What We've Learned About the Impact of the Adoption and Safe Families Act 25 Years Later

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Editor's note: On October 16, 2023, this post was edited to remove the description of the National Council for Adoption.

Elizabeth Brico's home is adorned with art made by her two young daughters—sequins, goopy glue and bright colors. Her two daughters, however, are gone. Permanently. Elizabeth's parental rights, and the rights of her two young daughters to have a loving mother, were terminated by the State of Florida in 2018. Elizabeth had never abused or neglected her children, and the drug testing she was subject to following allegations of substance use disorder was consistently negative. Her termination was a result of a law signed 25 years ago, which governs our current child welfare policies.

Passed in 1997, with broad bipartisan support, the Adoption and Safe Families Act (ASFA) was designed to be a response to children languishing in foster care, bouncing between different placements. ASFA promoted adoption as the happy ending, discounting the many children in foster care who could return to their parents' care. To promote adoption, ASFA required states to move forward with termination of parental rights if children spent 15 out of the previous 22 months in care outside of the home, regardless of whether child abuse or neglect had occurred.

On the 25th anniversary of its passing, leading venues published a series of commentaries that reviewed ASFA's negative impact on racial justice and disproportionality child and family health, family well-being and the child welfare system, including one I wrote on how the law has put parental rights at risk. In this piece and from my lens as a historian, I unpack the political forces that shaped ASFA, the disparate impact this law has had on children and families, and how those forces and impacts carry through to the discourse today.

The Political Forces that Shaped the Adoption and Safe Families Act

ASFA's timeline was an arbitrary compromise between legislators, devoid of evidence and with dire consequences for families. Notably, during the ASFA hearings, biological parents were not invited to testify or share their experiences. In contrast, adoptive parents and foster parents and their organizations were considered by policymakers as valuable partners in policy shaping.

Many of ASFA's advocates were passionate about protecting children and appalled at long periods of foster care churn and the lack of stability in children's homelives. They likely did not view themselves as enshrining the legal infrastructure to quickly cut children off from their parents, or penalize birth parents for poverty,

homelessness and incarceration. Yet, ASFA does just that.

The Disparate Racial and Socioeconomic Impacts of a Law Not Based in Evidence

ASFA further shaped the child welfare system into one that disproportionately targets poor families and families of color, who face excess investigations, child removal, and foster care placements, which can culminate in the termination of parental rights. Termination of parental rights, often termed the "civil death penalty" for families, is shockingly common. An estimated 1 in 100 children will experience this parental loss. Termination of parental rights creates a new category of dependent children, legal orphans: children who no longer have parents, as their parents had their parental rights terminated, but they also have not been adopted, and might never be.

One-quarter of a century later, the impact of ASFA is clear. Parents, predominately Black, poor, and many struggling with addiction, have had their familial ties to their children irrevocably severed. These arbitrary timelines to termination do not align with what is currently known about addiction and allow parents and children neither grace, nor the possibility for redemption.

This rush to "replace" children's families of origin with "new" families reflects policymakers' devaluation of certain parents, with the greatest harm to poor families and families of color. ASFA was also disproportionately shaped by advocates from the adoption industry, who would stand to gain financially from adoption incentives written into law. Furthermore, ASFA was not grounded in research, nor did it look to evaluate the impact of adoption. This work is also notably complicated by privacy laws that don't allow for the long-term follow up of adopted children, including those who have been involuntarily removed from their parents.

ASFA's Anti-Choice Pro-Adoption Roots Persist

Leading up to the passage of ASFA, the National Council for Adoption (NCFA) helped position adoption as an important component of child welfare. This was a clear shift from prior policy approaches, which had highlighted family preservation. Furthermore, seen as a non-controversial antidote to culture wars over abortion, adoption became a key priority for the Clinton administration. President Clinton announced the Adoption 2002 plan to double the number of children adopted from the public child welfare system by 2002. He also embraced tax credits for adoption, a Republican policy priority.

Fast-forward to present times, the 2022 U.S. Supreme Court decision overturning *Roe v. Wade* referenced the "domestic supply of infants" as an opportunity to support adoption, highlighting that links between abortion restrictions or anti-choice advocacy and pro-adoption advocacy persist. Furthermore, for some women, ASFA is wielded as a method to pressure them into voluntarily relinquishing their children, with the unenforceable promise of a future relationship via open adoption, as opposed to state-mandated termination of parental rights.

Elizabeth and her daughters are not alone suffering this painful loss. On this anniversary of ASFA, we should relieve ourselves of outdated notions of providing "new families" for children on an arbitrary timeline, and instead work to support families in creating communities in which all children can thrive.