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Kansas clinic returns to court over telemedicine abortions

By John Hanna, Associated Press | Updated - May 22nd, 2019 @ 6:50pm | Posted - May 22nd, 2019 @ 6:49pm

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TOPEKA, Kan. (AP) — A Kansas clinic stopped providing telemedicine abortions months ago and returned to court Wednesday after concluding that the legal climate remains uncertain despite a judge's order late last year saying the state couldn't stop the procedures.

The clinic in Wichita operated by the Trust Women Foundation also faces a complaint over its past telemedicine abortions filed with the state's medical board by officials from the anti-abortion group Kansans for Life. The state has enacted three laws in eight years to require physicians to be physically present when giving women pregnancy-ending medications.

The clinic has two doctors who live outside Kansas and can be at the clinic two days a week. In October, it started having them confer by webcam with women seeking medication abortions to increase the hours the physicians were available to patients. The clinic stopped Dec. 31.

"I was just fearful that our clinic and our doctors could be penalized," Julie Burkhart, the foundation's CEO and founder testified during a daylong state district court hearing Wednesday. "I wanted to be in a position where we absolutely knew we were able to wade into those waters."

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The clinic stopped telemedicine abortions on the same day Shawnee County District Judge Franklin Theis ruled that the state couldn't stop the procedures. But Trust Women attorneys said Wednesday that they could not get written assurances from the local district attorney and the State Board of Healing Arts that no ban would be enforced.

The Trust Women Foundation filed a new lawsuit in late January, seeking an order to block enforcement of any ban. Another judge, District Judge Teresa Watson, had the hearing Wednesday and said she hopes to rule "in short order."

The hearing was the first lower-court action since the Kansas Supreme Court ruled last month that access to abortion is a "fundamental" right under the state constitution. The high court said the state constitution grants a right to "personal autonomy" and to "control one's own body."

Mary Kay Culp, Kansans for Life's executive director, said she worries that the legal dispute over telemedicine abortions "could turn out badly" — and be only the first of many.

Abortion opponents fear that that the Kansas Supreme Court decision endangers even longstanding restrictions. Many were enacted under Republican Govs. Sam Brownback and Jeff Colyer before Democratic Gov. Laura Kelly took office in January.

Their frustration is rising as other states, including Alabama and neighboring Missouri, move to ban most abortions and abortion foes hope the U.S. Supreme Court will reverse its historic *Roe v. Wade* ruling in 1973 legalizing abortion across the nation.

"They could back and turn over virtually all our abortion laws," Culp said.

Kansas enacted its first telemedicine-abortion ban in 2011, only to see it swept up in a

broader lawsuit against multiple restrictions that prompted Theis to block them all together. In his December ruling, Theis said that earlier order blocked a 2015 version of the ban, and he declared that a 2018 version was an "air ball" without enforcement provisions. The state has appealed.

Kansans for Life launched its complaint over the Wichita clinic's telemedicine abortions before Theis' last ruling and received a notice last month that the complaint had been assigned to an investigator. The medical board regulates the clinic's physicians, while the clinic itself is regulated by the state health department.

The medical board's 15 members all were named by Brownback and Colyer, both strong abortion opponents. Kelly, an abortion rights supporter, cannot fill any spots until four members' terms expire June 30.

During Wednesday's hearing, Burkhart testified that webcam conferences made the clinic's two physicians available to patients and additional eight to 12 hours a week. She also said telemedicine allowed the clinic to reduce waiting times, so patients could spend less than two hours there, instead of from six to eight hours.

She said that Trust Women hoped eventually to open a clinic in rural Kansas offering telemedicine abortions.

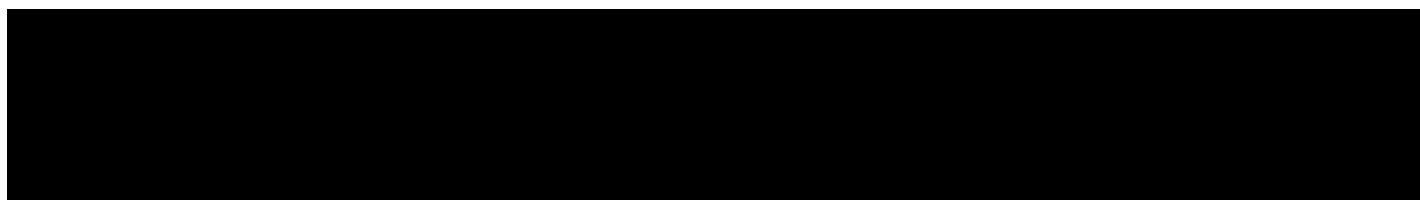
But Shon Qualseth, a lawyer representing the Kansas attorney general's office, said the clinic still cannot show that its patients face imminent harm without another court order.

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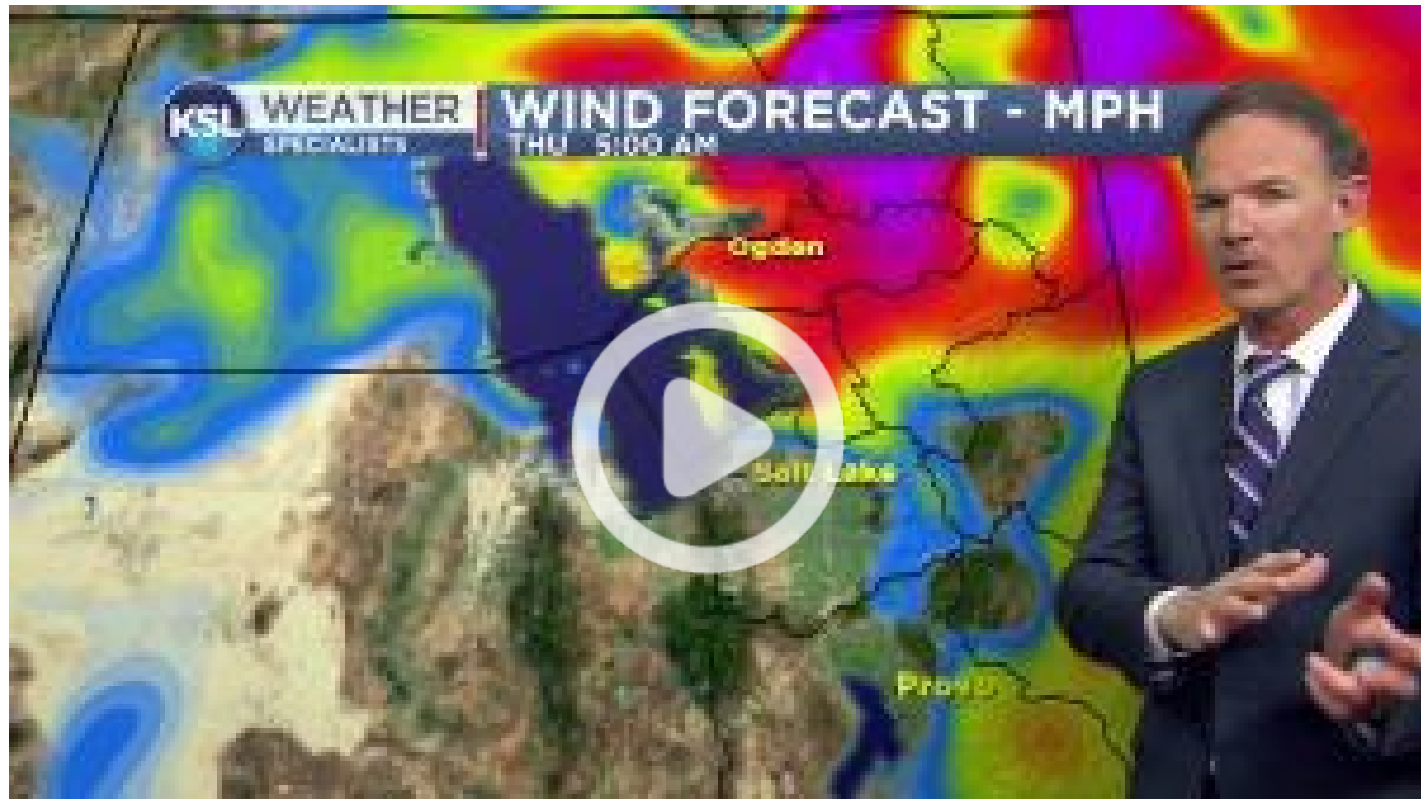


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