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SURRENDER AND SUBORDINATION: BIRTH MOTHERS AND ADOPTION LAW REFORM

Elizabeth J. Samuels*

For more than thirty years, adoption law reform advocates have been seeking to restore for adult adoptees the right to access their original birth certificates, a right that was lost in all but two states between the late 1930s and 1990. The advocates have faced strong opposition and have succeeded only in recent years and only in eight states. Among the most vigorous advocates for access are birth mothers who surrendered their children during a time it was believed that adoption would relieve unmarried women of shame and restore them to a respectable life.

The birth mother advocates say that when they surrendered their children, their wishes were subordinated and their voices silenced. They say they want to be heard now as they raise their voices in support of adult adoptees' rights to information in government records about their birth mothers' original identities. Opponents of restoring access, in "women-protective rhetoric" reminiscent of recent anti-abortion efforts, argue that access would harm birth mothers, violating their rights and bringing shame anew through unwanted exposure of out-of-wedlock births. Opponents say they must speak for birth mothers who cannot come forward to speak for themselves. Birth mother advocates respond that the impetus historically for closing records was to protect adoptive families from public scrutiny and from interference by birth parents, rather than to protect birth mothers from being identified in the future by their children. They maintain that birth mothers did not choose and were not legally guaranteed lifelong anonymity. They point out that when laws that have restored access have been challenged, courts have found neither statutory guarantees of, nor constitutional rights to, anonymity. They

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also offer evidence that an overwhelming majority of birth mothers are open to contact with their now grown children.

As a means of assessing these competing claims, this article analyzes the provisions in a collection of birth mother surrender documents assembled by the author—seventy-five mid-twentieth century documents executed in twenty-six different states. In order to establish the significance of the surrender document provisions with respect to these claims, the article first relates depictions by birth mothers of a journey from silence to legislative advocacy. The article then examines the conflicting claims about birth mothers that pervade legislative contests over adult adoptee access to original birth certificates. Finally, the article analyzes the provisions of the surrender documents. The analysis of the provisions definitively supports birth mother advocates' reports that women were neither offered a choice of nor guaranteed lifelong anonymity. Their opponents' contentions to the contrary, whether motivated by concern for birth mothers or other interests, reinscribe an earlier culture of shame and secrecy, subordinating women's own wishes and silencing their newly raised voices.

INTRODUCTION

Before her daughter was born, she bought two teddy bears, one to keep and one to go with her daughter to the adoptive parents she had chosen for her. She telephoned the agency regularly as her daughter grew up, updating her information so that her daughter's parents or her daughter could find her if they wished. When her grown daughter did find her, she learned that the agency not only had not provided her searching daughter any information, but also had not placed her daughter with the parents she had chosen. Nor had the agency delivered the teddy bear whose twin she had carried with her for nearly twenty-five years.¹

During the twentieth century, millions of women in the United States surrendered newborn infants for adoption.² During much of the century, it was thought that by surrendering their children, unmarried mothers would not only be relieved of shame and restored to a respectable life, but also

1. Letter from Amanda J. Woolston to the author (Aug. 8, 2010) (on file with the author).

2. Accurate and complete statistics are not available. More than a million children were adopted between 1951 and 1962, according to the U.S. Children's Bureau. Bernice Q. Madison, *Adoption: Yesterday, Today and Tomorrow—Part I*, 45 CHILD WELFARE 253, 254 (1996). The Bureau collected data from 1944 to 1975. It estimated the number of adoptions in 1944 to be 50,000, with the highest number of adoptions in 1970 (175,000). U.S. DEP'T OF HEALTH & HUM. SERVS., CHILDREN'S BUREAU, HOW MANY CHILDREN WERE ADOPTED IN 2007 AND 2008? (2011), available at <https://www.childwelfare.gov/pubs/adopted0708.pdf>. "Since the late 1980s, approximately 125,000 children have been adopted annually . . ." ELLEN HERMAN, KINSHIP BY DESIGN: A HISTORY OF ADOPTION IN THE MODERN UNITED STATES 5 (2008) ("[G]rowing numbers . . . are adopted across national, cultural, and racial borders[.]"). Estimates from different periods place the percentage of adoptions by unrelated persons in the vicinity of 50% or more. Madison, *supra* at 254 (citing 52% in 1962); HERMAN, *supra* at 302 n. 1 ("During the twentieth century, a majority of adoptees were probably placed with nonrelatives . . . The proportion of relative adoptions has increased since 1970 and represents approximately 50% of all adoptions today.").

Since the mid-1970s, relinquishments [of infants] have declined from nearly 9 percent to under 1 percent of births to never-married women. Among never-married women, relinquishment by Black women has remained very low—declining from 1.5 percent to nearly 0 percent, while relinquishment by White women has declined sharply—from nearly 20 percent to less than 2 percent.

U.S. Dep't of Health & Hum. Servs., Children's Bureau, *Voluntary Relinquishment for Adoption*, CHILD WELFARE INFORMATION GATEWAY (2005), http://www.childwelfare.gov/pubs/s_place.cfm.

would be able to put the event behind them as they went on with their lives.³ Today, many of these women have not put the births of their children behind them and are speaking out about their experiences. They report that at the time of the surrenders they felt a lack of agency, a stifling or silencing of their voices.⁴ They describe feelings of powerlessness, a powerlessness poignantly confirmed by the language and import of the “unconditional surrenders” they signed. Now, feeling freed from the shame and stigma associated with being unmarried and pregnant, they have become among the most vigorous advocates in legislative efforts to restore adult adoptees’ access to their own original, unamended birth certificates. This access was gradually eliminated by almost all of the states during the period from the late 1930s to 1990.⁵ Since 1990, access has been restored in a small but growing number of states.⁶

In the legislative efforts in which these women are participating, they are again facing a kind of silencing subordination cloaked in benevolence. Their opponents use “woman-protective rhetoric” reminiscent of rhetoric used by abortion opponents in recent years.⁷ The access opponents argue

that restoring adult adoptees’ access to original birth certificates harms birth mothers,⁸ violating their legal rights—or their expectations if not their rights—and bringing shame anew through exposure of out-of-wedlock births.⁹ The opponents say they must speak for birth mothers who cannot speak for themselves without sacrificing their anonymity.¹⁰ And the opponents’ simple message, buttressed by widespread misunderstanding of the history of adoption records, has even led many access proponents to speak in similar terms of birth mothers’ rights, although they conclude that these rights are outweighed by the rights of adult adoptees.¹¹

Birth mother advocates for access counter with a number of arguments: that the impetus historically for closing records was to protect adoptive families from public scrutiny and from interference by birth parents, rather than to protect birth mothers from being identified in the future by their children;¹² that birth mothers did not choose and were not legally guaranteed lifelong anonymity;¹³ and that an overwhelming majority of

it is upholding recognizes “that respect for human life finds an ultimate expression in the bond of love the mother has for her child” 550 U.S. at 128.

3. See Elizabeth J. Samuels, *The Idea of Adoption: An Inquiry into the History of Adult Adoptee Access to Birth Records*, 53 RUTGERS L. REV. 367, 408–09, 416 (2001); ANN FESSLER, *THE GIRLS WHO WENT AWAY* 148, 154 (2006).
4. FESSLER, *supra* note 3, at 154. See LORRAINE DUSKY, *BIRTHMARK* (1979); JANET MASON ELLERBY, *FOLLOWING THE TAMBOURINE MAN: A BIRTHMOTHER’S MEMOIR* (2007); LYNN C. FRANKLIN, *MAY THE CIRCLE BE UNBROKEN: AN INTIMATE JOURNEY INTO THE HEART OF ADOPTION* (1998); MEREDITH HALL, *WITHOUT A MAP: A MEMOIR* (2007); PATTI HAWN, *GOOD GIRLS DON’T* (2010); KAREN SALTER McELMURRAY, *SURRENDERED CHILD* (2004); MARGARET MOORMAN, *WAITING TO FORGET: A MOTHERHOOD LOST AND FOUND* (1996); CAROL SHAFFER, *THE OTHER MOTHER, A WOMAN’S LOVE FOR THE CHILD SHE GAVE UP FOR ADOPTION* (1991).
5. Samuels, *supra* note 3, at 369.
6. *Id.* at 371–72. See also, *infra* text accompanying note 44.
7. See Dave Andrusko, *More About the Connection Between Abortion and Depression*, NATIONAL RIGHT TO LIFE NEWS (Apr. 4, 2008), available at <http://www.nrlc.org/news/2008/NRL04/Depression.html>. Claims that women may regret an abortion and suffer depression, which were taken up by the Supreme Court in *Gonzales v. Carhart*, 550 U.S. 124, 159 (2007), “[A]ppeared in the 1980s as a therapeutic mobilizing discourse within the antiabortion movement . . . Leaders of the antiabortion movement . . . came to embrace the claim strategically . . . through a learning process in which they came to believe in the argument’s power to persuade audiences . . .” Reva B. Siegel, *The Right’s Reasons: Constitutional Conflict and the Spread of Woman-Protective Antiabortion Argument*, 57 DUKE L.J. 1641, 1657 (2008). See generally Paula L. Abrams, *The Scarlet Letter: The Supreme Court and the Language of Abortion Stigma*, 19 MICH. J. GENDER & L. 293; Maya Manian, *Irrational Women: Informed Consent and Abortion Regret*, in *FEMINIST LEGAL HISTORY: ESSAYS ON WOMEN AND LAW* 118 (Tracy A. Thomas & Tracey Jean Boisseau, eds., 2011). In a phrase that resonates ironically in the subject of this article, the Court in *Carhart* says the statute

8. This paper uses the term “birth mother” with apologies to those who may find the term objectionable to identify those women who have relinquished their parental rights for the purpose of adoption. Some women object to this language, preferring to be referred to by other terms, such as “mother,” “natural mother,” and “first mother.” Some parents of adopted children object to the terms “natural mother” and “real mother” for their children’s birth mothers (and object to the term “adoptive parents” for themselves). No terms are ideal, but “birth mother” is used here because it is probably the most commonly used and understood term. One example of objections to the term “birth mother” is the reason given by a number of women who declined to sign a petition by birth mothers supporting records access because “(1) being mothers still, we are not ‘birthmothers;’ (2) we find it offensive, dehumanizing, and objectifying to be defined and [labeled] as ‘incubators;’ and (3) we feel that the organization which sponsored this petition could just as easily have used the term which respects us: ‘natural mother.’” The Adoption Critic, *The Power of Words . . . and an Adoptee Rights Petition*, ADOPTION CRITIQUE: THE BLOG OF A NATURAL MOTHER, STILL A MOTHER, BUT NOT A “BIRTHMOTHER” (Apr. 29, 2011, 10:35 PM), <http://adoptioncritic.com/2011/04/29/words-and-adoptee-rights-petition>.
9. *Infra* text accompanying notes 61–64, 67–71.
10. *Infra* text accompanying notes 92–100.
11. For example, State Senator Bill Baroni, who voted to release an access bill from committee in 2008, said “You have promises made 20, 30, 40 years ago. And you have many adopted kids who have a real need to understand their past. . . . It’s incumbent on people like me to publicize the opt-out provision” (which gives birth parents a year to file vetoes prohibiting disclosure of their names). Elise Young, *N.J. Adoptees May Get Access to Records*, THE RECORD (Bergen, New Jersey), Mar. 10, 2008, at A1.
12. *Infra* text accompanying notes 86–91.
13. *Infra* text accompanying notes 65–66, 72–85, and 101–03.

birth mothers are open to contact with their surrendered children.¹⁴ They point out that courts have found neither statutory guarantees of, nor constitutional rights to, anonymity for birth mothers, and that the documents birth mothers signed surrendering parental rights did not promise anonymity.¹⁵

For this article, surrender documents from the last century have been collected in an effort to help determine the validity of competing claims about birth mothers' legal statuses. The documents have been generously provided to the author by birth mothers who received and retained copies of papers they signed in traditional "closed adoptions" in which they did not know the adoptive parents. The collection does not constitute a randomly selected sample, something that would be difficult to define as well as impossible to assemble. One difficulty is that many women did not receive copies of the documents they signed.¹⁶ But the collection is a significant resource. It consists of seventy-five documents from twenty-six states, spanning the years 1936 to 1990,¹⁷ with the largest number from the 1960s and 1970s.¹⁸ It is almost certainly a representative sample, first because of the striking similarity among the documents' provisions, both temporally through the decades and geographically around the country; and second, because no dissimilar document from the past has ever been produced by either those who oppose access legislation or by those who have unsuccessful

14. *Infra* text accompanying notes 104–125.

15. *Infra* text accompanying notes 77–91.

16. "Most women never got anything When I started looking [for my child], I had nothing." Telephone Interview with Carolyn Hoard, Former Board Member, State Representative, and Legislative Affairs Leader in the American Adoption Congress (June 11, 2008). As birth mother Holly Spann put it, "I didn't have a piece of paper, a court document, anything to prove I had had a baby except stretch marks and the memories." Leanne Italie, *Birth Mother's Day Eases Adoption Grief*, THE BOSTON GLOBE, May 3, 2009, at A17. See also, Ada White, *Survey Says Birthparents are Important*, CWLA CHILDREN'S VOICE, Mar./Apr. 2008, at 26 ("Some birth parents don't receive a copy of their relinquishment paperwork. Instead, it goes to the birth parents' own parents, or to the attorney representing them. Frequently after the adoption, they are unable to get a copy of the paperwork. . . . Sixty-four percent of agencies said they provide or will replace a copy of the relinquishment/surrender or termination of parental rights to the birth parent."). When the author made the request for documents on listservs, websites, in organizations' publications, and at conferences, many women responded that they would like to share their document but had not received a copy of it. Some of these women also reported that when they returned to the agency to request a copy, they were told that it would be unlawful to give it to them.

17. This period covers the years during which all but two states eventually denied adult adoptees access to their original birth certificates, and it concludes before a small number of states began restoring access. See Samuels *supra* note 3 at 369, 371–72.

18. See *infra* Appendix A.

fully challenged state laws restoring adult adoptees' access to formerly sealed original birth certificates.¹⁹

The first part of the article briefly relates birth mother depictions of their journeys from silence to legislative advocacy. The second part describes the conflicting claims about birth mothers that pervade legislative controversies over access to original birth certificates. The third part examines the provisions of the collected surrender documents and demonstrates they support birth mother advocates' reports that they were not offered a choice of and were not legally guaranteed lifelong anonymity. The documents, in addition to containing no promises of confidentiality or guarantees of anonymity, do not even promise that the children will be successfully placed for adoption. In 40% of the documents, it is the mother who promises she will not try to find the child or interfere with the adoptive family.²⁰ The documents, in other words, tell a story that is very different from the access opponents' accounts. The opponents' contrary accounts reinscribe an earlier culture of shame and secrecy; they subordinate women's own wishes and silence their newly raised voices.

I.

*I speak as a seventy-year-old reunited mother . . . and I appreciate the opportunity of having heard [my] voice that was stifled when relinquishing my child forty-eight years ago.*²¹

19. An indication that some documents might have included some assurances of anonymity appears in a study conducted in 1976 by CWLA's Research Center. The research included responses from 163 agencies to a lengthy questionnaire. CHILD WELFARE LEAGUE OF AMERICA, THE SEALED ADOPTION RECORD CONTROVERSY: REPORT OF A SURVEY OF AGENCY POLICY, PRACTICE AND OPINIONS 4 (1976). According to the report, 90% of the agencies reported some kind of explicit or implicit assurance of anonymity and five agencies indicated they gave some kind of written assurance of anonymity. *Id.* at 6. The report also found confusion on the part of agencies, both among the states and within states, about the law regarding parties' access to agency, birth, and court records. *Id.* at 11–15. And many agencies "are now advising biological parents and prospective adoptive applicants . . . that the child to be adopted might someday wish to know—and have the means to determine—the identity of his or her natural parents." *Id.* at 6. With respect to agencies' opinion about future practice, 69% of the agencies agreed that "[a]gencies should continue to guarantee confidentiality (insofar as their own records are concerned) . . . to the adoptive parents [and] the biological parents." *Id.* at 24. See *infra* note 72.

20. *Infra* text accompanying notes 184–197.

21. *An Act Concerning Adoptees: Hearing on A. 3237 Before the A. Comm. on Family, Women & Children's Servs. Comm.*, 211th Leg., 2d Ann. Sess. (N.J. 2005) [hereinafter *Hearing on A. 3237*] (statement of Laura Masonic).

*Please liberate the . . . adoptees and help us birth parents to throw off the mantle of shame and guilt that we have carried so long and that the state continues to hold over us . . .*²²

*[P]lease don't use "those [p]oor birthmothers" as a shield. [W]e were the least protected party in this enterprise and the most expendable, and if ninety-five percent of us tell you that we never wanted to be kept secret from our own flesh and blood, you should believe us.*²³

Portraying birth mother advocates as seeking to have their voices heard is not an academic conceit. Many women express this desire: "Our voices of pain weren't heard back then," birth mother JoAnne Swanson wrote in an exchange with an access opponent, "and organizations like yours . . . are still struggling to keep us muzzled. We can—and will—speak for ourselves."²⁴ Joining in the exchange, Mary Anne Cohen added that the access opponent "does not speak for me or for many other mothers who surrendered children for adoption. . . . We can speak for ourselves[,] as can adopted adults."²⁵ Birth mother Katherine Underhill joined in, writing that "as a reunited mother to a son who was relinquished in 1969, I am here to say that you have no business speaking on behalf of my best interests. I was promised nothing by the adoption industry. Where do you people who were not even there come up with this stuff?"²⁶

Birth mothers who have led access efforts at national and state levels have recounted their evolutions from silence to vocal advocacy. A leading advocate in the decades-long effort in New Jersey, Judy Foster, has testified and given interviews about how she did not tell her husband about her daughter's birth until ten years after their marriage; then with his support

22. *Id.* (statement of Judy Foster, member of New Jersey Coalition for Adoption Reform and Education (NJCARE) and a representative of the American Adoption Congress).

23. georgiamom2, Comment to *N.J. Adoption Reform: Protect the Privacy of All Parties*, NJ.COM (Mar. 28, 2010, 9:16 AM), http://blog.nj.com/njv_guest_blog/2010/03/nj_adoption_reform_protect_the/2168/comments-newest.html.

24. Jo Anne Swanson, Comment to *Protect Birth Mother, Adoptees*, ORLANDO SENTINEL (Nov. 18, 2007), <http://www.topix.com/forum/city/orlando-fl/TIUMBAR6PQ1J6A7A?#comments>.

25. Mary Anne Cohen, Comment to *Protect Birth Mother, Adoptees*, ORLANDO SENTINEL (Nov. 18, 2007), <http://www.topix.com/forum/city/orlando-fl/TIUMBAR6PQ1J6A7A?#comments>.

26. Kathleen Underhill, Comment to *Protect Birth Mother, Adoptees*, ORLANDO SENTINEL (Nov. 18, 2007), <http://www.topix.com/forum/city/orlando-fl/TIUMBAR6PQ1J6A7A?#comments>.

she found her daughter and became a vocal advocate.²⁷ Her fellow advocate Valerie Drabyk waited thirty-eight "years to reveal her secret to her husband and their three grown children, and find the son she lost."²⁸ According to a journalist who interviewed her, "Today, shame and fear are relics of Drabyk's past. She is one of dozens of birth mothers who belong to the Morristown[, N.J.] Post-Adoption Support Group that has tried for 31 years to change the law so people who were adopted can obtain birth records . . ."²⁹

In Maine, "adoptees have access to their original records today largely due to the unflagging advocacy of Roberta Beavers . . . who gave birth after a rape, relinquished her child to adoption, and reunited with him," according to fellow birth mother advocate and author Lorraine Dusky.³⁰ Roberta Beavers, when she testified in support of access legislation in New Hampshire, publicly shared her story about her son's conception and her finding him some thirty years later. She "thought it was important [that] lawmakers hear from birth mothers. It was testimony like hers that led New Hampshire to vote to open its adoption records."³¹ While she worked for adult adoptee access in Maine, she ran for and was eventually elected to the state House of Representatives.

National leader Eileen McQuade came to legislative advocacy after her daughter found her. She was a college freshman from a Catholic family when she became pregnant. The priest she and her boyfriend consulted advised her to relinquish the baby and return to school. She remembers it as "one of the most awful meetings in [her] life."³²

27. Susan K. Livio, *Birth Mothers Tell Their Stories to Fight for N.J. Adoption Bill*, NJ.COM, (May 15, 2011, 6:00 AM), http://www.nj.com/news/index.ssf/2011/05/birth_moms_divided_on_adoption.html.

28. *Id.*

29. *Id.*

30. Lorraine Dusky, *Akin, GOP to Women: We are in Charge of Your Bodies, No Exceptions for Rape*, FIRST MOTHER FORUM, (Aug. 21, 2012), <http://www.firstmotherforum.com/2012/08/akin-gop-to-women-we-are-in-charge-of.html>.

31. *Maine eyes open-adoption records*, LEWISTON-AUBURN SUN JOURNAL, (Dec. 13, 2004, 1:28 AM), <http://www.sunjournal.com/node/707326>. She became pregnant in 1966, and she and her son were reunited in 1995. Conference Program, Am. Adoption Congress, AAC's 29th International Adoption Conference, Adoption in the Global Community: Redefining Kinship in the 21st Century, Presenter Biographies 12, http://www.americanadoptioncongress.org/pdf/AAC_2008_Conference_Program.pdf. "Her greatest joy was to see all three of her children together in Washington State in 1996. She has been an advocate for adoptee human rights for 13 years, first in NJ, then NH, and finally in ME." *Id.*

32. Eileen McQuade, *Finding My Voice: A Birthmother Story* (unpublished manuscript) (on file with author).

It was clearly my fault I was pregnant The best thing to do was to keep the pregnancy a secret, go to an unwed mother's home, and relinquish the baby for adoption. The baby would end up with more deserving parents than us, and if I remained chaste maybe I could marry someone else later and have more babies. I would just forget about this one.³³

The following year the boyfriend, who had graduated and joined the Army, got back in touch with her. The next year they married and went on to raise two daughters.³⁴

"Talk of adoption was a huge no-no in our house. . . . If either of us even got near the topic, it could set off an explosion of pain It was easier to ignore it, and drive it deeper and deeper into our hearts."³⁵ Then, "[o]n May 6, 1997, I got the phone call that would change our lives forever."³⁶ She reports: "I no longer had to expend tremendous energy on suppressing all those emotions and lying to myself and everyone else. For the first time in 30 years, I felt really, truly alive."³⁷ She explains that the reunion of her family with her daughter Kathleen and Kathleen's extended adoptive family was an emotional "roller coaster" for the first five years but has been a successful one.³⁸

We worked hard to educate ourselves about the lifelong process of adoption and regularly attended post[-]adoption support groups. We shared our reunion story with aunts, uncles, nieces, nephews, co-workers, even the local newspaper. Reaction was overwhelmingly supportive, and no one condemned me. All my relationships improved as I became less guarded and more open.³⁹

Shortly after being found by her daughter Kathleen, she joined the American Adoption Congress (AAC), the membership of which includes adoptees, adoptive parents, birth parents, and adoption services professionals. The mission of the AAC includes advocacy for "legislation that will grant every individual access to information about his or her family and

33. *Id.* at 1.

34. Eileen McQuade, *President's Letter, Finding My Voice: A Mother's Story*, 26 AM. ADOPTION CONGRESS DECREE 3 (2010).

35. McQuade, *supra* note 32, at 2.

36. McQuade, *supra* note 34, at 10.

37. McQuade, *supra* note 32, at 4.

38. McQuade, *supra* note 34, at 10.

39. McQuade, *supra* note 32, at 4.

heritage."⁴⁰ She became a board member and treasurer in 2006, served as president of the board from 2007 to 2010, and then continued to serve on the board as the organization's conference chair.⁴¹ She has published numerous op-eds and letters to the editor and has been interviewed on many occasions by local and national media.⁴²

II.

Legislation seeking to restore adult adoptee access to original birth certificates—certificates that were sealed at the time of the adoptees' births as well as certificates that were sealed retroactively—has been pending every year in multiple states. In 2012, for example, bills were under consideration in Connecticut, Georgia, Maryland, Minnesota, New York, Oklahoma, Pennsylvania, and Washington.⁴³ Rhode Island's passage of its access law in

40. AAC *Mission Statement*, AM. ADOPTION CONGRESS, <http://www.americanadoptioncongress.org/mission.php> (last visited Apr. 1, 2012).

The American Adoption Congress is comprised of individuals, families and organizations committed to adoption reform. We represent those whose lives are touched by adoption or other loss of family continuity. We promote honesty, openness and respect for family connections in adoption, foster care and assisted reproduction. We provide education for our members and professional communities about the lifelong process of adoption. We advocate legislation that will grant every individual access to information about his or her family and heritage. *Id.*

41. Donnie Davis, *From the President: AAC Stands for Truth in Adoption*, AM. ADOPTION CONGRESS DECREE 4 (2010).

42. See Rita Price, *Birth Parents to Break Silence, Share Stories in Support Group*, THE COLUMBUS DISPATCH, Nov. 9, 2010, at 1A; Marlen Garcia, *Family Ties Tug at Villanova Star*, USA TODAY, Nov. 18, 2009, at C1; Leanne Italie, *Gift of Love: Mother's Day Tinged with Sadness for Birth Moms*, DESERET MORNING NEWS (Utah), May 5, 2009, at C1; Margi Boule, *For This Dad, Finding His Son Was the Start*, THE OREGONIAN, Mar. 27, 2008, at E1; Eileen McQuade, Op-Ed, *Birth Parent Counseling Too Rare in Real Life*, SOUTH FLORIDA SUN-SENTINEL, Mar. 2, 2008, at F5; M.A.C. Lynch, *One Phone Call Changed Their Lives Forever*, HARTFORD COURANT, Nov. 4, 2007, at H2.

43. Connecticut, S.B. 296, 2012 Leg. Sess., Feb. Sess. (Conn. 2012) (adoptees twenty-one or older may obtain a copy of original birth certificate; birth parents may file a contact preferences form); Georgia, H.B. 748, 2011–2012 Leg., Reg. Sess. (Ga. 2012) (adoptees eighteen or older may obtain a copy of original birth certificate; birth parents may file a contact preference form); Maryland, H.B. 719, 2012 Reg. Sess. (Md. 2012) (adoptees eighteen or older may obtain copy of original birth certificate unless birth parent filed a disclosure veto before October 1, 2012); Minnesota, H. File. 2292, 87th Leg. Sess. (Minn. 2012) (adoptees nineteen or older may obtain copy of original birth certificate unless affidavit of nondisclosure is on file; birth parents may file affidavit of disclosure or of nondisclosure); New York, Assemb. B. 8910, 2012 Leg. Sess. (N.Y. 2012) (adoptees eighteen or older may obtain copy of original birth certificate; birth parents may file contact preference form);

2011 made it the eighth state since the mid-1990s to restore access to birth records for all or almost all adoptees.⁴⁴ Alaska and Kansas have never denied access to adult adoptees.⁴⁵

Oklahoma, H.B. 2634, 53d Leg. (Okla. 2012) (adult adoptees born in-state may obtain copy of original birth certificate; birth parents may file contact preference form); Pennsylvania, H.B. 963, 2011–2012 Reg. Sess. (Pa. 2011) (adult adoptees may obtain copy of an original birth certificate); Washington, H.B. 2211, 62d Leg., 2012 Reg. Sess. (Wash. 2012) (adoptees eighteen or older may obtain copy of original birth certificate unless birth parent had filed an affidavit of nondisclosure; birth parent may file affidavit of nondisclosure that must be renewed periodically or contact preference form).

In 2011, “[l]awmakers in at least 11 states [were] considering the issue.” Susan Donaldson James, *Graying Adoptees Still Searching for Their Identities*, ABC News (July 27, 2010), available at <http://abcnews.go.com/Health/MindMoodNews/adult-adoptees-fight-access-original-birth-certificates/story?id=11230246#.T9oo51L7DT0> (quoting the Evan B. Donaldson Adoption Institute in a story focusing on the New Jersey legislative effort).

44. The following states have passed “clean bills” that provide access to original birth certificates for adult adoptees while providing birth parents with an opportunity to file “contact preference forms” (indicating a preference for contact, contact through an intermediary, or no contact): Alabama, ALA. CODE § 22-9A-12 (Westlaw through end of the 2012 Regular and First Special Sessions); Maine, ME. REV. STAT. ANN. tit. 22, § 2768 (Westlaw through 2011 Second Regular Session of the 125th Legislature); New Hampshire, N.H. REV. STAT. ANN. § 5-C:9 (Westlaw through Chapter 1 of the 2013 Reg. Sess.); Oregon, OR. REV. STAT. ANN. § 432.240 (Westlaw through End of the 2012 Reg. Sess. And ballot measures approved at the Nov. 6, 2012 General Election); and Rhode Island, R.I. GEN. LAWS ANN. § 23-3-15 (Westlaw through chapter 491 of the January 2012 session). Tennessee’s law has a number of very limited access exceptions, and its contact preferences system includes penalties for violations. TENN. CODE ANN. §§ 36-1-127, 36-1-132 (Westlaw through end of 2012 Second Reg. Sess.).

Delaware’s law provides for births before January 18, 1999 a procedure in which the state tries to contact the birth parents to give them an opportunity to veto a disclosure of their names. Adult adoptees have access to the original certificate unless a “birth parent has, within the most recent 3-year period, filed a written notarized statement . . . denying the release of any identifying information.” DEL. CODE ANN. tit. 13 § 923 (Westlaw through 78 Laws 2012, chs. 204–409). Illinois also provides disclosure and contact preference forms. Illinois law allows birth parents in adoptions after 1945 to prohibit the release of certain identifying information, effective for the life of the birth parent. If a birth parent has made this choice, his or her name is redacted from the certificate provided to the adoptee. Birth parents who do not make this choice may indicate their contact preference. 750 ILL. COMP. STAT. ANN. 50/18.1 (Westlaw through P.A. 97-1144 of the 2012 Reg. Sess.).

For an account of states’ closures of records to adult adoptees from the late 1930s to 1990, see Samuels, *supra* note 3 at 367–77, 378–85.

45. Alaska and Kansas have not denied access to adult adoptees. ALASKA STAT. § 18.50.500 (Westlaw through legislation passed during the 2012 2nd Regular Session and Third Special Session of the 27th Legislature); KAN. STAT. ANN. § 65-2423 (Westlaw through 2012 regular session).

In every state, the advocates for adult adoptee access have included activist birth mothers who contest opponents’ claims that access would break promises made to and harm birth mothers. In Oregon, one of the most dramatic instances of birth mother advocacy occurred two days before the vote on a statewide initiative to restore access. Initiative proponents published a full-page newspaper advertisement with hastily-gathered, brief personal statements by 500 birth mothers from all parts of the country.⁴⁶ In New Jersey, the role that birth mothers have played in that state’s long history of legislative efforts provides a rich and representative example of the nature of birth mothers’ advocacy as well as of the contrary claims made about them. In that state, a mix of adoptees, adoptive parents, and birth parents have been working for more than thirty years to restore adult adoptees’ access to original birth certificates.

In 1940, New Jersey was one of the earliest states to seal original birth certificates from inspection by adult adoptees,⁴⁷ and its law is typical of the laws that were later passed in most states. Legislation to restore access was first introduced in 1980.⁴⁸ Since then, bills passed in the Assembly in 1991 and 1994; the Senate in 2004, 2006, and 2008; and finally in both houses in the 2010–2011 session,⁴⁹ only to be vetoed on the last possible day by Governor Chris Christie.⁵⁰ Throughout these years, national groups as well

46. E. WAYNE CARP, *ADOPTION POLITICS: BASTARD NATION AND BALLOT INITIATIVE* 58–111 (2004) (in response to their appeal for support, advocates received 1,000 statements from birth mothers around the country).

47. New Jersey was also atypical (*see* Samuels, *supra* note 3, at 369) in simultaneously creating the substitute certificates and providing that the original certificate would be sealed from inspection by adult adoptees as well as by all other persons. *See* 1940 N.J. Laws 882–83.

48. A. 2051, 199th Leg., 2d Ann. Sess. (N.J. 1980).

49. Assembly voted 50–11 in favor of Assemb. 4503, 205th Leg., 1st Sess. (N.J. 1991) (provided access for adult adoptees to their original birth certificates); Assembly voted 50–17 in favor of Assemb. 1237, 206th Leg., 2d Ann. Sess. (N.J. 1994) (provided access for adult adoptees to their original birth certificates and provided one-year period for birth parents in previously completed adoptions to veto disclosure); The Senate or Assembly also voted in favor of the following bills that provided access for adult adoptees to their original birth certificates, provided one-year period for birth parents in previously completed adoptions to veto disclosure, and contact preference option for birth parents: Senate voted 23–14 in favor of S. 1093, 211th Leg., 1st Ann. Sess. (N.J. 2004); Senate voted 26–12 in favor of S. 1087, 212th Leg., 1st Ann. Sess. (N.J. 2006); Senate voted 73–1 in favor of S. 611, 213th Leg., 1st Ann. Sess.; Senate voted 27–10 in favor of S. 799, 214th Leg., 1st Ann. Sess. (N.J. 2010); and Assembly voted 45–26 in favor of Assemb. 1406, 214th Leg., 2d Ann. Sess. (N.J. 2011).

50. Letter from Gov. Chris Christie to the N.J. Senate (June 23, 2011), available at http://www.njleg.state.nj.us/2010/Bills/S1000/799_V1.HTM (vetoing the legislation passed by the legislature and proposing a substitute bill under which an inter-

as New Jersey-based proponents and opponents have expressed competing views about these bills in legislative hearings and in editorials, op-eds, letters to the editor, and, in recent years, online commentary.

The New Jersey bill that was vetoed in 2011 represented a compromise in which birth parents would have had one year from the passage of the law to notify the state that they wished to have their name redacted from the birth certificate.⁵¹ At any time, birth parents would also have had an option—an option provided in most of the states that have restored access—to file a “contact preference form” indicating whether they would like to be contacted by the adoptee, would like to be contacted through an intermediary, or would like not to be contacted.⁵² One group of access proponents opposed the legislation because it included the year-long disclosure veto option.⁵³ Some of the opponents objected that the one-year period was not long enough to protect birth mothers from the past, while other opponents sought a permanent disclosure veto option for all adoptions, past and future.⁵⁴

The opponents of access legislation in New Jersey included New Jersey Catholic Church officials, the New Jersey State Bar, the American Civil Liberties Union of New Jersey, and the National Council for Adoption (NCFCA), a national association of adoption agencies, the largest number of

mediary would search for birth parents for up to twelve months to obtain their consent to, or their refusal to permit, disclosure).

51. S. 799, 214th Leg., 1st Ann. Sess. (N.J. 2010); Assemb. 1406, 214th Leg., 2d Ann. Sess. (N.J. 2011).

52. N.J. S. 799; N.J. Assemb. 1406.

53. For example, the national organization, Bastard Nation, blogged in May 2011:

Bastard National Action Alert . . . A1406/1399/S699 is on its way to New Jersey Governor Chris Christie for signing. . . . Please take a few minutes to write the governor now and ask him to veto this flawed legislation and to support a clean bill that includes the restoration of the rights of all the state's adoptees.

Marley E. Greiner, *ACTION ALERT: Support Adoptee Rights for All, Not Privilege for Some. Tell Gov. Christie to Veto A1406*, BASTARD NATION ALERT (May 12, 2011, 9:43 AM), <http://bn-action-alert.blogspot.com/2011/05/action-alert-support-adoptee-rights-for.html>.

54. See testimony of Sen. Gerald Cardinale reported in James Ahearn, *Ahearn: Battle to Open Adoption Records*, NORTHJERSEY.COM (Apr. 18, 2010), http://www.northjersey.com/news/opinions/91330744_Battle_to_open_adoption_records.html; *An Act Concerning Adoptees, Hearing on S. 611 Before the S. Comm. on Health, Human Servs. & Senior Citizens*, 213th Leg., 1st Sess. (N.J. 2008) [hereinafter, *Hearing on S. 611*] (statement of Lee Allen, Dir. of Communications and Policy for the National Council for Adoption (N.C.F.A.)) (“There are very valid and legitimate reasons why somebody might want to choose a confidential adoption.”).

which are Mormon and Christian agencies.⁵⁵ Their arguments, like the arguments of opponents to legislative efforts throughout the country, have rested primarily on concern about birth mothers, while conceding that only a very small percentage of birth mothers oppose access.⁵⁶ According to the NCFCA, “Most often, birth parents are open to and interested in meeting their relinquished children.”⁵⁷ The NCFCA was formed in 1980 to mobilize opposition to adult adoptees’ access to birth records,⁵⁸ and it is part of a coalition of organizations that have opposed access legislation in New Jersey, the New Jersey Coalition to Defend Privacy in Adoption.⁵⁹ Another mem-

55. The largest groups of agencies that belong to the NCFCA are Latter Day Saints Family Services and Bethany Christian Children's Services. *Find an NCFCA Member Agency*, NAT'L COUNCIL FOR ADOPTION, https://www.adoptioncouncil.org/members/results_list.php?page=1 (last visited Apr. 1, 2013).

56. Some opponents of access also argue that restoring access could increase the rate of abortion, decrease the rate of adoption, and encourage women to keep infants who may be cared for best by an adoptive family. And some opponents argue that there are better measures than access for adult adoptees. For instance, passive registries, which have been established in some states, allow adoptees and birth relatives to register interest in information or contact. Another example is intermediary systems, which have also been established in some states, in which intermediaries with access to a variety of files seek out birth parents or adoptees and inquire whether they will provide information or have contact. Proponents of access counter with respect to the first set of concerns that statistical evidence from states with adult adoptee access provides no support for these fears and may even suggest opposite effects. With respect to the proffered preferable solutions, proponents counter that passive registries have proven highly ineffective in practice and that intermediary systems are unnecessary, expensive, intrusive, and involve a misplaced emphasis on reunion rather than on the right of adoptees to information about themselves in their original birth certificates. From the opposite end of the spectrum, some opponents object to compromises that include any limitations on adult adoptee access to original birth certificates. The substance of these arguments is outside the focus of this paper, as is the issue of what unstated concerns might motivate some access opponents, such as, for example, a concern for the reputation of birth fathers or the possible exposure of adoption service providers’ mistakes or misrepresentations.

57. Chuck Johnson & Megan Lindsey, *Attempting to Satisfy All on Birth Records in New Jersey*, NJ.COM (Feb. 4, 2011, 5:43 AM), http://blog.nj.com/njv_guest_blog/2011/02/attempting_to_satisfy_all_on_b.html (op-ed by the president of and a training manager for the National Council for Adoption (NCFCA)).

58. CARP, *supra* note 46, at 67–68; BETTY JEAN LIFTON, *LOST AND FOUND* 265 (2009).

59. Deborah Jacobs et al., *N.J. Adoption Reform: Protect the Privacy of All Parties*, NJ.COM, (Mar. 22, 2010, 5:39 AM), http://blog.nj.com/njv_guest_blog/2010/03/nj_adoption_reform_protect_the/2168/comments-newest.html.

The New Jersey Coalition to Defend Privacy in Adoption is a diverse coalition that includes the ACLU-NJ, the New Jersey State Bar Association, the National Council for Adoption, New Jersey Right to Life, the Lutheran Office of Governmental Ministry, and the New Jersey Catholic Conference. While each member of our coalition brings a different perspective to this and other issues, we stand together in opposition to Senate Bill 799, which

ber of the coalition, the executive director of the New Jersey Catholic Conference, similarly testified, “It is a small minority of birth mothers who want and need their privacy. Why don’t we respect them?”⁶⁰

Opponents speak about their concern for birth mothers in terms of “privacy,” “confidentiality,” and “anonymity,” as if the terms are synonymous. They refer variously to legal rights, to guarantees, or simply to expectations. The New Jersey coalition, for example, asserted that “thousands of women have made the difficult choice to give up a child for adoption with a *legal promise of confidentiality*” and that “[i]n many cases, the right to confidentiality was at the crux of the decision to choose adoption.”⁶¹ The executive director of the New Jersey Catholic Conference referred to “the promise of *anonymity* given to birth mothers” and maintained that “Catholic Charities always guaranteed *privacy*.”⁶² The executive director of the American Civil Liberties Union of New Jersey, another member of the coalition, testified that birth parents have a right to confidentiality that has stood in the law for decades.⁶³ The president of the NCFCA, argued that “[b]irth parents should not be expected to take action to maintain the privacy they were promised. . . . The promise of privacy should be kept unless careful protocol is followed requesting the birth parents’ permission”⁶⁴

Proponents of access legislation, on the other hand, distinguish confidentiality and privacy, with respect to public disclosure, from anonymity that forever precludes adult adoptees discovering their identity at birth. For example, one adopted adult wrote that “opponents of reform elevate a vague ‘promise of privacy’ to the level of anonymity. No one would argue that most people would not want details of their private lives published . . . but

would grant adoptees and their families access to their original birth records. *Id.*

60. Adrienne Lu, *Bill to Unseal Some Adoption Records Advances in N.J. Assembly*, PHILLY.COM, (June 16, 2010), http://articles.philly.com/2010-06-16/news/24965561_1_adult-adoptees-birth-parents-nonidentifying.

61. ALLIANCE IN DEFENSE OF PRIVACY IN ADOPTION *Reasons to Oppose S620/A1044* (handout attached to a Dec. 2004 form letter to legislators) (emphasis added) (AIDPA is the earlier name of New Jersey Coalition to Defend Privacy in Adoption).

62. Bill Bowman, *Should Adoptees Have Access to Their Own Birth Certificates?*, APP.COM (Mar. 5, 2011, 8:43 AM), <http://www.app.com/article/20110306/NJOPINION06/110305008/Should-adoptees-access-their-own-birth-certificates-> (quoting Patrick R. Brannigan)(emphasis added). Patrick Brannigan was quoted earlier as saying that to provide access would be “a callous betrayal” to birth parents. Elise Young, *N.J. Adoptees May Get Access to Records*, THE RECORD (Bergen, N.J.), Mar. 10, 2008, at A1.

63. Lu, *supra* note 60 (citing Deborah Jacobs’s testimony at a hearing of the Assembly Committee on Human Services). The national ACLU has not taken a position on adult adoptee access legislation.

64. Johnson & Lindsey, *supra* note 57.

restoring access does not mean ‘open records.’ It means restoring [access] to an adult adoptee”⁶⁵ Or, as birth mother Judy Foster wrote, “although I did not want her existence to be known in 1961, I always wanted to know her.”⁶⁶

With respect to the import of state laws, some access opponents have relied on language in a 1977 New Jersey Superior Court decision: “[t]he 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,” and with this “statutory shield of confidentiality,” they “are free to move on and attempt to rebuild their lives after what must be a traumatic and emotionally tormenting episode in their lives.”⁶⁷ Thus, according to a representative of coalition member the New Jersey State Bar, it is “grossly unfair to change the rules on these women.”⁶⁸ But in written submissions, the Bar more cautiously and precisely described—without reference to specific statutory or judicial language—an “expectation of privacy which has been judicially noted and relied on by [birth parents] and others.”⁶⁹ A letter from the State Bar Legislative Counsel to the Senate simply said that “many children adopted in the past were adopted with an understanding between birth parents and adoptive parents that unless both the child [after age eighteen] and the birth parent agreed, there would be no revealing of the birth parent’s identity. For example, a child adopted through Catholic Charities is placed,” she wrote, “with specific reliance by the birth parents that the birth parents’ identity” will not be disclosed without express consent.⁷⁰ In the words of a testifying adoptive parent, “whether

65. Romany, Comment to *Attempting to Satisfy All on Birth Records in New Jersey*, NJ.COM, (Feb. 4, 2011, 11:20 AM), http://blog.nj.com/njv_guest_blog/2011/02/attempting_to_satisfy_all_on_b.html.

66. Judy Foster, *Letter to the Editor*, THE RECORD (Bergen, N.J.), Mar. 16, 2008, at Opin. 2.

67. *See Statement by Patrick R. Brannigan In Opposition to Assembly Bill 2557 at the New Jersey Catholic Conference* (Feb. 14, 2007), http://www.njcathconf.com/docs/statements/NJCC_Statement_on_Adoption_Records_021407.pdf (executive director of the New Jersey Catholic Conference) (citing *Mills v. Atlantic City Dep’t of Vital Statistics*, 372 A.2d 646, 649, 653 (N.J. 1977)).

68. *Hearing on A. 3237*, *supra* note 21 (statement of Thomas Snyder).

69. Letter from Valerie L. Brown, Legislative Council for the New Jersey State Bar Association, to the members of the N.J. Senate (Dec. 1, 2006) (on file with author) (urging members to vote against S-1087, 212th Leg., 1st Ann. Sess. (2006) which permitted an adopted person and certain others access to adopted person’s original birth certificate and other related information.)

70. Letter from Valerie L. Brown, Legislative Counsel, N. J. State Bar to “Members of the [N.J.] Senate” (Dec. 2, 2004), http://www.njsba.com/images/assets/gov_relations/positionStatements/S611POSITIONSTATEMENT.pdf.

there was an intent in the law or not, it did have the effect of actually providing a privacy right.⁷¹

Countering opponents' arguments, a former New Jersey Deputy Attorney General noted that when opponents were "challenged to identify the specific statutes upon which they relied, they changed tactics and began to argue that birthparents had a 'reasonable expectation of privacy.'⁷² Access proponents make much more specific arguments about the law, maintaining that it has never guaranteed lifelong anonymity for birth mothers. They point out that the state's laws, like the laws sealing records in other states, allow courts to open records without notice to or participation by birth parents.⁷³ The law governing adoption *court records* simply provides that the records shall not "be open to inspection or copying unless the court, upon good cause shown, shall otherwise order."⁷⁴ Similarly, the seal under which *original birth certificates* are placed "shall not be broken except by order of a court of competent jurisdiction."⁷⁵ Though the Superior Court of New Jersey opined in a 1977 case that birth parents have a "statutory assurance that his or her identity as the child's parent will be shielded from *public disclosure*,"⁷⁶ it also indicated that a court has the authority under certain circumstances to provide identifying information to an adult adoptee without notice to, or consent by, birth parents.⁷⁷ In other states, proponents

71. *Hearing on A. 3237*, *supra* note 21 (statement of Christopher Bell, adoptive father and founder of Good Counsel Homes, which provides housing and independent living services for homeless pregnant women both before and after the birth of their children).
72. Letter from William H. Mild III, former attorney in the N.J. Div. of Law to Members of the N.J. S. Comm. on Health, Human Servs. and Senior Citizens (Oct. 16, 2006) ("The proponents of continued secrecy never refer to actual written contracts, statutes or court opinions. The fact that some adoption agencies or lawyers may have given inappropriate assurances of confidentiality or privacy does not create a compelling interest, or even a justification, for *State Government* to discriminate against adult adoptees by denying them access to their own birth records.") (on file with the author). Mr. Mild represented the Division of Youth and Family Services in cases involving child abuse and neglect, guardianship, and termination of parental rights.
73. NJCARE Legislative Team, *Op-ed. Governor Should Sign Adoptee Birthright Bill*, POLITICKER NJ (June 10, 2011), <http://www.politickernj.com/48501/governor-should-sign-adoptee-birthright-bill> (the group identifies itself as "[t]he New Jersey Coalition for Adoption Reform and Education, NJ CARE . . . a grass roots organization that supports honesty in adoption through educational outreach and legislative advocacy. [NJ CARE is] dedicated to the proposition that all persons are created equal and should have the same civil rights under the law.>").
74. N.J. STAT. ANN. § 9:3-52(a) (Westlaw through L.2012, c.80 and J.R. No. 5).
75. N.J. STAT. ANN. § 26:8-40.1 (Westlaw through L.2012, c.80 and J.R. No. 5).
76. *Mills v. Atl. City Dep't of Vital Statistics*, 372 A.2d 646, 651 (N.J. Super. Ct. Ch. Div. 1977) (emphasis added).
77. The court announced, for cases in which adult adoptees seek information, a procedure under which a court then refers the adoptee's request to an agency that seeks to

report, courts that have examined virtually identical laws have found both that those laws did not guarantee that records would never be opened⁷⁸ and that, in the words of a Tennessee court, there was not even "a reasonable expectation" that records would never be opened.⁷⁹ Therefore, adoption service providers could promise they would not reveal identifying information, but they could not truthfully promise that information would never be available from state agencies or courts. From the late 1960s onward, service providers became increasingly aware of both the growing movement for restoring access and the fact that experts were questioning the policy of denying access.⁸⁰

contact the birth parents and obtain consent. "If the agency or the biological parent refuses to consent to the divulgence of identifying data, the adoptee shall have the right to appeal to this court. On the basis of the adoptee's reasons and a report from the investigating agency, the court shall then make a decision." *Mills*, 372 A.2d at 656. And "where the agency's investigation fails to locate the natural parents the adoptee may appeal to the court for the information necessary to carry on the search." *Id.* A later court held that the adoptee must first establish good cause. *Baekes v. Catholic Family & Cmty. Servs.*, 509 A.2d 283 (N.J. Super. Ct. Ch. Div. 1985). *See also* *In re Adoption of Baby S.*, 705 A.2d 822, 823 (N.J. Super. Ct. Ch. Div. 1997) ("While this right to privacy [of adoptees, adoptive parents, and biological parents] cannot be made absolute, especially with regard to requests by adult adoptees to open adoption records, nonetheless in each instance good cause to do so must appear.").

78. *See Hearing on A. 3237*, *supra* note 21 (statement of Louis Manzo, prime sponsor of the bill) (referring to cases upholding Oregon and Tennessee laws); Marleygreiner, Comment to *Attempting to Satisfy all on Birth Records in New Jersey*, NJ.COM (Feb. 4, 2011, 11:12 PM) ("There is no right to anonymity in adoption as courts have ruled repeatedly").
- In a case upholding a law that provided adult adoptee access to previously sealed original birth certificates, the Oregon court held that Oregon's adoption laws never "prevented all dissemination of information concerning the identities of birth mothers. At no time in Oregon's history have the adoption laws required the consent of, or even notice to, a birth mother on the opening of adoption records or sealed birth certificates." *Does v. State*, 993 P.2d 822, 825, 832 (Or. Ct. App. 1999). Similarly, in a case upholding a Tennessee law providing records access for adult adoptees, the court held that the law had permitted disclosure upon "a judicial finding that disclosure was in the best interest of the adopted person and the public," with no requirement that birth parents be notified or have an opportunity to veto contact. *Doe v. Sundquist*, 2 S.W.3d 919, 925 (Tenn. 1999). In a federal court challenge to the Tennessee law, the Sixth Circuit rejected claims that the law violated birth mothers' constitutional rights to "familial privacy, reproductive privacy, and privacy against disclosure of confidential information . . ." *Doe v. Sundquist*, 106 F.3d 702, 705-08 (6th Cir. 1997).
79. *Doe*, 2 S.W.3d at 925 (upholding Tennessee statutes restoring access to adult adoptees).
80. *See* *Samuels*, *supra* note 3, at 416-24. One example from 1976 is a report of the CWLA Research Center, which stated:

Access proponents also argue that adoption practices through the years confirm that lifelong anonymity was not guaranteed. They point out that the documents birth mothers signed contained, on the part of the entities or individuals receiving custody of the children, neither promises of confidentiality nor broader assurances of anonymity.⁸¹ In these documents, birth mothers relinquished all their parental rights without even a guarantee that the child would be successfully placed for adoption, and the birth mothers did not retain any right to notice of future proceedings involving the child. The child could be kept in foster care or institutionalized, rather than placed for adoption, and would therefore retain his or her original birth certificate.⁸² Even in the case of a successful adoption, access proponents note, the original birth certificate would be sealed not at the time of relinquishment but only after finalization of adoption and issuance of an amended certificate, which frequently occurred many months later.⁸³ Fur-

Some therapists, adoption specialists and adult adoptees themselves see the search for one's natural parents as not only understandable but for many adoptees essential to the establishment of a sense of identity. Secondly, almost all published accounts of adoptees who have found their natural parents indicate that the adoptees have been glad to have the meeting, regardless of its outcome, and that their commitment to their adoptive parents has, if anything, been strengthened. Finally, many adoptees and others contend that, regardless of their reasons and regardless of the outcome, they have a right to know the full details of their past, including the identity of their natural parents.

CHILD WELFARE LEAGUE OF AMERICA, *supra* note 19, at 2–3 (footnotes omitted). There is “a groundswell of support for this position.” *Id.* at 3.

81. See *Hearing on S. 611*, *supra* note 54 (statement of Sen. Thomas M. McGee) (“Opponents to this bill have never produced a document signed by a birth mother that even hints at privacy/secret for her.”). See generally, AmandaW, Comment to *Ahern: Battle to open adoption records*, NORTHJERSEY.COM (Apr. 19, 2010, 1:21 AM), http://web.archive.org/web/20100421053659/http://www.northjersey.com/news/opinions/91330744_Battle_to_open_adoption_records.html#comments (“Relinquishment documents tell a mother that SHE must go away, never to contact her surrendered descendent. There has never, ever been one relinquishment document signed and produce[d] to show that a woman wanted, agreed to, and was promised secrecy, let alone for it to be legally binding.”). See *infra* text accompanying notes 180–98.

82. For example, “[w]hen a birthmother relinquishes a baby she surrenders custody of that baby without a guarantee of a sealed record. If the baby is not adopted, the [original birth certificate] is not sealed” *Hearing on S. 611*, *supra* note 54 (statement of Sen. Thomas M. McGee).

Similarly, “If the child is never adopted, or the adoption is disrupted, the original birth record is available to the person named on it – no matter what was ‘promised’ to the relinquishing parents.” Romany, Comment to *Attempting to Satisfy all on Birth Records in New Jersey*, *supra* note 57 (Feb. 4, 2011, 11:20 AM).

83. For example, “The little-known truth is that there can be no legal guarantee of secrecy even in allegedly ‘closed’ adoptions. This is because the altered birth certificate

ther, even when the child was adopted, the law left it up to the adoptive parents whether to change the child’s name.⁸⁴ Proponents also report that the child’s original surname, or the birth mother’s name, was often given to adoptive parents.⁸⁵

That neither law nor practice has guaranteed anonymity is consistent, proponents argue, with the fact that throughout the United States a key purpose of sealing records, in addition to protecting adoptee and adoptive families from public scrutiny, was to protect adoptive families from interference by birth parents.⁸⁶ For example, the 1940 New Jersey bill to close

isn’t issued—and the original sealed—until an adoption is finalized.” Yooperjo, Comment to *Attempting to Satisfy all on Birth Records in New Jersey*, NJ.COM (Feb. 4, 2011, 2:13 PM), http://blog.nj.com/njv_guest_blog/2011/02/attempting_to_satisfy_all_on_b.html. See also, NJCARE Legislative Team, *supra* note 73 (“A legal adoption occurs many months after relinquishment, if it occurs at all. Thus, if sealing records were intended to protect the privacy of birth parents, the act of sealing records would have had to occur at the time of relinquishment.”).

84. Pam Hasegawa, Letter to the Editor, *ACLU’s Adoption Stance Out of Character*, DAILY RECORD (Morristown, N.J.), Sept. 1, 2010 (“Adoptive parents . . . have . . . been allowed by law to keep the child’s birth name without permission from the original parent.”). New Jersey adoption laws provide that “the State Registrar . . . shall establish, in lieu of the original birth record, a certificate of birth showing (a) the name of the adopted person as changed by the decree of adoption, if changed” N.J. STAT. ANN. § 26:8-40.1 (Westlaw through L.2012, c. 80 and J.R. No. 5.) (emphasis added). New Jersey vital statistics law provides, “Upon entry of a judgment of adoption, the clerk of the court shall certify to the State Registrar . . . the new name of the child if changed by the judgment of adoption.” N.J. STAT. ANN. § 9:3-52(b) (Westlaw through L.2012, c. 80 and J.R. No. 5.) (emphasis added).

85. Mild, *supra* note 72, at 4 (“[T]hroughout the history of adoption, it has been not uncommon for the adopting family to know at least the name of the natural parent(s).”). Peggy Sturmfels, Op-ed, *Original Birth Certificate a Birthright*, ASBURY PARK PRESS (Ashburn Park, N.J.), May 19, 2010, Opinion Section (“Many adoptive parents were given the name of the birth mother by the agency at the time of placement.”). See Amanda Woolston, Comment to *Attempting to Satisfy All on Birth Records in New Jersey*, *supra* note 57 (Feb. 4, 2011, 5:43 AM) (“Information often IS given to the Adoptive Parents upon adoption. Many adoptees/adoptive parents know identifying information about the Original Parents.”); Marleygreiner, Comment to *Attempting to Satisfy all on Birth Records in New Jersey*, *supra* note 57 (Feb. 4, 2011, 11:12 PM) (“[I]dentifying information often appears in court papers given to adoptive parents”); *Hearing on A. 3237*, *supra* note 21 (statement of Judy Foster)(after giving up her daughter for adoption, and later meeting her for the first time, she learned that her daughter’s adoptive parents knew her name).

86. Judy Foster, *State Should Pass Adoptees’ Birthright Bill*, THE DAILY JOURNAL (Vine-land, N.J.), Sept. 13, 2008, at A (“[T]he New Jersey bill that sealed records in 1940 stated it was ‘to protect adoptive parents from the birth parents coming back and possibly causing harm or embarrassment.’”); *Hearing on S. 611*, *supra* note 54 (statement of Deborah A. Ellis, former Dir. of the ACLU of N.J.) (“As the states began to close records to the parties themselves, they did so not to provide lifelong anonymity

adoption court records stated that it would assure adopting parents that “a parent or parents of the child adopted would not turn up at some future date to embarrass both them and the child and possibly even do harm.”⁸⁷ The 1953 New Jersey statute governing the sealing of adoption court records includes among its stated purposes both protecting the child “from interference after he has been established in an adoptive home” and protecting the adoptive parents “from later disturbance of their relationships to the child by the natural parents.”⁸⁸ The only stated protection for natural parents is “from hurried or abrupt decisions to give up the child.”⁸⁹ It is consistent with these purposes, proponents note, that the surrender documents commonly contained a promise *by the birth mother* that she would not seek out her child.⁹⁰ And birth mother advocates report they understood that it was not the adoptive parents or the child who would have no right to information about the birth mother but the birth mother who was to have no right to information about or contact with the relinquished child.⁹¹

for birth mothers, but the other way around—to protect adoptive families from possible interference by birth parents.”).

87. A. 188, 164th Leg. (N.J. 1940) (enacted as ch. 210, 1940, N.J. Laws 870).

1. To keep out of the hands of any person who would have no interest in the subject matter, the facts relating to adoption. 2. To assure people adopting children that a parent or parents of the child adopted not turn up at some future date to embarrass both them and the child and possibly even do harm. A parent may surrender a child in good faith and subsequently have a change of heart or mind and upon discovering the whereabouts of the child the problem may become an embarrassing one. Then too, there is always the danger of such information being used illegally. 3. To eliminate the possibility of persons using information relating to adoption illegally and for extortion purposes. *Id.*

See also *Hearing on A. 3237*, *supra* note 21 (statement of Assemb. Louis Manzo) (the legislative intent behind sealing records was “mainly and solely to protect the adopting parents and the child from unwanted contact by the birth parent. How it ever got construed to the point that we are invading someone’s privacy is beyond me.”).

88. Act of July 23, 1953, ch. 264, 1953 N.J. Laws 1768.

89. Additional protections for the child are “from unnecessary separation from his natural parents” and “from adoption by a person unfit for such responsibility.” Additional protection for the adopting parents is “from assuming responsibility for a child without sufficient knowledge of the child’s heredity and capacity for physical and mental development.” *Id.*

90. NJCARE Legislative Team, *supra* note 73.

91. See *Hearing on A. 3237*, *supra* note 21 (statement of Valerie Drabyk) (“[T]he wording on the relinquishment papers that I signed was designed to prevent *me* from contacting my child or the adoptive parents”); MaryJane, Comment to *N.J. adoption reform: Protect the privacy of all parties*, *supra* note 23 (Mar. 22, 2010, 4:56 PM) (“[I]t was indicated to me that this secrecy was for his well-being. It was not something I wanted, it was something I was forced to accept. Given the choice, I would

Access opponents argue, however, that they must speak on behalf of birth mothers who wish to remain anonymous because those women cannot come forward to speak for themselves. In the words of the Director of Social Concerns for the New Jersey Catholic Conference, “The need for confidentiality prevents [birth mothers] from testifying . . . and we are compelled to speak out on their behalf.” She testified that access to records “can often cause deep psychological stress and profound life disruptions.”⁹² The executive director of the ACLU of New Jersey testified, “[T]hey can’t come here today and tell their story; they can’t talk about if they were in an abusive relationship . . . and so we’re trying to represent those interests.”⁹³ A lawyer opponent of access wrote in an op-ed that the legislature “is going to hear only from those who want access to records, those who can afford to speak publicly. . . . I know a lot of people who would be [affected] and who strongly desire confidentiality. They will not be coming forward”⁹⁴ An adoptive father and provider of services for homeless pregnant women testified about a birth mother in prison who “did not want her child to know the circumstances of his birth and placement” and about one of his own children’s birth mothers who told him that “until I may be ready I do not wish to have any contact.”⁹⁵ A board member of an adoption agency stated that “our primary concern is for our clients, the birth mothers I am sure you are aware of the incredible stigma, shame, guilt and desperation that pregnancy created for single women decades ago”⁹⁶

On behalf of birth mothers, an access opponent at one hearing submitted two anonymous letters from birth mothers. One letter stated, for example, that “I cannot possibly convey to you the devastating consequences such a bill would have on my life’ and that “I was told by the adoption agency [the birth certificate] would be permanently sealed (except on order of a judge).” The letter explained that “[m]y husband’s family does

have granted my son and his adoptive parents the right to contact me at any time on any issue that pertained to his well-being.”).

92. *Hearing on A. 3237*, *supra* note 21 (statement of Marlene Lao-Collins, Dir. for Social Concerns of the N.J. Catholic Conference).

93. *Id.* (statement of Deborah Jacobs, Exec. Dir. of the ACLU of N.J.)

94. Jeannine Fay Mood, Letter to the Editor, *Adoption Records Bill Underestimates Confidentiality*, ASBURY PARK PRESS, Dec. 31, 2004, at A15. See generally *An Act Concerning Adoptees: Hearing on S. 1087 Before the Sen. Comm. on Health*, 212th Leg. 1st Ann. Sess. (N.J. 2006) [hereinafter *Hearing on S. 1087*] (statement of Jeannine Fay Mood, a N.J. lawyer).

95. *Hearing on A. 3237*, *supra* note 21 (statement of Christopher Bell).

96. *Hearing on S. 611*, *supra* note 54 (statement of Delly Beekman, Bd. Member and former President of Family & Children’s Servs. in Long Branch, N.J.)

not know My children are too young to understand”⁹⁷ In written testimony that was submitted anonymously at another hearing, the writer said she was a birth mother who had been assured she and her child would meet only if they both agreed but “my birth son . . . is trying to hunt me down.”⁹⁸ A birth mother who testified against access in person, a staff member at the NCFA, reported that having had the option of confidentiality made it possible for her to consider adoption and then, ultimately, to choose an open adoption.⁹⁹ A birth mother opposing access who identified herself in written testimony wrote, “On behalf of all women in hiding, I plead for compassion from [t]he [c]ommittee. . . . All women in hiding are petrified of the betrayal of such private and personal information . . . and all the shame and anguish such exposure carries with it.”¹⁰⁰

Birth mother proponents of access testify that birth mothers were neither offered nor guaranteed lifelong anonymity. They and other access proponents maintain that the overwhelming majority of birth mothers are open to being contacted by their children. To support these contentions, they provide personal narrative accounts, statistics, evidence about adoption practices, and the research and opinions of adoption professionals. With respect to whether they received guarantees of lifelong anonymity, for example, one birth mother testified to the following at a legislative hearing: “In 1968, I was never promised to be a secret from my son.”¹⁰¹ Another testified that in “the entire relinquishment process including [the] counseling before and after her birth, confidentiality was never discussed and was certainly not promised.”¹⁰² A third reported that “in 1962 . . . I was never guaranteed privacy from my child nor did I desire it I was not given a choice.”¹⁰³

97. *Hearing on S. 1087*, *supra* note 94 (statement of Jeannie Fay Mood). She had earlier presented with her written testimony two anonymous letters by birth mothers opposing access. *Id.* One letter, for example, stated:

I cannot possibly convey to you the devastating consequences such a bill would have on my life. It is such an invasion of my privacy and my life. I was told by the adoption agency . . . that the birth certificate . . . would be permanently sealed (except on order of a judge). . . . My husband's family does not know My children are too young to understand *Id.*

98. Young, *supra* note 11.

99. *Hearing on A. 3237*, *supra* note 21 (statement of Courtney Lewis).

100. *Hearing on S. 611*, *supra* note 54 (statement of Kathleen Foley).

101. *Hearing on A. 3237*, *supra* note 21 (statement of Lisa LoRusso).

102. *Id.* (statement of Pamela Cook).

103. *Id.* (statement of Valerie Drabek). For similar statements in online commentary, see eileenmoira, Comment to *Attempting to satisfy all on birth records in New Jersey*, *supra* note 57 (Feb. 5, 2011, 9:36 AM) (“For the millionth time, I offer my testimony that as a birthparent, I was never promised anything during the relinquishment of my child.”); Painter51, Comment to *Graying Adoptees Still Searching for Their Identities*, ABCNEWS.COM (July 28, 2010), <http://abcnews.go.com/Health/MindMoodNews/>

The idea that “[m]ost birthmothers want to forget the past and not have ‘old wounds reopened’ is ‘a myth,’” according to the American Adoption Congress, the national organization that has supported the New Jersey access bills and similar legislation around the country.¹⁰⁴ Evidence of this was offered early in the New Jersey efforts to restore access by a group of directors of the New Jersey Catholic Charities offices that provide adoption services; their memo stated that in their experience, birth mothers “do not desire confidentiality.”¹⁰⁵ At a later legislative hearing, the head of a national adoption research institute similarly testified that “[o]ver time, the cultural rationale” for sealed birth certificates shifted from protecting adoptees against the stigma of illegitimacy “to maintaining the anonymity of birthmothers. However, nearly all available evidence indicates that these women—while sometimes wanting privacy in their families and not wanting their situations public—overwhelmingly desire some level of contact with or knowledge about the children they bore.”¹⁰⁶ Access proponents also offer evidence that in domestic infant adoptions today, in which mothers do have choices, most mothers choose a degree of openness in adoption arrangements.¹⁰⁷

adult-adoptees-fight-access-original-birth-certificates/comments?type=story&id=11230246#URBtfY55V8s (story focused on New Jersey legislative contest) (“As a mother of adoption loss let me be very clear. I DID NOT WANT ANONYMITY! I spent every day of 22 years grieving. I was not even allowed to hold her or see her when she was born. Thankfully we’ve been reunited. People just don’t realize that for most of us this was NOT a choice. It’s not a choice if there’s only one option!!!”).

104. *Reform Myths*, AMERICAN ADOPTION CONGRESS, http://www.americanadoptioncongress.org/reform_myths.php (last visited Apr. 1, 2013).

105. Memorandum from a Grp. of Dirs. of Maternity and Adoption Servs. for Catholic Charities Offices in five New Jersey Dioceses (1994) (on file with the author). Similarly, a 2006 publication by Catholic Charities USA, prepared for service providers, estimated that “[a]pproximately 90 percent of birthmothers are open to contact.” PATRICIA MARTINEZ DORNER, ADOPTION SEARCH: AN ETHICAL GUIDE FOR PROFESSIONALS 31 (2006). Dorner also noted that when approached, birth mothers “will say that while they welcome their children’s approach, that they didn’t feel entitled to even inquire about them.” *Id.* at 24.

106. *Hearing on S. 611*, *supra* note 54 (written statement of Adam Pertman, executive director of the Evan B. Donaldson Adoption Institute, a nonprofit research, policy and education think tank) (on file with the author). Another example at this hearing was a letter submitted by the president of the New Jersey-based group, Concerned Persons For Adoption (CPFA). *Id.* (written statement of Kathleen Strakosch Walz) (CPFA is a nonprofit “working to support those who wish to adopt, and to provide educational and networking resources to those who have adopted.”) (majority of birthmothers at CPFA programs “readily state” they would like their children “to have access to this vital information if they want it”).

107. For example, Pat Bennett, an adoptive parent and board member of the New Jersey organization Concerned Persons for Adoption (CPFA), submitted testimony that the “vast majority of domestic adoptions have some degree of openness already. Open

Among the overwhelmingly large majority of birth mothers who are open to contact, there are, as one would expect, a wide range of attitudes and experiences. From the deluge of accounts by and about birth parents and adoptees, and the legislative advocacy of access proponents, it is apparent that some of these birth mothers search for their adult children, some of them would like to search but believe either searching is prohibited or would be too intrusive, some of them take steps they hope will facilitate their children finding them, and some of them simply hope to be found.

Other birth mothers open to contact have neither searched for nor harbored hopes of being found; some are initially distressed when found. It is not uncommon, psychologist and adoptee Betty Jane Lifton writes, for a birth mother to “deny that she is the right person when first contacted. Taken by surprise, she needs time to work through her emotions”¹⁰⁸ Once found, some meet privately with the adult child while continuing to keep the child’s existence secret from family members and friends, while others, like the activist Eileen McQuade whose story is related in Part I, find great relief in sharing their long kept secret with family and friends.¹⁰⁹ As one adoptee testified, his birth mother first responded, “this is a dreadful intrusion,” but a year later “she invited [him] into her home.”¹¹⁰ Another adoptee testified that finding his birth mother was initially “a problem for her, but she has told [him] many times since, thank you for finding us.”¹¹¹

Although the percentage of birth mothers not open to contact is extremely small, the number of these birth mothers of course must be signifi-

records would encourage adoption For better or worse, the ‘stigma’ of unmarried pregnancy is not what it used to be.” *Hearing on S. 611, supra* note 54 (written statement of Pat Bennett).

108. LIFTON, *supra* note 58, at 115.

109. For a few samples of the large number of accounts of birth mothers’ different attitudes and reactions, see *supra* note 4; FLORENCE FISHER, *THE SEARCH FOR ANNA FISHER* (1973); JUDITH S. GEDIMAN & LINDA P. BROWN, *BIRTBOND: REUNIONS BETWEEN BIRTHPARENTS AND ADOPTEES—WHAT HAPPENS AFTER* (1991); MERRY JONES, *BIRTMOTHERS: WOMEN WHO HAVE RELINQUISHED BABIES FOR ADOPTION TELL THEIR STORIES* (1993); NICOLE J. BURTON, *SWIMMING UP THE SUN: A MEMOIR OF ADOPTION* (2008); LIFTON, *supra* note 58; EVELYN ROBINSON, *ADOPTION REUNION—ECSTASY OR AGONY?* (2009); SUSAN BENNETT, *LATE DISCOVERIES: AN ADOPTEE’S QUEST FOR TRUTH* (2011); PATRICK McMAHON, *BECOMING PATRICK: A MEMOIR* (2011).

110. *Hearing on A. 3237, supra* note 21 (statement of Peter Franklin).

111. *Id.* (statement of Thomas McGee). Another adoptee describes the first encounter: “After searching for over twenty years, I found my birthmother It took a few days for the initial shock to wear off for my 72-year old birthmother and then she immediately began to establish a relationship with me.” Kathleen Caswell, *Opening the Door to the Past: Recognizing the Privacy Rights of Adult Adoptees and Birthparents in California’s Sealed Adoption Records While Facilitating the Quest for Personal Origin and Belonging*, 32 GOLDEN GATE U. L. REV. 271, 310 (2002).

cant. With respect to these birth mothers, access proponents provide evidence that when they are located by adoptees—with or without adoptees’ access to original birth certificates—the adoptees respect the birth mothers’ wishes not to have contact.¹¹² As one adoptee relates, “she did not wish to meet, although she did share medical and some family history with me. Her decision hurt, but I’ve moved on. . . . I feel as if she has missed a great deal by not electing to meet [my family].”¹¹³

112. Beyond the kind of anecdotal evidence that can be found in the accounts cited in notes 4 and 110, access proponents rely on the reported lack of problems in the U.S. and the countries in which adult adoptees have access to records. For example, access proponents note that Oregon reported that during the five years after the new law took effect, “there has been nearly no negative fall out [sic] 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.” Barbara Busharis and Pam Hasegawa, *Adoptees Deserve Access to Their Birth Records*, Fall 2005 Adoptalk, North American Council on Adoptable Children (NACAC), www.nacac.org/adoptalk/accesstobirthrecords.html (quoting a letter from Kathy Ledesma, Oregon Program Manager for Adoption Services). Proponents similarly note that the lawyer who sought to block implementation of the law in Oregon, “[d]espite his prediction that birthmothers’ lives would be destroyed and their privacy lost . . . has since acknowledged that he had not heard ‘any so-called horror stories.’” EVAN B. DONALDSON ADOPTION INST., *FOR THE RECORDS II: AN EXAMINATION OF THE HISTORY AND IMPACT OF ADULT ADOPTEE ACCESS TO ORIGINAL BIRTH CERTIFICATES* 34 (2010) (quoting the Wayne Carp article *infra*).

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.” EVAN B. DONALDSON ADOPTION INST., *FOR THE RECORDS: RESTORING A LEGAL RIGHT FOR ADULT ADOPTEES* 16 (2007). See also E. Wayne Carp, *Does Opening Adoption Records Have an Adverse Social Impact? Some Lessons from the U.S., Great Britain, and Australia, 1953–2007*, 10 ADOPTION QUARTERLY, no. 3–4, 2007 at 29; Elizabeth S. Cole & Kathryn D. Donley, *History, Values, and Placement Policy Issues in Adoption*, in *THE PSYCHOLOGY OF ADOPTION* 273, 293 (David M. Brodzinsky & Marshall D. Schechter eds., 1990).

113. Susan P., *Where do Family Ties and Adoptee Rights Intersect?*, FAMILY TIES (June 4, 2012, 9:05 AM), <http://nanadays.blogspot.com/2012/06/where-do-family-ties-and-adoptee-rights.html>.

A private investigator helped me to locate my original mother within one week’s time—my adoptive parents had always had my birth name. And what did I find at the end of all that agency and legal stonewalling, at my own expense and after a great deal of time? I found an older woman who did not feel capable of meeting face-to-face, but who felt comfortable enough to share medical and some personal history in a phone conversation that she initiated after she received a sensitive, certified letter from me.

For statistical evidence of birth mothers' preferences, access proponents rely on a variety of types of data. With respect to New Jersey searches on behalf of adoptees, the New Jersey Division of Youth and Family Services reported that 95% of the birth parents it contacted agree to some form of contact.¹¹⁴ According to the testimony of a New Jersey-based private investigator, in his experience reuniting 1,700 birth mothers and the children they surrendered, only 2% "of those mothers did not want to be found."¹¹⁵ Turning to evidence from other countries, proponents cite research from the United Kingdom,¹¹⁶ where access to all adoption records was restored in the mid-1970s for English and Welsh adoptees.¹¹⁷ A study published there in 2005 found that 93% of birth mothers who have had contact with their children were either "pleased" or "very pleased" and only 1% of birth mothers were not pleased.¹¹⁸

Another kind of statistical evidence proponents offer comes from those states in which adult adoptee access has been restored and birth par-

What was the point in keeping her identity secret from me for all those years? After our conversation, I felt a great weight lifted from me—I knew the truth at last and finally felt that no one was trying to pull something over on me. Did our conversation harm my original mother? I don't think so. I found her inability to meet with me disappointing, but not surprising, considering the era in which she relinquished. She is a human being entitled to her own feelings, as am I, and like it or not, we share a connection. We are both adults, for heaven's sake. We can handle our own private affairs without state or agency intervention.

Susan P., *Maybe "Angry Adoptees" Are Just Well Informed*, FAMILY TIES (July 18, 2012, 5:20 PM), <http://nanadays.blogspot.com/2012/07/maybe-angry-adoptees-are-just-well.html>.

114. Letter from Delores Helb, Adoption Registry Coordinator, State of N.J., Dep't. of Human Servs., Div. of Youth and Family Servs., to N.J. Senator Joseph F. Vitale, (Dec. 13, 2004) (on file with the author).

We currently have approximately seven thousand birth family members registered with us. By registering, they have already expressed their willingness to have contact with the adoptee, should that person request it. In addition we receive about fifteen to twenty requests per month from adoptees seeking information about, and contact with, their birth family. . . . Despite the fact that the majority of parents we search for are not registered with us, 95% do agree to some form of contact with the adoptee. Though this percentage has not changed since 1996, newer technology has brought us greater success in the number of people we have been able to locate. *Id.*

115. *Hearing on A. 3237*, *supra* note 21 (statement of James (Joe) Collins).
 116. *See, e.g., id.* (statement of Alison Larkin, adopted adult who has written a novel and performed comedy about adoption).
 117. Children Act, 1975, c.72, § 26 (allowing adoptees at age eighteen to obtain birth records).
 118. JOHN TRISELIOTIS ET AL., *THE ADOPTION TRIANGLE REVISITED: A STUDY OF ADOPTION, SEARCH AND REUNION EXPERIENCES* 124 (2005).

ents may submit contact preference forms.¹¹⁹ Very few birth parents have indicated they do not want any contact. In Oregon, where access was restored through a statewide initiative,¹²⁰ the state issued 5,565 original birth certificates and received 411 birth parents' contact preference forms during the first year. Seventy-nine of the contact forms indicated a preference for no contact. After ten years, a total of 10,151 certificates had been issued and the total number of forms indicating a preference for no contact had increased from seventy-nine to eighty-five.¹²¹ In Alabama from 2000 to 2009, 4,227 adult adoptees accessed their certificates. Birth parents filed 207 contact preference forms, of which less than 1% indicated a preference for no contact.¹²² Results have been similar in the less populous states of New Hampshire and Maine.¹²³ In New Hampshire, from the start of access implementation in 2005 to the end of 2011, 1,497 records were requested, seventy-six contact preference forms were filed, and twelve of the forms indicated a preference for no contact.¹²⁴ In Maine, from the start of access implementation in 2009 through 2011, 1,131 original birth certificates

119. For example, on the American Adoption Congress' website, there is information about the small numbers of birth parents who have indicated a preference for no contact in Maine, New Hampshire, and Oregon. *Reform Access Success*, AM. ADOPTION CONG., http://www.americanadoptioncongress.org/reform_access_success.php (last visited Apr. 1, 2013). For another example, see Adoptaauthor (Mirah Riben), Comment to *N.J. Adoption Reform: Protect the Privacy of All Parties*, NJ.COM (Mar. 26, 2010, 6:04 PM), http://blog.nj.com/njv_guest_blog/2010/03/nj_adoption_reform_protect_the.html ("In states that have offered contact vetoes approximately 1% of mother[s] have requested not to be contacted.").

120. OR. REV. STAT. ANN. § 432.240 (Westlaw through End of the 2012 Reg. Sess. and ballot measures approved at the Nov. 6, 2012 General Election).

121. Oregon Health Authority, *Measure 58 History, Pre-Adoption Birth Records, Measure 58 Update*, OREGON.GOV, http://public.health.oregon.gov/birthdeathcertificates/get_vitalrecords/pages/58update.aspx (last visited Apr. 1, 2013). During a year and a half of litigation, when implementation of the law was stayed, a backlog developed of 2,272 requests. When the state began issuing the certificates, state officials estimated that some 25,000 adoptees were eligible to request copies of their birth certificates. Bill Graves, *Court Hands Adoptees A Big Victory*, THE OREGONIAN (Portland), May 31, 2000 (Local Stories section), at A1.

122. EVAN B. DONALDSON ADOPTION INST., *supra* note 112, at 28.

123. The 2011 U.S. Census Bureau population estimates for these states are: Alabama, 4.8 million; Oregon, 3.9 million; Maine, 1.3 million; and New Hampshire, 1.3 million. *State & County QuickFacts*, U.S. CENSUS BUREAU, <http://quickfacts.census.gov/qfd/index.html> (last visited Apr. 1, 2013).

124. *Vital Records, Pre-Adoption Birth Records, Track the Numbers*, N.H. SEC'Y OF STATE, http://www.sos.nh.gov/vitalrecords/Preadoption_birth_records.html#progress (provides downloadable year-by-year statistics) (last visited Apr. 1, 2013).

were requested; thirty birth parent contact forms were filed, of which eight indicated a preference for no contact.¹²⁵

Access proponents argue that the contact preference form, when included with access legislation, affords birth parents a means they otherwise lack to indicate their preferences.¹²⁶ As one proponent wrote, while “[c]urrently no such protection for birthparents exists in New Jersey,” the vetoed New Jersey legislation would have provided a period of a year to file for nondisclosure as well as the opportunity to indicate contact preferences at any time.¹²⁷ As a practical matter, proponents point out, many adoptees

125. E-mails from Rep. Roberta Beavers to the author (Jan. 31, 2012 & June 18, 2012) (on file with the author); e-mail from Sharon Wright, Adoption Coordinator, Me. Ctr. for Disease Control and Prevention, to the author (June 25, 2012) (on file with the author). See also *Legislation, Reform Adoption Data, Abortion and Adoption Data from States Who Have Enacted Access*, AM. ADOPTION CONG., http://www.americanadoptioncongress.org/reform_adoption_data.php (last visited Apr. 1, 2013).

Birth parents in Delaware in adoptions before 1999, and in Illinois in adoptions after 1946, may deny release of their identifying information by state records custodians. (In Delaware the denial must be renewed every three years, and in Illinois a denial is ineffective after the death of the birth parent.) DEL. CODE ANN. tit. 13, § 923(b)-(c) (Westlaw through 78 Laws 2012, chs. 204-409 and technical corrections received from the Delaware Code Revisors for 2012 Acts); 750 ILL. COMP. STAT. ANN. § 50/18.1b(e) (Westlaw through P.A. 97-1157, with the exception of P.A. 97-1150, of the 2012 Reg. Sess.). In Delaware between 1999 and 2006, 695 adult adoptees accessed their birth certificates, while eighteen requests were blocked by a birth parent disclosure veto. EVAN B. DONALDSON ADOPTION INST., *supra* note 122, at 28. In Illinois, the most populous state to restore access (estimated population of 12.9 million, *State & County QuickFacts*, *supra* note 123), adoptees adopted before 1946 became eligible in May 2010 and all adult adoptees became eligible in Nov. 2011 to apply for copies of their original certificates. 750 ILL. COMP. STAT. ANN. § 50/18.1b(e). Some 250,000 adoptees are eligible to apply for birth certificates, according to Illinois public health officials. Lolly Bowean, *Opening Doors to Adoptees' Pasts*, CHICAGO TRIBUNE, Mar. 18, 2012, at 1. Through 2012, the state issued 8,145 original birth certificates, 47 of which had some birth parent information redacted. Of 620 birth parent preference forms filed, forms that allow both for contact preferences and disclosure preferences, 163 filing birth parents indicated a preference for contact, two indicated a preference for no contact, and 455 requested not to be contacted and for some information about herself or himself be redacted. Letter from George S. Rudis, Ill. Dep't. of Pub. Health Deputy State Registrar, to the author (Jan. 15, 2013) (on file with the author); 750 ILL. COMP. STAT. ANN. § 50/18.2 (Westlaw through P.A. 97-1157, with the exception of P.A. 97-1150, of the 2012 Reg. Sess) (showing the birth parent preference form).

126. *E.g.*, *Hearing on A. 3237*, *supra* note 21 (statement of Judy Foster, member of NJ-CARE and a representative of the AAC) (“Because [birth mothers] are being found today . . . [the contact preference and the disclosure veto] give[] them a voice.”).

127. Carol Barbieri, *Give New Jersey Adoptees the Same Right to Their Birth Certificates that the Rest of Us Are Granted*, NEWJERSEYNEWSROOM.COM (Dec. 14, 2009), <http://www.newjerseynewsroom.com/commentary/give-new-jersey-adoptees-the-same-right-to-their-birth-certificates-that-the-rest-of-us-are-granted>.

discover the identity of birth parents without access to original birth certificates, through identifying information from their adoptive parents or non-identifying information either from adoptive parents or adoption agencies. As one proponent noted, “People in all fifty states every day are finding their birth parents through the Internet, Facebook and private detectives,”¹²⁸ and people are even beginning to use DNA databases to search.¹²⁹ Another proponent concluded that “the effect of the current law is arbitrary, capricious and discriminatory. The likelihood that any particular adult adoptee will know the identity of his/her birth parent(s) is extremely variable.”¹³⁰

Finally, proponents of access argue that both expert and public opinion support adult adoptee access to their birth certificates. In the New Jersey effort, a representative for ten private adoption agencies testified that access “further the interests of all members of the adoption triad [the birth parents, the adoptee, and the adoptive parents].”¹³¹ The Medical Society of New Jersey also supported the access legislation.¹³² National groups that have expressed support for access include the Child Welfare League of America (CWLA),¹³³ the North American Council on Adoptable Children

128. James, *supra* note 43 (quoting Adam Pertman, Executive Director of the Evan B. Donaldson Adoption Institute, in a story focusing on New Jersey legislative efforts). See also Lisa Belkin, *I Found My Mom Through Facebook*, N.Y. TIMES, June 26, 2011, at ST1 (“The Internet is changing nearly every chapter of adoption. . . . [It] can end . . . with birth mothers looking to reunite with children they’ve placed. A process that once relied on gatekeepers and official procedures can now be largely circumvented with a computer, Wi-Fi and some luck.”).

129. Rachel L. Swarns, *With DNA Testing, Suddenly They Are Family*, N.Y. TIMES, Jan. 23, 2012, at A1.

130. *Hearing on S. 611*, *supra* note 54 (written statement of William H. Mild III).

131. *Hearing on A. 3237*, *supra* note 21 (statement of Brenda Mirly, Spence-Chapin Services to Family and Children).

132. Carol Barbieri, *Give New Jersey Adoptees the Same Right to Their Birth Certificates that the Rest of Us Are Granted*, NEWJERSEYNEWSROOM.COM, (Dec. 14, 2009, 12:00 AM), <http://www.newjerseynewsroom.com/commentary/give-new-jersey-adoptees-the-same-right-to-their-birth-certificates-that-the-rest-of-us-are-granted>.

133. CHILD WELFARE LEAGUE OF AMERICA, CWLA STANDARDS OF EXCELLENCE FOR ADOPTION SERVICES 87 (2000).

The interests of adopted adults in having information about their origins have come to be recognized as having critical psychological importance as well as importance in understanding their health and genetic status. Because such information is essential to adopted adults’ identity and health needs, the agency should promote policies that provide adopted adults with direct access to identifying information. *Id.*

(NACAC),¹³⁴ and the National Association of Social Workers (NASW).¹³⁵ A 1990 review of adoption research described a “growing body of research that suggests that members of the adoption triad themselves do not see their interests as competing, much less [as] antagonistic.” The review noted that surveys “reveal that nearly all birthparents are willing to be found” and the “vast majority of birthmothers . . . strongly support the release of information about themselves to the children/adults they relinquished.”¹³⁶

According to public opinion polling data for New Jersey, cited in testimony submitted by the Legislation Director of the AAC, “98[%] of New Jersey citizens ‘with an adopted family member view[ed] access to birth family information as important. Among those without an adopted family member, . . . 88% [saw] having access to biological family information as important.’” The director continued that this data “parallels national findings” in an earlier poll which found that 84% of Americans “believe adopted children should be allowed to view their adoption records upon becoming adults.”¹³⁷ A New Jersey newspaper that supports access legislation summarized in an editorial, “Adoption has changed over the years and

134. *NACAC Position Statements*, NACAC.ORG, <http://www.nacac.org/policy/positions.html#Records> (last visited Feb. 2, 2011).

NACAC believes that every adopted person has the right, at the age of majority, to receive personal information about his or her birth, foster, and adoption history, including medical information, and educational and social history. NACAC supports efforts of adoptees to have access to information about and connections with their birth and foster families. *Id.*

135. NAT’L ASS’N OF SOC. WORKERS, *SOCIAL WORK SPEAKS: NATIONAL ASSOCIATION OF SOCIAL WORKERS POLICY STATEMENTS, 2000–2003* 131 (5th ed. 2000) (“The need and right of adoptees to know their birth origin should be recognized and respected. This right extends to requests from adult adoptees for identifying information.”).

136. Madelyn Freundlich, *Confidentiality Becomes Political: The New Strategy in Opposition to Open Records*, AM. ADOPTION CONGR. DECREE, Winter 1997/Spring 1998, at 1, 3, 5. *See also* Burton Z. Sokoloff, *Antecedents of American Adoption*, ADOPTION, Spring 1993, at 17, 24.

137. *Hearing on S. 611*, *supra* note 54 (written statement of Mary Martin Mason) (citing MONMOUTH UNIVERSITY POLLING INSTITUTE, NEW JERSEY COALITION FOR ADOPTION REFORM AND EDUCATION, *NEW JERSEY OPINIONS ON ADOPTED PERSONS’ ACCESS TO BIRTH RECORDS* (2006)). *See also* Evan B. Donaldson Institute, E-Newsletter: Study Shows Most Americans Support Adult Adoptee Access to Records (Dec. 2003), http://www.adoptioninstitute.org/newsletter/2003_12.html (Eighty-four percent of Americans with children “believe that adult adoptees should have full access to their adoption records”); DAVE THOMAS FOUNDATION FOR ADOPTION, *NATIONAL ADOPTION ATTITUDES SURVEY, RESEARCH REPORT 39* (2002) (Sixty-eight percent of Americans “think it is usually a good thing” for the adopted children when they seek out their birth parents).

is a much more open process now than it once was. The sense of shame is gone, thankfully But even as times change, the law remains.”¹³⁸

III.

*“Surrender” is such an appropriate description of these documents. We had our backs to a cliff—every single person we had ever trusted and loved betrayed our trust and were against us; our parents, teachers, the sisters and priest of our church. The only “choice” we were given was to “surrender” our child*¹³⁹

*I don’t like to touch it, read it or see it. . . . I really hate it, and what it represents, my utter defeat and capitulation*¹⁴⁰

*My regret over signing this paper is overwhelming. It’s the biggest mistake I’ve ever made. The repercussions are never-ending in my life.*¹⁴¹

An examination of the collection of seventy-five surrender documents from twenty-six states¹⁴² shows that their provisions are consonant with women’s reported feelings of lack of agency and powerlessness, as well as with their contention that they were neither offered nor guaranteed lifelong anonymity. The effect of the documents is simply to relieve the birth mothers of all parental obligations;¹⁴³ to terminate all parental rights or unconditionally relinquish custody, independent and irrespective of any future

138. *Family Matters*, THE RECORD (Bergen County, N.J.), March 8, 2010, http://www.northjersey.com/news/opinions/86788942_Family_matters.html?page=all.

139. Letter from Dorothea Copeck-Nolan to the author (June 6, 2009) (on file with author) (explaining that she married the child’s father and that she and her husband, and the two sons they raised, were found by the child when he was 35).

140. Email from Mary Anne Cohen to the author (July 13, 2012, 2:37 PM) (on file with author).

141. A note with just these words arrived with **California 1968A**.

142. The documents are listed in Appendix A and are referred to in the notes *supra* and *infra* by their state and year, as listed in the appendix.

143. There are three exceptions in which it is provided that the mother may retain financial obligations or in which the agency retains a right to return the child to the mother: **Iowa 1959** (“It is . . . understood that said child is of sound body and mind, and, if it is found that it was otherwise when it was received, it may be returned to the undersigned, and this instrument, thereupon, shall become null and void. And should any money have been paid by anyone toward the expense and support of said child, such money shall be refunded”); **New Jersey 1969A** (“I understand I cannot be relieved completely of obligations for support, education, and maintenance . . . except upon adoption of said child by other person or persons”); **Vermont 1946** (“If by reason of some physical or mental disease, or deficiency, or other cause beyond the control of said [agency, the agency] shall fail after a reasona-

proceedings;¹⁴⁴ and to either expressly or implicitly waive any right to notice of future proceedings regarding the child.¹⁴⁵ Thus, while adoption is typically stated either as *the* purpose or as *a* purpose of the surrender, there is no legal guarantee that the child will be adopted.¹⁴⁶ Whether or not the child is successfully placed for adoption, the birth mother's rights are terminated and, expressly or implicitly under the terms of the documents, the agency taking custody of the child is legally authorized to make all decisions about the child's future, including whether and by whom the child will be adopted.¹⁴⁷

Crucially, however, drafters of these documents anticipated that birth mothers might in the future long for contact with the child or for information about the child's welfare. Forty percent of the documents do include provisions about future identity disclosure or future contact. Under the terms of these provisions, it is the birth mother who promises she will not seek information about the child. She affirms her understanding that she is not entitled to information about the child's new identity or whereabouts. She promises she will not interfere with or harass the adoptive family.¹⁴⁸

The low social standing of and lack of choices available to most birth mothers are reflected in the standard language of the twenty percent of documents in which she attests that she is unable or is ill-suited to raise her child, often in a passage noting her unmarried state or the child's illegitimacy.¹⁴⁹ In what reads today as perhaps gratuitous censure, she concedes:

ble time, to provide an adoptive home . . . [the agency] shall have the right at any time, after due notice to me, to return the child to me")

144. *Infra* text accompanying notes 157–68. In one exception with respect to the termination of all rights, a document somewhat mysteriously refers to the birth mother transferring to the agency "all of her rights, authority and obligations, except those pertaining to property. . . ." **Louisiana 1990**. In one exception with respect to a condition, the surrender of rights is conditional on adoption: **Hawaii 1963** ("The . . . undersigned . . . consents to the legal adoption of said child . . . with the understanding and intent that when such adoption is completed, the undersigned will have no further rights to or responsibilities for said child.")

145. *Infra* text accompanying notes 160, 180–183.

146. *Infra* text accompanying notes 162–79.

147. *Id.* See *supra* note 19 with respect to the possible existence of documents that gave some kind of assurances of anonymity to the birth mother.

148. *Infra* text accompanying notes 184–190.

149. See **Colorado 1958** ("[T]he . . . natural mother of said child, is unable financially and otherwise to care for and to educate said child and feels that it is in the best interest of said child that she place said child for adoption"); **Florida 1943** ("That she . . . is unable to properly care for, raise and educate the said child"); **Georgia 1967** ("I, the undersigned mother of . . . a child born out of wedlock . . . and being solicitous that said minor child . . . should receive the benefits and advantages of a good home, and the [agency] being willing to receive and provide for the said child a home with its advantages to the end that said [child] may be best fitted for the

she is "unable financially and otherwise to care for and to educate said child;"¹⁵⁰ is "unable to properly care for, raise and educate the said child;"¹⁵¹ is "unable to provide for said child, [who] is destitute and dependent;"¹⁵² and "has no means of supporting [the] Baby Boy."¹⁵³ Unsuitability is linked to birth out of wedlock. The birth mother is "unable to care for the child for the following reasons: [c]hild was born out of wedlock and mother is

requirements of life, and I, the undersigned mother, being unable to provide an adequate family life for my child, release him"); **Iowa 1959** ("desirous that her child . . . shall be provided with a good home; and the [agency] being a duly incorporated home for the friendless . . . being willing to receive and provide for him a good home where he will be loved, trained, and educated so as to be fitted for the requirements of life [I] do hereby give and surrender said minor child"); **New Jersey 1939** ("I am unable to support, care for, and educate her; and . . . an application may be filed for the adoption of the said [child], which adoption would be for the best interests of the said [child]"); **New Jersey 1969A** ("I . . . am unable properly to support, care for and educate said child"); **New York 1951** ("I . . . certify that . . . the child is indigent, destitute and homeless. Feeling that the welfare of the said child will be promoted by placing it in a good home, I do hereby voluntarily and unconditionally surrender it"); **New York 1959** ("I am unable to provide for my said child, and the said child is destitute and dependent. Believing that the welfare of the said child will be promoted by placing it in a good home I hereby voluntarily, absolutely and unconditionally surrender it"); **New York 1966** ("Finding that I am unable to provide a suitable home for said child and feeling that the welfare of the child will be promoted by its adoption or by its being placed in foster care, the undersigned, after due consideration, does hereby voluntarily, unconditionally and absolutely surrender, transfer and commit said child"); **Ohio 1967** ("being unable to care for said child for the following reasons: The child was born out of wedlock and the mother cannot provide a suitable home under the circumstances."); **Ohio 1972** ("being unable to care for the child for the following reasons: child was born out of wedlock and his mother is unable to care for him [] therefore does hereby surrender and entrust . . . the permanent guardianship of said child"); **Ohio 1979** ("Mother is unmarried and unable to care for child [and] therefore does hereby surrender and entrust . . . the permanent guardianship of said child"); **Oklahoma 1972** ("[S]he is not married, that she has no means of supporting [the] Baby Boy . . . , that she has not finished her high school education and feels that she must do so, but it would be difficult or impossible for her to complete her education if she has said child, that she has not taken care of said child since its birth; and that because of the foregoing and because the child is not legitimate, it would not be in the best interest of said child to remain with Affiant."); **Texas 1965** ("I am presently unmarried and was unmarried at the time of the conception and birth of said child. Because of the circumstances of birth and having in mind the best interests of said child, I hereby agree to permanently surrender . . . care, custody and parental authority over said child . . . and I request that said child be declared a dependent and neglected child by the Court. (In the Dependency Judgment, ". . . the Court finds that said child . . . is homeless and abandoned").

150. **Colorado 1958**.

151. **Florida 1944**.

152. **New York 1959**.

153. **Oklahoma 1972**.

unable to care for it;¹⁵⁴ she is “unmarried and unable to care for child [and] therefore does hereby surrender and entrust” the child;¹⁵⁵ she is “presently unmarried and was unmarried at the time of the conception and birth of said child [and b]ecause of the circumstances of birth and having in mind the best interests of said child, [she] hereby agree[s] to permanently surrender the care, custody and parental authority over said child. . . .”¹⁵⁶

The documents emphasize the total and unconditional nature of the surrenders of custody and of parental rights. They confirm both the birth mother’s lack of any role in determining the child’s future and the fact that she will know nothing about the child in the future. While the documents either specify or suggest that adoption is an ultimate goal, the surrender of parental rights is not contingent upon a subsequent adoption.¹⁵⁷ In other words, there is no guarantee that the child will be adopted. More than one third of the documents expressly note the possibility of a disposition other than adoption, such as foster care or institutionalization.¹⁵⁸ More than one fourth of the documents expressly provide either that the birth mother consents to any future adoption or that she authorizes the agency or person to whom her rights are transferred to consent on her behalf.¹⁵⁹ Her consent is implicit in the balance of the documents because the documents terminate all of her rights. In half of the documents, she expressly waives her right either to notice of any adoption proceedings or to notice of any proceedings whatsoever to do with the child.¹⁶⁰ And, in any event, she would not have a right to notice because in surrendering parental rights, she becomes a legal

154. **Ohio 1972.**

155. **Ohio 1979.**

156. **Texas 1965.**

157. For one exception, see **Hawaii 1963** (“[W]hen such adoption is completed, the undersigned will have no further rights to or responsibilities for said child.”).

158. For a collection of language excerpted from these documents, see Appendix B2, which is not appended here but is available with the copy of this article posted on the Social Science Research Network at <http://ssrn.com/abstract=2233400>.

159. *E.g.*, **California 1953; Georgia 1967; Hawaii 1963; Louisiana 1990; Nebraska 1966; New Jersey 1969A; New Jersey 1961A; New Jersey 1950; New Jersey 1939; New York 1968A; New York 1959; New York 1953; New York 1951; New York 1936; North Carolina 1982; North Carolina 1970; Tennessee 1985.**

160. For a collection of language excerpted from these documents, see Appendix B2, which is not appended here but is available with the copy of this article posted on the Social Science Research Network at <http://ssrn.com/abstract=2233400>. One of the documents suggests not a right to, but a possibility of, notice to the birth mother if the child is not adopted:

If . . . [the agency] shall fail after a reasonable time, to provide an adoptive home for said child, said [agency] shall have the right at any time, after due notice to me, to return the child to me, or take other action with reference to its care in a private home or public institution, and/or institute legal proceedings for the commitment of said child to a public agency or/institu-

stranger to the child. In none of the documents is it suggested that the birth mother had a right to select adoptive parents, and more than one-third of the documents expressly note that the child’s new custodian has that authority.¹⁶¹

The complete relinquishment of rights is expressed in statements that range from plain and concise to lengthier and more emphatic.¹⁶² Examples of the briefer statements are “I hereby relinquish all rights and claims to said child”¹⁶³ and “[she] relinquishes all rights to said child hereafter.”¹⁶⁴ More elaborate ones read “the undersigned, after due consideration, does hereby voluntarily, unconditionally and absolutely surrender, transfer and commit said child to the custody, control, care and management of [the agency]” and “the undersigned . . . hereby surrenders, relinquishes and releases this child to the [agency] And the undersigned hereby also gives and grants to the agency . . . accepting the guardianship of said child the same parental control and authority that the undersigned would have had if she had retained said child.”¹⁶⁵ In keeping with this relinquishment of rights, none of the documents identify any right either retained or gained by the birth mother, although one of the documents does provide that the birth mother

tion in this State as may be deemed best for the welfare of said child. **Vermont 1947.**

161. **Connecticut 1969; Florida 1951; Hawaii 1963; Illinois 1966; Illinois 1965; Illinois 1964; Iowa 1959; Minnesota 1970A; Minnesota 1970B; Nebraska 1972; Nebraska 1961; New Jersey 1978; New Jersey 1969A; New Jersey 1963; New Jersey 1961A; New Jersey 1961B; New Jersey 1950; New Jersey 1948; New York 1966; New York 1959; North Carolina 1982; North Carolina 1970; Rhode Island 1966; Tennessee 1968; Tennessee 1965; Texas 1965.** In the case of **Tennessee 1985**, the mother believed she had chosen a family to adopt her daughter but the child was instead placed with another family. As related by the child after their reunion, the mother had been told that she:

[W]ould not be permitted to know anything about me, but my parents and I would have her identifying information and could reach out to her if we wanted. She was told that I would be encouraged to contact her at the age of 16. None of this ever happened. . . . They were not helpful or forthcoming when I was attempting to gather information on myself or find her; despite her calling them regularly throughout my life to update her information, demanding never to be held in secret from me.

Letter from Amanda J. Woolston to the author (Aug. 8, 2010) (on file with author).

162. For a collection of language excerpted from these documents, see Appendix B2, which is not appended here but is available with the copy of this article posted on the Social Science Research Network at <http://ssrn.com/abstract=2233400>.

163. **Georgia 1967.**

164. **Minnesota 1970A.**

165. **Tennessee 1985.**

may retain an obligation of financial responsibility,¹⁶⁶ and another provides that the child may be returned to the birth mother at the agency's option.¹⁶⁷

A possibility of a disposition other than adoption is expressly noted in almost 40% of the documents.¹⁶⁸ A few documents, for example, state that the agency taking custody of the child will decide *whether* to place the child for adoption: "I hereby request said Home, if it so desire, to secure for said child legal adoption by such person, or persons, as may be chosen by said Home,"¹⁶⁹ and "said [agents of the agency] if they so desire, may undertake for the said child a legal adoption."¹⁷⁰ A few documents state that whether the child will be adopted depends upon the circumstances, with language such as "committing said child to [the agency] for subsequent adoption, if proper,"¹⁷¹ and "to be placed for adoption if and when found suitable."¹⁷² Several documents from New York simply state that the agency assuming custody is to care for the child: the agency "is to provide it with a home in the United States until it shall reach the age of twenty-one years, unless such child shall be sooner lawfully discharged from the care and supervision of such [agency]."¹⁷³ Documents from seven states expressly indicate that adoption is one of the possible dispositions. For example, a 1983 Massachusetts document provides that the surrender is "for the purpose of adoption or such other disposition as may be made by a court of competent jurisdiction."¹⁷⁴ According to a 1971 surrender document in Michigan, the birth

166. "I understand that I cannot be relieved completely of obligations for support, education, and maintenance of said child except upon adoption of said child by other person or persons . . ." **New Jersey 1969A**.

167. "It is also understood that said child is of sound body and mind, and, if it is found that it was otherwise when it was received, it may be returned to the undersigned, and this instrument, thereupon, shall become null and void." **Iowa 1959**.

168. For a collection of language excerpted from these documents, see Appendix B2, which is not appended here but is available with the copy of this article posted on the Social Science Research Network at <http://ssrn.com/abstract=2233400>.

169. **Iowa 1959**.

170. **Georgia 1967**. See also **Iowa 1959** ("I hereby request said Home, if it so desire, to secure for said child a legal adoption by such person, or persons, as may be chosen by said Home . . .").

171. **Florida 1979**.

172. **Minnesota 1968**. See also **Minnesota 1974** (same); **Ohio 1972** (the agency has "the right to place him/her in a foster home and to consent in court to his/her adoption").

173. **New York 1959**. See also **New York 1936** ("to provide it with a good home, unless prevented from doing so by some physical or moral disease, or by the gross misconduct of the child"); **New York 1951** ("to provide it with a home in the United States until it shall reach the age of 21 years, unless prevented from doing so by some physical or moral disease, by the gross misconduct of the child or by its leaving the place provided for it without the knowledge or consent of the [agency]").

174. **Massachusetts 1983**.

mother is "solicitous that said child be cared for or placed in a suitable home by adoption or otherwise under the laws of the State of Michigan."¹⁷⁵ A New York surrender document provides that the agency is to "deal with and provide for her . . . until she shall arrive at the age of eighteen years or be sooner otherwise properly provided for by legal adoption."¹⁷⁶

The possibility of foster care, or of either foster care or institutionalization, is specifically referred to in a number of documents. A New York document specifies, for example, that the surrender is made "with the understanding that said child may be adopted by such person or persons as said agency in its discretion may select or that the child may be placed by said agency in its discretion in foster care."¹⁷⁷ An Ohio document, which refers to institutionalization, states that:

[I]t is agreed that [the agency] shall have the sole and exclusive guardianship of said child and the right to place him/her in a foster home and to consent in court to his/her adoption It is further agreed that the undersigned will . . . not . . . induce him/her to leave *the institution* or family with whom he/she might be placed¹⁷⁸

175. **Michigan 1971**.

176. **New York 1942**. See also **California 1968** ("licensed . . . to find homes for children and to place children in homes for adoption"); **Illinois 1964** ("full and complete custody and control of said child for all purposes including, but not limited to, the placing of said child in a family home for adoption of said child and the taking of any and all other measures which said agency may deem to be in the best interest of said child"); **Illinois 1966** ("full and complete custody and control of said child for all purposes including, but not limited to, the placing of said child in a family home for adoption of said child and the taking of any and all other measures which said agency may deem to be in the best interest of said child"); **Massachusetts 1983** ("for the purpose of adoption or such other disposition as may be made by a court of competent jurisdiction"); **Michigan 1960** ("solicitous that said child be cared for or placed in a suitable home by adoption or otherwise under the laws of the State of Michigan"); **Michigan 1968** ("being solicitous that said child be cared for or placed in a suitable home by adoption or otherwise under the laws of the State of Michigan"); **New Jersey 1969B** ("full authority in [the agency] to place said child for adoption or otherwise"); **New York 1959** ("to provide it with a home . . . until it shall reach the age of 21 years").

177. **New York 1964**; **New York 1966**. See also **Nebraska 1961** is similar ("I . . . authorize the Institute to place said child in a suitable family home on written contract during minority and to consent to and procure the adoption of said child by any person deemed by said Institute to be fitted to become the guardian of said child.").

178. **Ohio 1979** (emphasis added).

Similarly, under the terms of a New Jersey document, if “the Society shall decide, because of physical or mental condition that the best interests of the child would be served by commitment to a public or private institution or home or other agency . . . , the Society shall have the full authority and discretion to commit said child.”¹⁷⁹

Thus, under the terms of the documents, it is possible the child will not be adopted. And the birth mother, because she either explicitly¹⁸⁰ or implicitly has no right to notice of future proceedings, has no right to know whether the child has been adopted or instead has been placed either in foster care or in an institution. In the express waiver provisions that appear in half of the documents, she “waive[s] notice of any legal proceeding affecting the custody, guardianship, adoption, or other disposition”¹⁸¹ or “waive[s] any and all notice of a hearing in any court on my removal as guardian of the person of said minor. I further hereby consent to the adoption of said minor by such person or persons as may be approved by [the agency] and also waive notice of any hearing on the approval of said adoption.”¹⁸² More simply, in many of the documents she “consent[s] to the adoption of said child by any person or persons that may be designated by [the agency] without further consent on my part and without notice to me,” or she “hereby waive[s] any notice of such adoption or adoption proceedings.”¹⁸³

If the child is not successfully placed for adoption, the state does not issue an amended birth certificate. The original certificate will remain the

179. **New Jersey 1978**. Similar provisions: **New Jersey 1961B** (“I do authorize and permit [the agency] to place the said child in a foster home or for adoption I give and grant . . . full power and authority, if it deems it desirable for the welfare of the child, to transfer and surrender the custody and control of said child . . . to the New Jersey State Board of Child Welfare or to such an approved agency or public or private institution as may accept its custody.”); **Ohio 1967** (“It is agreed that [the agency] shall have the sole and exclusive guardianship of said child and the right to place him in a foster home and to consent in court to his adoption It is further agreed that the undersigned will . . . not . . . induce him to leave the institution or family with whom he might be placed.”); and **Vermont 1947** (“If [the agency] shall fail after a reasonable time, to provide an adoptive home for said child, said [agency] shall have the right at any time, after due notice to me, to return the child to me, or take other action with reference to its care in a private home or public institution, and/or institute legal proceedings for the commitment of said child to a public agency or/institution in this State as may be deemed best for the welfare of said child.”).

180. For a collection of language excerpted from these documents, see Appendix B2, which is not appended here but is available with the copy of this article posted on the Social Science Research Network at <http://ssrn.com/abstract=2233400>.

181. **Massachusetts 1983**.

182. **Connecticut 1969**.

183. **New York 1968A**.

child’s birth certificate, showing the child’s birth name and—unless the birth mother used a false name—at least the birth mother’s name.

The relinquishment and notice provisions described above confirm what the history of adoption law and practice otherwise demonstrates, that a primary purpose of having records closed to the parties to adoption as well as to the public was to protect prospective adoptive families from birth mothers rather than to guarantee birth mothers lifelong anonymity. Evidence of this in the documents themselves is the fact that 40% of them include promises *by the birth mother* regarding future contact or disclosure of information.¹⁸⁴ A frequent promise made by the birth mother is that she will not interfere with, disrupt, or molest the child or the persons caring for the child:¹⁸⁵ “I . . . do promise not to interfere in the management of the

184. For a collection of language excerpted from these documents, see Appendix B2, which is not appended here but is available with the copy of this article posted on the Social Science Research Network at <http://ssrn.com/abstract=2233400>. One set of documents suggests that the mother’s preference with respect to future contact will be taken into account by—but will not be binding on—a court if and when the child seeks identifying information. The affidavit the birth mother filed, choosing disclosure, “is not binding upon the Court and merely suggest[s] my opinion and feelings in reference to disclosure of my identity.” **Iowa 1983**.

185. **New Jersey 1948** (“promise not to interfere in the management of said child in any way whatsoever”); **New Jersey 1950** (“undertake and promise not to interfere in the management of said child in any respect whatsoever”); **New Jersey 1961B** (“nor in any way molest or interfere with the family in which she may be placed”); **New Jersey 1963** (“nor in any way molest or interfere with the family in which he may be placed”); **New Jersey 1969B** undertake and promise not to interfere in the management of said child in any respect whatsoever”); **New York 1936** (“pledge myself not to interfere with the custody or management of the said child in any way, or encourage or allow [anyone] else to do so”); **New York 1951** (“pledge myself not to interfere with the custody or management of the said child in any way, or encourage or allow anyone else to do so”); **New York 1959** (“pledge myself not to interfere with the custody or management of the said child in any way, or encourage or allow anyone else to do so”); **New York 1964** (“agree and pledge not to interfere with the custody, control, care or management of said child in any way or encourage or allow anyone else to do so”); **New York 1966** (“agree and pledge not to interfere with the custody, control, care or management of said child in any way or encourage or allow anyone else to do so”); **New York 1968A** (“pledge not to interfere hereafter with the care or management of said child in any way”); **New York 1970** (“expressly pledge not to interfere hereafter with the care or management of said child in any way”); **North Carolina 1970** (“declare . . . That I will not interfere with said child”); **North Carolina 1982** (“declare . . . That I will not interfere with said child”); **Tennessee 1965** (“agree not to seek to disrupt the future relationships of this child . . . nor in any way to disturb the child or the persons accepting responsibility for his care”); **Tennessee 1968** (“agree not to seek to disrupt the future relationships of this child . . . nor in any way to disturb the child or the persons accepting responsibility for his care”); **Tennessee 1985** (“nor in any way to molest the family in which said child may be placed”).

said child in any way whatsoever,"¹⁸⁶ "I pledge myself not to interfere with the custody or management of the said child in any way,"¹⁸⁷ "I . . . declare . . . [t]hat I will not interfere with said child,"¹⁸⁸ and "the undersigned further agrees not to . . . in any way [] molest the family in which said child may be placed."¹⁸⁹ More specifically in a number of documents, she makes promises concerning future contact, such as promises not to contact, communicate with, see, or visit the child. She promises, for example, "the undersigned will not communicate with said child."¹⁹⁰

Other promises made by the birth mother are that she will not attempt to discover either the name or whereabouts of the child, or the names or whereabouts of the adoptive parents, and that she will not induce the child to leave the persons with whom the child is placed. With respect to knowledge, the birth mother in a 1947 Vermont document states, "I am not to know the name of the person or persons with whom the child is placed, nor their address."¹⁹¹ In a 1968 Colorado document, the birth mother responds "yes" to the question, "Do you understand you will never know in what home the child is placed?"¹⁹² With respect to regaining custody of the

186. *New Jersey 1948*.

187. *New York 1959*.

188. *North Carolina 1970*.

189. *Tennessee 1985*.

190. *Ohio 1979*. See also *New Jersey 1948* ("promise not to . . . visit said child"); *New Jersey 1950* ("undertake and promise not to . . . visit said child without the consent in writing of the Superintendent of said [agency]"); *New Jersey 1962* ("agree and promise that I will never in any way have any further contact with my child whatsoever"); *New Jersey 1969B* ("undertake and promise not to . . . visit said child without the consent in writing of said [agency]"); *North Carolina 1970* ("will not interfere . . . by personal visits or correspondence"); *North Carolina 1982* ("will not interfere with said child either by personal visits or correspondence"); *Ohio 1967* ("I . . . have fully explained . . . she will relinquish the right to contact, see, visit or have custody of the child [Affidavit of employee of agency]."); *Ohio 1972* ("[T]he undersigned will . . . not to communicate with said child . . . unless other arrangements are made by the certified institution . . . because of exceptional circumstances."); *Ohio 1979* ("[T]he undersigned will . . . not communicate with said child . . . unless other arrangements are made by the certified institution or organization, board or department because of exceptional circumstances.");

191. *Vermont 1947*.

192. *Colorado 1968* ("set of interrogatory questions filed in court in connection with the relinquishment"). See also *New Jersey 1961B* ("agree that I will not seek to discover the home of the said child"); *New Jersey 1963* ("agree that I will not seek to discover the home of the said child"); *New Jersey 1978* ("I faithfully promise never to . . . demand any information . . . except as the Society in its discretion shall see fit to impart to me."); *Ohio 1967* ("I . . . have fully explained the meaning of said surrender . . . that in executing the surrender of said child . . . she will relinquish the right to . . . know when, where, and with whom said child will be placed [Affidavit of employee of agency]."); *Ohio 1972* ("rights which I relinquished are my right

child, documents include promises by the birth mother that she will not "induce the child to leave the family where said child may be placed,"¹⁹³ "will not at any future time demand return of said child to my custody,"¹⁹⁴ "will . . . not . . . induce him/her to leave the institution or family with whom he/she might be placed,"¹⁹⁵ will not "attempt (his, her) removal either physically or through legal proceedings,"¹⁹⁶ and "will not seek to regain custody of said child."¹⁹⁷

Tellingly, at a time when domestic infant adoption arrangements were moving toward greater openness, a set of documents executed in Iowa in 1985 very specifically recognizes the possibility that the birth mother may wish to receive information and have future contact, while at the same time clearly advising her that the adoptive parents will determine whether this will be possible. The birth mother is given the opportunity to indicate whether she would want to be notified if her "child developed some serious physical or mental handicap" or "died before reaching Age 18;" whether if her "child would want to meet me prior to Age 18, I would want to do this;" whether she will "probably . . . want to know how my child is doing occasionally during the growing up years;" and whether she will "probably . . . want a picture occasionally." If she does want these things, as the birth mother did in this instance, it is explained that "the final decision is

to . . . know when, where, and with whom the child will be placed [Judgment Entry]"); *Tennessee 1965* ("agree not to . . . attempt [] to discover his whereabouts"); *Tennessee 1968* (agree not to . . . attempt [] to discover his whereabouts"); *Tennessee 1985* ("agrees not to seek to discover said child's home").

193. *New Jersey 1948*.

194. *North Carolina 1970*.

195. *Ohio 1972*.

196. *Tennessee 1968*.

197. *Vermont 1947*. See also *New Jersey 1950* ("undertake and promise not to . . . take said child from, or to induce said child to leave the family where said child may be placed"); *New Jersey 1961B* ("agree that I will not . . . attempt to remove her [from her home]"); *New Jersey 1963* ("agree that I will not . . . attempt to remove him [from his home]"); *New Jersey 1969B* ("does undertake and promise not to . . . take said child from or to induce said child to leave the family where said child may be placed"); *North Carolina 1982* ("I . . . declare . . . That I will not . . . at any time demand the return of said child to my custody"); *Ohio 1972* ("agreed that the undersigned will . . . not . . . induce him/her to leave the institution or family with whom he/she might be placed . . . unless other arrangements are made by the certified institution . . . because of exceptional circumstances"); *Ohio 1979* ("agreed that the undersigned will . . . not . . . induce him/her to leave the institution or family with whom he/she might be placed . . . unless other arrangements are made by the certified institution or organization, board or department because of exceptional circumstances"); *Tennessee 1965* ("agree not to . . . attempt his removal either physically or through legal proceedings"); *Tennessee 1985* ("agrees not to . . . attempt its removal [from the child's home], either physically or by taking proceedings tending to that end").

up to the discretion of the adoptive parents. However, your response will assist us to know if you would like to be contacted were the opportunity to arise.”¹⁹⁸

CONCLUSION

The laws that birth mother advocates seek to change in order to provide adult adoptees access to original birth certificates, and the opposition that birth mothers face in their efforts, are deeply entrenched despite the relatively short life of the culture that originally led to the laws’ passage.¹⁹⁹ The idea that adopted persons’ own birth identities should be concealed from them, an idea that arose and enjoyed its heyday during the last century, was a novel invention, a historical anomaly.²⁰⁰ It was entwined at that time with the idea that the adoptive family could be a perfect replica of the biological family, with the adoptee “as if born” to the adoptive parents, and with the idea that adoption not only provided a home for a child but also solved the social and individual problems of both the childless couple and the unmarried mother, at least the white unmarried mother.²⁰¹ Unmarried mothers, according to popular advice columnist Ann Landers, were “[s]ingle girls who hang on to their babies” and exhibit a “sick kind of love,” “an unwholesome blend of self-pity, mixed with self-destruction and a touch of martyrdom. . . . The unwed mother who has genuine love for her child wants him to have a decent life in a conventional, socially-acceptable home environment.”²⁰² Unmarried pregnant women had become pregnant, according to an increasingly dominant view in the social work profession, as a

198. **Iowa 1983.** The birth mother wrote in an explanation about her desire to meet her child if her child wanted to meet her before reaching age 18: “Only if she is mature enough to understand circumstances (after 15 or 16 yrs).”

199. See Samuels, *supra* note 3, at 385–416.

200. See David M. Smolin, *Of Orphans and Adoption, Parents and the Poor, Exploitation and Rescue: A Scriptural and Theological Critique of the Evangelical Christian Adoption and Orphan Care Movement*, 8 REGENT J. INT’L L. 267, 317–19; Samuels, *supra* note 3, at 373–85; Naomi Cahn & Jana Singer, *Adoption, Identity, and the Constitution: The Case for Opening Closed Records*, 2 U. PA. J. CONST. L. 150, 157 (1999).

201. See generally Samuels, *supra* note 3, at 404–05; RICKIE SOLINGER, WAKE UP LITTLE SUSIE: SINGLE PREGNANCY AND RACE BEFORE ROE V. WADE (1992); ELLEN HERMAN, KINSHIP BY DESIGN: A HISTORY OF ADOPTION IN THE MODERN UNITED STATES 4–103, 121–349 (2008); BARBARA MELOSH, STRANGERS AND KIN: THE AMERICAN WAY OF ADOPTION 105–57 (2002); E. WAYNE CARP, FAMILY MATTERS: SECRECY AND DISCLOSURE IN THE HISTORY OF ADOPTION 116 (1998).

202. Ann Landers, *Ann Called Cold-Hearted Mean Woman*, PITTSBURGH POST-GAZETTE, Apr. 25, 1961, at 17.

result of psychological disorders and the best solution for them was adoption.²⁰³

Dramatic changes in the culture were soon under way. The idea that adoptees should never learn their original identities was challenged by a movement of adoptees, supported by birth and adoptive parents, and was criticized by an increasing chorus of expert voices. The movement for access began in the late 1960s and accelerated in the 1970s.²⁰⁴ An example of expert support is the action in 1980 of a panel mandated by Congress and convened by the U.S. Department of Health, Education, and Welfare. The panel drafted a model state adoption act that would give adult adoptees unrestricted access to their original birth certificates.²⁰⁵ Attitudes toward birth mothers changed as attitudes changed about sexuality and single motherhood. Women, including unmarried pregnant women, gained protection from discrimination in education, housing, and employment, in addition to gaining access to legal contraception and abortion. The rate of births to unmarried women rose sharply and the rate of infant adoptions plummeted. In 1940, the birth rate for unmarried white women was 1.95%, escalating to 10.69% in 1970 and 31% in 1993.²⁰⁶ The rate of relinquishment before 1973 was almost 20% for never-married white

203. Samuels, *supra* note 3, at 408–09; SOLINGER, *supra* note 201, at 86–186; CARP, *supra* note 201, at 114–16.

204. See generally Samuels, *supra* note 3, at 369–70, 417.

205. Model State Adoption Act and Model State Adoption Procedures, 45 Fed. Reg. 10,622, 10,687–88 (Feb. 15, 1980). Ultimately, after a comment period, the Department promulgated a model act that covered only the adoption of children with special needs. Model Act for Adoption of Children With Special Needs, 46 Fed. Reg. 50,022 (Oct. 8, 1981). Opposition to the proposed act was mobilized by the NCFCA, which was founded in 1980 with the original purpose of opposing three parts of the model act: the access to records for adult adoptees, provisions concerning the rights of unmarried fathers, and provisions concerning the legalization of non-agency adoptions. CARP, *supra* note 46, at 67.

206. U.S. DEP’T. OF HEALTH & HUMAN SERVS., REPORT TO CONGRESS ON OUT-OF-WEDLOCK CHILDBEARING Figure 1–3 (1995). Analyses of rates for all women reveal significantly different rates at different age and education levels. Jason DeParle & Sabrina Tavernise, *Unwed Mothers Now a Majority Before Age of 30*, N.Y. TIMES, Feb. 18, 2012, at A1 (article cites a study that shows (for white women ages twenty to thirty) figures of 8% for college-educated women, 34% for women with some post-secondary schooling, and 51% for women with a high school diploma or less). See generally CHARLES MURRAY, COMING APART: THE STATE OF WHITE AMERICA, 1960–2010 (2012); KATHRYN EDIN & MARIA J. KEFALAS, PROMISES I CAN KEEP: WHY POOR WOMEN PUT MOTHERHOOD BEFORE MARRIAGE (2011); Kathryn Edin & Joanna M. Reed, *Why Don’t They Just Get Married? Barriers to Marriage among the Disadvantaged*, 15 FUTURE OF CHILDREN 117, 117–30 (2005).

women under forty-five years of age,²⁰⁷ compared with a rate of less than 2% in the early 1990s.²⁰⁸ As these rates shifted, experts abandoned the view that women could put the experience of surrendering a child entirely behind them.²⁰⁹ Increasingly, birth mothers were given an opportunity for openness in adoption arrangements.²¹⁰

Even as these changes were under way, states continued to close records to adult adoptees; thirteen states closed birth records between 1970 and 1990, joining the thirty-five states that had done so between the late 1930s and 1970.²¹¹ Since 1990, a period during which openness in domestic infant adoptions has become the norm,²¹² only eight states have restored access to all or most adoptees, despite the successful example of the states in which access has been restored and despite the continual efforts to restore access in other states.²¹³ The powerful resistance to restoring access has rested largely on “protecting” birth mothers, but in effect it has reinscribed the shame and stigma of the earlier era. The birth mother advocates, who are among the most vocal advocates for ac-

207. STEPHANIE J. VENTURA & CHRISTINE A. BACHRACH, CTRS. FOR DISEASE CONTROL & PREVENTION, NONMARITAL CHILDBEARING IN THE UNITED STATES, 1940–99, Figure 22 (2000).

208. *Id.* at Figures 2 & 22. Only the rates for white women are provided in the text because black women have never surrendered children for adoption in significant percentages. The rate before 1973 was 1.5%, and it declined between then and 1995. *Id.* at Figure 22.

209. Samuels, *supra* note 3, at 418–19.

210. See DEBORAH H. SIEGEL & SUSAN LIVINGSTON SMITH, ADOPTION INSTITUTE, OPENNESS IN ADOPTION: FROM SECRECY AND STIGMA TO KNOWLEDGE AND CONNECTIONS 6–7 (2012) (“Today, research attests to the reality that most private adoptions of infants in this country involve some level of openness, and a recent survey—viewed as the first nationally representative study of adoptive families in the U.S.—found there is continuing contact between adopted children and their birth relatives in about two-thirds of families adopting privately.”) (citation omitted); Annette Ruth Appell, *The Myth of Separation*, 6 NORTHWESTERN J.L. & SOC. POL’Y 291, 295 (2011) (“open adoption has become the norm in practice in private and foster care adoptions”); Suein Hwang, *Adoptions Get Easier Thanks to ‘Open’ Agreements*, WALL ST. J., Sept. 8, 2004, at D1 (“agencies report that open adoption is being embraced by pregnant women who previously might have been reluctant to consider giving up a baby if it meant no chance of contact later in life”); Ruth G. McRoy et al., *Openness in Adoption*, FOCAL POINT, Spring 1996, at 1, (“movement is generally away from confidentiality and secrecy toward more ‘openness’ . . . in which either mediated or direct contact occurs between the child’s families by birth and by adoption”).

211. Samuels, *supra* note 3, at 383–85 (Oklahoma’s law before 1997 may have by its terms provided access but have been interpreted to deny access).

212. See SIEGEL & SMITH, *supra* note 210; Appell, *supra* note 210; Hwang, *supra* note 210; McRoy et al., *supra* note 210.

213. *Supra* note 43–44 and accompanying text.

cess, stress the fact that birth mothers were neither offered a choice of being, nor guaranteed that they would be, forever unknown to their children. That fact, emphasized in birth mother accounts and corroborated by the surrender documents, makes it fair to ask, as one of the newly raised birth mother voices asks, “Where do . . . people who were not even there come up with this stuff?”²¹⁴ Or in the words of another birth mother, “Why is something I was supposedly promised[,] which I did not want and never heard of[,] so important now that it is used to deny adopted adults their civil rights?”²¹⁵ ❖

214. Underhill, *supra* note 26.

215. Letter from Mary Anne Cohen to Lois Rogers, Features Editor, THE MONITOR, NEWSPAPER OF THE ROMAN CATHOLIC DIOCESE OF TRENTON, NJ (2008), available at Comments, THE DAILY BASTARDETTE, *Be Careful of What You Ask For! New Jersey Catholic Conference Wants to Hear First Mother Stories!*, <http://bastardette.blogspot.com/2008/03/new-jersey-be-careful-of-what-you-ask.html>

APPENDIX A: DOCUMENTS

STATE	YEAR	SOURCE
<u>California</u>	1953	Frank Chilson, Attorney
	1966	Children's Home Society of California
	1968A	San Diego County Dept. of Public Welfare
	1968B	Contra Costa County Social Service Department
<u>Colorado</u>	1958	Denver Dept. of Welfare
<u>Connecticut</u>	1962	Diocesan Bureau of Social Services, Hartford
	1969	Child & Family Services of Connecticut, Inc., Hartford
<u>Florida</u>	1944	Diocesan Catholic Charities of the Diocese of St. Augustine, Jacksonville
	1951	Private doctor
	1964	Catholic Welfare Bureau, Palm Beach County
	1979	Catholic Social Services, Inc., Deland
<u>Georgia</u>	1967	Children's Center of Metropolitan Atlanta
<u>Hawaii</u>	1963	Hawaii Dept. of Social Services
<u>Illinois</u>	1964	Lutheran Child Welfare Assoc., Cook County
	1965	The Cradle Society
	1966	Lutheran Child Welfare Assoc., Cook County
<u>Iowa</u>	1959	Florence Crittenton Home of Sioux City
	1983	Catholic Charities of the Archdiocese of Dubuque
<u>Louisiana</u>	1990	Associated Catholic Charities of New Orleans, Inc.
<u>Maryland</u>	1968	Associated Catholic Charities, Inc.
<u>Massachusetts</u>	1968	Catholic Welfare Bureau of New Bedford
	1983	Catholic Charitable Bureau of Archdiocese of Boston; Catholic Charities Centre of Old Colony Area
<u>Michigan</u>	1960	Lutheran Social Services of Michigan
	1968	Michigan Children's Aid Society, Farmington
	1971	Bethany Christian Home, Inc.
<u>Minnesota</u>	1960	Bureau of Catholic Charities, St. Paul
	1967	Diocesan Bureau of Catholic Charities, St. Paul
	1968	Catholic Social Service, Ramsey County
	1970A	Lutheran Social Services of Minnesota, Minneapolis
	1970B	Catholic Social Service, Ramsey County
	1971	Children's Home Society of Minnesota, Minneapolis
<u>Nebraska</u>	1961	Immanuel Deaconess Institute, Omaha
	1966	The Catholic Charities of the Archdiocese of Omaha, Inc.
	1972	Catholic Social Service Bureau of Lincoln
	1947	Nevada State Welfare Department, Div. of Child Welfare Services
<u>New Jersey</u>	1939	New Jersey State Board of Children's Guardians
	1948	Catholic Children's Aid Assoc. of New Jersey, Newark
	1950	Children's Home Society of New Jersey, Trenton
	1961A	Family and Children's Service Inc., Monmouth County
	1961B	Associated Catholic Charities of the Roman Catholic Diocese of Paterson

STATE	YEAR	SOURCE
	1962	Catholic Children's Aid Assoc. of the Associated Catholic Charities, Essex County
	1963	Associated Catholic Charities of the Roman Catholic Diocese of Paterson
	1969A	State of New Jersey, Bureau of Children's Services
	1969B	Catholic Welfare Bureau, Diocese of Trenton
<u>New York</u>	1978	Children's Aid and Adoption Society of New Jersey, Essex County
	1936	Welfare Department of Schenectady, New York
	1942	The Sophia Fund, New York City
	1951	Free Synagogue Child Adoption Committee, N.Y.C.
	1953	Commissioner of Welfare of the City of New York
	1959	Louise Wise Services, New York City
	1963	Commissioner of Welfare of The City of New York
	1964	Spence-Chapin Adoption Service
	1966	Spence-Chapin Adoption Service
	1968A	Albany County Dept. of Social Services
	1968B	Erie County Child Welfare Services
	1970	Board of Social Services of Nassau County, Mineola
	1990	Family and Children's Service of Ithaca
<u>N. Carolina</u>	1982	The Children's Home Society of North Carolina, Inc.
	1970	Public Welfare of Wake County
<u>Ohio</u>	1967	Lorain County Child Welfare Board
	1972	Catholic Service League, Inc., Diocese of Youngstown, Ashtabula
	1973	Catholic Family & Children's Services, Diocese of Cleveland
	1979	Catholic Social Services of the Miami Valley, Dayton
<u>Oklahoma</u>	1972	Deaconess Hospital, Oklahoma City
<u>Pennsylvania</u>	1966	Jewish Family and Children's Services of Pittsburgh
	1968	Children's Home of Pittsburgh, Washington County
<u>Rhode Island</u>	1966	Sophia Little Home, Cranston
<u>Tennessee</u>	1965	Tennessee Dept. of Public Works
	1968	Tennessee Baptist Children's Homes, Inc.
	1985	Bethany Christian Services, Inc.
<u>Texas</u>	1965	Homestead Child Placement Agency, Fort Worth
<u>Vermont</u>	1947	Elizabeth Lund Home, Inc., Burlington
<u>Wisconsin</u>	1968	Children's Service Society, Dane County

