

COMMENTARY

S. 1224—IN SUPPORT OF THE MULTIETHNIC PLACEMENT ACT OF 1993

SENATOR HOWARD M. METZENBAUM*

Anyone who knows me, friend or foe, will tell you that one of my great passions in life is children. They represent the best in all of us and our best hope for the future. All my life I have pursued policies to ensure that all children, no matter what the circumstances of their birth, are treasured and nurtured. Whether it is a baby born with AIDS and addicted to crack, or my own wonderful grandchildren, I want to do everything in my power to make sure that every child grows up in a loving, caring, stable, and safe environment.

Today, sadly, children in America are in more danger than ever. Poverty, crime, and substance abuse are tearing families apart. The number of children in the foster care system has exploded from 276,000 in 1986 to 450,000 in 1992. Children are entering foster care at a younger age in record numbers, and are staying in the system for longer periods of time.

The government's goal for most children in foster care should be reunification with their families. We must also increase the funding for programs that prevent the breakup of families in the first place and help them to stay together once they are reunited. However, family reunification is not always possible or appropriate. As a result, thousands of children of all races and colors are presently waiting to be adopted in America. The vast majority are living in foster care homes, some of which are good, some passable, and some horrible.

I believe that every child who is eligible for adoption has the right to be adopted by parents of the same race if that is possible. A same race or ethnic group placement can go a long way in helping a child make the psychological, social, and cultural adjustment to a new family. I strongly support efforts to recruit prospective adoptive parents of all races.

Despite these efforts, same race placement is not available for the overwhelming majority of children in foster care homes. This unfortunate situation is made even worse when state agencies prevent foster care children from being adopted by available and qualified adults solely because the

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This comment contains Senator Metzenbaum's statement in support of his bill, The Multiethnic Placement Act, to be codified at 42 U.S.C. § 5115a (1994). Minor editorial changes have been made to the text, but in all cases, every effort was made to retain the original voice of the speaker.

child is of a different race than the prospective parents. Several state and local child welfare agencies virtually prohibit multi-ethnic and transracial foster care and adoption placements. Indeed, some agencies prevent the adoption of children by prospective parents of a different race, even after the child and parents have bonded through years of living together in a loving foster care home.

For example, in Minnesota, a biracial couple is being forced to give up their four year old black foster son whom they are trying to adopt, solely because of a state law that discourages transracial adoptions. The little boy and his foster family have shared a caring and nurturing interracial home for more than three years. In Arizona, a white couple is seeking to adopt their three year old black foster daughter who came to live with them when she was only three months old. Although this couple have been wonderful foster parents, they face an uphill battle to preserve their loving family because of state policies which make race a controlling factor in placement decisions. Something must be done to help these and other children of all races, colors, and national origins, who are being denied the opportunity to be part of a stable and caring interracial family when placement with a same race family is not available.

The Multiethnic Placement Act, S. 1224,¹ will strengthen the federal government's commitment to improving the lives of children and fighting harmful discrimination. The bill makes it clear that race, national origin or color cannot be the only consideration in making foster care and adoptive placements. For example, it would prohibit child welfare agencies from categorically denying anyone the opportunity to become an adoptive or foster parent on the basis of race, color or national origin. Policies prohibiting racial and ethnic mixing have no place in determining what is in the best interests of any child.

As the author of S. 1224, I am proud that this bill enjoys broad bipartisan, multiracial, and multiethnic support. Senators Carol Moseley-Braun, Daniel Inouye, Dan Coats, Nancy Kassebaum, Paul Simon, David Durenberger, and Dianne Feinstein are cosponsors of S. 1224. Representative Alan Wheat has introduced the Multiethnic Placement Act in the House of Representatives. Marian Wright Edelman of the Children's Defense Fund and Reverend Jesse Jackson of the National Rainbow Coalition also support the bill.

I fully understand that transracial homes present special adjustments and problems for all those involved. But I also have seen first hand that they can provide the loving, caring, and stable home that all children deserve. Moreover, I strongly oppose that which is too often the case today. Too many social workers prefer warehousing children in foster care homes and institutions over their placement in loving, permanent interracial homes.

Although an appropriate transracial placement is often a positive experience, efforts to make appropriate and timely same race, language or ethnic group placements, should not be discouraged or abandoned. Therefore, the

1. For the text of S. 1224, 103d Cong., 2d Sess. (1994), see Appendix A.

Multiethnic Placement Act also makes it clear that race, color or national origin can be a factor in making foster and adoptive placements, if the consideration of the factor is in the child's best interest and race, color or origin is considered along with other factors. These factors may include age, sex, member of a sibling group, religion, disability, language, emotional and physical needs, and the child's relationship with his or her current caregiver.

This common-sense approach to the consideration of race in making foster care and adoption placements is consonant with long standing federal adoption legislation that encourages the recruitment of prospective parents of all races. Federal and state case law and the Department of Health and Human Services (HHS) guidelines also specifically allow race to be one factor in making foster care and adoptive placements. In addition, every single major child welfare and adoption organization advocates the consideration of race as one of the factors used to determine the best interests of a child.

S. 1224 also stresses the importance of eliminating racial, ethnic, and national origin discrimination and bias in adoption and foster care recruitment, selection, and placement procedures. Child welfare agencies are encouraged to use active, creative, and diligent efforts to recruit parents from every race and culture for children needing out of home placements.

But while we work towards these important goals, my bill restates the basic principles of Title VI of the Civil Rights Act of 1964.² This well-settled law bans discrimination on the basis of race, national origin or color, in any program or activity that receives federal funding. In addition, my bill provides for the same types of remedies that are allowed for Title VI violations. HHS is directed to deny adoption assistance administrative funds to any agency found to be in violation of this law. My bill also allows victims of discrimination to seek relief in federal court.

S. 1224 was introduced on July 14, 1993. A hearing was held on the bill on July 15, 1993, by the U.S. Senate Subcommittee on Children, Families, Drugs and Alcoholism. The bill was adopted by voice vote at an executive session of the U.S. Senate Committee on Labor and Human Resources in October 1993. It passed as an amendment to the U.S. Senate version of the Disadvantaged Minority Improvement Act³ in March 1994. It also passed as an amendment to the U.S. Senate version of the Elementary and Education Act Reauthorization⁴ in August 1994. At this time, both the Disadvantaged Minority Improvement Act and the Elementary and Education Act Reauthorization are pending action by designated U.S. Senate and House of Representatives conference committees.⁵

2. 42 U.S.C. § 2000d (1988).

3. S. 1569, 103d Cong., 2d Sess. (1994).

4. H.R. 6, 103d Cong., 2d Sess. (1994).

5. The conference report for H.R. 6, which includes an amended version of the Multiethnic Placement Act, was passed by both the U.S. House of Representatives and the U.S. Senate. The Howard M. Metzenbaum Multiethnic Placement Act of 1994, Pub. L. No. 103-382, 108 Stat. 3518 (1994) (to be codified at 42 U.S.C. § 5115a), was signed into law by the President on October 20, 1994. For the text of the Act, see Appendix B.

The passage and enactment of the Multiethnic Placement Act is the highest legislative priority of my remaining term in the U.S. Senate. I urge all of those who share my love for children and the laudable values of this country to put aside their politics and prejudices and support this bill.

APPENDIX A

SECTIONS 2 AND 3 OF S. 1224, 103D CONG., 2D SESS (1994)

SEC. __02. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that—

- (1) nearly 500,000 children are in foster care in the United States;
- (2) tens of thousands of children in foster care are waiting for adoption;
- (3) 2 years and 8 months is the median length of time that children wait to be adopted;
- (4) child welfare agencies should work to eliminate racial, ethnic, and national origin discrimination and bias in adoption and foster care recruitment, selection, and placement procedures; and
- (5) active, creative, and diligent efforts are needed to recruit parents, from every race and culture, for children needing foster care or adoptive parents.

(b) PURPOSE.—It is the purpose of this Act to decrease the length of time that children wait to be adopted and to prevent discrimination in the placement of children on the basis of race, color, or national origin.

SEC. __03. MULTIETHNIC PLACEMENTS.

(a) ACTIVITIES.—

(1) PROHIBITION.—An agency, or entity, that receives Federal assistance and is involved in adoption or foster care placements may not—

(A) categorically deny to any person the opportunity to become an adoptive or foster parent, solely on the basis of the race, color, or national origin of the adoptive or foster parent, or the child, involved; or

(B) delay or deny the placement of a child for adoption or into foster care, or otherwise discriminate in making a placement decision, solely on the basis of the race, color, or national origin of the adoptive or foster parent, or the child, involved.

(2) PERMISSIBLE CONSIDERATION.—An agency or entity to which paragraph (1) applies may consider the race, color, or national origin of a child as a factor in making a placement decision if such factor is relevant to the best interests of the child involved and is considered in conjunction with other factors.

(3) DEFINITION.—As used in this subsection, the term “placement decision” means the decision to place, or to delay or deny the placement of, a child in a foster care or an adoptive home, and includes the decision of the agency or entity involved to seek the termination of birth parent rights or otherwise make a child legally available for adoptive placement.

(b) LIMITATION.—The Secretary of Health and Human Services shall not provide placement and administrative funds under section 474(a)(3) of

the Social Security Act (42 U.S.C. 674(a)(3)) to an agency or entity described in subsection (a) that is not in compliance with subsection (a).

(c) **EQUITABLE RELIEF.**—Any individual who is aggrieved by an action in violation of subsection (a), taken by an agency or entity described in subsection (a), shall have the right to bring an action seeking relief in a United States district court of appropriate jurisdiction.

(d) **CONSTRUCTION.**—Nothing in this section shall be construed to affect the application of the Indian Child Welfare Act of 1978 (25 U.S.C. § 1901 et seq.).

APPENDIX B

HOWARD M. METZENBAUM MULTIETHNIC PLACEMENT ACT OF 1994¹

Part E—Multiethnic Placement

Subpart 1—Multiethnic Placement

SEC. 552. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds that—

- (1) nearly 500,000 children are in foster care in the United States;
- (2) tens of thousands of children in foster care are waiting for adoption;
- (3) 2 years and 8 months is the median length of time that children wait to be adopted;
- (4) child welfare agencies should work to eliminate racial, ethnic, and national origin discrimination and bias in adoption and foster care recruitment, selection, and placement procedures; and
- (5) active, creative, and diligent efforts are needed to recruit foster and adoptive parents of every race, ethnicity, and culture in order to facilitate the placement of children in foster and adoptive homes which will best meet each child's needs.

(b) PURPOSE.—It is the purpose of this subpart to promote the best interests of children by—

- (1) decreasing the length of time that children wait to be adopted;
- (2) preventing discrimination in the placement of children on the basis of race, color, or national origin; and
- (3) facilitating the identification and recruitment of foster and adoptive families that can meet children's needs.

SEC. 553. MULTIETHNIC PLACEMENTS.

(a) ACTIVITIES.—

(1) PROHIBITION.—An agency, or entity, that receives Federal assistance and is involved in adoption or foster care placements may not—

(A) categorically deny to any person the opportunity to become an adoptive or a foster parent, solely on the basis of race, color, or national origin of the adoptive or foster parent, or the child, involved; or

(B) delay or deny the placement of a child for adoption or into foster care, or otherwise discriminate in making a placement decision, solely on the basis of the race, color, or national origin of the adoptive or foster parent, or the child, involved.

(2) PERMISSIBLE CONSIDERATION.—An agency or entity to which paragraph (1) applies may consider the cultural, ethnic, or racial

1. PUB. L. NO. 103-382, §§ 551-554, 108 Stat. 3518, 4056-57 (1994) (to be codified at 42 U.S.C. § 5115a).

background of the child and the capacity of the prospective foster or adoptive parents to meet the needs of a child of this background as one of a number of factors used to determine the best interests of a child.

(3) DEFINITION.—As used in this subsection, the term “placement decision” means the decision to place, or to delay or deny the placement of, a child in a foster care or an adoptive home, and includes the decision of the agency or entity involved to seek the termination of birth parent rights or otherwise make a child legally available for adoptive placement.

(b) EQUITABLE RELIEF.—Any individual who is aggrieved by an action in violation of subsection (a), taken by an agency or entity described in subsection (a), shall have the right to bring an action seeking relief in a United States district court of appropriate jurisdiction.

(c) FEDERAL GUIDANCE.—Not later than 6 months after the date of the enactment of this Act, the Secretary of Health and Human Services shall publish guidance to concerned public and private agencies and entities with respect to compliance with this subpart.

(d) DEADLINE FOR COMPLIANCE.—

(1) IN GENERAL.—Except as provided in paragraph (2), an agency or entity that receives Federal assistance and is involved with adoption or foster care placements shall comply with this subpart not later than six months after publication of the guidance referred to in subsection (c), or one year after the date of the enactment of this Act, whichever occurs first.

(2) AUTHORITY TO EXTEND DEADLINE.—If a State demonstrates to the satisfaction of the Secretary that it is necessary to amend State statutory law in order to change a particular practice that is inconsistent with this subpart, the Secretary may extend the compliance date for the State a reasonable number of days after the close of the first State legislative session beginning after the date the guidance referred to in subsection (c) is published.

(e) NON-COMPLIANCE DEEMED A CIVIL RIGHTS VIOLATION.—Noncompliance with this subpart is deemed a violation of Title VI of the Civil Rights Act of 1964.

(f) NO EFFECT ON INDIAN CHILD WELFARE ACT OF 1978.—Nothing in this section shall be construed to affect the application of the Indian Child Welfare Act of 1978 (25 U.S.C. 1901 et seq.).

SEC. 554. REQUIRED RECRUITMENT EFFORTS FOR CHILD WELFARE SERVICES PROGRAMS.

Section 422(b) of the Social Security Act (42 U.S.C. 622(b)) is amended— . . .

(3) by adding at the end the following:

“(9) provide for the diligent recruitment of potential foster and adoptive families that reflect the ethnic and racial diversity of children in the State for whom foster and adoptive homes are needed.”