

**UNITED STATES COURT OF APPEALS**  
**FOR THE TENTH CIRCUIT**

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AID FOR WOMEN, on its own behalf;  
TERI AUGUSTUS, L.M.S.W.;  
MARGOT BRECKBILL, R.N.;  
TRACY COWLES, M.D.; WILLOW  
EBY, R.N.; VICKI EPP, L.B.S.W.;  
MARGARET ESTRIN, M.D.;  
HERBERT HODES, M.D.; TRACI  
NAUSER, M.D.; COLLEEN  
O'DONNELL, R.N.-C.; STACI  
MORGAN, D.O.; BETH MCGILLEY,  
Ph.D.; TRINA WHEELER, L.M.S.W.;  
SHERMAN ZAREMSKI, M.D., on  
behalf of themselves and their  
adolescent patients and clients under  
the age of sixteen and as  
representatives of a class of similarly  
situated individuals.

Plaintiffs - Appellees/  
Cross-Appellants,

v.

Nos. 06-3187, 06-3188 &  
06-3202

NOLA FOULSTON, in her official  
capacity as District Attorney, 18th  
Judicial District of Kansas, and as  
representative of a class of all county  
and district attorneys in the state of  
Kansas,

and

PAUL MORRISON, Attorney General  
for the State of Kansas,

Defendants - Appellants/  
Cross-Appellees.

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THE AMERICAN ACADEMY OF  
FAMILY PHYSICIANS; AMERICAN  
MEDICAL ASSOCIATION;  
AMERICAN MEDICAL WOMEN'S  
ASSOCIATION; AMERICAN  
NURSES ASSOCIATION;  
AMERICAN SOCIETY FOR  
ADOLESCENT PSYCHIATRY;  
ASSOCIATION OF REPRODUCTIVE  
HEALTH PROFESSIONALS;  
KANSAS CHAPTER OF THE  
AMERICAN ACADEMY OF  
PEDIATRICS; KANSAS MEDICAL  
SOCIETY; KANSAS PUBLIC  
HEALTH ASSOCIATION; KANSAS  
SECTION OF DISTRICT VII OF THE  
AMERICAN COLLEGE OF  
OBSTETRICIANS AND  
GYNECOLOGISTS; KANSAS  
STATE NURSING ASSOCIATION;  
NATIONAL ASSOCIATION OF  
SOCIAL WORKERS; KANSAS  
CHAPTER OF NATIONAL  
ASSOCIATION OF SOCIAL  
WORKERS, SOCIETY FOR  
ADOLESCENT MEDICINE;  
AMERICAN CIVIL LIBERTIES  
UNION; AMERICAN CIVIL  
LIBERTIES UNION OF KANSAS  
AND WESTERN MISSOURI;  
NATIONAL FAMILY PLANNING  
AND REPRODUCTIVE HEALTH  
ASSOCIATION, NATIONAL  
CHILDREN'S ADVOCACY  
CENTER, NATIONAL LEGAL

FOUNDATION and KANSAS  
LEGISLATORS,

Amici Curiae.

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ORDER

Filed September 18, 2007

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Before **KELLY, McCONNELL**, and **GORSUCH**, Circuit Judges.

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These appeals are before the court based on a motion by Appellees-Plaintiffs to dismiss, Appellant-Defendant's response, and Appellees-Plaintiffs' reply. On April 18, 2006, the district court entered an order and separate judgment in favor of Plaintiffs, permanently enjoined enforcement of Kan. Stat. Ann. § 38-1522, a child abuse reporting statute. *See Aid for Women v. Foulston*, 427 F.Supp.2d 1093 (D. Kan. Apr. 18, 2006). These appeals followed.

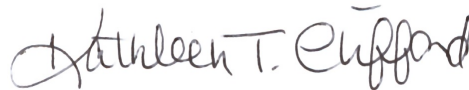
Appellees-Plaintiffs presently seek dismissal of these appeals based on mootness as a result of Kansas lawmakers repealing the reporting statute, § 38-1522, challenged in their complaint and in these appeals. The statute was replaced with a new reporting statute that became effective January 1, 2007. In response, Appellant-Defendant states she does not object to dismissal of the appeals but requests that such dismissal be based on lack of jurisdiction rather than mootness.

Upon review, the court finds that these appeals were rendered moot as a result

of repeal of § 38-1544, and that dismissal based on mootness is appropriate. *See Sinochem International Co. v. Malaysia International Shipping Corp.*, \_\_\_ U.S. \_\_\_, \_\_\_, 127 S.Ct. 1184, 1188 (2007) (holding that federal court may dismiss an action on the basis of a threshold non-merits issue without first determining whether it has jurisdiction over case).

Accordingly, these appeals are **DISMISSED** *as moot*. The district court's April 18, 2006 Order and separate judgment are **VACATED**. This case is **REMANDED** to district court with instructions to dismiss without prejudice. The mandate shall issue forthwith.

Entered for the Court,  
Elisabeth A. Shumaker, Clerk

A handwritten signature in black ink that reads "Kathleen T. Clifford". The signature is written in a cursive, flowing style.

Kathleen T. Clifford  
Attorney - Deputy Clerk