Presentation to the South Carolina Senate
DSS Oversight Committee
September 7, 2016

1.**Objective of the meeting**: To inform the Senate DSS Oversight Committee of:
●Concerns over recent DSS changes in policy and practice, and deceptive and unethical behavior by DSS, which adversely affect foster children and foster parents Statewide;
●Concerns over SC Court decisions that have created chaos with SC Adoption Act and which give license for courts to summarily disregard clear Legislative statutes and intent, which also adversely affect foster children and foster parents.

2. **Concerns with DSS policy and practice regarding foster care and foster parents**:
   a. General concerns with actions and practices of DSS
   b. Specific Examples

      (1) Lexington County Case
      ●DSS caught fabricating facts and falsifying court affidavits
      ●2014 Investigation by DSS Division of Investigations should be reviewed by Legislature

      (2) Union County Case
      ●DSS ignoring the best interests of children and disregarding child's bonding and attachment and positive development with foster parents (who wish to adopt child), and attempting to get the child out of DSS care, by keeping foster parents in the dark about the DSS plan and blindsiding them at a court hearing by asking the Judge to place the child with a relative who has no relationship with the child and allowing DSS to close its case; and by arguing against foster parents intervening in the case - thereby keeping foster parents from having any participation with the court proceeding.
      ●DSS practice of blindsiding foster parents and not respecting their right to receive 10 day written notice informing them that DSS intends to remove child - all in an effort to keep foster parents from filing an administrative appeal

- DSS deliberately misleading foster parents about the nature of court hearings where DSS would be seeking removal of the child
- DSS seeking to dismiss private action of foster parents who bring their own action for TPR and adoption
- The DSS administrative appeal process is not well understood and is disregarded by Family Court Judges - and is thereby made virtually ineffective in protecting the right of foster parents.

(3) York County Case (The Smiths)

- Severe physical abuse of two infants (multiple incidents of broken bones and shaken baby injuries) when children in care of birth parents
- When 3rd child born to these parents in June 2016, DSS initially removed child because of past abuse of other two infant siblings, and sought TPR. But remarkably, York County DSS has been relentless in its efforts to remove the child from the foster parents and his siblings and place the child in relative custody with a distant relative.
- This case highlights the detrimental changes in DSS policy and practice affecting the safety and well-being of children in foster care. It also clearly shows how foster parents are being deprived of their rights to protect their own interests in the welfare of the child, or to speak on behalf of the children in their care. A detailed overview will be provided at the meeting.

(4) **DSS rewriting policy to downplay foster parents' rights and downplay the permanency of adoption for children who cannot be returned to their parents**: DSS, through the Children's Law Center, has prepared a draft of new policy manual for Foster Care and Foster Home Licensing. Stakeholders were asked to submit comments by May 1, 2016, and revisions are in progress. We will provide you with a summary of our concerns about these proposed policy changes. We will also provide you with a summary of important statistical information showing the substantial stability and permanency for adopted children verses children placed in relative custody; that most adoptions of children from DSS are by foster parents; and that DSS actions for TPR (which lead to adoption) are substantially down. For example, in State fiscal year 2013, York County had 24 TPRs, but only 5 in 2014. For State fiscal year 2015, 39% of the children who reentered care with DSS were from prior relative placements verses 4 % who reentered care after being placed for adoption.

3. **DSS attacks against foster parents are taking their toll**: The relentless attacks by DSS against foster parents have caused the following problems:

a. **DSS is losing foster parents** at an alarming rate and children are being placed in group home settings far too often. The normalcy bill just passed by the legislature will not help when there are so few foster homes available for children.

b. There is substantial lack of trust by foster parents for the integrity of DSS.

c. **Courts losing the voice of foster parents**: Foster parents, who know more about the child in their care than most any other person in the DSS or Court system, are being treated like they are the enemy of the system, and are being deprived of their rights to tell the Court what they know about the child.

d. **Courts are increasingly antagonist against foster parents**: Courts are now stripping foster parents of their rights to be heard and participate in hearings, despite clear Legislative directives giving foster parents rights and a seat at the table in matters regarding children in their care. Evidence of Legislative intent to provide rights to foster parents is very clearly seen in the following statutes:

> §**63-7-1630**, which provides as follows: *"The department* [DSS] *shall provide notice of a hearing held in connection with an action filed or pursued under Subarticle 3 or Section 63-7-1650, 63-7-1660, 63-7-1670, 63-7-1680, 63-7-1700, or 63-7-2550 to the foster parent, the preadoptive parent, or the relative who is providing care for a child. The notice must be in writing and may be delivered in person or by regular mail. The notice shall inform the foster parent, preadoptive parent, or relative of the date, place, and time of the hearing and of* ***the right to attend the hearing and to address the court concerning the child****. Notice provided pursuant to this section does not confer on the foster parent, preadoptive parent, or relative the status of a party to the action."* (Emphasis added)
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> **§63-11-720(A)(5)**, which provides that the Foster Care Review Board is *"to advise* ***foster parents*** *of their right to petition the family court for* ***termination of parental rights and for adoption*** *and* ***to encourage these foster parents to initiate these proceedings*** *in an appropriate case when it has been determined by the local review board that return to the natural parents is not in the best interest of the child."* (Emphasis added)

e. **In the Smith case itself** the Family Court Judge has refused to hear motions of foster parents seeking to intervene in the case, and has refused to allow the foster parents to address the court concerning the welfare of the child, in clear violation of §**63-7-1630.**

4. **Specific Legislation needed to repair what DSS and the Courts have broken**:

a. **Youngblood decision requires Legislative correction**: The SC Supreme Court decision (Youngblood v. DSS, 2013) has created chaos with SC Adoption Act for children in DSS foster care.

(1) At issue is **§63-9-60** from the SC Adoption Act, which was to carry out the Legislative purpose of the Act - for children to be adopted by SC residents only, except in unusual or exceptional circumstances (see §63-9-20 for Legislative purpose)

(2) **Youngblood has turned the clear Legislative purpose on its head**. Now, Youngblood has been interpreted to prohibit SC residents from bringing an action to adopt a child in DSS care (unless DSS itself decides to place the child with them for adoption). But, if a non-resident wants to adopt a child in DSS care, 63-9-60(A)(1)(f) specifically provides that the non-resident can bring an action for placement of the child with them for purposes of adoption.

(3) **Youngblood decision being used to dismiss actions for adoption being filed by foster parents**: The Youngblood decision has already been used in multiple cases to prevent foster parents from bringing their own private action to adopt a child in their care. Earlier this year, the SC Court of Appeals (DSS v. Boulware) upheld the decision of a Family Court Judge dismissing the action for adoption brought by the foster parents, when the parental rights had been terminated in large measure by the evidence provided by the foster parents, who had brought their own action seeking TPR. The Court of Appeals held that "pursuant to Youngblood—foster parents do not have standing under section 63-9-60 to file an adoption petition, regardless of whether they are former or current foster parents or whether DSS has made an adoption placement decision. This finding is consistent with the overall policy of the Children's Code, as expressed in Youngblood." The Court of Appeals decided that its decision would be unpublished, meaning that it could not be used in other cases as authority.
Nevertheless, DSS has petitioned the Court of Appeals to make the decision a published decision. **If the decision becomes a published decision, DSS will be able to use it to dismiss every action in the State presently filed by foster parents to adopt children in their care**.

(4) **Proper Interpretation of §63-9-60(B) gives congruent meaning to all language in statute, and in other related statutes**: With the backdrop of the legislative intent to restrict the placement of children for adoption by nonresidents, is it clear to see that §63-9-60(B) is intended to remove the restrictions and procedures for nonresident adoptive placement **when DSS has placed the child for adoption with nonresidents**. This interpretation gives meaning to all of the provisions of this section and to the other provisions of the Adoption Act and Children's Code relating to the issue of standing for adoption actions being brought for children in foster care with DSS.

(i) The proper interpretation for the first sentence of §63-9-60(B) is that "this section does not apply to a child placed **[with a nonresident]** by the State Department of Social Services... for the purposes of placing that child for adoption. Neither the department nor its

contractors may delay or deny the placement of a child for adoption by nonresidents if that nonresident has been approved for adoption of the child by another state.... The department shall provide an opportunity for a hearing... to a nonresident who believes that the department, in violation of this section, had delayed or denied placement of a child for adoption." (The above phrase, "with a nonresident," is added to demonstrate the proper interpretation of section (B))

(ii) **Affirmation of proper interpretation of §63-9-60(B)**: This interpretation also gives meaning to the exception to nonresident placement for adoption found in §63-9-60(A)(1)(f), where "the child has been in foster care for at least six months after having been legally freed for adoption and no South Carolina resident has been identified as a prospective adoptive home." Under this exception, a nonresident, and not DSS, would be seeking to have a child in DSS care placed with them for purposes of adoption. The nonresident would have to go through the judicial determination process of §63-9-60(A)(2), and prove one of the circumstance in items (a) through (f) of §63-9-60(A)(1), before the child could be placed with them. If DSS were seeking to place the child for adoption with the nonresident, §63-9-60(B) would eliminate the need for the judicial determination process called for in §63-9-60(A)(2), and there would be no need to prove the circumstances in items (a) through (f) of §63-9-60(A)(1).

b. **Second problem from Youngblood**: Another problem stems from the Youngblood Decision, and must be addressed, or many Legislative acts will be rendered worthless.

(1) The Supreme Court opened the door for the following interpretation made by the SC Court of Appeals in a decision referenced above (DSS v. Boulware). The Court of Appeals ruled as follows:

> *"Foster Parents next contend they have standing to file an adoption action under section 63-11-720(A)(5) of the South Carolina Code (2010), which permits local foster care review boards 'to advise foster parents of their right to petition the family court for termination of parental rights* [TPR] *and for adoption and to encourage these foster parents to initiate these proceedings in an appropriate case.' **Although this statute grants local foster care review boards the power to discuss rights with foster parents, it does not in itself create a right**. See Youngblood, 402 S.C. at 320, 741 S.E.2d at 519 ("**[A] statutory directive to inform persons of their rights does not in itself create rights**."). Thus, this statute does not grant Foster Parents standing."* (Emphasis added)

(2) This flawed logic has been used multiple times by multiple courts in cases across the state, in violation of clear legislative intention and directions. The Legislature certainly needs to promptly address this misguided approach.