

# ADOPTION ADVOCATE

Christie Renick, *editor*

January 2018

NO.  
115

## NCFA's Legislative and Policy Priorities for 2018

BY ERIN BAYLES, RYAN HANLON, AND CHUCK JOHNSON

**A**s our name indicates, National Council For Adoption (NCFA) is an organization for and about the advocacy of adoption. NCFA is narrowly focused on the issues of advocacy, policy, and practice across all adoption types, including domestic, foster care, and intercountry adoption as viable solutions for children who need stable permanency that will only be achieved through the legal and time-tested option of adoption. Passionately committed to the belief that *every* child deserves to thrive in a nurturing, permanent family, NCFA's mission is to meet the diverse needs of children, birth parents, adopted individuals, adoptive families, and all those touched by adoption through global advocacy, education, research, legislative action, and collaboration.

Within that list of actions, NCFA is very often associated with our legislative work on Capitol Hill in support of adoption-related legislation—a record and reputation for which we are quite proud. As much as NCFA may be rightly associated with legislative action, we also devote significant time and resources to other types of adoption-specific advocacy across all three types of adoption, promotion of best practices in adoption, educational and public awareness programs/campaigns, and oversight of our ongoing and acclaimed research projects.

We have been fortunate in our legislative advocacy at the federal level in that adoption is viewed as one of the least partisan issues on Capitol Hill. With the exception of a very small handful of adoption-related policies, adoption



National Council  
For Adoption

225 N. Washington Street  
Alexandria, VA 22314  
(703) 299-6633  
[www.adoptioncouncil.org](http://www.adoptioncouncil.org)

is not seen as a “liberal” or “conservative” issue, evidenced by the fact that the Congressional Coalition on Adoption is the largest bicameral, bipartisan caucus in Congress.<sup>1</sup> And it is in that spirit that NCFA has pledged to take no position or engage in any activity that would appear to politicize or polarize the strong bi-partisan support of adoption in Congress. Lastly, and in keeping with our mission statement, we would be remiss in not mentioning that NCFA works very closely and collaboratively with a diverse network of adoption professionals, child welfare organizations, groups, and individuals in which we have found common ground on one or more specific legislative issues—and these partnerships have contributed to our collective successes. A good example of effective group advocacy is with the Adoption Tax Credit Working Group—more than 150 organizations committed to preserving and improving the adoption tax credit, and for which NCFA serves on the executive committee.<sup>2</sup>

Annually, NCFA staff, Board, and consultants assess the most critical needs in adoption to develop a strategic plan for addressing existing legislation that NCFA will support as well as the potential for new legislation for which we will advance or stake out a public position. This legislative strategy helps us better know how to allocate resources, effectively direct our advocacy efforts, identify areas for collaboration with others, and discipline ourselves to remain on mission. Avoiding “mission-drift” requires our internal discipline, as all of us at NCFA identify as advocates for children and, as an example of the potential of drifting, nowhere is significant reform more required than in our nation’s broken foster care system. However, with adoption as our only focus, NCFA must restrict our advocacy efforts to the nearly 118,000<sup>3</sup> children in foster care awaiting adoption and not to the larger issue of foster care reform that many of us personally would like to see.

For 2018, NCFA has identified five legislative goals for which we will advocate. In this article, we will articulate a rationale and a justification of the need for passage of each one.

## Adoption Tax Credit

*By Erin Bayles*

### Background

The Adoption Tax Credit (ATC) is a nonrefundable tax credit that adoptive families use to help offset some of the high costs of adoption. The current

*Did you Know?  
The Congressional  
Coalition on Adoption  
is the largest bicameral,  
bipartisan caucus in  
Congress.*

<sup>1</sup> <http://www.ccaainstitute.org/about/about-us>

<sup>2</sup> <https://www.reuters.com/article/us-trump-effect-tax-powerless/how-parents-of-adopted-children-foiled-a-u-s-republican-tax-proposal-idUSKBN1DU33L>

<sup>3</sup> <https://www.acf.hhs.gov/sites/default/files/cb/afcarsreport24.pdf>

credit is \$13,570 per child for couples finalizing an adoption in 2017<sup>4</sup>, though the credit can be spread out over several years to reduce the families' tax liability for multiple years and help them get the most value from the credit. The tax credit can be used for adoptions from U.S. foster care, domestic infant adoptions, and intercountry adoptions.

## Challenges

While NCFCA believes the ATC is a vital credit that has helped thousands of families afford costly adoptions, we also believe that making the adoption tax credit a *refundable* credit would make it work better for children and families, particularly in the area of encouraging the adoption of children currently in foster care. In tax years 2010 and 2011, the adoption tax credit was refundable, meaning that families did not have to have any tax liability to receive the full amount of the credit and could claim it in a single year rather than having to spread it out over several years. In its current nonrefundable state, not all families can utilize it in the same way, and most will never receive its full benefit. In the past four years, the tax credit has helped more than 220,000 families, providing an average annual tax credit of just under \$4,500.<sup>5</sup>

Three key facts about the ATC:

1. When the ATC was refundable, families with lower incomes were able to receive the full benefit of the credit, increasing the likelihood of more children being adopted from foster care. In its nonrefundable state, the ATC only goes against tax liability—which benefits middle-income families but is not as helpful to families with lower incomes who presumably would benefit most from the credit. Of the families adopting from foster care, 62 percent do not receive the full benefit of the ATC, even when spreading it out over several years. Families making between \$50,000–\$75,000 receive a mean credit of just over \$5,000 while families making \$30,000–\$50,000 are receiving just \$1,200.<sup>6</sup> Refundability would assist all adoptive families, except those excluded due to high incomes, by allowing them the full amount of the credit to go toward not only their original adoption costs but also helping them better care for the ongoing needs of their child(ren).
2. Many of the high costs of private and intercountry adoption come before a family even brings home their child. Homestudies, lawyer and court fees, agency fees, background checks, and

<sup>4</sup> <http://www.taxpolicycenter.org/briefing-book/what-adoption-tax-credit>

<sup>5</sup> <https://www.irs.gov/statistics/soi-tax-stats-individual-income-tax-returns-publication-1304-complete-report>

<sup>6</sup> <http://www.taxpolicycenter.org/briefing-book/what-adoption-tax-credit>

fingerprinting are required for an adoption and can be pricey. Many families will take out loans, borrow money from friends and family, fundraise, or rack up credit card debt due to all these fees. Refundability helps ease the financial burden of these families immediately following the legal finalization of the adoption.

3. A refundable ATC will actually save taxpayer money and help ease the strained foster care system by incentivizing some foster families to pursue finalization of the adoption. The onetime adoption credit of \$13,840 pales in comparison to keeping a child in the foster care system. The average annual net savings for one child being adopted out of foster care is estimated to be \$15,480 nationally.<sup>7</sup> Not only that, but many states' foster systems are currently overrun due to the opioid crisis and do not have a sufficient number of foster or adoptive families in which to place children.<sup>8</sup> With almost 118,000 children in the system waiting to be adopted, getting children out of the system and into a stable family would ease that burden and give children the permanency that is in their best interests.

## What Others Are Saying

The adoption tax credit historically has been a popular tax policy and has enjoyed broad bipartisan support for more than two decades. The main criticism of the ATC is that, in its current form, it is not realizing its full potential and helping all the families who are adopting children. Although made a permanent part of the tax code in 2012, the ATC was scheduled for elimination in the original *Tax Cuts and Jobs Act* proposal introduced in the House of Representatives in November 2017. In response, thousands of families and hundreds of organizations on all sides of the political spectrum spoke out in favor of preserving the ATC. Many influential groups, such as the United States Conference of Catholic Bishops, issued statements, calling the ATC “life-affirming resistance” and “vital to the pro-family movement.”<sup>9</sup>

The swift actions of the proponents of the ATC and intense public backlash against elimination of this specific tax credit resulted in an amendment by Ways and Means Committee Chairman Kevin Brady to reinstate the ATC. The Senate soon followed with its own budget proposal, which included retention of the ATC—and the ATC was fully preserved in the final passage of the *Tax Cut and Jobs Act of 2017*. For now, it remains a permanent part of the tax code and families can continue to utilize it to offset adoption expenses, but the credit was not made refundable.

<sup>7</sup> <http://www.afamilyforeverychild.org/Adoption/AFFECreportonchildreninfostercare.pdf>

<sup>8</sup> <http://abcnews.go.com/Health/wireStory/opioid-crisis-strains-foster-system-kids-pried-homes-51738944>

<sup>9</sup> <http://www.cnn.com/2017/11/07/health/adoption-tax-credit-families/index.html>

## NCFA's Position

NCFA was very involved in the original conceptualization and passage of the ATC and counts the ATC among its signature legislative victories. NCFA was pleased to work alongside a diverse coalition of child welfare organizations to effectively advocate for preservation of the ATC during the tax reform debate—which was aided by a successful social media campaign and with the courageous support of many members of Congress. As important as this victory is, we were disappointed that we were not successful in convincing Congress to return the ATC to refundability in the discussion of comprehensive tax reform.

With the debate about the ATC hopefully settled once and for all, it is time to return our attention to highlighting the benefits of refundability. With passage of comprehensive tax reform now complete, NCFA will continue to encourage Congress to consider making the ATC refundable, and the time may come when technical corrections to the tax code become necessary. The good news is that there are already versions of the proposed legislation, the *Adoption Tax Credit Refundability Act*, in both the House of Representatives<sup>10</sup> and in the Senate<sup>11</sup>, which would make the ATC refundable. Given the clear and convincing evidence that refundability encourages adoption and saves state and federal dollars<sup>12</sup>, NCFA will continue to work through 2018 and beyond, if necessary, with like-minded proponents to see the ATC made a refundable credit once again.

*With passage of comprehensive tax reform now complete, NCFA will continue to encourage Congress to consider making the ATC refundable...*

## A Positive Mandate for Intercountry Adoption

*By Ryan Hanlon*

### Background

The *Intercountry Adoption Act of 2000* designated the United States Department of State as the U.S. Central Authority, with oversight over the intercountry adoption process.<sup>13</sup> Within the Department of State, the Bureau of Consular Affairs' Office of Children's Issues oversees intercountry adoption (as well as international child abduction). Since its inception, many in Congress and other pro-adoption child welfare advocates believe the U.S. Central Authority has operated without a clear, positive mandate to pro-actively promote adoption as a means of helping unparented children find families. Previous legislative attempts seeking to clarify this mandate for the U.S. Central Authority have failed to progress

<sup>10</sup> <https://www.congress.gov/bill/115th-congress/house-bill/2476>

<sup>11</sup> <https://www.congress.gov/bill/115th-congress/senate-bill/937>

<sup>12</sup> <http://www.adoptioncouncil.org/publications/2015/05/adoption-advocate-no-83>

<sup>13</sup> Pub. L. 106-279 Intercountry Adoption Act of 2000

through the committee process, despite what many believe would be strong bipartisan support if the legislation came to the floor for a vote of the full Congress.

In 2013, hundreds of child welfare advocates, including NCFCA, supported the *Children in Families First* (CHIFF) legislation which would have moved the Central Authority functions out of the Bureau of Consular Affairs and under the purview of the Under Secretary for Civilian Security, Democracy, and Human Rights, with the mindset that intercountry adoption should be treated like other human rights policy issues.<sup>14</sup> When Congress chose not to act on CHIFF before the end of the 113th Congress, the legislative effort failed.

Later, during the 114th Congress, the *Vulnerable Children and Families Act of 2016* was introduced.<sup>15</sup> This legislation was also designed to streamline the process of children finding families. In addition to appointing an Ambassador-at-Large for vulnerable children, the goal was to strategically align the Central Authority to work in concert with The Action Plan on Children in Adversity, created by the federal government in 2012. Notably, this legislation also had a provision requiring the Department of State to include information on children living without families in the annual country reports on human rights practices. Like CHIFF, Congress failed to pass this legislation into law.

Currently before Congress, the *Vulnerable Children and Families Act of 2017* (VCFA) is bi-partisan legislation designed to take into account previous concerns about the size and scope of reconfiguring intercountry adoption within the Department of State. This legislation is more narrowly focused than previous iterations, with an emphasis on providing a clear, positive child welfare mandate, but without restructuring within the Department of State. It also does not include the language requiring human rights reporting, which was subsequently introduced as stand-alone legislation in both the House and Senate.

## What Others Are Saying

Critics of the CHIFF legislation said it was costly, caused unneeded bureaucratic changes, and would provide too much authority to the United States Citizenship and Immigration Services (USCIS) to adjudicate child welfare cases. Despite clear language in the legislation that no new resources would be used, proponents of small government did not want to risk adding new layers of bureaucracy by the creation of a new office within the Department of State. As is discussed separately within this

---

<sup>14</sup> H.R. 4143: Children in Families First Act of 2013; S. 1530: Children in Families First Act of 2013

<sup>15</sup> S.3279 - Vulnerable Children and Families Act of 2016

*Adoption Advocate*, the human rights reporting found in the VCFA has also been criticized as both too expensive and unrealistic.

As a supporter for a positive, stronger mandate for the U.S. Central Authority, like NCFA, Diane Kunz includes the *Vulnerable Children and Families Act of 2017* as among the top legislative priorities for the Center for Adoption Policy's agenda. Kunz says:

*“The dearth of options for unparented children around the world to find permanent, loving homes demands that the Department of State take a lead role in creating and supporting the finding of families for unparented children, wherever these families are found. To accomplish this goal, VCFA requires the President to appoint an Ambassador at Large who will head the Office of Vulnerable Children and Families (which will replace the Department of State’s Office of Children’s Issues) and take the lead in turning the aspirations of the bill into reality. The catastrophic decline in international adoptions to the United States over the last decade is one symptom of the failure of U.S. institutions to promote the most effective solution to global poverty: a permanent, loving family.”*

## Challenges

Although the supporters of the re-designed VCFA are much more optimistic with this streamlined version, there remain practical challenges to getting this legislation passed. Today's more contentious political climate has seen fewer bipartisan efforts than in previous years. Nevertheless, the current legislation has taken into account the previous issues of concern in hopes of a clearer path toward passage. There is also the issue of the Department of State: Although the current VCFA has addressed the issues most objected to by the Department of State in previous versions, the legislation does clarify its mission as the Central Authority and will require that those in charge of intercountry adoption policy be much more proactive and supportive in advancing solutions for intercountry adoption—and, in the process, be far more accountable for the outcomes of its policies. It will be interesting to monitor the Department's position on VCFA given that, by opposing this new version, it will also be opposing the greater transparency and accountability the legislation will require of it.

## NCFA's Position

NCFA supports the passage of the *Vulnerable Children and Families Act of 2017* and urges Congress to pass this bill. With millions of children living outside parental care, more work is needed to ensure children have a path to a permanent family. Providing a positive mandate that recognizes adoption as an integral means of helping children without parents join families is essential to the U.S. Department of State's mission to serve as an effective and capable Central Authority.

The role of the U.S. Central Authority ought not to be limited to simply protecting against potential abuses; instead, a pro-active mandate to help unparented children find families should be central to the U.S. adoption authority's mission. In so doing, U.S. policy will match the sentiments of the American people at large: That children belong in families. It also will bring into alignment the original mandate given to them by Congress when they were delegated this role.

Coordinating federal government efforts, so that the U.S. Central Authority has strengthened cooperation with the U.S. Agency for International Development (USAID) can ensure that our nation's efforts to help vulnerable and parentless children are more effective.

Setting concurrent planning as the official United States policy to facilitate children finding families means that children for whom reunification, kinship placement, and domestic adoption are not an option will not unnecessarily languish while waiting to be approved for a family. This is not only the right thing to do for children, but will align intercountry practices with decades-old domestic child welfare practices that integrate concurrent planning throughout a child's time outside family care. Failing to do so deprives children around the world of the opportunity for a timely and appropriate placement.

## Citizenship for Internationally Adopted Children

*By Erin Bayles*

### Background

*The Child Citizenship Act of 2000 (CCA)*, which originally became effective on February 27, 2001, amended the *Immigration and Nationality Act (INA)* to provide automatic U.S. citizenship to some children adopted abroad by U.S. citizens. Internationally adopted children already living permanently in the U.S. who were under the age of 18 when the Act passed were granted citizenship automatically. Prior to the Act, they had to go through a lengthy immigration process after their arrival in the U.S. Children who came to the U.S. on an IR-3 visa—meaning their full and final adoption was completed abroad—were also given automatic citizenship as long as they entered the U.S. prior their 18<sup>th</sup> birthday and resided here permanently with their parents. At the time of its passage, the CCA was considered a major victory for many international adoptees granted citizenship and whose adoptive families no longer needed to go through a lengthy and costly immigration process once their adoption was finalized. The legislation, however, provided an incomplete fix for many internationally adopted individuals, and the Act must be amended again to

---

*This is not only the right thing to do for children, but will align intercountry practices with decades-old domestic child welfare practices that integrate concurrent planning throughout a child's time outside family care.*

---



adequately address the citizenship of adoptees for whom the Act did not cover.

## Challenges

As stated, the language of the CCA excluded a significant number of international adoptions, estimated to be as high as 35,000 individuals.<sup>16</sup> Through no fault of their own, many persons who were internationally adopted have come to find out that they are not, in fact, U.S. citizens because the CCA did not apply to their adoptions. There are two main groups of adoptees that the CCA passes over:

### *Adoptees 18+*

Prior to the CCA, all internationally adopted children had to go through a naturalization process prior to their 18<sup>th</sup> birthday in order to gain their full U.S. citizenship. For one reason or another, some adoptive parents failed to take this crucial step and their children never became citizens. Parents may have been confused about the paperwork and requirements, felt it was an unnecessary expense, or believed their child was a U.S. citizen by virtue of their adoption.

When the CCA was passed, it helped make this right for children *under* the age of 18 as of February 27, 2001, but it did not apply to anyone *over* the age of 18. That means anyone adopted internationally to U.S. parents, born before February 27, 1983, who had not previously been granted citizenship was not covered by the CCA.

Many internationally adopted persons find out that they are not U.S. citizens at certain milestone events such as applying for FAFSA college loans, joining the military, registering for social security, applying for a passport, or after the September 11th attacks, when employers began requiring proof of citizenship. As security and proof of identification has become more scrutinized in recent years, more adoptees are finding out about their non-citizenship status. In the most tragic of possible outcomes, some have been deported or not let back into the country after traveling abroad.

### *IR-4 and IH-4 Visas*

The other group the CCA excludes is children coming to the U.S. on the other type of adoption visas, the IH-4 and the IR-4. These visas are issued to children of Hague (IH-4) and non-Hague (IR-4) adoptions where the child's adoption will be fully finalized *after* arrival to the U.S. Children arriving on these visas are in the U.S. legally and are given permanent resident status (a.k.a. a green card), but they must be "re-adopted" by

---

<sup>16</sup> <http://nakasec.org/adopteerights>

their families to obtain U.S. citizenship to which they are entitled. Some parents have failed to complete the citizenship process, not realizing how important this final step is and the resulting very serious risks to their child.

## What Others Are Saying

The Adoptee Rights Campaign (ARC) and National Korean American Service & Education Consortium (NAKASEC), along with NCFA and many other intercountry adoption advocates, have been vocal proponents of automatic citizenship for internationally adopted children. There have been legislative solutions offered in the past, primarily the *Adoptee Citizenship Act* last introduced in the 114th Congress<sup>17,18</sup>, but currently there is no pending legislation in the House or Senate addressing this issue. NCFA, however, took special interest in noting that Suzanne Lawrence, Special Adviser for Children's issues at the U.S. Department of State, recently spoke in support of a legislative fix.<sup>19</sup>

## NCFA's Position

NCFA seeks to rectify this legal loophole and ensure that internationally adopted individuals are provided the U.S. citizenship to which they are legally entitled. Although there is no pending legislation in Congress to address this important issue, NCFA will continue to advocate a legislative solution that ensures every internationally adopted individual—the legal child of a U.S. citizen—is granted U.S. citizenship, regardless of visa type or when the adoption took place. NCFA calls for new bipartisan legislation to be introduced and passed in 2018 that enables internationally adopted children and adults the same citizenship rights as any child born to U.S. citizens.

*NCFA will continue to advocate a legislative solution that ensures every internationally adopted individual—the legal child of a U.S. citizen—is granted U.S. citizenship, regardless of visa type or when the adoption took place.*

## Creation of a National Putative Father Registry

*By Chuck Johnson*

### Background

If a man who may have fathered a child is not involved in an adoption proceeding because he did not know about it, those adoptions, even if legally finalized, can be later disrupted or even dissolved, which is not in the best interest of the child and can be a painful experience for all involved. An effective solution to that problem is to enable the man to register in a database (called a putative, paternal, or responsible fatherhood

<sup>17</sup> <https://www.congress.gov/bill/114th-congress/senate-bill/2275>

<sup>18</sup> <https://www.govtrack.us/congress/bills/114/hr5454>

<sup>19</sup> <http://koreajoongangdaily.joins.com/news/article/article.aspx?aid=3042279&cloc=joongangdaily|home|newlist2>

registry) so that the man can be notified of court proceedings related to the child. NCFA and many in the professional adoption community have been strong advocates for the creation of state-based putative father registries throughout the 1990s and to present day.<sup>20</sup> Approximately 34 states have some form of a registry that allows unmarried men who believe they may have fathered a child to sign within a state-specific time frame and, in doing so, secure legal notice of a planned adoption of his “putative”, or possible, child. Putative father registries are Supreme Court-tested and provide putative fathers who register with the state registry the right to legal notice, but also allow adoptions to proceed with greater assurance that they will not be subject to a legal challenge when putative fathers do not register.

Many state legislatures enacted putative father registries following some tragic and protracted legal challenge in their state by a biological father in which the courts dissolved a legally finalized adoption because the biological father did not receive notice of the proceeding that terminated his parental rights. These registries, which ensure the man who registers receives such notice, is in the best interests of children, because they prevent such challenges from happening in that state in the future. NCFA supports and strongly encourages the participation of expectant fathers throughout the adoption process,<sup>21</sup> but also recognizes the necessity of ensuring adoption offers the child legal permanency without the risk of later legal challenges when biological fathers are unresponsive in asserting their rights in a timely fashion or whose identities are unknown for various reasons. NCFA believes that putative father registries balance the legal rights of biological, unmarried fathers by creating a legal access point for them to be involved along with rights of adoptive parents to rely on the finalization of their adoption. This balance is in the best interest of the child, as it enables the child’s future with a family to be legally determined without subsequent disruption—and this is why we have supported implementation of the paternal registry system at the state level.

## Challenges

Although most states have a putative father registry system in place, there are 16 states without such protections—and, with many adoptions occurring across state lines, state-based registries do not necessarily cooperate with each other. For instance, a putative father may live in one state, but the adoption will be finalized in another—and he may not receive notice, even if he signs in his state of residence, or he may be

<sup>20</sup> <http://www.adoptioncouncil.org/files/large/bed26063416cc19>

<sup>21</sup> <http://www.adoptioncouncil.org/files/large/67d91b35329369a>

uncertain in which state he should register. Several legal challenges have resulted.

### What Others Are Saying

Some have expressed concern that requiring a man to register in a putative father registry to receive notice deprives him of legal rights. However, most states have registries in place and the courts have consistently upheld the legality of putative father registries. According to attorney and NCFA Board Member Andrea Vavonese,

*“A national registry would only enhance protections to biological fathers that they may not currently have because it would ensure that if they register they are not deprived of notice if they register in the ‘wrong’ state. A national registry would also protect the privacy of the biological mother, who would not need to ‘find’ the possible father by providing notice in a newspaper, disclosing her identity and pregnancy.”*

In introducing the *Permanency for Children Act* in the House in 2017, the co-sponsors of the legislation, Representatives Hartzler and Kuster had this to say:

*“A consolidated fatherhood registry will greatly benefit the adoption system and families across the country. Every child deserves to have a safe and stable home to grow up in, and this common sense legislation will make it easier for birthfathers to voluntarily assert their rights as parents by connecting the 34 state Responsible Father Registries with the Federal Parent Locator Service.”<sup>22</sup>*

### NCFA’s Position

A national registry would allow states to voluntarily participate, give fathers a place to register once for every state, and supply a more uniform system of information. A single, national registry would also provide adoption professionals a mechanism to access more complete information from all participating states, helping to ensure that the best, most complete and ethical checks are completed before adoptions of children are finalized.

It is for these reasons that NCFA supports the establishment of a national putative father registry and, in particular, passage of the *Permanency for Children Act* (HR-3092), which accomplishes this objective. We also hope to see a companion bill introduced in the Senate in 2018, and NCFA will advocate for the passage of both.

*A national registry would allow states to voluntarily participate, give fathers a place to register once for every state, and supply a more uniform system of information.*

<sup>22</sup> <https://hartzler.house.gov/media-center/press-releases/representatives-hartzler-and-kuster-introduce-permanency-children-act>

## A Human Right to a Family

By Ryan Hanlon

### Background

Every year since 1977, the U.S. Department of State has formally reported to Congress on the status of countries' human rights practices during the previous year. This includes reporting on issues ranging from civil and political freedoms, anti-Semitism, corruption and transparency, discrimination based on sexual orientation, trafficking in persons, worker rights, HIV and AIDS stigma, and many other important issues that can and should be reported on around the world.

Over the last few years, a growing chorus of child welfare advocates have pointed to the millions of children growing up without parents and asked: Why are we not reporting on countries who deny children the fundamental right to a family?

When we consider the issues that are reported on, it is not clear why we discriminate against children without parents. The following breaks down a sampling of the current report on human rights practices:

INCLUDES	EXCLUDES
Prohibition of child labor	Access to domestic and intercountry adoption
Arbitrary arrest or detention	Unnecessarily prolonged child institutionalization
Prison and detention center conditions	Orphanage conditions
Freedom of movement for stateless persons	Ability for parentless children to join families
Denial of a fair public trial	Denial of child welfare best interests determinations

Reporting on unparented children's access to find a permanent family is important because researchers have shown that human rights monitoring and reporting changes the attitudes and behaviors of both U.S. and foreign policymakers.<sup>23,24,25</sup>

<sup>23</sup> Kim, H. J. (2015) Reporting North Korean Refugees in China: The Case of the U.S. Department of State Human Rights Country Reports. *Korea Observer*, 46(1), 117-144.

<sup>24</sup> Sikkink, K. (2004) *Mixed Signals: U.S. Human Rights Policy and Latin America*. Ithaca, NY: Cornell University Press.

<sup>25</sup> Krommendijk, J. (2015) The domestic effectiveness of international human rights monitoring in established democracies. The case of the U.N. human rights treaty bodies. *Review of International Organizations*, 10(4), 489-512.

## Challenges

There are two main challenges to passing this legislation. The first one is logistical. We really do not know how many orphaned and abandoned children there are in the world, nor do we know where they are. Many countries with large orphan populations do not know either, nor do they have the resources or the wherewithal to find out. This is not to say that we do not have these data in every country or region (there have been regional surveys), but overall, it is simply not a priority to find out. It suits the political and economic purposes of some to not know. More to the point, there is not even a universally accepted definition for exactly who is an orphan.

Another challenge comes from the U.S. Department of State. As was discussed previously, the Office of Children's Issues within the State Department does not have a mandate to proactively seek families for unparented children; further, the Department of State does not include unnecessarily prolonged institutional care as a human rights violation because it does not hold to the conviction that children have an inherit right to a family.

## What Others Are Saying

Critics of adding unparented children to the human rights report say that reporting on nations' human rights abuses is a form of nation shaming. In part, they are right: We shine a light on human rights abuses in hopes that by making the issues more visible, policymakers in the United States and abroad will work to address them. The end goal is not to shame nations' practices, but to change them.

Critics also raise concerns about the expense of reporting and capacity of the Department of State to report on this issue. Existing legislation already requires the Department of State to report on a wide range of human rights issues, requiring extensive work by human rights officers at U.S. missions all over the world. Given the current scope of reporting<sup>26</sup>, adding children's rights to a family would not be cumbersome or cost prohibitive.

Supporters of adding children's rights to a family to the Department of State's annual report see this as a way to raise awareness on behalf of children who cannot speak out on this issue for themselves. Why? Because, social science evidence on this is clear: Institutionalization of a child can have lifelong ramifications.

---

*We shine a light on human rights abuses in hopes that by making the issues more visible, policymakers in the United States and abroad will work to address them. The end goal is not to shame nations' practices, but to change them.*

---

---

<sup>26</sup> U.S. General Accounting Office (U.S. GAO), "Human Rights: State Department's Commitment to Accurate Reporting Has Increased." Report to the Chairman, Legislation and National Security Subcommittee, Committee on Government Operations (Washington, D.C.: House of Representatives, September 1990)

Elizabeth Bartholet, the Director of Harvard Law School's Child Advocacy Program, supports this legislation, saying:

*“This represents an important step in vindicating the child’s right to family, something that is essential to changing cultural understanding worldwide and to related policy. It would require the Department of State to recognize in its annual report on human rights violations that keeping children in institutions and denying them available homes through adoption constitutes a violation of their most fundamental human rights.”*

### **NCFA’s Position**

Over the last few decades, the profound extent of global human rights abuses has been raised in the consciences of individuals both in the United States and abroad. Unparented children’s lack of access to find a family is perhaps the single largest unrecognized human rights abuse issue of our time.

As a matter of mission and purpose, NCFA embraces the conviction that all children have a right to grow up in a nurturing, permanent family. Countries, including the United States, ought to seek family preservation and reunification as a first means of finding families for children. If this is not successful, and if a permanent kinship adoption is not possible, domestic and then intercountry adoption ought to be pursued to ensure that children do not remain in orphanages longer than necessary.

Children are not chattel and should never be used as bargaining chips or leveraged for trading purposes between nations. However, if a country severely restricts children’s access to domestic and intercountry adoption, the United States ought to impose the same foreign aid and trading ramifications it would if that country were guilty of other human rights abuses.

NCFA respectfully disagrees with those who cite expense or concern about nation shaming as reasons for not reporting. Nations that restrict or prohibit children from joining permanent families ought to be ashamed of their treatment of children; reporting on these actions only shines light on practices currently being kept in the dark.

As for the expense of reporting, it is laudable that we should be concerned with the costs of government-sponsored initiatives, but why is it acceptable to incur the expense of reporting on issues such as workers’ rights to collective bargaining or individuals’ freedom from interference with correspondence—and yet arbitrarily draw a line to say “we cannot afford the expense of reporting on children”? Because they have no voice, too often children’s rights are overlooked while the rights of adults are upheld.

The United States has been a global leader on child welfare issues for decades. We must continue to lead by proclaiming that children have a fundamental right to a family and subsequently reporting on countries' efforts to find families for children in need.

Bi-partisan legislation has been introduced in both the House of Representatives and the Senate to address this issue by requiring that the annual *Country Reports on Human Rights Practices* include violations of children's rights to a family.

In the House, Representatives Marino and Cicilline introduced H.R. 2643 in May 2017. The bill has been referred to the House Foreign Affairs committee. Also in May 2017, Senator Blunt introduced S. 1177, which has been referred to the Senate Foreign Relations committee. NCFCA calls on both chambers of Congress to pass this legislation in 2018.

## Conclusion

These five issues are not the full extent of the legislative issues that NCFCA will work on in 2018—they are just the issues identified as primary legislative priorities due to either an urgent need or to support legislation that has already been introduced. Ongoing updates about these legislative areas can be found at [www.adoptioncouncil.org/advocate](http://www.adoptioncouncil.org/advocate). We encourage all those whose lives are impacted by adoption to educate themselves about legislative opportunities and to advocate for reform and change on behalf of children's well-being. As part of our effort to organize for change, on June 20, 2018, NCFCA will lead an Advocacy Day on Capitol Hill for adoption supporters to work together to advocate on these issues.



National Council  
For Adoption

SUPPORT NCFCA  
DONATE ONLINE ►►  
[www.adoptioncouncil.org](http://www.adoptioncouncil.org)

## ABOUT THE AUTHORS

Chuck Johnson serves as president and CEO of National Council For Adoption. He is responsible for all aspects of NCFCA, including management as well as implementing the organization's mission. He is an advocate for children, birth parents, and adoptive families, and is a frequent writer, speaker, and commentator on adoption policy and practice. Prior to joining NCFCA, Chuck served 17 years with a licensed child-placing agency in Alabama, including eight years as its executive director. He is a graduate of Auburn University with a degree in Social Work and holds a Masters degree from Birmingham Theological Seminary.

Ryan Hanlon joined NCFCA in 2017 with over 13 years of experience as an adoption professional, most recently serving as the executive director of a Hague-accredited adoption agency. Ryan has experience serving as a foster care caseworker as well as with child protective services. He has been a speaker at national conferences, and has worked on accreditation issues as well as state licensing matters. After receiving his B.A., Ryan went on to earn three Master's degrees, including a MA in Liberal Arts, a MS in Nonprofit Management, and a Master of Social Work degree. He has served as a social work field instructor and teaches social work in an adjunct capacity to both undergraduate and graduate students. He is currently pursuing his Ph.D.

Erin Bayles joined NCFCA in August 2013 as the government relations and public policy intern and currently serves as Policy and Education Manager. Erin is responsible for the planning and execution of the annual NCFCA conference, managing membership, and overseeing training programs. She also corresponds with policy associates including government agencies, stakeholders, and adoption agencies in order to improve communications and coordinate policy campaigns. Erin graduated undergrad from American University in 2014 with a dual Bachelor's degree in international relations and behavioral psychology. She is currently in her 1L year in the part-time evening program at Antonin Scalia Law School at George Mason University.