

November 23, 2021

The Honorable Karen Bass
U.S. House of Representatives

Dear Representative Bass:

On behalf of First Focus Campaign for Children, a bipartisan children's advocacy organization dedicated to making children and families the priority in federal policy and budget decisions, I am writing to endorse the *21st Century Children and Families Act* (H.R. 5856) and to recognize that it improves the conditions surrounding adoptions from foster care. As a result, First Focus anticipates that more family connections will be protected, fewer children will grow up as legal orphans, and more children will have the opportunity to be adopted by adults who will cultivate and celebrate their identities and cultural heritage.

Every child needs a family in order to reach their full potential. Having permanent, safe, loving connections with responsive adults helps children weather life's hardships and develop resilience and confidence that they can draw upon into adulthood. Too many children in foster care have gone without this type of connection for too long.

On average there are about 100,000 children and youth in foster care whose parents have had their parental rights terminated and these children are considered legally available for adoption. The average time these children spend waiting to be adopted is three (3) years. Unfortunately, about 20% of these youth — or 20,000 children — age out of foster care every year without getting connected to a family who will provide that safe, loving, forever connection for them. Too many children in foster care who have had their connection to their family of origin legally terminated are then left to languish in the system. This nightmare is disproportionately the reality of Black and Native American children, children with disabilities, and children who are Two Spirit or LGBTQ+ who are in foster care. First Focus Campaign for Children applauds your commitment to reducing the number of children who “age out” of foster care and who grow up without a legal family.

The *21st Century Children and Families Act* will (1) decrease the number of children in foster care who become legal orphans by updating policies related to the termination of parental rights and (2) increase the pool of supportive adults who can give children a permanent family.

Research shows that the mental health and well-being of Two-Spirit or LGBTQ+ youth are jeopardized when they are in families that do not affirm their identity.¹ The *21st Century Children and Families Act* acknowledges this research by allowing child welfare agencies to consider the ability of the prospective foster or adoptive parents to affirm the cultural, ethnic, sexual orientation, gender identity, gender expression, racial, or religious background of the child when the agencies assess the child's best interest prior to placing a child in a foster or adoptive home. The bill also requires agencies to consider the child's various identities and the prospective foster parent's or adoptive parent's ability to affirm the child's identities when requested by the child or the child's parent. First

Focus recommends that the agencies be required to consider the child's various identities and backgrounds prior to placing a child or youth in a congregate care setting.

Data shows that adults from particular communities and ethnic groups are underrepresented in the pool of adoptive parents. To ensure that discrimination is not contributing to this underrepresentation, the bill would forbid state child welfare agencies that receive federal funds to

- 1) Deny any person the opportunity to become an adoptive or foster parent based on the person's (or the child's) race, color, sex (including sexual orientation, gender identity, and gender expression), religion, or national origin
- 2) Delay or deny the delivery of foster care prevention support and services, family preservation or reunification services, kinship supports, or adoption or guardianship subsidies to children, parents or kin caregivers on the basis of their race, color, sex, (included sexual orientation, gender identity, and gender expression), religion or national origin
- 3) Significantly delay or deny or otherwise discriminate when making a placement decision about a child for adoption or into foster care solely on the basis of the child's, or the adoptive or foster parent's race, color, sex, (included sexual orientation, gender identity, and gender expression), religion or national origin.

First Focus Campaign for Children also supports H.R.5856's amendments to the Adoption and Safe Families Act ("ASFA") as they relate to the timeline for the termination of parental rights. Research from 2019 estimates that 1-in-100 children under the age of 18 will experience a termination of parental rights.² Nearly 3% of Native American children and 1.5% of Black American children will experience having their parent's rights terminated.³ We know that some children develop depression, experience grief or struggle with abandonment issues after their parents' rights have been terminated and they have been adopted,⁴ but we do not have robust data about the duration, prevalence or severity of these feelings or the impact that termination of parental rights exerts on children. The termination of parental rights has been called "the civil death penalty" for parents, but children are the ones who lose connection to their families of origin. Termination of parental rights cuts children off from holiday traditions, medical histories, and family trees. When an adoptive family is not standing at the ready to fill in what the child has lost, then the child is left disconnected and with holes in their self-conceptualization.

Presently, ASFA requires a state child welfare agency to petition for the termination of a parent's rights when a child has spent 15 out of the last 22 months in foster care. There are few exceptions to this requirement. Reportedly, this requirement was made in service of the children who were languishing in foster care. As currently enacted, ASFA attempts to make the adoption of children from foster care more appealing to foster parents by establishing a timeline for which adoption could be expected and requiring the agency to take steps to remove birth parents from the legal landscape. Unfortunately, this policy solution harms more children than its drafters could have foreseen by relegating children to the status of legal orphans.

The current ASFA timeline harms children by reducing them to pawns in legal competitions between child welfare agencies and their parents or caregivers. Child welfare agencies pressure birth parents to comply with court-ordered services while the agencies threaten to permanently sever the parent-child relationship. Instead of positioning the child welfare agency to be the family's chief supporter in healing and success, the ASFA requirement positions the agency as a compliance monitor of the family's completion of the services in the case plan. The parents and the child welfare agency fight to prove whether the agency was justified in its intrusion into the family or whether the

parents have completed the mandated services; neither inquiry sufficiently centers the safety, well-being or best interests of the children, who are left waiting to see if they will lose connection to the only family they have ever known and whether there is another family ready to take them in permanently.

Secondly, the ASFA timeline harms children by shifting the negative consequences of failing to remedy the reasons that a child entered foster care entirely onto the shoulders of children and their parents. In a society where poor and racialized communities often face intractable, system-level impediments when striving for safety and stability, this blame shift is both unhelpful and unfair. The COVID-19 pandemic elucidated how a lack of virtual service options for non-English speaking parents and incarcerated parents, limited access to family-based treatment services, and an over-extended workforce contributes to families' failure to complete their case plans and leads to the unnecessary termination of the parent-child relationship. By not allowing exceptions to the ASFA timeline that accounts for these systemic hardships, the interests of potential adoptive parents are elevated over the actual connections that children have with their families of origin.

The *21st Century Children and Families Act* centers the best interest of the child by allowing state agencies to modify parental rights (in lieu of terminating parental rights) when it is in the child's best interest, by requiring states to provide a compelling reason for why modifying the legal relationship between the child and the parent is in the child's best interest, and by requiring states to prove by clear and convincing evidence that they have provided the child's parents the time, services, and support necessary to address the reason the child came into foster care to begin with before it can file or join a petition to modify or terminate the parent's rights. Having modification as an option will be especially beneficial to older children and youth in foster care who will now be able to have a legal assurance that they will be able to maintain years-old relationships with family members that will anchor their identity development and build their resilience.

Additionally, H.R. 5856 incentivizes child welfare agencies to focus their resources and energy on helping the parent address the reasons the child came into foster care by prohibiting the agency from filing for modification (or termination) of parental rights when a child has been in foster care with someone who is not family for less than 24 consecutive months and the parent is actively engaged in services. States are also prohibited from motioning to modify parental rights when the motion is principally based on the parent's incarceration, detention or deportation.

First Focus Campaign for Children also supports H.R.5856's expansion of the Court Improvement Program's purpose to include providing access to counsel for children and parents involved in child welfare proceedings. Current law mandates the appointment of a guardian *ad litem* (GAL) for child victims of abuse or neglect. In some states and localities, children who have been abused and neglected are appointed GALs who are non-attorney volunteers. In other jurisdictions, GALs are trained attorneys, able to invoke the full force of state and federal laws in favor of their child-clients' expressed wishes and/or best interests. Ensuring that all child victims have access to high-quality legal counsel will promote their safety and well-being.

Counsel for kids can ensure that courts hear from children who have survived abuse and neglect about what they need to heal and to feel safe. The federal Children's Bureau has affirmed the "widespread agreement in the field that children require legal representation in child welfare proceedings" which is "rooted in the reality that judicial proceedings are complex and that all parties, especially children, need an attorney..."²⁵ In court rooms where adults often have the loudest voices,

attorneys *ad litem* can center the child by examining witnesses, making motions, and preparing children to use their voice in court. These legal actions can have major consequences for child welfare proceedings and can also empower child victims of abuse and neglect to embrace their role as self-advocates.

Some advocates are predicting that the updates proposed by the *21st Century Children and Families Act* will result in fewer children having their parent's rights terminated. They have also expressed concern that many kin and prospective adoptive parents will be deterred from filing for adoption because the government has not already paved the legal pathway for them to adopt from foster care. These advocates have also alleged that the relationship between birth parents and adoptive parents will be strained if adoptive parents must petition for the termination of parental rights without the agency's involvement. These concerns, while valid, can be addressed by equipping and holding birth and adoptive parents accountable to collaborating in the best interests of the children. The answer cannot be continuing to allow over 20,000 children to age out of foster care and grow up as legal orphans.

We look forward to working with you to implement policies supported by our best, most current research and that center the best interests of children and youth in the child welfare system. Should you have any further questions please contact Aubrey Edwards-Luce, Senior Director for Child Welfare and Juvenile Justice at AubreyEL@firstfocus.org.

Sincerely,



Bruce Lesley
President

¹ Martin, M., Down, L., & Erney, R. (2016). Out of the Shadows: Supporting LGBTQ youth in child welfare through cross-system collaboration. Washington, DC: Center for the Study of Social Policy. Available at: <https://cssp.org/wp-content/uploads/2018/08/Out-of-the-Shadows-Supporting-LGBTQ-youth-in-child-welfarethrough-cross-system-collaboration-web.pdf>

² Wildeman, C., Edwards, F. R., & Wakefield, S. (2020). The Cumulative Prevalence of Termination of Parental Rights for U.S. Children, 2000-2016. *Child maltreatment*, 25(1), 32-42.
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6868298/>

³ Ibid, 2.

⁴ Schneider, K.M. & Phares, V. (2005). Coping with Parental Loss Because of Termination of Parental Rights. *Child Welfare*, 84 (6), 819-842 .

<https://cbexpress.acf.hhs.gov/index.cfm?event=website.viewArticles&issucid=73§ionid=3&articleid=1131>

⁵ Administration for Children, Youth and Families Information Memorandum ACYF-CB-IM-17-02. "High Quality Legal Representation for All Parties in Child Welfare Proceedings." January 17, 2017. Available at: <https://www.acf.hhs.gov/sites/default/files/cb/im1702.pdf>