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TO: The Honorable Lance Kinzer, Chair and  
Members of the Kansas House Judiciary Committee  
2011 Kansas Legislative Session

TESTIMONY OF RONALD W. NELSON

On 2011 HB 2254 – Covenant marriages; procedures for divorce and separate maintenance.

Mr. Chairman and Members of the Committee:

Good afternoon. I am Ronald W. Nelson. I have practiced family law in Kansas – with my offices in Johnson County – for over 25 years. I am a past-president of the Kansas Bar Association Family Law Section, and I a Fellow in both the American Academy of Matrimonial Lawyers and the International Academy of Matrimonial Lawyers. In addition to my daily practice representing clients in divorce, parentage, and other domestic relations disputes, I have also written chapters in the Kansas Bar Association PRACTITIONERS' GUIDE TO KANSAS FAMILY LAW.

For years, psychologists, social workers, sociologists, and family lawyers have tried to help couples strengthen their relationships and marriages – and to avoid the difficult and emotionally damaging problems resulting from separation and divorce. Some have focused on making the divorce process itself more humane by helping the participants through the process in a more cooperative and issue focused manner, rather than viewing the process as an opportunity to “go to war” a dragging their issues through the courts. Others focus efforts on educating people about the challenges faced by couples entering into marriage and living together as a couple before marriage. Still others emphasize helping couples deal with their stresses throughout their marriage – teaching couples throughout marriage how to renew their relationship and stay married.

One suggestion to “strengthen marriage” – that is before the Committee today – is Covenant Marriage, which requires couples counseling on the front end and limits the reasons for which a couple may divorce on the back end. But when the proposal is critically analyzed, the benefits are illusory and the consequences more harmful than leaving things the way they are. In addition, setting up multiple forms of marriage is contrary to good public policy.

HB2254 provides that a “covenant marriage” is one in which the couple “agree[s] that the marriage between them is a lifelong relationship.” But that commitment is exactly the same commitment that everyone who marries makes. No one enters into a marriage planning on separation or divorce. No one thinks that their marriage or their relationship will suffer the fate that far too many marriages today endure. To suggest (as does this bill) that a “covenant marriage” is the only marriage in which couples make a life-long commitment to each other exhibits a lack of understanding of why people marry and why people divorce.

HB 2254 requires that before entering into a “covenant marriage” the couple receive “premarital counseling of the seriousness of covenant marriage ... a discussion of the obligation to seek marital counseling in times of marital difficulties, and a discussion of the exclusive grounds for legally terminating a covenant marriage by divorce or by divorce after separate maintenance.” But no where does the bill say anything about the counselor confirming that the couple is “ready for marriage” or understands the marriage commitment. Merely “informing” couples about the seriousness of covenant marriage and about “the exclusive grounds for termination” hardly prepares couples for what is to come in future months and years: buying, renting, and setting up a home, work, school, and home stresses, family conflicts, unforeseen medical – and mental health – issues, pregnancy, raising children through the “fun years” into and past their teens into adulthood, and the financial –and time management – strains that come with it. To expect that couples entering into any kind of marriage fully understand what is to come in their life and marriage is to disregard the complexities of married life and to ignore the emotional and mental state of couples contemplating marriage. As Barbara Whitehead, author of “The Divorce Culture” states: “It’s impossible to get [engaged couples] to contemplate [future] troubles, adversity, [and] conflict, especially if it’s their first marriage and they are fairly young. *It’s not a teachable moment.*”

There is very little statistical information about the lasting effect of covenant marriages, in part because of the small number of covenant marriages (only about 1% of couples in the three states having statutory covenant marriage), the demography of those entering into covenant marriage, and the movement of couples between states (a couple in a “covenant marriage” divorce under the laws of the state in which they then live, not under the laws of the state where they married).<sup>1</sup> But the information available indicates that many of those who choose covenant marriage would likely not divorce anyway because of their strong religious and social views.

The main feature of HB 2254 is its provisions that divorce from “covenant marriage” may occur only for certain reasons – what family lawyers call “fault-based” divorce grounds. But the imposition of “fault-based” grounds for divorce has never preserved families or relationships. Instead, it leads to a different kind of family dissolution (leaving the family home without divorce) or greater conflict because the parties must assign blame. One reason for the rise of “no fault” divorce in the 60s and 70s was that there were many spouses who simply left the home without obtaining divorce. And requiring “fault” to obtain divorce is simply a frustrated attempt by the state to keep two people together who do not want to be together – imposing the fallout from that failed relationship on the state from greater conflict, more – and longer – court hearings, and greater need for social services. Divorces from covenant marriages *will* happen. And the “fault-based” divorces coming from failed covenant marriages will cost the state more money in court time, judge and related court personnel salaries, and other valuable state resources.

Good Family Lawyers spend many hours trying to get divorce clients to get past their anger, resentment and grief that often results from blaming their spouse – and others – for the break down of the marriage. Lawyers, mental health professionals and others work hard to help couples having marital troubles avoid “the blame game.” But this bill *encourages* that destructive tendency. Instead of recognizing that people sometimes grow apart because of events out of their control, and helping them to humanely dissolve that relationship, this bill sets up the couple as combatants. And the victims of that combat will be couple’s children.

“Chains do not hold a marriage together. It is threads; hundreds of tiny threads which sew people together through the years.” Simone Signoret.

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<sup>1</sup> Arkansas originally sought to limit the power of other states to effect Arkansas covenant marriages. But that effort was determined a violation of the US Constitution and no other states have recognized Arkansas’s power to limit that other state’s ability to divorce that state’s own citizens – regardless where they married.