

Testimony of SB 180

For the Senate Public Health & Welfare Committee

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Chair Gossage, and members of the Committee, thank you for the opportunity to provide testimony on Senate Bill 180. This bill will have a profound negative impact on trans Kansans, many of whom are my clients.

Through a Skadden Fellowship, I run the Kansas Name Change Project, where I provide free legal representation to low-income transgender Kansans seeking name changes, identity document corrections, and other civil legal services. I began advocating for equitable and affordable legal representation for trans Kansans in 2019, when I co-founded a legal clinic in Lawrence that assisted trans and nonbinary folks with the name and gender marker change process. Over the last four years, I have become extremely familiar with Kansas' laws related to the definition of sex and gender, and the way they impact the lives of transgender Kansans.

As you will likely hear from many people, this bill will codify into law inaccurate and under-inclusive definitions of gender. It does not reflect the existence of trans people, whose gender identity differs from that of their assigned sex at birth. And it does not reflect the existence of intersex people, who have identifiable physical characteristics that are neither female nor male, or are both female and male.¹ SB 180's strict and narrow definitions of gender are inaccurate and incomplete because they do not reflect the lives of thousands of Kansans.

By forcing government agencies to adopt a narrow and inaccurate definition of gender and parenthood, this bill will have a significant negative effect on Kansas' trans community and my clients.

First, this bill could have far-reaching negative effects on my clients' lives. While SB 180 primarily attempts to define gender, those definitions could have far-reaching echoes on state employment, customer service, vital records, education systems, and the official interpretation of other state legislation. This law would create significant confusion and discord for my clients as they try to figure out whether they are allowed to change their gender marker on state-issued IDs, whether their state employer is allowed to use their correct pronouns and title in the workplace, and whether their kids are allowed to be truly recognized for who they are at state-run schools and colleges.

¹ <https://www.unfe.org/wp-content/uploads/2017/05/UNFE-Intersex.pdf>

Second, SB 180 may be broad enough to act as a de facto “gender marker ban” and make it impossible for trans Kansans to obtain state documentation that accurately reflects their gender. This is an issue for my clients, because it is essential for trans folks to have identity documents that reflect their true, lived gender.

Symbolically, having a birth certificate and ID that states who you really can be life-changing for trans folks, who feel seen and understood when they can present accurate documentation. Practically, it can be extremely dangerous for folks to have identity documents that do not accurately reflect their gender. Having mismatched or inaccurate ID can involuntarily disclose a person’s status as being transgender. This can cause significant harm. It opens trans folks up to discrimination in public accommodations, housing, and employment – really, anywhere you might have to show your ID. Studies show that this involuntary disclosure makes it more likely that trans folks will be questioned, harassed, or even physically assaulted.

Finally, by banning vital records that accurately reflect the gender markers of trans Kansans, SB 180 likely violates constitutional law, and runs afoul of a binding Consent Order that the state of Kansas entered into in *Foster v. Anderson*.² A 2018 lawsuit in federal court against the state of Kansas found that banning gender marker corrections on state-issued birth certificates violated the Fourteenth Amendment’s Equal Protection Clause and the Due Process Clause. Kansas agreed to a binding and enforceable consent order that requires that the state allow trans Kansans to obtain accurate identity documents that reflect their true gender identity.³ SB 180 may violate this Consent Order.

It is essential for Kansas’ laws to reflect all Kansans. By enshrining inaccurate definitions of gender into the law, the ripple effect from SB 180 will have a significant negative impact on trans Kansans.

Thank you very much for your time.

² *Foster v. Anderson*, Civil Action No. 18-2552-DDC-KGG, District of Kansas.

³ https://www.lambdalegal.org/in-court/legal-docs/foster_ks_20190624_consent-judgment