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2016 Jul 01 PM 4:55
CLERK OF THE APPELLATE COURT
CASE NUMBER: 114153

No. 15-114153-A

IN THE SUPREME COURT OF THE STATE OF KANSAS

Hodes & Nauser, MDs, PA,
Herbert C. Hodes, M.D., and Traci Lynn Nauser, M.D.,
Plaintiffs-Appellees,

v.

Derek Schmidt, in his official capacity as Attorney General of the State of Kansas, and Stephen M. Howe, in his official capacity as District Attorney for Johnson County,
Defendants-Appellants.

RESPONSE OF APPELLANTS TO APPELLEES' SUPPLEMENTAL BRIEF

Appeal from the District Court of Shawnee County
Honorable Larry D. Hendricks, Judge
District Court Case No. 2015-CV-490

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Oral Argument: 45 minutes

TABLE OF CONTENTS

INTRODUCTION

This case comes before the Court by way of an appeal from the district court's grant of a preliminary injunction to plaintiffs-appellees ("Hodes & Nauser"). Before the district court's ruling in this case, no Kansas court had found any unenumerated substantive right—and in particular, any right to abortion—under the Kansas Constitution. In fact, a decade ago, this Court explicitly declined to recognize that a state-law abortion right existed in light of well-established federal abortion jurisprudence. *Alpha Medical Clinic v. Anderson*, 280 Kan. 903, 920, 128 P.3d 364 (2006).

The district court below ruled, however, that Hodes & Nauser had shown a substantial likelihood of prevailing on the merits of the very right that the Kansas Supreme Court refused to recognize in *Alpha*. The district court also found that the abortion facility would suffer irreparable harm without the injunction in this case—despite the fact that Hodes & Nauser had made the strategic decision to forego asserting any federal claims in this action. See *Downtown Bar & Grill v. State*, 294 Kan. 188, 191, 273 P.3d 709 (2012) (setting forth the requirements for a temporary injunction). The district court reached both of these conclusions by explicitly disregarding the long-recognized maxim—rooted in the separation of powers—that statutes must be presumed constitutional. Neither the district court's injunction nor the *en banc* Court of Appeals split decision affirming that injunction on a 6-1-7 vote can stand.

ARGUMENT

I. The Kansas Constitution does not include a right to abortion.

Over a year into this litigation, appellees have changed their tack. Before the district court and the Court of Appeals, Hodes & Nauser sought a judicial ruling that Sections 1 and 2 of the Kansas Constitution provided state-law protection for abortion coextensive with federal abortion

jurisprudence. In their supplemental brief before this Court, however, Hodes & Nauser devote the bulk of their argument to posit an even more extreme position—asking the Kansas Supreme Court to ignore the Kansas Constitution's text and history and the 150 years of case law interpreting that charter, as well as 43 years of federal abortion law; to find abortion to be a fundamental right in Kansas; and to rule that any regulation of that new right is subject to strict scrutiny.

The extremism of Hodes & Nauser's new focus lays bare the most basic error in their constitutional analysis: It is not rooted in the constitution. That is, appellees' arguments are not tethered to the Kansas Constitution's language or history, but rather propose interpretations based on appellees' policy preferences. These are not positions grounded in the intent of the Kansans who adopted the Kansas charter (the "will of the people"); instead, Hodes & Nauser seek to further a political agenda in contravention of the people's intent. And rather than pursue their aims through the legitimate and authorized amendment process in Article XIV—a process that has been employed 29 times since the 1973 decision in *Roe v. Wade*—Hodes & Nauser ask this Court to judicially rewrite the state constitution.

The reality is that these legal acrobatics are unwarranted and unnecessary. No one disputes that appellees could have brought a federal claim under established federal abortion jurisprudence in this case. Indeed, if the challenged Act were truly as detrimental as Hodes & Nauser allege, why not bring what the facility asserts to be a potentially meritorious argument (the federal claim)? The answer, of course, is twofold: First, federal law does not demand the outcomes reached by the district court and 6-judge plurality. Second, this case at its foundation is not about protecting patient rights so much as it is about attempting to create new and unprecedented law in Kansas. This Court should not take the bait.

Hodes & Nauser are seeking recognition of a state-law right to abortion under Sections 1 and 2 of the Kansas Constitution Bill of Rights. Those provisions state:

> **1. Equal rights.** All men are possessed of equal and inalienable natural rights, among which are life, liberty, and the pursuit of happiness.
>
> **2. Political power; privileges.** All political power is inherent in the people, and all free governments are founded on their authority, and are instituted for their equal protection and benefit. No special privileges or immunities shall ever be granted by the legislature, which may not be altered, revoked or repealed by the same body; and this power shall be exercised by no other tribunal or agency.

It is not surprising that the text of these sections appears nowhere in appellees' supplemental brief to this Court. Instead, Hodes & Nauser argue (without citation) that constitutional rights "change over time" with an "evolving understanding" that need not be tied to the language of the Kansas Constitution or the historical context in which the people of Kansas adopted that language. See H&N Supplemental Brief, at 8-9.

This free-form method of interpretation runs directly contrary to this Court's decisions, dating from the earliest years of Kansas's statehood, that "the legislature may enact any law that they may think proper, unless it appears affirmatively that the framers of the constitution intended that such a law should not be passed." *Wright v. Noell*, 16 Kan. 601, 606 (1876). That is, "[s]ince the people have all governmental power, and exercise it through the legislative branch of the government, the Legislature is free to act except as it is restricted by the state Constitution." *Jansky v. Baldwin*, 120 Kan. 332, 334, 243 Pac. 302 (1926). And in "ascertaining the meaning of a constitutional provision, the primary duty of the courts is to look to the intention of the makers (the legislature) and the adopters (the voters) of that provision." *In re Application of Kaul*, 261 Kan. 755, 765, 933 P.2d 717 (1997). Applying these principles here, it is clear that Sections 1 and 2 were never intended to create a right to abortion under Kansas law.

A. The language and history of the Kansas Constitution, as well as this Court's early case law interpreting that charter, demonstrate there is no Kansas constitutional right to abortion.

As the State previously observed in its briefs before the Kansas Court of Appeals (incorporated here by reference), there is nothing in the text or the history of Sections 1 and 2 of the Kansas Constitution Bill of Rights that demonstrates Kansans intended to create a state-law right to abortion. In fact, the opposite is true: These provisions make no reference to abortion. Section 1, which was modeled after the Declaration of Independence, was never intended to be a source for unenumerated, substantive rights. Rather, Section 1 was adopted on the eve of the Civil War—when Kansas was entering the Union as a free state—to be a general statement of equal protection. Section 2 likewise demands that legislatures and other governmental bodies provide equal treatment under the law and has no relevance to alleged rights not explicitly set forth therein.

Both of these provisions were adopted when abortion was illegal in Kansas—a reality that continued until the United States Supreme Court's decision in *Roe* recognized an abortion right under the U.S. Constitution in 1973. Only *Roe* itself—not any political action by the people of Kansas—invalidated abortion restrictions in Kansas. Since *Roe*, Kansans have amended the state constitution on average more than once every election cycle, yet never to recognize any right to abortion. Since *Roe*, when the Kansas Legislature has adopted legislation aimed at regulating abortion within the confines of federal law, the legislature has specifically indicated that Kansas statutes shall not be construed as recognizing a right to abortion. See, *e.g.*, K.S.A. 65-6715 (1997); K.S.A. 2105 Supp. 65-4a11 (2011); K.S.A. 2015 Supp. 65-6748 (2015). These statements by Kansans' elected representatives would be nonsensical if Kansans at the same time intended their state constitution to *create* a Kansas abortion right. Accord *Miami Cty. Bd. of Comm'rs v. Kanza Rail-Trails Conservancy, Inc.*, 292 Kan. 285, 322, 255 P.3d 1186 (2011)

("courts should construe statutes to avoid unreasonable results and should presume that the legislature does not intend to enact useless or meaningless legislation").

Thus, nothing in the language or history of the Kansas Constitution points to a conclusion that Kansans have ever intended or desired to create a Kansas constitutional right to abortion. Despite these realities, Hodes & Nauser invite this Court, for the first time in Kansas history, to disregard the constitutional text and to read into the charter an implied "right to self-determination"—a right more extensive than the protections granted under the Fourteenth Amendment to the U.S. Constitution—that could include any number of state-law rights, even when recognition of those rights is directly contrary to Kansans' wishes. This Court must decline that invitation.

More than a century ago, the Kansas Supreme Court in *Schaake v. Dolley*, 85 Kan. 598, 118 Pac. 80 (1911), rejected an invitation to construe Section 1 of the Kansas Bill of Rights as a catchall source of substantive (but otherwise unlisted) protections. *Schaake* involved a challenge to the denial of an application for a bank charter in Abilene. The unsuccessful applicant brought suit to contest the denial and argued, among other things, that Section 1 of the Kansas Bill of Rights encompassed a right to determine one's occupation, and the denial of the bank charter by the state banking board constituted a violation of that alleged right. The Court thoughtfully and carefully rejected that argument:

> The right to liberty and the pursuit of happiness includes the right to employ one's faculties and property in a gainful occupation of his own choosing. This right, however, has never been regarded as absolute by either the English or the American law. While it is properly spoken of as fundamental and inalienable, it is nevertheless qualified to the extent that the sovereign power may interfere with its enjoyment through regulations necessary or proper for the mutual good of all the members of the social whole. ... Therefore, it is a principle of undisputed validity that a person's right to devote his property to a selected employment must be subordinated to such reasonable restrictions and limitations as are necessary to prevent the exercise of the right from becoming harmful to others. If the benefits

> of organized society are to be enjoyed at all, authority must reside somewhere to consider the conflicting claims and interests of the individual and of the community to which he belongs, and prescribe the rules of good neighborhood. *The power to do this is legislative power*, and it must necessarily be adequate to meet the need for which it is instituted. *The result is that the declaration of the Bill of Rights [i.e. Section 1] ... is not a prohibition against just restrictions upon the enjoyment of liberty and the pursuit of happiness, in the interest of the public good. It is a political maxim addressed to the wisdom of the Legislature, and not a limitation upon its power.* It is not a mere "glittering generality," and cannot be entirely disregarded in any valid enactment, *but it lacks the definiteness, certainty, and precision of a rule*, like the command of the Bill of Rights respecting slavery, or religious freedom, or bail, or trial by jury, *and consequently cannot*, as those provisions do, *furnish a basis for the judicial determination of specific controversies*.

85 Kan. at 600-01 (internal citation omitted) (emphasis added). The Kansas Supreme Court went on to quote a constitutional treatise at length to explain how Section 1 should be interpreted:

> "Many things, indeed, which are contained in the Bill of Rights, to be found in the American Constitutions, are not, and from the very nature of the case cannot be, so certain and definite in character as to form rules for judicial decisions; and they are declared rather as guides to the legislative judgment than as marking an absolute limitation of power. The nature of the declaration will generally enable us to determine without difficulty whether it is the one thing or the other. If it is declared that all men are free, and no man can be slave to another, a definite and certain rule of action is laid down, which the courts can administer; but, if it be said that 'the blessings of a free government can only be maintained by a firm adherence to justice, moderation, temperance, frugality, and virtue,' we should not be likely to commit the mistake of supposing that this declaration would authorize the courts to substitute their own view of justice for that which may have impelled the Legislature to pass a particular law, or to inquire into the moderation, temperance, frugality, and virtue of its members, with a view to set aside their action, if it should appear to have been influenced by the opposite qualities. It is plain that what in the one case is a rule, in the other is an admonition addressed to the judgment and the conscience of all persons in authority, as well as of the people themselves."

85 Kan. at 602 (quoting Cooley, Const. Lim. (7th Ed.), at 245)). With this understanding of constitutional intent, the *Schaake* court had no trouble concluding that Section 1 did not restrict the Kansas Legislature's ability to regulate the banking industry:

> To decide that the act in question violates the quoted section of the Bill of Rights would be merely to substitute the court's opinion as to the manner in

> which a recognized doctrine of political science should be given practical effect for the deliberate judgment of the Legislature upon the subject. This the court is not authorized to do.

85 Kan. at 602.

The *Schaake* court's constitutional analysis is consistent with other early decisions, which indicate that Sections 1 and 2 provide a statement of equality under the law—that is, of equal protection—but were never intended to be a source of otherwise unenumerated *substantive* rights. See *Winters v. Myers*, 92 Kan. 414, 422, 140 Pac. 1033 (1914) (referencing the language in Section 1 and noting that "'[t]he phrase must mean equality before the law, if it means anything'"); see also *Winters*, 140 Kan. at 421 (observing that Section 2 provides for equal protection under the law and "is similar to a clause in the fourteenth amendment to the federal Constitution").[1] Indeed, less than 25 years into Kansas's statehood, Justice Brewer explained that "each [section of the Kansas Bill of Rights] refers to one particular subject," and that "[t]his fact is important in determining the scope" of a constitutional section at issue. *Atchison St. Ry. Co. v. Missouri Pac. Ry. Co.*, 31 Kan. 660, 665, 3 Pac. 284 (1884); see also 31 Kan. at 665-66 (holding that Section 2 governs the privileges of political entities). In short, Sections 1 and 2 were never intended to be catchall sections under which courts were authorized by the people of Kansas to recognize new substantive rights as the courts saw fit.

It is true, as the State noted in its briefs before the Court of Appeals, that some later Kansas cases employ arguably sloppy language equating due process and equal protection rights as interchangeable protections under the Kansas Constitution. See, *e.g.*, *Farley v. Engelken*, 241 Kan. 663, 667, 740 P.2d 1058 (1987); *Manzanares v. Bell*, 214 Kan. 589, 602, 610, 522 P.2d

[1] Hodes & Nauser have never provided a textual analysis as to why Section 2 should provide a substantive right to abortion. Eight of the Kansas Court of Appeals judges (the seven dissenting judges and Judge Atcheson) rejected that claim outright. And although Hodes & Nauser continue to make passing reference to Section 2, it appears that the focus of their claim has shifted to Section 1. See, *e.g.*, H&N Supplemental Brief, at 9.

1281 (1974); *Henry v. Bauder*, 213 Kan. 751, 752-53, 518 P.2d 362 (1974); *Tri-State Hotel Co. v. Londerholm*, 195 Kan. 748, 759-60, 408 P.2d 877 (1965). The State discussed the problems with this analysis in its previous briefs and need not repeat those issues here. Regardless, however, none of these cases found Section 1 (or Section 2) to be a repository for unlisted or yet-to-be-determined substantive rights. Instead, all of these cases involved questions of equal protection—a guarantee fully supported by the text and the history of those constitutional provisions. Imprecise dicta in judicial decisions cannot overcome the constitutional text and the intent of the Kansans who designed and adopted the constitutional provisions at issue here.

Since *Roe*, Kansans have amended the Kansas Constitution to include provisions relating to lotteries, the sale of alcohol, bingo, labor unions, raffles, and taxation of personal watercraft, among others. See Appendix A (listing amendments to the Kansas Constitution and the dates of the amendments' adoption). Few, if any, of these amendments would have been necessary if Sections 1 and 2 could be interpreted as Hodes & Nauser seek to have them applied here. Kansans, however, did not delegate the determination of necessity for each such constitutional protection to the courts, but instead always have employed the amendment process set forth in Article XIV of the state constitution to recognize new rights.

Despite amending the state constitution on numerous occasions for various reasons, Kansans have never made any effort to amend the Kansas Constitution to include a right to abortion. Accord *Cole v. Mayans*, 276 Kan. 866, 878, 80 P.3d 384 (2003) (applying the maxim *expression unius est exclusion alterius*, i.e., the inclusion of one thing implies the exclusion of another). Appellees' argument that the Court should hijack this process in order to establish a right to abortion—and in particular, a fundamental right even more expansive than the federal abortion right—is contrary to the text of the Kansas Constitution, to Kansas history, and to this

Court's longstanding case law. The decisions of the district court and the Court of Appeals plurality finding such a right must be reversed.

B. The manner in which other states have interpreted their state constitutions—documents that have different texts and histories, were adopted at different times, and by their very nature reflect the particular culture and norms of a particular state's people—has no bearing on the intent of Kansans in adopting the Kansas Constitution.

It is perhaps not surprising that the thrust of Hodes & Nauser's constitutional arguments is not the language of the Kansas Constitution or the historical context surrounding the adoption of Sections 1 and 2 of the Kansas Bill of Rights. Instead, appellees ask this Court to follow the very few states that have decided to provide greater protection for abortion under state law than federal law provides.

There is no need. The state constitutional provisions on which those decisions rely contain different provisions adopted at different times for different reasons; they provide no insight into Kansans' intent in adopting Section 1 and 2. Further, the decisions cited do not in fact necessarily reach the result appellees seek. Several state decisions on which Hodes & Nauser rely do not provide any greater protection for abortion than what is already established under federal law. Indeed, some state courts have rejected the notion—even in the face of what those courts consider to be "fundamental" rights, like an explicit state constitutional right to privacy—that state laws concerning abortion should be subject even to the federal undue-burden standard. This wide variation in state-court opinion provides no justification for this Court to supplant the plain language and known history of the Kansas constitutional provisions at issue here.

As a starting point, although some state constitutions contain declarations similar to the Declaration of Independence—as Kansas does in Section 1—no state has a constitution identical

in scope or history to Kansas. For this reason, additional provisions in other states' constitutions have led to strikingly different approaches to states' abortion right analyses.

By way of example, Alaska and California, which Hodes & Nauser cite in their supplemental brief, both have constitutions that contain an explicit right of privacy—a right that is not found in the Kansas Constitution. See California Const., Art. 1, sec. 1 (and additional references throughout the constitution); Alaska Const., Art. I, sec. 22 ("The right of the people to privacy is recognized and shall not be infringed."). In both of these states, courts have found that these explicit privacy rights—and not the states' Declaration of Rights clauses—give rise to the states' more stringent scrutiny of abortion laws. See *Valley Hospital Ass'n v.Mat-Su Coalition for Choice*, 948 P.2d 963, 968 (Alaska 1997) (noting the "express privacy provision was adopted by the people in 1972" and "provides more protection of individual privacy rights than the United States Constitution"); *American Academy of Pediatrics v. Lungren*, 16 Cal. 4th 307, 314, 66 Cal. Rptr. 2d 210, 940 P.2d 797 (1997) (concluding that parental consent requirement for minor "violate[d] the right of privacy guaranteed by article I, section 1, of the California Constitution"). Thus, these courts provide no guidance as to how an abortion right could be found in the complete absence of supporting constitutional language (as appellees urge the Court to do here).

Other courts do not rely on particular constitutional guarantees, but instead cobble together several constitutional provisions for their abortion analysis—provisions for which there are no counterparts in terms of text or interpretation under the Kansas Constitution. See *Planned Parenthood of Middle Tennessee v. Sundquist*, 38 S.W.3d 1, 13 (Tenn. 2000) (noting that Tennessee's previous decisions finding a right of privacy "sprang from the express grants of rights in Article I, sections 3, 7, 19, and 27, and also from the grants of liberty in Article I,

sections 1, 2, and 8" of the Tennessee Constitution). This approach is not only inconsistent with well-established principles of Kansas constitutional analysis, but it is entirely irrelevant here, where appellees have only argued that Sections 1 and 2 of the Kansas Bill of Rights apply.

Some state courts recognize that because abortion is a unique act, laws concerning abortion are not subject to strict scrutiny, even when their state constitutions contain language indicating some rights are "fundamental." See, *e.g.*, *In re Doe*, 613 Pa. 339, 33 A.3d 615 (2011) (applying federal *Casey* standard with no mention of a higher standard being required under Pennsylvania law); *Hodges v. Huckabee*, 338 Ark. 454, 995 S.W.2d 341 (1999) (applying federal abortion case law, not strict scrutiny, to claim regarding whether Arkansas could restrict Medicaid funding on the basis of abortion); see also *Commonwealth of Kentucky Cabinet for Health and Family Svcs. v. Eubanks and Marshall of Lexington, P.S.C.*, unpublished opinion of the Kentucky Court of Appeals (Case No. 2016-CA-444, filed June 15, 2016), *available at* http://apps.courts.ky.gov/supreme/sc_opinions.shtm (allowing State to close abortion facility for failing to obtain license under Kentucky abortion facility regulations with no mention of strict scrutiny).

In fact, even an explicit privacy right in a state constitution does not automatically result in regulation of abortion being analyzed under strict scrutiny. See *Planned Parenthood Arizona, Inc. v. American Ass'n of Pro-Life Obstetricians & Gynecologists*, 227 Ariz. 262, 257 P.3d 181 (Ariz. App. 2011) (recognizing explicit right of privacy in the Arizona Constitution but nevertheless applying the federal undue-burden standard). Indeed, the Michigan Court of Appeals' decision in *Mahaffey v. Attorney General*, 222 Mich. App. 325, 564 N.W.2d 104 (1997), discussed at length in the State's opening brief before the Kansas Court of Appeals, concluded that even though the Michigan Constitution includes "a generalized right of privacy"

that is "highly valued," that same constitution did not include any right to abortion. 222 Mich. App. at 334.

If anything can be gleaned from these opinions, it is that state courts have been consistently inconsistent in their analysis of abortion under the various state constitutions. On some level, this is not surprising: "As a matter of simple logic, because the texts [of the various state constitutions] were written at different times by different people, the protections afforded may be greater, lesser, or the same." *Sitz v. Dep't of State Police*, 443 Mich. 744, 762, 506 N.W.2d 209 (1993).

The bottom line, as both the Arizona and Idaho appellate courts have noted, is that any sound analysis of the Kansas Constitution cannot come from observing the actions of other state courts under their unique and different constitutional texts and histories, but rather must be "'based on the uniqueness of our state, our Constitution, and our longstanding jurisprudence.'" *Planned Parenthood Arizona*, 227 Ariz. at 270 (quoting *State v. Donato*, 135 Idaho 469, 20 P.3d 5, 8 (2001)). There is nothing in the text or the history of the Kansas Constitution to indicate that Kansans intended to create a state-law right to abortion. Likewise, nothing in Kansas case law demonstrates that Sections 1 and 2 should be used as a repository for unenumerated substantive rights—and certainly nothing in Kansas law indicates that the Kansas Constitution should somehow provide *greater* protection for abortion than federal law. Hodes & Nauser's contrary arguments must be rejected.

II. Federal abortion jurisprudence does not constitutionalize abortion methods for all eternity; rather, it allows flexibility for legislatures to regulate and sometimes even ban particular abortion procedures as medical science and technology advance.

Because the Kansas Constitution does not include a right to abortion, there is no need to analyze the challenged Act under federal abortion jurisprudence. Should this Court proceed to this question, however, the State includes three final observations for the Court's consideration.

First, appellees' description of the challenged Act in their supplemental brief before this Court is rife with drastic language—alleging for example that the Act requires a "physically invasive medical procedure" that in some cases is "experimental." H&N Supplemental Brief, at 1. These allegations, although dramatic, are inflammatory and fail to provide an accurate depiction of Kansas law and its requirements.

It is undisputed that Hodes & Nauser are under no obligation to stop performing dismemberment abortions under the Act. Rather, the Act merely requires that when appellees perform these abortions, they do so in a manner that reflects the dignity of the life that is being terminated by first euthanizing the fetus (i.e., inducing fetal demise). K.S.A. 2015 Supp. 65-6742(b)(1). This step can be performed a number of different ways, from umbilical cord transection (UCT) to injecting digoxin or potassium chloride into the fetus, umbilical cord, or amniotic sac. Further, nothing prevents a physician from performing an abortion without demise in the case of a medical emergency. K.S.A. 2015 Supp. 65-6743(a).

There is similarly no question that surgical abortion, and in particular D&E, is an invasive procedure. By its very definition, dismemberment abortions require multiple invasions of a woman's uterus with clamps, forceps, tongs, scissors, or other instruments in order to tear apart a fetus and extract all of the fetal parts. See State's Opening Brief, at 5. These invasive steps are in addition to administering whatever anesthetic may be necessary. To characterize the additional step of severing the umbilical cord before performing the D&E or injecting a feticide

as "risky" or "invasive" glosses over the very nature of the abortion procedures that already are being performed.

Moreover, nothing about inducing fetal demise is "experimental" in nature. In her declaration before the district court, Dr. Nauser merely indicated, for example, that performing a UCT "is not always possible." [R. III, 219.] The converse of this statement, however, is that UCT is possible in some, perhaps most, cases. In those cases where it is possible to perform a UCT, the undisputed evidence in the record indicates that the step adds only 3 to 11 minutes to the abortion procedure and has virtually no side effects or risks that are not already inherent in the D&E procedure itself.

Likewise, Dr. Nauser's allegation that "there is virtually no literature" on using digoxin injections before 18 weeks' gestation [R. III, 220] is belied by the numerous studies the State cited in its Response. Even if Dr. Nauser's hyperbole were accurate, requiring a physician to perform a procedure at 15 weeks rather than 18 weeks is hardly "experimentation on women." In fact, as the State indicated in its Response before the district court, the reason for inducing demise at 18 weeks instead of earlier was not based on any medical rationale, but rather on the physicians' desire to avoid a live birth midway through the abortion procedure and the greater likelihood of such an occurrence later as the pregnancy advances. [R. II, 172-73.] Other studies demonstrated that inducing fetal demise through a digoxin injection may actually make the abortion safer and easier by softening the fetal tissue to be removed. [R. II, 171-72.]

Dr. Nauser did not dispute the findings of these studies, but instead her second declaration indicated that she "strongly disagree[d]" with them. [R. III, 219.] The disagreement of a particular physician with numerous peer-reviewed studies, however, does not mean that the

Act requires experimental procedures, or that the Act's requirement of inducing fetal demise before performing a dismemberment abortion is facially unconstitutional.[2]

Second, the district court and Court of Appeals' plurality's findings that the Supreme Court's decision in *Stenberg v. Carhart*, 530 U.S. 914 (2000), forever insulates the D&E procedure from any state regulation or oversight fails to appreciate the nuance and historical context of the Supreme Court's abortion jurisprudence. In particular, federal law recognizes and leaves open the possibility for "[t]he medical profession [to] find different and less shocking methods to abort the fetus in the second trimester." *Gonzales v. Carhart*, 550 U.S. 124, 160 (2007).

To provide some context, one of the central issues in *Planned Parenthood of Central Missouri v. Danforth*, 428 U.S. 52 (1976), decided three years after *Roe*, was whether a state could ban one particular abortion procedure: saline amniocentesis. The alternative procedure that would have been available for doctors at the time was the very procedure that appellees claim to have constitutional immunity here: D&E (which at the time of *Roe* was only used in first-trimester abortions). See *Akron v. Akron Center for Reproductive Health, Inc.*, 462 U.S. 416, 436 n.23-24 (1983).

Roughly two decades later when *Stenberg* was decided, D&E had become the accepted practice in second-trimester abortions, and D&C (or suction abortions) had become the primary first-trimester procedure. See *Stenberg*, 530 U.S. at 923. In the same year the *Stenberg* decision was handed down, the federal Food and Drug Administration approved use of mifepristone (commonly known as RU-486) for early-term abortions. Seven years later, when *Gonzales* was decided, the Court noted the growing prevalence of medication abortions. 550 U.S. at 134.

[2] These factual disagreements further underscore the district court's error in placing the burden on the State to prove the Act's constitutionality, rather than requiring Hodes & Nauser to demonstrate its invalidity. See State's Supplemental Brief, at 13-20.

Today, medication abortions account for roughly half of all abortions performed in Kansas. See Abortions in Kansas, 2015 Preliminary Report, Kansas Department of Health and Environment, *available at* http://www.kdheks.gov/hci/abortion_sum/2015_Preliminary_Abortion_Report.pdf.

In short, abortion procedures, like other medical procedures, are constantly being refined and updated to reflect advancing medical science and technologies. The argument that *Stenberg* has forever isolated all aspects of the D&E procedure from state regulation—especially when, as the reports cited in the State's Response before the district court indicate, more and more physicians are *choosing* to induce fetal demise before performing D&Es for a whole variety of reasons—cannot be reconciled with this reality. *Stenberg* and *Gonzales* do not impose or demand any such ossification of abortion procedures.

Third, the Supreme Court's recent decision in *Whole Women's Health v. Hellerstedt*, __ U.S. __, 2016 WL 3461560 (decided June 27, 2016), only further demonstrates that this Court need not create a Kansas abortion jurisprudence. Federal courts continue to refine and hone the contours of the federal abortion right, and that right continues to provide protection for women seeking abortions against unduly burdensome laws. The challenged Act does not fall into that category, but if Hodes & Nauser question the Act's constitutionality, they are free to challenge the Act under federal law. They have not done so. This Court should not allow appellees to manipulate the Kansas court system to obtain an unnecessary decision on controversial constitutional questions.

CONCLUSION

The Kansas Legislature passed the Kansas Unborn Child Protection from Dismemberment Abortion Act in order to respect the dignity of human life by minimizing the cruelty of an inhumane procedure. There was no evidence presented to the district court that

Hodes & Nauser or other abortion providers could not comply with this Act; the evidence was instead that Hodes & Nauser would not otherwise choose to induce fetal demise before performing a dismemberment abortion. These facts will be developed, if necessary, as the case proceeds through discovery to trial. But they cannot distract from the central legal question presented in this case: the interpretation of the Kansas Constitution.

Before this case, Kansas courts had never found a right to abortion under the Kansas Constitution. The language and history of the state constitution provide no support for such a right. Kansas case law interpreting Sections 1 and 2 of the Kansas Bill of Rights long has held that those provisions were never intended to be a holding place for unenumerated, yet-to-be-recognized substantive rights. And only a decade ago, this Court explicitly declined abortion providers' invitation to recognize a Kansas right to abortion—as such a finding was unnecessary in light of the well-established federal abortion right.

Any argument by appellees suggesting an urgent need to create a state-law right to abortion falls flat; these are circumstances entirely of Hodes & Nauser's own making. They deliberately determined, for whatever reason, not to bring claims under longstanding federal law, and instead to roll the dice in an effort to convince Kansas courts to create from whole cloth a right that has no basis in the Kansas Constitution.

The people of Kansas rely on the Kansas Supreme Court—as the "guardian of the [people's] Constitution"—to give effect to the will of Kansans, evidenced by the language of that charter. *Brown v. Wichita State Univ.*, 219 Kan. 2, 13, 547 P.2d 1015 (1976). Here, the lower courts failed to fulfill that obligation. Thus, the district court's decision, and Court of Appeals opinions affirming that ruling, must be reversed.

Respectfully submitted,

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Appendix A

List of Amendments and Proposed Amendments to the Kansas Constitution

List of Amendments and Proposed Amendments to the Kansas Constitution

Revisor's Note:

The original constitution was ratified or adopted October 4, 1859, by a vote of 10,421 for and 5,530 against (see, Kansas: A History of the Jayhawk State, p. 86 et seq.).

YEAR	SUBJECT	ART.	SEC.
1861.	Relating to the denomination of circulating notes that may be issued by a banking institution. L. 1861, ch. 16. Adopted Nov. 5, 1861: For, 3,733; against, 3,343	13	7
1864.	Providing that bills may originate in either house. L. 1864, ch. 46. Adopted Nov. 8, 1864: For, 8,708; against, 626	2	12
1864.	Assuring soldiers, sailors and marines the right of suffrage. L. 1864, ch. 45. Adopted Nov. 8, 1864: For, 10,756; against, 329	5	3
1867.	Denying the right of suffrage to certain persons. G. S. 1868, p. 64. Adopted Nov. 5, 1867: For, 16,860; against, 12,165	5	2
1867.	A proposition to eliminate the word "male" from the clause defining the qualifications of an elector. (To amend sec. 1, art. 5.) Rejected Nov. 5, 1867: For, 9,070; against, 19,857	5	1
1867.	A proposition to eliminate the word "white" from the clause defining the qualifications of an elector. (To amend sec. 1, art. 5.) Rejected Nov. 5, 1867: For, 10,483; against, 19,421	5	1
1868	Providing for the election of the state printer by the legislature. 1868 Senate Journal p. 336. Adopted Nov. 3, 1868: For, 13,471; against, 5,415	15	4
1873.	Increasing and limiting the number of state senators and representatives. L. 1873, ch. 134. Adopted Nov. 4, 1873: For, 32,244; against, 29,189	2	2
1875.	Changing regular legislative sessions from annual to biennial. L. 1875, ch. 140. Adopted Nov. 2, 1875: For, 43,320; against, 15,478	2	25
1875.	Fixing the terms of office of members of the legislature. L. 1875, ch. 140. Adopted Nov. 2, 1875; For, 42,724; against, 15,509	2	29
1875.	Authorizing the legislature to make biennial tax levy. L. 1875, ch. 140. Adopted Nov. 2, 1875: For, 43,052; against, 15,293	11	4
1876.	Fixing the terms of office for county officers. L. 1876, ch. 129. Adopted Nov. 7, 1876: For, 93,138; against, 1,985	9	3
1876.	Providing that no money be drawn from the state treasury except by appropriation, and limiting time for which appropriations may be made to two years. L. 1876, ch. 129. Adopted Nov. 7, 1876: For, 95,430; against, 1,768	2	24
1879.	The prohibitory amendment. (Relating to the manufacture and sale of intoxicating liquors.) L. 1879, ch. 165. Adopted Nov. 2, 1880: For, 92,302; against, 84,304	15	10
1879.	A proposition to call a convention to revise the Constitution. L. 1879, ch. 163. Rejected Nov. 2, 1880: For, 22,870; against, 146,279		
1879.	A proposition to strike out the clause exempting two hundred dollars personal property from taxation. (To amend sec. 1, art. 11.) L. 1879, ch. 164. Rejected Nov. 2, 1880: For, 38,442; against, 140,120	11	1

YEAR	SUBJECT	ART.	SEC.
1885.	A proposition to increase the membership of the supreme court. (To strike out sec. 2, art. 3, and amend sec. 13, art. 3.) L. 1885 p. 327; H. Jt. Res. No. 4. Rejected Nov. 2, 1886: For, 81,788; against, 132,535	3	13
1887.	Relating to the militia and to strike out the word "white." L. 1887, p. 339; S. Jt. Res. No. 2. Adopted Nov. 6, 1888; For, 223,474; against, 22,251	8	1
1887.	Concerning the property rights of citizens and aliens. Bill of Rights. L. 1887, p. 340; S. Jt. Res. No. 6. Adopted Nov. 6, 1888: For, 220,419; against, 16,611		17
1889.	A proposition to change the limit of legislative sessions to 90 days, and the time of beginning to the first Tuesday in December. (To amend secs. 3 and 25, art. 2.) L. 1889, p. 418; H. Jt. Res. No. 5. Rejected Nov. 4, 1890: For, 52,463; against, 140,041	2	25
1889.	A proposition to change the number of justices of the supreme court, and relating to their terms of office. (To amend secs. 2 and 13, art. 3.) L. 1889, p. 419; H. Jt. Res. No. 8. Rejected Nov. 4, 1890: For, 66,601; against, 121,636	3	13
1891.	A proposition for a convention to revise, amend or change the constitution. L. 1891, p. 413; S. Jt. Res. No. 1. Rejected Nov. 8, 1892: For, 118,491; against, 118,957		
1893.	A proposition to establish equal suffrage. L. 1893, p. 274; S. Jt. Res. Nos. 1 and 2. Rejected Nov. 6, 1894: For, 95,302; against, 130,139		
1899.	Relating to the supreme court, and increasing the number of justices. L. 1899, ch. 314; H. Jt. Res. No. 4. Adopted Nov. 6, 1900: For, 123,721; against, 35,474	3	2
1901.	A proposition to change the amount of compensation of members of the legislature. L. 1901, ch. 423; H. Con. Res. No. 21. Rejected Nov. 4, 1902: For, 92,090; against, 140,768		
1901.	Changing general elections from annual to biennial. L. 1901, ch. 424; S. Con. Res. No. 5. Adopted Nov. 4, 1902; For, 144,776; against, 78,190	4	2
1903.	Relating to the signing of bills passed by the legislature, and to the veto power of the governor; authorizing the governor to veto parts of appropriation bills. L. 1903, ch. 545; H. Con. Res. No. 6. Adopted Nov. 8, 1904: For, 162,057; against, 60,148	2	14
1903.	Providing for the election of the state printer by the people. L. 1905, ch. 545; S. Con. Res. No. 20, 1903. Adopted Nov. 8, 1904: For, 169,620; against, 52,363	15	4
1905.	Concerning the individual liability of stockholders of corporations. L. 1905, ch. 542; H. Con. Res. No. 13. Adopted Nov. 6, 1906: For, 110,266; against, 67,409	12	2
1905.	Relating to the application of general laws, and to the enactment of special laws. L. 1905, ch. 543; H. Con. Res. No. 7. Adopted Nov. 6, 1906. For, 110,021; against 63,485	2	17
1905.	Concerning the probate court in each county, and providing for a judge pro tem. L. 1905, ch. 544; S. Con. Res. No. 13. Adopted Nov. 6, 1906: For, 107,974; against, 70,730	3	8
1907.	A proposition to change the amount of compensation of members of the legislature. L. 1907, ch. 431; H. Con. Res. No. 2a. Rejected Nov. 3, 1908: For, 104,554; against, 150,576.		
1907.	Relative to the disqualification of judges to hold certain offices. (Proposing to amend sec. 13, art. 3.) L. 1907, ch. 432; S. Con. Res. No. 11. Rejected Nov. 3, 1908: For, 102,156; against, 135,745.		

YEAR	SUBJECT	ART.	SEC.
1909.	A proposition to change the amount of compensation of members of the legislature. (To amend sec. 3, art. 2.) L. 1909, ch. 271; Sub. S. Con. Res. No. 5. Rejected Nov. 8, 1910: For, 91,894; against, 181,970.		
1911.	Relating to equal suffrage, granting equal rights and privileges to women. L. 1911, ch. 337; H. Con. Res. No. 3. Adopted Nov. 5, 1912: For, 175,246; against, 159,197	5	8
1913.	A proposition to amend sections 1 and 2 of article 11, relative to finance and taxation. L. 1913, ch. 335; S. Con. Res. No. 4. Rejected Nov. 3, 1914: For, 156,969; against, 166,800.		
1913.	Providing for the recall of public officers. L. 1913, ch. 336; H. Con. Res. No. 4. Adopted Nov. 3, 1914: For, 240,240; against, 135,630	4	3-5
1917.	Authorizing the legislature to levy a permanent tax for the support of the state educational institutions. L. 1917, ch. 352; S. Con. Res. No. 15. Adopted Nov. 5, 1918: For, 234,858; against, 101,569	6	10
1917.	Relative to the right of suffrage. (Allowing only citizens of the United States to vote.) L. 1917, ch. 353; S. Con. Res. No. 18. Adopted Nov. 5, 1918: For, 238,453; against, 91,617	5	1
1919.	A proposition for a new amendment to the constitution to be known as section 11, article 15, relating to state aid in the purchase of farm homes. L. 1919, ch. 321; S. Con. Res. No. 25. Adopted Nov. 2, 1920: For, 223,499; against, 201,559	15	11
1919.	A proposition to amend section 8 of article 11 of the constitution, to be known as the good roads amendment. L. 1919, ch. 331; S. Sub. for H. Con. Res. No. 23. Adopted Nov. 2, 1920: For, 284,689; against, 193,347	11	9
1919.	A proposition to amend sections 1 and 2 of article 11 of the constitution, relative to finance and taxation. L. 1919, ch. 335; H. Con. Res. No. 37. Rejected Nov. 2, 1920: For, 170,710; against, 218,931	11	2
1921.	A proposition for a bond issue for compensation for veterans of the World War, entitled "An act relating to compensation for veterans of the World War." L. 1921, ch. 255; H.B. No. 441. Adopted Nov. 7, 1922: For, 375,015; against, 148,898.		
1923.	A proposition for a bond issue, entitled "An act relating to compensation for veterans of the war with Spain, the Philippine insurrection and the China relief expedition." L. 1923, ch. 211; S.B. No. 559. Rejected Nov. 4, 1924: For, 250,282; against, 255,940.		
1923.	A proposition to amend sections 1 and 2 of article 11, relative to finance and taxation. L. 1923, ch. 255; H.C.R. No. 18. Adopted Nov. 4, 1924: For, 250,813; against, 196,852	11	1
1925.	A proposition to amend section 3 of article 2, relative to compensation of members of the legislature. L. 1925, ch. 192; H.C.R. No. 26. Rejected Nov. 2, 1926: For, 162,815; against, 221,287	2	3
1928.	A proposition to amend section 8 (renumbered as 9) of article 11, of the constitution, relating to the adoption, construction, reconstruction and maintenance of a state system of highways. L. 1928, Special Session, ch. 3; S.C.R. No. 3. Adopted Nov. 6, 1928; For, 493,989; against, 117,596	11	9
1928.	A proposition to amend article 11, by adding a section 9 (renumbered as 10) thereto, relating to special road taxes on motor vehicles and motor fuels. L. 1928, Special Session, ch. 4; S.C.R. No. 4. Adopted Nov. 6, 1928: For, 444,806; against, 136,719	11	10

YEAR	SUBJECT	ART.	SEC.
1929.	A proposition to amend article 11 by adding a new section thereto, relating to an income tax. L. 1929, ch. 281; S.C.R. No. 8. Rejected Nov. 4, 1930: For, 228,175; against, 263,600	11	
1929.	A proposition to amend section 3, article 2, relating to compensation of members of the legislature. L. 1929, ch. 207; S.C.R. No. 9. Rejected Nov. 4, 1930: For, 132,002; against, 325,008	2	3
1931.	A proposition to amend section 2 of article 4 of the state constitution by eliminating therefrom the words "sheriff or county treasurer." L. 1931, ch. 155; H.C.R. No. 14. Rejected Nov. 8, 1932: For, 193,031; against, 483,656	4	2
1931.	A proposition to amend article 11 of the constitution of the state of Kansas by adding a section thereto, relating to an income tax. L. 1931, ch. 300; H.C.R. No. 21. Adopted Nov. 8, 1932: For, 389,145; against, 283,148...	11	2
1931.	A proposition to amend article 11 of the constitution of the state of Kansas by adding a section thereto, relating to tax limitation. L. 1931, ch. 301; H.C.R. No. 24. Rejected Nov. 8, 1932: For, 297,202; against, 349,328 ..	11	
1933.	A proposition to repeal section 10 of article 15 of the constitution of the state of Kansas and to add a new section relating to alcoholic liquor. L. 1933, ch. 128 (Special Session); H.C.R. No. 14. Rejected Nov. 6, 1934: For, 347,644; against, 436,688.	15	10
1936.	A proposition to amend section 4 of article 7 of the constitution of the state of Kansas, relating to the relief of aged and infirm persons. L. 1936, ch. 4; S.C.R. No. 3. Adopted Nov. 3, 1936: For, 490,176; against, 172,473	7	4
1936.	A proposition to amend article 7 of the constitution of the state of Kansas by adding a section thereto, relating to unemployment compensation and old-age benefits. L. 1936, ch. 5; S.C.R. No. 4. Adopted Nov. 3, 1936: For, 532,042; against, 179,582	7	5
1939.	A proposition to amend section 2, article 15 of the constitution of the state of Kansas, relating to civil service. L. 1939, ch. 188; H.C.R. No. 23. Adopted Nov. 5, 1940: For, 428,739; against, 241,582	15	2
1943.	A proposition to amend section 9, article 15 of the constitution of the state of Kansas, relating to homesteads. L. 1943, ch. 161; S.C.R. No. 12. Adopted Nov. 7, 1944; For, 334,014; against, 115,502	15	9
1945.	A proposition to amend section 9, article 2 of the constitution of the state of Kansas, relating to vacancies in the legislature. L. 1945, ch. 200; H.C.R. No. 8. Adopted Nov. 5, 1946: For, 285,349; against, 132,187	2	9
1947.	A proposition to amend section 10, article 15 of the constitution of the state of Kansas, relating to intoxicating liquors. L. 1947, ch. 248; H.C.R. No. 2. Adopted Nov. 2, 1948: For, 422,294; against, 358,310	15	10
1947.	A proposition to amend section 13, article 3 of the constitution of the state of Kansas, relating to the compensation of justices of the supreme court and judges of the district courts of the state of Kansas. L. 1947, ch. 249; S.C.R. No. 6. Adopted Nov. 2, 1948: For, 369,921; against, 240,806.....	3	13
1947.	A proposition to amend section 3, article 2 of the constitution of the state of Kansas, relating to compensation and expenses of members of the legislature. L. 1947, ch. 250; S.C.R. No. 9. Adopted Nov. 2, 1948: For, 360,477; against, 263,285	2	3
1951.	A proposition to amend article 7, of the constitution of the state of Kansas by adding a new section thereto, relating to a permanent income for certain state institutions. L. 1951, ch. 267; S.C.R. No. 10. Adopted Nov. 4, 1952; For, 524,287; against, 263,741	7	6

YEAR	SUBJECT	ART.	SEC.
1951.	A proposition to amend section 2, article 4 of the constitution of the state of Kansas relative to the tenure of office of sheriffs and county treasurers. L. 1951, ch. 266; H.C.R. No. 6. Not submitted at the 1952 general election, see 173 K. 403	4	2
1953.	A proposition to amend section 2 of article 4 of the constitution of the state of Kansas relative to the tenure of office of sheriffs and county treasurers. 1953 H.C.R. No. 3; 1953 House Journal p. 41. Subsection 2(a) rejected Nov. 2, 1954: For, 203,661; against, 362,407. Subsection 2(b) rejected Nov. 2, 1954: For, 191,006; against, 346,657	4	2
1953.	A proposition to amend section 25 of article 2 of the constitution of the state of Kansas, relating to sessions of the legislature. S.C.R. No. 1. Adopted Nov. 2, 1954. For, 310,059; against, 141,022	2	25
1953.	A proposition to amend section 17 of article 2 of the constitution of the state of Kansas, relating to operation of general and special laws. S.C.R. No. 13. Adopted Nov. 2, 1954. For, 265,017; against, 169,647	2	17
1955.	A proposition to amend section 1 of article 11 of the constitution of the state of Kansas relating to the system of taxation. H.C.R. No. 10. Rejected Nov. 6, 1956: For, 284,327; against, 474,310	11	1
1957.	A proposition to strike out sections 2, 5, 11 and 18 of article 3 of the constitution of the state of Kansas and to insert a new section 2 as to the selection, qualifications and tenure of justices of the supreme court. L. 1957, ch. 234; S.C.R. 4. Adopted Nov. 4, 1958: For, 280,159; against, 186,884	3	2
1957.	A proposition to amend section 9 of article 11 of the constitution of the state of Kansas as to the state being a party to flood control and water resource works. L. 1957, ch. 236; S.C.R. 8. Adopted Nov. 4, 1958: For, 361,848; against, 188,726	11	9
1957.	A proposition to amend article 15 of the constitution of the state of Kansas by adding a section relating to membership or nonmembership in labor organizations. L. 1957, ch. 235; H.C.R. 20. Adopted Nov. 4, 1958: For, 395,839; against, 307,176	15	12
1959.	A proposition to amend section 5 of article 12 of the constitution of the state of Kansas, relating to cities, and granting to cities powers of home rule. L. 1959, ch. 182; S.C.R. 15. Adopted Nov. 8, 1960; For, 346,739; against, 270,820	12	5
1959.	A proposition to amend article 15 of the constitution of the state of Kansas by adding a section relating to authorizing the legislature to provide for continuity of government. L. 1959, ch. 183; H.C.R. 11. Adopted Nov. 8, 1960: For, 448,613; against, 180,909	15	13
1960.	A proposition to amend section 3 of article 2 of the constitution of the state of Kansas, relating to compensation of members of the legislature. L. 1960, ch. 47 (Budget session); H.C.R. 5. Rejected Nov. 8, 1960; For, 275,205; against, 365,043	2	3
1961.	A proposition to amend section 3 of article 2 of the constitution of the state of Kansas, pertaining to compensation of members of the legislature. L. 1961, ch. 196; S.C.R. 31. Adopted Nov. 6, 1962: For, 275,549; against, 182,141	2	3
1962.	A proposition to amend section 1 of article 5 of the constitution of the state of Kansas, pertaining to qualifications of electors and changing residence requirements to permit certain electors to vote for presidential electors and candidates for president and vice-president. L. 1962, ch. 33; H.C.R. 2. Adopted Nov. 6, 1962: For, 393,008; against, 70,123	5	1

YEAR	SUBJECT	ART.	SEC.
1963.	A proposition to amend section 1 of article 11 of the constitution of the state of Kansas, relating to taxation and providing for certain exemptions including household goods and personal effects. L. 1963, ch. 459; H.C.R. 4. Adopted Nov. 3, 1964: For, 474,273; against, 214,382	11	1
1964.	A proposition to amend section 2 of article 4 of the constitution of the state of Kansas, relating to tenure of the office of sheriff. L. 1964, ch. 24 (Budget session); H.C.R. 2. Adopted Nov. 3, 1964: For, 465,851; against, 178,232	4	2
1966.	A proposition to amend section 25 of article 2 of the constitution of the state of Kansas, relating to the legislature. L. 1966, ch. 7 (Special Session); H.C.R. 504. Adopted Nov. 8, 1966: For, 331,479; against, 168,382	2	25
1966.	A proposition to amend all of article 6 of the constitution of the state of Kansas, relating to education. L. 1966, ch. 10 (Special Session); H.C.R. 505. Adopted Nov. 8, 1966: For, 286,400; against, 211,027	6	
1966.	A proposition to amend article 11 of the constitution of the state of Kansas by adding a section relating to the taxation of income. L. 1966, ch. 14 (Special Session); S.C.R. 2. Adopted Nov. 8, 1966: For 252,731; against, 223,643	11	11
1968.	A proposition to amend section 2 of article 4 of the constitution of the state of Kansas, relating to general elections and the election of county and township officers. L. 1968, ch. 97; H.C.R. 1063. Adopted Nov. 5, 1968: For, 481,657; against, 142,078	4	2
1970.	A proposition to amend section 10 of article 15 of the constitution of the state of Kansas, relating to intoxicating liquors. L. 1969, ch. 241; L. 1970, ch. 189; S.C.R. 8. Rejected Nov. 3, 1970: For, 335,094; against, 346,423	15	10
1970.	A proposition to amend article 1 of the Kansas constitution, relating to the executive branch of government. L. 1970, ch. 347; H.C.R. 1026. Adopted Nov. 3, 1970: For, 310,340; against, 253,408. The Supreme Court of Kansas held this amendment improperly submitted, see Moore v. Shanahan, 207 K. 1	1	
1970.	A proposition to amend article 14 of the Kansas constitution, relating to constitutional amendment and revision. L. 1970, ch. 411; H.C.R. 1033. Adopted Nov. 3, 1970: For, 297, 221; against, 262,779	14	1,2
1971.	A proposition to amend section 1 of article 5 of the Kansas constitution, relating to qualifications of electors. L. 1971, ch. 351; S.C.R. 11. Adopted April 6, 1971: For, 261,557; against, 158,769	5	1
1972.	A proposition to repeal section 5 of article 5 of the Kansas constitution, relating to duelists. L. 1972, ch. 393; H.C.R. 1092. Adopted Aug. 1, 1972: For, 208,473; against, 108,090	5	5
1972.	A proposition to revise article 7 of the Kansas constitution, relating to certain public institutions and public welfare. L. 1972, ch. 394; H.C.R. 1094. Adopted Aug. 1, 1972; For 216,507; against, 95,884	7	
1972.	A proposition to repeal section 11 of article 15 of the Kansas constitution, relating to state aid in purchase of farm homes. L. 1972, ch. 396; H.C.R. 1096. Adopted Aug. 1, 1972: For, 177,802; against, 132,125	15	11
1972.	A proposition to repeal section 26 of article 2 of the Kansas constitution, relating to taking of census. L. 1972, ch. 391; H.C.R. 1097. Adopted Aug. 1, 1972: For, 178,071; against, 123,115	12	26
1972.	A proposition to repeal section 3 of article 10 of the Kansas constitution, relating to original apportionment of the legislature. L. 1972, ch. 395; H.C.R. 1098. Adopted Aug. 1, 1972: For, 187,140; against, 113,321	10	3

YEAR	SUBJECT	ART.	SEC.
1972.	A proposition to amend the Kansas constitution by revising article 1, relating to the executive branch of state government. L. 1972, ch. 390; S.C.R. 46. Adopted Nov. 7, 1972: For, 362,163; against, 235,850	1	
1972.	A proposition to amend section 12 of the bill of rights of the Kansas constitution, relating to the transportation of a person from the state for any offense committed within the state, and corruption of the blood. L. 1972, ch. 389; S.C.R. 75. Adopted Nov. 7, 1972: For, 366,207; against, 231,221		12
1972.	A proposition to amend the Kansas constitution by revising article 3, relating to the judiciary. L. 1972, ch. 392; H.C.R. 1018. Adopted Nov. 7, 1972: For, 349,264; against, 211,026	3	
1974.	A proposition to amend the Kansas constitution by revising article 5, relating to suffrage. L. 1974, ch. 462; S.C.R. 77. Adopted Aug. 6, 1974: For, 183,002; against, 85,796	5	
1974.	A proposition to amend section 2 of article 6 of the Kansas constitution, relating to the state board of education, the operation, supervision and control of community junior colleges and the state board of regents. L. 1974, ch. 465; S.C.R. 122. Rejected Aug. 6, 1974: For, 130,265; against, 141,492	6	2
1974.	A proposition to revise article 10 of the Kansas constitution, relating to apportionment of the legislature. L. 1974, ch. 457; H.C.R. 1059. Adopted Aug. 6, 1974: For, 137,290; against, 120,577	10	
1974.	A proposition to amend section 1 of article 11 of the Kansas constitution, relating to assessment and taxation. L. 1974, ch. 460; S.C.R. 3. Adopted Aug. 6, 1974: For, 183,759; against, 94,002	11	1
1974.	A proposition to repeal section 3 of article 12 of the Kansas constitution, relating to vesting of title to property owned by religious corporations in trustees elected by such corporations. L. 1974, ch. 456, H.C.R. 1006. Adopted Aug. 6, 1974: For, 135,550; against, 121,209	12	3
1974.	A proposition to amend article 15 of the Kansas constitution by adding a new section 3a thereto to permit the legislature to regulate, license and tax operation of games of "bingo" by certain organizations. L. 1974, ch. 461; S.C.R. 72. Adopted Nov. 5, 1974: For, 499,701, against, 210,052	15	3a
1974.	A proposition to amend the Kansas constitution by revising article 4, relating to elections. L. 1974, ch. 463; S.C.R. 78. Adopted Nov. 5, 1974: For, 484,399; against, 131,159	4	
1974.	A proposition to repeal section 4 of article 15 of the Kansas constitution, relating to public printing and the state printer. L. 1974, ch. 464; S.C.R 91. Adopted Nov. 5, 1974: For, 381,934; against, 218,382	15,4	
1974.	A proposition to revise article 2 of the Kansas constitution, relating to the legislature. L. 1974, ch. 458; H.C.R. 1060. Adopted Nov. 5, 1974: For, 341,392; against, 160,420	2	
1974.	A proposition to amend the Kansas constitution by adding a new section 26 to article 15, concerning oaths of state officers. L. 1974, ch. 459; H.C.R. 1064. Adopted Nov. 5, 1974: For, 490,029; against, 79,697	15	14
1975.	A proposition to amend article 11 of the Kansas constitution by adding a new section 12 thereto relating to assessment and taxation of land devoted to agricultural use. L. 1975, ch. 516; H.C.R. 2005. Adopted Nov. 2, 1976: For, 433,347; against, 343,259	11	12
1980.	A proposition to amend section 9 of article 11 of the Kansas Constitution, relating to works of internal improvements. L. 1980, ch. 350; S.C.R. 1669. Adopted Nov. 4, 1980: For, 513,971; against, 199,747	11	9

YEAR	SUBJECT	ART.	SEC.
1980.	A proposition to amend section 1 of article 14 of the Kansas Constitution, relating to amendment of the state constitution. L. 1980, ch. 355; S.C.R. 1652. Adopted Nov. 4, 1980: For, 488,357; against, 196,021	14	1
1980.	A proposition to revise article 13 of the Kansas Constitution, relating to banks and currency. L. 1980, ch. 356; S.C.R. 1655. Adopted Nov. 4, 1980: For, 582,367; against, 146,278	13	
1985.	A proposition to amend section 10 of article 15 of the constitution of the state of Kansas, relating to intoxicating liquors. L. 1985, ch. 360; S.C.R. 1605. Adopted Nov. 4, 1986: For, 489,646; against, 325,505	15	10
1985.	A proposition to amend section 1 of article 11 of the constitution of the state of Kansas, relating to the taxation of property. L. 1985, ch. 364; H.C.R. 5018. Adopted Nov. 4, 1986: For, 534,799; against, 253,123	11	1
1986.	A proposition to amend article 15 of the constitution of the state of Kansas by adding a new section thereto authorizing the legislature to provide for a state-owned and operated lottery. L. 1986, ch. 414; S.C.R. 1609. Adopted Nov. 4, 1986: For, 515,893; against, 291,411	15	3c
1986.	A proposition to amend the constitution of the state of Kansas by adding a new section thereto authorizing the legislature to permit, regulate, license and tax the operation or conduct of horse and dog racing by bona fide nonprofit organizations and parimutuel wagering thereon; and providing for county option thereon. L. 1986, ch. 416; H.C.R. 5024. Adopted Nov. 4, 1986: For, 483,944; against, 324,143	15	3b
1986.	A proposition to revise article 6 of the constitution of the state of Kansas, relating to education. L. 1986, ch. 417; H.C.R. 5028. Rejected Nov. 4, 1986: For, 365,235; against, 385,093	6	
1986.	A proposition to amend article 11 of the constitution of the state of Kansas by adding a new section thereto, relating to the exemption of property for economic development purposes. L. 1986, ch. 423; H.C.R. 5047. Adopted Aug. 5, 1986: For, 181,685; against, 171,166	11	13
1986.	A proposition to amend section 9 of article 11 of the constitution of the state of Kansas, relating to internal improvements. L. 1986, ch. 432; S.C.R. 1635. Adopted Aug. 5, 1986: For, 211,058; against, 141,600	11	9
1988.	A proposition to amend section 1 of article 10 of the constitution of the state of Kansas, relating to reapportionment of senatorial and representative districts. L. 1988, ch. 405; H.C.R. 5043, Adopted, Nov. 8, 1988: For, 451, 818; against, 260, 567 (unofficial)	10	1

List of Amendments and Proposed Amendments to the Kansas Constitution

YEAR	SUBJECT	ART.	SEC.
1990.	A proposition to revise article 6 of the constitution of the state of Kansas, relating to education. L. 1990, ch. 371; H.C.R. 5010; rejected Nov. 6, 1990: For 245,132; against 377,625	6	1-7
1992.	A proposition to amend section 1 of article 11 of the constitution of the state of Kansas, relating to the taxation of property. L. 1992, ch. 342; H.C.R. 5007; adopted Nov. 3, 1992: For 476,958; against 428,213	11	1
1992.	A proposition to amend article 15 of the constitution of the state of Kansas by adding a new section thereto, prescribing certain rights for victims of crime. L. 1992, ch. 343; S.C.R. 1634; adopted Nov. 3, 1992: For 789,994; against 145,983	15	15
1995.	A proposition to amend section 3a of article 15 of the constitution of the state of Kansas, relating to the games of call bingo and instant bingo. L. 1995, ch. 275; S.C.R. 1602; adopted Apr. 4, 1995: For 241,389; against 174,677	15	3a
1999.	A proposition to amend section 13 of article 11 of the constitution of the state of Kansas, relating to exemption of property used for oil and gas development, exploration and production purposes. L. 1999, ch. 176; H.C.R. 5002; rejected Apr. 6, 1999: For 112,938; against 155,967	11	13
1999.	A proposition to amend section 2 of article 13 of the constitution of the state of Kansas, relating to banks. L. 1999, ch. 184; H.C.R. 5037; adopted Nov. 7, 2000: For 556,725; against 348,323	13	2
2000.	A proposition to amend section 1 of article 11 of the constitution of the state of Kansas, relating to the classification and taxation of aircraft and watercraft. L. 2000, ch. 190; S.C.R. 1629; rejected Nov. 7, 2000: For 433,627; against 445,904	11	1
2005.	A proposition to amend article 15 of the constitution of the state of Kansas by adding a new section thereto, concerning marriage. L. 2005, ch. 211; S.C.R. 1601; adopted Apr. 5, 2005: For 417,627; against 179,432	15	16
2009.	A proposition to amend section 4 of the bill of rights of the constitution of the state of Kansas, relating to the right to bear arms. L. 2009, ch. 152; S.C.R. 1611; adopted Nov. 2, 2010: For 720,102; against 95,957	BR	4
2010.	A proposition to amend section 2 of article 5 of the constitution of the state of Kansas, relating to qualification of voters. L. 2010, ch. 174; S.C.R. 1622; adopted Nov. 2, 2010: For 503,143; against 302,966	5	2
2012.	A proposition to amend section 1 of article 11 of the constitution of the state of Kansas, relating to classification and taxation of watercraft. L. 2012, ch. 180; H.C.R. 5017; adopted Nov. 6, 2012: For 551,479; against 479,792	11	1
2014.	A proposition to amend article 15 of the constitution of the state of Kansas by adding a new section, authorizing the legislature to permit the conduct of charitable raffles by certain nonprofit organizations. L. 2014, ch. 148; S.C.R. 1618; adopted Nov. 4, 2014: For 612,582; against 208,695	15	3d