



WRITTEN TESTIMONY AGAINST HB 578
SUBMITTED TO THE IDAHO SENATE
HEALTH AND WELFARE COMMITTEE
MARCH 6, 2024
ON BEHALF OF THE
AMERICAN CIVIL LIBERTIES UNION OF IDAHO

Chair VanOrden and Committee Members:

The ACLU and ACLU of Idaho strongly oppose House Bill 578 (HB 578). We urge the committee to reject this harmful and unconstitutional bill. If passed, HB 578 would allow adoption and foster agencies in Idaho, many of which are taxpayer funded, to discriminate on moral or religious grounds.

The ACLU of Idaho recognizes religious freedom as a fundamental American – and deeply Idahoan – value. We cherish and work hard to defend the right for everyone to freely practice their religion. However, the right to freely express one’s religion does not automatically permit discrimination. In recent years we have seen a troubling push against the rights of LGBTQ+ people, in Idaho and across the U.S. Legislation like HB 578 is an iteration of this coordinated attack on the LGBTQ+ community, and one which allows people to wield their religious beliefs to discriminate.

HB 578 IS NOT IN THE BEST INTEREST OF THE CHILD

If passed, HB 578 would allow taxpayer funded child welfare programs – specifically adoption and foster care services to discriminate. These agencies would be allowed to pick and choose to whom they provide public funded services – and to refuse to work with LGBTQ+ parents or children.

In 2023 alone, Idaho had over 1,600 children who were removed from their homes. Existing Idaho law reflects child welfare practice – which is to ensure placement decisions based on the best interest of the child. Of course, placing children in loving homes is central to this commitment; it is the duty of Idaho to ensure as many children removed from their homes are placed into stable and loving homes.

And while HB 578 is stylized as a religious freedom bill, and one concerned with the health and wellbeing of Idaho children, the bill does not appear to serve any child’s best interest. Instead, it would only limit the chances a child does get placed in an appropriate setting, exacerbating our state’s shortage of foster homes. Recent investigative journalism has shown that nearly 60 children in last year alone were sent out of state, citing a shortage of appropriate placements here in Idaho. Rather than permit foster and adoption agencies to deny children from becoming part of a loving family, on ideological, religious or moral grounds, the state should do everything in its power to protect the rights and safety of its youth.

HB 578 IS DISCRIMINATORY

In 2019, a federal appeals court rejected a similar law in Pennsylvania. In the ruling, the court stated that taxpayer-funded child welfare agencies are required to abide by nondiscrimination laws. The ACLU celebrated our victory in this suit; we know prospective foster and adoptive parents should be judged by their capacity to provide love and support to a child, and never by the religious views of a tax-funded agency.

Like the legislation that sparked the Philadelphia case, HB 578 would only limit the pool of potential adoptive and foster parents through exclusionary and discriminatory mechanisms. When the state contracts with child welfare service providers to carry out all or part of the state’s duty to youth in care, the providers are stepping into the role of the state and receiving taxpayer money to provide the contracted services for the youth. These children need, deserve, and have the right to

every chance to be placed in loving homes; however, HB 578 decreases those chances by giving service providers the state's express permission -- and taxpayer dollars -- to discriminate against prospective families who are qualified to give children in care a temporary or permanent home. By allowing service providers to turn away qualified adoptive and foster parents, HB 578 limits the pool of available homes for children and exacerbates Idaho's shortage of loving homes for youth in state care.

HB 578 privileges individuals' religious rights and freedom of speech over local and national anti-discrimination law. It also contradicts the broader, overarching principle of child welfare services, which is to make all determinations "in the best interest of the child." HB 578 does no such thing – it allows certain agencies to break the law, discriminate, and all with the affect of delaying or failing to place children in loving, supportive homes.

RELIGIOUS DISCRIMINATION IS NOT RELIGIOUS FREEDOM

Religious freedom is a fundamental American value that we cherish and work hard to defend. However, as LGBT people gain greater equality under the law, we are seeing a troubling push to allow anyone, including businesses, to use their religious beliefs to discriminate. Religious freedom in America means that we all have a right to our religious beliefs, but this does not give us the right to use our religion to discriminate against and impose those beliefs on others who do not share them.

Bills that permit discrimination in welfare and social services, including adoption agencies, are not about religious freedom. Instead, these bills should be understood as part of a broader, coordinated attack on the civil rights and liberties of LGBTQ+ people. It would write anti-LGBTQ+ discrimination into the law. Legislation like HB 578 is not supported by the larger adoption community, nor mental health professionals. And, the bill is obviously unconstitutional.

The right to freely practice one's religion or exercise one's moral beliefs does not excuse such discrimination. In fact, religious freedom in America means that we all have a right to our religious beliefs, but this does not give us the right to use our religion to discriminate against and impose those beliefs on others who do not share them.

Children in Idaho deserve – and have the right to be placed in loving homes. HB 578 would allow religious beliefs to encroach on the welfare of Idaho's most vulnerable youth. It would also enable our state to skirt its duty to care for and protect the 1,600 children who, in last year alone, were removed from their homes. The Idaho legislature should not permit child welfare agencies to limit the chances of finding placement for these children. This body should not permit individual and institutional beliefs of adoption and other child welfare agencies to discriminate against qualified, loving, potential adoptive parents, including LGBTQ+ couples.

The state-sanctioned discrimination permitted by this bill violates the Establishment Clause of the First Amendment of the United States Constitution by allowing the use of government funds to promote specific religious beliefs. Just as the government itself could not make religious-based decisions in the provision of government services, an entity that receives government funding to carry out a government function also cannot do so. No taxpayer-funded organization entrusted with the care of children should be allowed to put its beliefs ahead of the children's best interests, but H578 does just that. Children in state care depend on lawmakers to protect their best interests and encourage placement in homes with families, not to prioritize the beliefs of placement agencies. We ask that you vote no on H578. We urge you to reject HB 578.

Respectfully,

Amy Dundon, Legislative Strategist, ACLU of Idaho