well as a tubal pregnancy that required termination. She remains fertile and could be at serious risk if a public or religiously affiliated hospital denied her emergency healthcare.” Newcomb ¶ 5.	Hearsay	Witness relies on beliefs held and statements made by an unidentified third party, and offers these statements for the truth of the matter asserted. Fed. R. Evid. 801–802.

B. Declaration of Allison Andrews

	TESTIMONY	OBJECTION	EXPLANATION
Objection No.15	“RCGA has several members residing in Nebraska and surrounding states who have a medical	Lacks foundation	Witness does not testify about the basis for her conclusory testimony regarding the beliefs of

	TESTIMONY	OBJECTION	EXPLANATION
	need for treatment related to gender transition and who anticipate needing treatment over the next year.” Andrews ¶ 3.		unidentified third parties. Fed. R. Evid. 601–602.
Objection No. 16	“RCGA has several members residing in Nebraska and surrounding states who have a medical need for treatment related to gender transition and who anticipate needing treatment over the next year.” Andrews ¶ 3.	Calls for speculation	Witness speculates about the beliefs of unidentified third parties without providing a basis for her testimony. Fed. R. Evid. 601–602.
Objection No. 17	“RCGA has several members residing in Nebraska and surrounding states who have a medical need for treatment related to gender transition and who anticipate needing treatment over the next year.” Andrews ¶ 3.	Hearsay	Witness relies on beliefs held and statements made by unidentified third parties, and offers these statements for the truth of the matter asserted. Fed. R. Evid. 801–802.
Objection No. 18	“At least one member requires medically necessary surgery related to their transition, but is insured through the Nebraska Medicaid Program, which does not provide insurance coverage for surgery related to gender transition.” Andrews ¶ 3.	Lacks foundation	Witness does not testify about the basis for her conclusory testimony regarding the beliefs of an unidentified third party. Fed. R. Evid. 601–602.
Objection No. 19	“At least one member requires medically necessary surgery related to their transition, but is insured through the	Calls for speculation	Witness speculates about the beliefs of an unidentified third party without providing a

	TESTIMONY	OBJECTION	EXPLANATION
	Nebraska Medicaid Program, which does not provide insurance coverage for surgery related to gender transition.” Andrews ¶ 3.		basis for her testimony. Fed. R. Evid. 601–602.
Objection No. 20	“At least one member requires medically necessary surgery related to their transition, but is insured through the Nebraska Medicaid Program, which does not provide insurance coverage for surgery related to gender transition.” Andrews ¶ 3.	Hearsay	Witness relies on beliefs held and statements made by an unidentified third party, and offers these statements for the truth of the matter asserted. Fed. R. Evid. 801–802.
Objection No. 21	“If Plaintiffs succeed in striking down the U.S. Department of Health and Human Service’s final rule, . . . RCGA reasonably fears that its members will be discriminated against in healthcare based on their gender identity. Its members have already been stripped of critical protections.” Andrews ¶ 5.	Lacks foundation	Witness does not testify about the basis for her conclusory testimony regarding the beliefs of unidentified third parties. Fed. R. Evid. 601–602.
Objection No. 22	“If Plaintiffs succeed in striking down the U.S. Department of Health and Human Service’s final rule, . . . RCGA reasonably fears that its members will be discriminated against in healthcare based on their gender identity. Its members have already been	Calls for speculation	Witness speculates about the beliefs of unidentified third parties without providing a basis for her testimony. Fed. R. Evid. 601–602.

	TESTIMONY	OBJECTION	EXPLANATION
	stripped of critical protections.” Andrews ¶ 5.		
Objection No. 23	“If Plaintiffs succeed in striking down the U.S. Department of Health and Human Service’s final rule, . . . RCGA reasonably fears that its members will be discriminated against in healthcare based on their gender identity. Its members have already been stripped of critical protections.” Andrews ¶ 5.	Hearsay	Witness relies on beliefs held and statements made by unidentified third parties, and offers these statements for the truth of the matter asserted. Fed. R. Evid. 801–802.

CONCLUSION

Plaintiffs respectfully request that the Court sustain these objections, deem the Declarations of Cheryl Newcomb and Allison Andrews inadmissible and omit the evidence when evaluating the putative intervenors’ motion to intervene.

Respectfully submitted this the 25th day of February, 2019.

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CERTIFICATE OF SERVICE

I hereby certify that on February 25, 2019, I electronically filed the foregoing document through the Court's ECF system, which automatically serves notification of the filing on counsel for all parties.

/s/ David J. Hacker
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