



March 18, 2013

Testimony of Robin Elizabeth Pope, Attorney
Oregon State Bar Family Law Section, Standing Committee on Adoption

House Bill 3249

Representative Krieger and members of the Oregon Legislature: My name is Robin Pope. I am an attorney in private practice; my practice is limited to adoption and related matters. I am a member of the OSB Standing Committee on Adoption and a former chair of that committee; a member of the American Academy of Adoption Attorneys, a national association of attorneys who practice, or have otherwise distinguished themselves, in the field of adoption law; and have served as a Pro Tem Judge in Clackamas County Circuit Court (family law matters) and Washington County Circuit Court (small claims court) for many years. I appreciate having the chance to appear in front of you to testify regarding strong concerns we have with Sections 4 and 5 of House Bill 3249, and request that this statement be submitted for the record.

HB 3249 is about grandparents and their right to notice of a pending adoption regarding a grandchild. The main thrust of HB 3249, contained in Sections 1 through 3 of the bill, is to require notice of a pending adoption to the child's grandparents, where the child is under the authority of the Oregon Department of Human Services (DHS). We do not object to the proposed changes in Sections 1-3 of HB 3249.

Our concerns, and they are strong in nature, are in regard to Sections 4 and 5 of HB 3249. Under current Oregon law, notice is already required to be given to grandparents in an adoption where one of the child's parents retains parental rights. The notice must be given to the parents of the party whose parental rights would be terminated.

Essentially, this means that in step parent or second parent adoptions, notice must be given to the child's grandparents (the parents of the party whose rights will be terminated by the adoption). This notice requirement was added a number of years ago to address a sad situation where a grandfather, whose son had died, and who had an on-going relationship with his grandchildren, as well as a court order allowing him to spend time with his grandchildren, lost his legal rights to be with his grandchildren after the children's mother remarried and her husband completed a step parent adoption of the children. No notice was given to the grandfather. He appealed and lost. The court's decision centered on the parent's right to make decisions for their children. We ended up with legislative revisions to ORS 109.309 requiring notice to grandparents in step parent and second parent adoptions.

We support notice to grandparents who have an existing and on-going relationship with their grandchildren. However, we have strong concerns about extending this notice requirement to *all* adoptions. Please consider the following:

1. It is our opinion that the proposed changes contained in Sections 4 and 5 of HB 3249, if passed, will be found unconstitutional. In *Troxel v. Granville*, the U.S. Supreme Court stated that "the interest of parents in the care, custody and control of their children ... is perhaps the oldest of the fundamental

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liberty interests recognized by this Court.” The Supreme Court made it clear that this fundamental right is implicated in grandparent visitation cases. Violation of that right deprives a parent of their substantive due process rights under the 14th Amendment to the U.S. Constitution.

2. Passage of Sections 4 and 5 of HB 3249 will violate a birth parent's right to privacy and will have a chilling effect on infant adoptions in Oregon. Our law currently recognizes that a birth parent has the right to place their child for adoption without the consent of, and even without the knowledge of, their parents (except for step parent and second parent adoptions). They have a right to privacy on this issue. Some birth parents do not want to tell their parents (the child's grandparents) about their pregnancy and/or the adoption. Under both State and Federal law, they have the right to make decisions about their child's care, custody and control.

3. Grandparents' rights, in essence, flow through their children. In most situations, the parent has the right to make decisions about their child, including the decision to place their child for adoption.

4. A birth parent who places a child for adoption does not have any right to visitation with that child (absent entering into and having approved an agreement for continuing contact pursuant to ORS 109.305). If Sections 4 and 5 of HB 3249 are passed by the Legislature, grandparents will have greater rights than the child's birth parents. That is contrary to existing Federal and State law.

5. In Oregon, women can have an abortion without telling their parents. Why should they have to tell them about an adoption?

6. In Section 4 of HB 3249, page 5, lines 16-17, waiver of the service requirement by the court, for good cause shown, will be deleted from the statute. It removes judicial discretion. The exercise of judicial discretion is an integral part of our system of law. We believe in allowing for the exercise of judicial discretion. We helped add this “waiver upon good cause shown” language several years ago. There are times when it is impossible to serve a grandparent in a step parent adoption. For example, the grandparent may be dead, or never had a relationship with the child, or their whereabouts are truly unknown. It is always wise to leave the option of waiver, upon good cause shown, for the court's discretion.

7. Section 5 of HB 3249 deletes the phrase “by a stepparent”. To some this may seem like a minor change. To the contrary: It is a major shift in policy. Such a major shift should only be considered after discussion with the affected stakeholders and serious consideration given to the effect of such a shift.

8. I am currently a member of an Oregon Law Commission workgroup regarding adoption issues, along with Standing Committee members Susan Moffet, John Wittwer and John Chally. We have completed our first task regarding open records, sealed adoption records and e-court filings. Our next task is to review all of ORS Chapter 109 and consider rewriting Oregon adoption law. The concerns brought up by Sections 4 and 5 of HB 3249 could be considered by our work group in conjunction with our anticipated overview and revisions of ORS Chapter 109.

In summary, Oregon law already requires notice be given to grandparents in a step parent adoption. These are the adoptions where a grandparent is more likely to have an existing relationship with a grandchild. Extension of this requirement to all adoptions is overreaching and potentially unconstitutional. For all of the reasons stated above, we respectfully ask you to oppose the inclusion of Sections 4 and 5 of HB 3249 and ask that they be deleted from the bill. Thank you.

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