

Testimony of Helen Alvaré  
Professor of Law, George Mason University  
Before the  
Senate Standing Committee on the Judiciary  
Legislature of the State of Kansas  
March 6, 2014

Good morning and thank you for this opportunity to testify. My name is Helen Alvaré, and I am a professor of law and religion at George Mason University in Virginia. I have studied and written scholarship about the intersection of law and religion for decades. My other graduate degree is in Systematic Theology. I also lead a group of approximately 41,000 women in support of religious freedom (“Women Speak for Themselves”), and advise both the U.S. Catholic Conference of Bishops in Washington, DC, as well as Pope Francis’ Pontifical Council for the Laity in Rome.

It is an honor for me to be here, and I hope I may be of service to you today. I will make three points, and answer questions you might have about the details or implications of my testimony.

The three points are these:

First: while the Kansas Preservation of Religious Freedom Act is a good and necessary step toward securing religious freedom for Kansans it will not prove legally adequate to protect religiously, conscientiously objecting individuals or businesses who wish to live freely and conduct their businesses in Kansas with faithful integrity to their deepest beliefs, should legal recognition of same sex marriage be imposed upon Kansas by a federal court.

Second, there are significant, additional positive benefits to a law securely protecting individuals and business owners’ rights of free exercise in a situation where same sex marriage has been imposed upon Kansas from outside.

Third, but closely related to one and two, is the matter of the full significance of marriage in Judeo-Christian and Christian theology. It means so much more than the freedom to live one’s own marriage according to religious beliefs, to the point that asking religious citizens to facilitate or cooperate with a same sex marriage is like asking them to practice another religion.

**Turning to the first point,** The Kansas Preservation of Religious Freedom Act (“PRFA”) (which is modeled upon the federal legislation nearly unanimously supported by the U.S. Congress and signed by President Clinton in 1993), allows the state to “substantially burden” (2(a)) the “exercise of religion” (2(a)) of any “legal person or entity” (1(f)) in Kansas, via any “government action” (5(b)), *only when* the government “demonstrates, by clear and convincing evidence” that burdening the

person or entity “is in furtherance of a compelling governmental interest” and is the “least restrictive means” of furthering it (2(a)(1), (2)).

On its face, PRFA would seem to provide robust protection for the religious liberty of individuals and businesses should same-sex marriage be imposed upon Kansans by federal actors. Same-sex marriage proponents and federal judges, however -- including a majority of Justices on the United States Supreme Court -- have clearly signaled that laws like PRFA will not likely stand in the way of efforts to impose a new understanding of marriage -- or as I will argue in my third point -- a kind of “new religion” -- upon Kansans seeking only to live with integrity according to their religious convictions.

Same-sex marriage proponents, with the enthusiastic cooperation of powerful media voices, have signaled their intentions to impose same sex marriage upon religious conscientious objectors in the recent weeks’ smear campaign,<sup>1</sup> as well as in their scholarly works. They view the matter at hand as a zero sum game in which religious liberty is a *per se* affront to LGBT rights.

Of course, this is false empirically. Presumably the 52% of LGBT persons who survey as “religiously affiliated” (Pew),<sup>2</sup> would welcome religious freedom. Furthermore, rationally, there is likely nothing that can compete with Judeo-Christian religious beliefs -- about the radical equality of every single human being, made in God’s image -- for grounding a lasting community consensus in favor of recognizing the dignity of every LGBT person.

But supporters of same sex marriage see it differently. In the words of a leading LGBT activist who is a commissioner for President Obama’s EEOC, Chai Feldblum<sup>3</sup>: “The most pressing question for LGBT people probably is not ‘How can we be sure that we are adequately considering and taking into account the beliefs of those who believe we are immoral and sinful?’”<sup>4</sup> Wayne Besen, an online gay-rights advocate characterizes protections for religious institutions strictly as “an attempt to rationalize discrimination.”<sup>5</sup>

---

<sup>1</sup> Mollie Hemingway, *Dumb, Uneducated and Eager to Deceive: Media Coverage of Religious Liberty in a Nutshell*, at <http://thefederalist.com/2014/02/28/dumb-uneducated-and-eager-to-deceive-media-coverage-of-religious-liberty-in-a-nutshell/> (Feb. 28, 2014).

<sup>2</sup> Pew Forum, *A Survey of LGBT Americans* (June 13, 2013) (roughly 48% say they have no religious affiliation), at <http://www.pewsocialtrends.org/2013/06/13/a-survey-of-lgbt-americans/>.

<sup>3</sup> See U.S. Equal Employment Opportunity Commission, Chai R. Feldblum, Commissioner, <http://www.eeoc.gov/eeoc/feldblum.cfm> (last visited March 4, 2014).

<sup>4</sup> Chai Feldblum, *Moral Conflict and Conflicting Liberties*, in Douglas Laycock, Anthony R. Picarello, Jr., & Robin Fretwell Wilson, Eds., *Same-sex Marriage and Religious Liberty: Emerging Conflicts* (2008), 26.

<sup>5</sup> Gabriel Arana, *Religious Liberty: The Next Big Front in the Culture Wars*, at <http://prospect.org/article/religious-liberty-next-big-front-culture-wars>.

Even more ominously, federal judges are describing same-sex marriage recognition in ways leaving no breathing room for religious freedom. I say “more ominously,” because of course these actors have the power to override duly enacted state laws conferring marriage recognition only upon the class of couples who might have children and preserve those children’s human right to know and be loved by their mother and their father for a lifetime. Federal judges can override and have overridden even the most popularly supported state laws and constitutional amendments defining marriage as opposite-sexed – *no matter that the state has a religious freedom act* – by the simple act of declaring that federal constitutional guarantees of either equal protection or due process, or both, can be judicially interpreted to mandate the same-sex marriage. This has recently happened in Texas,<sup>6</sup> and in Utah.<sup>7</sup>

In Texas, for example, a federal district court found that Texas’ definition of marriage conflicted with federal constitutional guarantees of equal protection and due process. Though Texas’ law was passed by 76% of citizens, and possessed accompanying legislative findings indicating that its marriage policy was based upon creating a “healthy, successful, stable environment for children,” and allowing the family to “enjoy good health, avoid poverty, and contribute to their community”<sup>8</sup>, the federal court, citing the Supreme Court’s recent marriage decision in *United States v. Windsor*<sup>9</sup>, repeated that treating same- and opposite-sexed pairs differently, “demean[ed] the couple, whose moral and sexual choices the Constitution protects.” Likewise, a federal district court in Utah, quoting frequently from *Windsor*, struck down Utah’s marriage recognition law -- passed in 2004 with 66% of votes -- under both due process and equal protection rationales. It relied upon *Windsor*’s finding that laws refusing to recognize same-sex marriage are motivated by a “bare desire to harm” same-sex pairs, and are not justified by any state interests in linking children with their natural parents.

And then, of course, there is *Windsor* itself, which, after paying lip service to federalism principles, substituted a new, federal definition of the meaning of marriage – an extraordinarily adult-centric meaning – for the meaning adopted by the vast majority of states, and every one of the relevant, prior Supreme Court opinions treating marriage.<sup>10</sup> To summarize a great deal of material, the Supreme Court defined marriage as: the way people define *themselves*, as persons committed in a special emotional and sexual way to another person; as an

---

<sup>6</sup> *De Leon et al. v. Perry et al.*, (W.D. Tex, Feb. 26, 2014), <https://www.documentcloud.org/documents/1030104-texas-federal-judge-s-same-sex-marriage-ruling-2.html>.

<sup>7</sup> *Kitchen et al., v. Herbert et al.*, (D. Utah, Dec. 20, 2013). [http://sblog.s3.amazonaws.com/wp-content/uploads/2013/12/Kitchen\\_et\\_al\\_v.\\_Herbert\\_et\\_al\\_12-20-13.pdf](http://sblog.s3.amazonaws.com/wp-content/uploads/2013/12/Kitchen_et_al_v._Herbert_et_al_12-20-13.pdf)).

<sup>8</sup> House Research Org., H. J. R. 6 Bill Analysis, 79<sup>th</sup> Leg., Reg. Sess., at 3-4 (Tex. Apr. 25, 2005).

<sup>9</sup> 133 S. Ct. 2675 (2013).

<sup>10</sup> See *Amicus Brief of Helen M. Alvare in support of Hollingsworth, et al., Hollingsworth v. Perry, & United States v. Windsor*, at <http://www.adfmedia.org/files/HollingsworthAmicusAlvare.pdf>, 9-23.

acknowledgment of an intimate relationship between two people;<sup>11</sup> as a protection of a person’s “personhood and dignity”<sup>12</sup>; and as a means for same-sex couples to “enhance their *own* liberty”<sup>13</sup> and equality with opposite-sexed married couples.<sup>14</sup>

If a federal judge or Justice insists that Kansas recognize same-sex marriage, it will become the law of the state. Once this is a matter of Kansas law by judicial fiat, and *especially* because such a fiat will undoubtedly insist that it is grounded upon recognition of the “equal dignity and personhood” of same-sex couples, it is extraordinarily easy post-*Windsor* to imagine a judge finding under PRFA that the state’s interest in same sex marriage is sufficiently “compelling” to outweigh a religious actor’s need to live in accordance with her or his beliefs.

States, like Connecticut and others with state-level RFRA, still realized that they needed particular religious freedom protective legislation in connection with same-sex marriage recognition, (even if those protections are not as robust as religious freedom really requires).<sup>15</sup> RFRA style statutes were not designed to protect religious freedom in a context of state-recognized same sex marriage, but to restore a balancing test unexpectedly struck down by the U.S. Supreme Court in 1990.<sup>16</sup> The federal RFRA was passed in the early 1990s at a time when same-sex marriage was unthinkable. At that time, *every single federal case treating state marriage recognition in the history of our nation had linked marriage firmly with states’ interests in procreation.*<sup>17</sup> Even earlier state-level RFRA were passed when it was unimaginable that federal judges would repeatedly ignore centuries of precedents—both state and federal – *and* the historical, global understanding of marriage to date. No one really expected that courts would reverse all of this, and suddenly declare that marriage has nothing to do with linking children with their parents, but is rather an emotional and sexual enterprise only, given as a benefit to adults who re-frame it as a right for themselves.

**Second**, legislative protection for religious freedom in connection with same-sex marriage offers many advantages to a state. The state would have agreed in advance that it does not have a compelling state interest in forcing particular religious actors to cooperate with or facilitate same-sex marriage. This provides security to religious actors who can then feel free to form businesses, secure in the safety of their current and future investment, and secure in their ability to avoid costly or even ruinous lawsuits.

Religious freedom legislation also provides security to couples with recognized

---

<sup>11</sup> *Ibid.*

<sup>12</sup> 133 S. Ct. at 2696.

<sup>13</sup> 133 S. Ct. at 2695.

<sup>14</sup> 133 S. Ct. at 2694.

<sup>15</sup> Connecticut Public Act No. 09-13, <http://www.cga.ct.gov/2009/ACT/PA/2009PA-00013-R00SB-00899-PA.htm>.

<sup>16</sup> *Employment Division v. Smith*, 494 U.S. 82 (1990).

<sup>17</sup> See *supra* note 10.

same-sex unions because it can delineate clearly the categories of persons and activities shielded by law from cooperating with the event of their same-sex union. A law also can draw a bright and correct line between cooperating with a same sex union and with non-marital services for LGBT persons.

Another reason to consider legislation protecting religious freedom in connection with same-sex unions concerns its beneficial effects upon the business economy. An emerging body of research, by a leading scholar in the area, and now emanating from an institute devoted to this precise topic, indicates that where religious freedom thrives, the business economy thrives.<sup>18</sup> Where religious freedom is disrespected, the opposite follows.

Not just business owners, but *all* citizens, benefit when the state recognizes what people of faith believe, and strongly: that human labors are and must be an extension of their personal integrity and dignity. As distinguished from some opponents of religious liberty, who urge that the human beings who run a business are no more than tools in the process – like the mixer that mixes the cake or the camera that takes the picture... nothing better than inanimate objects<sup>19</sup> – one can find both secular and theological affirmations of the principle that work is an extension of human meaning and personhood. Labor unions support this idea with campaigns about “working with dignity.”<sup>20</sup> Viktor Frankl’s *Man’s Search for Meaning* speaks about how even small human actions “offer[] the opportunity to make a decision .. which determine[s] whether you would or would not submit to those powers which threatened to rob you of your very self, your inner freedom... whether or not you would become the plaything of circumstance....”<sup>21</sup> Harvard Business School <sup>22</sup> publications remind us that “[q]uite simply, without a sense of purpose, we become alienated from our work and find it harder to motivate ourselves”; and that people feel deeply the need to “integrate the spiritual dimension of their lives into what they do for most of the day.” They also recognize that people who are so integrated experience heightened team spirit, focus, and attitudes of servant leadership toward one another and the customer.

The Christian religion speaks directly to this point. *Matthew* 7:20 states that “By their fruit you will know them.” *Luke* 9:25 teaches “that it profits a man nothing if he gains the whole world and loses himself.” St. Paul tells the Corinthians “So whether you eat or drink, or whatever you do, do all to the glory of God.” (*Cor* 10:31).

---

<sup>18</sup> Religious Freedom and Business Foundation, <http://religiousfreedomandbusiness.org>.

<sup>19</sup> Kirsten Powers, *Are Opponents of Arizona’s Anti-Gay Law Eager to Deceive?*, (March 3, 2014), <http://www.thedailybeast.com/articles/2014/03/03/are-arizona-anti-gay-law-opponents-eager-to-deceive.html>.

<sup>20</sup> See e.g. Unitedworkers.org, “WORK WITH DIGNITY” Campaign : <http://unitedworkers.org/wp-content/uploads/2013/09/UW-WorkwithDignityApplication.pdf>

<sup>21</sup> *Man’s Search for Meaning*, 66 (1946).

<sup>22</sup> Marguerite Rigoglioso, *Spirit at Work: The Search for Deeper Meaning at the Workplace* (Oct. 12, 1999), <http://hbswk.hbs.edu/archive/644.html>.

Evangelical and Catholic Christians both teach that work has value whatever it is, *because of the human subject who performs it*, and that the person is importantly contained in all her or his work. Christian scholar Justin Taylor quotes Martin Luther stating that no matter how seemingly insignificant the work: “I am certain that it is thus pleasing in [God’s] sight...not because the father is washing diapers, but because he is doing so in Christian faith.”<sup>23</sup>

Pope John Paul II in his major letter on human labor refers to the necessity of work that “serve[s] to realize [the person’s] humanity, to fulfill the calling to be a person that is his by reason of his very humanity.”<sup>24</sup> All workers “can justly consider that by their labour they are unfolding the Creator's work, consulting the advantages of their brothers and sisters, and contributing by their personal industry to the realization in history of the divine plan”<sup>25</sup> He explicitly distinguishes this from the view that human effort is a sort of “merchandise”,<sup>26</sup> or from a situation in which “man is treated as an instrument of production, whereas he – he alone, independently of the work he does – ought to be treated as the effective subject of work and its true maker and creator.”<sup>27</sup> He sums up the teaching as “Hence, the norm of human activity is this: that in accord with the divine plan and will, it should harmonize with the genuine good of the human race, and allow people as individuals and as members of society to pursue their total vocation and fulfill it.”<sup>28</sup> Pope Francis echoes these teachings with his recent remarks: “[w]ork is part of God's loving plan for humanity,” by which man is “called to participate in [God’s] act of creation.”<sup>29</sup>

Jewish theology holds similarly. In a religious freedom Supreme Court brief just filed by eight Jewish organizations<sup>30</sup> the authors state that if a business person, in the course of work is “forced to violate a religious duty, he personally suffers the Divine punishment.”<sup>31</sup>

In sum, when the state protects the religious freedom of its workers, it paves the way for religious citizens to open and to grow businesses, secure in the knowledge that they can live with integrity respecting their faith, and thereby benefit themselves, their families, and the public peace and economic thriving of their communities.

---

<sup>23</sup> Justin Taylor, *Working Out a Theology of Work*, at <http://www.boundless.org/adulthood/2012/working-out-a-theology-of-work> (April 13, 2012).

<sup>24</sup> Id. at 6.

<sup>25</sup> Id. at 25.

<sup>26</sup> Id. at 7.

<sup>27</sup> Id. at 8.

<sup>28</sup> Id. at 26, *quoting Gaudium et Spes*, 35.

<sup>29</sup> Pope Francis, Audience on the Feast of St. Joseph the Worker, May 1, 2013, at <http://www.news.va/en/news/audience-on-may-1st-an-appeal-against-slave-labor>.

<sup>30</sup> Amicus Brief of the National Jewish Commission on Law and Public Affairs, *Sebelius v. Hobby Lobby*, at <http://www.becketfund.org/wp-content/uploads/2014/01/13-354-13-356-bsac-COLPA1.pdf>

<sup>31</sup> Id. at 8.

**Third.** Due to the centrality of “marriage” to the Judeo-Christian understanding of God, God’s relationship with human beings, and the very meaning of human life – asking religiously objecting citizens to cooperate with a meaning of marriage that removes a man or a woman, removes bodily differences and complementarity, and removes the possibility of procreating children, is tantamount to asking believers to practice a different faith.

This is a very difficult thing to communicate briefly, because it’s theological roots are so deep, and its scope so vast, but I will try. I have a longer article on the subject if any members are interested.

Many believe that same-sex marriage creates a legal clash with religious freedom because of clear biblical passages rejecting homosexual sexual practices.<sup>32</sup> But religious opposition to same-sex marriage recognition is *not* addressed to these, but is about the *meaning of marriage*. And Christian teaching about marriage is not simply about how Christians are to live their *own* marriages, but is very much also about how they are to understand, communicate about and witness to marriage generally. It is not an exaggeration to say that marriage is an essential component of an entire religious “cosmology” and “anthropology.” Here are its leading elements.

First, for Christians, marriage is a glimpse of God’s self as Trinity -- Father, Son and Holy Spirit – wherein three persons are united in an interpenetrating unity of endless love, and the Father and the Son send forth the Holy Spirit. Man and woman are, each and together, created in the image of God. They unite in marriage body and person, which union is the unique locus of new human life. In Catholic teaching, the “complementarity of the sexes... reflects the inner unity of the Creator.”<sup>33</sup> And marriage is the first and fundamental dimension of human beings’ call to live in the loving communion that God lives.<sup>34</sup>

A second aspect of religious belief about marriage is that marriage is humanity’s glimpse of God’s relationship with human beings. This is delineated in the Judeo-Christian Old Testament where marital analogies and language feature prominently as descriptions of the covenant between God and Israel. God’s relationship with Israel is captured in the language of fidelity, adultery, love and betrayal.<sup>35</sup> It features in Christian New Testament passages about God and the Church. In the New Testament, reflecting on the unity of man and woman at the moment of the world’s creation, the Apostle Paul exclaims: “this mystery is a profound one, and I am saying that it refers to Christ and the Church” (*Eph* 5:32).

---

<sup>32</sup> See *Gen.* 19:5-8; *Lev.* 18:22-23; *Lev.* 20:13; 1 *Tim.* 1:9-10; *Rom.* 1:26-27.

<sup>33</sup> Congregation for the Doctrine of the Faith, *Letter to the Bishops of the Catholic Church on the Pastoral Care of Homosexual Persons*, ¶6 (1986).

<sup>34</sup> John Paul II, *Mulieris Dignitatem*, ¶7 (1988).

<sup>35</sup> Catechism of the Catholic Church, ¶¶ 1611 – 12.

Third, for Catholics in particular, man-woman marriage provides the model for how all human beings are to love one another. In short, sexual difference and complementarity point toward the meaning not only of the male-female relationship in marriage, but toward the meaning and purpose of life itself. They tell us that life is essentially relational; it's communitarian. I must go out of myself to love the other who is not me. Marriage is the privileged sign of this. The highest doctrinal body of the Catholic Church, the Congregation for the Doctrine of the Faith wrote in 2004: "The human creature, in its unity of soul and body [in marriage], is characterized therefore, from the very beginning, by the relationship with the other-beyond-the-self"<sup>36</sup> Benedict XVI's first encyclical, *Deus Caritas Est* (God is Love) articulates in definitive language the relationship between the meaning of marriage and the norm of love: "Marriage based on exclusive and definitive love becomes the icon of the relationship between God and his people and vice versa. God's way of loving becomes the measure of human love."<sup>37</sup>

Furthermore, Christian theology teaches that marriage is ordained both for the good of the spouses and for procreation. Christians often trace this back to the *Genesis* passage wherein God commands the couple to "[b]e fruitful and multiply" (*Gen1:28*). The Catholic Catechism states: "true married love ... without diminishment of the other ends of marriage," is "directed to disposing the spouses to cooperate valiantly with the love of the Creator..."<sup>38</sup> In "this sense, the fundamental task of marriage and family is to be at the service of human life."<sup>39</sup> There is also a great deal of Catholic teaching about how easy it is for marriage to become simple "mutual use," when there is no common good to which both are inclined...a common good which can bind them, internally and externally. A good to which they are willing to subordinate themselves to, and one to the other, for its sake."<sup>40</sup> Children are this unique common good.

Another "face" of the procreative nature of marriage concerns the rights of children. International human rights norms as well as Christian teachings indicate that children have rights respecting their origins and their family life. They have the right to be created in a loving act worthy of a human person, and to be reared by their mother and father in marriage.<sup>41</sup> Because God's "image and likeness" comes into being in the world, practically speaking, by means of procreation, and this is done by persons we call "father" and "mother" (as God is Father and Jesus had a mother and a heavenly father) it is possible, to say that "God himself is present in human fatherhood and motherhood." Both He and they are the "source of image and

---

<sup>36</sup> *On the Collaboration of Men and Women*, ¶8.

<sup>37</sup> *Deus Caritas Est*, 11.

<sup>38</sup> Catechism at 1652 (citing *Gaudium et Spes* (Constitution on the Church in the Modern World (1965)), 48, 1, 50.

<sup>39</sup> Catechism at 1653 (citing *Familiaris Consortio*, ¶28).

<sup>40</sup> Pope John Paul II, *Love and Responsibility*, 28.

<sup>41</sup> Congregation For The Doctrine Of The Faith, *Donum Vitae* (Instruction On Respect For Human Life In Its Origin And On The Dignity Of Procreation: Replies To Certain Questions Of The Day) Introduction, 5 (1987); see also Catechism at 2376.

likeness” to God that humans bear. The current proliferation of material about children’s longing for their mother and their father following assisted reproduction or divorce or separation bears witness to this.<sup>42</sup>

It is not only the case that forcing religious persons to cooperate with same-sex marriage directly undermines each of the religious teachings described above, but it also silences important voices in the community advocating for the common good. Above, I pointed out the potential for religious voices to provide the most *convincing* arguments for the *essential equality of all LGBT persons*. I would add here that religious voices are a voice for preserving the weight of sex, due to its relationship with existence itself. At a time when the links between sex and marriage and children are growing very attenuated – with particularly ill effects upon poor Americans – many people, not just religious adherents, are benefitted when the links between sex and marriage and children are preserved. Religious actors also and valuably, remind society that marriage is about much more than emotional sympathy. A great deal of literature within and beyond the same-sex marriage issue has begun to equate marriage strictly with a “soulmate union.”<sup>43</sup> The risks of adopting such a view of marriage are significant. It is linked with increasing rates of divorce, which, in addition to creating difficulties for children, appear to cause lingering harms for adults and for society too, all of which affect already disadvantaged communities the most.<sup>44</sup>

Even a society eager to communicate compassion and inclusion to lesbian and gay individuals and couples, may wish to maintain the uniqueness and visibility of a view of marriage which remembers marriage’s link with the good of children and of the community.

### **Conclusion:**

There is nothing short of a media frenzy at the present time – driven by the usual factors—eager to label religious freedom “anti-gay.” It will pass. I’ve been here before and lived to tell the tale. Though I understand how unpleasant it is.

I hope we can all take a breath, however, and *think*. Think about what defines us as a free people – and certainly religious freedom is an indispensable part of this. In a major exhibit in our national Library of Congress summarized the role of religious liberty at America’s founding thus: the U. S. was “settled by men and women of deep

---

<sup>42</sup> See e.g. AnonymousRUs.org.

<sup>43</sup> Andrew J. Cherlin, *The Deinstitutionalization of American Marriage*, 66 J. of Marriage & Fam. 848 (2004); W. Bradford Wilcox, *The Evolution of Divorce*, National Affairs (Fall 2009), at <http://www.nationalaffairs.com/publications/detail/the-evolution-of-divorce>.

<sup>44</sup> See Andrew J. Cherlin & W. Bradford Wilcox, *The Marginalization of Marriage in Middle America* (2011), at [http://www.brookings.edu/~media/research/files/papers/2011/8/10%20strengthen%20marriage%20wilcox%20cherlin/0810\\_strengthen\\_marriage\\_wilcox\\_cherlin.pdf](http://www.brookings.edu/~media/research/files/papers/2011/8/10%20strengthen%20marriage%20wilcox%20cherlin/0810_strengthen_marriage_wilcox_cherlin.pdf); Charles Murray, *Coming Apart: The State of White America, 1960-2010*, 149-67 (2012).

religious convictions who ... crossed the Atlantic Ocean to practice their faith freely.” It was “a religious people [who] rose in rebellion against Great Britain in 1776, and ... most American statesmen, when they began to form new governments at the state and national levels, shared the convictions of most of their constituents that religion was, to quote Alexis de Tocqueville's observation, *indispensable to the maintenance of republican institutions.*”

Kansas' Bill of Rights clearly and proudly forms part of this tradition with its bold statement that: “nor shall any control of or interference with the rights of conscience be permitted.”<sup>45</sup>

Federal and state governments in the United States have a long tradition of legislatively providing for religious freedom for conscientious objectors, whether the subject matter at issue is war, abortion, or capital punishment. In recent times, governments have understood that moral and religious freedom protections are also necessary in the context of drastically changing norms respecting human sexual relationships. Thus federal and state legislatures have sometimes enacted exemptions in connection with sex education, or the provision of birth control or morning after drugs, and now same-sex unions.

Same sex marriage is like these earlier issues and also unlike them. From a religious freedom perspective it is like abortion because it is a freshly announced “right” which contradicts thousands of years of prior secular and religious laws and understandings. It demands cooperation with an event that religious believers simply cannot support. It is *unlike* all of them, however, because it is described by supporters as nothing more than a loving act that two people wish to do, which sets up unique difficulties for those whose religious freedom requires that they demur from participation. Especially in the currently frenzied environment. Clearly, should same sex marriage be forced upon Kansas, both same sex marriage proponents and religious believers will have to live with less than everything they want. Both will continue to encounter unpleasantness. Government can't save either side from embarrassment or hurt feelings; further, it's not its role. But should same-sex marriage come to Kansas, almost certainly against its will, it is and always has been the role of state government to do its part in protecting citizens' most fundamental freedom.

---