



TESTIMONY OF
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IN OPPOSITION TO SB 401
KANSAS SENATE FEDERAL AND STATE AFFAIRS COMMITTEE

MARCH 20, 2018

Thank you, Chair Estes, and members of the Federal and State Affairs Committee for affording us the opportunity to provide testimony on SB 401.

The American Civil Liberties Union (ACLU) of Kansas is a non-partisan, non-political membership organization dedicated to preserving and strengthening the constitutional liberties afforded to every resident of Kansas. We work to preserve and strengthen our constitutional rights and freedoms through policy advocacy, litigation, and education. We proudly serve over 30,000 supporters in Kansas and represent more than 1.6 million supporters nationwide.

The ACLU of Kansas strongly opposes SB 401. This bill unconstitutionally authorizes state-contracted child placement agencies to deny children in State custody foster or adoptive placements that are in their best interests. The sweeping language of this bill could have devastating effects for the children in Kansas foster care system and irrevocably harm vulnerable children across the state. Specifically, the ACLU of Kansas opposes SB 401 because:

- **This bill flies in the face of well-established professional child welfare standards.** Such standards provide that placement decisions must be based on the best interests of the child and, to ensure the broadest pool of families for children. Research shows that young people who spend long periods of time in multiple placements are more likely than their peers to experience unemployment, homelessness, incarceration or early pregnancy.ⁱ And young people who age out of care without achieving positive permanency are more likely to experience housing instability and homelessness, face poor educational outcomes and become involved with the criminal justice system.ⁱⁱⁱⁱⁱ Similar to a slew of bills in other states, SB 401 substitutes the interests of private placement agencies in place of families and children, threatening the welfare of children across the state.
- **If passed into law, SB 401 would allow placement agencies to deny children a family because of reasons that have no bearing on an individual's ability to be a good parent.** Though this bill appears to be an effort to allow agencies to refuse to place children with lesbian and gay parents, it has much broader implications. We live in a diverse society with diverse religious beliefs. When children are removed from their families by the State because of abuse or neglect, they deserve to have their foster or adoptive family chosen for them based on their needs, not the religious or moral beliefs of the agencies making the placement. When private agencies contract with the State and receive tax dollars to find families for children in the child welfare

system, their religious beliefs should not trump the best interests of those children. This bill allows just that. It provides that “[n]o child placement agency shall be required to perform, assist, counsel, recommend, consent to, refer or otherwise participate in any placement of a child for foster care or adoption when the proposed placement of such child would violate such agency’s sincerely held religious beliefs.” That means an agency could refuse to place a child with his aunt because she is not of the same faith as the agency, subjecting that child to the frightening experience of being sent to live with strangers even though a loving relative is willing and able to care for him. Or a doctor or nurse who is willing to care for a child with severe medical needs could be turned away based on religious reasons even if she is the only prospective parent with the skills needed to care for the child. In turn, a child could be placed in a home with a family who supports the use of corporal punishment or opposes the use of vaccinations. And a religious child could be placed in a home that does not meet the child’s dietary restrictions and needs. If this bill becomes law, agencies could refuse to make placements with qualified families for countless reasons that have no relevance to the best interests of the children or the family’s ability to provide a safe, loving home for a child.

- **Furthermore, by allowing agencies to turn away qualified families, more Kansas children could be left with no family at all.** This state already has far too many children waiting for families to adopt them. If people who are willing and able to open their hearts and homes to a child in need are turned away for religious reasons, we can’t count on them continuing to knock on doors of other agencies until they are welcomed. The most recent trends across the United States related to the opioid epidemic are resulting in increases in foster care placements across all fifty states with numbers increasing by more than 15,000 foster care placements just over the past year alone. These national trends will only increase the pressure and need for more families. Additionally, LGBT youth and youth of color are disproportionately overrepresented in the child welfare system. When data is disaggregated by sexual orientation, gender identity and race, research shows that these young people experience poorer mental and behavioral health outcomes when compared to their heterosexual or cisgender peers, due in part to experiencing greater discrimination outside of care as well as their placement in foster care environments that are unsafe and do not affirm their sexual orientation, gender identity and gender expression.^{iv}
- **This bill unconstitutionally allows state-contracted agencies to screen out prospective families based on religious criteria.** The First Amendment’s Establishment Clause bars the use of religious criteria in the provision of government services like foster care and adoption services for children in state custody. SB 401 would effectively enable tax dollars to be spent to achieve religious ends. The Supreme Court has consistently held that “this unyielding weighting in favor of [a particular religious proclivity] over all other interests contravenes a fundamental principle of the Religion Clauses.”^v If this bill becomes law, state funding would be used to further those religious ends. This bill also violates both the Due Process and Equal Protection Clauses of the 14th Amendment by discriminating against same-sex couples in their ability to adopt and raise a family. These egregious encroachments on the rights of Kansans could open the state up to litigation and undermine our constitutional protections until resolved.

Therefore, we urge this committee to vote “No” on SB 401.

ⁱ Child Trends. (2015). *Foster Care Indicators on Children and Youth*.
https://www.childtrends.org/wpcontent/uploads/2014/07/12_Foster_Care.pdf.

ⁱⁱ Fowler, P., Marcal, K., Zhang, J., Day, O., & Landsverk, J. (2017). *Homelessness and aging out of foster care: A national comparison of child welfare-involved adolescents*. *Children and Youth Sciences Review*: 77: 27-33.
<http://www.sciencedirect.com/science/article/pii/S0190740916305485>.

ⁱⁱⁱ Henzel, P.D., Mayfield, J., Soriano, A., Marshall, D., & Felver, B. (2016). *Youth aging out of foster care: Risk and protective factors for criminal justice system involvement*.

http://sac.ofm.wa.gov/sites/default/files/public/pdf/foster_youth_report.pdf.

^{iv} Martin, M., Down, L., & Erney, R. (2016). *Out of the Shadows: Supporting LGBTQ youth in child welfare through crosssystem collaboration*. <https://www.cssp.org/pages/body/Out-of-the-Shadows-Supporting-LGBTQyouth-in-child-welfare-through-cross-system-collaboration-web.pdf>.

^v *Estate of Thornton v. Calder*, 472 U.S. 703, 708 (1985).