

Fla. Judge Strikes Down Gay Adoption Ban

by Steve Weinstein
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On Tuesday, Nov. 25, gay Floridians--and unwanted kids clogging the state's orphanages and foster care and family courts--got an early Thanksgiving present from Miami-Dade Circuit Judge Cindy Lederman. The landmark decision involved Martin Gil, a North Miami man who was trying to adopt two young boys has been raising as foster children. The state of Florida has fought in court against Gill's petition to adopt the boys.

Florida has had one of the strictest bans on gay adoptions in the country. A judge in Key West ruled in September that the ban was unconstitutional, but that ruling has had limited legal impact.

The American Civil Liberties Union took up Gill's cause. The ACLU says there is a shortage of parents for adoptions in Florida, where at a given time there are about 1,000 children waiting to be adopted.

Jennifer Chrisler, who heads the [Family Equality Council](#), in a statement, applauded Judge Lederman's ruling, calling it "a long-overdue recognition of the equal ability of LGBT people to raise happy, healthy families."

Claiming that LGBT parents (and would-be parents) "want only to be given the same opportunities and legal protections other families have so that we may best take care of ourselves," she added that Florida's ban "has long stood in the face of more than 25 years of social science research that shows no difference in the abilities of LGBT and straight parents."

Miami-Dade Circuit Judge Cindy Lederman said the 31-year-old law violates equal protection rights for the children and their prospective gay parents, rejecting the state's arguments that there is "a supposed dark cloud hovering over homes of homosexuals and their children."

She noted that gay people are allowed to be foster parents in Florida. "There is no rational basis to prohibit gay parents from adopting," she wrote in a 53-page ruling.

The ruling means that Martin Gill, 47, and his male partner can adopt two brothers, ages 4 and 8, whom he has cared for as foster children since December 2004.

"I've never seen myself as less than anybody else," Gill said. "We're very grateful. Today, I've cried the first tears of joy in my life."

He said the two boys have been practicing writing their new last names, and the older one said: "That's what's going to make us a family."

The state planned a swift appeal, likely setting up a battle that could reach the Florida Supreme Court. A judge in gay-friendly Key West also found the law unconstitutional in September, but that ruling has not been appealed and has limited legal reach.

The state presented experts who claimed there was a higher incidence of drug and alcohol abuse among gay couples, that they were more unstable than heterosexual unions and that the children of gay couples suffer a societal stigma.

Organizations such as the American Academy of Pediatrics, American Medical



Association and American Psychiatric Association all support permitting same-sex couples to adopt.

Lederman rejected all the state's arguments soundly.

"It is clear that sexual orientation is not a predictor of a person's ability to parent," the judge wrote. "A child in need of love, safety and stability does not first consider the sexual orientation of his parent. The exclusion causes some children to be deprived of a permanent placement with a family that is best suited to their needs."

Florida Assistant Attorney General Valerie Martin said an appeal would be filed on behalf of the state Department of Children & Families. She declined additional comment.

Neil Skene, special counsel for DCF, said the judge did an "excellent job" on the case, but the department still must enforce state law. He noted that DCF placed the foster children with Gill.

"We think this is a wonderful foster parent," Skene said.

The State of Florida will now decide whether to appeal Judge Lederman's ruling to the State Supreme Court. Action on this case at the State Supreme Court level could overturn Florida's decade's old ban on gays and lesbians adopting children. Florida is currently the only state that expressly bans all gays and lesbians from adopting. The state does allow gays and lesbians to foster parent.

The Family Equality Council maintains that LGBT parents are already raising 4 percent of all adopted children in the United States--about 65,500 children. Three percent are being raised by single lesbians and gay men and 1 percent by same-sex couples.

Gay parents are concentrated in New England, the Mid-Atlantic, and the West Coast. The fewest are in the Midwest and the South. Massachusetts, California, New Mexico, and Alaska have the highest percentages of lesbian and gay adoptive parents. In addition, gay and lesbian foster parents are more likely to raise children with disabilities--32 percent of all foster children with disabilities reside with gay and lesbian parents.

Florida is the only state that has a law specifically disallowing gay individuals from adopting. In Nebraska, a 1995 directive of the then-director of the Department of Social Service prohibited gay adoption and anyone in an unmarried relationship. North Dakota permits child-placing agencies to discriminate against prospective adoptive parents based on religious or moral objection. And Utah law gives preference to married couples over single adults.

Conversely, California, Maryland, Massachusetts, Nevada, New Jersey, and New York prohibit sexual orientation discrimination in the adoption process. An individual's sexual orientation is not a basis for exclusion in Connecticut, Colorado, Illinois, Indiana, Pennsylvania, Vermont, and Washington, D.C.

On Nov. 4, Arkansas voters passed restrictions on gay and lesbian foster parenting and adoption. Act 1 banned unmarried, cohabitating couples from fostering or adopting children, which effectively excluded gay and lesbian couples.

EDGE Editor-in-Chief Steve Weinstein has been a regular correspondent for the International Herald Tribune, the Advocate, the Village Voice and Out. He has been covering the AIDS crisis since the early '80s, when he began his career. He is the author of "The Q Guide to Fire Island" (Alyson, 2007).

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