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Testimony in Support of Senate Joint Resolution 38
Senate Committee on Judiciary and Labor
Julaine K. Appling, WFA President
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Thank you, Chairman Grothman and committee members, for the opportunity to testify today in support of Senate Joint Resolution 38. I am Julaine Appling, president of Wisconsin Family Action, an organization dedicated to strengthening, preserving and promoting marriage, family, life and liberty in The Badger state. Our mission affords us the privilege of working extensively with churches and religiously-affiliated or faith-based organizations and ministries statewide.

We are grateful to Sen. Leibham and Rep. Craig for introducing SJR 38, the Religious Freedom Amendment. Wisconsin Family Action strongly supports this preemptive, proactive amendment that is designed to ensure that Wisconsin citizens have their constitutionally provided religious freedom and conscience rights protected for years to come.

SJR 38 adds language to Article I, Section 18 of the Wisconsin Constitution. It does not delete or change any existing language. Rather, the additional language clarifies and delineates the approach a court must take when deciding a case dealing with a citizen's religious and conscience beliefs. By adding this language, we lessen the likelihood that the state through a court or even legislative action can compel a person to act—or, as important, not act, in a way or in ways that violate his religious beliefs or conscience.

Wisconsin Family Action has closely studied the language of this amendment for some time. We have talked with religious freedom legal experts extensively. We have hashed over various scenarios that might come before courts in our state under this amendment. Each time, we have come away more convinced that we need this amendment in Wisconsin, that the wording is strong and is the very best wording available to ensure our citizens' religious freedom is appropriately regarded and safeguarded.

Prior to 1990, in this nation, we had a clear “compelling interest” precedent that required the state to unequivocally prove its “compelling interest” in abrogating a person's or organization's religious freedom or conscience rights. However, with *Employment Division v. Smith*, the US Supreme Court dramatically lowered the test and standard of protection for citizens. In response, Congress passed the Religious Freedom Restoration Act. In an ensuing legal challenge this new law, the US Supreme Court eventually struck down the portion of the law that extended the reach of the RFRA to states and local governments. However, the Court left the door open for states to take their own action to ensure that they do not have to have the same low standard for religious freedom as is now in place federally. States such as Wisconsin have been fortunate that our courts have over the past twenty-plus years essentially retained a pre-*Smith* approach. However, again, nothing, absolutely nothing in Wisconsin's current statutes or constitution requires the use of the “balance test.” That is the entire purpose of this amendment.

Some will ask for specific examples of where religious freedom has been threatened in Wisconsin. We can provide those, but more important to us is what we might face in the future. While Wisconsin courts have actually been pretty good on cases regarding religious freedom over the last 20 years, we know that a single election or even a vacancy appointment could change that in any given court. The protection of a freedom as important as our religious freedom should not be dependent upon either the good will or the whim of any particular judge or court. This amendment gives judges and courts clear language and directives by which to determine a case involving religious freedom.

Some have inquired about whether or not this amendment creates any new or additional rights for any religious activity or potential litigant. Religious freedom experts assure us that the amendment does not do this. It merely restores the former, heightened standard of review of religious liberty claims that served our country and our people well for so many years. That standard requires courts to always weigh legitimate free exercise claims against compelling state interests.

In addition, no problems have been created or abuses noted since the passage of the federal Religious Freedom Restoration Act, nor in any of the numerous states where the “compelling interest test” has already been restored by statute or amendment over the last decade or so. Prior to the passage of many of those laws, detractors warned the legislation would spark waves of subversive litigation. Those abuses simply never materialized.

Quite honestly, we see no way that Wisconsin is exempt from more and more challenges involving citizens’ religious freedom, just as other states are experiencing. Now is the time to ensure that the very best and most responsible legal protection is in place for our citizens, people who believe in strong religious freedom protection. Waiting or taking no action is a risk that we are not willing to take. Giving our citizens the opportunity to vote on this important matter is altogether appropriate.

Thank you for your time. Wisconsin Family Action urges you to vote in support of SJR 38.