

**IN THE DISTRICT OF JOHNSON COUNTY, KANSAS
CIVIL COURT DEPARTMENT**

HODES & NAUSER, MDs, P.A., on)
behalf of itself, its patients, physicians,)
and staff; TRACI LYNN NAUSER,)
M.D.; TRISTAN FOWLER, D.O.; and)
COMPREHENSIVE HEALTH OF)
PLANNED PARENTHOOD GREAT)
PLAINS, on behalf of itself and its)
patients, physicians, and staff,)
Plaintiffs,)

v.)

KRIS KOBACH, in his official capacity)
as Attorney General of the State of)
Kansas; STEPHEN M. HOWE, in his)
official capacity as District Attorney for)
Johnson County; MARC BENNETT, in)
his official capacity as District Attorney)
for Sedgwick County; MARK A.)
DUPREE SR., in his official capacity as)
District Attorney for Wyandotte)
County; SUSAN GILE, in her official)
capacity as Executive Director of the)
Kansas Board of Health Arts; and)
RONALD M. VARNER, D.O., in his)
official capacity as President of the)
Kansas Board of Healing Arts, and)
JANET STANEK, in her official capacity)
as Secretary of the Kansas Department)
of Health and the Environment)

Defendants.

Case No. 23CV03140
Division No. 12
K.S.A. Chapter 60

**DEFENDANTS ATTORNEY GENERAL KRIS W. KOBACH AND DISTRICT
ATTORNEYS STEPHEN M. HOWE, MARC BENNETT, AND MARK A.
DUPREE SR.'S MOTION TO DISMISS PLAINTIFFS' AMENDED PETITION**

(Pursuant to K.S.A. Chapter 60)

Come now Defendants Attorney General Kris Kobach and District Attorneys Stephen M. Howe, Marc Bennett, and Mark A. Dupree Sr. (“Defendants”) and pursuant to K.S.A. 60-212(b)(1), (6) hereby move for dismissal of Plaintiffs’ Amended Petition (Doc. 35) because the Petition fails to state free speech or equal protection claims under the Kansas Constitution and its vagueness claim is not ripe.

The Amended Petition alleges that the Act—which Plaintiffs concede they have complied with for decades —violates multiple provisions of the Kansas Constitution. Yet several of Plaintiffs’ sweeping claims (specifically, those involving free speech and equal protection) lack support in either fact or law. And their vagueness claim is unripe.

Plaintiffs bring a free speech claim against the entire Woman’s Right to Know Act (“Act”) and make specific free-speech allegations as to certain portions of the statute. But the Amended Petition fails to allege that several provisions of the Act regulate speech at all, even incidentally. Second, Plaintiffs assert only a bare legal conclusion that the Act constitutes sex discrimination in violation of equal protection. Such a claim has never been accepted by any Kansas court, and every federal court to consider a sex-discrimination claim based on equal protection has rejected it out of hand. The Amended Petition further fails to allege any facts suggesting that the Act is sex-based rather than procedure-based, or that women and men are similarly situated when it comes to pregnancy, as would be required to state an equal protection claim. Third, the Amended Petition alleges that a new provision of the Act, H.B. 2264, is unconstitutionally vague; but that provision is not yet operative and, as a result, the claim is not ripe.

In support of this motion, Defendants submit a memorandum of law. As set out in the accompanying memorandum of law, Defendants have demonstrated that plaintiffs rely on conclusory allegations and have failed to state a claim that the Act

violates Plaintiffs’ free speech or equal protection rights. Courts are not “required to accept conclusory allegations on the legal effects of events the plaintiff has set out if these allegations do not reasonably follow from the description of what happened, or if these allegations are contradicted by the description itself.” *Weil & Assocs. v. Urban Renewal Agency*, 479 P.2d 875, 883 (Kan. 1971); *see also Kurcharski-Berger v. Hill’s Pet Nutrition, Inc.*, 494 P.3d 283, 515–16 (Kan. Ct. App. 2021). Plaintiffs’ free speech claim fails to identify how numerous provisions of the Act impair speech, and they fail to allege sufficient facts to support an equal protection claim that has been rejected by numerous courts.

Defendants request the Court dismiss Plaintiffs’ second, fourth and fifth claims in their Amended Petition (Doc. 35).

Respectfully submitted this 25th day of August, 2023.

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CERTIFICATE OF SERVICE

This is the certify that on this 25th day of August, 2023, I filed the above and foregoing with the Clerk of the Court, and served electronically to all counsel of record:

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