



*End discrimination based on
sexual orientation and
gender identity*

Dennis "Boog" Highberger
Kansas House of Representatives, District 46
1024 New York
Lawrence, KS 66044

June 15, 2014

Dear Mr. Highberger:

Equality Kansas, formerly the Kansas Equality Coalition, is the leading lesbian, gay, bisexual and transgender (LGBT) political and advocacy organization in the state. We have approximately 2500 dues-paying members in eleven chapters, from Kansas City to Dodge City and from Pittsburg to Hays. Our membership is as diverse as the general population, and is actively engaged in formulating and defending pro-equality, non-discriminatory public policy at the state and local level.

In addition to our public policy activities, our political action committee, the Kansas Equality PAC, endorses and supports candidates who make a commitment to speak out and vote in favor LGBT equality, and who will defend against the ongoing attempts to legislate LGBT Kansans into second-class status.

Please find the enclosed Equality Kansas 2014 Legislative Questionnaire. The topics are among those that have, in the past, been issues before the Kansas legislature and are likely to come before it in the future. Each question may be answered with a simple "yes" or "no" response. There is also room for additional comments, which we welcome and encourage. Many areas of public policy are complex, and nuanced answers from you will help us get to know you as a candidate and officeholder.

If you are an incumbent officeholder, we will likely know some of your views from your voting record and public statements. *We encourage you to spend a few minutes on our questionnaire regardless.* There may be issues with which you are unfamiliar, or on which you'd like to offer an opinion. We value your input, and would like to hear from you.

If you have any questions, please call me at 316-683-1706, or email witt@eqks.org.

Sincerely,

Thomas Witt, Executive Director
Equality Kansas

Responses from Dennis “Boog” Highberger:

1. Criminalization of Same-Sex Relationships (Sodomy)

In 2003, the US Supreme Court decided in *Lawrence v. Texas* that criminalizing consensual acts between same-sex partners (defined as sodomy) is unconstitutional. It is important to note that just because the courts have ruled a statute unconstitutional, that does not compel a state legislature to remove it from the statute books. That is the case here in Kansas: Although the Kansas statute criminalizing same-sex sodomy is technically unenforceable, it remains the law in this state, and has been used to justify official harassment of LGBT Kansans. The Kansas law currently states that sex acts between members of the same sex is a Class B misdemeanor, punishable by up to six months in prison and a \$1000 fine.

a. Do you support repealing Kansas’s criminal ban on same-sex relationships, which is unconstitutional and unenforceable after the U.S. Supreme Court’s 2003 *Lawrence v. Texas* decision? **YES/NO/COMMENT:**

1.a. YES. I think it is the responsibility of the legislature to repeal any statute that is unconstitutional.

2. Non-Discrimination & Equal Opportunity

Kansas currently has a non-discrimination statute called the Kansas Acts Against Discrimination. It protects people from discrimination based on religion, sex, age, race, ethnicity, and national origin in employment, housing, and public accommodations. It does not include protections based on sexual orientation or gender identity.

In 2011, 2012, and 2014, controversial “religious freedom” bills (such as this year’s HB2453) that would allow overt discrimination against LGBT Kansans have been introduced in the legislature. All have failed to pass. Do you oppose recent efforts by the Kansas Legislature to enact religious freedom legislation that would allow business owners, business employees and government employees to refuse to serve the LGBT community because of their religious objections?

a. Do you oppose discrimination in employment, housing, and public accommodation based on sexual orientation and gender identity? **YES/NO/COMMENT:**

2.a. YES. I am fortunate to reside in a city that prohibits discrimination based on sexual orientation and gender identity. As a member of the Lawrence City Commission, at the request of local citizens, I initiated the process of amending our anti-discrimination ordinance to include gender identity, but the amendment was not adopted until after I left the commission.

b. Do you support amending Kansas’s existing nondiscrimination law (which bans discrimination in employment, housing, and public accommodation based on traits such as race, sex, and religion) to include sexual orientation and gender identity? **YES/NO/COMMENT:**

2.b. YES.

c. Do you support procurement regulations banning discrimination by government contractors based on sexual orientation or gender identity? **YES/NO/COMMENT:**

2.c. YES.

3. Relationship Recognition

Marriage: Kansas currently has both a statutory and a constitutional ban on recognizing the marriages of same-sex couples. The statute, passed in 1996, is similar to other state’s “Defense of Marriage” laws passed in the

wake of the original debate over same-sex marriage in Hawaii nearly 20 years ago. The constitutional ban was passed by the voters in low-turnout municipal election.

Domestic Partnerships: During the debate over same-sex marriage in 2004 and 2005, then-Attorney General Phill Kline went on record to say that limited domestic partnerships would not violate either the statutory or constitutional bans on recognizing same-sex marriage.

Income taxes: In the wake of the 2013 US Supreme Court ruling in *United States v. Windsor* (the DOMA case), the Internal Revenue Service has directed legally married taxpayers to file as married, even if the jurisdiction in which they currently reside does not recognize their marriage. Kansas law specifies that an individual's filing status is that of their Federal filing – if filing as married Federally, Kansas taxes should also be filed as married. In October of last year, the Kansas Department of Revenue issued a bulletin directing legally married same sex couples to complete a special worksheet that disassembles their Federal tax form, and file as single.

a. Do you support repealing Kansas's constitutional and statutory provisions banning same-sex marriage? **YES/NO/COMMENT:**

3.a. YES. *I think all Kansans should have the same opportunity to have public recognition of their commitment to their partners and to receive all the legal rights and protections that come with that recognition.*

b. Do you support civil unions for gay and lesbian couples? **YES/NO/COMMENT:**

3.b. YES.* **In the absence of sufficient votes to overturn the Kansas marriage amendment, I would support creation of a civil union option as a transition measure.*

c. Do you support registered domestic partnerships for gay and lesbian couples? **YES/NO/COMMENT:**

3.c. YES.* **In the absence of sufficient votes to overturn the Kansas marriage amendment or to create a civil union option, I would support creation of a state domestic partnership registry as a transition measure. As a Lawrence city commissioner, I helped adopt Lawrence's domestic partnership registry.*

d. Do you support the recognition of same-sex marriages performed out of state for income tax and other purposes? **YES/NO/COMMENT:**

3.d. YES.

4. Voting Rights and Identification Issues

Prior to 2012, photo identification was not required for voting in Kansas. Prior to 2013, documentary proof of citizenship was not required for voter registration. Voters must now display photo ID when voting and must provide birth certificates, passports, marriage certificates in the case of name changes, and so on when registering to vote. The impact of this legislation on the LGBT community in Kansas is twofold:

- Kansans who have entered into same-sex marriages out of state and who have changed their names may not be able to update their Kansas identification, and are being challenged at the polls because of the mismatch between outdated ID and their actual names.

- Transgender Kansans who have transitioned but who have not been able to update their identification have been challenged at the polls, specifically because name, gender, and appearance on the identification do not readily match the appearance of the voter. - An additional hurdle faced by transgender voters is the sudden decision by the Kansas Department of Health and Environment, Vital Statistics division, to stop amending birth certificates of individuals who have physically transitioned.

a. Do you support repeal of the birth certificate voter registration requirements in effect since 2013?

YES/NO/COMMENT:

4.a. YES. I think the primary intent of recent voter registration restrictions is to reduce the turnout among low-income citizens and other marginalized groups.

b. Do you support Kansas allowing voters who have married out of state, or who have undergone gender transition, to have access to identification that accurately reflects their name and identity? **YES/NO/COMMENT:**

4.b. YES.

5. Insurance

Same-sex couples: The Kansas Department of Insurance currently permits insurance companies to provide coverage for same-sex domestic partners. This includes couples who have married out of state, and who have established domestic partnerships sufficient to meet their employer's requirements. This provision was clarified in 2008 with the issuance of an Attorney General's Opinion.

Transgender individuals: Kansas currently does not mandate coverage for medically necessary care when ordered by a physician. Prior to 2013, transgender individuals on Medicaid routinely had their hormone therapy approved and paid for; however, since the privatization of Kansas Medicaid (KanCare), transgender patients are no longer receiving necessary medications.

a. Do you support Kansas and local government agencies providing the same benefits to employees' same-sex domestic partners as to employees' married heterosexual spouses? **YES/NO/COMMENT:**

5.a. YES.

b. Do you support mandating that KanCare provide medically necessary care, when ordered by a physician, to transgender patients? **YES/NO/COMMENT:**

5.b. YES.

6. Supporting Families

Hospital Visitation: In rare cases, same-sex partners and their children have been banned by hospital personnel from visiting their loved ones.

a. Do you support the right of same-sex couples to have hospital visitation with their partners and spouses? **YES/NO/COMMENT:**

6.a. YES.

Adoption: Kansas law currently does not explicitly permit same-sex couples to adopt each other's children, nor does it explicitly permit same-sex couples to adopt children in need of care.

b. Do you support co-parent or joint adoptions by gay and lesbian parents? **YES/NO/COMMENT:**

6.b. YES.

c. Do you support adoption and foster care placements based on the best interests of the child, without regard to the parents' sexual orientation or gender identity? **YES/NO/COMMENT:**

6.c. YES. As a practicing family law attorney, I strongly support the statutory requirement that the primary

consideration in all child custody or placement decisions is the best interest of the child. It is clear that same-sex couples are capable of providing nurturing, supportive homes for children and the law should not prohibit the from doing so.

IVF and Surrogacy: There are currently five clinics in Kansas that provide in-vitro fertilization services to women, and most do not turn away women in same-sex relationships. In 2010 a bill was introduced that would have required the reporting to the state the names of same-sex couples seeking IVF therapy. In the bill, failure to report could have resulted in clinic workers being charged with a Level 10 non-person felony. Kansas law currently permits surrogacy contracts for couples seeking to have children carried by third parties. It is not uncommon for same-sex couples in Kansas to also enter into surrogacy contracts, as they are not currently banned. In the 2014 legislative session, a bill was introduced, and quickly killed after public hearings, that would have imprisoned and fined mothers entering into surrogacy agreements.

d. Do you support maternity/paternity rights for non-biological parents when gay and lesbian couples decide to start a family? **YES/NO/COMMENT:**

6.d. YES.

e. Do you oppose any attempt to restrict or criminalize surrogacy, no matter the sexual orientation of the parents? **YES/NO/COMMENT:**

6.e. YES

7. School Bullying Prevention

In 2007, the Legislature passed a statute requiring public schools districts in Kansas to adopt policies and develop implementation plans to combat bullying. The statute currently lacks enumerations of protected classes, or any transparency or enforcement provisions. As a result, many school districts across Kansas are not in compliance with the statute. In school districts that have taken steps to follow the law, the quality of compliance varies widely. In general, those districts whose bullying prevention materials are readily available to parents have the qualitatively most comprehensive plans, where those whose materials are difficult to access place little to no emphasis on following the law.

a. Do you support school district policies banning bullying by students based on sexual orientation or gender identity? **YES/NO/COMMENT:**

7.a. YES.

b. Do you support requiring school districts to post their bullying policies and implementation plans online, and to file them with the Kansas Department of Education? **YES/NO/COMMENT:**

7.b. YES. I support as much transparency in government as possible.

8. Justice for Crime Victims

Kansas has had a hate crimes statute on the books since 1993 that includes “sexual orientation” among its protected classes. Because of US Supreme Court decisions involving similar laws in other states, the Kansas statute was amended in 2000 to require what amounts to a second trial to determine if bias was present and whether it justifies a harsher sentence than the underlying crime itself. Because of the cost and time required to empanel a jury for the penalty phase, it has been used in almost no prosecutions in Kansas.

a. Do you support tracking and reporting statistics on crimes motivated by bias based on sexual orientation or gender identity? **YES/NO/COMMENT:**

8.a. **YES.**

b. Do you support amending our state hate crimes statute to include gender identity? **YES/NO/COMMENT:**

8.b. **YES.**

c. Do you support amending that statute to improve its enforceability? **YES/NO/COMMENT:**

8.c. **YES.**

9. Local Government

Under the Kansas constitution, cities are given the right of home rule, and unified school districts are given wide latitude to govern their own affairs. Using their local powers, some cities and school districts in Kansas have created domestic partnership registries, enacted non-discrimination ordinances and policies inclusive of sexual orientation and gender identity, and have expanded bully prevention policies to include LGBT students.

a. Do you support the home-rule and local-control rights of Kansas cities and school districts to establish their own nondiscrimination ordinances, domestic partner registries, and bullying prevention policies?

YES/NO/COMMENT:

9.a. **YES.** *As a former mayor and city commissioner, I strongly support home-rule authority for city governments*

10. Additional Comments:

10. *I have been an ally for a long time. Of all the recognitions I have received in my years of public service, probably the most gratifying is the Certificate of Appreciation I received from Gay and Lesbian Students of Kansas in 1984 for defending the rights of gay and lesbian students at the University of Kansas during my term as KU student body vice-president. (Copy attached.)*

I would be honored to receive the endorsement of Equality Kansas.

