



March 20, 2023

The Honorable Brian Maienschein
Chairman, Assembly Committee on Judiciary
California State Capitol
10th and L Streets
Sacramento, CA 95814

RE: AB1302: OPPOSE (POSITION CHANGE)
Hearing Date: March 21, 2023

Dear Chairman Maienschein and Members of the Committee:

I am an attorney and the founder of Adoptee Rights Law Center, a law firm that represents adult adopted people. I submitted written testimony previously on AB1302, in which I registered a position of OPPOSE UNLESS AMENDED. Given the recent amendments to the bill, my position is now OPPOSED. The current bill is, honestly, awful. The bill now creates a massive and likely costly bureaucracy that involves the courts and a state agency, further requiring double notifications to birthparents by certified mail, return receipt requested. Minnesota nearly 50 years ago implemented a similar law and it is now considered broken and beyond repair. AB1302, if enacted as now drafted, would be considered a dead law on its arrival.

I am submitting a memorandum addressing the state constitutional arguments that appeared in counsel's bill analysis. That is attached, along with an affidavit from one of my former clients, who was born and relinquished for adoption in California but adopted here in Minnesota. I ask that the committee do not report AB1302 out favorably.

Best regards,

ADOPTTEE RIGHTS LAW CENTER PLLC

Gregory D. Luce

MEMORANDUM

Gregory D. Luce, through Adoptee Rights Law Center,¹ submits this memorandum to the California State Assembly, Committee on Judiciary, to refute the argument that a birthparent who relinquished a child for adoption in California has an ongoing state or federal constitutional right to privacy that controls and prevents the release of a copy of a registrant's own pre adoption birth record, presuming that the record was sealed after the registrant's adoption.

A. RELEVANT FRAMEWORK FOR ANALYSIS

This matter involves a birth record. It does not involve private child placing agency records, attorney or law firm files, or any other records including court records that are part of the broad swath of documents that are vaguely and loosely defined as "adoption records." A birth record is not an adoption record. It is a vital record, and it is required to be created after a birth in the state. It is not registered with, legally held, certified by, or released by courts nor by any other state agency other than the California Department of Public Health. As such, it is independent of adoption and subject to the laws and regulations surrounding vital records, not the laws governing adoption.²

If a birthmother, for example, relinquishes a child for adoption but her child is never

The author acknowledges and endorses the prior work of Nina Anne Greeley and attorneys at California-based Heller, Erhman, White & Mcauliffe, LLP, who prepared a comprehensive legal memorandum on this issue in 2001, which has been instrumental in putting this memorandum together. ² Accordingly, in the bill analysis for AB1302, counsel inaccurately and frequently refers to an adopted person's own birth record as "adoption records," "these adoption records," "a right to privacy in adoption records," and "in the event that adoption records become unsealed." AB1302, which I strongly oppose in its current form, does not involve adoption records, such as court files and adoption agency files. It relates instead to a single birth record, which is not an adoption record under any reading of the laws of California or other states. Referring to them as adoption records only muddies the waters and unjustifiably expands the reach of alleged birthparent privacy concerns to practically all records.

adopted, the birth record remains available at all times to the registrant and is, in fact, available for release to members of the public as a certified informational copy. See Calif. Health & Safety Code § 103526(3)(A)(record is available to non authorized persons as an informational copy only).³ In the context of adoptions, the original birth record is sealed **only** after a court approves and finalizes the adoption and **only** if the adoptive parents' also decide independent of a birthparent that a new birth certificate should be issued. See, Cal. Health and Safety Code § 102640; (providing that “[w]hen requested by the adopting parent or parents, a new certificate shall not be established by the State Registrar.”). This is consistent with other parts of California law, particularly involuntary termination of parental rights. See, generally, Calif. Family Code 903(a) (restriction on release of birthparent’s identifying information to foster youth after termination of parental rights is not applicable unless an adoption has occurred).

In addition, if an adoption is annulled or vacated, which is allowed specifically under current California law and in a number of other states, the original birth record is restored, without any requirement of notice or consent to the birthparent. See, e.g., Calif. Family Code § 9100 (allowing annulment of an adoption within five years if a child’s developmental issues were not properly disclosed). This happened recently in 2018, when an adoptee I represented born in California and adopted in Minnesota annulled her adoption, leading in part to restoration of her California original birth certificate as her

³ California also published and sold the state’s public birth index, which contains birth information for all births, including children who were later adopted. These records are now publicly available on numerous genealogical websites, including ancestry.com and FamilySearch. See, California Birth Index: FamilySearch Historical Records, https://www.familysearch.org/en/wiki/California_Birth_Index-FamilySearch_Historical_Records (last accessed March 18, 2023); Aff. of Nikki Carlson, ¶ 4 (attached).

only birth certificate. Aff. of Nikki Carlson, ¶¶ 18 (attached). As that case illustrates, the birthmother had surrendered all rights over her child to the Los Angeles County Bureau of Adoptions, which assumed sole custody and control over the child. Carlson Aff. ¶¶ 2, 5. As is the case with nearly all public or private agency adoptions, the birthparent had no control over the placement of the child nor involvement in any future adoption proceedings once she relinquished the child to the agency, and particularly when, in this case, the adoption occurred 1,850 miles away in Minnesota. The court accordingly rejected a birthmother's effort to intervene in the matter, stating in part that

A biological parent is only entitled to notice of an adoption where "the result of the judicial proceeding was permanently to deprive a legitimate parent of all that parenthood implies." *Armstrong v. Manzo*, 380 U.S. 545, 550 (1965)(step parent adoption required biological parent to receive notice). Here, [the birth mother] had no legitimate parental rights to Nikki Carlson upon the signing and filing of the Relinquishment form in 1965. [The] relinquishment was not contingent upon an adoption nor was there a promise of adoption. Rather, [the birth mother's] relinquishment was final.

The current statutes do not support [the birth mother's] argument that she is entitled to notice or entitled to have a say over the Vacation Order after an adoption is finalized. "After a decree of adoption is entered the birth parents of an adopted person shall be relieved of all parental responsibilities for the adopted person, and they shall not exercise or have any rights over the adopted person or the adopted person's property"

[The birthmother] had no rights to Nikki Carlson upon signing the Relinquishment form and therefore had no right to exercise any control or rights over Nikki Carlson's actions.

Further, a parent of an adult child is not entitled to notice or the right to appear or be heard in an adoption of their child. *In re Adoption of an Adult by C.K.*, 7 A.2d 1030 (N.J. Super. Ct. Ch. Div. 1998)(parents of adult child who petitioned to be adopted by another adult have no interest in their adult child and her choice to be adopted by another and had no right to notice of the impending adoption, a right to appear, or to be heard.); *In re Adoption of A.S.C.*, 2016 WL 1229169 (N.J. Super. Ct. App. Div. Mar. 30, 2016)(birth father of adult petitioning for adoption by step father had no right to notice

or opportunity to be heard). A parent's authority ceases when a child attains the age of majority. See Cal. Fam. Code § 7505(c).

Carlson Aff. ¶ 7.

This raises an obvious additional issue: the interstate placement of children for adoption outside of California significantly diminishes if not eliminates a viable claim of a reasonable expectation of privacy for birthparents, particularly within the context of confidential birth and adoption records. For example, adopted people whose adoptions are finalized in at least four states—Hawai'i, Oregon, South Dakota, and Colorado—have a statutory right to request and obtain copies of their court adoption files, which typically contain a copy of the adopted person's birth record as well as other identifying information, including a parent's relinquishment documents. See, e.g., Haw. Rev. Stat. §578 15(b)(2)(release of court records in Hawaii once the “adopted individual attains the age of eighteen and upon submission to the family court of a written request for inspection by the adopted individual or the adoptive parents.”); Colo. Rev. Stat. § 19 5 305(2)(b)(I)(A) (“custodian of records shall provide direct access, without redaction, to all adoption records . . . for inspection and copying by an adult adoptee, an adoptive parent of a minor adoptee, a custodial grandparent of a minor adoptee, or the legal representative of any such individual”); S.Dak. Rev. Stat. § 25 6 15 (the “files and records of the court in adoption proceedings are not open to inspection or copy by persons other than . . . the child when he reaches maturity.”); Or. Stat. Ann. § 109.289(4) (adult adopted person “may inspect and copy sealed records, papers and files that are maintained in the court's record of the adoption case without a court order,” excluding the home study).

Moreover, provided there is a finalized adoption in the state, every state in the country allows the release of court or adoption records upon court order, with varying standards of review but without regard to an alleged California right to privacy. Thus, to argue that a California birthparent maintains a secure and absolute right to control the release of another person's own birth record after that parent had unequivocally relinquished the person for adoption has no basis in law or fact.

B. BIRTH RECORD BILLS RELATED TO ADULT ADOPTED PEOPLE DO NOT TRIGGER A BIRTH PARENT'S ALLEGED RIGHT TO PRIVACY UNDER CALIFORNIA'S STATE CONSTITUTION

For all of the above reasons, the release of an adult registrant's birth record i.e., the adopted person's own record does not trigger constitutional privacy concerns of birthparents who may be listed on the record. There is no reasonable expectation of privacy over the release of a name that appears on another person's birth record. As every court considering this issue has determined, both under federal and state constitutions:

[W]e are unable to conclude that a law that permits adult adoptees access to vital records concerning their birth has the same sort of constitutional infirmities as the laws that criminalized contraception and abortion that were struck down in *Griswold*, *Eisenstadt* and *Roe*. A decision to prevent pregnancy, or to terminate pregnancy in an early stage, is a decision that may be made unilaterally by individuals seeking to prevent contraception or by a woman who chooses to terminate a pregnancy. A decision to relinquish a child for adoption, however, is not a decision that may be made unilaterally by a birth mother or by any other party. It requires, at a minimum, a willing birth mother, a willing adoptive parent, and the active oversight and approval of the state. Given that reality, it cannot be said that a birth mother has a fundamental right to give birth to a child and then have someone else assume legal responsibility for that child Although adoption is an option that generally is available to women faced with the dilemma of an unwanted pregnancy, we conclude it is not a fundamental right. Because a birth mother has no fundamental right to have her child

adopted, she also can have no correlative fundamental right to have her child adopted under circumstances that guarantee that her identity will not be revealed to the child.

Does 16 v. State of Oregon, 164 Or. App. 543, 565 (1999). Similarly, the Sixth Circuit noted:

Even should it ultimately be held some day that the right to give up a baby for adoption or to adopt a child is protected by the Constitution, such a right would not be relevant to this case. Because the challenged law [opening birth records to adult adopted people] does not limit adoptions, cases striking down laws restricting abortion are not analogous.

Doe v. Sundquist, 106 F.3d 702, 706 (6th Cir. 1997).

Even if the California state constitution gives rise to a right to privacy that somehow operates to reimpose control over a vital record of another person over whom they had previously and unequivocally relinquished all rights counsel's reading of the scope of that right is far too broad, is excessively rigid, and is not supported by the reality of birth records and adoption procedures. Counsel, while misattributing a vital record as an "adoption record," expands the scope so broadly that it encompasses all records that may touch adoption, no matter their origin, context, or content. No one, for example, is arguing here that a birthparent should lack the privacy or confidentiality necessary to make a decision about an adoption. We are not, for example, seeking social, medical, or counseling records, nor are court records, personal records, or adoption agency records typically part of birth record legislation. No one is arguing that confidential documents specifically documenting a personal decision to surrender a child for adoption are to be turned over to an adopted person upon simple request. Rather, if a right to privacy exists (and obviously it should correspondingly exist for the child as an adult to know who

they are and where they came from) then it exists along a broad spectrum, where the intensity of confidentiality is at first strong (e.g., the decision to relinquish) but wanes significantly over time so that an adult adoptees' right to their own record becomes the primary if only consideration that controls the release of a person's own birth record 18 or more years later.

Thus, as an example, a California state constitutional privacy right, assuming for the sake of argument that it is applicable here, may possibly attach to adoption agency records because they likely contain notes or memoranda of conversations with a birthparent, possibly outlining intense and private deliberations and concerns about an adoption. But because no adoption occurs at birth and there is no right to an adoption nor a right to secrecy over another person's birth and identity state constitutional privacy interests cannot attach by proxy to birth records of a registrant; i.e., the subject of the record. Such records are not the birthparent's and do not relate to nor document private deliberations, concerns, or a birthparent's personal decision making surrounding an adoption. Moreover, as the need for privacy at the time of relinquishment wanes considerably over time particularly as the need for confidentiality fades into the past after a birthparent's decision the interest of the adopted person to possess their own birth record grows substantially,⁴ to the extent that there should be no legal impediment to request and obtain your own record as an adult.

⁴ This is reflected in current California law, in which a court considering a request for a copy of an adopted person's original birth record must give "great weight" to the fact that the adoptee "has attained majority." Calif. Health & Safety Code § 102705.

C. CONCLUSION

Sealed birth record laws are a result of a long rejected focus on shame and secrecy, typically associated with illegitimacy, sex, and the ideological redemption of individuals through adoption. One result of that focus, which arose in the 1930s and continued for decades, has been the enactment of discriminatory laws in the United States that sought to hide and punish birthparents while ultimately denying adult adopted people the right to possess their own original identity documents. Left on the books and enforced indiscriminately, these antiquated laws have continued to perpetuate shame and stigma, both for the adopted person and for their birthparents. Worse, they have relegated an entire class of citizens adopted people to second class status, with the state shaming them for believing they are entitled to the most basic of records: a record of their own births. This must end. The California state constitution does not stand in the way of the legislature to eliminate a discriminatory and humiliating law that has for 88 years abrogated an adult adopted person's right to know what is theirs: identity, truth, and heritage.

ADOPTEE RIGHTS LAW CENTER PLLC

Dated: March 20, 2023



Gregory Dean Luce
4629 1st Avenue South
Minneapolis MN 55419
(612) 221 3947
greg@adopteerightslaw.com

SWORN STATEMENT OF NIKKI CARLSON

Nikki Carlson, after being sworn on oath, states as follows:

1. My name is Nikki Carlson. I am 57 years old and a resident of Minnesota.
2. I was born in Los Angeles, California, in September 1965, and relinquished for adoption to the Los Angeles County Board of Adoptions that same year. A true and correct copy of the relinquishment document is attached, showing that my birthmother surrendered all rights over me through her relinquishment to Los Angeles County.
3. That relinquishment was later filed with the State of California.
4. No promise of secrecy was provided to my birthmother. In fact, the record of my birth is part of the California Birth Index, which is available to the public on ancestry.com and other genealogical sites. As an example, a true and correct copy of the record that exists on ancestry.com is attached to this statement. It lists my birthmother's last name.
5. I was later adopted in Minnesota in 1968, with no requirement of notice to my birthmother. The Los Angeles Department of Adoptions, and not my birthmother, consented to my adoption in Minnesota. A true and correct copy of the Consent of the County of Los Angeles Department of Adoptions is attached to this statement.
6. In 2018, with the help of counsel, I vacated and annulled my adoption. The annulment legally operated to restore my original birth certificate on file with the California Department of Public Health. It is my only birth certificate and, under California law, it is now a public record and available to the public as an informational copy.
7. My birthmother attempted to intervene in the annulment matter in Minnesota but the Court dismissed her petition, stating in part that she had no legal interest or basis to intervene nor control any actions I took as an adult related to the adoption. As part of its ruling, the court specifically stated:

A biological parent is only entitled to notice of an adoption where "the result of the judicial proceeding was permanently to deprive a legitimate parent of all that parenthood implies." *Armstrong v. Manzo*, 380 U.S. 545, 550 (1965)(step-parent adoption required biological parent to receive notice). Here, [the birthmother] had no legitimate parental rights to Nikki Carlson upon the signing and filing of the Relinquishment form in 1965. [The] relinquishment was not contingent upon an adoption nor was there a promise of adoption. Rather, [the birthmother's] relinquishment was final.


The current statutes do not support [the birthmother's] argument that she is entitled to notice or entitled to have a say over the Vacation Order after an adoption is finalized. "After a decree of adoption is entered the birth parents of an adopted person shall be relieved of all parental responsibilities for the adopted person, and they shall not exercise or have any rights over the adopted person or the adopted person's property"

[The birthmother] had no rights to Nikki Carlson upon signing the Relinquishment form and therefore had no right to exercise any control or rights over Nikki Carlson's actions.

Further, a parent of an adult child is not entitled to notice or the right to appear or be heard in an adoption of their child. *In re Adoption of an Adult by C.K.*, 7 A.2d 1030 (N.J. Super. Ct. Ch. Div. 1998)(parents of adult child who petitioned to be adopted by another adult have no interest in their adult child and her choice to be adopted by another and had no right to notice of the impending adoption, a right to appear, or to be heard.); *In re Adoption of A.S.C.*, 2016 WL 1229169 (N.J. Super. Ct. App. Div. Mar. 30, 2016)(birth father of adult petitioning for adoption by step-father had no right to notice or opportunity to be heard). A parent's authority ceases when a child attains the age of majority. See Cal. Fam. Code § 7505(c).

8. I will provide a full copy of the Minnesota court's decision to the Committee upon request to my counsel, Gregory Luce.

Signed on March 20, 2023, in the County of Hennepin, State of Minnesota. Pursuant to Minn. Stat. § 358.116, I declare under penalty of perjury that everything I have stated in this document is true and correct.



Nikki Carlson (Mar 20, 2023 13:18 CDT)

Nikki Carlson

[REDACTED]

in the California Birth Index, 1905-1995

Detail

Source

Name:

Birth Date: 21 Sep 1965

Gender: Female

Mother's Maiden Name:

Birth County: Los Angeles

Save 

COUNTY OF LOS ANGELES
BUREAU OF ADOPTIONS
DEPARTMENT OF CHARITIES
2550 W. OLYMPIC BLVD., LOS ANGELES, CALIFORNIA 90008

RELINQUISHMENT
(SOLE CUSTODY)

I, the mother ~~#####~~ of BABY GIRL MILLER, a minor FEMALE child,
born September 21, 1965 - Los Angeles, Cal being entitled to sole custody of said minor child do hereby relinquish
and surrender said minor child for adoption to the LOS ANGELES COUNTY BUREAU OF ADOPTIONS, an organization
licensed by the State Department of Social Welfare to find homes for children and to place children in homes for adoption. It
is fully understood by me that when this relinquishment is filed with the State Department of Social Welfare by said agency, all my
rights to the custody, services, and earnings of said minor child and any responsibility for the care and support of said minor
child will be terminated and that said child cannot be reclaimed by me.

Date October 7, 1965

The foregoing instrument was, at the date thereof, by the said _____
signed in the presence of us, who have signed the same as witnesses thereto.

Engle M. Lusk
Leola Duckett

STATE OF CALIFORNIA

County of Los Angeles } ss.

On this 7th day of October, 1965, before me CAROL STEINMAN
an authorized official of the LOS ANGELES COUNTY BUREAU OF ADOPTIONS, an organization licensed by
the Department of Social Welfare of the State of California to find homes for children and place children in homes
for adoption, personally appeared _____
known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that
she executed the same.

FILED 10-22-65

Carol Steinman
Authorized Official of Agency

SUPERIOR COURT OF THE STATE OF ~~CALIFORNIA~~ MINNESOTA
FOR THE COUNTY OF ~~LOS ANGELES~~ SCOTT

IN THE MATTER OF THE ADOPTION OF

BABY GIRL MILLER
Birth Reg. as
" _____ MILLER" A Minor

CONSENT OF
COUNTY OF LOS ANGELES
DEPARTMENT OF ADOPTIONS
TO ADOPTION

County of Los Angeles Department of Adoptions, an organization existing under the laws of the State of California and licensed by the State Department of Social Welfare to place children in homes for adoption, hereby fully and freely consents to the adoption of the above-named child by the petitioners, DOUGLAS VERN CARLSON and PHYLLIS ARIENE CARLSON and authorizes STATE OF MINNESOTA DEPARTMENT OF PUBLIC WELFARE to complete adoption.

IN WITNESS WHEREOF, said County of Los Angeles Department of Adoptions has caused this consent to be executed by its duly authorized Administrator this 2nd day of April, 1968

COUNTY OF LOS ANGELES DEPARTMENT OF ADOPTIONS
Formerly known as
LOS ANGELES COUNTY BUREAU OF ADOPTIONS

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

By Elizabeth A. Lynch
Authorized Official of Agency

Subscribed and sworn to before me this

2nd day of April, 1968

Witness Rene Gleich

~~XXXXXXXXXXXXXXXXXXXX~~

By Dorothy L. Klein

Witness Marie Gillette

Dorothy L. Klein
Notary Public



My Commission Expires July 6, 1970