

1 Phill Kline
2 Attorney General
3 Lance Y. Kinzer, No. 17136
4 Special Assistant Attorney General
5 Schlagel, Damore & Gordon LLC
6 201 E. Loula
7 Olathe, KS 66051
8 (913)782-5885
9 (913)782-0123 (Fax)
10 Attorneys for Plaintiff

11 **IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS**
12 **Division No. _____**

13 **STATE OF KANSAS**, ex rel.)
14 **PHILL KLINE**,)
15 Attorney General)

16 **Plaintiff,**)

17 vs.)

18 **Case No. _____**

19 **THE HONORABLE KATHLEEN**)
20 **SEBELIUS**, Governor, State of Kansas, in her)
21 official capacity; **DUANE GOOSSEN**,)
22 Secretary, Kansas Department of)
23 Administration, in his official capacity; and)
24 **BOB DAY**, Director, Division of Health)
25 Policy and Finance, in his official capacity,)

Defendants.)

Petition Pursuant to K.S.A. Chapter 60

PETITION FOR WRIT OF MANDAMUS AND QUO WARRANTO

COMES NOW the petitioner, State of Kansas, on relation of Phill Kline, Attorney General, by and through Specially Appointed Counsel Lance Kinzer of Schlagel, Damore &

1 Gordon, LLC, and upon the specific order of the Kansas House of Representatives, places before
2 this Court a controversy involving multiple branches of the State government and, by
3 implication, the relationship between monetary expenditures of the State of Kansas and the *status*
4 *quo ante* of the federal Medicaid program.

5 6 **Overview of this Case and Controversy**

7 1. This action is brought pursuant to K.S.A. 60-801 et seq. and K.S.A. 60-1201 et
8 Seq. , at the direction of the Kansas House of Representatives pursuant to K.S.A. 75-702.
9 Venue is proper before this Court pursuant to K.S.A. 60-602(2).

10 2. The Attorney General pleads this case against the Executive on order of the 2002
11 Kansas House of Representatives at set forth in House Resolution 6003. (A copy of H.R.
12 6003 is attached as Exhibit A).

13 3. H.R. 6003 having been neither redacted nor recalled by the House of
14 Representatives in the 2003, 2004 or 2005 session, this matter is now brought before this
15 Court.

16 4. The Attorney General has notified the Executive of his inability to represent the
17 Executive Branch in this matter due to the demands of K.S.A. 75-702, which causes the
18 General to represent only the House of Representatives in this adversarial matter.

19 5. This action seeks a *Writ of Quo Warranto*, and demands that the Executive branch
20 of the government of Kansas answer by what authority it has allocated and processed the
21 expenditure of state funds utilized as reimbursement for elective pregnancy terminations
22 in light of the organic law of the State set forth in Section 1 of the Kansas Constitution.

1 6. Said fund allocation and processing is identified as an unconstitutional and *ultra*
2 *vires* act in H. R. 6003, and thus an act rightfully pled to this Court as an action in Quo
3 Warranto.

4 7. Said explanation of fund allocation and processing is demanded of the Executive
5 by the House of Representatives because of certain factual conclusions (after review of
6 the biological sciences as to the life of *in utero* human beings) and certain legal
7 conclusions (as to the legal status of *in utero* human beings under Kansas law) reached by
8 the House of Representatives during the 2002 session.

9 8. Said explanation of fund allocation is demanded by the House of Representatives
10 as a due process necessity given the status afforded to *in utero* human life under the prior
11 rulings of the Courts of the State of Kansas. *See* H.R. 6003

12 9. This action further seeks a *Writ of Mandamus* setting forth an authoritative and
13 binding interpretation of Section 1 of the Kansas Constitution as to the legal status of *in*
14 *utero* human life.

15 10. The *Writ of Mandamus* sought by the Kansas House of Representatives is
16 intended to serve as a binding and authoritative interpretation of Section 1 of the Kansas
17 Constitution, guiding the Executive Branch of the Kansas government during the
18 allocating and processing of state funds utilized as reimbursement for elective pregnancy
19 terminations pursuant to federal and state statutes.

20 11. The linguistic difference between the personhood language of the Fourteenth
21 Amendment of the United States Constitution and the term “men” as utilized by the
22 Framers of the Kansas Constitution is a distinction that makes a life or death difference as
23 to those *in utero* human beings whose termination is underwritten, directly or indirectly,
24 by state tax monies.

1 **Parties Involved in this Case and Controversy**

2 12. Phill Kline is the duly elected, qualified and acting Attorney General of the State
3 of Kansas (“General Kline”). The office of the Attorney General was created by Kansas
4 Constitution, Article 1, § 1. The powers of the Attorney General are found in the
5 common law, K.S.A. 75-701, *et seq.*, and throughout the Kansas Statutes Annotated.

6 13. General Kline is a proper party to bring this action. K.S.A. 75-702.

7 14. As an officer of an agency of the State of Kansas, The Office of the Attorney
8 General *ex rel.* Phill Kline is exempt from payment of a docket fee for filing this action as
9 per K.S.A. 60-2005.

10 15. General Kline has been authorized and directed to bring this lawsuit pursuant to
11 H.R. 6003, passed in 2002 by the Kansas House of Representatives.

12 16. Defendant KATHLEEN SEBELIUS is the Governor of Kansas and is the chief
13 executive officer of the State. Governor Sebelius may be served *via* her Chief Counsel,
14 Matt All at 300 SW 10th, Suite 212 South, Topeka, KS 66612.

15 17. Upon information and belief, as the chief executive officer of Kansas, Defendant
16 Sebelius has final oversight authority over any state executive department and its
17 personnel.

18 18. Defendant Sebelius is a proper respondent in this action for *Quo Warranto*.

19 19. Defendant DUANE GOOSSEN is Secretary of the Kansas Department of
20 Administration. Secretary Goossen may be served *via* the Department’s Chief Counsel,
21 Amy Bertrand, at 900 SW Jackson St., Suite 107, Topeka, KS 66612.

22 20. Upon information and belief, Defendant Goossen, as Secretary of Administration,
23 is responsible for the oversight of any of its programs and personnel, including any use of
24 Kansas state funds as reimbursement for Medicaid abortions.

1 21. Defendant Goossen is a proper respondent in this action for *Quo Warranto*.

2 22. Defendant BOB DAY is the Director of Health Policy and Finance, a Division
3 within the Department of Administration. Director Day may be served *via* the
4 Department's Chief Counsel, Amy Bertrand, at 900 SW Jackson St., Suite 107, Topeka,
5 KS 66612.

6 23. Upon information and belief, Defendant Day is charged with the oversight of,
7 among other things, the expenditure of Kansas state funds as reimbursement for elective
8 Medicaid abortions.

9 24. Defendant Day is a proper respondent in this action for *Quo Warranto*.

10
11 **Allegation of Unconstitutional Action Creating this Case and Controversy**

12 **VIOLATION OF SECTION 1 OF THE KANSAS CONSTITUTION**

13 25. Section 1 of the Kansas Constitution provides as follows: "All men are possessed
14 of equal and inalienable natural rights, among which are life, liberty, and the pursuit of
15 happiness."

16 26. The term "men" as used in Section 1 of the Kansas Constitution is not expressly
17 limited to males and has not been so interpreted by the Courts of this State.

18 27. The term "men" as used in Section 1 of the Kansas Constitution is not expressly
19 limited to adults and has not been so interpreted by the Courts of this State.

20 28. The term "men" as used in Section 1 of the Kansas Constitution is not expressly
21 limited to born human beings and should not be so interpreted by this Court.

22 29. This Court, in interpreting the Kansas Constitution, is not constrained by any
23 decisions of any federal courts interpreting the Constitution of the United States.
24
25

1 30. This Court should interpret the term “men” in Section 1 of the Kansas
2 Constitution to include all male and female human beings at any stage of development
3 and may do so without running afoul of any Federal case or statutory law.

4 31. The Kansas House of Representatives asserts that the “medical, biological and
5 scientific facts” as to the unique nature of each in utero human being are “undeniable.”
6 *See* H.R. 6003.

7 32. Medical science has clearly established that at the very moment of fertilization a
8 new, unique, and genetically distinct human being is formed, distinct from its host while
9 dependant upon her.

10 33. Medical science has further established that the unique human being formed at
11 conception develops and grows in a continuous process from the initial cell division to
12 natural death, with no clearly defined “trimesters,” “stages” or “phases,” all of these
13 being social constructs used to label general observations of no definite boundary.

14 34. Kansas law recognizes the right of *in utero* humans to be born alive even if the
15 child’s mother has been sentenced to death by the Kansas courts. *See* K.S.A. 22-4009
16 (b).

17 35. Kansas law recognizes that the transfer of genetic material and the science of
18 genetics is the proper foundation for determining individuality. *See Smith v. Depish*, 248
19 Kansas 217 (1991).

20 36. Upon information and belief, the State of Kansas voluntarily opted into the
21 federal Medicaid program by passing certain statutes and regulations (“State Medicaid
22 Statutes”) decades ago.

1 37. Pursuant to said state Medicaid statutes and regulations, Defendants exercise
2 various degrees of executive authority over the State of Kansas' participation in the
3 federal and related state Medicaid program.

4 38. Upon information and belief, Defendants have overseen the expenditure of
5 Kansas state funds as reimbursement for the provision of elective pregnancy terminations
6 under state and federal statutes, despite the protection of the natural right to life of "men"
7 set forth in Section 1 of the Kansas Constitution.

8 39. The past expenditure of state funds was unconstitutional and thus an *ultra vires*
9 act because the use of state funds for reimbursement of elective pregnancy terminations
10 involves the State in the destruction of the lives of "men" without due process of law in
11 violation of Section 1 of the Kansas Constitution.

12 40. The continued expenditure of state funds as reimbursement for elective pregnancy
13 terminations is unlawful because the use of state funds for reimbursement of such
14 pregnancy terminations involves the State in the destruction of the lives of "men" without
15 due process of law in violation of Section 1 of the Kansas Constitution.
16
17
18
19
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PRAYER FOR RELIEF

WHEREFORE, General Kline prays for judgment as follows:

A. That this Court order a *Writ of Mandamus* establishing:

1) That the term “men” as used in Section 1 of the Kansas Constitution includes all male and female human beings at each and every stage of life, regardless of their status as pre- or post-partum individuals;

2) That the expenditure of Kansas state funds as reimbursement for elective pregnancy terminations involves the State of Kansas in the destruction of the lives of “men” without due process of law in violation of Section 1 of the Kansas Constitution;

3) That the continued expenditure of such funds as reimbursement for elective pregnancy terminations is unconstitutional under the Kansas Constitution, unlawful, and without force of law; and

4) That the Defendants must immediately cease any further expenditures of state funds for reimbursement for elective pregnancy terminations.

B. That this Court issue an Order, *Quo Warranto*, preventing Defendants from exercising any authority or oversight that affects, causes, allows, or in any other fashion facilitates the expenditure of state tax monies for elective pregnancy terminations.

C. That this Court retain jurisdiction of this matter for the purpose of enforcing any of the Court’s Order.

D. That this Court grant such other relief as the Court deems equitable and just under the circumstances.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Dated this 16th day of August, 2005,

Respectfully submitted,

OFFICE OF THE ATTORNEY GENERAL
PHILL KLINE

Lance Y. Kinzer, #17136
Special Assistant Attorney General
Schlagel, Damore & Gordon LLC
201 E. Loula
Olathe, KS 66051
(913)782-5885
(913)782-0123 (Fax)
Attorneys for Plaintiff
