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January 15, 2021

Kansas House Committee on Federal and State Affairs

RE: **Proponent** Testimony **HCR 5003** The Value Them Both Constitutional Amendment for Life

Dear Chairman Barker and Members of the Committee:

Thank you for giving me the opportunity to testify in support of the Value Them Both Constitutional Amendment for Life.

My name is Elizabeth Kirk, and I am a faculty research associate at the Columbus School of Law at the Catholic University of America. I also serve as an associate scholar at the Charlotte Lozier Institute, the leading national scholarly institute devoted to identifying “policies and practices that will protect life and serve both women’s health and family well-being.”

Please find attached my publication (also [available online](#)), “Impact of the Strict Scrutiny Standard of Judicial Review on Abortion Legislation under the Kansas Supreme Court’s Decision in *Hodes & Nauser v. Schmidt*,” which details my primary concerns with the *Hodes* decision and its impact on current and future statutes in Kansas relating to abortion.

In summary, my chief concerns with the *Hodes* decision are as follows.

First, the Kansas Supreme Court imposed an extremely high bar, known as “strict scrutiny,” for abortion-related legislation to pass constitutional muster. This bar is so stringent that in 1992, the U.S. Supreme Court abandoned it for the more relaxed standard (“undue burden”) that exists still today. Examples of laws that have been stricken by courts using this strict test include parental notice/consent laws and 24-hour waiting periods. This means that such laws in Kansas are now vulnerable to extensive, expensive litigation and to being struck down by courts. Future common-sense regulations on abortion will also be subject to this constitutional hurdle.

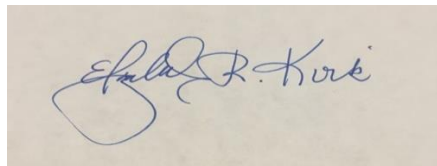
Second, the U.S. Supreme Court has always used a sliding scale to recognize the State's interest in the life of the child as it approaches delivery and to allow states more latitude in restricting abortion after the child is viable. The Kansas Supreme Court's decision included no such allowance. This means that laws such as bans on partial-birth or late-term abortions are now vulnerable as well.

Third, in its decision in *Hodes*, the Kansas Supreme Court relied on several cases which mandated state funding of abortions. This signals that the Court believes publicly funded abortion is required by its decision and therefore the current Kansas state statute providing otherwise is now vulnerable.

In light of these concerns, it is my recommendation that the legislature pass the Value Them Both Amendment, giving Kansans the opportunity to consider the amendment at the ballot box. The proposed amendment is a modest response to *Hodes*. It reverses *Hodes* by declaring the state constitution contains no right to abortion or right to funding for abortion. But, otherwise it leaves the state constitution neutral on the question of abortion, leaving difficult questions to the political and legislative processes of deliberation and compromise.

Thank you for your consideration of my testimony and I ask you to support the Amendment.

Sincerely,

A rectangular image showing a handwritten signature in blue ink on a light-colored background. The signature is cursive and appears to read "Elizabeth R. Kirk".

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