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TESTIMONY REGARDING HB 2203

Representative Lance Kinzer

Kansas enjoys a rich history of respect for and protection of religious liberty. Section 7 of the Kansas Bill of Rights provides broad protection of the right not just to worship, but to live out one's life consistent with their deeply held religious beliefs. As the Kansas Supreme Court put it interpreting this provision back in 1943, "At no time in the history of our state have the conscientious religious beliefs of people been restrained, prohibited or penalized by statute." *State v. Smith*, 155 Kan. 588 (1943).

This strong respect for religious liberty is not a mere relic of the past, rather as recently as 2011 in the case of *Stinemetz v. Kansas Health Policy Authority*, our Court of Appeals has recognized that our state constitution provides more expansive religious liberty protection than the US Constitution. As our Court stated:

"Stinemetz has even greater protections concerning the free exercise of religious beliefs under sec. 7 of the Kansas Constitution Bill of Rights than under the federal Constitution. To determine whether government action violates an individual's right to the free exercise of religious beliefs under the Kansas Constitution, a court must determine: 1) whether the individual's religious beliefs are sincerely held; 2) whether the state action burdens the individual's free exercise of religious beliefs; 3) whether the state interest is overriding or compelling; and 4) whether the State uses the least restrictive means of achieving its interest."

Given the existence of a strong constitutional strict scrutiny test in KS law why is HB 2203 needed?

Let me suggest two reasons:

1. We know from experience at the federal level that Courts do sometimes backtrack in the protection of religious liberty. In the early 90's the US Supreme Court overturned a long history of applying strict scrutiny in religious liberty cases under the US Constitution. The legislative response was swift and bi-partisan, culminating in President Clinton signing the federal Religious Freedom Restoration Act. By acting now we can insulate ourselves from the effects of any court opinion that might weaken the protections enjoyed by Kansans under the Kansas Constitution;

2. By placing our strict scrutiny standard clearly on the face of the statute books we avoid confusion and decrease the likelihood of litigation. In the Stinemetz case the plaintiff won her case against the state when it was determined that KHPA had in fact violated her constitutionally protected religious liberties. But for her that decision came too late as she was no longer medically eligible to receive the liver transplant she needed to save her life. While no one can say for certain, it is not a stretch to say that the existence of a clear statutory strict scrutiny standard could have been a matter of life and death for at least one Kansan.

I ask you to pass HB 2203 so that we can say we have done what was needed to preserve the rich heritage of respect for religious liberty in Kansas.

March 18, 2013