



OPPOSITION TESTIMONY RE HCR 5003

Testimony of Nadine Johnson

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House Federal and State Affairs Committee

January 15, 2021

Chairman Barker and Members of this Committee,

Thank you for the opportunity to present testimony. My name is Nadine Johnson, and I am the Executive Director of the ACLU of Kansas. We are a nonpartisan, non-profit organization that preserves, protects, and strengthens the constitutional liberties of all Kansans.

The ACLU of Kansas opposes the proposed constitutional amendment. The amendment stands in direct contrast to the proud history of our state, a state valuing individual liberty and equality. It will infringe on Kansans' personal autonomy—a principle consistently espoused by the same proponents of this effort. Fundamental constitutional rights should never be on the ballot, yet members of this chamber seek to alter the core principles of individual freedoms enshrined in our state's constitution by placing them up for a vote.

At its base, this proposed amendment seeks to deprive Kansans of their fundamental rights. The Kansas Supreme Court's decision in *Hodes & Nausser, MDS, P.A. v. Schmidt*,¹ the ostensible target of the proposed amendment, affirmed the natural right of personal autonomy in the Kansas Constitution. Advancing this amendment to deprive residents of this fundamental right, to strip away a judicially affirmed autonomy while substituting the legislature's own values for those core freedoms, sets a dangerous precedent.

Further, the proposed constitutional amendment bypasses the difficult work of legislating. This legislature—this supermajority—retains the right to create reasonable, medically justifiable laws concerning reproductive health. Per *Hodes & Nausser*, those laws are subject to heightened judicial scrutiny because they concern inalienable natural rights. Under this standard, a law must be furthering a compelling government interest, in a manner narrowly tailored to that interest. That test is hardly an impossible one to pass, as demonstrated by myriad laws in this country concerning other areas of fundamental constitutional rights. Yet instead of embracing this authority, proponents of this amendment would abandon their core function.

Moreover, the proposed constitutional amendment restricts personal autonomy in an attempt to re-write Kansas's history. Our state constitution is grounded in Lockean beliefs of natural rights that emphasize one's freedom from government intrusion into personal choices. The core principles of personal autonomy are at play here—bodily integrity and bodily control. Kansas should continue to honor its history and uphold its founding principles by respecting the individual rights of all Kansans and championing equality and individual freedom for all who live in this great state.

Finally, the proposed constitutional amendment places fundamental civil rights and civil liberties—and specifically, individuals' equality under law—on the ballot. This is an ill-conceived, dangerous proposition. The foundation of our form of government is the adherence to the rights, liberty, and equality of all persons under the law. Passing this amendment is a direct attempt to discriminate against and undermine the equality of the

¹ *Hodes & Nausser, MDS, P.A. v. Schmidt*, 309 Kan. 610, 440 P.3d 461 (2019) (*per curiam*)

women of Kansas. It puts fundamental individual rights up for a vote. If this body stands for the stripping away of rights from one group now, this or future legislatures can do the same for any other group, because this amendment would create that pathway.

For the above reasons, we urge this committee to oppose House Concurrent Resolution 5003. Thank you.