



TO: Judiciary Committee
FROM: Tom Venzor, Executive Director
Nebraska Catholic Conference
DATE: February 26, 2021
RE: LB230 (Public Accommodations & Housing SOGI Non-Discrimination) (Oppose)

The Nebraska Catholic Conference advocates for the public policy interests of the Catholic Church and advances the Gospel of Life through engaging, educating, and empowering public officials, Catholic laity, and the general public.

The Catholic faith recognizes the supreme dignity of every person as made in the image and likeness of God. The only appropriate response to this reality is charity. For this reason, the Catholic faith also recognizes that nobody, including those who are experiencing same-sex attraction or gender identity issues, should be subject to unjust discrimination.¹ In other words, everyone should be treated with respect and dignity.

LB230, unfortunately, goes beyond protecting against unjust discrimination. LB230 seeks to utilize the government's coercive power to force and punish individuals, businesses, non-profit entities, and religious institutions to affirm conduct that conflicts with their sincerely held moral or religious beliefs on marriage and human sexuality. Even former Supreme Court Justice Anthony Kennedy recognized that a traditional view on marriage and sexuality "long has been held—and continues to be held—in good faith by reasonable and sincere people here and throughout the world."² LB230 does not treat those with differing views as reasonable and sincere people, but in need of corrective government coercion and punishment.

LB230 contains at least several fundamental flaws.

First, as discussed with LB120, LB230 would expand local and statewide public accommodations laws. This would inevitably raise serious constitutional issues. In 2019, a 3-judge panel of the 8th Circuit Court of Appeals recognized that when such laws "seek[] to regulate speech itself as a public accommodation, it has gone too far...and its interest must give way to demands of the First Amendment."³

Second, LB230 would have an adverse effect on people in the housing and real estate industry who hold to traditional moral or religious views on marriage and human sexuality. Consider the situation of Phyllis Young, who currently has a petition for a writ of certiorari in front of the

¹ See *Catechism of the Catholic Church*, paragraphs 2357-2359.

² *Obergefell v. Hodges*, 135 S.Ct. 2584, 2594 (2015).

³ *Telescope Media Group v. Lucero*, 936 F.3d 740, 758 (8th Cir. 2019).

United States Supreme Court.⁴ Mrs. Young rents several bedrooms in her family home under the business name Aloha Bed & Breakfast. This business endeavor helps Mrs. Young earn a livelihood during retirement. Mrs. Young welcomes any guests to her house, as long as they follow her “house rules.” One of her “house rules” is that “no romantic partners share a bedroom unless they are a married man and woman.”

Based on her rules, Mrs. Young was unable to accommodate a same-sex couple who attempted to reserve a room at her home. She stated that this would violate her religious beliefs, as she believes she is “morally responsible for the sexual activity that takes place under her roof.” She provided a referral to a nearby friend who was willing to accommodate the couple. Notably, Mrs. Young also requires her daughter and live-in boyfriend to sleep in different bedrooms when they stay at the house.

LB230 would unnecessarily and unjustly punish people in Nebraska who, like Mrs. Young, hold certain views about marriage and human sexuality and engage in activities such as renting or leasing their home.⁵ This sends the message to people like Mrs. Young that the government will force you to sacrifice your faith if you want to earn a living in the housing industry. Such an unwelcoming message chills full participation in public life, is bad public policy, and would unquestionably entangle Nebraska in First Amendment litigation.

Third, it is not rare for a religious organization to offer low-cost housing options or to engage in the selling, renting, and leasing of real estate. Under LB230, religious organization engaged in the housing industry with similar values as Mrs. Young could be punished by the government for declining to be a party to certain conduct because of their moral and religious beliefs related to issues of marriage and human sexuality. This would have the result, for example, of jeopardizing their ability to provide affordable housing to those who most need it.⁶ This is a substantial societal cost and should be carefully considered when thinking about legislative bills that would use the government’s coercive power to punish religious organizations for not abiding by a particular view of marriage and human sexuality.

The Nebraska Catholic Conference respectfully urges your opposition of LB230. Thank you for your time and consideration of our position.

⁴ See Petition for a Writ of Certiorari, *Aloha Bed & Breakfast v. Diane Cervelli, et al.* (2018) (No. 18-451), available at <https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/18-451.html> (last accessed February 25, 2021).

⁵ See Nebraska Revised Statutes §20-322(3) (“Nothing in the act shall prohibit or limit the right of any person or his or her authorized representative to refuse to rent a room or rooms in his or her own home for any reason or for no reason or to change tenants in his or her own home as often as desired, except that this exception shall not apply to any person who makes available for rental or occupancy more than four sleeping rooms to a person or family within his or her own home.”). Though this provision would provide some protection, it also raises a variety of questions related to the meaning of a “home” or “sleeping rooms” and the extent to which it would provide protection to people in Nebraska in a similar situation as Mrs. Young.

⁶ Similar laws, in different contexts, have had a negative effect on religious organizations to serve vulnerable children in need of good homes through foster care and adoption services. See “Discrimination against Catholic Adoption Services,” USCCB (2018), available at <http://www.usccb.org/issues-and-action/religious-liberty/upload/Discrimination-against-Catholic-adoption-services.pdf> (last accessed on Feb. 25, 2021)