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CLERK OF THE SHAWNEE COUNTY DISTRICT COURT
CASE NUMBER: 2011-CV-001298

**IN THE DISTRICT COURT OF
SHAWNEE COUNTY, KANSAS**

Hodes & Nauser, MDs, P.A.,
et al.,

Plaintiffs,

v.

Case No. 2011-CV-1298
Division No. 7

Robert Moser, M.D., in his official
Capacity as Secretary of the Kansas
Department of Health and Environment,
et al.,

Defendants.

Pursuant to K.S.A. Chapter 60

**DEFENDANTS' MOTION FOR SUMMARY JUDGMENT
ON PLAINTIFFS' CLAIMS UNDER THE KANSAS EQUAL PROTECTION CLAUSE**

Defendants move the Court for Summary Judgment under K.S.A. 60-256(b) on Counts I, II, and VIII in plaintiffs' First Amended Petition. Each of these claims challenges K.S.A. 65-4a01 through K.S.A. 65-4a12 ("the Act") and K.A.R. 28-34-126 through K.A.R. 28-34-144 ("the Regulations") under the Kansas Equal Protection Clause. Plaintiffs' equal-protection claims present purely legal issues regarding the State's authority to adopt a regulatory framework for facilities that regularly perform elective abortions. For the reasons set forth in defendants' Memorandum in Support, filed in conjunction with this Motion, Counts I, II, and VIII fail as a matter of law.

For more than 20 years, the United States Supreme Court has held that "the State may enact regulations to further the health or safety of a woman seeking an abortion." *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 878 (1992). Indeed, determining whom or what should be regulated is a quintessential

legislative function, particularly in the realm of public health. *Williamson v. Lee Optical Co.*, 348 U.S. 483, 489 (1955); *Hearn v. City of Overland Park*, 244 Kan. 638, 650, 772 P.2d 758 (1989).

The legislature's decision to regulate facilities that regularly provide elective abortions—like its longstanding regulation of hospitals, ambulatory surgical centers, and maternity centers—is rationally related to the State's traditional and important role of protecting health and safety. Thus, plaintiffs' equal-protection claims are without merit:

- Counts I and II—which challenge the legislature's authority to regulate facilities that regularly perform abortions (but not adopt those regulations for facilities that do not) and to allow discretionary exemptions for facilities already licensed as ambulatory surgical centers or hospitals—cannot succeed because the Act and Regulations are rationally related to a legitimate (and important) public interest.

- Count VIII—which argues that the regulation of facilities that regularly perform elective abortions constitutes gender discrimination—fails as a matter of law because the United States Supreme Court has rejected that very argument for over a quarter of a century.

In short, no genuine issues of material fact exist as to Counts I, II, and VIII, and defendants are entitled to summary judgment on those claims as a matter of law.

Respectfully submitted,

THOMPSON RAMSDELL QUALSETH & WARNER, P.A.

/s/ Sarah E. Warner

Sarah E. Warner	#22788
Stephen R. McAllister	#15845
Shon D. Qualseth	#18369

333 W. 9th Street
P.O. Box 1264
Lawrence, KS 66044
Phone: (785) 841-4554
Fax: (785) 841-4499
sarah.warner@trqlaw.com
steve.mcallister@trqlaw.com
shon.qualseth@trqlaw.com

Jeffrey A. Chanay #12056
Chief Deputy Attorney General
Office of Kansas Attorney General Derek Schmidt
Memorial Building, 2nd Floor
120 SW 10th Avenue
Topeka, KS 66612-1597
Phone: (785) 368-8435
Fax: (785) 291-3767
jeff.chanay@ag.ks.gov

Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent via electronic mail on January 16, 2015, addressed to:

Teresa Woody
The Woody Law Firm PC
1621 Baltimore Avenue
Kansas City, MO 64108
teresa@woodylawfirm.com

Bonnie Scott Jones
Stephanie Toti
Kara Loewentheil
Center for Reproductive Rights
120 Wall Street, 14th Floor
New York, NY 10005
bjones@reprorights.org
stoti@reprorights.org
kloewentheil@reprorights.org

L.J. Leatherman
Palmer, Leatherman, White & Dalton, L.L.P.
2348 SW Topeka Boulevard
Topeka, KS 66611-1286
ljlaw@jpalmerlaw.com

/s/ Sarah E. Warner
Sarah E. Warner