



Testimony in Opposition to H.B. 2556
House Health & Human Services Committee

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Chairwoman Landwehr, and members of the Committee, my name is Brittany Jones. I am an attorney and the Director of Policy and Engagement for Kansas Family Voice. We represent thousands of Kansans who care deeply about moms and babies and are concerned about tax dollars being used to pay for abortions.

I am here today to highlight the grave consequences that will likely arise because of a Kansas Supreme Court ruling if this body implements Medicaid Expansion. I am not here today to argue whether this case was right or wrong, but to present a legally factual account of the caselaw and what has occurred in states with similar abortion cases when they expanded Medicaid.

The Kansas Supreme Court created a right to abortion in the Kansas Constitution in *Hodes & Nauser v. Schmidt*.¹ This case now requires that strict scrutiny, the highest level of review, be used in all cases that are deemed to abridge the right to abortion.²

First a little background on strict scrutiny. Strict scrutiny requires that the state have a compelling interest before it can limit what is deemed to be a fundamental right.³ Further, the limitation must be narrowly tailored to meet the state's compelling interest.⁴ This standard assumes that the government regulation is invalid.⁵

In the Court's decision, the Court cited to five different state court ruling that required state funding of abortion through Medicaid.⁶ This is backed up by what has happened in multiple other states. According to the abortion industry's research arm itself, seventeen states cover abortions through Medicaid programs.⁷ In nine states, this was a mandate from a court, not through the legislative process.⁸ Many of these are the very cases that our Court relied on in the *Hodes* decision.

By relying on these cases in its decision, the Court has set the groundwork for a case that will eventually deny the state the ability to restrict funding for abortion through

¹ *Hodes & Nauser v. Schmidt*, 309 Kan. 610, 624 (2019).

² *Id.* at 663

³ *Id.*

⁴ *Id.*

⁵ *Id.* at 669 (“Once a plaintiff proves an infringement—regardless of degree—the government's action is presumed unconstitutional.”).

⁶ *Valley Hosp. Ass'n v. Mat-Su Coal. for Choice*, 948 P.2d 963 (Alaska 1997); *Comm. to Defend Reprod. Rights v. Myers*, 625 P.2d 779 (Cal. 1981); *Moe v. Sec'y of Admin. & Fin.*, 417 N.E.2d 387 (Mass. 1981); *Women of the State v. Gomez*, 542 N.W.2d 17 (Minn. 1995); *Women's Health Center v. Panepinto*, 191 W. Va. 436 (W. Va. 1993).

⁷ Guttmacher Institute. “State Funding of Abortion Under Medicaid.” <https://www.guttmacher.org/state-policy/explore/state-funding-abortion-under-medicaid>.

⁸ Alaska, California, Connecticut, Massachusetts, Minnesota, Montana, New Jersey, New Mexico, and Vermont.



Medicaid. In this case, this body will no longer be able to rely on statutory protections because the Court would overturn them.

Since the 2019 *Hodes* decision, lower courts have enjoined the entire Women’s Right to Know Act, including sections that had been in place for decades,⁹ and Clinic Licensing Regulations.¹⁰ Given the opportunity, applying *Hodes*, a court in Kansas would likely be compelled to strike down the state’s prohibition on taxpayer funding of abortion.

The Alaska Supreme Court forced that state to pay for abortions through Medicaid, a case our Court cited in *Hodes*. When they expanded Medicaid, abortions in the state increased by double digit percentages.¹¹ Before expansion only 34% of abortions were paid for by Medicaid as mandated by their court under a similar ruling to *Hodes*.¹² After they expanded Medicaid that percentage jumped to as high as 51% in 2018. In 2021 and 2022 it was 44% which is still a 10% increase in the number of abortions being paid for by taxpayers prior to expansion.¹³

Based on reporting from the abortion industry, we know that last year we were on target for almost 20,000 abortions.¹⁴ Do Kansas taxpayers really want to potentially pay for a majority of those abortions every year? I would posit they do not, no matter how they feel about abortion itself.

Some may argue that this could be true without expansion. That is a partially true assertion except it does not account for the rate of increase in the number of women of childbearing age who would not normally qualify for Medicaid without expansion or those who have left private insurance because of expansion. And the argument does not explain the jump that other states have experienced in the percentage of taxpayer funded abortions after expansion. If the Court takes the step that nine other states have taken to require the state to pay for abortions through Medicaid, expansion will only accelerate the pipeline for abortions paid for by the taxpayer.

I ask for this body to consider the lasting impacts that expanding Medicaid would have on this state and reject such a proposal.

Thank you!

⁹ *Hodes & Nauser v. Kobach*, No. 23-CV-03140 (Kan. D. Ct. Oct. 30, 2023).

¹⁰ *Hodes & Nauser vs. Norman*, 2011-CV-001298 (Kan D. Ct. Dec. 3, 2021).

¹¹ Michael New, An Analysis of How Medicaid Expansion in Kansas Will Affect Abortion Rates, Chalotte Lozier Institute, (Feb. 19, 2022) <https://lozierinstitute.org/an-analysis-of-how-medicaid-expansion-in-kansas-will-affect-abortion-rates/>

¹² *Id.*

¹³ Alaska Induced Terminations 2022 Annual Report, Alaska Department of Health, <https://health.alaska.gov/dph/VitalStats/Documents/PDFs/Alaska%20Induced%20Terminations%202022%20Annual%20Report%20V1.3.pdf>.

¹⁴ Society of Family Planning, Oct. 24, 2023, https://societyfp.org/wp-content/uploads/2023/10/WeCountReport_10.16.23.pdf. Compare to KDHE, Preliminary Abortion Report 2022, <https://www.kdhe.ks.gov/DocumentCenter/View/29328/KS-Abortions-2022-PDF>.