

## MINUTES OF THE HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman John Edmonds at 1:30 P.M. on January 27, 2005 in Room 313-S of the Capitol.

All members were present.

Committee staff present:

Athena Andaya, Kansas Legislative Research Department  
Dennis Hodgins, Kansas Legislative Research Department  
Mary Torrence, Revisor of Statutes Office  
Carol Doel, Committee Secretary

Conferees:

Rep. Tim Owens  
Rep. Jan Pauls  
Rep. Ward Loyd  
Rep. Mike O'Neal  
Dennis Hodgins, Legislative Research Department

Others attending:

See attached list.

Chairman Edmonds opened the meeting for bill introductions. There were no bill introductions.

Material regarding *Areas of Law that Would be Affected by Recognition of Same-Sex Marriage and Non-Marital Unions* which Representative Burroughs had previously requested from staff was presented for committee review with Dennis Hodgins, Legislative Research Department giving a briefing. (Attachment 1)

Representative Burroughs explained that he had requested this information because he felt it was necessary do to the discussion at the previous meeting regarding economic impact that could occur in reference to businesses within the state and the potential for resources to come to our state or vacate our state depending on which side of the issue one was on. He stated that he felt it was imperative that the committee understand the benefits of marriage.

Chairman Edmonds advised the committee that there would be a briefing on **SCR 1601** by four attorneys who were House Members and introduced as the first to speak Representative Tim Owens.

Representative Owens, related that he is not giving formal legal advice, but is speaking only as an attorney legislator and out of respect to the Chairman and his invitation. Representative Owens gave his previous background. He is in his fourth year of the legislature and he served twenty-four years as a city counsel member in Overland Park, three years as general counsel for the Kansas Department of Social and Rehabilitation Services, two years as the city prosecutor and assistant city attorney in Overland Park. He has been in general private practice for most of the last thirty-one years. In the 2003 and 2004 legislature, he served as the rules chair for the house and he has also served as a municipal judge and judge pro-tem in all of the different types of district courts in Johnson County. He is a retired colonel from the U.S. Army Reserve. In the varying capacities in which he has served, he has always been called upon to address issues that related to constitutional questions. Representative Owens stated that the observations that he will offer will be rendered in the same manner and approach as he took as rules chairman, non-partisan, non-personal, and analytical of the issue as he sees it.

Representative Owens related that the obvious issue is whether to put to the vote of the people the proposal to amend Article 15 of the State Constitution to incorporate a new section 16 defining marriage as between one man and one woman and declaring all other marriages to be void and against public policy of the state as is already the language in **KSA 23-101** and declaring that no relationship other than a marriage shall be recognized by the state as entitling the parties to "the rights and incidents" of marriage. He further stated that if the matter is taken before a court, the courts are going to look at the strict language of any laws that they are dealing with and the definitions. Representative Owens says that as nearly as he can tell, in his research Kansas Law of, Kansas does not define what the right and incidents are. There are a lot of questions about

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how to define “the rights and incidents” of marriage. He further related there are other issues which are of concern such as federal versus state. The next area of consideration has to do with Article 4 of the U.S. Constitution dealing with full faith and credit. Representative Owens stated given the topic that is being dealt with, the Defense of Marriage Act (DOMA) needs to be looked at. It is an act, it is not constitutional. It has not been challenged throughout the entire system yet. There has been no ruling on whether or not it is constitutional. If this act is upheld on the challenge, then it would be his opinion, that no further legislation is needed to protect marriage in Kansas. Another area of concern is equal rights and equal protection. The above are the basic areas that are cause for concern, with the legislation, proposed in terms of how it will be treated if it goes to court. (No Testimony)

Chairman Edmonds introduced Representative Pauls as the next attorney to brief the committee on **SCR 1601**. Representative Pauls stated that she does support the resolution, however she was going to focus on an unbiased legal opinion. She stated that she graduated from law school and she started practice in Hutchinson for a Legal Aid Society which provides legal services for the poor. She did this for a number of years and then was in private practice for two year, followed by Assistant County Attorney in Reno County for two years doing prosecutions and juvenile court and then for four years she was a District Judge in Reno County. After that she went back into private practice and has now been in the Legislature since 1991.

Representative Pauls stated that she appreciates questions about protection against abuse laws. In 1998 it was redefined to make the act more clear. It makes it clear that people can get protection with a restraining order against someone else due to threats of physical abuse or certain types of threats. These people are described as an intimate partner, or household member meaning persons who are or have been in a dating relationship, persons who reside together or have formerly resided together or persons who have a child in common. That was drafted very carefully to pick up anyone who had lived together or had a dating relationship which is defined as a social relationship of a romantic nature. The only proof that a person has to have to get a restraining order is that they have lived in a household together. Representative Pauls continued with the fact that talk about Civil Rights has been heard again. In Kansas sexual orientation has never been included as a protection class under Civil Rights. One other protection that we afford people in Kansas due to Federal Law is that you cannot discriminate against someone that you think has AIDS. Apart from that there is no protection under Kansas Law or Federal Law regarding sexual orientation.

Representative Pauls related that there was a question about benefits and it was indicated that some corporations in Kansas may be withholding tax benefits that we have options as state employees to have withheld, but they are doing it for same sex couples. Currently there is no specific authority under State Law to do that. If they are making that decision, they might be subject to challenge now under current tax law whether this amendment gets passed or not.

Another question was regarding the faith of marriage, paragraph A. The courts interpretation is that “other marriages” is something other states call marriage and we don’t. Rep. Pauls spoke also on the two subject rule as well as defining the concept of “rights and incidents” of marriage. If a person, meets the Kansas definition of marriage, they would be entitled to benefits.

Next to brief the committee on **SCR 1601** was Representative Ward Loyd who has been in general practice of law since 1968 and has made a number of appearances before the Kansas Supreme Court. Representative Loyd stated that it is his belief that sometimes in the pursuit of what we believe to be just and right, we wind up doing the wrong thing. It is his fear that **SCR 1601** may fit into that category.

Representative Loyd summarized the concerns with the first being that he doesn’t think this resolution is necessary as the current Kansas Law, **K.S.A. 23-110**, defines the nature of marriage relation as one which exists “between two parties who are of opposite sex”. This has been the law since 1867.

Another area of concern which Representative Loyd touched on, was the question of whether Kansas will at some point under the doctrine of “full faith and credit” be required to recognize a same-sex marriage legalized in Massachusetts. However, if it is necessary to fix this, it can be done by legislative enactment, without the necessity of an amendment of our Kansas Constitution.

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Representative Loyd related that a new element of difficult definition in **SCR 1601** is Section (b), “No relationship, other than a marriage, shall be recognized by the state as entitling the parties to the rights or incidents of marriage.” He has not had the opportunity to research the potential effect of Section (b), but it is his concern that he cannot define this phrase, or its application. He further stated that without certainty in such definition, we may be placing at risk may currently recognized relationships. existing at law not intended by the sponsors of this measure to be impacted. (Attachment 2)

Representative O’Neal came before the committee to give briefing on **SCR 1601**. He stated that this is his 21<sup>st</sup> session in the legislature and in his real life he practices law. He does explicitly medical mal practice defense. He does not do a lot of cases involving constitutional law, but he related some past experiences in that area. He further stated that he would be as objective as he could, but he wished to confess from the beginning that he is a strong proponent of passage of the constitutional amendment.

Representative O’Neal related the reasons for making the amendment to the State Constitution when Kansas already has a statute on this subject. He stated that we cannot always take solace in the fact that we have a good strong statue on the books that has been upheld by the highest court in our state, that we need to look only to the recent death penalty cases to know that is not necessarily true. There is the argument that we should not amend the constitution “willy nilly”. However, something is not forever unless the people support it forever. The issue in **SCR 1601**, the institution of marriage, is a very important issue. Marriage is a matter of public concern.

Representative O’Neal spoke on the meaning of “rights or incidents of marriage”. If you have any document that generally says spouse or whatever, you cannot replace that word with something else such as civil unions. Anything in law that gives a right or incident or is implied by case law is obligation. If a person dies intestate, without any provision, the law presumes that if you have a surviving spouse, your property will automatically go to the spouse. By this we have not deprived same-sex individuals in a committed loving relationship from inheriting. They cannot inherit intestate succession as a spouse, however, they can do estate planning.

The Representative also commented on full faith and credit.

Chairman opened the floor for consideration of **SCR 1601**.

Representative Myers moved **SCR 1601** be passed out favorable for passage. The motion was seconded by Representative Brunk .

Representative Craft offered a substitution motion to amend **SCR 1601** to strike subsection (b). The motion was seconded by Representative Mah.

Representative Craft issued a copy of the proposed resolution change to each member for review. (Attachment 3)

Vote was taken on the substitution motion to amend **SCR 1601**. Motion failed.

Returning to the original motion by Representation Myers, vote was taken. Motion passed.

With no further business before the committee, Chairman Edmonds adjourned the meeting.