

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY**

**Seventy-Third Session
February 22, 2005**

The Committee on Judiciary was called to order at 8:05 a.m., on Tuesday, February 22, 2005. Chairman Bernie Anderson presided in Room 3138 of the Legislative Building, Carson City, Nevada, and via simultaneous videoconference, in Room 4401 of the Grant Sawyer State Office Building, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Mr. Bernie Anderson, Chairman
Ms. Francis Allen
Mrs. Sharron Angle
Ms. Barbara Buckley
Mr. John C. Carpenter
Mr. Marcus Conklin
Ms. Susan Gerhardt
Mr. Brooks Holcomb
Mr. Garn Mabey
Mr. Mark Manendo
Mr. Harry Mortenson
Mr. John Ocegüera
Ms. Genie Ohrenschall

COMMITTEE MEMBERS ABSENT:

Mr. William Horne (excused)

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Allison Combs, Committee Policy Analyst
René Yeckley, Committee Counsel

Judy Maddock, Committee Attaché

OTHERS PRESENT:

John Tatro, Justice of the Peace, Carson City, representing the Nevada Judges Association
Ron Niman, Justice of the Peace, Ely, representing the Nevada Judges Association
Cynthia Lu, Chief Deputy Public Defender, Washoe County Public Defenders Office, Reno, Nevada
Maire Burgess, Licensed Social Worker, Washoe County Department of Social Services, Reno, Nevada
Angela Chalmers-Howald, Private Citizen
Robert Payant, Executive Director, Nevada Catholic Conference
Annette Appell, Professor, William Boyd School of Law, University of Nevada, Las Vegas
Justin Jones, Private Citizen
William Bryson, Attorney at Law
Vivian Boyle, Adoptive Parent, Private Citizen
Michael Calkins, Private Citizen
Amy Turner, Private Citizen
David Arnold, Private Citizen
Jennifer Eckersley, Registered Nurse, Private Citizen
Chris Escobar, Attorney at Law
Rick Perry, Executive Director, LDS [Latter-Day Saints] Family Services
Wanda Scott, Adoption Specialist, Division of Child and Family Services, Nevada Department of Human Resources
Helen Foley, Private Citizen

Chairman Anderson:

[Meeting called to order and roll taken. Chairman Anderson reminded the witnesses of the proper etiquette for testifying.] Let us open with Assembly Bill 55.

Assembly Bill 55: Revises provisions relating to bonding of justices of the peace. (BDR 1-221)

John Tatro, Justice of the Peace, Carson City, representing the Nevada Judges Association:

This statute, the way it was written, has been on the books a long time requiring justices of the peace (JPs) to have bonds posted. What's been

happening across the state is that counties have been posting the bond instead of the JPs posting the bond, or there hasn't been a bond posted. Most of the large counties are posting the bond already under their blanket bond, their fiduciary bond, for all city employees and elected officials. All we're trying to do is get it to where we're under that fiduciary bond or post a separate bond for the judge. That's the amendment on the background sheet.

Chairman Anderson:

Judge, is there anything else that you would like to add?

Ron Niman, Justice of the Peace, Ely, representing the Nevada Judges Association:

No. I think Mr. Tatro has covered exactly the reason we're here.

Chairman Anderson:

This was established in 1873. We set the bond in 1873 for \$1,000, which the justice of the peace had to pay for. The constable likewise had to pay according to the statutes, Chapter 7 of the Sixth Session of the Nevada Legislature. It's been around for a while. It really comes down to the bond, the "penal sum," as it was referred to at that time. Not less than \$1,000 but not more than \$5,000. With this bill we would raise that bond to a higher threshold. Would that cause an undue hardship on the counties to do so?

Ron Niman:

I didn't ask our county if it would cause an impact on them. However, they're paying now for the bond for the three justices of the peace right now, and it costs them \$300 a year to bond us at the sum as it is set now. I don't believe there would be an additional impact.

John Tatro:

Andrew List of the National Association of Counties (NACO) was to be here to support the bill. There maybe a minimal cost of \$100 to some counties; however, most counties are already paying it.

Assemblyman Carpenter:

To your knowledge, has there ever been anyone go against your bond for not performing faithfully?

Ron Niman:

Yes. We had a person out of Utah challenge our bond for the faithful performance of our duties. That's what brought this about. We all understood that we were covered under the blanket bond until the district attorney checked, and we were not. We have been challenged on our bond.

Chairman Anderson:

I think that Mr. Carpenter's question was, had anyone ever collected on the bond?

Ron Niman:

Not collected, but we have been challenged.

Chairman Anderson:

Judge, have you ever had to pay this bond? How long have you been on the bench?

Ron Niman:

I've been on the bench 20 years. I personally thought I was covered. I never had to personally pay for the bond.

Chairman Anderson:

It's my understanding that you're one of the more senior justices of the peace in the state. Am I correct in that?

Ron Niman:

Yes, sir.

Chairman Anderson:

Judge Tatro, when you came to the bench, were you informed of the need for a bond?

John Tatro:

No, I was not. I was kind of embarrassed when I read the 1873 statute requiring that I have one. Our county, though, had us under the bond.

Chairman Anderson:

So, some counties have put you directly under the bond and some counties have not. What this would do is bring a uniformity to the bonding question.

Is there anyone else wishing to testify on A.B. 55? We will then close the hearing on A.B. 55. With that, let's turn our attention to Assembly Bill 51.

Assembly Bill 51: Provides procedure for parties to adoption to enter into enforceable agreement for postadoptive contact. (BDR 11-457)

Mr. Ocegüera, I'm going to ask you to take the Chair, please.

Assemblyman Bernie Anderson, Assembly District No. 31, Washoe County:

I am indeed responsible for personally picking this particular piece of legislation to come back in front of this Committee, which I consider a very important bill for the Committee. As many of you will recall, the Committee considered a similar piece of legislation in 2003, Assembly Bill 28 of the 72nd Legislative Session, and the measure did not pass due to what I believe to be a misunderstanding of both the nature and intent of the bill.

Let me explain why asking for a rehearing on this issue ([Exhibit B](#)). In 2002, the Nevada Supreme Court held that: agreements entered into by two consenting parties to provide for contract or communication between a birth mother and an adopted child are not enforceable unless they are incorporated into the adoptive decree. *Birth Mother v. Adoptive Parents*, 118 Nev. 972 (2002). This bill adopts the holding of the Nevada Supreme Court, which is the law governing this agreement, by requiring that an agreement be included in the adoptive order of decree, in order to be enforceable. Procedures to ensure that laws are carried out in a fair manner are included in this Assembly bill. You will hear more of the details from other speakers today.

I want to explain that I am supporting this measure out of a strong concern both for birth parents and those adoptive parents who are choosing to enter into these agreements. In this situation, the birth parents and the adopting parents may agree to some kind of future contact that ranges from something as simple as sending a picture of the child to the birth mother once a year, to something more involved like actual visits between the child and the birth mother. Please understand: these agreements are not new, people have been using them for years in a variety of formats, both written and oral.

We must remember that the decision of a birth mother to give up the child for adoption, whether the child is a baby or an older child, is heart-wrenching. We cannot imagine the importance to this mother of knowing this child will be loved and raised with a caring, loving family. In some cases, the mother will not willingly give up that child without the assurance that that's going to take place.

For the adoptive parents, they want to know that that child is their own to raise. The importance of developing that bond for those parents and that child is absolute. It is the new loving, caring relationship that cannot be measured. Those of us who are parents know the feeling that comes with that bond.

[Assemblyman Anderson, continued.] Every situation involving an adoption is different. The child may be an infant, 8 or 14 years of age. The situation for each mother who relinquishes her parental rights is different. In some adoptions, a young mother may give up her child for adoption, and not wish to know who the adoptive parents are. Others, the parental rights are terminated due to the unfitness of that parent. The child may or may not be old enough to remember their mother. Every situation is different.

Some adoptions are closed where the birth mother and the adoptive mother may not know one another and there is no thought of future contact. Some adoptions are open, and everyone knows who is involved. They may or may not be in agreement for contact when the adoption is final. This is the decision of the birth mother and the adoptive parents.

Assembly Bill 51 addresses the adoption cases in which the parents have agreed to contact after the adoption is final. The birth mother wants regular reassurance that her child may be in a loving, caring relationship. The child may be a baby or may be an adolescent who has established a bond with the mother and still wants to know her, even though living with her is no longer in that child's best interest. The adoptive parents in the case of A.B. 51 have agreed to provide this reassurance to the mother through some future contact.

We must recognize that the individuals involved in adoptive situations are in very emotional states. Both the mother, who is giving up the child, and the adoptive parents, who want desperately to have this child, will do anything to adopt the child. They all deserve to know the future impact of this agreement. The only way we can give all parties—birth mother and adoptive parents—real assurance of the current and future impact of the agreement of contact after the adoption, is to place in statute the declaration of the Nevada Supreme Court and clarify the process surrounding these agreements. This is what A.B. 51 does.

I wanted to conclude with these final points. This agreement may be implicitly authorized under a Nevada regulation, and people have been entering into these agreements for many years. Today, there is much unnecessary confusion about the legality and enforceability. We are not serving the citizens by failing to clarify this law, for everyone is involved. The birth parent and the adoptive parents have that loving, caring nature. We will hear testimony today regarding the ongoing confusion resulting from this court decision and the Legislature's failure to act in 2003 to clarify the law.

[Assemblyman Anderson, continued.] Let me tell you what A.B. 51 does not do. The bill does not apply to oral agreements between a birth mother and adoptive parents. The bill does not create open adoption or establish a public policy in favor of open adoption or suggest that open adoptions are in the best interest of the child. The bill does not provide a means by which to challenge the adoption or terminate it in any reason now, or in the future.

Let me tell you what the bill does do. It applies only to written agreements; it clarifies the information that parties in these proceedings understand these agreements, and lastly the bill clarifies the law where there is confusion. Isn't that our responsibility as legislators? I wanted the Committee to understand how strongly I feel as a member about this particular issue, and the fact that it was not properly addressed.

Vice Chairman Ocegüera:

Before you get up, Mr. Anderson, we do have a question here.

Assemblyman Conklin:

The Court ruled that it would only be enforceable if it were in the adoption decree. Because I'm unfamiliar with adoptions, what is the difference between where people were typically having these arrangements and an adoption decree?

Assemblyman Anderson:

I'm not an attorney, therefore, I'm not in court to see how this actually takes place on a day-to-day basis. However, on my right is somebody who deals with this on a regular basis, and I think is much more qualified to answer that question.

Cynthia Lu, Chief Deputy Public Defender, Washoe County Public Defenders Office, Reno, Nevada:

Basically, if the agreement has not been part of the adoption order, it's not enforceable. Therefore, it's pretty much a gentleman's agreement between the parties. So, neither party would be able to enforce any type of verbal agreement or any written agreement that has not been incorporated into the adoption order. At this point, only if it is specifically stated in the adoption order, would these agreements be able to be enforceable in court. Otherwise, they are not enforceable period, written or verbal.

Vice Chairman Ocegüera:

Mr. Conklin, are you satisfied with that?

Assemblyman Conklin:

I am for now.

Assemblyman Anderson:

One of the issues, Mr. Conklin, that all of us deal with is an understanding of the court process. Whether they are open or closed cases. In a closed case, the state takes control of the child, and the determination of the parental authority and is moved to the state. In an open adoption, there is a very short window of time while the paper work crosses the table. There's one instance where we've taken a child away for the best interests of the child because of somebody being incarcerated. We may have had that child for some time in a foster care program or other kinds of state programs.

In the open adoption, they were told this was going to happen, and when they came to the actual adoption that's not what happened. Then the court places that child and those adoptive parents are the parents. It's not the intent of this bill to reach back in time to end the adoption of anybody who has already been through open adoption; this is not a set of new rules. This is from this point forward. Those are the people who are going to be affected by it. It merely clarifies the intent of what the Supreme Court asks for.

Cynthia Lu:

I've been employed in that office since 1994, where I've represented both parents and children in dependency cases, which are *Nevada Revised Statutes* (NRS) 432B, abuse and neglect cases dealing with families involved in a foster care system. I have provided written testimony, so I intend to keep my verbal remarks extremely short ([Exhibit C](#)). This bill will speed up permanency for children, especially children in the foster care system. As Assemblyman Anderson indicated, this bill is not retroactive and does not affect the adoptions that have already been completed. This is simply to address future adoptions in the state of Nevada.

This bill will also reduce the number of trials and save court and attorney time, as a cost-saving measure. As birth parents have more options rather than going to trial, I have found that many of my clients choose to proceed with postadoptive contact agreements rather than go to trial. I have had fewer trials in my office since we've been using this as a permanency tool option in our cases. In one of the written surveys that was done by Professor [Annette] Appell at UNLV [University of Nevada, Las Vegas], she indicates that other states have seen an increase in adoptions and postadoption contact agreements after enacting similar statutes. In this end, I believe this bill will hopefully provide clear structure to all parties involved and it should reduce litigation on this topic. In fact, other states have reported through that survey that they have

not seen any litigation arising out of such agreements based upon their postadoptive contact agreement statutes. Hopefully, this bill will also ensure that all parties involved are treated equally and fairly, which I believe is the purpose of legislation: to protect all citizens in the state of Nevada, and to ensure that they are fully informed as to what their rights are and what their rights are not. I believe this bill is definitely needed to create clear structure for both parties and attorneys, and those that are working in this field.

Assemblyman Carpenter:

Even though you've been doing these contracts or agreements, it would not be enforceable unless this law is passed and if somebody contested it, is that right?

Cynthia Lu:

We have been doing these now, and they are enforceable if they are put in the adoption order. Our judges in the Second Judicial District have included these agreements in the adoption orders. Currently, we do have agreements that are enforceable. However, if the judges do not, or if the parties just want to have a verbal agreement or a gentleman's agreement where it's not in the adoption order, we do inform our clients that this is not an enforceable agreement. They are basically just relying on the word of the adopting family, and they wouldn't be able to go to court and enforce it. If the adopting family just decides one day that they didn't want to continue the contact, they may do so. However, we do have enforceable agreements that are in adoption orders presently.

Assemblywoman Angle:

I've heard some concerns from adoptive parents that this might actually have a chilling affect on adoption because the law would then ask for that agreement, and if you didn't have that agreement that the birth parent wanted to have, they wouldn't allow you to have their child. They're concerned about a chilling effect and I heard in your testimony that actually the opposite is true. Could you expand on that a little?

Cynthia Lu:

It is interesting. I know there is a concern that there is a chilling effect. However, the 18 states that were surveyed by Professor [Annette] Appell that had similar statutes have found no chilling effect and have seen an increase in adoptions as well as an increase in postadoption contact agreements. Just to allay any fears, this is simply an option. It's simply a tool. If the adopting family doesn't want to have such an agreement, since I'm rather limited to only dealing with birth parents, who are in the foster care system, a lot of my clients don't have a lot of negotiating room. If an adopting parent doesn't want to have an agreement, I basically indicate to our clients that there isn't going to be an

agreement, and their choices are either to relinquish or proceed to a termination of parental rights trial.

[Cynthia Lu, continued.] Most of the time, my clients still relinquish, especially if they don't feel they will be successful at trial, and so they don't have an agreement. Again, this is a choice. In the private adoption arena, I don't know what their experiences are. I don't know if it's possible if a birth parent in a private adoption, not one where the child is in foster care, might indicate they really want this agreement. They're only interested in releasing a child to a family who wants to have that type of ongoing contact with them. That's a possibility in the private adoption arena. I haven't seen that happening in the foster care system. In that regard, it is interesting that the other states have not seen a chilling effect.

Assemblywoman Angle:

When we're dealing with relinquishing rights where we have a foster child, an older child, then this doesn't seem to be the situation, and you don't have a whole lot of experience with newborns and that whole arena where a newborn child is given up. I can see there's a difference here between newborns and older children, and I want you to pursue that a little bit with me if you would.

Cynthia Lu:

We do have some clients with newborns. Our clients have a wide age range. We're not really limited to just older children. These agreements have affected all ages. However, referring specifically to private adoptions, which probably is a higher percentage of newborn children. I might refer that question to Maire Burgess, who's with the Washoe County Department of Social Services, because they do sometimes get involved with those newborns at the hospital. Cases where the birth parent wants to relinquish right after the 72 hours. So, it never becomes a court case because the relinquishment is done so quickly, but Ms. Burgess may be able to respond to that fully for you.

Vice Chairman Ocegüera:

I have a couple more questions from members of the Committee for Ms. Lu. If you would please put that down as one of the questions you should answer in your testimony, would that be alright with Ms. Angle?

Assemblyman Mabey:

It seems like if I were an adopting parent and I wanted to adopt a baby, I would be at an unfair disadvantage because I would almost want to do anything to get that baby, and I might agree to something that I normally wouldn't agree to. I would like you to comment on that. Then, what would you do with adoptive

parents that don't honor the agreement? What's going to be the penalty for them?

Cynthia Lu:

There maybe some adopting parents who feel so desperate that they are willing to agree to anything. I would hope that they be counseled by their attorney or by a case manager who is working with them regarding the long term effects, the finality of these agreements, and the possibility that it could be enforced in court. I would hope their emotional effect would be countered by the rational discussion of what can take place in these agreements. It is my hope that happens. Obviously, I can't at this point anticipate that is what's going to happen, but I would hope that, with the counseling from their legal counsel as well as their case manager, they fully understand what this agreement means.

In regard to penalties, I believe that's pretty much discretionary with the court, but what this bill specifically states is that this bill does not negate the adoption. It does not negate a relinquishment or termination. That status is final. All the court really can do is tell the parties they need to comply. I highly doubt the court will look at any sanctions as to jail or anything like that because the court's main interest is to preserve that child's home. So, the courts are not going to do anything to disrupt that home. I believe the courts will probably just indicate to the parties that: "Okay, you haven't sent the pictures you were supposed to send two months ago, we want you to send them within ten days." It could be as simple as an order like that where the parties are just directed that they need to comply with the agreement that they agreed to.

Assemblyman Anderson:

Let me respond in part to Dr. Mabey. One of my concerns in seeing the drafting of this particular piece of legislation was to make sure the new adoptive parents, who are the parents, are going to have standing because they are providing that nurturing relationship, which is what parenting is all about. The birth parents clearly were concerned about the infant when they put them up for adoption, and wanted to make sure that they're doing the right thing. They want to be reassured of that. By putting this into the court process, the adoptive parents now become aware of what they are truly agreeing to, and not just what my heart's desire is.

That's a major step in my opinion. They truly understand the obligation is not merely, "I want this child, and I'll do anything to get it," but also the reassurance to the birth parents that their rights are going to be observed in some fashion. It's a heart-wrenching question. I don't think it can be anything but.

Assemblyman Mabey:

I'm still very troubled by that part. It seems like it would be more disruptive to the family and the child that was adopted to be brought back into court, so I really have some concerns regarding that punishment.

Assemblywoman Gerhardt:

What recourse do adoptive parents have if they have entered into one of these agreements, and then later on, there is some behavior on part of the birth parent that makes this no longer desirable?

Cynthia Lu:

The bill itself indicates that these parties can come back to court; the adopting family can come back to court to modify the agreement and change the agreement. That's in there where they can come to court and it's not completely set in stone. If there is good reason that it needs to be changed, based upon the behavior of the birth parent, the adopting parents can do that. The reality is if the birth parents have either gone back to a negative type of lifestyle, most of my clients usually are drug addicts or alcoholics, and they go back to that, they're never going to come back into court again to do anything because they can't even keep their life together. If an adopting family were to come into the court and modify this agreement, I'm pretty certain that if the birth parents are really kind of out of it, at that point, there's going to be no opposition, and it's just going to be a matter of filing a simple motion to modify. If there's no opposition that modification would just be signed by the court. I don't anticipate that as a major hurdle or an issue.

Assemblyman Carpenter:

This bill provides that if you have one of these in the order of decree of adoption, it creates this rebuttable presumption that the contract provided is in the best interests of the child. Does that in any way put the adoptive parents at a disadvantage?

Cynthia Lu:

I believe that rebuttable presumption language is found throughout the other custody statutes in the *Nevada Revised Statutes* (NRS), and I don't believe that the caseload indicated it's an extra high burden to overcome. Obviously, any presumption is a hurdle to overcome, but I don't believe it's overly burdensome. It's also in other parts of the custody statutes between the father and a mother and the divorce proceeding. I don't believe that it's an extraordinarily difficult hurdle.

Chairman Anderson:

Let's turn our attention to give testimony here, if you would. I want to make sure that we have the bill up and understood by everyone here.

Maire Burgess, Licensed Social Worker, Washoe County Department of Social Services, Reno, Nevada:

I have supervised the adoption program in Washoe County for over 13 years, first with the Division of Child and Family Services (DCFS), and then with Washoe County. The Department does support the passage of A.B. 51. [Referred to [Exhibit D](#).] Not only will this bill promote permanency and be in the best interest of children, it will solidify that a breach of the agreement does not put in jeopardy the adoption or the relinquishment related to that specific adoption. Some of the things that were brought up were in the best interest. I deal with both, those children who are in dependency cases, and those with private adoptions, either through the State or mothers coming into our agency and relinquishing their children and requesting an adoptive home.

One of the things that I think is very important, it is notated in my paper there, is that our children in the dependency mostly have a relationship with their parents. It is very important for them to be able to know that their parents are alive and well. By having some level of contact, it gives them peace of mind. Most of our contact agreements are for cards, letters, or an occasional visit, if that is deemed in the best interest of the child. Also included in the agreements is if something occurs that is negative for the child, such as the parents' behavior deteriorating again, or the child having a very difficult time, a therapist can say that this is no longer any good. It's actually in the agreement, and any contact would then be suspended.

If I may answer the question in regard to the newborns to Ms. Angle, my experience has been that the birth mothers would like to be able to meet the family if at all possible. I think it gives them a sense of peace, in at least being able to see and meet the family, to see whether or not their child is going to go into a good home. Most of the agencies and other states that we work with will not even consider families who won't consider some level of openness, even if it's just a card or picture once a year. We're not talking about ongoing contacts, because that would be very confusing for a child. When we're saying contact, it could be as little as an updated letter once a year. It gives them that peace of mind. We have not had anybody go to litigation or anybody contest.

One of the other things that is often put into the agreement is if either side does not request whatever was agreed upon within a year's time, then that agreement becomes void. That is explained very well to both parents, both the birth parents and the adoptive parents. An example: If you are able to pick up

your pictures of your child, usually we try to do it on their birthdays and holidays. If you don't make that request within a year's time, then that agreement is void. So, that behooves the birth parents to exert their responsibility to request that. I believe that's probably all that I have.

Chairman Anderson:

Of course, Ms. Burgess, this all comes about not because of the state law but because of the *Nevada Administrative Code* 127.210, which I believe we've distributed to members of the Committee. I would draw their attention to 4(a) and (c), "May offer open adoptions in which the adoptive parents are selected by the biological parents," ... and then "Contact between the adoptive family and biological parent may be arranged, if that contact is agreed upon by all persons involved." The *Nevada Administrative Code* under 127.210 is spoken to in this bill. If this statute is to be put into law, then that's what the case was originally based on. That's the reason why it's even come up, other than we don't want to have closed adoptions. The other alternative then, I would think, would be to do away with open adoption and just have it closed.

Maire Burgess:

I would really hate to see that happen, and I would have to speak more from those children that are in the permanency portion of the adoption track, especially the older children who clearly know their parents. One of the things that I've put into my paper ([Exhibit D](#)) that I've provided you is that, by the adoptive parents accepting the birth parents, it then translates through to the child. I think that's a very important thing, especially when you're dealing with older children, and I'm talking about children two years old and older who have had some relationship with their parents. If they know that their adoptive parents, who are raising them, nurturing them, and giving them all of the tenderness and love that they need, accept their birth parents, then they accept them and all that comes with that. We can't forget all of the genetic makeup and everything that comes with that came from the birth parents. By the adoptive parents saying that it was an okay thing to do, it makes it right for the children.

Angela Chalmers-Howald, Private Citizen:

I am the birth parent that Chairman Anderson was speaking about in the Supreme Court case in Nevada. If A.B. 51 had been in place nearly five years ago, I might be visiting my daughter instead of telling lawmakers how I was legally violated as a birth mother in the adoption process ([Exhibit E](#)). A.B. 51 goes a long way when it comes to making the postadoption contact agreement an honorable contract instead of a deceptive contract. Prior to this legislative session, it has been unenforceable in any Nevada court of law. I support A.B. 51. It is well thought out and goes the extra mile to make certain birth

parents know if they might be allowed contact with their relinquished child or not. I encourage you to support A.B. 51. Through all the growing pains that has surrounded this issue, I believe it is time to give birth to much needed new laws. I ask you again to please support and pass into law A.B. 51.

Chairman Anderson:

In your particular case, there was a verbal agreement that you were going to be able to keep contact with your child?

Angela Chalmers-Howald:

It was a written agreement signed by all parties and the agency.

Chairman Anderson:

Because there was no reference to it in the court document, therefore it was not an enforceable agreement.

Angela Chalmers-Howald:

That's correct.

Assemblywoman Buckley:

Can you tell us what the written document said in terms of what kind of contact there would be?

Angela Chalmers-Howald:

It said that I would be able to visit my daughter for the first three years on or around her birthday, and I would get pictures of her once a year also and a phone call when they came home. It was very specific contact agreement.

Assemblywoman Buckley:

And then what happened?

Angela Chalmers-Howald:

I found out that the agreement was not legal. The adoptive parents and I started having some issues. I never wanted to relinquish and the agency pushed me into it and used a very heavy hand, and I was having issues with this. The agency knew it. The adoptive parents knew it. They were not going to let me see Taylor because they were concerned. I was freaking out. They just did not let me see Taylor. I went to the family court system. Muriel Skelly said, "You have a closed adoption. This postadoption contact agreement is not legal in the state of Nevada." I was screaming in the courthouse. That's what happened, and I have not seen my baby since then. It's been over five years.

Robert Payant, Executive Director, Nevada Catholic Conference:

Although we noted that we favored the passage of A.B. 51, at this time I would say we're in a neutral position. We're coming at this matter in a different way ([Exhibit F](#)). You were going to, during the course of this session, face a number of additional issues concerning adoption. For example, A.B. 50 clarifies contact and access to the State Registry. Assembly Bill 50 is a significant bill. It has implications with regards to A.B. 51. You're going to see Assembly Concurrent Resolution 2, which asks the Nevada Supreme Court to review the process by which district judges determine the availability of files for adoption proceedings. At this time, the statutes are bigger with regard to what the review process should amount to and what the standard of proof should be with regards to availability of adoption proceedings. Bill Draft Request 709 provides that an adopted person at age 18 has the right to open all of the files which would include home study and so on.

Chairman Anderson:

One of the difficulties with this issue, and one of the things that I was going to make sure did not take place this time was to confuse the question about the records of adoption with this particular issue. This, unfortunately, becomes a stumbling block where people think that what we are talking about is opening the record, which we are not. This time, I've decided on this particular issue, I'm going to walk a very tight line. So, if you want to talk on A.B. 51, I think that you should contain yourself to this bill and not to that other question, because I'm afraid the other bills will get lost, because I agree with you that they're very, very important. I understand that one of these deals with the process of the court itself and that needs to be examined. I understand the nuances of this story. I believe that this has a different application, and that's what happened to it last time. That's the reason we did an interim study, and the bills reference that interim study.

Robert Payant:

I did hear adoption cases during my number of years as a judge in the state of Michigan, but I don't think that has much reference here. At this time, I'm going to defer. The material I've presented to you gives the reasons that I think a full and comprehensive study should again take place with regard to adoption proceedings in this state. That was the purpose of my listing at least the other matters implicating adoptions that are there.

Annette Appell, Professor, William Boyd School of Law, University of Nevada, Las Vegas:

I'm speaking from down south, and, apparently, the only proponent of this bill in the room. My primary area of research is in the adoption area, particularly in postadoption contact, and even more narrowly, the enforceable postadoption

contact agreements that are contemplated by statutes like A.B. 51. I have submitted written testimony, and will not repeat it here ([Exhibit G](#)). I also echo what has been said previously by you, Assemblyman Anderson, and the other witnesses. I do want to say that I did actually do a study, also a social study, of the statutes that are in existence in other states. I have attached to my testimony a short report I did on that study, as a study commissioned by DCFS. I can make the full report accessible.

[Annette Appell, continued.] One of the reasons other states have passed these statutes is to formalize and make fairer and clearer the process that is occurring throughout the country in terms of agreements for postadoption contact. So, I think that piece of it is very important. I think that the issues of informed consent, of wise counseling, and avoiding coercion are important. Formalizing these procedures for those families that want to engage in these types of agreements is a good thing. I also want to stress that these types of enforceable agreements are not for everybody. These should be entered into only by those parties that are completely willing to do so. Finally, this is a pretty important tool for children in the foster care system for promoting permanency and protecting their interests.

Chairman Anderson:

Doctor, I appreciated the nuances of the thoroughness of the report. I note that on Page 76, where it talks about your report of the longer part of the document, "Survey of States Utilizing Adoption with Contact," it mentions that there is no state that permits the new adoptive parents to vacate or give-up their child. In that statute, that's also true?

Annette Appell:

That's correct. That is such an important part of this bill, and also the other statutes; that they do not undermine the integrity of the adoption. If this contact does not work out, if the agreement is terminated or modified, the adoptive family stands. There is no change in that family, that's very important. I would tinker with this bill a little bit, but I think that the protections in this bill are quite good. That particular protection that says this cannot be grounds to terminate or invalidate adoption or relinquishment, and also that it has standards for modification, and standards for termination. It's very, very important.

Assemblywoman Buckley:

Professor, I think what bothers me the most about this issue is that it's just not clear. In the adoption decree, it should say whether or not there is to be visits or not, and if there's not that it say clearly you have no right to enforce it. If there is, that enforcement mechanism also be in the decree. It just seems that having a situation where one party to an agreement thinks they're going to get

something and they don't get it, is not right. So, if the birth mother and the adoptive parents don't want any visitation, which is very common with a newborn, than that's how it should be written up. If it's an older child who wants the right to see their parent once a year, that should also be clear. I'm wondering if one of the concerns I hear from the adoptive parent community is the fear of being dragged into court. All of a sudden, they are the parent now. They love the child, and they're stuck in either a costly court battle or the trauma of a court battle. What I'm wondering, has there been any alternative dispute resolution? First, how often does that occur in your research? Second, have any states considered any alternative dispute resolution to address that concern?

Annette Appell:

I can't recall right now how many, but at least three or four or more states either mandate or suggest mediation if there is a disagreement. In fact, I just received an email over the weekend from a law professor from Maryland that's been working on a statute that I've been consulting on. They've just added an intermediation provision. It's still in the bill form right now. I think that's important and very useful to have alternative dispute resolution in most cases. I do want to say that there really has not been, according to my survey, and certainly if you look at the published decisions, any litigation regarding agreements under and pursuant to these statutes. I think the clarity of the agreements and perhaps other things have kept people from bringing them to court. I understand the financial cost and the emotional cost of dragging parents or their adoptive parents into court to contest the way that the child is being raised. Some wanted more visits or different visits, that's a big deal. I understand that. These statutes don't seem to be promoting that litigation. The more clear they are, like the one that's at issue here, the least likely they're going to come into court because it's clear what the standards are and what the parties are required and permitted to do.

Assemblywoman Angle:

When a child is adopted, I want you to talk to me about the presumption. I've always been under the assumption that the presumption is that the adoptive parents are in the best interest of the child, so it kind of flips the law from being that the birth parents would be presumed to be the best place for a child when you go into that adoption process. Could you talk to me a little bit about that presumption, please, as far as adoptions and birth parents go?

Annette Appell:

There's no question that the adoptive parents, by definition of the decree, are in the best interest of the child. As parents, which is what they become after the adoption decree is entered, they are presumed to add to the best interest of

their child. That presumption is given great deference. I don't think there's any question about challenging their status as parents or their decisions, because if one of these agreements is entered into as part of the decree, the adoptive parents have by definition agreed to the contact, and agreed presumably, to what is in the best interest of their child, whether it's phone calls, letters, visits, whatever it is. The idea of having a presumption retained is to discourage litigation to make people understand what's expected of them. It is true it is a very open standard to the best interest of the child. It's open to the decision maker's values. It's not very precise. It's one reason that we've really deferred to parents to make those decisions about the best interests of their child. That's what we'll be doing here. I think what's also special about these particular statutes is they're agreeable. These agreements are entered into by the people who know the child best, the adoptive parents and the birth parents. It is much better than having someone second guess them, whether it's a judge or someone else who doesn't know the family or the child so well.

Chairman Anderson:

I see no other questions from members of the Committee. Doctor, thank you very much for spending the morning with us, and we appreciate your insight especially since you have a national view of how this issue is continuing to come up from the law school side.

Justin Jones, Private Citizen:

Four months ago, my wife and I had the opportunity to have a child placed in our home. In about two months, we'll go to court and have the adoption decree entered so we can become the full legal parents of Gabriella. I also have the opportunity to work with the Nevada chapter of Families Supporting Adoption, an organization of more than 120 adoptive families who seek to promote adoption in our community and educate those seeking to adopt on the legal processes involved.

[Justin Jones read from [Exhibit H.](#)]

I come to you today in opposition of A.B. 51. The Committee members should have received my written testimony, and I'm not going to belabor this too long. I just wanted to get to a couple of points that I thought were not addressed yet today or need further clarification.

This bill does not require contracts between adoptive couple and birth parents. However, the conspicuous notice requirement under Section 2 of A.B. 51 would only serve to encourage contracts between birth members and adoptive families. The adoptive

couples would have little choice but to comply with these adoptive contracts as refusing to accept the contract will land them back on a waiting list for months or even years. Noticeably absent from A.B. 51 are any guidelines on the remedies that would be appropriate for breach of a postadoption contract. In other breach of contract actions, two types of remedies are generally available: specific performance and money damages. If a natural parent were able to seek specific performance of a contract, would a court force contact with a child even if the adoptive parents had determined that it was not in their child's best interest? If the adoptive parents refused to comply with the contract even after a court order, would the judge throw them in jail? Money damages would raise just as many unanswerable questions. How would a court assess a monetary value on the failure to send a photograph or the refusal to permit visitation? If the agreement provided for liquidated damages, would the court also need to be engaged in analysis of whether the liquidated damages constituted an unenforceable penalty?

[Justin Jones, continued.] This bill is not in the best interests of adoptive parents. The most concerning provision of A.B. 51 is Section 3, paragraph 4, which creates a rebuttable presumption that contact with a natural parent is in the best interest of the child. If passed, this burden-shifting provision would directly interfere with the adoptive couple's parental rights to determine what is in the best interest of their child. This section creates an absurd result in that adoptive parents would have the burden of proving in court that contact with drug addicted or an overly intrusive natural parent is not in the child's best interest. In practice, this relegates adoptive couples to second class parents who have to ask permission from the courts before making family decisions.

Assembly Bill 51 is also not in the best interests of natural parents. As we've talked before, you hear in this matter, natural parents are often not in a position to pay costly legal bills. Pursuing enforcement in the courts are often not a viable alternative for breach of a postadoption contract. Even if a natural parent were financially able, the statute provides they could be forced to pay the adoptive couples' attorney's fees and costs if they do not prevail in their enforcement action in court. We have mentioned Ms. Howald. If this bill had been in place for Ms. Howald and she had pursued remedy in court and had lost, if the court had

determined that it was not in the best interest of the child to have contact with Ms. Howald, she would have been saddled with the attorney's fees of the adoptive couple.

[Justin Jones, continued.] The bill is also not in the best interest of Nevada's court systems. Our courts are already financially strapped and our family courts are full of cases that create complex legal problems for the judges. Under A.B. 51, each time a party to a postadoption contract seeks a modification, they must obtain a court order using scarce judicial resources, even if both parties consent to the modification. As the statute provides for enforcement of the contracts until the child reaches the age of 18, there is the potential for ongoing court battles between adoptive parents and natural parents, all of which would clog our already strapped family courts. I want to clarify a point that I believe was made by Ms. Burgess before: Nothing in this legislation would terminate the contract or make it void if it wasn't enforced within one year. Legislation says that these contracts are enforceable up until the age of 18 of the child.

I propose what I believe is a better solution. I've provided to the Committee substitute legislation. A.B. 51 purports to be a response to the Nevada Supreme Court's decision in *Birth Mother v. Adoptive Parents*. However, a review of the *Birth Mother* case reflects that A.B. 51 not only goes far beyond the Supreme Court's ruling, but contradicts it in many respects. In *Birth Mother v. Adoptive Parents*, the Nevada Supreme Court was faced with the question of whether a contract providing for contact with adopted child after the adoption order was enforceable under Nevada law. In answering this question, the Nevada Supreme Court looked to *Nevada Revised Statute* (NRS) 127.160 which addresses the rights and duties of adoptive parents. This statute states: "Upon the entry of an order of adoption, the child shall become the legal child of the persons adopting him, and they shall become his legal parents with the right and duties between them of natural parents and legitimate child. ... After a decree of adoption is entered, the natural parents of an adopted child shall be relieved of all parental responsibilities for such child, and they shall not exercise or have any rights over such adopted child or his property."

NRS 127.160 reflects the public policy of this state regarding adoption, where the birth parents are relieved and divested of any rights to the relinquished child after the entry of adoption decree.

Noticeably absent from A.B. 51 is any mention of a reference to NRS 127.160. A.B. 51 seeks to repudiate the public policy of NRS 127.160, which is to protect the rights of the adoptive parents to make decisions in the best interest of the child without interference from or permission from the natural parents or the courts. The substitute legislation I have proposed reaffirms that state's public policy regarding post decree adoption rights and ensures that birth mothers are not misled regarding their rights. First, the substitution clarifies the postadoption contracts as invalid and unenforceable, as they are contrary to the public policy set out in NRS 127.160.

[Justin Jones, continued.] I would ask that you vote no on A.B. 51, and I ask for consideration by the Committee of the substitute legislation I have proposed.

Chairman Anderson:

Well, if we vote no, then we wouldn't get to do this. Do you think this is an issue that needs to be clarified in some way or not?

Justin Jones:

Do I think that A.B. 51 needs to be clarified?

Chairman Anderson:

No. The open adoption question needs to be clarified in its current statutes relative to the Supreme Court case, and adoptive parents. Do you have an opinion on whether there is an ambiguity in the current law under the open adoption agreements?

Justin Jones:

There is no ambiguity. The Supreme Court's holding an adoptive parent clearly states what the law of this state is. There's no purpose for this legislation. The alternate that I have proposed would take us back to the public policy of this state.

Chairman Anderson:

The Supreme Court holding, you contend, doesn't point to the Legislature that since we're silent on this issue, then there is no such thing unless they're included in the contract, there's no ambiguity there?

Justin Jones:

We've already heard testimony today from Ms. Lu in which she clearly stated that she has continued to enter into postadoptive contracts with people she has worked with, and those contracts have been enforceable.

Chairman Anderson:

Those were closed adoptions.

Justin Jones:

If they're closed adoptions, then there would be no contract.

Chairman Anderson:

There are questions. People want to know.

Assemblywoman Buckley:

Open adoptions work very well sometimes. I recall a case where a child was in the abuse and neglect system, very troubled with an alcoholic parent. The child wanted to be adopted by a lovely, lovely person. The adoption went through, and the only way the natural mother would agree to terminate her parental rights is if she had a once a year visit. The adoptive parent, who you probably know, just an incredible loving person, worked out an arrangement to avoid the child from having to go through a trial to be adopted quicker, and taught the child how to love their parent despite the fact that they could not raise this child. I never saw such love and working with a child in my life.

That situation would have been so wrong if an adoption agency, the soon-to-be-parent, and the birth parent had signed an agreement saying you're going to get a visit once a year and then later, after everything was processed, said, "We lied, you're not getting a visit." That is just so incredibly wrong to me. What I don't understand with your testimony is why you don't get that scenario? Why can't we promote adoption and get these children some wonderful homes sooner and not have a situation where there can be deception? How would you respond to that?

Justin Jones:

Obviously, I feel just as you that it is wrong for adoptive couples to enter into deceitful transactions whether in contracts or for other ways with the birth parent. The purpose of adoption is not to deceive the birth mother and steal a child from them. The purpose is to provide them with a home that will be loving and that will provide them with the resources that they need that the birth mother may not be able to provide. The problem is adoptions involving children adopted at birth differ widely from those who are from foster care or older children. Perhaps the better solution is to make a provision in this legislation such that it will only apply to individuals who are coming out of the foster care system or only of an age of three or older, where there is already significant contact between the birth parent and the adopted child.

Assemblywoman Buckley:

Thank you for that response, I'll think about it.

Chairman Anderson:

If we put it to a subcommittee, we'll make sure we put you on a list.

William Bryson, Attorney at Law, Las Vegas, Nevada:

In law school, my course of study emphasized constitutional law and theory. Although I have opposition to this law based on a number of other issues, I'm going to limit my testimony today to problems with A.B. 51 surviving federal constitutional scrutiny.

[Mr. Bryson read from prepared testimony.]

Assembly Bill 51, as written, effectively or directly infringes on two recognized fundamental rights protected by the *Constitution of the United States*. The right of a citizen to pass from one state into any other state or to reside in them without molestation is secured by the *United States Constitution*, and is known as the Right of Free Movement. The Supreme Court has long recognized the constitutional Right of Free Movement as a fundamental right. In 1849, Chief Justice Roger B. Taney wrote, "We are all citizens of the United States, and as members of the same community, we must have the right to pass and repass through every part of it without interruption as freely within our own states."

In 1966, Justice Potter Stewart added, "The Constitutional Right to travel from one state to another occupies a state fundamental to our federal union. It is a right that has been firmly established and repeatedly recognized as a fundamental constitutional right. Any state law that has the effect of infringing upon this right for any person or group of people is subject to strict scrutiny by the federal courts." Unfortunately, the proposed legislation as written may have that exact effect. Many of the agreements contemplated by A.B. 51 would involve contact and/or visitation of birth parents that would be adversely affected by an out-of-state move by adoptive parents. There are many reasons why one might decide to move to another state: a new job out of town, the need to move near family to care for grandparent or other loved one, or the need to just feel a fresh start in another state. The proposed legislation would require many adoptive parents who have entered into these postadoptive contact agreements to file motions with the court

before they can move and request a modification of the adoption decree.

[William Bryson, continued.] When seeking modification, A.B. 51 requires the adoptive parents to establish both a change in circumstances that warrants the modification and that the agreement as written is no longer in the best interest of the child. These requirements effectively limit the Constitutional right to free movement. In such a case, the adoptive parent has no right to free movement at all. Instead, they are burdened with filing a motion with the court, and having such motion heard and granted before being allowed to move to another state.

Furthermore, the legal burden to prove that a change in circumstance warrants the change and being forced to show that the agreement is no longer in the best interest of the child are heavy burdens, indeed. It's difficult to conceive within the purpose of A.B. 51 any state interest that would be compelling enough to justify the state's restriction on adoptive parents' fundamental right of free movement in this manner. As such, it is equally difficult to conceive that, if put to the test, A.B. 51 would survive Constitutional strict scrutiny. Even more troubling, A.B. 51's effective infringement on the right of free movement is the direct and unmistakable infringement on the constitutional rights of parents to direct the rearing of their children. The Supreme Court has consistently found that parents have a fundamental Constitutional right to direct the rearing of their minor children.

"The liberty interest of parents in the care, custody, and control of their children is perhaps the oldest of the fundamental liberty interests recognized by this court," wrote Supreme Court Justice Sandra Day O'Connor in *Troxel v. Granville* [530 US 57 (2000)]. This interest is rooted in the theory of substantive due process under the due process clause of the Fourteenth Amendment to our *Constitution*. The Supreme Court wrote, "It is cardinal that the custody, care, and nurture of the child reside first in the parents whose primary function and freedom include the preparation for obligations the state can neither supply nor hinder." The Supreme Court has further recognized that the existence of a constitutional parental right against undue adverse interference by the state.

Chairman Anderson:

Would you like to submit this in writing to us since you didn't fax it up?

William Bryson:

I was not made aware of this hearing until the last minute. I can certainly put this to writing and fax a copy of this to the Committee.

[Continued from prepared testimony.]

Furthermore, the Supreme Court has recognized a fundamental principle that a presumption exists that fit parents act in the best interest of their children. Accordingly, so long as a parent adequately cares for his or her children, there would normally be no reason for the state to interject into the private realm of the families to further question the ability of that parent to make the best decision concerning the rearing of that parent's children. This includes a parent's right to change their mind as to what is in the best child's interest at any moment.

Unfortunately, A.B. 51 directly and unmistakably interferes with that fundamental Constitutional principle. Assembly Bill 51 creates a rebuttable presumption that the contact provided for in the adoption decree is in the best interest of the child for a period of 18 years. This puts the burden on the parents, the adoptive parents, to justify any action which they take which could possibly be interpreted by a court as contrary to the postadoption contact agreement. This rebuttable presumption and its accompanying burden are directly contrary to the Constitutional right of a parent to direct the rearing of their minor child. Its accompanying presumption that any action by a parent who adequately cares for his or her child is acting in that child's best interest.

[William Bryson, continued.] Furthermore, A.B. 51's requirement that places the burden on the parents to prove circumstances warrant a modification and that the agreement is no longer in the best interest of the child is directly violative of the Constitutional right of that parent. The Supreme Court has already articulated a presumption that exists to child rearing. That presumption is that a fit parent's actions are in the best interests of the child.

Assemblywoman Buckley:

Being on this Committee last session, I heard a great deal of similar testimony. I want to ask your opinion on something. You heard my question to Mr. Jones. How do you deal with that situation? There can't be oral promises of postadoption contacts. If parties agree to postadoption contacts, that agreement must be contained in the adoption decree and not in a separate written agreement. If the postadoption contact in the adoption decree contains

visitation, which I think is rare, then a court would have the ability to enforce that. What would you think of that? I mean trying to get at the problem we're trying to solve, but not interfere or cause disruption to the great work done by adoption agencies that we desperately need. We need more, not less. What would you think of that approach?

William Bryson:

I fail to see how A.B. 51 addresses the concerns about that branch.

Assemblywoman Buckley:

No, forget A.B. 51. We're trying to solve a problem, and I tried to articulate it, and what about what I just said?

William Bryson:

If what you said was true, I would wonder how the court would go about enforcing such an adoption decree without undoing the adoption decree itself.

Assemblywoman Buckley:

Every day in family court parents with children appear with all the Constitutional rights that apply. If adoptive parents have those same rights, they are the parents once the decree is over. Courts have to decide that everyday. Look at the grandparents' visitation statute. Again, this is just where there's visitation in a decree, which really doesn't happen in newborn cases.

William Bryson:

I think the issue comes with the presumption that is created by A.B. 51.

Assemblywoman Buckley:

No. Forget it. I withdraw my questions. I'm not talking about A.B. 51.

William Bryson:

The problem comes in the presumption that the parent must rebut a presumption that something other than their own actions are in the best interests of their child. You mentioned the grandparent visitation statutes. In that vein, the Supreme Court's analysis in *Troxel* is extremely instructive.

Assemblywoman Buckley:

I know that case. Thank you very much. We just had a full hearing on that the other day. If a parent had all of those same rights, then it was presumed that the parent was acting in the best interest. It would have to be a rebuttable presumption by clear and convincing.

William Bryson:

Given the content of Ms. Lu's testimony earlier, I believe that that situation is what we have right now.

Assemblywoman Buckley:

Okay.

Chairman Anderson:

Do you want to make a summary statement?

William Bryson:

In summary, A.B. 51 fails to provide any protection for adoptive parents' fundamental Constitutional right to make decisions. It is difficult to imagine a compelling state interest.

Chairman Anderson:

I have one question, as Chairman. There are 18 states that have similar pieces of legislation. Many court processes, as Ms. Buckley has originally pointed out, require and allow people to move from state to state. At least two of the states do not put visitation rights as part of requirements of the agreement, because there is a possibility of people moving from state to state. It sounds in part that there is a Constitutional basis of free access, which you make such reference to in the very first part of your statement based upon that visitation question. Is that a correct assumption?

William Bryson:

Among others. There's no language in A.B. 51 as to what kind of things need to be included. It could be visitation. It depends on the question regarding each individual postadoption contact agreement.

Chairman Anderson:

Those are court prerogatives, I understand.

Vivian Boyle, Adoptive Parent, Private Citizen:

In my seventh decade of life, I have a lot of experience in a lot of things, and one of them is losing children. The privilege of adopting came to us when my husband was in his mid-30s and I was in my late 20s. When that young man became 25 years of age, he and his wife, finding herself pregnant, desired to know more and sought to find his birth mother, whom we had told him all his life loved him so much that she placed him in our care and keeping.

My concern in opposition to this bill is not only for adoptive parents but it is also for birth parents. Having chosen to place the child for adoption, and now in

most cases having chosen the parents who will rear the child, is a monumental decision for a young woman or any woman. It comes on the heels of another, unselfish decision, to birth her child. Having trusted herself to choose the right home, she now is in a position to trust the family she chose. The dignity of parenting is fraught with moments of uncertainty in the everyday way of things. It is to the best advantage of the child she loved enough to birth to allow the parent she chose to parent the child. This bill puts unneeded and undeserving stress on the family she helped to create, and ultimately, on the family she lovingly chose to birth. There are already practices in place to allow her to follow the progress of her child for a reasonable time. She, too, is hindered by this bill, the nature of which may lead her to feel responsible after she has allocated that responsibility to the adoptive parents.

[Vivian Boyle, continued.] The state has in place guidelines for choosing families who may adopt and is governed by statutes followed by competent men and women who have chosen their work and work hard at it. This bill creates more for them to do when there is enough already and will be a hindrance to those who seek the rewards of rearing a family. We are seeking more families to choose adoption, not fewer. It is my hope that you will, through your careful consideration, oppose A.B. 51.

Michael Calkins, Private Citizen:

I wasn't going to come here this morning. I wrote a number of you and even specifically said so, but have you ever changed your mind when you just know something is wrong and you can't sit down and do it? I'm assuming you can see me because I am going to muddy the issue with this picture of this family that shows a beautiful little girl, a handsome little boy, a gorgeous mother, and a balding father. There's some things that I have a problem with. I'm not an eloquent lawyer. I'm just a drama teacher. Drama teachers have to be told what to say. Well, there was no script written for me. So, I'm just going to say I think there is some inequity here. The burden is put on the adoptive parent. As an adoptive parent, the burden shouldn't be put on me, and I'll tell you why: I've already proved to the state through going to lessons, counseling, having my home looked at and having friends write letters to support me as a potential father. The burden of proof isn't with the birth parent. It's really funny, because where's the equity in that?

As I wrote in my letter, in essence, and maybe some of these adoptive parents don't want to look at this, but I'm also a certified special education teacher. I'm kind of disabled. There's a part of me that is broke. There is a part of my life that is broke. If you are favoring the birth parent over me, where's the equity? I just want to have fairness, and where is that? People who are disabled want to

be treated like everybody else. We don't want special favors, we want to be as normal as we can be. So I'm just going to ask you to vote no on A.B. 51.

Chairman Anderson:

Thank you, Mr. Calkins. Any of us who have sat through several of our sessions now, over the years, dealing with the need for people who are going to become adoptive parents, know the many hurdles that we have placed in front of you to be fit, proper, and to be clearly judged by the agencies to meet a certain economic requirement. It's truly a monumental task to become adoptive parents, and for that, all of us recognize, at least I hope we all recognize, the huge burden that falls to you, sir. The question here is if we are to leave open adoptions in place, which we feel serve a particular need, is there not an obligation between both parties that they go into it with their eyes wide open? Should the birth parent and the new parents recognize that there is a relationship that you go into with an open eye as to what you have agreed to? Do you think that you should include that or not?

Michael Calkins:

You know, it's already being done. It really is. My wife and I am involved in two semi-open adoptions. We have contact. Are we trying to make the exception to the rule or should the rule be the rule? If we make the exception to the rule, we're going to be kind of screwed-up. In essence, we need all of us to allow it to be this way. We're also looking at two different issues, which A.B. 51 doesn't address, and that is if we have some adoptions with kids who know their birth parents. My children have grown-up knowing they are adopted. Michael is six, Laura is four. When we say our nighttime prayers, we have our children pray for their birth parents. My children know. We just wrote a letter to Michael's birth mother on his birthday. But you see, these are kids who don't really know their birth parents. My son, when he first started praying for his birth mother would say, "Bless my birth parents," that's what he'd say, and "bless my cat's birth parents, and my dad's birth parents, and our house's birth parents."

Sir, I assume you are a parent. You look like you would be a parent, and I'm going to muddy it some more. So, somebody comes along and says, "I'm your child's dad." How would you feel?

Amy Turner, Private Citizen:

I am an adopted mother of two daughters. My husband and I are currently leading our local Families Supporting Adoption (FSA) chapter that has about 120 families and couples in our care. We are hoping to have more families in the future so this law will have an impact on us, I believe. I love our birth mothers very much, and we correspond with them through our agency. We are hoping to

have more families in the future, so this law will have an impact on us. I've reviewed A.B. 51 and am opposed to this legislation. My first concern is for my children. If I enter into a contract with a birth mother and then decide later that it's not in the best interest of my child to continue with that contractual agreement, then I need the right to do so. I deserve that right to choose that for my child. I'm also concerned with the penalties. The penalties in A.B. 51 seem to be a slippery slope area with no concrete guidelines, and if the penalty is to be monetary, I see this as a possible avenue for birth families to abuse it, especially since the burden of proof is put upon me and adoptive couples. How will I ever be able to prove that I mailed the letter? How will I ever be able to prove how many pictures I sent? Whether my packages reached her?

[Amy Turner, continued.] Most importantly, I want to parent my adopted children as if they were born to me. Our adoption decrees for our daughters state: "And the minor shall henceforth be regarded and treated as practitioner's natural child and have all the lawful rights as their own child including rights of support, protection, and inheritance." This bill is in conflict with my right and court-given direction to parent my child, as if born to me. I'm happy to send these letters and pictures and have the contact that I believe to be appropriate and best for my child, but this should not be a legislative matter. Thank you for your time.

Chairman Anderson:

[Chairman Anderson explained the bill and its significance to a group from the Boy Scouts of America.]

David Arnold, Private Citizen:

I sent you an email yesterday, unfortunately, it was past the 4:00 cut-off, and so it will not be in the record. I would invite the Committee to read my email, although it is not part of the record, and I will not belabor the things that I brought up in that email ([Exhibit I](#)). I would like to say a few things: I am not an attorney, I am an adoptive father. I apologize if I get a little emotional. Our adoption was just finalized a little less than two months ago. We have a beautiful eight month old daughter. I'm a first time parent, and I waited a long time. My wife and I have been married for 16 years. We are unable to have children biologically. We struggled through the hardship of fertility treatments and the lengthy adoption process, which I will not belabor as you are all familiar with that.

Prior to the placement of our daughter in our home, we were able to meet our birth mother. She is a wonderful person, and we love her very much. We correspond with her regularly. We send her pictures every month, as a matter of fact. We intend to continue to do so. We hope to someday have her meet our

beautiful little daughter. I feel that that timetable should be something that we determine. I feel that we, as parents of our daughter, are best qualified to determine the timetable as to her maturity and her preparedness to meet her mother. Also, I wanted to say a couple of other things. I feel I am my child's father. I'm not her adoptive father. When I introduce her to friends and family, I do not say, "This is my adopted daughter." I say, "She is my daughter." She is our child. We are her parents.

[David Arnold, continued.] As Ms. Turner pointed out, the court readily recognizes us as her legal parents. I think A.B. 51 has an effect to relegate us to a second class parent or a different class of parent, in the fact that it gives the state unreasonable invasion into our ability to parent our daughter. Just imagine those of you who are parents, imagine the birth of your own children, and the doctor says, "You have a beautiful little girl, but prior to my giving you your daughter, the state has mandated that you sign this contract," and in essence, the state has now intervened, and now the state is going to place upon you a stipulation. That is essentially what will happen to adoptive parents. After waiting 16 years, the agency will call me and say, "We have a baby for you, but here are the conditions that the mother is demanding." Now, if I deem those conditions to be unreasonable, I go back on a waiting list. Perhaps I lose my opportunity to the child who really would belong in my home. I feel personally that the daughter that we have belongs in our home. She was meant for us. I believe in a higher being that put her in our home for a reason.

I think that it's not the state's business to meddle in these affairs. I think that our current system works, as Ms. Lu testified. Apparently there are means already for the state to be able to enforce contracts. Ms. Lu and Ms. Burgess in their testimony both spoke of older children and foster children. We adopted an infant child. I think that if you feel something needs to be done with children who already know their birth parents, then I think A.B. 51 is not the avenue to pursue, and you may want to look at alternative legislation. I think I've pretty much said my piece. I would just like to reiterate that I agree with everything that's been said in opposition pretty much. I don't disagree with anything that was said in opposition. I would encourage the Committee to strongly consider the bill. I know there are two sides, but please look at the adoptive parent side, and I would encourage all of you to vote no on this.

Chairman Anderson:

Mr. Arnold, clearly you're following whatever agreement was in place. An agreement that you had set up prior to the adoption of the child, and A.B. 51 would not affect the adoption that you currently have in place. However, if you were to move into one in the future, which you very well may do...

David Arnold:

Mr. Chairman, I apologize. I should have said that I do intend to adopt in the future as well, sorry.

Chairman Anderson:

So, your concern is what the impact would be in the future?

David Arnold:

Absolutely.

Chairman Anderson:

You've entered into such an agreement currently. You intend to follow that agreement. Is that true?

David Arnold:

Absolutely. Ms. Lu said most of her clients are drug addicts, when she was speaking to the fact that adoptive couples could come back to court and change that agreement. However, I think the Committee should consider that there are adoptive parents who are in that situation.

Jennifer Eckersley, Registered Nurse:

I am also the proud mother of two beautiful children, one of which is adopted and who is now five. We are looking forward to adopting another child, and we are on the waiting list. Today, I'd like to express my dissatisfaction with the bill, A.B. 51. Adoption is already a difficult process to go through, and the legislation will only make it more challenging. If it's passed, A.B. 51 will essentially allow the birth parent to force adoptive couples into binding contracts for visitations and other contact with the child, even after the adoption is completed. These contracts would be binding on the adoptive parents until the child reaches 18. We as adoptive couples already go through more than average parents just to have the privilege of raising a child. Think of the young lady who is most likely struggling to make the decision to adopt out the child. Why add more complications to an already conflicted heart?

When my husband and I went to court to finalize my son's adoption, it was my understanding that when we became the legal parents of my child, we were also given the legal right to make all the decisions for our child. What would happen if the birth mother thinks that the contract has been breached? Assembly Bill 51 leaves open the possibilities for an adoptive couple to face monetary fines, or if the court saw fit, potential jail time. The penalties would be assessed by the court even if the adoptive parents like myself, who are only doing what we believe to be in the best interest of my child. Assembly Bill 51 also states that contact with a birth parent is in the best interest of the child.

However, I feel that's not always the case. How does the Legislature know better than me, a parent, what is in the best interest of my child? If I determine that contact with the birth parent would be creating emotional problems with my child, what ramifications would I have to stop contact other than expensive court trials concerning the contract that we agreed upon?

[Jennifer Eckersley, continued.] Adoptive parents should have the same right to determine what is in the best interest of our child just like every other parent, but my understanding is that Nevada statutes give adoptive parents the same rights as parents of naturally born children. However, A.B. 51 would roll back the rights guaranteed to adoptive couples and designate judges and birth parents as equal participants in the most intimate of parenting decisions. Sometimes the birth parents relinquish the right prior to legalization of the adoption. Before you vote on A.B. 51, I want each of you to ask yourself, as mothers and fathers, this question: Would I want the courts looking over my shoulder dictating my parenting decisions for my child? If the answer to that question is no, then I would submit that you also vote no on A.B. 51.

Chairman Anderson:

Are you of the opinion because there would be a contempt of court that you would end up doing jail time? Is that what your thinking is? I'm trying to figure out how you figure jail time.

Jennifer Eckersley:

Well, A.B. 51 doesn't give the courts guidelines as to what kind of penalties they're giving adoptive parents if they fail to hold up their end of the contract.

Chairman Anderson:

So, you're assuming that it means jail time?

Jennifer Eckersley:

Potentially, on the extreme, yes, but more likely monetary fines. Ms. Turner, the young lady that spoke earlier, said that birth parents could potentially abuse.

Chairman Anderson:

[Chairman Anderson placed email, [Exhibit J](#), from Mr. Caceres in the record.]

Chris Escobar, Attorney at Law:

You've heard a lot of testimony, and I'm not going to repeat any of that. However, I do want to touch on a couple of points that have been brought out in the testimony and by some of the questioning of the Committee. With regard to the case that I think is the basis for this legislation, *Birth Mother v. Adoptive Parents*: Five members of the Nevada Supreme Court stated, "If the agreement

is not incorporated in the adoption decree, their rights as to the child are terminated upon adoption, and any contact with the child may be only on the adoptive parents permission, regardless of the agreement." What that states, and what the judge in opposition, Judge Robert Rose, said, was if you incorporate under today's laws in the adoption decree, this postadoption contract, the court can give enforcement to it. Judge William Maupin disagreed with that, but that is only one of the seven judges that were up there.

[Chris Escobar, continued.] My basic premise is right now, I don't think this legislation is necessary because of the Nevada Supreme Court decision which says you can enforce these postadoption contracts if you put them in the adoption decree. That premise, I think, is wrong. Second, we've heard some testimony that we don't think there's going to be a huge issue here because most of these adoptions just say we're going to give pictures or letters. We don't see a lot of litigation in that regard. I don't disagree with that. What I see, the way this legislation is drawn, it can lead to substantial litigation in that area and may indeed clog the courts. I understand that Annette Appell has done research finding none of that. That's because they aren't appellate decisions.

I am a practicing attorney that practices in this area of law in adoption, and these issues do come up, and we counsel with our clients. I think Assemblywoman Buckley's comments about what would be wrong if we let the court be involved on whether or not that visitation is appropriate. That's an interesting issue, and I think that goes to this open adoption aspect. What we're finding is in the foster care area, a need for this type of a contract being enforceable in the adoption decree to facilitate not having termination of parental rights if cases go to trial. They will by agreeing to this being sent to the adoption rather than having their rights terminated because they are a drug addict or otherwise. Perhaps in that situation where there is a visitation issue, the court may need to be involved, because they have agreed previously to visitation. What happens, though, is this legislation, the way it's drawn presently, is overbroad; it affects those of us that have adopted infants through an agency with a child that hasn't gone through foster care. That's the real challenge I see with this legislation.

Chairman Anderson:

You're of the opinion that this reaches back in time? This becomes *ex post facto*?

Chris Escobar:

No, I do not believe this.

Chairman Anderson:

It's not going to reach back to any of the ones that are currently in place? I recognize that this is in the area of law that you practice in, and clearly your anecdotal information is better than mine in that regard. My concern rests with what is going to happen here in the future, if we don't do this, relative to these adoptive parents, birth parents, and their relationship, if we don't respond in some meaningful way. As in 18 other states, who have seen this kind of problem come forward, and as we have heard from child protective services, where there rests an issue that needs to have some resolve from a legislative decision. I know you disagree with Justice William Maupin. That's an attorney's prerogative to disagree with the Nevada Supreme Court, I recognize that.

Chris Escobar:

I think that you've misconstrued my remarks. What I'm saying is the case that brought this down already says that these postadoption contracts are enforceable if they are in the adoption decree. That's what the holding in this case is.

Chairman Anderson:

Should we not make sure that the judges are doing that in some meaningful way? Make sure that they recognize that? It did not happen.

Chris Escobar:

They read the Supreme Court cases just like I do, and my point is that this is a contract matter between the private, adoptive couple, and a birth mother. Let the law as it's presently in existence stand.

Chairman Anderson:

Because it lets the birth mother not have any standing? The new parents who are giving that child everything it needs, who want to raise the child, and is operating in the best interest of the child, which we heard last week from grandparents who are trying to get involved in this question too. Now here we have the birth parents who say, "We agreed before this started that I would hear what was happening to my child." And the new parent, the parent who is raising this child, is giving it the nurturing, caring relationship, and I don't want to diminish that in any possible way, because as a parent, I recognize what that strong bond is. How do we make sure that they didn't just say it, and they really meant it? I'm having a real difficulty with that issue here, Mr. Escobar.

Chris Escobar:

I think that you brought up the issue that really matters, which is acting in the best interest of the child. I think it was Annette Appell who said that right now the standard is the adoptive parents are acting in the best interests of the child.

I think if you look at this legislation, the legislation states that what is in the best interest of the child, for purpose of this legislation is what's in this adoptive contract. Yet, I as a parent can't act if I see something's wrong without going to court. If the birth mother decides that what I'm doing with raising this child is wrong, she can go to court, and try to change what is in the best interest of the child. There's also no limit in the number of times that birth parents or adoptive parents can go to court on this issue.

Chairman Anderson:
Ms. Buckley.

Assemblywoman Buckley:

Mr. Escobar, you heard my questions from earlier. What if, instead of the approach in A.B. 51, we instead ban the use of postadoption contracts unless they are contained in the adoption decree? By doing this, there could not be claims that someone, especially looking outside the newborn situation, gives up their parental rights with the understanding that they will have visitation and then are told, sorry, weren't you dumb. Even though you have a written contract, it's no good. What if the legislation just banned the use of contracts for visitation not contained in the adoption decree. If the change in the enforcement mechanism, if there was contact in the adoption decree, changed it so that there was a presumption that the adoptive parent is working in the best interest of the child?

Chris Escobar:

I want to make sure that I understand your question. Are you suggesting that the only type of contract between an adoptive couple and a birth couple that would be enforceable under this legislation, whenever it's passed, would be ones that clearly specify visitation, and those would be the only ones to be part of the adoption decree?

Assemblywoman Buckley:

No. What I'm talking about is there would be a ban on the use of contracts not in the adoption decree, because that's what the Supreme Court said. If you want it to be enforceable, it has to be in the decree.

Chris Escobar:
Right.

Assemblywoman Buckley:

That way, someone couldn't say, "We had a written contract," because not everybody keeps up with the Supreme Court's rulings.

Chris Escobar:

My concern with that is again the second class citizenship of adoptive parents. Now, we are having mandated what has to be in our adoption decree. We're being told everything that must be there because we want to protect a situation. Really, the situation is, as I understand it, is the foster care situation—to try to get those children adopted quicker. It really isn't a birth parent situation where they have provided an infant to an agency or done a private adoption.

Assemblywoman Buckley:

I think that the foster care example is one where an open adoption is more common. To me, what I'm having trouble with, is that I don't think a birth mother should use in her decision to give up her child, if there's a contract that says, "You're going to have one visit a year," and later found out that paper wasn't worth anything. That just strikes me as wrong. I'd rather see us ban the use of that contract than to have a written contract that can't be enforced. It just really concerns me that that possibility is still out there. Why should we have a contract that can't be enforced? Why not just ban it?

Chris Escobar:

I think it's because of the nature of a parent/child relationship. If I, as an adoptive parent, have been given the responsibility by the state to provide protection, support, and inheritance, and have been given the obligations associated with that parenting responsibility, when I make a decision that I consider to be in the best interest of the child, it should indeed be respected. That's the competing interest that you have, and that's what makes me a second class citizen if indeed you require these contracts to be enforced.

Assemblywoman Buckley:

Let's say that's right. Let's say that should be the policy of the state of Nevada. How is having a law that says you can't do unenforceable written contracts, how does that contradict that policy? Why can't you have both?

Chris Escobar:

I really think that where it goes to is a chilling effect on adoption. It can in many ways prevent the type of adoption that I entered into from occurring. There are people that simply want to adopt in a closed or semi-closed situation. You take away that option by making everything open and mandating this type of language be included in decrees or to be given to the birth mother for her consideration or the birth father for his consideration. Those types of adoption become less and less. What you're doing is mandating more and more of an open adoption and less and less of other types of adoption, and that's part of the policy that needs to be considered as this Judiciary Committee considers

this bill, because there are lots of different types of adoption. Let's keep them all available.

Assemblywoman Buckley:

Is the flip side to that you need the use of a written contract that is unenforceable under Nevada Supreme Court law to facilitate adoptions? Is that what you're saying?

Chris Escobar:

No, that's not what I'm saying. What I'm saying is that by mandating this type of language... I guess what I'm really saying is that we right now can, by writing a contract with the birth mother and putting that language in the adoption decree, enforce the contract, as I understand the Supreme Court decision. I think you would agree with me in that regard.

Assemblywoman Buckley:

I do.

Chris Escobar:

So, why is there a need for this legislation if it's already there?

Assemblywoman Buckley:

I don't want to take up any more Committee time. I appreciate you responding to the questions though, to make me understand it better.

Chairman Anderson:

Mr. Escobar, it is the Chair's intent if this is to go to a work session or work session document, if you could see some way that we can improve the bill, if not, we'd love to see some correspondence from you given your background in working in this area. I would encourage you to do so. Would you have some time available for that?

Chris Escobar:

I would make myself available. I should point out that I did provide to the Committee an email ([Exhibit K](#)) from Michael Rasmussen, who was unable to appear today. I would just concur with his comments as well.

Chairman Anderson:

When the writing comes from Mr. Escobar and from Mr. Rasmussen, we would ask for that to be distributed to the members and to be made part of the record for the day.

Rick Perry, Executive Director, LDS [Latter Day Saints] Family Services:

I've been a social worker in excess of 31 years. I agree with most of those who have testified against the bill. I had the opportunity of calling some of my colleagues. Of the 18 states indicated that have these enforceable contracts, LDS Family Services has agencies in 11 of them. They have never heard of an enforceable adoption contract. I think there's a major disconnect. My prediction is that it has to do with the difference between the public agencies and the private agencies. Most of the people that have testified here in Las Vegas represent those who have adopted through private agencies. I'm predicting many of these states are dealing with those in the public arena. I think that's an issue that has to be looked at carefully.

Secondly, I'd like to say that I believe adoptive parents are honorable people. We believe in the importance of contracts, and agreements that go on between birth parents and adoptive parents. My experience as an adoption professional is that these agreements are honored in almost every case. I believe that if A.B. 51 is passed, it would be moving a lot of the responsibility and the guidance of these agreements from the private adoption arena into the public and court arena. It's a simple matter that if a birth parent may call the agency if there's been some time elapsed since their last agreement or letter or picture that they could call and speak with the agency and say, "Hey, what happened to that letter?" It would be quite easy for the agency to call and say, "Adoptive parents, we have something that's coming." I think that's a lot easier, better, more empathic, and cooperative way, than dealing with it in the court arena.

I also want to reiterate that I believe adoptive parents should be afforded the same rights as any other parents. I could see a number of scenarios where problems could occur later in the adoptive family even with the child that might preclude the reasons to move forward with an agreement such as this. I think it's already been said that many times an adoptive parent would be forced to enter into an agreement that they in their own instincts might suggest is not good. The national statistics indicate that there are six to seven couples that want to adopt, for every child that is available. Anytime any of us enter into an agreement, whether it's to purchase a car, a home, or even to marry, we presume that the agreement is in the best interest of all parties, and I feel there's an imbalance at the time that such an agreement would be forged. The last point I want to make is: I think the courts are the last place where these arrangements ought to be enforced. I think that, as an adoption professional, I didn't receive any contact from any legislators even asking us what our current policies are and how are we handling agreements, and what types of provisions do we have when it comes to openness, letters, and pictures. I think that we are folks that have something to offer in this arena, and we've been excluded. That concludes my remarks, Mr. Chairman.

Chairman Anderson:

Mr. Perry, were you here two years ago when we took up this issue?

Rick Perry:

Two years ago, I was not able to participate.

Chairman Anderson:

That is the first time we've heard this. There were extensive hearings relative to this between sessions where Senator Rawson's Committee looked at part of this issue and then put it into a subcommittee. Did you get the opportunity to testify there?

Rick Perry:

We did participate in that, Mr. Chairman.

Chairman Anderson:

I was under a different impression, and I wanted to make sure that I clarified. Wanda Scott, Division of Child and Family Services, has indicated that she has a desire to speak, but is neutral on the bill. Ms. Scott, is there some particular part of this that you feel is necessary for us to hear that we have not heard? The indication of the Chair is to put this in a subcommittee.

**Wanda Scott, Adoption Specialist, Division of Child and Family Services,
Nevada Department of Human Resources:**

Our agency will not be presenting verbal testimony here today. I believe we submitted a written document that pretty much reflects our comments on the bill. We'll let that written document stand ([Exhibit L](#)).

Chairman Anderson:

It's my intention to put this into a subcommittee, and also include the Division of Child and Family Services.

Wanda Scott:

We'll be happy to participate.

Helen Foley, Private Citizen:

This is a difficult issue. The best interest of the child to me is paramount. When I first entered into this process, I wasn't sure about open adoptions, semi-open adoptions, and closed adoptions, what it was all about. Through Catholic Charities and the training that they gave us, they encouraged us to have as open an adoption that could conceivably be possible, because children eventually are going to want to know what is going on. As a result, I attend with my children at least five different functions a year with other adopted

children. They know more adopted children than they do natural birth children. It's a wonderful process.

[Helen Foley, continued.] With the issue of openness, it has not worked out that I have a relationship with the birth mothers. However, I have developed a great relationship with the birth grandmother of my oldest daughter. We meet a couple of times a year. She brings presents for both my children, and she is a delightful woman. She is very disappointed in some of the decisions her daughter has made. If that mother cleans up her act, I will develop a relationship with her because I believe that that will be in the best interest of my child. With my son, he has a relationship with his two sisters. They are currently in foster care and will be adopted by that foster mother.

The birth parents are in a difficult situation. They are very involved in the court system of another state. There's been discussion that they could come and possibly take the children at some point. I don't care what I would have signed, what would have been part of state law, I would not allow my children to see those parents, not now. I don't care what any court tells me, I am their mother, and I am not going to let that happen. If I sign something very willingly to adopt that baby, and it says it's in the best interest of the child, today, I know it is not in the best interest of the child for those parents to see my baby. So, there you have it. It's not a court and attorneys who have been following in a foster parent program what a parent is doing and whether or not that contract would be good to speed up the process or that it would be in the best interest of the child. Things change, people change. If they do change and they do get on the straight and narrow, you bet, I'm going to have my children know their birth parents, but not right now.

I don't want to feel that I have to hire an attorney to go to court and prove to someone I am telling the truth, and I have my children's best interest at heart. In that legislation, it says that that contact and that relationship between that birth parent and my child is in the best interest of the child regardless of what I signed, when I was desperate to get that baby. Maybe I wasn't thinking as clearly as I would if I was out buying a car and signed a contract. I see that there are real inherent problems with it. I thank you, Mr. Chairman for requesting this legislation because there are some terrible issues when people sign a contract and think that it means something, but there's also the other side of the coin.

Chairman Anderson:

I recognize how the other 18 states have processed their way through this difficult issue. I hope that we can find a solution to it, too. I don't want to abandon the issue because it's a real problem and it needs a solution. While it may be an anomaly and not the normal means of what happens, there has to be a solution for the uniqueness of the cases, which are every bit as heartfelt as those of yours and the other people who spoke for fear of the loss of their relationship with their child.

It's the Chair's intention to close the hearing on A.B. 51. Mr. Horne and Mr. Carpenter and myself had this in a subcommittee two years ago. Mr. Conklin, I'm going to ask you to be the Chair of the Subcommittee of the Judiciary Committee to look into this with the information that has been supplied to us. In addition, there's some background material from the National Clearinghouse of Child Abuse and Neglect Information, NAIC [National Adoption Information Clearinghouse], that details the 18 states. I would indicate that would be a good document.

I'll place myself on the Subcommittee at your discretion and I would ask if Ms. Allen would avail her time to serve on this Subcommittee. With that, I would ask you to have this done for the next work session. If you could look into it, hold additional public hearings if you feel necessary and then report back to the Committee, and make sure members of the Committee are notified when you are meeting.

Anything else that we need to get into the record today? We're adjourned [at 10:49 a.m.].

RESPECTFULLY SUBMITTED:

RESPECTFULLY SUBMITTED:

Judy Maddock
Recording Attaché

Michael Shafer
Transcribing Attaché

APPROVED BY:

Assemblyman Bernie Anderson, Chairman

DATE: _____

EXHIBITS

Committee Name: Judiciary Committee

Date: February 22, 2005 **Time of Meeting:** 8:05 a.m.

Bill #	Exhibit ID	Witness	Dept.	Description
N/A	A	Judiciary Committee	N/A	Agenda for Today's Meeting.
AB 51	B	Chairman Bernie Anderson	Judiciary Committee	Written testimony delivered to the Committee on A.B. 51.
AB 51	C	Cynthia Lu, Washoe County Public Defender's Office	Washoe County	Written Testimony delivered to the Committee on A.B. 51.
AB 51	D	Maire Burgess, Washoe County Department of Social Services	Washoe County	Written Testimony on A.B. 51.
AB 51	E	Angela Chalmers-Howald, Private Citizen	N/A	Written Testimony on A.B. 51.
AB 51	F	Judge Payant, Nevada Catholic Conference	Diocese of Reno	Written Testimony on A.B. 51.
AB 51	G	Annette Appell, Professor of Law	University of Nevada, Las Vegas	Written Testimony on A.B. 51.
AB 51	H	Justin Jones, Nevada Chapter of Families Supporting Adoption	Private Citizen	Written Testimony on A.B. 51.
AB 51	I	David Arnold	Private Citizen	Email to Committee Members on A.B. 51.
AB 51	J	Barry Caceres, Practicing Attorney	Private Citizen	Emails to the Committee on A.B. 51.
AB 51	K	Michael Rasmussen, Practicing Attorney	Private Citizen	Written Testimony on A.B. 51.
AB 51	L	Wanda Scott, Social Service Program Specialist	Nevada Division of Child and Family Services	Written Testimony on A.B. 51.