

Combating Misguided Efforts to Ban Lesbian & Gay Adults As Foster & Adoptive Parents

Under long-settled child welfare policy and practice, foster and adoptive parents are evaluated as individuals on a case-by-case basis. Child welfare professionals — not politicians — are best equipped to make sound judgments about which adults are qualified to serve as foster and adoptive parents for particular children. Furthermore, all leading national associations of child welfare professionals concur that lesbian and gay adults are as fit as any others to be considered for service as foster or adoptive parents. Yet despite this clear professional consensus, in some states politically motivated legislative and administrative policies have been proposed that would prohibit otherwise qualified lesbian and gay adults from service. These misguided efforts are contrary to the best interests of the many children in need of nurturing foster and adoptive parents and unfair to the lesbian and gay adults who are well-equipped to care for them.

EFFORTS TO BAN LESBIAN AND GAY ADULTS FROM FOSTERING AND ADOPTING CHILDREN ARE COUNTER TO THE OVERWHELMING SOCIAL SCIENCE EVIDENCE AND PROFESSIONAL CONSENSUS.

Decades of social science data show that children raised by lesbian and gay adults fare just as well as other children. Every leading professional child welfare organization in this country strongly supports the practice of licensing lesbian and gay people as foster and adoptive parents according to the exact same criteria applied to all other applicants. Efforts to prohibit lesbian and gay people from serving as foster and adoptive parents are contrary to the mainstream professional consensus on the subject, represented by these statements of the following leading professional organizations:

The American Academy of Pediatrics

“The American Academy of Pediatrics recognizes that a considerable body of professional literature provides evidence that children born with parents who are homosexual can have the same advantages and the same expectations for health, adjustment and development as can children whose parents are heterosexual.”¹

The National Association of Social Workers

“Legislation seeking to restrict foster care and adoption by gay, lesbian, bisexual or transgender people should be vigorously opposed.”²

The Child Welfare League of America (CWLA)

“Based on more than three decades of social science research and our 85 years of service to millions of families, CWLA believes that families with LGBTQ members deserve the same levels of support afforded other families. Any attempt to preclude or prevent gay, lesbian and bisexual individuals or couples from parenting, based solely on their sexual orientation, is not in the best interest of children.”³

FOSTERING TRANSITIONS

A CWLA/Lambda Legal
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“The family foster care agency should not reject foster parent applicants solely due to their...sexual orientation.”⁴

“All applicants [for adoption] should be assessed on the basis of their abilities to successfully parent a child needing family membership and not on their...sexual orientation.”⁵

IT IS CONTRARY TO THE BEST INTERESTS OF CHILDREN IN NEED OF LOVING FAMILIES TO DIMINISH THE POOL OF QUALIFIED FOSTER AND ADOPTIVE PARENTS.

State child welfare agencies have an affirmative duty to ensure the safety and well-being of the children in their custody. The U.S. Department of Health and Human Services reports

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– Position Statement of CWLA

The North American Council on Adoptable Children (NACAC)

“Children should not be denied a permanent family because of the sexual orientation of potential parents. All prospective foster and adoptive parents, regardless of sexual orientation, should be given fair and equal consideration. NACAC opposes rules and legislation that restrict the consideration of current or prospective foster and adoptive parents based on their sexual orientation.”⁶

Evan B. Donaldson Adoption Institute

A March 2006 policy brief entitled *Expanding Resources for Children: Is Adoption by Gays and Lesbians Part of the Answer for Boys and Girls Who Need Homes?* finds no child-centered

that there are over 500,000 children in this country’s foster care systems, of whom 119,000 are awaiting adoption by a loving family. With only 150,000 licensed nonrelative foster homes, there is a critical shortage of available homes to care for all these children.⁹ More — *not less* — effort is needed in every state to find permanent loving families for these waiting children. Measures to bar lesbian and gay foster and adoptive parents, and thus senselessly diminish the pool of potential foster care resources still further, are not in the best interests of children. Such measures would not only ban countless qualified prospective foster parents, further decreasing the already short supply, but would also wrench children already placed with loving, capable foster parents from the stable homes in which they are thriving.

“ Children should not be denied a permanent family because of the sexual orientation of potential parents. ”

– Position Statement of NACAC

reason to prevent lesbian and gay adults from becoming adoptive parents, and recommends that lesbian and gay parents be utilized more extensively to provide permanent, loving homes for children living in foster care systems across the country.⁷

According to the 2008 report, *Expanding Resources for Waiting Children II: Eliminating Legal & Practice Barriers to Gay & Lesbian Adoption from Foster Care*, “[l]aws that prohibit adoption by gay or lesbian individuals and couples should be rescinded to maximize the number of interested, qualified adoptive families for waiting children.”⁸

BLANKET BANS AGAINST SERVICE AS FOSTER OR ADOPTIVE PARENTS VIOLATE THE RIGHTS OF LESBIAN AND GAY ADULTS.

The United States Supreme Court has held that restrictions based solely on animus or moral disapproval towards lesbian and gay people — at bottom the only explanation behind such a restriction — lack even a rational relationship to a legitimate state purpose and are unconstitutional.¹⁰ State governments are prohibited from adopting laws and policies specifically designed to disadvantage gay and lesbian people.

A BAN ON LESBIAN AND GAY FOSTER PARENTS WOULD WASTE TAXPAYER DOLLARS.

Imposing a ban on lesbian and gay foster parents would not only deprive children of nurturing foster families but would also needlessly impose added costs on already financially strapped child welfare systems. Given the critical shortage of foster families, if lesbian and gay adults are barred from the pool of available homes many children will be relegated to more restrictive group home settings, which are substantially more expensive than foster family care and where the quality

parents. The court concluded that the ban “does not promote the health, safety or welfare of foster children but rather acts to exclude a set of individuals from becoming foster parents based upon...bias.” The court adopted a lower court finding that the “exclusion may be harmful to promoting children’s healthy adjustment because it excludes a pool of effective foster parents.”¹³

Missouri: In 2006, a judge in Missouri overturned a Department of Social Services decision denying the foster parent application of a highly qualified applicant solely because

“ Legislation seeking to restrict foster care and adoption by gay, lesbian, bisexual or transgender people should be vigorously opposed. ”

– Policy Statement of NASW

of care, even in the best facilities, rarely approximates that of a loving family. Such arbitrary bans on foster parenting by lesbian and gay adults undoubtedly would invite costly legal challenges as well.

THESE ARCANE BANS HAVE LARGELY BEEN ELIMINATED WHERE THEY ONCE EXISTED, AND STATE CHILD WELFARE SYSTEMS INSTEAD ARE INCREASING THEIR CAPACITIES TO SERVE LESBIAN AND GAY PEOPLE.

Only one state — Florida — maintains a legislative ban on the adoption of children by lesbian and gay adults.¹¹ No state has a statutory ban on their service as foster parents.¹² In keeping with existing professional standards and research, a number

she is a lesbian involved in a same-sex relationship. The court held that the Department improperly relied on a state law criminalizing sexual intimacy between same-sex couples that had been deemed unconstitutional by the U.S. Supreme Court in *Lawrence v. Texas* in 2003.¹⁴

Texas: In 2003 and 2005, ill-advised bills were proposed in the Texas legislature to prohibit lesbian and gay adults from fostering and adopting children in that state. Heeding the strong opposition of Texas-based and national child welfare and social work organizations, the legislature has repeatedly refused to pass such a bill into law.

“ County child welfare departments, group home facilities and foster family agencies have a legal responsibility to provide care, placement and services to foster children, family members, foster parents and service providers without discriminating on the basis of actual or perceived ... sexual orientation, gender identity ... or HIV status. ”

– California Foster Care Non-Discrimination Act

of states and cities have adopted policies making explicit that sexual orientation is not a bar to licensing qualified foster and adoptive parents. Courts also have struck down these arcane bans where they once existed. For example:

Arkansas: In 2006, the Supreme Court of Arkansas struck down a state agency regulation prohibiting lesbian and gay adults or those who reside with them from serving as foster

California: In 2003, California’s Foster Care Non-Discrimination Act went into effect, providing that, “County child welfare departments, group home facilities and foster family agencies have a legal responsibility to provide care, placement and services to foster children, family members, foster parents and service providers without discriminating on

the basis of actual or perceived...sexual orientation, gender identity...or HIV status.”¹⁵

New Hampshire: In 1999, the New Hampshire state legislature overwhelmingly voted to repeal a 1987 law prohibiting lesbian and gay adults from fostering and adopting children.

BANNING LESBIAN AND GAY ADULTS FROM SERVING AS FOSTER AND ADOPTIVE PARENTS IS SIMPLY BAD PUBLIC POLICY.

There is no valid reason to diminish the already critically inadequate pool of prospective foster homes by rejecting otherwise qualified, loving adults based only on sexual orientation. The professional consensus is resoundingly opposed to such bans, and decades of social science research shows no evidence of risk of harm — physical, sexual or emotional — based upon the sexual orientation of a child’s foster, adoptive or birth parents. In fact, more foster and adoptive parent recruitment, not less, is needed to meet the needs of the most vulnerable members of our society.

Contact Lambda Legal for additional support and resources if you are opposing a proposed ban on lesbian and gay foster and adoptive parents or are seeking to increase the capacity of your state child welfare system’s ability to find lesbian and gay adults to serve as foster and adoptive parents.

CONNECT WITH ADDITIONAL RESOURCES

The Human Rights Campaign Foundation’s “All Children All Families” initiative helps to find permanent families for children by promoting policies that welcome LGBT foster and adoptive parents. The program works to help enhance LGBT competence among child welfare professionals, and increase opportunities for LGBT people to become foster or adoptive parents to waiting children. For more information, see www.hrc.org/issues/parenting/adoptions/12111.htm.

The many other components of Getting Down to Basics offer additional support.

This tool kit includes additional handouts covering a variety of topics addressing the needs of LGBTQ youth and adults involved with the child welfare and juvenile justice systems, such as *Basic Facts About Being LGBTQ*, *Caseworkers with LGBTQ Clients*, *Teaching LGBTQ Competence in Schools of Social Work*, *Working with Transgender Youth*, *What the Experts Say: Position & Policy Statements on LGBTQ Issues from Leading Professional Associations*, *Families Supporting an LGBTQ Child*, *Information for LGBTQ Youth in Care* and *LGBTQ Youth Resources*. To order free copies of the *Getting Down to Basics* tool kit, contact Lambda Legal at 1-866-LGBTTeen (toll free) or 212-809-8585, or download it for free at www.lambdalegal.org or www.cwla.org.

REFERENCES

- ¹ *Policy Statement on Coparenting and Second Parent Adoption by Same-Sex Parents* (2002), available at <http://aappolicy.aappublications.org/cgi/content/full/pediatrics;109/2/339>.
- ² *Policy Statement of The National Association of Social Workers* (2002), from *Social Work Speaks*, Sixth Edition, NASW Policy Statements, 2003–2006.
- ³ *Position Statement on Parenting of Children by Gay, Lesbian, and Bisexual Adults* (2005), available at www.cwla.org/programs/culture/glbqtqposition.htm.
- ⁴ *Standards of Excellence for Family Foster Care Services*, Section 3.18 (1995), available at www.cwla.org/programs/culture/glbqtqstandards.htm.
- ⁵ *Standards of Excellence for Adoption Services*, Section 4.7 (2000), available at www.cwla.org/programs/culture/glbqtqstandards.htm.
- ⁶ *Position Statement on Gay and Lesbian Adoptions and Foster Care* (2005), available at <http://www.nacac.org/policy/positions.html#Gay>.
- ⁷ Available at http://www.adoptioninstitute.org/policy/2006_Expanding_Resources_for_Children.php.
- ⁸ Available at www.adoptioninstitute.org/policy/2008_09_expand_resources.php.
- ⁹ This data is available at http://ndas.cwla.org/data_stats.
- ¹⁰ *Romer v. Evans*, 517 U.S. 620 (1996); see also *Lawrence v. Texas*, 539 U.S. 558 (2003).
- ¹¹ F.S.A. § 63.042 (3): “No person eligible to adopt under this statute may adopt if that person is homosexual.” A Mississippi statute prohibits “[a]doption by couples of the same gender.” Miss. Code Ann. § 93-17-3 (2). In Utah, only single individuals and legally married couples may foster [U.A.C. R501-12-4 (1)] and adopt [U.A.C. 1953 § 78-30-1 (3) (b)]; cohabiting unmarried couples, gay or straight, may not. In 2009, the “Every Child Deserves a Family Act,” a federal legislation that would prohibit discrimination against adoptive and foster parents based on sexual orientation and marital status, was introduced in Congress.
- ¹² However, pursuant to a 1995 Administrative Memorandum, the Nebraska Department of Social Services does not license “persons who identify themselves as homosexuals” as foster parents.
- ¹³ *Howard v. Child Welfare Agency Review Board*, 238 S.W. 3d 1 (Ark. 2006). In 2008 Arkansas voters approved a ballot initiative that bars unmarried or cohabiting couples from adopting or fostering children. Arkansas Acts of 2008, Initiated Act No. 1.
- ¹⁴ *Johnston v. Missouri Dept. of Social Services*, Case No. 0516CV09517 (2006), available at www.aclu.org/lgbt/parenting/241941gl20060217.html.
- ¹⁵ Cal. Welf. & Inst. Code § 16013(a).



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