

Getting Down to Basics

Tools to Support LGBTQ Youth in Care

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, some states carry politically motivated legislative and administrative policies that 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 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

1 Am. Acad. of Pediatrics, *Policy Statement on Coparenting and Second-Parent Adoption by Same-Sex Parents*, 109 Pediatrics 339, 339 (2002, reaff’d 2010).

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

“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

“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

2 Nat’l Ass’n of Soc. Workers, *Foster Care and Adoption, Social Work Speaks: National Association of Social Workers Policy Statements, 2003-2006* (6th ed. 2003), at 150.

3 Child Welfare League of Am., *Position Statement on Parenting of Children by Lesbian, Gay, and Bisexual Adults* (2005), available at www.cwla.org/programs/culture/glbtposition.htm.

4 Child Welfare League of Am., *CWLA’s Standards of Excellence for Family Foster Care Services* (1995), available at www.cwla.org/programs/culture/glbtpstandards.htm.

FOSTERING TRANSITIONS

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parent a child needing family membership and not on their... sexual orientation.”⁵

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

continue to exist in many states in our country and around the world.”⁹

The report also notes the increasing numbers of non-heterosexual parents in the United States and the positive outcome this has on the well-being of adoptable children.

“Lesbian and gay parents, like their heterosexual counterparts, are providing love, nurturance, stability and life-long permanence for...children. Moreover, they are doing so with a high level of parenting sensitivity and competence, comparable to that found among heterosexual adopters. And the evidence is

“ 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. ”

– Position Statement of CWLA

Evan B. Donaldson Adoption Institute

A 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 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 non-heterosexual individuals and couples should be rescinded to maximize the number of interested, qualified adoptive families for waiting children.”⁸

In 2011, the Institute published the results of a four-year research project in *Expanding Resources for Children III: Research-Based Practices in Adoption for Gays and Lesbians*. The policy recommendations indicated in this publication affirm those of previous publications, asserting:

“Given that so many children live in institutionalized or temporary settings—and are in need of safe, permanent families—greater efforts should be directed toward removing the legal, political and cultural barriers to LGBT adoption that

that their sons and daughters are adjusting just as well as those being raised by heterosexual parents.”¹⁰

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. In 2010 there were over 400,000 children in this country’s foster care systems, of whom more than 100,000 were awaiting adoption by a loving family.¹¹ With only 153,000 licensed foster homes nationwide as of 2004, there remains a critical shortage of available homes to care for all these children.¹² 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.

5 Child Welfare League of Am., *CWLA’s Standards of Excellence for Adoption Services* (2000), available at www.cwla.org/programs/culture/cwsstandardsadoption.htm.

6 North Am. Council on Adoptable Children, *Position Statement on Gay and Lesbian Adoptions and Foster Care* (2005), available at www.nacac.org/policy/lgbtq.html.

7 Evan B. Donaldson Adoption Inst. (2006), at 6, available at www.adoptioninstitute.org/publications/2006_Expanding_Resources_for_Children%20_March_.pdf.

8 Evan B. Donaldson Adoption Inst. (2008), at 8, available at www.adoptioninstitute.org/publications/2008_09_Expanding_Resources_Legal.pdf.

9 Evan B. Donaldson Adoption Inst. (2011), at 47, available at www.adoptioninstitute.org/publications/2011_10_Expanding_Resources_BestPractices.pdf.

10 *Id.* at 58.

11 U.S. Dept of Health and Hum. Svcs., Admin. for Children & Families, *The Adoption & Foster Care Analysis and Reporting System Report* (2011), available at www.acf.hhs.gov/programs/cb/stats_research/afcars/tar/report18.htm.

12 Foster Care Alumni of Am., *Facts About Children in Foster Care*, [www.fostercarealumni.org/userfiles/file/FCM07_Fact_Sheet_\(national\).pdf](http://www.fostercarealumni.org/userfiles/file/FCM07_Fact_Sheet_(national).pdf), n.3.

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.¹³ 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 of care, even in the best facilities, rarely approximates that of a loving

the Every Child Deserves a Family Act was reintroduced in Congress and the Senate in 2011. If passed, this legislation would prohibit discrimination nationwide against adoptive and foster parents based on sexual orientation or marital status.¹⁵

In keeping with existing professional standards and research, a number 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 2011, the Arkansas Supreme Court upheld a lower court ruling that struck down

Act 1, a state law banning unmarried couples living together from adopting or fostering children. The court declared that Act 1 violated rights to privacy and equal protection guaranteed under the Arkansas State Constitution. The court stated, “Act 1 directly and substantially burdens the privacy rights of ‘opposite-sex and same-sex individuals’ who engage in private, consensual conduct in the bedroom by foreclosing their eligibility to foster or adopt children, should they choose to cohabit with their sexual partner.”¹⁶

“ 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

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.

There are currently no states that maintain a statutory ban explicitly preventing lesbians and gay men from becoming adoptive or foster parents. However, a few states have laws and directives which could be used to prevent lesbians or gay men from adopting or fostering a child.¹⁴ At the federal level,

13 *Romer v. Evans*, 517 U.S. 620 (1996); see also *Lawrence v. Texas*, 539 U.S. 558 (2003).

14 A Mississippi statute prohibits “[a]doption by couples of the same gender[.]” Miss. Code Ann. § 93-17-3 (5) (2012). In Utah, only single individuals and legally married couples may foster (U.A.C. R501-12-4 (1) (2012)) and adopt (U.A.C. R512-41-4 (1)(c) (2012)); cohabiting unmarried couples, regardless of their sexual orientation, may not. The Nebraska Department of Social Services does not license “persons who identify

Florida: In 2010, Florida ended its 33-year ban on adoptions by gay men and lesbians when an appellate court declared that the law violated the right to privacy guaranteed under the Florida State Constitution. The State of Florida decided not to appeal the ruling.¹⁷

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 she was 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

themselves as homosexuals” as foster parents. Memorandum from Director of Nebraska Dep’t of Social Servs. (Jan. 23, 1995). In 2012, the Virginia State Code was amended to allow “private child-placing agencies” to refuse to “participate in any placement of a child for foster care or adoption when the proposed placement would violate the agency’s written religious or moral convictions or policies.” Va. Code Ann. § 63.2-1709.3 (2012).
15 See H.R. 1681, 112th Cong. (2011); S. 1770, 112th Cong (2011).
16 *Arkansas Dep’t of Human Servs. v. Cole*, 2011 Ark. 145, *18 (2011).
17 *Fla. Dept. of Children & Families v. X.X.G.*, 2010 Fla. App. LEXIS 14014 (Fla. 3d DCA 2010).

had been deemed unconstitutional by the U.S. Supreme Court in *Lawrence v. Texas* in 2003.¹⁸

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.

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."¹⁹

In 2010 the California Department of Social Services issued an all-county information notice to provide child welfare and out-of-home care agencies with information on resources to improve services to "LGBTQ youth, their caregivers and LGBT prospective foster and adoptive parents" and to further illustrate the purpose of Assembly Bill 458, which "prohibits discrimination in the California foster care system on the basis of...sexual orientation [or] gender identity[.]"²⁰

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.²¹

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 necessary to meet the needs of the most vulnerable members of our society.

18 *Johnston v. Missouri Dep't of Soc. Servs.*, Case No. 0516CV09517 (2006), available at www.aclu.org/lgbt/parenting/241941gl20060217.html.
19 Cal. Welf. & Inst. Code § 16013(a) (2012).

20 State of Cal. Health and Human Servs. Agency, Dep't of Soc. Servs., All County Information Notice I-81-10, *Serving Lesbian, Gay, Bisexual, Transgender and Questioning (LGBTQ) Youth, LGBTQ Caregivers and LGBT Prospective Foster and Adoptive Parents* (2010), available at www.dss.cahwnet.gov/lettersnotices/entres/getinfo/acin/2010/i-81_10.pdf.

21 See H.B. 90, 1999 Leg., 156th Sess. (N.H. 1999).

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.



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