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July 23, 2018

VIA ELECTRONIC FILING

The Clerk of the Appellate Courts
Kansas Judicial Center
301 S.W. 10th Ave.
Topeka, KS 66612-1507

Re: *Hodes & Nauser, M.D.s, P.A., et al. v. Derek Schmidt, et al.*
Appellate Case No. 15-114153-S
Response to Rule 6.09(b) Letter
Planned Parenthood of the Heartland v. Reynolds, No. 17-1579 (Iowa 2018)

Dear Clerk of the Appellate Courts:

Planned Parenthood v. Reynolds considered an Iowa abortion regulation under the Iowa Constitution's due-process clause. But the Iowa due-process clause is markedly different from Section 1 of the Kansas Constitution. Indeed, although the Iowa Constitution includes an inalienable-rights provision akin to Kansas's Section 1 (Iowa Const., art. I, § 1), that provision was never argued as the source of an Iowa abortion right.

Reynolds contrasts sharply with this Court's case law. In Kansas, constitutional analysis is moored in the language and history of the people's charter, as "the best and only safe rule for ascertaining the intention of the makers ... is to abide by the language they have used" and "the understanding of the people when they adopted it." *Gannon v. State*, 298 Kan. 1107, 1148, 319 P.3d 1196 (2014) (citations omitted); see also *State v. Riffe*, ___ Kan. ___, 418 P.3d 1278, 1285 (2018) (Stegall, J., concurring). But the Iowa court "freed [itself] from the private views of the constitution's framers" and instead applied "current prevailing standards" that it believed "mark the progress of a maturing society." *Reynolds*, at 49 (citations omitted). And the Iowa court also employed a divergent approach under the Iowa due-process clause (a provision Kansas does not have) from the federal due-process analysis (something Kansas has never done).

The Kansas Constitution was largely modeled on the Ohio—not Iowa—Constitution. The Ohio Supreme Court has held that Section 1 of the Ohio Constitution is not a source of legally enforceable rights. *State v. Williams*, 728 N.E.2d 342, 354 (Ohio 2000) (implicitly overruling *Preterm Cleveland v. Voinovich*, 627 N.E.2d 570 (Ohio Ct. App. 1993) (dealing with abortion)). See Appellants' Reply Brief, at 10. The *Williams* court's holding echoes here:

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Similar to the language in the Declaration of Independence and other state constitutions, the language in Section 1, Article I of the Ohio Constitution is not an independent source of self-executing protections. Rather, it is a statement of fundamental ideals upon which a limited government is created. But it requires other provisions of the Ohio Constitution or legislative definition to give it practical effect.

Respectfully submitted,

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/s/ Sarah E. Warner

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CERTIFICATE OF SERVICE

I hereby certify that on July 23, 2018, the above response was filed by electronic means, which effects service on registered Kansas counsel and at least one representative of each interested party united in interest.

/s/ Sarah E. Warner
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