Adoptee Rights Law Center

greg@adopteerightslaw.com

January 26, 2021

Senator William C. Smith, Jr.
Chairman, Senate Judicial Proceedings Committee
Maryland General Assembly
Miller Senate Office Building, 2 East
Annapolis, Maryland 21401

RE: Testimony in Support of SB0331

Dear Chairman Smith and Members of the Committee:

I am an attorney and the founder of Adoptee Rights Law Center, a law firm and nationally-recognized resource on legal issues related to adult adopted people, whether those issues relate to identity documents, original birth certificates, or securing U.S. citizenship for intercountry adoptees. I am also the president of Adoptees United Inc., a national nonprofit organization dedicated to educating the public about adoptee rights and to securing equal rights for all adult adopted people. Last session Adoptees United submitted a joint letter from more than 30 organizations and 400 individuals, all in favor of HB1039 and other bills pending across the country, bills that did not go forward generally because of the arrival of COVID-19 and its impact on our country. As you are aware, last session's HB1039 is identical to SB0331, the bill before you today.

Personally, and on behalf of the Adoptee Rights Law Center, I write in strong support of SB0331 and request that you act favorably on the bill. Please report it out as DO PASS from the Judicial Proceedings Committee, without amendment.

Maryland is not unusual in its history of sealing original birth certificates, particularly in cases of adoption and legitimation. First, as in every state, the sealing of pre-adoption birth records was intended to protect adoptive parents, the adoptee, and the newly formed adoptive family. It was not intended to permanently erase a relinquishing parent's name from an adoptee's own birth record. It was also not intended, as it has been used, to enforce a punishing and humiliating secrecy over the adopted person's identity.

The process of sealing original birth records started in California in 1935, when Assembly Member Charles Fisher introduced a bill to seal records because "unscrupulous persons

have obtained access to the adoption records and have blackmailed the adoptive parents by threatening to tell the adopted child it was adopted." New York followed in 1936, though last year it fully repealed its 83-year-old secrecy law. The District of Columbia and Maryland began sealing pre-adoption birth records in 1937, though court adoption records in Maryland were publicly available until the middle of 1947. Sealing of pre-adoption birth records continued in other states through the 1940s and 1950s, almost always in response to national scandals involving black market trafficking of children for adoption. The unstated reason for sealing adoption-related records was to enforce secrecy over the entire process, largely to hide the shame and coercion that agencies used against young and predominantly white women who had become pregnant out-of-wedlock. That secrecy was also enforced to hide unethical and highly questionable practices that included scientific experimentation on infants who were in the legal custody of prominent national adoption agencies, such as the experimentation on twins and triplets who were separated by agencies for the sole reason of secret "scientific" study. Or pain studies involving shooting infants with rubber band guns to assess the baby's length and cries. Indeed, a new book released today, *American Baby* by Gabrielle Glaser, outlines in exacting detail how secrecy became the defining feature of adoption, to the horrific detriment of birthparents and their relinquished children.

Experimentation and coercive secrecy aside, the general stated reasons for sealing records in the past was also unrelated to birthparent privacy. Rather, the stated reasons included: 1) to keep records from the public to avoid potential blackmail of the adoptive family; and 2) to seal records to secure an adoptee's "legitimate" status in society and within the adoptive family, primarily by preventing any future interference from birthparents. Indeed, when a committee of the US Congress considered this issue in 1954, it reiterated that the purposes of sealing records generally was to protect:

> (1) the adoptive child, from unnecessary separation from his natural parents and from adoption by persons unfit to have such responsibility;
>
> (2) the natural parents, from hurried and abrupt decisions to give up the child; and
>
> (3) the adopting parents, by providing them information about the child and his background, and *protecting them from subsequent disturbance of their relationships with the child by natural parents*.

Pub. Law 392, 68 Stat. 246 (1954)(emphasis supplied). Sealing of a person's own birth record was never about enforcing permanent secrecy in a government record by

preventing that person— the adopted person—from later obtaining an unaltered copy of the record as an adult.

This was true in Maryland and in most other states (Kansas and Alaska have never made the original birth record unavailable to an adult adoptee). Many other states did not seal original birth records until much later in the century, with Florida doing so in 1977 and Pennsylvania, one of the latest, in 1984. Most states during the middle of the century followed what was then (and remains today) the best practice, first outlined in 1950 by national child welfare experts and more fully explained by E. Wayne Carp, one of the foremost scholars on the history of sealed pre-adoption birth records:

> There is no evidence that child welfare or public health officials ever intended that issuing new birth certificates to adopted children would prevent them from gaining access to their original one. **On the contrary, they specifically recommended that the birth records of adopted children should 'be seen by no one except the adopted person when of age or upon court order.'** This policy, which provided adoptees with the right to view their original birth certificate, was staunchly affirmed by [U.S.] Children's Bureau officials in 1949, who worked out guidelines for a nationwide directive on the confidential nature of birth records with members of the American Association of Registration Executives and the Council on Vital Records and Statistics. They declared that the right to inspect or secure a certified copy of the original birth certificate 'should be restricted to the registrant, if of legal age, or upon court order.'

Carp, E. Wayne, *Family Matters: Secrecy and Disclosure in the History of Adoption*, p. 55 (Harvard University Press: 1998); *see also*, *The Confidential Nature of Birth Records: Including the Special Registration Problems of Children Born Out of Wedlock, Children of Unknown Parentage, Legitimated Children, and Adopted Children*. Washington, D.C: Children's Bureau and National Office of Vital Statistics, Federal Security Agency, 1949.

Maryland is not alone in its current date-based approach, which currently limits requests for a pre-adoption birth record to adoptions finalized after January 1, 2000 (a flowchart showing how Maryland's current law works is attached, along with what SB0331 will do if it is enacted). But it also would not be alone in restoring an unrestricted right for all adult adoptees to obtain their own birth records. Nine other states, including New York, New Hampshire, Alabama, Colorado, Rhode Island, Oregon, Alaska, Maine, and Kansas, have either restored an unrestricted right for adult adoptees to obtain their own birth record or have never restricted that right in the first place. That these are diverse states with

diverse populations and greatly varied political affiliations speaks directly to how this is a bipartisan and overwhelmingly supported issue. No problems have been reported in any of these states on any issue, whether related to the impact on adoption in the state or on any other “hot button” social or political issues often used against adoptees who seek a basic human right to identity.

It is a mistake to assume that Maryland’s sealing of original birth certificates was intended to secure permanent secrecy. This is historically and irrefutably wrong. I understand, at an emotional level, the repeated response of “what about birthmother privacy?” I hear it every time I discuss this issue. But privacy is vastly different from secrecy and anonymity, two concepts that are impossible to assure in an era of widespread social media and inexpensive DNA matching. More significantly, no one is suggesting that Maryland or any other state open their pre-adoption birth records to the public. SB0331 releases the original birth record to the adult adoptee at age 18, if the adoptee feels compelled to request it at all (many adoptees actually do not request their original birth certificates).

Vague and misplaced notions of “privacy” does not justify shifting control over an adoptee’s own birth record to a person who is not the record’s specific registrant. Only conservators, guardians, or parents of minor children typically have control over another person’s birth record, with the notable exception of adopted people, whose records in a number of states are controlled by the state and, for historically inaccurate reasons, subject to permanent biological parental control. We are not minor children, nor are we incapacitated and in need of a guardian to manage our affairs. I, for one, am a 55-year-old man with a wife and two sons, whose own birth record the District of Columbia sealed after his adoption in 1965 by a couple living 35 miles away from this Chamber, in Silver Spring, Maryland.

Do the right thing in Maryland. Reject an outdated, misplaced, and discriminatory approach of punishing secrecy in adoption. A birth record is the registrant’s own record, to do with as he or she believes is right. Vote DO PASS on SB0331 and restore a right that all Maryland adoptees once had: the right to request and obtain their own pre-adoption birth records, free from government restrictions and alterations, and free from the stigma and humiliation of enforced permanent secrecy.

Best regards,

ADOPTEE RIGHTS LAW CENTER PLLC

Gregory D. Luce