



Bastard Nation: the Adoptee Rights Organization

PO Box 4607

New Windsor, New York 12553-7845

bastards.org 614-795-6819 @BastardsUnite

bastardnation3@gmail.com

Submitted Comments

HB 1969

Subcommittee on Health, Welfare, and Institutions

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Marley E. Greiner, Executive Chair

Bastard Nation: the Adoptee Rights Organization is the largest adoptee civil rights organization in the United States. We support only full unrestricted access for all adopted persons to their original birth certificates (OBC) and related documents. We are a core partner in the Capitol Coalition for Adoptee Rights (Maryland, Virginia, WDC).

We support HB 1969 as written; a “clean bill” with no restrictions to access by Virginia-born adoptees. We do, however suggest one very minor change: OBCs are kept by the Department of Health, not the Department of Social Services, so the Commissioner of DOH would be the one to release the documents, not DSS.

Current Law v HB 1969

Current Virginia law severely limits adopted people from obtaining their OBCs and other adoption information. Adoptees must petition a court for release of the information for “good cause” or a state agency can release it, again for “good cause.” “Good cause,” however, is not defined by law and is left up to individual interpretation. Both processes are humiliating, time-consuming, infantilizing, and rarely successful. They can also be expensive. The Not Adopted, of course, do not have to stand bureaucratic scrutiny to receive their birth certificates.

Here is a real-life story told to me a few years ago by a Virginia-born woman adopted at birth. At the time of this incident she was living in Cleveland, Ohio and had two young daughters suffering from a serious illness, which doctors, believed was genetically-related. They could not diagnose the illness with any certainty without continued extensive and expensive testing. They supported her request to the State of Virginia to release her adoption information in an attempt to build a family medical history

The adoptee took a couple of days off from work and drove, with her girls, to an appropriate office in Virginia (I don't remember which or where.) When she attempted to submit her request she was stopped dead in her tracks by a clerk who refused to file the request saying "When you agreed to be adopted, you agreed that your records would be sealed."

This kind of ignorance, arrogance, and treatment of adopted people is unacceptable. .

HB 1969 does away with this very limited current legal process and restores the right of all Virginia born adopted people to obtain their OBCs upon request at the age of 18 with no restrictions or conditions. The adoptee would simply fill out a form and submit it directly to the appropriate department for a nominal fee.

Privacy and The Balance of Rights

HB 1969 is not about search and reunion, though search and reunion can happen. The bill is about civil rights.

We often hear the term "balance of rights" in the OBC debate. That can be a legitimate debate in cases where an actual conflict of rights among parties exists. In the case of OBC rights, however the only rights involved are those of thousands of adopted people in Virginia, who since 1976 have been legally banned from obtaining the genuine unaltered record of their birth.

There is no "balance of rights" here. Everyone born in Virginia except those who are adopted, have an unquestioned right to obtain their own birth certificate upon request and a nominal fee. The current sealed records practice confers upon the documents and the adopted people to whom they pertain, some kind of personal and political stigma.

This is about adoptee rights only. No other right exists. Rights and interests are unequal. A few birthparents—and in a broader sense, third parties with no standing, may argue a "right" to birthparent anonymity, but courts have found there is no such right. These parties might have an "interest" (or think they do), but "rights" trump "interests." The Adopted and the Not Adopted have an absolute right to obtain the official state record of their own birth and no third party--parent or not--has the "right" to bar that access. Critically, parental rights were voluntarily relinquished years ago or were terminated by a court, so if there was even such a parental "right" it would not exist in the case of adoption.

Adoption Privacy Overview

“Privacy” “confidentiality,” and “anonymity” are not synonymous either legally or linguistically. “Anonymity” is a myth perpetuated by special interests that for decades have profited off of economic distress and society-induced shame and family crisis. In many cases, adoption is a permanent solution to a temporary problem that has not only individual but generational consequences.

There is no evidence in any state that records were sealed to “protect” the reputation or “privacy” of biological parents who relinquished children for adoption. On the contrary, records were sealed to cover coercive child acquisition practices by adoption agencies, black and gray market baby dealers, exploitative assembly-line maternity homes, and other corrupt systems. Numerous historical and legal researchers and writers have shown that OBCs were never intended to be sealed in perpetuity from individual adoptees as adults. At “best” sealed OBCs were billed as a way to protect the reputations of “bastard children” (not adults) and to protect adoptive families from birthparent and stranger interference. These documents were first sealed from the public, then the parties to the adoption, and eventually to adopted people themselves. What was once an outlier practice has now been normalized through a mix of myth and “tradition” and treated like “the way it's always been.”

Courts, however, have ruled that adoption anonymity does not exist. (*Doe v Sundquist, et. al.*, 943 F. Supp. 886, 893-94 (M.D. Tenn. 1996) and *Does v. State of Oregon*, 164 Or. App. 543, 993 P.2d 833, 834 (1999). Laws change constantly, and the state, lawyers, social workers, and others were never in a position to promise anonymity in adoption. In the over 60 years of the adoptee equality battle, not one document has been submitted anywhere that promises or guarantees sealed records and an anonymity “right” to birthparents.

Identifying information about surrendering parents often appears in court documents given to adoptive parents who can at any point give that information to the adopted person. (In some states adoptive parents, at the time of the adoption order, can petition the court to keep the record open.) The names of surrendering parents are published in legal ads. Courts can open “sealed records” for “good cause” without birthparent consent or even knowledge. Critically, the OBC is sealed at the time of adoption finalization, not surrender. If a child is not adopted, the record is never sealed. If a child is adopted, but the adoption is overturned or disrupted, the OBC is unsealed. Please remember that the OBCs of persons with established relationships with biological parents as in stepparent and foster adoptions are also sealed.

The American Academy of Adoption and Assisted Reproduction Attorneys agrees with this assessment. In a major about face, in 2018 it passed a monumental resolution in support of adoptees’ right to full access to our OBCs court, and agency records.

Privacy and Technology

Today, inexpensive and accessible DNA testing services, and a large network of volunteer “search angels” that locate adoptee government-hidden information, histories, and biological families, has made the traditional “privacy” argument obsolete. The minuscule number of birthparents or professionals who believe that restricted OBC/records access or no access equals adoption anonymity are greatly mistaken. Nearly all successful searches are done without the OBC and other court documents.

Conclusion

OBC access is not about search and reunion. Many adopted people are not interested in pursuing a search. Instead, access is about obtaining our state-generated and held document of our birth, something the Not Adopted don't even think about. There is no state interest in keeping original birth certificates sealed from adult adoptees to whom they pertain nor does the state have a right or duty to mediate and oversee the personal relationships of adults. The debate on the release of OBCs to its adopted citizens is small v large government issue. Small government should win this one.

Adopted people in 12 states (and Vermont will open later this year), have unrestricted access to their OBCs. Not one single negative report about unsealing has been published. Access has been normalized. Adoptees are treated just like the Not Adopted and like the Not Adopted no one denies that they have a right to those records and information.

Please vote Do Pass on HB 1969 as written, without restrictive amendments. It's the right thing to do. Thank you.

Bastard Nation is dedicated to the recognition of the full human and civil rights of adult adoptees. Toward that end, we advocate the opening to adoptees, upon request at age of majority, of those government documents which pertain to the adopter's historical, genetic, and legal identity, including the unaltered original birth certificate and adoption decree. Bastard Nation asserts that it is the right of people everywhere to have their official original birth records unaltered and free from falsification, and that the adoptive status of any person should not prohibit him or her from choosing to exercise that right. We have reclaimed the badge of bastardy placed on us by those who would attempt to shame us; we see nothing shameful in having been born out of wedlock or in being adopted. Bastard Nation does not support mandated mutual consent registries or intermediary systems in place of unconditional open records, nor any other system that is less than access on demand to the adult adoptee, without condition, and without qualification.
