

NYA AFF

New York Attorneys for Adoption & Family Formation

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December 11, 2019

Attention: Jillian Faison, Esq.
Governor Andrew Cuomo
Governor's Office
State Capitol
Albany, New York 12224

Re: Bill Number A2199A; the "Preserving Family Bonds" Act

Dear Governor Cuomo:

We, the undersigned, are a group of adoption attorneys and other adoption and child-welfare professionals from across New York State, who work with adoptive families, children, child welfare agencies and the court system to protect and advocate for the rights of adoptive children and their families.

We previously submitted two letters in opposition to Bill Number A2199A (the "Preserving Family Bonds" Act), which proposes to make various amendments to the New York State Family Court Act, relating to post-termination visitation or contact in foster care adoptions.

It is our understanding that this bill will be delivered to you for consideration this week. As such, we are enclosing our two prior letters regarding this bill. We strongly urge you not to sign this bill into law in the form in which it passed the Senate and Assembly. Our second letter outlined various compromises that we hope will be considered. We will gladly participate in discussions about revisions to this bill if given the opportunity.

Please contact the President of our organization, Kathleen ("Casey") Copps DiPaola, at 518-436-4170, or by email at kdipaola@theCDSLAWFirm.com to discuss how NYA AFF can be involved in making the Preserving Family Bonds Act a piece of legislation that would benefit



children and families, rather than one which has the potential to harm children in the foster care system and potentially discourage families from considering adoption.

Thank you for your time and attention.



New York Attorneys for Adoption & Family Formation

By: Kathleen ("Casey") Copps DiPaola, Esq.

President

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October 21, 2019

Governor Andrew Cuomo
Governor's Office
Attn: Julia Kupec
State Capitol
Albany, New York 12224

Re: Bill Number A2199A; the "Preserving Family Bonds" Act

Dear Governor Cuomo:

We, the undersigned, are a group of adoption attorneys and other adoption and child-welfare professionals from across New York State, who work with adoptive families, children, child welfare agencies and the court system to protect and advocate for the rights of adoptive children and their families. We previously submitted a letter in opposition to Bill Number A2199A (the "Preserving Family Bonds" Act), which proposes to make various amendments to the New York State Family Court Act, relating to post-termination visitation or contact in foster care adoptions.

It is our understanding that this bill has already passed through both the Senate and Assembly; however, there has been a great deal of opposition to the bill as it is currently drafted. Many of the issues with the current bill were outlined in our July 9, 2019 correspondence, a copy of which is enclosed herewith for reference.

After careful consideration of the competing interests of those in support and opposition of the bill, we believe there are revisions that could be made that would address many concerns on both sides, to arrive at a piece of legislation that is agreeable to all New Yorkers. Given our

collective experience and expertise working with families in the foster care system, as well as our daily interaction with the populations who would be directly effected by the passage of this bill, it is essential that we be included in the conversation regarding this legislation, including a discussion of potential revisions to remedy some of its current deficiencies. We ask that you invite NYAAFF to participate in any future conversations regarding this bill and that you provide us with an opportunity to discuss and explain our suggested revisions which would make this bill more agreeable to the populations we serve.

Please contact the President of our organization, Kathleen ("Casey") Copps DiPaola, at 518-436-4170, or by email at kdipaola@theCDLawFirm.com to discuss how NYAAFF can be involved in making the Preserving Family Bonds Act a piece of legislation that would benefit children and families, rather than one which has the potential to harm children in the foster care system and potentially discourage families from considering adoption.

Thank you for your time and attention.



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NYAAFF

New York Attorneys for Adoption and Family Formation

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July 9, 2019

Governor Andrew Cuomo
Governor's Office
Attn: Julia Kupec
State Capitol
Albany, New York 12224

Re: Bill Number A2199A; the "Preserving Family Bonds" Act

Dear Governor Cuomo:

We, the undersigned, are a group of adoption attorneys and other adoption and child-welfare professionals from across New York State, who work with adoptive families, children, child welfare agencies and the court system to protect and advocate for the rights of adoptive children and their families. We submit this letter in opposition to Bill Number A2199A (the "Preserving Family Bonds" Act), which proposes to make various amendments to the New York State Family Court Act, relating to post-termination visitation or contact in foster care adoptions. The bill has already passed through both the Senate and Assembly, and we urge you to veto the bill for the reasons more fully set forth herein.

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Currently, in order for a child in foster care to be “freed” for adoption, the parental rights of the child’s birth parents must either be terminated by the Family Court or surrendered by the birth parent(s) by executing a Judicial Surrender. If the adoptive parents agree to allow post-adoption contact between the child and the birth parents, the parties may agree to “conditions” in the Judicial Surrender, which allow for enforceable post-adoption contact. If the Surrender does not contain such conditions, or if the parental rights of the birth parent(s) are terminated, they do not have the right to any post-adoption contact with the child and do not have standing to seek visitation post-adoption. The adoptive parents are free to permit contact, at their discretion, if they feel it is appropriate for the child.

The proposed bill would authorize birth parents, prior custodians/guardians and/or siblings to petition the Family Court for visitation and/or contact with a child, *even after he or she has been adopted by an adoptive family*. The bill would also authorize the Family Court to enforce or modify such visitation orders after they are issued, up until the time the child turns 18.

The proposed legislation would substantially alter the status quo in foster care adoptions, to the peril of prospective adoptive children, as it would disincentivize prospective adoptive parents from adopting, would lead to increased cost and litigation in foster care adoptions, and would require children to remain in foster care for longer periods of time. Perhaps most concerningly, the bill is arguably violative of the Fifth and Fourteenth Amendments of the United States Constitution, as dictated by the United States Supreme Court in *Troxel v. Granville*.

Disincentive to Surrender

Because a child in foster care cannot be adopted into a permanent home until he or she has been “freed” for adoption, a child must remain in foster care until the birth parent(s) either surrender their parental rights or have their parental rights terminated by the Court. Termination of parental rights (“TPR”) proceedings can take up to a year or more to litigate and cost the county a great deal of time and resources, all while the subject child remains in the foster care system. The more favorable alternative, therefore, is a surrender of parental rights by the birth parent(s). Many birth parents are incentivized to surrender their parental rights (rather than going through a termination proceeding) by the possibility of post-adoption contact with the child. Post-adoption contact is currently only available if the birth parent(s) sign a “conditional” Judicial Surrender. By allowing birth parents to petition for visitation and/or contact, even after an adoption finalizes, disincentivizes the use of conditional Judicial Surrenders, since a birth parent would still have the ability to seek post-adoption contact with the child

even if his or her parental rights were terminated. This will undoubtedly lead to an increase in TPR litigation for the county, which is not only costly and time-consuming, but requires children to remain in foster care for longer periods of time before they can be “freed” for adoption.

Over Broad with No Time Limit

In addition to allowing birth parents and/or biological siblings to petition for post-adoption visitation, the bill also allows any half-siblings or prior custodians or guardians of the child to seek visitation and/or contact. This means that any person(s) who previously had custody of the child (which could be any number of people) would have standing to seek visitation with the child even after he or she has been adopted into a permanent home.

The bill also does not contain any time limitation on when a birth parent (or other prior custodian/guardian) can petition for post-adoption visitation. That means that a birth parent could potentially file a petition for visitation up until the time the child reaches the age of 18, regardless of what age the child went into foster care. That could potentially mean that the adoptive parents (and the child) may be subject to litigation for a period of up to 18 years. In addition, the visitation orders authorized by the bill are subject to future modification, meaning that a birth parent may seek to modify the order (by requesting additional or different contact with the child) anytime until the child becomes an adult. Even if these petitions are denied or dismissed by the Family Court, there is no limit on the number of petitions that may be filed, thus requiring the adoptive parents to appear in court time and time again, potentially *years* after the adoption has finalized. This creates uncertainty for the family and leaves the possibility of litigation hanging over their heads until the child reaches the age of majority.

Undue Burden on Foster/Adoptive Parents

This all places an extreme and undue burden on foster parents who are considering becoming adoptive parents, creating a major disincentive for families to adopt children out of foster care. It removes any real ability for adoptive parents to negotiate and agree upon post-adoption contact with the birth parents, as it leaves the question of whether and what type of visitation will be allowed up to the discretion of the Family Court Judge. This increases uncertainty and generates additional litigation. Increased litigation comes at a cost to adoptive parents who are not entitled to assigned counsel before the child is “freed” for adoption and are only entitled to a subsidy of up to \$2,000 to cover the cost of representation up until the time the child is adopted. If birth parents, siblings and other prior custodians

are permitted to petition for visitation, the legal costs will almost certainly exceed the allotted subsidy, and if petitions are brought after the adoption finalizes (which is specifically authorized by the bill), there is no subsidy available to cover those expenses incurred by the adoptive parents.

Constitutional Implications

The bill also has constitutional implications and is potentially violative of adoptive parents' rights under the United States Supreme Court's holding in *Troxel v. Granville* (530 US 57 [2000]). In *Troxel*, the Supreme Court re-affirmed the age-old promise of the Due Process Clause that a parent's interest in the care, custody and control of their children ("perhaps the oldest of the fundamental liberty interests recognized by this Court") will not be interfered with by the Government. In that case, the Court dealt with a Washington State statute that authorized third parties to seek visitation with a child "at any time" so long as such visitation would serve the best interests of the child. The Supreme Court struck down this statute as being unconstitutional, as it subjected a parent's decision concerning visitation with their child(ren) to state-court review and contained no presumption of validity in the parent's decision regarding the care and custody of their child.

Bill Number A2199A contains many of these same fundamental defects, and its constitutionality is questionable at best. The bill allows for non-parent third parties (including siblings, half-siblings, prior custodians and birth parents whose parental rights have already been terminated) to seek visitation and/or contact with a child *even over the objection of the adoptive parents*. Pursuant to Domestic Relations Law § 110, an adoption creates a parent-child relationship between the adoptive child and the adoptive parents, and the adoptive parents "acquire the rights and incur the responsibilities of [a] parent" with respect to such child. As such, the adoptive parents acquire this "fundamental liberty interest" in making decisions concerning the care, custody and control of their children upon adoption.

This bill allows the Family Court to infringe upon this fundamental right, exposing adoptive parents to litigation regarding what is in the best interests of their children, and giving sole discretion in that regard to the Family Court Judge – something which was expressly forbidden by the Supreme Court in *Troxel*.

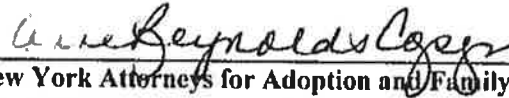
Conclusion

In closing, it is important to remember that the overarching principle of New York's adoption statutes, as interpreted by the New York Court of Appeals, is to further the best interests of adoptive

children (*see Matter of Jacob*, 86 NY2d 651, 657-58 [1995]). Our State is concerned with providing stability and permanency to children in foster care and pre-adoptive homes, recognizing that the adoption of children into safe, stable, loving and permanent adoptive homes satisfies the overriding policy of providing for the best interests of children.

This bill will almost certainly be a harbinger for additional litigation and increased costs associated with freeing children for adoption, and it will also disincentivize adoptive families from considering adopting children out of the foster care system, resulting in the undesirable effect of more children remaining in foster care for longer periods of time. While this bill may be well-intentioned, it is clear to those of us who are intimately involved with the adoption community, that the impacts and consequences of the proposed amendments will undoubtedly be drastic, far-reaching and severe.

We respectfully urge you to veto the bill for the reasons more fully set forth herein.



New York Attorneys for Adoption and Family Formation
By: Anne Reynolds Copps, Esq.
President