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January 14, 2016

Representative John Barker
Chairman
Committee on Judiciary
Kansas House of Representatives
Topeka, KS 66612

Re: Kansas Catholic Conference's Opposition to HB 2323

Chairman Barker and Members of the Committee:

Each and every human being is created in the image and likeness of God, and all of us are equally God's children. All people possess the same innate human dignity and should be treated with respect. No one should face unjust discrimination.

Undoubtedly it is the case that well-intentioned people support HB 2323 out of a genuine desire to protect same-sex attracted individuals from unjust discrimination -- a laudable goal, one that we share -- however this legislation, if passed, would do little to advance the goals of tolerance and equality, and instead would create more divisiveness, conflict, and injustice.

Supporters of HB 2323 promote it as an anti-discrimination measure, however experience in other states demonstrates that such laws are ultimately used to discriminate against people acting upon entirely legitimate religious beliefs. If passed, HB 2323 would inevitably be used as an instrument of coercion against those whose mainstream beliefs on marriage are out of favor with many cultural, political, and legal elites.

The case of Barronelle Stutzman perfectly illustrates the danger posed by HB 2323. Barronelle is a great-grandmother in her 70's who runs a floral shop in the state of Washington. Following Washington State's redefinition of marriage in 2012, one of her longtime customers asked her to provide the floral arrangements for his same-sex wedding to another man. Barronelle politely declined because that kind of ceremony violates her Christian beliefs about marriage. It is important to understand that she had been selling flowers to this gentleman for nine years. She knew full well that he identified as gay and was perfectly happy to sell him flowers regularly. In fact she cherished him as a friend. Moreover, Barronelle had had openly gay employees working at her shop at various times, which was not a problem for her.

The problem only came when she was asked to use her creative skills to help celebrate a same-sex wedding, a ceremony fundamentally in conflict with her religious beliefs. That is when she felt that she would be crossing the line into participation in an activity and behavior that her religious beliefs told her were immoral. Only at that point did she object.

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After she explained that she could not participate because of her religious beliefs, she recommended other florists to the man making the request and hugged him before he left the store. The attorney general of the state of Washington is now prosecuting her for discrimination.

As Barronelle's case makes clear, the Washington nondiscrimination law made illegal what only an extreme minority of people would believe is wrong. Most Americans would not think that Barronelle had done anything immoral or illegal, yet her livelihood and her very home are in serious jeopardy of being lost as a result of her following her conscience in this matter.

Laws like the Washington State law and HB 2323 ignore the crucial distinction between conduct and inclination. The cases where a business would deny service to a man simply because he is attracted to other men are vanishingly rare to nonexistent, however there are cases, like Barronelle's, where a business owner would legitimately wish to avoid complicity in conduct or an activity that is immoral according to one's sincerely held religious beliefs. There is a world of difference between refusing service to someone because of their attractions and refusing to facilitate an event that you believe is immoral, but HB 2323 ignores that distinction.

Should a pacifist photographer be required to take glamor shots at an assault weapons show?
Should a union carpenter be forced to build a platform for an anti-union rally? Surely one's deeply held religious beliefs are worthy of as much protection as one's political preferences.

Cases like Barronelle's are beginning to proliferate. In New Mexico, a husband and wife photography team were fined over \$6,000 for declining to photograph a same-sex commitment ceremony that violated their religious beliefs. This past summer, an Oregon bakery was fined \$135,000 for declining to bake a wedding cake for a same-sex wedding. There is an ever increasing list of cases of florists, bakers, and photographers who are punished by the government under so-called nondiscrimination laws like HB 2323.

It is extremely difficult to find cases of Americans turned away from stores and restaurants because they are attracted to people of the same-sex. If there is in fact any such discrimination occurring, we share the concern. Fortunately, there is virtually no cultural acceptance of such wrongful discrimination in our society today. Such situations would assuredly garner significant media attention and it is unlikely such businesses would survive very long.

HB 2323 presents dangers to those outside the business community as well. Recently, a Massachusetts court ruled that a Catholic school was in violation of nondiscrimination law when it rescinded a job offer to a man in a same-sex marriage. Previously, Catholic Charities was forced to close its adoption ministries in Boston, Washington DC, and Illinois because their policy of only placing children in situations where they would have a married mother and father was deemed discriminatory. Under HB 2323, religious adoption ministries in Kansas would face a similar threat. While tragic circumstances sometimes make it impossible, every child deserves a mother and a father, and making that possible should be society's aspiration. Yet the architects of laws like HB 2323 have made it clear they consider such sentiments to be bigotry, and they wish to codify their view and to use the power of the state to enforce it.

HB 2323 would also make bad law because of its extreme ambiguity. The terms sexual orientation and particularly gender identity are ambiguous and still heavily contested. Yet discrimination on the basis of gender identity would become illegal. What does it mean to discriminate on the basis of gender identity? What conduct would be prohibited and what conduct would continue to be allowed?

Under HB 2323, business owners would no longer have the right to handle delicate transgender bathroom issues themselves. Conflict over usage of separate men's and women's restroom, locker-room, and dormitory facilities is increasing each day, and HB 2323's lack of clarity would only add to the growing chaos.

HB 2323 takes sides in the so-called culture war, using the teaching and, more importantly, the coercive power of the law to treat traditional religious beliefs about marriage and human sexuality as tantamount to racism. By making sexual orientation and gender identity specially protected classes like race, the state would treat the vast majority of Kansans who understand that maleness and femaleness are biological realities to be respected and affirmed as bigoted and irrational. The law would declare that traditional beliefs about marriage and human sexuality are false and discriminatory, and would punish the Barronelle Stutzmans of the world for acting according to the dictates of conscience, no matter how compassionately.

Many Americans hoped and believed that once the Supreme Court redefined marriage for the whole country, these battles could cease and we could move forward in the spirit of "live and let live." Sadly, it is clear that some same-sex marriage activists have very different intentions. It is quite plainly their goal to press their newfound advantage in the culture and in the law by pushing traditional Christian beliefs on marriage and human sexuality outside the bounds of respectable society.

Despite the good intentions of many of HB 2323's Kansas supporters, it is difficult to escape the conclusion that this proposal is part of a broader agenda to stigmatize and delegitimize Christian beliefs about the human person that were only very recently almost universally accepted. While bills like HB 2323 purport to be in service of tolerance, they in fact allow culturally ascendant interests to use the power of the government to punish those who hold traditional beliefs on marriage and the family. Under the new dispensation, such beliefs are not reasonable and cannot be held by people of good will. That is precisely the principle HB 2323 would enshrine in the law. It should be opposed, and any claim that opposition to HB 2323 is rooted in anti-gay bigotry should be forcefully rejected. The city of Houston has twice elected a mayor who openly identifies as a lesbian yet nonetheless rejected a similar law with a popular vote of over 60 percent.

Kansans should respect the human dignity of all people, whatever their attractions. We cannot solve whatever lingering injustices remain in society by repealing freedom of conscience. We have to find a better way forward.

Thank you for your consideration.

Michael Schuttloffel
Executive Director