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CLERK OF DIST. COURT  
18TH JUDICIAL DISTRICT  
SEDGWICK COUNTY, KS

BY \_\_\_\_\_

**IN THE EIGHTEENTH JUDICIAL DISTRICT  
DISTRICT COURT, SEDGWICK COUNTY, KANSAS**

STATE OF KANSAS, )  
Plaintiff, )  
)  
vs. )  
)  
GEORGE R. TILLER, )  
Defendant )  
\_\_\_\_\_ )

Case No. 07 CR 2112

**MOTION TO COMPEL DISCOVERY  
OF EXCULPATORY EVIDENCE**

COMES NOW Defendant Dr. George R. Tiller, by and through his attorneys, and respectfully requests of this Court an order directing the State of Kansas to produce for inspection and copying the following items material to Dr. Tiller's motions to dismiss and suppress, and/or to his trial defense, for the following reasons:

**1. Information relevant to Dr. Tiller's claim of selective investigation.**

Along with this motion, Dr. Tiller has filed a motion to dismiss based in part on former-AG Kline's selective investigation of later-term abortion providers—and no other mandatory reporters—for imagined violations of the child-abuse reporting requirements.

While the evidence described in that motion will be sufficient to establish selective investigation necessitating dismissal, Dr. Tiller seeks additional discovery to support his

claim. Specifically, Dr. Tiller seeks discovery of (1) an accounting of all criminal charges filed under the child-abuse reporting statute by Kline's office or by local prosecutors at the direction of Kline's office during Kline's tenure as Attorney General; (2) a description of all files opened by the Attorney General's office during Kline's tenure to investigate violations of the child-abuse reporting statute; (3) a list detailing all complaints made to the Attorney General's office during Kline's tenure of violations of the child-abuse reporting statutes; and (4) information describing whether and how any of the above cases and/or investigations and/or complaints were resolved.

While the defendant must produce "clear evidence" in support of a selective-prosecution or selective-investigation claim, the standard for obtaining discovery in pursuit of such a claim is much lower. *See United States v. Armstrong*, 517 U.S. 456, 465 (1996). To support a motion for discovery of evidence relevant to a claim of selective prosecution or investigation, the defendant need only produce "*some* evidence tending to show the existence of the essential elements" of the claim. *Id.* at 470 (emphasis added). The evidence detailed in Dr. Tiller's motion to dismiss meets that standard.

**2. Information about the influences underlying AG Morrison's charging decision.**

As noted in the factual recitation in Dr. Tiller's motion to dismiss, the charges currently pending were filed by former-AG Paul Morrison, who was at the time involved in an extramarital affair with Linda Carter, an administrator from the Johnson County District Attorney's Office, which was then headed up by none other than former-AG Phill Kline. According to one news report, Morrison's paramour "urged Morrison to charge Tiller."

Tim Carpenter, *Sex Scandal Rocks Attorney General Morrison*, THE TOPEKA CAPITAL-JOURNAL (Dec. 8, 2007).

The current charges have been irredeemably tainted by Kline's misconduct, regardless of Morrison's motive to charge Dr. Tiller. Nonetheless, if Morrison's filing decision was influenced by his relationship with an employee of Kline's, that influence would establish an even stronger link between Kline's misconduct and the current charges. A recent news story suggests that there may be several sources of this information available to the state:

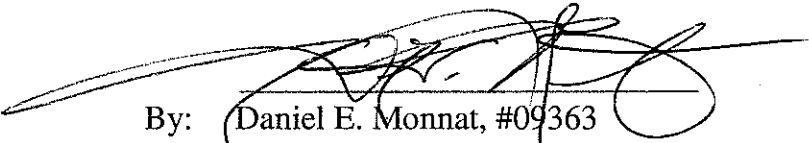
1. Linda Carter's sworn statement to Agent Tom Williams, reportedly given at the Johnson County District Attorney's Office on November 1, 2007;
2. Agent Williams's investigative report detailing Carter's relationship with Morrison; and
3. Any report, testimony, or other evidence from the "special investigation" by Robert Arnold and Tim Keck into Carter's relationship with Morrison.

See Justin Kendall, *Morrison's Mistress*, THE PITCH (Aug. 21, 2008) (describing investigations by Williams, and Arnold and Keck). While these items may all be in the custody of the Johnson County District Attorney's office rather than the Attorney General's office, Kansas law provides that "[f]or the purpose of controlling crime . . . the attorney general may call upon and obtain from . . . county attorneys all information that said attorney general may deem necessary in ascertaining the true condition of the crime situation; and it shall be the duty of the above-mentioned officers to furnish the information

so requested by the attorney general.” K.S.A. 21-2504(a). Additionally, “the individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government’s behalf in the case.” *Kyles v. Whitley*, 514 U.S. 419, 437 (1995).

The Attorney General’s office has a due-process obligation to obtain and disclose exculpatory evidence in the state’s possession when that evidence is “material” to the defendant’s case. *Brady v. Maryland*, 373 U.S. 83 (1963). Material evidence includes evidence relevant to a defense that the prosecution was not undertaken in good faith. See *Kyles*, 514 U.S. at 445 (holding that evidence which “would have raised opportunities to attack . . . the thoroughness and even good faith of the investigation” constituted *Brady* evidence). The above-listed evidence is all in the hands of state actors, and is exculpatory. The state has a duty to disclose this evidence to Dr. Tiller, and this Court may order that it do so.

Dr. Tiller respectfully requests a hearing and oral argument on this motion.

  
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CERTIFICATE OF SERVICE

I, Daniel E. Monnat, do hereby certify that a copy of the above was mailed by placing the same in the United States Mail, postage prepaid, properly addressed on this 15<sup>th</sup> day of September, 2008, to the following:

Veronica Dersch, #20757  
Assistant Attorney General  
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Room 200  
Topeka, Kansas 66612

Dr. George Tiller



DANIEL E. MONNAT #09363