

APPEAL, CLOSED, TYPE-D

**U.S. District Court**  
**District of Columbia (Washington, DC)**  
**CIVIL DOCKET FOR CASE #: 1:09-cv-01575-RCL**  
***Internal Use Only***

SHERLEY et al v. SEBELIUS et al  
Assigned to: Chief Judge Royce C. Lamberth  
Case: 1:01-cv-00502-RCL  
Cause: 05:0706 Judicial Review of Agency Actions

Date Filed: 08/19/2009  
Date Terminated: 10/27/2009  
Jury Demand: None  
Nature of Suit: 890 Other Statutory Actions  
Jurisdiction: U.S. Government Defendant

**Plaintiff**

**JAMES L. SHERLEY**  
*Dr.*

represented by **Ryan G. Koopmans**  
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**Plaintiff**

**THERESA DEISHER**  
*Dr.*

represented by **Ryan G. Koopmans**  
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**Steven Henry Aden**  
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**Plaintiff**

**NIGHT-LIGHT CHRISTIAN  
ADOPTIONS**  
*individually and as next friend for Plaintiff  
Embryos*

represented by **Ryan G. Koopmans**  
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**Plaintiff**

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**Plaintiff**

**TINA NELSON**

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**Plaintiff**

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**Plaintiff**

**PATRICIA FLYNN**

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**Steven Henry Aden**  
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**Plaintiff**

**CHRISTIAN MEDICAL  
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**Plaintiff**

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**Samuel B. Casey**

(See above for address)

**Steven Henry Aden**

(See above for address)

V.

**Defendant**

**KATHLEEN SEBELIUS**

*in her official capacity as Secretary of the  
Department of Health and Human Services*

represented by **Eric R. Womack**

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**Defendant**

**DEPARTMENT OF HEALTH AND  
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**Joel L. McElvain**  
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*LEAD ATTORNEY*

**Kyle Renee Freeny**  
(See above for address)

**Defendant**

**FRANCIS S. COLLINS**  
*Dr., in his official capacity as Director of  
the National Institutes of Health*

represented by **Eric R. Womack**  
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**Joel L. McElvain**  
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**Kyle Renee Freeny**  
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**Defendant**

**NATIONAL INSTITUTE OF HEALTH**

represented by **Eric R. Womack**  
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**Kyle Renee Freeny**  
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Date Filed	#	Page	Docket Text
08/19/2009	<u>1</u>		COMPLAINT against KATHLEEN SEBELIUS, DEPARTMENT OF HEALTH AND HUMAN SERVICES, FRANCIS S. COLLINS, NATIONAL INSTITUTE OF HEALTH ( Filing fee \$ 350, receipt number 4616023260) filed by WILLIAM FLYNN, PATRICIA FLYNN, CHRISTIAN MEDICAL ASSOCIATION, JAMES L. SHERLEY, THERESA DEISHER, NIGHT-LIGHT CHRISTIAN ADOPTIONS, SHAYNE NELSON, TINA NELSON. (Attachments: # <u>1</u> Civil Cover Sheet)(rdj) (Entered: 08/20/2009)
08/19/2009			SUMMONS (6) Issued as to KATHLEEN SEBELIUS, DEPARTMENT OF HEALTH AND HUMAN SERVICES, FRANCIS S. COLLINS, NATIONAL INSTITUTE OF HEALTH, U.S. Attorney and U.S. Attorney General (rdj) (Entered: 08/20/2009)
08/19/2009	<u>2</u>		NOTICE OF RELATED CASE by WILLIAM FLYNN, PATRICIA FLYNN, CHRISTIAN MEDICAL ASSOCIATION, JAMES L. SHERLEY, THERESA DEISHER, NIGHT-LIGHT CHRISTIAN ADOPTIONS, SHAYNE NELSON, TINA NELSON. Case related to Case No. 01-502. (rdj) (Entered: 08/20/2009)
08/19/2009	<u>3</u>		MOTION for Preliminary Injunction by WILLIAM FLYNN, PATRICIA FLYNN, CHRISTIAN MEDICAL ASSOCIATION, JAMES L. SHERLEY, THERESA DEISHER, NIGHT-LIGHT CHRISTIAN ADOPTIONS, SHAYNE NELSON, TINA NELSON (Attachments: # <u>1</u> Memorandum in Support, # <u>2</u> Declaration Bradley J. Lingo, # <u>3</u> Bradley J. Lingo Exhibit A, # <u>4</u> Bradley J. Lingo Exhibit B, # <u>5</u> Bradley J. Lingo Exhibit C, # <u>6</u> Bradley J. Lingo Exhibit D, # <u>7</u> Declaration Dr. James Sherley, # <u>8</u> Declaration Dr. Theresa Deisher, # <u>9</u> Declaration Ronald L. Stoddart, # <u>10</u> Declaration Mrs. Tina Nelson, # <u>11</u> Declaration William T. Flynn)(rdj) (Entered: 08/20/2009)
08/19/2009	<u>4</u>		MOTION to Appoint Guardian ad Litem by WILLIAM FLYNN, PATRICIA FLYNN, CHRISTIAN MEDICAL ASSOCIATION, JAMES L. SHERLEY, THERESA DEISHER, NIGHT-LIGHT CHRISTIAN ADOPTIONS, SHAYNE NELSON, TINA NELSON (Attachments: # <u>1</u> Memorandum in Support, # <u>2</u> Declaration Ronald L. Stoddart, # <u>3</u> Text of Proposed Order)(rdj) (Entered: 08/20/2009)
08/26/2009	<u>5</u>		NOTICE of Appearance by Bradley Jason Lingo on behalf of all plaintiffs (Lingo, Bradley) (Entered: 08/26/2009)
08/26/2009	<u>6</u>		MOTION for Leave to Appear Pro Hac Vice :Attorney Name- Samuel B. Casey, :Firm- Advocates International, :Address- 8001 Braddock Rd., Suite 300, Springfield, VA 22151. Phone No. - 703-894-1076. by WILLIAM FLYNN, PATRICIA FLYNN, CHRISTIAN MEDICAL ASSOCIATION, JAMES L. SHERLEY, EMBRYOS, THERESA DEISHER, NIGHT-LIGHT CHRISTIAN ADOPTIONS, SHAYNE NELSON, TINA NELSON (Attachments: # <u>1</u> Declaration, # <u>2</u> Text of Proposed Order)(Hungar, Thomas) (Entered: 08/26/2009)

08/27/2009	<u>7</u>	NOTICE of Appearance by Steven Henry Aden on behalf of WILLIAM FLYNN, PATRICIA FLYNN, CHRISTIAN MEDICAL ASSOCIATION, JAMES L. SHERLEY, EMBRYOS, THERESA DEISHER, NIGHT-LIGHT CHRISTIAN ADOPTIONS, SHAYNE NELSON, TINA NELSON (Aden, Steven) (Entered: 08/27/2009)
08/27/2009	<u>8</u>	Joint MOTION for Extension of Time to File <i>/Set Briefing Schedule</i> by KATHLEEN SEBELIUS, DEPARTMENT OF HEALTH AND HUMAN SERVICES, FRANCIS S. COLLINS, NATIONAL INSTITUTE OF HEALTH (Attachments: # <u>1</u> Text of Proposed Order)(Womack, Eric) (Entered: 08/27/2009)
08/27/2009	<u>9</u>	ORDER granting Motion <u>6</u> for Leave to Appear Pro Hac Vice. Signed by Chief Judge Royce C. Lamberth on 8/27/2009. (lcrcl2, ) (Entered: 08/27/2009)
08/27/2009	<u>10</u>	ORDER granting the Joint Motion <u>8</u> for Extension of Time to File; Set/Reset Deadlines: Opposition briefs are due on or before 9/14/2009. Any reply briefs are due on or before 9/28/2009. Signed by Chief Judge Royce C. Lamberth on 8/27/2009. (lcrcl2, ) (Entered: 08/27/2009)
08/27/2009	<u>11</u>	NOTICE of Appearance by Joel L. McElvain on behalf of all defendants (McElvain, Joel) (Entered: 08/27/2009)
08/28/2009	<u>12</u>	NOTICE of Appearance by Eric R. Womack on behalf of all defendants (Womack, Eric) (Entered: 08/28/2009)
08/28/2009		Set/Reset Deadlines: Opposition briefs due by 9/14/2009. Reply briefs due by 9/28/2009. (rje) (Entered: 08/28/2009)
09/01/2009	<u>13</u>	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed as to KATHLEEN SEBELIUS served on 8/24/2009, answer due 10/23/2009. (Aden, Steven) (Entered: 09/01/2009)
09/01/2009	<u>14</u>	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed as to FRANCIS S. COLLINS served on 8/21/2009, answer due 10/20/2009. (Aden, Steven) (Entered: 09/01/2009)
09/01/2009	<u>15</u>	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed as to DEPARTMENT OF HEALTH AND HUMAN SERVICES served on 8/24/2009, answer due 10/23/2009. (Aden, Steven) (Entered: 09/01/2009)
09/01/2009	<u>16</u>	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed on Attorney General. Date of Service Upon Attorney General 8/23/09. (Aden, Steven) (Entered: 09/01/2009)
09/01/2009	<u>17</u>	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed as to the US Attorney. (Aden, Steven) (Entered: 09/01/2009)
09/02/2009	<u>18</u>	NOTICE of Appearance by Samuel B. Casey on behalf of all plaintiffs (Casey, Samuel) (Entered: 09/02/2009)
09/11/2009	<u>19</u>	NOTICE of Defendants' Objection to Plaintiffs' Related Case Designation by KATHLEEN SEBELIUS, DEPARTMENT OF HEALTH AND HUMAN SERVICES, FRANCIS S. COLLINS, NATIONAL INSTITUTE OF HEALTH re <u>2</u> Notice of Related Case (McElvain, Joel) (Entered: 09/11/2009)
09/11/2009	<u>20</u>	Unopposed MOTION for Leave to File Excess Pages by KATHLEEN



		SEBELIUS, DEPARTMENT OF HEALTH AND HUMAN SERVICES, FRANCIS S. COLLINS, NATIONAL INSTITUTE OF HEALTH (Attachments: # <u>1</u> Text of Proposed Order)(Womack, Eric) (Entered: 09/11/2009)
09/14/2009	<u>21</u>	ORDER granting defendants' Unopposed Motion <u>20</u> for Leave to File Excess Pages. Signed by Chief Judge Royce C. Lamberth on 9/14/2009. (lcrcl2, ) (Entered: 09/14/2009)
09/14/2009	<u>22</u>	MOTION to Dismiss by KATHLEEN SEBELIUS, DEPARTMENT OF HEALTH AND HUMAN SERVICES, FRANCIS S. COLLINS, NATIONAL INSTITUTE OF HEALTH (Attachments: # <u>1</u> Memorandum in Support, # <u>2</u> Declaration, # <u>3</u> Text of Proposed Order)(Womack, Eric) (Entered: 09/14/2009)
09/14/2009	<u>23</u>	Memorandum in opposition to re <u>3</u> MOTION for Preliminary Injunction filed by KATHLEEN SEBELIUS, DEPARTMENT OF HEALTH AND HUMAN SERVICES, FRANCIS S. COLLINS, NATIONAL INSTITUTE OF HEALTH. (Womack, Eric) (Entered: 09/14/2009)
09/14/2009	<u>24</u>	NOTICE of Appearance by Kyle Renee Freeny on behalf of all defendants (Freeny, Kyle) (Entered: 09/14/2009)
09/14/2009	<u>25</u>	Memorandum in opposition to re <u>4</u> MOTION to Appoint Guardian ad Litem filed by KATHLEEN SEBELIUS, DEPARTMENT OF HEALTH AND HUMAN SERVICES, FRANCIS S. COLLINS, NATIONAL INSTITUTE OF HEALTH. (Attachments: # <u>1</u> Text of Proposed Order)(Freeny, Kyle) (Entered: 09/14/2009)
09/16/2009	<u>26</u>	RESPONSE re <u>19</u> Notice (Other) of Defendants' Objection to Plaintiffs' Related Case Designation filed by WILLIAM FLYNN, PATRICIA FLYNN, CHRISTIAN MEDICAL ASSOCIATION, JAMES L. SHERLEY, EMBRYOS, THERESA DEISHER, NIGHT-LIGHT CHRISTIAN ADOPTIONS, SHAYNE NELSON, TINA NELSON. (Lingo, Bradley) (Entered: 09/16/2009)
09/18/2009	<u>27</u>	REPLY re <u>19</u> Notice (Other) Defendants' Reply Regarding Their Objection to Plaintiffs' Related Case Designation filed by KATHLEEN SEBELIUS, DEPARTMENT OF HEALTH AND HUMAN SERVICES, FRANCIS S. COLLINS, NATIONAL INSTITUTE OF HEALTH. (McElvain, Joel) (Entered: 09/18/2009)
09/28/2009	<u>28</u>	REPLY to opposition to motion re <u>4</u> MOTION to Appoint Guardian ad Litem filed by WILLIAM FLYNN, PATRICIA FLYNN, CHRISTIAN MEDICAL ASSOCIATION, JAMES L. SHERLEY, EMBRYOS, THERESA DEISHER, NIGHT-LIGHT CHRISTIAN ADOPTIONS, SHAYNE NELSON, TINA NELSON. (Hungar, Thomas) (Entered: 09/28/2009)
09/28/2009	<u>29</u>	REPLY to opposition to motion re <u>3</u> MOTION for Preliminary Injunction filed by WILLIAM FLYNN, PATRICIA FLYNN, CHRISTIAN MEDICAL ASSOCIATION, JAMES L. SHERLEY, EMBRYOS, THERESA DEISHER, NIGHT-LIGHT CHRISTIAN ADOPTIONS, SHAYNE NELSON, TINA NELSON. (Hungar, Thomas) (Entered: 09/28/2009)
09/28/2009	<u>30</u>	NOTICE of Proposed Order by WILLIAM FLYNN, PATRICIA FLYNN, CHRISTIAN MEDICAL ASSOCIATION, JAMES L. SHERLEY, EMBRYOS, THERESA DEISHER, NIGHT-LIGHT CHRISTIAN ADOPTIONS, SHAYNE NELSON, TINA NELSON re <u>3</u> MOTION for Preliminary Injunction (Hungar, Thomas) (Entered: 09/28/2009)

09/28/2009	<u>31</u>		Memorandum in opposition to re <u>22</u> MOTION to Dismiss filed by WILLIAM FLYNN, PATRICIA FLYNN, CHRISTIAN MEDICAL ASSOCIATION, JAMES L. SHERLEY, EMBRYOS, THERESA DEISHER, NIGHT-LIGHT CHRISTIAN ADOPTIONS, SHAYNE NELSON, TINA NELSON. (Attachments: # <u>1</u> Declaration of Ronald Stoddart in Support of Opposition to Motion to Dismiss, # <u>2</u> Text of Proposed Order Denying Defendants' Motion to Dismiss)(Hungar, Thomas) (Entered: 09/28/2009)
10/08/2009	<u>32</u>		REPLY to opposition to motion re <u>22</u> MOTION to Dismiss filed by KATHLEEN SEBELIUS, DEPARTMENT OF HEALTH AND HUMAN SERVICES, FRANCIS S. COLLINS, NATIONAL INSTITUTE OF HEALTH. (Womack, Eric) (Entered: 10/08/2009)
10/14/2009			Minute Entry for proceedings held before Chief Judge Royce C. Lamberth: Motion Hearing held on 10/14/2009. Motion on Preliminary Injunction heard and held in abeyance. (Court Reporter Theresa Sorensen.) (rje, ) (Entered: 10/14/2009)
10/15/2009	<u>33</u>		ORDER denying defendants' Objection <u>19</u> to Plaintiffs' Related Case Designation. Signed by Chief Judge Royce C. Lamberth on 10/15/2009. (lcrl2, ) (Entered: 10/15/2009)
10/16/2009	<u>34</u>		NOTICE of Appearance by Ryan G. Koopmans on behalf of all plaintiffs (Koopmans, Ryan) (Entered: 10/16/2009)
10/27/2009	<u>35</u>	13	ORDER granting defendants' Motion <u>22</u> to Dismiss. Signed by Chief Judge Royce C. Lamberth on 10/27/2009. (lcrl2, ) (Entered: 10/27/2009)
10/27/2009	<u>36</u>		MEMORANDUM AND OPINION re: defendants' Motion <u>22</u> to Dismiss. A separate Order shall issue this dte. Signed by Chief Judge Royce C. Lamberth on 10/27/2009. (lcrl2, ) (Entered: 10/27/2009)
10/27/2009	<u>37</u>	14	ORDER denying as moot plaintiffs' Motion <u>3</u> for Preliminary Injunction, and Motion <u>4</u> to Appoint Guardian ad Litem. Signed by Chief Judge Royce C. Lamberth on 10/27/2009. (lcrl2, ) (Entered: 10/27/2009)
10/28/2009	<u>38</u>	11	NOTICE OF APPEAL as to <u>35</u> Order on Motion to Dismiss, <u>37</u> Order by WILLIAM FLYNN, PATRICIA FLYNN, CHRISTIAN MEDICAL ASSOCIATION, JAMES L. SHERLEY, EMBRYOS, THERESA DEISHER, NIGHT-LIGHT CHRISTIAN ADOPTIONS, SHAYNE NELSON, TINA NELSON. Filing fee \$ 455, receipt number 4616024999. Fee Status: Fee Paid. Parties have been notified. (rdj) (Entered: 10/29/2009)

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

DR. JAMES L. SHERLEY; DR. THERESA DEI-  
SHER; NIGHTLIGHT CHRISTIAN ADOPTIONS,  
individually and as next friend for PLAINTIFF EM-  
BRYOS; SHAYNE AND TINA NELSON; WILLIAM  
AND PATRICIA FLYNN; CHRISTIAN MEDICAL  
ASSOCIATION,

Plaintiffs,

v.

KATHLEEN SEBELIUS, in her official capacity as  
Secretary of the Department of Health and Human Ser-  
vices; DEPARTMENT OF HEALTH AND HUMAN  
SERVICES; DR. FRANCIS S. COLLINS, in his offi-  
cial capacity as Director of the National Institutes of  
Health; NATIONAL INSTITUTES OF HEALTH,

Defendants.

Case No. 1:09-cv-1575 RCL

**NOTICE OF APPEAL**

Notice is hereby given that Plaintiffs appeal to the United States Court of Appeals for the District of Columbia from the final judgment entered on October 27, 2009, the Order granting Defendants' Motion to Dismiss [Dock. No. 35] entered on October 27, 2009, and the Order denying Plaintiffs' Motion for Preliminary Injunction and Motion to Appoint a Guardian ad Litem [Dock. No. 37] entered on October 27, 2009.

Dated: October 28, 2009

Respectfully Submitted,

/s/ Thomas G. Hungar

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Bradley J. Lingo, D.C. Bar No. 490131  
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*Counsel for Plaintiffs*

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

_____	)	
DR. JAMES L. SHERLEY, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civ. No. 1:09-cv-1575 RCL
	)	
	)	
KATHLEEN SEBELIUS, <i>et al.</i> ,	)	
	)	
Defendants.	)	
_____	)	

**ORDER**

Upon consideration of defendants' Motion to Dismiss, the memorandum of law in support thereof, and responses thereto, it is hereby

ORDERED that the Motion to Dismiss is GRANTED, and that this action is DISMISSED WITH PREJUDICE.

Singed by Royce C. Lamberth, Chief Judge, on October 27, 2009.

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

---

DR. JAMES L. SHERLEY, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civ. No. 1:09-cv-1575 RCL
	)	
KATHLEEN SEBELIUS, <i>et al.</i> ,	)	
	)	
Defendants.	)	

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**ORDER**

In light of the Court's Order dismissing this case, it is hereby  
ORDERED that plaintiffs' Motions [3, 4] for Preliminary Injunction and to Appoint a  
Guardian ad Litem are DENIED AS MOOT.

Signed by Royce C. Lamberth, Chief Judge, on October 27, 2009.