Prepared Testimony of
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Committee on Families, Children and Seniors
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Distinguished Chair and Distinguished Members of the Committee: Thank you for the opportunity to provide testimony today. My name is Katherine Bussard. I serve as Executive Director & C.O.O. of Salt & Light Global and the Great Lakes Justice Center and Vice President of Mid-Michigan Women for Conservative Values. Today, I testify in my personal capacity to express my deep concerns regarding the constitutionality of House Bill 4085, HB 4086, and HB 4087.

It is well recognized that the State of Michigan has a compelling government interest in passing laws protecting its citizens, including protecting children from abuse by unfit parents. I am certain that the distinguished members of this body and the Michigan legislature have only these noble intentions in mind in seeking to provide for the needs of homeless and runaway youth. However, it is also well recognized that the manner in which the state acts must be within the limited boundaries of other established law, in order to protect other fundamental rights and prevent unintended harm.

The bill package defines "homeless youth" based on the status of a "safe environment," but in Section 5 of Hb 4087, it notes that a child who is deemed "homeless" or "runway" has not necessarily experienced abuse or child neglect. However, the proposed legislation fails to define a "safe environment" at all, except to imply that unsafe environments can exist without meeting a threshold of abuse or neglect. Based on this undefined standard, HB 4086 purports to provide care (including shelter and medical treatment) to "homeless" and "runaway youth" for up to 72 hours with or without parental consent. HB 4087 provides a laundry list of other adults (a non-profit director, an educator, an attorney, or any two adults who are "aware" of the child's situation) to intervene in providing care on the child's behalf—all of whom may act without a) investigating the situation or b) notifying the parent or legal guardian.

The Supreme Court of the United States has already ruled in a series of noteworthy landmark cases pertaining to this subject. Summarily, this body of case law concurs with the 1996 Michigan law (MCL 380.10) which protects, "the *fundamental* right of parents and legal guardians to determine direct the care" and upbringing of their children. This right is further protected by the standard of strict scrutiny and due process protections under the 14th Amendment of the US Constitution. Notably:

- In *Meyer v. Nebraska*, 262 U.S. 390 (1923), SCOTUS affirmed that the Due Process Clause of the Fourteenth Amendment protects this liberty, incorporating "the right to marry, establish a home, and bring up children."

- In *Pierce v. Society of Sisters*, 268 U.S. 510 (1925), SCOTUS held that "the child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations."
- In *Stanley v. Illinois*, 405 U.S. 645 (1972), SCOTUS upheld the fundamental rights of parents "in the companionship, care, custody, and management" of their children. *Id*. at 651.
- In *Wisconsin v. Yoder*, 406 U.S. 205 (1972), SCOTUS declared that "[t]his primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition." *Id*. at 232.

Under this body of United States Supreme Court precedent, a Court applies *strict scrutiny* when reviewing government actions that substantially interfere with a citizen's fundamental rights. U.S. Supreme Court case law articulates a "strict scrutiny" standard that limits the exercise of government power.

> "The essence of all that has been said or written on the subject is that only those interests of the highest order and those not otherwise served can overbalance legitimate claims to the free exercise of [a fundamental right]." – *Wisconsin v. Yoder*, 406 U.S. 205 (1972); See also *Adarand v. Pena*, (1995), *Widmar v. Vincent*, (1982), and *Church of the Lukumi Babalu Aye, Inc., v. Hialeah*, (1993).

Courts at various levels of the federal judiciary used this same terminology in at least 125 cases since its introduction in 1972. Its meaning, therefore, is well established and clear.

The proposed legislation constitutes a clear violation of the Due Process clause of the 14th Amendment, which protections extends to the fundamental rights of parents, and fails to meet the test of strict scrutiny necessary to circumvent those rights. If enacted, this bill package could result in unlawful interference by the government—not to mention the sheer agony of otherwise fit parents who for days on end, could be precluded from knowledge about the wellbeing of their child. There is also a risk to the health of the child—something as simple as administering a simple medication like ibuprofen or penicillin or feeding a child a sandwich could result in the child having a deadly allergic reaction. A parent who has loved and cared for a child since birth knows their medical history and special needs. A stranger (even a well-trained professional) who has known a child for a matter of hours cannot possibly protect the child from such unknown risks.

While well intentioned, this bill package could have devastating consequences to the children of the state of Michigan and create serious violations of constitutionally protected liberties. I urge that this body table this legislation until it can be re-written in such a way as to protect the best interest of all parties involved. Thank you for your consideration on this vital issue.