



August 2, 2010

Dear Representative:

RE: ACLU Urges Co-Sponsorship of the Every Child Deserves a Family Act (H.R. 4806)

On behalf of the American Civil Liberties Union (ACLU), a non-partisan organization with more than a half million members, countless additional activists and supporters, and 53 affiliates nationwide, we urge you to co-sponsor the Every Child Deserves a Family Act. This important legislation, which was introduced by Representative Pete Stark (D-CA) earlier this year, would prohibit discrimination in adoption or foster care placements based on the sexual orientation, gender identity, or marital status of any prospective adoptive or foster parent, or the sexual orientation or gender identity of the child involved.

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According to the most recent reports from the federal government, there are 123,000 children in the child welfare system across the United States who are waiting to be adopted but have no family available for them.¹ Despite the desperate need for more families who are willing to open their hearts and homes to these children, many qualified families are arbitrarily turned away on the basis of sexual orientation, gender identity or marital status. Such discrimination in our nation's foster care and adoption placement systems remains an all too common reality.

Presently, only six states have policies that explicitly prohibit sexual orientation discrimination in the adoption and foster care placement process. The lack of protection in the rest of the country leaves children and families vulnerable to the potential biases of individual case workers and family court judges. And four states have laws that bar consideration of adoption or foster applicants who are gay or in same-sex or unmarried relationships.²

The ACLU is currently challenging such laws in Florida and Arkansas. Florida law bans adoption by gay and lesbian individuals regardless of the

¹ U.S. Dep't of Health and Human Services, Administration for Children and Families, AFCARS report Available at http://www.acf.hhs.gov/programs/cb/stats_research/afcars/tar/report16.htm.

² Fla. Stats. section 63.042(3)(prohibiting adoption by "homosexuals"); Miss. Code Ann. section 93-17-3(5)(prohibiting adoption by same-gender couples); Ark. Code Ann. section 9-8-304 (prohibiting adoption or fostering by individuals living with an unmarried partner); Utah Code Ann. section 78B-6-117(3)(same).

circumstances. The law is so restrictive that it even prevents children in the foster care system from being adopted by their own family member or foster parents if they happen to be gay or lesbian. With the help of the ACLU, Martin Gill is currently challenging Florida's law in state court. Gill and his partner of 10 years have been parenting two boys – brothers placed in their care through the foster care system – for six years. The boys arrived in a state of neglect, but are now thriving in every way and closely bonded to their family. However, because of Florida's law, the boys are denied the security and stability of being adopted into their family. A state judge ruled in November of 2009 that Florida's law is unconstitutional because it both fails to promote the welfare of children and actually works against the interests of children by depriving them of good families. The case is currently on appeal.

In Arkansas, the ACLU is leading a challenge to Act 1, a law passed by voters in 2008 that bans adoption and fostering by anyone who lives with an unmarried partner. Among the plaintiffs is Sheila Cole. Because of Act 1, Cole – who lives with her same-sex partner and the child they are raising together – was not permitted to adopt her own infant granddaughter who had been taken into state custody because of severe abuse by her parents. This was despite the fact that the Arkansas Division of Children and Family Services concluded that placement with her grandmother was in the child's best interest. An Arkansas trial court ruled this April that the law is unconstitutional because it “casts an unreasonably broad net over more people than is needed” to serve the State's interest in protecting the well-being of children. This case is now on appeal.

While litigation can be a helpful tool to remove barriers to adoption and foster placements with LGBT and unmarried parents, it is not a solution to the problem. These kinds of cases are extremely expensive – well beyond the means of virtually any individual seeking to be considered as an adoptive or foster parent – because of the need for expert testimony. Additionally, they often take years to fully litigate, thereby extending the already long period when children remain in limbo while awaiting permanent families. The Every Child Deserves a Family Act (H.R. 4806) represents a much more comprehensive and effective response to this problem.

Ending discrimination in adoption and foster care placements of the types targeted by this legislation is a position that has been embraced by all of the leading organizations in the fields of children's health and welfare. For example, a 2002 report by the American Academy of Pediatrics found that:

A growing body of scientific literature demonstrates that children who grow up with 1 or 2 gay and/or lesbian parents fare as well in emotional, cognitive, social, and sexual functioning as do children whose parents are heterosexual. Children's optimal development seems to be influenced more by the nature of the relationships and interactions within the family unit than by the particular structural form it takes.³

³ <http://aappolicy.aappublications.org/cgi/content/full/pediatrics:109/2/341>. See also Child Welfare League of America, Standards of Adoption Excellence (rev. ed. 2000), § 4.7 (applicants should not be assessed based on marital status or sexual orientation); American Psychological Association, “Sexual orientation, parents and

The goal of our adoption and foster care systems is to provide all children with permanent, stable homes with loving and supportive parents, but discrimination on the basis of sexual orientation, gender identity and marital status hinders that. The Every Child Deserves a Family Act (H.R. 4806) will help to ensure that children are not needlessly kept waiting for families because willing and able loving families are being turned away. And it will prevent children and families in the future from having to go through the kinds of experiences endured by the families of Martin Gill and Sheila Cole. The ACLU urges your support for the Every Child Deserves a Family Act (H.R. 4806).

Sincerely,



Laura W. Murphy
Director, Washington Legislative Office



Christopher E. Anders
Senior Legislative Counsel

children,” APA Council of Representatives, July 28 and 30,2004, available at <http://www.apa.org/pi/lgbt/resources/parenting.aspx>.