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Proponent Testimony on House Bill 61
House Judiciary Committee
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Chairman Butler, Vice Chair Pelanda, Ranking Minority Member Stinziano, and members of the Judiciary Committee, thank you for permitting me to testify today in support of House Bill 61, which will provide adults who were adopted in Ohio uniform access to their original birth records.

The National Center for Adoption Law and Policy works to improve the laws, policies and practices that govern child welfare, foster care, and adoption systems through research, education, training, and advocacy. Our focus is on the best interests of children and youth who are involved in these systems. That focus does not end when children and youth who have been adopted become adults. We believe that every child deserves a safe, permanent family connection. We also believe that all persons who have been adopted have a right to information about their birth identities.

You will hear others testify about why records access is important to those who have been adopted, about the research demonstrating that most adoptees and birthparents support records access, about the negative impact to adoptees from secrecy about adoption, and about the positive reports from states that provide records access; thus, I will limit my remarks to the legal and policy-based issues related to Ohio law's inconsistencies in granting or denying adult adoptees the right to know about their biological origins. I will focus on three questions:

- *What are the legal implications of denying adult adoptees access to their original birth records?*
- *Do the reasons for denying access make sense from legal and policy perspectives?*
- *Why does HB 61 make legal, constitutional, and practical sense?*

Legal implications of denial of access to adoption records

A birth certificate is of fundamental legal importance: it creates a child's legal identity and records the child's name, sex, race, country of origin, and biological parentage. Although

issuance of birth certificates in the United States is a State function, the right of every child to a birth identity is one of international significance. Article 7 of the United Nations Convention on the Rights of the Child states that children have the right to a legally registered birth officially recognized by the government and "the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents." Article 8 of the Convention urges that governments "undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference." The Convention also recognizes that many children cannot, should not, or simply do not, remain with their parent(s) of origin. Thousands of families are created each year through adoption.

Under current Ohio law, when a family is formed through adoption a new identity is established for the adoptive child through the creation of a new birth certificate (unless the adoptive parents request otherwise). Accordingly, "a stroke of the pen or strike of a key can create or change a person's identity, history, life story, and any resulting privileges and powers."[1] Ohio law seals the facts of a child's biological origin and creates for an adopted child the legal fiction of a new birth identity in order to provide documentation of the adoptive family's legal relationship that is necessary for a variety of purposes, including school registration and access to medical care. The original birth records of Ohio adoptees remain sealed forever, with limited exceptions, although adoptees may be granted access upon adulthood. The scheme of records access for adult adoptees is codified in an inconsistent statutory framework that restricts or grants access depending solely on when an adoption was finalized.

Ohio's three-tiered system allows persons adopted prior to 1964 have access to original birth records on file with the Bureau of Vital Statistics. The records of those adopted after 1964 but before 1996 are sealed; adoptees in this group may access records only via a court order and only if the biological parent(s) or an adult sibling signed and filed a release with the Bureau of Vital Statistics. An adult aged 21 or older whose adoption occurred after September 18, 1996, or the adoptive parent of an adopted person over the age of 18 and under the age of 21, may get a copy of his or her adoption file from Vital Statistics, unless there is a denial of release on file. Consequently, in Ohio, when you were adopted governs how and what you can learn about your adoption and your biological family.

A couple of weeks ago, the Center received an email from a man whose 90- year-old mother had just learned that she was adopted. She had had a happy life with her adoptive family, but she wanted to know about her birth identity and her family of origin. Her son asked us for help in finding her adoption records. A few months prior to this email, we received an inquiry from someone who had been adopted after 1964 but before 1996. She also wanted to know about her family of origin and her adoption. We could tell the first woman that, under Ohio law, she is permitted access to her adoption records. We had to tell the second woman that she is not permitted access to identifying records without a court order, and then only if a release of information from her birth parent(s) is on file.

[1] Annette Appell, "Certifying Identity," article-in-progress for the Wells Conference on Adoption Law (2013).

Why did we have to give these women different answers to the same question? Not because they have different circumstances, rights, or reasons for wanting to know about their families of origin, but because shifts in Ohio public policy over the years has resulted in an anachronistic system of records access that no longer makes any legal or practical sense – one that infringes on adoptees' rights to "the official record of who they are."

The non-validity of reasons for denying access

Others will testify in detail today about all of the arguments made by those who support secrecy of adoption records and why those arguments are unpersuasive. Accordingly, I will briefly address just two arguments are particularly relevant to Ohio's law and why these reasons are no longer valid (if they ever were).

- **A clean break from the past**

  It was not until around the era of the Second World War that laws sealing the original birth records of adopted persons began to be passed. Early on, records were sealed primarily to protect adoptees and birth mothers, often unwed, from public disclosure of the adoptive placement. Later, the laws requiring confidentiality of records expanded to exclude not only public access, but access by adoptees themselves. Laws that made adoption records secret were aimed - misguidedly - at "treating adoption as a rebirth that severs and erases all ties and then seals all information about the birth family."[2]

  What the proponents of these laws, including Ohio's current law as it applies to those adopted between 1964 and 1996, fail to recognize is that adopted persons carry their pasts with them, whether or not the actual details of their birth are known to them. Laws "protecting" adoptees from learning about their birth identities are blind to the fact that the majority of adult adoptees do not want or need such protection, and to the reality that such protection is meaningless in today's social-media driven world. Further, laws denying adoptees access to their own records are incompatible with current adoption policy and trends.

  Recent studies indicate that the overwhelming majority of adult adoptees want access to their own adoption records because, as a matter of right, they are entitled to the same information about themselves as those who grew up in their birth families. For the majority, the desire for access is not bound up with a dissatisfaction with their adoptive families; rather, it reflects a craving and, often, a need to know more about themselves and their birth families. Ohio law perpetuates a paternalistic myth that adult adoptees need to be insulated from their own histories.

  Such insulation, in addition to being inconsistent with adoptees' desire for access and the realities of technology-aided adoption searches, flies in the face of the current move

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[2] Annette Appell, "*Reflections on the Movement Toward a More Child-Centered Adoption,*" Washington University in St. Louis School of Law, Faculty Paper No. 10-03-11, published in the Western New England Law Review (June, 2010).

toward openness and honesty in in adoption law, policy and practice: "Adopted individuals, birth families, and adoptive families are best served by a process that is open, honest, and supportive of the concept that all information, including identifying information, may be shared between birth and adoptive parents."[3]

Finally, although access to records may aid in a search for a birth family, many adoptees who gain access do not use their records as a means to search. Conversely, many adopted persons who search for and find their birth families do so without assistance from original birth records. Practically speaking, secrecy in adoption is a thing of the past, given the pervasive impact of social media and internet technology on all aspects of adoption. Adoption reunion registries, providing online assistance with locating birth families, abound. Facebook and other social media sites provide quick and easy means for birth families to connect with adoptees and vice versa. Social media and technology cannot, however, provide persons adopted in Ohio access to their original, official birth information. Only changes in the law can do that.

- **Adoptive parents' concerns**

  An oft-cited reason for prohibiting records access is to maintain the integrity of the adoptive family; to do otherwise, it has been argued, would send a message that adoption is a second class family building option and create a presumption that adoptees will automatically default to their birth families at adulthood.[4] The reality is that the systemic move to openness in adoption means that as a society we are looking at family in a different and more inclusive way. We are also looking at the ways outmoded policies requiring secrecy in adoption have negatively impacted all members of the adoption triad: adoptive parents, birthparents, and adoptees.

  Study after study over the past fifty years demonstrates the negative impacts that shrouding adoption in secrecy and denying adoptees access to their records have had; rather than shielding adopted children and birth parents from shame, secrecy perpetuates the fallacy that it is shameful to place a child or be placed for adoption. [5] Further, most adoptive families today recognize the advantages of birth history knowledge: access may yield important medical or genetic information, or may ease tension in the adoptive family associated with keeping secrets or with the adopted child's questions about her family or origin. Most important, however, is the growing recognition that it is fundamentally unfair to adoptees to not have the legal right to their own birth histories.

  Ohio law takes this unfairness a step further than laws of other states that restrict records by creating three tiers of access. Not only are adoptees in Ohio treated less favorably than those who have not been adopted, but classes of Ohio adoptees are treated disparately based solely on the date of their adoption. You have in your record

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[3] Child Welfare League of America Standards of Excellence for Adoption Services, 2000. Section 4.12, p. 60.

[4] Adam Pertman*, FOR THE RECORDS II: An Examination of the History and Impact Of Adult Adoptee Access to Original Birth Certificates*, Evan B. Donaldson Adoption Institute (July 2010).

[5] Id.

the testimony of William B. Norris, one of the principal authors of the Ohio law that excludes those adopted between 1964 and 1996 from adoption records access. The reason for the law was simply to keep personal family business from the public domain. Significantly, Mr. Norris, now deceased, realized years later that the legislation instead produced "an absurd anomaly" and that although the law served the purpose of protecting private information from public scrutiny, it also harmed the innocent parties it was designed to protect -- adoptees. It is past time to correct what the author of the law, armed with better information and clearer understanding, has since called "a grave mistake."

Why does House Bill 61 make sense?

House Bill 61 represents a thoughtful and legally solid solution to Ohio's unwieldy, illogical, unfair, and outdated legal framework for access to adoption records. It is narrowly tailored to serve the interests of adoptees while speaking to the concerns of adoptive parents and birth parents. House Bill 61:

- **Continues to exclude public access to adoption records**
  The bill does not open adoption records to the public; it only provides for adult adoptees (aged 18 or older) who were adopted prior to September 18, 1996, or their lineal descendants (aged 18 or older) to have access to their original adoption records via a written request without the need for a court order.

- **Provides a uniform centralized process for access**
  HB 61 would repeal laws requiring persons adopted between 1964 and 1996 to file a petition in probate court to obtain information about the adoptee's biological family and replaces those laws with a procedure by which persons adopted prior to September 18, 1996, or their lineal descendants, who are at least 18 years of age may submit a written request to the Ohio Department of Health (ODH) to provide the adopted person with a copy of the contents of his or her adoption file.

- **Provides for birth parent privacy (if desired)**
  HB 61 would require ODH to develop a contact preference form for biological parents and, if it accepts a completed form, to place it in the adoption file of the adopted person to whom it pertains. This provision allows birth parent to register their unwillingness to be contacted, a new protection under Ohio law that speaks to concerns of birth parents who, at the time of placement, may not have anticipated that records would someday be open. Although Ohio law makes no such guarantee, the measure represents a desire to defer to a birth parent's preference not to be contacted. [6]

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[6] Significantly, the constitutionality of a Tennessee law similar to HB 61 was upheld in a case brought by a birth parent. In Doe v. Sundquist, 2 S.W.3d 91 (TN 1999), the Tennessee Supreme Court held that retrospective application of legislation allowing disclosure of adoption records to adopted persons over the age of 21 did not impair the vested rights of birth parents in violation of the Tennessee Constitution, nor did it violate the right to privacy embraced in the Tennessee Constitution.

- **Respects adoptive family integrity**
  Under HB 61, ODH will also be required to develop a social and medical history form, which will be attached to each contact preference form it makes available to biological parents. This form will be reviewed any identifying information or inaccurate information will removed, after which the form will be filed with the court that decreed the adoption. The law would permit the adoptive parents, during the minority of an adopted person, or only an adopted person upon reaching majority, to inspect the social and medical history forms.

Conclusion

House Bill 61 will correct the "absurd anomaly" in Ohio law that allows for unequal access to adoption records for Ohio's adoptees in recognition of the fact that all of us, whether we are adopted or not, have the right to know our biological history. I urge you to support this important legislation.

Thank you for allowing me to testify.