

# Legislators say Kansans would not vote for gay marriages

TOPEKA (AP)— Many legislators are confident that Kansans would vote overwhelmingly in favor of a proposed amendment to the state constitution banning gay marriage if given the chance.

Kansans have not been shy in expressing their views, especially those who believe such a measure would help check a growing permissiveness in society. Before a debate last week on a constitutional gay marriage ban, senators reported getting dozens — even hundreds — of e-mails.

Yet no amendment emerged from the Senate. As a group, senators were more cautious than House members, and their collective reluctance led to a big victory for gay rights activists.

Faced with a House-approved proposal to ban both gay marriage and civil unions for same-sex couples, senators turned it into a measure that would ban gay marriage but did not specifically prohibit civil unions. The Senate's strongest opponents of gay marriage then helped kill that version.

"I don't think the Senate ever had the will to work on it anyway," said Rep. Kathe Decker, Clay Center, a co-sponsor of the House's version of the proposed amendment.

As adopted by the House earlier this month, the proposed amendment would have added a section to the constitution declaring that only marriages between one man and one woman are valid. The proposed amendment also would have prohibited the state from extending benefits associated with marriage to any other relationship — effectively banning civil unions for same-sex couples.

Decker and Rep. Jan. Pauls, D-Hutchinson, drafted the proposed amendment in response to a November ruling by Massachusetts' highest court saying it was unconstitutional in that state to ban gay marriage. Their goal was to prevent a Kansas court from issuing a similar decision.

But Kansas, unlike Massachu-

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R- Independence

setts, has a “defense of marriage” law, passed in 1996 to reaffirm a policy in place since 1867 that the state recognizes marriages only between one man and one woman.

Thirty-four states, including Kansas, have such laws. Four — Alaska, Hawaii, Nebraska and Nevada — have constitutional provisions against gay marriage.

Also, in 2002, the Kansas Supreme Court considered the state's definition of marriage in ruling that a marriage between a man and someone who had undergone sexual reassignment surgery to become a woman was not valid.

The court said it could not ignore how the Legislature had set the state's policy on marriage, adding, “If the Legislature wishes to change public policy, it is free to do so; we are not.”

Those facts led some senators, including Majority Leader Lana Oleen, R-Manhattan, to question the need for a constitutional amendment.

In addition, even some senators who were willing to ban gay marriage in the state constitution worried that the House's language would invite a lawsuit in federal court. Their theory was that a gay couple wouldn't sue in state court because the Kansas Constitution would prevent a favorable decision anyway but would turn to the federal courts for relief.

In 1996, the U.S. Supreme Court struck down an amendment to Colorado's constitution preventing that state and its local governments from enacting anti-discrimination policies giving gays and lesbians a “protected status.”

Moreover, Nebraska faces a federal lawsuit over its constitutional ban on gay marriage and marriage-like benefits for same-sex couples. The plaintiffs are not arguing that they are entitled to marriage or civil unions, but that Nebraska's constitution limits their ability — but not other citizens' — to seek legislative action on such issues.

“It would have been the same issue here,” said Sen. Derek Schmidt, R-Independence, an attorney. He said in the Senate, “The predominate sentiment was, ‘I want to ban same-sex marriage in the manner least likely to land us in federal court.’”

At the same time, senators felt pressure to respond to constituents who were demanding the chance to vote on a gay marriage ban.

So, in response, Oleen offered and senators approved a proposal shortening the proposed amendment to a statement that marriage is a civil contract between one man and one woman only.

In some ways, her language was an attempt to preserve the status quo, dropping phrases from existing Kansas law into the constitution.



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