



March 12, 2025

Chair Beverly Gossage
Committee on Public Health
Kansas Senate

SUBJECT – HB 2311; Background and Bill Analysis

Dear Chair Gossage and Members of the Committee:

Kansas should welcome a diverse range of qualified adoptive and foster parents - including people of faith. While not every family is the right placement for every child, Kansas should not make the mistake other states have, by excluding otherwise qualified parents from adopting or fostering at all, simply because of their religious beliefs. HB 2311, which passed the House 86-37, is designed to protect the Kansas foster and adoptive parents from unjust discrimination, while ensuring that all individual placements are made consistent with the best interests of the child.

Traditionally Courts had recognized that attempts to disqualify parents from being licensed/approved to foster or adopt based upon their religious beliefs raises serious 1st Amendment issues.¹ But these good results took years to litigate. Troublingly, a more recent line of cases have been decided against adoptive/foster parents, or are still in doubt as to what their outcomes will be.² A protective state law like HB 2311 could have produced favorable results for the parents in those cases, or even better avoided litigation all together. (A document providing an overview of these cases is attached hereto).

Individual placements should always be made consistent with the best interests of the child, but Kansas law should be clear that this process never starts with a presumption that an otherwise qualified current or prospective parent is not appropriate for a placement merely because they hold common place religious beliefs about issues of sex and gender. Rather the best interest of the child should be determined based upon the totality of the circumstances in a given case. HB 2311 would not alter, and is consistent with, current Kansas law regarding foster parent rights and the best interests of the child such as KSA 38-2201a.(c)(2)&(3); KSA 38-2264; KSA 38-2270; 38-2272; and 38-2272a. As discussed in more detail below, all HB

¹ See *Lasche v. NJ Division Child Protective Services*, Case #20-2325 (US Ct of App 3rd Cir. 2022); *Blais V Hunter*, 493 F. Supp. 3d 984 (ED Wash. 2020)

² See *Bates v. Director Pakseresht*, Case # 2:23-cv-00474 (US D. Or. 2023), on Appeal to U.S. 9th Cir Court of Appeals APPEAL NO. 23-4169; *Burke v. Walsh*, Case 1:23-cv-11798 (US D. MA. filed 2023); *DeGross v. Hunter* – Case #3:24-cv-05225 (WD WA, filed 2024); *Wuotii and Gantt v. Winters et al.* - Case #2:24-cv00614 (US D. VT. filed 2024); *Kellim v. Dept. of Human Services*, Case #A179722 (Oregon Ct of Appeals, appeal filed 2023); *Antonucci and Mathieu v Winters et al.* - Case No. 2:24-cv-783 (US S, VT. 2024)

2311 would do is protect the status quo in Kansas where people of faith are eligible to foster and adopt.

Kansas should encourage as many qualified people as possible to provide loving homes for children in need. **Imposing ideological litmus tests, as other states have done, is unjust to those parents, needlessly limits the pool of available families, and is exactly the opposite of what kids in the foster system need.**

This committee is well aware of the pressing need for more foster and adoptive parents in Kansas. Driving well qualified people of faith out of the foster system would only worsen the already significant problem of foster care capacity and placement instability. Christians are 3x more likely to seriously consider fostering, and 2x more likely to adopt, than the general population. Families recruited through church or religious foster organizations, foster on average 2.6 years longer than other foster parents.³ Legislation making it clear that such parents are welcome in Kansas is in everyone's best interests.

Kansas can and should act now, joining states like TN, ID, and AZ to statutorily lock in its current practice of welcoming a diverse range of qualified foster and adoptive parents, including those with traditional religious views regarding sex and gender.

Bill Analysis (HB 2311)

Section 1(a)(1)

This subsection makes it clear that the state cannot compel affirmation of an ideological position regarding sexual orientation and gender identity, as a condition of eligibility to foster or adopt. In essence the state cannot compel a foster or adoptive parent to speak a message that violates their religious beliefs, as a prerequisite to being a foster or adoptive parent. State adoption/foster care regulations or policies that compel people of faith to assent to propositions that violate their conscience have been a key cause of litigation in this area. To be clear this section speaks to eligibility to foster or adopt at all, or to be considered for a placement, not a right to have any particular child placed with you.

Section 1(a)(2)

This subsection further clarifies that even if there is no direct requirement to “affirm, accept or support” an ideological position regarding sexual orientation and gender identity, the state still cannot use a person's sincerely held religious beliefs regarding sexual orientation or gender identify, including how they intend to guide, instruct, or raise a child, as justification to deny eligibility to foster or adopt. To be clear, again, this section speaks merely to eligibility to foster or adopt at all, or to be considered for a placement, not a right to have any particular child placed with you.

Section 1(b)(1)&(2)

³ <https://becketnewsite.s3.amazonaws.com/FosterCareCrisisFaithBasedAgencies.pdf>

These subsections clarify that nothing in the bill precludes the state from considering the religious or moral beliefs of a foster/adoptive child or their family of origin in determining the most appropriate placement for the child. Those views can be compared with the views of a prospective adoptive/foster family in determining if a given placement is in the best interests of the child. This is an important provision because it further clarifies that the state is not being precluded from considering factors specific to a particular child in making a placement. The bill does not create an unfettered right to foster or adopt any particular child – it merely precludes being made ineligible to foster or adopt at all, or from being even considered to foster or adopt a particular child, merely because of your sincerely held religious beliefs regarding sexual orientation and gender identity.

The best interest of the child standard's current status under Kansas law with respect to any particular placement is preserved by this subsection. If this bill passes that standard remains in effect for all placements, just as it currently exists.

Section 1(c)

This subsection allows a current or prospective foster or adoptive parent who is harmed by a violation of this Act to seek a judicial remedy against the Kansas Department of Children and Families.

Thank you for your interest in this important issue. Please do not hesitate to contact me if I can be of any further assistance.

Sincerely,

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Many States Are Wrongly Excluding Parents From Foster Care and Adoption for Their Religious Beliefs



Numerous states now require prospective foster and adoptive parents to affirm, accept, and support the government's view of sexual orientation and gender identity.

Such eligibility requirements are being imposed regardless of whether the parent's views can be shown to impact the best interests of a particular child with respect to any specific placement.

Ideological litmus tests that exclude many people of faith from foster care and adoption are wrong and harm children in need of a safe and loving home.

In Any Given Year There are Approximately 400,000 Children in the Foster System Nationwide.

The need for foster families is great with many states lacking sufficient foster care homes, resulting in further instability in the already insecure lives of foster children.

There are over **110,000 children** in the foster system currently awaiting adoption. The percentage of adoptions from foster care has **decreased by almost 20%** since 2019, and approximately 20,000 foster children "age out" of the foster system every year.

Prohibiting otherwise fully qualified, loving, and stable parents from fostering or adopting merely because the **government disagrees with their religious beliefs** places ideology above the best interests of children.



Forcing qualified parents to sue their own states in order to foster and adopt is wrong and extremely burdensome – even when the parents win.



Michael and Jennifer Lasche had served as foster parents for 10 years. In 2017 the state of New Jersey removed foster children from their home and suspended their foster license because of their traditional Christian beliefs about marriage. It took 5 years to secure a ruling from the Third Circuit Court of Appeals that their 1st Amendment rights had been violated.

In 2019 Seventh-day Adventists James and Gail Blairs sought to become foster parents, and to adopt their biological granddaughter. The state of Washington denied both requests due solely to the fact that the Blairs' views on gender identity were inconsistent with those of the State Department of Children, Youth and Families. Two years later the state reversed course after a Federal District Court determined that the Blairs were being targeted for their religious beliefs. But Washington has returned to its practice of excluding Christian parents they deem insufficiently "affirming", revoking the license of Shane and Jenifer DeGross who were forced to file suit in 2024. That litigation is still pending.

In 2022 Jessica Bates began the process of applying to adopt a child from the foster system in Oregon. Her application was denied merely because her religious beliefs did not allow her to affirm the state's view point regarding sexual orientation and gender identity. Bates was deemed categorically unfit to foster or adopt because she holds traditional Christian views. She filed a lawsuit against the state, but a Biden appointed Federal District Court judge ruled against her. That case is now being appealed. Shaw and Teresa Kellin experienced similar discrimination, there case is currently before the Oregon Court of Appeals.

In January of 2022 Mike and Kitty Burke applied to become foster parents in Massachusetts. Their application was ultimately denied due to the fact that their religious belief regarding "children who identify LGBTQIA" differ from the view of the Massachusetts Department of Children & Families. The Burkes filed a lawsuit against the state in August of 2023. That case is still pending.

Similar litigation is ongoing in Vermont. While often the result of agency regulations or policies, California now has a statute that entirely excludes parents with traditional views on gender identity from being foster parents.



State legislatures can and should protect both the best interests of children in their foster systems, and the religious liberties of current and prospective adoptive & foster parents. Arizona, Idaho and Tennessee have already done so.