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## Note

**\*251 FINDING FAMILY: WHY NEW JERSEY SHOULD ALLOW ADULT ADOPTEES ACCESS TO THEIR ORIGINAL BIRTH CERTIFICATES**Jennifer Butch [\[FNa1\]](#)

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## I. INTRODUCTION

The characteristics of a family have changed considerably throughout history. In the 1980s, commentators wrote about the “exclusivity” of the family, noting that a family had two distinct and definite features: (1) children have only two parents, and (2) in relation to children, adults are either parents or strangers. [\[FN1\]](#) Exclusivity fails to include parents that do not fit into the traditional mold of natural parents in an opposite-sex relationship. However, there is no doubt that traditional American attitudes about what constitutes a family are constantly evolving, and it is not uncommon for families to consist of step-parents, gay parents, or other caregivers. [\[FN2\]](#)

\*252 Attitudes are changing in the realm of adoption as well. Reunions between birth parents and adoptees are becoming common and more widely publicized. [\[FN3\]](#) Many commentators today note that the media often highlights these reunions, indicating the popularity of the practice. [\[FN4\]](#) It is also more socially acceptable today for an adoptee to question his origins. [\[FN5\]](#) Common attitudes toward adoption indicate that it is natural for adoptees “to seek answers and even mourn their losses.” [\[FN6\]](#) Sumeia Williams, an adult adoptee who had been brought to the United States from Vietnam in 1970, [\[FN7\]](#) wrote of her experience speaking with another Vietnamese child. She related:

[I]t's sad, but our online exchanges were the first real interaction on any ‘normal’ level I'd had with another Vietnamese person. He was almost half my age but thoughtful and compassionate beyond his years. Often our discussions would center on how we felt about the world and our lives in it. This set into motion a process of reexamination. How had I gotten where I was and why? My inner eye eventually turned to my adoption. [\[FN8\]](#)

Additionally, while lifelong secrecy was once viewed as an immutable part of adoption proceedings, such a view has been largely discredited. [\[FN9\]](#) Commentators also assert that the practice of confidentiality is now “falling into disfavor.” [\[FN10\]](#) Originally, the reasoning underlying the sealing of adoption records and maintaining confidentiality, and thus preventing a child adoptee from learning about his origins, was to dissolve the relationship between birth parents and adoptees and foster a new relationship between the child and the adoptive parents. [\[FN11\]](#) Current commentators aptly note that the purpose \*253 behind the confidentiality provisions of adoptions was to avoid divulging information about the adoptee's parents, but not to prevent an adoptee from gaining information about his self once he reached adulthood. [\[FN12\]](#)

Moreover, adoptees need to know their biological roots to gain information about themselves in order to form a sense of self and identity. [\[FN13\]](#) Researchers on the subject note that as a person matures, he begins to question aspects of who he is that can only be answered by a birth parent. [\[FN14\]](#) This can cause a great deal of despair and confusion in the adoptee. Adoptees claim there is a “gap or void in their lives” when they do not have access to information about their birth parents. [\[FN15\]](#) Even in instances where the truth might be painful, research has shown that adoptees feel better knowing this painful information, rather than not knowing anything at all. [\[FN16\]](#)

Despite these findings, some **adult adoptees** are unable to answer simple questions about their identity due to confidentiality statutes. [\[FN17\]](#) Specifically, **adult adoptees** in New Jersey have little or no access to personal information. [\[FN18\]](#) Under current law, an adopted person is provided with a birth certificate indicating his name after it has been changed by an adoption proceeding. [\[FN19\]](#) Essentially, this law prevents a person adopted in the state from knowing his original birth surname and the identity of his birth parents. Additionally, New Jersey's current record law [\[FN20\]](#) works in conjunction with its birth certificate law [\[FN21\]](#) and states that the records of any adoption proceeding must be sealed and only opened upon “good cause.” [\[FN22\]](#) The origins of these current laws date back to 1938, at which time any records relating to adoption in New Jersey were sealed from the public. [\[FN23\]](#) The intended purpose of keeping \*254 the records from the public was twofold: first, “. . .to keep the information from the prying eyes of the public, to protect adoptees and adoptive parents from em-

barrassment should the birth parent ‘turn up at some future date and possibly even to do harm’ and second, to eliminate the possibility of illegal use of the information.” [\[FN24\]](#) In 1940, the law was amended whereby adoption records were then sealed from adoptive parents, birth parents and adoptees as well. [\[FN25\]](#)

Today, states take different approaches in allowing an adoptee access to identifying information. Only New Jersey and Washington, D.C. take the most extreme position, providing **adult adoptees** little or no access. [\[FN26\]](#) In stark contrast stand both Kansas and Alaska, states in which **adult adoptees** have unrestricted access to their original birth certificate. [\[FN27\]](#) Additionally, five states that originally rescinded an adult adoptee's access to his original birth certificate--Alabama, Oregon, New Hampshire, Tennessee, and Maine--now all provide **adult adoptees** with unrestricted access to their original birth certificate. [\[FN28\]](#) Although access to an original birth certificate is unrestricted, these states have other provisions that limit the possible actions an adult adoptee can take. [\[FN29\]](#) For instance, these states offer contact preference forms or contact veto provisions which restrict an adult adoptee's ability to contact his birth parents. [\[FN30\]](#) Some other states have enacted \*255 “prospective open records laws,” which call for open records for all adoptions that are finalized after the law goes into effect. [\[FN31\]](#) The laws in some of these states, however, limit an adult adoptee's ability to access his original birth certificate if the birth parent has filed a disclosure veto. [\[FN32\]](#) Moreover, fifteen other states require that a passive registry [\[FN33\]](#) be maintained for the benefit of birth parents and adoptees. [\[FN34\]](#) In other words, these states allow an adult adoptee to find out identifying information about himself with some restrictions, while giving a birth parent the ability to restrict other forms of contact between the parties.

Despite the numerous changes taking place nationwide, New Jersey has yet to change its outdated law and currently has no registry or post-adoption program for adoptees. [\[FN35\]](#) The state has lacked any reform in this area since legislation was initially proposed in the 1980s. [\[FN36\]](#) In the 2008-2009 session, the New Jersey Legislature again proposed new legislation containing the necessary changes that are needed in this area of the law. [\[FN37\]](#) Senate Bill S611 (‘S611’), which passed on March 3, 2008, by a 30-7 vote in the Senate, would allow adult [\[FN38\]](#) adoptees, and certain others, access to original birth certificates and other birth related \*256 information. [\[FN39\]](#) The Assembly, however, took no action in 2009 regarding S611. [\[FN40\]](#)

The 214th Legislative Session began on January 12, 2010. [\[FN41\]](#) Sponsors of S611 pre-filed Senate Bill S799 (‘S799’), formerly S611, and Assembly Bill A1406. [\[FN42\]](#) This Note will argue that New Jersey should adopt a version of S799 that does not have a disclosure veto provision in place in order to appropriately address the necessary reforms in record access that have been evidenced by other states' movement toward more relaxed legislation, and by New Jersey's own initiatives in amending other laws. This Note contends that, like Kansas and Alaska, New Jersey should provide its citizens with unrestricted access to their original birth certificates. Additionally, proposed legislation should omit a disclosure veto that would limit an adoptee's ability to receive identifying information about his birth parent. Disclosure vetoes are of dubious value and may not be in accord with public attitudes about records access. [\[FN43\]](#) Such provisions do not grant an adult adoptee his procedural due process because they deny an adoptee the ability to obtain identifying information without first having a hearing. [\[FN44\]](#)

Moreover, residents of New Jersey today have different attitudes concerning the status of adoption records access, indicating a willingness to modify outdated legislation. [\[FN45\]](#) Nine-in-ten residents surveyed acknowledged that adopted persons should be afforded this \*257 information. [\[FN46\]](#) Likewise, three-in-four New Jersey residents surveyed indicated that they would support the passage of a law that would allow an adopted person to get an original birth certificate indicating the names of his parents. [\[FN47\]](#) Additionally, when participants of a survey were asked if their feelings about the law would change if birth parents had the option of removing their names if the adoptee were granted medical and other pertinent information, support for such a bill only increased by four percent. [\[FN48\]](#)

Part II of this Note provides a timeline of the ways in which laws have impacted an adult adoptee's access to birth records throughout the nation. Part III details how other states have recently reformed their adoption laws and provides the specific models they utilize which give **adult adoptees** access to their original birth certificates. The focus of the Note then narrows to specifically analyze New Jersey. Part IV concludes that New Jersey should provide **adult adoptees** with unrestricted access to their original birth certificates by passing a version of S799 that does not include a provision for a disclo-

sure veto.

## II. THE HISTORY OF SEALING ADOPTEES' BIRTH RECORDS IN THE UNITED STATES

### A. Original Purpose Behind Closed Records

Lynn Lauber, a birth mother who gave her daughter up for adoption, related:

[I]n the late 1960s, when I was pregnant, the United States' adoption process was secret and punitive. In the religious maternity home where I spent six sodden months, a dose of guilt was dispensed with the daily vitamins: I was bad and should be punished; that was the message up and down the line, and I registered it with my tender antennae. [\[FN49\]](#)

Lauber's experience was not unlike that of many other birth mothers at that time. Commentators on this subject have noted that statements from legislators and the clear wording of state statutes throughout the mid-1900s reveal that confidentiality was mandated in **\*258** order to keep child adoptees free from public scrutiny. [\[FN50\]](#)

One of the most prominent institutions that researched and reported on the subject of adoption confidentiality throughout this time was the United States Children's Bureau (the Bureau). [\[FN51\]](#) The Bureau first advocated that the public should be disallowed from viewing these private proceedings, and second, that both birth parents and child adoptees should not have access to one another's information. [\[FN52\]](#) The Bureau also unequivocally stated that access to birth records should still be provided to **adult adoptees**. [\[FN53\]](#) In 1941, the Bureau explicitly avowed that the public should be barred from obtaining private adoption information so that a child would be spared the embarrassment of "explaining why his own name and the names of the parents are not the same as the names on his birth record." [\[FN54\]](#) Additionally, the Bureau believed that birth parents and adoptees should not have access to information about one another in order to protect the child from unwarranted interference from his or her birth parents. [\[FN55\]](#) Most importantly, however, the Bureau made it clear that when the child came to the age of majority, this information should be available to him. [\[FN56\]](#)

Another influential actor in this arena, the Child Welfare League of America (the League), adopted a position similar to that of the Bureau. [\[FN57\]](#) The League, a private organization, was founded in 1921 with sixty-five organizations as charter members. [\[FN58\]](#) The League asserted that the reasons for confidentiality in adoption were: first, to keep the relationship between adoptive and birth parents as strangers, and **\*259** second, to protect adoptees and adoptive parents from public scrutiny. [\[FN59\]](#) However, the League nonetheless advocated that adopted children should be able to locate their birth parents once they reached adult status. [\[FN60\]](#)

Thus, until the 1950s, the goal in partially closing birth records was to protect the child adoptee, but not hinder an adult adoptee from accessing his records. [\[FN61\]](#) In fact, there was little controversy among social workers in the field about whether **adult adoptees** should be afforded access to their records. [\[FN62\]](#)

### B. Uniform Adoption Act Begins to Take Away Adult Adoptee's Rights

Consistent with the policy at the time, the Uniform Adoption Act of 1953 (the Act) provided that an original birth certificate and a copy of the decree were to be sealed after an adoptee had a subsequent certificate drawn up with his new information. [\[FN63\]](#) Specifically, a sealed record "may be opened by the state registrar only upon the demand of the adopted person if of legal age or by an order of court." [\[FN64\]](#) The Act implied that an adoptee could request his original birth certificate if he reached the age of majority. Therefore, **adult adoptees** still had access to their original birth certificates. Additionally, there seemed to be no tangible reason to fear that **adult adoptees** would lose this right in the future because commentary on the subject at the time largely focused on the dangers of adoptive parents and natural parents finding out one another's identities. [\[FN65\]](#)

**\*260** Although **adult adoptees** were not previously prevented from accessing their birth records under the aforemen-

tioned laws, this soon changed. In 1969, an amendment to the Act completely rescinded the right of **adult adoptees** to access original birth records, a right that existed under the Act's 1953 provisions. [FN66] While records do not indicate if this omission was intentional, almost twenty-five years later the purpose of the statute has become clear. In 1994, the Act was revised to specifically obstruct **adult adoptees** from accessing their birth records for ninety-nine years. [FN67] In addition, these records were available only through a court order or upon request by **adult adoptees** who “furnished consent to disclosure signed by each individual who was named as a parent on the . . . original birth certificate.” [FN68] Through this amendment, **adult adoptees** affirmatively lost their right to records access. **Adult adoptees** lost this right, a right that they had enjoyed for many years, with no explanation for the change.

Throughout the 1960s, there was a consensus and a wealth of literature claiming that confidentiality in adoption proceedings was intended to foster a healthy relationship between adoptive parents and the child adoptee. [FN69] Further, it was intended to protect the adoptee from ridicule. [FN70] How did **adult adoptees** lose the right to access their original birth records? The answer is complex, and much like the surrounding issue, shrouded in secrecy. [FN71] However, commentators do note that:

[S]ecrecy was thus seen as critical to the successful rehabilitation of unwed (white) mothers and to their reentry into the marriage market, as well as to the child's successful integration into her adoptive family. . . . By the mid-1960s, these factors had combined to transmute traditional confidentiality requirements into a regime of sealed records and secrecy which prevented all members of the adoption triad from accessing information about the connection between adopted child and their biological families. [FN72] \*261 Fortunately, the stigmas of illegitimacy and secrecy are no longer as great of a concern as they were in the past. In 1968, the United States Supreme Court held that children born to unmarried parents are “persons,” and that the Fourteenth Amendment's Equal Protection Clause prohibits states from discriminating against the children of an unmarried mother. [FN73] Moreover, legislative reform has ameliorated this concern. The Uniform Parentage Act (the ‘UPA’), passed in 1973, was enacted in order to provide equality to all children irrespective of the marital status of their parents. [FN74] In 2000, the UPA was revised to incorporate the Uniform Putative and Unknown Fathers Act (the ‘UPUFA’). [FN75] The UPUFA outlines specific requirements to establish paternity so that “attendant rights, privileges, duties and obligations may take effect” that concern the child. [FN76] Hence, the stigma and secrecy surrounding a decision to give up a child for adoption no longer exist. This has allowed birth parents like Lynn Lauber, who was reunited with her daughter twenty-five years after giving her up for adoption, to form bonds with their children. [FN77]

### III. MODELS ADOPTED BY OTHER STATES

The policy reasons for originally sealing birth records are no longer at work. [FN78] Along with a shift in policy, the public has changed its conception and attitude toward adoption reform. [FN79] Birth parents are now more accepting of open records and understand that open record access promotes the best interests of adoptees. [FN80] The Division of Youth and Family Services (‘DYFS’) approximated that seven thousand birth family members in New Jersey were registered with DYFS in 2004, [FN81] \*262 indicating that these families all wish to have contact with the adoptee. [FN82] DYFS also noted that, of the families that are registered, ninety-five percent agree to some kind of contact with the adoptee. [FN83]

Recognizing these concerns, some states have repealed their outdated laws and restored rights to **adult adoptees**. [FN84] Tennessee, Oregon, Alabama, New Hampshire, and Maine have given **adult adoptees** access to their original birth certificates. [FN85] Before analyzing Tennessee's current law, it is useful to provide a historical background as a parallel to national trends in this area. In 1917, the Tennessee Legislature provided that adoption records were to be kept private unless demanded open by judicial order. [FN86] The Legislature liberalized the law in 1949 to allow **adult adoptees** the ability to open their records. [FN87] However, this right was narrowed by the Legislature in 1985 when it passed an amendment allowing only an adult over the age of twenty-five to receive “nonidentifying information” with the consent of his biological parents. [FN88]

However, in 1995, Tennessee amended its law specifically to allow **adult adoptees** access to their adoption records. [FN89] The purpose of the amendment was “to favor the rights of adopted persons or other persons for whom any closed

records are maintained . . . and to permit them to obtain information about themselves from the adoption records, sealed records, sealed adoption records, or post-adoption records to which they are entitled.” [\[FN90\]](#) While the statute has a contact veto mechanism in \*263 place, [\[FN91\]](#) birth parents do not need to be given notification in order to open the adoption records to the adult adoptee. [\[FN92\]](#) Therefore, while a birth parent can prevent an adoptee from contacting him, an adoptee can still obtain the name of his birth parent without the consent of the birth parents.

After groups instituted a lawsuit to challenge the amendment, the Tennessee Supreme Court held that the 1995 Amendment did not violate a birth parent's right to privacy, nor did it violate any expectation of privacy the parent may have had prior to the adoption. [\[FN93\]](#) The court reasoned that, during the adoption proceedings, it was never mandated that the identity of the parties be sealed, and there was always the possibility that the records could be opened by court order. [\[FN94\]](#) Moreover, the court found that opening the adoption records promoted the public interest, [\[FN95\]](#) and that prior laws to the contrary were not consistent with good public policy. [\[FN96\]](#) The court went on to say that, “[t]he new law reflects the legislature's view that the disclosure of records is in the best interest of the adopted person and the public.” [\[FN97\]](#) Legislation, along with reinforcement by the state's highest court, brought about a necessary change in Tennessee adoption law. [\[FN98\]](#)

Similarly, Oregon passed Measure 58, which allows adopted persons who have attained the age of twenty-one to gain access to their original birth certificates through a ballot initiative. The judiciary upheld Measure 58. [\[FN99\]](#) Procedurally, an adopted person, aged twenty-one years or older, would be issued a copy of his original birth certificate \*264 with no exceptions upon writing to the state registrar. [\[FN100\]](#) However, in 1999, the legislature amended this to add a contact preference form in order to give birth parents the choice of whether to permit contact with the adoptee. [\[FN101\]](#)

As in Tennessee, the Oregon initiative was met with serious opposition, as evidenced by a suit brought by six birth mothers claiming that Measure 58 was unconstitutional. [\[FN102\]](#) Citing their right to privacy, birth mothers attacked from a different angle by claiming that the law violated contract clauses of both the state and federal constitutions. [\[FN103\]](#) As to the state constitutional claim, the Court of Appeals of Oregon specifically declared that prior laws governing adoption did not provide “a statutory contract with birth mothers to prevent the disclosure of their identities to their adopted children without their consent.” [\[FN104\]](#) Moreover, court records could always be opened at any time by court order, disproving the birth mothers' claims that they were guaranteed confidentiality and privacy. [\[FN105\]](#)

As to the federal constitutional claim, the court distinguished cases that protected the right to privacy in situations of pregnancy and contraception. [\[FN106\]](#) The court declared that never in the state's history had adoption laws “prevented all dissemination of information concerning the identities of birth mothers.” [\[FN107\]](#) The court further noted that, “[a]t 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.” [\[FN108\]](#)

Alabama is another state that recently amended its laws to allow the release of original birth certificates to **adult adoptees** who request \*265 such information. [\[FN109\]](#) In passing this law, the Alabama Legislature “supported the stance that unsealing adoption records was a matter of fundamental human and civil rights, rather than a matter of reunion.” [\[FN110\]](#) Additionally, while Alabama's law provides for a contact preference form, this does not in any way prohibit an adoptee from obtaining his original birth certificate. [\[FN111\]](#)

In 2005, New Hampshire enacted legislation that grants **adult adoptees** access to their original birth certificates. [\[FN112\]](#) Additionally, Maine's law, granting adoptees access to identifying information, went into effect on January 1, 2009. [\[FN113\]](#) Meanwhile, in New Jersey, S799 awaits consideration by the State Assembly. [\[FN114\]](#)

#### IV. NEW JERSEY SPECIFIC ANALYSIS

##### A. New Jersey's Reputation as a Progressive and Reformist State.

First, this section of the Note will identify New Jersey as a progressive state. It will then address the specific programs

the state has implemented in the past to address the needs of its citizens. It will conclude that New Jersey should continue its reformist trend and allow **adult adoptees** unqualified access to their original birth certificates by adopting an amended form of S799. The White Oak Foundation notes that New Jersey is one of two states in this country where adoptees have “access to virtually nothing.” [FN115] In comparison, the White Oak Foundation notes that every other state in the nation has at least a passive registry [FN116] available for adoptees, if not complete unrestricted \*266 access to their original birth certificate. [FN117] New Jersey's failure in this regard stands in stark contrast to its impressive record in promoting and protecting the rights of its residents. The state has made great strides in many other areas, including the right to affordable housing and the right to die with dignity. [FN118] Following a landmark court decision [FN119] and subsequent legislation, [FN120] a New York Times article proclaimed that New Jersey “has become a national beacon for gay equality” [FN121] and now recognizes gay civil unions. [FN122] Moreover, the state recently became the first in a generation to abolish the death penalty. [FN123]

New Jersey's proven record in diligently protecting the rights of its citizens evidences the fact that the state should reform adoptees' rights as well. New Jersey should not only allow its adopted citizens unqualified access to their original birth certificates, but should also enact a law that does not have a disclosure veto provision in place. In so doing, New Jersey will be safeguarding the rights of **adult adoptees**, thereby demonstrating, once again, its commitment to progressive ideals.

#### B. Specific Family Related Programs That the State Has Implemented to Address the Needs of its Citizens

Not only has New Jersey distinguished itself in the above-cited areas, it has also implemented innovative programs for families and their unique needs. For example, New Jersey has enacted a Standby Guardianship Act. [FN124] The Standby Guardianship Act allows a parent who is chronically or fatally ill to begin to make plans for the custody of \*267 his or her child without losing any of his or her parental rights. [FN125]

The benefits of this law are very significant when juxtaposed with the traditional practice, under which a parent could not share guardianship of his child with any other person, preventing him from being able to transfer custody to another while still retaining his guardianship rights. [FN126] Specifically, prior to the passage of the Standby Guardianship Act, a single parent was often left in a precarious situation; in the event of a debilitating illness, there was no legal adult who could immediately assume responsibility of the child. [FN127] In 1995, the New Jersey Legislature declared that the “current law does not adequately address the needs of custodial parents or legal custodians.” [FN128] The Legislature acknowledged:

[t]hat there is an imperative need to create an expeditious manner of establishing a guardianship known as a standby guardianship, in order to enable a custodial parent or legal custodian suffering from a progressive chronic condition or a fatal illness to make plans for the permanent future care or the interim care of a child without terminating parental or legal rights. [FN129]

New Jersey has also been at the forefront of other reformist legislation in the area of family law. While many states have a type of subsidized legal guardianship program, [FN130] only seven states (including New Jersey) allow this type of subsidized program for informal kinship caregivers. [FN131] This law gives the caregiver legal guardianship of the child, but the birth parent still has visitation rights and must also pay \*268 child support. [FN132] New Jersey recognizes that the state's subsidized legal guardianship programs should be available to informal kinship providers because these arrangements provide a stable and nurturing environment for children that do not also involve state intrusion. [FN133]

The New Jersey Legislature saw that there was an increase in the number of relatives caring for children and proactively addressed the concern by awarding the caregiver certain rights, while not mandating the termination of parental rights. [FN134] The Legislature specifically declared that there was a “public interest in creating a new type of legal guardianship that addresses the needs of children and caregivers . . . .” [FN135] and required the court to specifically consider the best interests of the child when making a determination for appointments as kinship legal guardians. [FN136] As one of only seven states to offer such a program, [FN137] New Jersey demonstrated once again that it is one of the leading reformers in the country when it comes to children and their welfare.

Additionally, the state has implemented a program called Fost-Adopt, [\[FN138\]](#) which speeds up the adoption process in general. [\[FN139\]](#) Fost-Adopt was implemented after the Governor's Blue Ribbon Panel on Child Protective Services (the Panel) investigated the Division of Youth and Family Services ('DYFS') and found that DYFS was not properly protecting children in the foster care system. [\[FN140\]](#) The Panel concluded that the adoption process should be sped up, so that children would spend no more than a year in foster care. [\[FN141\]](#) Under Fost-Adopt, one caseworker will try to reunite a child with his natural family, while another caseworker will work towards a potential adoption with his foster family. [\[FN142\]](#) The children that are placed in Fost-Adopt are unlikely to be returned to their natural home, and thus the program "bridge[s] the gap between a child's initial need for temporary care and a child's long-\*269 term need for a permanent home." [\[FN143\]](#)

A federal law was also enacted in 1997, [\[FN144\]](#) which New Jersey later adopted, to increase the number of adoptions throughout the nation by focusing on the "safety, permanency and well being of children by requiring less time in foster care and more opportunities for adoption." [\[FN145\]](#) By adopting this legislation, New Jersey lawmakers once again recognized a need to address the pertinent needs of citizens, by carefully safeguarding due process rights of parents while also ensuring that children not languish in foster care.

### C. New Jersey Should Allow **Adult Adoptees** Unqualified Access to Their Original Birth Certificates

The New Jersey law pertaining to birth certificates states that an adopted person is provided with a birth certificate indicating the name of the adoptee after it is changed by an adoption proceeding. [\[FN146\]](#) Therefore, the adult adoptee does not know his original surname, or the identity of his birth parents. Additionally, the relevant portion of New Jersey's adoption statute stipulates that the records of any adoption proceeding must be sealed and only opened upon "good cause." [\[FN147\]](#)

Recently, the legislature proposed a bill that considers the issue of **adult adoptees'** access to their birth certificates and would change the present availability of such documents. [\[FN148\]](#) This bill, S799, would amend the relevant birth certificate procedure statute by permitting an adopted person to obtain his original birth certificate if he is at least eighteen years old, upon written notarized request. [\[FN149\]](#)

Proponents of open access to records in New Jersey argue that birth parents do not have any right to non-disclosure or confidentiality. [\[FN150\]](#) Citing directly to the present statute, advocates of disclosure point out that the plain language of New Jersey's current records statute already \*270 allows the court to open sealed birth records for "good cause." [\[FN151\]](#) That being the case, it can hardly be said that there was any absolute guarantee of anonymity. Moreover, legislative history provides proponents of S799 additional credence because the purpose of confidentiality was never intended to protect birth parents. For instance, a 1977 amendment to the records statute was intended to "[simplify and clarify] the provisions governing adoption proceedings . . . and [to] facilitate enforcement of the law against unauthorized persons who for profit act as intermediaries in adoption placements." [\[FN152\]](#) Again, nowhere within the existing law's legislative intent does S799 claim to protect birth parents or their right to confidentiality. Instead the apparent past and present purpose of the law is to prevent outsiders from meddling in the adoption process. [\[FN153\]](#)

Section 3(a) of S799 specifies that "[u]pon receipt of a written, notarized request . . . the State Registrar shall provide the authorized requester with an uncertified, long-form copy of the adopted person's original certificate of birth." [\[FN154\]](#) Because some birth parents may prefer to receive no contact, S799 also has a contact preference form in place that allows a birth parent to elect not to receive contact from an adoptee. [\[FN155\]](#) Similar to the contact preference forms in the states of Oregon, New Hampshire, and Alaska, [\[FN156\]](#) section 4(a) provides that, "[a] birth parent of an adopted person may submit a document of contact preference to the State Registrar indicating the birth parent's preference regarding contact with the adopted person." [\[FN157\]](#) The Registrar requires a birth parent who submits a contact preference form also complete and submit a form detailing his family history information. [\[FN158\]](#) If the birth parent elects to receive no contact from the adoptee, he must update his family history every ten years until the birth parent is forty years old, and then every five years after that. [\[FN159\]](#)

Under the proposed legislation, a disclosure veto would \*271 accompany the contact preference form. [\[FN160\]](#) A disclo-

sure veto allows the birth parents of adoptions that took place before the new law to elect to completely conceal their identifying information. [FN161] Specifically, section 2(a) says that, “a birth parent of a person adopted prior to the date of enactment of this act may submit to the State Registrar a written, notarized request for nondisclosure . . . . The request shall prohibit the State Registrar from providing the birth parent’s name and home address. . . .” [FN162] If the birth parent elects to use the disclosure veto, he must provide a copy of the family history form to the adoptee. [FN163]

While other states have utilized contact preference forms and vetoes as well as disclosure veto forms to make birth parents feel more comfortable, there are sound policy reasons for enacting a law that does not have a disclosure veto in place. There is reason to allow adults, who have been adopted prior to the enactment of this law, the right to receive the same information that adoptees will have in the future. Furthermore, public policy also favors an abolition of the disclosure veto. Opponents of veto forms contend that these types of provisions deny adoptees procedural due process by “extinguishing their ability to obtain identifying information without even so much as a hearing.” [FN164] Practically, a birth parent may file a form when they initially give up their child for adoption. It has been noted that many birth parents may never amend their contact vetoes to reflect their current point of view. [FN165] Additionally, an adoptee’s rights may be violated because he does not have access to identifying information. The right to identifying information is the right of an adoptee, not the birth parent. The Adoption Institute [FN166] study notes that adoptees are the only class of people who are not permitted to obtain their original birth certificates and that once this prohibition is lifted, adoptees will be on equal legal ground with the rest of the population. [FN167]

\*272 While S799 is a step in the right direction for **adult adoptees**, the disclosure veto is unnecessary and discriminatory. S799 assumes that a birth parent must be protected from an adult adoptee who may harass him. However, current law governing harassment requires that there be a court proceeding to establish the guilt of the supposed harasser. [FN168] However, a disclosure veto such as the one proposed in S799 is mandated only on the fact that the person is an adoptee. [FN169] Additionally, an order of no contact is granted without any finding or court proceeding. [FN170] Thus, adoptee contact is prohibited merely based on his status as an adoptee and deprives him of his procedural due process of law because no finding of guilt is made. [FN171]

Kansas and Alaska have both recognized this fundamental flaw in qualifying provisions that limit an **adult adoptees’** ability to gain access to identifying information. These states have been deemed “access on demand” states [FN172] and advocates claim that a system that restricts in any way an adult adoptee from accessing his birth records violates the adoptee’s civil rights. [FN173] States that allow **adult adoptees** unfettered access to their original birth certificates treat **adult adoptees** equally under the law, and reduce the hurdles adoptees face because of this prejudicial system. [FN174]

Disclosure vetoes that prevent persons adopted prior to the enactment of the law from receiving identifying information are unfair, as they are prospective in nature and will only affect adoptions that take place after the law is in effect. Florence Fisher of the Adoptee Liberty Movement Association related that disclosure vetoes are ineffective and disallow current adoptees from learning vital information about themselves. [FN175] She stated that if this was the course of action, “the adoptees who are being hurt by the present laws would all be dead and \*273 buried before the States would open up unconditionally.” [FN176] The backbone of Fisher’s argument gives credence to eliminating provisions that only protect future adoptions and do not serve those people presently affected by the laws. New Jersey should follow the crux of Fisher’s argument and eliminate its disclosure veto so that all **adult adoptees** have access to identifying information.

## V. CONCLUSION

An adoptee in 1981, who had recently been reunited with her birth mother implored, “please end our enslavement. Open your minds, your hearts, and open our records.” [FN177] At the same hearing, Betty Allen, both a school psychologist and an adult adoptee stated that:

[T]he need to know our own history is very strong for most of us. It is not idle curiosity. It may be almost impossible to fully understand the intensity of this need without having experienced, firsthand, the frustration of knowing

that information exists, but is denied to those of us it most deeply affects. [\[FN178\]](#)

Across the nation, states have increasingly recognized the fallacies and consequences in ascribing secrecy onto adoption. [\[FN179\]](#) Surprisingly, New Jersey has been unable to make any headway in this area for decades, despite its well-deserved reputation as a progressive state. New Jersey appears poised to enact S799, but unfortunately this bill contains a qualifying provision that essentially maintains secrecy. Disclosure vetoes may be viewed as a compromise that would open a birth parent's willingness to the process, but this would not truly address the problem that has been plaguing **adult adoptees** for decades in New Jersey. The only way to effectively remedy New Jersey's current laws is to unconditionally grant all **adult adoptees** access to information. Therefore, the legislature should adopt a version of S799 that would make New Jersey an "access on demand" state, in order to protect the civil rights of adoptees.

[\[FN1\]](#). J.D. Candidate, 2010, Seton Hall University School of Law; The College of New Jersey, B.S., 2007. Thank you to Professor Kevin B. Kelly for his guidance and insight throughout this process.

[\[FN1\]](#). Judith Areen & Milton C. Regan, Jr., *Family Law Cases and Materials* 5 (Foundation Press 2006).

[\[FN2\]](#). *Id.* at 4.

[\[FN3\]](#). See Elizabeth Samuels, [The Idea of Adoption: An Inquiry into the History of Adult Adoptee Access to Birth Records](#), 53 *Rutgers L. Rev.* 367, 371 (2000-2001).

[\[FN4\]](#). *Id.*

[\[FN5\]](#). Smueia Williams, *Well-Adjusted*, N.Y. Times, Dec. 1, 2007, available at <http://relativechoices.blogs.nytimes.com/2007/12/01/well-adjusted/#more-29>.

[\[FN6\]](#). *Id.*

[\[FN7\]](#). *Relative Choices*, Posts published by Smueia Williams, N.Y. Times, Dec. 1, 2007, available at <http://relativechoices.blogs.nytimes.com/author/sumeia-williams/>.

[\[FN8\]](#). See *supra* note 5.

[\[FN9\]](#). See generally Samuels, *supra* note 3. Samuels' article expands on the themes of confidentiality and secrecy that envelop adoption and how these notions were not a part of early adoption in the United States. She notes that these practices have now become a means of sealing birth records from **adult adoptees**, but this has begun to wane.

[\[FN10\]](#). Douglas E. Abrams & Sarah H. Ramsey, *Children and the Law: Doctrine, Policy and Practice* 708 (American Casebook Series 2007).

[\[FN11\]](#). *Id.*

[\[FN12\]](#). *Id.*

[\[FN13\]](#). Lauren M. Fair, [Shame on the U.S.: The Need for Uniform Open Adoption Records Legislation in the United States](#), 48 *Santa Clara L. Rev.* 1039, 1063 (2008).

[\[FN14\]](#). *Id.* at 1064.

[\[FN15\]](#). Brett Silverman, [The Winds of Change in Adoption Laws: Should Adoptees Have Access to Adoption Records?](#), 39

[Fam. Ct. Rev. 85, 94 \(2001\)](#).

[FN16]. *Id.*

[FN17]. See *infra* Part II.

[FN18]. See *infra* Part IV.

[FN19]. [N.J. Stat. Ann. § 26:8-40.1 \(West 2009\)](#).

[FN20]. [N.J. Stat. Ann. § 9:3-52 \(West 2009\)](#).

[FN21]. [§ 26:8-40.1](#).

[FN22]. [§ 9:3-52](#).

[FN23]. Nj-care.org, New Jersey Adoption Bill FAQ's, <http://www.nj-care.org/billfaqs.htm> (last visited Mar. 22, 2010).

[FN24]. *Id.*

[FN25]. See *infra* Part II.

[FN26]. The White Oak Foundation [hereinafter Foundation], States with no post-adoption provision, <http://www.whiteoakfoundation.org/noprov.htm> (last visited Mar. 22, 2010) (noting that New Jersey and the District of Columbia are the two regions in the nation that provide adoptees with the least access to information). The White Oak Foundation is a not-for-profit organization that works to reform post-adoption in the state of Illinois.

[FN27]. [Alaska Stat. § 18.50.510 \(2008\)](#); [Kan. Stat. Ann. § 65-2423 \(2006\)](#).

[FN28]. [Ala. Code § 26-10A-31\(g\) \(2008\)](#); Me. Rev. Stat. Ann. 22 M.R.S., § 2767 (2008); [N.H. Rev. Stat. Ann. § 5-C:9 \(2008\)](#); [Or. Rev. Stat. 432.420 \(2007\)](#); [Tenn. Code Ann. § 36-1-127 \(2008\)](#).

[FN29]. Birth parents in Alabama, New Hampshire, and Oregon can file a contact preference form. See [Ala. Code § 26-10A-31\(j\)](#); Oregon Dep't of Human Servs Ctr. For Health Statistics, Measure 58 Update: Significant Dates and Events, <http://www.oregon.gov/DHS/ph/chs/58update.shtml> (last visited Mar. 22, 2010); [N.H. Rev. Stat. Ann. § 5-C:9\(I-a\)](#); [Tenn. Code Ann. § 36-1-128](#) (permitting birth parents in Tennessee to file a contact veto provision).

[FN30]. *Id.* A contact preference form is a vehicle a birth parent can use to state whether he wants direct contact with the adult adoptee, contact through an intermediary, or no contact at all. However, a contact preference form does not legally restrict the adoptee. See American Adoption Congress, The ABCs of Adoption Reform, [http://www.americanadoptioncongress.org/pdf/legislative\\_definitions.pdf](http://www.americanadoptioncongress.org/pdf/legislative_definitions.pdf), follow Legislative Terminology (last visited Mar. 22, 2010). A contact veto is a provision that prohibits contact from an adoptee after the original birth certificate is released. If an adult adoptee violates this provision, he could be punished criminally or civilly. American Adoption Congress, <http://www.americanadoptioncongress.org/state.php#MI>; See American Adoption Congress, The ABCs of Adoption Reform, [http://www.americanadoptioncongress.org/pdf/legislative\\_definitions.pdf](http://www.americanadoptioncongress.org/pdf/legislative_definitions.pdf) (last visited Mar. 22, 2010).

[FN31]. See e.g., [Mont. Code Ann. 42-6-109](#); [Minn. Stat. 259.89](#); Nev. Rev. Stat. 43-130, 43-136, 43-143, 43-146.04; [Okla. Stat. tit. 10, 7505-6.6](#); [Wash. Rev. Code 26.33.345](#). This type of law would not affect current **adult adoptees** who do not have access to their birth certificates, but only those adoptions that take place in the state after the law is enacted.

[FN32]. A disclosure veto allows one, or both, birth parents to submit a document that would disallow an adult adoptee from receiving his original birth certificate. See American Adoption Congress, *The ABCs of Adoption Reform*, [http://www.americanadoptioncongress.org/pdf/legislative\\_definitions.pdf](http://www.americanadoptioncongress.org/pdf/legislative_definitions.pdf) (last visited Mar. 22, 2010).

[FN33]. The White Oak Foundation, *Glossary of Terms*, <http://www.whiteoakfoundation.org/definitions.htm> (last visited Mar. 22, 2010) (defining a registry as a system in which an adoptee or birth parent must sign up with a public or private agency and indicate a willingness to exchange identifying information with other parties to the adoption).

[FN34]. The Foundation, *U.S. Adoption Statutes...*, (2007), <http://www.whiteoakfoundation.org/mappage.htm> (last visited Mar. 22, 2010). A passive registry and a waiver system requires that the adoptee and the birth parent both decide to identify themselves before a birth parent's identity will be disclosed. The White Oak Foundation, *Glossary of Terms*, <http://www.whiteoakfoundation.org/definitions.htm> (last visited Mar. 22, 2010).

[FN35]. See *supra* note 26.

[FN36]. Susan K. Livio, *Bill would open birth data to adult adoptees*, *Star Ledger*, Jan. 24, 2008.

[FN37]. S. 611, 213th Leg., 2008 Sess. (N.J. 2008).

[FN38]. *Id.* at § 1b(a) (stating that an adult adoptee is one who is eighteen years of age or older).

[FN39]. See *supra* note 37.

[FN40]. American Adoption Congress, <http://www.americanadoptioncongress.org/state.php#MI>, (follow NEW JERSEY) (last visited Mar. 22, 2010).

[FN41]. *Id.*

[FN42]. *Id.* On March 22, 2010, the New Jersey Senate passed S799. Evans B. Donaldson Adoption Institute, *Adoption Institute E-Newsletter*, March 2010, [http://www.adoptioninstitute.org/newsletter/2010\\_03.html](http://www.adoptioninstitute.org/newsletter/2010_03.html). The bill is now before the Assembly Human Services Committee. *Id.*

[FN43]. See *infra* Part IV.

[FN44]. *Id.*

[FN45]. See generally *New Jersey Opinions on Adopted Persons' Access to Birth Records* [hereinafter *New Jersey Opinions*], Monmouth University Polling Institute, (April 2006), available at <http://www.nj-care.org/AdoptionPoll.pdf>. This survey was conducted by the Monmouth University Polling Institute, commissioned by the New Jersey Coalition for Adoption Reform and Education through a telephone survey of New Jersey residents. *Id.* The sampling error for the survey was +- 3.5 percent at a 95 percent confidence level with 50/50 proportions. *Id.* at 1. The survey noted that “levels of support” for the different proposals the participants were asked about were “nearly identical” for those people who were related to adopted persons and other residents of the state. *Id.* at 3.

[FN46]. *Id.* at 1.

[FN47]. *Id.* at 2.

[\[FN48\]](#). Id. at 2.

[\[FN49\]](#). Lynn Lauber, Reunion, N.Y. Times, Nov. 20, 2007, available at <http://relativechoices.blogs.nytimes.com/2007/11/20/reunion/?scp=1&sq=adoption%20reunion&st=cse>.

[\[FN50\]](#). E. Wayne Carp, Family Matters: Secrecy and Disclosure in the History of Adoption 5, 41 (Harvard University Press 1998).

[\[FN51\]](#). Samuels, supra note 3, at 385-86. The Bureau formed in 1912 within the United States Department of Commerce and Labor. The Bureau conducted studies that have been deemed pivotal and critical in reforming adoption law in the United States as well as influencing adoption workers and educating the public on adoption issues. Id. at 374.

[\[FN52\]](#). Id. at 386 (noting that in 1941 the Bureau study articulated that a child would be better off without subsequent interference in his life from his birth parents. Additionally, the Bureau noted that an adoptee should be spared any embarrassment in the adoption process, and therefore, amendments should be made to a birth record so his name matched those of his adoptive parents).

[\[FN53\]](#). Id. at 386-87.

[\[FN54\]](#). Id. at 386.

[\[FN55\]](#). Id.

[\[FN56\]](#). Id.

[\[FN57\]](#). Carp, supra note 50, at 26-27.

[\[FN58\]](#). Samuels, supra note 3, at 390.

[\[FN59\]](#). Id. at 390-91.

[\[FN60\]](#). Id. at 391 (noting that the “need to keep adoptive and birth parents from knowing one another's identity and the need to protect adoptees and adoptive parents from the dangers of public access to personal information” as being the main purposes for keeping confidentiality).

[\[FN61\]](#). Fair, supra note 13, at 1045 (noting that confidential information regarding adoptions, if in the hands of the public, could lead to a stigma such as “illegitimate”).

[\[FN62\]](#). Carp, supra note 50, at 100.

[\[FN63\]](#). [Unif. Adoption Act § 14\(2\)](#) (1953), reprinted in Handbook of the National Conference of Commissioners on Uniform State Laws and Proceedings (1953).

[\[FN64\]](#). Id. (emphasis added). See also Samuels, supra note 3, at 391-92. Even after the passage of the 1953 Act, the Child Welfare League had recommendations concerning adoptees' access to information about their birth parents. Id. In 1959, the League stated that case records should be maintained and made available when needed. Id. “In cases in which children or parents return for information or assistance, the agency should find out about the situation and give help with concerns re-

lated specifically to adoption, as for example a child's request to know about his natural parents.” Id.

[FN65]. Samuels, *supra* note 3, at 393 (noting that a comment in Texas legislation explained that “it is now possible for the identity of the adopted parents to be concealed from the adopted parents, when the child is adopted through a licensed placement agency”).

[FN66]. Id. at 390.

[FN67]. [Unif. Adoption Act § 6-107](http://www.law.upenn.edu/bll/archives/ulc/fnact99/1990s/uaa94.htm) (1994) available at <http://www.law.upenn.edu/bll/archives/ulc/fnact99/1990s/uaa94.htm>.

[FN68]. Id. See also Carp *supra* note 50, at 230 (noting that groups such as the American Adoption Congress, Concerned United Birthparents, the Child Welfare League of America, and the National Association of Social Workers all opposed the 1994 Uniform Adoption Act).

[FN69]. See *supra* note 55.

[FN70]. Samuels, *supra* note 3, at 396-97.

[FN71]. Carp, *supra* note 50, at 101 (“How and why this development occurred is a surprisingly complicated tale embedded in the changing world of postwar America.”).

[FN72]. Naomi Cahn & Jana Singer, Adoption, Identity, and the Constitution: the Case for Opening Closed Records, [\*2 U. Pa. J. Const. L.\* 150, 154-56 \(1999\)](#).

[FN73]. [\*Levy v. Louisiana\*, 391 U.S. 68, 70 \(1968\)](#).

[FN74]. [Unif. Parentage Act § 2](http://www.law.upenn.edu/bll/archives/ulc/fnact99/1990s/upa7390.htm) (amended 2000), available at <http://www.law.upenn.edu/bll/archives/ulc/fnact99/1990s/upa7390.htm>.

[FN75]. [Unif. Parentage Act § 402](http://www.law.upenn.edu/bll/archives/ulc/upa/final2002.htm) (2000), available at <http://www.law.upenn.edu/bll/archives/ulc/upa/final2002.htm>.

[FN76]. Id.

[FN77]. See Lauber, *supra* note 49.

[FN78]. See *infra* Part II.

[FN79]. Fair, *supra* note 13, at 1059.

[FN80]. Id.

[FN81]. State of New Jersey, Department of Children and Families, Adoption Registry, <http://www.nj.gov/njfofadopt/adoption/registry/>. “The DYFS Adoption Registry facilitates contact between birth family members and adoptees whose adoptions were processed by DYFS or by its predecessor agencies... **Adult adoptees**, adoptive parents of minor adoptees and birth parents who wish to register must complete an application form that includes identifying information about themselves and the person(s) they wish to contact. Once the information is processed, the information is entered into the Registry. The Registry will not release this information but will notify the registered persons if they family

member they are seeking applies to the Registry.” Id.

[FN82]. Letter from Dolores Helt, New Jersey Coalition for Adoption Reform and Education, to Senator Viale (Dec. 13, 2004), available at <http://www.nj-care.org>, (follow “Legislation FAQs,” and then follow N.J. DYFS Adoption Registry statistics).

[FN83]. Id.

[FN84]. See supra note 28.

[FN85]. Id.

[FN86]. Jennifer Flowers, [Family Law - Adoption- Retrospective and Prospective Opening of Adoption Records to Adoption Persons Twenty-One Years of Age or Older](#), 67 *Tenn. L. Rev.* 1019, 1021 (2000).

[FN87]. Id.

[FN88]. Id.

[FN89]. [Tenn. Code Ann. § 36-1-127](#) (3) (2008) (“Which records are in the office of the clerk...shall be made available to the following eligible persons: (A) An adopted person...who is twenty-one (21) years of age or older for whom an adoption record, sealed record, sealed adoption record, post-adoption record, or other record of paper is...maintained.”).

[FN90]. [Tenn. Code Ann. § 36-1-101\(c\)](#) (2008).

[FN91]. Id.; see supra note 30 for a definition of a contact veto; see Samuels, supra note 3, at 433 (explaining that this contact veto would apply to adoptions that “took place after the date on which adult adoptee access to birth records was prohibited”). Therefore, the law is prospective in nature, and would not affect adoptees who had been adopted prior to passage of the law in 1995.

[FN92]. Flowers, supra note 86, at 1022. Therefore, **adult adoptees** can receive identifying information, but they may not receive contact if the birth parent has elected to exercise his right to remain contact free.

[FN93]. [Doe v. Sundquist](#), 2 S.W.3d 919, 925 (Tenn. 1999) (“There simply has never been an absolute guarantee or even a reasonable expectation by the birth parent or any other party that adoption records were permanently sealed. In fact, reviewing the history of adoption statutes in this state reveals just the opposite.”).

[FN94]. Id.

[FN95]. Id. at 924.

[FN96]. Id. at 925.

[FN97]. Id.

[FN98]. Flowers, supra note 86, at 1032.

[FN99]. [Doe 1 v. State](#), 993 P.2d 822, 825 (Or. Ct. App. 1999) (describing Measure 58 now codified as [Or. Rev. Stat. §](#)

[432.420](#) (2007)).

[FN100]. [Id. at 826.](#)

[FN101]. Wayne Deloney, [Unsealing Adoption Records: The Right to Privacy Versus the Right of Adult Adoptees to Find Their Birth Parents](#), 7 *Whittier J. Child & Fam. Advoc.* 117, 127 (2007); Samuels, *supra* note 3, at 432-33 (explaining that a contact veto allows a birth parent to complete a “Contact Preference Form,” which gives the birth parent three options regarding their contact with their natural child. The birth parent can opt to (1) be contacted directly by the child (2) be contacted through a middle-man or (3) opt to not be contacted at all by the adoptee at that time).

[FN102]. [Doe 1, 993 P.2d at 825.](#)

[FN103]. *Id.*

[FN104]. *Id.* at 831.

[FN105]. *Id.* at 832.

[FN106]. See generally [Griswold v. Connecticut](#), 381 U.S. 479 (1965); [Roe v. Wade](#), 410 U.S. 113 (1973).

[FN107]. [Doe 1, 993 P.2d at 832.](#)

[FN108]. *Id.*

[FN109]. [Ala. Code § 26-10A-31\(g\)](#) (2008); American Adoption Congress, <http://www.americanadoptioncongress.org/state.php#AL> (noting that before January of 1991, **adult adoptees** had always had an unqualified access to adoption records and that HB-690 gave adults this right back that they had lost for nine years).

[FN110]. Deloney, *supra* note 101, at 129.

[FN111]. *Id.*

[FN112]. [N.H. Rev. Stat. Ann. § 5-C:9](#) (2008).

[FN113]. [Me. Rev. Stat. Ann. tit. 22, § 2767](#) (2008).

[FN114]. See *supra* note 42.

[FN115]. See *supra* note 26.

[FN116]. The Foundation, Glossary, [http:// www.whiteoakfoundation.org/definitions.htm](http://www.whiteoakfoundation.org/definitions.htm) (defining a passive registry as a system in which neither birth parent nor adoptee can receive information about each other unless the parties have registered and agreed to participate in an exchange of their information).

[FN117]. The Foundation, U.S. Adoption Statutes at a Glance..., [http:// www.whiteoakfoundation.org/mappage.htm](http://www.whiteoakfoundation.org/mappage.htm).

[FN118]. See generally S. [Burlington County N.A.A.C.P. v. Twp. of Mount Laurel](#), 92 N.J. 158 (1983); [In re Quinlan](#), 70 N.J. 10, 18 (1976).

[FN119]. [Lewis v. Harris, 188 N.J. 415, 423 \(2006\)](#) (holding that “denying rights and benefits to committed same-sex couples that are statutorily given to their heterosexual counterparts violates the equal protection guarantee of [the [New Jersey Constitution, Article 1, Paragraph 1](#)]”).

[FN120]. [N.J. Stat. Ann. § 37:1-28 \(West 2009\)](#).

[FN121]. Andrew Jacobs, In a Progressive State, a City Where Gay Life Hangs by a Thread, N.Y. Times, Nov. 30, 2007, available at <http://www.nytimes.com/2007/12/02/nyregion/02newark.html>.

[FN122]. See supra note 120.

[FN123]. [N.J. Stat. Ann. § 2C:11-3 \(West 2009\)](#).

[FN124]. [N.J. Stat. Ann. § 3B:12-68 \(West 2009\)](#).

[FN125]. Id.

[FN126]. Joyce McConnell, [Standby Guardianship: Sharing the Legal Responsibility for Children](#), 7 Md. J. Contemp. Legal Issues 249, 251 (1996).

[FN127]. Id. at 261.

[FN128]. [§ 3B:12-68](#).

[FN129]. Id. See also McConnell, supra note 126, at 252. Other states, including New Jersey, have enacted Standby Guardianship laws in an effort to respond to two specific changes in our society: first, the development of single parenthood, and second, the AIDS epidemic. Id. The convergence of these two situations create a situation in which children may be “cared for by caretakers without any legal authority.” Id.

[FN130]. Njeri Brown, Grandmother's Rights: Why New Jersey's Grandmothers Are Not Taking Advantage of the State's Kinship Care Law, 8 Rutgers Race & L. Rev. 107, 116-17 (2006) (A subsidized guardianship program is one that provides economic assistance to families in which formal adoption is not an option, which are generally for the benefit of children who will go to live with a legal guardian).

[FN131]. Id. (defining informal kinship care as a situation in which a relative “cares for a child outside of the supervision of the formal child welfare system, without any state supervision or intervention,” as opposed to formal kinship in which the state will place a child with a relative and provide economic support to the relative if needed).

[FN132]. [N.J. Stat. Ann. § 3B: 12A-1 \(West 2009\)](#).

[FN133]. Id.

[FN134]. Brown, supra note 130, at 119.

[FN135]. [N.J. Stat. Ann. § 3B: 12A-1\(d\) \(West 2009\)](#).

[FN136]. [N.J. Stat. Ann. § 3B: 12A-6 \(2\) \(West 2009\)](#).

[FN137]. Brown, *supra* note 130, at 117.

[FN138]. Peggy O’Crowley, Child agency acts to shore up weaknesses, *Star Ledger*, June 25, 1998.

[FN139]. State of New Jersey, Department of Children and Families, About Foster Children (2007), <http://www.state.nj.us/njfofosteradopt/foster/children/index.html>.

[FN140]. O’Crowley, *supra* note 138.

[FN141]. *Id.*

[FN142]. *Id.*

[FN143]. See *supra* note 138.

[FN144]. Adoption and Safe Families Act of 1997, [Pub. L. No. 105-89, 111 Stat. 2115 \(2006\)](#).

[FN145]. Press Release, New Jersey Dept. of Human Services, DYFS meets federal requirement to double adoptions (Nov. 19, 2002), available at <http://www.nj.gov/humanservices/Press-2002/adoption-awareness.htm>.

[FN146]. [N.J. Stat. Ann. § 26:8-40.1 \(West 2009\)](#).

[FN147]. [N.J. Stat. Ann. § 9:3-52 \(West 2009\)](#).

[FN148]. S. 799 §1(b), 214th Leg., 2008 Sess. (N.J. 2010).

[FN149]. *Id.*

[FN150]. New Jersey Coalition for Adoption Reform and Education, [www.nj-care.org](http://www.nj-care.org), follow “Legislation FAQs.”

[FN151]. *Id.*

[FN152]. N.J. Senate, No. 1631.

[FN153]. See *supra* note 23.

[FN154]. S. 799, § 3(a) 214th Leg., 2008 Sess. (N.J. 2010).

[FN155]. *Id.* at § 4(a).

[FN156]. See *supra* note 29.

[FN157]. S. 799, § 4(a) 214th Leg., 2008 Sess. (N.J. 2010).

[FN158]. *Id.* at § 4(c).

[FN159]. Id. at § 4(e).

[FN160]. Id. at § 2(a).

[FN161]. Id.

[FN162]. S. 799, [§ 2\(a\)](#) 214th Leg., 2008 Sess. (N.J. 2010).

[FN163]. Id.

[FN164]. Fair, supra note 13, at 1059.

[FN165]. Id.

[FN166]. The Adoption Institute was established in 1996 as a research and policy organization for adoption. Evans B. Donaldson Adoption Institute, About: Who We Are (2007), <http://www.adoptioninstitute.org/about/>.

[FN167]. Evans B. Donaldson Adoption Institute, For the Records: Restoring a Legal Right for **Adult Adoptees**, (Nov. 2007), 25, [http://www.adoptioninstitute.org/publications/2007\\_11\\_For\\_Records\\_Executive\\_Summary.pdf](http://www.adoptioninstitute.org/publications/2007_11_For_Records_Executive_Summary.pdf).

[FN168]. Jennifer R. Racine, [A Fundamental Rights Debate: Should Wisconsin Allow \*\*Adult Adoptees\*\* Unconditional Access to Adoption Records and Original Birth Certificates?](#), 2002 Wis. L. Rev. 1435, 1461 (2002).

[FN169]. Id.

[FN170]. Id.

[FN171]. Fair, supra note 13, at 1059.

[FN172]. Racine, supra note 168, at 1461 (defining access on demand states as those states that allow adoptees access to their original birth certificates upon request, after they have attained the proper age, without any conditions).

[FN173]. Id.

[FN174]. [www.nj-care.org](http://www.nj-care.org); follow Legislation FAQs; then follow “Does access to original birth certificates violate the privacy of birth parents?”

[FN175]. Carp, supra note 50, at 177.

[FN176]. Id.

[FN177]. Carp, supra note 50, at 183 (quoting Peggy Stapelton).

[FN178]. Id.

[FN179]. See supra note 28.

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