Balancing the Adoption Triangle: The State, The Adoptive Parents and the Birth Parents-Where Does the Adoptee Fit In?

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BALANCING THE ADOPTION TRIANGLE: THE STATE, 
THE ADOPTIVE PARENTS AND THE BIRTH PARENTS—
WHERE DOES THE ADOPTEE FIT IN?

Audra Behné

I. INTRODUCTION

Graphing the family tree is an interesting project for most children. It allows the child to fill each leaf of the tree with family history and connect the branches between ancestors until the branches lead to the child standing as the trunk. However, what about the child who has no leaves to fill in or branches to connect, but only a trunk?

Prior to 1930, birth records were not sealed, and any member of the adoption process could access them. However, currently only Alaska and Kansas allow adoptees to access birth records without the consent of the biological parents. In every other state, records, the only ancestral link an adoptee has, are sealed away under the guise of the "best interest of the child." The adoptee is issued a new birth

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2 HOLLINGER, ET AL., supra note 1, at § 1.03(4); See ALASKA STAT. § 18.50.500 (1994); KAN. STAT. ANN. § 65-2423 (1992).

certificate which substitutes the adoptive parents for the birth parents.\textsuperscript{4} The original birth records are kept within the court and remain sealed for 99 years.\textsuperscript{5} This comment examines the history of adoption laws and the short life sealed records have had in adoption history.

This comment also analyzes the state's, the birth parents', the adoptive parents', and adoptee's roles in the adoption process. The state represents the adoptee in the adoption contract and promises anonymity to the birth parents and the adoptive parents. Because the state acts on behalf of the adoptee, the adoptee is bound by this promise. This promise is further protected by the birth parents' right to privacy and the adoptive parents' right to raise the adoptee without interference. Adoptees have unsuccessfully argued that the sealed record statutes violate their Equal Protection rights and their right to receive information under the First Amendment.

In addition, this comment addresses the courts' role in upholding sealed record statutes using "good cause" and "in the best interest of the child" standards. There is no uniform definition of "good cause" or "in the best interest of the child." As a result, inconsistent rulings have emerged, making the judicial system an unreliable and frustrating outlet for adoptees.

Part VI of this comment examines the 1994 Uniform Adoption Act and the lack of influence it has had on adoption laws. Since its enactment, the Uniform Adoption Act has failed in its purpose of unifying state adoption laws. It has been heavily criticized by several groups, including adoption agencies, social workers and family law judges, for favoring adoptive parents at the expense of birth parents and adoptees.

\textsuperscript{4} See Uniform Adoption Act § 3-802(a), (b) & (c) (1994). See also HOLLINGER, ET AL., supra note 1, at § 13.01(1)(a); CAL. HEALTH & SAFETY CODE § 10434 (West 1994); N.Y. DOM. REL. LAW § 114 (Consol. 1995); N.J. STAT. § 26:8-40.1 (West 1996).

\textsuperscript{5} See, e.g., Uniform Adoption Act, supra note 4, at § 6-102(d).
This comment also explores alternative methods to the current adoption process. Presently, volunteer registries have developed where birth parents, adoptive parents, and adoptees register in hopes of connecting with one another. However, these registries are only successful if the parties join the same registry. Independent and open adoptions also exist which allow the birth parents and the adoptive parents to meet. In independent adoptions, the contact between birth parents and adoptive parents ceases after the child is born. However, in open adoptions, the birth parents remain in contact with the adoptive parents even after the adoption. The degree of contact is usually determined by the parties.

Finally, this comment suggests a new approach to the adoption process. Currently, adoptees must show "good cause" to open their birth records. Because there is no uniform definition of "good cause," this is a difficult standard to meet. This comment proposes a new approach. The legislature and the courts should decide on one definition for "good cause," and birth parents and adoptees should share the burden of proving whether or not good cause has been shown. Birth parents should be required to show "good cause" why birth records should not be released, and this showing should be balanced against the adoptee's showing of "good cause" why the records should be opened. This way courts can balance the needs of all parties as opposed to simply placing a burden of proof on the adoptee.

II. THE HISTORY OF ADOPTION RECORDS IN THE UNITED STATES

Statutes mandating sealed records have a short history. The first adoption statutes were enacted in the mid 1800's. These statutes did not create adoption, but served to legitimize previous transfers of parental rights. Early adoption statutes made no provisions for the confidentiality of adoption proceedings, the details of which were often

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6 Hollinger, Et Al., supra note 1, at § 1.02 (2).
reported in the newspaper . . . . Original birth certificates . . . were available to adoptees on demand."

Even statutes enacted in the 1920s, which required adoption records to be confidential, did not "preserve anonymity between biological parents. . . . These statutes barred all persons from inspecting the files except for the parties to the adoption and their attorneys." It was not until the 1930's that statutes were enacted requiring adoption records to be sealed. At this time, most states rather suddenly felt that there was a need to break away from the long history of open adoptions, and to create an "atmosphere of honesty." Legislators reasoned that birth parents would be more forthcoming in supplying correct information if they were guaranteed anonymity.

Unfortunately, such anonymity does not guarantee that birth parents will give more reliable information. Further, the possibility that "more correct" information might result from closed adoptions is rather meaningless. The people who would benefit most from improving the accuracy of information received by birth parents are the

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7 Id. at § 1.03(4).

8 Id. at § 1.03(4) (emphasis in original).

9 Id. at § 1.04. See also Victor Bradbury & Michael J. Daly III, Who is My Mother? Who is My Father?, FAM. ADVOCATE, Fall 1981, at 14; see also ADAMEC, supra note 1, at 211.


11 Poulin, supra note 10, at 410.

12 "Seventeen years ago when I gave up a child for adoption I gave the social worker wrong information about the father. I wonder how many other mothers gave wrong information that will be passed on to the child. I would like to correct this." ARTHUR D. SOROSKY, ET AL., THE ADOPTION TRIANGLE 63 (1984) (letter written by a birth mother).
adoptees themselves; however, the fact that an adoption is closed prevents the adoptee from ever receiving the information the birth parents provide. What difference does it make if the information is obtained in an "atmosphere of honesty" if it remains locked away?

III. THE ADOPTION TRIANGLE

The adoption process has often been represented as a triangle, including the birth parents, the adoptive parents, and the adoptee. However, such a representation is inaccurate, as it leaves out a very important player — the state.

Adoption did not exist at common law. It is entirely a creature of statute. The state plays a vital role in carrying out the laws that govern the adoption process. It is the state that insists that one side of the "triangle" be hidden.

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13 See e.g., Uniform Adoption Act, supra note 4, at § 6-102(d)(e).

All records on file with the court must be retained permanently and sealed for 99 years after the date of the adoptee's birth. Any additional information about an adoptee, the adoptee's former parents, and the adoptee's genetic history that is submitted to the court within the 99-year period, must be added to the sealed records of the court.

Id.

14 See generally SOROSKY, supra note 12.

15 See Mills v. Atlantic City Dep't of Vital Statistics, 372 A.2d 646, 649 (N.J. Ch. 1977). "Adoption was unknown at common law. Adoption and its legal consequences 'are of statutory origin, to serve a sociofamilial policy of prime import.'" Id. (quoting In re Holibaugh, 18 N.J. Sup. Ct. 229, 233 (1955) (citations omitted).

16 HOLLINGER, ET AL., supra note 1, at § 13.01(1(a).
A. The Role of the State

In the adoption process, the state enters into a contractual relationship with the birth parents and adoptive parents. Under this contract, the birth parents agree to relinquish their child in exchange for anonymity. The adopting parents take the child with the assurance that sealed records prevent future interference by the birth parents.

Missing from the formation of this contract is the party most bound by it — the adopted child. The state is supposed to represent the child's best interest. However, the state is so concerned with protecting the integrity of the adoption process that the rights of the child are lost in the very process that is meant to protect those rights.


18 Mills at 649; Application of Anonymous, 390 N.Y.S.2d 779, 781 (1978); Poulin, supra note 11, at 410. "[S]tates have quasi-contractual relationships with birth parents and adoptive parents. States, in brokering adoptions, make 'agreements' with their citizens. One of the state's promises is that identities shall remain private."

19 See Anonymous, 390 N.Y.S.2d at 781; See also Mills, 372 A.2d at 649.

20 "Confidentiality also protects adopted children who are illegitimate from any possible stigma they might otherwise have to bear because of their birth." Anonymous, 390 N.Y.S.2d at 781. However, in the 1994 amendment of the Uniform Adoption Act, a guardian ad litem may be appointed for an adoptee at the discretion of the court. Uniform Adoption Act, supra note 4, at § 3-201.

21 Sorenson, 212 N.W. at 489, cited in Carol Riccardello, Adoptees' Right to Identity-A Ninth Amendment Approach to the Sealed Birth Certificate, 27 S.D. L. REV. 122, 134 n.106 (1981); see also Mills, 372 A.2d at 649: "The child, who is the . . . ultimately most important party to the adoption, has no voice in the proceeding."
Courts have clung to the belief that secrecy protects the adoption process, and "promotes an atmosphere of honesty" between the birth parent and state. However, secrecy is not necessary for the adoption process to function adequately. Currently, two states and many foreign countries advocate a system of open adoption.

Society and its mores have changed over the last two decades. Yet courts adhere to decisions that were articulated in an era when unplanned pregnancies and single mothers were severely chastised.

Confidentiality serves several purposes. It shields the adopted child from possibly disturbing facts surrounding his or her birth and parentage, it permits the adoptive parents to develop a close relationship with the child free from interference or distraction and it provides the natural parents with an anonymity that they may consider vital. The State's interest in fostering an orderly and supervised system of adoption is closely tied to these interest of the parties involved.

Id. at 1303 (citations omitted).

Simanek, supra note 10, at 124.

See supra note 1; See also Round One: Landmark Adoption Legislation Affirmed by New Jersey Assembly, Decree (Am. Adoption Congress, Wash, D.C.) Spring 1995, at 1.

Id.; See also Bradbury, supra note 9, at 19.

A birth mother, who relinquished her child for adoption in 1967, poignantly describes the lack of choice that existed in this era because of the social stigma that surrounded unplanned pregnancies. Back in 1967, there was a terrible stigma attached to illegitimacy. It was generally believed a child labeled illegitimate (or worse) would be at a terrible social disadvantage. Indeed, even
The state's desire to cling to the notion that secrecy is a necessary part of the adoption process perpetuates this taboo attached to unplanned pregnancies. However, secrecy cannot erase the psychological and emotional consequences of an adoption. The birth parents are left carrying a burden in silence. The adoptive parents are left fearing the "unknown." The adoptee is left with a contract he or she never signed.

B. Birth Parents and Their Right to Privacy

The majority of parents who give their children up for adoption

the birth certificate stated that the birth was illegitimate. More than likely, a young mother and the child born into this situation would either live in poverty or become dependent upon other family members. Many young women were coerced into relinquishing their babies because of these fears, and the belief that they'd never find a decent man to marry them if an illegitimate child was part of the package. Times have changed so much that people who didn't live the scenario probably find what I am saying to be pathetic and hard to believe. Well, the women's movement hadn't really taken hold yet, and a decent lifestyle did still dependent on a "man's" income. Letter from a birth mother to Audra Behné, Staff Editor, Southwestern University Law Review (September 17, 1994) (on file with the Southwestern University Law Review).

26 See HOLLINGER, ET AL., supra note 1, at § 13.01(1)(c)(1993). Studies have shown that some biological mothers are unable to achieve closure after the adoption has taken place and continue to suffer from the loss of their child for many years; this continued sense of loss may be exacerbated by lack of access to any information about the child. Moreover, because of a different social context, the guarantee of confidentiality is no longer the incentive that it once was for a biological mother trying to make a decision about adoption. Id. See also Carolyn Burke, The Adult Adoptee's Constitutional Right to Know His Origins, 48 S. CAL. L. REV. 1196, 1215-16 (1975).

27 Sorenson, 212 N.W. at 489.
are unwed teenagers,\textsuperscript{28} faced with the most frightening decision of their lives — should they get an abortion, raise the child, or put it up for adoption? Those who choose the final option join the ranks as birth parents in the adoption "triangle."

Whether sealed records are truly desired by these birth parents is an issue of great controversy. Courts have suggested that the purpose of sealed records is to allow birth parents to "go on with their lives." \textsuperscript{29} However, the birth parents do not simply forget and go on.\textsuperscript{30} Just because a child is put up for adoption does not mean it was unwanted. "It should be emphasized that in most cases, the mother relinquishes her baby to assure him/her of love, care, and security from two parents in a normal home situation that she cannot

\textsuperscript{28} \textit{See} SOROSKY, supra note 12, at 47.

The National Center for Social Services estimated that in 1971, 60 percent of all children adopted in the United States, about 101,000 were born out of wedlock. This statistic is misleading because it implies, without explanation, that 40 percent of the children placed for adoption are legitimate. It is important to differentiate between the traditional nonrelative adoptive placement and the relative or step-parent adoption. Most of the 60 percent represents nonrelative adoptions, while most of the 40 percent represents relative or step-parent adoptions. \textit{Id.}

\textsuperscript{29} \textit{See}, \textit{e.g.}, \textit{In the Matter of} Linda F.M., 418 N.E.2d at 1303. Although the sudden reappearance of the child may often be a source of great pleasure to the natural parent, in other cases it may be a destructive intrusion into the life that the parent has built in years since the adoption. It may be the source of much discomfort. In some cases, it may even open the way for the child or others to blackmail the natural parents by threatening to disclose embarrassing circumstances surrounding the birth. \textit{Id.}

\textsuperscript{30} \textit{See} CAROLE A. MCKELVEY & DR. JOELLEN STEVENS, ADOPTION CRISIS: THE TRUTH BEHIND ADOPTION AND FOSTER CARE, 165 (Fulcrum Publishing 1994). "Most birth parents can not forget the children they bore as teenagers, and some have banded together to form 'search groups' such as Concerned United Birth Parents (CUB), Adoption Triangle Ministry (ATM) and American Adoption Congress (AAC)." \textit{Id.}
providing.\textsuperscript{31} Signing a piece of paper does not erase the pain and sense of loss that a birth mother or father endures.\textsuperscript{32}

Courts also suggest that allowing an adoptee to re-enter a birth parent's life would be very disruptive.\textsuperscript{33} However, courts are assuming that birth parents would view a reunion with an adoptee as an intrusion. On the contrary, many birth parents have expressed a desire

\begin{quote}
\textsuperscript{31} Id. at 49.
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\textsuperscript{32} In a letter, a birth mother expressed the emptiness that remains years after giving her child up for adoption. "I have never forgotten my child. I hope she is well and happy. I hope she will someday want to know me. I will always long for the child I carried, but never held." SOROSKY, \textit{supra} note 12, at 59.
\end{quote}

\begin{quote}
\textsuperscript{33} In a letter, a birth mother expressed her concerns about the possibility of the child she had given up for adoption returning:

As a young woman living in shame, I was grateful, after having made my decision to relinquish, to be promised that I could never be found. The adoption records would be sealed away forever, and I could pretend none of this ever happened. I went on my way and started a new life of secrets and denial. I must also admit, that in those early years, I believe that opening the sealed records could have caused problems for me as well as for the other sides of the triad. I did have a fear that a young man might show up on my doorstep one day, unannounced, and upset my husband and young children (who did not know about him). I still felt ashamed and did not want "the neighbors" to ever know what had happened to me in my youth. But enough said, that never happened. If society had the same attitude about illegitimacy today as in the past, I might be more inclined to believe that sealed records should be continued. But let's face it, times really have changed. Birth mothers don't need to be protected from anything nowadays. And the benefits of opening the records far outweigh the occasional negative situations which might occur.

Letter from a birth mother to Audra Behné, Staff Editor, \textit{Southwestern University Law Review} (September 17, 1994) (on file with the \textit{Southwestern University Law Review}).
\end{quote}
to reunite with the child they once gave up. For many, such a reunion would provide closure to a time in their lives that has weighed heavily on their hearts and minds.

Despite the picture the state portrays of birth parents and their desire for privacy, the opinions of birth parents actually have no bearing on whether or not adoption records are sealed. After the 1930s, sealing records became a standard procedure. Birth parents' preferences were no longer considered. The state simply assumed,

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34 In a study conducted by Dr. Sorosky, 82 percent of the birth mothers who relinquished children were interested in reuniting with their child. See Sorosky, supra note 12, at 53. "I fear he may not understand why I gave him up and hate me for it. I would like to be able to explain this to him for his sake." Id. at 61.

35 In telling of her experience reuniting with her son, a birth mother wrote:

[w]hen I was initially contacted by the state, I was very surprised. I had made a conscious decision years earlier not to search myself, because the situation had been so painful to me and I didn't think I could handle a possible rejection. I had pretty well stored the whole experience away in my denial file. But I was very happy that he took the initiative to find me, and I promptly gave my permission for contact.

Letter from a birth mother to Audra Behné, Staff Editor, Southwestern University Law Review (September 17, 1994) (on file with the Southwestern University Law Review).

36 See Hollinger, et al., supra note 1, at § 1.04.

37 See Sorosky, supra note 12, at 49. "The commonly held assumption that the birth mother wants to completely sever ties with the child and begin life anew needs to be re-examined. In actuality, the mother's greatest concern is usually that her child will never forgive her for abandoning him/her." Id.
without consulting the birth parents, that closing the door on "illegitimate" children would be better for everyone involved.39

It is true that the desire to open previously sealed records is not unanimously shared among birth parents.40 A minority of birth parents want birth records to remain sealed.41 They contend that anonymity was part of the adoption contract, and that opening records violates their right to privacy.42 Unfortunately, courts have decided that this minority's "right" to such privacy should be valued over the desires of

38 "Illegitimate" is a label given by the courts to a child given up for adoption. It is an archaic term. The fact that children can still be labeled "illegitimate" today is a signal that courts should re-evaluate their reasoning. See, e.g., Anonymous, 390 N.Y.S.2d at 781.

39 "Maybe 2 percent of birth mothers would like to keep their secret. So do we make laws to serve 2 percent of the group? Do we torture the other 98 percent, not to mention all the adoptees, because 2 percent would rather forget?" Dina Baker, The Hunt is on: Adoptees, Birth Parents Search, CHI. TRIB., May 31, 1992, at 3.

40 See SOROSKY, supra note 12, at 53. "When asked if [birth parents] would be interested in a reunion with the child they relinquished, 82 per cent said yes, if the adoptee desired to meet them . . . ." Id.

41 See SOROSKY, supra note 12, at 71. "I have closed all doors behind me for my protection and peace of mind. I do not want them opened by a curious child." Id. (letter from a birth mother). It is interesting to note that the birth mother referred to the adoptee as a child. This birth mother did not consider the ramifications of sealed records when the "curious child" becomes a curious adult, seeking medical records or other necessary information.

42 People v. Doe, 138 N.Y.S.2d 307, 309 (1955). [I]t has assured the mother, who has given birth to a child born out of wedlock and finds that she cannot properly take care of the child, that instead of secreting the child or placing it with persons haphazardly, if she wishes to permit suitable desirous and qualified persons to adopt the infant her indiscretion will not be divulged. Id.
the majority of birth parents, who would like to pierce the veil of secrecy.

The right to privacy is the "right to be let alone."\(^{43}\) Although the right to privacy is not enumerated in the Bill of Rights, Justice Douglas has reasoned that the Constitution creates a penumbra of privacy.\(^{44}\) Further, the United States Supreme Court iterated the concept of a "right to privacy" in *Griswold v. Connecticut*.\(^{45}\) In that case, the Court struck down a state statute that not only banned contraceptives but also prohibited the dissemination of information regarding them.\(^{46}\) Such a statute, which allows a state to sit in judgment and determine what information is useful and what should be heard, seems to violate the very soul of the First Amendment.\(^{47}\)

Subsequently, in *Eisenstadt v. Baird*,\(^{48}\) the Supreme Court expanded the meaning of *Griswold*. *Eisenstadt* abolished any

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\(^{44}\) *Griswold v. Connecticut*, 381 U.S. 479 (1965). Justice Douglas found a constitutional right to privacy based on the penumbras of the First, Third, Fourth, Fifth and Ninth Amendments. *Id.* at 484-85. "[S]pecific guarantees in the Bill of Rights have penumbras, formed by emanations from those guarantees that help give them life and substance." *Id.* at 484.

\(^{45}\) *Id.*

\(^{46}\) *Id.* at 480.

\(^{47}\) See Whitney v. California, 274 U.S. 357 (1927) (Brandeis, J. concurring). "Those who won our independence . . . knew that . . . it is hazardous to discourage thought, hope and imagination; that fear breeds repression; that repression breeds hate; that hate menaces stable government; that the path of safety lies in the opportunity to discuss freely supposed grievances and proposed remedies." *Id.* at 375.

\(^{48}\) 405 U.S. 438 (1972).
distinctions that may have existed between the right to privacy of married individuals and that of single individuals. 49 This "right to privacy" has since been extended to include such issues as abortion. 50 In an effort to protect sealed record statutes, courts have also included adoption under this umbrella of the "right to privacy." 51

C. Adoptive Parents

It has been suggested that an adoptee's quest for information is a betrayal of the adoptive parents who have opened their heart and home. 52 However, most adoptees do not desire to open sealed birth records to find "new parents." They oftentimes simply wish to get relevant medical, psychological, or ancestral information. 53 Such

49 "If the right of privacy means anything, it is the right of the individual, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child." Id. at 453 (emphasis in original).

50 Roe v. Wade, 410 U.S. 113 (1973). The Supreme Court held a woman's right to privacy is a "fundamental right" under the Fourteenth Amendment. Id. at 153.

51 See, e.g., Application of Maple, 563 S.W.2d 760, 763-65 (Mo. 1978) (holding that a Missouri statute denying an adoptee the right to access her birth records did not unconstitutionally deprive her of her right to liberty or a right to privacy but, rather, protected the privacy interests of the birth parents).

52 Id. at 73. Adoptive parents have felt particularly threatened by the possibility of changes in the present policies. They fear that a liberalization of the sealed record laws would lead to the loss of their adopted child to the birth parents. There is no evidence to substantiate such fears.

53 See Barbara Prager & Stanley A. Rothstein, The Adoptee's Right to Know His Natural Heritage, 19 N.Y.L. FORUM 137, 139 (1973-74).
information cannot be provided by adoptive parents.\textsuperscript{54}

The purpose of sealed record statutes in regard to the adoptive parents is to allow these parents to "raise [the] child without fear of interference from the natural parents and without fear that the birth status of an illegitimate child will be revealed or used as a means of harming the child or themselves."\textsuperscript{55} However, the need for this protection is greatly diminished once the adoptee becomes an adult. This does not minimize the concerns and fears that adoptive parents often feel when adoptees seek out their birth parents.\textsuperscript{56} However, many adoptive parents understand that their child's quest for information is a personal need.\textsuperscript{57} "Most [adoptive parents] know deep within themselves that they adopted because they wanted a chance to parent, not because they were promised a lifetime of secrecy."\textsuperscript{58}

D. Adoptees and Their Right to Receive Information

i. Levels of Review Adopted by the Courts

Most people can relate to the experience of sitting in a doctor's waiting room filling out the medical questionnaire. However, only some can relate to the frustration of skipping over the section that asks

\textsuperscript{54} SOROSKY, supra note 12, at 221. "It would appear that very few adoptees are provided with enough background information to incorporate into their developing ego and sense of identity." Id.

\textsuperscript{55} Mills, 372 A.2d at 649.

\textsuperscript{56} See, SOROSKY, supra note 12, at 221. "Some adoptive parents insisted that they would not have adopted had they felt their children would one day leave them to search for their 'real parents.'" Id.

\textsuperscript{57} Id. at 85.

\textsuperscript{58} Id. at 221.
"Does your family have a history of . . . ."59 This and other such frustrations must be confronted regularly by adoptees under a closed-record regime. As a result, adoptees contend that sealed records discriminate against a group based on their status.60 Adoptees argue that sealed records violate their right to equal protection by denying them access to information readily available to non-adoptees.61 However, courts have held that the right to receive information does not include the unwilling disclosure of nonpublic records at the request of an adoptee.62

In reviewing equal protection claims, the Supreme Court has developed the following three levels of judicial review: strict scrutiny,63 rational basis,64 and an intermediate level of review. "Strict scrutiny" review is applied when a classification discriminates against

59 See, e.g., Prager, supra note 53, at 139. "It is difficult even to comprehend the necessity of the adoptee's desire to learn the identity of his biological parents. The pleasure of associating with one's blood relatives is wholly taken for granted, yet these simple joys are never known to an adoptive person. Moreover, the adoptee is deprived of the very knowledge of his parentage."


61 See ALMA Society, 601 F.2d at 1233. See also BETTY JEAN LIFTON, TWICE BORN 4 (1975). "I say that society by sealing birth records, by cutting adoptees off from their biological past, by keeping secrets from them, has made them into a separate breed, unreal even to themselves." Id.

62 In the Matter of Roger B., 407 N.E.2d 884, 886 (1980); see also ALMA Society, 601 F.2d at 1233-36; See also Mills, 372 A.2d at 653.

63 See United States v. Carolene Products Co., 304 U.S. 144, 152 n.4 (1938). "There may be narrower scope for operation of the presumption of constitutionality when legislation appears on its face to be within a specific prohibition of the Constitution, such as those of the first ten amendments, which are deemed equally specific when held to be embraced within the Fourteenth." Id.

64 See West Coast Hotel v. Parish, 300 U.S. 379, 400 (1937).
a suspect class or involves a "fundamental right," and requires that the state show that the classification furthers a compelling state interest. "Rational basis" review, a less stringent test, is applied when rights such as those connected to economic and social welfare interests are implicated. The rational basis test asks whether a statute is rationally related to a legitimate state interest. The third, "intermediate," level of scrutiny developed in response to discrimination against members of a "quasi-suspect" class. Quasi-suspect status is afforded to classifications based on gender.

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65 A suspect class includes race, lineage and alienage. For a discussion see Prager, supra note 53, at 141-46.

66 There are two classes of rights that are considered "fundamental." The first class includes rights guaranteed by the first ten amendments, such as the freedom of speech and the right of interstate migration. The second class includes rights which are not explicitly guaranteed by a constitutional amendment, but relies on the Equal Protection Clause. Some of these rights relate to areas of sex, marriage, child-bearing and child-rearing. For a detailed discussion on fundamental rights see John Hart Ely, Foreword: On Discovering Fundamental Values, 92 HARV. L. REV. 5 (1978).

67 See Prager, supra note 53, at 141-42. However in some cases, courts have articulated a stricter standard in interpreting mere rationality by applying a more rigid standard than was first articulated by the Supreme Court. "[T]he classification must be reasonable, not arbitrary and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike." F.S. Royster Guano Co. v. Virginia, 253 U.S. 412, 415 (1920).

illegitimacy, and alienage. Under the intermediate level of scrutiny, courts apply a standard that falls somewhere between strict and rational basis scrutiny. Which standard should be applied to the equal protection claims of adoptees is a much debated question.

ii. Adoptees as a Suspect or Quasi-suspect Class

Adoptees contend they are a suspect class, and that sealed record statutes should be subject to strict scrutiny. Adoptees argue that they are a "stigmatized class" because the state denies adoptees information about their identity. Furthermore, they argue that sealed record statutes do not serve a compelling state interest sufficient to satisfy the strict scrutiny standard.

69 See Levy v. Louisiana, 391 U.S. 68 (1968). A Louisiana statute prohibited "unacknowledged illegitimates" from bringing a wrongful death action for their mother's death. Although the court purported to use a mere rationality standard, it subjected the statute to a more rigid test that approached strict scrutiny. Id. at 70-71.

70 See Plyer v. Doe, 457 U.S. 202 (1982). The court prohibited a statute that denied education to illegal-alien children. The court rejected the argument that illegal aliens should be treated as a suspect class. However, the court applied an intermediate level of scrutiny because of the powerless nature of the children and the importance of education. Id. at 221-30.

71 See Craig v. Boren, 429 U.S. at 197. In Craig, a gender discrimination case, the court articulated that "classification by gender must serve important governmental objectives and must be substantially related to achievement of those objectives." Id.

72 HOLLINGER, ET AL., supra note 1, at § 13.01(3)(a)(v)(e)(1993). See also Mills, 372 A.2d at 653; ALMA Society, 601 F.2d at 1233.

73 Mills, 372 A.2d at 653.

74 Id.; see also Burke, supra note 26, at 1214.

The constitutional right of privacy is the freedom of an individual to make fundamental decisions regarding his personal or family life . . . . However, the right to make
However, courts have rejected the argument that adoptees are a suspect class. Courts have held that "suspect classes are those that suffer from an immutable characteristic determined solely by the accident of birth" and that, unlike race or alienage, being adopted is not such an "immutable characteristic." Courts largely reason that while such things as race are predetermined by ancestry, adoption is a choice. This reasoning totally disregards the fact that this "choice" is the birth parents' choice, not the adoptee's. The fact is, a person has as much choice in being an adoptee as she has control over her race or alienage. Nevertheless, courts are unwilling to recognize the adoptee status as equivalent to race or alienage.

Alternatively, adoptees contend that sealed record statutes should be subject to strict scrutiny because these statutes violate the Thirteenth Amendment. The argument has been made that "statutes that require sealing of the adoption records as to adults constitute the second of the five incidents of slavery, namely, the abolition of the parental relation . . . ." Since the protection of the Thirteenth Amendment is absolute, were it applied, the interests of birth or adoptive parents would become irrelevant. However, courts dismiss fundamental decisions may have little meaning where the state engages in the sort of indirect interference which deprives the individual of control over information about himself.

Id. (emphasis in original).


76 Id.

77 See e.g., id.

78 ALMA Society, 601 F.2d at 1230.

79 Id. at 1236.
this argument because they are reluctant to expand the application of
the Thirteenth Amendment in this way.\textsuperscript{80}

Finally, courts have refused to extend the category of fundamental rights to include an adoptee's right "to know his own origins."\textsuperscript{81} Because the sealed record statutes do not violate a fundamental right, these statutes are measured against less rigid standards of scrutiny.\textsuperscript{82}

Because courts refuse to treat adoptees as a suspect class, adoptees argue that they should at least be afforded the same level of protection as "illegitimates," who are considered a quasi-suspect class.\textsuperscript{83} Adoptees contend that since courts refer to adoptees as "illegitimate" children, then adoptees should receive the same protection as "illegitimate" children.\textsuperscript{84} However, courts have responded that even if adoptees were considered a quasi-suspect class,

\begin{itemize}
\item \textsuperscript{80} Id.
\item \textsuperscript{81} See, e.g., \textit{In re} Roger B., 418 N.E.2d at 753.
\item \textsuperscript{82} Id. The Illinois Supreme Court applied a rational relationship standard to a sealed record statute. The court held that the statute was rationally related to a legitimate state interest -- preserving the integrity of the adoption process. \textit{Id.} at 756. \textit{See also} ALMA Society, 601 F.2d at 1231-33.
\item \textsuperscript{83} Levy, 391 U.S. at 70-71. "Why should the illegitimate child be denied rights merely because of his birth out of wedlock? He certainly is subject to all the responsibilities of a citizen, including payment of taxes and conscription under Selective Service Act. How under our constitutional regime can he be denied correlative rights which other citizens enjoy?" \textit{Id.}
\item \textsuperscript{84} In \textit{San Antonio Independent School Dist.}, Justice Marshall recognized the need to give greater constitutional protection to "illegitimate" children. \textit{San Antonio Independent School Dist. v. Rodriquez}, 411 U.S. 1, 109 (1973) (Justice Marshall dissenting). Status of birth, like the color of one's skin, is something which the individual cannot control, and should generally be irrelevant in legislative considerations. Yet illegitimacy has long been stigmatized by our society. Hence, discrimination on the basis of birth-particularly when it affects innocent children-warrants special judicial consideration. \textit{Id.}
\end{itemize}
sealed record statutes would survive the intermediate level of scrutiny. The courts have based this response on their reasoning that access to sealed records is denied equally to adoptees and non-adoptees alike. However, the courts' reasoning is flawed. The courts have justified the laws by saying they are nondiscriminatory because they appear to treat all people equally. In application, however, the laws are arbitrary and capricious. A law which denies adoptees access to birth records does not treat adoptees and non-adoptees equally. Only adoptees are deprived of their ancestry. Non-adoptees are unaffected by the law.

As a result of the courts' decisions, a line has been drawn excluding adoptees from protection that is afforded to other classes. The adoptee is denied rights "merely because of his birth." The right of the adoptee is sacrificed for the integrity of the adoption process, a process which is ironically purported to serve the adoptee.

iii. The Adoptee's First Amendment Right to Receive Information

Adoptees contend that denying information about their birth violates their First Amendment right. The First Amendment not only protects the freedom of speech, but also the freedom to receive information. The First Amendment prohibits the state from deciding

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85 See ALMA Society, 601 F.2d at 1234.

86 In re Roger B., 418 N.E.2d at 756.

87 See e.g., Yick Wo v. Hopkins, 118 U.S. 356 (1886). The Supreme Court held that a statute which is neutral on its face, but is applied in a discriminatory fashion is unconstitutional. Id. at 373-74.

88 Levy, 391 U.S. at 71.

89 See, e.g., Lamont v. Postmaster General, 381 U.S. 301, 307 (1965). The Supreme Court struck down a state statute that required an addressee of foreign communist propaganda to make a formal written request for his mail to the U.S. post office. The Court held that the state interfered with the addressee's First
that ignorance is preferable to the free flow of truthful information. However, courts have refused to include the adoptee's right to receive information within the realm of the First Amendment. Courts consistently have held that sealed record statutes serve the valid state interest of protecting the adoption process.

IV. THE PROCESS OF OPENING SEALED RECORDS

The struggle between the birth parents' right to privacy and the adoptee's right to information has plagued the courts for as long as adoption statutes have existed. Despite the numerous attacks on the

Amendment right to receive information and ideas. See also Red Lions Broadcasting Co. v. FCC, 395 U.S. 367, 390 (1969). The FCC denied the public's right to receive information by denying a radio frequency to a broadcaster who expressed controversial views.


See, e.g., Application of Maples, 563 S.W.2d at 762.

[T]he states' protection of the adoption process by control of its judicial records does not rise to the level of an unconstitutional infringement of [adoptee's] First Amendment right to receive information but rather is the exercise of a valid state interest, balancing conflicting rights of privacy and protecting the integrity of the adoption process which could suffer if the confidentiality of the records were diminished. Id.

See, e.g., id.; see also In the Matter of Roger B., 407 N.E.2d 884, 886 (1980). "While the Constitution protects the right to receive information and ideas, the First Amendment does not guarantee a constitutional right of special access of information not available to the public generally. The right to receive information presupposes a willing speaker." Id. (citations omitted).

See, e.g., Mills, 372 A.2d 646; ALMA Society, 601 F.2d 1225.
constitutionality of adoption statutes, courts have held that sealing records is "in the best interest of the child." If the "child" wishes to access these records, the "child" must show "good cause." So when does the adoptee stop being a child? How long must the adoptee carry the burden of a contract he or she never signed?

A. The Adoptee's Burden of Showing Good Cause

State statutes, which require adoption records to be sealed, allow records to be released upon a showing of "good cause." Adoption statutes articulate the burden of proof the adoptee must meet. However no adoption statute defines the term "good cause." It is solely a matter of judicial discretion whether the adoptee has met this burden.

The case law shows that, in determining whether the burden of

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95 See infra text accompanying notes 107-112.

96 See infra text accompanying notes 113-114.

97 The standard of "good cause" enumerated in statutes differs from state to state. Some states have a more rigid standard, while other states are more lenient. For a detailed discussion of the varying standards of "good cause" among the states. See Melissa Arndt, Severed Roots: The Sealed Adoption Controversy, 6 N. ILL. U. L. REV. 103 (1986).

98 See HOLLINGER, ET AL., supra note 1, at § 13.01(3)(I).

99 Id.

showing "good cause" has been met, courts attempt to balance the competing interests of the adoptee, the adoptive parents, and the birth parents. These competing interests include the following:

(1) the nature of the circumstances dictating the need of the identity of the birth parents; (2) the circumstances and desires of the adoptive parents; and (3) "the circumstances of the birth parents and their desire or at least the desire of the birth mother not to be identified;" and (4) the interests of the state in maintaining a viable system of adoption by the assurance of confidentiality.101

However, this "competing interests" approach fails to establish what circumstances are sufficient to tilt the scale in favor of one party over another. Courts have been inconsistent in defining what constitutes "necessary circumstances" to warrant opening sealed records.102 One court held that an adoptee's need for genetic information in treating a heart condition was insufficient to establish

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101 Application of George, 625 S.W.2d 151, 156 (Mo. Ct. App. 1981) (quoting the trial court judge); see also HOLLINGER, ET AL., supra note 1, at §13.01(3)(ii).

102 See In re Assolone, 512 A.2d 1383, 1386 (R.I. 1986) (holding that an adoptee's curiosity and desire to know her natural identity was not sufficient to outweigh the competing interest); Matter of Linda F.M., 409 N.Y.S.2d 638, 642 (1978) (determining that psychological difficulties, including the fear of entering into an incestuous relationship, is insufficient to show "good cause"); Matter of Dixon, 323 N.W.2d 549, 552 (Mich. Ct. App. 1982) (holding that psychological reasons may be sufficient to show "good cause"); Bradey v. Children's Bureau of South Carolina, 274 S.E.2d 418, 422 (S.C. 1981) (holding that an adoptee who is insecure but does not require medical attention has not shown "good cause"); In the Matter of Robert Wilson, 153 A.D.2d 748, 749 (N.Y. App. Div. 1989) (psychological trauma is sufficient to establish "good cause" if the trauma is directly connected to "the lack of knowledge of ancestry").
"good cause." In that case, notice to the birth parents and a hearing for the "interested parties" was required before "good cause" could be established. On the other hand, another court has held that psychological reasons may be sufficient to establish "good cause".

B. When Does the Adopted Child Stop Being a Child?

Adoption statutes are purported to be "in the best interest of the child." However, state statutes tend to differ in their use of the term "best interest." Courts reason that sealed records are "in the best interest of the child" because they (1) protect adoptees from their "illegitimate" past; (2) protect adoptees from intrusions by birth parents; and (3) protect the adoption process whose primary purpose is to serve the needs of adoptees by placing them in stable homes.

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104 Id. at 278.

105 Matter of Dixon, 323 N.W.2d at 552.

106 For a detailed discussion of "the best interest of the child" standard see GOLDSTEIN, ET AL., supra note 3.

107 See, e.g., Conn. Gen. Stat. Ann § 45a-726a (West 1994) (allowing decision makers to consider the sexual orientation of the adoptive parents); N.J. STAT ANN. § 30:4c-26.7 (West 1994) (giving foster parents who have cared for the child for two years preference in adopting the child); ARK. CODE ANN. § 9-9-102 (Michie 1995) (giving preference to adoptive parents with the same racial or ethnic heritage as the adoptee).

108 See, e.g., People v. Doe, 138 N.Y.S.2d at 309. "Adoption assures . . . that the interests of the child will be protected in that no one will ever know by means of the adoption proceeding that the child is illegitimate." Id.

109 ANONYMOUS, 390 N.Y.S.2d at 781; see also Mills, 372 A.2d at 649.

110 Application of Sage, 586 P.2d at 1204.
The problem is that state statutes and courts refer to adoptees as "adopted children" long after these "children" have reached the age of majority. By referring to adoptees as "children," the state and the courts can justify their paternal actions. They can hide behind the claim that the adoption statutes are written and enforced as they are in an attempt to protect the best interest of the child. But this "protection" extends well beyond its need. The courts fail to address the fact that the state's role as parens patriae ends when the adoptee reaches majority. When does the child grow up? When is the child treated with the same deference as the other parties to the adoption "triangle"?

V. THE 1994 UNIFORM ADOPTION ACT

The National Conference of Commissioners on Uniform State

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111 See, e.g., In re Maples, 563 S.W.2d at 763. "The primary concern of the state must be to protect and foster an effective scheme for adoption, thus serving the best interest of the child." Id. The Uniform Adoption Act defines "child" as "a minor or adult son or daughter . . . ." Uniform Adoption Act, supra note 4, at § 1-101(4) (emphasis added).

112 Matter of Dixon, 323 N.W.2d at 553.

113 See, e.g., Application of Sage, 586 P.2d 1201. "[W]e must keep in mind that the adopted child eventually becomes an adult, and one may question whether continued confidentiality remains in the adoptee's best interest once he reaches majority." Id. at 1203. Despite the court's apparent insight into the adoption dilemma, the court denied the plaintiff, an adult adoptee, access to his birth records. The court held that the plaintiff's interests did not outweigh the countervailing interests of the birth parents, adoptive parents and the state. Id. at 1206-07.

114 See, e.g., Lifton, supra note 100, at 54. "What makes Joe special is that he is a 50-year-old 'adopted child.'" Id. (commenting on the incongruity of the adoption process).
Laws approved the Uniform Adoption Act in August 1994. The Uniform Adoption Act is meant to serve as a model for states in constructing their adoption statutes. The purpose of the Uniform Adoption Act is to encourage consistency in adoption laws among the states. However, the 1994 Uniform Adoption Act, along with its predecessors, has failed to unify state adoption laws. States are not bound to follow the Uniform Adoption Act, and to date no state has adopted it.

The 1994 Uniform Adoption Act has also received criticism from numerous adoption and child welfare organizations. Opponents of the Act contend that it "fails to address the rights of birth parents and the needs of adoptive children; it leans heavily toward the rights of adoptive parents." For example, the Act allows a birth mother only eight days after the child is born to revoke consent of the adoption.

The current Act is also criticized for not mandating open records. It has been commented that "the provision [requiring

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116 Id.


118 The Uniform Adoption Act was first enacted in 1951. The last revision of the Act was in 1971. See HOLLINGER, ET. AL., *supra* note 1, at § 1.01[1].


120 *Adoption Laws*, supra note 117, at A24.


122 Uniform Adoption Act, *supra* note 4, at § 2-404(a).

confidentiality] is a throwback to the 1950s, when adoptions were closed because of the stigma of illegitimacy." The Act does require birth parents to furnish the adoptive parents with information regarding their medical and psychological history, and social history such as religion and tribal affiliations, education, and criminal convictions. However, these provisions have been criticized as merely being "for the convenience of people who want to adopt healthy newborns." For example, although the medical and psychological history will be of some benefit to the adoptee, the Act does not provide for the transmission of information to adoptive parents regarding medical changes or discoveries that occur after the child is adopted. Thus, the medical and psychological information may be incomplete and misleading.

Considering the strong opposition to the current Uniform Adoption Act, and the failure of its predecessors to unify state adoption laws, it is unlikely that the 1994 Act will be successful in uniting the current adoption laws. Thus, the current standards, such as "good cause" and "in the best interest of the child," will continue to produce inconsistent rulings among the states.

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124 Id. at 61 (quoting Ann Sullivan, director of the adoption program for the Child Welfare League).

125 Unif. Adoption Act supra note 4, at § 2-106.

126 Id.

127 See Hansen, supra note 115, at 60.

VI. ALTERNATIVES TO THE SEALED RECORD STATUTES

There have been movements in the state legislatures to open sealed adoption records. Currently, New York,\textsuperscript{129} New Jersey,\textsuperscript{130} and Pennsylvania\textsuperscript{131} have bills before their state legislatures that would require the release of information currently in sealed records. However, the bills are meeting strong opposition by traditionalists, who believe that the adoption process will be thrust into turmoil if sealed record requirements are abandoned.\textsuperscript{132} Consequently, the battle of releasing sealed records rages on.

A. Current Approaches

There are several current approaches to circumventing the harshness of permanently sealed records. These include mutual

\textsuperscript{129} See A.B. 2160, 218th Gen Assem., 1st Sess., 1995 N.Y. The assembly bill proposes that an adoptee may request identifiable information about her birth parents. However, before the information can be released, first the adoptee must give proof that the adoptive parents are deceased or get the consent of surviving adoptive parents and second, the birth parent must authorize the disclosure of the information. \textit{Id.}

\textsuperscript{130} Currently there are two separate bills before the New Jersey Legislature. The assembly bill would allow an adoptee, at the age of majority, to obtain an original birth certificate. However, birth parents are given twelve months from the effective date of the bill to request that their names not be disclosed on the birth certificates. \textit{See A.B. 742, 207th Leg., 1st Sess., 1996 N.J.} In addition to the assembly bill, a separate senate bill proposes to allow for the exchange of non-identifiable information and medical history. \textit{See S. 567, 207th Leg., 1st Sess., 1996 N.J.}

\textsuperscript{131} A senate bill proposes to allow an adoptee to obtain her original birth certificate. The bill would also establish a statewide registry which will retain adoption documents and release the documents to adoptees, adoptive parents and birth parents. \textit{See S. 877, 179th Gen. Assem., Reg. Sess. 1995 Pa.}

\textsuperscript{132} See \textit{supra} text accompanying note 22.
consent registries and the activities of private volunteer organizations. Mutual consent registries are state-created registries where birth parents and adoptees, who have reached the age of majority, can register. If a match is made, identifying information is released to both parties.

Along with state registries, numerous private organizations have developed in response to the controversy over sealed record statutes. Volunteer organizations are staffed by adoptees, birth parents, and adoptive parents. The private organizations operate similarly to the state-created mutual consent registries. Both the adoptee and the birth parent must register with such an organization and, if a match is made, the parties are then contacted.

Both the mutual consent registries and private organizations are effective means of circumventing the sealed record statutes, provided that neither party is reluctant to register or is deceased, and that both parties join the same registry or organization. Otherwise, the registries fail in their purpose. In situations where the registries

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133 The New Jersey Assembly bill proposes a "voluntary information exchange mechanism to permit adopted adults and members of their birth families to record and share their current names, addresses and medical, cultural and social history." See A.B. 742, 207th Leg., 1st Sess., 1996 N.J. For an in depth discussion on mutual consent registries see Kuhn, supra note 940, at 280-83.

134 Some of the private organizations include Adoptee Liberty Movement of America (ALMA), American Adoption Congress (AAC) and Concerned Birth Parents (CUB). For a complete list of private organizations see SOROSKY, supra note 12.

135 Given the growing number of private adoption "search" organizations that have developed in recent years, it is not unlikely for parties who actively search to register at different organizations. Because many of the organizations charge fees, a searching party may not be able financially to join them all. Consequently, parties who actively search for each other, but join different registries may never connect.
fail, adoptees are left dealing with the court system. For many adoptees, this is not much of an option.\textsuperscript{136}

B. Independent Adoptions

In a traditional agency adoption, the birth parents relinquish their parental rights to an agency and the agency, in turn, places the child with adoptive parents. However, there is a growing trend toward independent adoptions.\textsuperscript{137} In an independent adoption, the birth parents select the adoptive parents with the help of an attorney, doctor, or other professional.\textsuperscript{138} The birth parents and adoptive parents spend time together, and usually the adoptive parents pay the birth mother's maternity expenses and legal fees.\textsuperscript{139}

Unlike an agency adoption, the adoptive parents in an independent situation have the opportunity to get to know the birth parents and ask any necessary background and medical information. However, when the adoption is finalized, the original birth record is sealed just as in an agency adoption.\textsuperscript{140} Thus, the adoptee will ultimately only know what the adoptive parents thought to ask about.

\textsuperscript{136} See supra text accompanying notes 97-114.


\textsuperscript{139} See Hollinger, Et Al., supra note 1, at § 1.05(3)(b).

\textsuperscript{140} See supra text accompanying note 13.
C. Open Adoptions

Open adoptions are much like independent adoptions. The major difference is that, in an open adoption, the birth parents and adoptive parents agree to maintain an ongoing relationship, even after the birth parents relinquish their parental rights. The degree of contact between the birth parents and the adoptee is decided by the parties involved, and can range from regular visits to sporadic letters or telephone calls.

Advocates contend that open adoptions benefit all members of the adoption "triangle." The birth parents keep some ties to the adoptee, thus "alleviat[ing] the fears the birth mother has about the adoptive placement . . . ." The adoptive parents' fear that the birth parents will return is eliminated, because the birth parents are a part of the adoptive parents' and adoptee's lives. Finally, adoptees who know who their birth parents are are able to get answers to medical and other questions by something as simple as making a phone call, as opposed to having to stage an emotional and often fruitless search.

Opponents contend that open adoptions may force "unwanted abortions" for birth parents who desire confidentiality. Opponents also argue that because of the birth parents' emotional state, they may not be "the best judge of what kind of people would make good

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141 See SOROSKY, supra note 12, at 207; Carol Amadio and Stuart Deutsch, Open Adoption: Allowing Adopted Children to "Stay in Touch" with Blood Relatives, 22 J. Fam. L. 59, 60-61 (1983-84).

142 See ADAMEC, supra note 1, at 210.

143 Id. at 212.

144 Id.

145 Id.

146 Id. at 213.
parents." In addition, birth parents may not "psychologically relinquish" their feeling of entitlement toward the adoptee. This, in turn, may hinder the adoptive parents' ability to bond with the adoptee.

In any event, it is unlikely that open adoptions will ever replace traditional agency adoptions. Independent and open adoptions currently comprise only ten percent of the adoptions that take place in the United States.

D. A Different Approach – Unlocking Sealed Records

Adoption records should be released to any adoptee who has reached the age of majority. Current legislative proposals would allow an adoptee, upon reaching the age of majority, to access birth records upon demand only if the birth parent does not object. The current proposals allow the birth parent to prevent the release of identifying information by contacting the court or agency. Although the current proposals do not address the issue, it is presumed that if the birth parent objects to the release of the information, the adoptee must go through the court system and battle the arbitrary "good cause" standard.

A better, truly balanced approach would not allow birth parents to unilaterally decide whether or not information should be released. Instead, if the birth parents have requested that records remain sealed, they should be required to share the burden currently carried only by the adoptee. More precisely, birth parents should be required to show

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147 Id.
148 Id.
149 Id.
150 Id.
151 See supra notes 129-131.
"good cause" why the records should remain sealed. However, for this approach to work, legislatures must establish a uniform standard for "good cause" for both the adoptee and the birth parent. If the birth parent establishes "good cause" why records should remain sealed, the court may compromise between the interests of the birth parent and the adoptee. A compromise could include releasing all birth records while deleting any identifying information, or requiring the birth parents to supply the adoptee with an updated, in-depth medical history.

This approach allows the court to truly balance the interests of the parties involved while still protecting the current integrity of the adoption process. An adoptee who reaches the age of majority, is old enough to make the decision to request that her records be released, and is no longer in need of the state's *parens patriae* protection. In addition, the birth parents are afforded an opportunity to reflect on the adoptee's decision. If anonymity is still desired, the birth parents can present their reasons to the court. On the other hand, birth parents who have not been able "to close the door" are given an opportunity to reunite with the adoptee. Further, adoptive parents are ensured that birth parents will not interfere in their relationship with the adoptee. By the time the adoptee has reached majority, and decides to seek desired information, the adoptive parent-adoptee relationship is well forged. In summary, with all of the parties' interests addressed, the state's concern for the integrity of the adoption process is preserved.

**VII. CONCLUSION**

Legislatures contend that sealing birth records balances the rights of the adoption "triangle." They claim that it balances the birth parents' right to privacy with the adoptive parents' right to raise the adopted child without fear of the birth parents' returning. Both legislatures and courts contend that sealed record statutes protect the adoptee's rights by ensuring an adoptee is placed in a more stable home and that the adoptee's "illegitimate" past remains undisclosed. However, many adoptees contend that the need to know their origins is not properly considered. The balancing approach places the birth parents' and adoptive parents' right to privacy above the adoptee's
right to receive information. By failing to include the adoptee's right to receive information, the adoption "triangle" is incomplete.

Attempts to unify state adoption laws through the Uniform Adoption Act have not been successful. In addition, the courts have not been able to establish one standard for "good cause" or "in the best interest of the child." Because of these inconsistencies, the adoption process cannot function adequately and must be re-examined. In re-examining sealed records statutes, legislatures must consider that these statutes were enacted in an era when unplanned pregnancies and single parenthood were taboo. It is time to pierce the veil of secrecy.