

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

**PAT GOODSON    OCTOBER 30, 2019**

**Favoring action concerning the legalization of abortion following Hodes and Nausser v Schmidt decision.**

Mr. Chairman, members of the committee, I respectfully address you as a private Kansas resident and as the mother of 14 human beings including three babies who were never born, but who lived. Regardless of the opinion of six judges of the Kansas Supreme Court those three babies had the same worth as any other human being.

My experience, as a founder of Right To Life of Kansas (RTLK, a founding member of the first board of National Right to Life Committee (NRLC) and a lobbyist to this legislature for 25 years, allows me to state unequivocally that the decision by the court in Hodes and Nausser v Schmidt was a grievous error that can only be corrected by holding the court to the original intent of the Kansas Bill of Rights.

I present as evidence the following:

- The Kansas Bill of Rights recognizes the natural rights of all men. It is an undeniable fact that Section 1 was intended to include unborn men and prohibit abortion. This was understood and accepted by judges, courts, legislators and citizens of Kansas for over a hundred years of jurisprudence.
- The Hodes court purported to recognize natural rights, but instead denied all rights to an entire class of men.
- For the past 50 years this legislature has enacted many bills that were unconstitutional because they permitted abortion. It was such a regulatory bill that gave the court the opportunity to pronounce the Hodes decision.
- The only way to correct these errors is to return to the original intent of framers, by specifically recognizing unborn children as human persons.
- The Kansas Bill of Rights is the keystone that provides guiding principles for the rest of the constitution.
- Any change to the constitution regarding abortion that does not include recognition of the humanity and personhood of unborn humans repeats the error of the court and does violence to the meaning, intent and purpose of the Bill of Rights.
- A negative declaration that there is no constitutional right to abortion without also declaring a positive affirmation of the rights of unborn persons will not reverse the holding that women have an autonomous right to abortion.
- A Resolution that would fulfill the interim Judiciary committee recommendation (to pass an amendment that would reverse the holding of Hodes with regard to abortion), and restore the intent of Section 1, has already been introduced and awaits action in the 2020 session.

In Kansas we inherit the legacy of our founders, men who fought the injustice of slavery and championed freedom for all men. Slave owners did not deny the humanness of black men, they denied their value, their personhood. Humanity, humanness if you will, is not determined by appearance, age or location, but by DNA. It is the value we place on humans that determines their personhood. Today we endure 50 years of injustice to unborn men whose rights as persons are denied. Abortionists do not deny the DNA of preborn humans, they deny their value, their personhood. The Hodes court likewise ignored the worth of preborn humans.

It is important to understand the unique character of the Kansas Bill of Rights. The Bill of Rights in the United States Constitution was an afterthought. In Kansas the Bill of Rights provided the keystone and the guiding principle for the rest of the Constitution. The federal 14<sup>th</sup> amendment is expressed in the negative, in terms of what a State is prohibited from doing, that is, from denying equal protection of the law. Alternatively, section 1 of the Kansas Bill of Rights is expressed in terms of the rights of which all men are possessed.

In a recent address, William Barr, Attorney General of the United States quoted John Adams. Adams wrote:

"We have no government armed with power which is capable of contending with human passions unbridled by morality and religion. Our constitution was made only for a moral and religious people. It is wholly inadequate for the government of any other."

To our founders, protecting the rights of all men and opposing injustice was the fundamental purpose of the government of the state which they were struggling to establish. Every human life from conception to natural death has

intrinsic value. This is emphasized in the inspired language of Section 1. Until 1969 those ideals entrenched in the Bill of Rights protected the rights of unborn human men. That was proper and right.

While it has the force of law, the Hodes ruling was only an (erroneous) "interpretation" of the constitution. An amendment would change the actual document. An amendment that would permit, but not prohibit abortion would change its meaning and write immorality into the ruling document of Kansas government. We should heed the words of our second President and ensure that the ruling document of our government reflects the ideal of a government fit for a moral and religious people.

Earlier this month the interim Judiciary Committee voted to recommend to the 2020 session that Kansas voters be provided the opportunity to vote on an amendment that would reverse the holding in Hodes and Nausser with regard to the existence of a right to abortion in the constitution. No specific language was suggested, but language that would accomplish the recommendation is already introduced and awaits action; It is the Personhood Amendment HCR 5004 and its companion resolution in the Senate, Hearings were held in March prior to the Hodes decision in the regular House Committee on Federal and State Affairs. No action was taken and now HCR 5004 is more urgent than ever. A Personhood amendment will restore to the constitution the original intent of framers. It would recognize once again the right to life of all human persons which include preborn human children.

Some, no doubt sincere but I believe misguided, proliferers and Kansas Catholic Bishops testified at the Judiciary Committee hearing. They want an amendment to "reverse the ruling" that would, according to the Kansas Catholic Conference, "keep in place lifesaving limits on the abortion industry", and "will not ban all abortions". They wish the state constitution to allow the regulation of an industry whose existence it has no right to permit.

Because these regulation proponents have not publicized any language, I can only comment on what they have stated they intend it to do, Please understand, therefore, that when I refer to their amendment during this testimony, I am referring to a hypothetical amendment that will permit both abortion and its regulation. Jim Sedlak of American Life League has said "Any such amendment should be opposed by any person who understands that every born and preborn human being is created by God and must be protected." I agree. As a past prolife leader, I know that many proliferers and many Catholics agree also. I am a Catholic. When my Bishop speaks correctly on matters of faith, I listen and obey, this however, is a political decision with which I vehemently disagree.

It is heartbreaking for proliferers to contemplate the murder of an innocent baby by abortion, ( dare I say murdered). That is what the honorable men who founded our state said it was. Forty-six years ago when the US Supreme Court decreed Roe v Wade it became apparent that powerful forces supported abortion and stopping it would be a virtually insurmountable task. In their urgency to protect lives, some proliferers believed they could save some lives by allocating resources and efforts toward the regulating rather than the prohibiting of abortion. Legislative regulations on abortion gave approval and legitimacy to abortion.

For instance, under parental consent bills, a minor could not have an abortion without her parents' consent. Parents could stop an abortion, but they could also say yes, thereby consenting, and approving the killing of their own grandchild. Kansas Senate Bill 95, that resulted in the Hodes and Nausser edict, prohibited the performance of abortion by the procedure known as D and E, thereby giving legislative acceptance to the killing of babies by abortion performed through any other procedure.

It was Abraham Lincoln who observed: In any case that arises, "one of two positions is necessarily true, that is, the thing is right within itself, and therefore deserves the protection of all law and all good citizens; or it is wrong, and therefore proper to be prohibited by legal enactments." Regulatory measures that give approval to the killing of preborn children are wrong. They violate the laws of God; the natural law; and the rule of law of a civilized society.

In order to protect life, we need a reasoned approach. The incremental strategy has failed to bring us any closer to stopping abortion. It was a regulatory measure that gave the Kansas court the opportunity to dictate policies far more injurious to the cause of life than Roe v Wade did. An emotional response is not needed. Is it reasonable to cling to a 46 year long failed strategy?

The Hodes ruling was a flagrant misinterpretation of the clear meaning and intent of section 1 of the Bill of Rights and contradicts over a hundred years of abortion jurisprudence in Kansas. This is demonstrated authoritatively in extensive research conducted by Right To Life of Kansas. Some of that research is available in public documents which this committee can easily access: Washburn Law Journal Vol, 30 No.1 Fall 1990 pp 75, 76, by Pat Goodson, and 2002 testimony on HR. 6003 by Elmer Feldkamp.

Why is that history important? It is because I believe that history is the key to a prolife and proper response to the court.

We need to correct an obvious misinterpretation of one provision. We should not change the meaning and purpose of the document itself. In considering an amendment to the Bill of Rights we find guidance by reflecting on how the authors viewed it and how it has been understood in its long history. It is necessary to look to history to understand the meaning and purpose of the Bill of Rights.

It was injustice that motivated the framers of the Wyandotte Constitution. In an intense and bloody struggle the heroic and courageous men of bleeding Kansas had championed the cause of freedom. They knew and detested the injustice of slavery that had been perpetrated on their fellow men. They were determined to establish a state where the rights of all men would be protected. They were acutely aware of the need to carefully craft a "political bible" that would forever, in Kansas law uphold justice, and recognize the rights of all men. They were men who may not have been perfect, and may have made some mistakes, but they had the wisdom of honesty and common sense. In the Bill of Rights they created a masterpiece.

Framers clearly understood unborn children to be men who were protected by Section I because they also enacted statutory protection for those children. One statute made the killing of an unborn quick child the crime of manslaughter. The second statute prescribed a penalty of manslaughter for merely attempting an abortion after quickening. It was hard to prove that a woman was actually pregnant at the time of the abortion, that the fetus was alive when the abortion was committed, and that the abortion killed the fetus. Quickening was a flexible standard of proof that the child was living at the time of the abortion, a distinction that was necessary to obtain conviction of homicide in a court of law. It was not a substantive judgment on the value of unborn life before quickening. This is shown by the third statute which protected babies at every stage and made committing abortion a crime.

In 2002 this legislature agreed with the Bill of Rights when they passed HR 6003 which said: Unborn children in the state of Kansas have an equal and inalienable right to life from conception / fertilization and that allowing the termination of the lives of innocent human beings even before birth violates Section I of the Bill of Rights of the Kansas Constitution.

The Hodes Court trashed those rights, refusing to acknowledge the rights or even the existence of the second part of the equation in the autonomous right of a woman to have an abortion; the unborn baby whose life is terminated. The Judiciary Committee recommends that Kansas voters be provided the opportunity to vote on the existence of a right to abortion in the constitution. I respectfully submit that Kansas voters have already voted on that matter. They did so in 1859 when they approved that venerable document, our Constitution, that has been held dear by all Kansans until 1969 when Kansas legislative leaders spearheaded passage of Senate Bill 9 decriminalizing abortion. Kansas voters signaled their rejection of abortion by voting out of office those leaders and replacing them with pro life legislators.

In 1884, the Supreme Court of this state unequivocally affirmed the Kansas Bill of Rights as the state's "political bible":

"The Bill of Rights is something more than a mere collection of glittering generalities, some of its sections are clear, precise, and definite limitations on the powers of the legislature, and all officers and agencies of the state; and while others are largely in the nature of general affirmations of political truths, yet all are binding on legislature and courts, and no act of the legislature can be upheld which conflicts with their provisions, or trenches upon the political truths which they affirm.

Atchison Street Ry, Co. Missouri Pac. Ry. Co. 31 Kan, 660, Syl. 1, 3P. 284, (1884).

A hundred years later, this Court again affirmed our state Constitution's distinctive value, concluding that, "The Kansas Constitution affords separate, adequate, and greater rights than the federal Constitution."

Farley v Engelken, 241 Kan. 663, 671, 740 p.2d 1058, 1063 (1987).

The following quoted excerpts affirm the Kansas Bill of Rights as the keystone which provides guidance to the rest of the Constitution.

In an article from the Journal of the Kansas Bar Association authors write:

"First, the Kansas Constitution and the Kansas Bill of Rights were not based upon federal precedent. The Constitution of Kansas has a lineage that can be traced through prior state constitutions to the English Bill of Rights and the provisions of the Magna Carta .... The concepts of equal protection embodied in Sections 1 and 2 were drawn from

Jefferson's language in the Declaration ( of independence), and preceded the ratification of the 14th Amendment of the United States Constitution of the United States by nine years .... The structure of our state Bill of Rights is also strong evidence of the framers' intention to grant rights independently of the federal Constitution. The federal Bill of Rights was an afterthought - it was not ratified until three years after the federal Constitution .... By contrast the framers of our state Constitution believed that the Kansas Bill of Rights would provide the guiding principles for the remainder of the state Constitution. The Bill of Rights, commented a delegate to the convention, would make the Kansas Constitution "more permanent and better grounded in the hearts of the people. It becomes the incarnation of fundamental principles, the steadfast light and hope of each State that survives the terror of tyrants and is the security of the free."

"The Kansas Bill of Rights, Glittering Generalities or Legal Authority " 69 J.K.B.A. No. 8 20-21 (2000)

In a 1901 address to the Kansas State Historical Society an author spoke of the origin of Section I of the Bill of Rights.

"The first section was the only one that led to an extended debate ..... Samuel A. Kingman proposed the following: All men are possessed of equal and inalienable natural rights, among which are those of life, liberty, and the pursuit of happiness." He said that he 'wished the purely American feeling to appear in this first section'. These terms were already in the hearts of the people; they had become traditional. The declaration of independence and declaration of rights formed a part of the political creed from which no man could extricate himself. He loved the form in which old ideas were expressed. They were, in form as well as spirit, the political bible of every citizen. If you change the language, you mar its beauties. He had therefore selected a few words from those documents and molded them into a substitute that would show man's prejudice and was broad enough for all to stand upon. In this form the section was adopted.

Kansas Constitutional Convention: A Reprint of the Proceedings and Debates Which Framed the Constitution of Kansas at Wyandotte in July 1959: Appendix D, p. 678-79 ( 1920).

Mr. Kingman also said: "But I hold the use of the word "inalienable" is misunderstood and misinterpreted in this House. A man's right to his life is inalienable in law under all circumstances. He has no right to sell or give it away - no right to dispose of it at all." Id p. 282

Every abortion is a tragedy. The goal of every prolifer, even those who support regulating abortions, is to prohibit all abortions. An amendment that only regulates but does not prohibit all abortion writes into the constitution the principle that abortion may be permitted; that some humans do not have the rights of all men. It denies the humanity of unborn humans and jeopardizes the rights of all humans. Such an amendment writes into the constitution the proposition that the taking of innocent human life is a matter of legislative discretion. No legislature, no judge, no court has the right to decide whether to allow or prohibit the killing of innocent persons.

I oppose an amendment that only regulates abortion, but I question also whether such an amendment would accomplish the goal of "reverse the ruling". Would it circumvent the autonomous right of a woman to have an abortion? The court listed a virtually unlimited laundry list of reasons why a pregnant woman could make a choice to abort her child. I can not envision any regulation that would not present an undue burden on her decision. The only way to counteract that choice is by asserting the equal rights of the second person in that equation. But that person must be legally recognized as a person by adopting a personhood amendment. Why would proliferers support anything else? Why would they instead write into the rule of law a constitutional principle that denies the humanity and the right to life of unborn babies; a premise that denies the basic principle of the cause we champion?

We could do no better than to restore to our Constitution those honorable ideals. The only possible way to reverse the ruling of the Hodes court is to give legal status to humanity and personhood of preborn children; to adopt an amendment that recognizes and restores the truth that Section I was intended to prohibit abortion. Let us remember the words of Abraham Lincoln, the Great Emancipator, words that echo down the years. Let us resolve to bring a "new birth of freedom" to these least of our brethren unborn children. I urge this committee to recommend to the 2020 session of the legislature the adoption of an amendment such as HCR 5004.

Respectfully submitted.

Pat Goodson 10/30/2019