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To: Senate Judiciary Committee
From: Martin W. Bauer – Member – Judicial Council Adoption Law Committee
Date: March 15, 2018
Re: Testimony in support of HB 2481 amending the Kansas Adoption and Relinquishment Act

I want to thank the Committee for the opportunity to testify in support of HB 2481, which would amend the Kansas Adoption and Relinquishment Act. The current Kansas Adoption Act has been in effect with little change since 1990. When the Committee first met, we unanimously agreed the framework of the Act has served Kansas birth parents, the children, and the State's interests well. The case of *In the adoption of H.C.H*, 297 Kan 819, 304 P.3d 1271(2013) concluded that the jurisdictional language in the Adoption Act was incomplete and ambiguous. The need to address this key issue, coupled with electronic filing, decisions on gender neutrality and the recognition of same sex marriages, compelled the Committee to examine each provision of the Act from new perspectives.

There were some common themes throughout our discussions. First, we wanted to move toward greater equality between the parents of the child where that was possible. Second, we tried to use the gender-neutral term "parent", rather than "mother" or "father", where appropriate. Third, and most significantly, we frequently asked the question when discussing a possible change – "Does the distinction that exists in the current statute, or that we would be creating, make a difference to the child?" This often helped the constant balancing we were trying to achieve in the Act – that of a proper balance between the mother, any father, and the State's interests in the child.

My understanding is that all those testifying today are proponents of HB 2481, but that some question two changes. I will address those two issues specifically and any others generally.

First, some have suggested that the term "child's residency" should be deleted. Instead, they suggest that the phrase "where the child lives" should be used, arguing that the adult with whom the child lives determines the child's residency. The language "residence of the child" and "place where the child resides" has been in the statute since at least 1990 without difficulty in interpretation or application, unless the Court got embroiled in the issues that gave one parent priority over the other because heavily mired in the issue of which parent had legal custody and whether the parents were married. By eliminating these factors that were deemed to usually be unimportant to the child, the proposed amendment gives parents equal footing. If parents are not together because never married, divorced or separated, the usual judicial decree is joint custody. I also believe the Committee retained the term of art to avoid the abuses that have occurred in

adjoining states that use "where the child can be found". I would encourage the Committee to leave Section 1 (e) as proposed by the Judicial Council.

Second, some have objected to the proposed amendments to KSA 59-2136 (h) relating to the decision of whether a parent's rights can be terminated and consent declared unnecessary thereby overriding any objection. Those questioning the proposed amendments, to the contrary, seem to contend that married, presumed, or paternity established fathers have greater rights. Any father- possible, presumed or actual- has one constitutional right – due process. This encompasses a right to notice of an adoption proceeding and a right to be heard. What Lehr v. Robertson, 463 U.S. 248 (1983), Caban v Mohammed 441 US 380 (1979), and related cases stand for is that a birth mother's decision about what is in the child's best interest, including adoption, is controlling unless the father has seized the opportunity to parent in an appropriate manner. Under the banner of state's rights, each state then has the right to establish the standards by which the father is deemed not to have seized the opportunity to parent sufficiently such that he should not have an equal voice in the child's future. As noted in the case of *In re J.M.D. and K.N.D.*, 293 Kan. 153, 260 P.3d 1196 (2011), a parent's duty "is to provide for and nurture the children's mental and emotional health, rather than simply making frequent contact with the child." This case noted that a father who abuses or berates a child three times a day is not appropriately assuming parental duties. If a parent has appropriately seized the opportunity to parent through marriage, being a presumptive parent, or had his parentage declared, they would not have their parental rights terminated under KSA 59-2136 (h). Conversely, a parent who fails to seize the opportunity through marriage, the presumption of parentage, or obtaining a declaration of parentage by breaching one or more of the factors listed in KSA 59-2136 should not morally or constitutionally have the right to overrule the mother's decision. The mere fact of marriage, presumptive parentage, or declaration of paternity, gives no parent a pass on the quality or quantity of their efforts to mentally and emotionally nurture the health and wellbeing of a child.

Finally, it should be noted that the Judicial Council personally heard from Dr. Bud Dale, and then concluded the Committee's version should be recommended for passage. Similarly, the House Judiciary and the House have passed the proposed revisions unanimously.

For these reasons, I am proud to ask this Committee to approve HB 2481 and ask that it be forwarded to the Governor for signing so it becomes law.

I would be glad to answer any questions.

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WALLACE & BAUER, L.L.P.

Martin W. Bauer