

**KANSAS LEGISLATURE INTERIM FEDERAL AND STATE AFFAIRS COMMITTEE**

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**Action concerning the legalization of abortion following Hodes and Nausser v Schmidt decision**

Favoring Action

There are ten states where activist supreme courts have created a fundamental right to abortion in the constitution: Alaska, California, Florida, Iowa, Kansas, Massachusetts, Minnesota, Montana, New Jersey and New Mexico.

By placing abortion in the state constitution, pro-abortion state courts are ensuring that abortion on demand will continue even if the US Supreme Court overturns Roe v. Wade.

In all of the cases where a fundamental state right to abortion was created by activist state courts, it was done through legal challenges to pro-life laws that sought to regulate abortion. This is important to note because proponents of a personhood amendment are often told that personhood amendments could “set the movement back.” Yet, as we can see, the insistence of some pro-lifers on passing laws that regulate some abortions and allow others to continue is precisely what allowed the state courts to create these fundamental state rights to abortion.

There are several possible responses to the judicial activism that has forced Kansas to adopt this fundamental right to abortion.

One totally unacceptable option is to enshrine within the state constitution some form of abortion regulation. This would be catastrophic for several reasons: 1. Pro-lifers do not seek to regulate the manner in which children are killed; we seek to protect them from being killed. 2. Inserting abortion regulations into the constitution would ensure that future state legislative progress is limited to those regulations written into the constitution. 3. It would create a separate basis to keep abortion legal in Kansas if and when the federal right to abortion is overturned, ignored, or defied.

A possibly less catastrophic option is to write into the state constitution language specifically denying that there is a right to abortion--but without requiring the abolition of abortion. So, by leaving the abolition of abortion to the discretion of legislators, this amendment would implicitly write into the state constitution the notion that preborn children have no fundamental right to life.

A third approach is one that you already have introduced in the legislature and which deals with the problem at hand in a fundamental and consistent manner. This is the personhood amendment. A personhood amendment simply

recognizes that the child in the womb is a person with the basic fundamental rights of any other person. It is the most clear and concise rebuttal of those who dehumanize the child in order to justify abortion. A personhood amendment would use the very same logic used by the Kansas Supreme Court that “Section 1 of the Kansas Constitution Bill of Rights sets forth rights that are broader than and distinct from the rights in the Fourteenth Amendment to the United States Constitution” but instead of protecting the right to “abortion”, the state constitution would protect the right to life. While this approach would still be open to attack from federal activist courts, it would

1. Ensure the protection of preborn babies in Kansas once *Roe v. Wade* is overturned or chosen to be ignored or defied,
2. Immediately guarantee protection for pre-born babies in a myriad of cases such as wrongful death, fetal homicide, chemical endangerment and many other non-abortion related cases (see the series of fetal personhood cases in Alabama) and
3. Provide for a solid foundation upon which to challenge the federal judicially created right to abortion.

Personhood Kansas therefore recommends swift passage of the HCR5004 and SCR1604 amendment which says, *“Recognizing the authority of the state of Kansas to exercise its police power and its sovereign right to adopt individual liberties in the constitution of the state of Kansas more expansive than those conferred by the constitution of the United States, the state of Kansas shall hereby guarantee the inalienable rights, equal protection and due process of law of every human being from the beginning of the biological development of that human being, including fertilization.”*