

Congress of the United States
Washington, DC 20515

November 20, 2009

Dear Adoption Community:

It has come to our attention that a certain organization within the adoption community recently issued an "Advocacy and Legislative Call to Action," asking its members to oppose H.R. 3110 and S. 1359, The Foreign Adopted Children Equality Act (FACE Act).

As sponsors of this legislation, we were disappointed that the Call to Action inaccurately portrayed this legislation, which we believe is an important step toward providing equality of treatment between biological and internationally adopted children of American citizens.

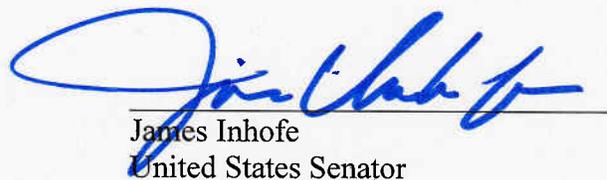
In order to refute this inaccurate portrayal, we have prepared the attached response. We believe that after further review you will agree that the Call to Action contains a number of significantly inaccurate misstatements.

We are committed to providing internationally adopted children with all the benefits of equal protection under federal law as well as lessening the burdens of families hoping to adopt. We believe that a simple reading of the bill will eliminate any questions or concerns regarding this legislation and we hope that you will join us in support of the FACE Act.

Sincerely,



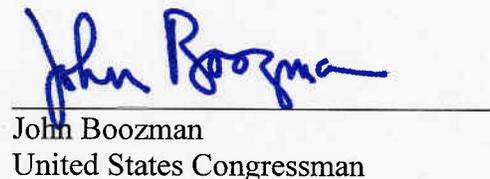
Mary Landrieu
United States Senator



James Inhofe
United States Senator



Diane Watson
United States Congresswoman



John Boozman
United States Congressman

RESPONSE TO HOLT INTERNATIONAL'S LEGISLATIVE CALL TO ACTION

November 20, 2009

(Holt's legislative alert in normal font. *Response is italicized.*)

FACE ACT SUMMARY & OVERVIEW:

Summary FACE legislation:

The Foreign Adopted Children Equality Act (FACE Act), introduced in the Senate as S. 1359 by Senators Mary Landrieu (D-LA) and James Inhofe (R-OK) and in the House as H.R. 3110 by Representatives Diane Watson (D-CA) and John Boozman (R-AR), is a bill to provide United States citizenship for children adopted from outside the United States, and for other purposes. FACE simplifies the acquisition of citizenship for internationally adopted children and removes these children of American citizens from the immigration process.

Citizenship is one of the most fundamental of individual rights. The Child Citizenship Act of 2000, to provide automatic citizenship for international adoptees greatly improved the process for children immigrating to the US to their adoptive families. Additional measures would improve the citizenship process: extending to older adoptees not covered under the Child Citizenship Act; including those adoptees who have been, or are at risk of being deported; providing automatic documentation of citizenship without additional expense to families. *(Both Hague and non-Hague countries) Currently if adoption is not finalized overseas (Korea) it is an uneven process.

- *The FACE Act accomplishes all of these suggested improvements to the Child Citizenship Act.*
- *Clarification: Under current law, there is no way around treating non-finalized adoptions differently. Until a child is fully and finally adopted, current citizenship provisions, and those contained in the FACE Act, are different for children brought to the United States to be adopted. However, once their adoption is final here in the United States, they need to be treated equally.*

FACE goes far beyond these measures. Considering the life-long impact of adoption, FACE has critical negative consequences for international adoptees.

Contact your Representative and urge them not to support FACE

Issues of Concern regarding FACE Act:

A fundamental principle of professional and ethical adoption practice is a commitment to preserving the full and true history and record of the adoption triad; including the birth family, the adoptee, and adoptive family.

In an effort to allow children adopted internationally to be eligible to become US

President, FACE diminishes the accurate and critical history of a child's beginning and connection to birth country. Instead, FACE establishes an artificial history and nationality that severs the valuable and profoundly treasured reality of children adopted from one country and culture to another.

- *These statements are serious misrepresentations and unsubstantiated. The FACE Act is an effort to treat adopted children and children born overseas equally. It places internationally adopted children in the same class of citizenship as children born abroad, but it does not establish an artificial history, nor sever the adopted child's reality. In fact, the FACE Act supports maintaining accurate documentation of an adopted child's birth history and states so explicitly in Sections 5 and 6.*
 - *Section 5 reads: "Nothing in this act or in any amendment made by this act may be construed to abrogate any citizenship rights provided to an adoptee by the adoptee's country of origin or nullify the facts of the adoptee's birth history."*
 - *Section 6 reads: "It is the sense of Congress that the government of each foreign country from which children are adopted by citizens of the United States should provide documentation of the adopted children's original birth history to the adoptive family in accordance with the laws of such country."*

In the evolution of intercountry adoption practice over three generations, it has been firmly established that it must be a priority to preserve the culture and heritage of adoptees to their birth country and culture.

Adoptive families are embracing this philosophy, understanding that they are adopting not only a child, but the child's culture and history—many times, a history the child does not know or remember because they are infants or toddlers at the time of their adoption.

Countries of Origin are reassured by the current practice that increasingly adoptive families are educated and prepared to ensure their adopted sons and daughters grow up staying connected to their birth country.

- *All three of the above statements represent trends in best practice and nothing in the FACE Act would impact this.*
- *Rather, the FACE Act strengthens these assertions through inclusion of Sections 5 and 6.*
- *Whether a child adopted internationally as an infant or toddler remains connected by culture and history to their country of origin is totally dependent on how the child is raised by their adoptive parents and/or how the child chooses to stay connected. No law can change that.*

Other Concerns of FACE ACT:

- By conferring citizenship retroactive to birth, FACE creates a legal fiction and diminishes adoptees' birth history
 - *The FACE Act does not diminish an adoptees' birth history. Under U.S. adoption law, as enunciated in numerous court decisions, a child who is adopted is entitled to "the same rights, duties and responsibilities as a natural born child."*
 - *The FACE Act achieves this legal principal by statutorily conferring U.S. citizenship on internationally adopted children in the same way and under the same statute that confers U.S. citizenship on biological children of American citizens born abroad.*
 - *Conferring U.S. citizenship at birth on internationally adopted children of American citizens no more diminishes an adoptee's birth history as conferring U.S. citizenship at birth on biological children born abroad to American citizens diminishes a biological child's birth history. Conferring U.S. citizenship at birth on either biological or adopted children of American citizens born in a foreign country neither changes the facts of where the child was born nor changes any citizenship rights bestowed on the child by the country of birth.*
 - *Legal fictions are used by courts to promote fairness and equity in cases that come before them. The act of adoption is a prime example of a legal fiction. The definition of a legal fiction is: "an assumption that something occurred or someone or something exists which, in fact, is not the case, but that is made in the law to enable a court to equitably resolve a matter before it." The FACE Act provisions are intended to promote fairness and equity between internationally adopted children and biological children born abroad to American citizens.*
- Current immigration procedures requires the preservation of child history and records by the Central Authority. Adoption information and records are regularly lost or misplaced by families requiring adoptees to seek their birth and adoption history. That information is preserved for them, but FACE would eliminate the preservation of this critical information.
 - *This statement is false. Nothing in the FACE Act would eliminate the preservation of original birth and adoption history. In fact, Section 6 specifically addresses the maintenance of birth records and makes clear that original birth documents should be provided to the adoptive family where permitted under the laws of the country of birth.*
 - *The FACE Act provides this directive to countries that have not acceded to the Hague treaty on international adoption. Countries who have signed the treaty commit to maintaining original birth records and making them available to the adoptee "in so far as is permitted by the law of that state [country]." The Hague*

provisions do not apply to countries who have not signed the treaty. Therefore the FACE Act extends this provision to non-Hague countries in Section 6.

- Eliminates the US immigrant visa process, and the essential safeguards to ensure that children placed for adoption are legally and ethically appropriate for intercountry adoption.
 - *This statement is inaccurate. The FACE Act does eliminate the requirement of an immigration visa, however, the FACE Act upholds all current requirements in regard to approval of parents to adopt a foreign born child and preserves all current safeguards that validate a child is legally-free for adoption. It simply eliminates the visa process for a child who has been adopted by an American citizen, putting that child in the same legal status as a child born to an American abroad.*
 - *The FACE Act continues to require that before citizenship attaches to an internationally adopted child, adoptive parents must be approved by the U.S. government as fit to adopt, just as under current law. See Section 2(b)(1)(C).*
 - *Adoptive parents will still need to meet the same document requirements currently submitted for approval of an I-600a or an I-800a including an approved home study, criminal clearances and all other documents that are now part of the approval process. The FACE Act does not change any of this. See Section 2(b)(1)(C) discussed in more detail below.*
 - *The FACE Act continues to uphold and require all immigration safeguards currently in place to ensure that a child has been adopted legally without fraud or trafficking. See Section 2(b)(1)(D) that sets forth the conditions which must be met before a child can be determined as eligible to be adopted by an American citizen.*
 - *Conditions required to approve an I-600 or an I-800 form will continue unchanged including an orphan investigation as mandated under current law. See Section 2(b)(1)(D).*
 - *The U.S. government will continue to have to affirmatively determine that a child has been adopted appropriately and that the child meets the adoption requirements of U.S. adoption law for international adoptions. See Section 2(b)(1)(D).*
- Eligibility for adoption of a particular child is generally determined by the competent authority of the child's country of origin. The bill does not address eligibility for adoption in countries without a designated competent authority.

- *The lack of a Hague designated “competent authority” is not germane to the FACE Act. Under the FACE Act, adoptions in non-Hague countries without Hague designated “competent authorities” would continue to be handled by the designated government authority in that country. The designation of “competent authority” under the Hague and the Intercountry Adoption Act is a legal term with a specific meaning under that specific legislation. The use of the term “competent authority” in the FACE Act, means the relevant government authority in charge of international adoptions.*
- Eliminates appropriate criminal background checks that ensure children will be adopted into a safe and loving family.
 - *This is false. Section 2(b)(1)(C) reads: “It is determined that each adopting parent is eligible and suitable to adopt the child, including that the parent is able to support the child and has undergone an appropriate criminal background check.”*
- Does not address existing federal requirements for home studies of prospective adopting parents.
 - *This statement is inaccurate. Nothing in the FACE Act requires changes to the current requirements for approval of prospective adoptive parents. Section 2(b)(1)(C) specifically clarifies that each adopting parent has to be determined to be eligible and suitable to adopt a child. Current statutory law does not detail what must be done to approve a family to adopt, nor does it specify the need for a home study. Such details are found in implementing regulation. Nothing in the FACE Act requires changes to the current requirements for approving prospective adoptive parents as fit to adopt. It is the intent and expectation that all current requirements regarding approval of American families to adopt internationally will continue as is.*
- FACE bypasses the existing visa system hoping to accelerate the adoption process. Confusion in interpretation and the development of new processing procedures, particularly for Hague countries, will likely create delays.
 - *The FACE Act does not eliminate the current immigration visa system in order to “accelerate the adoption process.” Rather the FACE Act eliminates the immigration process for equity reasons; placing an internationally adopted child in the same legal standing as a biological child born abroad to an American citizen.*
 - *When a biological child is born abroad to an American citizen, that child receives citizenship, an American passport and a Consular Report of Birth prior to returning to the United States. These children’s parents are not required to go*

through an immigration process in order to bring their child home. They do not have to prove their fitness to parent, their ability to financially support their child, or prove the child is medically fit to enter the United States. They are given U.S. passports, Consular Reports of Birth and allowed to return to the U.S. at will.

- *The same should apply to internationally adopted children of American citizens. As a condition to adopt, adoptive parents have already been approved as suitable to adopt by the U.S., they have already proven that they are capable of financially caring for their adopted child (all covered when the adoptive parent's I-600a or I-800a is approved). Children who are adopted should not be required to meet different medical requirements than a biological child to enter the U.S. because they are both children of American citizens and should be treated equally under federal law.*

Holt International appreciates efforts to improve and streamline the adoption process for families and believe the intent of this legislation is intended to do that. However, Holt feels it goes beyond what is best practice and certainly violates the rights of adoptees to their own history and information and opposes the FACE legislation.

- *The FACE Act provides major benefits to adopted children and their families such as immediate documentation of citizenship, elimination of the immigration process while maintaining all the existing safeguards for the child, birth family and adoptive family, eligibility for citizenship for children not covered by the Child Citizenship Act of 2000, the ability to adopt a 16 or 17 year old sibling of a younger adoptee as well as many other valuable benefits.*
- *The FACE Act does not eliminate best practices and does not violate "the rights of adoptees to their own history." In fact, it encourages countries of birth to provide original birth documents to adoptive families and adoptees. A reading of the proposed bill language makes this clear: <http://thomas.loc.gov/cgi-bin/query/z?c111:S.1359/>*

Please join Holt and others to protect the rights of adoptees and ensure safe practices that ensure the life long history of individual adoptions.