
TRANSRACIAL ADOPTION: ARGUMENTS AND ANSWERS

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I. INTRODUCTION

In its 1972 *Position Statement on Trans-Racial Adoption*, the National Association of Black Social Workers stated, “We affirm the inviolable position of Black children in Black families where they belong physically, psychologically and culturally in order that they receive the total sense of themselves and develop a sound projection of their future.”¹ The organization continued on to say, “We

1. NAT’L ASS’N OF BLACK SOC. WORKERS, *Position Statement on Trans-Racial*

stand firmly . . . on conviction that a white home is not a suitable placement for Black children and contend it is totally unnecessary.”² Despite these statements being over 40 years old, the content of the arguments has remained. Decades later, the organization has not wavered from this emphasis, and their statements represent a sentiment shared by many people throughout the country.³ Are they right? This Paper explores the issue of transracial adoption in America to show why the answer, ultimately, is no.

After considering the historical development of race understanding in America and analyzing it with respect to fundamental legal and sociological principles, this Paper concludes that race should not be an impediment to adoption proceedings and transracial adoption should instead be encouraged. This Paper explores competing arguments surrounding transracial adoption, weighs the legal and sociological merits of each, and ultimately concludes that despite potential issues concerning adolescent adjustment, appearance discomfort, cultural identity, discrimination, and familial assimilation, transracial adoption should be embraced rather than prevented.

II. BACKGROUND

A. Defining Transracial Adoption

While defining transracial adoption may seem simple, much of the discourse surrounding the topic misses the mark. Some define transracial adoption as “the adoption of a child that is of a different race than that of the adoptive parents,”⁴ while others define it as “the joining of racially different parents and children together in adoptive families.”⁵ Both of these basic definitions, while correct, do not sufficiently address a common misconception regarding the term.

Looking at scholarship and general public perception, the term transracial

Adoption, September 1972, at 1 [hereinafter NABSW, POSITION STATEMENT].

2. *Id.* at 4.

3. See NAT’L ASS’N OF BLACK SOC. WORKERS, PRESERVING FAMILIES OF AFRICAN ANCESTRY: BACKGROUND AND SIGNIFICANCE 1, 6 (2003) available at https://c.ymcdn.com/sites/nabsw.org/resource/collection/0D2D2404-77EB-49B5-962E-7E6FADBF3D0D/Preserving_Families_of_African_Ancestry.pdf [hereinafter NABSW, PRESERVING FAMILIES]; Twila L. Perry, *The Transracial Adoption Controversy: An Analysis of Discourse and Subordination*, 21 N.Y.U. Rev. L. & Soc. Change 33, 42 (1994) (stating that after the NABSW adopted its official position, the percentage of transracial adoptions dropped precipitously).

4. See *Transracial Adoption in America*, AM. ADOPTIONS, http://www.americanadoptions.com/adopt/transracial_adoption (last visited May 14, 2015).

5. See Arnold R. Silverman, *Outcomes of Transracial Adoption*, 3 FUTURE OF CHILD. 104, 104 (1993).

adoption is normally associated with white parents adopting black children.⁶ The U.S. Department of Health and Human Services (DHHS) stated, “In the United States [transracial or transcultural adoption] usually refer[s] to the placement of children of color or children from another country with Caucasian adoptive parents.”⁷ It is important to realize, however, that transracial adoption occurs when parents of any race adopt a child of any different race.⁸ A 1987 survey found that “[m]others of other races adopting white children accounted for only 2 [percent] of all adoptions.”⁹ In addition to this study, there are numerous personal accounts of black parents adopting white children.¹⁰ It is unclear what causes individuals to ignore this,¹¹ but it is fundamental in any discussion of transracial adoption to realize that it is not a one-way street.¹² Realizing and appreciating that transracial adoption refers to the adoption of a child of any race by parents of any different race is important in making informed decisions on realistic policy.

B. History

The earliest reports of transracial adoption in America are from the early 1900s, when various anecdotes “circulated in journalism, fiction, and professional literature” about black children who were accidentally placed into the homes of

6. See, e.g., *id.* (“[T]his term is sometimes reserved for the adoption of black children by white families . . .”).

7. *Transracial and Transcultural Adoption*, U.S. DEP’T OF HEALTH AND HUMAN SERVS., http://web.archive.org/web/20140327143807/https://www.childwelfare.gov/pubs/f_trans.cfm (last visited May 15, 2015); see also Silverman, *supra* note 5 (using the term as “understood to include also the adoption of Native American, Asian, and Hispanic children by white families”) (last visited May 15, 2015).

8. See AM. ADOPTIONS, *supra* note 4.

9. Kathy S. Stolley, *Statistics on Adoption in the United States*, 3 *FUTURE OF CHILD* 26, 34 (1993). The study also found that white mothers adopting non-white children accounted for six percent of all adoptions. See *id.*

10. See, e.g., Dawn Davenport, *Transracial Adoption Twist—Black Parents Adopting White Children*, *CREATING A FAMILY* (June 18, 2013), <http://www.creatingafamily.org/blog/transracial-adoption-twist-black-parents-adopting-white-kids/>; Tony Dokoupil, *What Adopting a White Girl Taught One Black Family*, *NEWSWEEK* (Apr. 22, 2009), <http://www.newsweek.com/what-adopting-white-girl-taught-one-black-family-77335>.

11. “Black children and white parents have always defined the debate about transracial adoption, achieving a symbolic importance that overshadowed their tiny numbers.” *Transracial Adoptions, THE ADOPTION HISTORY PROJECT*, <http://pages.uoregon.edu/adoption/topics/transracialadoption.htm> (last visited May 20, 2014) [hereinafter *THE ADOPTION HISTORY PROJECT, Transracial Adoptions*].

12. White families adopting black children may be more common, but the disparity is not so pronounced that it would justify treating transracial adoption as a unidirectional phenomenon. See Stolley, *supra* note 9.

white parents.¹³ Because race-matching in adoptions was the prevailing practice at the time, “these stories were considered tragic and shocking.”¹⁴ While black children “were inadvertently placed with white parents” on occasion, the reverse—white children placed with black parents—was said to be “unthinkable and intolerable.”¹⁵ These attitudes began to shift as early as the years following WWII, partially due to demographic pressures.¹⁶ A confluence of shifting social norms and technological advancements decreased the number of white children available for adoption and led an increasing amount of prospective adoptive parents to consider transracial adoption.¹⁷

Approval of transracial adoption grew at a rapid pace. The first recorded adoption of a black child by white parents in America occurred in 1948.¹⁸ Many campaigns in the 1950s promoted the adoption of black children and gained the interest of white parents.¹⁹ Due to this increased interest and the inability to find racially matched homes for black children, various adoption agencies started to place mixed-race and black children into the homes of white parents.²⁰ Programs such as the Indian Adoption Project, which ran from 1958 to 1967, furthered the development of transracial adoption by placing 395 Native American children with white families through the cooperation of “[a]pproximately fifty public and private

13. See THE ADOPTION HISTORY PROJECT, *Transracial Adoptions*, supra note 12.

14. *Id.* (“Most Americans believed in the naturalness of race-matching, but race-matching could be very difficult to achieve, so it was not at all natural in the sense of being automatic.”).

15. *Id.* In one instance while children were adopted by a Mexican-American family, “[a]rmed white vigilantes removed the children and placed them in white Protestant families instead.” *Id.*

16. *See id.*

17. *See id.* (“New contraceptive technology like the pill, legalized abortion after *Roe v. Wade*, and the sexual revolution all decreased the supply of healthy white infants, along with the stigma surrounding illegitimacy.”).

18. *Id.* Prior to the first recorded transracial adoption in 1948, in 1944 “a white couple . . . took an African-American child into foster care . . . when she was only six weeks old, and adopted her—against the advice of their social worker—when she was nine.” *Id.*

19. *Id.*

20. *Id.* “Some, but not all, of these families became targets of violence and harassment.” *Id.* Luckily, the majority of these placements were not affected by the rancorous and often violent opposition to the civil rights movement.

A program of the Children’s Home Society of Minnesota called PAMY (Parents to Adopt Minority Youngsters) found that its first such placements in the early 1960s were blessedly uneventful. Transracial adoptions were only a “little revolution,” concluded project director Harriet Fricke, in relief. Black children were kin, not projects in racial reconciliation or pawns in racial conflict.

Id.

adoption agencies.”²¹ White parents adopted “approximately 50,000 black and biracial children [between 1968 and 1972.]”²²

In 1972, however, the debate changed when the National Association of Black Social Workers (NABSW) issued its position statement condemning transracial adoption and labeling it “unnatural,” “artificial,” and “unnecessary.”²³ Cenie J. Williams, president of the organization, went so far as to say that, for black children, “temporary foster and even institutional placements were preferable to adoption by white families.”²⁴ Additionally, the Child Welfare League of America rewrote their adoption standards in 1973 to clarify that “same-race placements were always better” despite having revised their standards in 1968 to be more accepting of transracial adoption.²⁵ The number of transracial adoption placements dropped immediately.²⁶ Transracial adoption in America “slowed . . . to a trickle” and various agencies renewed their efforts to “find black homes for black children.”²⁷

In 1994, the first federal law regarding race in adoptions—the Multiethnic

21. *Indian Adoption Project*, THE ADOPTION HISTORY PROJECT, <http://pages.uoregon.edu/adoption/topics/IAP.html> (last visited May 15, 2015). The agencies which placed the greatest number of Native American children were also “leaders in African-American adoptions and services to children of color.” *Id.*

22. *Adoption History*, PBS (Dec. 18, 2000), <http://web.archive.org/web/20140104082446/http://www.pbs.org/pov/firstpersonplural/history.php>.

23. NABSW, POSITION STATEMENT, *supra* note 1, at 3–4; *see also* THE ADOPTION HISTORY PROJECT, *Transracial Adoptions*, *supra* note 11.

24. THE ADOPTION HISTORY PROJECT, *Transracial Adoptions*, *supra* note 11.

25. *Id.*

26. *See* PBS, *supra* note 11 (“The response [to the NABSW’s position statement] from the adoption field was swift. There was an immediate drop in the number of transracial placements. Policy makers established laws and practice guidelines requiring adoptive parents to be of the same race as the child. Although white parents continued to care for black and biracial children through foster care, many states legally barred them from formally adopting these children.”); *See also* Perry, *supra* note 3, at 42.

27. THE ADOPTION HISTORY PROJECT, *Transracial Adoptions*, *supra* note 11. Suddenly confronted by the need to find racially matched families to adopt black children, new organizations took form and took up the cause. “A number of new agencies, staffed almost entirely by African Americans, such as Homes for Black Children in Detroit and Harlem-Dowling Children’s Service in New York, renewed the effort that had started in the late 1940s and 1950s to find black homes for black children.” *Id.* The formation of new organizations to find black families to adopt black children reflected societal acknowledgment of the NABSW’s critique that there was “institutionalized racism within the adoption profession” that systemically excluded black prospective adoptive parents through the use of “evaluation criteria for prospective adoptive couples that routinely prevented black families from qualifying.” *See* PBS, *supra* note 11.

Placement Act—was passed.²⁸ This Act prohibited adoption agencies receiving federal funding from delaying or denying adoptions solely because of racial difference.²⁹ However, race could still be a factor so long as other factors were considered.³⁰ This law was revised in 1996 by the Inter-Ethnic Adoption Amendment, which made it illegal for a federally funded adoption agency to consider race *at all* in denying or delaying an adoption.³¹ These laws were “designed to decrease the length of time a child ha[d] to wait before being adopted and eliminate racial discrimination.”³² Finally, the Adoption and Safe Families Act of 1997³³ accelerated the permanent placement of children “and represented a policy shift away from family reunification and toward adoption” by stressing permanency planning for children.³⁴

C. Current Public Opinion and Prevalence

According to national surveys, public opinions regarding transracial adoption are far from cohesive.³⁵ For example, one study found that 51 percent of white women planning to adopt as of 1995 preferred to adopt a white child, but—preferences aside—73 percent were willing to adopt a black child and 89 percent were willing to adopt a child of another race.³⁶ The study found a similar attitude in black women, with 52 percent preferring a black child, but 86–89 percent willing

28. Multiethnic Placement Act of 1994, Pub. L. No. 103-382, §§ 551–555, 108 Stat. 3518, 4056–58; *Timeline of Adoption History*, THE ADOPTION HISTORY PROJECT, <http://pages.uoregon.edu/adoption/timeline.html> (last updated Feb. 24, 2014) [hereinafter THE ADOPTION HISTORY PROJECT, *Timeline*].

29. § 553(a)(1), 108 Stat. at 4056; PBS, *supra* note 22.

30. § 553(a)(2), 108 Stat. at 4056; THE ADOPTION HISTORY PROJECT, *Timeline*, *supra* note 28.

31. Inter-Ethnic Adoption Amendment, Pub. L. No. 104-188, § 1808, 110 Stat. 1755, 1903–04 (1996); THE ADOPTION HISTORY PROJECT, *Timeline*, *supra* note 28.

32. PBS, *supra* note 22.

33. Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, § 101, 111 Stat. 2116, 2116–17 (1997).

34. THE ADOPTION HISTORY Project, *Timeline*, *supra* note 28.

35. See, e.g., Richard M. Lee, *The Transracial Adoption Paradox: History, Research, and Counseling Implications of Cultural Socialization*, 31 COUNS. PSYCHOL. 711, 713 (2003), available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2366972/> (noting “national surveys suggest that Whites and African Americans have mixed feelings regarding domestic transracial adoption”); see also Jeninne Lee-St. John, *Should Race Be a Factor in Adoptions?*, TIME (May 27, 2008), <http://content.time.com/time/health/article/0,8599,1809722,00.html> (stating even after the passage of Acts encouraging transracial adoption, “the proportion of transracial adoptions has risen only modestly”).

36. Anjani Chandra, et al., *Adoption, Adoption Seeking, and Relinquishment for Adoption in the United States*, 306 ADVANCE DATA 1, 8–9 (1999), available at <http://www.cdc.gov/nchs/data/ad/ad306.pdf>.

to accept a non-black child.³⁷ However, another study estimated that only 15 percent of all foster care adoptions in 1998 were transracial.³⁸ Others have noted that rates have only increased modestly since the enactment of the aforementioned legislation—from 11.6 percent in 1996 to 16.9 percent in 2003.³⁹

A 2008 study by the Evan B. Donaldson Adoption Institute found that black children “who come into contact with the child welfare system are disproportionately represented in foster care, and are less likely than children of other racial and ethnic groups to move to permanency in a timely way.”⁴⁰ While black children account for only 15 percent of the American child population, they represent 32 percent of the 510,000 children in foster care⁴¹ and 40 percent of all American foster children available for adoption.⁴² Additionally, black children are adopted at slower rates than children of other races.⁴³ The National Adoption Center has reported that 67 percent of “hard-to-place” children available for adoption are black and 26 percent are white.⁴⁴ This over-representation and under-adoption of black children has ensured the practice of transracial adoption has remained a relevant and divisive issue.

37. *Id.* More specifically, 86 percent of black women surveyed would have accepted a white child. *Id.* at Table 4.

38. Lee, *supra* note 35, at 714.

39. Mary Eschelbach Hansen & Daniel Pollack, *Transracial Adoption of Black Children: An Economic Analysis* 15, 26 (Am. Univ. Dep’t of Econ., Working Paper No. 2007-1, 2007), available at <http://w.american.edu/cas/economics/repec/amu/workingpapers/2007-01.pdf>; see also Lee-St. John, *supra* note 35. 17.2 percent of black children and 3.5 percent of white children who were adopted in 1996 were adopted by families of a different race—compared to 20.1 percent of black children and 8.2 percent of white children adopted in 2003. Hansen & Pollack, *supra*.

40. EVAN B. DONALDSON ADOPTION INSTITUTE, FINDING FAMILIES FOR AFRICAN AMERICAN CHILDREN: THE ROLE OF RACE & LAW IN ADOPTION FROM FOSTER CARE 5 (2008), available at <http://adoptioninstitute.org/old/publications/MEPApaper20080527.pdf> [hereinafter DONALDSON INSTITUTE].

41. *Id.*

42. Sue Anne Pressley, *Texas Case Interracial Adoption Reflects National Debate: Family Waged a Legal Fight for 2 Black Youngsters*, WASH. POST, A01 Jan. 2, 1997; NABSW PRESERVING FAMILIES, *supra* note 3, at 1. The proportionality problem may not be as stark as it appears because black families may be disproportionately willing to adopt. Although black people account for 13 percent of the American population, 31 percent of families waiting to adopt a child are black. Pressley, *supra*.

43. See DONALDSON INSTITUTE, *supra* note 40.

44. Pressley, *supra* note 42.

III. COMPETING STANCES

A. Sociological Considerations

1. In Favor of Race Considerations in Adoption

While hedging to indicate that they “do not condone delaying placement and preventing children from finding homes,” the North American Council on Adoptable Children (NACAC) has taken a similar stance as the NABSW by stating that it is “probably optimal” for children to be placed into same-race and same-culture homes.⁴⁵ They are not alone in this belief.

As mentioned above, one of the strongest advocates for allowing race-based decisions to occur in an adoption context is the NABSW.⁴⁶ Surprisingly, this organization has taken the stance that the adoption of black children by white parents is a form of genocide that cuts adopted children off from healthy social development.⁴⁷ The crux of the organization’s argument—originating in the early 1970s and reiterated and developed into the new millennium—is that “the developmental needs of Black children are significantly different from those of white children” and that denying black children the proper socialization processes is unacceptable.⁴⁸ The organization rejects the altruistic arguments in support of transracial adoption and instead sees the act as “further assignment of chattel status to black people.”⁴⁹ Racism, the organization argues, underscores the white and black dichotomy at every level and transracial adoption does nothing to change

45. *Id.* That view notwithstanding, the NACAC “offers training and publications for people who are currently, or who are considering, parenting transracially.” *Transracial/Transcultural Parenting*, NACAC, <http://www.nacac.org/postadopt/transracial.html> (last visited May 15, 2015).

46. See THE ADOPTION HISTORY PROJECT TRANSRACIAL ADOPTIONS, *supra* note 12.

47. Pressley, *supra* note 42.

48. NABSW POSITION STATEMENT, *supra* note 1, at 2.

49. *Id.* The NABSW acknowledged that the increase in transracial adoptions was a supply-and-demand response to the shortage of adoptable white children, but stated that the *availability rationale* was itself pernicious:

We fully recognize the phenomenon of trans-racial adoption as an expedient for white folk, not as an altruistic humane concern for Black children. The supply of white children for adoption has all but vanished and adoption agencies, having always catered to middle class whites developed an answer to their desire for parenthood by motivating them to consider Black children. . . . We resent this highhanded arrogance and are insulted by this further assignment of chattel status to Black people.

Id.

it.⁵⁰ Transracial adoption is unnatural, in the NABSW's view, because it disrupts the child's social development by removing him from a culture he is accustomed to, and it leads to artificial conditions and adaptations stemming from white families "trying to become black"—and these "[s]uperficialities convey nothing of worth and are more damaging than helpful."⁵¹ NABSW National Vice President J. Toni Oliver argues the notion that "love is all it takes" overlooks the true impact of race on society.⁵²

The arguments put forth by the NABSW are united by their focus on the experiences and development of the children themselves.⁵³ The organization, like many others, primarily supports its views on transracial adoption by arguing that due to a number of sociological and psychological factors, transracial adoption has a negative effect on black children.⁵⁴ Various scholars have explored this idea and discussed the dangers and benefits of transracial adoption, paying close attention to five considerations: adolescent adjustment, appearance discomfort, cultural identity, familial association, and responses to discrimination.⁵⁵ Many, though not all, of the considerations appear to favor the consideration of race in the adoption context.

a. *Appearance discomfort.* The Evan B. Donaldson Adoption Institute concluded that transracially adopted children were presented with difficulties because of their physical differences.⁵⁶ Difficulty coping with physical differences is referred to as appearance discomfort.⁵⁷ Studies suggest that unique challenges face transracially-adopted children who are aware they do not look the same as their parents.⁵⁸ Femmie Juffer, for instance, found that many dark-skinned transracially adopted children expressed a desire to be white.⁵⁹ Another study

50. *Id.*

51. *Id.* at 3 (internal quotation marks omitted).

52. Pressley, *supra* note 42 (internal quotation marks omitted). "Only a Black family can transmit the emotional and sensitive subtleties of perception and reaction essential for a Black child's survival in a racist society. Our society is distinctly black or white and characterized by white racism at every level." NABSW POSITION STATEMENT, *supra* note 1 at 2.

53. See NABSW, POSITION STATEMENT, *supra* note 1, at 1–2.

54. See *id.*; NABSW PRESERVING FAMILIES, *supra* note 3, at 2–4.

55. See, e.g., DONALDSON INSTITUTE, *supra* note 39, at 6–7, 20–28.

56. *Id.* at 22.

57. See *id.* at 6.

58. *Id.* at 6, 22.

59. Femmie Juffer, *Children's Awareness of Adoption and Their Problem Behavior in Families with 7-Year-Old Internationally Adopted Children*, 9 ADOPTION Q., Mar. 2006, at 10 ("[A]lmost half of the children . . . had expressed the wish of being white like their parents and peers. Some of these children expressed this wish every now and then, but other children talked

found that “about half of all transracial adoptees’ parents felt their child had experienced discomfort about their appearance.”⁶⁰ Other studies looking at various ethnicities also found that children adopted by racially matched parents are more comfortable with and accepting of their appearance than those adopted by parents of a differing race.⁶¹ Outside of the family, the settings that children are raised in also have an impact on their level of comfort with their appearance.⁶² Transracial adoptees living in communities largely composed of whites were twice more likely to feel uncomfortable with their racial appearance than those living in racially heterogeneous communities.⁶³ Advocates of considering race in adoption argue this appearance discomfort is unnecessary and leads to higher levels of adjustment difficulties through childhood and into adulthood.⁶⁴

b. *Cultural identity.* The next argument advanced in support of considering race in adoptions is that transracially adopted children struggle to develop a positive racial or ethnic identity.⁶⁵ As the NABSW asserts, racial culture is a

about this wish quite persistently, sometimes week after week.”).

60. William Feigelman, *Adjustments of Transracially and Inracially Adopted Young Adults*, 17 CHILD & ADOLESCENT SOC. WORK J. 165, 176 (2000).

61. See, e.g., Estela Andujo, *Ethnic Identity of Transethnically Adopted Hispanic Adolescents*, 33 SOC. WORK 531, 534 (1988) (finding that “a majority of the transethnic adoptees studied had not developed a positive sense of ethnicity” in terms of “pride in their ethnic roots and appearance” and noting “[e]thnic identity appear[ed] to have more of a problem for transethnic adoptees than for the same-ethnic adoptees”); William Feigelman & Arnold R. Silverman, *The Long-Term Effects of Transracial Adoption*, 58 SOC. SERV. REV. 588, 594 (1984) (finding that black transracial adoptees and Korean transracial adoptees showed more discomfort about their appearance than white same-race adoptees).

62. See DONALDSON INSTITUTE, *supra* note 40, at 23 (“Studies that include qualitative methods find that many transracial adoptees report a struggle to fit in with peers, the community in general and, sometimes, their own families.” (citing J. JOHN., *BLACK BABY WHITE HANDS: A VIEW FROM THE CRIB* (2002); J. J. TRENKA, J. C. OPARAH, S. Y. SHIN, *OUTSIDERS WITHIN: WRITING ON TRANSRACIAL ADOPTION* (2006); R. SIMON, H. ALSTEIN, *ADOPTION, RACE & IDENTITY: FROM INFANCY TO YOUNG ADULTHOOD* (2002); M. D. Brooks, *A Study of the Experiences and Psychosocial Developmental Outcomes of African American Adult Transracial Adoptees*, 62 DISSERTATION ABSTRACTS INTERNATIONAL 327 (2001))).

63. Feigelman, *supra* note 40, at 180 (“Transracial adoptive parents residing in predominately White communities tended to have adoptees who experienced more discomfort about their appearance than those who lived in integrated settings.”); see also DONALDSON INSTITUTE, *supra* note 40, at 22 (“Research and reports from transracially adopted adults indicate that the sense of physical difference is more intense for children of color growing up in homogeneous White communities.”).

64. See NABSW POSITION STATEMENT, *supra* note 1, at 1–2, 4; see also DONALDSON INSTITUTE, *supra* note 40, at 22–24.

65. See DONALDSON INSTITUTE, *supra* note 40, at 24–25.

unique aspect of every child's development, and denying them an environment where that culture can be naturally experienced is damaging to them.⁶⁶ Many scholars argue that placing black children in homes where the prospective adoptive parents are of a different race prevents the child from fully identifying with, embracing, and understanding their cultural identity.⁶⁷ One study found that black children growing up in primarily white environments "seemed to devalue or not to acknowledge a black identity."⁶⁸ This indicates that transracial adoption leaves children less capable of identifying with their cultural identity than children raised in a racially homogenous home.⁶⁹ The Evan B. Donaldson Adoption Institute's 2008 report points out that this confusion contributes to behavioral problems and psychological distress.⁷⁰ A child who can understand his or her own cultural identity is likely to be better off in terms of behavioral and psychological adjustment than a child who cannot, because "ethnic pride is related to higher well-being and less distress."⁷¹ Whether transracial adoption always prevents this understanding, however, is not clear.⁷²

c. *Coping with discrimination.* It is impossible to ignore the issues presented by racism. Despite improvements in race relations since the various civil rights movements, racism still thrives in this country and is something that black individuals constantly face.⁷³ The Evan B. Donaldson Adoption Institute

66. See NABSW, POSITION STATEMENT, *supra* note 1, at 1–2; DONALDSON INSTITUTE, *supra* note 40, at 24–25 ("Racial/ethnic identity, a component of personal identity, develops over the course of childhood, adolescence, and early adulthood. . . . [T]ransracial adoptees' confusion over ethnic identity is associated with behavior problems and psychological distress [while] ethnic pride is related to higher well-being and less distress." (citation omitted) (citing D. P. Yoon, *Causal Modeling Predicting Psychological Adjustment of Korean-born Adolescent Adoptees*, 3 JOURNAL OF HUMAN BEHAVIOR IN THE SOCIAL ENVIRONMENT 65–82 (2001)).

67. See, e.g., Ruth G. McRoy et al., *Self-Esteem and Racial Identity in Transracial and Inracial Adoptees*, 27 SOC. WORK 522, 526 (1982).

68. *Id.* at 525.

69. See *id.* at 526 ("Racial identity seemed to be more of a problem for the black children who were being reared by white families.").

70. DONALDSON INSTITUTE, *supra* note 40, at 24–25.

71. *Id.* at 25 (citing Dong Pil Yoon, *Causal Modeling Predicting Psychological Adjustment of Korean-Born Adolescent Adoptees*, 3 J. HUM. BEHAV. SOC. ENV'T 65, 82 (2001)).

72. Some research has suggested that adoptive parents can neutralize cultural identity confusion from transracial adoptions by taking steps to provide identity-enriching experiences. See, e.g., McRoy et al., *supra* note 67 ("Such factors as the [white adoptive] family's nurturance of the child's black identity, the child's access to black role models and peers in the community and in school, and the parents attention to the child's black heritage seemed to be influential in the shaping of a positive racial identity.").

73. See, e.g., MICHELLE ALEXANDER, THE NEW JIM CROW: MASS INCARCERATION IN THE

summarized research on the issue, stating, “A key life skill for transracially adopted children is the ability to cope with discrimination.”⁷⁴ When discussing the legitimacy and practicality of transracial adoption, research asks the following: Are white parents able to help black children learn to cope with racism?⁷⁵ In a study of transracially adopted children of various races and ethnicities, Devon Brooks and Richard Barth found that black children—especially males—experienced the highest levels of discrimination.⁷⁶ As such, white parents adopting black children face the biggest challenge in attempting to teach the child to handle such adversity. Whether it is something white parents can adequately do is not certain.⁷⁷ Advocates for race consideration in adoption argue that, having not experienced such discrimination themselves, white parents often cannot.⁷⁸ Like the problems presented by issues of cultural identity, unaddressed racial antagonism is very much associated with “[h]igher levels of adjustment difficulties” such as psychological and behavioral problems.⁷⁹

2. Against Race Considerations in Adoption

In response to arguments asserting the benefits of considering race in

AGE OF COLORBLINDNESS 240–41 (2012) (rejecting “colorblindness” because it ignores “the systematic mass incarceration of people of color” as well as other “racial and structural divisions that persist in society: the segregated, unequal schools, the segregated, jobless ghettos, and the segregated public discourse”).

74. DONALDSON INSTITUTE, *supra* note 40, at 26.

75. *See id.* at 26.

76. DONALDSON INSTITUTE, *supra* note 40, at 7, 26 (citing Devon Brooks & Richard Barth, *Adult Transracial and Inracial Adoptees: Effects of Race, Gender, Adoptive Family Structure, and Placement History on Adjustment Outcomes*, 69 AM. J. OF ORTHOPSYCHIATRY 87, 93–95 (2010)); *see also* Feigelman, *supra* note 60, at 176 (“... African-American transracial adoptees were subjected to the most intense anti-minority mistreatment.”).

77. *See* DONALDSON INSTITUTE, *supra* note 40, at 28.

78. *See id.* (“Responsible and ethical adoption practice requires preparing [transracial adoptive] parents to understand these issues and to be able to address them with their children. While some [transracial] adoptive parents will educate themselves, many others will lack sufficient awareness of these issues unless they are prepared by professionals.”).

79. Feigelman, *supra* note 60 (“Higher levels of adjustment difficulties were reported when children encountered more discrimination, more negative comments about their background, and when they experienced more appearance discomfort.”); *see also* DONALDSON INSTITUTE, *supra* note 40, at 26 (“Studies of transracially adopted adolescents and young adults have found perceived discrimination is significantly associated with behavior problems and psychological distress.” (citing M. Cederblad et al., *Mental Health in International Adoptees as Teenages and Young Adults: An Epidemiological Study*, 40 J. OF CHILD PSYCHOL. & PSYCHIATRY & ALLIED DISCIPLINES 1239–48 (1999); W. Feigelman, *Adjustments of Transracially and Inracially Adopted Young Adults*, 17 CHILD AND ADOLESCENT SOC. WORK J. 165–83 (2000))).

adoptions, advocates that race should not be a consideration in adoption placements take a more practical approach. They stress the over-representation of black children available for adoption and the inadequate number of black adoptive parents for these children, although the standards and requirements for adoptive parents present strong racial divides.⁸⁰ Advocates argue that there is a need to support transracial adoption simply because it is not possible to match every black child with black adoptive parents.⁸¹ Refusing to place black children with white parents would therefore result in a large number of children needlessly remaining without homes.⁸² Advocates against race considerations in adoption argue that problems associated with transracial adoption pale in comparison to the harm caused by preventing black children from having homes at all.⁸³ The differing rates of adoption for white children and for black children exacerbate this dilemma.⁸⁴ Jeninne Lee-St. John, writing for *Time*, notes that “[w]hite children are five times as likely as to be adopted than children from any minority group, and are adopted out of foster care an average of nine months sooner than black children.”⁸⁵ Donna Matias, a lawyer with the non-profit public interest law firm Institute of Justice, adds that “[o]ne of the problems with race-matching policies . . . is that [they leave] the children in the system to wait. They are thrown into a vicious cycle where the chances plummet that they will ever get adopted.”⁸⁶

The issues of appearance discomfort, cultural identity, and coping with discrimination seemingly support the idea that race should be a consideration in adoptions.⁸⁷ Data on adolescent adjustment issues, however, supports the opposite conclusion.⁸⁸ Additionally, scholars have discussed issues regarding familial association that counter, or at least mitigate, concerns of cultural identity and appearance discomfort.⁸⁹

80. See, e.g., Pressley, *supra* note 42; see also *infra* Part IV.A.1 for discussion on the issue of racial biases in standards and requirements for adoptive parents.

81. See, e.g., Pressley, *supra* note 42 (“Opponents of race matching contend that the numbers now seemed stacked against the possibility of same-race adoptions”).

82. See *id.*

83. See, e.g., Feigelman & Silverman, *supra* note 61, at 601 (noting the “damage sustained by black children without permanent placement is considerable” and “whatever problems may be generated by transracial adoption, the benefits to the child outweigh the costs”).

84. See Lee-St. John, *supra* note 35 (“Black children are adopted less frequently and more slowly than kids of any other race.”).

85. *Id.*

86. Pressley, *supra* note 42 (internal quotation marks omitted).

87. See discussion *supra* Parts III.A.1.a–c.

88. See *infra* Part III.A.2.a.

89. See *infra* Part III.A.2.b.

a. *Adolescent adjustment.* Adolescent adjustment is measured by how a child adapts to their adopted environment throughout adolescence.⁹⁰ The question is whether the disruption from the change in environment had an adverse impact on the child.⁹¹ Regarding transracial adoption, studies have compared the responses from children adopted into racially homogenous homes with those adopted into racially heterogeneous homes.⁹² A report by the Evan B. Donaldson Adoption Institute summarized a number of studies by stating that “children adopted transracially in the U.S. or from other countries had overall adjustment outcomes similar to children placed in same-race families.”⁹³ The current body of research, the report concluded, supports the idea that “[t]ransracial adoption in itself does not produce psychological or social maladjustment problems in children.”⁹⁴ Similarly, William Feigelman analyzed behavior problems among adopted adolescents and found that “transracial adoptees as a group showed no greater adjustment deficits, compared with inracially adopted Whites.”⁹⁵ These findings speak in favor of transracial adoption and suggest that children are capable of adjusting to living with parents of a different race.

b. *Familial assimilation.* Proponents for considering race in an adoption context focus on the negative impact on the child as seen through the struggle for a cultural identity and appearance discomfort.⁹⁶ These issues, however, can be negated and perhaps eliminated through what is referred to as either familial assimilation, cultural socialization, or cultural assimilation.⁹⁷ There are different

90. See, e.g., DONALDSON INSTITUTE, *supra* note 40, at 24 (discussing studies focused on transracial adoption’s effect on nonwhite adoptees); Lee, *supra* note 35, at 716.

91. See, e.g., DONALDSON INSTITUTE, *supra* note 40, at 24 (noting adjustment issues such as behavioral problems).

92. *Id.*

93. *Id.* at 5 (citing L. J. GROW & D. SHAPIRO, CHILDREN AND FAMILIES IN THE SOCIAL ENVIRONMENT (1974); D. S. Kim, *How They Fared in American Homes: A Follow-Up Study of Adopted Korean Children in the United States*, 6 CHILDREN TODAY 2, 2–6 (1977); McRoy et al., *supra* note 67 at 522–26; R. McRoy et al., *The Identity of Transracial Adoptees*, 65 SOC. CASEWORK 34, 34–39 (1984); R. McROY & L. A. ZURCHER, TRANSRACIAL AND INRACIAL ADOPTEES (1983); R. J. SIMON & H. ALSTEIN, TRANSRACIAL ADOPTEES AND THEIR FAMILIES: A STUDY OF IDENTITY AND COMMITMENT (1987); W. FEIGELMAN & A. R. SILVERMAN, CHOSEN CHILDREN: NEW PATTERNS OF ADOPTIVE RELATIONSHIPS (1983); J. F. Shireman & P. R. Johnson, *A Longitudinal Study of Black Adoptions: Single Parent, Transracial, and Traditional*, 31 SOC. WORK 172, 172–76 (1986)).

94. *Id.* at 22.

95. Feigelman, *supra* note 60, at 173.

96. Lee, *supra* note 35, at 715–16.

97. See, e.g., *id.* at 720–21 (discussing the process of cultural socialization); McRoy et al., *supra* note 67 (stating a family’s nurturance of a transracially adopted child’s racial identity is

approaches to handling socialization in the transracial adoption context.⁹⁸ The Evan B. Donaldson Adoption Institute summarized studies examining these approaches and concluded that regardless of the approach taken, “when parents facilitate their children’s understanding of and comfort with their own ethnicities, the children show more positive adjustment in terms of higher levels of self-esteem, lower feelings of marginality, greater ethnic pride, less distress, and better psychological adjustment.”⁹⁹ This indicates that, while transracially adopted children may be at a disadvantage in developing appearance comfort and cultural identity, the emotional and psychological aspects of the home environment in which they are raised—which is controlled by their adoptive parents—can counteract this disadvantage.¹⁰⁰ Linda Manning stresses the importance of developing a shared family identity that both emphasizes similarities and allows for differences within transracial families.¹⁰¹ She suggests that keeping a wide variety of cultural artifacts in the home allow for the embrace of the differing cultures represented in the family by “creat[ing] a worldview that embraces diversity—not just races and ethnicities directly related to those embodied by family members.”¹⁰²

The notion of racial or cultural assimilation in the home touches upon the idea of cultural competency. The U.S. Department of Health and Human Services defines cultural competency as “an ability to interact effectively with people of different cultures while being aware of one’s own cultural worldview.”¹⁰³ While cultural competency can refer to respect for “people of all cultures, languages, classes, races, ethnic backgrounds, sexual orientations, and other diversity

influential in shaping a positive racial identity).

98. See DONALDSON INSTITUTE, *supra* note 40, at 27 (“Recent research has focused on parents’ approaches to cultural and racial socialization, and has examined how different approaches affect aspects of their children’s ethno-racial identity and psychological adjustment.”).

99. *Id.* at 27 (citing D. P. Yoon, *Causal Modeling Predicting Psychological Adjustment of Korean-Born Adolescent Adoptees*, 3 J. OF HUMAN BEHAVIOR IN THE SOC. ENVIRONMENT 65, 65–82 (2001); D. Lee & S. Quintana, *Benefits of Cultural Exposure and Development of Korean Perspective-Taking Ability for Transracially Adopted Korean Children*, 11 CULTURAL DIVERSITY AND ETHNIC MINORITY PSYCHOLOGY 130, 130–43 (2005); J. Mohanty et al., *Family Cultural Socialization, Ethnic Identity, and Self-Esteem: Web-Based Survey of International Adult Adoptees*, 15 J. OF ETHNIC & CULTURAL DIVERSITY IN SOC. WORK 153, 153–72 (2007)).

100. *See id.*

101. Linda D. Manning, “Presenting Opportunities:” *Communicatively Constructing a Shared Family Identity*, 29 INT’L & INTERCULTURAL COMM’N ANN. 43, 64 (2006).

102. *Id.* at 50.

103. *Cultural Competence: Adoption*, U.S. DEP’T OF HEALTH AND HUMAN SERVS., <https://www.childwelfare.gov/systemwide/cultural/adoption/> (last visited May 15, 2015).

factors,” the term has also been tied to transracial adoption.¹⁰⁴ As applied in an adoption context, some scholars have broken the term down into three areas of attention: racial awareness, multicultural family planning, and survival skills.¹⁰⁵ These scholars have looked to understand the benefits of culturally competent adoptive parents and the processes by which cultural competency can be achieved.¹⁰⁶

Developing cultural competence is a long-term process.¹⁰⁷ When brought into the household, such competence could benefit both children and adults in better understanding and approaching sensitive racial and cultural issues.¹⁰⁸ As such, culturally competent adults possess a preferable trait in determining and deciding adoption placements involving race.¹⁰⁹ An early determination of cultural competency may thus be a satisfactory race-neutral factor that can be implemented to serve as a middle ground in the debate as to whether race should be considered in an adoption context.¹¹⁰

B. Legal Considerations

1. Statutory Law

The statutory provision at issue is the Multi-Ethnic Placement Act¹¹¹ as amended in 1996 by the Interethnic Adoption Amendments.¹¹² The amendments were titled Removal of Barriers to Interethnic Adoption, and “are now a part the Social Security Act under the Title IV-E Foster Care and Adoption Assistance.”¹¹³

104. *See id.*; *see also* M. Elizabeth Vonk, *Cultural Competence for Transracial Adoptive Parents*, 46 SOC. WORK 246, 246 (2001).

105. *See, e.g.*, Vonk, *supra* note 103, at 247, 249 (“It is not enough to be aware of how race and culture affect self-functioning; individuals also must be open to learning about the effect of race and culture on others, to learning about racism and mechanisms of oppression, and to acquiring the cross-cultural skills that enable effective intervention.”).

106. *See, e.g., id.* at 249–51.

107. *Id.* at 247.

108. *See id.* at 250; *see also* Andrew Morrison, *Transracial Adoption: The Pros and Cons and the Parents’ Perspective*, 20 HARV. BLACKLETTER L.J. 167, 192 (2004).

109. *See* Vonk, *supra* note 103 (noting both supporters and critics of transracial adoption strongly recommend a culturally competent adoptive parent in order to foster a positive racial identity).

110. *See* Part IV.B.

111. 42 U.S.C. § 671 (2012).

112. Small Business Job Protection Act of 1996, Pub. L. No. 104-188, § 1808, 110 Stat. 1755.

113. NATIONAL INDIAN CHILD WELFARE ASSOCIATION, MULTI-ETHNIC PLACEMENT ACT AND AMENDMENTS: POTENTIAL IMPACTS ON INDIAN CHILDREN 1 *available at*

The relevant portion of this statute reads:

[N]either the State nor any other entity in the State that receives funds from the Federal Government and is involved in adoption or foster care placements may—

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

(B) delay or deny the placement of a child for adoption or into foster care, on the basis of the race, color, or national origin of the adoptive or foster parent, or the child, involved.¹¹⁴

This statute does not bar same-race adoption placements, but rather prohibits delaying or denying an adoption placement on account of race.¹¹⁵ The amendments had the effect of prohibiting adoption agencies from considering race at all when making final placement decisions except in the most exceptional circumstances.¹¹⁶ As such, the appropriate standard for reviewing the use of race in adoption placements was confirmed to be strict scrutiny.¹¹⁷ As the Department of Health and Human Services (DHHS)—the government agency in charge of enforcing the statute—stated:

[T]he Interethnic Adoption provisions and the U.S. Constitution forbid decision making [in the adoption process] on the basis of race or ethnicity except in the very limited circumstances where such consideration would be necessary to achieve a compelling governmental interest. The only compelling governmental interest related to child welfare that has been recognized by courts is protecting the “best interests” of the child who is to be placed.¹¹⁸

Regarding transracial adoption, this statute is very clear.

<http://www.nicwa.org/law/mepa/MEPA.pdf>.

114. 42 U.S.C. § 671(a)(18).

115. NATIONAL INDIAN CHILD WELFARE ASSOCIATION, *supra* note 112.

116. See Colin Schlueter, *Color Conscious: The Unconstitutionality of Adoptive Parents' Expression of Racial Preferences in the Adoption Process*, 19 WM. & MARY BILL RTS. J. 263, 269 (2010).

117. *Id.*

118. Memorandum from Dennis Hayashi, Dir., OCR, and Olivia Golden, Principal Deputy Assistant Sec'y, ACF, to OCR Reg'l Managers and ACF Reg'l Dirs. (June 4, 1997) [hereinafter DHHS Memorandum], available at <http://www.hhs.gov/ocr/civilrights/resources/specialtopics/adoption/jointguidancewacf.html>.

The purpose of [the statute] is to promote the best interest[s] 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.¹¹⁹

The statute requires states and programs that receive federal financial assistance to “provide prospective parents and children equal access to the benefits and opportunities in adoption and foster care programs, without regard to race, color, or national origin.”¹²⁰ A violation of the Multi-Ethnic Placement Act also constitutes a violation of Title VI of the Civil Rights Act of 1964.¹²¹ Thus, there is far less debate over the law's implementation than there is over its merit.

However, these laws only reach agencies receiving federal financial assistance.¹²² This limitation has concerned scholars and other observers with respect to private adoption agencies.¹²³ Some scholars argue that “[t]oo often, adoption agencies are using racist practices under the guise of serving children, when in truth they are primarily serving the needs of their adult clients . . . and their own bottom line.”¹²⁴ They have extrapolated on this by pointing out the

119. *Multiethnic Placement Act/Interethnic Adoption Provision*, N.D. DEP'T HUMAN SERVS. (last updated Feb. 2007), http://www.state.nd.us/humanservices/policymanuals/ppfc-508/624_05_15_50_15.htm.

120. *Protection from Race, Color, and National Origin Discrimination in Adoption and Foster Care*, U.S. DEP'T OF HEALTH AND HUMAN SERVS., <http://www.hhs.gov/ocr/civilrights/resources/specialtopics/adoption/> (last visited Apr. 15, 2015).

121. *Id.*; 42 U.S.C. § 2000d (2012) (“No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”).

122. *See id.*

123. *See, e.g.*, Beth Hall, Joe Kroll, & Ruth McRoy, *Racial Politics: The “Business” of Domestic Private Adoption*, PACT, AN ADOPTION ALLIANCE 1 (2010) [hereinafter *Domestic Private Adoption I*] available at <http://www.pactadopt.org/app/servlet/documentapp.DisplayDocument?DocID=147> (arguing that private adoption agencies, unlike public agencies, have a problem with “unethical behavior and . . . inherent racism” in differential treatment of children based on race); Beth Hall, Joe Kroll, & Ruth McRoy, *Race and the Business of Domestic Private Adoption*, ADOPTALK North American Council on Adoptable Children Fall 2010 [hereinafter *Domestic Private Adoption II*], available at <http://www.nacac.org/adoptalk/RaceandBusiness.html>.

124. *Domestic Private Adoption I*, *supra* note 123 (citing Ruth G. McRoy, *An*

differing fee structures in place for adoption of children of different races.¹²⁵ In a recent study examining more than 800 adoptions, authors found adopting a non-black child instead of a black child requires an additional \$38,000 in adoption finalization costs on average.¹²⁶ This is believed to be a method of incentivizing parents to adopt black children.¹²⁷ Some deem such an incentive necessary because black children are “harder to place in adoptive homes.”¹²⁸ Critics nevertheless condemn this system because they believe it sends the message that black children are worth less than white children.¹²⁹

There are additional issues concerning transracial adoption that stem from differing approaches to private and public adoption. Two of the most pressing concerns are the insufficient recruitment of black adoptive parents and inadequate the preparation of white parents adopting or seeking to adopt transracial children.¹³⁰ These issues also implicate questions of assessment—bringing the topic of cultural competency back into consideration.

As previously noted, a large factor in the growth of transracial adoption is the racial disproportion in children available for adoption, as well as the imbalance between races adopting.¹³¹ With so many black children available for adoption and so few black adoptive parents, critics have stressed the need for changes to recruit black families to adopt.¹³² In a 2010 article, Beth Hall, Joe Kroll, and Ruth McRoy argued that the African American community is naturally resistant to the current state of private adoption.¹³³ The differing valuations of children based on their race is seen by the black community as insulting and repugnant.¹³⁴ Instead of treating

Organizational Dilemma: The Case of Transracial Adoptions, 25 J. APPLIED BEHAV. SCI. 145, 145–60 (1989)).

125. See *Domestic Private Adoption I*, *supra* note 123; *Domestic Private Adoption II*, *supra* note 123.

126. See Catherine Rampell, *Black Babies, Boys Less Likely to Be Adopted*, N.Y. TIMES (Jan. 25, 2010), http://economix.blogs.nytimes.com/2010/01/25/black-babies-boys-less-likely-to-be-adopted/?_r=0.

127. See *Six Words: “Black Babies Cost Less To Adopt”*, NPR (June 27, 2013), <http://www.npr.org/2013/06/27/195967886/six-words-black-babies-cost-less-to-adopt>.

128. *Id.*

129. See *Domestic Private Adoption I*, *supra* note 123; *Domestic Private Adoption II*, *supra* note 123.

130. See *Domestic Private Adoption I*, *supra* note 123; *Domestic Private Adoption II*, *supra* note 123.

131. See DONALDSON INSTITUTE, *supra* note 40.

132. See, e.g., *Domestic Private Adoption I*, *supra* note 123.

133. See *Domestic Private Adoption I*, *supra* note 123; *Domestic Private Adoption II*, *supra* note 123.

134. *Domestic Private Adoption II*, *supra* note 123.

children merely as goods to be sold, “[a]gencies that hope to attract families of color need to gain a far better understanding of how to effectively work with communities of color.”¹³⁵ The authors ask how to benefit adopted children, particularly those of color, if the adoption system uses race-based fee structures that discourage well-qualified parents from doing so.¹³⁶

Finally, adoption agencies need to “provide white parents who adopt black children with the education and support they need to adequately prepare their children to live as people of color in our society”¹³⁷ or they should take steps to promote cultural competency.¹³⁸ Children who are detached from their cultural roots will often struggle with their cultural identity, manifesting in behavior problems as they mature.¹³⁹ Parents who do not embrace their child’s race and ethnicity will likely experience greater difficulty than those that do.¹⁴⁰ Transracially adopted children need “chances to access places and people who could help them explore their identity and culture and evaluate how they fit into their families and community.”¹⁴¹ Cultural competency in adoptive parents can be accomplished either on the front end by using it as consideration in selecting and approving adoption placements or later in the process by implementing education resources to help parents develop into more culturally competent individuals.¹⁴²

This concern presents a major issue presented by the federally regulated public adoption agencies. The federal Office of Civil Rights in the DHHS requires all public adoption agencies to implement a colorblind approach to adoptive parent preparation.¹⁴³ As applied by the courts, colorblind, while indicating hesitation towards the use of race, does not necessarily mean that race considerations cannot be involved at all.¹⁴⁴ In *Brown v. City of Oneonta*, for instance, the court found that police officers attempting to find a criminal could use a racial classification made by the victim.¹⁴⁵ There, the court held the use of a person’s race as an identification factor was constitutional absent some showing of discriminatory intent on the

135. *Id.*

136. *Id.*

137. *Id.*

138. *See* Vonk, *supra* note 104, at 246, 254.

139. *See* DONALDSON INSTITUTE, *supra* note 40, at 6, 23–24.

140. *See Domestic Private Adoption II*, *supra* note 123 (“Ill-equipped parents who see no reason to address racial identity issues are destined for a rough ride.”).

141. *Id.*

142. *See* Vonk, *supra* note 104, at 246, 254.

143. *Domestic Private Adoption II*, *supra* note 123.

144. *See, e.g.,* *Brown v. City of Oneonta*, 221 F.3d 329, 333–34 (2d Cir. 2000).

145. *Id.* at 337.

behalf of the police.¹⁴⁶ Thus, there are special circumstances when a governmental agency uses race as a factor that do not require strict scrutiny.¹⁴⁷ It is important to realize that what actually constitutes colorblindness is more amorphous than the term itself implies.

Holding public adoption agencies to a colorblind approach denies many parents the unique support and resources they need to raise a child of a different race.¹⁴⁸ While a beneficial policy to remove governmentally constructed racial barriers to adoption, this appears to have a negative impact on the actual success of said adoptions.¹⁴⁹ Like other authors, Hall, Kroll, and McRoy support that approach and conclude that “[a]doptive parents must receive the encouragement and education they need—about race, development, and adoption-related issues—to successfully adopt and help their children grow into healthy adults who have a clear sense of identity and family, as well as certainty in their intrinsic worth.”¹⁵⁰

2. Case Law

Even with the aforementioned statutes and DHHS’s enforcement efforts, the constitutional landscape surrounding the issue of transracial adoption is unclear.¹⁵¹ The Supreme Court has historically said very little about the topic, with the most relevant consideration of race and adoptions in the 1984 case of *Palmore v. Sidoti*.¹⁵² The case arose after two white parents divorced and the mother was granted custody of their three-year-old white daughter.¹⁵³ The father sought to have the court’s previous custody judgment modified because of changed conditions in that the mother had since began cohabitating with a black man (whom she married two months later).¹⁵⁴ At trial, the court noted the “inevitable” social stigmatization that would result if the child were placed in her mother’s biracial household and granted custody to the father.¹⁵⁵ In addition to reprimanding the mother for choosing to cohabit and engage in sexual activity with a man prior to marriage, the trial court emphasized the harm that the child would realize.¹⁵⁶ Focusing on the

146. *Id.* at 338–39.

147. *Id.*

148. *Domestic Private Adoption II*, *supra* note 123 (citing Ruth McRoy, et al., *Making MEPA-IEP Work: Tools for Professionals*, 86 CHILD WELFARE 49 (2007)).

149. *See id.*

150. *Id.*

151. Schlueter, *supra* note 116, at 272.

152. *Id.* (citing *Palmore v. Sidoti*, 466 U.S. 429 (1984)).

153. *Palmore*, 466 U.S. at 430.

154. *Id.*

155. *Id.* at 431.

156. *Id.*

best interests of the child, the trial court held that, “despite the strides that have been made in bettering relations between the races in this country, it is inevitable that [the child] will, if allowed to remain in her present situation and attains school age and thus more vulnerable to peer pressures, suffer from the social stigmatization that is sure to come.”¹⁵⁷ The court further stated that “[t]he child . . . is, or at school age will be, subject to environmental pressures not of choice.”¹⁵⁸ The trial court held that it could not put a child into a situation where third parties would subject them to unnecessary social stigma, reasoning that the visibility of transracial adoption would cause this stigma.¹⁵⁹

The Supreme Court reversed the judgment of the lower court, stating, “The Constitution cannot control such prejudices but neither can it tolerate them. Private biases may be outside the reach of the law, but the law cannot, directly or indirectly, give them effect.”¹⁶⁰ The Court did not dismiss the possibility of private biases subjecting the child to stigmatization and even stated that the harm would not likely exist in a racially homogeneous familial placement.¹⁶¹ The Court ruled, however, that such third-party stigma and any resulting harm was not sufficient to warrant the removal of a child from the mother’s custody.¹⁶² Quoting *Palmer v. Thompson*, the Court continued, “Public officials sworn to uphold the Constitution may not avoid a constitutional duty by bowing to the hypothetical effects of private racial prejudice that they assume to be both widely and deeply held.”¹⁶³ The Court cited *Strauder v. West Virginia* in stating that “[a] core purpose of the Fourteenth Amendment was to do away with all governmentally imposed discrimination based on race.”¹⁶⁴

The Court rejected the lower court’s use of race in deciding the proper placement of a child.¹⁶⁵ The Court would not accept a ruling that would have

157. *Id.* (quoting Appendix to Petition for a Writ of Certiorari at 26–27, *Palmore v. Sidoti*, 466 U.S. 429 (1984) (No. 82-1734)).

158. *Id.* (quoting Record at 84) (second alteration in original).

159. *See Id.*

160. *Id.* at 433.

161. *Id.* at 433 (“It would ignore reality to suggest that racial and ethnic prejudices do not exist or that all manifestations of those prejudices have been eliminated. There is a risk that a child living with a stepparent of a different race may be subject to a variety of pressures and stresses not present if the child were living with parents of the same racial or ethnic origin.”).

162. *Id.*

163. *Id.* (quoting *Palmer v. Thompson*, 403 U.S. 217, 260–61 (1971) (White, J., dissenting) (internal quotation marks omitted)).

164. *Id.* at 432 (citing *Strauder v. West Virginia*, 100 U.S. 303, 307–08, 310 (1880) (footnote omitted)).

165. *See id.* at 433.

opposite results depending on the race of one individual.¹⁶⁶ Despite ruling nearly 30 years ago—when race relations, especially regarding adoptions, were more tenuous and strained than today—the Court disregarded the notion that problems faced by racially mixed households could justify denying constitutional rights.¹⁶⁷ In conclusion, the Court noted that “[t]he effects of racial prejudice, however real, cannot justify a racial classification removing an infant child from the custody of its natural mother found to be an appropriate person to have such custody.”¹⁶⁸

Palmore thus appears to be a very straightforward case upholding the use of the “best interest of the child” consideration in child placement, and declining to recognize third-party stigma as a cause to deny custody.¹⁶⁹ Despite what appeared to be a clear stance with respect to race considerations in adoption placement, however, courts have interpreted the Supreme Court’s ruling in various ways.¹⁷⁰

Some courts followed the spirit of the Supreme Court in *Palmore* and held unconstitutional laws against transracial adoption.¹⁷¹ Using the Equal Protection Clause as the basis for its decision, the court in *Compos v. McKeithen* did so, noting that such racial classifications were constitutionally suspect.¹⁷² A class action lawsuit was brought after two white parents were told they could not adopt a black child, and a mixed-race couple was told they could not adopt any child, because of a state statute that read, “A single person over the age of twenty-one years, or a married couple jointly, may petition to adopt any child of his or their race.”¹⁷³ The court ruled that, because placement in a transracial home may be preferable to remaining in the adoption system, there is no permissible state objective for an outright ban on transracial adoption.¹⁷⁴ Like the Court in *Palmore*, the *Compos* court recognized the realities of American society and stated that they “agree that an interracial home . . . presents difficulties for a child, including the possible refusal by a community to accept the child, and other community pressures, born

166. *Id.* at 432.

167. *Id.* at 434.

168. *Id.*

169. *See id.* at 429–34.

170. *See* Schlueter, *supra* note 116, at 273 (noting some courts have a “questionably narrow reading of *Palmore*”).

171. *See* Kim Forde-Mazrui, Note, *Black Identity and Child Placement: The Best Interests of Black and Biracial Children*, 92 MICH. L. REV. 925, 933 (1994) (“For example, the court in *Compos v. McKeithen* invalidated a state statute that categorically prohibited transracial adoption.”).

172. *Compos v. McKeithen*, 341 F. Supp. 264, 266, 268 (E.D. La. 1972).

173. *Id.* at 264–65 (quoting LSA-R.S. 9:422) (internal quotation mark omitted).

174. *Id.* at 268.

of racial prejudice, on the interracial family.”¹⁷⁵ The court noted that such harm justifies race as a consideration, but it does not go so far as to justify race as a determinative consideration.¹⁷⁶ The court placed an extremely high burden on the state by requiring them to “convince the [c]ourt that under all circumstances it is against the child’s best interests to have racially different parents or a racially different parent” to justify the statute’s racial classification.¹⁷⁷ The court concluded that such justification was not possible when comparing (admittedly imperfect) transracial adoption with the alternatives—such as foster home care or institutional care.¹⁷⁸ Like the Court in *Palmore*, the *Compos* court considered the best interest of the child and determined that mandatory racial matching in adoption proceedings could not satisfy the requirement.¹⁷⁹

Other courts, however, have taken an approach that differs from the Supreme Court.¹⁸⁰ Before the Court ruled in *Palmore*, the Fifth Circuit Court of Appeals dealt with the issue of transracial adoptions in *Drummond v. Fulton County Department of Family & Children’s Services*.¹⁸¹ In *Drummond*, a question faced the court after two foster parents attempted to adopt a mixed-race child and were denied.¹⁸² The court stated it was “clear that the race of the [prospective adoptive parents] and of [the child] and the racial attitudes of the parties were given substantial weight in coming to this conclusion.”¹⁸³ The trial court nevertheless dismissed the complaint on the merits because, while it was clear that race was considered, “the consideration of race was properly directed to the best interest of the child and was not an automatic-type of thing or of placement, that is, that all blacks go to black families, all whites go to white families, and all mixed children go to black families, which would be prohibited.”¹⁸⁴

Of primary importance in this case was the manner in which race was used.¹⁸⁵ The Fifth Circuit indicated that, while race cannot automatically serve to deny an adoption placement, race could be considered as a relevant factor.¹⁸⁶ Implementing

175. *Id.* at 266, 268.

176. *Id.* at 266.

177. *Id.*

178. *Id.*

179. *See Palmore v. Sidoti*, 466 U.S. 429, 434 (1984); *Compos*, 341 F. Supp.at 267–68.

180. *See Forde-Mazrui, supra* note 171, at 933–34.

181. *See generally Drummond v. Fulton Cnty. Dep’t of Family & Children’s Servs.*, 563 F.2d 1200 (5th Cir. 1977).

182. *Id.* at 1203–04.

183. *Id.* at 1204.

184. *Id.*

185. *Id.*

186. *Id.* at 1205 (internal quotation marks omitted).

a plus-factor approach, the court noted the “difficulties inherent in interracial adoption” and sought to avoid “the potentially tragic possibility of placing a child in a home with parents who will not be able to cope with the child’s problems.”¹⁸⁷

Further, the Fifth Circuit stated that “[i]t is a natural thing for children to be raised by parents of their same ethnic background.”¹⁸⁸ Instead of stating this as a precursor to prohibiting laws impeding transracial adoption, the court in *Drummond* used it to underscore their holding that race can be a factor in deciding an adoption placement so long as it is not the sole factor.¹⁸⁹ The court also raised two issues already touched upon in this Paper—cultural competency and appearance discomfort.¹⁹⁰

The court referenced cultural competency, stressing “the importance of considering the racial attitudes of potential parents.”¹⁹¹ Cultural competency relates to the ability of an individual to interact with other cultures,¹⁹² and the court, by looking at the abilities of potential adoptive parents with respect to race and culture, was in accord with scholarly research on the topic.¹⁹³ The court stated, “A couple has no right to adopt a child it is not equipped to rear, and according to the professional literature race bears directly on that inquiry.”¹⁹⁴ The court thus indicated that it is important to have parents that are not only capable of providing a loving home for their child, but also are equipped to handle the delicate and complex issues of race and culture.¹⁹⁵ The court expressed concern over placing a child with parents unable to handle the child’s unique problems and subsequently concluded that using race, as one of many factors to prevent such an issue, is entirely permissible.¹⁹⁶

Finally, the court in *Drummond* looked at the practicality and consequences of transracial adoption by discussing the problems created by visible racial differences.¹⁹⁷ Noting the goal of having a child “become a normal family member,” the court stressed that “duplication of [the child’s] natural biological

187. *Id.*

188. *Id.*

189. *Id.* at 1206.

190. *See Id.* at 1205–06.

191. *Id.* at 1205.

192. U.S. DEP’T OF HEALTH AND HUMAN SERVICES, *supra* note 103.

193. *See Drummond*, 563 F.2d at 1205.

194. *Id.*

195. *See Id.*

196. *Id.* at 1206.

197. *Id.* at 1205–06.

environment” is a proper means by which to do so.¹⁹⁸ The court equated race to things such as “age, hair color, eye color, and facial features” as a consideration that can be used to make a logical adoption placement for a child, minimizing appearance discomfort.¹⁹⁹ Such an approach reasons that the similarity in appearance between a child and parent is fundamental. The court explained it as “the belief that a child and adoptive parents can best adjust to a normal family relationship if the child is placed with adoptive parents who could have actually parented him.”²⁰⁰ This seeks to place a child in a setting in which they are more comfortable on account of feeling as though they “belong” or “fit in.” Furthermore, a focus on appearance similarity between a parent and child may well counter third-party stigmatization that would otherwise be worsened because of the visibility of race. With a racially heterogeneous family, a child is unable to hide the fact that they are adopted. Not so in a racially homogenous family—a consideration given great weight by the court in *Drummond*.²⁰¹

While *Drummond* occurred before the Supreme Court’s *Palmore v. Sidoti* ruling, the case’s plus-factor approach to race in an adoption context appears to retain legitimacy as subsequent courts have imitated and reiterated the *Drummond* approach.²⁰² In the case of *In re Marriage of Gambla*, the Illinois Court of Appeals held that racial considerations could be the ultimate deciding factor in adoption placements.²⁰³ The court approved the trial court’s finding that the child in question “would have to learn to exist as a biracial woman in a society that is sometimes hostile to such individuals and that [her African-American mother] would be better able to provide for [the child’s] emotional needs in this respect.”²⁰⁴ As the court stated, “so long as race is not the sole consideration for custody decisions, but only one of several factors, it is not an unconstitutional consideration.”²⁰⁵

Courts have used the plus-factor analysis in racial contexts in the past. In *Regents of Univ. of California v. Bakke*, for instance, the Supreme Court ruled that so long as race was one of many other considerations, it could be a factor used by

198. *Id.* at 1205.

199. *Id.* at 1205–06.

200. *Id.*

201. *Id.*

202. *See, e.g., In re Marriage of Gambla*, 853 N.E.2d 847, 869 (Ill. App. Ct. 2006) (“Volumes of cases from other jurisdictions have interpreted *Palmore* as not prohibiting the consideration of race in matters of child custody.”).

203. *Id.* at 868 (finding that when all other factors are equal, it was permissible for the trial court to award custody based on racial considerations), *abrogated by* *People v. McKown*, 924 N.E.2d 941 (Ill. 2010).

204. *Id.*

205. *Id.* at 869.

schools to approve or deny state medical school applications.²⁰⁶ The Court stated that “[e]thnic diversity . . . is only one element in a range of factors a university properly may consider in attaining the goal of a heterogeneous student body.”²⁰⁷ Like *Drummond*, the Court in *Bakke* required that the racial factor not be the sole factor.²⁰⁸ The Court explained that race may only be used alongside other considerations; regardless of the weight each is given.²⁰⁹ The Court stated that “race or ethnic background may be deemed a ‘plus’ in a particular applicant’s file, yet it does not insulate the individual from comparison with all other candidates for the available seats.”²¹⁰ This system should be, the Court reasoned, “flexible enough to consider all pertinent elements of diversity in light of the particular qualifications of each applicant, and to place them on the same footing for consideration, although not necessarily according them the same weight.”²¹¹ As such, race can be the most important or the deciding factor so long as it is not the only factor.²¹²

Referencing *Bakke*, the Supreme Court in *Grutter v. Bollinger* similarly held that “truly individualized consideration demands that race be used in a flexible, nonmechanical way.”²¹³ As such, the Court ruled against racial group quotas, racial competition isolation, or separate admission tracks for particular races in school admissions proceedings.²¹⁴ Like *Bakke*, the Court held that universities could, however, “consider race or ethnicity more flexibly as a ‘plus’ factor in the context of individualized consideration of each and every applicant.”²¹⁵ Most importantly, the Court in *Grutter* reiterated that granting greater weight or significance to race does not make it “the functional equivalent of a quota” or change its constitutionality.²¹⁶ Using this approach, the Supreme Court found a policy unconstitutional in *Gratz v. Bollinger* for failing to provide individualized consideration of all relevant factors for each applicant and for using race as an automatic decisive factor.²¹⁷ As such, the Court deemed the policy to not be

206. *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 314 (1978).

207. *Id.*

208. *Id.* at 318.

209. *Id.* at 317–18.

210. *Id.* at 317.

211. *Id.*

212. *See id.*

213. *Grutter v. Bollinger*, 539 U.S. 306, 334 (2003), *superseded by constitutional amendment*, M.C. Const. art. 1, § 26, *as recognized in* *Schuetz v. Coalition to Defend Affirmative Action*, 134 S. Ct. 1623 (2014).

214. *Id.*

215. *Id.* (citing *Bakke*, 438 U.S. at 315–16).

216. *Id.* at 335 (quoting *Bakke*, 438 U.S. at 317–18) (internal quotation marks omitted).

217. *Gratz v. Bollinger*, 539 U.S. 244, 271 (2003).

sufficiently narrowly tailored to pass strict scrutiny.²¹⁸

As cases such as *Gratz*, *Grutter*, and *Bakke* indicate, courts often apply a plus-factor approach to cases involving racial issues that receive strict scrutiny. However, considering these cases do not directly relate to adoption and cases such as *Palmore* take a different approach entirely, the common law status of transracial adoption is not clear. With such varying approaches to transracial adoption by various courts, determining the underlying guiding legal principles is important to articulate the appropriate legal standard. The language of the Supreme Court in *Palmore* and DHHS's enforcement of MEPA indicates that courts must use strict scrutiny—which requires a law to be narrowly tailored to serve a compelling state interest—when reviewing racial classification in adoption placement proceedings.²¹⁹ This standard—by circumscribing the instances where an adoption can be denied on the basis of race and thus allowing for a greater number of adoptions—appears to be in accordance with the states, which generally require courts to protect the best interests of the child when making placement considerations.²²⁰

The most recent Supreme Court precedent on transracial adoption is the *Adoptive Couple v. Baby Girl* case.²²¹ While pertaining to the Indian Child Welfare Act,²²² this case has language regarding race and adoption²²³ and is the Court's most direct discussion of the issue since the *Palmore* case.

In *Baby Girl*, a child was born to unwed parents, one of whom was a member of the Cherokee Nation.²²⁴ Upon learning of the pregnancy, the father pressured the mother to marry him sooner than they had initially planned.²²⁵ The mother eventually ended the relationship prior to the birth and eliminated contact with the father.²²⁶ The father told the mother that he would rather relinquish his parental rights to the child than pay child support.²²⁷ After the mother put the child up for adoption and a non-Indian couple adopted her, the biological father sought custody and asserted that he did not consent to the adoption.²²⁸ The South Carolina Family

218. *Id.* at 275.

219. *See* Schlueter, *supra* note 116, at 275.

220. *See* Forde-Mazrui, *supra* note 171, at 929.

221. *See generally* *Adoptive Couple v. Baby Girl*, 133 S.Ct. 2552 (2013).

222. *Id.* at 2556.

223. *See id.* at 2558.

224. *Id.*

225. *Id.*

226. *Id.*

227. *Id.*

228. *Id.* at 2558–59.

Court granted custody to the biological father and the South Carolina Supreme Court affirmed.²²⁹

Because of the child's Indian heritage, the case implicated the federal Indian Child Welfare Act of 1978 (ICWA).²³⁰ The portion of this statute quoted by the Court and relevant to the discussion of transracial adoption reads,

In any adoptive placement of an Indian child under State law, a preference shall be given, in the absence of good cause to the contrary, to a placement with (1) a member of the child's extended family; (2) other members of the Indian child's tribe; or (3) other Indian families.²³¹

The Court first stated that “when, as here, the adoption of an Indian child is voluntarily and lawfully initiated by a non-Indian parent with sole custodial rights, the ICWA's primary goal of preventing the unwarranted removal of Indian children and the dissolution of Indian families is not implicated.”²³² On its face, such a statement pertains only to the application of the ICWA to Indian children and adoptive parents.²³³ However, when considered more liberally, the statement indicates an implicit approval of transracial adoption by the Court. By only addressing instances in which a statute allows interference into transracial adoptions, the Court tacitly suggests transracial adoptions are proper.²³⁴

The Court is more accepting of transracial adoption when they directly disagree with a decision by the lower court. The Supreme Court criticized the lower court by stating that they would “surely dissuade some of [the adoptive parents] from seeking to adopt Indian children,” adding that, “this would, in turn, unnecessarily place vulnerable Indian children at a unique disadvantage in finding a permanent and loving home, even in cases where neither an Indian parent nor the relevant tribe objects to the adoption.”²³⁵ The Court approves of a parent of one race adopting the child of another—a permanent and loving home is the paramount concern.²³⁶ If the Court were against transracial adoption, the ruling would not have given a preference to the idea of an Indian child, without a loving or permanent home, being adopted by a non-Indian father.²³⁷

229. *Id.* at 2559.

230. *Id.* at 2556.

231. 25 U.S.C. § 1915(a) (2012); *see also Baby Girl*, 133 S. Ct. at 2558, 2564.

232. *Baby Girl*, 133 S. Ct. at 2561.

233. *See id.*

234. *See id.*

235. *Id.* at 2563–64 (footnotes omitted).

236. *See id.*

237. *See id.*

While the Court appeared to follow in the steps of *Palmore v. Sidoti* by taking a critical stance against laws impeding transracial adoption, proponents for racial considerations in adoption would be quick to point out that the Court ends their analysis with approval for racial preferences with regard to the ICWA specifically.²³⁸ The Court took no stance in opposition of the ICWA, and instead spoke to its scope, stating, “preferences are inapplicable in cases where no alternative party has formally sought to adopt the child.”²³⁹ As such, the Court approved of the ICWA dictating adoption placements based on race.²⁴⁰ This case, with its limited scope, does not answer the question of whether statutes allowing racial considerations in adoption placements are constitutionally permissible. While MEPA and the Interethnic Adoption Amendments are still valid law, *Adoptive Couple v. Baby Girl* suggests that the Supreme Court, while not invalidating transracial adoptions, may accept laws that allow for the use of race as a consideration in adoption placements.²⁴¹

IV. THE ANSWER

A. *Why Transracial Adoption Should Be Supported*

As evidenced above, the current legal state of race in adoption is unclear. Even with statutory language and historical cases touching on the topic, questions remain regarding legality and procedure, as well as the merit of the practice itself. For instance, exactly how much importance may race be given in making an adoption placement? Should race be considered at all? While this muddled understanding of a fundamental topic is attributable to vague legislative terminology, judicial inconsistencies, recent changes in various laws, and the lack of a recent Supreme Court case directly addressing the issue, the true problem lies with the people themselves. Race relations in this country have long been an impediment to and a catalyst for legal change and development. When it involves children, should it be any surprise that racial attitudes flair? With this in mind, it is likely that personal opinions shaped approaches to transracial adoption both legally and politically.

With the unclear state of transracial adoption in this country, the debate over the legitimacy, practicality, and legality of it has continued. As outlined above, there are arguments in support of either approach to the issue.²⁴² This Paper

238. *Id.* at 2565.

239. *Baby Girl*, 133 S. Ct. at 2564.

240. *See id.* at 2565.

241. *See id.* at 2557.

242. *See supra* Part III.

contends that race should not be an impediment to adoption proceedings and transracial adoption should be encouraged.

1. Adoption Standards: Potential for Disparate Impact

Required qualifications for adopting a child vary from state to state for public adoption agencies and from agency to agency for private adoption agencies.²⁴³ There are, however, a few general guidelines and requirements.²⁴⁴ Some of the most common standards for parents seeking to adopt a child are marital status, length of marriage, age, age of the parent in relation to the child, health issues, housing, and state residency.²⁴⁵ These are all a part of what is called a home study—an evaluation process conducted in order to determine whether the home environment would be suitable for the child and to assess the capabilities of the adoptive parents.²⁴⁶ This screening and evaluation process is often required either by state law or mandated by an adoption agency.²⁴⁷

While some factors evaluated in the home study are without criticism, others raise some concerns, especially concerning transracial adoptions.²⁴⁸ Some of the areas under scrutiny are drug, alcohol, and tobacco use, stay-at-home parents, financial status, employment stability, housing conditions, and criminal background checks.²⁴⁹ Florida, for instance, requires that adoptive parents be

243. *The Adoption Home Study Process*, CHILD WELFARE INFORMATION GATEWAY, 2, http://www.childwelfare.gov/pubPDFs/f_homstu.pdf (last visited May 15, 2015); *Home Study Requirements for Prospective Parents in Domestic Adoption*, CHILD WELFARE INFORMATION GATEWAY, 2–3, https://www.childwelfare.gov/pubPDFs/homestudyreqs_adoption.pdf (last visited May 15, 2015).

244. *Home Study Requirements for Prospective Parents in Domestic Adoption*, *supra* note 243; *Who May Adopt, Be Adopted, or Place a Child for Adoption*, CHILD WELFARE INFORMATION GATEWAY, 2–3, https://www.childwelfare.gov/pubPDFs/parties.pdf#page=2&view=Who_May_Adopt? (last visited May 15, 2015).

245. *Home Study Requirements for Prospective Parents in Domestic Adoption*, *supra* note 243; *Who May Adopt, Be Adopted, or Place a Child for Adoption*, *supra* note 244.

246. *The Adoption Home Study Process*, *supra* note 243, at 1–2; *Home Study Requirements for Prospective Parents in Domestic Adoption*, *supra* note 243, at 1, 3.

247. *The Adoption Home Study Process*, *supra* note 243, at 1.

248. *See, e.g.*, ALA. DEP'T OF HUMAN SERVS., MINIMUM STANDARDS FOR CHILD-PLACING AGENCIES 29 (2002), *available at* http://www.dhr.state.al.us/documents/MinimumStandards_Child-PlacingAgencies.pdf.

249. *See Criminal Background Checks for Prospective Foster and Adoptive Parents*, CHILD WELFARE INFORMATION GATEWAY, 1–2, <https://www.childwelfare.gov/pubPDFs/background.pdf>; *Home Study Requirements for Prospective Parents in Domestic Adoption*, *supra* note 243, at 3–4; *Criteria for Adoptive Families, THE HOME FOR LITTLE WANDERERS*,

“person[s] of modest means or wealth” and notes that “[a] few things will prevent you from becoming an adoptive parent, such as certain felony criminal records.”²⁵⁰ Similarly, Alabama requires that “[a]pplicants must be financially stable,” but adds a more vague standard in stating that “[a]pplicants’ motivation must be determined and understood.”²⁵¹ Texas adds similarly vague requirements to their adoption criteria by requiring “financially stable, and responsible mature adults” and requiring these individuals to “share information regarding their background and lifestyle”—in addition to the already compulsory criminal history background check.²⁵²

The vague nature of such standards presents reasonable fears for black adoptive parents. When standards such as a parent’s “background” or “motivation” can be determinative for whether or not an individual can adopt a child, the adoption agency’s discretion becomes very powerful. Some prospective adoptive parents do not even understand why they were denied.²⁵³ Without proper safeguards, there is nothing stopping an agency from making a decision motivated by race and concealing it through vague standards. Disparate treatment is difficult to prove in this circumstance because the home study process is so comprehensive as to include innumerable factors.²⁵⁴

However, further analysis raises the question of disparate impact on black, potential parents.²⁵⁵ Unlike disparate treatment, disparate impact does not require proof of intention to discriminate, but rather only a disproportionately adverse impact on a particular group.²⁵⁶ This Paper contends that the criteria used by

http://www.thehome.org/site/PageServer?pagename=adoption_about_criteria#.VT59eaMo6bg (last visited Apr. 27, 2015).

250. *Frequently Asked Questions*, EXPLORE ADOPTION, <http://www.adoptflorida.org/faq.shtml> (last visited May 15, 2015).

251. ALA. DEP’T OF HUMAN SERVICES, *supra* note 248.

252. *Requirements for Foster/Adopt Families*, TEXAS ADOPTION RESOURCE EXCHANGE, http://www.dfps.state.tx.us/adoption_and_foster_care/get_started/requirements.asp (last visited Apr. 30, 2014).

253. *See, e.g., Adoption Forums*, ADOPTION.COM (Sept. 17, 2010), <http://forums.adoption.com/becoming-foster-parents/380513-anyone-else-been-denied.html> (discussing adoption agency denials and uncertainty as to why individuals had been denied).

254. *See The Adoption Home Study Process*, *supra* note 243, at 3.

255. *See* Washington v. Davis, 426 U.S. 229, 242 (1976) (explaining disparate impact analysis).

256. *See id.* at 241–42 (stating when a prima facie case of discriminatory purpose is made, the burden shifts to the State to show racially neutral selection criteria as the cause of the disparate impact); Carla J. Rozycki & Emma J. Sullivan, *Disparate-Impact Claims Under the ADEA*, A.B.A. (Sept. 2011), http://www.americanbar.org/publications/gp_solo/2011/september/disparate_impact_claims_a_dea.html.

adoption agencies to approve or reject potential adoptive parents has a disparate impact on black parents, because they are designed and tailored for the white middle class.

The closest study supporting this contention examines the rate at which different races seek to adopt and how many parents of each race do adopt, but does not analyze the experiences of those seeking adoptions, and does not examine the rate at which the parents seeking adoption are denied.²⁵⁷ With its limited scope, this study did not find a disparate impact, but without knowing the rate in which black prospective adoptive parents apply for adoption and are denied in relation to the rate of other races, discussions of disparate impact are more speculative than conclusive. 71 percent of adoptive parents within the United States are white²⁵⁸ but, without knowing what percentage of *applicants* white prospective parents constitute, it is difficult to say whether there is a disparate impact on blacks. While this necessary has not been studied, the adoption standards themselves justify considering whether they could have a disparate impact.

The incarceration of black individuals in modern society is evidence of continued racism throughout society.²⁵⁹ Michelle Alexander coins this condition “the new Jim Crow.”²⁶⁰ Using criminal background checks as a bar to adoption is therefore bound to have an adverse impact on black individuals as they are incarcerated at far higher rates than white individuals are.²⁶¹ One of the many things that adoption agencies look for in a criminal background check is history of substance abuse or drug charges.²⁶² Because of modern racist tactics that imprison

257. See Chandra et al., *supra* note 36 at 3, 6. When comparing the number of black and white women in America in 1999 who considered adopting with the number of black and white women who had already adopted, the numbers are consistent. See *id.* More than 11,000 black women reported taking steps to adopt and 711 reported adopting. *Id.* at 6. Similarly, 9,699 white women took steps to adopt and 524 reported adopting. *Id.* The study found 6.4 percent of blacks and 5.4 percent of whites adopted successfully—which would not support a claim of disparate impact. See *id.* However, because the study is examining two isolated factors, and does not address denial of adoption applications, the results are not prohibitive of further consideration on the matter.

258. U.S. DEP’T OF HEALTH & HUMAN SERVS., RACE, ETHNICITY, AND GENDER, *available at* <http://www.aspe.hhs.gov/hsp/09/NSAP/chartbook/chartbook.cfm?id=15>.

259. See generally ALEXANDER, *supra* note 73, at 178–220.

260. See generally *id.*

261. See, e.g., Dorothy E. Roberts, *The Social and Moral Cost of Mass Incarceration in African American Communities*, 56 STAN. L. REV. 1271, 1274 (2004) [hereinafter *Mass Incarceration*] (“Blacks are about eight times more likely to spend time behind bars than whites.”); AMERICAN CIVIL LIBERTIES UNION, *THE WAR ON MARIJUANA IN BLACK AND WHITE*, 17–20 (2013).

262. See *Criminal Background Checks for Prospective Foster and Adoptive Parents*, *supra* note 249, at 2.

far more black people than white people on drug charges—despite similar usage rates—²⁶³black individuals are significantly disadvantaged in becoming adoptive parents. This is another form of disenfranchisement as referred to by Alexander.²⁶⁴ Not only are black people disproportionately punished criminally, but taking away their ability to adopt on account of that takes away their ability to exist equally in society.²⁶⁵

Additionally, financial-based adoption standards cause more concern for the impact they may well have on black adoptive parents. As noted above, many adoption agencies consider both financial status and employment stability of adoption candidates.²⁶⁶ This is troublesome because, using DHHS's poverty guidelines, The Henry J. Kaiser Family Foundation found that 27 percent of black individuals in the United States lived below the poverty line as opposed to only 10 percent of white individuals.²⁶⁷ Similarly, the United States Bureau of Labor Statistics found that black Americans have consistently had a rate of unemployment approximately double that of white Americans for the past 35 years.²⁶⁸ Rejecting an application based on such grounds will therefore negatively affect more black prospective adoptive parents than it will white prospective adoptive parents. Because some adoption agencies prefer that one parent remain at home for the child, if only at least temporarily, the concern is exacerbated.²⁶⁹ With black families already at a statistical disadvantage to being as "financially secure" as their white counterparts, how can they further be expected to forego income? Such a standard reflects the true problem with modern adoption requirements—they are designed for the white middle class.²⁷⁰ For parents and families with a reasonable amount of money, job stability is likely not a huge concern. Additionally, in these families, one spouse frequently foregoes employment to raise the family.²⁷¹ Conversely, for a family with less economic means, removing

263. See *Mass Incarceration*, *supra* note 261, at 1275; AMERICAN CIVIL LIBERTIES UNION, *supra* note 263 at 15–18.

264. ALEXANDER, *supra* note 73, at 99.

265. See *id.*

266. See, e.g., *The Adoption Home Study Process*, *supra* note 243, at 4.

267. *Poverty Rate by Race/Ethnicity*, THE HENRY J. KAISER FAMILY FOUNDATION, <http://kff.org/other/state-indicator/poverty-rate-by-raceethnicity/> (last visited May 15, 2015).

268. See *Unemployment Rates by Race and Ethnicity, 2010*, UNITED STATES BUREAU OF LABOR STATISTICS (Oct. 5, 2011), http://www.bls.gov/opub/ted/2011/ted_20111005.htm.

269. See, e.g., *Criteria for Adoptive Families*, *supra* note 249 ("The agency prefers one parent to remain at home for at least three months after a child is placed.").

270. See *Domestic Private Adoption II*, *supra* note 123 (citing Ruth G. McRoy, *An Organizational Dilemma: The Case of Transracial Adoptions*, 25 J. APPLIED BEHAV. SCI. 145, 145–60 (1989)).

271. See Matthew Jelalian, *Working vs. stay-at home parents: Who can save more for their*

one source of income is not possible.²⁷² The fact that adoption agencies consider both financial stability and the ability to keep one spouse at home serves to doubly benefit those with acquired means and doubly damage those working for said means.

Some scholars add that differing fee structures for children have a negative impact on black children and prospective adoptive parents.²⁷³ Hall, Kroll, and McRoy, for instance, state that

Adoption professionals who value diversity and making the system accessible to families of color know income-based fees are a means to recruit more qualified families for infants of color. Not only are race-based fee structures unethical and offensive, they poorly serve children of color by discouraging well-qualified parents from accessing the system that is supposed to benefit children who wait.²⁷⁴

This is not to say adoption agencies should ignore economic factors in evaluating prospective parents. Instead, adoption agencies need to consider the racial implications of such economic standards and assign them proper weight in adoption placement considerations. For instance, determining a minimum economic means would be a preferable approach to weighing every economic situation against each other. So long as either family has the requisite means to care for a child, such a distinction should be unnecessary. Allowing a preference for more financially prosperous grants adoption agencies a nebulous arena in which discrimination can occur.

Finally, note that the above discussion and analyses are not suggesting a conclusive finding of disparate impact. To evaluate a disparate impact claim, further legal analysis is required, including factors not touched upon in this Paper.²⁷⁵ What can be said, however, is that there are issues present in transracial adoption that warrant further consideration regarding disparate impact.

family, WASH. TIMES (Apr. 14, 2015), <http://www.washingtontimes.com/news/2015/apr/14/working-vs-stay-at-home-parents-who-can-save-more/> (“[S]ome parents have a choice whether or not one of the two spouses should stay home with the children.”).

272. *See id.* (“[T]here are . . . certain circumstances, usually economic, that force the choice [of whether one spouse can remain at home with the children]. In one case, childcare may be too expensive to justify staying in the workforce, and in another situation the bills are too expensive for a parent to forgo work.”).

273. *E.g.*, Domestic Private Adoption I, *supra* note 123; Domestic Private Adoption II, *supra* note 125.

274. Domestic Private Adoption II, *supra* note 123.

275. *See* *Washington v. Davis*, 426 U.S. 229, 240–42 (1976).

2. *Two-Way Street*

As noted earlier in this Paper, it is important to acknowledge the difference between public perception and definition in transracial adoption.²⁷⁶ While not a significant consideration in research,²⁷⁷ this distinction is critical to the contention of this Paper that transracial adoption should be embraced rather than prevented.

Any argument against transracial adoption is as much a critique of black parents adopting white children as it is of white parents adopting black children. Despite the unique experience of blacks in America, the alleged problems with white parents adopting black children do not disappear when the races are swapped. While studies primarily focus on the experiences of black children, there is nothing to suggest that a white child adopted into a black family would not also experience appearance discomfort or cultural confusion.²⁷⁸ While perhaps not as pronounced in light of this country's turbulent racial history, white individuals possess culture and identity as well. Any potential threat to this, therefore, is not isolated by race.

This argument, however, does not apply to those that oppose transracial adoption on the grounds that races should not be mixed at all. Even those that focus entirely on the experiences of black children, like the National Association of Black Social Workers, do not falter because of their limited definition of transracial adoption.²⁷⁹ This is because supporting racial isolation in families applies to any race regardless of whether it is looking at the parents or children. This approach, however, is not free from criticism.

3. *A Melting Pot or a Patchwork Quilt?*

With respect to diversity and immigration in the United States, many scholars have used the terms "melting pot" and "patchwork quilt."²⁸⁰ The more traditional of the two terms, melting pot, is used to describe the coming together

276. See *supra* Part II.A.

277. See *supra* notes 4–6 and accompanying text.

278. See Davenport, *supra* note 10; Laura Conaway, *White Kid, Black Family: Transracial Adoption*, NPR, http://www.npr.org/sections/bryantpark/2007/11/white_kid_black_family_transra.html (last visited May 28, 2015).

279. See NABSW, *Preserving Families* *supra* note 3.

280. E.g., Terrence Dermott, *In the Eye of the Beholder: A Comparative Study of Public Morality and Free Speech Across the Pacific*, 26 COLUM. J. ASIAN L. 105, 129 (2013); Stephen H. Legomsky, *Immigrants, Minorities, and Pluralism: What Kind of Society Do We Really Want?*, 6 WILLAMETTE J. INT'L L. & DISP. RESOL. 153, 157 (1998).

of people from various countries to form one nation.²⁸¹ The idea behind the term is that immigrants brought to America their own culture and traditions and, once settled in the United States, these cultures and traditions “melted” into one cohesive collective.²⁸² The term supports the idea that, despite everyone’s ethnic and racial individuality, we have come together as one group that embraces one another and identifies as a whole.²⁸³ Conversely, the term patchwork quilt is the “Salad Bowl Theory,” or pluralism.²⁸⁴ As the name suggests, this theory holds that individuals do not lose their culture once in this country and instead retain their unique characteristics and customs.²⁸⁵ Unlike in a melting pot, the components of a patchwork quilt can be readily identified and distinguished from one another while still existing together to form a greater whole.²⁸⁶

These terms are relevant to this discussion because one centers on integration while the other centers on coexistence.²⁸⁷ For our country to be a melting pot, all cultures need to interact and grow together as one collective entity.²⁸⁸ This should be the goal. Instead, the United States is a patchwork quilt—composed of many different cultures and ethnicities, but much of society is too afraid to merge these different life experiences. How can Americans grow as a society if they view people of other races as neighbors they put up with instead of their friends they embrace?

In a melting pot, all walks of life come together to create something cohesive, impactful, and unique.²⁸⁹ This, however, is what scares so many people. Organizations like NABSW believe mixing cultures in a familial setting will cause black culture to disappear.²⁹⁰ This belief, however, is not necessarily true. When everything combines in a melting pot, each component still exists and is recognized. Just because black people and white people interact and create a new experience does not mean black or white culture is gone.

In order to foster development and growth as an inclusive nation, we must

281. See *Social Theories of Immigration*, OSWEGO CITY SCHOOL DISTRICT REGENTS EXAM PREP CTR., <http://www.regentsprep.org/regents/ushisgov/themes/immigration/theories.htm> (last visited May 15, 2015).

282. *Id.*

283. *See Id.*

284. *Id.*

285. *Id.*

286. *Id.*

287. *See id.*

288. *See id.*

289. *See id.*

290. See NABSW, PRESERVING FAMILIES, *supra* note 3; Pressley, *supra* note 42 (stating the NABSW’s stance that transracial adoption will lead to a form of “genocide”).

embrace transracial adoption. Will it be easy for a black child living in a white family or a white child living in a black family? It likely will not be.²⁹¹ It will be similarly challenging for the parents in each scenario. But, what better way to encourage exploration into new cultures than by facing such challenges? Everyone has something to learn from someone else. By creating families that have different ethnic, cultural, and racial backgrounds, we are setting the stage for greater growth and understanding. Cultural isolation hardly seems commendable in this modern day.

4. *The Actual Harm*

While NABSW does make a strong argument for the harm black children experience when adopted into a white home,²⁹² their assertions fail to recognize the harm in the alternative. This harm is the harm a black child experiences from either not being adopted or from being adopted at a lower price than a white child.²⁹³

As Andrew Morrison points out, there is a much higher number of black children available for adoption than there are white children.²⁹⁴ This leads to quicker and easier adoption for black children; an adoption of a black child takes one to nine months and the adoption of a white child takes up to 18 months.²⁹⁵ Despite this, black children are commonly in the system longer as they await adoption.²⁹⁶ With black children already struggling to be adopted, an organization seeking to benefit black children should not argue that only black parents should adopt these children—thereby drastically reducing the number of potential adoptive parents.

Considering the number of black children available for adoption, everything should be done to encourage and facilitate their placement into homes. Does being adopted into a white family threaten a black child's culture, per the contentions of

291. See *Palmore v. Sidoti*, 466 U.S. 429, 433 (1984) (“It would ignore reality to suggest that racial and ethnic prejudices do not exist or that all manifestations of those prejudices have been eliminated. There is a risk that a child living with a [parent] of a different race may be subject to a variety of pressures and stresses not present if the child were living with parents of the same racial or ethnic origin.”).

292. See NABSW, PRESERVING FAMILIES, *supra* note 3.

293. See Feigelman & Silverman, *supra* note 61, at 601; *Domestic Private Adoption I*, *supra* note 123; *Domestic Private Adoption II*, *supra* note 123.

294. Morrison, *supra* note 108 at 181.

295. *Id.*

296. Becky McKendry, *Racial Disparities in Adoption Raise Concerns*, CAPITAL NEWS SERVICE (Sept. 27, 2013), <http://news.jrn.msu.edu/capitalnewsservice/2013/09/27/racial-disparities-in-adoption-raise-concerns/>.

the NABSW?²⁹⁷ Perhaps. However, that is far less harmful to a child than not having a family at all. It is counterproductive to deny a child a home to advance such amorphous goals as cultural preservation.

There are additional reasons critics should consider altering their stance on transracial adoption. Specifically, there may be harmful consequences from efforts of adoption agencies to encourage adoption of black children. As has already been discussed, adoption agencies have implemented questionable tactics to try to increase the rate of adoption for black children.²⁹⁸ Some adoption agencies implement different adoptive parent requirements depending on the race of the child sought for adoption.²⁹⁹ As an example, Morrison cites the American Adoptions agency requirement that an adoptive parent for a white child be married for two years, between the ages of 25 and 45, and have no more than one child.³⁰⁰ While an adoptive parent for a black child need only be younger than 55, regardless of how many children they already have.³⁰¹ Additionally, this same agency charges approximately \$10,000 to \$25,000 more for adoption of a white child than it does for a black child.³⁰²

While perhaps guided by altruistic intent, such guidelines are not beneficial to race relations and could result in problems for the child. How is a black child supposed to interpret the fact that they cost less than a white child and can be adopted under less stringent guidelines? These practices send the message that black children are less valuable than white children, further polarizing the races.

B. *Cultural Competency: A Proposed Solution*

As discussed above, cultural competency looks to an individual's ability to understand and interact with different cultures.³⁰³ In transracial adoption, this factor is seen when an adult is knowledgeable about the culture of their child and is capable and willing to implement their knowledge and understanding for the benefit of their child.³⁰⁴ This is of particular importance deciding the ultimate question of whether or not race should be a consideration in the adoption context. Rather than treating every prospective adoptive parent as equal, a cultural competency analysis will equip an adoption agency with information to determine

297. See NABSW, PRESERVING FAMILIES, *supra* note 3.

298. See Morrison, *supra* note 108, at 180–81.

299. *Id.*

300. *Id.* at 180.

301. *Id.*

302. *Id.*

303. See Vonk, *supra* note 104, at 247.

304. See *id.*

how to involve race in an adoption. Prospective adoptive parents who are highly culturally competent, for instance, should face no more resistance when seeking to adopt a child of a different race than when seeking to adopt a child of their own race. Conversely, if prospective adoptive parents exhibits little to no cultural competence, they should face greater resistance in efforts to adopt a child of a different race. It seems logical, after all, to allow a prospective adoptive parent who is well equipped to help a child understand his or her culture and feel comfortable about themselves to transracially adopt before a prospective adoptive parent who does not understand their child's culture.³⁰⁵ Such an approach is in accord with the judicial preference of considering the child's best interest, and is a race-conscious consideration while remaining race-neutral.³⁰⁶ By screening candidates based on their cultural competency, a desirable middle ground appears between the two competing approaches.³⁰⁷ It does not ignore race and does not rely on race—cultural competency instead addresses the impacts of race as manifested through concerns such as cultural assimilation and the ability for a child to cope with discrimination.

While not directly endorsed by the Supreme Court, Justice Kennedy lends support to this approach in his concurring opinion in *Parents Involved in Community Schools v. Seattle School District No. 1*.³⁰⁸ Justice Kennedy explained that states are able to consider racial composition and take steps to promote racial diversity in the administration of schools.³⁰⁹ He continued by stating:

If school authorities are concerned that the student-body compositions of certain schools interfere with the objective of offering an equal educational opportunity to all of their students, they are free to devise race-conscious measures to address the problem in a general way and without treating each student in different fashion solely on the basis of a systematic, individual typing by race.³¹⁰

Justice Kennedy argued for an approach that was race conscious but that did not treat people differently based on race.³¹¹ Such an approach relates to cultural competency in that it finds a middle ground between disregarding race and making decisions based solely on race.³¹² Justice Kennedy did not want to endorse either

305. See McRoy et al., *supra* note 67.

306. See, e.g., *Palmore v. Sidoti*, 466 U.S. 429, 431 (1984).

307. See *supra* Part III.A.2.b.

308. See *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701 (2007).

309. *Id.* at 788.

310. *Id.* at 788–89.

311. *Id.* at 789.

312. See *id.*

extreme—his opinion understands the need to consider race when making decisions while also tempering the impact making that consideration can have.³¹³ By balancing race conscious considerations with race neutral considerations, Justice Kennedy argued for an approach to race that would be best applied in an adoption context.

How exactly such an approach would be applied in practice is unclear. The best approach, despite raising concerns regarding administrative discretion as explained above, may be to provide adoption agencies with the resources and responsibility to make determinations themselves regarding the cultural competency of prospective adoptive parents. This can be accomplished through the use of questionnaires, surveys, or interviews conducted by the adoption agency.³¹⁴ The Center for Development of Human Services in Buffalo, New York, for instance, has a resource guide for agencies to implement a cultural competency approach.³¹⁵ In assessing families considering adoption, the guide suggests asking questions and conducting analyses regarding “[c]ultural norms of the family system;” “[p]ersonal habits and behaviors;” “[a]ttitudes towards external help;” the “[a]bility to distinguish and negotiate different cultures to meet needs;” “[l]anguage issues;” “[p]roblem definition and problem solving methods;” and “[c]ultural identity and resources.”³¹⁶ In asking questions such as “[w]hat messages does the birth family and the foster/adoptive family share with the child about cultural differences” and “[h]ow are the family’s rules, boundaries, subsystems, and power structure influenced by their experiences and background,” those working in an adoption setting can better implement cultural competency in making placement decisions by evaluating the adoptive families.³¹⁷ If such an approach were implemented instead of the traditional plus-factor approach, culturally competent parents would rightfully have greater chances of adopting children of different races—thus reducing the disparate number of black children without homes. Not only would this address the goal of finding homes for all children regardless of race, but it also would serve the best interest of children by ensuring that they would be placed in homes fully capable of handling any complications arising from mixing races and cultures within a home effectively and thoroughly.

313. *See id.* at 790.

314. *See, e.g.*, CENTER FOR DEVELOPMENT OF HUMAN SERVICES, ACHIEVING PERMANENCY THROUGH SURRENDER AND TERMINATION OF PARENTAL RIGHTS RESOURCE GUIDE: ADOPTING CULTURAL COMPETENCE (2010), available at <http://www.bsc-cdhs.org/adoption/pdf/Res%20A%20-%202004%20Adopting%20Cultural%20Competence%20-%202007-10.pdf>.

315. *Id.*

316. *Id.*

317. *See id.*

V. CONCLUSION

With this in mind, this Paper returns to the original question asking whether NABSW was right in condemning transracial adoption. As it stands, black children are likely to be denied a family and home for longer than white children and when, or if, they eventually are adopted, it may well be under relaxed standards that send the message that they are below white children. Is this how the system should be? Of course not. Trying to stifle the already low amount of transracial adoptions will only seek to exacerbate the problem. Cultural preservation—especially when considering the benefits of a melting pot approach to cultural assimilation—is hardly worth the negative effects on the child. In the end, NABSW is wrong and it is the children that will suffer.

*Nicholas J. Krob**

* B.S., University of Northern Iowa, 2012; J.D. Candidate, Drake University Law School, 2015. I would like to thank Professor Russell Lovell for his valuable guidance and feedback in the creation of this Paper.