



Court: Supreme Court

Case Number: 114153

Case Title: HODES & NAUSER, MDS, P.A.;
HERBERT C. HODES, M.D.; AND
TRACI LYNN NAUSER, M.D., APPELLEES,
V.
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, APPELLANTS.
Type: Motion to File Amici Curiae Brief of the ACLU-KS,
et al.

Motion Granted: Amici Curiae brief to be filed on
or before 10/03/2016.

SO ORDERED.

A handwritten signature in cursive script, appearing to read "Lawton R. Nuss".

/s/ Lawton R. Nuss, Chief Justice

No. 114153

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,

v.

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 *AMICI CURIAE* BRIEF OF THE
CONSTITUTIONAL ACCOUNTABILITY CENTER AND THE ACLU of KANSAS
IN SUPPORT OF PLAINTIFFS-APPELLEES AND AFFIRMANCE

Pursuant to Rule 6.06 of this Court, the Constitutional
Accountability Center (“CAC”) and the American Civil Liberties Union
Foundation of Kansas (“ACLU-KS”), by and through their undersigned
attorneys, respectfully move for leave to file an *amici curiae* brief in
support of Plaintiffs-Appellees urging this Court to affirm the judgment
of the district court.

In support of this motion, *amici* state:

1. *Amicus curiae* Constitutional Accountability Center (CAC) is
a think tank, public interest law firm, and action center dedicated to
fulfilling the progressive promise of our Constitution’s text and history.

CAC works in our courts, through our government, and with legal scholars and the public to improve understanding of the Constitution and to preserve the rights, freedoms, and structural safeguards that our nation's charter guarantees.

2. Founded more than fifty years ago, the ACLU-KS has approximately 3,000 members in Kansas and is an affiliate of the national ACLU. Over the past fifty years, the ACLU-KS has participated, either as direct counsel or as *amicus curiae*, in numerous cases in Kansas's state and federal courts to advocate for a broad interpretation of constitutional rights and liberties. In particular, the ACLU-KS has frequently participated in cases involving reproductive freedom.

3. CAC and the ACLU-KS have a strong interest in this case and the questions it raises about the scope of the Kansas Constitution's protection of substantive fundamental rights and whether the Kansas Constitution grants lesser protections for substantive fundamental rights than the U.S. Constitution.

4. CAC's and the ACLU-KS's brief will provide the Court with a unique perspective by making arguments that are grounded in the

text and history of the Kansas and U.S. Constitutions. More specifically, *amici* will argue that Section 1 of the Kansas Constitution's Bill of Rights and Section 1 of the Fourteenth Amendment share a common history: both were written to incorporate the principles of the Declaration of Independence and guarantee broad protection of substantive fundamental rights. Despite the different wording of the liberty guarantees of the Kansas Bill of Rights and the Fourteenth Amendment to the U.S. Constitution, both guarantees ensure the full promise of liberty and equal dignity for all in line with the principles spelled out in the Declaration of Independence. Thus, contrary to arguments made by Defendants-Appellants and their *amici*, the difference in wording of Section 1 of the Kansas Constitution and Section 1 of the Fourteenth Amendment does not support reading the Kansas Constitution to be less protective of substantive fundamental rights. Section 1 of the Kansas Constitution, no less than Section 1 of the Fourteenth Amendment, protects the full scope of liberty and equal dignity for all, including a woman's right to choose abortion.

5. CAC has filed *amicus* briefs addressing the text and history of the Fourteenth Amendment in other courts—including the Supreme

Court of the United States. *See, e.g.* Brief of Constitutional Accountability Center as *Amicus Curiae* in Support of Petitioners, *Whole Women’s Health v. Hellerstedt* (No. 15-274); Brief of Constitutional Law Professors as *Amici Curiae* in Support of Petitioners, *McDonald v. City of Chicago* (No. 08-1521).

6. Counsel for Appellees consents to the filing of a brief by *amici curiae* CAC and ACLU-KS, and counsel for Appellants does not object to the filing of a brief by *amici curiae* CAC and ACLU-KS.

For these reasons, pursuant to Rule 6.06, *amici* respectfully request that the Court enter an order granting its application to file an *amici curiae* brief.

Respectfully submitted,

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Dated: June 23, 2016

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing motion of the Constitutional Accountability Center and ACLU of Kansas for leave to file its brief *amici curiae* in support of plaintiffs-appellees were served, via email through the Court's electronic filing system, on June 23, 2016, on the following counsel:

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