pennsylvania
DEPARTMENT OF HEALTH

Good Morning, the Pennsylvania Department of Health would like to thank Chairmen Watson and Bishop, as well as the rest of the members of the Children and Youth Committee for the opportunity to provide written remarks on House Bill 162.

The Department of Health, under its Bureau of Health Statistics and Research (or Division of Vital Statistics), maintains the registry of birth information for all individuals born in Pennsylvania, including birth information of adoptees. House Bill 162 would amend Pennsylvania's adoption laws pertaining to adoptee access to a pre-adoptive birth certificate naming the adoptee's biological parents. Currently, release of the original birth certificate to the adoptee is permitted only when both biological parents have provided written consent for the release of the record. If only one of the biological parents has provided written consent, then the Department is permitted to release a copy of the summary of the original birth record naming only the consenting biological parent.

House Bill 162 adds language to the section of the statute that requires biological parental consent as a condition of release of the original birth record. The language proposed in House Bill 162 appears to contradict the existing language requiring consent of the biological parents, but does not amend or delete those requirements, rendering the purpose of the bill unclear.

The Co-sponsorship Memorandum indicates that the bill would be introduced to allow Pennsylvania *adult* adoptees access to their original birth record without regard to whether one or both biological parents have given consent. However, the bill does not include language to limit access to the original birth record, regardless of biological parent consent, to only adult adoptees. If that is the intent, the bill should be amended to clarify that unfettered access is available only to adult adoptees. If the intent is

that all adoptees, regardless of age and regardless whether both biological parents have consented to release of the information, should have access to the original birth record naming the biological parents, then the sections of the statute preceding the amendment outlining consent requirements for access to the original birth record should be amended or deleted to conform with these changes. If the legislation is adopted in its current form, the Department believes it will cause confusion and conflict for adoptees and biological parents, as well as potentially create litigation for the Commonwealth.

Additionally, if the sponsor's intent is to provide access to the original birth record for all adoptees, this would create a significant workload increase for the Department as we anticipate a rapid influx of applications from adoptees. Currently, the issuance of a pre-adoptive birth certificate is not an automated process. Although an adjustment to the Department's electronic system would solve that issue, the cost of such modifications are unknown and are not currently accounted for in the Department's budget. With a rapid influx of applications seeking pre-adoptive birth certificates, there stands the potential for a ripple effect of delays throughout the Vital Records system. However, the more significant concern is that the Department will be placed at the center of inevitable conflicts between adoptees, who desire to know the identity of their biological parents, and biological parents, who desire to keep that information private.

To minimize potential conflicts, the Department respectfully suggests that the Legislature consider adding language to the bill to clarify whether the provisions of House Bill 162 granting adoptees access to the pre-adoptive birth certificate would supersede a court order sealing the adoption information, including the pre-adoptive birth certificate. It is anticipated that this issue will likely be the subject of

litigation, resulting in additional costs to the Department to defend, if House Bill 162, as currently written, becomes law.

Finally, the Department respectfully requests that the Legislature define "pre-adoptive birth certificate" as the record to which the adoptee will have access.

FILED: December 29, 1999

IN THE COURT OF APPEALS OF THE STATE OF OREGON

JANE DOES 1, 2, 3, 4, 5, 6, and 7,

Appellants,

v.

THE STATE OF OREGON; JOHN A. KITZHABER, Governor of Oregon; and EDWARD JOHNSON, State Registrar of the Center for Health Statistics in Oregon,

Respondents,

and

HELEN HILL, CURTIS ENDICOTT, SUSAN UPDYKE; and THE OREGON ADOPTIVE RIGHTS ASSOCIATION,

Intervenors-Respondents.

(98C-20424; CA A107235)

Appeal from Circuit Court, Marion County.

Because a birth mother has no fundamental right to have her child adopted, she also can have no correlative fundamental right to have her child adopted under circumstances that guarantee that her identity will not be revealed to the child.

Adoption necessarily involves a child that already has been born, and a birth is, and historically has been, essentially a public event. In *Doe v. Sundquist*, 106 F3d 702, 705 (6th Cir), *cert den* 522 US 810 (1997), the Sixth Circuit Court of Appeals, in rejecting a similar challenge to a Tennessee law that permits adoptees access to birth records, noted:

"A birth is simultaneously an intimate occasion and a public event--the government has long kept records of when, where and by whom babies are born. Such records have myriad purposes, such as furthering the interest of children in knowing the circumstances of their birth. The Tennessee legislature has resolved a conflict between that interest and the competing interest of some parents in concealing the circumstances of a birth."

Neither a birth nor an adoption may be carried out in the absolute cloak of secrecy that may surround a contraception or the early termination of a pregnancy. A birth is an event that requires the generation of an accurate vital record that preserves certain data, including the name of the birth mother. That the state has a legitimate interest in preserving such data is not disputed here. We recognize that a birth mother may well have a legitimate interest in keeping secret the circumstances of a birth that is followed by an adoption and also that an adoptee may have a legitimate interest in discovering the identity of his or her birth mother. Legitimate interests, however, do not necessarily equate with fundamental rights. The state may make policy choices to accommodate such competing interests, just as the state has done with the passage of Measure 58. We conclude that the state legitimately may choose to disseminate such data to the child whose birth is recorded on such a birth certificate without infringing on any fundamental right to privacy of the birth mother who does not desire contact with the child.

Stay issued by this court preventing Measure 58 from going into effect is lifted, effective immediately; judgment affirmed.