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Testimony in Support of the Kansas Preservation of Religious Freedom Act – HB 2203

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Senate Judiciary Committee

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Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...

– First Amendment to the US Constitution

...nor shall any control of or interference with the rights of conscience be permitted...

– Kansas Constitution

Section 7 of the Kansas Constitution Bill of Rights provides greater protections concerning the free exercise of religious beliefs than does the First Amendment to the United States Constitution.

– *Stinemetz v. Kansas Health Policy Authority*, Kansas Court of Appeals 2011

Chairman King and Members of the Committee:

The Kansas Catholic Conference strongly supports HB 2203.

Enshrined in the first line of the First Amendment, freedom of religion is our “first freedom.” It is our most cherished right, central to our history and identity as Americans. If this right is infringed upon, then it can fairly be said that the entire American project has been fundamentally compromised.

We believe that HB 2203 is necessary as a bulwark against an alarming development in the interpretation and application of the First Amendment. Increasingly, freedom of religion is being defined down to mean the freedom to worship in a private setting. Under this new and radically narrow understanding of religious freedom, the constitutional rights of religious individuals and

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institutions have been respected so long as believers are allowed to gather in a church and conduct a prayer service. But this profoundly constricted view of religious freedom deviates from the Founders' intentions, and is deeply at odds with the expansive reading of the First Amendment that has prevailed for two centuries.

A proper understanding of the First Amendment recognizes the right of individuals to live their faith while functioning as full participants in society. Religious institutions should also be allowed to pursue their ministries without undue burdens being placed upon them by government.

Legislation protecting religious liberty from government coercion is more necessary now than in the past in part due to the simple fact that the government regulatory apparatus touches more of everyday life than it previously has. Combine this fact with an increasingly militant secularism that controls the commanding heights of our popular culture and academic institutions, and the result is a growing number of policymakers and judges who are hostile to religious freedom and have the means to reinterpret it.

The need for a restoration of the true meaning of religious freedom has been made especially clear by the US Department of Health & Human Services' "contraceptive mandate." Under the mandate, the federal government will force religious institutions to violate their own teachings, and religious business owners to violate their consciences, by requiring them to provide their employees with health insurance plans that cover products and services they find deeply immoral – including drugs that can induce abortion. It is our belief that the HHS contraceptive mandate violates the federal Religious Freedom Restoration Act – which HB 2203 is modeled after – and that it is profoundly contrary to the spirit and the letter of the First Amendment.

But it is not an isolated incident.

Some other prominent examples of infringements upon religious liberty include:

- A young Christian husband and wife who operated a photography business in New Mexico declined to photograph a same-sex commitment ceremony on the basis of their religious beliefs, and were subsequently fined nearly \$7,000 by the State Human Rights Commission.
- Belmont Abbey, a Catholic College in North Carolina, was determined by the US Equal Employment Opportunity Commission to have violated gender discrimination laws because it refused to provide contraceptives in its health plan. (This case was prior to the issuance of the HHS contraceptive mandate.)
- Catholic Charities of Boston had to close down its adoption ministry, which was one of the oldest and most successful in the country, because it would not comply with state law requiring that it place children with same-sex couples. This has also happened in Washington, DC, and Illinois.

- A Catholic parish in Texas that outgrew its church building was denied a permit for a desired expansion by the Boerne City Council in the name of historic preservation.

This is only a small selection from the growing list of such cases.

The legal standard that would be codified by HB 2203 is already existing federal law and currently applies to the actions of the federal government, however the Supreme Court struck down its application to the states. Nonetheless, states are free on an individual basis to protect religious liberties in the same fashion as the federal legislation, and many have. In fact, this same legal standard is already used by Kansas courts. In the 2011 *Stinemetz v. Kansas Health Policy Authority* case, the Kansas Court of Appeals reaffirmed this same standard when it ruled in favor of a Jehovah's Witness whose religious freedom had been violated by the Kansas Health Policy Authority. **We seek only codification of the current standard already in use in federal law and by Kansas courts** to protect against any future judicial mischief. To put it another way, we seek only the status quo.

Preservation of the right of religious people and institutions to live and operate according to the dictates of conscience is not a partisan issue. The federal Religious Freedom Restoration Act was signed in 1993 by President Bill Clinton and supported by the late Senator Ted Kennedy. At the signing ceremony, Vice President Al Gore said, "We want Americans free to practice religion not as government sees fit, but as they see fit." Only three people in the entire US Congress voted against it.

We ask you to act on behalf of the conscience rights of ordinary Kansans, and on behalf of the fundamental principles of religious liberty that are at the heart of the American dream.

Thank you for your consideration.