

February 7, 2025

Rep. Martin LaLonde  
Sen. Nader Hashim

Re: H.7/S.13

Dear Representative LaLonde and Senator Hashim:

I am writing this letter in support of H.7 and S.13, bills to reinstate the ability of the court in an adoption proceeding to consider whether a person asserting parental rights has made reasonable and consistent payments to support the minor child when determining whether termination of parental rights is in the best interests of the child.

I am a family law attorney practicing in Burlington, Vermont. I am a member of the Academy of Adoption and Assisted Reproduction Attorneys. I have been practicing adoption law since 1995, the year before Title 15A was enacted.

I have tried dozens of contested termination of parental rights cases over the years. I have handled these cases in the Probate Division, upon transfer to the Family Division, and on de novo appeals in the Civil Division. I have briefed and argued appeals from decisions in these cases before the Vermont Supreme Court.

I was surprised when I saw that 15A V.S.A §3-504(a)(2)(A) was repealed.<sup>1</sup> While I do not know why the section was repealed, I was told that the change was initiated by the Department of Children and Families (DCF). In all the years that I have been trying these cases, I have never had DCF involved as a party, nor can I imagine how the Department would be involved in a termination proceeding under Title 15A. The legal structure for termination hearings under 15A V.S.A §3-504 is completely different and separate from the Title 33 termination proceedings in which the Department regularly participates.

If the concern was that a Court would terminate a person's parental rights because they could not afford child support payments, that concern is unfounded. By the plain language of the statute, such payments must be "in accordance with the respondent's financial means". Further, under 15A V.S.A §3-504(b), if the respondent has proved *by a preponderance of the evidence* that he or she had good cause for not complying with subdivision (a)(1) or (2) of this section, the court *may not terminate* the respondent's parental rights to a minor except upon a finding by clear and

---

<sup>1</sup> I note that an identical provision under 15A V.S.A §3-504(a)(1)(B) for children under the age of six months was not repealed.

# TARNELLI & HUGHES

FERTILITY AND FAMILY LAW

convincing evidence that other enumerated grounds exist, and that termination is in the best interests of the minor.

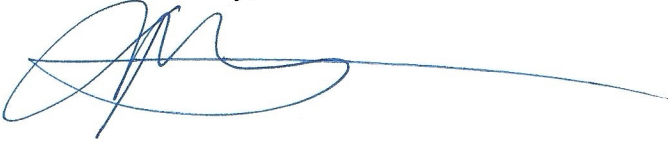
I happened to have just finished a trial in which the respondent had not seen or communicated with the child for a number of years, but he had been making child support payments to the extent that he could afford them and actually paid \$5,000 toward arrearages during the trial. The removal of 15A V.S.A §3-504(a)(2)(A) has made the fact that the respondent was making support payments legally irrelevant.

Let me be clear: a Court would *never* terminate an individual's parental rights solely because they could not afford to pay child support. Such a decision would be contrary to the plain wording of the statute. However, it makes no sense to entirely remove that criteria from the Court's consideration. I have had many cases in which the respondent had no communication with the child for years *and* they owed tens of thousands of dollars in child support arrearages without excuse. Why shouldn't the Court be allowed to consider that as an additional factor? On the other side of the equation, why shouldn't the Court be allowed to consider the fact that a respondent *has* made child support payments to the best of their ability?

In summary, this statutory framework has been working very well for nearly thirty years. The language is clear and unambiguous, and has provided practioners and judges with clear guidelines by which to try these difficult cases. I am grateful that these bills have been advanced to correct the mistake (however well-intentioned) that was made when 15A V.S.A §3-504(a)(2)(A) was repealed.

I would be happy to answer any questions that your respective committees may have concerning this subject.

Sincerely,

A handwritten signature in blue ink, appearing to be 'Kurt M. Hughes', with a long horizontal flourish extending to the right.

Kurt M. Hughes