

IN THE SUPREME COURT OF THE STATE OF KANSAS

HODES & NAUSER, MDs, P.A.;)	
HERBERT C. HODES, M.D.; and)	
TRACI LYNN NAUSER, M.D.,)	
)	
Plaintiffs-Appellees,)	
vs.)	Case No. 114153
)	
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.)	
)	

APPLICATION TO FILE AMICUS BRIEF

Pursuant to Rule 6.06 of the Rules of this Court, the American College of Obstetricians and Gynecologists (“ACOG”) respectfully applies for leave to file an amicus brief regarding the issues set forth in the June 20, 2015 Order of the District Court of Shawnee County, Kansas, temporarily enjoining enforcement of the Kansas Unborn Child Protection from Dismemberment Abortion Act, Senate Bill 95 (2015) (the “Act”), which the Court of Appeals, sitting *en banc*, affirmed. ACOG was granted leave and filed an amicus brief in the Court of Appeals in favor of plaintiffs, urging the Court of Appeals to affirm the District Court’s order. Following the affirmance, defendants filed a petition for review by this Court which was granted on April 11, 2016. This case is of central concern to ACOG because of the Act’s interference with the patient-physician relationship and its provisions criminalizing medical procedures that physicians may

perform in their best medical judgment. In further support of this application, ACOG states as follows:

1. ACOG is a non-profit 501(c)(3) organization consisting of physicians specializing in obstetrics and gynecology in the United States. The College's objectives are to foster improvements in all aspects of women's health care; to establish and maintain the highest possible standards for education; to publish evidence-based practice guidelines; to promote high ethical standards; and to encourage contributions to medical and scientific literature. The College's companion organization, the American Congress of Obstetricians and Gynecologists (the "Congress"), is a professional organization dedicated to the advancement of women's health and the professional interests of its members. With more than 57,000 members—representing 90% of all board-certified obstetricians and gynecologists practicing in the United States—the College and the Congress are the leading professional associations of physicians who specialize in women's health care.

2. This appeal involves the constitutionality and enforceability of the Kansas Unborn Child Protection from Dismemberment Abortion Act, Senate Bill 95 (2015). The Act seeks to ban and criminalize a medical procedure known as dilation and evacuation—the most commonly-used and safest method of abortion in the second trimester.

3. The issues in this appeal—specifically, the permissibility of a state legislature criminalizing medical techniques that physicians may need to perform in the exercise of their best medical judgment—are subjects of profound importance to ACOG. ACOG seeks to preserve the physician-patient relationship and physicians' ability to

provide the best evidence-based care to their patients, which at times may include the performance of dilation and evacuation procedures. In addition to physicians who could be subject to criminal sanction, the outcome of this appeal will affect not only the appellees' patients, but all women in the state of Kansas for whom a dilation and evacuation procedure may be medically advisable.

4. ACOG has submitted amicus briefs addressing similar issues to other courts—including the Supreme Court of the United States. *See e.g.*, Brief for American College of Obstetricians and Gynecologists et al. as Amici Curiae Supporting the Government, *Sebelius v. Hobby Lobby, Inc.*, 134 S. Ct. 2751 (Jan. 28, 2014) (No. 12-354). ACOG's briefs have been cited as medical authority in numerous judicial opinions related to issues of women's health. *See, e.g.*, *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 2799 (2014); *Stenberg v. Carhart*, 530 U.S. 914, 932-36 (2000); *Hodgson v. Minnesota*, 497 U.S. 417, 454 n.38 (1990); *Simopoulos v. Virginia*, 462 U.S. 506, 517 (1983); *see also Greenville Women's Clinic v. Bryant*, 222 F.3d 157, 168 (4th Cir. 2000).

5. As noted, ACOG was previously granted leave to file an amicus brief in support of the plaintiffs in this case in the Court of Appeals.

For these reasons, pursuant to Rule 6.06, ACOG respectfully requests that the Court enter an order granting its application to file an amicus brief.

Dated: May 3, 2016

Respectfully submitted,

/s/ Don P. Saxton

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of this Application to File Amicus Brief was sent by United States Mail, postage prepaid, on May 3, 2016, to:

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