

SESSION OF 2021

**SUPPLEMENTAL NOTE ON HOUSE CONCURRENT
RESOLUTION NO. 5003**

As Recommended by House Committee on
Federal and State Affairs

Brief*

HCR 5003, if adopted by a two-thirds majority of each chamber of the Kansas Legislature and approved by voters, would amend 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, laws that account for circumstances of pregnancy resulting from rape or incest, or circumstances of necessity 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 affirm there is no Kansas constitutional right to abortion or to require the government funding of abortion, and would reserve to the people of Kansas, through their elected state legislators, the right to pass laws to regulate 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.

*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>

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

A vote against the Value Them Both Amendment would make no changes to the constitution of the state of Kansas and could restrict the people, through their elected state legislators, from regulating abortion by leaving in place the recently recognized right to abortion.

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

The resolution requires the proposed constitutional amendment be submitted to voters at a special election called on August 2, 2022, to be held in conjunction with the primary election held on that date.

Background

2019 Kansas Supreme Court Decision

The proposed constitutional amendment was first introduced in the 2020 Legislative Session after the Kansas Supreme Court's decision in *Hodes & Nauser, MDs, P.A. v. Schmidt*, 309 Kan. 610 (2019) (*Hodes*), which was released in April 2019. In the decision, the Supreme Court concluded section 1 of the *Bill of Rights* 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 provisions of enacted 2015 SB 95, which 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* in light of the Kansas Supreme Court's decision in *Hodes*.

2020 Legislative Session Action (HCR 5019/SCR 1613)

The House Committee on Federal and State Affairs and the Senate Committee on Judiciary held a concurrent hearing on HCR 5019 and SCR 1613 on January 21, 2020.

HCR 5019 was recommended favorably by the House Committee on Federal and State Affairs, but no further action was taken on HCR 5019.

The Senate Committee of the Whole amended SCR 1613 to specify the proposed amendment would be submitted to electors at a special election held in conjunction with the August 4, 2020, primary election. As introduced, the concurrent resolution stated submission to electors would occur "at the primary election in August in the year 2020, unless a special election is called at a sooner date by concurrent resolution of the legislature, in which case it shall be submitted to the electors of the state at the special election."

The 2020 Senate adopted SCR 1613 as amended. On final action in the 2020 House of Representatives, SCR 1613 did not obtain the required two-thirds majority for adoption.

2021 Legislative Session Action (HCR 5003)

The concurrent resolution was introduced by the House Committee on Federal and State Affairs at the request of Representative Barker.

House Committee on Federal and State Affairs

The House Committee on Federal and State Affairs held a hearing on HCR 5003 on January 15, 2021. At the hearing, **proponents** testifying in support of the resolution included representatives of the Archdiocese of Kansas City, Family Policy Alliance of Kansas, Frontier Peace Advisors, Kansans for Life, and Rachel's Vineyard; one attorney; two medical doctors; one licensed psychologist; and a private citizen.

Written-only **proponent** testimony was provided by representatives of Ascension Via Christi, Kansas Catholic Conference, and the Office of the Attorney General; former Kansas Governor Jeff Colyer; six medical professionals; and a private citizen.

Opponent testimony was provided by former Representative Lusk; representatives of Kansas Abortion Fund, Mainstream Coalition, Planned Parenthood Great Plains Votes, Trust Women, and URGE: Unite for Reproductive Justice; two medical doctors; and six private citizens.

Written-only **opponent** testimony was provided by Representative Vaughn and Representative Haswood; former Representative Koesten; representatives of American Civil Liberties Union of Kansas, Jewish Community Relations Bureau, National Association for Pregnant Women, National

Women's Law Center, Physicians for Trust Women, and Woody Law Firm; 1 medical doctor; and 17 private citizens.

Written-only neutral testimony was provided by a representative of the Kansas Association of Counties.

Fiscal Information

No fiscal note was available at the time the House Committee took action on the resolution.

Abortion; Value Them Both; *Kansas Constitution*