

FILED

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
SIXTH DIVISION 2004 DEC 29 PM 1:35

CARDLYN STALEY
CIRCUIT-COUNTY CLERK

MATTHEW LEE HOWARD, CRAIG STOOPS,
ANNE SHELLEY, and WILLIAM WAGNER

PLAINTIFFS

VS.

CASE NO. CV 1999-9881

THE CHILD WELFARE AGENCY
REVIEW BOARD and THE ARKANSAS
DEPARTMENT OF HUMAN SERVICES

DEFENDANTS

JUDGMENT

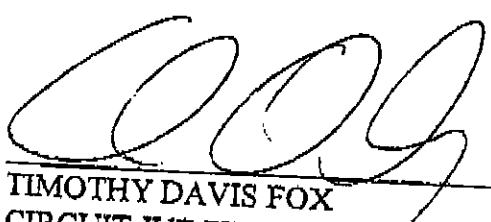
In accordance with the *Memorandum Opinion and Findings of Fact and Conclusions of Law* issued on even date herewith, the court declares that:

1. The Arkansas General Assembly legislatively delegated to the defendant Child Welfare Agency Review Board the authority to promulgate rules and regulations that "promote the health, safety, and welfare of children."
2. The blanket exclusion contained in Section 200.3.2 of the Minimum Licensing Standards, promulgated by the defendant Board, is not a rule or regulation that "promotes the health, safety, or welfare of children."
3. Section 200.3.2 of the Minimum Licensing Standards is unconstitutional as being violative of the Separation of Powers Doctrine.

4. Section 200.3.2 of the Minimum Licensing Standards does not violate the Equal Protection provisions of the United States Constitution or the Arkansas Constitution.

5. Section 200.3.2 of the Minimum Licensing Standards does not violate the plaintiffs' constitutional rights to privacy or intimate association under either the United States Constitution or the Arkansas Constitution.

IT IS ACCORDINGLY ADJUDGED AND DECREED THAT Section 200.3.2 of the Minimum Licensing Standards is unconstitutional under the Separation of Powers Doctrine and the defendants are enjoined from enforcement of such regulation.



TIMOTHY DAVIS FOX
CIRCUIT JUDGE

12/29/04
DATE

cc: counsel of record

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

The court issues the following findings of fact and conclusions of law pursuant to Rule 52 of the Arkansas Rules of Civil Procedure:

FINDINGS OF FACT

1. Act No. 1041 of 1997, commonly referred to as "The Child Welfare Agency Licensing Act" is codified as A.C.A. §9-28-401, *et seq.*
2. The defendant Child Welfare Agency Review Board was created pursuant to A.C.A. §9-28-403(a)(1).
3. A.C.A. §9-28-402(13) defines "foster home" as follows:

(13) "Foster Home" means a private residence of one (1) or more family members that receives from a child placement agency any minor child who is unattended by a parent or guardian in order to provide care, training, education, custody, or supervision on a twenty-four hour basis, not to include adoptive homes.

4. When the Child Welfare Agency regulations were first promulgated in 1997 there was no provision excluding lesbians, gay men, or persons living with such individuals because the Child Welfare Agency saw no need for such exclusion (*Stipulated Facts*, #6).
5. In 1999, the Child Welfare Agency Review Board enacted section 200.3.2 of the Minimum Licensing Standards, which states:

No person may serve as a foster parent if any adult member of that person's household is a homosexual. Homosexual, for purposes of this rule, shall mean any person who voluntarily and knowingly engages in or submits to any sexual contact involving the genitals of one person and the mouth or anus of another person of the same gender, and who has engaged in such activity after the foster home is approved or at a point in time that is reasonably close in time to the filing of the application to be a foster parent (*Stipulated Facts*, #7).
6. The Board's attorney advised the Board that there was no need to enact the exclusionary provision because the preexisting regulations already gave the Board the enforcement power to take care of any concerns and to adequately protect the interests of children (*Stipulated Facts*, #14).
7. Lesbians and gay men are not excluded from adopting children in Arkansas (*Stipulated Facts*, #23).
8. Lesbians and gay applicants seeking to adopt are subjected to the same screening process as every other applicant (*Stipulated Facts*, #25).
9. Prior to 1999, there was no prohibition under any Arkansas law or regulation excluding lesbians or gay men or those living with them from being foster parents (*Stipulated Facts*, #26).
10. The defendants are aware of "homosexuals," as defined, who have served as foster parents in Arkansas (*Stipulated Facts*, #27).
11. The defendants are not aware of any child whose health, safety, and/or welfare has been endangered by the fact that such child's foster parent, or other household member, was "homosexual", as defined. (*Stipulated Facts*, #28).
12. The State has no statistics indicating that gays are more prone to violence than heterosexuals or that gay households are more unhealthy than heterosexual households (*Stipulated Facts*, #30).
13. Based on its foster care statistics the defendants do not know of any reason that lesbians and gay men would be unsuitable to be foster parents (*Stipulated Facts*, #31).