Prepared Testimony of
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the Judiciary Committee
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Distinguished Chair and Distinguished Members of the Committee: Thank you for providing me the opportunity to present testimony opposing House Bill 4003. My name is Katherine Bussard, Executive Director & COO of Salt & Light Global & the Great Lakes Justice Center and Vice President of Mid-Michigan Women for Conservative Values. Today, I am here to testify in my personal capacity.

GOOD GOVERNANCE AND THE CONSTITUTIONAL SEPARATION OF POWERS

Article IV, Section 1 of the Michigan Constitution provides "[t]he legislative power of the State of Michigan is vested in a senate and a house of representatives." Nonetheless, the Michigan Supreme Court handed down a decree recently amending the Elliott-Larsen Civil Rights Act to add sexual orientation to the list of classifications covered by the law. The judicial edict wrongly usurped the constitutional lawmaking authority held by this institution, the Michigan Legislature. I commend this body for returning the debate to the people's branch of the Michigan government, where public policy can be crafted with proper public participation.

SERIOUS POLICY CONCERNS

Religious Liberty

Ratified in 1791 as the foremost issue in the Bill of Rights, the First Amendment to the United States Constitution states "Congress shall make no law respecting the establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech . . . ."

People of the Abrahamic faiths (like Jews, Christians, and Muslims), recognize that differences in sex reflect God's nature and that this difference is inherent to our status as human beings made in the image of God: "So God created mankind in his own image, in the image of God he created them; male and female he created them." *Genesis 1:27*. The sweeping language of HB 4003 would require that people of religious conscience open same-sex spaces like restrooms, changing rooms, locker rooms, dormitories and other accommodations, as well as sex-segregated athletic and scholastic pursuits, and any other sex-separated programing to persons of the opposite [biological] sex, if an individual simply claims or identifies their sex accordingly.

For people of faith, the "Imago Dei" is the source of the inherent worth and dignity of all persons. It is *not* invidious discrimination, therefore, to protect one's privacy in a bathroom or shower. Nor is it an oppressive social construct in need of deconstruction. Likewise, for these same reasons, people of faith do not engage in sexual harassment when, grounded in their sincere religious conscience, they express biologically accurate personal pronouns and refuse to lie. Chromosomes are not a social construct.

However, to compel a person to deny that biological gender exists or prohibit religious practice that is based on "gender identity, sexual orientation, or expression" would substantially limit religious conscience, expression, and practice. How would institutions that ascribe to the Biblical definition of marriage as a sacred covenant between one man, one woman, and their God, faithfully observe this teaching without discriminating against those in same-sex unions? How could a Christian school deny teen boys access to a girls locker room or dormitory without committing illegal segregation? How could a doctor or medical professional who believes in the sanctity of life refuse to carry out an abortion procedure if such a procedure is a constitutionally protected right? How could a surgeon who holds that gender is an immutable, sacred part of our Creator-endowed identity decline to perform a gender reassignment surgery or withhold puberty blockers? The infringements are endless, and when both positions are enshrined the Elliot Larson Act, it creates an impossible zero sum game where no rights are well secured.

If enacted, HB 4003 will result in devastatingly destructive actions to religious people, violating: 1) the fundamental constitutional right of parents to control and direct the upbringing of their children; 2) the First Amendment constitutional freedoms of citizens (whose valid religious, moral, political, and cultural views necessarily conflict with a political agenda that denies biology, ignores Biblical teaching, and diminishes personal privacy); and 3) the fundamental constitutional liberty and equal protection interests judicially recognized by the U.S. Supreme Court in *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015) (i.e., the personal identity rights of citizens who find their personal identity not in their sexuality but in Jesus Christ or other faith orientation).

There are 5 significant religious liberty amendments before this body today, and each has merit and should be passed in order to protect religious liberty in places of public accommodation (Johnsen Amendment), religious employment (Wendzel Amendment), religious schools (Outman Amendment), in an equally broad construction through the RFRA (Wozniak Amendment), and in businesses where sex is a bona fide occupational requirement as in the BFOQ (Fink Amendment).

Personal Safety

It should be further noted that ignoring the difference between men and women leads to a host of dangers, especially for women. There are some outstanding occasions for strict, sex-based separation in same-sex spaces like rest rooms and locker rooms, to protect women from sexual predators with nefarious intentions. The same is true for women's prisons and women's shelters, where exposure to the opposite sex can, in the best of circumstances, substantially deter healing and recovery, and in the worst of circumstances, can lead to rape and other forms of violent abuse. According to statistics provided by the US Dep. of Justice,

- 1/6 women are victims of violent sexual abuse.
- Every 2 minutes, someone in America is sexually assaulted.
- 91% of victims are biological females. 9% are men.
- 99% of perpetrators are biological men.

While no one would ever disparage someone living a sincere lifestyle, the broad language of HB 4003 opens the door for people with nefarious intent to exploit new opportunities provided by the law to harm others in what should be safe spaces. This is not an acceptable solution.

Equal Opportunity

Further, it should be noted that female athletes would never have a chance to be recognized for their ability, earn scholarships, or receive awards if forced to compete against biological males (regardless of how they identify), who have numerous physical advantages. Even with all advancements of modern medicine, a biological male who received all the hormone blockers and gender reassignment surgeries available would still have a stronger bone density, a larger heart, and greater lung capacity than a biological female. In swimming, for example, males are about 11x faster than females. No real supporters of women's' rights would advocate for a policy that so endangers and disenfranchises them. Regardless of gender identity, sexual orientation, or expression," other states are taking action to protect biological female athletes by either upholding traditional sex-based segregation in sports, or initiating additional, inclusive co-ed leagues. Michigan should explore those solutions as well, before adopting this bill.

Conclusion

Simply put, HB 4003 is bad public policy that, if passed as written, will infringe on constitutionally protected liberties, disenfranchise and endanger women, and waste taxpayer resources on vain, costly litigation. While no one supports discrimination of any kind, this body has a duty to protect the fundamental constitutional rights of all citizens, and should protect those rights by either amending this bill with appropriate accommodations or opposing its passage altogether. Thank you for your consideration.