

Birthmother Confidentiality Rulings in Tennessee & Oregon

NC - Lifting the Genealogical Veil: a Blueprint for Legislative Reform of the Disclosure of Health-Related Information in Adoption, by D. Marianne Brower Blair. 70 NCLR 681

Tennessee – Doe vs. Sundquist

The Trial Court's conclusions of law on the preliminary injunction motion answered the issue posed by this Court in its order of June 12, 1997, namely, "the constitutionality of the Act in respect to all citizens." The Trial Court concluded that, as a matter of law:

[A] *A birth parent has no constitutional right to nondisclosure of his or her identity.* (Mem. and Opin. at 16).

[B] The legislature has the power to draw distinctions and to treat different groups of persons differently as long as the classification is not arbitrary and without reasonable basis. (Mem. and Opin. at 16).

[C] This factor [whether the statute surprises persons who have long relied on the contrary state of the law] is not judged on whether a particular person was found to have relied on the expectation of confidentiality. What is most important is whether or not the person had a reason to believe that the records were confidential and that this rule of confidentiality would not and could not be changed.

Adoption records were not sealed until 1951 and the statutes dealing with their disclosure were amended several times thereafter. **It was, therefore, foreseeable that whatever confidentiality rights might have existed were subject to change.** Any reliance upon permanent and absolute confidentiality would have been misplaced. (Mem. and Opin. at 27-28).

Oregon – Ballot Measure 58

The six women, who maintained their anonymity throughout, claimed:

- that statutes of the Oregon and US Constitutions should be read as a guarantee of "absolute privacy and confidentiality" for all parties to an adoption (adoptees, adoptive parents, birth parents);
- the new law violates matters of "intimate personal privacy;"
- the law violates the plaintiffs' right to "equal protection;"
- their "fundamental personal liberties" will be violated by the law;
- that the plaintiffs' "rights to freely exercise their religion and their rights of conscience" will be violated;
- that the state cannot enforce the law due to the existence of "prior laws and representations..."

JUDGE PAUL LIPSCOMB: No Contractual Right

"Plaintiffs have failed to demonstrate either any contractual right to absolute privacy and confidentiality, or any impermissible impairment of any such rights."