

WRITTEN TESTIMONY

OF

**GILLIAN CHADWICK, ESQ.**  
ASSOCIATE PROFESSOR OF LAW  
ASSOCIATE DIRECTOR, CHILDREN AND FAMILY LAW CENTER  
WASHBURN UNIVERSITY SCHOOL OF LAW

**IN SUPPORT OF TO HB 2333**

KANSAS HOUSE COMMITTEE ON JUDICIARY

JANUARY 29, 2020

Thank you, Chair Patton and members of the Committee, for allowing me the opportunity to submit testimony in support of HB 2333. This is an issue that is close to my heart, and one on which I have been working professionally for the last several years. Specifically, my work on this issue has included filing a brief of *amicus curiae* in the Tenth Circuit Court of Appeals and publication of an article in the Harvard Journal of Law & Gender. I was delighted to hear the bill was set for hearing today.

You all have heard about the heartbreaking story of Lt. Col. Patrick Schreiber who has been denied legal recognition of his daughter because of a delay in her adoption caused by his deployment. Although there is still an appeal pending, a federal court has told Lt. Col. Schreiber that his family must be torn apart because *Kansas did not recognize his daughter's adoption until after she turned sixteen*. This bill would change that and allow Kansas to fully recognize not just the Schreiber family, but other adoptive families who have been denied rights under not just immigration law, but in all areas of law.

The fundamental principal of law pertaining to child welfare law is promoting the best interest of the child. Kansas law repeatedly emphasizes this principal in child custody, adoption, and welfare statutes. HB 2333 would advance the best interest of the child in Kansas by protecting a small but important group of children who are currently being cut out of protections offered under the law solely for procedural reasons.

This bill would allow Kansas courts a critical tool to help them do what is right for children. Specifically, HB 2333 would empower judges on a case-by-case basis to make a finding that an adoption decree should take effect not on an arbitrary date controlled by scheduling vagaries, but on the date that serves the *best interest of the child* being adopted in that individual case. This bill would make the law more fair for adoptive families who deserve the same rights and protections other families enjoy under the law.

The small but important group of children this law would protect come from all walks of life. The issue of immigration law has, of course, been raised in connection with this bill; but, this is not a bill about immigration—it is a bill about family. It is a bill about how Kansas defines family and whether Kansas is willing to fully recognize adoptive families. The federal government leaves determinations of family law to the states. That is because state court judges are unquestionably in the best position to ascertain facts and determine what is in the best interest of the child. What this bill asks of you is to allow Kansas judges to decide what is best for Kansas families.

For those who have concerns about opportunities for overreach and misuse, this bill includes several sensible parameters that will limit that risk.

1. In most cases, nothing will change from the way the law currently operates—the adoption decree will take effect when filed.
2. In the unusual circumstance in which it truly benefits the child, a Kansas court could make a *specific finding of fact* that a selected date is in the best interest of the child. The requirement of a *specific finding of fact* sets the bar above a simple gut feeling or preference by an individual judge. A finding of fact must be based on the facts presented to the court and must be specifically articulated by the judge.
3. The court must find that the selected date is in the *best interest of the child*. The words *best interest of the child* constitute a legal term of art, which means the determination will not be a matter of convenience, preference, or benefit to someone other than the child, but something that truly furthers the child’s wellbeing.
4. The court is prohibited from choosing a date prior to the establishment of a *bona fide relationship* between the adoptive parent and adoptive child. That means the system cannot be manipulated to provide a legal benefit when the facts do not support the existence of the relationship giving rise to that benefit. For those concerned about misuse of the system, this provision would limit that misuse.
5. This new provision will not apply to adult adoptees. Again, what this bill addresses is an issue of caring for Kansas children, and it would not be appropriate to extend the bill to cover adult adoptions.

Furthermore, the existing law contains another limitation that would not change under HB 2333. Under 59-2128 (a), the petitioner, meaning the proposed adoptive parent, must *file* the petition. This will not change if this bill passes. Therefore, no adoption could be initiated posthumously because no one is permitted to file a petition for adoption on behalf of another person, alive or deceased. This existing provision would ensure that the new provision is not used as an end run around estate laws.

There are a number of situations in which affording the court this flexibility could benefit a child. I will give you an example of why the best interest of the child should be the driving factor behind the effective date of an adoption decree, rather than the date the hearing happens to be scheduled: On January 10, 2020, the Shawnee County courthouse flooded. All hearings were cancelled. Like most Fridays, there were several adoption hearing set for that day. Because the statute requires at least ten days' notice prior to a hearing, hearings had to be rescheduled a few weeks later. For most of the children involved, there will be no real harm done by a delay of a few weeks. However, imagine that one of those children, due to some unforeseen circumstance, was harmed and lost access to a legal right because of that delay. Nothing in the current law provides a remedy for that harm. A judge's hands would be tied and the child would suffer simply because the courthouse flooded.

Ultimately, all children deserve recognition and protection. Our adoption laws should help children, not harm them. HB 2333 helps children by providing Kansas judges with the option, within reasonable bounds, to tailor an adoption decree to meet the needs of a child in the rare but important circumstance in which it is necessary. This is a particularly meaningful option for military families, like the Schreibers, who make the incredible sacrifice of prioritizing service to their country despite personal and family hardship. The law should mitigate that hardship rather than adding to it; and a family should not be torn apart because a father chose to serve his country.

For the foregoing reasons, I urge the Committee to support HB 2333.

Respectfully submitted,  
Gillian Chadwick