

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
DIVISION 1

FILED BY CLERK
K.S. DISTRICT COURT
THIRD JUDICIAL DIST.
TOPEKA, KS.

2014 MAR 17 A 8:55

HODES & NAUSER, MDs, P.A.;
HERBERT C. HODES, M.D.; and
TRACI LYNN NAUSER, M.D.,

Plaintiffs,

v.

DEREK SCHMIDT, in his official
capacity as Attorney General
of the State of Kansas; ROBERT
MOSER, M.D., in his official capacity
as Kansas Secretary of Health and
Environment; and NICK JORDAN,
in his official capacity as Kansas
Secretary of Revenue,

Defendants.

Case No. 13-C-705

PLAINTIFFS' CROSS-MOTION FOR JUDGMENT ON THE PLEADINGS

Pursuant to K.S.A. § 60-212(c), Plaintiffs respectfully move the Court to grant them judgment on the pleadings on the Second through Sixth Claims in their Amended Petition, declare that HB 2253 (2013-14 Session), 2013 Kansas Laws ch. 119, (the "Act"), violates the Kansas Constitution, and permanently enjoin the enforcement of the Act. Plaintiffs are entitled to judgment as a matter of law under the facts alleged and admitted by the parties. *See Purvis v. Williams*, 73 P.3d 740, 745 (Kan. 2003). In particular, Plaintiffs have shown that:

1. The Act's provisions individually and collectively violate Section 1 of the Kansas Constitution Bill of Rights by infringing on women's fundamental right to terminate a pregnancy; and,
2. Sections 14(l) and 14(k) of the Act violate Section 11 of the Kansas Constitution Bill of Rights by compelling Plaintiffs to endorse state-authored information that

they believe is medically inaccurate information and to turn their office walls into billboards for the State's message; and,

3. The Act's provisions individually and collectively violate Section 1 of the Kansas Constitution Bill of Rights by imposing burdensome, stigmatizing, and degrading conditions on abortion patients, in violation of their right to equal protection of the laws; and,
4. The Act's provisions individually and collectively violate Section 1 of the Kansas Constitution Bill of Rights by singling out abortion providers and women seeking abortion services for the imposition of burdensome, stigmatizing, and degrading conditions, in violation of their right to equal protection of the laws; and,
5. Section 2 of the Act is merely precatory and thus cannot affect the rights, status, or other legal relations of Plaintiffs or their patients.

In support of the present motion, Plaintiffs rely on the Act itself and the memorandum of law submitted herewith.

WHEREFORE Plaintiffs request that the Court:

- a. grant this motion for judgment on the pleadings;
- b. issue a declaratory judgment that
 - i. Section 2 of the Act is not self-executing, and its provisions are not enforceable; as a result, Section 2 cannot be used as the basis for any civil or criminal action against a pregnant woman or a healthcare professional who provides services to a pregnant woman; and/or
 - ii. The Act as a whole is unconstitutional and therefore unenforceable; and/or

iii. Each section of the Act that violates the Kansas Constitution is

unconstitutional and therefore unenforceable;

c. issue a permanent injunction restraining Defendants, their agents, and their successors in office from:

i. Enforcing the Act in its entirety; and/or

ii. Enforcing each provision of the Act that violates the Kansas Constitution

d. Grant such other and further relief as the Court deems just, proper, and equitable.

Dated: Topeka, Kansas
March 14, 2014



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*Admitted *Pro Hac Vice*

**Motion for Admission *Pro Hac Vice*
Pending

COUNSEL FOR PLAINTIFFS

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the above and foregoing was filed with the Clerk of the Court and served on the following by electronic mail, pursuant to an agreement of the parties, on March 14, 2014.

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A handwritten signature in black ink, appearing to read "Rene M. Netherton", written over a horizontal line.

Rene M. Netherton