

Journal of the Senate

FIRST REGULAR SESSION

SECOND EXTRA SESSION

TENTH DAY—TUESDAY, JULY 25, 2017

The Senate met pursuant to adjournment.

President Pro Tem Richard in the Chair.

Reverend Carl Gauck offered the following prayer:

“You must understand this, my beloved: let everyone be quick to listen, slow to speak, slow to anger; for your anger does not produce God’s righteousness. (James 1:19)

Almighty God, Grant unto us this day that we may be a people that may love the things which You command and desire that which You have promised. May our hearts be fixed on You, so we can remember Your wisdom so we may do our very best to seek what is most helpful as we engage one another. And grant that as we serve You we find true joy and delight in what You will for us. In Your Holy Name we pray. Amen.

The Pledge of Allegiance to the Flag was recited.

A quorum being established, the Senate proceeded with its business.

The Journal of the previous day was read and approved.

Senator Kehoe announced photographers from Associated Press, St. Louis Public Radio, KOMU-8, KRCG-TV, KMIZ-TV and Fox 2 St. Louis were given permission to take pictures in the Senate Chamber.

The following Senators were present during the day’s proceedings:

Present—Senators

Brown	Cunningham	Curls	Dixon	Eigel	Emery	Hegeman
Holsman	Hoskins	Hummel	Kehoe	Koenig	Kraus	Libla
Munzlinger	Nasheed	Onder	Richard	Riddle	Rizzo	Romine
Rowden	Sater	Schaaf	Schatz	Schupp	Sifton	Silvey
Wallingford	Walsh	Wasson	Wieland—32			

Absent—Senators—None

Absent with leave—Senator Chappelle-Nadal—1

Vacancies—1

RESOLUTIONS

Senator Riddle offered Senate Resolution No. 125, regarding the Fiftieth Wedding Anniversary of David and Janet Potts, Mexico, which was adopted.

Senator Riddle offered Senate Resolution No. 126, regarding Tom Shackelford, which was adopted.

Senator Sater offered Senate Resolution No. 127, regarding Shannon Pagan, which was adopted.

Senator Sater offered Senate Resolution No. 128, regarding the Sixty-fifth Wedding Anniversary of Charles and Barbara Chrisman, Noel, which was adopted.

Senator Sater offered Senate Resolution No. 129, regarding Charles Jordan, Branson, which was adopted.

Senators Kehoe and Dixon offered Senate Resolution No. 130, regarding the Sixty-fifth Wedding Anniversary of James “Jim” and Agnes Rackers, Wardsville, which was adopted.

PRIVILEGED MOTIONS

Senator Koenig moved that **SS** for **SB 5**, with **HCS**, as amended, be taken up for 3rd reading and final passage, which motion prevailed.

HCS for **SS** for **SB 5**, as amended, was taken up.

Senator Koenig moved that **HCS** for **SS** for **SB 5**, as amended, be adopted.

Senator Holsman offered a substitute motion that the Senate refuse to concur in **HCS** for **SS** for **SB 5**, as amended, and request the House to recede from its position and to take up and pass the **SS** for **SB 5**.

Senator Holsman offered **SA 1** to the substitute motion, which was read:

SENATE AMENDMENT NO. 1

Amend the substitute motion by striking the words “and to take up and pass the **SS** for **SB 5**” and inserting in lieu thereof, the following: “or, failing to do so, grant the Senate a conference thereon.”

Senator Holsman moved that the above amendment be adopted.

Senator Schatz requested a roll call vote be taken on the adoption of **SA 1**. He was joined in his request by Senators Brown, Hegeman, Onder and Wieland.

Senator Kraus assumed the Chair.

President Pro Tem Richard assumed the Chair.

SA 1 to the substitute motion failed of adoption by the following vote:

YEAS—Senators

Curls	Dixon	Holsman	Hummel	Nasheed	Rizzo	Romine
Schaaf	Schupp	Sifton	Silvey	Walsh—12		

NAYS—Senators

Brown	Cunningham	Eigel	Emery	Hegeman	Hoskins	Kehoe
Koenig	Kraus	Munzlinger	Onder	Richard	Riddle	Rowden
Sater	Schatz	Wallingford	Wasson	Wieland—19		

Absent—Senators—None

Absent with leave—Senators

Chappelle-Nadal Libla—2

Vacancies—1

At the request of Senator Holsman, the substitute motion was withdrawn.

HCS for SS for SB 5, as amended, was adopted by the following vote:

YEAS—Senators

Brown	Cunningham	Dixon	Eigel	Emery	Hegeman	Hoskins
Kehoe	Koenig	Kraus	Munzlinger	Onder	Richard	Riddle
Rowden	Sater	Schatz	Wallingford	Wasson	Wieland—20	

NAYS—Senators

Curls	Holsman	Hummel	Nasheed	Rizzo	Romine	Schaaf
Schupp	Sifton	Silvey	Walsh—11			

Absent—Senators—None

Absent with leave—Senators

Chappelle-Nadal Libla—2

Vacancies—1

Senator Kraus assumed the Chair.

President Pro Tem Richard assumed the Chair.

Senator Keonig moved that **HCS for SS for SB 5**, as amended, be read a 3rd time and finally passed.

Senator Curls offered a substitute motion that the senate stand adjourned sine die.

Senator Kehoe requested a role call vote be taken on the above substitute motion. He was joined in his request by Senators Brown, Koenig, Onder and Sater.

The above substitute motion failed of adoption by the following vote:

YEAS—Senators

Curls	Holsman	Hummel	Nasheed	Rizzo	Schupp	Sifton
Walsh—8						

NAYS—Senators

Brown	Cunningham	Dixon	Eigel	Emery	Hegeman	Hoskins
Kehoe	Koenig	Kraus	Libla	Munzlinger	Onder	Richard
Riddle	Romine	Rowden	Sater	Schatz	Wallingford	Wasson
Wieland—22						

Absent—Senators

Schaaf Silvey—2

Absent with leave—Senator Chappelle-Nadal—1

Vacancies—1

Senator Koenig moved that **HCS for SS for SB 5**, as amended, be read the 3rd time and finally passed and submitted the following privileged motion:

Motion for the Previous Question - Pursuant to Rule 84 of the Missouri Senate:

Shall the Main question be now put?

Signed:

/s/ Andrew Koenig	/s/ Daniel Hegeman
/s/ Bob Onder	/s/ Jay Wasson
/s/ Ed Emery	/s/ Brian Munzlinger
/s/ Dave Schatz	/s/ Denny Hoskins
/s/ Bill Eigel	/s/ David Sater
/s/ Paul Wieland	/s/ Mike Cunningham
/s/ Will Kraus	/s/ Dan Brown
/s/ Wayne Wallingford	/s/ Caleb Rowden
/s/ Ron Richard	/s/ Jeanie Riddle
/s/ Mike Kehoe	

The motion to move the previous question was adopted by the following vote:

YEAS—Senators

Brown	Cunningham	Eigel	Emery	Hegeman	Hoskins	Kehoe
Koenig	Kraus	Munzlinger	Onder	Richard	Riddle	Rowden
Sater	Schatz	Wallingford	Wasson	Wieland—19		

NAYS—Senators

Curls	Dixon	Holsman	Hummel	Libla	Nasheed	Rizzo
Romine	Schupp	Sifton	Silvey	Walsh—12		

Absent—Senator Schaaf—1

Absent with leave—Senator Chappelle-Nadal—1

Vacancies—1

HCS for SS for SB 5, as amended, was read the 3rd time and passed by the following vote:

YEAS—Senators

Brown	Cunningham	Dixon	Eigel	Emery	Hegeman	Hoskins
Kehoe	Koenig	Kraus	Libla	Munzlinger	Onder	Richard
Riddle	Romine	Rowden	Sater	Schatz	Wallingford	Wasson
Wieland—22						

NAYS—Senators

Curls	Holsman	Hummel	Nasheed	Rizzo	Schupp	Sifton
Silvey	Walsh—9					

Absent—Senator Schaaf—1

Absent with leave—Senator Chappelle-Nadal—1

Vacancies—1

The President declared the bill passed.

On motion of Senator Koenig, the title to the bill was agreed to.

Senator Koenig moved that the vote by which the bill passed be reconsidered.

Senator Onder moved that motion lay on the table, which motion prevailed.

Bill ordered enrolled.

On motion of Senator Kehoe, the Senate recessed until 5:00 p.m.

RECESS

The time of recess having expired, the Senate was called to order by President Pro Tem Richard.

REPORTS OF STANDING COMMITTEES

Senator Kehoe, Chairman of the Committee on Rules, Joint Rules, Resolutions and Ethics, submitted the following report:

Mr. President: Your Committee on Rules, Joint Rules, Resolutions and Ethics, to which was referred HCS for SS for SB 5, as amended, begs leave to report that it has examined the same and finds that the bill has been duly enrolled and that the printed copies furnished the Senators are correct.

OBJECTIONS

Senator Holsman submitted the following:

July 25, 2017

Adriane Crouse – Secretary of the Senate
State Capitol, Room 325
Jefferson City, Missouri 65101

RE: Objection to the signing of HCS/SS/SB 5 by the President Pro-Tem

Dear Ms. Crouse:

Pursuant to the provisions Article III, § 30 of the Missouri Constitution and Senate Rule 68, please consider this correspondence as my objection to the signing of House Committee Substitute for Senate Substitute for Senate Bill 5 by the President Pro-Tem. In accordance with these provisions, please print this correspondence in the Senate Journal and annex it to the legislation to be considered by the Governor.

My first objection is that the extra session that was called to convene the bill was, itself, unconstitutional. On June 7, 2017, Governor Eric Greitens issued a proclamation calling for the convening of an extra session of the Missouri General Assembly to address legislation relating to abortion laws. Such a convening of the Missouri General Assembly violates Article IV, Section 9 of the Missouri Constitution in that extra sessions called for by the Governor may only be done on “extraordinary occasions.”

Article II, Section 1 of the Missouri Constitution provides as follows,

The powers of government shall be divided into three distinct departments--the legislative, executive and judicial--each of which shall be confided to a separate magistracy, and no person, or collection of persons, charged with the exercise of powers properly belonging to one of those departments, shall exercise any power properly belonging to either of the others, except in the instances in this constitution expressly directed or permitted.

Article III, Section 1 confines the legislative power of state government to the General Assembly. A careful reading of the article shows that the constitution assigns the General Assembly the single power and sole responsibility to make, amend and repeal laws for Missouri and to

have the necessary power to accomplish its law-making responsibility. State Auditor v. Joint Committee on Legislative Research, 956 S.W.2d 228, 230-231 (Mo. 1997). “All the power to make laws in the name and with the authority of its constituent elements—its citizens en masse—is lodged in the temporary Legislature, subject only to the restraining clauses of the Constitutions of the state and nation.” Ludlow–Saylor Wire Co. v. Wollbrinck, 205 S.W. 196, 197 (Mo. 1918). Article IV, Section 1 confines the executive power of state government to the governor. The governor may call an extra session of the Missouri General Assembly by proclamation wherein he shall specifically describe each matter on which action is necessary. Mo.Const. Art. IV, Sec. 9. However, he may do so only on “extraordinary occasions.” *Id.* No Missouri Court has undertaken the task of defining what constitutes an “extraordinary occasion” for the purposes of this constitutional provision. Words used in constitutional provisions are interpreted to give effect to their plain, ordinary, and natural meaning. Wright-Jones v. Nasheed, 368 S.W.3d 157, 159 (Mo. 2012). The dictionary defines “extraordinary” as “(1) not according to the usual custom or regular plan; (2) going far beyond the ordinary degree, measure, limit, etc.; very unusual; exceptional; remarkable.” WEBSTER’S NEW WORLD COLLEGE DICTIONARY 515 (5th ed. 2014).

As evidence that the subjects upon which the Governor has called an extra session do not constitute an extraordinary occasion, bills relating to the same subject matters were sponsored, debated and partially moved through the legislative process during the regular legislative session of 2017. However, the collective judgment of the General Assembly – sitting as the single power and sole responsibility to make, amend and repeal laws – was that these subjects were not extraordinary enough to truly agree and finally pass a bill on them during the regular session, much less during an extra session.

While the proclamation issued by the Governor cited the May 2, 2017 decision of Judge Sachs in the case of Comprehensive Health of Planned Parenthood, Great Plains vs. Randall Williams as one of the reasons for the special session, it should be noted that this litigation had been pending since November 30, 2016. Furthermore, the United States Supreme Court’s opinion in Whole Women’s Health vs. Hellerstedt – which Judge Sachs relied on in his order – was handed down on June 27, 2016. To summarize, the issues addressed in the Governor’s proclamation did not arise for the first time on May 2, 2017.

My second objection addresses the substance of the bill itself. In Planned Parenthood of Southeastern Pennsylvania vs. Casey, the United State Supreme Court held that where a state regulation imposes an undue burden on a woman’s ability to make the decision to terminate a pregnancy, the state reaches into the heart of a liberty protected by the Due Process Clause of the United States Constitution. 505 U.S. 833, 874, 112 S.Ct. 2791, 2819 (1992). The Court went on to state,

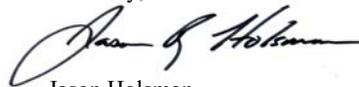
A statute which, while furthering the interest in potential life or some other valid state interest, has the effect of placing a substantial obstacle in the path of a woman’s choice cannot be considered a permissible means of serving its legitimate ends...An undue burden exists, and therefore a provision is invalid, if its purpose or effect is to place a substantial obstacle in the path of a woman seeking an abortion before the fetus attains viability.

Id. 505 U.S. at 877-878, 112 S.Ct. 2820-2821.

House Committee Substitute for Senate Substitute for Senate Bill 5 creates the types of substantial obstacles to women’s health choices that were prohibited by the Casey decision. The bill requires approval by the Department of Health and Senior Services for every chemically induced abortion. The bill also contains many of the same regulations that caused Missouri’s abortion laws to be invalidated in the recent judgment by Judge Sachs. The only change is that now the regulations are not called ambulatory surgical center regulations.

It is unfortunate that the obsession of this General Assembly continues to suppress the reproductive rights of Missouri women has yet again lead it to send to the Governor legislation that is unconstitutional. This not only hurts Missouri women, but wastes the tax dollars sent to Jefferson City by hard-working Missourians when it used to defend unconstitutional legislation. I hope in the future this obsession ceases.

Sincerely,



Jason Holsman.
Jackson County
District 7

SIGNING OF BILLS

The President Pro Tem announced that all other business would be suspended and **HCS for SS for SB 5**, as amended, having passed both branches of the General Assembly, would be read at length by the Secretary, and, the objection notwithstanding, the bill would be signed by the President Pro Tem to the end that it may become law. The bill was so read by the Secretary and signed by the President Pro Tem.

INTRODUCTION OF GUESTS

Senator Eigel introduced to the Senate, Nathan Scott, Savannah.

Senator Schupp introduced to the Senate, Elisabeth Condon, St. Peters.

Senator Sifton introduced to the Senate, Alisha Stratton, California.

Senator Eigel introduced to the Senate, Anna Hoduski, California.

Senator Kraus introduced to the Senate, Brice Caponetto, and his son, Jacob, Lee's Summit.

Senator Kehoe introduced to the Senate, Cheryl Rackers, her daughter, Emily, and granddaughter, Addison, Jefferson City.

On motion of Senator Kehoe, the Senate of the Second Extraordinary Session of the First Regular Session of the 99th General Assembly adjourned sine die, pursuant to the Constitution.

MICHAEL L. PARSON
Lieutenant Governor

ADRIANE D. CROUSE
Secretary of the Senate

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