



Testimony in Support of H.B. 2729

Brittany Jones

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Chairman Kessler, and members of the committee, my name is Brittany Jones. I am an attorney and the President of Kansas Family Voice. We are grateful for the opportunity to explain why H.B. 2729 strengthen constitutional foundation of the state's current Women's Right to Know law and better serves women facing one of life's most consequential decisions.

The central purpose of these amendments is to make explicit in the statutory text what the trial record in has already established as a matter of fact: the informed consent disclosures required by the Woman's Right to Know Act are the speech of the State of Kansas, not the speech of abortion providers.¹

At trial, both plaintiff abortion providers testified under oath that they treat the Women's Right to Know Act disclosures as the State of Kansas's speech. Comprehensive Health of Planned Parenthood Great Plains' corporate representative testified that the disclosures are "the State of Kansas' speech" and "not Comprehensive Health's speech." Dr. Nauser likewise confirmed that "Hodes & Nauser treats the required disclosures in the Act as the message of the state of Kansas."² When Dr. Nauser gave patients the KDHE booklet on fetal development, she would tell them it was material from KDHE that she was required to provide. And Hodes & Nauser affixed a disclaimer to its consent forms stating: "The State of Kansas requires us to make the following statements."³

Under established First Amendment jurisprudence, when the government speaks its own message, it does not violate the free speech rights of private parties whom it requires to transmit that message. The government speech doctrine, recognized by the United States Supreme Court, holds that the government may express its own views without being subject to free speech challenges by those who disagree.⁴

II. The Amendments Codify the Government Speech Framework

The proposed amendments to Women's Right to Know Act accomplish this objective by requiring the Kansas Department of Health and Environment to provide the informed consent forms that physicians must use. By mandating that the disclosures be provided

¹ *Hodes & Nauser, MDs, P.A. v. Kobach*, Case No. 23CV03140.

² *Hodes & Nauser, MDs, P.A. v. Kobach* Transcript.

³ *Id.*

⁴ *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995); *See Pleasant Grove City v. Summum*, 555 U.S. 460, 467–68 (2009).



“on a form provided by the Kansas Department of Health and Environment,” the amendments eliminate any ambiguity about whose speech these disclosures represent. The form is drafted by the state. The form is provided by the state.

This approach mirrors other well-established frameworks in which the government communicates directly with citizens through regulated intermediaries. Pharmacists are required to provide FDA-mandated medication guides. Employers must post government-drafted workplace safety notices. Financial institutions must deliver government-prescribed disclosure forms. In none of these contexts does anyone seriously contend that the government’s message becomes the private speech of the business or other provide. The same principle applies here.

III. Government Speech Strengthens the Act Against Constitutional Challenge

The abortion providers who challenged the Women’s Right to Know Act made free speech claims central to their case. They argued that being required to convey the Women’s Rights to Know Act disclosures violates their right to free expression. But their own testimony defeated that claim: they acknowledged the disclosures are not their speech, and they freely added disclaimers and competing disclosures whenever they disagreed with the state’s message.

By codifying the government speech framework through KDHE-provided forms, these amendments ensure that any future free speech challenge to the Women’s Right to Know Act will face an even stronger barrier. The State of Kansas has every right to communicate truthful, scientifically supported information to women considering abortion. It may do so through its own instrumentalities, including KDHE. Abortion providers cannot claim that their speech is being compelled when they are merely delivering the government’s own form.

By establishing that Women’s Rights to Know Act’s disclosures are provided on forms drafted and supplied by the Kansas Department of Health and Environment, the Legislature will make explicit what the trial record already shows: these disclosures are the government’s own speech, protected by the First Amendment, and grounded in reliable scientific evidence. Women deserve this information. The Constitution permits it. And these amendments ensure it will endure.

For these reasons, we ask that the Committee pass H.B. 2729 favorably.