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BY EMAIL AND UPS OVERNIGHT

The Honorable Christopher G. Donovan
Speaker of the House
Legislative Office Building, Room 4106
300 Capitol Ave.
Hartford, CT 06106-1591
Christopher.Donovan@cga.ct.gov

Re: Religious liberty implications of Raised Bill 899

Dear Mr. Speaker:

I write to urge that Raised Bill 899, on same-sex marriage, be amended to provide robust and specific protections for religious liberty. I have studied and written about the law of religious liberty for many years, and I have written about how to protect both sexual liberty and religious liberty in my co-edited book, *Same-Sex Marriage and Religious Liberty* (2008). I write in my personal capacity, and of course the University of Michigan takes no position on these issues.

I heartily endorse the amendments proposed in the letter that Professors Thomas C. Berg, Carl H. Esbeck, Richard W. Garnett, and Robin Fretwell Wilson sent to you yesterday. I have not signed their letter, because I come to these issues from a rather different perspective, but their analysis of potential legal conflicts is accurate, and their proposed statutory language is necessary to legislation that is fair and just to all sides.

I support same-sex marriage. I think the decision of the Connecticut Supreme Court in *Kerrigan v. Commissioner of Public Health* is a great advance for human liberty. But careless or overly aggressive implementation could create a whole new set of problems for the religious liberty of those religious believers who cannot conscientiously participate in implementing the new regime. The net effect for human liberty will be no better than a wash if same-sex couples now oppress religious dissenters in the same way that those dissenters, when they had the power to do so, used to oppress same-sex couples.

Nor is it in the interest of the gay and lesbian community to create religious martyrs in the enforcement of this bill. To impose legal penalties or civil liabilities on a wedding planner who refuses to do a same-sex wedding, or on a religious counseling agency that refuses to provide

marriage counseling to same-sex couples, will simply ensure that conservative religious opinion on this issue can repeatedly be aroused to fever pitch. Every such case will be in the news repeatedly, and every such story will further inflame the opponents of same-sex marriage. Refusing exemptions to such religious dissenters will politically empower the most demagogic opponents of same-sex marriage. It will ensure that the issue remains alive, bitter, and deeply divisive.

It is far better to respect the liberty of both sides and let same-sex marriage be implemented with a minimum of confrontation. Put religious exemptions in the bill, and at a stroke, you take away one of the opponents' strongest arguments. Let the people of Connecticut see happy, loving, same-sex marriages in their midst; let them see (this cannot be helped) that some of those marriages fail, just as many opposite-sex marriages fail; let them see that these same-sex marriages, good and bad, have no effect on opposite-sex marriages. Same-sex marriage will be backed by law, backed by the state, and backed by a large and growing number of private institutions. Let the market respond to the obvious economic incentives; same-sex couples will pay good money just like opposite-sex couples. Let same-sex marriage become familiar to the people, and do these things without oppressing religious dissenters in the process. Much of the dissent will gradually fade away, and nearly all the rest will go silent, succumbing to the live-and-let-live traditions of the American people. The number of people who assert their right to conscientious objection will be small in the beginning, and it will gradually decline to insignificance if deprived of the chance to rally around a series of martyrs.

Exemptions for religious conscientious objectors will not burden same-sex couples. Connecticut is a compact and highly urbanized state; no couple will have to go far to find merchants, professionals, counseling agencies, or any other desired service providers who will cheerfully meet their needs and wants. And same-sex couples will generally be far happier working with a provider who contentedly desires to serve them than with one who believes them to be engaged in mortal sin, and grudgingly serves them only because of the coercive power of the law.

Enacting the right to same-sex marriage with generous exemptions for religious dissenters is the right thing to do. It respects the right of conscience for all sides. It protects the sexual liberty of same-sex couples and the religious liberty of religious dissenters. It is obviously better for the traditional religious believers; on a few moments' reflection, it is also better for the same-sex couples. Because it is better for both sides, it is better for Connecticut.

Very truly yours,

Douglas Laycock