

New Jersey Catholic Conference

Statement by Patrick R. Brannigan

In opposition to Senate Bill 799

March 4, 2010

Senate Bill 799 would permit adults who had been adopted as children, as well as the guardians or adoptive parents of a child who is currently a minor, to learn the identity of a birth parent. The New Jersey Catholic Conference opposes S-799. The retroactivity of this bill (it applies to those who have placed a child for adoption in the past, often many years in the past) is especially egregious and undermines the statutory assurances of privacy in effect at that time.

The New Jersey Catholic Conference does not oppose adoptees having full access to their birth parents' medical histories. This information can often prove helpful in dealing with medical difficulties that they – and their own descendants – might confront. While it is currently fully available through the Court, the Legislature's formally mandating such availability would be advisable. However, we are opposed to requiring birth mothers to provide updates on their medical history every ten years until they are 40 years old and every five years thereafter. That requirement is punitive and grossly unfair.

Neither does the Conference oppose revealing the identities of natural parents to adoptees in cases where the natural parents have consented to the release of such information. However, to do so without the birth parents' actual consent is simply wrong and unfair.

In *Mills*, the court reviewed at length the interests that are involved in placing adoption records under seal. Judge Gruccio noted that the purpose of the Adoption Act is to protect the child placed for adoption, the adopting parents, and the birth parents. Analyzing each of their respective interests, Judge Gruccio first addressed those of the birth or natural parents, and the adoptive parents:

The assurance of secrecy regarding the identity of the natural parents enables them to place the child for adoption with a reputable agency, with the knowledge that their actions and motivations will not become public knowledge. Assured of this privacy by the State, the natural parents are free to move on and attempt to rebuild their lives after what must be a traumatic and emotionally tormenting episode in their lives.

The adopting parents also have an interest in having the birth records placed under seal. They have taken into their home a child whom they will regard as their own and whom they will love and raise as an integral part of their family unit. It is important to these adopting parents that they may raise this child without fear of interference from the natural parents and without fear that the birth status of the illegitimate child will be revealed or used as a means of harming the child or

themselves. The State has an active interest in protecting and nurturing the growing family relationship it has statutorily created.

[148 *N.J.Super.* at 307-08, 372 A.2d 646.] Next and especially significant in this case, Judge Gruccio placed special emphasis on the interests of the adoptee, aptly observing that:

The child, who is the third and ultimately most important party to the adoption, has no voice in the proceedings. He or she is not represented as an individual by legal counsel. The child's only protection at the proceedings is the thoroughness of the report of the Division of Youth and Family Services and the perceptiveness of the presiding judge. The State has an obligation to protect the interests of this voiceless party. *In re P.*, [114 N.J.Super. 584, 277 A.2d 566 (1971)]; *In re B.*, 63 N.J.Super. 98, 164 A.2d 65 (App.Div.1960). Sealing the birth records serves the interests of the child. It protects the child from any possible stigma of illegitimacy which, though fading, may still exist, and insures that the relationship with his or her new parents can develop into a loving and cohesive family unit uninvaded by a natural parent who later wishes to intrude into the relationship. The statute requiring that the records be sealed clearly serves the interest of all three parties in the adoptive triangle: adoptive parents, natural parents and the child.

Thousands of birth mothers placed their children for adoption through the New Jersey courts in reliance on that assurance of privacy. This assurance was not based on some private contract or agreement between themselves and the adoption agency; no such contract or agreement was needed in light of the specific public law – which the court in *Mills* called “the statutory shield of confidentiality.” As the court added, 148 *N.J.Super.* at 311, “the natural parent surrenders a child for adoption with not merely an expectation of confidentiality but with actual statutory assurance that his or her identity as the child’s parent will be shielded from public disclosure.” (Emphasis supplied.)

There should not be a “presumption” that, because birth mothers failed to formally register their objection to having their names revealed, their consent to be identified can somehow be presumed. Such presumption simply ignores a number of reasons – including their out-of-state location or their simple unawareness of the legislation – that might underlie the birth parent’s failure to register. It is unfair and unjust to place this burden on birth mothers who were assured that their anonymity would be protected at the time they agreed to place their children for adoption.

The issue of access to this information is an extremely sensitive one for all parties involved with an adoption. It is an issue that is of concern also to the Catholic Charities agencies statewide which for decades have had the privilege of sponsoring adoption services. Those agencies and the New Jersey Catholic Conference are opposed to S-799 because it would enable a one-sided pursuit of a reunion between birth parents and an adopted person.

It is important to note that for those adopted persons who desire a reunion, agencies make this possible when the birth parents have also agreed to it – mutual consent is the key principle.

The New Jersey Catholic Conference supports a mutual consent registry system which would link birth parents and adult adopted persons when the parties have requested and consented to such a reunion.

This mutual consent registry should be a robust system that would use only a qualified individual or agency to function as an Intermediary. This Intermediary, while respecting each party's right to confidentiality, would be charged with the responsibility to locate adopted persons and birth parents, certify contacts, and assess those interested in reunification. In the case where a birth parent is unwilling to reunite, the Intermediary would obtain family and medical history for the adoptee.

Prospectively, we recommend that the birth parent of an adopted person be allowed to file with the State Registrar a completed document of contact preference indicating their preference regarding contact with the adopted person. They should be given the opportunity to change their preference at any time by submitting a revised document of contact preference to the State Registrar.

Birth parents should be advised of their right to file a contact preference form prior to the entry of any judgment of adoption. If the birth parent indicates a desire for no contact, the State Registrar should not disclose the birth certificate or contact preference form, but could provide medical history forms. If the adult adoptee still desires the birth certificate, he or she can seek the intervention of a court which would make that determination after careful consideration.

Many years ago Justice Brandeis in his 1928 opinion in *Olmstead v. U.S.*, described "the right to be let alone" as "the most comprehensive of rights and the right most valued by civilized men." In *Mills*, the court said, 148 *N.J. Super.* at 311, that the natural parent "has a right to privacy, a right to be let alone, that is not only expressly assured by the provisions of [the adoption statute] but has also been recognized as a vital interest by the United States Supreme Court."

In many cases the birth mothers' spouses, families and friends may have no knowledge of this episode in their lives. Surely, their own privacy – especially when they acted in reliance on the Legislature's assurance of their privacy and confidentiality – ought not to be disregarded.

Simply put, if the right to privacy means anything then it means that one ought to be free from the perhaps unwanted visitor whose arrival was made possible by the Legislature's *ex post facto* about-face.

Protection of the concerns of all parties who were involved in the adoption process ought to remain the policy of the State of New Jersey.