

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

FILED

OCT 15 2015

FEATHER L. SMITH  
CLERK OF APPELLATE COURTS



HODES & NAUSER, MDs, P.A.; )  
HERBERT C. HODES, M.D.; and )  
TRACI LYNN NAUSER, M.D., )

Plaintiffs-Appellees, )

vs. )

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. )

Case No. 15-114153-A

APPLICATION TO FILE *AMICUS* BRIEF

Under 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 was scheduled to take effect on July 1, 2015. 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 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

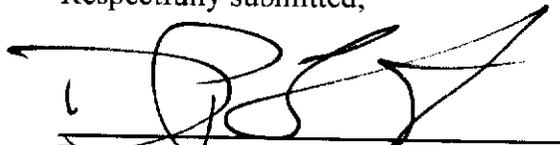
be subject to criminal sanction, the outcome of this appeal will affect not only the appellees' patients, but all women in the state of Kansas for whom a dilation and evacuation procedure may be medically advisable.

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.*, 134 134 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).

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 regarding the issues set forth in the lower court's June 20, 2015 Order.

Dated: October 14, 2015

Respectfully submitted,



DON SAXTON, KS Bar #21978  
Saxton Law Firm LLC  
1000 Broadway, Suite 400  
Kansas City, MO 64105  
Tel.: (816) 471-1700  
Fax: (816) 471-1701

*Counsel of Record for American College of  
Obstetricians and Gynecologists*

/s/ Kimberly A. Parker

KIMBERLY A. PARKER

SKYE L. PERRYMAN

BRITTANI KIRKPATRICK IVEY

SOUVIK SAHA

WILMER CUTLER PICKERING

HALE AND DORR LLP

1875 Pennsylvania Ave., N.W.

Washington, D.C. 20006

(202) 663-6000

*Counsel of Record for American College of  
Obstetricians and Gynecologists*

## 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 October 14, 2015, to:

ROBERT V. EYE  
ROBERT V. EYE LAW OFFICE, LLC  
123 S.E. 6<sup>th</sup> Avenue, Suite 200  
Topeka, KS 66603

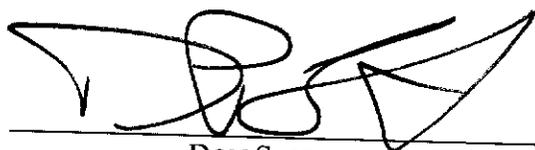
TERESA A. WOODY  
THE WOODY LAW FIRM PC  
1621 Baltimore Avenue  
Kansas City, MO 64108

JANET CREPPS  
GENEVIEVE SCOTT  
ZOE LEVINE  
CENTER FOR REPRODUCTIVE RIGHTS  
199 Water Street, 22<sup>nd</sup> Floor  
New York, NY 10038

ERIN THOMPSON  
THOMPSON LAW FIRM LLC  
106 E. 2<sup>nd</sup> Street  
Wichita, KS 67202

SARAH E. WARNER  
SHON D. QUALSETH  
STEPHEN R. MCALLISTER  
THOMPSON, RAMSDELL &  
QUALSETH, P.A.  
333 West 9<sup>th</sup> Street  
P.O. Box 1264  
Lawrence, KS 66044

JEFFREY A. CHANAY  
*Chief Deputy Attorney General*  
DENNIS D. DEPEW  
*Deputy Attorney General*  
OFFICE OF THE ATTORNEY GENERAL  
DEREK SCHMIDT  
Memorial Building, 3<sup>rd</sup> Floor  
120 S.W. 10<sup>th</sup> Avenue  
Topeka, KS 66612



---

DON SAXTON  
KS #21978