

Oppose HB 1155

Foster Parents, Kinship Parents, Preadoptive Parents, and Caregivers – Right to Intervene

Testimony of Shanta Trivedi, Esq.

Thursday, March 10, 2022

House Judiciary Committee

Dear Del. Clippinger and Members of the House Judiciary Committee:

I am an Assistant Professor of Law at the University of Baltimore School of Law. I teach courses on Family Law and the Child Welfare System and write extensively on child welfare issues, particularly as it affects low-income and minority families. I have also represented hundreds of parents whose children were in foster care or at risk of entering foster care. In addition, I serve as the Faculty Director of the Sayra and Neil Meyerhoff Center for Families, Children, and the Courts (CFCC). CFCC's mission is to create, foster, and support a national movement to integrate communities, families, and the justice system in order to improve the lives of families and the health of the community. **I urge you to issue an unfavorable report on HB 1155.**

HB 1155 would allow temporary caregivers the right to intervene in CINA cases as parties. This would give state-designated interim caregivers the same status in legal proceedings affecting children as those children's parents. However, the law is clear that foster parents do not hold the same rights as parents. The Supreme Court has stated that "whatever liberty interest might otherwise exist in the foster family as an institution, that interest must be substantially attenuated where the proposed removal from the foster family is to return the child to his natural parents."¹ In the proceedings contemplated by HB 1155, what is at stake is the future of a child's relationship with their parents. It would be improper for a court to elevate the rights of foster parents whose relationship "has its source in state law and contractual arrangements"² to the same level as parents whose right to raise their children is "essential."³

While more information may be useful for a court in these proceedings, several mechanisms already exist for temporary caregivers to be given notice and to be heard in these cases, making HB1155 superfluous.⁴ And for temporary caregivers who have cared for a child for more than 12 months, it would remove a judge's discretion to determine whether intervention is appropriate. While foster and kinship parents are contractually obligated as arms of the state to work with families to further the goal of reunification in most cases, it defies logic and human experience that caregivers could remain neutral in these proceedings. Some may have good intentions and love the children in question, they may want to adopt them or have financial motivations including wanting to continue to receive foster care funds. Thus, the interim caregivers who have the most to gain from parents losing their children are most likely to intervene.

HB1155 also would lead to increased bias in a system already plagued by discrimination. Child welfare proceedings are meant to determine whether a child can safely remain with her parents or whether state assistance is necessary. Allowing foster parents to intervene at multiple stages of the process would transform these proceedings into a beauty contest between temporary caregivers and parents who have little chance of winning. Parents are starting at a disadvantage given that there are allegations against them and none against the foster parents. Additionally, these parents are usually low-income and minorities⁵ and data is clear that they already face discrimination at every stage of the child welfare system.⁶

There has been a nationwide reckoning that the child welfare system has disproportionately targeted families of color and unnecessarily removed their children. Many now refer to the child welfare system as the family regulation system.⁷ New federal legislation has been proposed in response to some of these concerns in recognition of the harmful impacts of child welfare laws.⁸ HB1155 is a step backwards and will further entrench the problems plaguing the child welfare system, rather than moving Maryland forward. **For that reason, I urge you not to support HB 1155.**

¹ *Smith v. Org. of Foster Fams. For Equal. & Reform*, 431 U.S. 816, 846–47, 97 S. Ct. 2094, 2111, 53 L. Ed. 2d 14 (1977)

² *Smith v. Org. of Foster Fams. For Equal. & Reform*, 431 U.S. 816, 845, 97 S. Ct. 2094, 2110, 53 L. Ed. 2d 14 (1977)

³ *Meyer v. Nebraska*, 262 U.S. 390, 399, 43 S. Ct. 625, 626, 67 L. Ed. 1042 (1923)

⁴ Md. Code Ann., Cts. & Jud. Proc. § 3-816.3; MD R. JUV. CAUSES Rule 11-215

⁵ Child Welfare Info. Gateway, U.S. Dep't of Health & Human Servs., *Racial Disproportionality and Disparity in Child Welfare*, ISSUE BRIEF, Nov. 2016, at 1, 6.

⁶ Katherine Elliott & Anthony Urquiza, *Ethnicity, Culture, and Child Maltreatment*, 62 J. SOC. ISSUES 787, 795 (2006).

⁷ Dorothy Roberts, *Abolishing Policing Also Means Abolishing Family Regulation*, THE IMPRINT, June 16, 2020, <https://imprintnews.org/child-welfare-2/abolishing-policing-also-means-abolishing-family-regulation/44480>

⁸ *Rep. Bass Introduces 21st Century Children and Families Act to Improve Stability for Kids in Foster Care*, November 4, 2021 <https://bass.house.gov/media-center/press-releases/rep-bass-introduces-21st-century-children-and-families-act-improve>