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Testimony in Support of the Kansas Preservation of Religious Freedom Act – HB 2260

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House 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 Kinzer and Members of the Committee:

The Kansas Catholic Conference strongly supports HB 2260.

Freedom of religion is our “first freedom.” It is our most cherished right, central to our history and identity as Americans. The Bill of Rights gives it pride of place: it is listed first in the rights enumerated in the First Amendment. 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 2260 is necessary as a bulwark against an alarming development in the interpretation and application of the First Amendment. Increasingly, freedom of religion is being reduced and confined to little more than the freedom to worship in a private setting. Under this

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radically narrow understanding of religious freedom, religious individuals' and institutions' constitutional rights have been respected so long as believers are allowed to gather in a church and conduct their 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 being full participants in society. Religious institutions should also be allowed to operate with integrity, and to pursue their ministries, without undue burdens being placed upon them by government.

Religious liberties are in greater need of protection than in the past in no small part due to the new and unprecedented reach of the government regulatory apparatus. Because the modern regulatory state touches virtually every aspect of contemporary societal life, the potential for malfeasance is rife. Even where lawmakers do not intend any infringement upon religious liberty, the application of laws with implications for religious freedom are often left to the countless public commissions, regulatory bodies, zoning boards, educational institutions, etc., that have been ceded authority over so many matters by legislatures. And of course, the courts have asserted broad powers to intervene in decisive, and sometimes disastrous, fashion.

Recent days have made especially clear to the need for a restoration of religious freedom in this country. The US Department of Health & Human Services intends to force religious institutions to violate their own teachings and religious individuals to violate their consciences by compelling them to purchase insurance plans that provide services they find deeply immoral. The HHS contraceptive mandate is itself a violation of the federal Religious Freedom Restoration Act, in our view, and a desecration 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 discrimination laws because it refused to provide contraceptives in its health plan.
- 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.
- 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.

The list goes on and on.

Opponents of a state religious freedom law have been busy making the inaccurate claim that it would legalize discrimination. To the contrary, a state religious freedom law would help *prevent* discrimination, namely government-sanctioned discrimination against people of faith.

More to the point, the legal standard that would be codified by HB 2260 is already the standard in place in federal law, and is the same standard that has long been in use in Kansas. In the recent *Stinemetz v. Kansas Health Policy Authority* case, the Kansas Court of Appeals reaffirmed this same standard in upholding the religious liberty of a Jehovah's Witness. **We seek only codification of the current standard** to protect against any future judicial mischief.

Opponents of HB 2260 will also try to suggest that it is a right-wing, partisan proposal. However, 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.

The federal Religious Freedom Restoration Act is still operative at the federal level, but the Supreme Court struck down its application to the states. However, states remain free to protect religious liberties in the same fashion as the federal legislation. Other states have, and Kansas should.

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.