

## **REPORT**

### Introduction

As the current ABA policies and the reports accompanying those policies demonstrate, there are thousands of children in the United States who need stable, permanent homes with loving parents. Despite this growing need, it is anticipated that proposals will be introduced in fourteen (14) states to bar any lesbian or gay person from serving as adoptive and foster parents based solely on their sexual orientation, and wholly irrespective of the individuals' parenting abilities.

The proposed resolution would build upon the ABA's strong history of opposing discrimination on the basis of sexual orientation in areas related to adoption and parenting. In August 1995, the ABA adopted a policy supporting the enactment of legislation and implementation of public policies that would ensure that child custody or visitation is not denied or restricted on the basis of a parent's sexual orientation. In February 1999, the ABA adopted a policy supporting "the enactment of laws and implementation of public policy [providing] that sexual orientation shall not be a bar to adoption when the adoption is determined to be in the best interests of the child." Most recently, in 2003, the ABA adopted a policy supporting state laws and court decisions permitting second-parent adoptions by same-sex and other unmarried couples. All three policies were co-sponsored by the Family Law Section.

### Why This Recommendation Is Necessary

Currently, it is anticipated that next session four states – Georgia, Kentucky, Missouri, and Ohio – will introduce proposed amendments to their respective state constitutions that would prohibit lesbian and gay people from adopting children or from serving as foster parents. In addition, another 10 states may introduce bills that statutorily would ban lesbian and gay people from adopting children or serving as foster parents.

As the current ABA policies and the reports accompanying those policies demonstrate, there are thousands of children in the United States who need stable, permanent homes with loving parents. This need has been made even greater as a result of the recent hurricanes which have displaced hundreds of children. Despite this growing need, it is anticipated that proposals will be introduced in fourteen (14) states to bar any lesbian or gay person from serving as adoptive and foster parents based solely on their sexual orientation, and wholly irrespective of the individuals' parenting abilities.

Contrary to the underlying premise of these proposals, in addition to the ABA, at least ten (10) child welfare, social science, and professional organizations have issued policy

statements supporting adoption by and foster care placement with lesbian, gay, bisexual and/or transgender (LGBT) people:

- Child Welfare League of America
- American Medical Association
- American Psychiatric Association
- American Academy of Pediatrics
- American Academy of Family Physicians
- American Academy of Child & Adolescent Psychiatry
- North American Council on adoptable Children
- National Association of Social Workers
- American Psychological Association
- American Psychoanalytical Association<sup>1</sup>

These policy statements are based on decades of research indicate that optimal development for children is based not on the sexual orientation of the parents, but on stable attachments to committed and nurturing adults. Children with two parents, regardless of the parents' sexual orientation, do better than children with only one parent. (American Psychiatric Association 11/2002 policy statement)

These policy statements are also based on the premise that adoption and foster care placement decisions should be based on an individualized assessment of what is in the best interests of the child to be adopted. Applicants should be assessed on the basis of their ability to successfully parent a child in need of family membership and not on irrelevant considerations such as sexual orientation.

In addition to eliminating a large pool of prospective adoptive and foster parents, these bills and proposed constitutional amendments may limit the ability of a same-sex partner to become the second legal parent of a child that was intentionally born into a same-sex parent family. In the last two decades, a growing percentage of children are being born into same-sex parent households. For the great majority of these families, second parent or joint adoptions are the only legal avenue through which both parents can establish a legal parental relationship to their child. In the absence of a legally protected parental relationship, a child may not be entitled to child support or inheritance rights through the second parent, may not be entitled to social security benefits, retirement benefits, or state workers compensation benefits if the second parent dies or is incapacitated, and may be ineligible for health insurance or other insurance benefits from the second parent's employer. Adoption is also critical to protect the child's right to financial support and to a continuing relationship with the second parent if the parents separate.

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<sup>1</sup> These policy statements can be accessed at:  
<http://www.hrc.org/Template.cfm?Section=Parenting&CONTENTID=14091&TEMPLATE=/ContentManagement/ContentDisplay.cfm>.

Conclusion

Every child deserves a permanent home and all the love and care that good parents can provide. Prospective foster and adoptive parents should be evaluated on the basis of their individual character and ability to parent, not on their sexual orientation, and courts should grant adoptions when they are determined to be in the child's best interest.

Respectfully Submitted

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