

**PRIVATE ADOPTION AGENCIES SERVING CHILDREN  
IN STATE FOSTER CARE ALREADY ARE PROHIBITED FROM  
DISCRIMINATING AGAINST LESBIAN AND GAY PROSPECTIVE  
ADOPTIVE PARENTS; MARRIAGE EQUALITY IN NEW YORK  
WOULD NOT ALTER THESE EXISTING REQUIREMENTS**

*Question:*

Will passage of the marriage bill in New York State require faith-based adoption agencies to place children in the State foster care system with married same-sex couples?

*Answer:*

Already adoption agencies providing government-funded services for children in the State foster care system are prohibited from discriminating against lesbian and gay prospective foster and adoptive parents on the basis of sexual orientation. Passage of the marriage bill would have no impact on existing non-discrimination requirements and, if anything, would advance the most important criteria governing provision of child welfare services — the best interests of children.

- Consistent with the best interests of children, New York law and policy already prohibits discriminating against lesbian and gay adults and couples in the area of adoption, whether or not these adults are granted the right to marry in New York. Many lesbian and gay adults have adopted children from the foster care system, giving loving homes to children in need.
  - Domestic Relations Law § 110 provides that “[a]n adult married person, an adult married couple together, or any two unmarried adult intimate partners together may adopt another person.”
  - New York State regulations require that State-supervised private adoption agencies providing foster care and adoption services, including faith-based and non-faith-based agencies alike, not discriminate against lesbian and gay adults applying to adopt children in foster care. 18 NYCRR § 421.16(h)(2) specifically provides that “Applicants shall not be rejected solely on the basis of

homosexuality.” Thus, already adoption agencies working with children in the foster care system are prohibited from discriminating against lesbian and gay prospective adoptive parents, whether these adults are married or not.

- Decades of social science data consistently shows that children reared by lesbian and gay adults fare just as well as other children. Every leading professional child welfare organization in this country strongly supports licensing lesbian and gay adults as foster and adoptive parents according to the same criteria applied to all other applicants. New York law and policy supporting licensing lesbian and gay adults to serve as foster and adoptive parents is fully consistent with the expert professional consensus on the subject<sup>1</sup> and recognition of the desperate need of children in the foster care system for nurturing families.
- Moreover, discriminating against same-sex couples as potential adoptive parents would violate Equal Protection and Due Process guarantees. In 2010, a Florida appellate court struck down a ban on adoption by gay and lesbian adults as violating the state guarantee of Equal Protection and as not furthering any rational government interest.<sup>2</sup> Recently, the Arkansas Supreme Court upheld a lower court ruling striking down an Arkansas law banning cohabiting unmarried couples from adopting or fostering children because the law directly and substantially infringed the fundamental right of adults to maintain intimate cohabiting relationships.<sup>3</sup>
- Allowing government-funded adoption agencies to refuse services to lesbian and gay prospective adoptive parents based on religious objections would violate Establishment Clause principles as well. Government funds may not be used to discriminate against same-sex couples and to deny needed placements for children based on a provider’s religious beliefs.

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<sup>1</sup> See, e.g., Am. Academy of Child & Adolescent Psychiatry, “Gay, Lesbian, Bisexual, or Transgender Parents Policy Statement” (2008); Child Welfare League of Am., “Position Statement on Parenting of Children by Lesbian, Gay, and Bisexual Adults” (2005); Nat’l Assoc. of Soc. Workers, “Lesbian, Gay and Bisexual Issues,” *Social Work Speaks: National Association of Social Workers Policy Statements 2003-2006* (6th ed. 2003); Comm. on Psychosocial Aspects of Child and Family Health, Am. Acad. of Pediatrics, *Coparent or Second-Parent Adoption by Same-Sex Parents*, 109 *Pediatrics* 339 (2002); Child Welfare League of Am., *Standards of Excellence for Adoption Services* § 4.7 (2000); Child Welfare League of Am., *Standards of Excellence for Family Foster Care Services* § 3.18 (1995).

<sup>2</sup> *Fla. Dep’t of Children & Families v. Adoption of X.X.G. & N.R.G.*, 45 So. 3d 79 (Fla. Dist. Ct. App. 2010).

<sup>3</sup> *Arkansas Dep’t of Human Servs. v. Cole*, 2011 Ark. 145 (2011).

- It would similarly run afoul of the 2010 Presidential Executive Order regulating faith-based social service providers, which provides that “[a]ll organizations that receive Federal financial assistance under social service programs should be prohibited from discriminating against beneficiaries or prospective beneficiaries of the social service programs on the basis of religion or religious belief.”<sup>4</sup>
- New York law and policy on this issue also protects lesbian, gay, bisexual, and transgender (LGBT) youth in foster care from the harmful, stigmatizing message that there is something wrong or immoral in being LGBT, such that when these youth grow into adults they should be prevented from adopting and parenting children.
- Passage of the marriage bill would only enhance protections and stability for same-sex couples and the children they raise without altering the existing child-welfare based criteria already prohibiting discrimination against them as prospective parents for needy children in foster care.

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<sup>4</sup> Exec. Order No. 13559, 75 Fed. Reg. 71,319 § 2(d) (Nov. 22, 2010).