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**Special Committee on Federal and State Affairs:
Testimony of Letitia Harmon, Policy Director ACLU of Kansas
October 30, 2019**

**ACLU of Kansas testimony in OPPOSITION to any
constitutional amendment that would restrict a woman's
personal autonomy and infringe on their reproductive rights**

The ACLU of Kansas works to preserve and strengthen the constitutional liberties, including the right to reproductive freedom, of every person in Kansas. We have more than 40,000 supporters in this state. The ACLU of Kansas opposes any constitutional amendment that would restrict a woman's reproductive freedom as an unacceptable infringement on a woman's personal autonomy and her ability to make deeply personal medical decisions, and because it would put politics above the safeguarding of a woman's health.

Any attempt to restrict a woman's personal autonomy is an attempt to re-write Kansas's history - a state that was founded on Lockean beliefs of natural rights, with an emphasis on one's freedom from government intrusion into personal choices.

Our state Supreme Court elaborated on the natural rights at stake in its 6-1 decision in *Hodes & Nauser, MDs, P.A. v. Schmidt*, stating:

- **“At issue here is the inalienable natural right of personal autonomy, which is the heart of human dignity. It encompasses our ability to control our own bodies, to assert bodily integrity, and to exercise self-determination. It allows each of us to make decisions about medical treatment and family formation, including whether to bear or beget a child.” *Hodes & Nauser, MDs, P.A. v. Schmidt*, 309 Kan. 610, 671, 440 P.3d 461 (2019)**

The court painstakingly analyzed the historical record, finding that it “overwhelmingly shows an intent to broadly and robustly protect natural rights and to impose limitations on governmental intrusion into an individual's rights” and that at the core of those rights is “the ability to control one's own body, to assert bodily integrity, and to exercise self-determination. This ability enables decision-making about issues that affect one's physical health, family formation, and family life.” [*Hodes & Nauser, MDs, P.A. v. Schmidt*, 309 Kan. 610, 623, 646, 440 P.3d 461 \(2019\)](#)



A constitutional amendment would ignore the natural rights of women and the consequences women would face if we did not recognize that the natural rights undergirding our Constitution do not apply solely to men.

Inherent in this discussion is the question of equality in the eyes of the law. As the court noted in *Hodes*:

“We recognize that many do not view abortion through a lens of gender bias. But we cannot ignore the prevailing views justifying widespread legal differentiation between the sexes during territorial times and the reality that these views were reflected in policies impacting women's ability to exercise their rights of personal autonomy, including their right to decide whether to continue a pregnancy. *See Siegel*, 44 Stan. L. Rev. 261. In essence, the history of women's rights contemporaneous to the Wyandotte Convention reflects a paternalistic attitude and—despite what the Constitution said—a practical lack of recognition that women, as individuals distinct from men, possessed natural rights. We no longer live in a world of separate spheres for men and women. True equality of opportunity in the full range of human endeavor is a Kansas constitutional value, and it cannot be met if the ability to seize and maximize opportunity is tethered to prejudices from two centuries ago. Therefore, rather than rely on historical prejudices in our analysis, we look to natural rights and apply them equally to protect all



individuals. Territorial and early state statutes do not compel another result or rationale.”

The right to an abortion is guaranteed under Section 1 of the Kansas Constitution Bill of Rights through bodily autonomy. Men and women alike are protected by this, regardless if a woman is pregnant or not. An amendment to strip away these natural rights guaranteed to all men and women from only women who are pregnant would be discriminatory and would be a blatant defiance of the values that founded this state and form the basis for its Constitution.

Recognizing that any other conclusion would be discriminatory, the court held the “Kansas Constitution’s drafters’ and ratifiers’ proclamation of natural rights applies to pregnant women. This proclamation protects the right to decide whether to continue a pregnancy.” [*Hodes & Nauser, MDS, P.A. v. Schmidt*, 309 Kan. 610, 650, 440 P.3d 461 \(2019\)](#).

This decision is to be made between a woman and her medical professional, as this a medical procedure.

- **This is not a decision between the voters or politicians of Kansas and women seeking reproductive services.**
- **Legally denying a woman the right to choose what she does with her body only denies her access to safe abortions and reproductive services. As our country’s history shows, without access to safe abortions women will seek out unsafe methods for abortion, which can and do result in the woman’s serious harm, injury, or death.**

Kansas should continue to uphold its founding principles to respect the individual rights of all Kansans and to champion women’s equality under the law.



- **Kansas was a free state. Kansas granted suffrage to women in 1912, eight years before the right was extended to all women by the federal government. Kansas was the first to elect a woman to public office, in 1918. Kansas should honor its history and continue to respect the rights of women.**

Conclusion:

This amendment would pave the way for the legislature to violate more than four decades of binding U.S. Supreme Court precedent holding that a state cannot ban abortion care prior to viability, regardless of whether the ban has any exceptions. *See e.g., Roe v. Wade, 410 U.S. 113 (1973); Planned Parenthood of Se. Pa v. Casey, 505 U.S. 833 (1992); see also Stenberg v. Carhart, 530 U.S. 914, 920-21 (2000); Gonzales v. Carhart, 550 U.S. 124, 146 (2007).*

The Supreme Court's most recent decision on abortion rights, *Whole Woman's Health v. Hellerstedt*, reaffirmed that abortion is a constitutionally protected right subject to heightened judicial scrutiny. 136 S. Ct. 2292 (2016).

Whole Woman's Health reaffirmed that a law is unconstitutional if it places an undue burden on a woman's right to decide to have an abortion "before the fetus attains viability." *Id.* at 2299.

The decisions of the United States Supreme Court and the Kansas Supreme Court discussed today confirm the right to individual freedom and bodily autonomy enshrined in our laws. We may not all agree on abortion, but we can all agree that it is important to support a woman's health and well-being.

The ACLU of Kansas would oppose a constitutional amendment that would undermine protected rights, such as the ability to safely access abortion. Given years of legal precedent and the principle of gender equality and

bodily autonomy that must be protected, we urge the legislature not to consider such an amendment.

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