

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

HODES & NAUSER, M.D.'s, P.A.,	)	
HERBERT C. HODES, M.D., and	)	
TRACI LYNN NAUSER,	)	
Plaintiffs,	)	CIVIL ACTION
and	)	
	)	Case No. 11-2365-CM-KGS
CENTRAL FAMILY MEDICAL, LLC	)	
dba AID FOR WOMEN, and	)	
RONALD N. YEOMANS, M.D.,	)	PLACE OF TRIAL REQUESTED:
Plaintiffs/Intervenors,	)	KANSAS CITY, KANSAS
	)	
v.	)	
	)	
ROBERT MOSER, M.D., in his official capacity	)	
as Secretary of the Kansas Department of Health	)	
and Environment; STEPHEN HOWE, in his	)	
official capacity as District Attorney for Johnson	)	
County; and DEREK SCHMIDT, in his official	)	
capacity as Attorney General for the State of	)	
Kansas,	)	
Defendants.	)	

**SUGGESTIONS IN SUPPORT OF MOTION  
TO INTERVENE BY CENTRAL FAMILY MEDICAL, LLC  
AND DR. RONALD YEOMANS AND FOR EXPEDITED CONSIDERATION**

Plaintiffs-Intervenors Central Family Medical, LLC, dba Aid for Women, and Dr. Yeomans are similarly situated as Plaintiffs, in that recent Kansas legislation and regulations with no medical necessity will force them to stop providing safe abortions for women. Aid for Women and Dr. Yeomans assert important constitutional claims in common with Plaintiffs, which impact their own rights and those of their patients. Aid for Women's and Dr. Yeomans' interests, however, cannot be adequately protected by Plaintiffs. This Court, therefore, should allow Aid for Women and Dr. Yeomans to intervene. Aid for Women and Dr. Yeomans offer

the following suggestions in support of his motion.

## **I. Introduction**

This is a lawsuit pursuant to 42 U.S.C. § 1983 in which Plaintiffs seek a judgment declaring that Senate Bill No. 36 (2011) (“Act”) and the temporary regulations, K.A.R. 28-34-126 et seq., promulgated by the Kansas Department of Health and Environment (“regulations”) violate the constitutional rights of Plaintiffs and their patients. Specifically, Plaintiffs assert that the Act and regulations violate the constitution in the following ways: 1) they violate Plaintiffs’ patients’ right to privacy by making it unduly burdensome to obtain an abortion; 2) they violate Plaintiffs’ right to procedural due process by failing to provide a pre-deprivation hearing, including any opportunity to comment on the regulations or request waivers from KDHE; 3) they violate Plaintiffs’ right to substantive due process by depriving Plaintiffs of their property (lost income and future patients) and liberty (their ability to practice their chosen profession) interests; 4) they violate Plaintiffs’ right to due process by imposing arbitrary and irrational requirements that deprive Plaintiffs of property and liberty without serving any legitimate state interest; and 5) they violate Plaintiffs’ right to equal protection by subjecting Plaintiffs to unique burdens that are not imposed on medical practices that provide comparable services, with no legitimate basis for the differential treatment.

Proposed Plaintiff-Intervenor Dr. Ronald Yeomans is an abortion provider who will be subject to the same Act and regulations as Plaintiffs. Dr. Yeomans is a medical doctor and board-certified obstetrician/gynecologist who has provided women with safe abortions for over 35 years. His current practice is with Aid for Women, where he has for the past 5½ years provided safe, first trimester abortions to women who are no more than 15 weeks past their last

menstrual period. No patient of Dr. Yeomans who underwent an abortion at Aid for Women ever had a significant complication of any kind.

Dr. Yeomans asserts the same constitutional claims as Plaintiffs. See, Yeomans Complaint ¶¶ 76-85.

## **II. Argument**

### **A. Aid for Women and Dr. Yeomans are entitled to intervention as of right.**

Aid for Women and Dr. Yeomans seek to intervene pursuant to Fed. R. Civ. P. 24(a)(2), which provides:

On timely motion, the court must permit anyone to intervene who:  
. . . claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

The Rule 24(a)(2) factors are not rigid, technical requirements. *WildEarth Guardians v. National Park Service*, 604 F.3d 1192, 1198 (10<sup>th</sup> Cir. 2010). The central concern in deciding whether intervention is appropriate is the practical effect of the litigation on the applicant. *WildEarth Guardians v. United States Forest Service*, 573 F.3d 992, 995 (10<sup>th</sup> Cir. 2009). Tenth Circuit courts “follow a somewhat liberal line in allowing intervention.” *Id.*

Aid for Women and Dr. Yeomans have an interest in this litigation. Plaintiff-Intervenors have a property interest in the future income that will be lost due to enforcement of the Act and regulations, which take effect July 1, 2011. The Kansas Department of Health and Environment has already denied, or indicated its intent to deny, Aid for Women's application for a license. Aid for Women and Dr. Yeomans will have to cease performing abortions – the clinic's purpose

and its primary source of income – or face criminal prosecution. ““The threat of economic injury from the outcome of litigation undoubtedly gives a petitioner the requisite interest.”” *Id.* at 996, quoting *Utahns for Better Trans. v. U.S. Dep’t. Of Transp.*, 295 F.3d 1111, 1115 (10<sup>th</sup> Cir. 2002).

Dr. Yeomans also has a liberty interest in practicing his chosen profession. The practical effect of the Act and regulations will be the closure of Aid for Women. This will not only harm Aid for Women and Dr. Yeomans financially, but will prevent Dr. Yeomans from performing his life’s work – providing safe abortions for women. Aid for Women and Dr. Yeomans provide medical services for 100 to 120 women per month. The majority of these patients are low-income, and depend on having a safe and affordable clinic nearby. Aid for Women is the only abortion clinic in Wyandotte County. The Clinic will be forced to turn these women away if this litigation is determined adversely to Plaintiffs. Aid for Women and Dr. Yeomans serve patients who can ill afford to seek abortions elsewhere, especially if they are forced to travel to a distant location outside of Kansas.

Aid for Women’s and Dr. Yeomans’ interests will be impeded, because they are not adequately represented by the Plaintiffs. The burden to satisfy the “inadequate representation” requirement of Rule 24(a) (2) is quite minimal. *WildEarth Guardians v. United States Forest Service*, 573 F.3d 992, 996 (10<sup>th</sup> Cir. 2009). An intervenor need only show the possibility of inadequate representation. *Id.* The regulations set rigid requirements on such things as the size of rooms, the number and location of restrooms, the size of janitorial storage areas, and the specific equipment required to be kept in particular rooms. Aid for Women and Dr. Yeomans assert that these requirements are not medically necessary. If allowed to intervene, Aid for

Women and Dr. Yeomans will offer evidence demonstrating that abortions can be safely performed in their clinic. Indeed, abortions have been safely performed in that particular building for 21 years. The size, configuration and layout of their building differs from the physical facilities of Plaintiffs' practice. Therefore, they will seek to offer evidence concerning their particular building, located at 7<sup>th</sup> and Central in Kansas City, Kansas.

Another distinguishing feature of Plaintiffs-Intervenors' clinic is that they provide only first trimester abortions, which are simpler, require less equipment, and take less time than later abortions.

Aid for Women and Dr. Yeomans will also demonstrate that the regulations make it unduly burdensome for their patients to seek abortions elsewhere. This will require the presentation of evidence specific to Aid for Women and its patient population. Aid for Women and Dr. Yeoman treat a patient population – low-income women, largely from the immediate geographic area – who are generally not served by other area abortion providers. In this respect, their interests are unique and cannot be adequately protected by Plaintiffs.

**B. Alternatively, Aid for Women and Dr. Yeomans should be granted permissive intervention.**

Aid for Women and Dr. Yeomans meet all of the prerequisites for permissive intervention under Fed. Rule Civ. P. 24(b), which provides:

On timely motion, the court may permit anyone to intervene who: . . . has a claim or defense that shares with the main action a common question of law or fact. . . . In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights.

Aid for Women's and Dr. Yeomans' claims and interests and Plaintiffs' claims and interests involve numerous common questions of law and fact. The constitutional issues will be very similar if not identical.

Allowing Aid for Women and Dr. Yeomans to intervene in this case will neither unduly delay nor prejudice the adjudication of any parties' rights. The request for intervention will not result in delay of the proceedings on the merits, because this case is in the most preliminary stages. The Plaintiffs' complaint was filed June 28, 2011. The defendants have not filed an answer. No scheduling orders have been issued.

### **III. Conclusion**

For the reasons stated above, Aid for Women and Dr. Yeomans respectfully request that this motion to intervene as of right, pursuant to Fed. R. Civ. P. 24(a), be granted. Alternatively, Aid for Women and Dr. Yeomans request permissive intervention pursuant to Fed. R. Civ. P. 24(b).

Respectfully submitted,

/s/ Cheryl A. Pilate  
Cheryl A. Pilate, KS No. 14601  
Rebecca L. Kurz, KS No. 23490  
MORGAN PILATE LLC  
142 N. Cherry Street  
Olathe, KS 66061  
Tel: 913-829-6336  
Fax: 913-829-6446  
Email: [cpilate@morganpilate.com](mailto:cpilate@morganpilate.com)

**CERTIFICATE OF SERVICE**

I, Cheryl A. Pilate, do hereby certify that a true and accurate copy of the above and forgoing was served on all counsel of record via the ECF system on the 30<sup>th</sup> day of June, 2011.

/s/ Cheryl A. Pilate