

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Thomas C. (Tim) Owens at 9:38 a.m. on March 20, 2009, in Room 545-N of the Capitol.

All members were present except:

Senator David Haley- excused

Committee staff present:

Jason Thompson, Office of the Revisor of Statutes
Athena Andaya, Kansas Legislative Research Department
Karen Clowers, Committee Assistant

Conferees appearing before the Committee:

Senator Mike Petersen
Senator Tim Huelskamp
Jordan Austin, National Rifle Association of America
Patricia Stoneking, President, Kansas State Rifle Association
Paul Degener
Rick Cagen, National Alliance on Mental Illness
Karen Eager, Disability Rights Center of Kansas
Jane Rhys
Amy Campbell, Kansas Mental Health Coalition

Others attending:

See attached list.

The Chairman opened the hearing on **SCR 1611 - Constitutional amendment concerning individual right to bear arms.**

Senator Mike Petersen testified as a sponsor of the bill. The Senator indicated that based on a recent ruling of the U.S. Supreme Court he found that Section 4 of the Kansas Constitution does not provide the right for an individual to bear arms. This constitutional amendment will ensure the individual right of citizens to bear arms. (Attachment 1)

Senator Tim Huelskamp spoke in support stating his shock upon learning that the Kansas Courts determined there was no constitutional protections in the Kansas Constitution for the individual right to own firearms. It is imperative to make certain that our Kansas Constitution reflects this individual right. (Attachment 2)

Jordan Austin appeared in support stating this amendment will correct a long standing problem with the Kansas State Constitution. A 1905 ruling by the Kansas Supreme Court issued a ruling that the right to bear arms was a collective right not an individual right. The language in **SCR 1611** will guarantee an individual right to keep and bear arms. (Attachment 3)

Patricia Stoneking spoke as a proponent indicating concern that our constitution does not provide the right for individuals to bear arms. Citizens are worried, disenfranchised, and scared that their right for firearm ownership is in jeopardy and encouraged enactment of the resolution. (Attachment 4)

Paul Degener testified in support stating as an individual citizen he has great concern regarding the loss of individual rights. Mr. Degener proposed the elimination to the references to hunting and recreational use and enactment of the bill. (Attachment 5)

Written testimony in support of **SCR 1611** was submitted by:

Steve Six, Kansas Attorney General (Attachment 6)

Senator Schmidt moved, Senator Lynn seconded, to recommend SCR 1611 favorably for passage. Motion carried.

CONTINUATION SHEET

Minutes of the Senate Judiciary Committee at 9:38 a.m. on March 20, 2009, in Room 545-N of the Capitol.

The Chairman opened the hearing on **SCR 1605 - State constitutional amendment; deleting mental illness disqualification from voting.**

Rick Cagan appeared in support stating the current language in Article 5, Section 2 of the Kansas Constitution provides for limiting the right to vote for persons living with mental illnesses represents an historical blemish tracing back to the original Constitution. This stigmatizing language reflects a terribly dated view of persons with mental illness and reinforces unfounded fears about persons with mental illness. Mr. Cagan offered a balloon amendment eliminating language pertaining to any prohibition on the right to vote of persons with mental illness. The passage of **SCR 1605** will eliminate discriminatory language and send an important message to the citizens of Kansas. (Attachment 7 & 8)

Karen Eager testified in support stating the Kansas Constitution applies, without limitation, to any mental illness or mental disorder. Mental illness is an extremely broad category and could effect at least 26.6 percent of people ages 18 and older. This resolution is an opportunity to eliminate broad and sweeping discrimination. (Attachment 9)

Jane Rhys spoke in favor stating this is a simple request to remove the term mental illness from the list of those who may be disqualified to vote in Kansas. People with mental illness have endured stigma due to their illness. Ms. Rhys requested a favorable recommendation on the resolution. (Attachment 10)

Amy Campbell appeared as a proponent stating that although the Kansas Legislature has not exercised the authority to prevent someone with mental illness from voting the option is discriminatory and unacceptable. Voting is the most fundamental of rights and the Kansas Legislature should not have the power to take away the right to vote based on a disability. (Attachment 11)

Written testimony in support of **SCR 1605** was submitted by:

- Michelle Sweeney, Association of Community Mental Health Centers of Kansas (Attachment 12)
- Ernest Kutzley, AARP (Attachment 13)
- Sally F. Fronsman-Cecil (Attachment 14)

There being no further conferees, the hearing on **SCR 1605** was closed.

Senator Vratil indicated this is a very serious matter that should be fully vetted. The election cycle will not cause any loss in time and recommended the matter be carried over to the next session.

This was the last scheduled meeting of the 2009 legislative session.

The meeting was adjourned at 10:37 a.m.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 3-20-09

NAME	REPRESENTING
PAUL DEGENER	CAIT Self
James Ruff	Self
Amy (Gustafson)	KMHQ
Kaye McIntyre	Kansas Public Radio
J. DeSimone	D. Schmitt
Richard Samirya	Kenny L Assoc.
Joseph Molix	KS BAR ASSN.
Al Terwelp	Kansas Libertarian Party - vice chair
Linda Walsh	Jud. Branch

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SENATOR MIKE PETERSEN

COMMITTEES
VICE CHAIR: UTILITIES
MEMBER: LOCAL GOVERNMENT
TRANSPORTATION
JOINT COMMITTEE ON
INFORMATION TECHNOLOGY

SCR 1611

March 20, 2009

Mr. Chairman, Members of the Committee Thank you for giving me the opportunity to appear today. SCR 1611 is a very important measure to ensure Kansas Citizens have an individual right to Bear Arms. These Resolutions change the title in Section Four of the Kansas Bill of Rights from referring to "The People" to "Individual Right to" it also clarifies that a person has the right to keep and bear arms for the defense of self, family, home and state, for lawful hunting and recreational use, and for any other lawful purpose.

After the recent ruling by the U.S. Supreme Court (D.C. v. Heller) that our Second Amendment Rights apply to individuals, I was surprised to learn that a 1905 Kansas Court ruled (City of Salina v. Blakley) our Section Four only provided a Right to bear arms as a member of the State Militia, or some other military organization provided for by law. The Kansas Court did not find that an individual had a right to bear arms. The same court applied this interpretation to the Federal Second Amendment. The 1905 case record indicated an intoxicated person was firing indiscriminately into a crowd of people.

The language being proposed includes the term lawful purpose this phrase insures that an individual does not have the right to bear arms for illegal purposes and it allows the Department of Wildlife to continue to enforce hunting regulations.

This constitutional amendment will correct a problem with section four of the states constitution that has been interpreted as a "collective right" not an "individual right". The language of HCR 5017 and SCR 1611 will preserve an individual right into the Kansas Constitution coming on the heels of the landmark ruling by the U.S. Supreme Court in Heller vs. DC, the timing couldn't be better for bringing Kansas in line with the U.S. Constitution. The proposed amendment will be submitted to the people in the 2010 General Election.

Senator Mike Petersen

Senate Judiciary

3-20-09
Attachment 1

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Committee Assignments
Agriculture
Education
Information Technology
Local Government

Senator Tim Huelskamp, Ph.D.

Testimony by Senator Tim Huelskamp
Senate Judiciary Committee – SCR 1611
Friday, March 20, 2009

A handwritten signature in blue ink, appearing to read "TH", written over a diagonal line.

Dear Chairman Owens and members of the Senate Judiciary Committee:

Thank you for the opportunity to testify on SCR 1611 – a proposed constitutional amendment to protect the individual right to keep and bear arms.

I know you have heard many of the positive points about this resolution – and there are many. Why the concern now about a Kansas Supreme Court decision issued in 1905?

First, let me read from that unanimous decision:

The provision in section 4 of the Bill of Rights "that the people have the right to bear arms for their defense and security" refers to the people as a collective body. It was the safety and security of society that was being considered when this provision was put into our Constitution. It is followed immediately by the declaration that standing armies in time of peace are dangerous to liberty and should not be tolerated and that "the military shall be in strict subordination to the civil power." It deals exclusively with the military. Individual rights are not considered in this section. (underline emphasis added)

In comparison, the majority opinion in the Heller vs. D.C. U.S. Supreme Court decision – argued one year ago this week – concluded:

The Second Amendment protects an individual right to possess a firearm unconnected with service in a militia, and to use that arm for traditionally lawful purposes, such as self-defense within the home. (underline emphasis added)

The difference is clear – a collective vs. individual right to possess a firearm. I for one was shocked to hear that the Kansas Court had previously determined there were no constitutional protections in our Kansas Constitution for the individual right to own firearms.

In conclusion – we need to do this now because it is time to make certain that our Kansas Constitution also reflects this individual-based right. It is time to declare that we support individual gun owner rights in Kansas. And this Amendment will give Kansans an individual opportunity to make this determination at the ballot box.

Thank you for your time.

Senate Judiciary
3-20-09
Attachment 2



NATIONAL RIFLE ASSOCIATION OF AMERICA

INSTITUTE FOR LEGISLATIVE ACTION

11250 WAPLES MILL ROAD

FAIRFAX, VIRGINIA 22030-7400

Chairman Tim Owens
Senate Judiciary Committee
Room 545-N
Kansas State Capitol
Topeka, KS 66612

Dear Chairman Owens,

March 20, 2009

I come before you today as a registered lobbyist speaking on behalf of the National Rifle Association in support of Senate Concurrent Resolution 1611. This important constitutional amendment will correct a long standing problem with the Kansas State Constitution.

In 1905 the Kansas Supreme Court issued a ruling based on the case: *City of Salina v. Blaksley*, 72 Kan. 230, 83 P. 619 (1905) which ruled that, Section 4 of the Kansas State Constitution, "the bear arms; armies" provision was, in the courts opinion, a collective right not an individual right. So for over 100 years, this state has not recognized an individual's right to keep and bear arms. The language presented in SCR 1611 will correct this problem.

Claiming that the term "people" refers to a collective right has no support in the Kansas Bill of Rights. For example, Section 3, which addresses peaceable assembly and petition, guarantees that "The people have the right to assemble" Section 15, which addresses search and seizure, guarantees that "The right of the people to be secure in their persons and property" The ruling by the court comes as quite a surprise since these other sections of the State Constitution with similar language are clearly referring to individual rights.

"A person has the right to keep and bear arms for defense of self, family, home and state, for lawful hunting and recreational use, and for any other lawful purpose." We feel that this language will clearly be viewed by all as an individual right to keep and bear arms. Similar constitutional amendments have been adopted by many states who also viewed this language as a strong representation of an individual right to keep and bear arms.

The constitutions of 44 of the 50 states contain provisions protecting the right to arms. The six states the constitutions of which do not contain such provisions are California, Iowa, Maryland, Minnesota, New Jersey, and New York. Wisconsin was the most recent to adopt a constitutional amendment in 1998. The District of Columbia, as a federal jurisdiction, is protected by the 2nd amendment to the U.S. Constitution. The *D.C. v. Heller* decision issued in 2008 ruled that the 2nd amendment to the U.S. Constitution clearly recognizes an individual right to keep and bear arms.

Senate Judiciary

3-20-09

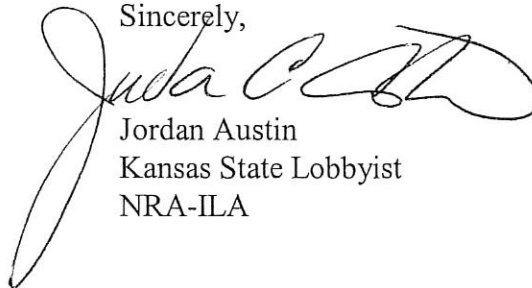
Attachment 3

The language for the original Section 4 of the Kansas Constitution was mirrored after the Ohio Constitution which was adopted in 1851. Kansas' State Constitution was adopted in 1859. The Kansas Supreme Court, in issuing their ruling in *Salina v. Blaksley*, ignored a previous ruling issued by the Ohio Supreme Court in 1900, *State v. Hogan*, 63 Ohio St. 202, 58 N.E. 572 (1900), which ruled that the same language was considered an individual right to bear arms. This court has recently reaffirmed this in a 2003 ruling stating the same, *Klein v. Leis*, 99 Ohio St.3d 537, 795 N.E.2d 633 (2003).

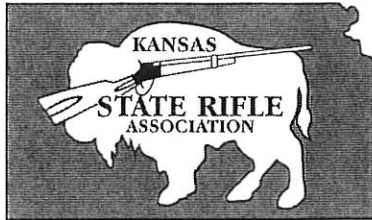
The Kansas Supreme Court also overlooked additional case law contrary to the court's unnecessary holding. *State v. Rosenthal*, 75 Vt. 295, 55 A. 610 (1903)(struck down pistol carrying ordinance as too restrictive where guarantee to arms is for "defence [sic] of themselves and the state"); *In re Brickey*, 8 Ida. 597, 70 P. 609 (1902)(struck down gun carrying statute as too restrictive where guarantee to arms is for "security and defense" and on Second Amendment grounds); *Jennings v. State*, 5 Tex. App. 298 (1878)(struck down statute requiring forfeiture of pistol after misdemeanor conviction as infringement on right to arms where guarantee to arms is for "defense of himself or the state"); *Wilson v. State*, 33 Ark. 557, 34 Am.Rep. 52 (1878)(struck down pistol carrying statute as too restrictive where guarantee to arms is for "common defense"); *Andrews v. State*, 50 Tenn. (3 Heisk.) 165, 8 Am.Rep. 8 (1871)(struck down pistol carrying statute as too restrictive where guarantee to arms is for "common defense"); *Smith v. Ishenhour*, 43 Tenn. (3 Cold.) 214 (1866)(struck down gun confiscation law as infringement on right to arms where guarantee to arms is for "common defense"); *Nunn v. State*, 1 Ga. (1 Kel.) 243 (1846)(struck down pistol carrying statute as too restrictive on Second Amendment grounds).

It is our opinion that the language presented in SCR 1611 will guarantee an individual right to keep and bear arms. The inclusion of "hunting and recreational use" and "any other lawful purpose" are important provisions which we also support and believe strengthen this amendment. We fully support the passage of this resolution and respectfully urge the committee to support it as well. I would be happy to stand for any question the committee may have.

Sincerely,



Jordan Austin
Kansas State Lobbyist
NRA-ILA



Kansas State Rifle Association
P.O. Box 1119
Wichita, Kansas 67201

Chairman Tim Owens
Senate Judiciary Committee
545-N
State Capitol
Topeka, KS 66612

Dear Chairman Owens,

March 20, 2009

Mr. Chairman and members of the committee, my name is Patricia Stoneking. I am President of the Kansas State Rifle Association and I am speaking today on their behalf. I would like to begin by thanking Senator Mike Petersen for introducing SCR 1611 and also to each Senator of this committee who has chosen to cosponsor this resolution. I would like to express my support for SCR 1611.

This constitutional amendment is very important to the citizens of this state. I myself, and most if not all of our membership has believed that section 4 of the Kansas State Constitution has always protected an individual right to keep and bear arms. We were quite surprised to learn of the 1905 Supreme Court decision stating the contrary. We support the language of SCR 1611 and feel that it will accurately reflect an individual right to keep and bear arms. The language is further enhanced by the additional protection of hunting and recreational use of firearms. We support this as well.

Over the past year, as our organization has met and as I have traveled around to our events across this great state I have sensed a reoccurring theme. A lot of the Kansas citizens are worried. They are worried about the present, but most importantly they are worried about the future. The new administration in DC has not given the American public the greatest sense of security since taking office. Their vocal opposition to certain types of firearms as well as their comprehensive agenda laid out on their webpage several days after the election has put firearms owners back on their heels. Everyone is just waiting for something bad to happen, and hoping that somehow this bad legislation can be stopped.

Kansas is a great state and this legislature has passed some tremendous legislation in the past several years to help expand on our firearms rights. This resolution would be the best thing possible for the people of this state right now. They are worried, disenfranchised, and upon the recent discovery of no protections for individual rights for firearm ownership under the State Constitution, they are scared. I feel that a constitutional amendment such as this would be one of the best things that this legislature could deliver to the people of this state. It would show them that you have recognized a problem, realized its importance to the citizens of this state and taken the steps to fix it. Not only fix it, but giving them something that they can be involved in too. A constitutional amendment goes back to the people. They can go out during the next general election and support each of you who has supported their individual right to keep and bear arms.

I would like to thank you for the opportunity to speak today and I respectfully urge this committee to pass this bill favorably out of committee. I would be happy to stand for any questions at the appropriate time.

Sincerely,

Patricia Stoneking
President
KSRA

Senate Judiciary

3-20-09

Attachment 4

Paul Degener
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w.degener@sbcglobal.net

SUBJECT: SCR 1611, Amend Section 4 of the Kansas Bill of Rights

Mr. Chairman and members of the committee,

My name is Paul Degener and I support this resolution with some reservations.

I am the president of, "Citizens Against Illegal Immigration-Topeka" (CAIT), and a member of the National Rifle Association, (NRA), Gun Owners of America (GOA), and the Jews for the Preservation of Firearms Ownership (JPFO), and several other organizations. I am a veteran with 36 years of combined service including active duty, reserves and the National Guard.

For decades the gun control activists have been incrementally whittling away at our 2d Amendment rights and at the same time attempting to brainwash the public into believing that the 2d Amendment is protect their hunting and sporting privileges. Understand, I am not opposed to hunting or the shooting sports. But, this was never the intent of the 2d Amendment. The only reasons for the 2d Amendment was to allow the people to defend themselves against barbarians and to provide a means of defense against a tyrannical government. The founding fathers new the importance of an armed society, they had just recently succeeded in suppressing Britain and gaining our freedoms.

My fear is that down the road sometime, someone who thinks that only the police and the military should have weapons will attempt the same brainwashing tactics on Kansans and convince them that our section 4 of the Kansas Constitution is all about hunting and recreational shooting and follow the lead of our federal government and start banning all sorts of firearms because you do not need them to hunt. I doubt that there are many Americans who know what the 2d Amendment of the U.S. Constitution or Section 4 of the Kansas Bill of Rights is all about.

I propose the references to hunting and recreational use be eliminated.

As a point of interest, I have a book here, put out by JPFO titled: "Gun Control" Gateway to Tyranny. This book is a translation of Germany's 1938 gun control laws and shows the similarities between this and our 1968 gun control laws. The Nazis were the first to use hunting and sporting weapons as the means of brainwashing the Germans on the firearms issues. If anyone knows about disarming the citizens and following up with genocide, the Jews should know.

For anyone who is really interested in the facts of the 2d Amendment, below is a link to a good collection of quotes to include quotes of the founding fathers on the armed citizen. There are also several others sites with 2d Amendment quotes.

http://www.godseesyou.com/2nd_amendment_quotes.html

Senate Judiciary
3-20-09
Attachment 5

I am curious however to know why this amendment is considered necessary. I would think the current section 4 would be appropriate except I would amend it to read:

“The **law abiding citizens of Kansas** have the right to keep and bear arms for the defense of self, family, **property** and state, and security **from tyrannical government, and may not be infringed by any level of government;....**

The current Section 4 of the Kansas bill of Rights:

§ 4. Bear arms; armies. The people have the right to bear arms for their defense and security; but standing armies, in time of peace, are dangerous to liberty, and shall not be tolerated, and the military shall be in strict subordination to the civil power.

Thank you for your time.



STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL

STEVE SIX
ATTORNEY GENERAL

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Senate Judiciary Committee
Senate Concurrent Resolution 1611
March 20, 2009

Mr. Chairman and members of the committee, thank you for allowing me to provide written testimony in support of Senate Concurrent Resolution 1611. SCR 1611 would clarify an individual's right to bear arms under the Kansas Constitution. I support such an amendment because I support an individual's right to possess a firearm under the Second Amendment of the United States Constitution as articulated by the U.S. Supreme Court in the case of *District of Columbia v. Heller*, 554 U.S. ____ (2008).

SCR 1611 would bestow the right to "keep and bear arms for the defense of self, family, home and state, for lawful hunting and recreational use, and for any other lawful purpose." I urge committee members to join me in support of an individual's right to bear arms and vote to recommend SCR 1611 favorably for passage.

Thank you for your consideration.

STEVE SIX
ATTORNEY GENERAL

Senate Judiciary
3-20-09
Attachment 6



Senate Judiciary Committee

Testimony on SCR 1605

March 20, 2009

Presented by:
Rick Cagan
Executive Director

Mr. Chairman and members of the Committee, my name is Rick Cagan. I am the Executive Director of NAMI Kansas, the state organization of the National Alliance on Mental Illness. NAMI Kansas is a statewide grassroots membership organization dedicated to improving the lives of individuals with mental illness. We provide peer support, education and advocacy for our members who are individuals living with mental illnesses as well as their family members who provide care and support.

The current language in Article 5, Section 2 of the Kansas Constitution which provides for limiting the right to vote for persons living with mental illnesses represents an historical blemish tracing back to the original Constitution. This stigmatizing language, which lumps persons with mental illness and offenders into the same group, also reflects a terribly dated view of persons with mental illness, long before our understanding of the biological foundations of mental illness and long before the development of recovery-based treatment methods. The offending language reinforces unfounded fears about persons with mental illness and establishes a significant number of Kansas as second-class citizens, subject to having their voting rights removed. The time has come to repeal three simple words from the Kansas Constitution.

We don't believe that the legislature is interested in wielding its authority granted by Article 5, Section 2 and we don't believe that in recent times that the legislature has taken up this issue. We also do not believe that it would be practical for you to do so. How would you go about identifying more than 95,000 Kansas who are affected by serious mental illness according to a 2007 report? As we all know, there is currently no litmus test related to mental illness for those seeking to register to vote and there is no practical way to identify such persons at the point of registration.

Prior to 1974 when this Constitutional language was last amended, the legislature removed earlier language referring to persons as insane, incompetent, and under guardianship. The legislature also eliminated the absolute prohibition to voting for these persons but retained its authority to continue

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Senate Judiciary

3-20-09
Attachment 7

to deny the right to vote for persons with mental illness. Now is the time to complete the process and to eliminate the conditional voting rights for a large segment of our population.

Questions have been raised as to whether individuals with mental illness can exercise the proper judgment to fulfill their constitutional right to vote. I would submit that anyone of us in this room, regardless of mental illness, is subject to lapses in judgment for a host of reasons including but not limited to other illnesses of the body, alcohol or substance abuse, or even ignorance about the issues or the candidates' stands on the issues. However, there are no constitutional provisions that permit the legislature or anyone else to deny the right to vote to persons whose judgment may be impaired due to other factors.

The current language singling out persons with mental illness is flagrantly discriminatory. I am quite certain that this legislature or any future legislature in the state of Kansas would not think for a minute about placing any condition on a person's right to vote based on race, ethnicity, gender, or disability status. However, the current constitutional language does impinge on a large class of persons who are living with a serious disability whose recognition as citizens of the state of Kansas is placed on a different and separate footing from large numbers of other Kansans living with disabilities. We cannot continue to justify this discriminatory language.

In this difficult legislative season, when few resources are available to address the pressing and unmet needs of a growing number of individuals living with mental illness, the passage of SCR 1605 would offer a token of good will from a legislature which will send an important message to these Kansas citizens and their family members that they are indeed full-fledged citizens of this great state.

Thank you for the opportunity to register our comments on SCR 1605.

Senate Concurrent Resolution No. 1605

By Committee on Ethics and Elections

1-28

9 A PROPOSITION to amend section 2 of article 5 of the constitution of
10 the state of Kansas, relating to qualification of voters.

11

12 *Be it resolved by the Legislature of the State of Kansas, two-thirds of the*
13 *members elected (or appointed) and qualified to the Senate and two-*
14 *thirds of the members elected (or appointed) and qualified to the House*
15 *of Representatives concurring therein:*

16 Section 1. The following proposition to amend the constitution of the
17 state of Kansas shall be submitted to the qualified electors of the state
18 for their approval or rejection: Section 2 of article 5 of the constitution
19 of the state of Kansas is hereby amended to read as follows:

20 “§ 2 **Disqualification to vote.** The legislature may, by law, ex-
21 clude persons from voting because of mental illness or commitment
22 to a jail or penal institution. No person convicted of a felony under
23 the laws of any state or of the United States, unless pardoned or
24 restored to his civil rights, shall be qualified to vote.”

25 Sec. 2. The following statement shall be printed on the ballot with
26 the amendment as a whole:

27 “*Explanatory statement.* This amendment would ~~authorize the legis-~~
28 ~~lature to permit~~ persons with mental illness to be eligible to vote.

eliminate any state constitutional impediment for

29 “A vote for this amendment would permit the legislature to allow per-
30 sons suffering from mental illness to vote.

31 “A vote against this amendment would continue the current ~~prohibi-~~
32 ~~tion against such persons voting.”~~

state constitutional authorization for the legislature to
exclude persons from voting because of mental illness

33 Sec. 3. This resolution, if approved by two-thirds of the members
34 elected (or appointed) and qualified to the Senate, and two-thirds of the
35 members elected (or appointed) and qualified to the House of Repre-
36 sentatives shall be entered on the journals, together with the yeas and
37 nays. The secretary of state shall cause this resolution to be published as
38 provided by law and shall cause the proposed amendment to be submitted
39 to the electors of the state at the general election in the year 2010.



Disability Rights Center of Kansas

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Testimony to the Senate Committee on Ethics and Elections Senate Concurrent Resolution NO. 1605 March 20, 2009

Chairperson and members of the Ethics and Elections Committee, my name is Karen Eager. I'm an attorney at the Disability Rights Center of Kansas (DRC), formerly known as Kansas Advocacy and Protective Services (KAPS). DRC is a public interest legal advocacy agency, part of a national network of federally mandated and funded organizations legally empowered to advocate for Kansans with disabilities. As such, DRC is the officially designated protection and advocacy organization for Kansans with disabilities. DRC is a private, 501(c)(3) nonprofit corporation, organizationally independent of state government and whose sole interest is the protection of the legal rights of Kansans with disabilities. I am here today to present testimony on SCR No. 1605 on behalf of DRC and the Kansans with disabilities that we serve.

Section 2 of Article 5 of the Kansas Constitution applies, without limitation, to any mental illness or mental disorder. Mental illness is an extremely broad category and allowing this part of the Kansas Constitution to stand would potentially allow the legislature to disenfranchise a group of voters solely based on age old prejudices and ignorance about mental illness. Such legislative enactments would have the effect of excluding at least 26.6 percent of people ages 18 and older—this is one in four adults.¹

In SCR No. 1605, this Committee has before it the opportunity to eliminate broad and sweeping discrimination from the Kansas Constitution. As it currently stands, Section 2 of Article 5 of the Kansas Constitution permits the legislature to enact laws that would exclude any Kansan with a mental illness from voting in any election. It is our position that this antiquated provision in the Kansas Constitution is in violation of the United States Constitution, federal law and the fundamental right of all Kansans to vote.

¹ National Institutes of Health, The Numbers Count: Mental Disorders in America, <http://www.nimh.nih.gov/health/publications/the-numbers-count-mental-disorders-in-america>.

The Americans with Disabilities Act (ADA) and the Rehabilitation Act

Any voting ban targeting individuals with mental illness would violate the ADA and the Rehabilitation Act as such laws single out a group of people with disabilities and excludes them from participation in an important activity of state government.

Under ADA, Title II,

no qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.” 28 C.F.R. 35.130(a) (see also 42 U.S.C. 12132).

Section 504 provides, in relevant part:

No otherwise qualified individual with a disability in the United States, as defined in section 705(20) of this title, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance
29 U.S.C. § 794(a).

There is no doubt that the State of Kansas is subject to the requirements of the ADA and the Rehabilitation Act. Public entities for purposes of the ADA include any state government or department or agency of state government. The State of Kansas also receives federal funds and is therefore covered by Section 504 of the Rehabilitation Act. Thus, the ADA and Rehabilitation Act prohibit the state from excluding individuals with disabilities from voting based on presumptions or prejudices about what a class of persons with disabilities can or cannot do. Under federal law, the legislature cannot use voter eligibility criteria that screen out people with disabilities simply because they have a disability.

Fourteenth Amendment: Equal Protection and Due Process

The right to vote is a fundamental right. See *Reynolds v. Sims*, 377U.S. 533, 562 (1964). As the *Reynolds* Court explained:

No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most

basic, are illusory if the right to vote is undermined. Our Constitution leaves no room for classification of people in a way that unnecessarily abridges this right. *Id.* at 560.

Under the Equal Protection Clause, classifications that might interfere with the right to vote must be “closely scrutinized and carefully confined.” *Harper v. Virginia State Bd. of Elections*, 383 U.S. 663, 670 (1966). When a state subjects individuals’ voting rights to “severe” restrictions rather than “reasonable, nondiscriminatory” ones, the state must prove that its election laws are “narrowly drawn to advance a state interest of compelling importance.” *Burdick v. Takushi*, 504 U.S. 428, 434 (1992). *See also, Dunn v. Blumstein*, 405 U.S. 330, 337 (1972) (*where the state grants the right to vote to some citizens and denies the franchise to others, the exclusions must be narrowly tailored to promote a compelling state interest*); *cf. Bush v. Gore*, 531 U.S. 98, 104-105 (2000) (once a state grants the franchise, it may not draw arbitrary lines). Any law that categorically prohibits voting by people with mental illnesses would likely fail the strict scrutiny test to which the courts subject severe voting restrictions.

In addition to the Equal Protection Clause, the Due Process Clause “forbids the government to infringe certain ‘fundamental’ liberty interests *at all*, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest”. *Reno v. Flores*, 507 U.S. 292, 302 (1993). What would be the state’s compelling interest in disenfranchising people with mental illnesses? The state cannot rely on asserting that a ban on voting by people with mental illness serves the interest in assuring that participants in elections be able to understand the electoral choices they make. As the United States Supreme Court has noted, “the criterion of ‘intelligent’ voting is an elusive one, and susceptible of abuse.” *Dunn*, 405 U.S. at 356. Even if “intelligent” voting is a compelling state interest, it must be narrowly tailored to that interest or otherwise it is both over- and under-inclusive. Banning all individuals with a mental illness, regardless of their capacity to vote, is over inclusive and would directly result in the disenfranchisement of many individuals who have the capacity to vote. At the same time, it is under inclusive as it subjects only individuals with mental illness to an “intelligence” test, meaning that it would be discriminatory not to require that all other voters to be subjected to an “intelligent” voting requirement.

Although up to this point, the legislature has not enacted legislation that takes away the voting rights of people with mental illness, the power to do so remains. We would not tolerate that such language remained in our Constitution if it related

to women or any other minority and we should take every step and every measure to remove this antiquated prejudice from our fundamental laws.

Recommendation

Based on the United States Constitution and federal law, discrimination cannot and should not be tolerated in our laws or in our State Constitution. We recommend that legislature eliminate any constitutional impediment to the right to vote by Kansans with mental illness by approving SCR No. 1605

Thank you for your time and attention, I would stand for any questions.

H. Jane Rhys
1133 SW Wayne Avenue
Topeka, Kansas 66604
785-249-1943

SENATE JUDICIARY COMMITTEE
FRIDAY, MARCH 20, 2009

Testimony in Regard to S.C. R. 1605, A PROPOSITION to amend section 2 of article 5 of the constitution of the state of Kansas, relating to qualification of voters.

Mr. Chairman, Members of the Committee, I am appearing today on my own behalf in favor of this Senate Concurrent Resolution. I have a long history in the field of mental illness, having taught students who had emotional disturbance and also having been the State Department of Education's Specialist in Students with Emotional Disturbance. After leaving the Department I became an Educational Advocate, a person assigned to advocate for students with disabilities who acts as a foster care child's parent in relation to their educational program. Over the past sixteen years I have advocated for many students who had mental illness as their disability. I am president of a Symposium who annually conducts a conference for professionals and parents in the field of children's emotional disturbance. I have also had several close relatives who had a mental illness, one who lived in Osawatomie State Hospital until her death, so I have much experience both with adults and children with this disability.

This resolution contains is a simple but very important request: remove the term "mental illness" from the list of those who may be disqualified to vote in Kansas. The Resolution asks that you vote to allow the people of Kansas to vote on this issue. Do it because it is the right thing to do. People with mental illness have endured stigma due to their illness for many years. They are shunned, people do not want them living in their neighborhoods, and families do not seek treatment because there is widespread lack of understanding of this illness. You cannot catch it from others, like mumps or measles, it does not appear due to lack of good parenting, and most types can be treated with appropriate therapy and medications.

Please pass this Resolution out of Committee with a favorable recommendation and pass it on the floor of the Senate.

I appreciate the opportunity to speak to you and would be happy to answer any questions you may have.

Senate Judiciary
3-20-09
Attachment 10

KANSAS MENTAL HEALTH COALITION

An Organization Dedicated to Improving the Lives of Kansans with Mental Illness

The Kansas Mental Health Coalition is comprised primarily of statewide organizations representing consumers of mental health services, families of consumers, community service providers and dedicated individuals as well as community mental health centers, hospitals, nurses, physicians, psychologists and social workers.
We all share a common goal: improving the lives of Kansans with mental illness.

Testimony to the Senate Judiciary Committee SCR 1605 March 20, 2009

The Kansas Mental Health Coalition is an Organization Dedicated to Improving the Lives of Kansans with Mental Illnesses and Severe Emotional Disorders. KMHC is a coalition of consumer and family advocacy groups, provider associations, direct services providers, pharmaceutical companies and others, all of whom share this common mission. Within the format of monthly roundtable meetings, participants forge a consensus agenda which provides the basis for legislative advocacy efforts each year. This design enables many groups otherwise unable to participate in the policy making process to have a voice in public policy matters that directly affect the lives of their constituencies. The result of this consensus building is greater success for our common goals. Our current membership includes over 40 organizations which get together once a month to discuss issues of common concern and develop consensus.

The Kansas Mental Health Coalition supports amending the Kansas Constitution to remove language discriminating against Kansans with mental illness.

Article V of the Kansas Constitution dealing with "suffrage" contains section 2 under the heading "disqualification to vote:" which currently reads as follows:

The legislature may, by law, exclude persons from voting because of mental illness or commitment to a jail or penal institution. No person convicted of a felony under the laws of any state or of the United States, unless pardoned or restored to his civil rights, shall be qualified to vote.

Although the Kansas Legislature has not exercised this authority – the option is discriminatory and unacceptable.

Up until 1974, the Kansas Constitution prevented "persons under guardianship," those who are "not competent," or those who were "insane" from either voting or holding elected office. In 1974 the Constitution was amended. It was amended to change the total prohibition from voting to a provision where the Legislature "may" take away the right to vote. It was further amended to remove references to persons under guardianship and those "not competent."

Kansans with mental illness were left on the list of persons for whom the Legislature can deny the right to vote.

Voting is the most fundamental of all rights. The Kansas Legislature should not have the power to take away the right to vote based on disability. It is wrong to target a class of people in the Constitution, like people with mental illness, and to give the legislature permission to discriminate.

For More Information, Contact:

Kansas Mental Health Coalition

c/o Amy A. Campbell, Lobbyist
P.O. Box 4103, Topeka, KS 66604

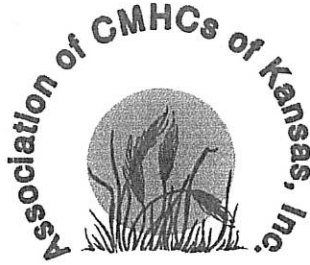
785-234-9702, cell: 785-969-1617; fx: 785-234-9718, kmhc@amycampbell.com

c/o Roy W. Menninger, MD, Chair
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Senate Judiciary

3-20-09

Attachment 11



Association of Community Mental Health Centers of Kansas, Inc
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Senate Judiciary Committee

Testimony on Senate Concurrent Resolution 1605

March 20, 2009

Presented by:

Michelle Sweeney, Policy Analyst
Association of CMHCs of Kansas, Inc.

Senate Judiciary

3-20-09
Attachment 12

Mister Chairman and members of the Committee, my name is Michelle Sweeney, I am the Policy Analyst for the Association Community Mental Health Centers of Kansas, Inc. The Association represents the 27 licensed Community Mental Health Centers (CMHCs) in Kansas who provide home and community-based, as well as outpatient mental health services in all 105 counties in Kansas, 24-hours a day, seven days a week. In Kansas, CMHCs are the local Mental Health Authorities coordinating the delivery of publicly funded community-based mental health services. The CMHC system is state and county funded and locally administered. Consequently, service delivery decisions are made at the community level, closest to the residents that require mental health treatment. Together, this system of 27 licensed CMHCs form an integral part of the total mental health system in Kansas. As part of licensing regulations, CMHCs are required to provide services to all Kansans needing them, regardless of their ability to pay. This makes the community mental health system the "safety net" for Kansans with mental health needs, collectively serving over 123,000 Kansans with mental illness.

It is important to note that one in four adults—approximately 57.7 million Americans—experience a mental health disorder in a given year.¹ Five of the top ten leading causes of disability world wide are mental disorders—such as depression, schizophrenia, bipolar disorders, alcohol use and obsessive compulsive disorders.²

As it is currently written, even though the Kansas Constitution guarantees citizens the right to vote³, it also allows the Legislature to restrict those with mental illness from voting. The truth is, this section was adopted before there were aggressive and evidence-based treatments for mental illness. This was written when people with depression and other mental illnesses were automatically remanded to state institutions and hospitals.

The truth is, mental illness can happen to anyone. With treatment, medication and other services and care, recovery is possible for those who have been diagnosed with mental illness. The onset of a mental illness should not make an individual ineligible or unable to vote.

Voting is the most fundamental of all rights. If this article were ever implemented by the Legislature in Kansas, many Kansans could potentially be excluded from voting. Additionally, it is discriminatory to "lump" those with mental illness in with felons as a constituency—which this article now does. Someone who suffers from mental illness should not be placed in the same category as felons when it comes to voting rights. The U.S. Constitution, the Americans with Disabilities Act and the U.S. Voting Rights Act already protect disabled people's right to participate in elections⁴, shouldn't the Kansas Constitution be amended to reflect these rights?

The Association supports the inalienable right of citizens to elect their own representation. Discrimination against those with mental illness is against the law. A vote for this amendment would eliminate any state constitutional impediment for persons with mental illness to vote.

Thank you for your support of mental health care and treatment for all Kansas, and the adoption of Senate Concurrent Resolution 1605 to eliminate discrimination against those with the disability of mental illness.

¹ U.S. Department of Health and Human Services. *Mental Health: A Report of the Surgeon General*. Rockville, MD: U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Center for Mental Health Services, 1999, pp. 408, 409, 411.

² *Regional Strategy for Mental Health*, World Health Organization Western Pacific Region, 7 August 2001; Read at <http://www.wpro.who.int/NR/rdonlyres/02421D66-3336-4C76-8D59-6ADA8B53D208/0/RC5214.pdf> on 2-2-09.

³ Constitution of the State of Kansas ; Article 5, Section 1. See <http://www.kslib.info/constitution/art5.html> ; Viewed March 19, 2009.

⁴ Bazelon Center for Mental Health Law; Jennifer Mathis, Deputy Legal Director ; *Trenton Star Ledger*, January 8, 2007; Washington, D.C.; 2007.



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March 19, 2009

The Honorable Thomas Owens, Chairman
Senate Judiciary Committee

Reference – Senate Concurrent Resolution 1605

Good morning Chairman Owens and members of the Senate Judiciary Committee. My name is Ernest Kutzley and I am the Advocacy Director of AARP Kansas. AARP is a nonprofit, nonpartisan membership organization dedicated to making life better for people 50 and over. AARP has more than 40 million members nationwide and more than 375,000 members in Kansas. We provide information and resources and engage in legislative, regulatory and legal advocacy. Thank you for allowing us to present our comments in support of SCR 1605.

As citizens of a free and democratic nation, Americans have a vital stake in assuring the integrity of our democratic processes and government institutions. The ability of government at all levels to respond to the concerns of citizens, promote the public interest, and retain public confidence in its fairness, competence, and relevance is dependent, in large measure, on adhering to policies that promote and sustain integrity.

Trust in government is extremely low. Public discourse and processes are increasingly characterized by partisanship, crisis driven decision-making, and gridlock. Without needed reforms in campaign finance laws, lobbying, ethics and accountability, redistricting, voting systems and registration procedures; and voter education—accompanied by diligent administration and enforcement of these reforms—the status quo is likely to continue.

AARP believes that the right to vote, along with full and fair representation, is the most basic of all political rights and the right of all citizens to vote in free and fair elections must be vigorously upheld.

Voting systems and registration procedures should be designed to encourage maximum participation in the process. Consistent with the constitutional right to vote and democratic principles, governments should aim to expand the franchise and enhance access to the ballot for those capable of voting. Yet state constitutions and laws vary widely regarding mental capacity to vote. All but 12 states have constitutional provisions barring people with various kinds of mental impairment from voting, and the categories of individuals excluded are sweeping and imprecise. State voting and guardianship laws also vary dramatically in this regard and often appear inconsistent with constitutional provisions. Only a few statutes and cases require a court to determine whether an individual has capacity to vote. Yet such a safeguard, with strict parameters, may be needed to avoid inappropriate deprivation of the right to vote based on mental impairment.

Therefore, AARP believes that uniform standards should be established and reinforced with adequate funding in order to safeguard the integrity of the election process and afford all Americans the ability to express their electoral preference. States should adopt procedures to detect and prevent voter fraud that do not permit arbitrary and discriminatory reviews, identity challenges, and misuse of provisional ballots in ways that discourage voter registration and turnout or show bias.

This system of standards should ensure that no governmental entity exclude any otherwise qualified person from voting on the basis of medical diagnosis, disability status or type of residence. State constitutions and statutes should not permit exclusion of a person from voting based on mental incapacity.

Therefore, AARP Kansas supports SCR 1605 and respectfully requests the support of the Senate Judiciary Committee on this important piece of legislation.

Thank you.

Resources:

The Policy Book, AARP Public Policies 2009

Testimony to the Senate Judiciary Committee
on Senate Concurrent Resolution No. 1605
Pertaining to protection of voting rights of citizens of Kansas with mental illness
March 20, 2009
Sally F. Fronsman-Cecil

I respectfully request that you take action on Senate Concurrent Resolution 1605 and protect the voting rights of all people with mental illness in Kansas.

The Senate Committee on Ethics and Elections has proposed the amendment of section 2 of article 5 of the constitution of the state of Kansas which relates to qualification of voters in order to protect the right to vote of people with mental illness. The current language in the constitution is both stigmatizing and represents a danger to an important civil right of Kansan citizens with mental illness – our right to vote.

I am a parent of a person with a mental illness and a person with a mental illness myself. I am appalled that our state constitution contains a provision that would allow the Kansas legislature to deny voting rights to people with mental illness as a special class. The constitution currently includes us as a category with people who have been convicted of felonies and committed to a jail or penal institution. The Kansas constitution does not single out people with any other type of disability. At this time in our country's history denial of a basic civil right such as the vote would never be permitted on account of race or gender. Those of us with mental illness should not be singled out to be vulnerable to a loss of our basic civil right to vote.

Sally F. Fronsman-Cecil