**"Taking Children Out of the Culture Wars"**

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**NCFA talk – June 21, 2018**

**slide 1**:

There is a **Gathering Cloud** over adoption and foster care placement, where we are witnessing an unfolding culture war. My core premise is that children should not be a part of the culture war--that their interests can guide us to reforms that will help us ensure every child who suffers a rupture in their family of origin comes to have a loving family. For me this is a deeply personal question because I am an adopted child myself, and my mom and dad literally changed the arc of my life.

First, let’s paint a picture of these conflicts, which have precipitated laws moving in wholly different directions across the country. Then I want to explore competing claims made by LGBT advocates and faith-based providers--and argue that we can honor both sets of core claims--that gay couples should not be blocked from adopting or be told they are “less than” when all they want to do is take a child into their family BUT also that we need to have all hands on deck--that faith-based organizations carry a significant part of the load in most states, especially more rural and deeply religious states. The core tension, I think, comes from how we fund the adoption agencies themselves--it feels as if agencies are taking public money but serving only a fraction of the public. In other contexts, we place families in the driver's seat--in other words, we provide resources to families, literally certificates they can spend on things like daycare, and the family decides which providers best match their needs so that the family, not the state, is choosing the agency.

**Slide 2** ( Barrage of lawsuits):

Surely I do not need review for you the barrage of lawsuits we have seen in the last year.

In Michigan, the ACLU has filed suit against the Michigan Dept of HHS of behalf of lesbian MARRIED COUPLES, Kristy and Dana Dumont and Erin and Rebecca Busk-Sutton, who sought to adopt from Catholic Charities and were turned away. They claim the refusal is Michigan’s, which denies them their rights under federal laws under the color of state law, violating Section 1983.

In TX: a lesbian couple filed suit against an agency that would not consider them as foster parents for refugee children in need of temporary homes because they did not “mirror the holy family.”

This agency made placements of children in families for temporary care, foster care *and* adoption.

This program is supported by federal tax dollars.

In Philadelphia: the city is ending its contract this month with the Catholic social services and have stopped referring children and families to them because WORDS. This despite apparently no instance in which any couple has been turned down.

**Slide 3(Faces)**:

Both sides--families and the agencies--claim to be discriminated against. The families, because adoption was hard or effectively closed to them. In the Dallas case there have been allegations that the Fort Worth agency was the only provider contracting with the federal government in Texas, effectively placing them in a choke point position. [CHECK] The agencies, because they say they should have the freedom to serve according to their faith tenets, especially if other agencies gladly serve gay couples.

**Slide 4(Regs)**: At the federal level, they can both point to laws and regulations that say they are the wronged party.

A little known 2016 Obama-era HHS final regulation announced a broad administrative policy that SO and GI should not be grounds for exclusion from benefits supported by HHS dollars-- This reg did not interpret a particular statute. NOW TO BE CLEAR, I think this is the right policy--BUT having this clear commitment to our LGBT citizens does not mean that faith-based agencies must close.

**Likewise federal statute (42 U.S.C. § 604a(c)** … ) and regulation say **religious organizations cannot be discriminated against “**on the basis that the organization has a religious character. (1996)”

**Slide 5 (non discrimination laws)**

Like federal law, we see states moving in 2 wholly different directions.

Between 2006 and 2017, 9 states have said by statute or regulation that being LGBT could not be a basis for turning persons away.

**Slide 6 (closures)**

We have seen high profile closures following these measures, including the closing of Catholic Charities of Boston, whuch closed after a 103 years of placing children for adoption in Boston.

Some closures followed the enactment of marriage equality laws because some agencies only placed with married couples--and after Obergefell and earlier laws, suddenly, gay couples presented for children, too. This brought to the fore the religious convictions of providers who believe that children should have a mother and a father.

**Slide 7 (Obergefell):**

In other words, adoption and marriage rose and fell together, until *Obergefell v. Hodges* opened marriage to everyone.

**Slide 8: (Adoption Protection Laws)**

Not surprisingly, state laws allowing adoption agencies to make placements consistent with faith first emerged in conjunction with marriage equality laws--as you can see here CN, MD, MN, RI all gave same-sex marriage by statute and gave assurance to agencies that if they placed with certain married families before, they could do so after. Some tied this to public money. You could make privately supported placements following faith tenets, but not with public dollars.

And then we have a newer generation of stand-alone laws that protect discretion of faith-based groups--and importantly, those do not give any rights to gay couples in the same law--they are one-sided deals.

We have seen this accelerate with Marriage equality, and even Alabama tied this to public money only.

A number of bills have died, and one, in NJ, is still pending. It would require that kids be placed in families that share their faith [AB 461]

**Slide 9 (last Ban):**

That does not mean gay people cannot adopt. The last Ban on gay adoption fell in MS in 2016. But it may mean, if state officials are not careful, that gay couples will not know what agencies place with gay couples OR that those agencies are proximate to them.

**Slides 10 and 11 (Currey)**

In this process, LGBT advocates have said that these one-sided laws are licenses to discriminate. They make 2 claims:

1. These bills permit discrimination, and Adoption placement is a government function and so there can be no discrimination
2. KIDS LOSE THEIR RIGHTS

**Slide 12 (Chart)**

And this charge, that faith based agencies discriminate, has stuck and is increasingly in the media. California notably boycotting all of these states, although they allow their football teams to play. And we have seen hints by Google and other companies that they are paying attention.

**Slide 13 and Slide 14:**

There is some merit to concerns that children who are fostered are losing the rights that other children have. Texas’s law extends not to just placement BUT also TO REFUSALS TO make referrals for abortions, contraceptives, or abortion-inducing medications.

BY Comparison, the other stand-alone laws deal with placement alone.

As a child who has been fostered, I do not think that a child who experiences the loss of their family of origin should also lose any of their constitutional rights.

**Slide 15 (vote counts)**

Many social conservatives think they are winning these battles in the states and they need only to protect agencies. But the last round of laws in 2018 Barely Squeaked Through, as you can see here (Kansas was clearest where it cleared by the slimmest of margins.)

**Slide 16 (Bumpy map)**

Laid over all of this are religious freedom restoration act laws and heightened scrutiny in state constitutions for burdens on religion. Surely we will see RFRA claims made in some of this litigation.

[[some states—the bumpy ones--ban discrimination on the basis of SOGI—but not all treat adoption agencies as public accommodations.

Some states have heightened scrutiny for burdens on religious belief or practice—in the state constitution or under state RFRAs that mirror the federal RFRA. So you can see litigation brewing to defend the ability of agencies to make faith-guided placements.

Some states have specific statutory adoption protections —some with sophisticated provisions that refer between agencies when a family or child is not being served, some that do not. That kind of device is important in muting harm and avoiding the indignity of being turned away.

Some, like Alabama, tie the ability to follow one’s faith to not receiving public money, much like the federal regulations.

\*\*In this growing tangle of laws, the thing that should matter most is getting lost:

**Every child deserves the promise of a permanent loving family.**

**Slide 17 (stockpiling)**

To listen to this debate, one would think kids are trapped in agencies who will not let them out unless the right family appears. BUT as I understand it, in the vast majority of cases, the agencies are bringing families forward and the state is then making placements. That means when families present and hit a wall, no given child loses out on that family. But systematically we should worry.

**Slide 18 (lose-lose)**

1. Prospective adoptive couples are turned away.

-- We need every loving family to adopt.

-- and I cannot imagine the hurt my parents would have experienced if turned away when they showed up to adopt my sister and me.

-- I can just tell you that if my dad had been told that he and my mother were not the perfect family, he would have left and never come back. My family never would have adopted as a result.

(2) Adoption and foster care agencies close.

--and we need every agency that does this important work to be able to do so. Many are really good at finding families who want to make this incredible gift to children, including our hardest to place Children.

(3) If this system craters, fewer children will have permanent homes--and the security that comes with a forever family.

**Slide 19 (Loving family slide)**

We need to go back to basics and ask what goods should this system serve? There should be 3 guiding principles:

1. Every couple can adopt
2. Every child has a permanent home
3. Birth mothers wishes are respected bc without them there are no children to be placed.

**Slide 20 (Driver’s Seat)**

Today our system is driven by states picking winners and losers, which agencies to contract with and which to shower funds on. By placing families in the drivers seat, families will decide what agency can best assist them to make this incredible gift to a child. And we will have taken children out of this culture war, where they do not belong.

**Slide 21 (Child Care & Development)**

**Slide 22 (Information booth)**

**Slide 23 (All hands on deck)**

**Slide 24 (Potential Impasses)**

§ As an adopted child, I want to be sure that every family that is willing to care for children can do so.

§ In fact, gay families and single women have been stepping up to adopt the many children who do not have homes

In Georgia, the Keep Faith in Adoption and Foster Care Act passed the Georgia Senate last week, with the hope of keeping “open as many doors as possible for those children that are in need of homes.”

§ In the past, agencies faced with making placements inconsistent with their faith have closed—Catholic Charities of Boston is the best known but not the only example.

§ Critics of the bill have called it “a message of hate,” and a “bigoted” “ slap in the face to same-sex couples” that “sanctions discrimination.”

§ Ironically, no GA law would have required a placement inconsistent with faith, and the state law cannot push aside the federal mandate as to federally supported programs.

This map shows how the US has become a mess of laws working in different directions.

BUT our background laws are delivering win-lose answers: requirements that agencies serve everyone, knowing that many will close; or laws saying agencies can turn away families, knowing that some will be so discouraged that they may never adopt or take a child for care.

Perhaps we need to start over and write new script that follows 2 key principles:

1. Every child deserves a permanent, loving home.

2. Every loving family that wants to adopt should be able to adopt.

What might that look like? Actually, it would look a lot like what we do now with early childhood development where we support lower income children and the need for early childhood education by **giving families** the ability to pick what facility best suits their needs

END

Adoption was once restricted to married couples, who were all heterosexual. Then Obergefell happened.

· Then adoption was restricted in many places to hetero couples (& singles). Then last ban on gay adoptions happened, so gays can adopt in all 50 states.

· Through it all, statutes & regulations tried to keep up, but ended up going in different directions.

· Federal slide, two state laws slides.

· Conflicting claims of discrimination

· These conflicting laws & claims provoked controversy - law suits & closings.

· “license to discriminate”

· Cook letter

· Stockpiling babies slide

· Texas statute

· OK bill (now statute)

· Votes are often close

· Where are we now – red & bumpy America

· Lose-lose situation.

· Here's what we need to focus on: Every couple gets to adopt - every child gets a home - birth mothers get to choose agencies that share values.

· Federal CCD block grant program model puts families in control

· We need all hands on deck!

· Impasses?

· Questions?

Do you need the 1983 state action side? It’s at the end & can be put where you want it, but I think it kind of messes up the flow.