

The privilege to adopt: Fighting for fair treatment

LEGAL BRIEFS

By Elizabeth F. Schwartz

If you're gay or lesbian, you're not good enough to be allowed the privilege and responsibility of adoption. At least that's what Florida law indicates.

And if that doesn't really bother you. If you think the issue doesn't concern you, think again. This law is about as ugly as it gets. Florida has the dubious distinction of remaining the *only* state in the country with laws on the books specifically forbidding gays and lesbians from adopting children.

In fact, "homosexuals" are the only group of people legally prevented *as a class* from adopting here. This means that convicted child molesters and murderers are looked at on a case-by-case basis – we don't even get the benefit of an individual determination. This has a devastating effect as more children than ever are in need of safe and permanent homes, and in increasing numbers we are choosing the experience of parenthood. But such is the power of hatred.



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children.

The ACLU has unsuccessfully challenged this statute four times before, but this time may be different. The suit filed in federal court, rather than state court on federal constitutional grounds, forces the state to justify the law in new ways. Second, this is the first time child plaintiffs are part of the case, providing a voice to kids currently being raised by gay parents who want and deserve their families to be permanent and secure. Third, federal courts have traditionally ruled more favorably on civil rights issues than state courts have.

The landscape

There are more than 2000 kids in Florida's foster care system waiting for a permanent adoptive home. Interestingly, gays and lesbians are not prohibited from being foster parents. Nor are we considered to be *per se* unfit parents according to Florida's Supreme Court, the state's highest court, which ruled

in a contested custody case that evidence of harm to the child would be required beyond a simple showing that one of the parents might be gay. It seems obvious, yes, but against Florida's often lunar legal landscape the ruling came as a stunning victory for gay parents.

As we said, Florida is the only state retaining an outright prohibition on gay adoption. Last month, New Hampshire, the other long-time holdout, legislatively overturned its ban. Unfortunately, measures banning gays and lesbians from adopting and being foster parents are or have been under consideration in Texas, Arkansas, Idaho, Indiana and Utah.

These are people's lives at stake, both parent and child, and it can be ugly out there. If the laws not only fail to protect us, but single us out for open discrimination, where are we to turn?

Remnants of Anita

Florida's ban on gay and lesbian adoption was enacted only two days after the 1977 repeal of Dade County's human rights ordinance. Anita Bryant's Save Our Children campaign had created a wave of homophobic hysteria across the nation, but reserved its most hateful vitriol for Florida, where it was given birth.

Finally, over 20-years later, SAVE-Dade, a coalition of civil rights groups, turned back the clock on Anita and (again) saw to an amendment of the Human Rights Ordinance protecting against discrimination based on sexual orientation in the areas of housing, employment, public accommodations and finance.

So we continue our struggle, even still, to undo the damage done by far too much hate allowed to fester for far too long. Overturning this statutory ban is our one great challenge to truly save all of our children who are in desperate need of a stable and loving home.

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