

Disregarding the Best Interest of the Child:

Licenses to Discriminate In
Child Welfare Services



Licenses to Discriminate In Child Welfare Services

Executive Summary

Seven states, including five states in the last three years, have passed laws allowing taxpayer-funded child welfare programs (adoption and foster care services) to pick and choose to whom they provide the services the government has paid them to provide. All of these laws allow agencies to refuse to work with LGBTQ people, and some also allow them to refuse various medical treatments to LGBTQ children in their care. These bills are unconscionable, and they are unnecessary. This brief explains why.

Not in the Best Interest of Children

It isn't in the best interest of a child to deny them a qualified, loving family simply because that family doesn't share all of the tenets of the placing agency's faith, and it certainly isn't in the best interest of an LGBTQ child to be denied medical treatment, or subjected to abusive

discredited practices like "conversion therapy", because the host family or child welfare agency wants to change a child's LGBTQ identity.

Limiting the Pool of Potential Parents

Children in care need parents. Same-sex couples and LGBTQ individuals are eager to become those parents. In allowing these individuals to be excluded from the pool of prospective parents for discriminatory reasons is harmful to children in care — and leads to taxpayers footing the bill for the consequences of this discrimination. Having

more qualified, loving parents in that pool serves to help the children who are waiting for families. Over 100,000 children in the U.S. foster care system are in need of a permanent, adoptive family. An estimated 2 million LGBTQ adults are interested in adoption.

Not Necessary for the State to Continue to Provide Services

The number of children served by these agencies is often quite significant and some agencies have falsely claimed that without them, the children will have a harder time

being matched with families, and as a result, they will spend a longer period of time in care.

Religious Organizations' Religious Rights Are Not Infringed By the Status Quo

Religious organizations who engage in child welfare work are entitled to their religious viewpoints, and the state cannot and should not be legislating on matters of faith. However, when engaged in a taxpayer-funded activity, such as when the state awards a contract to care for children who are wards of the state in a foster care or pre-adoptive setting, every state contractor should be required

to do the job without picking and choosing to whom they provide services they have been paid by the government to deliver. These children are the state's responsibility, and they should not be subjected to discrimination or denial of necessary services simply because the state has delegated the responsibility to care for them to a provider.

Discriminating At the Taxpayers' Expense

Bills permitting discrimination by child welfare agencies are simply one more effort to write anti-LGBTQ discrimination into law. These bills are not supported by the larger adoption community or by mental health professionals.

Discriminating against qualified prospective parents using taxpayer dollars does a disservice both to the children who need homes and to the entire state; and allowing those charged with a child's care to discriminate against a child is simply unconscionable.

INTRODUCTION

What Are Licenses To Discriminate In Child Welfare?

The last three years have seen a surge of bills introduced in state legislatures that aim to diminish the rights of lesbian, gay, bisexual, transgender and queer (LGBTQ) people. In 2015, state versions of the Religious Freedom Restoration Acts proliferated in states, like Indiana, angered by the imminent arrival of marriage equality; in 2016, state legislatures took aim at the transgender community with bills like North Carolina's infamous HB2; and in 2017 state legislatures pursued more targeted bills that carved out religiously- or morally-based refusals from regulation of certain sectors.¹ Among these targeted refusal bills were licenses to discriminate in child welfare services. The number of these nearly doubled in 2017, from 4 to 7, with new bills passed in Alabama, South Dakota, and Texas. Compounding the alarm about the implications of these state laws, the Trump/Pence administration has doubled down on this discrimination with an executive order that has the potential to expand this kind of discrimination even further in federally administered or funded programs.

To be clear, these laws are about discrimination — they permit taxpayer-funded programs to pick and choose to whom they provide services they have been paid by the government to deliver. Proponents of these bills have been very forthright that the bills are a lingering reaction to marriage equality — their purpose is to enshrine discrimination into law by granting state contractors and grantees who provide taxpayer-funded child welfare services the ability to discriminate with impunity in the provision of those services against qualified same-sex couples or LGBTQ individuals who want to adopt. However, some of the exemptions are so broad they'd also allow agencies to object to placement with single parents, parents of another faith or an interfaith couple, and others. Some of these bills are also drawn in such a way that there are implications around the agencies being able to responsibly care for LGBTQ youth, and some would implicate youth's reproductive rights as well.

These laws enshrine discrimination into law by granting state contractors who provide taxpayer-funded child welfare services the ability to discriminate with impunity in the provision of those services against qualified same-sex couples or LGBTQ individuals who want to adopt. Some of the laws also allow the child welfare organizations to refuse to provide necessary services to children in their care.

This contrived controversy dates back about a decade as marriage equality spread from just a few states to the entire country. Some providers of child welfare services, citing religious objections, have threatened to cease providing state-funded services if they are forced to serve same-sex couples or other potential parents seeking to adopt a child — from interfaith couples to single parents to a married a couple where one prospective parent had been previously divorced. One of the cruelest consequences of these types of bills is that they would allow agencies to refuse to place foster children with members of their extended families — a practice often considered to be in the best interest of the child — based solely on the agency's religious beliefs. A loving, LGBTQ-identified grandparent, for example, or a stable, eager LGBTQ relative could be deemed objectionable as a matter of religious belief and therefore an unsuitable placement for a child. This is contrary to the guiding principle in child welfare to prioritize the placement of children within their family of origin whenever a relative is able and willing to step in.

Further, some of these laws would allow agencies responsible for caring for LGBTQ youth to refer that child to a provider of the abusive and discredited practice of so-called "conversion therapy", if that was consistent with the agency's religious beliefs, without the state being able to intervene, cancel the contract, or withdraw support in other ways. They would also allow an agency to refuse to give a child access to affirming mental health care, or to prevent them from continuing to receive hormone therapy. Similarly, some of the bills explicitly state that the agency can refuse to provide reproductive health care including contraception or abortion.

Child welfare services should be guided by the overarching principle that guides all family law: all determinations should be in the "best interest of the child". It isn't in the best interest of a child to deny them a qualified, loving family simply because that family doesn't share all of the tenets of the placing agency's faith, and it certainly isn't in the best interest of an LGBTQ child to be denied medical treatment, or subjected to abusive discredited practices, because the host family or child welfare agency wants to change a child's LGBTQ identity. The best interests of the child are served by making a case by case determination about whether placement of a child with a prospective family is in that child's best interest.

It is important to acknowledge that religious organizations who engage in child welfare work are entitled to their religious viewpoints, and that the state cannot and should not be legislating on matters of faith. However, when engaged in taxpayer-funded activity, such as when the state awards a contract to care for children who are wards of the state in a foster care setting, state contractors should not be allowed to pick and choose to whom they provide services they have been paid by the government to deliver. These children are the state's responsibility, and they should not be subjected to discrimination or denial of necessary services simply because the state has delegated the responsibility to care for them to a provider.

License to discriminate in child welfare bills are simply one more effort to write anti-LGBTQ discrimination into law. These bills are not supported by the larger adoption community or by mental health professionals. They are not supported by the data either — data shows that LGBTQ parents are as well equipped to care for children as non-LGBTQ parents, and data also shows that in jurisdictions where religiously-affiliated agencies have withdrawn their operations in protest of having to treat same-sex couples equally that children have not been subjected to longer waits in care. Rather, these laws are harmful and unnecessary. Discriminating against qualified prospective parents using taxpayer dollars does a disservice both to the children who need homes and to the entire state; and allowing those charged with a child's care to discriminate against a child is simply unconscionable.

THE LEGAL LANDSCAPE

State

At the close of 2017, seven states have versions of license to discriminate in child welfare laws on the books — three of which were passed in 2017 and five of which were passed in the last three years. While this trend is extremely alarming, the laws passed thus far have some significant similarities and differences, and they are worth examining in more depth.

The first laws to pass were focused on refusing to place a child with parents to whom the agency had a religious or moral objection.

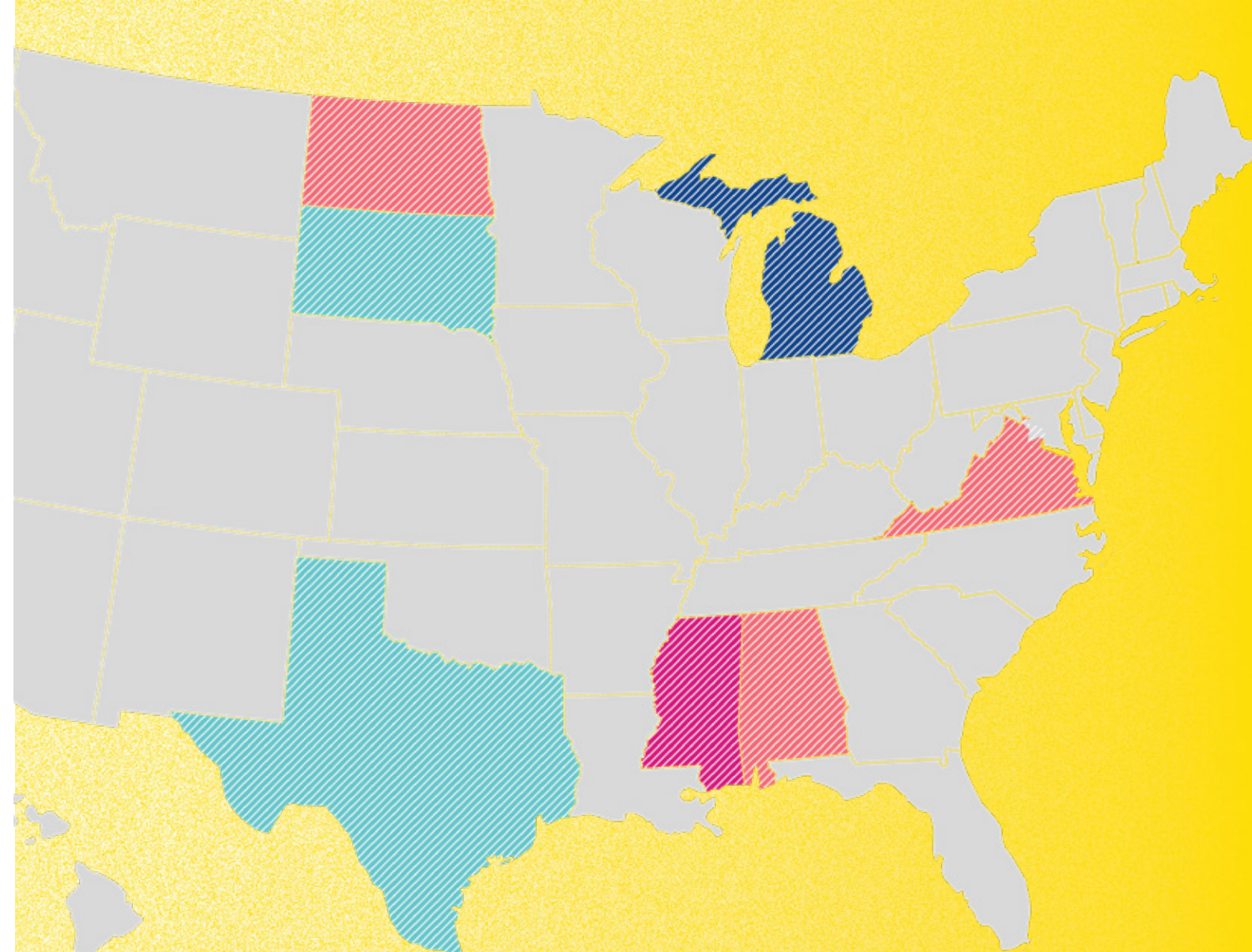
North Dakota was an early adopter of license to discriminate in child welfare laws, with a 2003 law that protected an agency participating in child placement activities from losing a contract or participation in a government program as a result of the agency's written religious or moral convictions or policies.ⁱⁱ Virginia emulated this provision about nine years later, adopting a "conscience clause" into existing state code that read: "no private child-placing agency shall be required to perform, assist, counsel, recommend, consent to, refer, or 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", and that an agency shall not be denied a license or a grant, contract, or participation in a government program as a result of the agency's objections.ⁱⁱⁱ

This framing is sweeping: by including "moral convictions" as well as religious beliefs it sets the stage for agencies to be able to object to a placement on all kinds of grounds that may go beyond what is traditionally considered religious belief. However, it is important to note that while these laws allow the agencies to discriminate against prospective parents, they do not extend to allowing the agency to refuse to provide services that a child in care needs, unlike some of the bills that would follow.

With a surge in interest came broader bills allowing discrimination in more services and sometimes against children in care.

License to discriminate in child welfare bills began to surge in popularity over the next few years, with 20 child welfare bills introduced in state legislatures across the country over the course of the 2015, 2016, and 2017 legislative sessions. Beginning with Michigan in 2015, 5 new states had license to discriminate in child welfare laws on the books by 2017.

The most limited of these is Alabama's 2017 law; it allows some state-licensed agencies to reject qualified prospective LGBTQ adoptive or foster parents (or other parents to whom the agency may have an objection) based on the agency's religious beliefs, but that exemption is limited to agencies that receive no state or federal funding.^{iv} Michigan's law, which was passed as a three-bill package, went further by expressly allowing agencies to refuse to serve certain children: it allowed agencies providing adoption services to "decline to provide any services that conflict with...the agency's sincerely held religious beliefs",^v including refusing to accept a referral for a child for placement services if the agency objects to the child or the likely placement of the child.^{vi}



State License To Discriminate In Child Welfare Laws



Allows agencies to discriminate against potential parents



Allows agencies to refuse to work with potential parents and children



Allows agencies to refuse to work with potential parents and children and allows agencies to deny children services to which the agency objects



Allows sweeping anti-LGBTQ discrimination that includes allowing agencies to refuse to work with potential parents and children and allows agencies to deny children services to which the agency objects, including refusing to allow transgender people access to sex-segregated facilities consistent with their gender identity.

Parents can be rejected because the agency has an objection to them for any reason, including interfaith couples, single parents, married couples in which one prospective parent has previously been divorced, or other parents to whom the agency has a religious objection.



THE LEGAL LANDSCAPE : STATE

South Dakota and Texas took a more expansive view of what “services” included; these laws encompass discrimination against children in care as well as discrimination against prospective parents.⁸ Even the discrimination is bigger in Texas, where “child welfare services” is defined to include counseling for children and families, residential care and group homes, and family reunification services, among others.⁹ These sweeping laws allow taxpayer-funded agencies to refuse to provide services to children in care if the agency has a religious objection to that service. Among other things, that means a state has its hands tied — it cannot cancel the contract or refuse to give the agency a contract in the future — if the agency refuses to provide children in their care with necessary medical services (like hormone therapy, contraceptives, or affirming mental health care) or even if the agency forces children in their care, justified by the agency’s religious belief, to dangerous and abusive practices such as so-called “conversion therapy”.

It is also important to note that while the rhetoric and political climate make it clear that it is the unwillingness of these agencies to serve same-sex parents that has been the impetus for these bills, the language of these bills is so sweeping that other prospective parents are also caught up in it.

Parents can be rejected because the agency has an objection to them for any reason, including interfaith couples, single parents, married couples in which one prospective parent has previously been divorced, or other parents to whom the agency has a religious objection.

Finally, there is one additional law which has the effect of a license to discriminate but which has many other deeply problematic ramifications as well. Mississippi’s H.B. 1523, passed in 2016, allows — among its many discriminatory and particularly anti-transgender provisions — precisely the kinds of discrimination sanctioned by the license to discriminate in child welfare: taxpayer-funded child welfare agencies are affirmatively allowed to refuse to place children with parents with whom the agency has a religious objection; to subject an LGBTQ child to conversion therapy while in care; and to deny medical treatment such as hormone therapy to children who are relying on the state to meet their needs. Furthermore, service providers could refuse transgender people access to appropriate sex-segregated facilities consistent with their gender identity.¹⁰ After passage, H.B. 1523 was halted by a federal court before the law could go into effect. An appeals court overruled that stay, and in October of 2017 the most sweeping and devastating anti-LGBTQ state law in the country took effect. That case continues on appeal.

In Michigan, another legal challenge has recently been filed: the American Civil Liberties Union (ACLU) and the ACLU of Michigan are currently suing the Michigan Department of Health and Human Services and Michigan Children’s Services Agency, challenging this law and its enforcement as a violation of the Establishment and Equal Protection Clauses of the United States Constitution. If licenses to discriminate in child welfare laws continue to be passed, these legal challenges will continue as well.

THE LEGAL LANDSCAPE

Federal

While adoption and foster care are primarily regulated by the states, many federal laws and regulations apply to child welfare activities, as well as state child welfare programs that receive federal funding. As a result, state agencies and other adoption and foster care providers receiving federal funding are subject to federal laws and regulation, including non-discrimination requirements on the basis of race, color, and national origin. However, there are no such non-discrimination requirements when it comes to sexual orientation, gender identity, or marital status.

EXECUTIVE ORDER AND SUBSEQUENT MEMO BY THE ATTORNEY GENERAL

Unfortunately, the Trump administration is clearly interested in creating carve-outs so that religiously-affiliated organizations are not subject to non-discrimination laws and policies, including in the child welfare context.

A draft Executive Order leaked in February explicitly permitted discrimination on the basis of sexual orientation and gender identity by child welfare agencies. When President Trump signed the revised, final executive order in May, many ignored a key provision ordering the Attorney General to issue guidance to agencies regarding the Department of Justice's interpretation of religious liberty under federal law.^{xii} That guidance was issued in the form of a memo from the Attorney General's office released in October 2017, and it includes implicit authorization for federal employees or federally-funded programs to refuse to provide services to LGBTQ children in crisis, or to refuse to make an adoptive or foster placement with a same-sex couple or transgender parent simply because of who they are.^{xiii}

It is important to note that the Department of Justice's interpretation of existing federal law is not consistent with the way that federal courts have interpreted these issues, and that these instructions are subject to legal challenges; however, there's certainly an effort to carve unprecedented religious exemptions out at the federal level in the same way that the states have done with targeted child welfare laws.

FEDERAL LEGISLATION

Federal legislation on both sides of the issue — affirmatively allowing discrimination and expressly forbidding it — has also been introduced in Congress.

LEGISLATION AFFIRMATIVELY ALLOWING DISCRIMINATION

Legislation allowing discrimination includes two misleadingly named bills, the "Child Welfare Provider Inclusion Act" and the "First Amendment Defense Act".

- The "Child Welfare Provider Inclusion Act" (H.R. 1881; S. 811), introduced in Congress in April 2017, would do much the same thing as the state laws: it would allow child welfare organizations, including adoption and foster care providers, to make placement determinations based on the organization's "religious beliefs or moral convictions" regardless of the needs of the child. In addition, the bill would bar the federal government and states receiving federal funding for their programs from prohibiting anti-LGBTQ discrimination.
- The "First Amendment Defense Act" was introduced and heard in Congress in 2016, but the bill has not yet been introduced in the 115th Congress. It would, much like HB 1523 in Mississippi, allow the federal government — including government employees, contractors, grantees and the like — to refuse to provide services to same-sex couples. Of course, that would have significant implications for any federally-funded programs related to adoption or foster care services.

LEGISLATION PROHIBITING DISCRIMINATION

Legislation that would prevent discrimination in child welfare services includes the "Every Child Deserves a Family" Act and the "Equality Act".

- The "Every Child Deserves a Family" Act (H.R. 2640; S. 1303) would prohibit any child welfare agency receiving federal financial assistance from discriminating against any potential foster or adoptive family on the basis of sexual orientation, gender identity, or marital status; further, it would prevent discrimination against any foster youth because of their sexual orientation or gender identity.
- The "Equality Act" (H.R.2282; S.1006) would provide consistent and explicit non-discrimination protections for LGBTQ people across key areas of life, including employment, housing, credit, education, public spaces and services, federally funded programs, and jury service. It also includes non-discrimination provisions applying to recipients of federal funds, which would impact many state child welfare programs.

FACT OR FICTION

Debunking the Justifications for Discrimination

Proponents of licenses to discriminate in child welfare laws, bills, and policies argue that these laws are in the best interest of the children: if agencies with religious objections to same-sex parenting are penalized for discriminating, then these children — who are the state’s responsibility to care for — will be worse off.

Namely, they claim that the state will struggle to meet its obligations to the children in its care because it has such a tradition of relying on religiously affiliated contractors to provide child welfare services. Children will have longer wait times before they are placed with a family, the argument goes, and the pipeline of parents will be diminished.

These arguments are taken seriously for good reason: everyone agrees children are better off placed with qualified, loving families than remaining in the child welfare system. That’s why it is important to consider which of these arguments are based in fact, and which are based in fiction.

FICTION: Allowing Agencies to Discriminate is in the Best Interests of the Children in Care.

The number of children served by these agencies is, often, quite significant, and the agencies have claimed that without these agencies the children will have a harder time being matched with families as a result they will spend a longer period of time in care. However, that claim is not supported by the data.



FACT: Placement Rates and Time in Care Do Not Change Significantly in Absence of Discriminatory Providers.

There were three high-profile instances in which Catholic Charities, one of the providers often invoked in conversations around these bills, closed rather than serve same-sex couples. The amount of time that children waited for placement did not change significantly as a result.

- Massachusetts, 2006. In 2006, Catholic Charities of Boston discontinued the adoption work it had been doing, saying in a statement that “the issue is adoption to same-sex couples...we simply must recognize that we cannot continue in this ministry”. This decision was highly publicized and many feared that without the work of Catholic Charities, children would remain in the system longer. However, data show that the placement rate for children did not significantly change, with the length of time that children waited for placement in 2007 remaining consistent with pre-2006 figures as well.^{xiv}
- Washington, D.C., 2010. Catholic Charities withdrew from offering foster care services in February 2010, the entire foster care program — which reportedly served only 43 children — was simply transferred to another provider who was able to absorb those children.^{xv}
- Illinois, 2011. Where Catholic Charities also refused to continue to provide adoption services if it had to place children with parents in a legal same-sex relationship, there similarly was no gaping hole left in the services provided; in 2012, the first year since Catholic Charities had ceased to provide services, Illinois had similar mean and median times for children waiting for placement as it had the previous year while managing a significant increase in the number of children with placement needs.^{xvi}



FACT: Children in Care Need a Larger Pool of Qualified, Loving, Prospective Parents.

What we do know about providing these services is that children in care need parents who are willing to foster and adopt them. Over 100,000 children in the U.S. foster care are in need of a permanent, adoptive family.^{xvii} Having more qualified, loving parents in that pool can only serve to help the children who are waiting for families. An estimated 2 million LGBTQ adults are interested in adoption.^{xviii} In fact, same-sex couples raising children are four times more likely than different-sex couples to be raising an adopted child: a 2013 Williams Institute study estimated that more than 16,000 same-sex couples are raising more than 22,000 adopted children across the United States.^{xix} That study was conducted before marriage equality was

available nationwide, which means LGBTQ parents have more access to adoption now than before. And, because same-sex couples who are married or consider themselves married are more than twice as likely to be raising children than are same-sex couples who don’t, that may mean more prospective adoptive parents are out there now. Children in care need parents and LGBTQ individuals and couples are eager to become those parents; allowing them to be excluded from the pool of prospective parents for discriminatory reasons is simply not what is in the best interest of the children in care — and neither is it in the best interest of the taxpayer who is footing the bill for the consequences of the discrimination.

FACT OR FICTION



FACT: We Need to Do Better, Not Worse, for LGBTQ Youth In Care.

Further, research consistently shows that LGBTQ youth are overrepresented in the foster care system, as many have been rejected by their families of origin because of their LGBTQ status, and they are especially vulnerable to discrimination and mistreatment while in foster care.^{xx} License to discriminate in child welfare laws in some states allow for agencies to refuse medical treatment to LGBTQ youth, such as hormone therapy or contraceptives, and also allow agencies to subject children in care to discredited and dangerous practices — such as “conversion therapy” — so long as those practices are justified by religious belief.

If agencies are not able to provide the kind of professional, nurturing care that these children deserve, the state should not be contracting with them to provide these services — and laws protecting the agencies’ ability to discriminate and harm are opposed by the wider child welfare provider profession.

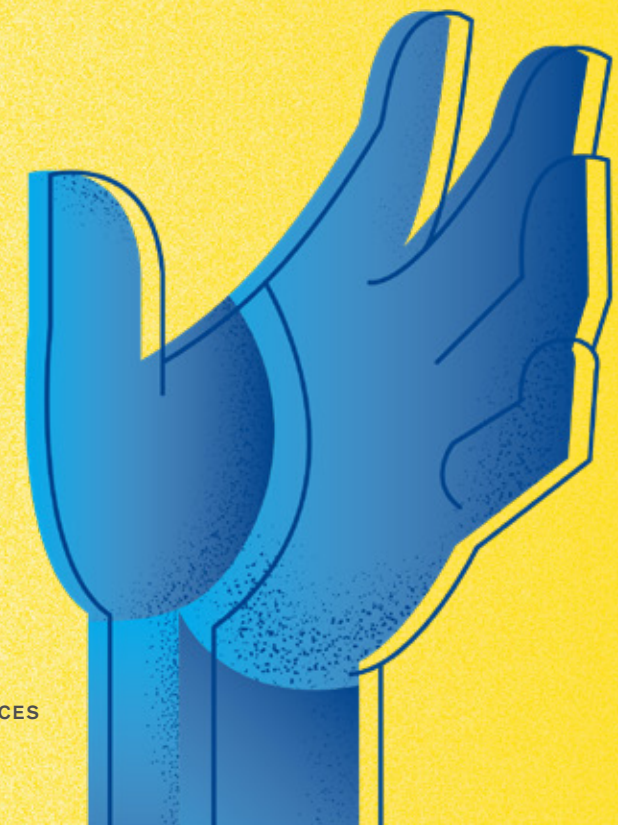


FACT: Qualified, Loving LGBTQ Parents Have Lives and Experiences That Can Support Children In Care.

Having LGBTQ adults in the pool of prospective parents is valuable for children for whom it is in their favor, same-sex couple parents and their children are more likely to be racial and ethnic minorities than are different-sex couples.^{xxi} It is also important to dispel the myth that same-sex couples are only raising children on the coasts or in big cities: the Williams Institute Study also shows that the states with the highest proportions of same-sex couples raising children are in Mississippi, Wyoming, Alaska, Idaho, and Montana.^{xxii}

Allowing qualified LGBTQ parents to enter the pool of prospective foster and adoptive parents would be good for children in care across the country.

Further, research consistently shows that LGBTQ youth are overrepresented in the foster care system, as many have been rejected by their families of origin because of their LGBTQ status, and they are especially vulnerable to discrimination and mistreatment while in foster care.



CASE PROFILE

FosterAdopt Connect, Missouri and Kansas

In our region, FosterAdopt Connect is one of the only agencies the LGBTQ community can trust. Other private agencies that contract with the state are either unable to do this work or unwilling to serve LGBTQ families. As a non-faith based NGO, we have a strong belief that there are great potential foster and adoptive resources for kids in our area that are not being tapped because of this 'faith based' barrier. Additionally, as an agency formed by foster and adoptive families, and informed by the voices of foster and adoptive youth, we recognize the deep need in our community for welcoming and affirming families for youth in care who identify as LGBTQ or who may be questioning their identity or sexual orientation.

As the CEO of the organization, I was motivated to pursue this work after I had a very personally painful experience, when I was asked to support our local child welfare agency and a foster family following the suicide of an 11 year old boy in care. I had known this little boy, who had played with my children, and was aware that he had been placed in multiple foster homes with deep religious convictions which might cause them to inappropriately respond to a young person who was figuring out that he was part of the LGBTQ community. The night I spent hours sitting with this young boy's body (as he had no one else after several years in foster care) while the foster family was questioned and the agency people made phone calls was life changing for me.

The critical importance of all children being able to be cared for by parents who understand, welcome and affirm the core of who they are, even as they struggle to figure that piece out, is a human right that cannot be ignored by the child welfare system. To create laws and policies which codify the ability of agencies to not only not respond to the needs of LGBTQ children, but also cause them harm, is criminal.

An agency like ours can provide the tools necessary to understand what is unfamiliar, to create an environment which is welcoming and affirming to many LGBTQ headed families for our children, and to assure that we can make placements for kids who are LGBTQ in homes with families who will truly support them for who they are.

LORI ROSS

President/CEO, FosterAdopt Connect, Missouri and Kansas

CASE PROFILE

Lutheran Child and Family Services of Illinois

“With this change, we have gained so much ... new prospective foster and adoptive families for children, and most importantly, a supportive and affirming environment for children and youth”

Several years ago, Lutheran Child and Family Services went through a process full of lively and sometimes, contentious, debate to answer the question, “How do we, as a faith-based agency that is deeply rooted in the Lutheran tradition and the Lutheran Missouri Synod embrace the provision of service to the LGBTQ community?” This was a painful journey replete with highly charged beliefs and positions. This issue filled the air of our agency for months and involved all of us — our Board of Trustees, the Agency's leadership staff members, direct service personnel, our donors, and our contract partners. It felt that we would never come together. Yet, like most processes, perseverance was key and all remained steadfast and committed to resolution.

Finally, our Board of Trustees decided that because of our faith, we must embrace inclusion and diversity. In fact, the Board of Trustees enacted the following: 1. The Board believes diversity in its many dimensions enriches our world. 2. The Board encourages the development of a diverse staff and leadership whose characteristics reflect the rich diversity of those we serve. To value diversity and inclusion means that we don't simply tolerate and put up with others who are different.

Furthermore, it does not mean that we lovingly accept them in hopes that they might change their ways. Valuing inclusion means that we embrace one another and affirm the inherent value of each and every person. Unfortunately, the agency lost a board member, a few staff members, and a few longstanding stakeholders. However, with this change, we have gained so much — new learning, new partnerships, new donors, new prospective foster and adoptive families for children, and most importantly, a supportive and affirming environment for children and youth whose gender identity/sexual orientation/gender expression have been rejected previously by so many.

BEVERLY JONES

Vice President — Chief Operating Officer
Lutheran Child and Family Services of Illinois

Conclusion

The proliferation of these bills in states across the country — not to mention the threat of the federal government adopting similar policies via law regulation, or policy — should alarm anyone who believes that children in our child welfare system deserve to have their best interests be at the heart of every decision made on their behalf. The justifications for these licenses to discriminate simply don't hold up — and the harms they impose are very real.



About the Author

Cathryn Oakley is the state legislative director and senior counsel at the Human Rights Campaign, where she is responsible for advising legislators and advocates working to enact laws that further LGBTQ equality.

She focuses in particular on passing non-discrimination laws at the state and local levels and combating anti-LGBTQ legislation in state legislatures, including bills preventing municipalities from passing non-discrimination ordinances, bills that would give state agents the ability to deny service from LGBTQ people, and anti-transgender legislation that limits the ability of transgender people — including students — to access facilities in accordance with their gender identity.

Cathryn earned her law degree from the George Mason University School of Law and is a member of the Virginia Bar. She holds a bachelor's degree in Economics from Smith College, where she was a Research Fellow at the Louise W. and Edmund J. Kahn Liberal Arts Institute. Prior to working at the Human Rights Campaign, Cathryn practiced family law in Northern Virginia.

©2017 BY THE HUMAN RIGHTS CAMPAIGN FOUNDATION

The Human Rights Campaign Foundation owns all right, title and interest in and to this publication and all derivative works thereof. Permission for reproduction and redistribution is granted if the publication is (1) reproduced in its entirety and (2) distributed free of charge. The Human Rights Campaign name and the Equality logo are trademarks of the Human Rights Campaign. The Human Rights Campaign Foundation and design incorporating the Equality logo are trademarks of the Human Rights Campaign Foundation.

ISBN: 978-1-934765-45-6

When referencing this document, we recommend the following citation:

Oakley, Cathryn. *Disregarding the Best Interest of the Child: Licenses to Discriminate In Child Welfare Services*. Washington, DC: Human Rights Campaign Foundation, 2017.

Appendix

- i** For more information on Religious Freedom Restoration Acts and anti-transgender legislation, please see the State Equality Index at www.hrc.org/sei and 2015 Anti-Transgender Legislative Brief at <https://www.hrc.org/resources/unprecedented-onslaught-of-state-legislation-targeting-transgender-american>.
- ii** N.D.C.C. §50-12
- iii** VA Code § 63.2-1709.3 (2014)
- iv** Alabama House Bill 24, Signed by Governor May 3, 2017. Available at: <http://alisondb.legislature.state.al.us/ALISON/SearchableInstruments/2017RS/PrintFiles/HB24-enr.pdf>
- v** MCL 722.124e
- vi** MCL 722.124f(1)
- ix** South Dakota Senate Bill 149, Signed by the Governor March 27, 2017. Available at: http://www.sdlegislature.gov/Legislative_Session/Bills/Bill.aspx?Bill=149&Session=2017
- x** Texas House Bill 3859, Signed by the Governor June 15, 2017. Available at: <http://www.capitol.state.tx.us/BillLookup/History.aspx?LegSess=85R&Bill=HB3859>
- xi** Mississippi House Bill 1523, Signed by the Governor April 18, 2016. Available at: <http://billstatus.ls.state.ms.us/documents/2016/html/HB/1500-1599/HB1523SG.htm>
- xii** “Presidential Executive Order Promoting Free Speech and Religious Liberty”, May 4, 2017. Available at: <https://www.whitehouse.gov/the-press-office/2017/05/04/presidential-executive-order-promoting-free-speech-and-religious-liberty>. Sec. 4 reads: “Sec. 4. Religious Liberty Guidance. In order to guide all agencies in complying with relevant Federal law, the Attorney General shall, as appropriate, issue guidance interpreting religious liberty protections in Federal law.”
- xiii** Office of the Attorney General, “Memorandum for All Executive Departments and Agencies, From: The Attorney General, Subject: Federal Law Protections for Religious Liberty”. October 6, 2017. Available at: <https://www.justice.gov/opa/press-release/file/1001891/download>
- xiv** Massachusetts data from: “Annual Data Profile CY2006” and “Annual Data Profile CY 2007”, The Executive Office of Health and Human Services, Department of Children & Families Statistical Information. These data show the placement rate for children in care at 23% in 2006 and 21% in 2007. Compare to the 21% average placement rate over the period 2004-2014 (calculated from respective Annual Data Profiles at Id.). The data also show that the waiting time for placements did not rise after 2006 from 2004-2006, the average percent of children placed in less than one year was 42% and in less than two years was 64%; from 2007-2009, 47% of children were placed in less than one year and 70% were placed in less than two. The average for the 2004-2014 period was 46% placed in less than one year and 68% placed in less than two (calculated from respective Annual Data Profiles at Id.).
- xv** Boorstein, Michelle. “Citing same-sex marriage bill, Washington Archdiocese ends foster-care program”. Washington Post, February 17, 2010. Available at: <http://www.washingtonpost.com/wp-dyn/content/article/2010/02/16/AR2010021604899.html>
- xvi** 2012 data from “Time between Termination of Parental Rights (TPR) and Adoption Finalization: October 1, 2011 to September 30, 2012 (FY 2012)”, U.S. Department of Health and Human Services, Administration for Children and Families, Administration on Children, Youth and Families, Children’s Bureau. Available at <http://www.acf.hhs.gov/programs/cb>. 2011 data from Id., “Time between Termination of Parental Rights (TPR) and Adoption Finalization: October 1, 2010 to September 30, 2011 (FY 2011)”. In 2011, Illinois’ system served 1,194 children with a mean of 18.9 months from termination of parental rights to adoption and a median of 14.5 months. In 2012, Illinois’ system served 1,798 children (a 34% increase from the year before) with a mean of 19.6 months from termination of parental rights to adoption and a median of 15.4 months. Compare that data with the 2008-2014 average (two years before Catholic Charities began diminishing services and two years after services had been declared withdrawn) of 1,429 children served with a mean of 18.1 months from termination of parental rights to adoption and a median of 14.0 months. Particularly given the increased overall demand for services, these numbers are remarkably stable. Formatted: Font color: Accent 1
- xvii** “The AFCARS Report, Preliminary FY1 2015 Estimates as of June 2016, #23”, U.S. Department of Health and Human Services, Administration for Children and Families, Administration on Children, Youth and Families, Children’s Bureau. Available at <http://www.acf.hhs.gov/programs/cb>.
- xviii** Gates, Gary and Bladgett, M.V Lee, Williams Institute; and Macomber, Jennifer Ehrle and Chambers, Kate, The Urban Institute. “Adoption and Foster Care by Gay and Lesbian Parents in the United States”. March 2007. Available at: <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Gates-Badgett-Macomber-Chambers-Final-Adoption-Report-Mar-2007.pdf>.
- xix** Gates, Gary. “LGBT Parenting in the United States”. Williams Institute, February 2013. Available at: <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Parenting.pdf> xx “LGBTQ Youth in the Foster Care System”. Human Rights Campaign and Foster Club, 2015. Available at: <https://www.hrc.org/resources/lgbt-youth-in-the-foster-care-system>.
- xxi** Gates, Gary. “LGBT Parenting in the United States”.
- xxii** *Id.*



1640 RHODE ISLAND AVE. N.W.
WASHINGTON, DC 20036-3278

FRONT DESK: (202) 628-4160
TTY: (202) 216-1572
TOLL-FREE: (800) 777-4723
FAX: (202) 347-5323

DECEMBER 2017