May 13, 2014

RE: ACLU Urges Co-Sponsorship of the Every Child Deserves a Family Act (S. 1069)

Dear Senator:

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 support and co-sponsor the Every Child Deserves a Family Act (S. 1069). This important legislation, which was introduced by Senator Kirsten Gillibrand (D-NY), 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.

According to the most recent report from the federal government, there are nearly 400,000 children in the U.S. foster care system, more than 100,000 of whom are waiting to be adopted. Unfortunately, because of the lack of adoptive parents, more than 23,000 of these children will leave foster care without ever finding a permanent, loving home. 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 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. Three states have policies that explicitly bar consideration of adoption or foster applicants who are gay or in same-sex or unmarried relationships. In 2012, Virginia joined North Dakota in allowing private, state-licensed adoption and foster care agencies to discriminate against prospective parents based on

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2 Miss. Code Ann. § 93-17-3(5) (2013) (prohibiting adoption by same-gender couples); Utah Code Ann. § 78B-6-117(3) (2013) (prohibiting adoption or fostering by individuals living with an unmarried partner); Administrative Memorandum #1-95 from the Neb. Dep’t of Soc. Servs. to District Administrators & Division Administrators (Jan. 23, 1995).
their sexual orientation, religion or other bases that may be contrary to the adoption agency’s religious tenets.\textsuperscript{4} This law needlessly delays and denies permanency for children because the state-contracted agencies can turn away qualified families for reasons unrelated to child welfare.

**Fighting for LGBT Parents and Their Children in Court**

In addition to advocating for passage of this legislation in Congress, the ACLU has been at the forefront in challenging the unequal treatment of LGBT parents by courts in child custody cases and policies that exclude LGBT people from becoming adoptive or foster parents.

**Florida**

The ACLU successfully challenged a Florida law that excluded gay people from becoming adoptive parents regardless of the circumstances. The law was so restrictive that it even prevented children in the foster care system from being adopted by a family member or foster parents if they happened to be gay or lesbian. Martin Gill successfully challenged Florida’s law in state court and is now officially the proud parent of two boys. Gill has been parenting the boys – brothers originally placed in his care through the foster care system – for the majority of their young lives. The boys arrived to Martin in a state of neglect, but are now thriving in every way and have closely bonded to their “forever family.” Because of Florida’s law, the boys were – for too long – denied the security and stability of being adopted into their family. A state judge ruled, and the Third District Court of Appeals affirmed, that Florida’s law was unconstitutional because it both failed to promote the welfare of children and actually worked against the interests of children by depriving them of good families.\textsuperscript{5} As a result of this legal challenge, gay and lesbian people are now adopting children across Florida.

**Arkansas**

In Arkansas, the ACLU challenged a regulation banning foster parenting by anyone with a “homosexual adult household member.” In 2006, the Arkansas Supreme Court unanimously struck down the discriminatory regulation, writing that “there is no correlation between the health, welfare, and safety of foster children and the blanket exclusion of any individual who is a homosexual or who resides in a household with a homosexual.”\textsuperscript{6}

As a result of that successful challenge, in 2008, voters passed Act 1, a law banning adoption and fostering by anyone who lived with an unmarried partner. Once again, the ACLU brought a legal challenge. Among the plaintiffs was 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. In April 2011, the Arkansas Supreme Court affirmed a lower court ruling in holding that the law was

\textsuperscript{4} Va. Code Ann. § 63.2-1709.3 (2012).
\textsuperscript{6} Dep’t of Human Servs. v. Howard, S.W.3d 1, 7 (2006).
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.\(^7\)

Nebraska

In August 2013, the ACLU filed a lawsuit in Nebraska state court seeking to strike down a discriminatory state policy that prohibits the Nebraska Department of Health and Human Services from placing foster children with “persons who identify themselves as homosexuals” or persons who are “unrelated, unmarried adults residing together.” The ban also prohibits these individuals from adopting children from the foster care system, since individuals must first be licensed as foster parents before they can adopt children in state custody.

One of the plaintiff couples who brought this lawsuit, Greg and Stillman Stewart of Lincoln, have been together for over 30 years. Greg is a minister and Stillman works with at-risk children at a middle school. Together, they have five children, who now range in age from 13 to 20, and whom they adopted from the California foster care system before moving to Nebraska. Most of the children experienced significant abuse and neglect and multiple foster placements before being placed with Greg and Stillman. When one of their children first came to live with them, at five years old, he was still in diapers and did not know how to use utensils. By 17, he brought home a report card with all As and one B. Another child, who had been through 17 foster home placements and three failed adoptions in three different states, is now a college sophomore. These children are now thriving because of the care and love they received from Greg and Stillman. Now that some of their children are grown, they would like to be there for other children in need.

A Federal, Legislative Solution is Needed

While litigation can be a helpful tool to remove barriers to adoption and foster placements with LGBT and unmarried parents, it is not the most practical solution. These kinds of cases are extremely expensive – well beyond the means of virtually any individual who wants to be an adoptive or foster parent. 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 (S. 1069) represents a more comprehensive and immediate response to this problem by barring discrimination in adoption and foster placements by ending the need for such litigation.

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, including the American Academy of Pediatrics, the American Psychological Association, and the Child Welfare League of America. For example, a landmark 2002 report by the American Academy of Pediatrics found that:

\[ \text{A growing body of scientific literature demonstrates that children who grow up with 1 or 2 gay and/or lesbian parents fare as well in} \]

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.  

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 (S. 1069) will help ensure that children are not needlessly kept waiting for families because willing and able loving parents are being senselessly turned away. This legislation would 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 co-sponsorship of and support for the Every Child Deserves a Family Act (S. 1069). For questions, please contact Ian Thompson at (202) 715-0837 or ithompson@aclu.org.

Sincerely,

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Director, Washington Legislative Office

Ian S. Thompson
Legislative Representative

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