Approved: 3/18/11
Date

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Lance Kinzer at 3:30 p.m. on February 17, 2011, in Room 346-S of the Capitol.

All members were present.

Committee staff present:
Jill Wolters, Office of the Revisor of Statutes
Matt Sterling, Office of the Revisor of Statutes
Tamera Lawrence, Office of the Revisor of Statutes
Lauren Douglass, Kansas Legislative Research Department
Robert Allison-Gallimore, Kansas Legislative Research Department
Sue VonFeldt, Committee Assistant

Conferees appearing before the Committee:
Landon Fulmer, Policy Director, Office of the Governor
Keith Tatum, Kansas Council on Developmental Disabilities
Kerrie Bacon, on behalf of Martha Gabehart, Kansas Commission on Disability Concerns
Representative Ann Mah, Fifty-Third District, Topeka, Kansas
Anita Hockman, Concerned Citizen, Topeka, Kansas
Lori Hoodenpyle, Attorney, Concerned Citizen
Representative Bruchman, Twentieth District
Joel Oster, Leawood, Kansas, Alliance Defense Fund
Michael Schuttloffel, Kansas Catholic Conference
Tim Madden, Kansas Department of Corrections and Juvenile Justice Authority
Senator Francisco, Second District
Thomas Witt, Kansas Equality Coalition
Holly Weatherford, ACLU of Kansas and Western Missouri

Others attending:
See attached list.

Hearing on on **HB 2219 - Providing child support for an exceptional child through the school year the child turns 23 years of age** was opened.

Representative Ann Mah, Fifty-Third District, Topeka, Kansas, addressed the committee in support of this bill that provides for child support for exceptional children until they are out of high school even if that is beyond the age of 18. Current law allows for child support through age 19, but only with the consent of the absent parent. She also stated a balloon amendment revises the age of eligibility to the semester a student turns 21 from 23, which is the current policy of the Kansas Department of Education. It also allows a judge to consider other avenues of support that might be available, but keeps child support as a backup for the custodial parent. She closed with stating it is difficult at best to get services for Kansans with disabilities and if we can require absentee parents to be more financially responsible, that is good for the children and for our state. (Attachment 1)

Anita Hockman, Concerned Citizen, Topeka, Kansas, testified in support of the bill, and shared her life situation. Her son has autism and is 20 years old and has one more year of school, however, the current law basically says that child support stops at 18 unless the father agrees to extend the child support. She asks the committee to change that to address children of special needs so they will have support until they are finished with high school. (Attachment 2)

Lori Hoodenpyle, Attorney and a concerned citizen spoke as an opponent to the bill and stated the bill does not go far enough and offered an amendment to add "or enrolled in a vocational or special education program." She also asked for the following language enacted in Colorado, "If the child is mentally or physically disabled, the court may order child support, including payments for medical expenses or insurance or both, to continue beyond the age of eighteen. (Attachment 3)

There were no opponents.

The hearing on **HB 2219** was closed.

The Hearing on **ERO 35 - Transferring the functions of the Commission on Disability under K.S.A. 74-6701 *et seq.* from the Department of Commerce to the Office of the Governor** was opened.

Chairman Kinzer explained while the committee is hearing this executive reorganization order (ERO), the committee won't be taking any action of working the bill because pursuant to Article 1, Section 6 of the Kansas Constitution, the ERO will become law on July 1, 2011, unless one house of the legislature passes a resolution disapproving the ERO.

The Revisor Staff provided the committee with a Memorandum explaining the ERO. (Attachment 4)

Landon Fulmer, Policy Director from the Office of the Governor, spoke before the committee in support of the ERO that would move the Kansas Commission on Disability Concerns (KCDC) from the Department of Commerce to the Office of Governor. He explained the policy reason for this move is quite simple, the Governor wants the disability advocacy community to have a direct line to him and a greater opportunity for state government to respond quickly to their inquiries. (Attachment 5)

Keith Tatum, on behalf of the Kansas Council on Developmental Disabilities, addressed the committee in support of the ERO. He stated it will increase the visibility of disability issues within the state and the KCDA seems to make a better fit within the Governor's Office than anywhere else as disability issues are not specific to the Department of Commerce any more than they would be specific to Departments of SRS or Education. Disability affects Kansans at all levels and in every arena, and this move may enable the Kansas Commission on Disability Concerns to advocate more effectively without the concerns or constraints of agency politics. (Attachment 6)

Kerrie Bacon, presenting for Martha Gabehart, Kansas Commission on Disability Concerns, spoke in support of the bill. She stated they advocate for changes to state programs, laws, and regulations that help Kansans with disabilities be active citizens and part of being an active citizen is having a job. KCDC has been working to reduce barriers and improve opportunities for employment, and being in the Governor's office will bring KCDC's work to the highest level of the executive branch. (Attachment 7)

There were no opponents.

The hearing on **ERO 35** was closed.

The Hearing on **HB 2260 - Kansas preservation of religious freedom act** was opened.

Tamera Lawrence, Assistant Revisor Staff, presented an overview of the bill for the committee. (Attachment 8)

Joel Oster, Leawood, Kansas, is the Senior Litigation Counsel for the Alliance Defense Fund and spoke on their behalf in support of the bill. He stated in light of the ever-increasing threats to religious freedom, and in order to provide Kansas citizens an opportunity to clarify and restore the heightened protection for our "first liberty", the time has now come to amend Kansas law. (Attachment 9)

Michael Schuttloffel, Executive Director, Kansas Catholic Conference addressed the committee in support of the bill stating this legislation is necessary as a bulwark against an alarming development in the interpretation and application of the First Amendment. (Attachment 10)

Judy Smith, State Director, Concerned Women for America of Kansas, provided written testimony in support of the bill. (Attachment 11)

Tim Madden, Kansas Department of Corrections and Juvenile Justice Authority, appeared as a neutral to the bill. He stated the Department of Corrections appreciates the role that religion holds in the life of persons in the department's custody and seeks to accommodate the diverse religious beliefs and practices of inmates, however, they request an amendment to reflect that the standard for judicial review of correctional actions impacting religious practices should be whether the action is reasonable related to a correctional interest. He attached a copy of a balloon to cover their requested amendment to his testimony. (Attachment 12)

Senator Marci Francisco, Second District, addressed the committee in opposition of the bill. She stated she does not believe that our Kansas Constitution and our Kansas statutes should be used to condone discrimination on the basis of an individual exercising their freedom of religion. (Attachment 13)

Thomas Witt, is the Chair of the Kansas Equality Coalition, which works to eliminate discrimination based on sexual orientation and gender identity, and spoke in opposition of this bill. He stated the bill is targeted towards the non-discrimination ordinances passed by cities and counties within the State of Kansas, and that its purpose is to deny gay, lesbian, and transgendered Kansans their right to petition their government for a redress of grievances, namely, to request the inclusion of "sexual orientation", and/or, "gender identity" as protected classes in their local ordinances. (Attachment 14)

Holly Weatherford, J.D., Program Director, for the ACLU of Kansas and Western Missouri, testified in opposition to the the bill. She stated the ACLU believes it is important that we are all free to practice our religious beliefs and that laws similar to this bill exist in other states, however, she contends this bill is written in a way that could threaten a host of laws protecting the civil rights, health, safety, and welfare of Kansas and gave several examples. She stated that lessons can be learned from other states that have previously passed state religious freedom laws, faced legal challenges, and succeeded. She also provided a copy of the Texas law and said it was a great example and was a result of cooperative efforts of a diverse coalition drawn together by a shared commitment to protecting religious freedom in the state. (Attachment 15)

Stephanie Mott, Kansas Equality Coalition, provided written testimony in opposition of the bill. (Attachment (16)

The hearing on **HB 2260** was closed.

The Hearing on **HB 2207 - Series limited liabilities companies** was opened.

Representative Bruchman, Twentieth District, addressed the committee as a proponent of the bill and provided a Power Point Presentation to explain how Limited Liability Companies (LLC) have become the most popular form of new business entities in use today because of the corporate-like liability protections combined with the advantages of being treated like a partnership for tax purposes. While the conventional LLC has been incredibly successful, there has been a growing trend among states on the forefront of corporate law to adopt statutes promoting what are known as series LLCs. He then explained, the concept of a series limited liability company (SLLC) is to subdivide an LLC into separate classes (known as "series"), having separate members, managers, interests, and business purposes. He spoke of the benefits and how a SLLC could benefit a Kansas resident in the context of farming, real estate industry, etc. He also stated, the ultimate goal in the adoption of an SLLC statute, is to promote economic growth by providing greater business opportunities, by removing administrative burdens, and promoting cost-saving attributes, including tax and liability advantages, to individuals starting and operating businesses in Kansas. (Attachment 17)

Christopher Sook, President of KBA's Section on Corporation, Business,and Banking Law, provided written testimony in support of the bill. (Attachment 18)

There were no opponents.

The hearing on **HB 2207** was closed.

HRC 5006 - State constitutional amendment concerning appropriations of money and expenditure of funds appropriated by law by the legislative branch.

Jill Wolters, Staff Revisor, provided an overview of the bill for the committee.

Representative Patton made the motion to report HCR 5006 favorably for passage. Representative Holmes seconded the motion.

Chairman Kinzer made the substitute motion striking "April and inserting "November" Representative Brookens seconded the motion. Motion carried.

Minutes of the House Judiciary Committee at 3:30 p.m. on February 17, 2011 in Room 346-S.

Representative Brookens made the substitute motion to amend on page 1, line 15, after "redirect" by inserting "an appropriation". Chairman Kinzer seconded the motion. Motion carried.

Chairman Kinzer made the substitute motion to amend as follows:

On page 2, in line 3, by striking "and the existing order that directs the"; by striking all in line 4; in line 5, by striking "remain in effect";

Representative Meier seconded the motion. Motion carried.

Representative Patton made the motion to report HCR 5006 favorably for passage as amended. Representative Osterman seconded the motion. Motion carried.

The next meeting is scheduled for February 18, 2011.

The meeting was adjourned at 6:00 p.m.

JUDICIARY COMMITTEE GUEST LIST

DATE: February 17, 2011

NAME	REPRESENTING
Ann Mah	Rep
Anita Hodiman	HB2219
Blake Hefner	HB2219
LORI HOODENPYLE	HB 2219
Tim Madden	KDOC
Lynne Leifer	KEC
William Leifer	KEC
THOMAS WITT	KEC
Scott Rothschild	Lawrence Journal-World
[illegible]	KCDD
Kenneth J Bacon	Kansas Commission on Dis. Concerns
Bob Eberhardt	Self
Bob Vlen	self
Joel Cocy	self
SEAN MILLER	CAPITOL STRATEGIES
Diane Minear	Secretary of State
[illegible]	KS Contractors Assoc.
Holly Weatherford	ACLU
Whitney Damron	
Callie Denton	KS Assn for Justice
Megan Pinegar	AG

STATE OF KANSAS
HOUSE OF REPRESENTATIVES

STATE CAPITOL
TOPEKA, KANSAS 66612
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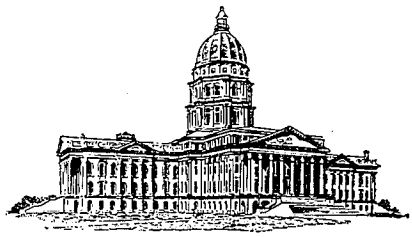
ann.mah@house.ks.gov



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TOPEKA, KS 66605
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ANN E. MAH
53RD DISTRICT

HOUSE COMMITTEE ON JUDICIARY
TESTIMONY – HB 2219

Mr. Chairman and Committee: Thank you for hearing our bill today. HB provides for child support for exceptional children until they are out of high school, even if that is beyond the age of 18. The genesis of this bill was a situation of a constituent who had a child with disabilities who was able to attend high school until the age of 21 through his individual education plan. She was made the guardian of her disabled son when he turned 18, but was not provided child support from his absentee father.

It is common for children with disabilities to stay in high school if they have an IEP that prescribes continued education. Current law allows for child support through age 19, but only with the consent of the absent parent. In my constituent's case, the absentee father declined the opportunity to help his son.

HB 2219 allows the judge to require support for students beyond age 18. I visited with the Kansas Department of Education, SRS Child Support Enforcement, and local child support enforcement contacts and they had some suggestions that are included in a balloon amendment to the bill.

SRS said they could administer the change, but remain neutral on legislation. The local child enforcement authorities were concerned about increased caseload, but agreed it could be a good thing for disabled children.

A balloon amendment revises the age of eligibility to the semester a student turns 21 from 23, which is current policy of the Kansas Department of Education. It also allows a judge to consider other avenues of support that might be available (i.e., social security benefits), but keeps child support as a backup for the custodial parent.

It is difficult at best to get services for Kansans with disabilities. If we can require absentee parents to be more financially responsible, that is good for children and for our state.

House Judiciary
Date 2-17-11
Attachment # 1

HOUSE JUDICIARY COMMITTEE
HB 2219 TESTIMONY

First I would like to thank you for the opportunity to share my story with you and explain my reasoning for wanting the current law changed. This is my son Blake, he is 20 and he is currently a junior at Shawnee Heights high school. The reason he is 20 and is still in high school is because he has autism. He still has one more year to go at the high school. One GLORIOUS senior year as his teacher says. The second picture is he and his sister Bailey. They were 4 and 5 when I got divorced. Blake didn't even have a diagnosis yet at that point. We didn't know what the future was going to bring, but no one really does. I knew something was wrong but we had been from one doctor and specialist to another and he wasn't diagnosed with autism until he was 7. So I couldn't have known to ask for an agreement for child support beyond the norm when I got divorced.

I was aware that child support continued through the school year the child turned 18 in, but Blake was going to be in high school much longer than that. So before he turned 18 I asked my attorney if she could ask for the child support for him to be extended through the time he would be in high school which would have been through the school year he would turn 21. She said she would ask for that and a motion was filed. However, when we got to court that day my ex-husband didn't show up for the hearing. This was typical. The Judge let us know that because he wasn't there to agree to extend the child support the longest she could extend it for was through the year Blake turned 19 which was 2010. That the law didn't allow her to do any more than that. Blake will be graduating with the class of 2012 and I just ask that Judges be allowed the option to extend child support in situations like this. The current law really does not allow Judges to address the special needs child who is commonly in high school through the year they turn 21.

Current law basically says that child support stops at 18 unless

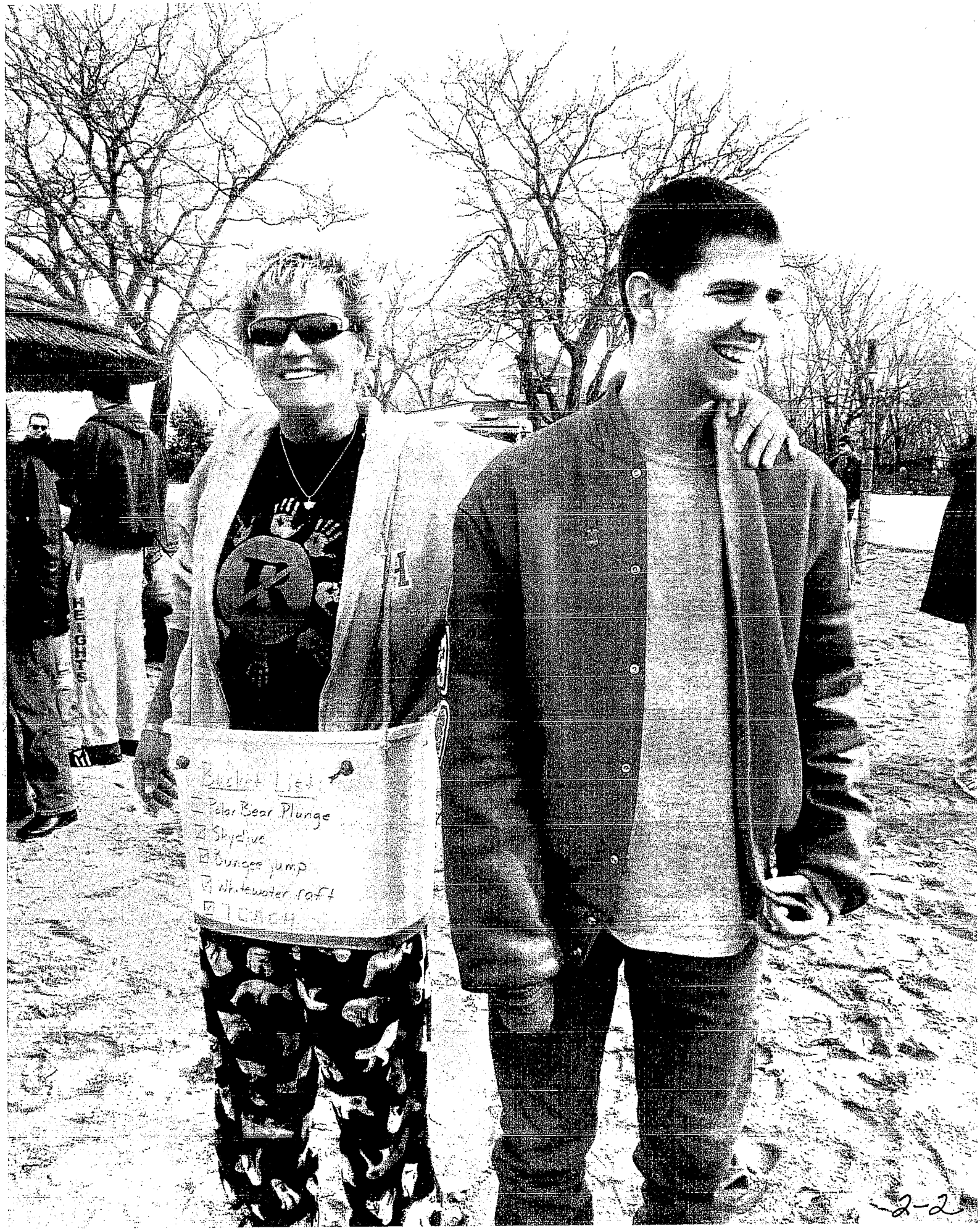
1. The parents agree in writing that it will continue beyond that.

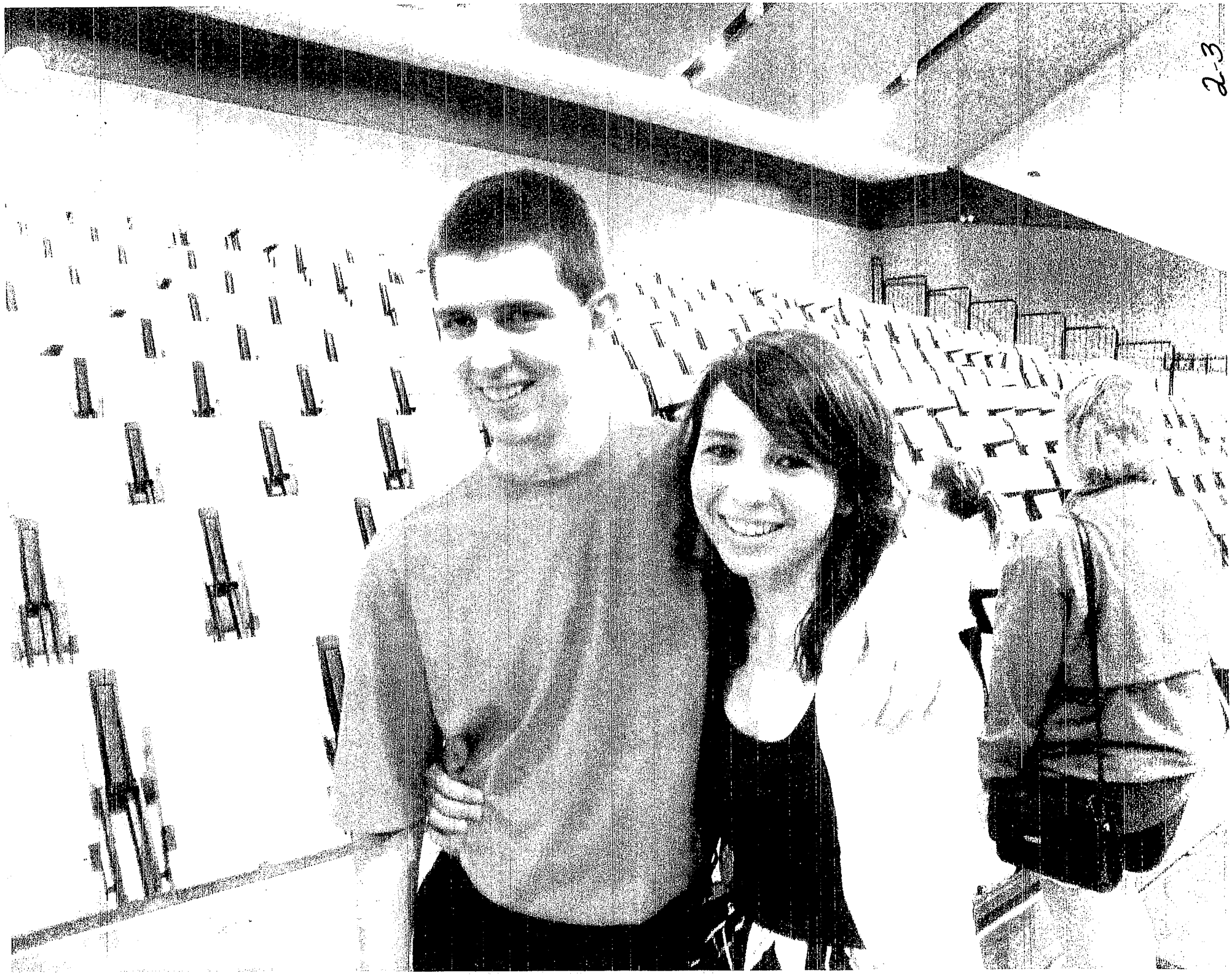
2. The child reaches 18 before completing high school in which case the support doesn't automatically terminate until June 30 of the school year the child became 18 in if they are still attending high school. If the child is a bona fide high school student after June 30 of the year they turned 18 then support may continue through the year the child becomes 19 so long as the child is a bona fide high school student and the parents jointly participated or knowingly acquiesced in the decision which delayed the child's completion of high school.

Current law does not address or allow judges to rule on things related to special needs kids/support beyond 18 without AGREEMENT by the parties and I would appreciate your consideration in changing that.

Anita Hockman

House Judiciary
Date 2-17-11
Attachment # 2


Bucket List
Polar Bear Plunge
Skydive
Bungee jump
Whitewater raft



LORI HOODENPYLE
913-406-4090

House Judiciary Committee
Honorable Lance Kinzer, Chairman
February 17, 2011
HB 2219

Chairman Kinzer and Members of the Committee,

My name is Lori Hoodenpyle, and I am an attorney and citizen of Kansas. I appreciate the opportunity to testify in support of HB 2219. Divorce cases involving families with disabled children, in particular those who will never be emancipated, very often have inequitable and even tragic results.

Cases arise where one parent provides most of the caregiving while the other pays some support. Because of the many hidden costs of raising a special needs child, however, the support is often inadequate to meet real life expenses. The result is that the primary custodial parent falls further and further behind, losing employment opportunities and going into debt while struggling to acquire services for her child's developmental, educational and medical care.[1]

HB 2219 is a lifeline to these disabled children and their primary caregiver. Without this legislation, when the disabled child reaches majority, the caregiver, already behind, may be left to go completely under. Absent a Settlement Agreement for support that extends beyond high school graduation the year the child turns 18, the primary caregiver may be on her own. While the needs of this disabled young person have likely increased with the passage of time, the availability of family support has suddenly vanished. The family is forced to depend on government assistance to meet their most basic needs.

We are grateful, then, that HB 2219 states that *"the court, on motion, may order support to continue through the school year during which the exceptional child becomes 23 years of age so long as the exceptional child is a bona fide high school student."* However, we must respectfully suggest that this law does not go far enough. Many special needs students, in particular those with profound learning and developmental disabilities have remained in school, moving forward from grade to grade with their peer group on a yearly basis. The reality is, however, that these students have not acquired an education commensurate with their peers. Because they must spend so much time and effort catching up and keeping up they are not, in any sense, ready for the real world; not developmentally, not academically, not socially.

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[1] Leitner, V. Kraus, M.W., Anderson, B., & Wells, N. (2004). The Consequences of Caring: Effects of Mothering a Child with Special Needs. *Journal of Family Issues, 25(3), 379.*

House Judiciary
Date 2-17-11
Attachment # 3

Therefore, I would like to offer an amendment to HB 2219 as follows:

> *"...the court, on motion, may order support to continue through the school year during which the exceptional child becomes 23 years of age so long as that child is a bona fide high school student* ***or enrolled in a vocational or special education program."***

Alternatively, I would ask that this committee enact more comprehensive legislation. Following the language of the statute enacted in Colorado, our sister jurisdiction in the Tenth Circuit, I would like to offer an amendment to HB 2219 as follows:

> ***"If the child is mentally or physically disabled, the court may order child support, including payments for medical expenses or insurance or both, to continue beyond the age of eighteen."***[2]

The adoption of this language would mark a return to what was historically the common law of Kansas: that parents have a duty to support an adult incompetent child. [3] This is a common law that makes common sense because it protects Kansas' most vulnerable sons and daughters;[4] those with disabilities for whom the emancipation and independence that the rest of us take for granted, will never be an option.

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[2] **Colo. Rev. Stat. § 14-10-115(1.5)(a)(2)** *"If the child is mentally or physically disabled, the court or the delegates of the child support enforcement unit may order child support, including payments for medical expenses or insurance or both, to continue beyond the age of 19."*

[3] **In the Matter of the Marriage of Sherri Doney and Risley,** 201 P3d 770, Kan. App., 2009. (citing Arche v. United States of America, 247 Kan. 276, 288-289, 798 P2d 477 (1990), To reconcile the common law with a 1967 amendment to the probate code that limited a parent's "duty to support" to incompetent children in State hospitals and not their incompetent adult counterparts, the court modified its previous decisions in Glass, 15,5 Kan. 246, 262 P2d 934, (1953); Prosser v. Prosser, 159 Kan. 651, 157 P2d 544 (1945); and Sheneman v. Manring, 152 Kan. 780, 107 P2d 741 (1940).

[4] **Laterra v. Treaster**, 17 Kan App.2d 714, 726, 844 P. 2d 724 (1992)(without citing Arche, Glass, Prosser or Sheneman, Court of Appeals summarily stated in the context of a wrongful death action that ***Kansas law is clear that a parent has no legal duty to support a child beyond the age of majority, unless that child is physically or mentally unable to maintain and support himself or herself."***

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Telephone (785) 296-2416 FAX (785) 296-6668

MEMORANDUM

To: Chairman Kinzer and members of the House Judiciary Committee
From: Daniel Yoza, Assistant Revisor
Date: February 17, 2011
Subject: Executive Reorganization Order No. 35

This is an executive reorganization order (ERO) pursuant to Article 1, Section 6 of the Kansas constitution.

This ERO transfers the commission on disability concerns from the department of commerce to the office of the governor. All powers, duties and functions of the current commission on disability concerns will be transferred to the governor's office. The ERO provides that the governor will appoint an executive director to lead the commission.

All funds and accounts and any rules and regulations of the current commission on disability concerns are transferred to the governor's office. All officers and employees of the current commission will be transferred to the governor's office.

Pursuant to Article 1, Section 6 of the Kansas constitution, this ERO will become law on July 1, 2011, unless one house of the legislature passes a resolution disapproving the ERO.

Capitol Building
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Kansas
Office of the Governor

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Sam Brownback, Governor

TESTIMONY ON EXECUTIVE REORGANIZATION ORDER NO. 35
HOUSE JUDICIARY COMMITTEE, FEBRUARY 17, 2011
LANDON FULMER, POLICY DIRECTOR, OFFICE OF THE GOVERNOR

Mr. Chairman and distinguished members of the Committee, I rise today to testify in support of Executive Reorganization Order No. 35. This ERO would move the Kansas Commission on Disability Concerns from the Department of Commerce to the Office of the Governor.

The policy reason for this move is actually quite simple: the Governor wants the disability advocacy community to have a direct line to him. We desire greater understanding of the challenges they're facing, whether these challenges are related to finding jobs, facilities access, discrimination in services, or anything else. We feel that if we have the Commission within our office—similar to the African-American Affairs Commission and the Latino and Hispanic Affairs Commission—there will be a greater opportunity for state government to respond quickly to their inquiries. After this move, the KCDC will have direct access to all departments of state government and will not have to go through an interagency channel.

This move has the support of many in the advocacy community. In fact, when the Governor signed this ERO, he did so at the Topeka Independent Living Center surrounded by advocates. For this reason, we believe that this ERO will be one of the least controversial proposed during the 2011 Legislative Session.

As a practical matter, this is a lateral move. Unlike others of our EROs, it doesn't save the state any money. But it will result in a better coordination of efforts to ensure that we address discrimination against those who have disabilities. The KCDC would be housed alongside the two Commissions I mentioned previously and a new, part-time Native-American relations officer. Jon Hummell, the Governor's Operations Director, is here today, and he can answer any questions you may have as to the logistics of the move.

And if you have policy questions, I would be more than happy to address them. Thank you for this opportunity, and I look forward to working toward a favorable outcome on this important reorganization.

House Judiciary
Date 2-17-11
Attachment # 5

Kansas Council on Developmental Disabilities

SAM BROWNBACK, Governor
KRISTIN FAIRBANK, Chairperson
JANE RHYS, Ph. D., Executive Director
jrhys@kcdd.org

Docking State Off. Bldg., Rm 141,
915 SW Harrison Topeka, KS 66612
785/296-2608, FAX 785/296-2861
htpp://kcdd.org

"To ensure the opportunity to make choices regarding participation in society and quality of life for individuals with developmental disabilities"

KANSAS HOUSE JUDICIARY COMMITTEE
FEBRUARY 17, 2011

Testimony in Regard to E.R.O. 35, AN ACT TRANSFERRING THE FUNCTIONS OF THE COMMISSION ON DISABILITY CONCERNS UNDER K.S.A. 74-6701 *ET SEQ.* FROM THE DEPARTMENT OF COMMERCE TO THE OFFICE OF THE GOVERNOR

Chairman Kinzer and Members of the House Judiciary Committee:

Thank you for allowing me the opportunity to appear before you today. My name is Keith Tatum, and I represent the Kansas Council on Developmental Disabilities (DD council). The DD Council stands as one of the premier developmental disability advocacy agencies in the state, providing advocacy services and skills training for and on behalf of thousands of Kansans impacted by developmental disabilities. Regarding Executive Reorganization Order 35, the DD Council supports Governor Brownback's recommendation to house the Kansas Commission on Disability Concerns (KCDC) within his office for two crucial reasons. I will succinctly outline those reasons below.

First, moving the KCDC from the Dept. of Commerce to the Governor's Office will increase the visibility of disability issues within the state. It may give the appearance of increased legitimacy concerning disability issues, as well. The KCDC will have more direct access to the Governor, and Kansans may potentially feel their disability issues will reach farther within the levels of government and be adequately addressed.

Second, the KCDC seems to make a better fit within the Governor's Office than anywhere else. Disability matters are not specific to the Dept. of Commerce, any more than they'd be specific to the Depts. of SRS or Education. Disability affects Kansans at all levels and in every arena, and this move may enable the KCDC to advocate more effectively without the concerns or constraints of agency politics.

It is for these reasons the DD Council supports the passage of E.R.O. 35. Again, thank you for the opportunity to speak to you today. I will stand for any questions at this time.

House Judiciary
Date 2-17-11
Attachment # 6

Martha Gabehart, Executive Director

KANSAS
COMMISSION ON DISABILITY CONCERNS

KCDCinfo.com

Martha K. Gabehart
Executive Director
Testimony in Support of ERO 35
House Judiciary Committee
February 17, 2011

Thank you Mr. Chair and committee members. I am Kerrie Bacon, filling in for Martha Gabehart, Executive Director of the Kansas Commission on Disability Concerns (KCDC). I am testifying in support of ERO 35 which moves KCDC to the Governor's office. KCDC currently resides in the Kansas Department of Commerce.

KCDC is a catalyst for change in state government for Kansans with disabilities. We advocate for changes to state programs, laws and regulations that help Kansans with disabilities be active citizens. Part of being an active citizen is having a job. KCDC has been working to reduce barriers to and improve opportunities for employment for over 60 years. Being in the Governor's office brings KCDC's work to the highest level of the executive branch. We welcome this opportunity and encourage your support.

House Judiciary
Date 2-17-11
Attachment # 7

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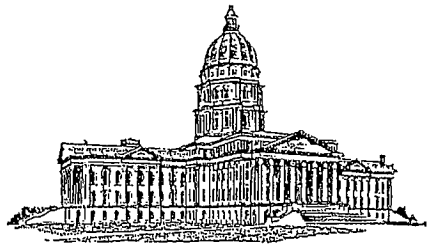
• Phone: (785) 296-1722 • Toll Free: (800) 295-5232 • TTY: 711 • Fax: (785) 296-6809 • www.KCDCinfo.com

MARY ANN TORRENCE, ATTORNEY
REVISOR OF STATUTES
JAMES A. WILSON III, ATTORNEY
FIRST ASSISTANT REVISOR
GORDON L. SELF, ATTORNEY
FIRST ASSISTANT REVISOR



OFFICE OF REVISOR OF STATUTES
KANSAS LEGISLATURE

Legal Consultation—
Legislative Committees and Legislators
Legislative Bill Drafting
Legislative Committee Staff
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Legislative Coordinating Council
Kansas Commission on
Interstate Cooperation
Kansas Statutes Annotated
Editing and Publication
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To: Committee on Judiciary

From: Tamera Lawrence, Assistant Revisor of Statutes

Date: February 17, 2011

Subject: HB 2260

HB 2260 enacts the Kansas preservation of religious freedom act. It provides that the government may not substantially burden a person's exercise of religion, even if doing so is the result of a generally applicable law, unless the government can prove that the application of such a law is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that governmental interest.

The bill provides a claim or defense for a person whose exercise of religion has been or is substantially likely to be burdened in violation of this act. If a court finds that the government has burdened a person's exercise of religion, it may grant appropriate relief as deemed necessary. If a court finds that a person has abused the protections of this act, such person may be enjoined from filing further claims under this act.

The bill also provides that the act shall not be construed to impair the the rights of parents to control the care and custody of minor children, authorize any relationship that violates the Kansas constitution, authorize the application of any law other than those of Kansas and the United States, limit funding for religious organizations, or activities or protect actions to end the life of any child whether born or unborn.

The bill applies to all governmental action, including state and local laws, rules, regulations, ordinances and policies, regardless of whether they were implemented before, after or on the effective date of this act.

House Judiciary
Date 2-17-11
Attachment # 8

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PHONE (785) 296-2321 FAX (785) 296-6668 E-mail: Revisor'sOffice@rs.state.ks.us

Testimony by Joel Oster, Senior Litigation Counsel for the Alliance Defense Fund, in support of:

The Kansas Preservation of Religious Freedom Act

February 17, 2011

House Judiciary
Date 2-17-11
Attachment # 9

If the people do not enhance and further define the protection for religious freedom now, the government may eventually take it away.

WHY DO WE NEED A RELIGIOUS FREEDOM ACT?

The free exercise of religion is, in a literal sense, our first and most basic freedom as Americans. The Founders listed it first in the Bill of Rights because they understood religious freedom as the most fundamental and inalienable right of every human being. The right to worship in accordance with the dictates of our own conscience is a liberty given to us by our creator. No man, and no government, should have the authority to take it away.

But today, the right to freely exercise religious faith is under increasing attack by government, and religious discrimination, even against mainstream faiths, is becoming more and more common. Nurses are being fired and demoted for expressing religious objections to participating in abortions, religiously-motivated home schoolers are being harassed, the religious expression of college and university students is being silenced by draconian campus speech codes, landlords are being forced to violate their consciences and condone immoral behavior, and churches and private business owners are being penalized for trying to follow their faith at work.

Just this past year, the Michigan Department of Civil Rights filed a complaint against a single lady who posted an advertisement on her church's bulletin board seeking a Christian roommate. This single lady wanted to have a roommate of the same faith so the two of them could read the Bible and pray together, and generally encourage each other in their Christian walk. But the Department did not value this single lady's religious freedom, and filed this complaint against her for discrimination in housing.

Over the past two decades, the U.S. Supreme Court has significantly reduced the religious freedom guarantees of the First Amendment to the U.S. Constitution. However, the states can and should go further to protect their citizens, and many states now have. The time has come for Kansas to do the same.

DON'T WE HAVE AN EXISTING PROTECTION IN OUR STATE CONSTITUTION?

While both section seven of the bill of rights of the Kansas Constitution and the First Amendment to the United States Constitution protect religious freedom, those protections were seriously eroded in a 1990 decision by the United States Supreme Court in *Employment Division., Department of Human Resources v. Smith*, 494 U.S. 872 (1990), which has been cited favorably by the Kansas Supreme Court in *Lower v. Board of Directors of the Haskell County Cemetery District*, 274 Kan. 735 (2002).

Prior to the *Smith* decision, it was well understood that the government could not impose a burden or limitation upon the fundamental right to freely exercise religion *unless the government could show it had a compelling interest in doing so, and no less restrictive means*

were available to accomplish that compelling interest. See Sherbert v. Verner, 374 U.S. 398 (1963); *State v. Heritage Baptist Temple, Inc.*, 236 Kan. 544 (1985).

But in 1990, the U.S. Supreme Court tragically reduced the level of protection historically afforded religious freedom. *Smith*, a five-four decision of the United States Supreme Court held that if a person's religious beliefs have been burdened by a law that is neutral and generally applicable, it is only subjected to the lowest level of scrutiny. *Smith*, 494 U.S. at 872. The Court held that the compelling interest test can only be applied if a state action or law *directly targets religion,* and not where an action or law is *generally applicable* with only an "incidental" adverse effect on free exercise." In the latter scenario, the state is merely required to show a *rational basis* for its action. This is really no protection at all.

Consequently, post *Smith*, a generally applicable law[1] is valid, however frivolous the government's interest, and however great the interference with religious liberty.[2] For example, if a law against consumption of alcohol by minors is neutral and generally applicable, then the state can deprive minors of the sacrament of Holy Communion in Catholic, Episcopal, and other churches that use real wine for communion, and *a fortiori* the state can suppress First Communion, traditionally celebrated at about age seven. A dry county or precinct could entirely exclude the central religious ritual of these churches. Or, a single lady can be found guilty of housing discrimination for seeking a Christian roommate to live with her in her 900 square feet home because the law is neutral and generally applicable.

This new requirement in federal cases has been rejected by Congress and nearly half the states. Eight state courts have expressly rejected it as an interpretation of their own constitutions;[3]

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[1] A law is not generally applicable if it applies to religious conduct but not to similar secular conduct, or if it has secular exceptions but not religious exceptions, or if the state permits secular activity that undermines the same interests as the forbidden religious activity. *Church of the Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 537, 543 (1993); *see also* cases cited in note 11. For application of that standard to this case, see Br. of Appellants 57-63 (in the Eleventh Circuit); Reply Br. 28-29.

[2] Whether a law is neutral and generally applicable under these standards often requires a difficult and complex inquiry into arguably analogous secular behavior *See Lukumi*, 508 U.S. at 531-46 (comparing challenged ordinances to full range of state and local law on activities affecting animals and to regulation of restaurants and garbage disposal); *see also Fraternal Order of Police v. City of Newark*, 170 F.3d 359, 364-66 (3d Cir. 1999); *Rader v. Johnston*, 924 F. Supp. 1540, 1546-56 (D. Neb. 1996); *Keeler v. Mayor of Cumberland*, 940 F. Supp. 879, 884-86 (D. Md. 1996).

[3] *See Swanner v. Anchorage Equal Rights Comm'n*, 874 P.2d 274, 280-82 (Alaska 1994) ("substantial threat to public safety, peace or order or where there are competing state interests of the highest order"); *Attorney Gen'l v. Desilets*, 636 N.E.2d 233, 235-41 (Mass. 1994) (state "interest sufficiently compelling to justify" burden on religious exercise); *State v. Hershberger*, 462 N.W.2d 393, 397-99 (Minn. 1990) (compelling interest and least restrictive means); *Humphrey v. Lane*, 728 N.E.2d 1039 (Ohio 2000) (compelling interest and least restrictive means); *Hunt v. Hunt*, 648 A.2d 843, 852-53 (Vt. 1994) ("Vermont Constitution protects religious liberty to the same extent that the Religious Freedom Restoration Act restricts governmental interference with free exercise"); *Munns v. Martin*, 930 P.2d 318, 321-22 (Wash. 1997) (compelling interest and least restrictive means); *State v. Miller*, 549 N.W.2d 235, 238-42 (Wis. 1996) (compelling interest and least restrictive alternative); *see also McCready v. Hoffius*, 586 N.W.2d 723, 729 (Mich. 1998) (compelling interest), *vacated on other grounds*, 593 N.W.2d 545 (Mich. 1999). The first *McCready* opinion found a compelling interest. The religious claimant sought rehearing on the basis of new authority elsewhere holding that a similar state interest was not compelling. *See id.* at 546 (Cavanagh, J., dissenting) (describing the petition's reliance on

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six other state courts have rendered decisions inconsistent with it.[4] Congress passed first the Religious Freedom Restoration Act, 42 U.S.C. '2000bb *et seq.* (1994 and U.S.C.A. Supp. 2001), and more recently the Religious Land Use and Institutionalized Persons Act, 42 U.S.C.A. '2000cc *et seq.* (Supp. 2001). Twelve state legislatures, including Missouri, passed state Religious Freedom Restoration Acts,[5] and the voters of Alabama rejected *Smith* by constitutional amendment, Ala. Const. amend. 622. The *Smith* opinion has also been subjected to intense scholarly criticism.[6]

The new federal rule has been so widely rejected because it does not serve the American tradition of religious liberty. It does not serve the purposes either of the constitutional guarantee or of the state's occasional need to override the constitutional guarantee, because it disregards the relative importance of each interest.

In light of the ever-increasing threats to religious freedom—and in order to provide Kansas citizens an opportunity to clarify and restore the heightened protection for our "first liberty" —the time has now come to amend Kansas law.

RECENT EXAMPLES OF GOVERNMENT INFRINGEMENT OF RELIGIOUS FREEDOM[7]

1) In September 2010, the Michigan Department of Civil Rights filed a housing discrimination complaint against a single, 31 year old lady in Grand Rapids, Michigan for seeking a Christian roommate. The single lady wanted a Christian roommate so she could read the Bible with her roommate, pray together, and generally encourage each other in their faith. Most assuredly, she did not want to share her house with a person who would try to convert her to another faith or would denigrate her faith. But when she posted an advertisement on her church's bulletin board seeking a "Christian female roommate," the Michigan Department of

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Thomas v. Anchorage Equal Rights Comm'n, 165 F.3d 692, 714-17 (9th Cir. 1999), *vacated on other grounds*, 220 F.3d 1134 (9th Cir. en banc 2000), *cert. denied*, 121 S.Ct. 1078 (2001).

[4] *Matter of Dubreuil*, 629 So.2d 819 (Fla. 1993) (ignoring *Smith* and applying pre-*Smith* law); *State v. Evans*, 796 P.2d 178 (Kan. App. 1990) (same); *Kentucky State Bd. for Elem. & Secondary Educ. v. Rudasill*, 589 S.W.2d 877 (Ky. 1979) (pre-*Smith*, expressly interpreting state constitution); *Rupert v. City of Portland*, 605 A.2d 63 (Me. 1992) (applying pre-*Smith* law but reserving issue of whether to change in light of *Smith*); *In re Brown*, 478 So.2d 1033, 1037-39 & n.5 (Miss. 1985) (pre-*Smith*, expressly interpreting state constitution); *State ex rel. Swann v. Pack*, 527 S.W.2d 99, 107, 111 (Tenn. 1975) (same).

[5] Ariz. Rev. Stat. Ann. §41-1493 *et seq.* (Supp. 2000); Conn. Gen. Stat. Ann. §52-571b (Supp. 2001); §761.01 *et seq.*, Fla. Stat. (2001); Idaho Code §73-401 *et seq.* (Supp. 2001); 775 Ill. Comp. Stat. Ann., Act 35 (2001); L.S.A.-R.S. 13:5231 (2010); Mo. Rev. Stat. § 1.302 (2009); N.M. Stat. Ann. art. 28-22 (Supp. 2000); Okla. Stat. §51-251 *et seq.* (Supp. 2001); R.I. Gen. Laws ch. 42-80.1 (1999); S.C. Stat. ch. 1-32 (Supp. 2000); Tex. Civ. Prac. & Rem. Code ch. 110 (Supp. 2001).

[6] *See* James D. Gordon III, *Free Exercise on the Mountaintop*, 79 Cal. L. Rev. 91 (1991); Douglas Laycock, *The Remnants of Free Exercise*, 1990 Sup. Ct. Rev. 1; Michael W. McConnell, *Free Exercise Revisionism and the Smith Decision*, 57 U. Chi. L. Rev. 1109 (1990).

[7] These examples are from cases and situations in which the Alliance Defense Fund was involved. These are just a sampling of the many cases of religious discrimination going on in America, both reported and unreported.

Civil Rights filed a complaint against her. The Department defended its actions by claiming that the law prohibiting discrimination in housing was a neutral law that applied to everyone.

2) In August of 2010, the City of Mission, Kansas passed a law that charged a tax to churches based on the number of persons who attend their service, referred to in the media as "the driveway tax." The City has hinted that it can increase this tax in the future and has refused to exempt churches.

3) In May 2009, the Louisiana Supreme Court ruled that summary judgment was not warranted for the state hospital defendants who demoted and penalized a nurse for stating a religious objection to dispensing the "morning after" abortion pill. The case is proceeding to trial.

4) On February 11, 2011, a letter was sent to Secretary of Health and Human Services Kathleen Sebelius, signed by 46 members of the U.S. House of Representatives, asking her to explain why her department is seeking to repeal conscience protections for health care workers in light of known attacks on such workers. The letter cited as examples a nurse in New York who alleged she was forced by Mt. Sinai Hospital to participate in the abortion of an unborn child, despite her moral and religious objections to assisting in the termination of human life. Similarly, two nursing students filed complaint with the HHS Office of Civil Rights because Vanderbilt University Medical Center's nurse residency program application required all applicants to labor and delivery, obstetrical and gynecological care, newborn nursery, and postpartum care programs to acknowledge in writing that they may be required to assist in abortions.

5) At Southeastern Louisiana University, campus police prohibited four students from sharing their faith on open areas of campus without applying for a speech permit, and perhaps paying a fee, at least one week in advance.

6) Students in public secondary and elementary schools are commonly prohibited from starting pro-life student organizations, and sometimes bible clubs, on the same basis as all other student organizations. Student-organized and initiated See You at the Pole and National Day of Prayer events are routinely proscribed.

7) In Ocean Grove, New Jersey, a United Methodist Association lost its property tax exemption and was subjected to a state investigation for declining to rent its private facility as a location for a same-sex "civil commitment" ceremony.

8) In Albuquerque, New Mexico, a young couple who owned and operated a photography studio were fined $6,000 by a state commission for discrimination because their Christian faith required that they decline a couple's request to hire them to photograph their ceremony.

9) In Norfolk, Virginia, Christians were prohibited from engaging in some forms of public speech during the annual Harborfest event, including wearing sandwich boards and the distributing religious literature.

10) In Pensacola, Florida, police recently halted Thursday night fellowships at a local Catholic church because the picnics were attracting too many "undesirables" (i.e., local homeless people).

11) In Mt. Juliet, Illinois, students and their parents were ordered to cover up references to God and prayer and any Scripture passages on the posters they made or else they could not be posted. Each year, students and parents have placed posters in the hallways of the school informing students of the "See You at the Pole" event on the National Day of Prayer.

12) In Balch Springs, Texas, a senior center used its facility for social programs and recreational events. A group of Christian seniors had also gathered at the center to sing gospel songs and to hear the Word of God from a retired pastor. These seniors quietly said a word of thanks to the Lord when they received their meals at the center. In August 2003, the city of Balch Springs enacted a new policy demanding that all mealtime prayers, gospel music, and "religious messages" cease immediately. No other group was silenced, only Christians.

13) While distributing literature on several occasions at the City College of San Francisco's Ocean Campus in 2007 and 2008, a Jews for Jesus employee was approached by campus security officers who told him he couldn't distribute literature without a permit. Police arrested and handcuffed him, searched him and detained him for more than three hours. The charges were dropped the next day.

14) Local authorities in the Village of Fife Lake, near Grand Rapids, Michigan, have graciously made the town's Municipal Building meeting room available for free to local community organizations. However, Forest Area Bible Church was required to pay rent. With the public room now closed to them, and no other suitable alternative, the church has stopped meeting.

15) On March 3, 2005, an FAA's civil service supervisor received a letter of reprimand from his regional manager. The document accused the supervisor of engaging in "unbecoming conduct" for several friendly conversations he had with un-offended co-workers regarding his Christian beliefs. For his actions, the supervisor was punished with a seven-day suspension without pay and a forced relocation from his position in Louisville, Ky. to Birmingham, Ala. A settlement agreement cleared the supervisor's record and required the government to pay attorneys' fees and costs.

16) A Christian man reached a favorable settlement with the New York Department of Transportation, which agreed to allow his trailer donning a gospel message to remain on his private business property along a public highway. The trailer had previously been cited as a "public nuisance," and NYDOT warned the man that it would be forcibly removed if the Christian message remained visible from the highway.

17) Spokane Falls Community College officials threatened a young female student and members of a Christian student group with disciplinary measures, including expulsion, if

they chose to hold a pro-life event on campus to share information with other students because the message was "discriminatory" and did not include a pro-abortion viewpoint.

18) In November 2004, a Montana Baptist church hosted a pro-marriage simulcast and allowed volunteers to circulate petitions to place a marriage amendment on the state ballot. Opponents filed a complaint with the state's commissioner of political practices, accusing the church of violating state law by acting as an "incidental political committee." A Montana federal district court ruled against the church. The 9th Circuit reversed the district court calling the law's application to the church unconstitutionally vague and a violation of the church's First Amendment rights.

19) American Atheists sued the Utah Highway Patrol and the Utah Transportation Department seeking a court order to remove roadside cross memorials placed to honor fallen state highway patrol officers.

WHAT QUESTIONS SHOULD SUPPORTERS OF THIS ACT ANTICIPATE?

QUESTION #1:
Won't this Act open a Pandora's Box, and allow a new cause of action for fringe groups or individuals to challenge the state's limitation on their "religiously motivated" antics?

ANSWER: No. This Act does not create any new or additional rights for any religious activity or potential litigant. It merely restores the former, heightened standard of review of religious liberty claims that served our country and our people well for so many years. That standard requires courts to always weigh legitimate free exercise claims against compelling state interests.

No problems have been created or abuses noted since the passage of the federal RFRA or RLUIPA laws, nor in any of the numerous states where the "compelling interest test" has already been restored over the last decade. Prior to the passage of many of those laws, detractors warned the legislation would spark waves of subversive litigation. Those abuses simply never materialized.

QUESTION #2:
Since Kansas citizens have not yet seen the high volume of direct threats to religious liberty that is occurring in other states, shouldn't we just wait until we get a substantial number of outrageous cases here before we act to amend the constitution?

ANSWER: No. As this document shows, recent and shocking cases of persons being compelled to act in violation of their deeply held religious beliefs or penalized for not violating their faith are becoming all too common. While Kansas may not *yet* have compiled the same number of examples as some other states, this Act is no doubt a necessary measure *right now* to prevent the further erosion of religious freedom.

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Testimony in Support of the Kansas Preservation of Religious Freedom Act – HB 2260
Michael Schuttloffel
Executive Director, Kansas Catholic Conference

House Judiciary Committee
February 17, 2011
3:30 PM

Chairman Kinzer and Members of the Committee:

The Kansas Catholic Conference strongly supports HB 2260.

When children are first taught the history of America, its founding, and why it is that the Pilgrims and others crossed a dangerous ocean, leaving everything behind to embark into the great unknown, they learn that first and foremost it was for freedom of religion. It is our first and 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 this legislation 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 freedom of private worship. Under this 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 made our country a shining city on a hill, the longing of the world's oppressed.

A proper understanding of our First Amendment rights recognizes the right of individuals to live their lives in accordance with the tenets of their religious faith. Religious institutions should also

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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.

Some prominent examples of infringements upon religious liberty include:

- 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.
- 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 in the country, because it would not comply with state law requiring that it place children with same-sex couples.

The list goes on and on.

Preservation of the right of religious people and institutions to live and operate according to the dictates of the conscience is not a partisan issue. The federal Religious Freedom Restoration Act was signed in 1993 by President Bill Clinton. 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."

Of course, four years later the Supreme Court struck down the Act on the grounds that Congress could not require states to use the "compelling interest" test in religious freedom cases. However, states remain free to protect religious liberties in the same fashion as was contemplated by 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.

CONCERNED WOMEN FOR AMERICA

CONSTITUTIONALLY PROTECTED RELIGIOUS FREEDOM SHOULD BE PROTECTED

Other governmental entities should not trump protected rights

Chairman Kinzer and members of the House Judiciary Committee:

Concerned Women for America of Kansas testifies in favor of HB 2260. One of our core issues is religious freedom, and we rise in support of this bill, because we, like the founders of our nation and our state, believe in the right of all citizens to practice their sincerely-held religious tenets or beliefs without government interference.

There are many issues in which people who have sincerely-held religious beliefs are being challenged; in fact in some cases people are losing their jobs, their opportunities for advanced study for their careers and censure for merely practicing what they believe. We do uphold compelling governmental interests in the face of religious tests, but we believe the government should use the least restrictive means of furthering that interest. The Kansas Constitution in its bill of rights (Section 7) guarantees a person's right to act or refuse to act in a manner consistent with their consistently-held religious belief. The U.S. Constitution guarantees the right to freedom of religion in the First Amendment.

Consistency in law is of primary importance if civil order is to be maintained. Other governmental entities should not be allowed, using ordinances, rules, by-laws, etc. to trump the U.S. or Kansas Constitutions. In fact several other states have passed legislation that clarifies disagreements between specific parties and constitutionally guaranteed rights. For instance, in a Florida Appeals court case in 1992, it was found that the state could not infringe on a parent's right to require their children to attend church with them as part of their religious training. Another case in New Hampshire in 1998 between a psychologist and the state in the revocation of his license because he read the Bible as part of the therapy was resolved by finding the religious part of the treatment did not violate the law. In Vermont the state's constitution expresses two related, but different, concepts about the nature of religious liberty. First, no governmental power may interfere with or control an individual's free exercise of religious worship, and secondly no person can be compelled to attend or support religious worship against that person's conscience. *(Chittenden Town School Dist. V. Department of Education, 169 VT310, 738 A.2d 539 (Vt. 1999)*

Men and women have fought and died for the right to exercise their religious beliefs. Right now religious people all over the world are being persecuted for their religious beliefs. In Egypt Coptic Christians are being killed, kidnapped and intimidated just for their beliefs. The fact that religious freedom is contained in the First Amendment to the United States Constitution should testify to its importance. No city, township, neighborhood association, commission, board or any other entity should be allowed to trump that all important right.

We urge you to pass this bill.

Judy Smith

Judy Smith, State Director
Concerned Women for America of Kansas

House Judiciary
Date 2-17-11
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Ray Roberts, Secretary of Corrections

Sam Brownback, Governor

Testimony on HB 2260
to
The House Judiciary Committee

By Ray Roberts
Secretary
Kansas Department of Corrections
And
Curtis Whitten
Commissioner
Juvenile Justice Authority
February 17, 2011

The Department of Corrections appreciates the role that religion holds in the life of persons in the department's custody and seeks to accommodate the diverse religious beliefs and practices of inmates within the parameters of the department's responsibility to protect the safety and security of incarcerated persons, staff or visitors and to maintain good order and discipline within correctional facilities. However, the department does not believe that the operation of correctional facilities and the application of rules and policies reasonably related to the department's mission are suited to judicial determination as to whether the application of those rules and policies impact religious practices in the least restrictive manner. Therefore, the department urges amendment of HB 2260 to reflect that the standard for judicial review of correctional actions impacting religious practices should be whether the action is reasonably related to a correctional interest. Additionally, the supervision of released offenders by the department raises the same concerns. A balloon providing for the proposed amendment of HB 2260 is attached.

HB 2260 creates the Kansas Preservation of Religious Freedom Act. Similar legislation was proposed in 2002 and 2003. In response to those legislative proposals, the department expressed its concern regarding enactment of prisoner and released offenders' rights that would subject correctional and parole operations to judicial review utilizing a "least restrictive manner" test. Those same concerns remain today in regard to HB 2260.

HB 2260 prohibits governmental statutes, rules, regulations, policies, actions or activities that burden a person's exercise of religion unless there is a compelling state interest and the compelling interest is achieved in the least restrictive manner possible. The provisions of HB 2260 apply to statutes and actions even if the governmental rule is one of general application. The religious activities covered by HB 2260 need not be mandated by the person's religion or be central to a larger system of religious beliefs. Finally, HB 2260 provides for the recovery of monetary damages, attorney's fees and costs.

The critical provision of HB 2260 is that even if a governmental action is derived from a "compelling state interest" that interest must be achieved in the "least restrictive means". While that test has been set out and applied to various government activities, see *Sherbert v. Verner*, 374 U.S. 398 (1963) and *Wisconsin v. Yoder*, 406 U.S. 205 (1963) as a workable test for striking a sensible balance between religious liberty and competing governmental interests, that test has been found to be unworkable and

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not required by the United States Constitution in the context of prison management. The United States Supreme Court has specifically rejected the "compelling interest test" in the context of administration of religious activities in a correctional facility, finding the test to be unworkable for both courts and corrections officials.

A "least restrictive means" test could also significantly impact the supervision of released offenders. For example the department has for a number of years imposed stringent restrictions on the activities of released sex offenders on Halloween. While many view Halloween as a secular outing for children, there is no doubt than some may view Halloween activities as motivated by their sincerely held religious belief, whether or not compulsory or a central part or requirement of their religious beliefs. Thus giving rise to litigation as to whether a curfew or other restrictions on sex offenders that night are the least restrictive means available.

The unsuitability of the application of HB 2260 to correctional management of inmate or parolee religious activities is due to both the imprecise definition of "least restrictive" and the boundless scope of activities that are "substantially motivated by a religious belief" even though the belief is not a compulsory component of the religion or even part of a larger system of religious beliefs. These two aspects of HB 2260 create uncertainty as to whether any restriction imposed by corrections officials is the least restrictive possible and means the ultimate evaluation of the Department's compliance is subject to variant degrees of subjective disagreement and likely will involve increasing court involvement and determination.

The unworkable standard of HB 2260 relative to correctional operations is clearly demonstrated by the circumstances that caused the United States Supreme Court to reject that standard. The United States Supreme Court in *O'Lone v. Estate of Shabazz*, 482 U.S. 342 (1987) was presented with the situation where Muslim inmates assigned to work details outside of the prison sought to be returned to the facility at noon on Fridays for participation in communal Jumu'ah prayer. Transporting the Muslim inmates back to the facility from the work site for the noon prayer entailed bringing the entire crew back since only one officer was assigned to supervise the crew. Additionally, reentry into the facility caused security concerns due to the need to search all of the inmates as well as vehicles making deliveries to the facility during a high traffic time of the day. The increased congestion at a high security access point, and the curtailment of a normal workday for the inmate work crews was deemed operationally unacceptable by prison officials. Creation of special work crews for Muslim inmates to work at the facility was not deemed feasible by prison officials due to the desire to reserve those assignments for higher custody inmates who should not be on work crews operating outside of the facility's perimeter and to avoid the creation of a select group susceptible to being a cover for an inmate gang activities or which could be viewed by other inmates as providing special privileges or treatment. The federal District Court concurred with the prison officials' assessment.

The New Jersey prison officials' accommodation of Muslim religious practices through the provision of congregational prayer during non-work hours, a state provided Imam, religious diets, and special arrangements during the month long period of fasting for Ramadan were insufficient in the view of the federal Circuit Court of Appeals under the "compelling interest and least restrict alternative test", contrary to the decision of the lower federal District Court.

Situations such as that presented in *O'Lone* regarding the operation of correctional facilities while providing religious exercise confront correctional officials on a daily basis, yet resulted pursuant to the standard offered in HB 2260 in conflicting decisions in the federal court, ultimately resolved by the United States Supreme Court's rejection of that standard. The United States Solicitor General, thirty-

two states and the District of Columbia all joined in requesting the Supreme Court to reject the "compelling interest and least restrictive manner" test.

The standard provided by the Supreme Court in *O'Lone* is whether the regulation in question is reasonably related to legitimate penological interests. The Supreme Court adopted this standard due to the necessity of ensuring the ability of corrections officials to anticipate security problems and to adopt innovative solutions to the intractable problems of prison administration, avoiding the unnecessary intrusion of the judiciary into problems particularly ill suited to resolution by court decree. The Supreme Court in *O'Lone* applied the "reasonableness" test enunciated in *Turner v. Safley*, 482 U.S. 78 (1987), which provides that in determining the reasonableness of prison officials actions, relevant factors include: (a) whether there is a "valid, rational connection" between the regulation and a legitimate and neutral governmental interest put forward to justify it, which connection cannot be so remote as to render the regulation arbitrary or irrational; (b) whether there are alternative means of exercising the asserted constitutional right that remain open to inmates, which alternatives, if they exist, will require a measure of judicial deference to the corrections officials' expertise; (c) whether and the extent to which accommodation of the asserted right will have an impact on prison staff, on inmates' liberty, and on the allocation of limited prison resources, which impact, if substantial, will require particular deference to corrections officials; and (d) whether the regulation represents an "exaggerated response" to prison concerns, the existence of a ready alternative that fully accommodates the prisoner's rights at de minimis costs to valid penological interests being evidence of unreasonableness.

The unsuitability of a "compelling interest and least restrictive alternative" test to resolve situations confronting correctional officials on a daily basis is not the only area of concern caused by HB 2260. In *O'Lone*, the prominence of Jumu'ah congregational prayer in the Muslim faith is well recognized. However, the scope of HB 2260 is not limited to accommodating religious practices fundamental to the religious faith. HB 2260 subjects the actions and policies of prison officials to the subjective "compelling interest least restrictive manner" test irrespective of whether a fundamental aspect of the offender's faith is affected.

Finally, the Department of Corrections as a governmental entity required and committed to religious nondiscrimination, does not license or "validate" religions. Rather, it applies its security policies on a religiously neutral basis. HB 2260, however, precludes application of prison policies of general application to entities claiming religious status except pursuant to the subjective "compelling interest and least restrictive manner" test. A double standard relative to prison operations is not good correctional practice.

The Department urges that HB 2260 be amended to provide an exception for the operation and management of correctional facilities and persons under release supervision from the least restrictive manner test.

Session of 2011

HOUSE BILL No. 2260

By Committee on Judiciary

2-9

AN ACT concerning civil procedure; relating to exercise of religion.

Be it enacted by the Legislature of the State of Kansas:

Section 1. As used in the Kansas preservation of religious freedom act:

(a) "Burden" means any government action that directly or indirectly constrains, inhibits, curtails or denies the exercise of religion by any person or compels any action contrary to a person's exercise of religion, and includes, but is not limited to, withholding benefits, assessing criminal, civil or administrative penalties, or exclusion from government programs or access to government facilities.

(b) (1) "Compelling governmental interest" includes, but is not limited to:

Delete

~~(A) Any penological rules and regulations which are established by a jail or correctional institution to protect the safety and security of incarcerated persons, staff or visitors or to maintain good order and discipline in any jail or correctional institution; and~~

~~(B)~~ protecting the welfare of a child from all forms of cruelty, neglect, degradation and inhumanity.

(2) "Compelling governmental interest" shall not include prohibition of a practice or policy of discrimination against individuals in employment relations, in access to free and public accommodations or in housing, except as set forth in K.S.A. 44-1001 et seq., and amendments thereto, and the laws and constitution of the United States.

(c) "Exercise of religion" means the practice or observance of religion under section 7 of the bill of rights of the constitution of the state of Kansas and the first amendment to the constitution of the United States and includes the right to act or refuse to act in a manner substantially motivated by a sincerely-held religious tenant or belief, whether or not the exercise is compulsory or a central part or requirement of the person's religious tenants or beliefs.

(d) "Fraudulent claim" means a claim that is dishonest in fact or that is made principally for a patently improper purpose, such as to harass the opposing party.

(e) "Government" includes the executive, legislative and judicial branches and any and all agencies, boards, commissions, departments,

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districts, authorities or other entities, subdivision or parts whatsoever of state and local government as well as any person acting under color of law.

(f) "Person" means any legal person or entity under the laws of the state of Kansas and the laws of the United States.

Sec. 2. (a) Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, unless such government demonstrates, by clear and convincing evidence, that application of the burden to the person:

(1) Is in furtherance of a compelling governmental interest; and

(2) is the least restrictive means of furthering that compelling governmental interest.

(b) A person whose exercise of religion has been burdened, or is substantially likely to be burdened, in violation of this act, may assert such violation as a claim or defense in a judicial proceeding. A court may grant appropriate relief as may be necessary including:

(1) Injunctive relief;

(2) protective order;

(3) writ of mandamus or prohibition;

(4) declaratory relief;

(5) actual damages; or

(6) costs and attorney fees determined by the court.

(c) Any person found by a court of competent jurisdiction to have abused the protection of this act by making a fraudulent claim may be enjoined from filing further claims under this act without leave of court.

Sec. 3. (a) Nothing in this act shall be construed to:

(1) Impair the fundamental right of every parent to control the care and custody of such parent's minor children, including, but not limited to, control over education, discipline, religious and moral instruction, health, medical care, welfare, place of habitation, counseling and psychological and emotional well-being of such minor children;

(2) authorize any relationship, marital or otherwise, that would violate section 15 of article 15 of the constitution of the state of Kansas;

(3) authorize the application or enforcement, in the courts of the state of Kansas, of any law, rule, code or legal system other than the laws of the state of Kansas and of the United States;

(4) limit any religious organization from receiving any funding or other assistance from a government, or of any person to receive government funding for a religious activity to the extent permitted by the laws and constitution of the state of Kansas and of the United States; or

(5) protect actions or decisions to end the life of any child, born or unborn.

(b) This act applies to all government action including, but not

limited to, all state and local laws, ordinances, rules, regulations and policies and to their implementation, whether enacted or adopted before, on or after the effective date of this act.

Sec. 4. Sections 1 through 3, and amendments thereto, shall be known as and may be cited as the Kansas preservation of religious freedom act.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.

Provided, however, this act shall not apply to government action including but not limited to penological rules, regulations, conditions or policies which are established by a jail, correctional institution, juvenile detention facility or an entity supervising offenders in the community that are reasonably related to the safety and security of incarcerated persons, staff, visitors, supervised offenders or the public; or to maintain good order and discipline in any jail, correctional institution or juvenile detention facility.

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STATE OF KANSAS

MARCI FRANCISCO
SENATOR, 2ND DISTRICT

DURING SESSION
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SENATE CHAMBER

COMMITTEE ASSIGNMENTS
RANKING MINORITY MEMBER
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MEMBER, JOINT COMMITTEE
ARTS AND CULTURAL RESOURCES
LEGISLATIVE EDUCATIONAL PLANNING
STATE BUILDING CONSTRUCTION

House Committee on Judiciary
HB 2260
February 17, 2011

Chairman and Members of the Committee:

I am here today to express concerns with regard to HB 2260.

I am Senator Marci Francisco. From 1979 to 1983, I had the honor of serving on the Lawrence City Commission. In that role, I was involved with hearings regarding our community's human relations ordinance. It was, and remains, important to our community that our citizens are involved in crafting ordinances that reflect the values of our community and respond to experiences of our citizens.

I am very confused by the wording proposed in this bill. I do want to express my objection to the clause that "Compelling governmental interest" shall not include prohibition of a practice or policy of discrimination against individuals in employment relations, in access to free and public accommodations or in housing, except as set forth in K.S.A. 44-1001 et seq., and amendments thereto, and the laws and constitution of the United States.

I do not believe that our Kansas Constitution and our Kansas statutes should be used to condone discrimination on the basis of an individual exercising their freedom of religion. I would hope that you not keep this clause in the bill.

Thank you for your consideration, and for all your good work on behalf of the great state of Kansas.

marci francisco

Senator Marci Francisco

House Judiciary
Date 2-17-11
Attachment # 13

Kansas Equality Coalition

Our mission is to end discrimination based on sexual orientation and gender identity, and to ensure the dignity, safety, and legal equality of all Kansans.

www.KansasEqualityCoalition.org • 6505 E. Central #219 • Wichita, KS 67206 • (316) 260-4863 • fax (316) 858-7196

Testimony of Thomas Witt, Chair, Kansas Equality Coalition
House Committee on the Judiciary
In Opposition to HB2260
February 17, 2011

Good morning Mr. Chairman and members of the committee. I am here today to speak in opposition to HB2260, and I thank you for the opportunity to do so.

My name is Thomas Witt. I am Chair of the Kansas Equality Coalition, which works to eliminate discrimination based on sexual orientation and gender identity. In the five years since we formed, we have organized eleven chapters around the state and have nearly 2000 members.

I stand in opposition to HB2260. It is clear from the timing of introduction, and from language of the bill, that its target is the non-discrimination ordinances passed by cities and counties within the State of Kansas, and that its purpose is to deny gay, lesbian, and transgendered Kansans their right to petition their government for a redress of grievances; namely, to request the inclusion of "sexual orientation" and/or "gender identity" as protected classes in their local ordinances.

Section 1(b)(2), starting on page 1, line 20, makes this clear. The only activity defined as not being a "compelling government interest" is the enforcement of any non-discrimination ordinance that goes beyond that which is set forth in KSA 44-1001. KSA 44-1001 is commonly known as the Kansas Act Against Discrimination, which provides protections to classes of Kansans who have historically been the targets of discrimination, repression, and oppression. The original Act, passed in 1953, has been amended repeatedly over the years to both broaden its scope and to further enforcement.

Currently in Kansas, the largest and most obvious class of people who have a history of suffering from discrimination but are not covered in the Act are gay, lesbian, and transgendered citizens, and it is we who are working in our local communities for enactment of the protections everyone else enjoys.

As the Act has evolved, local jurisdictions in Kansas have also passed civil and human rights ordinances. Many of these ordinances go beyond the provisions in the Act in enforcement provisions and in the classes found to be targets of discrimination. In many respects, it is the local jurisdictions that have led the way in addressing the scourge of bias and discrimination, with the state often years behind in updating the Act to reflect modern standards. An excellent resource on the history of the civil rights movement in Kansas can be found in the book "Dissent in Wichita: The Civil Rights Movement in the Midwest, 1954-72" by Dr. Gretchen Eick.

The US Constitution, in the 10th Amendment, reserves to the states those powers not granted to the Federal Government. The 10th Amendment has been the subject of much recent debate in this body over whether the Federal Government has the power to regulate the manufacture and sale of firearms within the State of Kansas, and whether the Federal Government has the power to compel the purchase of health insurance. There are current bills, sponsored by many of the

members of this committee, that specifically cite the 10th Amendment to the US Constitution as justification for their passage.

The Kansas Constitution, in Article 5, guarantees to cities the powers of home rule. Under home rule, adopted by Kansas constitutional amendment in 1961, incorporated cities within Kansas are granted the power to pass charter ordinances. Section (c)(2) states:

> *A charter ordinance is an ordinance which exempts a city from the whole or any part of any enactment of the legislature as referred to in this section and which may provide substitute and additional provisions on the same subject.*

This is the section which has been relied upon by many cities across Kansas to expand upon the provisions of the Act Against Discrimination, with ordinances tailored to their local communities, for nearly fifty years. Furthermore, the Kansas Constitution declares in Article 5, Section (d):

> *"Powers and authority granted cities pursuant to this section shall be liberally construed for the purpose of giving to cities the largest measure of self-government."*

This tradition of Kansas cities having the power to regulate discrimination within their jurisdictions is something we should all be proud of. As I state earlier in my testimony, it has often been the cities that have led the way to removing the scourge of bias and discrimination from Kansas. This bill now proposes, however, to meddle with that authority by giving individuals an ill-defined method to personally "opt out" of obeying the laws of the cities where they live or conduct business. This, to my knowledge, is an absolutely unprecedented assault on the home rule power granted to cities under our Constitution.

I have previously referenced the home rule power granted to cities under Article 5 of our Constitution. Oddly, though, HB2260 makes no reference to home rule. Instead, it is all done by inference and circuitous language that all has the effect of usurping the Constitutionally guaranteed powers of cities to govern themselves, and seeks to overturn nearly fifty years of tradition in the power of our cities to regulate discrimination within their jurisdictions.

There will certainly be unintended consequences from some very obvious flaws in this bill. The bill relies upon the provisions of KSA 44-1001 for that "opt out." If you study local ordinances, however, you'll quickly find that there are more differences between state and local laws than merely whether sexual orientation and gender identity are included. One example is in employment discrimination, in which the Act exempts businesses that employ four or fewer persons. The current human relations ordinance in Lawrence, Kansas, however, only exempts businesses employing two or fewer persons. A careful examination of the Act, compared to charter ordinances in Lawrence and other cities, will almost certainly reveal many instances in which local provisions are more restrictive than state provisions.

Up to now in my statement, I have stipulated that this bill's targets are gay, lesbian, and transgendered citizens of Kansas. Notably, HB2260 makes no reference to sexual orientation or gender identity. I believe it is no coincidence, however, that this bill was introduced the very day after the duly elected commissioners of the City of Manhattan passed an amendment to their local ordinance to extend protections against discrimination based on sexual orientation and gender identity. Other cities in Kansas currently extend some protection against discrimination based on sexual orientation, most notably Lawrence (sexual orientation only) and Topeka (sexual orientation, city employees only).

In Lawrence, the City Commission added sexual orientation as a protected class to their human relations ordinance in 1994. Since then, there have been no instances that I know of in which any Lawrencian has made an adjudicated claim that this ordinance has violated their First Amendment rights to free exercise of religion. For nearly 17 years, discrimination against gay and lesbian Lawrencians in employment, housing, and public accommodations has been prohibited by ordinance, with no ill effects. In fact, Lawrence is a fast-growing and vibrant city, as evidenced by the millions of dollars in new development on the west side of town. Businesses there thrive, and many of them employ openly gay and lesbian workers who do not need to fear for their jobs. People from all over Kansas, including some very conservative members of this body, travel to Lawrence as a destination to enjoy a rich culture of arts, entertainment, restaurants, and unique shopping opportunities. In short, the people of Lawrence took a strong stand against discrimination, and the world did not come to an end.

In Topeka, the City Council voted in 2004 to add protections for city employees against discrimination based on sexual orientation. Shortly after its passage, members of Topeka's Westboro Baptist Church, led by Fred Phelps, successfully circulated a petition which put the new ordinance before the voters of Topeka for either approval or nullification. That ballot measure, decided on March 1, 2005, was defeated. Gay and lesbian City of Topeka employees today enjoy protections from discrimination based on their sexual orientation. The world has still not ended.

Why does this bill's author, or authors, dance around the home rule issue, rather than addressing it directly?

Why does this bill's author not come right out and say what they mean – that they don't want to see protections for sexual orientation or gender identity enacted into law in any Kansas city?

A moment ago, I spoke of Fred Phelps and his campaign against the Topeka ordinance. The Phelps clan, whose anti-gay activism goes back over twenty years, makes no secret of their disdain for gay and lesbian Kansans. They are honest about their views, to the point of carrying huge, brightly colored signs declaring their hatred, and what they believe is God's hatred, for "fags." "God Hates Fags" is written all over everything they publish – from emails to faxes, to signs, to the very name of website from which they spew their filth. Of course, we all know that Fred Phelps isn't speaking for God when he declares that hatred – he's speaking for himself, and those that follow his ministry.

The only difference between what this bill purports to do and what the Phelps clan does is honesty: Phelps is honest about how he feels about gay and lesbian people. This bill is a dishonest and cowardly attack on every gay, lesbian and transgendered Kansan alive, for between every line of text of a bill that seeks to hide legalized bigotry behind the Bible are those words of Fred Phelps: God Hates Fags. At least Mr. Phelps has the courage of his convictions and says in plain language what he believes. I could only hope that the authors of this bill could do the same.

Like Fred Phelps, the author of this bill does not speak for God's hatred. You speak only for your own.

Thank you for your time and attention. I would be happy to take questions or to provide further information.

Testimony of the ACLU of Kansas and Western Missouri

Regarding HB 2260

February 17, 2011

Holly Weatherford, J.D.

Program Director, ACLU of Kansas and Western Missouri

3601 Main St. Kansas City, MO 64111

House Judiciary
Date 2-17-11
Attachment # 15

Background

Thank you for this opportunity to address the House Judiciary Committee today in opposition to HB2260, the *Kansas Preservation of Religious Freedom Act*. It feels funny speaking in opposition to this bill as the ACLU. The ACLU believes that religious freedom is a fundamental human right that is guaranteed by the First Amendment's Free Exercise and Establishment clauses.[1] The First Amendment encompasses not only the right to believe (or not to believe), but also the right to express and to manifest religious beliefs. These rights are fundamental and should not be subject to political process and majority votes. Thus the ACLU, along with almost every religious and civil rights group in America that has taken a position on the subject, rejects the Supreme Court's notorious decision of *Employment Division v. Smith*. In *Smith*, Justice Scalia wrote that the accommodation of religion should be left "to the political process" where government officials and political majorities may abridge the rights of free exercise of religion.[2]

The national opposition to the *Smith* case was overwhelming. The ACLU joined with a broad coalition of religious and civil liberties groups, including People for the American Way, the National Association of Evangelicals, the Southern Baptists' Ethics Religious Liberty Commission, and by many other groups to urge Congress to reinstitute the rule that religious freedom could be constrained solely if the government had a "compelling interest" in doing so. Congress agreed with this position and adopted the Religious Freedom Restoration Act (RFRA) in 1993 to prevent the government from substantially burdening a person's free exercise rights unless the burden furthered a compelling government interest and was the least restrictive means of furthering that interest. Section 2000bb-2(1) declared the law applicable to any form of government—federal, state or otherwise. [3] Congress relied on its powers under Section 5 of the 14th Amendment in applying RFRA to the states. It is on this ground that the Supreme Court ruled RFRA unconstitutional as applied to state and local governments.

In *City of Boerne v. Flores*, the Court said RFRA exceeded Congress' authority under the 14th Amend and ruled RFRA was not a proper exercise of Congress's enforcement power under Section 5 of the amendment as it violated the separation of powers.[4] It should be noted that even if Congress' intent in creating RFRA had remained latent, the Court still would have invalidated the law because, again, Congress has no constitutional authority to tell state courts how an alleged violation of a person's religious liberty should be interpreted. Following the Court's ruling in *Boerne*, many states began to enact their own versions of RFRA.[5]

The ACLU believes is important that we are all free to practice our religious beliefs. Laws similar to HB 2260 exist in other states, and these can be useful tools for providing additional protection for religious freedom, again an important constitutional right. However, this bill is written in a way that could threaten a host of laws protecting the civil rights, health, safety, and welfare of Kansans.

HB 2260 Fails to Protect Existing Civil Rights Laws in Kansas.

HB 2260 lacks language to protect existing civil rights laws in Kansas. In its current form, HB 2260 could allow individuals to argue that their religious beliefs exempt them from complying with laws that prohibit discrimination on the basis of religion, gender, marital status, national origin and sexual orientation. For example, based on religious objections:

- Employers could argue that the RLRA allows them to refuse to hire women, LGBT people, or people of a particular religion or race.
- An employer who believes that pregnancy outside of marriage is a sin could cite the RLRA as a defense for firing an unmarried pregnant female employee, even though such an action is prohibited by state law.
- A wedding photographer, flower shop owner, or caterer could claim that the RLRA affords a right to refuse services to interracial, interfaith, or same-sex couples.
- A restaurant could argue that the RLRA protects a policy requiring that all blacks, non-Christians, or LGBT people only be served food outside.

- A police officer could argue that requiring her to take reports of hate-motivated assaults against gays viola. her religious beliefs.
- A bus driver for a public transportation system could maintain that the RLRA confers the right to refuse transport to blacks and Latinos based on his religious beliefs that they are inferior.
- A Muslim firefighter could argue that, per the RLRA, she could not be required to respond to a church fire, while a Christian firefighter could claim that the RLRA sanctions his refusal to respond to a fire at a mosque.
- Landlords could claim a right to refuse to rent to LGBT people, single parents, single pregnant women, or those of other faiths or races.

HB 2260 fails to protect against government-sponsored religious discrimination.

HB 2260 lacks language reaffirming the constitutional prohibition against governmental sponsorship of religion and defines a "burden" on religious liberty as including the denial of benefits. This bill could endanger existing protections that prevent the government from sponsoring or financing religious indoctrination and discrimination. For example, based on religious objections:

- A ministry operating a soup kitchen or senior center with government funds could argue that, under the HB 2260, it may preach to clients or provide benefits only to those willing to attend a religious service.
- A religious organization seeking a government grant to provide marital counseling to low-income couples or drug treatment to youth could claim that, HB 2260, it is entitled to proselytize participants in these programs.
- Religious groups could argue that this bill permits them to discriminate in hiring for programs operated with government funds.
- A public school biology teacher could argue that HB 2260 grants him the right to refuse to teach evolution.
- A county social worker could argue that she has a right under the HB 2260 to proselytize clients.
- A state judge could claim that the RLRA authorizes him to open judicial proceedings with prayer.

A Better Way to Protect Religious Freedom

It is no secret that many religious groups do not support state religious freedom laws that provide exemptions for certain groups of people or for certain actions. Exemptions can include prisoners, land use claims and civil rights claims. These religious groups have called exemptions dangerous as they are designed to torpedo state-level religious protection.[6] The ACLU could not disagree more and believes there is a better way to protect religious liberty in Kansas.

Lessons can be learned from other states that have previously passed state religious freedom laws, faced legal challenges to that, and succeeded. Texas is a great example. The success behind the Texas law, which was signed into law by then Governor George W. Bush, was a result of cooperative efforts of a diverse coalition, drawn together by a shared commitment to protecting religious freedom in our state. The Texas RFRA coalition, which drew support from various faith communities and spanned the political spectrum from the conservative Christian Legal Society to the liberal Texas Freedom Network. The Texas law is comprehensive in nature and ensures protections for the health, safety, and fundamental rights of all citizens. The Texas law is provided below.[7]

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[1] The First Amendment of the Constitution provides that "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof...." Article VI of the Constitution contains another provision that also is of particular importance: that there shall be no religious test for public office.
[2] *Employment Division v. Smith*, 494 U.S. 872, 890 (1990).

[3] Religious Freedom Restoration Act of 1993, Pub. L. No. 103-141, 107 Stat. 1488 (Nov. 16, 1993), codified at 42 U.S.C. § 2000bb through 42 U.S.C. § 2000bb-4.
[4] *City of Boerne v. Flores*, 521 U.S. 507 (1997).
[5] The following is a list of cites to 16 states that have RFRAs (current as of Nov. 2010):

Alabama (Ala. Const. Amend. 622);
Arizona (Ariz. Rev. Stat. Ann. § 41-1493);
Connecticut (Conn. Gen. Stat. Ann. § 52-571b);
Florida (Fla. Stat. Ann. § 761.01);
Idaho (Idaho Code. § 73-40);
Illinois (775 Ill. Comp. Stat. Ann. 35/1-35/99);
Louisiana (recently enacted SB 606 (Act No. 793);
Missouri (Mo. Ann. Stat. §§ 1.302 & 1.307);
New Mexico (N.M. Stat. Ann. § 28-22-1);
Oklahoma (Okla. Stat. Ann. tit. 51, § 251);
Pennsylvania (71 Pa. Cons. Stat. Ann. § 2401);
Rhode Island (R.I. Gen. Laws § 42-80.1-1);
South Carolina (S.C. Code Ann. § 1-32-10);
Tennessee (Tenn. Code Ann. §4-1-407);
Texas (Tex. Civ. Prac. & Rem. Code Ann. § 110.001);
Virginia (Va. Code Ann. § 57-2.02).

[6] http://www.freedomforum.org/packages/first/keepingfaith/part2.htm

[7] ***Tex. Civ. Prac. & Rem. Code Ann. §§110.001-110.012 (1999)***

§ 110.001. Definitions

(a) In this chapter:

nbsp; (1) "Free exercise of religion" means an act or refusal to act that is substantially motivated by sincere religious belief. In determining whether an act or refusal to act is substantially motivated by sincere religious belief under this chapter, it is not necessary to determine that the act or refusal to act is motivated by a central part or central requirement of the person's sincere religious belief.

nbsp; (2) "Government agency" means:

(A) this state or a municipality or other political subdivision of this state; and

(B) any agency of this state or a municipality or other political subdivision of this state, including a department, bureau, board, commission, office, agency, council, or public institution of higher education.

(b) In determining whether an interest is a compelling governmental interest under Section 110.003, a court shall give weight to the interpretation of compelling interest in federal case law relating to the free exercise of religion clause of the First Amendment of the United States Constitution.

§ 110.002. Application

(a) This chapter applies to any ordinance, rule, order, decision, practice, or other exercise of governmental authority.

(b) This chapter applies to an act of a government agency, in the exercise of governmental authority, granting or refusing to grant a government benefit to an individual.

(c) This chapter applies to each law of this state unless the law is expressly made exempt from the application of this chapter by reference to this chapter.

§ 110.003. Religious Freedom Protected

(a) Subject to Subsection (b), a government agency may not substantially burden a person's free exercise of religion.

(b) Subsection (a) does not apply if the government agency demonstrates that the application of the burden to the person:

(1) is in furtherance of a compelling governmental interest; and

(2) is the least restrictive means of furthering that interest.

(c) A government agency that makes the demonstration required by Subsection (b) is not required to separately prove that the remedy and penalty provisions of the law, ordinance, rule, order, decision, practice, or other exercise of governmental authority that imposes the substantial burden are the least restrictive means to ensure compliance or to punish the failure to comply.

§ 110.004. Defense

A person whose free exercise of religion has been substantially burdened in violation of Section 110.003 may assert that violation as a defense in a judicial or administrative proceeding without regard to whether the proceeding is brought in the name of the state or by any other person.

§ 110.005. Remedies

(a) Any person, other than a government agency, who successfully asserts a claim or defense under this chapter is entitled to recover:

(1) declaratory relief under Chapter 37;

(2) injunctive relief to prevent the threatened violation or continued violation;

(3) compensatory damages for pecuniary and nonpecuniary losses; and

(4) reasonable attorney's fees, court costs, and other reasonable expenses incurred in bringing the action.

(b) Compensatory damages awarded under Subsection (a)(3) may not exceed $ 10,000 for each entire, distinct controversy, without regard to the number of members or other persons within a religious group who claim injury as a result of the government agency's exercise of governmental authority. A claimant is not entitled to recover exemplary damages under this chapter.

(c) An action under this section must be brought in district court.

(d) A person may not bring an action for damages or declaratory or injunctive relief against an individual, other than an action brought against an individual acting in the individual's official capacity as an officer of a government agency.

(e) This chapter does not affect the application of Section 498.0045 or 501.008, Government Code, or Chapter 14 of this code.

§ 110.006. Notice; Right to Accommodate

(a) A person may not bring an action to assert a claim under this chapter unless, 60 days before bringing the action, the person gives written notice to the government agency by certified mail, return receipt requested:

(1) that the person's free exercise of religion is substantially burdened by an exercise of the government agency's governmental authority;

(2) of the particular act or refusal to act that is burdened; and

(3) of the manner in which the exercise of governmental authority burdens the act or refusal to act.

(b) Notwithstanding Subsection (a), a claimant may, within the 60-day period established by Subsection (a), bring an action for declaratory or injunctive relief and associated attorney's fees, court costs, and other reasonable expenses, if:

(1) the exercise of governmental authority that threatens to substantially burden the person's free exercise of religion is imminent; and

the person was not informed and did not otherwise have knowledge of the exercise of the governmental authority in tim reasonably provide the notice.

(c) A government agency that receives a notice under Subsection (a) may remedy the substantial burden on the person's free exercise of religion.

(d) A remedy implemented by a government agency under this section:

(1) may be designed to reasonably remove the substantial burden on the person's free exercise of religion;

(2) need not be implemented in a manner that results in an exercise of governmental authority that is the least restrictive means of furthering the governmental interest, notwithstanding any other provision of this chapter; and

(3) must be narrowly tailored to remove the particular burden for which the remedy is implemented.

(e) A person with respect to whom a substantial burden on the person's free exercise of religion has been cured by a remedy implemented under this section may not bring an action under Section 110.005.

(f) A person who complies with an inmate grievance system as required under Section 501.008, Government Code, is not required to provide a separate written notice under Subsection (a). In conjunction with the inmate grievance system, the government agency may remedy a substantial burden on the person's free exercise of religion in the manner described by, and subject to, Subsections (c), (d), and (e).

(g) In dealing with a claim that a person's free exercise of religion has been substantially burdened in violation of this chapter, an inmate grievance system, including an inmate grievance system required under Section 501.008, Government Code, must provide to the person making the claim a statement of the government agency's rationale for imposing the burden, if any exists, in connection with any adverse determination made in connection with the claim.

§ 110.007. One-Year Limitations Period

(a) A person must bring an action to assert a claim for damages under this chapter not later than one year after the date the person knew or should have known of the substantial burden on the person's free exercise of religion.

(b) Mailing notice under Section 110.006 tolls the limitations period established under this section until the 75th day after the date on which the notice was mailed.

§ 110.008. Sovereign Immunity Waived

(a) Subject to Section 110.006, sovereign immunity to suit and from liability is waived and abolished to the extent of liability created by Section 110.005, and a claimant may sue a government agency for damages allowed by that section.

(b) Notwithstanding Subsection (a), this chapter does not waive or abolish sovereign immunity to suit and from liability under the Eleventh Amendment to the United States Constitution.

§ 110.009. Effect on Rights

(a) This chapter does not authorize a government agency to burden a person's free exercise of religion.

(b) The protection of religious freedom afforded by this chapter is in addition to the protections provided under federal law and the constitutions of this state and the United States. This chapter may not be construed to affect or interpret Section 4, 5, 6, or 7, Article I, Texas Constitution.

§ 110.010. Application to Certain Cases

Notwithstanding any other provision of this chapter, a municipality has no less authority to adopt or apply laws and regulations concerning zoning, land use planning, traffic management, urban nuisance, or historic preservation than the authority of the

pality that existed under the law as interpreted by the federal courts before April 17, 1990. This chapter does not affect authority of a municipality to adopt or apply laws and regulations as that authority has been interpreted by any court in cases that do not involve the free exercise of religion.

§ 110.011. Civil Rights

(a) Except as provided in Subsection (b), this chapter does not establish or eliminate a defense to a civil action or criminal prosecution under a federal or state civil rights law.

(b) This chapter is fully applicable to claims regarding the employment, education, or volunteering of those who perform duties, such as spreading or teaching faith, performing devotional services, or internal governance, for a religious organization. For the purposes of this subsection, an organization is a religious organization if:

(1) the organization's primary purpose and function are religious, it is a religious school organized primarily for religious and educational purposes, or it is a religious charity organized primarily for religious and charitable purposes; and

(2) it does not engage in activities that would disqualify it from tax exempt status under Section 501(c)(3), Internal Revenue Code of 1986, as it existed on August 30, 1999.

§ 110.012. Grant to Religious Organization Not Affected

Notwithstanding Section 110.002(b), this chapter does not affect the grant or denial of an appropriation or other grant of money or benefits to a religious organization, nor does it affect the grant or denial of a tax exemption to a religious organization.

Kansas Equality Coalition

Our mission is to end discrimination based on sexual orientation and gender identity, and to ensure the dignity, safety, and legal equality of all Kansans.

www.KansasEqualityCoalition.org • 6505 E. Central #219 • Wichita, KS 67206 • (316) 260-4863 • fax (316) 858-7196

Testimony of Stephanie Mott, Kansas Equality Coalition
House Committee on the Judiciary
In Opposition to HB2260
February 17, 2011

Mr. Chairman and Committee Members,

My name is Stephanie Mott. I am a member of the board of directors of Kansas Equality Coalition, which advocates for fair treatment of gay, lesbian, bisexual, and transgender Kansans; and the executive director of Kansas Statewide Transgender Education Project. I am a member of the board of directors of Metropolitan Community Church of Topeka.

Under what circumstances can it be appropriate for government to espouse a particular religious view, while disenfranchising another religious view? HB2260 is not designed to establish religious freedom. It is a thinly veiled, hate-based proclamation of one religious viewpoint, designed to protect some non-existent right to oppress LGBT Kansans, while failing to acknowledge the growing number of Christian denominations that support LGBT rights.

There is a compelling government interest in providing solutions for the burden of discrimination against LGBT people. False arguments, which claim a lack of evidence regarding the prevalence of discrimination against LGBT people, are purposed to hide that which is plainly true.

I am a transsexual woman. I have lived many years in the shadows created by those who claim to have the only truth. I lived in the mistaken belief that God had only one plan for everyone. I held to that belief for nearly 50 years - never mind the fact that every single moment of my conscious existence took place on the battlefield between who I am, and who I thought I had to be.

Throughout most of my adulthood, I was haunted by the belief that God hated me, as I was created. It is not possible for me to live as a man. That is not who I am. I am a child of God, worthy in the fact that I am alive – one of the basic tenets of my church's denomination.

Five years ago, I was at the end of my rope; still trying to live as a man. I thought about suicide many times, each and every day. The recent rash of gay teen suicides is more than ample evidence of the direct effects of discrimination. Among transgender people, 41% of us attempt suicide. We are twice as likely to be unemployed, four times as likely to live in poverty, and one out of five of us experience homelessness.

Five years ago, I stopped pretending to be a man, and embraced the fact that God had created me as a woman. In that time, I have gone from homelessness, to becoming a contributing member of society. I am active in my church. I have joined the fight against homelessness.

Perhaps more importantly, I have come to know that God loves me unconditionally, just as I am. I have come to understand that God's will for us is love. I believe with all my heart that God's will for me is to share that love with everyone.

I love you - you can not work in my factory; I love you - you can not live in my apartment building; I love you - I will not let you eat in my restaurant; I love you - you must live according to my beliefs about God's will; is not love at all.

I plead with you. Please do not endorse this bill. Please do not allow one particular religious point of view to become the law of the land. Please allow me to continue to live in the light of God's love.

STATE OF KANSAS
HOUSE OF REPRESENTATIVES

ROB BRUCHMAN
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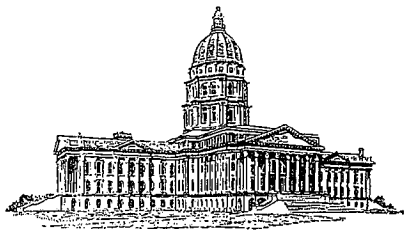

MEMORANDUM IN SUPPORT OF HB 2207

TO: Chairman Kinzer and Members of the House Judiciary Committee

DATE: February 17, 2010

RE: Series Limited Liability Companies

Limited liability companies ("LLC") have become the most popular form of new business entities in use today because of the corporate-like liability protections combined with the advantages of being treated like a partnership for tax purposes. The LLC structure provides for greater contractual flexibility by allowing members to contract for varying profit distribution formulas, altering voting rights among members and loosening of managerial responsibilities to reflect the overall objectives of the business entity. While the conventional LLC has been incredibly successful, there has been a growing trend among states on the forefront of corporate law to adopt statutes promoting what is known as series LLCs. Delaware was the first state to adopt a series LLC statute, but numerous states have followed including Oklahoma, Iowa, Illinois, Texas, Utah, Nevada and Wisconsin.

Series Limited Liability Company Defined

The concept of a series limited liability company ("SLLC") is to subdivide an LLC into separate classes (known as "series") having separate members, managers, interest, and business purposes. Each series is allowed to hold assets in its own name and has the ability to contract for its own debts and obligations. Additionally, the SLLC can create numerous series within the SLLC to accomplish diverse business objectives and/or hold title to real estate separately. Thus, an SLLC provides that the particular debts, liabilities, and obligations relating to a particular series is enforceable only against the assets of that particular series and not against the assets of the SLLC generally or any other series within the SLLC.

Separation of Assets

Separating assets can serve a variety of goals including aligning creditors with assets, separating "high risk" and "low risk" assets and protecting assets from judgments. This not only allows for greater managerial flexibility but also affords increased freedom and creativity for investors and owners. Rather than investing in an LLC in its entirety, one may choose to invest or even become a member in one or several of the series of the SLLC in which they may perceive as having the greatest opportunity while reducing their overall exposure to risk.

Administrative Cost Reduction

SLLCs require only one certificate of formation to be filed with the Secretary of State for all series, which is an efficient avenue to avoid the administrative difficulties associated with multiple filings for essentially the same business. The commonality among series reduces the administrative costs and burdens associated with establishing and maintaining several LLCs. This may seem relatively small when compared to other expenses but the costs can become substantial for small business owners who need to maintain separate LLCs.

Below is a comparison of estimated costs of an LLC to an SLLC in the state of Kansas for a company with ten (10) wholly owned subsidiaries. The figures include filing fees, filings service, and fictitious name. Key figures not accounted for include legal and accounting fees associated with the formation of a business entity. However, there is an expectation that legal and accounting fees associated with forming 10 LLCs will be substantially greater than forming one SLLC.

Kansas LLC	**Kansas SLLC**
Certificate of Formation = $165 10 x $165 = $1,650	Certificate of Formation = $165
Annual Report = $40 10 x $40 = $400	Annual Report = $40
Name Reservation = $20 10 x $20 = $200	Name Reservation = $20
Total Estimate = $2,250	Total Estimate = $225

Who Benefits

The SLLC is primarily intended for individuals and companies whose only alternative is a traditional LLC. Many times, these individuals and companies are forced to over-fund their LLC's with more assets than they could tolerate all being subject to the same judgment. The context in which SLLCs are currently being used range from Mutual funds to franchise businesses to real estate investments.

Benefits to Farming Industry

One example of how a SLLC could benefit a Kansas resident is in the context of farming. The farmer could establish an SLLC and place livestock, equipment, and land in separate series of the SLLC to protect each asset from any possible judgment against one of the series.

Benefits to Real Estate Industry

Assume a real estate investor owns five properties. Normally the investor has one of two options when it comes to protecting his assets. First, He could put all five properties under the same LLC but lenders tend not to prefer this since one property could wipe out the equity in one or more of the properties. His second option would be to create five individual LLCs for each of the five properties, which becomes prohibitively expensive to create and maintain. By allowing for SLLCs, the real estate investor would be able to place all five properties in a single LLC while at the same time compartmentalizing the liabilities associated with each of the properties by placing them in separate series and thereby protecting himself and his assets.

Value to the State of Kansas

The State of Kansas can utilize the attractiveness of SLLCs as a vehicle to encourage companies to set up diverse business interests by offering protections for ownership interests, operations and assets. The objective behind SLLC statutes is to offer asset protection and the ability to create several business interests operating under one business entity structure. The ultimate goal in the adoption of an SLLC statute is to promote economic growth by providing greater business opportunities by removing administrative burdens and promoting cost-saving attributes, including tax and liability advantages, to individuals starting and operating businesses in Kansas.

Series Limited Liability Companies

HB 2207
Rep. Rob Bruchman
20th District

Growth of Popularity of the LLC

- Corporate-like Liability Protections
- Partnership-like Tax Advantages
- Contractual Flexibility
  - ary profit distribution
  - ter voting rights
  - posen managerial responsibilities
  - eflect overall objectives of business entity

Series Limited Liability Company (SLLC)

- Subdivides an LLC into separate classes (known as "series")
  - parate members, managers, interests and business urposes
  - bility to separate assets into separate series
  - bility to contract separately for debts and obligations
  - , liabilities, and obligations of one series is eable only against the assets of that series and not st the assets of the SLLC generally or any other series n the SLLC

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Series Limited Liability Company (SLLC)

- Separation of Assets
  - Aligns creditors with specific assets
  - Separates "high risk" from "low risk"
  - Protects assets from judgments
  - Reduces overall exposure to risk
- Greater Managerial Flexibility
- Increased Freedom and Creativity from Investors and Owners

States with SLLC Legislation Enacted

- Delaware - 1996
- Illinois - 2005
- Iowa - 2005
- Nevada - 2005
- Oklahoma - 2006
- Tennessee - 2005
- Texas - 2009
- Utah - 2006

Administrative Burdens Reduced

- SLLCs require only one set of articles of organization to be filed with the Secretary of State for all series
  - Avoids difficulties associated with multiple filings
  - Reduces administrative costs associated with establishing and maintaining several LLCs
- Benefits small businesses and start-up companies trying to enter the market place

Comparison of Estimated Costs

- Table below compares administrative costs for an LLC with 10 wholly owned subsidiaries to an SLLC

Kansas LLC	Kansas SLLC
Articles of Organization = $165 10 x $165 = $1,650	Articles of Organization = $165
Annual Report = $40 10 x $40 = $400	Annual Report = $40
Name Reservation = $20 10 x $20 = $200	Name Reservation = $20
Total Estimate = $2,250	Total Estimate = $225

include associated legal fees associated with formation and maintenance

Who Benefits from the Use of SLLCs

- SLLC primarily intended for individuals and companies whose only alternative is a traditional LLC
- SLLC avoid "over-funding" of LLC with more assets than desired to be subject to liability
- Variety of Industries and Businesses Currently Utilizing SLLCs
  - Mutual funds
  - Franchise Businesses
  - Real Estate Investments
  - Farming Industry
  - Entrepreneurs with multiple business ideas
  - Oil and Gas
  - Complex Business Arrangements

Farming Industry

- Protect various assets to avoid possible judgments or credit liabilities by creating multiple series
  - Livestock
  - Equipment
  - Land/Real Estate
  - Products

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Farming SLLC Illustration

- Farmer forms SLLC with primary purpose to conduct operations in the farming industry
- Creates separate series with the SLLC to protect individual assets used in the farming operation
  - Series A to hold real estate and land
  - Series B to hold farming equipment
  - Series C to manage products and contracts with distributors

Real Estate

- Real Estate Investors
  - Able to place each investment property in a separate series
  - Insulates each property from the liabilities of other investment properties
    - One property would not be able to wipe out the equity of other properties
  - Avoids costs and burdens associated with protecting multiple investment properties
  - Companies, Investment Groups and Private Kansas Farms can take advantage of the benefits

Real Estate SLLC Illustration

- Real Estate Investor obtains 3 separate and distinct properties
  - Apartment complex
  - Vacant land
  - Commercial property (strip mall)
- Investor forms SLLC with primary purpose to manage real estate investments and related conduct
- Creates 3 series to segregate properties and limit liability and exposure to risk associated with the operation pertaining to each property
  - Series A to manage and operate apartment complex
  - Series B to manage the vacant lot and possible future uses
  - Series C to manage and operate commercial property

Value to the State of Kansas

- Promote economic growth though private investments and job creation
- Develop greater business opportunities for residents and non-residents
- Encourage companies to set-up diverse business interests within Kansas
- Increase overall tax base
- Improve efficiency to current marketplace

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Reply to Topeka Office

February 17, 2011

Rep. Rob Bruchman
Kansas House of Representatives
House Judiciary Committee

RE: House Bill 2207, 2011 Session

Dear Rep. Bruchman:

I am the current President of the Kansas Bar Association's Section on Corporation, Business and Banking Law (the "Section"). I am writing you concerning House Bill 2207 ("HB 2207"), introduced by you in this year's session. It is my understanding that the purpose of HB 2207 is to incorporate into the Kansas Revised Limited Liability Company Act, KSA §§ 17-7662 to -76,142 (the "Kansas Act"), the so-called "series" provisions currently contained in the Delaware Limited Liability Company Act, Del. Code Ann. tit. 6, §§ 18-101 to -1109 (the "Delaware Act"), primarily in Del. Code Ann. tit. 6, § 18-215.

Given the timing with which it is being reviewed by the Legislature's committee, the Section has been unable to form an official opinion concerning HB 2207. However, I want to relay to you the consensus of several members of our Section who commonly practice in the area.

As you are aware, the Kansas Act, adopted in 1999 and effective January 1, 2000, was patterned after the Delaware Act, which continued the practice in Kansas of modeling our business entity laws with the business entity laws in Delaware begun with our corporation code. However, Kansas did not adopt the series provisions of the Delaware Act as part of the Kansas Act. There were perhaps several reasons for this omission, but the common understanding among the bar is that the series provisions were viewed as complex and there would be little demand for the feature.

Since the adoption of the Kansas Act, the corporate bar in Kansas has had greater experience with limited liability companies in general and with series limited liability companies. Many members of the bar have seen increased interest in forming limited liability companies utilizing the series feature, although that interest is growing slowly. Several practitioners in our bar have related that they have organized Delaware limited liability companies for the express purpose of taking advantage of the Delaware Act's series provisions. This growing popularity has been reflected in the growing number of states that have adopted series provisions as part

House Judiciary
Date 2-17-11
Attachment # 10

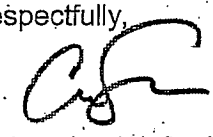
of their respective limited liability company acts. Since its adoption in Delaware, at least Illinois, Iowa, Nevada, Oklahoma, Tennessee, Texas, and Utah have also adopted series provisions.

As noted, while slowly increasing, the experience of our bar has been that the demand for series limited liability companies continues to be generally low in Kansas and throughout the United States. This lack of wide utilization may be attributed to the lack of certainty with the series provisions before the courts. The limited liability and asset protection aspects of series limited liability companies (one of the main advantages promoted for their use) has not been thoroughly vetted in the courts. There also remain questions as to how series limited liability companies will be treated for tax purposes—in particular under the Internal Revenue Service's "check-the-box" regulations.

Generally, the consensus among our practitioners that have weighed in on the topic is that the adoption of the Delaware Act's series provisions as part of the Kansas Act would be beneficial. Our bar believes that the demand for series limited liability companies will continue to grow, and as the courts and governmental agencies begin to resolve the current uncertainty on their treatment, we believe that the future demand for series limited liability companies could greatly increase. Our bar believes that there is no material reason why Kansas should not be able to accommodate the current demand for series limited liability companies that would otherwise be formed in our states and retain the associated organization fees and corporate/franchise taxes. Our bar further believes that adoption now would better guard against our laws being out of position should demand greatly increase in future years.

Thank you for your kind consideration.

Respectfully,



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