

SESSION OF 2020

**SUPPLEMENTAL NOTE ON HOUSE CONCURRENT
RESOLUTION NO. 5019**

As Recommended by House Committee on
Federal and State Affairs

Brief*

HCR 5019, if adopted by two-thirds majority of both chambers of the Kansas Legislature and approved by voters, amends the *Kansas Constitution* to create a new section in the *Bill of Rights* concerning the regulation of abortion. The new section would state the *Kansas Constitution* does not require government funding of abortion and does not create or secure a right to abortion. Further, the language would state, to the extent permitted by the *U.S. Constitution*, the people of Kansas, through their elected state representatives and senators, may pass laws regarding abortion, including, but not limited to, in circumstances of pregnancy resulting from rape or incest, or when necessary to save the life of the mother.

The resolution requires the following explanatory statement be printed on the ballot with the text of the amendment if it is submitted to voters for their approval:

The Value Them Both Amendment would reserve to the people of Kansas, through their elected state legislators, the right to pass laws to regulate abortion because there is no Kansas constitutional right to abortion or to require the government funding of abortion.

A vote for the Value Them Both Amendment would reserve to the people of Kansas,

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

through their elected state legislators, the right to pass laws to regulate abortion because there is no Kansas constitutional right to abortion or to require the government funding of abortion.

A vote against the Value Them Both Amendment would make no changes to the constitution of the state of Kansas and could prevent the people, through their elected state legislators, from regulating abortion in many circumstances. It would leave in place the newly discovered right to abortion first recognized in 2019.

If approved by two-thirds of the Legislature, the text of the resolution and the ye and nay votes of both the Kansas House of Representatives and the Kansas Senate would be published in the journals of the respective chambers.

The resolution requires the proposed constitutional amendment be submitted to voters at the primary election in August 2020, unless a special election is called at a sooner date by concurrent resolution of the Legislature.

Background

The resolution was introduced by the House Committee on Federal and State Affairs at the request of Representative Barker. The Senate Committee on Judiciary introduced an identical concurrent resolution, SCR 1613, at the request of Senator Wilborn.

2019 Kansas Supreme Court Decision

The proposed constitutional amendment was introduced after the Kansas Supreme Court's decision in *Hodes & Nauser, MDs, P.A. v. Schmidt*, 309 Kan. 610 (2019), which

was handed down in April 2019. In the decision, the Supreme Court concluded section 1 of the *Bill of Rights* of the *Kansas Constitution* protects judicially enforceable rights, including a right to personal autonomy that includes the right to decide whether to continue a pregnancy, and a strict scrutiny standard of review should be applied in determining whether a statute infringes on fundamental constitutional rights. The litigation was a challenge to 2015 SB 95, which was passed into law and prohibited dismemberment, or dilation and evacuation (D&E) method, abortions.

2019 Interim Committee Action

The topic of the resolution was discussed at meetings of both the 2019 Special Committee on Federal and State Affairs and the 2019 Special Committee on Judiciary. Both Special Committees issued recommendations that voters be provided an opportunity to vote on an amendment concerning the language of the *Kansas Constitution* following the Kansas Supreme Court's decision in *Hodes & Nauser*.

2020 Legislative Hearings

The House Committee on Federal and State Affairs and the Senate Committee on Judiciary held a concurrent meeting on HCR 5019 and SCR 1613 on January 21, 2019. At that concurrent meeting, proponent testimony was provided by representatives of the Office of the Attorney General, Family Policy Alliance of Kansas, Kansas Catholic Conference, Kansans for Life, Liberty Alliance, and Professional Association. Two representatives of Project Rachel and Project Joseph, three medical doctors, and two private citizens also testified in support of the resolution.

Written-only proponent testimony was received from Washburn University College Republicans and Ichabods for Life; Pro-Life Medical Students of Kansas City, Kansas;

Students of Benedictine College; and 3 medical doctors and 28 private citizens.

Opponent testimony was provided by Representative Lusk, representatives of the American Civil Liberties Union, Catholics for Choice, The Center for Reproductive Rights, Jewish Community Relations Bureau, Kansas Abortion Fund, Medical Students for Choice, National Women's Law Center, Planned Parenthood Great Plains Votes, Trust Women, Unite for Reproductive and Gender Equity, and the YWCA of Northeast Kansas, as well as four medical doctors and nine private citizens.

Written-only opponent testimony was provided by Mainstream Coalition, National Women's Law Center, Personhood Kansas, and 6 medical professionals and 94 private citizens.