

IN THE SUPREME COURT OF THE STATE OF KANSAS

**Hodes & Nauser, MDs, P.A.,
and Traci Lynn Nauser, M.D.**

v.

Derek Schmidt and Stephen M. Howe.

County Appealed From: **Shawnee**

District Court Case No(s): **2015CV490**

Proceeding Under Chapter: **60**

Party Filing Appeal: **Schmidt, Howe**

Party or Parties Who Will Appear as Appellees: **Hodes &
Nauser, Traci Lynn Nauser**

DOCKETING STATEMENT - CIVIL

The docketing statement is used by the court to determine jurisdiction and to make calendar assignments under Rules 7.01(c) and 7.02(c). This is not a brief and should not contain argument or procedural motions.

1. **Civil Classification:** From the list of civil topic sub-types listed at the end of this form, choose the **one** which best describes the **primary** issue in this appeal.
Constitutional Law

2. **Proceedings in the District Court:**
 - a. Trial judge from whose decision this appeal is taken: **Hon. Teresa L. Watson**
 - b. List any other judge who has signed orders or conducted hearings in this matter:
Hon. Larry D. Hendricks, Hon. Richard D. Anderson
 - c. Was this case disposed of in the district court by:
 Jury trial
 Bench trial
 Summary judgment
 Dismissal
 Other
 - d. Length of trial, measured in days (if applicable): **N/A**
 - e. State the name of each court reporter or transcriptionist who has reported or transcribed any or all of the record for the case on appeal. (This is not a substitute for a request for transcript served on the individual reporter or transcriptionist under Rule 3.03.)
Tracy E. Woodward, Blair P. Capps
 - f. State the legal name of all entities that are NOT listed in the case caption (including corporations, associations, parent, subsidiary, or affiliate business entities) but are parties or have a direct involvement in the case on appeal:
N/A

- g. State the name, address, telephone number, fax number, and e-mail address of every attorney who represented a party in district court if that attorney's name does NOT appear on the certificate of service attached to this docketing statement. Clearly identify each party represented.

All counsel are on certificate of service

3. Jurisdiction:

- a. Date journal entry, judgment form, or other appealable order filed: **April 7, 2021**
- b. Is the order appealed from a final order, *i.e.*, does it dispose of the action as to all claims by all parties? **Yes**
- c. If the order is not a final disposition as to all claims by all parties, did the district court direct the entry of judgment under K.S.A. 60-254(b)? **N/A**
If not, state the basis on which the order is appealable.
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- d. Date any posttrial motion filed: **N/A**
- e. Date disposition of any posttrial motion filed: **N/A**
- f. Date notice of appeal filed in district court: **May 6, 2021**
- g. Other relevant dates necessary to establish this court's jurisdiction to hear the appeal, *i.e.*, decisions of administrative agencies or municipal courts and appeals therefrom: **N/A**
- h. Statutory authority for appeal: **K.S.A. 60-2101(b)**
- i. Are there any proceedings in any other court or administrative agency, state or federal, which might impact this case or this court having jurisdiction (yes or no)? **No**
If "yes," identify the court or agency in which the related proceeding is pending. List the case captions and the case or docket numbers.

4. Constitutional Challenges to Statutes or Ordinances:

- Was any statute or ordinance found to be unconstitutional by the district court (yes or no)? **Yes**

If "yes," what statute or ordinance?

Kansas Unborn Child Protection From Dismemberment Abortion Act (Kansas Senate Bill 95 (2015), codified at K.S.A. 65-6741 *et seq.*)

5. Related Cases/Prior Appeals:

- a. Is there any case now pending or about to be filed in the Kansas appellate courts which:
- (1) Arises from substantially the same case as this appeal (yes or no)? **No**
If "yes," give case caption and docket number.
- (2) Involves an issue that is substantially the same as, similar to, or related to an issue in this appeal (yes or no)? **No**

If “yes,” give case caption and docket number.

- b. Has there been a prior appeal involving this case or controversy (yes or no)?

Yes

If “yes,” give case caption and docket number.

Hodes & Nauser v. Schmidt, No. 114153

6. Brief statement (less than one page), without argument, of the material facts. This is not intended to be a substitute for the factual statement that will appear in the brief.

This case concerns the constitutionality under the Kansas Constitution of the Kansas Unborn Child Protection From Dismemberment Abortion Act (Kansas Senate Bill 95 (2015), codified at K.S.A. 65-6741 *et seq.*). In a previous appeal from a temporary injunction, this Court found that Section 1 of the Kansas Constitution includes a right to personal autonomy that encompasses the right to terminate a pregnancy, and that laws regulating abortion are subject to the strict scrutiny test. *Hodes & Nauser, MDs, P.A. v. Schmidt*, 309 Kan. 610, 650, 668-69, 440 P.3d 461 (2019). The Court remanded the case to the district court for further proceedings, noting that “there are no Kansas cases applying strict scrutiny to natural rights.” 309 Kan. at 667.

On remand, the parties conducted discovery and designated expert witnesses. Both parties moved for summary judgment. The district court granted Plaintiffs’ motion, finding that “there is a compelling government interest in promoting respect for the value and dignity of human life,” but that “the Act is not narrowly tailored to further this interest.” The district court thus found the law “unconstitutional and unenforceable,” and granted a permanent injunction prohibiting enforcement of the law.

7. Concise statement of the issues proposed to be raised. You will not be bound by this statement but should include issues now contemplated. Avoid general statements such as “the judgment is not supported by the law.”

The district court improperly applied the strict scrutiny test to find the law unconstitutional.

The district court incorrectly found that the state does not have a compelling interest in regulating and maintaining the ethical integrity of the medical profession.

The district court incorrectly found that the law was not narrowly tailored to further the legitimate state interest in promoting respect for the value and dignity of human life.

The district court correctly disagreed with the legal reasoning and conclusions of the majority opinion in *Hodes & Nauser, MDs, P.A. v. Schmidt*, 309 Kan. 610, 440 P.3d 461 (2019), albeit while following them.

Whether the prior decision in *Hodes & Nauser, MDs, P.A. v. Schmidt*, 309 Kan. 610, 440 P.3d 461 (2019), should be overruled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 6, 2021, I electronically filed this document with the Clerk of the Court using the Court's electronic filing system, which will send a notice of electronic filing to all counsel of record. Courtesy copies were also sent via email to:

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