

EXHIBIT E

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UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS,

HODES & NAUSER, MD's, PA,
et al.,

Docket No. 11-2365-CM

Plaintiff,

Kansas City, Kansas

Date: 7/1/11

v.

ROBERT MOSER, et al,

Defendants.
.....

TRANSCRIPT OF
TEMPORARY RESTRAINING ORDER HEARING
BEFORE THE HONORABLE CARLOS MURGUIA,
UNITED STATES DISTRICT JUDGE.

APPEARANCES:

For the Plaintiffs: Teresa A Woody
Woody Law Firm, PC
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Kansas City, MO 64108

Bonnie Scott Jones
Center for Reproductive Rights - NY
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New York, NY 10005

For the Defendants: Jeffrey A Chanay & Steve R Fabert
Office of Attorney General - Topeka
120 SW 10th Avenue - 2nd Floor
Topeka, KS 66612-1597

Movant: Cheryl A Pilate
Morgan Pilate LLC
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Olathe, KS 66061

Court Reporter: Nancy Moroney Wiss, CSR, RMR, FCRR
Official Court Reporter
558 US Courthouse
500 State Avenue
Kansas City, KS 66101

1 First, the court looks at the likelihood
2 that plaintiffs will succeed on the merits of their
3 claims. Plaintiffs base their injunction request on
4 their claims that defendants violated plaintiffs'
5 procedural and substantive due process rights and their
6 patient's right to privacy. To succeed on the
7 procedural due process claim under the Fourteenth
8 Amendment, plaintiffs must establish that they possessed
9 a protected interest such that the due process
10 protections were applicable. If they make such showing,
11 then they must show that they were not afforded an
12 appropriate level of process. It's a case of *Farthing*
13 *versus City of Shawnee* at 39 Fed 3rd 1131, an 1135, a
14 Tenth Circuit case from 1994. Plaintiffs argue they
15 have a property and liberty interest in the continued
16 operation of their medical practice. The right to
17 pursue a lawful business has long been recognized as a
18 property right within the protection of the Fourteenth
19 Amendment. Plaintiffs have provided evidence that their
20 medical practice has been in operation, that they have
21 been providing abortion services for approximately
22 24 years. Based on the record presented, it appears
23 plaintiffs have a protected interest in maintaining
24 their business. Procedural due process requires notice
25 and a pre-deprivation hearing before property interests

1 perform abortion services at another facility. Thus,
2 the defendants argue, the only remaining harm of
3 plaintiffs is the speculative harm that plaintiffs will
4 lose revenue and future clients, receive damage to the
5 professional standing, and that there will be a threat
6 to public health. Plaintiffs presented evidence that
7 without an injunction, they would have to cease
8 providing medical services today. KDHE informed
9 plaintiffs this morning that they would be denied a
10 license. They have patients scheduled to receive these
11 services within the next week. According to the
12 affidavit submitted, these services are often medically
13 necessary, and a delay in the services creates a health
14 risk for patients. There is evidence in the record of
15 at least two women with fetal anomalies and serious
16 medical complications that will suffer irreparable harm
17 if an injunction is not issued. At least one of the
18 plaintiffs performs 25 percent of these services in the
19 state of Kansas. One plaintiff has been licensed, but
20 the record indicates that that clinic does not have the
21 specific expertise of plaintiffs Hodes and Nauser in
22 performing certain complicated procedures, and is
23 unlikely to be able to absorb the patients of both
24 plaintiffs in the manner that will address the health
25 concerns involved with dealing with delaying the

1 services to patients. There's also evidence that
2 plaintiffs will lose revenue through future clients, and
3 good will, and suffer harm to their professional
4 reputation if they are forced to stop providing legal
5 medical services. Based on the record presented, the
6 court finds that plaintiffs have sufficiently shown that
7 they will suffer irreparable harm unless a temporary
8 restraining order is issued.

9 Next, the court looks at whether the
10 threatened injury outweighs the harm that the temporary
11 restraining order may cause defendants. If the court
12 were to issue the requested orders, defendants would be
13 prohibited, at least temporarily, from enforcing the
14 temporary regulations and licensing process. There's no
15 evidence that an injunction will impose any affirmative
16 obligations, administrative burden or cost to
17 defendants. The delay in enforcing the state's laws
18 that might result from an injunction is not as great as
19 the threatened harm to plaintiffs and their patients.
20 An injunction would not prevent the regulation of
21 plaintiff's medical services entirely. Plaintiffs would
22 remain subject to existing regulatory requirements and
23 government oversight. Any delay or interruption from
24 the issuance of an injunction will be temporary pending
25 the resolution of this action. The court finds that the