

**U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE FOR CIVIL RIGHTS
HEADQUARTERS**

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**U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE FOR CIVIL RIGHTS
MID-ATLANTIC REGION**

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ADMINISTRATIVE COMPLAINT

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PRELIMINARY STATEMENT

1. This Complaint is filed by Katz, Marshall, and Banks, LLP and the National Women's Law Center, on behalf of Dr. Diane Horvath-Cosper, pursuant to the Church Amendment, 42 U.S.C. §§ 300a-7 *et. seq.*

2. The Church Amendment includes a non-discrimination provision which prohibits an entity receiving federal financial assistance under the Public Health Service Act, 42 U.S.C. §§ 201 *et seq.*, from discriminating in the employment of a physician or other health care personnel because of her moral convictions respecting abortions. 42 U.S.C. § 300a-7(c)(1)(A).

3. The non-discrimination provision of the Church Amendment protects physicians and other health care personnel from discrimination in employment both because they refuse to perform abortions and because they perform abortions. It also protects physicians and other health care personnel from discrimination in employment based on their moral convictions with respect to abortions, whether in support or opposition.¹ The United States Supreme Court has observed that moral convictions include those beliefs "an individual deeply and sincerely holds. . . that are purely ethical or moral in source and content but that nevertheless impose upon him a duty of conscience" to act in a certain manner. *See Welsh v. U.S.*, 398 U.S. 333, 340 (1970).²

¹ The legislative history of the Church Amendment makes clear that the concept of "moral convictions" is separate and distinct from "religious beliefs." *See* 119 CONG. REC. 9595-96 (1973). Though the statute does not define the meaning of "moral convictions," the legislative history expresses an intent to interpret the term consistent with how the U.S. Supreme Court has interpreted similar terms in other statutes that contain conscience-protection language. *Id.* at 9596. The legislative history also makes clear that the discrimination prohibition applies to those with religious beliefs and moral convictions either in support of or in opposition to abortion. *Id.* at 9604 (Senator Howard Jarvis stating: "We are going to respect whatever the religious or moral convictions are on either side of the case, and our purpose is to respect them. That is the reason for the nondiscrimination portion.").

² In *Welsh*, the United States Supreme Court broadly interpreted the conscientious objector language of "by reason of religious training and belief" in the Universal Military Training and

4. MedStar Washington Hospital (“MedStar” or “the Hospital”) receives federal financial assistance under the Public Health Service Act.

5. Dr. Horvath-Cosper is a physician employed by MedStar as a Family Planning Fellow (“FPF”), where she focuses her practice on abortion and contraception.

6. Since December 4, 2015, MedStar has been discriminating against Dr. Horvath-Cosper in the terms, conditions, and privileges of her employment as a physician on the basis of her moral convictions respecting abortions.

7. Dr. Horvath-Cosper is an accomplished family planning physician who has dedicated her career to ensuring women’s safe and legal access to abortion services. Through her work, she has developed a deep moral conviction that she has a duty, as a physician, to engage in public advocacy about the importance of abortion services to women’s health and equality, and the need for physicians to be the public voices for evidence-based medicine in order to destigmatize abortion from a hotly contested political issue – often the target of public criticism, legislative attack, and threats of violence – to the legal, essential medical procedure that it is. In her words:

I believe physicians must engage in public discourse wherever it is happening, and we must be voices for evidence-based medicine both in and out of the office. There is still an incredible amount of stigma surrounding abortion and other reproductive health issues, and I hope that doctors’ willingness to share their stories will help women feel empowered to share theirs.

I chose to become an abortion provider because I respect the autonomy of women, and I trust them to decide what’s best for themselves and their families. Because I understand why women want to finish school, to start careers. Because I believe every child should be cherished, and because I value the ability to plan whether

Service Act to exempt from military service those who object on conventional religious grounds *and* those whose “consciences, spurred by deeply held moral, ethical, or religious beliefs, would give them no rest or peace if they allowed themselves to become a part of an instrument of war.” 398 U.S. at 344.

and when to have a family. I chose to do this because of pregnancies that didn't turn out as anticipated and because of women whose lives and health must be protected.³

8. While Dr. Horvath-Cosper's public advocacy on the topic of abortion has taken different forms, media advocacy on the topic of abortion has been a particularly critical aspect of her public advocacy work. For her, media advocacy is a crucial vehicle for her public abortion advocacy because of the breadth of audience it reaches and its potential to impact public opinion on the topic of abortion.

9. In July 2014, Dr. Horvath-Cosper accepted a position as a FPF at MedStar.⁴ The fellowship provides a unique, multi-faceted training opportunity for physicians seeking specialized training as family planning physicians. These training opportunities include medical practice, research, and advocacy.

10. Because of the importance of public advocacy to Dr. Horvath-Cosper personally and professionally, she accepted the role as a FPF at MedStar because it provided her the opportunity to develop her medical, research, and public advocacy skills.

11. From July 2014 until December 2015, Dr. Horvath-Cosper gained public advocacy experience by engaging in advocacy, including in the media, about the importance of abortion in women's lives and the need for physicians to engage in public discourse about it. She did so without incident or complaint from MedStar.

³ See Diane J. Horvath-Cosper, *Being A Doctor Who Performs Abortions Means You Always Fear Your Life Is In Danger*, Wash. Post (Oct. 29, 2015), https://www.washingtonpost.com/posteverything/wp/2015/10/29/being-a-doctor-who-performs-abortion-means-you-always-fear-your-life-is-in-danger/?tid=a_inl, attached hereto as Exhibit 1.

⁴ The Family Planning Fellow position is funded by the Fellowship in Family Planning. Dr. Horvath-Cosper brings this claim on her personal behalf, not on behalf of the Fellowship in Family Planning.

12. On December 4, 2015, Dr. Gregory Argyros (Chief Medical Officer), in an alleged attempt to increase security at the Hospital, instructed Dr. Horvath-Cosper to immediately cease her media advocacy on the “topic” of abortion, stating, *inter alia*, that he did “not want to put a K-Mart blue light special on the fact that we provide abortions at MedStar.”

13. Since this time, MedStar has prohibited Dr. Horvath-Cosper from accepting any media engagements on the topic of abortion and related women’s health issues, threatened repercussions if she continued with her public abortion advocacy, directed her not to take legal action, isolated her within her Department, Obstetrics-Gynecology (“OB-GYN”), and forced her to choose between remaining employed and sacrificing the public advocacy that is central to her moral convictions about abortion and the primary reason she became a FPF at MedStar.

14. Upon information and belief, MedStar does not similarly restrict the speech of physicians in other specialties who seek to engage in media advocacy about their specialty or discriminate against them when they speak out.

15. By prohibiting Dr. Horvath-Cosper from engaging in media advocacy on the topic of abortion and otherwise discriminating against her, MedStar has subjected Dr. Horvath-Cosper to disparate treatment in the terms, conditions, and privileges of employment because of her moral convictions about abortion and denied her the full benefit of her fellowship.

16. Dr. Horvath-Cosper requests that the Office for Civil Rights (“OCR”) investigate MedStar and require that it end the discriminatory practice of placing broad content-based speech restrictions on its abortion providers or other health care personnel on the topic of abortion while not restricting the speech of similarly situated physicians and stop discriminating against those whose moral convictions compel them to speak out about abortion.

JURISDICTION

17. OCR is responsible for ensuring compliance with the Church Amendment and receiving information about, investigating, and remedying violations of the Church Amendment. 42 U.S.C. § 300a-7(c)(1)(A).

18. Dr. Horvath-Cosper has not filed this complaint with any other agency or institution.

19. Given the ongoing nature of the problems documented, this complaint is timely.

FACTUAL ALLEGATIONS

20. Over four decades ago, the Supreme Court of the United States held that the United States Constitution protects a woman's right to decide whether or not to obtain an abortion. Today, a first-trimester abortion is one of the safest medical procedures in the United States, with a less than 0.05% risk of major complications that might need hospital care.⁵ It is also among the most utilized, with one in 10 women estimated to have an abortion by age 20, one in four by age 30, and three in 10 by age 45.⁶

21. Yet, despite its legal status, safety record, and the demonstrated need for abortion care, those who are opposed to abortion continue to seek ways to stigmatize abortion and target medical professionals who provide abortion. Abortion clinics and providers have been subjected to a range of tactics meant to silence them, isolate them from the larger medical profession, intimidate them and ultimately drive them out of practice. According to the latest statistics from the National Abortion Federation, in 2015, abortion providers were targeted with hate speech and

⁵ See *Facts on Induced Abortion*, GUTTMACHER INST. (Mar. 2016), https://www.guttmacher.org/sites/default/files/factsheet/fb_induced_abortion_0.pdf.

⁶ *Id.*

internet harassment, death threats, attempted murder, and murder.⁷ Public funding and other restrictions on medical schools and teaching hospitals limit abortion education and training for medical students and residents.⁸ Anti-abortion legislators have passed laws targeting abortion providers and clinics, with twenty-four states now regulating abortion providers and clinics beyond what is necessary to ensure patient safety in an attempt to shut down clinics and drive providers out of practice.⁹

22. These targeted tactics have led to a sharp decline in the number of abortion clinics and the number of trained abortion providers. Since the 1990s, the number of surgical abortion clinics has dropped more than three-fold, declining from more than 2,000 in 1990 to 582 in 2013, with the number of surgical abortion clinics closing at a rate of 1.5 clinics a week over the past two years.¹⁰ According to the most recent study, although 97 percent of practicing OB-GYNs

⁷ See *2015 Violence and Disruption Statistics*, NAT'L ABORTION FED'N (Apr. 2015), <http://5aa1b2xfmfh2e2mk03kk8rsx.wpengine.netdna-cdn.com/wp-content/uploads/2015-NAF-Violence-Disruption-Stats.pdf>.

⁸ See Am. Coll. of Obstetricians and Gynecology, *Committee Opinion No. 612, Abortion Training and Education*, 124 OBSTET. GYNECOL. 1055 (Nov. 2014), available at <http://www.acog.org/Resources-And-Publications/Committee-Opinions/Committee-on-Health-Care-for-Underserved-Women/Abortion-Training-and-Education> (hereinafter "Committee Opinion No. 612").

⁹ See *Targeted Regulation of Abortion Providers*, GUTTMACHER INST. (Mar. 4, 2016), https://www.guttmacher.org/sites/default/files/pdfs/spibs/spib_TRAP.pdf.

¹⁰ See Nina Liss-Schultz, *The New, Ugly Surge in Violence and Threats Against Abortion Providers*, MOTHER JONES (Nov. 28, 2015), <http://www.motherjones.com/politics/2015/11/violence-abortion-clinics-planned-parenthood-colorado-springs-shooting>.

reported that they had encountered patients seeking abortions, only 14 percent provide this service.¹¹

23. Women's access to safe and legal abortion depends on the availability of trained abortion providers. Limited abortion training in medical schools and residency programs today continue to limit the number of trained abortion providers. Although medical education training on abortion is highly valued, studies indicate that its availability in medical education training programs in the U.S. is not universal, and when provided, is often insufficient.¹² Compounding the lack of available abortion training in medical school curriculum is the equally limited availability of abortion care training in medical rotations and residency programs. According to a survey of residency program directors cited by the American College of Obstetricians and Gynecology, only 51 percent of OB-GYN residency programs offered routine abortion training.¹³

24. Because the number of trained abortion providers remains low relative to other medical fields, ensuring the continued existence of specialized training for abortion providers is paramount to women's continued access to abortion services.

25. Today, among the most important training opportunities available for abortion providers is the Fellowship in Family Planning ("FFP"). Founded in the mid-1990s amid an alarming drop in family planning physicians,¹⁴ the FFP was created to increase the number of

¹¹ See Sarp Aksel et al., *Unintended Consequences: Abortion Training In The Years After Roe v. Wade*, 103 AM. J. PUB. HEALTH 404, 406 (2013), available at <http://www.ncbi.nlm.nih.gov/pubmed/23327239>.

¹² See Committee Opinion No. 612, *supra* note 8.

¹³ *Id.*

¹⁴ Family planning physicians are physicians who specialize in abortion and contraception. Family planning physicians and abortion providers are used interchangeably herein to refer to physicians who specialize in abortion and contraception services.

trained abortion providers and incorporate abortion practice as an integrated part of women's healthcare within the larger medical community.

26. Since its founding, the FFP has been a critical lifeline for physicians in the family planning field. Now offered at twenty-nine leading institutions in the United States, it provides doctors interested in family planning an equal opportunity to become specialized in abortion practice.

27. Although it, like other medical fellowships, is intended to develop doctors in a specialized field, the training involved is unique. In addition to offering the fellow an opportunity to obtain a master's degree in public health, the FFP also focuses on developing the fellow's non-clinical abilities, including advocacy skills.¹⁵

28. The advocacy piece of the FFP is important to individuals training to become family planning physicians because of the continued attempts to stigmatize and discourage abortion, and the ongoing need to counterbalance the anti-abortion rhetoric that threatens women's access to abortion.

29. Though the form of advocacy varies by fellow, one important vehicle of advocacy for past fellows has been media advocacy on the importance of abortion to women's health and

¹⁵ See FELLOWSHIP IN FAMILY PLANNING, *Guide to Learning* (2008), at 22 (noting that the advocacy contemplated by the FFP includes providing fellows the opportunity to "develop skills for educating the public about contraception and abortion, including relations with the media and private and public organizations and foundations"), attached hereto as Exhibit 2; *see also* FELLOWSHIP IN FAMILY PLANNING, *Why Become A Fellow*, <http://www.familyplanningfellowship.org/why-become-fellow> (last visited Apr. 26, 2016) (advertising public policy and advocacy as one of the benefits of the FFP).

the need for physicians to act as a public voice in support of treating abortion as the legal, essential medical service that it is.¹⁶

30. Dr. Horvath-Cosper is an accomplished family planning physician who knows the dangerous realities – and the unique obligations – of working as an abortion provider. She, like other abortion providers, has been the target of anti-abortion threats and intimidation throughout her career. These threats have not been limited to her, but have also been directed at her family. For instance, less than a year ago, Dr. Horvath-Cosper discovered her name on an anti-abortion website describing her as a member of an “abortion cartel.” The website included links, not only to her office address and medical license numbers, but it also featured several photographs of her, including one of her holding her then 15-month-old daughter.

31. Though Dr. Horvath-Cosper has had many opportunities to leave the family planning field to escape the threat of violence that accompanies it, she has chosen instead to dedicate her professional life to this field of medicine through medical practice and public advocacy.

¹⁶ Below is a small sampling of media engagement by past fellows in the FFP program:

REDACTED

32. Dr. Horvath-Cosper holds the moral conviction that engaging in public advocacy, especially in the media, about the importance of abortion services to women’s health and equality – and the need for physicians to be the public voices for evidence-based medicine in order to destigmatize the procedure – is among the most important of her duties as an abortion provider. For her, this moral conviction is only strengthened by the continued existence of threats of intimidation and violence aimed at abortion providers more than forty years after the Supreme Court’s decision in *Roe v. Wade* because it underscores the continued need for physicians to continue to educate the public that abortion is a legal, safe, and essential medical procedure that is critical to women’s health and equality.

33. Other physicians and organizations share Dr. Horvath-Cosper’s moral convictions regarding the importance of public advocacy on the topic of abortion. The American College of Obstetricians and Gynecology, for instance, has stated that continuing efforts to destigmatize abortion through, *inter alia*, opposition to legislative restrictions on abortion and increased efforts to integrate abortion practice into the larger medical community are critical to ensuring the availability of trained abortion providers and access to abortion services.¹⁷

34. Understanding the vital role that advocacy plays in advancing the family planning field, Dr. Horvath-Cosper accepted a FPF position at MedStar in 2014, in pursuit of further developing her skills as a provider of, and advocate for, abortion services. Like fellows before her, Dr. Horvath-Cosper accepted the FPF position with the understanding and expectation that she would gain the full benefit of the fellowship, which included medical, research, *and* advocacy.

35. During the first year and a half of her fellowship, she did just that. From July 2014 until May 2015, Dr. Horvath-Cosper obtained a master’s degree in public health from Johns

¹⁷ See Committee Opinion No. 612, *supra* note 8.

Hopkins Bloomberg School of Public Health. During this time, she refined her research and advocacy skills by speaking on panels, assisting with legislative proposals that further women's access to reproductive health care, and contributing to media pieces on the topic of abortion. In June 2015, after completing her masters, Dr. Horvath-Cosper spent a month working at the National Abortion Federation ("NAF"), where she drafted internal policy memoranda, contributed to articles and literature reviews on abortion-related topics, and collaborated with NAF's legislative team.

36. From June 2015, when she entered the clinical phase of her fellowship at MedStar, until December 2015, Dr. Horvath-Cosper continued with her abortion-related advocacy without incident or complaint from MedStar. This work included speaking on panels dedicated to the topic of abortion, contributing to op-eds, working on legislation, and appearing on various news outlets to talk about a range of abortion-related issues, including the harms associated with extreme anti-abortion rhetoric and violence.

37. While the time Dr. Horvath-Cosper devoted to her public advocacy work beginning in June 2015 was not substantial, it was nevertheless important to her development as a physician. Of particular importance was an October 29, 2015 op-ed she wrote for the *Washington Post*¹⁸ and a December 1, 2015 *Reuters* article to which she provided comment.¹⁹ Both articles emphasized the dangerous realities of practicing as an abortion provider and underscored the critical need for physicians like her to be able to serve as a public voice highlighting abortion as the legal, essential

¹⁸ See Exhibit 1.

¹⁹ See Andy Sullivan and Jilian Mincer, *U.S. Abortion Providers Face Increased Threat of Violence*, REUTERS (Dec. 1, 2015), <http://www.reuters.com/article/us-usa-plannedparenthood-violence-idUSKBN0TK3AF20151201>.

service that it is, in order to quell the extreme anti-abortion rhetoric and violence that seeks to threaten women's access to abortion services.

38. Even though MedStar never publicly endorsed Dr. Horvath-Cosper's advocacy, it did not object to it from approximately July 2014 until December 2015. In fact, after the publication of Dr. Horvath-Cosper's *Washington Post* op-ed, a member of the Family Planning Department, Dr. Peggy Ye, circulated a link to the article via email to the OB-GYN Department, including Dr. Melissa Fries (OB-GYN Department Chair). In addition, on November 12, 2015, MedStar's OB-GYN Department published a newsletter announcing Dr. Horvath-Cosper's recent *Washington Post* article.²⁰ At no point during this time did MedStar complain that Dr. Horvath-Cosper's advocacy work violated MedStar's policies or exposed it to any risks.

39. MedStar's attitude towards Dr. Horvath-Cosper's advocacy changed markedly, however, beginning in early December 2015, in the wake of the November 27, 2015 shooting at a Colorado Springs Planned Parenthood clinic. Although the gunman was arrested, the attack caused understandable concern among other abortion providers, including the Family Planning Department ("FPD" or "the Department") at MedStar.

40. On December 1, 2015, prompted by the Colorado shootings, Dr. Fries emailed Dr. Gregory Argyros (Chief Medical Officer), Robert Ross (Chief Operating Officer), and Craig DeAtley (Director of Emergency Management) to alert them to the need to increase security in the FPD.

41. According to NAF, the design and implementation of appropriate office safety measures is among the most important steps a facility providing abortion services can take to keep

²⁰ See *Women's and Infants' Services Research e-Newsletter*, MEDSTAR WASHINGTON HOSPITAL CENTER, Nov. 2015, at p. 2, attached hereto as Exhibit 3.

its staff and patients safe.²¹ Among the necessary safety measures NAF recommends are the installation of alarm systems, the use of security guards, the implementation of opening and closing procedures, the installation of camera surveillance, the use of appropriate entrance access control measures, including shatter-resistant window barriers in reception areas, adherence to identification protocol for partners of patients, bag and package inspections, safety and evacuation drills, and appropriate staff and volunteer training on safety measures.²² Limitations or prohibitions on abortion providers from speaking publicly about abortion services is not listed among the NAF security measures.

42. Even though MedStar is a member of NAF,²³ as of December 1, 2015, it had not implemented in its Family Planning Department any of the security precautions listed in the summary of NAF's recommendations in paragraph 41.

43. During early December 2015, members of the Family Planning Department, including Dr. Horvath-Cosper, proposed security measures to the Hospital for implementation, including the hiring of a security guard, and the installation of security cameras, an intercom system, and shatterproof glass in the reception area. The only security measures that Dr. Horvath-Cosper is aware that MedStar took in response to the Colorado shooting, and the Department's request to increase security, were the hiring of a security guard (whom it tried to move to another

²¹ See *Security Resource Manual: Guidelines for Keeping Your Facility Safe*, NAT'L ABORTION FED'N, at p. 5, attached hereto as Exhibit 4.

²² *Id.* at pp. 5–11, 45–47.

²³ See *Find a Provider*, NAT'L ABORTION FED'N, <http://prochoice.org/think-youre-pregnant/find-a-provider/> (listing Washington Hospital Center among the NAF member providers in the District of Columbia) (last visited Apr. 27, 2016).

department in January 2016)²⁴ and the installation of security cameras on February 4, 2016, more than two months after the shootings. The Hospital refused to pay approximately \$5,000 to install the intercom system and to this day has failed to install the shatterproof glass (or implement the other recommended security measures listed in the summary of NAF's recommendations in paragraph 41 above).

44. Instead, MedStar has focused most of its "security" efforts on limiting Dr. Horvath-Cosper's advocacy work by denying all of her requests for media engagement on the topic of abortion.

45. MedStar maintains a media policy that requires all requests from the general media to interview MedStar physicians to be approved by the Hospital's Public Affairs office. Prior to December 4, 2015, Dr. Horvath-Cosper was unaware of the media policy. Though she did not have her requests approved by the Public Affairs office prior to December 4, 2015, members of the OB-GYN Department, including the OB-GYN Department Chair, were aware of her prior advocacy from July 2014 to December 4, 2015, including her widely read *Washington Post* article, and did not object or complain about it.

46. On December 4, 2015, after Dr. Fries' security request email, Dr. Argyros convened a meeting with other Hospital administration, including the Hospital's Vice President and Deputy General Counsel, during which he instructed Dr. Horvath-Cosper to immediately cease her media advocacy on the "topic" of abortion stating, *inter alia*, that he did "not want to put a K-Mart blue light special on the fact that we provide abortions at MedStar." While Dr. Argyros later clarified

²⁴ In January 2016, the Hospital proposed to move the security guard from the Family Planning Department to another department. Dr. Lotke objected to the Hospital's proposal as it had yet to implement any other security measures. The Hospital relented and thereafter agreed to keep the security guard in the Family Planning Department.

that Dr. Horvath-Cosper would be permitted to submit her media requests to the Public Affairs office, that option has, in practice, been futile.

47. Since December 4, 2015, Dr. Horvath-Cosper, in compliance with MedStar's media policy, has submitted multiple media requests to MedStar's Public Affairs office to participate in media advocacy efforts concerning the topic of abortion. MedStar has denied each request. These advocacy opportunities included an interview with the BBC about the anti-abortion climate in the United States, a request to contribute to a *Cosmopolitan* magazine article regarding women's health, an opportunity to speak at an event commemorating the 43rd Anniversary of *Roe v. Wade*, and a request to contribute to a *Reuters* article about young abortion providers in the United States.

48. On December 18, 2015, Dr. Fries, who attended the December 4, 2015 meeting with Hospital administrators, referenced in paragraph 46, above, acknowledged by email to Dr. Horvath-Cosper that the Hospital was "stonewalling" her actions and imposing an "inappropriate limitation" on her ability to discuss abortion issues.

49. On February 25, 2016, after the Hospital denied Dr. Horvath-Cosper's fourth media request, Dr. Pamela Lotke, the Family Planning Fellowship Program Director at the Hospital, requested that the Hospital provide an example of a media request on the topic of abortion that it might approve. She said:

Do you think you could give us a possible scenario in which a media event regarding abortion might be approved? At our meeting you said there wasn't a blanket ban but each request would be examined individually. Several requests have been made and each denied. So I am hoping to understand a little better what might be a hypothetical yes.²⁵

²⁵ See Email from Pam Lotke to Donna Arbogast dated February 25, 2016, attached hereto as Exhibit 5.

50. To Dr. Horvath-Cosper's knowledge, the Hospital never responded to Dr. Lotke's request.

51. In addition to interfering with her ability to engage in media advocacy work, members of the MedStar administration have become increasingly hostile towards Dr. Horvath-Cosper. On December 18, 2015, Dr. Fries warned Dr. Horvath-Cosper by email that although she was "within her rights" to discuss abortion issues publicly, if she continued to do so she risked being subject to review by the Hospital for misconduct, which "can be grounds for dismissal." In this same email, Dr. Fries also informed Dr. Horvath-Cosper that Dr. Argyros had told her directly to counsel Dr. Horvath-Cosper to stop any legal action she was then considering to challenge the restrictions on her ability to speak publicly about abortion.

52. MedStar's refusal to permit Dr. Horvath-Cosper to perform advocacy work has denied her the full benefit of her fellowship and impeded her development as a physician. Because the availability of abortion training in medical school and residency programs remains low, and at times insufficient, the FFP is an invaluable training opportunity for Dr. Horvath-Cosper. Given her moral convictions regarding the importance of public advocacy on the topic of abortion, the advocacy component of the fellowship is particularly critical for her development. By continuing to deny her the opportunity to engage in media advocacy on the topic of abortion, MedStar has denied her a vital benefit of her fellowship that is afforded to others in her program.²⁶

²⁶ Below is a partial listing of recent articles written by current and recently graduated fellows on the topic of abortion:

REDACTED

53. In addition, by refusing Dr. Horvath-Cosper's requests to engage in public advocacy on the topic of abortion, MedStar has also ostracized her within her own Department and forced her to choose between remaining employed and sacrificing the abortion advocacy that lies at the heart of her moral convictions respecting abortions and the central reason she became a FPF at MedStar.

54. Upon information and belief, MedStar does not maintain similar restrictions on the speech of physicians in other specialties who seek to engage in media advocacy about their specialty or otherwise discriminate against them if they speak out.

55. Moreover, MedStar has not offered any evidence to justify treating Dr. Horvath-Cosper's advocacy on the topic of abortion differently than advocacy in other specialties. Prior to MedStar's speech restriction, Dr. Horvath-Cosper engaged in abortion media advocacy as a fellow without incident or complaint from MedStar. The Hospital has not connected Dr. Horvath-Cosper's abortion media advocacy to any increased threats against the Hospital, nor has it pointed to any other FFP site that has been exposed to increased violence because of the advocacy performed by other fellows on the topic of abortion.

REDACTED

56. Instead, MedStar's conduct to date makes clear that the sole purpose for limiting Dr. Horvath-Cosper's speech is *because* her speech accomplishes what her moral convictions regarding abortions obligate her to do: use her voice and position as an abortion provider to highlight abortion as the legal, safe, and essential service that it is in order to de-stigmatize the procedure and re-focus the debate on integrating it into regular medical practice.

57. Upon information and belief, the Hospital intends to prohibit Dr. Horvath-Cosper from speaking about abortion for the remainder of her fellowship and to bar future family planning fellows from advocating on the topic of abortion as well.

58. By prohibiting Dr. Horvath-Cosper from engaging in abortion media advocacy, MedStar has subjected Dr. Horvath-Cosper to disparate treatment in the terms, conditions, and privileges of employment because of her moral convictions on abortion, namely that a key component of her role as an abortion provider is to speak out in order to destigmatize abortion and integrate abortion into standard medical practice, and denied her the full benefit of her fellowship.

LEGAL ALLEGATIONS

59. The Church Amendment provides in relevant part:

No entity which receives a grant, contract, loan, or loan guarantee under the Public Health Service Act [42 U.S.C. 201 *et. seq.*] . . . may discriminate in the employment, promotion, or termination of employment of any physician or other health care personnel . . . because of his religious beliefs or moral convictions respecting sterilization procedures or abortions. 42 U.S.C § 300a-7(c)(1)(A).

60. MedStar is an entity which receives a grant, contract, loan, or loan guarantee under the Public Health Service Act.

61. Dr. Horvath-Cosper is a physician employed by MedStar.

62. Since December 4, 2015, MedStar has been discriminating against Dr. Horvath-Cosper in the terms, conditions, and privileges of her employment as a physician on the basis of her moral convictions respecting abortions.

63. Dr. Horvath-Cosper accepted a position as a FFP at MedStar with the understanding and expectation that she would gain the full benefit of the FFP, including advocacy training.

64. From July 1, 2014, until December 4, 2015, Dr. Horvath-Cosper gained the full benefit of her fellowship by engaging in public advocacy, including in the media, on the topic of abortion without incident or complaint from MedStar.

65. On December 4, 2015, MedStar instructed Dr. Horvath-Cosper to immediately cease her media advocacy on the topic of abortion. Since this time, MedStar has continued to prohibit Dr. Horvath-Cosper from engaging in media advocacy on abortion and related women's health issues, threatened repercussions if she continued with her public abortion advocacy, directed her not to take legal action, isolated her within her Department, and forced her to choose between remaining employed and sacrificing the abortion advocacy that lies at the heart of her moral convictions respecting abortions and the central reason she became a FFP at MedStar. Since December 4, 2015, Dr. Horvath-Cosper has worked in an environment in which she has been fearful of disciplinary action, including termination, for speaking publicly about abortion or taking legal action to seek redress. Through this conduct, MedStar discriminated against Dr. Horvath-Cosper and denied her the benefits of the fellowship that other FFP fellows are obtaining elsewhere.

66. All objective evidence demonstrates that MedStar's decision to interfere with the advocacy component of Dr. Horvath-Cosper's fellowship was based on its objection to her moral convictions respecting abortion, namely that physicians must engage in public discourse about

abortion as the legal, safe, and essential service that it is in order to de-stigmatize the procedure and re-focus the conversation on integrating it into the larger medical community.

67. Upon information and belief, MedStar does not maintain similar content-based restrictions on the speech of physicians in other specialties who seek to engage in media advocacy about their specialty or otherwise discriminate against them for engaging in public advocacy.

68. MedStar has not produced any evidence connecting Dr. Horvath-Cosper's abortion advocacy to any increased threats against the Hospital, nor has it pointed to any other FFP site that has been exposed to increased violence because of the advocacy performed by its fellows.

69. Instead, MedStar's conduct to date makes clear that the sole purpose for limiting Dr. Horvath-Cosper's speech is *because* her speech accomplishes what her moral convictions regarding abortions obligate her to do.

70. Through this conduct, MedStar has subjected Dr. Horvath-Cosper to disparate treatment because of the abortion advocacy that forms a key part of her moral convictions about abortion, and unlawfully denied her the full benefit of her fellowship on the basis of her moral convictions on the topic of abortion.

RELIEF REQUESTED

71. Dr. Horvath-Cosper requests that:

- i. OCR investigate MedStar's policy respecting the right of physicians and health care personnel employed by MedStar to speak publicly about the topic of abortion;
- ii. OCR secure an end to the discrimination by MedStar and an assurance that MedStar will comply with the Church Amendment; and

- iii. OCR take all necessary steps to remedy any unlawful conduct identified in its investigation.

Respectfully submitted,



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