

Approved: 3-12-09
Date

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman Pete Brungardt at 10:30 a.m. on February 24, 2009, in Room 143-N of the Capitol.

All members were present except:

Senator Tim Owens- excused
Senator Roger Reitz- excused

Committee staff present:

Jason Long, Office of the Revisor of Statutes
Julian Efir, Kansas Legislative Research Department
Connie Burns, Committee Assistant

Conferees appearing before the committee:

Kari Ann Rinker, Kansas National Organization for Women
Professor Jeffrey D. Jackson, Kansas NOW
Krista Kastler, Mainstream Coalition
Anthony Singer, Wichita, Kansas
Pat Lehman, Wichita, Kansas
Melanie Jenney, Wichita, Kansas
Pedro Inigonegaray, Attorney PLI Law, Topeka, Kansas
Beatrice Swoopes, Associate Director, Kansas Catholic Conference
Judy Smith, State Director, Concerned Women for America of Kansas
Jeanne Gawdun, Kansans for Life

Others attending:

See attached list.

SCR 1608 - Kansas constitutional amendment: equal rights; no discrimination based on sex.

Chairman Brungardt opened the hearing on **SCR 1608**.

Staff provided an overview on the Senate concurrent resolution.

Senator Faust-Goudeau spoke in favor of the bill. (Attachment 1) SCR 1608 is an act that will serve as a collective constitutional commitment toward more comprehensive protection against sex discrimination.

Kari Ann Rinker, Kansas National Organization for Women, appeared in favor of the bill. (Attachment 2) The language of the amendment is "Equality of rights under the law shall not be denied or abridged by the state or any of its political or taxing subdivisions on account of sex." This language was selected because it was the chosen text of the Federal Equal Rights Amendment. The pursuit of this amendment is simply following through with the unfinished business; it is not about a "hidden agenda" but instead a continuation of the story of the women of Kansas.

Professor Jeffrey D. Jackson, Kansas NOW, spoke in favor of the bill. (Attachment 3) The proposed amendment will provide greater protection from gender discrimination than is currently provided by the United States Constitution's Equal Protection Clause; it appears that any fears that the proposed equal rights amendment will provide a basis for striking down Kansas' ban on same-sex marriage, or will prevent lawful state restriction on abortion are not well-founded. Area the proposed amendment will not affect: Same-Sex Marriage and Abortion. By applying strict scrutiny rather than the current intermediate scrutiny, the proposed amendment will require that state action discriminating on the basis of gender be justified by a compelling state interest and be narrowly-tailored to advance that interest, and it is also likely the amendment will extend protection to neutral regulations that have a disparate impact on one gender, such as pregnancy.

Krista Kastler, Mainstream Coalition, appeared in favor of the bill. (Attachment 4) The basic principle of the amendment is that a person's sex is not a permissible factor in determining his or her legal rights; and the lack of this amendment means a continued denial of full and explicit constitutional recognition of the rights of a

CONTINUATION SHEET

Minutes of the Senate Federal And State Affairs Committee at 10:30 a.m. on February 24, 2009, in Room 143-N of the Capitol.

female citizen.

Anthony Singer, Wichita, Kansas, spoke in favor of the bill. ([Attachment 5](#)) Mr. Singer stated that all children of Kansas, regardless of gender, deserve the same rights and protections.

Pat Lehman, Wichita, Kansas, appeared as a proponent of the bill. ([Attachment 6](#)) Ms. Lehman stated that today women citizens in Kansas actually outnumber the male citizens, but there is one difference; while women work along side the men in our state, serve in public office, pay their taxes, and fully contribute to the good of our state, only the men are in the Kansas Constitution.

Melanie Jenney, Wichita, Kansas, appeared in favor of the bill. ([Attachment 7](#)) Ms. Jenney stated that the constitution conveys class distinction between the sexes, by lacking to define women as equal to men; our constitution effectively defines women as second-class citizens. Women are taxed the same and contribute equally to the system, but are not granted the same protections or rights.

Pedro Inigonegaray, Attorney PLI Law, Topeka, Kansas, ([Attachment 8](#)) Mr. Inigonegaray states that the state constitution protects our most treasured rights; rights determined worth preserving and passing from generation to generation. The symbolic value of adopting a constitutional amendment protecting both current and future Kansans against sex discrimination would affirm our dedication to preservation of equality to citizens of this state.

Harriet Lerner, Ph.D. Clinical Psychologist, Lawrence, Kansas, ([Attachment 9](#)) Pat Jensen, Iowa City, Iowa, ([Attachment 10](#)) and Greater Kansas City Women's Political Caucus, Barbara Womack, Medgan Hall, and Serena Hein, ([Attachment 11](#)) provided written testimony in support of the bill.

Beatrice Swoopes, Associate Director, Kansas Catholic Conference, spoke in opposition to the bill. ([Attachment 12](#)) The amendment is an exercise in vagueness; it is only one sentence long; it is not written to respond to any particular grievances. It is intentionally open-ended, designed as a vehicle to put the abortion question in the hands of the courts. If there are specific concerns that the legislation seeks to address, it should address them.

Judy Smith, State Director, Concerned Women for America of Kansas, (CWA) appeared as an opponent to the bill. ([Attachment 13](#)) CWA feels strongly that this amendment is unnecessary and could lead to unforeseen consequences should it be implemented by the citizens of Kansas. CWA believes this is a thinly-disguised way to ensure that government mandate contraceptive coverage and abortions.

Jeanne Gawdun, Kansans for Life, spoke against the bill. ([Attachment 14](#)) Ms. Gawdun stated that adoption of the amendment threatens salutary and legal limitations on abortion in Kansas, and asked the committee not to pass the proposal.

Chairman Brungardt closed the hearing on **SCR 1608**

The next meeting is scheduled for February 25, 2009. The meeting was adjourned at 12:04 pm

SENATE FEDERAL AND STATE AFFAIRS COMMITTEE

GUEST LIST

DATE 2-24-09

NAME	REPRESENTING
Sharon Joseph Sarah Ruiz	Civil rights proponent Self - Civil rights
Jacque Rinker	Self
Chloe Mangrove	Self
Marina Patricia	Self
Barry Gross	Self
Naomi Durant	self & N.O.W.
Krista Kattler	self & MainStream Coalition
Jason Crocher	Kansas Jackson
THOMAS WEST	KANSAS EQUALITY COALITION
Marta Patricia	KS NOW
Pedro Ruiz Trigonegaray	CIVIL RIGHTS ATTORNEY
Kari Ann Rinker	KS NOW
Linda Jaslin	KS NOW
Pat Lehman	KS KS NOW
Judy Smith	CWA
Janice Gardner	KFL
Reg Y Jones	Self
Mary Cole	self KS NOW
Melanie Jensen	Self
Mary Zakaria-VanPelt	Self
Darlita & Blanca	self
Doris B. Cleeman	CWA
Ashley Shoop	S.K. - Daughters
Beatrice Swope	KS. CATH. CONF.
Kari Presley	Kearney & Associates

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TOPEKA

SENATE CHAMBER

COMMITTEE ASSIGNMENTS

RANKING MINORITY MEMBER: FEDERAL AND STATE AFFAIRS
ETHICS AND ELECTIONS
MEMBER: COMMERCE
LOCAL GOVERNMENT
JOINT COMMITTEE ON ARTS AND
CULTURAL RESOURCES

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Senate Federal and State Affairs Committee
Sen. Pete Brungardt, Chair

Testimony on SCR-1608

By Senator Oletha Faust-Goudean
February 24, 2009

Good morning, Mr. Chair and esteemed colleagues,

I appreciate the opportunity to speak before you today in strong support of SCR-1608. This issue has come before the Legislature in the past without passage, so it is not new to the body. However, there is still a strong desire from individuals of the State of Kansas to address this issue.

SCR-1608 is an act that will serve as a collective constitutional commitment toward more comprehensive protection against sex discrimination. 22 other states, which include Texas, Colorado and Wyoming, currently have some form of explicit protection with regard to sex in their constitutions. I introduce and support SCR-1608 with the intention of adding Kansas to their ranks. The Kansas Equal Rights Amendment is a tool that will encourage a more just judicial system and will affirm the principal of equality for all as bedrock of our state. Currently, the only constitutional rights explicitly afforded to women in Kansas are the right to vote and to acquire property and equal rights in the possession of their children. The rest of their rights have been earned in a piecemeal fashion and consist of statutes and court decisions, which can be repealed and overturned . . . it is simply not the same as a constitutional guarantee. I submit the bill as part of the continuing progression toward equal rights for all in our great state of Kansas.

I strongly feel that the implementation of this law will put the state of Kansas on the map, joining 22 other states that saw a need to place this language in their constitutions, demonstrating that they value the contributions and rights of all citizens, men *and* women.

Thank you for your time and attention in considering this matter.

Oletha Faust-Goudeau
Senator, 29th District



KARI ANN RINKER

Written Testimony and Information Packet

In Support of

HCR 5003 and SCR 1608

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Testimony for

The Senate Committee on Federal and State Affairs

2/24/09

SCR 1608

PROPONENT

Introduction:

Thank you Mr. Chairman and members of the Committee for the opportunity to present testimony on SCR 1608 regarding the Kansas Equal Rights Amendment. I speak to you today as a member of and lobbyist for the Kansas National Organization for Women. I also stand before you as a woman, as a mother and as a citizen of the state. The testimony presented today will represent a broad spectrum of experiences, and I feel honored to contribute to this very important discussion.

History & Tradition:

The language of the proposed amendment is thus: "Equality of rights under the law shall not be denied or abridged by the state or any of its political or taxing subdivisions on account of sex." This language was selected because it was the chosen text of the Federal Equal Rights Amendment. Alice Paul drafted the Federal ERA in 1923. This came on the heels of the 1920 ratification of the 19th Amendment, which gave women the right to vote. The right to vote, although a necessary and critical instrument toward equality for women, still left all other rights of U.S. citizenry undefined and, thus, unprotected under the supreme law of the land. In the forefront of the ERA movement, were two Republican lawmakers, Senator Charles Curtis and Representative Daniel R. Anthony, Jr- both hailing from our great state of Kansas. They first introduced the Federal ERA by way of Joint Resolutions

on December 10, 1923. It was subsequently introduced every year between 1923-1970, where it was continually bottled up in committee. The ERA was finally adopted by the house in 1971 and the senate in 1972. It was then passed along to the states for ratification. It fell just three states short, with 35 of the 38 required states ratifying within the imposed 7-year deadline. Many of the ratifying states amended their constitutions to include the ERA language at that time. Currently, 22 states have ERAs or similar language on their constitutions. I have provided you with a list of those states. Kansas was among the first states to ratify the federal amendment, but it did not proceed with state constitutional action. Currently the only rights guaranteed under the state are the right to vote, own property and equal rights in possession of their children. We can thank women's rights pioneer Clarina Nichols for those additions.

The lack of a constitutional guarantee of women's full rights in the document that defines the fundamental principles by which our state is governed is an oversight. Its omission goes directly against Kansas's long standing tradition of women's rights and a respect for women's strength and equal partnership in its communities. Kansas became a state in 1861 and included a constitutional provision that allowed women the right to vote in school elections. It was only the second state to take this "bold" action. Kansas pressed forward and granted its women full voting rights in 1912, preceding the 19th Amendment by eight years. Kansas produced the first female mayor in the nation, the first female U.S. Treasurer, the heroine Amelia Earhart, and the first female attorney to stand before the U.S. Supreme Court...these are just a few examples among many strong frontier women that made valuable contributions to our state's history and enrichment. In the pursuit of this amendment, we are simply following through with the unfinished business of the heroines of our past. It is not about a "hidden agenda", but instead a continuation of the story of the women of Kansas.

Opposition:

The Kansas ERA is NOT about removing all differences between the sexes. That would be an impossible and undesirable feat. It will not lead to de-segregated prisons, unisex restrooms or the inclusion of women in the draft. One can look to the 22 other states that have ERA's to recognize this as false. Those Texas boys would NOT put up with women utilizing the stall next to them in THEIR public restrooms. Those opposed to this amendment will tell you that writing equal rights for men and women into our constitution will lead to gay marriage and the weakening of our abortion laws. These allegations are made by a group of "concerned women", whose main objective is to denigrate this important debate by making broad sweeping statements about issues that are sensitive and deserving of full disclosure of the facts. There are many states with ERA's that have stricter abortion laws than the state of Kansas. I have provided documentation with my written testimony that may help alleviate any concerns. I invite you to look at the evidence closely...it will dispel the notion of any "ERA/Abortion connection". As for

gay marriage, we already have a constitutional provision that makes such unions illegal. This amendment will not undermine that.

Why?

I have had many conversations about the ERA in the past few months. I have discussed it with the majority of the committee members here today. The question that I have been asked the most is "Why?" "Why is this needed?" I respond to that question with a question of my own, "Why not?" Would any of you here today be comfortable without a guarantee of your constitutional rights? What if you were told that laws would be enacted to protect you, laws that could be overturned at anytime, but you should just trust the government to do the right thing? Would you be comfortable with that? Would you feel like equal members of your society? Or would your exclusion from the sacred document of your state be a glaring reminder of your status as a second-class citizen in the place that you proudly call home? The distinguished members of this committee have an opportunity to lead by example in this issue of equality. You have the opportunity to take the first step toward allowing the voters of Kansas to decide whether their daughters should be included in the constitution of their state. Positive action upon the part of this committee has the very real potential to raise a very large group of the citizens that they represent up from second-class status, putting principles to practice. My daughter was born into this state with a different set of rights than the little boy next to her in the nursery. I feel it is my duty to try to change that for the sake of her children. I appreciate the opportunity afforded to me today, as being one step closer to that goal. Thank you.

Clarina Nichols

Clarina Nichols listened and knitted during debates at the Wyandotte constitutional convention. As the official representative of the Moneka Woman's Rights Association, Nichols was assigned a seat in the convention hall, and she was asked to address the delegates on woman's rights issues. During recess and at every other opportunity, she met with delegates to share her strong views about equality for women and men. Because of her commitment, Nichols made an impact on Kansas history.



Clarina Howard was born in 1810 at West Townshend, Vermont, received an above average education for her day, and married at age twenty. She had three children, taught school, and worked for a newspaper. In 1843 she divorced her husband, Justin Carpenter, and almost immediately married George Nichols, a newspaper editor twenty-eight years her senior. They had one son.

A passionate advocate for woman's rights, Nichols was a recognized leader of the national movement and a champion of many other reform causes long before she decided to move West. In 1854 she joined the New England Emigrant Aid Society and soon moved her family to a claim in southern Douglas County, near Lawrence, Kansas Territory. Her husband died the next year, and after spending much of 1856 on the campaign trail, Nichols moved the family to Wyandotte County, where she became associate editor of the Quindaro *Chindowan*, an abolitionist newspaper.

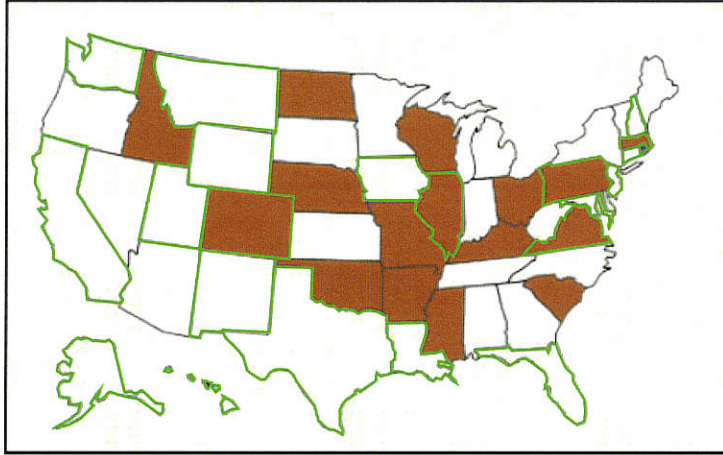
Clarina traveled throughout the territory lecturing about equality, gathering signatures on petitions, and by 1859 building support for her participation at the Wyandotte Convention. These petitions persuaded the delegates to give Nichols a voice and a platform.

The final version of the Wyandotte Constitution reflect Nichols's influence. It included three provisions dear to her heart: women's rights in child custody, married women's property rights, and equality in matters pertaining to public schools.

Kansas was a vital battleground for woman's rights, and events here were important to the national movement. Thus, when the Kansas campaign for equal suffrage was launched in 1867, Susan B. Anthony, Lucy Stone, Olympic Brown, and Elizabeth Cady Stanton joined Clarina Nichols in a valiant but futile effort. Kansas voters rejected amendments for both female and African American suffrage. The cause of woman's rights advanced slowly, thereafter, but it did advance, thanks to women such as Clarina I. H. Nichols. In 1912 Kansas women succeeded in their long effort to amend the state constitution and gain equality at the polls.

Nichols left Kansas in 1871 to be with two of her children in California. She died there in 1885. Through strong speaking and writing, Clarina Nichols made history in Kansas and advanced the cause of human rights.

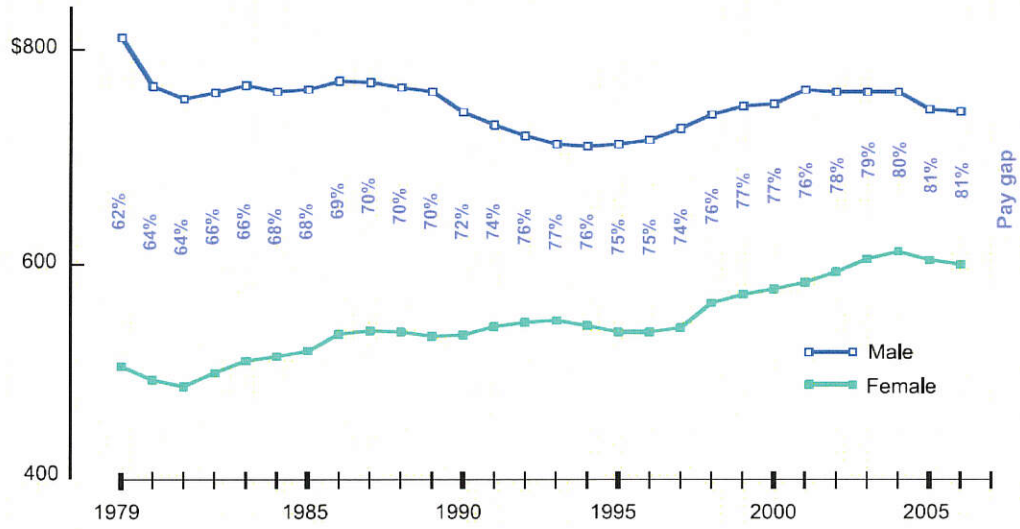
Insurance Prohibition for Abortion



17 states and the federal government prohibit certain private, federal, and/or state funded insurance plans from covering abortion services: AR, CO, ID, IL, KY, MA, MO, MS, ND, NE, OH, OK, PA, RI, SC, VA, WI.

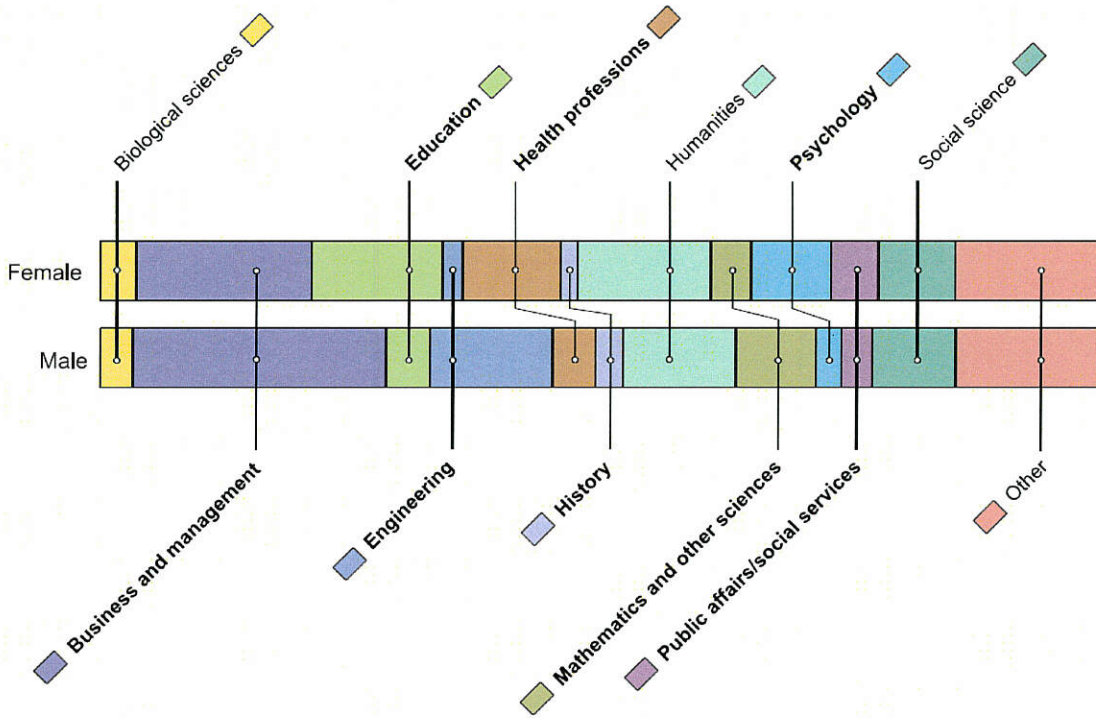
- Insurance Prohibition in Effect
- Insurance Prohibition Enjoined
- States With ERA Amendments

1. Alaska
2. California
3. Colorado
4. Connecticut
5. Florida
6. Hawaii
7. Illinois
8. Iowa
9. Louisiana
10. Maryland
11. Massachusetts
12. Montana
13. New Hampshire
14. New Jersey
15. New Mexico
16. Pennsylvania
17. Rhode Island
18. Texas
19. Utah
20. Virginia
21. Washington
22. Wyoming



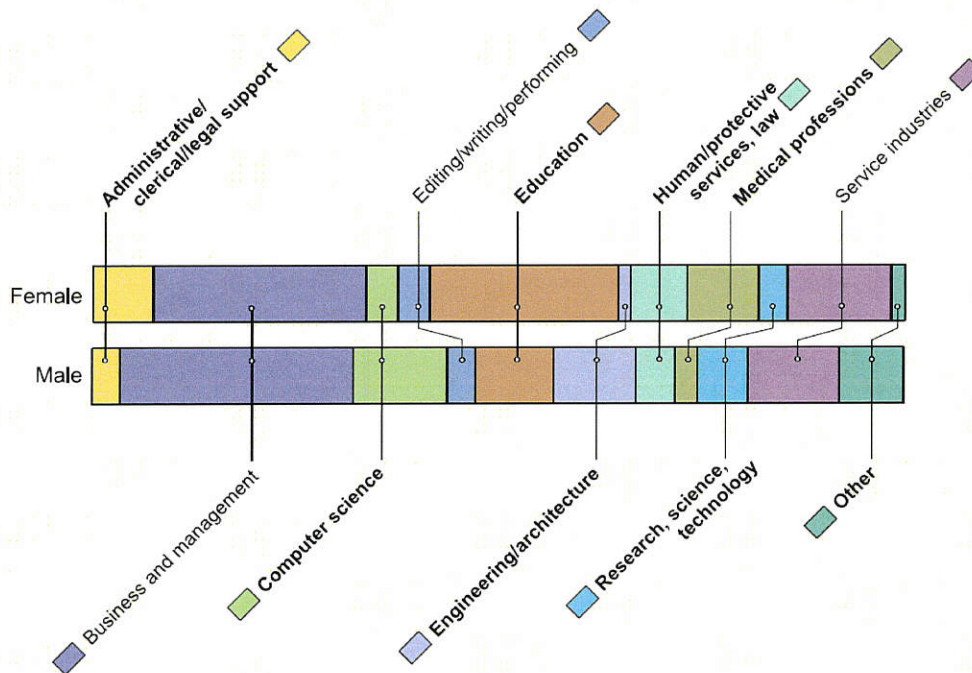
Source: Authors' analysis of U.S. Bureau of Labor Statistics data.

Figure 5. Choice of Undergraduate Major of 1999–2000 Bachelor's Degree Recipients Employed Full Time* in 2001, by Gender



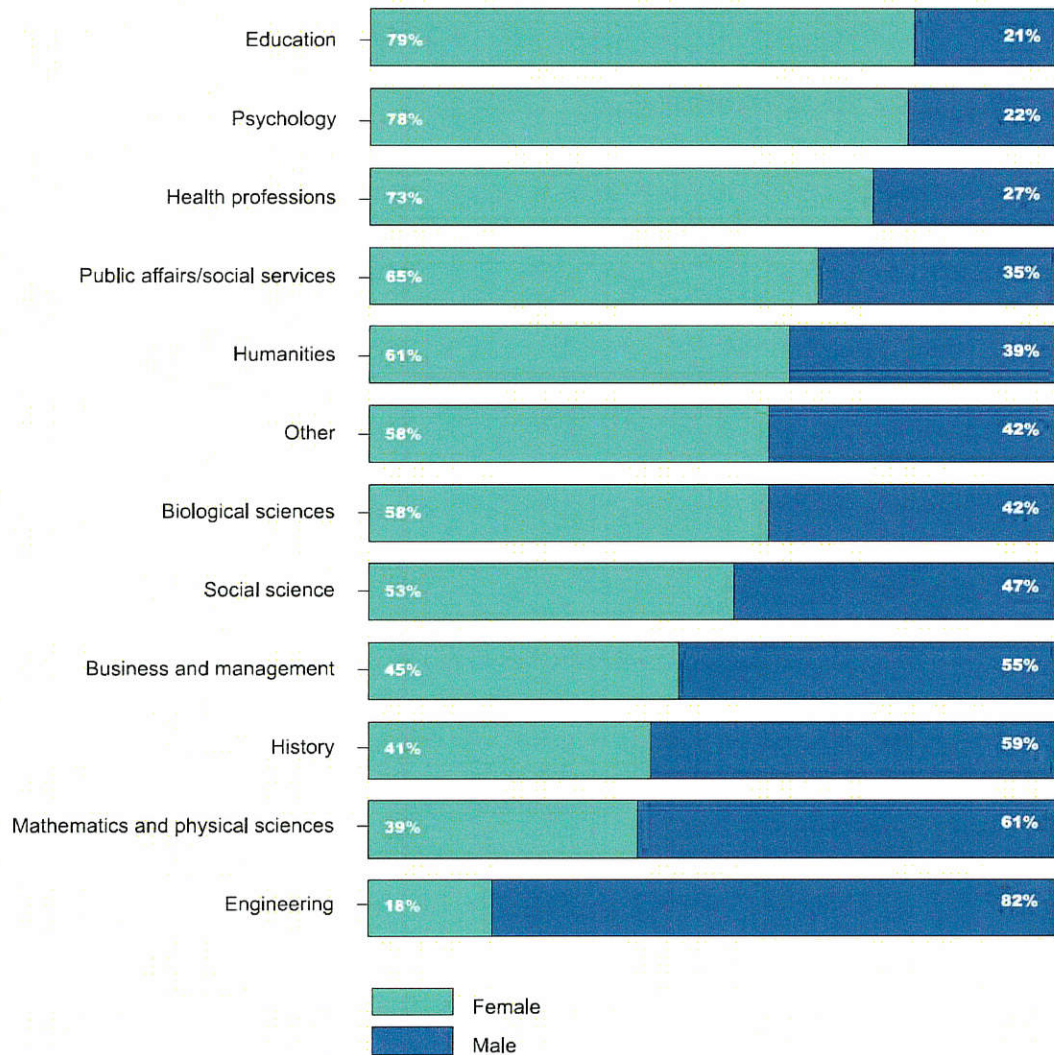
* Includes respondents with multiple jobs, regardless of hours worked in any job.
 Notes: Excludes graduates older than 35 at bachelor's degree completion. **Bold** indicates a significant gender difference (p < .05, 2-tailed t-test).
 Source: U.S. Department of Education, National Center for Education Statistics, 2000–2001 Baccalaureate and Beyond Longitudinal Study.

Figure 7. Occupation of 1999–2000 Bachelor's Degree Recipients Employed Full Time* in 2001, by Gender



* Includes respondents with multiple jobs, regardless of hours worked in any job.
 Notes: Excludes graduates older than 35 at bachelor's degree completion. **Bold** indicates a significant gender difference (p < .05, 2-tailed t-test).
 Source: U.S. Department of Education, National Center for Education Statistics, 2000–2001 Baccalaureate and Beyond Longitudinal Study.

Figure 4. Gender Composition of Undergraduate Majors of 1999–2000 Bachelor's Degree Recipients Employed Full Time* in 2001

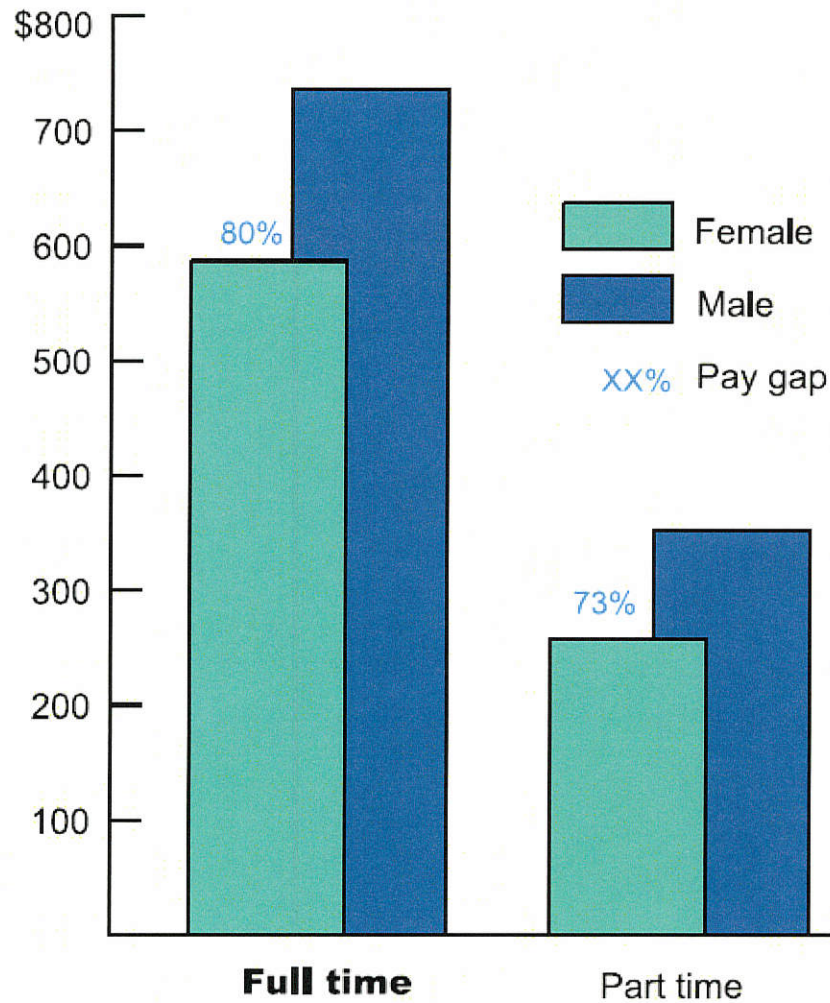


* Includes respondents with multiple jobs, regardless of hours worked in any job.

Note: Excludes graduates older than 35 at completion of bachelor's degree.

Source: U.S. Department of Education, National Center for Education Statistics, 2000–2001 Baccalaureate and Beyond Longitudinal Study.

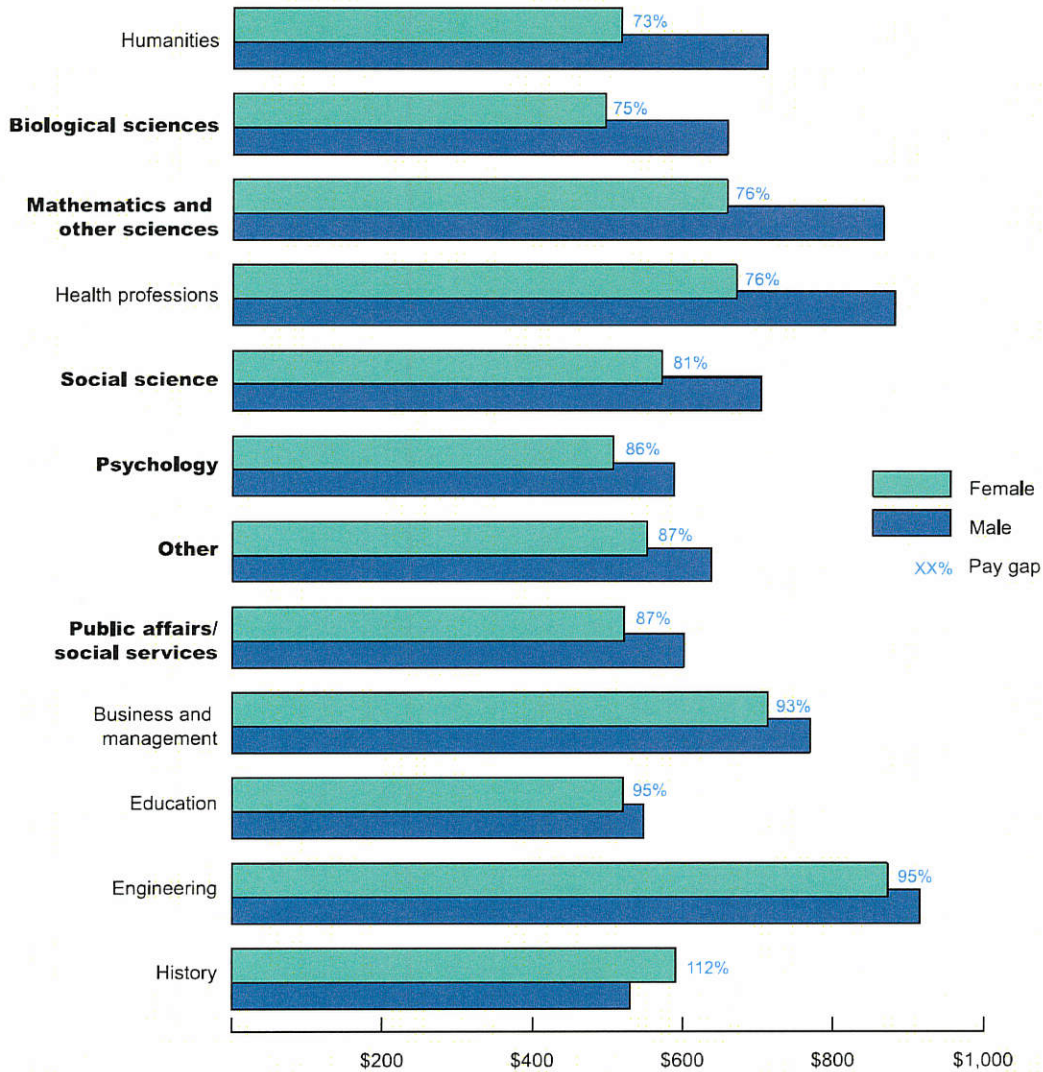
Figure 2. Average Weekly Earnings of 1999–2000 Bachelor’s Degree Recipients Employed in 2001, by Gender and Employment Status



Notes: Includes respondents with multiple jobs, regardless of hours worked in any job; for these respondents, earnings are for the primary job. Excludes graduates older than 35 at bachelor’s degree completion. **Bold** indicates a significant gender difference ($p < .05$, 2-tailed t -test).

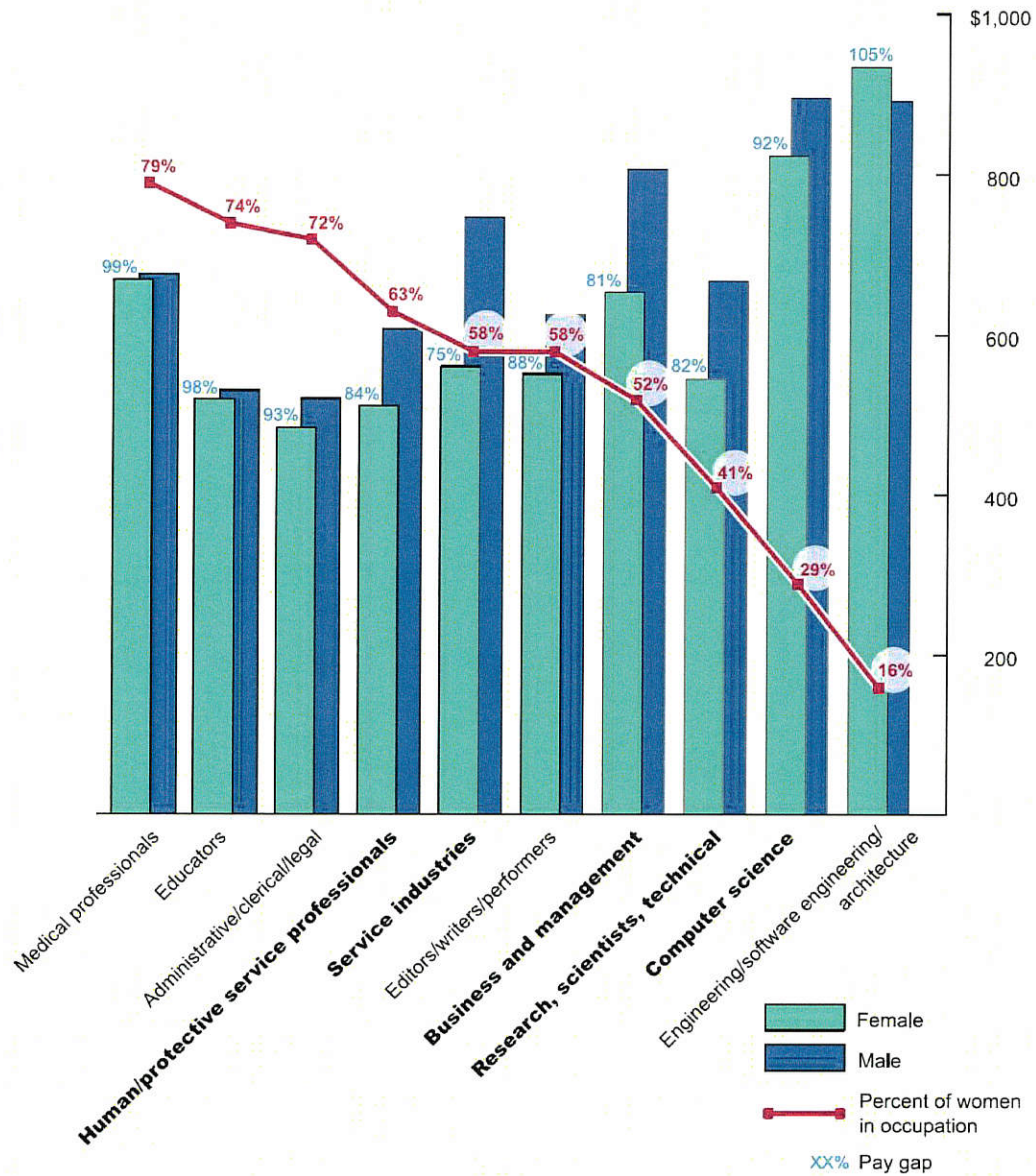
Source: U.S. Department of Education, National Center for Education Statistics, *2000–2001 Baccalaureate and Beyond Longitudinal Study*.

Figure 6. Average Weekly Earnings of 1999–2000 Bachelor’s Degree Recipients Employed Full Time* in 2001, by Gender and Undergraduate Major



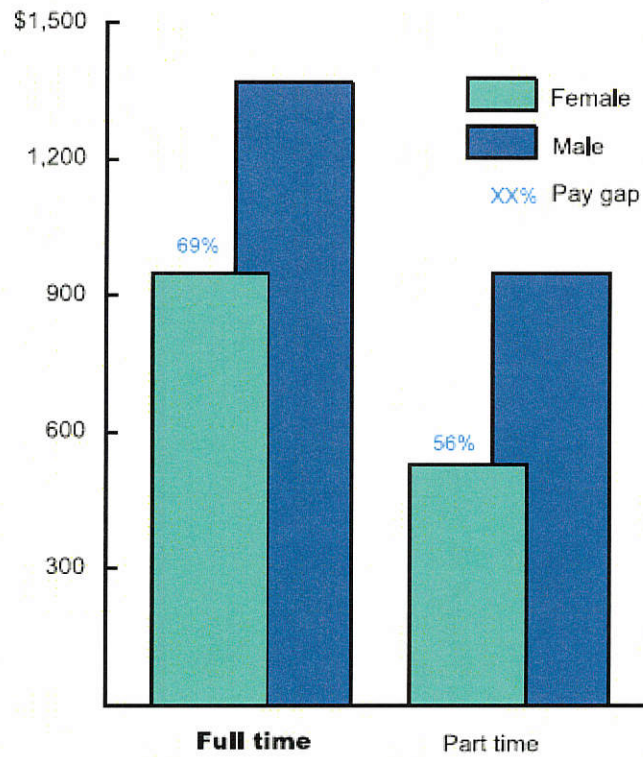
* Includes respondents with multiple jobs, regardless of hours worked in any job; for these respondents, earnings are for the primary job.
 Notes: Excludes graduates older than 35 at bachelor’s degree completion. **Bold** indicates a significant gender difference (p < .05, 2-tailed t-test).
 Source: U.S. Department of Education, National Center for Education Statistics, 2000–2001 Baccalaureate and Beyond Longitudinal Study.

Figure 8. Average Weekly Earnings of 1999–2000 Bachelor's Degree Recipients Employed Full Time* in 2001, by Gender and Occupation



* Includes respondents with multiple jobs, regardless of hours worked in any job; for these respondents, earnings are for the primary job.
 Notes: Excludes graduates older than 35 at bachelor's degree completion. **Bold** indicates a significant gender difference (p < .05, 2-tailed t-test).
 Source: U.S. Department of Education, National Center for Education Statistics, 2000–2001 Baccalaureate and Beyond Longitudinal Study.

Figure 10. Average Weekly Earnings of 1992-93 Bachelor's Degree Recipients Employed in 2003, by Gender and Employment Status



Notes: Includes respondents with multiple jobs, regardless of hours worked in any job; for these respondents, earnings are for the primary job. Excludes graduates older than 35 at bachelor's degree completion. **Bold** indicates a significant gender difference ($p < .05$, 2-tailed t-test).

Source: U.S. Department of Education, National Center for Education Statistics, *2003 Baccalaureate and Beyond Longitudinal Study*.

The survey was conducted for the ERA Campaign Network by Opinion Research Corporation (ORC) CARAVAN Services in July 2001. It involved telephone interviews among a national probability sample of 1,002 adults, comprising 500 men and 502 women, 18 years of age and older, living in private households in the continental United States. ORC's CARAVAN surveys are conducted using the most advanced and reliable methodologies and technologies available. The margin of error is plus or minus 3 percent for the sample as a whole, and plus or minus 4 percent for statistics based only on men or only on women, at the 95 percent confidence level. Note: Opinion Research Corporation, headquartered with its parent corporation ORC International in Princeton, New Jersey, has been known and respected for its high quality opinion and attitude research since its founding in 1938.

Findings

Overwhelmingly, Americans agree that male and female citizens should have equal rights, and the vast majority of Americans want those rights guaranteed by the US Constitution. Most, however, mistakenly assume that the Constitution already guarantees those rights.

Eighty-eight percent want the Equal Rights Amendment adopted into the U.S. Constitution. This is in contrast to the 61 percent during the earlier ERA movement of 1972-1982, when 35 of the 38 required states did ratify it.

Seventy-two percent now actually believe that ERA has already been adopted.

Overall, 96 percent now believe that women and men should have equal rights.

Those overall findings held true for both men and women, and for all the other demographic categories examined, by region, age, education, household income, race, and household makeup.

Following are all the actual questions asked, with the tables showing the distribution of responses for the survey respondents as a whole, and for men and women separately. In those instances in which there are statistically significant differences in the responses of men vs. women, that is so indicated. (If not indicated, any observed differences are not statistically significant.)

1. "In your opinion, should male and female citizens of the United States have equal rights?"

Responses	Total	Men	Women
Yes	96%	95%	97%
No	3%	4%	2%
Don't Know	1%	1%	1%

In all demographic categories studied, between 93 percent and 99 percent agree that male and female citizens should have equal rights.

2. "As far as you know, does the Constitution of the United States make it clear that male and female citizens are supposed to have equal rights?"

Responses	Total	Men	Women
Yes	72%	62%	69%
No	18%	16%	21%
Don't Know	10%	9%	10%

* Statistically significant difference between men and women: Somewhat more women than men are aware that the Constitution does not make it clear.

In all other demographic categories studied, between 60 percent and 80 percent think the Constitution makes it clear that male and female citizens are supposed to have

equal rights, while only between 13 percent and 25 percent think it does not. Younger people are somewhat more knowledgeable than older people in this regard: 22 percent of those in the 18-34 age range are aware that the Constitution does not make it clear, while only 15 percent of those 55 and up are aware – a statistically significant difference.

3. "In your opinion, should the Constitution make it clear that male and female citizens are supposed to have equal rights?"

Responses	Total	Men	Women
Yes	88%	85%	91%
No	9%	11%	6%
Don't Know	3%	4%	3%

* Statistically significant differences between men and women: Somewhat more women than men believe the Constitution should make it clear.

In all other demographic categories studied, between 83 percent and 94 percent believe the Constitution should make it clear that male and female citizens are supposed to have equal rights.

Testimony before the Senate Federal and State Affairs Committee
On Senate Concurrent Resolution No. 1608

by
Professor Jeffrey D. Jackson
Washburn University School of Law
1700 College Ave.
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(785) 670-1833

My purpose in presenting this testimony to the Committee is to address some of the possible effects of Senate Concurrent Resolution No. 1608, which provides that "Equality of rights under the law shall not be denied or abridged by the state or any of its political or taxing subdivisions on account of sex." A study of equal rights amendments passed by other states and the interpretations given them by those states' courts provides a fairly strong basis upon which to draw conclusions about what the likely effect of the amendment will be. It appears that the proposed amendment will provide greater protection from gender discrimination than is currently provided by the United States Constitution's Equal Protection Clause. Further, it appears that any fears that the proposed equal rights amendment will provide a basis for striking down Kansas' ban on same-sex marriage, or will prevent lawful state restrictions on abortion are not well-founded.

A. The Amendment Itself

Twenty states currently have explicit provisions in their state constitutions limiting discrimination on the basis of sex, and one other state's constitution has been construed in that manner.¹ In addition, one other state, California, has provisions prohibiting sex discrimination in employment and public education. The wording of the proposed Kansas amendment is similar to many of these provisions, especially those in Colorado, Maryland, Pennsylvania, and Texas.

One notable feature of the proposed Kansas amendment is that it applies only to "the state or any of its political or taxing subdivisions." As a result, the protection of the Kansas amendment would not extend to private actors, unlike the more expansive constitutional provisions in Pennsylvania and New Jersey. Instead, the amendment's protection would be restricted to discriminatory action taken by the state or its subdivisions.

¹ Those states are Alaska, Colorado, Connecticut, Florida, Hawaii, Illinois, Iowa, Louisiana, Maryland, Massachusetts, Montana, New Hampshire, New Mexico, Pennsylvania, Rhode Island, Texas, Utah, Virginia, Washington and Wyoming. (see attached list of provisions). New Jersey's constitution provides that "all persons" have natural and unalienable rights, and the New Jersey courts have interpreted this as a provision forbidding sex discrimination.

B. Areas the Amendment May Affect

There are two main areas that the proposed Kansas amendment may affect. The first is the level of scrutiny applied by courts in reviewing governmental actions with regard to gender. The second is the possible extension of scrutiny to those neutral state laws that have a discriminatory impact rather than an actual discriminatory intent. In both of these areas, the proposed amendment would provide more protection against discrimination than is currently afforded by the United States Constitution's Equal Protection Clause.

1. The Level of Scrutiny Employed

Currently, the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution provides the standard for determining whether a state law illegally discriminates on the basis of gender. Under the Fourteenth Amendment, challenges alleging that state laws discriminate on the basis of gender are reviewed under intermediate scrutiny. Under this standard of review, a law that treats persons differently on the basis of gender is only valid if the government presents proof that the gender classification serves an important governmental objective and that the objective is substantially advanced by the use of the classification. This intermediate scrutiny is a compromise between the rational basis level of review, which governmental action almost always passes, and the strict scrutiny level of review that is used with racial classifications and which is extremely difficult for governmental action to pass.

Many of the states that have passed constitutional equal rights amendments have interpreted those amendments as requiring that gender based-classifications by the government are now subject to the higher strict scrutiny standard of review. Connecticut, Hawaii, Illinois, Massachusetts, New Hampshire, New Mexico and Texas have all applied strict scrutiny to such claims. Under this standard of review, state action that treats persons differently on the basis of gender is presumed to be unconstitutional and can only be justified by a showing that it is narrowly tailored to achieve a compelling state interest. If a gender-neutral alternative is available to achieve the compelling interest, then the gender-based classification will fail the test.

Several other states have determined that their state equal rights amendments require an even higher level of scrutiny. Pennsylvania has determined that sex is no longer a permissible factor at all, and that even a compelling state interest will not allow a gender based classification to be valid. Maryland, Washington and Colorado prohibit all gender-based classifications except those based on physical characteristics unique to one sex, or those designed to remedy past discrimination.

Of the states that have adopted equal rights amendments, only Virginia, Utah, Rhode Island and Florida have adopted the intermediate scrutiny standard of review. In the case of Virginia, Utah and Rhode Island, courts determined that the intermediate

standard of review was warranted based on the legislative histories of those states' equal rights amendments.

An analysis of different state experiences strongly suggests that Kansas courts would interpret the proposed Kansas equal rights amendment to require that state laws which contain a gender-based classification be subject to strict scrutiny review. This is in line with the interpretation of the majority of states with equal rights amendments, and makes sense in the overall constitutional framework. As standards under the Fourteenth Amendment to the United States Constitution now exist, strict scrutiny is the standard used to review laws that classify on the basis of race, and those that infringe upon fundamental rights. Rational basis review is used to evaluate nonfundamental liberty interests and ordinary classifications that distinguish between similarly situated groups. The intermediate scrutiny that gender-based classifications are currently subject to puts gender discrimination in a constitutional second-class, suggesting that while sexual equality is somewhat important, it does not rise to the level of a fundamental right, and that discrimination on the basis of gender is not as worrisome as race discrimination. The application of strict scrutiny to gender-based claims would reaffirm the importance of gender equality in Kansas.

Further, this added protection is probably needed based on the United States Supreme Court's trend in applying a restrictive interpretation to intermediate scrutiny. As several commentators have noted, court decisions within the last decade have been wildly inconsistent in applying the intermediate scrutiny standard.² As a result, state laws that discriminate on the basis of pregnancy and state laws that disparately impact one gender have nonetheless been upheld under the Fourteenth Amendment analysis. As noted above, this problem would be likely to be addressed under the proposed state equal rights amendment.

Application of the strict scrutiny standard of review would not outlaw all classifications based on gender. Gender-based classifications would still survive if they are based on a compelling state interest and narrowly tailored to advance the interest. Further, states would still be allowed to take into account physical characteristics that are unique to one sex, so long as neither sex is disadvantaged by the resulting laws. Thus, the proposed amendment would not mandate such things as unisex bathrooms. On the other hand, gender classifications based on physical characteristics that disadvantage one gender, such as state action exempting pregnancy from required insurance coverage, would not pass strict scrutiny.

2. Application to Neutral State Laws that Disparately Impact One Gender

A second possible effect of the Kansas equal rights amendment is its possible application to laws that, while neutral on their face, have a disparate impact on one

² For a good summary of the problems with the application of intermediate scrutiny within the last ten years, *see* Linda J. Wharton, "State Equal Rights Amendments Revisited: Evaluating Their Effectiveness in Advancing Protection Against Sex Discrimination", 36 Rutgers Law Journal 1201, 1210-23 (2005).

gender. Under the current Fourteenth Amendment Equal Protection standards, laws that are facially gender-neutral do not violate the Equal Protection Clause absent proof of a discriminatory purpose. Thus, neutral laws which have the effect of disadvantaging one gender are allowed, so long as the purpose in enacting them was not discriminatory. States with equal rights amendments such as Pennsylvania have expanded protection against discrimination to cover those laws that have a disparate impact on one gender, whether or not the actual purpose of the law is discriminatory. There is a possibility that Kansas courts would do so as well under the proposed Kansas amendment.

C. Areas the Amendment Will Not Affect: Same-Sex Marriage and Abortion

Two of the more pervasive fears often expressed with regard to equal rights amendments are that they will prohibit state laws prohibiting same-sex marriage and regulating abortion. Indeed, these were some of the very same fears that helped to defeat the federal equal rights amendment. However, over thirty years of experience by states with equal rights amendments has shown that this fear is largely unjustified.

1. Same-Sex Marriage

While some advocates have attempted to use state equal rights amendments as a basis for overturning laws banning same-sex marriage, for the most part, these attempts have been unsuccessful. The one exception to this has been Hawaii, where the state supreme court held that the state's ban on same-sex marriage would be subject to strict scrutiny. The court's ruling was then promptly overturned by a constitutional amendment restricting same-sex marriage. With that exception, all of the other state courts to address the issue have held that laws banning same-sex marriage do not violate their states' equal rights amendments. This is true even in states such as Maryland and Washington, which have a standard even higher than strict scrutiny for race-based classifications. Even those states which have ended up allowing same-sex marriage, such as Massachusetts, have not relied on equal rights amendments to do so.

Rather, courts addressing the issue have held that bans on same-sex marriage are not classifications on the basis of gender, in that they apply equally to men and women. Both men and women are precluded from marrying same-sex partners, and neither gender is disparately impacted by the ban.³ As a result, it does not appear that the proposed Kansas equal rights amendment would have an impact on Kansas's prohibition of same-sex marriage.

2. Abortion

³ An example of this line of reasoning is *Baker v. State*, 744 A.2d 864 (Vt. 1999). Ironically, in that case the Vermont Supreme Court held that excluding same-sex couples from the benefits of marriage violated the Vermont Constitution. However, the court refused to hold that it violated the equal rights provision of the Vermont Constitution because it did not discriminate on the basis of sex.

Another fear frequently expressed, even in those states which do not strictly regulate abortion, is that an equal rights amendment would be interpreted to prohibit the state from doing so. As with the same-sex marriage issue, however, the experiences in states with equal rights amendments suggest that this fear is not well-founded. Most abortion-related cases in the states have dealt with whether states should be required to provide funding for medically necessary abortions for low-income women. New Mexico and Connecticut have held that their state laws prohibiting public funding for abortion violated their equal rights provisions, while Texas, Florida and Pennsylvania have held that their laws do not. Even in those instances where laws prohibiting public funding for abortions have been found to violate a state's equal rights amendment, however, the reason for the violation has been that the state did not apply the same standard of medical necessity to males and females. No state has held that other restrictions on abortion violate its equal rights amendment. Thus, it does not appear that equal rights amendments play a part to any great degree in restricting allowable state regulations on abortion.

Conclusion

From the experiences that a number of states have had in interpreting and applying their equal rights provisions over the last thirty years, it is possible to make some predictions as to how the proposed Kansas equal rights amendment would be interpreted and the effect it will have on Kansas law. These experiences suggest that the proposed amendment will provide greater protection against gender discrimination than that currently provided by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. By applying strict scrutiny rather than the current intermediate scrutiny, the proposed amendment will require that state action discriminating on the basis of gender be justified by a compelling state interest and be narrowly-tailored to advance that interest. It is also likely that proposed amendment will extend protection to neutral regulations that have a disparate impact on one gender, such as pregnancy.

On the other hand, it appears that any fears that the proposed amendment will be used to strike down state bans on same-sex marriage, or restrict state regulation on abortion are not justified. Rather, most states that have addressed these questions have held that state laws banning same-sex marriage do not implicate their equal rights amendments, and there is little support for the proposition that the proposed amendment will unduly affect any proposed state abortion restrictions.



Kansas Senate Federal and State Affairs Committee
Kansas Equal Rights Amendment

by Krista Kastler
KU MSW Student
MainStream Coalition

February 24, 2009

My name is Krista Kastler, and I am a 25 year-old female studying social welfare in the master's program at the University of Kansas. I grew up in Kansas, as did my mother, and my younger sister. I am speaking to you on behalf of myself, my family, and my fellow citizens in support of the Kansas Equal Rights Amendment.

The basic principle of this amendment is that a person's sex is not a permissible factor in determining his or her legal rights. The lack of this amendment means a continued denial of full and explicit constitutional recognition of my rights as a female citizen. I am proud of Kansas' historical promotion of women's rights as demonstrated in the areas of access to the voting booth and property ownership, as well as the state's ratification of the federal ERA in 1972. I believe that it is again time for Kansas to act as a leader in this area by passing this amendment and leave no doubt that the liberties and protections guaranteed in its constitution apply to all Kansans.

With passage of an Equal Rights Amendment, a higher level of constitutional scrutiny for sex-based classifications would be applied than the current intermediate level provided under the federal Equal Protection Clause. One example of how this would apply to women is in the case of a sexual harassment or discrimination lawsuit. According to one study, "under strict scrutiny, a claimant alleging discrimination has a seventy-three percent probability of success, while under intermediate scrutiny, a litigant will prevail only forty-seven percent of the time."⁽¹⁾ While I feel very fortunate to not have personally experienced direct sexual harassment or discrimination at school or at work, I am strongly convicted to speak on behalf of others who have, including my mother and one of my classmates. This amendment would make it easier for women to take legal action against injustices they face.

If passed, the symbolic impact of a Kansas Equal Rights Amendment would likely reach outside of our state border to the national and international levels. I returned in July of 2008 from serving for two years in the Peace Corps China TEFL program. I was assigned to teach English at a vocational college in Chongqing, China, where I was shocked at stories I heard from my female Chinese colleagues and friends at some of the discriminatory policies they were challenged with. Job applications required information on the applicant's height, weight, and bust size. At my school, men were frequently promoted into administration positions faster than women. Observing all of this worried me for what my female students might face after graduation, but at the same time made me feel so grateful for the progress and protections I have as a United States citizen.

After returning home, I was quickly reminded that although our situation is better than that of many of our international counterparts, there remains much room for improvement. We have never had a female president, and women are underrepresented in the federal Congress, as well as our state Congress. Women also lag behind men in corporate representation, as women held only 14.8% of all Fortune 500 board seats in 2007 and only 15.4% - a decrease from 2006 - of corporate officer positions. The gender wage gap persists. The median weekly earnings ratio of women's to men's wages was 80.2 in 2007.⁽²⁾ The Kansas Equal Rights Amendment is an important step towards living out our American value that women are entitled to equal treatment under the law.

The Equal Rights Amendment will bring both symbolic and tangible change for Kansans, particularly women whose experience of discrimination is beyond the reach of the Civil Rights Act and the Equal Protection Clause. With this in mind, I ask you to vote in favor of the Kansas Equal Rights Amendment.

Sincerely,

Krista Kastler
KU MSW Student
Krista@ku.edu

⁽¹⁾Epstein, Andrew D. Martin, Lisa Baldez & Tasina Nitzschke Nihiser (2004). Constitutional Sex Discrimination. *Tennessee Journal of Law & Policy*: 49

⁽²⁾Davis, Martha F. (2008). The Equal Rights Amendment: Then and Now. *Columbia Journal of Gender and the Law*. New York: 17(3): 419-460.

**Testimony before the
Senate Federal and State Affairs Committee
In support of SCR 1608
by
Anthony M. Singer**

My name is Anthony Singer. I am a resident of Wichita Kansas and a registered Republican. I am submitting this testimony as the father of three daughters to urge you to vote for SCR 1608.

If passed, SCR 1608 would allow the people of Kansas to decide whether our Constitution should include the following language:

§ 17. Equal rights. Equality of rights under the law shall not be denied or abridged by the state or any of its political or taxing subdivisions on account of sex.'

I have lived in Kansas almost my entire life. I received my entire education from first grade through law school in Topeka. I am proud of my state and proud to call myself a Kansan, but I am disheartened and hurt that Kansas, the state that I love, does not provide the same constitutional protection for my daughters that I enjoy. This is unjust and unfair. I am submitting this testimony because SCR 1608 gives us the opportunity to correct this injustice and to elevate my daughters, and the rest of the women of Kansas to "constitutionally protected" members of this State.

As a parent I am very concerned about my children's self-esteem. I believe that poor self-esteem is a destructive force that prevents children from reaching their full potential. I try to teach my children everyday that they can accomplish anything they desire and to never let anyone tell them they are not good enough or that they do not belong. It troubles me that our State's Constitution currently sends the message that my daughters are less of a citizen than their male counterparts; that male citizens deserve constitutional protection while my daughters do not. The women of Kansas are valuable members of society and deserve the same guarantees. It is time for the Kansas Constitution to recognize

women as full citizens of the State and to provide rights and protections to all citizens equally regardless of gender.

I believe as citizens of Kansas we often fail to appreciate the difficulty of the task our elected officials perform. I do not envy your position. As you know, our State faces many challenges. In this session the legislature has faced many controversial decisions. I recognize these decisions often place you in a "no win" situation. No matter how you vote, half of your constituents will be unhappy with your decision. SCR 1608, however, is *not* one of those decisions. I cannot imagine a more benign issue than gender equality. In fact equality is such a fundamental part of our American belief system it is difficult to fathom how or why anyone would oppose it. Nevertheless, even if your district ultimately opposes the amendment, your vote supporting SCR 1608 will be without repercussion. Supporting SCR 1608 will only allow the citizens of Kansas to decide the issue. Even the most outspoken constituent would find it difficult to criticize a decision which let them decide the outcome.

So I am urging you to support SCR 1608. Kansas is our State. This is where we live and this is where we raise our children. All children of Kansas, regardless of gender, deserve the same rights and protections. Our Constitution currently does not provide full protection for its female citizens. It is time we remedy this injustice and recognize the women of Kansas as full "constitutionally protected" members of the state. Your support for SCR 1608 is the first step in achieving this objective.

PAT LEHMAN

Testimony for Kansas Senate Committee on Federal & State Affairs

Committee Chair: Honorable Senator Brungardt

SCR 1608: Proponent

Kansas Equal Rights Amendment

February 24, 2009

Mr. Chairman, members of the Committee, ladies and gentlemen, my name is Pat Lehman, I live at 515 Manlo, Wichita, Kansas.

I did not expect at this stage in my life to be here to share my story with you. It has been more than 40 years since I became one of those "first women". In my case, I was the first woman to work in a tooling department in an aircraft company in Wichita classified in the same job code as the male workers.

I was young, suddenly single, and sole support for myself and two young children. I needed the job, and was appreciative of the opportunity to learn a highly skilled trade that had been closed to women.

My 56 male co-workers were understandably skeptical of my ability to learn the trade, and were not especially welcoming to me. I understood their skepticism. Most of them had worked in small shops for lesser wages and benefits until they became somewhat proficient at the trade.

Only then were they able to be hired at one of the local aircraft companies, but I was untrained,

and being given the opportunity for a good job with no prior experience.

I did my best to minimize the difference in my appearance from my co-workers. I wore no make up, no jewelry, and kept my long hair in a single "pigtail" pinned to the top of my head. Like the men, I wore simple work clothes, tee shirts and blue jeans were our standard work garb as the work could be quite dirty.

But I felt acutely alone. I did not look like my co-workers no matter how much I downplayed my femininity, all the assignments, written directions, etc. were always addressed to "men", I did not know another woman in my situation, and there was not even a toilet for women near my shop. In fact, where I was going to use the toilet facilities became a subject of much discussion among my supervisors and co-workers much to my embarrassment. I was finally directed to use the nearest woman's facility which happened to be reserved for the women working in the front offices.

My first work assignments were the simplest, dirtiest jobs in the shop and it seemed very fair to me. I expected to start at the bottom with a hope of learning new skills. I did not complain.

My life settled into a very busy routine, work in the shop during the day, vocational-education school later, and caring for my children in the evening and on weekends.

As my co-workers saw I was very serious about learning to do the work and to develop the skills

I needed, they gradually became more helpful, more accepting of me despite my gender, and began to teach me the fine points of the trade.

Some continued to be wary, and some never reconciled themselves to the reality that a woman really could learn this trade, and was willing to do to do a fair share of the dirtiest, and the most demanding jobs without complaint. It seemed to me they simply had an image of themselves that was tied to the work, and they felt they were somehow diminished as a man if in fact a woman could also do the same work.

Like the men, I worked my way through the various levels of pay and benefits offered by the company by demonstrating my increased skills and understanding of the work. After several years I was promoted to the top grade level available in the department. As the men said, I paid my “dues” meaning I had earned my upgrades and increases in pay the same way they had.

Ultimately the references to only men in our written communications were changed, and either noted “men and women” or were gender neutral. Our contract with the company was also changed to reflect the inclusion of both men and women.

I often reflect on the generations of Kansas women who have likewise “paid their dues” as citizens of our state.

Even when we were a territory, the Native American women were vital to the survival and success of their families and their tribes. They gathered and preserved food, made clothes, cooked, helped in the moving of their family, and generally took an equal place in the lives of their family and tribe.

Certainly the pioneer women of Kansas paid their "dues" as citizens. Leaving behind the only life they had ever known, they endured the many hardships connected with settling the Territory, and fully participated in its struggle to become a state. They worked along side their husbands, fathers and brothers to till the fields, herd the cattle, while still doing the endless cooking, cleaning, sewing, and the other tasks necessary to ensure the survival of their family in such hostile surroundings.

In times of war, Kansas women set standards for women in other states and even nations to follow. Especially during World War II, the willingness of Kansas women to take over the work of the farms and factories thus freeing our men for the battlefield duties was critical to the success of our nation in that horrific war.

The Arsenal of Democracy depended on the skills and productivity of the women who took over the work of supplying our troops and allies with the weapons they so desperately needed. Would anyone question whether the thousands of Kansas "Rosie the Riveters" had fully paid their

citizens “dues”? I doubt anyone would raise such a question.

Who can count the number of women who have started, or run business’ large and small in our state? From the early county stores, to the cafes, restaurants, laundries, child care centers, floral and gift shops, sophisticated boutiques, weekly newspapers, and on and on in every field of business from our earliest days to the present.

Of course when I think of women in business I immediately think of the two Olives of Wichita.

Olive Ann Beech helped found Beech Aircraft along with her husband Walter. Following his untimely death Ms. Beech assumed the position of President and led her company to world wide recognition for the quality of its’ aircraft and aerospace products. Thousand of Kansas workers were proud to work for this remarkable woman, and her contributions to the Wichita community were legendary.

Likewise Olive Garvey took the helm of the sprawling network of companies making up the Garvey business. She too provided jobs, and leadership for our community, and her funding of alternate medical treatments, and studies of nutrition continue to chart new directions in the treatment and care for many.

All these women have paid their “dues” and taxes as citizens of our state.

In government, Kansas has a proud history of extending voting rights to the women of our state

long before the Federal government saw fit to recognize their citizenship.

Kansas voters have seen fit to elect remarkable women to political office all across our state, from county courthouses, to city and township positions, to the Kansas Senate and House of Representatives, including two women governors, the late Governor Joan Finney, and our current Governor Kathleen Sebelius, both served in statewide positions as State Treasurer and State Insurance Commissioner respectively before being elected as governor. Additionally we have elected women to serve in the United States House of Representatives, Martha Keys, Nancy Boyda, and most recently Lynn Jenkins who had also served as Kansas Insurance Commissioner, and our other Nancy, that is former United States Senator Nancy Kassebaum who did not take a seat in the US Senate due to the death of a spouse or relative but rather was elected in her own right by the citizens of Kansas.

All these women named are wives and mothers, yet surely they have paid their "dues" as citizens of our state, just as those of you serving in public office today are paying yours.

Today, women citizens in Kansas actually outnumber the male citizens. But there is one difference, while women work along side the men in our state, serve in public office, pay their taxes, and fully contribute to the good of our state, only the men are in the Kansas Constitution.

I am glad we are past the silly and often misleading notions put forth in opposition to including the majority of our citizens in the Constitution. We know the passage will not lead to forced

unisex toilets, has nothing to do with reproduction, won't cause women to suddenly desert their families, and I doubt including women in the Kansas Constitution would cause hair to grow on our chests.

I would simply ask you how much longer Kansas women will have to continue to prove we have paid our "dues" as citizens before we can be lifted up and given the basic recognition of our citizenship by including us in the constitution.

I urge you to support the inclusion of women in the constitution by allowing Kansas citizens to vote on the issue.

And if you decide now is not the time to allow the citizens of our state to vote on this decision, I would simply ask you why not, and if not now, when?

Thank you for your time and consideration.

Kansas Senate Committee on Federal and State Affairs

Kansas Equal Rights Amendment SCR 1608 hearing

“Equality of rights under the law shall not be denied or abridged by the state
or any of its political or taxing subdivisions on account of sex.”

Feb. 24, 2009

Testimony presented by Melanie Jenney, Proponent



Good morning, ladies and gentlemen of the committee.

My name is Melanie Jenney and I am here today as a proponent of the Kansas Equal Rights Amendment, representing myself, my mother, my daughters and every woman I know who has bruised her head banging on a glass ceiling or stubbed her toe on stereotypes. But I also represent the idea of a better society at large. Of possibilities we have not considered.

We know what inequality looks like. We know the stories of the women who have gone before us and those who still work to overcome gender discrepancies. We know how many decades it took for women to earn the right to vote. When men went to war, we found out we were capable of building planes and weapons, only to go back to our kitchens when the men returned. We know that women could not own property or even get a credit card in their own names. We know how single women have sacrificed to feed their children while earning much less for the same work as their male peers. How women weren't hired or promoted because of their sex.

But what does *equality* look like? Can we even imagine?

It is 2009, and yet, as a woman and a mother to two bright daughters, it is disheartening that our state and national constitutions still do not recognize us as equal to our brothers.

Our constitution conveys class distinction between the sexes. By its lack of defining women as equal to men, our constitution effectively defines women as second-class citizens. We are taxed the same and contribute equally to the system, but are not granted the same protections or rights.

What would an equal rights amendment mean? Perhaps passing a state ERA would have no immediate impact. Perhaps there would be no tangible benefit derived from its passage.

Perhaps it would be just as much of an anticlimactic event as 12:01 a.m. on Jan. 1, 2000, when everyone prepared for an end of the world as we knew it, and we woke up to computers still humming and the clocks still ticking, and everyone had a certain sense of relief as well as a certain amount of letdown.

But it would be worth it, even if for no other reason than this: Affirming that our daughters are as respected and venerated as our sons. That there is no distinction between women and men when it comes to their value in contributing to our shared society.

Perhaps the change would be subtle but profound. If we write respect into law, would domestic violence decrease as women gain self-esteem and men see women less as second-class citizens? If women gained self-esteem, would media portray them differently? If we saw ourselves as more powerful, would we still allow ourselves to be exhibited as sex objects and victims? Would female students achieve more if they took themselves seriously, and venture into the male-dominated spheres of math and science and engineering? Would more women consider running for civic or political office when they feel their voices are heard? Would increased balance of representation in the hallowed marble halls of government create legislative parity?

In fact, a World Bank study found that countries where women and men enjoy equal rights tend to have higher economic growth along with lower poverty rates, and suffer less from corruption.

Susan B. Anthony said, "The day will come when men will recognize woman as his peer, not only at the fireside, but in councils of the nation. Then, and not until then, will there be the perfect comradeship, the ideal union between the sexes that shall result in the highest development of the race."

I don't know much about Eastern religions, but I love the symbolism and symmetry of yin yang ☯. The idea of balance. The black and the white are not the same, but they contribute equally to the whole. Without light, there is no growth; without dark, there is no rest. Both are essential to sustaining life.

Kansas was one of the first states to vote for women's suffrage. We had the first woman mayor in the United States. We were one of the first states to vote to ratify the national ERA. We've

come a long way, baby, but we still have so far to go. I believe that the ERA is inevitable, and I hope that you, Senators and decision-makers for ALL Kansans, women and men, girls and boys, will choose to be a part of the progress and not an impediment.

Women do not seek to take over. Women do not expect a 180-degree change in the paradigm of power. We simply seek to share the same rights enjoyed by men and protected by the constitution.

The ERA seeks to end any bias or discrimination based on sex, but it doesn't say which sex. The statement encompasses both women *and* men. The law shouldn't allow preference for either male or female, but treat us all as human beings with all the rights due any citizen of our state.

Inequality is the way it has been, but it is not the way it has to be.

Thank you for your time and thank you for your consideration.



“All truth passes through three stages. First, it is ridiculed. Second, it is violently opposed. Third, it is accepted as being self-evident.”

– Arthur Schopenhauer

TO: The Committee on Federal and State Laws

RE: The Honorable Pete Burngardt, Chairperson, Senate Concurrent Resolution No. 1608

My name is Pedro Irigonegaray, an attorney involved in civil rights litigation for the past thirty-five years, emphatically support the addition of the Equal Rights Amendment to the Kansas Constitution. This amendment plays an important role in protecting equal rights for citizens of Kansas; I cannot express its importance enough. Without the Equal Rights Amendment, Kansas laws intended to protect its citizens from sex discrimination are subject to future legislative and judicial modification, which could lead to far less protection against sex discrimination.

The Legislature, by a simple majority, may amend or repeal existing anti-discrimination statutes, these statutes can be negligently enforced and courts can use intermediate scrutiny when reviewing sex discrimination cases. The Equal Rights Amendment does not provide an opportunity for judicial activism; it raises the level of scrutiny to be applied when judges are faced with sex inequality. There is an important distinction between intermediate and strict scrutiny. Under intermediate, the alleged discriminative act must have an important objective and the means must be substantially related to achieve that objective. Under strict scrutiny, the alleged discriminative act must have a compelling interest and be narrowly tailored means to accomplish that interest. In *Loving v. Virginia*¹, the United States Supreme Court declared race discrimination unconstitutional under the Fourteenth Amendment's Equal Protection Clause requiring a "strict scrutiny" standard of review. The Supreme Court has not applied this level of scrutiny in sex discrimination cases. Race discrimination must meet the strict scrutiny standard, why should sex discrimination have a more lenient standard applied? Kansas needs to ensure its citizens that they are protected from sex discrimination, as a matter of constitutional law.

The Equal Rights Amendment is needed in order to guarantee for the first time our country's history that the rights affirmed by the U.S. Constitution are held equally by all

¹ 388 U.S. 1 (1967).

citizens without regard to sex. The ERA would provide a legal remedy against sex discrimination for both women and men.

Its most important effect would be to clarify the status of sex discrimination for federal and state courts, whose decisions still deal inconsistently with such claims. For the first time, sex would be a suspect classification, as race currently is. As a result, governmental actions that treat males or females differently as a class would be subject to strict judicial scrutiny, and they would have to meet the highest level of justification—a necessary relation to a compelling state interest—in order to be upheld as constitutional.

To actual or potential offenders who would try to write, enforce, or adjudicate laws inequitably, the ERA would send a strong message—that the Constitution has zero tolerance for sex discrimination under the law.

The ERA is sometimes referred to as the Women's Equality Amendment to emphasize that women have historically been guaranteed fewer rights than men, and that equality can be achieved by raising women's legal rights to the same level of constitutional protection as men's.

As its sex-neutral language makes clear, however, the ERA's guarantee of equal rights would protect both women as a class and men as a class against sex discrimination under the law.

The 14th Amendment was ratified in 1868, after the Civil War, to deal with race discrimination. In referring to the electorate, it added the word "male" to the Constitution for the first time. Even with the 14th Amendment in the Constitution, women had to fight a long and hard political battle to have their right to vote guaranteed through the 19th Amendment in 1920.

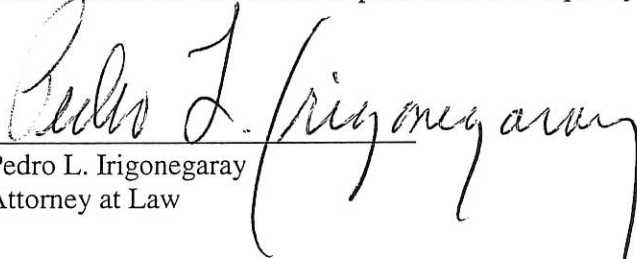
It was not until 1971, in Reed v. Reed, that the Supreme Court applied the 14th Amendment for the first time to prohibit sex discrimination, in that case because the circumstances did not meet a rational-basis test. However, in that and subsequent decisions (Craig v. Boren, 1976; United States v. Commonwealth of Virginia, 1996), the Court declined to

elevate sex discrimination claims to the strict scrutiny standard of review that the 14th Amendment requires for certain suspect classifications, such as race, religion, and national origin.

While the Court now applies heightened (so-called “skeptical”) scrutiny and requires extremely persuasive evidence in cases of sex discrimination, these claims can still be evaluated under a less protective intermediate standard of review, which requires only that classifications based on sex must substantially advance important governmental objectives.

The ERA would require courts to go beyond the current application of the 14th Amendment by adding sex to the list of suspect classifications protected by the highest level of strict judicial review. Under the ERA, a governmental classification on the basis of sex would have to bear a necessary relation to a compelling state interest in order to be upheld as constitutional.

The state constitution protects our most treasured rights; rights determined worth preserving and passing from generation to generation. The symbolic value of adopting a constitutional amendment protecting both current and future Kansans against sex discrimination would affirm our dedication to preservation of equality to citizens of this state.


Pedro L. Irigonegaray
Attorney at Law

To see a transcript of this pamphlet, [click here](#).

Ten Reasons Why The Great Majority of Women Do Not Want the Ballot.

BECAUSE they have not lost faith in their fathers, husbands, sons and brothers, who afford full protection to the community, there being no call for women to relieve them of the task.

BECAUSE women realize that when they become voters they will in consequence have to serve as jurors, and be compelled to hear all the repugnant details incident to murder trials and trials for other crimes disclosing unspeakable wickedness. Jury service is abhorrent to every normal woman.

BECAUSE in political activities there is constant strife, turmoil, contention and bitterness, producing conditions from which every normal woman naturally shrinks.

BECAUSE the primary object of government is to protect persons and property. This duty is imposed by nature upon man, the women being by nature absolved from assuming a task to them impossible.

BECAUSE when women noisily contest and scramble for public office—woman pitted against woman—they write an indictment of womankind against which all right-minded women strenuously protest.

BECAUSE women can accomplish more through counselling than they ever can attain through commanding.

BECAUSE woman suffrage will not enhance peace and harmony in the home, but, on the contrary, in the heat of a campaign, it is sure to bring about dissension and discord.

BECAUSE Nebraska women are already enjoying a greater measure of protection and privilege under the law than do women of any state where women vote.

BECAUSE the woman worker wants rest and quietude—not political excitement.

BECAUSE every reason supporting the claim of women to vote supports also the right of women to be consulted as to whether they shall or shall not be given the ballot.

Issued by the Nebraska Association Opposed to Women Suffrage, Omaha, Nebraska.

[Close Window](#)

*Resolved to the Liberty
of Congress. It is your
advocate of the sacred cause
for woman's rights & freedom of
rights ever known by a woman
No Royal & Noble & common law
is absolute dominant in the world by
woman's progress - and here, the
the first step - to think*

*Jessie B. Clithorne
Jan. 11/1809*

A
VINDICATION
OF THE
RIGHTS OF WOMAN:
WITH
STRICTURES
ON
POLITICAL AND MORAL SUBJECTS,
BY MARY WOLLSTONECRAFT.



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Chairman Brungardt
Senate Committee on Federal & State Affairs
RE: SCR 1608, Kansas Equal Rights Amendment
PROPONENT
2/24/09

Dear Chairman Brungardt,

I am writing today as a proponent of SCR 1608, the Kansas Equal Rights Amendment. For several decades I served as a staff psychologist and psychotherapist at the Menninger Clinic and a faculty member of the Karl Menninger School of Psychiatry. I have published widely on the subject of female psychology and women's relationships. My books (translated in over 35 foreign editions) include Women in Therapy (a collection of scholarly papers regarding the psychology of women) and The New York Times bestseller, The Dance of Anger. Because I have also worked as an advice columnist, both on line and for New Woman magazine (which had a readership of 6 million women), because I travel widely to teach and consult, because I have appeared on Oprah, CNN, NPR etc. I have been fortunate to have the opportunity to hear the voices of countless women beyond those I've worked with directly. I've also received honors in my home state of Kansas for work related to the status of women.

Obviously, one doesn't need to be an expert in female psychology to appreciate the obvious effects of inequality, as when women are paid less than men for equal work. This can of course damage lives, as women may not be able to support themselves and their families with the fruits of their labor. It also damages the integrity of our nation as a whole, compromising our nation's core commitment to equal opportunity, and to ridding the workplace of discrimination.

But less obvious is the deep connection between the personal and political. While my professional work focuses on individuals, couples and families, it is the larger context of our lives, what we call the "political," "societal," or "cultural" context--that gives shape and form to our most intimate interactions and to family process. Women, like men, cannot flourish under conditions of inequality and injustice.

Personal problems feel, "personal." That is, when women come to therapy reeling from depression, divorce, financial worries, and low self-esteem, they may view the problem as their individual failing, to be solved merely through their own initiative and individual problem-solving skills. It is difficult to appreciate the covert ways in which gender inequality affects every woman's sense of power, possibility and place in the world.

Gender inequality does not just adversely affect women. For both sexes, gender inequality is a major determinant of what each sex feels responsible for and entitled to. The common family problems that therapists see again and again: the marital fights over "Who does what?" after the first baby comes along; the "over involved" mother, the distant father, and the father who loses connection with his children following

divorce; the husband who is doesn't let his wife's voice effect him, and the wife who is stuck in ineffective fighting, complaining and blaming; the husband who falls apart after his wife leaves him "out of the blue" (as he experiences it); the marital fights over what each sex feels responsible for and entitled to -these and other dysfunctional patterns have deep roots in gender inequality.

In sum, inequality affects us in countless invisible ways. It's like a river that runs underground and seeps into women's ability to love and work. Gender inequality contributes to many symptoms and dysfunctional behaviors that bring women into therapy today including depression, low self-esteem, non-productive fighting and blaming--that is, the whole host of symptoms and dysfunctional behaviors that make for human misery. Men suffer in a "separate but equal" way. Women's "outside" position in the public sphere is inextricably connected to men's "outside" position family emotional life. Inequality hurts us all.

On the subject of gender inequality, women can take a lesson from men, whom like members of any dominant group), have certain clarity of vision about the importance of being valued and included. Men would not pretend, for examples, that words like "she" or "chairwoman" could ever truly include them. Men would not pretend that the works of womankind represent humankind. Man would never fail to notice if they were excluded or underrepresented from a major institution of any kind that generates policy, power and wealth. Men could not fail to notice—and protest-- if they did not have equal rights with women under Kansas's law.

In contrast, it is still difficult for women to take up their own cause (in contrast to fighting on behalf of others, such as children) because women fear facing their own legitimate anger lest they be labeled as troublemakers or "difficult to work for" or "one of those angry women." It's easier to pretend inequality no longer exists or that an equal rights amendment doesn't matter. Or woman may pretend that their special roles as wives to men and mothers to children somehow makes inequality under the law tolerable, unnecessary or even natural.

In sum, every expression of inequality in the public sphere, finds it's way into the deepest interior of family life. The politics worth having, the relationships worth having, demand that we give women equal rights under the law. It's in keeping with Kansas's proud and pioneering history to continue to work for that unrealized world where the dignity and integrity of all women, all humans, are honored and respected. Kansans owe it both to the past (the men and women who struggled to make equal pay a touchstone of civil rights) and to our future (our sons and daughters who will judge us by our behavior, not just our stated ideals) to put an end to discrimination in our beloved state.

Respectfully yours,
Harriet Lerner, PhD
Clinical Psychologist

**Testimony to the Kansas Senate
Committee on Federal and State Affairs
February 24, 2009
Chairman: Senator Brungardt
Regarding SCR 1608
Kansas Equal Rights Amendment
PROPONENT**

I write in support of Senate Concurrent Resolution No. 1608 to amend the Kansas Constitution, Article 15, to add a new section: "**Equal Rights. Equality of rights under the law shall not be denied or abridged by the state or any of its political or taxing subdivisions on account of sex.**" I urge the Committee to send the proposed amendment to the full House for consideration and passage, and to provide Kansas citizens the opportunity to vote on the issue.

I am not a Kansan. I am an Iowan. My name is Pat Jensen and I have worked for nearly 40 years to amend either the U.S. Constitution to include an Equal Rights Amendment or to add such an amendment to the Iowa Constitution.

I began my involvement with equal rights in the early 1970's when the U.S. Congress had passed an ERA to the Constitution (1972). It had gone to the states to be ratified, which 35 states did. At that time I lived in Virginia and was a leader in the League of Women Voters, serving as ERA Chair for the state League. As such, I helped begin the effort to get the federal ERA ratified by the Virginia Legislature. We organized a statewide Ratification Council made up of numerous organizations: the League, the American Association of University Women, Common Cause, NOW, churches and individuals. We worked each year to get the appropriate committees to report the amendment to the floor. Finally, the Senate committee reported the amendment out, we believed we had a tie vote in the Senate, and with the Lt. Governor a strong supporter who would break the tie, we would find success. However, one Senator moved from "yes" to "no" and we failed.

In 1979 I became president of the Virginia League and we moved to establish a "Women's Round Table" to bring together women from all view points, including those who had opposed an amendment, to make legislative changes that would have been required had the ERA passed. I organized the group, and together with female legislators working on issues relating to discrimination against women, we made progress. I returned to my home state of Iowa in 1981, was elected to the Board of Directors of the United States, and served as ERA Chair for the LWVUS. At this time, Congress had extended the deadline for ratification to 1982. As you are probably aware, there were no further ratifications and the federal ERA failed. An amendment was again introduced in Congress in 1983; I was in the House balcony to see it fall short by six votes. While a

federal ERA has been reintroduced numerous times in the intervening years, it has never moved forward.

Consequently action moved to states. In 1992 in Iowa, I was ERA Chair for the Iowa League and was active in organizing a coalition to support the ERA passed by the Legislature. I initially chaired the Steering Committee of ERA IOWA 1992, made up of groups similar to those involved earlier in Virginia, and served on the committee throughout the effort. The ERA failed that year in Iowa. However, in 1998 the issue was presented again to Iowans in the form of adding "and women" to the Constitution. This effort was successful. Iowa now has an Equal Rights Amendment in its Constitution. Nearly two dozen other states also have added equality for women to their state constitutions.

I have given the history of my journey with this issue to show how some of us care enough about equality for all, to spend not only hours and months, but years, working toward that goal. In the 1992 Iowa campaign sometimes someone would ask, "Do we really need to amend the constitution? Why?" My answer was, and is, that putting women in the Constitution is fundamentally the right thing to do. If one believes that the law should treat all of its citizens equally, then women should be part of the basic law of the state.

Again, I urge all members of the Federal and State Affairs Committee to vote the ERA to the floor for a vote. The citizens of Kansas deserve the right to be heard.

Thank you!

Pat (Patricia) Jensen
13 Lakeview Drive NE
Iowa City, Iowa 52240



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Program Coordinator

Committee: Senate Federal and State Affairs Committee
Subject: Kansas Equal Rights amendment
Organization: Greater Kansas City Women's Political Caucus
Date: February 23, 2009

The Greater Kansas City Women's Political Caucus fully supports the Kansas Equal Rights Amendment because we need to safeguard the rights we have fought for from an unknown future. The current legal status of women in Kansas is dictated by statues and court decisions. Laws can be repealed by a simple majority and our court decisions overturned. Only with an amendment to our constitution can we safeguard the equal rights of women in Kansas when we are no longer here to protect them.

The lack of an Equal Rights Amendment in Kansas is a detrimental problem that we need to fix in order to move forward and be a progressive state. Without an equal rights amendment women workers are clustered in low paying jobs. Employers consistently pay workers in female dominated occupations less than employees in male-dominated jobs. Even in the same occupations, women workers in Kansas are receiving less compensation than their male co-workers. In states with an Equal Rights Amendment, women have successfully challenged discriminatory laws and policies, including those that appear neutral but disproportionately deny them jobs, promotions, and higher wages.

With an Equal rights amendment we can set a permanent standard for the elimination of discrimination based on sex. We can empower women to fight discrimination not just in their jobs but in their lives.

Women face major difficulties in discrimination suits against employers in Kansas. The Kansas ERA will increase the chances of women winning sex discrimination lawsuits.

We are asking for your vote in favor of an Equal Rights Amendment.

Thank you,

Barbara Womack
President
816-531-9595

Megan Hall
KS Vice-President

Serena Hein
KS Legislative Chair



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Senate Committee on Federal and State Affairs

Tuesday, February 24, 2009, 10:30 AM

Testimony in Opposition to SCR 1608

Beatrice Swoopes, Associate Director, Kansas Catholic Conference

Chairmen Brungardt and members of the Committee, my name is Beatrice Swoopes and I am the associate director of the Kansas Catholic Conference. The Kansas Catholic Conference is the public policy arm of the Catholic Church in the state of Kansas. Thank you for the opportunity to testify in opposition to SCR 1608 on behalf of Kansas's four bishops and over 400,000 Catholics.

The Equal Rights Amendment (ERA) has been controversial since first proposed in 1921, but the reasons for it and the factions involved have changed over time. The basis for the initial effort was women's suffrage, and then it evolved into removing all legal barriers to women's equality and economic independence. In the 1960's the focus was on the elimination of discriminatory practices and sexist attitudes, not legal rights. It was only during the 1970's that the link between abortion and the ERA was established.

We are told that the proposed amendment is simply intended to ensure that women have equal protection under the law as men. However, women have already achieved equal protection. It is not legal to discriminate against women.

After 30 years of debating equal rights amendments (ERAs) at the state and federal level, in legislatures and in courtrooms, it has become abundantly clear that this legislation has little to do with ensuring equal rights, and much to do with abortion. Pro-abortion organizations argue that since only women seek abortions, any government policy that restricts access to abortion, or that treats abortion differently from procedures performed on men, is a diminishment of "rights on account of sex," which is precisely what the ERA would forbid.

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MOST REVEREND GEORGE
BISHOP EMERITUS - C

In addition, SCR 1608 is an exercise in vagueness. Only one sentence long, it is not written to respond to any particular grievances. Instead, it is intentionally open-ended, designed as a vehicle to put the abortion question in the hands of the courts. If there are specific concerns that this legislation seeks to address, it should address them.

Courts in other states have ruled that state ERAs do indeed guarantee abortion rights. In 1998, a **unanimous** ruling by the New Mexico Supreme Court decided that ERA language very similar to SCR 1608 mandated taxpayer-funding of abortions. The court held that a state ban on tax-funded abortions "undoubtedly singles out for less favorable treatment a gender-linked condition that is unique to women."

In addition to taxpayer funding of abortions, the ERA could allow the courts to overturn late-term abortion restrictions, parental involvement laws, etc. No one is really sure what all might happen because the ERA as written is so ambiguous, only the judges will know what it means.

In 1984, Cardinal Joseph Bernadine, Chairman of the Pro-Life Committee of the United States Conference of Catholic Bishops said "I support equality of rights under the law for women as a noble and necessary goal. Legally imposed or sanctioned discrimination against women has no place in our nation... There is however much room for concern that ERA, as it stands, might be interpreted by the courts as guaranteeing a right to abortion and the public funding of abortion." Our Kansas Catholic Bishops would agree.

If women in Kansas are being denied their legal rights in terms of employment or any other matter, crimes are being committed and should be prosecuted. The Catholic Church emphatically approves of any effort to protect women from discrimination and would welcome targeted legislation, focused legislation, which is clearly intended to do that. SCR 1608 is not that legislation.

SCR 1608 sounds like a wonderful idea – equal rights for everyone. However, if we allow it to pass, Kansans will wake up one day wondering how a right to unrestricted and taxpayer funded abortion was smuggled into their constitution.

Members of the Committee, please oppose SCR 1608.



February 24, 2009

Chairman Brungardt and members of the Senate Federal and State Affairs Committee:

I am Judy Smith, State Director of Concerned Women for America of Kansas, a public policy women's organization with 9000 members in Kansas. We are here to testify in opposition to SCR 1608.

As a woman, a mother of two grown successful daughters and four grand-daughters, I feel that I have a vested interest in this issue beyond the public policy issues you are debating in this body. My own personal experience also has relevance in this issue as well. I graduated from Purdue University's School of Pharmacy in 1963. There were three women in my class; today that number would be more than half of the class. While feeling a bit in the minority, I felt no discrimination from my peers or from my professors. In fact I gave birth to my eldest daughter in my last year of pharmacy school and have pictures of her at six months old at my graduation. I had no problem getting a job in my field and I hold my pharmacy license to this day. Today we have a female Speaker of the House, a female Secretary of State who is replacing another female, a record number of women serving in Congress and in this body. Women have gone into space; and women are serving in the military in battle positions and some regrettably have lost their lives. Last night in the news, I heard that women now make up 47 % of the workforce.

Concerned Women for America is celebrating its 30th anniversary this year. It exists *because* of the original attempt to declare "equal rights" for women. We joined with others in stating that we are already protected under the Constitution; that "equal rights" had already been gained with the right to vote and in the Fourteenth Amendment as well as Title VII of the 1964 Civil Rights Act that protects women against discrimination in the workplace. CWA took a strong stand against this unnecessary and outdated icon of radical feminism and it takes that stand today.

CWA of Kansas feels strongly that this amendment is unnecessary and could lead to unforeseen consequences should it be implemented by the citizens of Kansas. It is a weighty matter to change the Constitution; it should never be taken lightly. We approve the amendments that gave women the right to vote and we applaud legislation that gives women strong remedies in the case of discrimination. I have attached a list of Kansas statutes and federal laws that already protect women and give them these remedies.

Courts apply a strict test when it applies to strict scrutiny. In fact only race discrimination has a tougher standard in the courts. In *Craig v. Boren* 429 U.S. 190 (1976) decided on December 20, 1976 by a vote of 7-2 the U.S. Supreme Court announced for the first time that sex-based classifications were subject to stricter scrutiny under Equal Protection Clause of the Fourteenth Amendment than was provided by the rational basis or "ordinary scrutiny" test. Justices William J. Brennan wrote in his majority opinion the constitutional standard that would have to be met for a statute classifying by gender is that it must "serve important government objectives and must be substantially related to those objectives" (p. 197). In this case a female beer vendor and two underage men sued to overturn an Oklahoma law that allowed females 18-20 to purchase beer while males could not purchase beer until age 21 This was based on statistics showing men have higher drunk driving convictions and public drunkenness. The Court ruled that while enhancing public safety was an important government interest it did not meet the gender test.

In addition to this proposed amendment being unnecessary, CWA of Kansas feels that it could be harmful in that in trying to obtain already existing "equal rights" it will actually have the opposite effect. It will dilute and do away with laws that protect women: laws against rape and sexual harassment, and prostitution could be viewed as discriminatory. Supreme Court Justice Ruth Bader Ginsburg wrote, prior to being on the Supreme Court in a 230-page report entitled *Sex Bias in the U.S. Code: A Report of the U.S. Commission on Civil Rights*, that it was her opinion that "current provisions dealing with statutory rape, rape, and prostitution are discriminatory on their face. Statutory rape should not be an offense at all because a girl as young as 12 years old should have the right to have sex with whomever she pleases." She further noted that prostitution is privacy protected by recent constitutional decisions. This amendment allegedly designed to bring equality to women will have precisely the opposite result...it will remove laws that protect a woman's right not to be raped and reduces women to objects that can be sold legally through prostitution.

In addition, in spite of the intent at least publicly to give women equal protection the fact remains that this attractive package of "rights" has a hidden agenda...that the one thing some women believe hinders their progress in the workplace...their fertility and ability to bear children must be addressed by the government. We believe this is a thinly-disguised way to ensure that government mandate contraceptive coverage and abortions. New Mexico's ERA was the basis for a decision to fund abortions under Medicaid in that state so our concern is not unfounded.

We urge you to consider these things when you debate this bill.

Judy Smith, State Director
Concerned Women for America of Kansas

CWA of Kansas
P.O. Box 11233
Shawnee Mission, KS 66207
913-491-1380/816-695-7951

WOMEN ARE ALREADY PROTECTED AGAINST DISCRIMINATION BY THE FOLLOWING STATUTES

K.S.A. 44-1001

Prohibits discrimination in **employment, free and public accommodations and housing**

K.S.A. 44-1009

Specifies unlawful **employment practices**, unlawful **labor union practices** and schools and prohibits discrimination in regard to **employment classification**, admissions, training, transfers, assignments, upgrading, promotions, layoffs, dismissals and apprenticeships

K.S.A. 44-1205

Equal wages for equal work

K.S.A. 44-1406

Prohibits discrimination in **neighborhood improvement and youth employment**

K.S.A. 19-4319

Prohibits discrimination against **employees in Civil Service**

K.S.A. 44-1017

Prohibits discrimination in **real estate transactions and loans**

K.S.A. 44-1016

Prohibits discrimination in the **sale or rental of real sale property**

K.S.A. 44-1030

Prohibits discrimination in **state and local government contracts**

K.S.A. 24-507

Prohibits discrimination in **voting in drainage districts**

K.S.A. 40-3510

Prohibits discrimination in issuing or extending mortgage insurance

K.S.A. 74-99b11

Prohibits discrimination in **Employment by the Bioscience Authority**

K.S.A. 44-1116

Prohibits discrimination by **contractors with the State**

K.S.A. 75-2941

Prohibits discrimination against **Civil Service Employees**

K.S.A. 76-3311

Prohibits discrimination by the KU Hospital Authority in Health **Insurance plans or payroll systems**

K.S.A. 13-2412

Prohibits discrimination in **water rates**

K.S.A. 50-201

Prohibits discrimination in the **sale of news**

K.S.A. 22-2521

Regulates **strip searches**

K.S.A. 43-156

Grants **rights to serve as jurors**

K.S.A. 75-5158

Prohibits discrimination in **issuance of driver's licenses**

Federal v:

Title VII of the Civil Rights Act of 1964 protects individuals against employment discrimination on the basis of sex. Title VII's prohibitions against sex-based discrimination also cover Sexual Harassment and Pregnancy based Discrimination.

The Equal Pay Act of 1963 requires that men and women be given equal pay for equal work.

Title IX of the Educational Amendments of 1972 is the landmark legislation that bans sex discrimination in schools, whether it be in academics or athletics.

Equal Credit Opportunity Act prohibits discrimination in obtaining credit.

Section 109 of the Housing and Community Development Act of 1974 prohibits discrimination on the basis of race, color, national origin, sex or religion in programs and activities receiving financial assistance from HUD's Community Development and Block Grant Program.

Title VIII of the Civil Rights Act of 1968 (Fair Housing Act), as amended, prohibits discrimination in the sale, rental, and financing of dwellings, and in other housing-related transactions.

In 1994, women received 38% of medical degrees, compared with 9% in 1972.

In 1994, women earned 43% of law degrees, compared with 7% in 1972.

In 1994, 44% of all doctoral degrees to U.S. citizens went to women, up from 25% in 1977.



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OPPONENT: SCR 1608 "E.R.A."

Senate Federal State Affairs Committee – Feb. 24, 2009

Jeanne Gawdun, KFL Senior Lobbyist

Good Morning Chairman Brungardt and committee members,

Kansans for Life stands in opposition to Senate Concurrent Resolution 1608 because litigation for over 25 years shows such state E.R.A.s are interpreted by courts to force unrestricted tax-funded abortion.

The Connecticut Supreme Court stated (*Doe v Maher*), "**Since only women become pregnant, discrimination against pregnancy by not funding abortions ... is sex-oriented discrimination** ... The Court concludes that the regulation that restricts the funding for abortions ... Violates Connecticut's Equal Rights Amendment."

The New Mexico Supreme Court unanimously ruled (*New Mexico Right to Choose et al v. Johnson*) that the state could not differentiate between abortions of living human beings and medically necessary procedures like prostate surgery. (1) That **Court based its ruling solely on the state E.R.A.**, adopting the construction of the E.R.A. urged upon it by Planned Parenthood, NARAL, the A.C.L.U., the Center for Reproductive Rights, the N.O.W. Legal Defense and Education Fund, the state Women's Bar Association, Public Health Association, and the League of Women Voters.(2)

The E.R.A. failed to be ratified as a U.S. Constitutional amendment by $\frac{3}{4}$ of the states in 1979. Then, the United States Supreme Court upheld the Medicaid limitations of the Hyde amendment in 1980 (*Harris v McRae*). To undermine that ruling, leading lights of the abortion movement, including current Justice Ruth Bader Ginsberg (*then legal counsel for the A.C.L.U., and co-founder of its "Women's Rights Project"*) **promoted a strategy of suing states** (*including Hawaii, Massachusetts, Pennsylvania and Connecticut*) that had passed the E.R.A. (3)

ABORTION-NEUTRAL LANGUAGE REJECTED

In November of 1983, a U.S. House Judiciary panel was working on yet another E.R.A. bill. The Congressional Research Service had issued "a **legal analysis of the potential impact** of E.R.A. on abortion" and concluded on page 61 that "E.R.A. would reach abortion and abortion-funding situations". E.R.A. advocates could not deny this effect, but they were unwilling to separate the E.R.A. and abortion questions by voting for an amendment by Rep. James Sensenbrenner (R-WI) that would have made E.R.A. abortion-neutral. The amendment read:



Kansas Affiliate of the National Right to Life Committee

Sen Fed & State
Attachment 14
2-24-09

"Nothing in this Article [the E.R.A.] shall be construed to grant, secure, or deny any right relating to abortion or the funding thereof."

This amendment would not have changed the current legal status of abortion, nor would it permit the E.R.A. itself to be employed for anti-abortion purposes. Rather, it would simply have rendered the E.R.A. itself neutral regarding abortion policy.

Wisconsin and Minnesota state legislators tried adding similar abortion-neutral language to the text of their proposed state E.R.A.s, but, to the amazement of those legislators, the leading E.R.A. advocates (including the N.O.W., League of Women Voters, and the A.C.L.U.) publicly opposed E.R.A. in this form. Neither bill advanced. This experience makes it clear that the **E.R.A. advocates want E.R.A. to achieve abortion funding.**

IMPLICATIONS

Once a court adopts the legal doctrine that a law targeting abortion is by definition a form of discrimination based on sex, and therefore impermissible under E.R.A. – it can **be used to invalidate other current abortion restrictions,** such as :

- federal or state restrictions even on partial-birth abortions or third-trimester abortions (since these are sought “only by women”);
- federal and state “conscience laws,” which allow government-supported medical facilities and personnel -- including religiously affiliated hospitals -- to refuse to participate in abortions;
- parental involvement laws. Indeed, the A.C.L.U. “Reproductive Freedom Project” published a booklet that encourages pro-abortion lawyers to use state E.R.A.s as legal weapons against state parental notice and consent laws.

Adoption of SCR 1608 threatens salutary and legal limitations on abortion in Kansas. We ask this committee not to pass this proposal. Thank you.

NOTES

(1) Consider the case of New Mexico, which in 1973 adopted a state ERA worded: “Equality of rights under law shall not be denied on account of the sex of any person” [which is virtually identical to SCR 1608]. This ERA was used to attack the state policy against tax-funding of abortion. In 1998, the New Mexico Supreme Court unanimously agreed that their state ERA made it unconstitutional for the state Medicaid program to refuse to fund “medically necessary” abortions if Medicaid funded procedures sought by men (e.g., prostate surgery).

By the way, the term "medically necessary" suggests that an abortion is performed because of some sort of medical emergency arising from a woman's pregnancy. However, under federal court decisions going back more than 20 years, **"medically necessary abortion" is a legal term of art which simply means that an abortion is performed by a licensed medical professional.**

Thus, a decision to pay for "medically necessary" abortions under Medicaid is in fact a decision to pay for all abortions performed on Medicaid-eligible women - - the vast majority of which are performed simply as a method of birth control.

Pro-abortion advocacy groups understand this very well. A few examples:

In 1993, William Hamilton, vice president of the Planned Parenthood Federation of America, told Knight-Ridder Newspapers that "medically necessary" abortions include "anything a doctor and a woman construe to be in her best interest, whether prenatal care or abortion" (*Philadelphia Inquirer*, Sept. 8, 1993).

The National Abortion and Reproductive Rights Action League (NARAL) defined "medically necessary" as "a term which generally includes the broadest range of situations for which a state will fund abortion" (*Who Decides? A Reproductive Rights Issues Manual*, 1990).

A senior Clinton Administration health official told Congress, "When we're talking about medically necessary or appropriate [abortion] services we are also talking about all legal services" (*Judith Feder, principal deputy assistant secretary for planning and evaluation, Department of Health and Human Services, Jan. 26, 1994*).

(2) Pennsylvania (1984) and Texas (2002) state Supreme Courts have overridden state courts that upheld E.R.A. as trumping the 1976 Hyde Amendment Medicaid restrictions. Connecticut (1986) and New Mexico (1998) state Supreme Courts have upheld E.R.A. as trumping Hyde.

Kansas is one of 33 states that pay for Medicaid abortions only in cases of "rape, incest, or to save life of the mother", which is the current Hyde language, broadened in 1981 & 1993. Under E.R.A., any and every abortion would qualify for Medicaid reimbursement. KFL does not know the annual cost of Kansas Medicaid abortions.

(3) In her 1980 book, *Constitutional Government in America*, Justice Ruth Bader Ginsberg condemned the Supreme Court's ruling in *Harris v. McRae* and claimed that taxpayer-funded abortions should be a constitutional right. In another article titled, "Some Thoughts on Autonomy and Equality in Relationship to *Roe v. Wade*," Ginsberg wrote that as long as the government paid for childbirth, public funding could not be denied for abortion.