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April 5, 2013

Hon. Robert Duncan, Chair
State Affairs Committee
Texas Senate
P.O. Box 12068, Capitol Station
Austin, TX 78711

Dear Senator Duncan:

We have been asked for our opinion concerning the Religious Freedom Amendment, introduced as SJR 4 and again as SJR 49, currently under consideration in your committee. We heartily endorse this constitutional amendment.

This proposed constitutional amendment would simply place the substantive heart of the Texas Religious Freedom Restoration Act into the state constitution, giving it greater visibility and greater insulation from shifting political majorities. All the detail about private causes of action and the like would be left to the existing statute. Similar legislation or constitutional amendments have been enacted at the federal level (to govern federal law) and in seventeen states: Alabama, Arizona, Connecticut, Florida, Idaho, Illinois, Kentucky, Louisiana, Missouri, New Mexico, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, and Virginia. Another thirteen states have interpreted their state constitutions to provide similar protection: Alaska, Indiana, Kansas, Massachusetts, Michigan, Minnesota, Mississippi, Montana, New York, North Carolina, Ohio, Washington, and Wisconsin.

The federal RFRA has applied to federal law since 1993. The Texas RFRA has applied to Texas law since 1999. Some of these other state laws and decisions have also been around for a long time. The standard enacted in these laws was the constitutional law for the entire country from 1963 to 1990. In Texas and other states where these laws exist, they have not been interpreted in crazy ways that have caused problems for those jurisdictions; if anything, they have been enforced too cautiously. If opponents tell you about terrible things that will happen if this amendment is adopted, press them for specific examples of where their horror stories have actually happened in Texas or anywhere else. There are no such examples.

These laws typically do not wind up applying to large numbers of cases. The numbers of cases are small, but those cases are often of intense importance to the people affected. We should not punish people for practicing their religion unless we have a very

good reason. These cases are about whether people pay fines, or go to jail, for practicing their religion—in America, in the 21st century.

None of our employers takes any position on the amendment, and our institutional affiliations are listed for identification purposes only.

Respectfully,



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