

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

COMPREHENSIVE HEALTH Docket No. 13-02302-KHV
OF PLANNED PARENTHOOD OF
OF KANSAS AND MID-MISSOURI, Kansas City, Kansas
INC., et al., Date: 10/10/2014

 Plaintiffs,
v.
TEMPLETON, et al.,

 Defendants.
.....

TRANSCRIPT OF TELEPHONE STATUS CONFERENCE
BEFORE THE HONORABLE KATHRYN H. VRATIL
UNITED STATES DISTRICT JUDGE.

APPEARANCES:

For the Plaintiffs: Mr. Arthur A. Benson, II
 Arthur Benson & Associates
 4006 Central
 P.O. Box 119007
 Kansas City, Missouri 64171-9007

 Ms. Diana O. Salgado
 Planned Parenthood Federation
 of America - NY
 434 West 33rd Street
 New York, NY 10001

For the Defendants: Mr. Jeffrey A. Chanay
 Office of Attorney General - Topeka
 120 S.W. 10th Avenue, 2nd Floor
 Topeka, Kansas 66612-1597

 Mr. Shon D. Qualseth
 Ms. Sarah E. Warner
 Thompson Ramsdell & Qualseth, PA
 333 West 9th Street
 P.O. Box 1264
 Lawrence, Kansas 66044-2803

Court Reporter: Kelli Stewart, RPR, CRR, RMR
 Official Court Reporter
 259 U.S. Courthouse
 500 State Avenue
 Kansas City, Kansas 66101

1 MS. SOUTH: Good afternoon. This is Linda
2 South in Judge Vratil's chambers. Could I please have a
3 roll call of who is on the conference?

4 MR. QUALSETH: Hi. This is Shon Qualseth.

5 MR. BENSON: Arthur Benson.

6 MS. SOUTH: Thank you.

7 MR. CHANAY: And this is Jeff Chanay in the
8 Attorney General's Office.

9 MS. SOUTH: Thank you.

10 MS. SALGADO: Diana Delgado.

11 MS. SOUTH: Thank you.

12 MS. WARNER: Sarah Warner is on the call.

13 MS. SOUTH: Thank you. Anyone else that you
14 know of that we should wait for on the call?

15 MR. QUALSETH: This is Shon. We don't
16 expect anyone else.

17 MS. SOUTH: Okay. So just the five of you,
18 if I have my numbers counted right?

19 MR. QUALSETH: That's right.

20 MS. SALGADO: That's correct. The plaintiff
21 is not expecting anyone either.

22 MS. SOUTH: Okay. Great. If I could ask
23 you to hold on the line, please. (Pause.) Counsel,
24 this is Linda South again. For this afternoon's
25 conference, we do have a court reporter and so we will

1 be taking a transcript of this. I would ask that when
2 you're speaking that you identify yourself by name and
3 party. Thank you.

4 THE COURT: Hello?

5 MR. QUALSETH: Hello.

6 THE COURT: This is Judge Vratil. Am I on
7 the line with everyone?

8 MR. QUALSETH: Yes, Your Honor.

9 MS. SALGADO: Yes, Your Honor.

10 MR. BENSON: Yes.

11 THE COURT: Okay. Well, then if you would
12 tell me who is on the line, that would be great.

13 MR. QUALSETH: Judge Vratil for the
14 defendants, this is Shon Qualseth. And we also have
15 Jeff Chanay and Sarah Warner.

16 THE COURT: Okay.

17 MR. BENSON: And for the plaintiff, Arthur
18 Benson and Diana Salgado.

19 THE COURT: Okay. Thank you. I wanted to
20 visit with you all about a couple things, and even
21 though it may not be obvious to you, we have been
22 working very hard on your cross motions for summary
23 judgment. And frankly, I'm sort of confounded about
24 what to do at this point. Since Counts 2 and 3 dropped
25 out of the case, it seems to me that Count 1 looks very

1 different from the way it's been teed up in the briefs.

2 And I just-- I'm struggling with whether we
3 need to do further briefing, whether it makes sense to
4 try and dispose of this on a path of cross motions for
5 summary judgment or whether we should just set it for
6 trial. I mean, what it comes down to is this: So as I
7 read the briefs, the only issue is that-- with the
8 requirement in the statute which says that an abortion
9 facility that has a website has to have an easily
10 identifiable link on the home page, and the link has to
11 say basically that KDHE has a website and you can reach
12 it by clicking here.

13 The parties didn't really tease this out
14 very well in the briefs, but it looks to me like when
15 you look at this statute, part of it involves speech,
16 part of it compels certain speech, but part of it is
17 really compelling actions that doesn't have a First
18 Amendment component, that being placing a link on the
19 home page.

20 When you look at the speech aspect, I'm not
21 really sure it's compelled speech when it's applied to
22 this particular plaintiff, because my understanding of
23 compelled speech would be that the speaker is being
24 required to say something that they would not otherwise
25 say. When you look at Planned Parenthood in this

1 particular context, they've already got links to the
2 KDHE website. They don't use the exact words of the
3 statute, but I'm not sure whether there's any
4 constitutional significance to the distinction between
5 the words that are already used and the words that the
6 statute would require them to use.

7 So I guess there's a threshold question
8 about whether this is even compelled speech. And that
9 has all kinds of implications with regard to Article III
10 standing, with regard to whether this-- well, with
11 regard to what the standard of review would be, whether
12 plaintiff can show that the standard of-- that the
13 statute is unconstitutional under whatever the relevant
14 standard is. And-- and basically what I'm finding is
15 that the more I get into looking at this, the-- the more
16 I think that the briefs don't answer the questions I
17 have.

18 And initially my reaction was to try and
19 tease out what the partys' positions would be from
20 arguments that they have made on the counts that are no
21 longer in the case. That's not proving to be very
22 satisfactory. And so it's-- I want to toss this back in
23 your lap and find out, number one, I'm curious why
24 you're actually even pursuing Count 1 and whether you
25 think that what it-- what Planned Parenthood is doing

1 already is different from what the statute would require
2 it to do in any constitutionally relevant sense.

3 So I'm just throwing some ideas out. Talk
4 to me about where you think we are and whether it's
5 important to actually resolve this issue, what are the
6 ramifications of requiring re-briefing and all of that.

7 MS. SALGADO: Your Honor, this is Diana
8 Salgado on behalf of both plaintiffs. I'll try to
9 address some of your questions. The most-- the most
10 important being that we-- we do today continue to
11 believe that this is unconstitutional compelled speech,
12 both requiring the hyperlink and the state message that
13 goes with the hyperlink to the website to be placed on
14 the home page of Comprehensive Health's website.

15 THE COURT: Okay. I'm going to-- let me ask
16 you a question. What do you think the message is,
17 because the way it's briefed-- the only message that the
18 statute says is that the department has a website, that
19 this is the link to it.

20 MS. SALGADO: That's true, Your Honor. I
21 think both-- I think that the hyperlink itself is speech
22 and I think that there is case law that supports that.
23 I think that the message is that you, reader, whomever
24 that may be, that goes to the home page of Comprehensive
25 Health's website, and I think there are facts in this

1 case, if I'm correct, that there are over at least
2 20,000 unique visitors to Comprehensive Health's home
3 page annually. That the message is that you, reader,
4 should go to this-- the state's website and view the
5 contents of that website, to which Comprehensive Health
6 disagrees with the contents of the website.

7 THE COURT: How is that different from what
8 you already do? I mean, and here's another side issue,
9 like I-- I've been on the website and I've found a lot
10 of ways that you link to the KDHE website that don't
11 seem to be really different at all in substance from
12 what you're complaining about in the statute.

13 MS. SALGADO: Your Honor, I believe that the
14 current links to KDHE's website are on pages that are
15 directed towards patients. I mean, it's a way in
16 which-- in which a patient can receive the
17 statutorily-required information-- I'm sorry, the
18 statutorily-required state materials. And so I think
19 that is different than placing it on the home page of
20 Comprehensive Health's website. I think that that--

21 THE COURT: Okay. Okay. Go ahead.

22 MS. SALGADO: Sorry. I was going to say
23 that I think that the other difference-- or I think the
24 differences in-- in where it's currently placed today is
25 that it's part of-- it's a way in which to-- to

1 accomplish the statutorily-required mandate that
2 patients be given that information. So it's directed
3 for a specific purpose. It doesn't have the state's
4 message that goes with it. For example, it doesn't say
5 that you can go to the KDHE's website to see video of
6 sonogram images of the unborn child. Those are not--
7 that's not a message that Comprehensive Health places on
8 its-- its website anywhere. And certainly not terms
9 that it uses.

10 THE COURT: Right. But this statute doesn't
11 require you to use that language.

12 MS. SALGADO: It does. It does, Your Honor.
13 It requires that-- the statute requires that there be a
14 message that go with the-- that directs the reader to
15 the KDHE website and-- and that it include a hyperlink.

16 THE COURT: Well, it's-- it would say that
17 the department maintains a website containing
18 information about the development of the unborn child,
19 as well as a video of sonogram images at various points
20 in development.

21 MS. SALGADO: That's correct.

22 THE COURT: But I mean, you-- I-- I'm
23 looking at the website right now and I clicked directly
24 from your website to the exact same thing. And it says,
25 "DVDS, 4-D sonogram, DVD script, prenatal image

1 gallery," and so forth. And it says-- it says, you
2 know, you can go to the KDHE website and get this
3 information, that sort of thing. So I-- I mean, I guess
4 I'm-- I'm struggling to tease out what the difference is
5 between what you're saying currently and how that would
6 be relevant in any constitutional way.

7 MS. SALGADO: Well, Your Honor, I think-- I
8 think the difference-- I think the constitutional
9 difference is that Comprehensive Health objects to
10 having to place this message-- this statement that-- and
11 the hyperlink on the home page of its website, which it
12 receives over 20,000, you know, unique visitors every
13 year, but nowhere close to the number of patients that
14 Comprehensive Health serves, which means that it's
15 reaching a much-- a far broader audience than just its
16 patients.

17 And-- and the page in which currently
18 Comprehensive Health links to the KDHE website is
19 directed towards its patients so it can fulfill a
20 statutorily-obligated requirement that its patients be
21 given this information. I think for Comprehensive
22 Health, that's the important distinction.

23 THE COURT: So the distinction is you don't
24 want to provide this information to people who are not
25 patients?

1 MS. SALGADO: That is correct.

2 THE COURT: You have no--

3 MS. SALGADO: The only reason why it
4 provides it-- sorry, Your Honor, go ahead.

5 THE COURT: So you have no issue with the
6 statute as it applies to patients, only non-patients?

7 MS. SALGADO: We have not chosen to
8 challenge the requirement that it be-- that this
9 information be given to its patients.

10 THE COURT: Okay. All right. That's-- I'm
11 not sure that that's really clearly-- for example, I
12 don't think that the briefs really clearly address the
13 function of a hyperlink as constituting speech. I'm
14 really struggling to understand whether this challenge
15 is a facial challenge or whether it's only as-applied.
16 And if it's as-applied, I guess what you're telling me
17 now that I didn't understand before is that it would be
18 only as-applied to Planned Parenthood having to give
19 this information to people who are not patients.

20 MS. SALGADO: I mean, I think the-- the
21 question of whether it's a facial or a-- or as-applied,
22 I think this sort of involves remedy issues, what we
23 are-- because the public home page is viewed by both
24 patients and non-patients, Comprehensive Health is
25 objecting to it, to the requirements. I believe that--

1 THE COURT: I mean, that's true of the
2 current website.

3 MS. SALGADO: That is correct.

4 THE COURT: You don't have to be a patient
5 to access the informed consent page which says, "For
6 information about perinatal resources in Kansas, visit
7 www.kdhe," et cetera, "or contact the department at
8 785-296," et cetera.

9 MS. SALGADO: I'm sorry, it was not clear to
10 me whether you were referring-- whether that was from
11 the KDHE website or--

12 THE COURT: It's from your website.

13 MS. SALGADO: Right. Do you mean that
14 currently today patients-- more than patients have--
15 more than patients can access the page on which we
16 currently link?

17 THE COURT: Right.

18 MS. SALGADO: That is correct.

19 THE COURT: So I mean, this isn't really
20 answering my question about what's the constitutional
21 significance of-- you say you're only challenging the
22 part that goes to non-patients. And I'm not following
23 the-- the logic, because you have it posted at the
24 current time for both patients and non-patients.

25 MS. SALGADO: Your Honor, I think that the--

1 the page on which we currently link to KDHE is directed
2 towards patients. Can non-patients view it if they want
3 to view a patient-- a page that is specific about
4 informed consent for patients? Yes, that is possible.
5 But the reason that Comprehensive Health chooses to
6 currently link to KDHE and they do so on a page that is
7 targeted towards patients is because there is a
8 requirement to give that information to patients.

9 THE COURT: Right. You're not challenging--

10 MS. SALGADO: Right. And we are not
11 challenging that requirement. That's a statutory
12 requirement actually and we're not challenging that
13 statutory requirement. We're challenging the
14 requirement that we place it on the home page of our
15 website, which is-- which doesn't have-- you know, which
16 is targeted towards the public broadly speaking. That
17 is-- that is why we are challenging this requirement.

18 THE COURT: Okay. So I guess then what I
19 need from you is a legal analysis which distinguishes
20 these two fact scenarios. The status quo, which is that
21 you have a website and it's not on the home page. But
22 on the informed consent page in Paragraph 7, you say,
23 "Alternatives to abortion include parenting, foster care
24 and adoption. For information, visit www.kdhekanas.com,
25 et cetera, "or contact the department," and you give the

1 telephone number. Okay. So that's one scenario.

2 And then you have the current statute which
3 you're challenging, which basically says what
4 Paragraph 7 says in a little bit different language.
5 And it has to be on the home page instead of a-- an
6 internal page. And it has-- and you already have
7 hyperlinks. So hyperlinks aren't an issue.

8 So I guess you need to explain to me why
9 those-- why what you're being required to do is
10 different from what you are already doing in some way
11 that is constitutionally significant. Because
12 otherwise, I don't think we even get over the threshold
13 of whether it's compelled speech, because it looks to me
14 like you're already doing essentially what the new
15 statute requires, except for where you have the
16 hyperlinks on the internal pages instead of the home
17 page.

18 MS. SALGADO: And is-- is that something
19 that you would want further briefing or-- would you want
20 that in the form of further briefing?

21 THE COURT: I mean, I don't-- I don't think
22 the current briefs are of much help in this-- when we
23 look at this one issue in isolation. So I-- I guess it
24 depends on if you think you're entitled to summary
25 judgment, then yes, we need more briefs.

1 I'm sorry, I think I cut somebody off. Is
2 that Mr. Benson?

3 MR. BENSON: No, I'm-- I'm not speaking.

4 THE COURT: Okay. Who was that that I cut
5 off?

6 MR. QUALSETH: Your Honor, this is Shon
7 Qualseth. I was-- I'm kind of leading as far as the
8 defendants. You didn't cut me off.

9 THE COURT: Okay.

10 MS. SALGADO: I wasn't speaking, either,
11 Your Honor.

12 THE COURT: All right. Well, if I didn't
13 cut anyone off, then that's all the better. But so--
14 you know, and-- until we really focus on what's the
15 difference between the status quo and what the statute
16 requires, then it's really hard to figure out what
17 standard of scrutiny should apply. I think we need to
18 focus only on cases which deal with coerced speech and
19 figure out if this is coerced speech. We need to figure
20 out if-- if this is an as-applied challenge, whether
21 this-- well, either way, whether this plaintiff has
22 standing.

23 Because if you're not being required to do
24 anything other than what you're already doing, then
25 there-- there wouldn't be Article III standing, there

1 definitely would not be damages, but it could affect the
2 degree of scrutiny and what kind of scrutiny would
3 apply.

4 MR. QUALSETH: Your Honor, this is Shon
5 Qualseth. We'd be happy to get a briefing schedule and
6 respond to those issues. I would assume the plaintiffs
7 would-- would want to brief that first and we could-- we
8 could respond to their brief. If that's all right with
9 plaintiffs.

10 MS. SALGADO: Yes.

11 THE COURT: Okay. I mean, it does make more
12 sense to-- to have one set of briefs instead of two
13 separate ones that are like ships passing in the night.
14 So I-- I think that would be helpful. I think it's-- I
15 think it's possible that neither side will be entitled
16 to summary judgment, because even though the facts might
17 be undisputed if you-- on each motion, the opposing
18 party would be entitled to the benefit of all favored
19 inferences. And sometimes on cross motions, those
20 cancel each other out.

21 It might make more sense, if-- if you want
22 to avoid an actual trial, to have stipulations and just
23 agree to a bench trial that would be on a written
24 record. But I tell you, I-- I'm pretty stuck on the
25 issue of whether this is even a compelled speech case.

1 And unless moving the hyperlinks from one page to
2 another has some kind of constitutional significance,
3 I-- I'm not really sure what to do with these issues.

4 MS. SALGADO: Your Honor, this is Diana
5 Salgado on behalf of the plaintiffs. I just want to be
6 certain that I understand the instructions on the issues
7 that you would like to be briefed further. Am I
8 understanding you correctly that you would like us to
9 explain further the-- the constitutional significance or
10 I guess our-- why being compelled to place the hyperlink
11 on our home page is itself compelled speech?

12 THE COURT: Uh-huh.

13 MS. SALGADO: And is there-- is there
14 anything else beyond that?

15 THE COURT: I mean, frankly, that's-- as I
16 read the briefs, I think that this particular claim sort
17 of comes across as an afterthought. It's like the tail
18 which all of a sudden is wagging the dog, and I don't
19 get the sense that the parties have thought this through
20 very carefully. So I-- I don't want you to do your
21 re-briefing based on what my concerns are. I'm pretty
22 much just thinking out loud.

23 And that it's-- it's not clear to me, for
24 example, whether your challenge is facial or as-applied.
25 It's not sure-- it's not clear to me what your standing

1 is under either theory. It's not-- and that would be
2 Article III standing. It's not clear to me how you're
3 really aggrieved in terms of being required to comply
4 with the statute, because it seems to me that for all
5 intents and purposes, you're already doing exactly what
6 the statute says except your hyperlink is on the wrong
7 page.

8 So I don't really understand the strategy
9 here of making a constitutional issue out of having this
10 information posted for non-patients when it's already
11 not-- posted for non-patients. I don't think your
12 intent has really very much to do with it. I think the
13 fact that you put it on a page that's called "Kansas
14 24-Hour Informed Consent," I don't-- I don't think that
15 that's very compelling of a distinction in my mind. But
16 there may be cases out there that you know of which
17 could change my mind and that's why I think we need
18 re-briefing.

19 MS. SALGADO: Okay. Your Honor, we are
20 happy to do further briefing on this issue.

21 THE COURT: Okay. I think you should also
22 talk and see whether the parties would be willing to
23 stipulate to a bench trial. I don't-- I do not know if
24 you're-- I don't know what your thought was with regard
25 to trial, if we went to trial, if this would be a bench

1 trial or a jury trial. And I'm not sure what factual
2 issues would be in dispute.

3 But I think you need to take a further
4 look-- and I also think the website may have changed
5 some since you did your briefing. So why don't you see
6 the extent to which you can get a stipulated record and
7 then think of what your preference would be if either
8 side refused summary judgment and whether we could-- if
9 it is a bench trial, whether we could just go straight
10 to that point. It might save everyone some time and
11 preparation.

12 MS. MATTHEWS: Judge, this is Mary Matthews.
13 Right now the record reflects that it's not-- a jury
14 trial has not been requested.

15 THE COURT: Okay. Okay. Thank you, Mary.
16 So what I would propose to do at this point is just
17 enter a short order that says for the reasons that we've
18 discussed - and we do have a court reporter here and we
19 have a record of this - so I would propose to say that
20 for the reasons we've discussed, I'm overruling the
21 parties' cross motions for summary judgment. Let's set
22 a date when you all could either file a request for a
23 bench trial on a stipulated record, or plaintiffs could
24 file an additional motion for summary judgment.

25 MR. QUALSETH: Your Honor, this is Shon

1 Qualseth. And I assume that the-- the defendants would
2 also have an opportunity to file an additional motion
3 for summary judgment upon further briefing?

4 THE COURT: Now, I don't want to say you
5 can't do that, but then how does that-- how does that
6 help us avoid the problem of two ships passing in the
7 night like we're doing right now?

8 MR. QUALSETH: Well, I just want to preserve
9 it, that we do have-- have an-- I guess it-- I'm
10 thinking out loud. And in response to the plaintiff's
11 motion for summary judgment, that may result in
12 additional briefing for us to-- to show that the
13 constitutional issues just-- there isn't any.

14 THE COURT: I'm not following.

15 MR. QUALSETH: Okay.

16 THE COURT: I mean, if you-- if plaintiffs
17 file a motion for summary judgment and you dispute it,
18 then I suppose what-- what would plaintiffs do at that
19 point?

20 MR. QUALSETH: Well, would it-- it would be
21 a-- that would be subject to a trial.

22 THE COURT: Right. And so then-- so this
23 is-- this is why-- so if plaintiffs would have a bench
24 trial, and that's why I said if we-- if we avoid the
25 summary judgment procedure altogether and just go

1 straight to a trial with a stipulated record, that it
2 would save-- save both parties the two-step process.
3 And both sides would have a chance to be fully heard on
4 the merits. And we just wouldn't have to deal with the
5 summary judgment mechanics, which are sort of cumbersome
6 in a situation like this where there's no real factual
7 dispute and all the issues are legal.

8 MR. QUALSETH: I'd say, Your Honor, and I--
9 I just want to preserve our-- any defendants-- you know,
10 any ruling as a matter of law, unless-- my-- it was my
11 understanding you have not-- are not ruling yet, but are
12 thinking about it as far as overruling the motions for
13 summary judgment.

14 THE COURT: Well, I-- let me put it this
15 way. I feel like if I sustained either-- two things.
16 One is defendants already had a chance to file a motion
17 for summary judgment. The current state of the briefs
18 is such that I don't feel either side has demonstrated
19 that they're entitled to judgment as a matter of law.
20 And we could do things in that posture, and I could set
21 it for trial.

22 MR. QUALSETH: Okay.

23 THE COURT: Now that I think about it, maybe
24 that's what we should do is just set it for trial. And
25 if you all can come up with stipulated facts, that will

1 save us some time. Otherwise, I suppose we'll have to
2 spend some time establishing a factual record and you
3 can make arguments.

4 MS. SALGADO: Your Honor, this is Diana
5 Salgado. If-- if I can speak frankly and honestly here.
6 Where I thought we were headed was that on-- is that we
7 were-- that Your Honor was not ruling on our current
8 motion for summary judgment, but allowing plaintiffs the
9 opportunity to supplement the briefing to explain the
10 issues that the Court feels have not been adequately
11 addressed. And that presumably defendants would
12 respond. And at that point our motion for summary
13 judgment would be ruled upon.

14 THE COURT: I think that's a
15 miscommunication, because I guess that's what I was
16 trying to say when you said what should you focus on. I
17 think-- I think plaintiffs need to go back to square one
18 and figure this out and just pretend like those original
19 briefs don't exist, because they're not being helpful to
20 me.

21 MS. SALGADO: Okay.

22 THE COURT: I mean, obviously, you can--
23 when you go back and think-- keeping you focused on this
24 claim as a free-standing claim, you're going to see it
25 very differently than the way it's portrayed in the

1 briefs. And I think that the-- the way to get some
2 clarity about your position is to-- is to go back to
3 square one and figure out what is really the gist of
4 your claim. If there are materials in your original
5 briefs which are still pertinent, then, of course, copy
6 and paste them into the new briefs.

7 But we really need to focus with a very
8 laser-like attention to the difference between the
9 status quo and what the statute requires, and to focus
10 on only cases which involve compelled speech because
11 that's what this is about. I don't see that there's
12 issues about misleading information or anything like
13 that. That the statement that plaintiff is being
14 required to make is very factual and it seems completely
15 true if that link is there, because it's not-- nothing
16 is-- the plaintiff is not required to endorse anything
17 on the website and definitely is not required to endorse
18 anything more than it's already endorsing with the
19 status quo. So I mean, let's talk about this. What--
20 why wouldn't it make sense to just overrule the motions
21 and set the case for trial? Let the parties address all
22 these issues in trial briefs.

23 MR. QUALSETH: Your Honor, this is Shon
24 Qualseth. That's certainly something we-- we'd like to
25 discuss with-- with plaintiffs and that ultimately be--

1 may be an option for us. And one that would save, as
2 you said, save some time and money for everybody.

3 THE COURT: I would like you to talk to me
4 about this, because I am the one that will decide. And
5 I'm not sure what you're asking or what you would need
6 to discuss with plaintiffs before you know the answer on
7 that.

8 MR. QUALSETH: I'm sorry, Your Honor. I
9 think it-- I think it makes sense, the way you described
10 it as far as I would go forward.

11 MS. SALGADO: Your Honor, this is Diana
12 Salgado on behalf of the plaintiff. If it's possible,
13 I'd like to confer with co-counsel about this. I--
14 prior to-- you know, prior to taking a formal position
15 right now at this time.

16 THE COURT: Why don't you put us on mute for
17 a second and talk with co-counsel.

18 MS. SALGADO: Unfortunately, co-counsel is
19 in-- we're not sitting in the same office.

20 MR. BENSON: Judge, this is Arthur. I'm in
21 Lawrence, Kansas and she's in New York I guess.

22 MS. SALGADO: Yes.

23 THE COURT: Okay. Well, let me tell you
24 what I'm thinking. I'm thinking that the way to-- to
25 resolve these issues in the most inexpensive, expedient

1 and fair manner would be to dispense with further
2 summary judgment briefing, set the case for trial,
3 probably in November or December. And you can take all
4 the facts which are undisputed from your summary
5 judgment motions, whip those into stipulations, prepare
6 trial briefs which address the issues that we've talked
7 about, and we'll just key it up for a decision.

8 MR. QUALSETH: This is Shon Qualseth. That
9 sounds good, Your Honor.

10 THE COURT: So for plaintiffs, when you're
11 discussing it with the other attorneys, why--
12 specifically who do you need to discuss this with?

13 MS. SALGADO: Your Honor, I'd like to talk
14 further with both Mr. Benson and another attorney who is
15 on this case but today is out of the office.

16 THE COURT: Okay. Well, when you are
17 talking, why don't you all look at your calendars and if
18 you all could give me some dates when counsel would be
19 available in November and December and some idea about
20 how long you think the trial might take, that would be
21 helpful. And maybe if you could send that information
22 to Mary Matthews in my chambers, we'll take a look at
23 that. You can send an e-mail to our chambers account to
24 Mary's attention.

25 MS. SALGADO: Yes, Your Honor.

1 THE COURT: And let's see, today is Friday,
2 right? No, Thursday. How is that-- is that something
3 that you all could do by the close of business tomorrow?

4 MS. SOUTH: Judge, today is Friday, the
5 10th.

6 THE COURT: Yes, it is. I'm confused.
7 Let's see. How about the close of business on Monday?

8 MS. SALGADO: Yes, Your Honor.

9 THE COURT: And for the defendants?

10 MR. QUALSETH: This is Shon Qualseth. We
11 can do that as well, Your Honor.

12 THE COURT: Okay. All right. Let's-- let's
13 go ahead and do that. And I want you all to keep
14 thinking about whether you think this is the best
15 strategy. And if you come up with a better idea over
16 the weekend, that's fine with me. I'll consider any
17 alternatives. I guess I'd like to get this off dead
18 center and get it resolved. And like I said, the
19 further I dig into this, the more questions I have. So
20 I think this will be really helpful. So you-- anything
21 else?

22 MR. QUALSETH: No, Your Honor.

23 MS. SALGADO: No, Your Honor.

24 THE COURT: Okay. All right. Everybody
25 have a great weekend then and we'll look forward to

1 hearing from you next week.

2 MR. QUALSETH: Thank you, Judge.

3 MS. SALGADO: Thank you, Your Honor.

4 MR. BENSON: Thank you, Your Honor. Bye.

5 (Telephone status conference recessed at 2:43 p.m.)

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

I, Kelli Stewart, a Certified Shorthand Reporter and the regularly appointed, qualified and acting official reporter of the United States District Court for the District of Kansas, do hereby certify that as such official reporter, I was present at and reported in machine shorthand the above and foregoing proceedings.

I further certify that the foregoing transcript, consisting of 27 pages, is a full, true, and correct reproduction of my shorthand notes as reflected by this transcript.

SIGNED October 16th, 2014.

/s/ Kelli Stewart

Kelli Stewart, CSR, RPR, CCR, RMR