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FOR THE RECORDS:
Restoring a Legal Right for Adult Adoptees

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Prepared & Funded by: The Evan B. Donaldson Adoption Institute

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Executive Summary

“In all of us there is a hunger, marrow deep, to know our heritage, to know who we are and where we have come from. Without this enriching knowledge, there is a hollow yearning; no matter what our attainments in life, there is the most disquieting loneliness.”

-- Alex Haley (Roots)

BACKGROUND AND SUMMARY OF KEY ISSUES

Few questions are more heatedly debated in the world of adoption today than whether adult adopted persons should have routine access to their original birth certificates and other documents from their agency and court adoption files. In most states, they are legally prohibited from obtaining such information, except by petitioning a court for its permission. In only two states, Kansas and Alaska, have adopted persons – upon reaching the age of majority – always had access to their original birth certificates. In the rest of the country, at various times over the past 70 years, statutes have sealed these records and prohibited access to the information.

Since 1996, six states – Alabama, Delaware, Maine, New Hampshire, Oregon and Tennessee – have re-established adult adopted persons’ direct access to their birth and/or adoption records. Principally, these new laws have provided individuals with access to their original birth certificates, which usually contain identifying information about their birthparents; fewer states to date have permitted access to information in the adoption agencies’ and courts’ records, which generally contain more detailed information about the birthparents and the circumstances of the individual’s birth and adoption. These states’ experiences, as well as those of states that have considered changes in their relevant laws but have not amended them to date, provide insights that previously were not available to inform policy discussions on this issue. The arguments of proponents and opponents of “opening” adoption records provide the basis for a synthesis of the key elements. In addition, states’ experiences as they have implemented new access laws provide the foundation for a fuller examination of the impact of allowing adult adopted persons to obtain their birth certificates (and, sometimes, their adoption records). As a consequence, the policy debate can now advance from speculation about the appropriateness, wisdom and impact of such legal changes to a more-informed consideration of their personal, practical and social effects on real people’s real lives.

This policy paper is the result of the broadest, most extensive examination to date of the various issues related to state laws governing adult adopted persons’ access to their original birth certificates and/or adoption records. The information and recommendations in this paper are drawn from a review and analysis of past and current state laws; legislative history in states across the country; decades of experience on relevant issues; and the body of research relating to sealed and open records on the affected parties.

PRINCIPAL FINDINGS

This analysis highlights the key role that legal and social impact arguments have played in support of and opposition to statutory changes that provide adult adopted persons with access to their birth and/or adoption records. This debate and the experiences of various states reveal the following:

- Adopted persons are the only individuals in the United States who, as a class, are not permitted to routinely obtain their original birth certificates. This prohibition on access to one’s

personal information raises significant civil rights concerns, particularly given the growing understanding of the need to know one's history, heritage, medical and genealogical data.

- Denying adult adopted persons access to information related to their births and adoptions has potentially serious, negative consequences with regard to their physical and mental health. As recognized by the U.S. Surgeon General's office in its Family History Initiative, biological family medical history is vital to prevention, early diagnosis and treatment, particularly with regard to diseases and conditions for which individuals may be genetically predisposed, such as heart disease, cancer, and certain mental health conditions.
- As states have amended their laws to provide adult adopted persons with access to their birth and/or adoption information, there has been no evidence of the sorts of negative consequences predicted by opponents of changing these laws, including intrusive behavior such as stalking by adopted persons who receive their personal information.
- Similarly, there has been no evidence that the lives of birthmothers have been damaged as a result of the release of information to the children (now adults) whom they relinquished for adoption. In debates leading to these legal changes, opponents had uniformly stated that birthmothers object to the release of birth information and to being contacted by their children. In the states that have amended their laws, however, few birthmothers have expressed the desire to keep records sealed or the wish *not* to be contacted; indeed, in the vast majority of cases, the converse appears to be true.
- Another assertion by critics of changing these laws – that abortion rates rise as a result of such access – is not supported by the experiences of states that have re-opened records (or have never closed them); in fact, the data indicate that reopening records may reduce abortion rates and may increase adoption rates.
- For many adopted persons, the desire to obtain their records is entirely separate from any desire to search for their birthmothers or other relatives; they simply believe – as a human and civil right – that they are entitled to the same basic information about themselves that people raised in their birth families receive as a matter of course. Indeed, many who do get their birth certificates or other documents never search, while others successfully search (a growing phenomenon because of the internet) without any of their documents. Moreover, adopted adults who choose to search invariably make clear that their decisions are not a rejection of their adoptive parents but a desire to learn more about themselves and, in growing numbers, adoptive parents support and assist their adult children's searches.
- Research shows that knowledge of what happened to the children they relinquished for adoption plays a powerful role in the resolution of birthmothers' grief, thereby suggesting that providing access to birth and/or adoption information can have other positive consequences.
- There has been scant evidence that birthmothers were explicitly promised anonymity from the children they relinquished for adoption. Relinquishment documents provided to courts that have heard challenges to states' new "open records" laws do not contain any such promises. To the extent that adoption professionals might have verbally made such statements, courts have found that they were contrary to state law and cannot be considered legally binding.
- In addition to the states that have reopened birth and/or adoption records to all adult adopted persons, a growing number of states have restored access more narrowly – typically to (1) individuals who were adopted prior to the state's law sealing this information and/or to (2) individuals adopted after the effective date of the statute providing access. These statutes

have created a “sandwich” situation in which individuals caught in between – adopted a day too early or too late – are precluded from obtaining their documents. These situations raise significant civil rights and fairness issues by denying access to personal information to a selectively defined group of adults.

RECOMMENDATIONS

Much has been learned from the states that have reopened their records, as well as from those that have considered changes in relevant laws. Based on historical, social science and practice research, along with an analysis of the experiences of those states, the following recommendations are made to advance the development and implementation of sound public policy:

1. Amend every state’s laws to restore unrestricted access for adult adopted persons to their original birth certificates.

States’ experiences in providing this information make clear that there are minimal, if any, negative repercussions from taking this important policy step. Outcomes appear to have been overwhelmingly positive for adult adopted persons and birthparents alike; the predicted adverse outcomes, particularly for birthmothers, have not come to fruition.

To support states in amending their laws, it is recommended that:

- **Involved organizations, including the Adoption Institute, should monitor state legislative activity on an ongoing basis.** States that are considering the introduction of legislation to provide adult adopted persons with access to their birth and adoption information, or that have introduced such legislation, should be routinely identified and activity within them should be tracked. The intent is to gather information about the scope and nature of legislative proposals in order to assess how best to further them.
- **Advocates, legislators and affected parties from across the U.S. should convene to identify strategies that can support policy changes.** Individuals who have been actively engaged in efforts to change state laws on this issue should be brought together to contribute their collective wisdom and experience. To date, efforts to change pertinent laws have focused solely on individual states rather than on broader, more strategic efforts. A valuable next step would be to assemble knowledgeable individuals from around the U.S. to discuss what they have learned and to jointly develop resources and tools that identify:
 - key tactical and strategic components to legislative advocacy on the issue of birth/adoption records access
 - major players in any state’s strategy to educate policy-makers, both within and outside of that state
 - critical messages in a legislative advocacy strategy to amend state laws regarding the access issue
 - successful tactics and strategies in educating legislators and influencing the legislative process
 - effective responses to inaccurate assertions, speculations or data that are not borne out by research or experience

2. Within three years of enactment, revisit state laws that create a “sandwich” situation in which some adult adopted persons are denied access to their birth/adoption information.

The experiences of states that have opened birth/adoption information to some but not all adopted persons should be examined to learn how implementation has affected birthparents, adopted persons and adoptive families. If there are minimal or no adverse consequences, as might be assumed based on the experiences of states that have fully reopened records to all adopted persons, these laws should be revisited and those who had been excluded should be provided unrestricted access to their information.

3. Conduct research to expand the understanding of the experiences of adopted persons, birthparents and adoptive parents in relation to the issue of access to records.

The following types of research activities should be implemented:

- **Develop and utilize mechanisms to collect and analyze data on the outcomes for adopted persons and birthparents following changes in state law.** Some states have developed mechanisms to track outcome data following statutory changes regulating adult adopted persons' access to their birth and adoption records, but not all states have done so. Specifically, states should be assisted in developing processes to collect data on the:

- number of adult adopted persons who request birth and adoption information that is made available by statute
- number of birthparents who, when authorized to do so, object to the release of information and/or contact
- documented incidents of harassment or other inappropriate behavior by adult adopted persons or birthparents
- adoption rates for the affected state before and after law changes, along with analysis of trends over time
- abortion rates for the affected state before and after law changes, along with analysis of trends over time

- **Conduct qualitative research about the experiences of adult adopted persons and birthparents in states that reopen birth and/or adoption records.** In addition to data on outcomes and trends, much more needs to be learned about the experiences of the people most directly affected after access laws are amended. Qualitative studies involving interviews with adult adopted persons, birthparents and other family members are vital to the understanding of the impact of legal changes.

- **Conduct more rigorous research on the perspectives of birthparents regarding adult adopted persons' access to their information.** The current body of research on birthparents' perspectives is extremely limited: there are few studies, the existing ones are dated, and each has methodological limitations that affect generalization. Well-designed studies, involving quantitative and qualitative methods, are needed to provide a strong knowledge base on birthparents' perspectives regarding access and contact. Qualitative research with birthmothers, in particular, is needed to develop a clearer understanding of the extent to which they may have concerns about the reopening of records.

4. Build on the experiences of states that have restored access to original birth certificates to expand adopted adults' access to information in their adoption agency and court records.

Much is being learned from states' experiences following the restoration of adopted adults' access to their original birth certificates and from the experiences of the more limited number of states that have provided their access to information in adoption agency and court records. This knowledge base can provide a basis for policy changes that would provide adopted adults with full access to

their personal histories. These experiences should be documented and utilized in ongoing policy development on these issues.

5. Develop education programs to provide accurate data and counter mythology and misinformation.

The debates on legislative proposals to change state laws on access to their birth and adoptive records have taken place not only in state legislatures, but also in the “court of public opinion.” It is essential that information be developed to educate the public, the media and policy-makers about the key issues; create a more-accurate knowledge base; and counter the erroneous information and assumptions that can undermine a well-informed debate.

6. Focus attention at the national level on state law and policy approaches on the issue of access to birth and adoption records.

Although state law regulates access to birth and adoption records, ongoing attention to the relevant issues at the national level is essential – by including this subject on national organizations’ policy agendas, offering presentations at national conferences, and providing information in national organizations’ publications. Leadership in positioning this issue nationally is essential to ensuring that state policy decisions are supported by the most up-to-date, relevant, and accurate information.

CONCLUSION

Providing adopted persons with the same rights as their counterparts who are raised in their biological families is a matter of legal equality, ethical practice and, on a human level, basic fairness. Furthermore, it is an essential step toward placing adoptive families, families of origin, everyone connected to them – and, indeed, adoption itself – on a level playing field within society, without the stigma, shame and inequitable treatment they have experienced in the past.

One of these rights – access to birth certificates and other documents – has been heatedly debated for decades, including intense speculation about the repercussions of permitting adopted persons to obtain their information once they reach the age of majority. Today, the question no longer needs to be discussed in theory, because the knowledge base has grown substantially as a result of research, policy debates, and individual states’ experiences in implementing new statutory approaches that restore access.

By synthesizing and analyzing the expanding body of knowledge, this policy paper by the Evan B. Donaldson Adoption Institute provides the necessary foundation for advancing sound public policy that recognizes the right of adopted persons to know their personal histories. There is no evident benefit to waiting any longer for statutory reform; the recommendations in this paper provide a blueprint for the critically needed next steps.

Introduction

Few questions are more heatedly debated in the world of adoption today than whether adult adopted persons should have routine access to their original birth certificates and other documents from their agency and court adoption files. In most states, they are legally prohibited from obtaining such information, except by petitioning a court for its permission. In only two states, Kansas and Alaska, have adopted persons – upon reaching the age of majority – always had access to their original birth certificates. In the rest of the country, at various times over the past 70 years, statutes have sealed these records and prohibited access to the information

Since 1996, six states – Alabama, Delaware, Maine, New Hampshire, Oregon and Tennessee – have re-established adult adopted persons' direct access to their birth and/or adoption records. The experiences of these states, as well as those of states that have considered changes in their relevant laws but have not amended them to date, provide insights that previously were not available to inform policy discussions on this issue. The arguments of proponents and opponents of "opening" adoption records provide the basis for a synthesis of the key issues. In addition, states' experiences as they have implemented new access laws provide the foundation for a fuller examination of the impact of allowing adult adopted persons to obtain their birth and adoption records. As a consequence, the policy debate can now advance from speculation about the appropriateness, wisdom and impact of such legal changes to a more-informed consideration of their personal, practical and social effects on real people's real lives.

The contours of the public policy debate regarding changing laws to reopen adoption records have proven to be similar from one state to another. As each state has considered statutory changes to provide adult adopted persons with access to birth and/or adoption information, legislators have been urged to recognize the rights of those affected to obtain information about themselves. Adopted persons have maintained that they are entitled to their original birth certificates (which usually contain identifying information about their birthparents) and information in the adoption agency's and court records (which generally contain more detailed information about the birthparents and the circumstances of the individual's birth and adoption). Opponents of efforts to alter current law rely on arguments contending that birthmothers were promised lifelong anonymity and forecasting disastrous results for these women, for adoptive families, and for adoption itself should access to these records be permitted.

This policy brief is the result of the broadest, most extensive examination to date of the various issues related to state laws governing adult adopted persons' access to their original birth certificates and/or adoption records. The information and recommendations in this paper are drawn from a review and analysis of past and current state laws; of legislative history in states across the country; of decades of experience on relevant issues; and of the body of research relating to sealed and open records on the affected parties.

This study focuses on state laws regulating adult adopted persons' access to their information and on the public policy discussion about appropriate legislative approaches to this issue. It draws on the intense debates that have taken place in every state that has considered repealing its sealed record laws and providing adopted persons with access to their birth and/or adoption information. Analyses of these debates to date have focused largely on state-specific experiences and have been developed from an advocacy perspective that either supports or rejects changes in states' adoption records laws. This paper addresses an important gap by identifying and analyzing the broad themes

that have shaped the public policy debate, both “pro” and “con,” assessing the relative strengths and weaknesses of the arguments, and advancing recommendations to further the development of sound public policy on this important, highly personal issue.

This policy brief contains three sections:

Section I provides a context for the “open records” debate: a short history of the state statutes that govern access to birth and adoption information, and the current status of these laws.

Section II synthesizes the debate on this issue. It describes the key arguments that have been made in support of statutory changes that provide adult adopted persons with access to their records and the opposing arguments in response. It then describes the arguments that have been made in opposition to these changes and provides the responses of advocates to these counter-arguments. This section draws on legal documents, legal and social science research, and the experiences of states that have reopened their records. These experiences are particularly important in informing the policy debate, as they permit policy-makers to move from assumptions about the impact of legal changes to actual outcomes.

Section III provides an assessment of the arguments that have been made in support of and in opposition to restoring adopted people’s access to their records. It advances a number of recommendations to further the understanding of the key issues in the debate, to provide policy-makers with research- and experience-based analyses, and to support the development of sound public policy.

Section I: The Past and the Present

A SHORT HISTORY OF ADOPTION RECORDS LAW¹

The legal history of adoption begins in the mid-19th Century. During that period, the first “modern” adoption statutes appeared; that is, laws that focused on protecting the welfare of children as opposed to regulating inheritance rights when children were adopted. In this era, issues regarding maintaining and accessing adoption information were not statutorily addressed, suggesting that these issues were not of concern. As adoption evolved and became more professionalized, however, state laws began to address the procedural aspects of adoption, including the confidentiality of adoption information. The first statute addressing these issues was enacted in 1917 in Minnesota. It required a home investigation to determine the appropriateness of the prospective adoptive family and allowed access to adoption court files only by the parties to the adoption, their attorneys, and the “State board of control.” The Minnesota statute, like others that followed it, was designed to prevent the public from viewing adoption files and learning that the child had been born outside of marriage. Only those with a “legitimate interest” – that is, those directly involved – were allowed access.

In the 1930s and 1940s, states began the practice of issuing amended birth certificates that listed the names of their adoptive parents as their biological parents and sealed the original birth certificates that identified their first parents. Promoted by child welfare reformers and vital statisticians, this practice was promulgated to protect adopted persons from public knowledge of their illegitimacy. The sealing of original birth certificates was seen as a means of safeguarding family information, with the

expectation that adopted persons would later return to request information about their birth families. During the post-World War II era, a significant shift occurred with regard to these birth and adoption records. The focus changed from confidentiality (that is, the protection of information from public scrutiny) to secrecy (that is, sealing this information from access even by those involved in the adoption). The reasons for this shift are multifaceted. In addition to the social mores of the time and the impact of psychoanalytic thinking on adoption practice, the powerful influence of adoption practitioners such as Georgia Tann in Tennessee significantly impacted the move to secrecy.²

As social and legal historians have documented, secrecy came to be seen as essential to insuring the integrity of the adoptive family: It prevented birthparents from interfering with or harassing adoptive families, or from attempting to reclaim their children. It also protected adoptive families from public knowledge of the “shame” of their infertility. Historians and legal scholars also document that secrecy served yet another purpose: It was the path to “reforming” the young, single and predominately white women whose unwed pregnancies, in the context of prevailing psychoanalytic theory, were viewed as symptomatic of psychological disorders. The immediate relinquishment of their infants and the permanent severing of all ties between birthmothers and their children became the linchpins of their rehabilitation, as well as their ability to re-enter the marriage market.

Historians are consistent in finding that those factors supported the transformation from preventing disclosure of adoption records to the public – to keeping them secret from those involved, including adopted persons. The reason for closure was not, as is often popularly assumed, the desire to protect birthmothers by keeping information about them secret from the children they placed for adoption. Over several decades, the sealing of information from the parties to the adoption became institutionalized through legislative enactments in one state after another. Immediately after World War II, very few states had statutorily foreclosed adult adopted persons from inspecting their own records. By 1960, only 20 states continued to allow such access; of those 20, four sealed birth records during the 1960s, six more did so in the 1970s, and another six followed suit in the 1980s. Alabama became the last state to do so, in 1990. Only Kansas and Alaska never prohibited adult adopted persons from obtaining their original birth certificates. The remaining state, South Dakota, allowed records to be available on demand but required that the demand be made to a court and that a court order be issued.

Revolutionary social changes in the 1960s and 1970s, including the sexual revolution, changing views of contraception and abortion, and growing recognition of the rights of women, set the stage for a reconsideration of many aspects of adoption practice and policy, including the sealing of records. Adoption practice began to shift toward greater sharing of non-identifying information among birthparents, adoptive parents, and adopted persons. Adult adopted persons, however, found that non-identifying information fell significantly short in providing them with the information they sought about themselves and, in response, many joined together to assert the right to their birth and adoption records. Their efforts included two class-action lawsuits in the 1970s contending that statutes that sealed adoption records were unconstitutional; one suit was brought by an Illinois activist group known as Yesterday’s Children and another by a New York activist group known as the Adoptees’ Liberty Movement Association (ALMA). Although unsuccessful, these lawsuits played an important role in initiating a policy debate about the sealing of birth and adoption records – a debate that continues to this day.

THE PRESENT: MOST STATE LAWS DON’T ALLOW ACCESS

Most states currently do not allow adult adopted persons access to their original birth certificates or adoption information in the files of the adoption practitioner or the court.³ In these states, adults who were adopted may attempt to obtain such information, including the identities of their birthparents, through a variety of means: petitioning a court for the documents, usually having to demonstrate

“good cause” (such as medical need) for obtaining the information; mutual consent registries, which require that both the adopted person and the birthparent register an interest in establishing contact;⁴ confidential intermediary programs, in which the court certifies an intermediary to have access to the sealed records for the purpose of conducting a search for birth family members to obtain their consent for contact;⁵ and affidavit systems, through which birth family members can file either their consent to the release of identifying information or their refusal to be contacted or to release identifying information

Six states – Alabama, Delaware, Maine, New Hampshire, Oregon and Tennessee – have re-established adopted adults’ direct access to their birth and/or adoption records. Table 1 summarizes the laws of these states and the laws of Alaska and Kansas (which never sealed their records).

Table 1. State Laws Providing Adult Adopted Persons with Direct Access to Birth/Adoption Information

State	Content of Law
Alabama	Original birth certificate is made available to adopted persons, age 18 or older, upon request. Birthparents may file a non-binding Contact Preference Form, requesting direct contact with the adopted adult, contact through an intermediary, or no contact at all.
Alaska (never closed)	Alaska provides access to adopted persons age 18 and older and birthparents of adopted persons age 18 and older, if the adopted person gives written permission for the release of the information.
Delaware	Adult adopted persons may request their original birth certificates. Birthparents have the option of filing a veto against disclosure. If a disclosure veto is filed, the original birth certificate is not released to the adopted person.
Kansas (never closed)	Kansas grants access to the adoption file and the original birth certificate to adopted persons, age 18 and older, birth parents, and adoptive parents of a minor child. Birthparents may contact the adopted adult if he/she agrees to contact.
Maine	As of January 1, 2009, adult adopted persons who were born in Maine will have the right to obtain copies of their original birth certificates. Birthparents may file a nonbinding preference form.
New Hampshire	The original birth certificate is made available to the adopted person, age 18 or older, upon request. Birth parents may file a non-binding Contact Preference Form.
Oregon	The original birth certificate is made available to the adopted adult, age 21 or older, upon request. Birth parents may file a non-binding Contact Preference Form.
Tennessee	Adopted persons, age 21 or older, may access their original birth certificates and adoption records unless the record indicates the birth was the result of rape or incest and the birthparent victim does not consent to disclosure. Birthparents also may veto contact.

As of September 2007, an additional 11 states allow adult adopted persons born before or after certain dates to access their original birth certificates.⁶ These statutes create what is often called a “sandwich” situation, in which persons adopted prior to a certain date (often the date of the statute that sealed birth and adoption records) and those adopted after a certain date (usually the effective date of the new statute) are given access to their birth/adoption information, leaving no rights of access to anyone adopted between the two dates. As of September 2007, legislation had been introduced in Michigan, Missouri, Minnesota, North Carolina, Ohio and Texas intended to provide adult adopted persons with access to their original birth certificates and/or other information in their adoption records.⁷

A listing of state statutes governing adult adopted persons’ access to their original birth certificates and adoption records can be found at the Child Welfare Information Gateway: http://www.childwelfare.gov/systemwide/laws_policies/statutes/infoaccessapall.pdf

Section II: The Adoption Records Debate

This section outlines the contours of the “open records” debate by describing the arguments that have been made as states have considered legislative proposals to change their laws on access to birth and adoption information. First, the arguments of proponents of access to adoption information (original birth certificates, adoption agency records, and/or adoption court records) are presented, along with the responses to these arguments by opponents of “opening” records. The second part of this section describes the arguments that have been made against amending current laws on access to this information, along with advocates’ responses.

ARGUMENTS IN FAVOR OF ACCESS

Advocates of providing adult adopted persons with access to their birth and adoption information make assertions that fall within two categories: legal arguments and social impact arguments.

Five principal legal arguments have emerged in the debates:

1. Adult adopted persons have a fundamental “right to know” personal information about themselves.
2. States do not have a legitimate role in withholding birth and/or adoption information from adopted persons once they are adults.
3. Withholding birth and/or adoption information from adult adopted persons violates legal equal protection guarantees by denying them the same rights as other persons.
4. Placing the decision on release of this information in the hands of courts has resulted in inequitable decision-making.
5. Adopted persons should not be bound by decisions on anonymity made by birthparents and adoptive parents at the time of the adoption.

The social impact arguments focus on the consequences of releasing adoption records. These arguments, made in response to objections to changes in state law, take two key forms:

1. The vast majority of birthparents, contrary to popular belief, support the release of information to the children they placed for adoption.
2. In states that have granted adult adopted persons access to their records, predictions of negative outcomes have proven to be incorrect.

THE LEGAL ARGUMENTS

The following describes each of the five principal legal arguments made in favor of opening adoption records to adopted adults, along with the responses of those who oppose this change in state laws.

1. A Fundamental “Right to Know”: This argument focuses on the right of adult adopted persons to information that furthers their knowledge of their identities, their knowledge of familial/genetic/medical history, and inheritance rights, when such are available under state law. These arguments, premised on the rights of adopted persons as the owners of this personal information, can be summarized as follows:

Identity. Adult adopted persons have a right to information essential to the construction and understanding of their identities – including the identities of their birthparents and information about their births and their adoptions. Knowing one’s roots is an inherent human need.⁸

Knowledge of familial/medical history. Adult adopted persons have a right to information that can provide them with family, genealogical and medical history on an ongoing basis, as this information develops. As recognized by the U.S. Surgeon General's Family History Initiative,⁹ familial medical history, in particular, can be of vital importance in the diagnosis and treatment of medical conditions and illnesses that are genetically-based.¹⁰

Inheritance rights, when available. In states that permit adopted persons to inherit from birthparents,¹¹ adopted adults have the right to obtain information that provides them with the benefits of inheritance – through their birthparents' wills or, in cases where birthparents die without a will, through the states' laws of distribution of property.¹²

RESPONSE: Those who oppose providing adult adopted persons with access to their information deny the existence of any fundamental right to know. They contend that the rights of birthparents to privacy supersede any right claimed by adopted persons as to the "right to know." Opponents argue that identity does not constitute a protected right and that information about one's medical history can be obtained through other means.¹³

2. The Adopted Person's Best Interests and the State's Role: The adopted adult's best interests are served by access to their birth and/or adoption information. Irrespective of how the state's role is viewed when they are children, its role does not extend to withholding information once they reach adulthood.¹⁴

This argument, as historically made, rests on an assumption that the state has a legitimate interest in sealing records upon adoption to allow the child to develop stable and loving relationships with the adoptive family. With this assumption as the starting point, the argument is made that once adopted persons attain the age of majority, they no longer require the state to act in their best interests, nor is it in their best interests to have their records sealed in perpetuity. By sealing these records, the state no longer acts in the individual's best interests but, instead, acts in what the state perceives to be the birthparents' and/or the adoptive family's best interests.

Assuming the legitimacy of sealing records during childhood to support the autonomy of the adoptive families, it is argued that the state's interest, though compelling when adopted persons are children, ceases to be so when they become adults. At that point, the state's role is to respect the autonomy of the adults, allowing them to decide for themselves what is in their own best interests and allowing adopted persons who wish to access their records to do so.

RESPONSE: Opponents of access to records for adult adopted persons maintain that the state's role legitimately extends to protecting their interests, and those of the adoptive family, over time. They argue that the best interests of adopted persons demand that this information continues to be protected throughout the affected individuals' lifetimes.¹⁵

3. Denial of Equal Protection: Adopted persons are entitled to the same information about their births that is available to non-adopted persons.¹⁶

The equal protection argument focuses on the rights of adopted persons in relation to those who were not adopted. The thrust of this argument is that the two groups are not treated equally: non-adopted persons can obtain their birth certificates by paying a fee, whereas adopted persons must petition a court, with questionable prospects of success. The heart of this argument is that denying the latter the right to access their original birth certificates solely on the basis of their adopted status is unfair, discriminating against them solely on the basis

of how they entered their families. This argument is also made in relation to so-called “sandwich” laws that provide records to some adopted persons but not all, based on the dates of their adoption. Such distinctions, it is contended, are unfair as they arbitrarily recognize the fundamental rights of only some adopted persons.

RESPONSE: Those who oppose access of adult adopted persons to their birth information argue that there is no equal protection claim. They contend that adopted persons are not being unfairly subjected to state-sanctioned discrimination on any basis recognized by law. They further assert that the “right to know one’s origins” is not a fundamental right protected under the equal protection clause of the Fourteenth Amendment.¹⁷

4. Inequitable Decision-Making: Placing decisions on the release of information in the hands of courts, without standards regarding “good cause” for the release, has led to inequitable results.¹⁸

This argument focuses on the outcomes of current laws that require adopted persons to gain court approval for release of their information, contingent on a judicial finding of “good cause.” The argument highlights the different interpretations of “good cause” by various courts. It maintains that because there is no standard definition of “good cause” that permits access to adoption information, an adopted person’s ability to obtain it rests on a case-by-case interpretation that differs significantly from one court to another. Some courts, for example, have accepted psychological need as constituting “good cause,” while others have decided that even extreme medical necessity may not be sufficient to constitute “good cause.”

This argument also maintains that because there are no standards for determining “good cause,” courts often take a very conservative approach in deciding whether to release information. Courts weigh the interests of the adopted persons against those of birthparents, who are not a party to the proceedings, are not represented, and whose true desires are not known and can only be assumed. It is contended that courts make presumptions about the desires of the absent birthparents (the presumption being that they would not want the information disclosed), and typically conclude that birthparents’ presumed interests are more important than the actual interests of the adopted persons who appear before them.

RESPONSE: Opponents of “open records” view judicial decision-making as appropriately placed in the hands of courts that make determinations about the release of information to adopted adults, just as they make decisions on other issues. They contend that judicial concerns about the interests of birthparents are appropriate and should guide judicial discretion in making these decisions.¹⁹

5. Adopted Persons Not Bound by the Decisions of Others: Adopted persons cannot be bound by other parties’ decisions regarding anonymity.²⁰

This argument is based on the absence of the adopted person from the adoption planning process and from any discussions about anonymity that may have occurred at the time of the adoption. It concedes that some birthparents may have agreed to anonymity (though not necessarily for a lifetime), but also contends that many were given no option other than to accept, as a condition of the adoption, that they would not receive any further information. Adoptive parents may (or may not) have made clear their expectations that their children would receive no information about their birthparents. This argument maintains the rights of adopted persons, who did not participate in any discussions or agreements, cannot be “signed away” by others. It contends that adopted persons did not waive their rights to knowledge about their births, and others cannot waive those rights for them.

RESPONSE: Opponents contend that adopted persons lack the right to change the nature of the agreements made at the time they were adopted. They project highly negative social and

psychological outcomes for birthmothers should adopted persons be allowed to act “against” the purported wishes that lay at the heart of women’s relinquishment of their children for adoption.²¹

THE SOCIAL IMPACT ARGUMENTS

Advocates of restoring access to adoption records have made two principal social impact arguments in response to contentions that this legal change would have highly negative consequences, principally for birthmothers. The arguments in response to these contentions draw on the small body of research that has explored the viewpoints of birthparents and the experiences of the states that allow adopted adults to obtain their records.

1. Birthparents’ Support for Access to Records: The great majority of birthparents, contrary to popular assumptions, support the release of information about themselves to the children they relinquished, and desire contact with or information about them.

This argument takes issue with the frequently stated contention that birthmothers strongly object to adopted adults’ access to their birth and/or adoption information. In response to this contention, advocates of unsealing records draw on studies demonstrating that the vast majority of birthparents want information about themselves to be released. Studies in this area are few and have methodological limitations; however, they provide insights into birthparents’ views regarding the sharing of information about themselves and/or contact with the children they relinquished for adoption:

- In one study, 82 percent of birthparents said they would be interested in a reunion with their children.²²
- In a study in which birthparents volunteered to participate, the Maine Department of Human Resources Task Force on Adoption found in 1989 that everyone surveyed (130) wanted to be found by the child/adult they had relinquished for adoption.²³
- A 1991 study found that a substantial majority of birthmothers (88.5 percent) supported access by adult adopted persons to identifying information on their birthparents.²⁴
- A recent report by the Evan B. Donaldson Adoption Institute found that contacts with their birth children – and knowledge that they are well and safe – are the most powerful factors in helping birthmothers resolve the grief associated with having relinquished their children for adoption.²⁵

Advocates also point to analyses of relinquishment documents, which demonstrate that confidentiality was not promised to women considering adoption for their children.²⁶ These analyses have found that adoption agencies, rather than promising confidentiality, told birthparents that they had to “move on” for the benefit of their children and themselves.²⁷ In the course of legal challenges to states’ laws that permit adult adopted persons to obtain their birth and adoption information, printed relinquishment forms have been produced and reviewed. Many of them contain language instructing birthmothers to refrain from any effort to locate the adoptive family or make contact with the family or the child.²⁸

2. No Harmful Results when Access is Permitted: None of the predicted negative outcomes have occurred in states that have “opened” their records.

In response to contentions that allowing access to records will have extremely negative consequences, advocates draw on reports from states that have changed their laws. Table 2 provides data collected by the American Adoption Congress on the experiences of states that have done so and tracked subsequent outcomes. This data, though limited, strongly indicate that large numbers of adopted persons have sought information about their births and/or adoptions and that few birthparents have “vetoed” information access or expressed a desire against contact when given the statutory opportunity to do so.

Table 2. States Experiences after Allowing Access²⁹

State	Access Results
Alabama	Since the law's passage in May 2000, 2,722 adopted adults have obtained copies of their original birth certificates, with 131 Contact Preference Forms filed (state does not track expressed preference).
Delaware	From January 1999 to October 2006, 695 adult adopted persons obtained their original birth certificates; 16 did not receive complete original birth certificates as a result of disclosure vetoes.
New Hampshire	As of July 9, 2007, 1,000 adopted adults received their original birth certificates. Twelve birthparents stated their preference for no contact.
Oregon	In the six years since adopted adults obtained access to original birth certificates, 9,193 have received copies (as of February 1, 2007). Seventy-nine birthparents requested no contact in year one, one in year two, and one in year three. According to The Oregonian newspaper, there are between 66,000 and 132,000 adopted persons in Oregon. Assuming half of the birthparents are deceased, the percentage in Oregon requesting no contact is less than 0.25%.
Tennessee	The state has not reported statistics.

No empirically-based studies have been conducted of states' experiences following changes in their adoption records laws. Anecdotal accounts indicate that the adverse social impact predicted by opponents have not come to fruition. According to the American Adoption Congress, there have been no reports that adopted persons disturbed or harassed birthparents or that divorces were precipitated by adopted persons' reunions with their birthparents. Oregon reported that over the five years since the new law took effect, “there has been nearly no negative fall out from the open records measure/legislation,” leading the state's adoption program director to conclude, “we here in Oregon have learned ... that in the crafting of public policy, the fears of a few ... cannot necessarily be generalized to all of the public that is affected.”³⁰

Also cited in support of this argument are the findings of Dr. John Triseliotis, a researcher in the United Kingdom, who has studied the impact of records access worldwide. He has observed that “a policy of open records has been operating in Scotland since 1930 and in England from 1976 onwards. There has been no evidence so far of adopted people misusing or abusing this facility. The experience of countries such as Finland, Israel, and New Zealand, where open records operate, has been similar.”³¹

ARGUMENTS AGAINST ACCESS TO ADOPTION RECORDS & RESPONSES

The arguments against restoring access have likewise taken the form of legal and social impact arguments. The latter have played particularly potent roles in the policy debates and will be addressed first in this section, along with advocates' responses. The principal social impact arguments from those who oppose “opening” records to adult adopted persons are that allowing them to access their information would:

1. Violate promises to birthmothers

2. Lead to the imposition of unwanted relationships
3. Result in an increase in abortion and a decrease in adoption
4. Undermine the integrity of the adoptive family
5. Undermine the institution of adoption
6. Cause an increase in the foster care population

Next, this section presents the legal arguments against access, with corresponding responses. The key legal arguments are that allowing adopted adults to access their information would violate:

1. Constitutional rights to familial privacy
2. Constitutional rights to reproductive privacy
3. Constitutional rights to avoid disclosure of confidential information
4. Equal protection
5. The privacy rights of adoptive parents

THE SOCIAL IMPACT ARGUMENTS

1. Opening Records Violates Promises to Birthmothers: Allowing adult adopted persons to access currently-sealed documents violates the confidentiality that was promised to birthmothers, exposing private information that they were promised would not be made public.³²

This argument asserts that women were promised anonymity as to the children they relinquished for adoption, and those promises cannot be rescinded after the fact. These promises, it is argued, were made in two forms: state statutes that provided for confidentiality and verbal assurances by adoption professionals. It is maintained that these promises created binding legal agreements that cannot now be broken.

RESPONSES: Advocates of access to records contend that no enforceable promises existed regarding birthmothers' anonymity. Courts that have considered these arguments in Tennessee and Oregon have agreed with the advocates.³³

Response #1: State laws have never promised birthmothers complete confidentiality from their children.

Courts have recognized that adoption is a service for children whose parents, for whatever reason, do not raise them. Adoption has not traditionally been viewed as based on a "contract" among the involved parties. Courts, however, have been willing to consider arguments that some form of "contract" was made in the course of adoption planning or proceedings. In these cases, courts have required that any purported "contract" comply strictly with state statutes.

The key question is whether state laws that seal adoption records create promises that they are and will always be confidential. Courts have held that such a promise – guaranteeing the confidentiality of adoption information for all time – can exist only if the laws expressly state that the closure is (1) *absolute* and (2) *permanent*.

These statutes are not absolute. Courts that have considered this issue have held that state statutes regarding the confidentiality of adoption information are not absolute. State statutes allow courts to release adoption information to an adopted person upon a showing of good cause, the best interest of the adopted person, or other factors. When information is released to adopted persons in these circumstances, there typically is no statutory requirement that the birthparent give consent. Because these statutes make adoption information accessible to

adult adopted persons under certain circumstances without birthparent consent, they do not provide an absolute guarantee that adoption information will be safeguarded against any and all disclosures in the future. As a result, courts have ruled that even if birthparents had expectations that the state would not allow the information about the adoption to be made public, it was never possible to make assurances that this information would be withheld from the children they relinquished for adoption.

Adoption records statutes are not permanent. Courts that have considered this issue have held that state statutes do not provide that current laws on access to adoption information are permanent and can never be changed. Courts have found that just the opposite has occurred: state laws on these issues have been amended regularly over the past century to provide varying degrees of confidentiality (open access to adoption records, the sealing of adoption records, the unsealing of adoption information for some or all adopted persons). Courts have made clear that legislatures must be free to repeal and amend laws. Because laws on adoption information access are subject to change over time, as are laws on a host of topics, courts have held that they are not “permanent.”

Response #2: Adoption practitioners’ verbal promises of confidentiality are not – and cannot be – binding unless they are supported by the law.

Courts that have considered this issue have taken the position that any “promises” from social workers, doctors or adoption professionals do not have legal force unless they are supported in statute.

Courts typically first consider whether adoption practitioners actually made promises of confidentiality to birthmothers. Reviews of signed agreements have found no such “promises” in writing.³⁴ The testimony of birthmothers indicates that few were offered a choice about confidentiality and that, in most cases, they were told that secrecy was a condition of the adoption.³⁵ Courts, however, acknowledge it is possible some adoption professionals made verbal promises to women that their anonymity would be protected in perpetuity. If such promises were made, they were grounded in individual professionals’ views and not the law, and courts have refused to provide these inaccurate opinions with the force of binding legal agreements.

The legal analysis also has focused on a determination that adoption practitioners who make promises based on a misunderstanding of the law (or, possibly, other factors) cannot bind legislatures into the future. A state legislature is empowered to repeal and amend laws unless the legislature itself explicitly provides that a statute can never be changed. Courts have held that adoption professionals’ verbal promises of confidentiality cannot be permitted to tie the hands of legislatures into the future.

2. Restoring Access to Records Imposes Unwanted Relationships: Allowing adult adopted persons to obtain their information forces birthparents into unwanted relationships with the children they relinquished.³⁶

This argument holds that unsealing records will result in highly negative outcomes for women who do not wish to have relationships with the children, now adults, whom they relinquished for adoption. The supporters of this argument frequently refer to birthmothers who were the victims of rape or incest and who wish to maintain secrecy about their experiences. This argument also predicts that adopted persons will “force” themselves on birthmothers who have not told their husbands, children or others in their families, resulting in shame and humiliation if their secret is revealed.

RESPONSE: The right to information is simply that – the right to information.

Proponents of records access maintain that this argument confuses the right to information with the right to a relationship. Their response contends that laws providing adopted persons with access to their information recognize their legitimate interest in and need to obtain personal data and do not mandate – nor could they – that any persons create or sustain personal relationships with one another. It focuses on the nature of relationships as mutually developed between individuals.

The response points to research and the experiences of active registry and confidential intermediary programs that have shown the vast majority of birthparents are eager for contact with the children they bore, not secrecy from them. As discussed earlier, the research is limited, but it is one-sided in indicating that birthparents want contact and relationships. The response acknowledges that some birthparents may not want a relationship with their children for a variety of reasons. It maintains that these birthparents are free, as competent adults, to communicate their desires in this regard, having had between 18 and 21 years to decide what they might say if contacted by the child they relinquished. The response also points out that if birthparents are not certain at the moment of contact, they can work through their responses over time, as occurs in any new relationship.

The response further maintains that characterizing contact between adopted persons and their birthparents as “intrusions” and “forced relationships” does a deep disservice to all parties. Assertions that adopted persons are overreaching, thoughtless individuals who could wreck havoc on the lives of their birthparents – or even that they are would-be stalkers – generate fear and distrust. Such characterizations disparage the motives and integrity of adopted persons who seek personal information, some of whom also explore the possibility of relationships. As discussed earlier, these notions contradict the experiences in states that have restored access to records.

This response further argues that depictions of birthparents as fearful individuals who desire nothing more than to hide in the shadows are based on societal attitudes that birthmothers cannot – or, perhaps, should not – overcome the “shame” of a non-marital birth and relinquishment of their children. It maintains that these assertions disparage the motivations and strengths of birthparents, and ignores the changes that many (if not most) experience in their personal views and realities over the years; rather than mature adults able to deal with complex situations, they are cast as child-like individuals who need governments and other people to make their decisions for them.

3. Allowing Access to Records Increases Abortions and Decreases Adoptions: Allowing adult adopted persons to access their information causes more women to choose abortion over adoption because the former choice is confidential and the latter is not.³⁷

This argument holds that some women, faced with an unplanned pregnancy who would otherwise choose adoption, will choose abortion instead if they cannot place the child with the assurance of confidentiality. It is stated that the number of women who would make such a choice is impossible to tell, but that “the loss of human potential from even one abortion that could have been an adoption is unknowable.”³⁸

RESPONSES:

Response #1: There is no evidence that the assertion regarding abortion rates is true.

The response points to data on abortion rates in states where adult adopted persons have long been able to obtain their original birth certificates (Kansas and Alaska), states that have amended their laws to allow adopted adults access to their information, and states that continue to keep records sealed. These data demonstrate no discernible relationship between a state’s policy on access to adoption information and the abortion rate within its borders.

The Oregon Center for Health Statistics and Vital Records reports that the number of induced abortions performed in the state dropped 18.2 percent in the four years since passage of its law restoring access to records. The national decrease in abortions during the same period was 2 percent.³⁹ This trend is similar to abortion rate trends in England and Wales when adoption records were opened.⁴⁰ Other states with new adoption records laws have not issued analyses of these trends, limiting the scope of this analysis.

Table 3. Abortion Rates: 2002⁴¹

Jurisdiction	Abortions per 1,000 live births
United States	326.5
<i>Always open records</i>	
Kansas	311.3
Alaska	167.0
<i>Once sealed records now open</i>	
Alabama	234.5
Delaware	490.5
New Hampshire	208.4
Oregon	376.4
Tennessee	245.3
<i>Sealed birth/adoption records</i>	
California	445.9
Colorado	227.0
Iowa	158.9
Nebraska	167.4
New York	654.8
Washington	331.5

To address the contention that providing adopted adults with their information leads to increases in abortion, the proponents’ response points to data on abortion rates in different categories of states. Table 3 provides abortions rates for the United States and for states that provide access to birth/adoption information and states that do not. As Table 3 shows, Kansas and Alaska, where adult adopted persons always have had access to their original birth certificates, the abortion rate per 1,000 births is lower than the national rate. When states that have reopened records are compared to those that remain closed, the abortion rates vary. In some states that allow records

access, abortion rates are low; in others, they are higher. In some states with closed records, abortion rates are low; in others, they are higher.

The response maintains that the sensible explanation for the variation among states lies not in the legalities regarding access to adoption records (or any other extraneous legal factors) but in separate factors, including social and cultural ones that affect abortion decision-making, as well as state differences in accessibility to abortion services (waiting periods, parental notification requirements, and restrictions on public funding of abortion).

Response #2: There is no evidence that providing adopted persons with access to adoption information decreases adoption.

This response points to data which demonstrate that reopening records does not precipitate a decline in adoption rates; indeed, Oregon has reported that adoptions have increased since its law went into effect. The Oregon Department of Human Services reports that the number of independent (attorney assisted) adoptions increased from 208 in 2001 to 221 in 2002 and 2003.⁴² Other states have not provided trend data on adoption since enactment of their statutes, limiting the scope of this analysis.

To illustrate the relationship between records and adoption rates, the response focuses on data that states provide on infant adoptions. Table 4 provides comparative data on rates of infant adoptions in three ways: per 1,000 abortions, per 1,000 live births, and per 1,000 nonmarital births. As Table 4 shows:

Table 4. Unrelated Infant Adoption 2002 Compared to Non-Marital Live Births and Abortions⁴³

Jurisdiction	Infant adoptions per 1,000 abortions	Infant adoptions per 1,000 live births	Infant adoptions per 1,000 non-marital births
United States	17.0	5.5	16.3
<i>Always open records</i>			
Kansas	26.7	8.3	26.8
Alaska	142.8	23.8	70.1
<i>Once sealed records now open</i>			
Alabama	26.7	6.3	18.0
Delaware	5.3	2.6	6.4
New Hampshire	38.0	7.9	32.3
Oregon	23.7	8.9	28.8
Tennessee	21.3	5.2	14.4
<i>Sealed birth/adoption records</i>			
California	10.7	4.8	14.5
Colorado	32.6	7.4	27.6
Iowa	52.4	8.3	28.4
Nebraska	34.9	5.8	20.4
New York	19.2	6.7	18.7
Washington	17.8	5.9	20.5

- The rates of infant adoption per 1,000 abortions in Kansas and Alaska, where adult adopted persons always have had access to their original birth certificates, are higher than the national average. In Alaska, the adoption rate is substantially higher.

- Both Kansas and Alaska have higher rates of adoption per 1,000 nonmarital live births than the national rate.

- In states that have unsealed birth/adoption records, most have rates of infant adoption per 1,000 abortions and per 1,000 nonmarital births that meet or exceed the national rates.

- There is great variability in adoption rates among the states that have maintained sealed birth/adoption records laws.

The National Council for Adoption's Adoption Option Index, in fact, ranks four states that allow access to records in the top 20 with the highest adoption rates: Alaska (ranked number 2); New Hampshire (number 11); Kansas (number 18); and Oregon (number 19).⁴⁴

The response emphasizes that these data contradict the often-stated suggestion that adult adopted persons' access to their information will result in fewer adoptions. Instead, the data indicate that altering current laws may result in higher rates of adoption placement by non-married individuals who give birth. One explanation that has been put forth is that a pregnant woman's understanding that placing her child for adoption will not necessarily cause her to permanently lose contact may actually support a decision to proceed with adoption.⁴⁵ Research suggests that the vast majority of adoption agencies, as well as independent practitioners, offer open adoptions, in which identifying information is exchanged, and that extremely few women choosing adoption today seek anonymity or express a desire not to have ongoing information or contact with their children.⁴⁶

4. Allowing adult adopted persons to access adoption information undermines the integrity of the adoptive family: This argument maintains that adopted adults' access to their information destabilizes adoptive families and heightens the risk that adoptions will fail.⁴⁷

RESPONSE: The strengths of adoptive families rest in parent-child relationships and other family dynamics, not on withholding information from children once they reach adulthood.

In response to this argument, advocates of reopening records maintain that adoptive parents know they formed their families through adoption, know their children have birthparents, and know they are their children's permanent families. They point to studies that show the majority of adoptive parents are secure in their relationships with their children and support their children's efforts to learn more about their birth families once they reach the age of majority.⁴⁸ They emphasize that adoptive families' growing participation in open adoptions further demonstrates that they are readily able to incorporate their children's birth histories and the reality of their birth families into their lives.⁴⁹

The response challenges assertions that adoptive families will "disrupt" when adopted adults obtain information about their births/adoptions at age 18 or 21 (two decades after joining their adoptive family). Adopted adults may – or may not use – the information they obtain to search for their birthparents. Those who choose to search make it clear that – at their age – they are not rejecting their adoptive parents or looking for new ones; rather, they are manifesting a desire to complete their understanding of their personal histories and heritage.⁵⁰ The response draws on these findings (as well as anecdotal evidence) to argue that adoptive families are far stronger, healthier and more secure than opponents of unsealing birth/adoptive records appear to believe.

5. Allowing adult adopted persons to access their information undermines the institution of adoption: This argument contends that adoption as a viable way to form families will be negatively affected by allowing adult adopted persons access to their birth and/or adoption information.⁵¹

RESPONSE: Adoption is a strong and vital institution.

The response argues that adoption has proven itself highly adaptable as social, cultural, and economic conditions – as well as the needs of children and families – have changed over time. It denies that adoption would stand on the precipice of destruction if adult adopted persons get access to information about their births/adoptions. It points to adoption statistics in states that have always allowed access to this information and asserts that these data prove the opposite: that adoption remains a viable way to form families when adult adopted persons have access to their information.

6. Allowing adult adopted persons to access adoption information causes an increase in the foster care population: This argument links records access by adult adopted persons to growing numbers of children entering foster care. It states that access laws will cause women to choose to raise their children rather than place them for adoption; that the majority of these women are single mothers; and that as a result of single parenting, these women's children are at high risk of entering the foster care system.⁵²

RESPONSE: Children enter foster care because of abuse and neglect, not because women choose to raise their children as single parents.

The response points to research which demonstrates that certain social and economic factors may place children at risk of abuse and neglect.⁵³ Single parenting is only one of a number of factors associated with a greater risk of child maltreatment. In overwhelming numbers, children reared by single parents are not maltreated.⁵⁴

THE LEGAL ARGUMENTS

1. Allowing adult adopted persons to access their information violates constitutional rights (federal/state) to familial privacy: This argument asserts that allowing adopted adults to access their records violates the constitutional right to familial privacy.⁵⁵

RESPONSE: Access to adoption information is entirely consistent with “familial privacy.”

Courts have held that when adult adopted persons have access to adoption information, the constitutional rights “to marry, establish a home, and bring up children” remain powerful and unchanged. People are still free not only to marry and raise children, but also to adopt children and/or place them for adoption.⁵⁶

2. Allowing adult adopted persons to access adoption information violates constitutional rights (federal/state) to reproductive privacy: This argument asserts that the constitutional right to reproductive privacy includes adoption.⁵⁷

RESPONSES:

Response #1: Courts have never recognized adoption as part of the constitutional right to reproductive privacy.

In reviewing this argument in relation to the Oregon statute, the court of appeals made a clear distinction between pregnancy and adoption. It held that pregnancy is a reproductive decision; adoption, which is created by statute, is not. The court ruled that no one has a constitutional right to adopt or to place a child for adoption. Further, even if a future court were to hold that the right to place a child for adoption is constitutionally protected, it would still be a choice women could make – whether records were open or sealed.⁵⁸

Response #2: Adoption is about children, not reproductive privacy.

Courts have held that adoption was created (by statute) to protect the interests of children whose mothers and/or fathers, for whatever reasons, do not parent them. The courts have held that adoption was not developed as a means to promote reproductive rights to privacy for birthparents.⁵⁹

3. Allowing adult adopted persons to access adoption information violates constitutional rights (federal/state) to avoid disclosure of confidential information: This argument asserts that there is a constitutional right to prevent the disclosure of information that an individual considers confidential.

RESPONSE: There is no constitutional right to prevent the disclosure of “confidential” information.

There is no constitutionally protected right to have all information that one considers “confidential” shielded from disclosure. Specifically, information about one’s sexual activity, particularly in relation to pregnancy and birth, is not confidential. Courts have noted that births are a matter of public record.⁶⁰ Men have been subject to paternity suits for centuries and are the subject of such suits in every state of the union. In addition, in many states, men are required to register in putative fathers’ registries if they wish to assert parental rights to a child later placed for adoption.⁶¹ Other information that an individual may prefer to keep secret (such as a divorce, criminal conduct, or child support obligations – all of which may be “private,” if not more so, from an individual’s perspective) are matters of public record. Courts

have held that the constitutional right of privacy has never included a general right to the nondisclosure of all forms of information that an individual may prefer to keep secret.⁶²

4. Allowing adult adopted persons to access their information violates constitutional equal protection (federal/state): This argument asserts that providing adoption information may lead to the release of more birthmothers' names than birthfathers' names and, as a result, the women are being treated unfairly. The argument also asserts that birthmothers are unfairly subjected to embarrassment and stigma, thereby violating a fundamental right to privacy.

RESPONSE: There is no such "equal protection" right. The response contends:

There is no unfair classification of birthmothers. Legally freeing a child for adoption requires terminating the father's rights as well as those of the mother. So – in legal terms – women are not treated more punitively than men.

There is no fundamental right "not to be embarrassed." Access to adoption information is provided to the adult adopted person, not the general public. The adopted person already knows that he or she is adopted, as does the birthparent. The birthparent may, or may not, be "embarrassed." There is no constitutionally protected right to be free of embarrassment.

5. Allowing adult adopted persons' access to their information violates the privacy rights of adoptive parents.

RESPONSE: There are no familial privacy rights for adoptive parents once their child reaches the age of majority.

Adoptive families have a recognized right to privacy in their familial relations and in keeping their families intact, but those rights end when the child reaches the age of majority. Parents (adoptive and non-adoptive) have no rights of control over their adult children. Adoptive parents may believe their best interests are served by keeping information from their adult children, but they have no more legal right to control such information than do non-adoptive parents. Adults, as individuals and as family members, are legally autonomous individuals with the right to make decisions for themselves.

Section III: Discussion and Recommendations

"In all of us there is a hunger, marrow deep, to know our heritage, to know who we are and where we have come from. Without this enriching knowledge, there is a hollow yearning; no matter what our attainments in life, there is the most disquieting loneliness."

-- Alex Haley (*Roots*)

Much has been learned from the experiences of states that have considered changes in their adoption records laws and, in particular, the experiences of those that have restored records access to adult adopted persons. This understanding has made it possible to move from speculation about the appropriateness and wisdom of providing such access to a more-informed consideration of the issues that are relevant to legal change and to the social impact of these changes.

This analysis of the debate over adoption records highlights the key role legal and social impact arguments have played in support of and opposition to law changes that provide adult adopted persons with access to their birth and/or adoption records. A consideration of the debate, and of the experiences of states that have reopened records, lead to several key findings:

- Adopted persons are the only individuals in the United States who, as a class, are not permitted to routinely obtain their original birth certificates. This prohibition on access to one's own personal information raises significant civil rights concerns, particularly given the growing understanding of the need to know one's own history, heritage, and medical and genealogical data.
- Denying adult adopted persons access to information related to their births and adoptions has potentially serious, negative consequences with regard to their physical and mental health. As recognized by the US Surgeon General's office in its Family History Initiative, biological family medical history is vital to prevention and early diagnosis and treatment, particularly with regard to diseases and conditions for which individuals may be genetically predisposed, such as heart disease, cancer, and certain mental health conditions.
- As states have amended their laws to provide adult adopted persons with access to their birth and/or adoption information, there has been no evidence of the sorts of negative consequences predicted by opponents of changing these laws, including intrusive behavior such as stalking by adopted persons who receive their personal information.
- Similarly, there has been no evidence that the lives of birthmothers have been damaged as a result of the release of information to the children (now adults) whom they relinquished for adoption. In debates leading to these legal changes, opponents had uniformly stated that birthmothers object to the release of birth information and to being contacted by their children. In the states that have amended their laws, however, few birthmothers have expressed the desire to keep records sealed or the wish *not* to be contacted; indeed, in the vast majority of cases, the converse appears to be true.
- Another assertion by critics of changing these laws – that abortion rates rise as a result of such access – is not supported by the experiences of states that have re-opened records (or have never closed them); in fact, the data indicate that reopening records may reduce abortion rates and may increase adoption rates.
- Not all adopted persons use the information that they obtain to search for their birthparents, siblings or other family members. Adopted persons who choose to search invariably make clear that their decisions are not a rejection of their adoptive parents but a desire to learn more about themselves and their histories. In growing numbers, adoptive parents support their adult adopted children's searches.
- Research shows that knowledge of what happened to the children they relinquished for adoption plays a powerful role in the resolution of birthmothers' grief, thereby suggesting that providing access to birth and/or adoption information can have other positive consequences.
- There has been scant evidence that birthmothers were explicitly promised anonymity from the children they relinquished for adoption. Relinquishment documents provided to courts that have heard challenges to states' new "open records" laws do not contain any such promises. To the extent that adoption professionals might have verbally made such statements, courts have found that they were contrary to state law and cannot be considered legally binding.

- In addition to the states that have reopened birth and/or adoption records to all adult adopted persons, a growing number of states have restored access more narrowly – typically to (1) individuals who were adopted prior to the state’s law sealing this information and/or to (2) individuals adopted after the effective date of the statute providing access. These statutes have created a “sandwich” situation in which individuals caught in between – adopted a day too early or too late – are precluded from obtaining their documents. These situations raise significant civil rights and fairness issues by denying access to personal information to a selectively defined group of adults.

RECOMMENDATIONS

Much has been learned from the states that have reopened their records, as well as from those that have considered changes in relevant laws. Based on historical, social science and practice research, along with an analysis of the experiences of those states, the following recommendations are made to advance the development and implementation of sound public policy:

1. Amend every state’s laws to restore unrestricted access for adult adopted persons to their original birth certificates.

States’ experiences in providing this information make clear that there are minimal, if any, negative repercussions from taking this important policy step. Outcomes appear to have been overwhelmingly positive for adult adopted persons and birthparents alike; the predicted adverse outcomes, particularly for birthmothers, have not come to fruition.

To support states in amending their laws, it is recommended that:

- **Involved organizations, including the Adoption Institute, should monitor state legislative activity on an ongoing basis.** States that are considering the introduction of legislation to provide adult adopted persons with access to their birth and adoption information, or that have introduced such legislation, should be routinely identified and activity within them should be tracked. The intent is to gather information about the scope and nature of legislative proposals in order to assess how best to further them.
- **Advocates, legislators and affected parties from across the U.S. should convene to identify strategies that can support policy changes.** Individuals who have been actively engaged in efforts to change state laws on this issue should be brought together to contribute their collective wisdom and experience. To date, efforts to change pertinent laws have focused solely on individual states rather than on broader, more strategic efforts. A valuable next step would be to assemble activists and other knowledgeable individuals from around the country to discuss what they have learned and to jointly develop resources and tools that identify:
 - key tactical and strategic components to legislative advocacy on the issue of birth/adoption records access
 - major players in any state’s strategy to educate policy-makers, both within and outside of that state
 - critical messages in a legislative advocacy strategy to amend state laws regarding the access issue
 - successful tactics and strategies in educating legislators and influencing the legislative process

- effective responses to inaccurate assertions, speculations or data that are not borne out by research or experience

2. Within three years of enactment, revisit state laws that create a “sandwich” situation in which some adult adopted persons are denied access to their birth/adoption information.

The experiences of states that have opened birth/adoption information to some but not all adopted persons should be examined to learn how implementation has affected birthparents, adopted persons and adoptive families. If there are minimal or no adverse consequences, as might be assumed based on the experiences of states that have fully reopened records to all adopted persons, these laws should be revisited and those who had been excluded should be provided unrestricted access to their information.

3. Conduct research to expand the understanding of the experiences of adopted persons, birthparents and adoptive parents in relation to the issue of access to records.

The following types of research activities should be implemented:

- **Develop and utilize mechanisms to collect and analyze data on the outcomes for adopted persons and birthparents following changes in state law.** Some states have developed mechanisms to track outcome data following statutory changes regulating adult adopted persons' access to their birth and, for some, adoption records, but not all states have done so. Specifically, states should be assisted in developing processes to collect data on the:

- number of adult adopted persons who request birth and adoption information that is made available by statute
- number of birthparents who, when authorized to do so, object to the release of information and/or contact
- documented incidents of harassment or other inappropriate behavior by adult adopted persons or birthparents
- adoption rates for the affected state following law changes, along with analysis of trends over time
- abortion rates for the affected state following law changes, along with analysis of trends over time

- **Conduct qualitative research about the experiences of adult adopted persons and birthparents in states that reopen birth and/or adoption records.** In addition to data on outcomes and trends, much more needs to be learned about the experiences of the people most directly affected after access laws are amended. Qualitative studies involving interviews with adult adopted persons, birthparents and other family members are vital to the understanding of the impact of legal changes.

- **Conduct more rigorous research on the perspectives of birthparents regarding adult adopted persons' access to their information.** The current body of research on birthparents' perspectives is extremely limited: there are few studies, the existing ones are dated, and each has methodological limitations that affect generalization. Well-designed studies, involving quantitative and qualitative methods, are needed to provide a strong knowledge base on birthparents' perspectives regarding access and contact. Qualitative research with birthmothers, in particular, is needed to develop a clearer understanding of the extent to which they may have concerns about the reopening of birth records.

4. Build on the experiences of states that have restored access to original birth certificates to expand adopted adults' access to information in their adoption agency and court records.

Much is being learned from states' experiences following the restoration of adopted adults' access to their original birth certificates and from the experiences of the more limited number of states that have provided their access to information in adoption agency and court records. This knowledge base can provide a basis for policy changes that would provide adopted adults with greater access to their personal histories. These experiences should be documented and utilized in ongoing policy development on these issues.

5. Develop education programs to provide accurate data and counter mythology and misinformation.

The debates on legislative proposals to change state laws on access to their birth and adoptive records have taken place not only in state legislatures, but also in the "court of public opinion." It is essential that information be developed to educate the public, the media and policy-makers about the key issues; create a more-accurate knowledge base; and counter the erroneous information and assumptions that can undermine a well-informed debate.

6. Focus attention at the national level on state law and policy approaches on the issue of access to birth and adoption records.

Although state law regulates access to birth and adoption records, ongoing attention to the relevant issues at the national level is essential – by including this subject on national organizations' policy agendas, by offering presentations at national conferences, and by providing information in national organizations' publications. Leadership in positioning this issue nationally is essential to ensuring that state policy decisions are supported by the most up-to-date, relevant, and accurate information.

C O N C L U S I O N S

Providing adopted persons with the same rights as their counterparts who are raised in their biological families is a matter of legal equality, ethical practice and, on a human level, basic fairness. Furthermore, it is an essential step toward placing adoptive families, families of origin, everyone connected to them – and, indeed, adoption itself – on a level playing field within society, without the stigma, shame and inequitable treatment they have experienced in the past.

One of these rights – access to birth certificates and other documents – has been heatedly debated for decades, including intense speculation about the repercussions of permitting adopted persons to obtain their information once they reach the age of majority. Today, the question no longer needs to be discussed in theory, because the knowledge base has grown substantially as a result of research, policy debates, and individual states' experiences in implementing new statutory approaches that restore access.

By synthesizing and analyzing the expanding body of knowledge, this policy paper by the Evan B. Donaldson Adoption Institute provides the necessary foundation for advancing sound public policy that recognizes the right of adopted persons to know their personal histories. There is no evident benefit to waiting any longer for statutory reform; the recommendations in this paper provide a blueprint for the critically needed next steps.

Glossary of Terms

In this paper the Adoption Institute recommends that, upon reaching adulthood, all adopted persons should receive unrestricted access to their original birth certificates. The Institute's report does not suggest such access to other records. Since references to various types of birth and adoption records can be confusing, used differently by different parties or misconstrued, this glossary provides definitions of the relevant terms.

Adoption agency records. Records maintained by the agency that assisted in arranging and finalizing an adoption and held as confidential. These may include medical, psychological and social information concerning the birth family, collected at the time of the placement; birth information; details of the circumstances of the placement; and information about the adopting family. Copies of legal documents may also be included. In some instances, the files may contain correspondence received after the adoption from the birth family, the adoptive parents, or the adopted person.

Adoption records: A general term that refers to documents that are both public and non-public in nature that provide information about an adoption. The term "adoption records" includes the original sealed birth certificate, the court documents that relate to the processing and finalization of the adoption, and the non-public records of the agency or attorney who assisted in arranging and/or finalizing the adoption.

Amended birth certificate. A term used to refer to the new birth certificate that is issued for an adopted child after an adoption becomes final; it shows the new name of the child and lists the adoptive parents as the biological parents. The new birth certificate is placed in the public records in place of the child's original birth certificate.

Court records (adoption cases). The files and records of the court related to an adoption proceeding. As a rule, upon the entry of the final order in an adoption case, all court papers related to the adoption are sealed. Access to these records is governed by state law, and opening of the records for inspection by any person is prohibited unless there is a written order of the court and/or written consent of the parties to the adoption.

Identifying information. Names, addresses, and other information that could be used to determine the identity of a party to an adoption.

Non-identifying information. General background information on a party to an adoption that does not lend itself to identifying that individual. Non-identifying information may include appearance, religion, ethnicity, race, birthparents' education and occupation, the name of the agency that arranged the adoption, and the facts relating to the nature and cause of the adoption.

Original birth certificate. An official record of the date and place of a person's birth, usually including the names of the biological parents. Outside the adoption context, this document is called only a "birth certificate," without specifying whether it is the original.

"Sandwich" adoption records laws. State statutes that allow some adoptees to access information relating to them (usually original birth certificates), depending on the date on which they were adopted. Typically, those adopted in the years before a state sealed its records, along with those adopted after enactment of a new statute allowing access, are permitted to get their birth certificates upon becoming adults. But those adopted in the years in-between are not permitted to do so. These laws result from compromises between those seeking full access for all adoptees and those who contend some birthparents were promised their children would never learn their identities.

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