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To: Senate Federal & State Affairs Committee
Re: In Support of the Adoption Protection Act, SB 401

Agencies have been forced to choose between continuing to provide services and abiding by their deeply held religious beliefs in Illinois, California, Massachusetts, and the District of Columbia. Catholic Charities had provided adoption services in Massachusetts for over a century when they were forced by the state to close down. In other states, just the threat of legal action caused agencies to close.

The concern in the State of Kansas are attacks on faith-based agencies through changes in regulation or policy with respect to the interpretation of existing law. We cannot wait for that to happen. Several agencies closed in Texas after receiving threats of legal action. A conscience protection law was then passed, but the agencies in three cities did not have the resources to start up again.

The purpose of the Adoption Protection Act is not to change anything, but to prevent the State in the future from discriminating against faith-based agencies which not only believe, but actually live by and practice their sincerely-held convictions.

If Kansans truly believe in freedom of conscience and providing the most options for children, the legislature should make our great state one of the growing number of states, including North Dakota, Virginia, Rhode Island, Michigan, Mississippi, South Dakota & Texas, which have passed similar provisions. This bill is closely modeled on Virginia's law that has operated effectively since 2012 without legal challenge. It is short, focused, and easy to interpret.

On the issue of State funding, agencies which contract to provide those services, called case management contractors, currently KVC and St. Francis Community Svc., are exempted from coverage. Those contractors will try to provide families in from all quarters from their own ranks; however, some children are harder to place. KVC and St. Francis Community Services need the ability to reach out to other agencies to find appropriate placements. Do we really want to eliminate from the pool of adoptive resources those faith-based agencies who often have adoptive families willing to take hard to place children?

This bill also clearly provides that its provisions are subject to federal law. *42 USC 1996b* provides that adoption services providers are prohibited from using race, color or national origin as criteria in their services.

Under current Kansas law, a relinquishment to any agency terminates the rights of the parent and gives the agency the right to decide who will adopt. Having been involved in over 1,200 adoptions, I can honestly state that all but a tiny fraction of birthmothers want to place their child with both a father and mother. If she wants a couple who share her values and wants the caring assistance of an agency, she must have a faith-based agency as an option.

Catholic Charities and other agencies will only place in a home with a mother and father. That means they will not place in a home of co-habiting or single heterosexuals, including the celibate leaders of their faiths. The restrictions are not based upon animus towards anyone; rather, what the agency believe provides the best home for children.

Questions: Is it good policy for the state to discriminate against both faith-based agencies and faith-directed birthparents who want to assure children that same faith?

As all have faith in something, does the elimination of certain faith convictions as options in adoption not lead to the establishment of another faith or religion, that approved by the State?

Bottom line: These faith-based agencies will not violate their sincerely held religious convictions. We should appreciate people who stand for something, who have backbone, as did Justice Kennedy (*see quote from Obergefell opinion below, question number 1*). With that knowledge, opposition to this measure is evidence of a few things:

1. The intent of opposition can only be to shut down faith-based agencies and deny birthparents the assurance of placement with people of like faith. Therefore, there is a need for this measure because of that intent
2. Anyone who calls these agencies discriminatory is turning reality on its head. These agencies truly serve the most vulnerable, hard-to-place children, who Jesus called '*the least of these*'.
3. Knowing these agencies would shutter their operations instead of violating their convictions, I will leave it to you to determine whether there is animus in this debate.

Most simply, this bill preserves the status quo, so that faith based providers can continue to help birth mothers choose life, help adoptive parents find children to love and care for, and help children find forever homes. Other agencies and plenty of attorneys remain free to provide services as they do now to any that meet their criteria. In short, no fit adoptive resource will be denied multiple options for adoption. This bill discriminates against no one. It is the absence of this measure that leaves the door open to discrimination against organizations and people of particular faith.

Respectfully,



Austin K. Vincent

Questions that may be asked related to the Adoption Protection Act

1. Does this bill subvert the right to same-sex marriage established in the *Obergefell* decision?

NO, it does not. On the contrary, the principle that this bill supports is completely consistent with the majority Supreme Court opinion in *Obergefell* by the author, Justice Kennedy, when he wrote: *“Finally, it must be emphasized that religions, and those who adhere to religious doctrines, may continue to advocate with utmost, sincere conviction that, by divine precepts, same-sex marriage should not be condoned. The First Amendment ensures that religious organizations and persons are given proper protection as they seek to teach the principles that are so fulfilling and so central to their lives and faiths, and to their own deep aspirations to continue the family structure they have long revered. The same is true of those who oppose same-sex marriage for other reasons.”*

2. Does this bill create a new right to discrimination and/or to state funding of discrimination?

NO, it does not. First, the bill does not create new, legal rights of operation for faith-based adoption services. It simply allows them to continue to operate in the *same manner in which they have operated for decades* without fear of future regulation that would force them out of business. The only possible reason to oppose this bill, therefore, is if the ultimate goal is to force faith-based adoption providers out of business entirely.

If we go down that road, not only would we be engaging in discriminatory religious intolerance ourselves, but we'd be doing so in a fashion that limits the services available to vulnerable children. The goal of this legislation is to preserve a diverse range of private child placement service agencies in, so that we maximize the chance of finding loving homes for as many of these children as possible. Making sure that these agencies can continue to be licensed is of course most critical. But the fact that the state may in some instances contract with faith-based agencies to help meet a need in the community like finding adoptive homes, is in no way unusual or improper.

Funding from DCF does not come in a sort of block-grant form, and adoption providers do not compete with each other for state funds. Rather, funding is transactional on a per-adoption basis. Money is therefore only disbursed when a child is successfully placed.

Therefore, the bill does not give faith-based agencies any special rights or privileges in relation to receipt of state dollars; it merely limits the possibility that they will be denied the opportunity to facilitate the adoption of children and ensures that when they do so they are treated like any other agency that performs this valuable service.

3. Would passage of this bill put the state of Kansas in jeopardy of losing federal funds?

NO, it would not. Several states have passed very similar laws including Texas, Virginia, Michigan, South Dakota and North Dakota. Some of these laws were passed as early as 2003. Not a single state has faced loss of federal funds as a result of this legislation, even during the previous administration.

4. There have been no challenges in Kansas to the current operation of faith-based adoption services. So why is there a need for this legislation?

While to date, faith-based adoption services have enjoyed the right to operate according to their religious principles, this can change at some point in the future with very little notice. For instance, Catholic Charities of Boston had been in operation for a century before the state of Massachusetts instituted a regulation that forced the closure of their adoptive services. This has occurred in many other states, which is what prompted Texas, Virginia and other states to respond with the protections afforded in this bill.

A good example of why this measure is necessary in Kansas occurred last year in Virginia, when Governor McAuliffe issued an executive order limiting state contracts with entities that did not share his views on marriage, family and sexuality. Because the Virginia legislature had acted years before to protect faith-based adoption providers they were excluded from that executive order and remain free to serve in Virginia.

Change is rarely predictable. That's why this bill is needed: to put guarantees in place that allow faith-based services to continue operating as they have for decades.

5. Does this bill create limits on the potential for adoption of gay or transgender children?

NO, it does not. This question is based on a misunderstanding of how adoption services work. The bill specifically addresses the recruitment process for *adoptive families*, not children. As has been practiced for decades, faith-based services routinely recruit adoptive families that match their criteria within the parameters of their stated religious principles. This bill simply allows them to continue in that practice.

Further, numerous potential adoptive agencies have chosen to remain on the sidelines around the country because specific protections like those in the bill were not in place. That means fewer adoptive families recruited and, thus, fewer children placed in homes. That is a tragedy. This bill will actually *increase* the number of children being adopted, regardless whether through a faith-based or non-religious adoption service provider.

6. Could this bill create an opportunity for an adoption service to discriminate on race or interracial marriage?

NO, it does not. The bill's language specifically defers to federal law, which cannot be violated. Race is an explicitly protected class both in federal and state law. No state law can preempt those statutes. What's more, a specific federal statute (42 USC 1996b) explicitly prohibits race-based selection criteria for child placement providers.

7. Could this bill create a new right for fringe groups to claim religious protection for certain treatment of children otherwise prohibited by law (refusal of medical attention, genital mutilation, etc)?

No: The bill is drafted completely in the negative, protecting agencies from being compelled to engage in certain kinds of placements. It creates no new affirmative rights to make placements otherwise already prohibited by law.

8. Won't this legislation limit the pool of adoptive families and thus provide fewer options for children?

NO: First it important to remember that this bill changes nothing about the status quo in Kansas. It merely allows faith based providers to continue to operate as they always have.

Kansas is well served by having a diverse array of child placement providers. These include various faith-based agencies that focus on recruiting families motivated by their faith commitments to provide a home for hard to place children.

Adoptive parents themselves are diverse and want to work with agencies that respect their ethnic or religious heritage. Many of these agencies are among the best in the state at what they do and provide a service unparalleled elsewhere.

Without legal protections that preserve the right of an agency right to live out its faith commitments, it is only a matter of time before adversarial interest groups become more hostile in their attempts to shutter religious agencies.

More providers means more child placements, which is in the best interest of every child who is need of a loving home.

While we can't prove causation, the fact is that in states that have passed similar laws (not including new measures passed in 2017) adoption numbers have increased:

ND (2003): 96 to 132 from 2014-2016

VA (2012): 562 to 627 from 2015-2016

MI (2015) 1172 to 2078 from 2015-2016

RI (2013) 162 to 279 from 2013-2016

9. Isn't the actual effect/intent of this legislation just to provide religious groups that don't like gay people a license to discriminate?

NO: This bill is not about creating some new right to discriminate, it is merely about preserving an existing right for faith based agencies to continue to participate in facilitating adoptions exactly as they have been doing for decades. The only reason to oppose this bill is if you believe that Kansas should stop allowing current faith based providers to continue operating as licensed agencies. The fact that there are voices vehemently opposing a bill that merely codifies the status quo, shows exactly why this bill is needed – without it there will come a day when faith based providers are forced to shut their doors.

The fundamental issue in this bill is guaranteeing that the power of the state will not be used to punish individuals and institutions for living according to their sincerely held religious beliefs. Birth mothers and adoptive parents should not be precluded from working with agencies that share their beliefs. They should have that choice. For that choice to be meaningful Kansas must have policies in place that allow for a multiplicity of agencies, including long standing ones like Catholic Charities who are motivated to act out of their religious commitments.

Protecting the right of religious institutions to make distinctions based upon religious belief and practice is common place in state and federal law. As just one obvious example, religious employers can use religious criteria in employment decisions, even though other employers cannot do so. No one thinks this represents a license to discriminate. For very similar reasons this bill, which allows faith based agencies to operate consistent with faith based criteria, is not a license to discriminate either.

THE ADOPTION PROTECTION ACT does not in any way restrict the ability of same sex couples to adopt; it merely makes sure that faith based adoption service providers can continue to serve children as they always have – consistent with their deeply held religious tenants.

If faith based adoption providers are not free to serve in this way, the losers will be birth mothers who want to see their child adopted by a mother and father who share their values, adoptive parents who are motivated by their religious faith and children in Kansas who need “forever homes.”

Faith based child service providers are not seeking some new right; a so called license to discriminate - rather they are merely asking that as new rights regarding adoption are extended to the LGBT community, those rights not be used to wash away their freedom to serve consistent with the dictates of conscience in exactly the fashion they always have.

The implication that faith based providers are motivated by discriminatory intent is wrong and unfair; their core motivation is to help place children who are desperately in need of a loving home. By recruiting adoptive parents with whom they share certain core faith commitments, they are able to maximize a core strength (the motivating force of their faith) in a way that benefits society as a whole. Allowing groups like Catholic Charities to operate just as they always have, harms no one while serving a tangible social good.

Part of the point of religious freedom is that we recognize it is not healthy to force any segment of society that wishes to contribute to the public good out of the public square and into an isolated enclave. Using the power of government to limit the freedom of religious individuals and institutions to serve their communities is not merely unfair to those who are being punished, it undermines social cohesion and harms the entire community.

The proposed law actually prevents discrimination. In other states, government bodies have forced the closure of adoption agencies whose religious beliefs they disagree with; thus using the power of the state to discriminate against faith-based agencies – no one should be denied the right to help children just because someone else disagrees with their Religious belief.