



MISSOURI HOUSE OF REPRESENTATIVES  
**WITNESS APPEARANCE FORM**

BILL NUMBER: <b>HB 1221</b>		DATE: <b>3/3/2021</b>	
COMMITTEE: <b>Judiciary</b>			
<b>TESTIFYING:</b> <input checked="" type="checkbox"/> IN SUPPORT OF <input type="checkbox"/> IN OPPOSITION TO <input type="checkbox"/> FOR INFORMATIONAL PURPOSES			
<b>WITNESS NAME</b>			
<b>INDIVIDUAL:</b>			
WITNESS NAME: <b>ARNIE C. AC "HONEST-ABE" DIENOFF-STATE PUBLIC ADVO</b>		PHONE NUMBER:	
BUSINESS/ORGANIZATION NAME:		TITLE:	
ADDRESS:			
CITY:		STATE:	ZIP:
EMAIL: <b>arniedienoff@yahoo.com</b>		ATTENDANCE: <b>Written</b>	SUBMIT DATE: <b>3/3/2021 6:12 AM</b>
<b>THE INFORMATION ON THIS FORM IS PUBLIC RECORD UNDER CHAPTER 610, RSMo.</b>			

**I am in Support of this Bill on its Face. There needs to be some revisions and Amendments.**



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<b>WITNESS NAME</b>			
<b>BUSINESS/ORGANIZATION:</b>			
WITNESS NAME: <b>JOHN POLLOCK</b>		PHONE NUMBER: <b>410-400-6954</b>	
BUSINESS/ORGANIZATION NAME: <b>NATIONAL COALITION FOR A CIVIL RIGHT TO COUNSEL</b>		TITLE: <b>COORDINATOR</b>	
ADDRESS: <b>C/O PUBLIC JUSTICE CENTER, 201 N. CHARLES ST SUITE 1200</b>			
CITY: <b>BALTIMORE</b>		STATE: <b>MD</b>	ZIP: <b>21201</b>
EMAIL: <b>jpollock@publicjustice.org</b>	ATTENDANCE: <b>Written</b>	SUBMIT DATE: <b>3/3/2021 12:10 AM</b>	

**THE INFORMATION ON THIS FORM IS PUBLIC RECORD UNDER CHAPTER 610, RSMo.**

The National Coalition for a Civil Right to Counsel (NCCRC) opposes House Bill 1221, which eliminates the right to counsel for birth parents in adoption proceedings. The NCCRC is a coalition of over 600 participants and partners from 41 states (including Missouri) that seeks to advance the recognition of a right to counsel in civil cases involving fundamental interests and basic human needs. We worked closely with the American Bar Association (ABA) on its 2006 Resolution urging federal, state and territorial governments to recognize a right to counsel in basic human needs civil cases such as child custody. In addition, we have been involved in litigation and legislation efforts in several states around the right to counsel for parents in adoption proceedings. At present, Mo. Ann. Stat 453.030(11) provides that a birth parent has the right to legal representation and payment of any reasonable legal fees incurred throughout the adoption process, and the court also has discretion to appoint an attorney to represent a birth parent in certain situations. Section 453.030(12) adds that prospective adoptive parents or the child placing agency are obligated to cover the attorney fees incurred by the birth parent unless the adoptive parents are unable to pay and the court appoints pro bono counsel for the birth parents. HB 1221 would delete all of this language except the birth parents' "right to be represented by counsel", which would leave the birth parents simply with the right to retain counsel should they be able to afford to do so. While we surmise that this proposed change may be motivated by a concern over making adoptive parents responsible for birth parents' attorney's fees, and while we share that concern as described later, HB 1221's approach to this problem is both unsound and potentially unconstitutional. The complete termination of parental rights has been called the "civil death penalty", and the termination of parental rights resulting from an adoption is no less permanent than a termination of parental rights stemming from a child abuse and neglect case. The similarity between the two, as well as the fact that severance of parental rights in any context is impossible without the state's approval (via the courts), is why the U.S. Supreme Court has held that adoptions always involve state action. While a number of states do not authorize an adoption unless the birth parent consents or the birth parent's rights have been previously terminated, Missouri adoption law allows an adoption without consent of the birth parents based on determinations of neglect that are substantially the same as those made in the child abuse and neglect context (HB 1221, while slightly modifying the "exception to consent" provisions, does not eliminate them). Under Mo. Ann. Stat. § 211.462(2), indigent birth parents facing termination of parental rights stemming from a child abuse and neglect case are entitled to appointed counsel upon request, but if HB 1221 passes, indigent birth parents facing exactly the same consequence in an adoption case will be left to defend their parental rights without legal help. Disparate treatment of termination and adoption cases exposes the state to an equal protection challenge. To date, every state high court that has ruled on the matter has held it violates equal protection for a state to guarantee counsel for parents in state-initiated termination of parental rights

cases but deny it in private adoptions. The most recent such decision came from the Supreme Court of Ohio in December 2020, a case with which we were heavily involved. Putting aside the legal issue, this disparate treatment is highly problematic from a policy standpoint. The need for counsel can be more acute in the adoption context than in a termination action stemming from an abuse and neglect case. In the latter, upon an allegation of abuse or neglect, the state first must conduct an investigation, and if there is sufficient cause, the state files a petition and the court must rule on whether the child should be placed in foster care. Regardless of whether the child is removed, the state must provide services to the birth parents if the case remains open, and the initial goal remains reunification. Only after the birth parents remain unable to comply with the service plan for some time can the state switch its goal to termination. At that point, a hearing will be held and the birth parents will be provided counsel. In contrast, in the adoption context, all of these protections are missing. Instead, there is a single hearing where a judge enters a finding with the same result as a termination hearing: severing the birth parent's rights to the child. There is no comprehensive investigation, no services for the birth parents, no case planning. Attorneys play a critical role for birth parents in adoption cases. As advocates in a confidential relationship with their clients, attorneys can help birth parents understand not only the procedures in an adoption, but also the permanency of their actions and whether that fits with their goals. Additionally, a determination of whether a birth parent has "willfully, substantially and continuously neglected" a child is legally and factually complex, and such a determination requires the presence of counsel to ensure the birth parents' fundamental rights are not erroneously stripped. Prospective adoptive parents in adoption proceedings are very likely to have counsel, meaning the absence of counsel for the birth parents sets up a significant power imbalance that greatly increases the risk of error. The fact that the State is always represented by counsel in termination of parental rights cases is in part what has motivated so many states to provide counsel for birth parents in that context. We do believe adoptive parents should not be responsible for the attorney's fees of the birth parent, as such a situation risks causing an impediment to adoptions being filed. Even though § 453.030(12) specifies the adoptive parents are not responsible for such fees where they are "unable to pay", adoptive parents may be above the court's threshold for "unable to pay" but still be incapable of shouldering such fees. It is for this reason that we support HB 673, which would delete § 453.030(12) but otherwise leave intact the birth parents' right to payment of attorney fees. Such a change presumably would make such attorney fees a county charge, which is appropriate when parental rights are being irrevocably terminated. This is unlikely to be a significant fiscal burden for Missouri or its counties: in most states there are far fewer adoptions than state-initiated terminations, and the right to counsel will likely only be triggered only if the birth parents object to the adoption, which will not happen in many cases. A suitable amendment to HB 1221 to make the public charge clear would be the following: "12. the court shall order the costs of the attorney fees incurred pursuant to subsection 11 of this section, whether appointed or retained, to be paid by the county commission." Thank you for your consideration, and we would be happy to be a resource for your deliberations. Sincerely John Pollock  
Coordinator, NCCRC