



H.1601/S.1037 – SUPPORT

Joint Committee on the Judiciary

Tuesday, November 14, 2023, 1:00 PM

Location: A-2 and Virtual

TESTIMONY IN SUPPORT OF H.1601/S.1037, **REQUESTING AMENDMENT**  
FROM THE NATIONAL FEDERATION OF THE BLIND OF MASSACHUSETTS

To Chair Eldridge, Chair Day, and Members of the Joint Committee on the Judiciary:

The National Federation of the Blind of Massachusetts (NFBMA) testifies in support of, but requests a simple amendment to H.1601/S.1037, An Act prohibiting discrimination against adults with disabilities in family and juvenile court proceedings. We thank all who have been involved in developing and updating this legislation in the recent decades of this effort. Our neighboring states to the south and west, Rhode Island, Connecticut, and New York, have already created similar laws, and we are excited and hopeful that Massachusetts will create these procedural safeguards next.

Stated simply, the amendment that we request is that all places in this bill that set the evidentiary standard for using a parent's disability to make an adverse decision on their right to parent be homogenized at clear and convincing evidence, so that no lower evidentiary standard shall be considered acceptable. **On Line 20 and Line 48, please change "a preponderance of the" (evidence) to "clear and convincing" (evidence).** While we understand that some parts of the law use a lower evidentiary standard for the overall court decisions, we want the evidentiary standard for a court to use the disability of a parent or prospective parent as part of a court decision to be clear and convincing evidence.

While many of the concepts that we articulate are applicable to all disability groups, we will testify most directly about blindness and the experiences of blind parents and prospective parents because this is our specialty. We are an organization of blind people speaking for ourselves.

The lack of eyesight itself is not the real problem of blindness. The real problem of blindness is the set of low expectations and misperceptions which exist in society and the downstream effects that flow from these low expectations and misperceptions. When a sighted person puts on a blindfold and tries to function the way they normally would, this experience is difficult and sometimes scary, but it is the experience of being newly blind rather than the experience of living blind. The human brain is a powerful tool, and we use our human ability to adapt and problem-solve to carry out life's daily tasks. We learn some techniques that we use often, others that we use rarely, and we retain the ability to develop new skills when new situations demand it. Many of us are already raising children with the full spectrum of family experiences that any other family

enjoys. No matter which path we take to parenthood, we, the blind, have legacies that we want to pass on into the future through our children. We share in the joys of raising our children and preparing them to participate in the world.

Many people do not understand these realities about blindness and about blind people. Everywhere we go, there are people who jump in to provide help that we do not need, who assume that we cannot perform a job or complete a task, or who communicate to us in some way that they hold low expectations for us. One of our main functions in this organization is to remind each other that these messages are harmful and false. People working in the courts, child welfare systems, or adoption agencies are just as likely to hold these implicit biases as anybody else. Frequently, decisions are made against us because "it's just obvious" that parent X cannot raise a child, or "Given the situation, this parent is not the best person to raise this child." They may talk around blindness, but the implications are obvious; all who are present know exactly what they are talking about. They reference our disability without getting specific, and, if everyone else with power in the process shares those low expectations and misperceptions, a decision is made against a blind person without anyone ever having to explain what their gut is telling them. This bill will force the conversation about disability to be explicit, and it will help those experiencing the discrimination to defend themselves.

There may be people who fear that a child may be put in jeopardy because an unfit parent would be allowed to continue parenting because of this bill. To them, we will advise them to follow this new law, to develop a case that clearly defines a nexus between the parent's disability and the alleged parental deficiency, by clear and convincing evidence. We advise them to prove that supportive parenting services are not sufficient to keep the child in the care of their parent, and that reasonable accommodations cannot be used to carry out parenting tasks. If you can prove these things by clear and convincing evidence, go right ahead and take that child. All children deserve a safe and loving home, and this is exactly why we want children to be able to stay with their loving blind parents.

If you will not consider our request for this amendment to homogenize the evidentiary standard at clear and convincing evidence, this bill, as written, is still a step forward for us. We hope that you will also consider our proposed amendment.

Thank you for taking the time to hear this bill and to help keep children in the homes of their loving blind parents.

Sincerely,

Shara Winton, President  
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