

**Testimony before
United States Commission on Civil Rights**

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by

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My name is Elizabeth Bartholet.

I am on Faculty at HLS and have specialized for over 20 years in child welfare & adoption. Have in recent years founded at HLS new program, CAP, committed to advancing children's interests.

I have focused a huge amount of my professional time over these last decades on TRA & MEPA. Was one of those who fought for passage of MEPA in the form took by virtue of the amendments in 96, form it now takes. I have written two books and many articles addressing TRA and MEPA issues all of which can be accessed on my website, www.law.harvard.edu/faculty/bartholet.

I am also a civil rights lawyer: worked as such for a dozen years after graduation from HLS. Have taught civil rights in employment field my entire time at HLS.

I believe that MEPA is a very important law, and a very important part of the panoply of civil rights laws in the U.S. I believe this for two different kinds of reasons:

(1) because it knocks down barriers to the placement of children in foster care, and thus helps expedite placement – something that is terribly important for children, since early placement in adoption has been shown to be the central factor in predicting successful adjustment.

(2) because it sends the message that the State should not be in the business of insisting on same-race families – that was the message of the race-matching era that MEPA ended, and I think that message was as deeply wrong as was the message that inter-racial couples should not be allowed to marry, a message that was of course outlawed in *Loving v. VA*.

I think also that *this Briefing* is important, because we must ensure that this law is being appropriately enforced – that it's not just a law on paper, but is a law that actually makes the difference that Congress intended it to make.

Initially there were very significant enforcement problems: HHS just did not do the job needed to get word out appropriately about the meaning and significance of this law, a law which was after all designed to change the systematic race matching practices which existed in powerful form in all 50 states.

However I think you should take comfort in fact that HHS has finally done some important investigations of MEPA violations and issued some important enforcement decisions. I write in some detail about these decisions in the short article I submitted to the Commission which is in your Briefing book, *Cultural Stereotypes Can and Do Die*. (Please treat that article, also accessible on my website, as an Attachment to this Statement.) These are quite terrific decisions and will I think make a real difference for the following key reasons:

(1) They spell out in unmistakable language the meaning of MEPA, eliminating any possible doubt. This is important not because MEPA's language or the MEPA regulations were ambiguous – they were not. But MEPA has many enemies, and those enemies have done their best to create confusion as to MEPA's mandate. The HHS decisions make clear that MEPA prohibits *any* systematic reliance on race as a factor in placement, and that it prohibits all forms of special screening of prospective transracial adoptive parents. Experience has shown that these aspects of MEPA are crucial to its actually making a real-world difference in practice.

(2) These decisions also impose the very significant financial penalties mandated by MEPA – a \$1.8 million penalty in the Ohio case. This kind of financial penalty is the kind of message that financially strapped child welfare agencies *cannot* ignore.

However.... I am still concerned that not enough is being done. HHS has done little to publicize these decisions. Indeed I have found it necessary to post the decisions on my own website in order to help get the word out. Also, neither HHS nor any other government agency has produced any serious accounting of what difference in fact MEPA has made and the degree to which MEPA may continue to be systematically violated.

Conclusion:

In conclusion, I applaud you for holding this hearing. Hope that it will help both in encouraging HHS to do its enforcement job, and in getting the word out to the child welfare world that MEPA is the law of the day.

I also want to alert you to a MEPA-related problem that the federal government has created in connection with its implementation of the new Hague Convention on Intercountry Adoption. We now have federal regulations that require, in connection with U.S. agencies sending kids from this country to other countries for adoption, that the children be held for two months after birth prior to placement abroad in an effort to match the children with in-country parents, in direct violation of MEPA's prohibition against matching based on "race, color, *or national origin.*" I urge you to look into this and to encourage reconsideration of these recently issued federal regulations.

More generally, this Commission should know that U.S. and other countries' policies in the world of international adoption replicate what were our own domestic racial matching policies in the pre-MEPA world. In the international adoption context there are now very powerful preferences for keeping children within their racial, ethnic and national group of origin, even when this means that the children will live out their childhoods, or die, in orphanages characterized by horrendous conditions. Our State Department has shown great sympathy with these kinds of preferences. The underlying

principles that inspired MEPA are being entirely ignored in the world of international adoption.

So in conclusion, while I applaud you for holding this hearing, I want to emphasize that there is much work still to do both to enforce MEPA, and to implement the principles inherent in MEPA, principles that are very important to child welfare and to our society as a whole.