

**POLITICS**

# Kansas appeals court siding with Wichita clinic could be small step toward telemedicine abortions

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An appellate court decision last month in favor of a Wichita reproductive clinic could be a small step toward legalizing telemedicine abortions in Kansas.

The Kansas Court of Appeals sided with Trust Women in a lawsuit seeking to block enforcement of a telemedicine abortion ban, but the case is far from over.

"The short of it is that we are still waiting for a strong affirmative decision in the court cases, and in that event, we would certainly provide telemedicine abortions to qualifying patients in Kansas," said Zachary Gingrich-Gaylord, a spokesperson for Trust Women, in an email.

Telemedicine abortion would expand access to pregnant women and girls across the state, including Topeka. The state's four abortion clinics are in Wichita and Overland Park.

The appellate ruling overturns Shawnee County District Court Judge Teresa Watson's denial of an injunction.

The majority opinion concluded the lower court "diverged from well-established Kansas caselaw" and abused its discretion with legal and factual errors. Watson also made an "arbitrary and unreasonable" decision to ignore an order in a separate case that dealt with the same issue.

The case was remanded back to the district court to come to a new decision on an injunction that corrects the previous flaws.

The case proceeds under the shadow of a looming vote on a Kansas constitutional

amendment and a forthcoming U.S. Supreme Court decision that could overturn protections for abortion.

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## Who are the defendants?

The defendants in the case are Sedgwick County District Attorney Marc Bennett, Kansas Attorney General Derek Schmidt and the heads of the Kansas Board of Healing Arts.

A spokesperson for Bennett referred questions to Schmidt's office, which didn't immediately respond to a request for comment.

The appellate court also reinstated Board of Healing Arts leadership as defendants in the case.

The lower court had dismissed them because the clinic is licensed by the Kansas Department of Health and Environment, not the board, despite the fact the board licenses doctors and could take disciplinary action against the licenses of the clinic's physicians.

The doctors could also face misdemeanor criminal charges for violating the law.

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## Lawsuit challenges Kansas ban on telemedicine abortion

The lawsuit challenges a state law requiring that abortion-inducing drugs be given to the patient in the same room as the doctor who prescribed the medication. The law effectively blocks telemedicine abortion services using mifepristone and misoprostol.

A separate case, also in Shawnee County, resulted in a finding that the statute is unconstitutional. That decision is being appealed.

In the Trust Women case, the clinic requested a temporary injunction blocking enforcement of the statute against its clinic and physicians.

If the plaintiffs are granted an injunction, the Kansas Supreme Court may ultimately weigh in before the clinic resumes telemedicine abortions.

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"Our understanding is that the district court has to at least come to a new decision on the telemedicine case, and a decision to enjoin it, before we would consider offering telemedicine abortions," said Gingrich-Gaylord, of Trust Women. "Our expectation is that if the district court ruled in our favor, the state would still appeal it."

If telemedicine abortions were legalized, it could work one of two ways.

Physicians physically at the Wichita clinic could provide care to a patient elsewhere in Kansas but not outside the state.

Additionally, if a patient were physically at the clinic, then they could see a physician who is in another state. Allowing doctors from outside Kansas to perform telemedicine abortions via an in-person clinic is beneficial, court records state, because "finding physicians to work for Trust Women has been a consistent and chronic problem" that reduces access to care.

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## **AG Derek Schmidt 'threw down the gauntlet' on abortion rights**

The case's history stems in part from the unclear effects of an order in a separate case, which barred the attorney general from enforcing the telemedicine abortion ban, but didn't necessarily block state and local prosecutors from taking action against clinics not involved in that case.

Trust Women began offering telemedicine abortions in October 2018, believing it was protected by the order in the separate case. But two months later, Kansans for Life filed a complaint with the Board of Healing Arts alleging a physician at the clinic was providing illegal telemedicine abortions.

Additionally, Schmidt "threw down the gauntlet" by arguing that he could enforce the telemedicine ban against Trust Women, the appellate court opined. At the time, the district court noted that Schmidt "was ethically bound to comply" with the order barring enforcement.

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Trust Women responded by asking the board and Bennett, the local prosecutor, for written assurances that they would not try to enforce the law. They did not get the assurances they were looking for, so they stopped providing telemedicine abortions and filed a lawsuit.

At the time, Trust Women had been providing telemedicine abortion to expand access to services. Abortion care had previously been provided two days a week because of limited physician availability. Telemedicine then allowed more availability by using physicians outside Wichita.

The clinic intended to further expand access to rural areas using telemedicine, but has not actively pursued that because it was not "viable given existing laws."

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