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Adoptee aims to change rules for birth certificates

By Mary Garrigan, Journal staff

Eric Roach is working to change a South Dakota law so other adoptees won't have to work as hard, or tell lies, to get their original birth certificates.

Roach, of Spearfish, was adopted as a 6-month-old infant in Iowa in 1955. At age 40, he was denied access to his sealed adoption records and his original birth certificate by an Iowa court.

"That's wrong," Roach said. "I can't have what other people get automatically. Any biological child can go to the state of South Dakota and request a copy of their birth certificate and, with the appropriate documentation, they'll get it -- no questions asked. As an adoptee, if you want a copy of your birth certificate -- hang on for the ride. The answer is 'No. You're adopted.' The laws ought to be equal across the board."

As part of South Dakota Support and Education for Adoption Legislation, Roach is one of about a dozen members -- including adoptees, birth parents and adoptive parents -- who will lobby the 2010 Legislature to allow 18-year-old adoptees to obtain their original, unamended birth certificates from the South Dakota Department of Health. Under current state law, adoptees need a court order from the county where their adoptions were finalized to access their adoption records or their original birth certificates, requests that can be arbitrarily denied by a judge.

Current rules

Today, all those adopted through South Dakota courts have the right to receive nonidentifying information about their birth parents if they submit a written request to the South Dakota Department of Social Services adoption office. Nonidentifying information includes age, education and the height, weight and general appearance of their birth parents at their time of an adoptee's birth, as well as ethnic background, religion, occupation and birth family health history. An adoptee can also learn whether the termination of parental rights was voluntary or involuntary and the existence of any other children born to his or her birth mother or the relationship between the birth parents. But adoptees can't find out the location of their birth nor the birthdates of their natural parents.

Holder family

Daniel and Dorcas Holder are adopted 17-year-old twins from Spearfish who will turn 18 in November. They say they have no need, and little interest, in obtaining their original birth certificates, at least not right now.

Adopted at age 8 by Harold and Sharon Holder as part of a larger sibling group, the twins have some memories of their birth mother and know their birth family name, but they have no relationship with her. Their birth father is deceased.

The Holder twins are among the first generation to come of age from the post-open adoption era in South Dakota. None of the Holder family's 10 adopted children were part of an open adoption officially, but they have all been raised with an awareness of their birth mothers, and as much age-appropriate information about them as the Holders have to give.

Although he isn't currently curious for more information or contact with his birth family, Daniel can understand that other adoptees might be.

But he and his father, Harold, agree any change in state law should balance the adoptee's right to know with the birth family's right to anonymity.

"It's not just about the adoptee. You have to respect the confidentiality of the mom, too," Harold Holder said. "That person should have something to say about it. Everybody has a right to privacy."

Anonymity and accuracy

Roach and SD SEAL organizer Lynne Banks disagree. A guarantee of lifelong anonymity does not exist in adoption law, they argue.

"It's one of those adoption myths," said Roach. "But there's no guarantee of confidentiality in the law -- never was, never has been, never will be. If some social worker along the way made that promise, that's not legal and binding."

South Dakota adoption law dates back to at least 1939 and, although it may not guarantee anonymity, it has historically provided for sealed records, including birth certificates, that can only be opened by a court order. Post-adoption, a new birth certificate is created by the Vital Records department of the state Department of Health that replaces the birth parent names with the names of the legal parents.

Banks, the adoptive mother of two daughters, said a birth certificate is an important document, emotionally and legally. The birth certificates of adoptees make no distinction that the document has been amended.

"When I first got my daughters' amended birth certificates, I felt nauseous," Banks said. "It said I gave birth to my first daughter in Anaheim, California, and my second one in Lynchburg, Virginia. They're lies. They're legal documents, and those are false."

Banks believes adult adoptees have a right to their original birth certificates.

"That piece of paper -- it means the world to them, because it's theirs and nobody else's," she said.

Proposed legislation

Nine other states have open records laws giving adoptees, either at age 18 or 21, access to their original birth certificates without a court's permission.

Sen. Stan Adelstein, R-Rapid City, who leads the senate's Health and Human Services Committee, thinks it's time for South Dakota to do so.

Adelstein's committee approved a similar bill, SB153, in the 2009 Legislature, which eventually passed both houses but failed to become law when a House-Senate conference committee couldn't agree on the amended bill.

The amendment, designed to appease confidentiality concerns for birth parents, was sponsored by Sen. Sandy Jerstad, D-Sioux Falls, an adoptee who favors a change in state law. It mandated DSS to maintain a registry where birth parents could state a preference for contact. That's something the department has done on a voluntary basis to match adoptees and birth parents, since 1985.

Banks said the "ill-advised" amendment caused DSS to pull its earlier support for the bill, dooming it to failure. Adelstein hopes this year's bill will pass without amendments.

He has become "intrigued" by the issue over time, because of the many adoptees he's known who have benefited from the search for their birth family. The testimony of birth parents, too, has convinced him that it is good public policy to remove obstacles to that search. Adelstein was approached by a man at the state Legislature last year who told him that he was a birth father who, many years later, still hopes for a "knock on the door" some day.

Arguments against

Some SB153 opponents argued losing the veil of adoption anonymity would cause more women to choose abortion rather than adoption. Adelstein said there was no evidence to support that assertion. Banks said neither the abortion rate nor stalking incidents rose in any of the nine states that have opened adoptee birth certificates.

Rep. Joni Cutler, R-Sioux Falls, also an adoptee, contends the current process of getting a court order works, has benefits for the adoptee and should remain in place because it balances the privacy rights of all. DSS will assist an adoptee, free of charge, with the paperwork to petition the court to open their records.

But often, that's not the end result of a petition, Banks said. Unless an adoptee presents a medically-compelling reason for seeing their original birth certificate, many judges won't order it unsealed, she said.

"Courts don't have a role in facilitating relationships. No courts should tell them what kind of information you're capable of handling," she said. "We're talking about adults here."

Roach's search for family

Armed with little more than the location of his birth and his adoptive mom's memory that he had been nicknamed "Petey" by his foster family, Eric Roach eventually found his birth family on his own after a complicated two-year search. Roach learned his birth mother had died a few years earlier, never getting the reunion with him that she always hoped for.

"She carried one of those little hospital pictures of me in her wallet until the day she died," he said.

His mother, an unwed mother who had two older children, attempted to place a contact-preference letter in Roach's adoption file in the 1970s, but Roach never received it. The then-director of the Iowa adoption agency, who believed the legal term "final adoption" meant exactly that, made the decision to destroy the letter, Roach was told years later.

Renee Eggebraaten, director of Bethany Christian Services in Rapid City, said her agency favors openness in adoption policies.

Changing attitudes

The problems Roach encountered are fast becoming moot, given changing societal attitudes about adoption that began in the mid-1970s and have evolved into some level of openness in many adoptions in the 1990s. Seventy percent of all adoptions conducted by Bethany in the past five years have been open adoptions, meaning some degree of contact is ongoing in the adoption triad.

Eggebraaten favors the proposed change in birth certificate access, but she also wants birth parents to be able to state a reluctance to be contacted. Some situations involving crimes of rape or domestic violence may call for continued anonymity, she said.

But in the vast majority of adoptions, she said, the sooner people confront and express the losses that are inherent to all adoption, the sooner they come to grips with their fears of abandonment and rejection.

"Since when does having more information cause confusion?" she asks.

Having to lie

If Iowa's birth certificate law had been different in 1994, when Roach began his search, he might have met his birth mother.

"It would have been a direct route to my birth family. I could have circumvented two years of waiting. And I wouldn't have had to lie to a bunch of people."

As Roach narrowed his search for his birth family, the Archers, he sometimes posed as a genealogy researcher -- to funeral homes, schools and distant cousins -- while tracking down the names of his birth siblings.

"If you tell people you are conducting an adoption search, the doors that will slam in your face are innumerable. You have to become a proficient liar. You have to lie to so many people. I couldn't take the chance that they would choose to slam a door shut."

Today, Roach is the proud possessor of his original birth certificate, and an ongoing relationship with a birth sister and her extended family.

He also has an answer for why the nickname, "Petey."

The name his mother chose for him at birth was Peter John Archer.

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If you go

What: Black Hills Gospel Quartet fundraising concert for a local adoption agency

When: Thursday, Oct. 15. 7 p.m.

Where: Liberty Baptist Tabernacle Church, 1515 Space Ave., Rapid City

Who benefits: Donations will go to provide post-adoption counseling services at Bethany Christian Services

Why: Sharon Holder, a Spearfish mother of 12 children, 10 of whom were adopted through Bethany, said she wanted to help Bethany meet the needs of adoptive families like hers, including helping adoptees and their families work through birth family search issues.