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STATEMENT ON HOUSE BILL 5428
Senate Judiciary Committee
April 13, 2010

For generations, families have been the basic unit of our society. The family is the instrument for passing to the next generation our customs, traditions and with many families, faith in a higher being.

Unfortunately, not all children are born into families able or prepared to parent. Therefore, we are thankful to the millions of adoptive parents who have lovingly adopted children into their homes raising them just as they were of their own flesh and blood.

For generations, Catholic Charities agencies all across the country were instrumental in facilitating a large number of adoptions and in our state, have probably assisted in more adoptions than other agency. Needless to say, we have a strong interest in the legislation before you.

As we examine the provisions of HB 5428 as passed by the Illinois House and now being considered in the Illinois Senate, the dilemma is how can we balance the interests of an adult adoptee with that of a birth parent? On the one hand, adult adopted persons have a legitimate desire to know their identity and family of origin. On the other hand, birth parents may have been promised confidentiality, and although they usually welcome contact by the person they placed for adoption, there are occasions when they do not, and we are aware of contact that has not been welcomed.

Currently, there are ways for adopted persons to possibly obtain a copy of their original birth certificate based on the principle of mutual consent, whether it is through an adoption agency's search and reunion services, the matching system under the Illinois Adoption Registry, or a court-appointed confidential intermediary. These current options, based on the principle of mutual consent, help to assist an adopted person while still respecting the confidentiality that was promised to and expected by a birth parent.

While we recognize that today more adoptions are open, we also need to remember why confidentiality was promised. Birth parents thought privacy might allow them to rebuild their lives after what was often a traumatic and emotionally tormenting situation in their lives. As adopting parents embraced children joining their families, the thought was it was important for these parents to know they could raise their child without fear of interference from the birth parents and without fear that the birth status of the child will be revealed or used as a means of harming the child or themselves. This helps in the family being unified and the child having a sense of belonging. Finally, for children, confidentiality protected the child from any possible

stigma of illegitimacy. As we look at these reasons in the context of today, some of these reasons may not seem as paramount or pressing for individuals or even valid. Social stigmas about “out of wedlock” births have changed, and for many women, it is easier to raise a child with the help of extended family rather than place the child for adoption. However, we must remember the understandings of the past that these birth parents had at the time the adoptions took place.

The Catholic Conference of Illinois is not in opposition to HB 5428, but we believe that as lawmakers, you should contemplate the ramifications, both positive and negative, about enacting this legislation.

Make the Law Prospective

Our recommendation is that the legislation should be prospective by focusing on clarifying the rules on confidentiality for those born after the effective date of this act. Prospectively, birth parents should be advised of their right to file a contact preference form prior to the entry of any judgment of adoption. In adoption cases going forward, the birth parent of an adopted person would be given the opportunity to file with the State Registry a completed document of contact preference indicating their preference regarding contact with the adopted person. They should also be given the opportunity to change their preference at any time by submitting a revised document.

Furthermore, strong consideration must be given to the ramifications on adoptions in the past, as well as in future adoptions, of changing adoption laws to make them retroactive. Persons involved in adoption cases – both prior to 1946 and since 1946 to now – have relied on current adoption law that allows for identifying information to be kept confidential unless mutual consent is given. To change the law retroactively could set an unwanted precedent that adoption laws can be changed at any time so that confidentiality promised, even in adoption cases going forward, can be taken away later on.

Breach of Implied Confidentiality

One concern especially leads us to recommend that the legislation apply prospectively. We are concerned that in those adoptions that have taken place before the effective date of the legislation, the changes under this legislation will lead to a breach of the implied confidentiality between a birth parent and an adoption agency, like Catholic Charities. Client confidentiality is a premise of social work practice unless otherwise stated when it will not be possible. Though there may not have been written confidentiality agreements, particularly in older adoption cases, it was commonly understood among all the parties that there would be confidentiality based on this premise of client confidentiality. In addition, agencies have followed set procedures that also establish this confidentiality with clients. This legislation attempts to change the understandings that were established in past client situations and attempts to undo promises made in good faith with birth parents who put their trust into the agency.

This breach of implied confidentiality then also raises possible legal implications. Birth parents have relied on this understanding of confidentiality when they were clients of agencies, and under the proposed changes in HB 5428, this confidentiality is then broken, raising potential for lawsuits to be brought against agencies. This potential legal consequence of HB 5428 for adoption agencies that acted in good faith should be given consideration. While we understand it would be the State, not adoption agencies, providing access to the original birth certificates,

adoption agencies should be assured that they will not be held liable for identifying information being made available nor will they be mandated to open or turn over information in adoption case files. A clarification regarding this concern should be made.

While our Catholic Charities agencies now have moved to facilitating adoptions with as much openness as all the parties involved are comfortable with, this legislation will impact adoption cases that were conducted under a different set of understandings and during a different era and context of adoption practice. We need to move cautiously and understand the breadth of the implications and consequences of this significant change in access to original birth certificates, especially in older adoption cases.

Would the public information campaign be sufficient?

We understand that the legislation sets out a year-long public information campaign, during which time birth parents could file a form with the Illinois Adoption Registry indicating their non-consent. We have concerns that this will not be sufficient to adequately notify those birth parents impacted by this legislation. There are no assurances that all or even most birth parents will hear about this campaign. In particular, there are likely many birth parents who live outside of Illinois and will not be aware of the change in law and the opportunity to file their non-consent. Their confidentiality would not be protected. More details about the range and the cost dedicated to the public information campaign needs to be known. In addition, at some point, will adoption agencies be expected to conduct their own public information campaign or otherwise notify birth parents of this change in the law?

Agency search and reunion services can also provide counseling and other necessary assistance

The legislation will also have a tremendous emotional and mental impact on all those involved. Catholic Charities agencies, who provide search and reunion services for cases they handled, take many important steps when facilitating any potential reunion between an adopted person and a birth parent. The involvement of an agency in the search and reunion process allows for counseling and other assessments of those involved in the highly sensitive and emotional situation of a reunion. Under this legislation, however, such an important intervention will not necessarily be made. An adopted person could obtain identifying information from a birth certificate without any assisting entity. There would be more situations in which there is no availability of counseling and preparation for both the birth parent and adopted person before contact and a reunion occur. There have been cases where an adopted person contacted a birth parent on his or her own that turned into extremely distressing situations for both parties. Again, we need to have a clear understanding of the impact and consequences of the significant changes being made under this legislation.