



February 15, 2012

**RE: ACLU Urges Co-Sponsorship of the Every Child Deserves a Family Act (S.1770)**

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.1770). 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 408,000 children in the U.S. foster care system, 107,000 of whom are waiting to be adopted. Unfortunately, because of the lack of adoptive parents, 27,000 of these children will leave foster care without ever finding a permanent, loving home.<sup>1</sup> 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.<sup>2</sup> In addition, legislation in Virginia allowing private, state-licensed adoption and foster care agencies to discriminate against prospective parents based on their sexual orientation, religion or other bases that may be contrary to the adoption agency's religious tenets recently was approved by the General

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<sup>1</sup> 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/report18.htm](http://www.acf.hhs.gov/programs/cb/stats_research/afcars/tar/report18.htm).

<sup>2</sup> Miss. Code Ann. section 93-17-3(5)(prohibiting adoption by same-gender couples); Utah Code Ann. section 78B-6-117(3)(prohibiting adoption or fostering by individuals living with an unmarried partner); Administrative Memorandum of the Nebraska Division of Children and Family Services (1995).

Assembly and is expected to be signed into law.<sup>3</sup> Virginia currently has the second lowest rate of public adoptions in the country. This legislation will needlessly delay or deny permanency for children because the state-contracted agency responsible for their placement can turn away qualified families for reasons unrelated to child welfare.

The ACLU successfully challenged laws in Florida and Arkansas that excluded LGBT people from becoming adoptive or foster parents. The Florida law banned adoption by gay and lesbian individuals regardless of the circumstances. The law was so restrictive that it even prevented children in the foster care system from being adopted by their own 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 and his partner have been parenting the boys – brothers originally placed in their 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. The Florida Department of Children and Families has since changed its practices and provides gay and lesbian individuals full adoption rights.

In Arkansas, the ACLU led a challenge to Act 1, a law passed by voters in 2008 that banned adoption and fostering by anyone who lived with an unmarried partner. 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 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.

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 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 (S. 1770) 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

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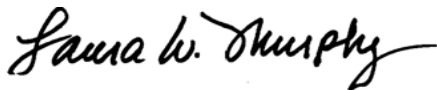
<sup>3</sup> S.B. 349, 2012 Reg. Sess. (Va. 2012).

children's health and welfare. For example, a 2002 report by the American Academy of Pediatrics found that:

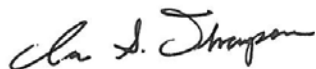
A growing body of scientific literature demonstrates that children who grow up with 1 or 2 gay and/or lesbian parents fare as well in emotional, cognitive, social, and sexual functioning as do children whose parents are heterosexual. Children's optimal development seems to be influenced more by the nature of the relationships and interactions within the family unit than by the particular structural form it takes.<sup>4</sup>

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. 1770) will help to ensure that children are not needlessly kept waiting for families because willing and able loving families 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. 1770).

Sincerely,



Laura W. Murphy  
Director, Washington Legislative Office



Ian S. Thompson  
Legislative Representative

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<sup>4</sup> <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 children," APA Council of Representatives, July 28 and 30, 2004, available at - <http://www.apa.org/pi/lgbt/resources/parenting.aspx>.