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# Resisting “Don’t Ask, Don’t Tell” in the Licensing of Lesbian and Gay Foster Parents: Why Openness Will Benefit Lesbian and Gay Youth

by  
NANCY D. POLIKOFF\*

As a lawyer who has devoted much of my life’s work to the issue of parenting by lesbians and gay men, what I hope to contribute to this Symposium is the argument that the continued availability of openly gay and lesbian foster parents is one critical component of a strategy to protect the well-being of lesbian, gay, bisexual, and transgender youth. The first gay family law case I ever litigated was in 1976. It was a case in which a gay teenager had been kicked out of his home by his parents, after which he was placed by the Montgomery County, Maryland social services agency with an adult gay man as a foster parent. The teenager’s parents opposed the placement and asked the judge to remove him. Mind you, they didn’t want him to come home.<sup>1</sup> They just didn’t want him in a home with an adult gay man.<sup>2</sup> Fortunately, we successfully convinced

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1. One study found that half of all queer youth reported that their parents rejected them because of their sexual orientation, while other studies suggest that one out of every four queer youth are forced to leave their homes. See Sonia Renee Martin, *A Child’s Right to be Gay: Addressing the Emotional Maltreatment of Queer Youth*, 48 HASTINGS L.J. 167, 169, 176 (1996). In one study, one-half of the bisexual and gay young men interviewed had run away from home at least once. See *id.* at 176. Thirteen percent of the 620 homeless youth interviewed in another study were gay, lesbian, bisexual, or undecided. See *id.* Other studies suggest that as many as 25% of all youth living on the streets of this country are gay or lesbian. See *id.* This figure varies and is much higher in urban areas. One survey conducted in San Francisco found that half of the 2,000 homeless teenagers who had contact with a youth center were gay or lesbian. See *id.* In Seattle, the estimated percentage of homeless teenagers who are gay, lesbian, or bisexual is 40%, while in Los Angeles, the estimated percentage is 30%. See *id.*

2. The parents of some lesbian and gay teenagers take even more dramatic and destructive action by committing their children to locked residential treatment facilities. See Abby Abinanti, *Legal Challenges Facing Lesbian and Gay Youth*, in HELPING GAY AND LESBIAN

the judge to leave the teenager in that placement, in part through the use of the expert testimony of a progressive psychiatrist who did an evaluation and who was not homophobic.

The most obvious connection between lesbian and gay youth and foster parents is the importance of the availability of gay and lesbian foster parents to provide homes for gay teenagers who need acceptance and support for their journey into adulthood. But the open, publicly acknowledged and valued existence of gay foster parents serves another function. The state agency that licenses foster parents is the same agency that controls the lives of lesbian and gay youth in its care. Open licensing of gay foster parents sends a powerful message to those youth that it's okay to be gay, and we need the state to send that message in as many ways as possible.<sup>3</sup>

I argue here that states must not only license gay and lesbian foster parents but that they must do so openly. A "don't ask, don't tell" policy might work for gay adult foster parents. It might be acceptable for a state agency to license foster parents without inquiring into sexual orientation, and to therefore be unable to say whether any of its foster parents were gay, because it is appropriate to believe that a person's sexual orientation is irrelevant to his or her ability to be a good parent. We might say that an agency that doesn't make that kind of inquiry before licensing foster parents is really doing a good job.

This reasoning fails, however, when one considers gay and lesbian teenagers within the foster care system. The child welfare system already ignores the existence of gay, lesbian, bisexual, and transgendered young people who receive their services.<sup>4</sup> Social workers, group home counselors, and foster parents are not trained to understand gay and lesbian adolescent sexual development, to recognize and overcome their own personal discomfort of adolescent sexuality, and to help gay and lesbian teenagers face and respond to social stigma that they experience.<sup>5</sup>

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YOUTH: NEW POLICIES, NEW PROGRAMS, NEW PRACTICE 149, 157 (Teresa DeCrescenzo ed., 1994) [hereinafter *HELPING GAY AND LESBIAN YOUTH*]; Daphne Scholinski, *After-Wards*, 48 *HASTINGS L.J.* 1195 (1997).

3. Gay and lesbian youth are denied recognition and support in nearly every aspect of their adolescent development. See generally Teemu Ruskola, *Minor Disregard: The Legal Construction of the Fantasy that Gay and Lesbian Youth Do Not Exist*, 8 *Yale J.L. & Feminism* 269 (1996) (discussing the role of culture, politics, and the law in constructing a heterosexual identity for children that deems the existence of gay youth impossible and denies them support from gay and lesbian adults).

4. See Dennis Durby, *Gay, Lesbian, and Bisexual Youth*, in *HELPING GAY AND LESBIAN YOUTH*, *supra* note 2, at 1, 23; Gerald P. Mallon, *Searching for a Good Fit: An Ecological Approach to Exploring the Experiences of Gay, Lesbian, and Bisexual Adolescents in North America's Child Welfare System*, *J. INT'L CENTRE FOR RESIDENTIAL CHILD CARE* (forthcoming 1997).

5. See Mallon, *supra* note 4, at 2-4.

"Don't ask, don't tell" is not benign for these adolescents because sexual orientation is always relevant to their development; it must be considered in their case plans and when making placements. Yet an agency that does not openly license gay foster parents cannot be expected to openly address the needs of gay and lesbian teenagers.

Although I focus here primarily on licensing lesbian and gay foster parents, it is also critical that the child's welfare system hire social workers and group home counselors who are openly gay and lesbian.<sup>6</sup> This is something, of course, that state and local agencies are not required to do unless there is some legislation or policy in place which prohibits discrimination in employment on the basis of sexual orientation.<sup>7</sup> Many teenagers are never placed in foster homes, but rather wind up in group home settings. There they are vulnerable to peer harassment as well as adult disapproval. These placements chronically fail.<sup>8</sup> For example, consider Rhonda, a sixteen-year old black lesbian. When her grandmother died, there was no one to take her and she moved into a youth shelter. Over the course of sixteen months, she went through every shelter and group home in Los Angeles. Several times between placements she wound up back on the streets. This is how she described her situation:

Maybe a third of us that hung out on the street together were gay. A lot of them left home because their parents threw them out. You're gay, that's a curse, get out. They treated it like a disease or something. A lot of gay kids would have problems because they wouldn't want to go to a straight foster home, so they didn't go anywhere. They'd say, "Either I get into a gay home or a shelter where I can be freely gay or

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6. In addition to those who enter the state system as foster children, other gay and lesbian teenagers come within the jurisdiction of the state as juvenile delinquents because they have engaged in consensual sex with each other, or as persons in need of supervision ("PINS") because they are truant, ungovernable, or beyond the lawful control of their parents. See Colleen A. Sullivan, *Kids, Courts, and Queers: Lesbian and Gay Youth in the Juvenile Justice Care System*, 6 LAW & SEXUALITY 31 (1997). Their needs are also often unmet.

7. Eleven states now prohibit discrimination in employment based on sexual orientation. See CAL. LAB. CODE § 1102.1 (West 1992); CONN. GEN. STAT. § 46A-51 (1991); D.C. CODE ANN. § 1-2512 (1996); HAW. REV. STAT. §§ 368-1, 489-1, *et seq.* (Supp. 1991); 1997 Me. Laws 205; MASS. GEN. LAWS ANN. ch. 151B, § 4(1) (West 1990); MINN. STAT. ANN. § 363.03 (West 1993); N.J. STAT. ANN. §§ 5-4, 5-12 (West 1991); R.I. GEN. LAWS §§ 28-5-5, 28-5-7 (1995); VT. STAT. ANN. tit. 21, § 495 (1992); WIS. STAT. ANN. § 101.22 (West 1988 & Supp. 1991).

8. See Nancy Taylor, *Gay and Lesbian Youth: Challenging the Policy of Denial*, in HELPING GAY AND LESBIAN YOUTH, *supra* note 2, at 39, 50. Many of these children come into placement after a period of time as homeless runaways from families in which they were abused or neglected. See *id.* One writer notes, "In the \$11 billion community care facility industry in the United States, programs specifically designed to meet the needs of lesbian and gay youth in placement are virtually non-existent." Abinanti, *supra* note 2, at 149, 163.

I'll stay out here on the streets." But after several months of going from shelter to shelter, you want to say, "Forget it, I'm not ever going to find a home. I'll make it on my own." I finally decided it was time to go to a straight group home, see how it was like there and if I didn't get along, I'd just leave. And I did go and I saw what everybody was afraid of. It was very homophobic. They watched everything I did. They made me sign an agreement not to touch any other girl in the home. They totally blew the subject out of proportion.<sup>9</sup>

A boy tells his story as follows:

I was living at home with my mom and she was always on me about acting more like a boy, being more like my brothers and all that mess. I tried but I just couldn't do it. It just wasn't me. Things went from bad to worse and I just couldn't take it anymore. One day my mom and I had this big fight and she said, "Why don't you just take your faggot ass out of my house?" So I left. I went to social services and they put me in this group home. It was horrible. First of all, it was a terrible place and the boys who were there were bad news. Although I didn't say anything about being gay or anything, the staff sensed that something was up with me, that I wasn't like the other boys and they were always watching me. They never said anything to me, but I knew that they were watching me. They sensed I was different, I could just tell by the way they looked at me when I first came in the door. The first night that I was there I got jumped by these guys in the bedroom. When I told the staff they said they could not do anything about it. I complained to my social worker and they moved me to another group home. This one was worse. In that one, I had staff preaching to me and telling me I was going to go to hell. And that I was evil and all of that. I had this psychologist asking me a million questions and asking me if I wanted to be a girl. You know, stupid, ignorant stuff like that. I just didn't fit in. I wasn't comfortable. I complained again and I was sent to another group home. This one was better because they had some gay staff there and they looked out for me so I stayed because the staff was cool with me. So there were other kids that lived there. It's not so bad now.<sup>10</sup>

One study based on interviews with fifty-four gay and lesbian teenagers in foster homes or group home placements in New York, Toronto, and Los Angeles showed that 89% had experienced multiple placements because they didn't fit in where they were originally placed. All but one

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9. Wendell Ricketts & Roberta Achtenberg, *Adoption and Foster Parenting for Lesbians and Gay Men: Creating New Traditions in Family*, in *HOMOSEXUALITY AND FAMILY RELATIONS* 97 (Fredric Bozett & Marvin Sussman eds., 1990).

10. Mallon, *supra* note 4, at 6-7.

had experienced verbal harassment due to their sexual orientation, and 52% had experienced physical violence.<sup>11</sup>

Examining the state of the law on lesbian and gay foster parents gives only one part of the picture, but it's a good place to start. And when I talk about the law, I mean it literally: the statutes, the case law and the administrative regulations that can be found in books. There is little to report. Only New Hampshire has a statute banning the licensing of gay and lesbian foster parents.<sup>12</sup> The constitutionality of this statute was upheld by the state supreme court in 1987, not long after *Bowers v. Hardwick*,<sup>13</sup> in a decision in which now-Supreme Court Justice David Souter was in the majority.<sup>14</sup> The court concluded that excluding gay men and lesbians from foster parenting was rationally related to the state's legitimate interest in providing appropriate role models for children:<sup>15</sup>

The rationale underlying the role model theory is that persons in the position of parents are the primary role models after whom children consciously or unconsciously pattern themselves. Although opponents of the bill have cited a number of studies that find no correlation between a homosexual orientation of parents and the sexual orientation of their children, the source of sexual orientation is still inadequately understood and is thought to be a combination of genetic and environmental influences. . . . [I]t is in the familial context that the theory of learned sexual preference is most likely to be true.<sup>16</sup>

Thus, the New Hampshire court both denied the unanimous conclusions of all social science research,<sup>17</sup> and cast aspersions on homosexuality by asserting that turning out gay would be a bad outcome for a child placed in foster care. Such reasoning feeds the same policy that produces problems for gay and lesbian teenagers in foster care by assuming that the only positive outcome for them is one in which they are heterosexual.

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11. *See id.* at 8.

12. *See* N.H. REV. STAT. ANN. § 161.2(IV) (Supp. 1991). North Dakota prohibits a foster parent from living with any adult partner who is not his or her spouse. *See* N.D. ADMIN. CODE § 75-03-14-04 (1997). While this does not prohibit the licensing of a single gay foster parent, it would prohibit the licensing of either a gay couple or a gay adult living with a partner.

13. 478 U.S. 186 (1986).

14. *See* Opinion of the Justices, 525 A.2d 1095, 1098-1100 (N.H. 1987). I'd like to think if he were sitting on that bench today he would make a different decision. *See* *Romer v. Evans*, 116 S. Ct. 1620 (1996).

15. *See* Opinion of the Justices, 525 A.2d at 1101.

16. *Id.* at 1100.

17. In the past ten years, studies have continued to show that there is no correlation between the sexual orientation of parents and that of their children. *See generally* Taylor, *supra* note 8, at 68.

Florida has a statute banning adoptions by lesbians and gay men.<sup>18</sup> The Florida Department of Health and Rehabilitative Services had an unwritten policy against licensing gay and lesbian foster parents, which was struck down by a state appeals court in 1994.<sup>19</sup> The facts underlying *Matthews v. Weinberg* arose out of a somewhat common circumstance: a lesbian mental health counselor for children in the state foster care system was counseling a young child who had several failed foster care placements.<sup>20</sup> She learned that his most recent placement was also going to fail, and inquired about becoming his foster mother. The counselor was living with a partner who was also a child welfare worker, and when a social worker conducted a home study to see if the placement was suitable, the couple was asked if they slept in the same bedroom. They said yes. The social worker then asked if they were lesbians. They said yes. The social worker promptly said, "I don't know anyone who would sign off on approving you as foster parents." The agency then removed the child, who had been placed temporarily in their home. The women brought an action against the state, and the appeals court ruled that the agency's unwritten policy banning gay men, lesbians, and unmarried couples from being foster parents was a violation of the state's procedural rules.<sup>21</sup>

This Florida case shows a bit of how agencies really work, regardless of the rules on the books. On a daily basis, social workers, their supervisors, and their supervisor's supervisors, who are often political appointees, make decisions about homes for children behind closed doors. The news behind these closed doors is not always bad. Social workers often support licensing of gay and lesbian foster parents because they know gay men and lesbians provide good homes for children and because foster homes are always, everywhere, in short supply.<sup>22</sup> Some agencies

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18. See FLA. STAT. ANN. ch. 63.042 (Harrison 1994 & Supp. 1996). The constitutionality of the statute was the subject of a recent trial in Florida. See also *Challengers of Gay Adoption Ban Won't Settle for Broward-Only Win*, BROWARD DAILY BUS. REV., May 9, 1997, at B1. In an unpublished opinion, Broward County Circuit Court Judge John Frusciantie upheld the statutory ban. *Amer v. Johnson*, No. 92-14370 (Fla. 17th Cir., July 27, 1997).

19. See *Matthews v. Weinberg*, 645 So. 2d 487 (Fla. Dist. Ct. App. 1994).

20. See, e.g., *In re Adoption of Charles B.*, 1988 Ohio App. LEXIS 4435 (1988), *rev'd*, 552 N.E.2d 884 (1990) (psychologist counseling a foster child later petitioned to adopt him after several previous attempts at an adoptive placement had failed).

21. See *Matthews*, 645 So. 2d at 488.

22. The National Association of Social Workers was part of a lawsuit in Massachusetts challenging regulations that effectively prohibited the state from licensing lesbians and gay men as foster parents. See *Babets v. Secretary of the Executive Office of Human Servs.*, 526 N.E.2d 1261, 1261 n.1 (1988) (NASW dismissed as party for lack of standing). The lawsuit subsequently settled when Massachusetts agreed to implement regulations that prefer those with parenting experience but make no distinctions based on sexual orientation.

explicitly place gay and lesbian teenagers in gay foster homes. While programs exist in some places you might expect—New York,<sup>23</sup> Los Angeles,<sup>24</sup> Washington, D.C.,<sup>25</sup> and Boston<sup>26</sup>—advocates of gay and lesbian

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Recently, a father whose fourteen-year old son was removed by the state as a result of an allegation of physical abuse challenged his son's foster care placement with a gay male couple. See Frank Phillips, *Gay Foster Parents Under Fire: Challengers Say Placement Violated Religious Freedom*, BOSTON GLOBE, June 21, 1997, at B1. The father claimed that the gay foster placement violated his fundamental religious beliefs as a Catholic. See *id.* The Massachusetts Supreme Judicial Court refused to hear the case because the child had already been returned to his parents after six months in foster care. See *id.* The United States Supreme Court denied the father's petition for certiorari. *Doe v. Massachusetts Dep't of Soc. Servs.*, 118 S.Ct. 52 (1997).

23. In New York, some preliminary research has been done and some programming is available to gay and lesbian youth. See Sullivan, *supra* note 6, at 59. The Hetrick-Martin Institute in New York City is a social service, education, and advocacy agency for lesbian, gay, bisexual, and homeless youth. The agency offers individual, group and family counseling; training and resources for youth and professionals; referrals to legal, medical, employment and shelter services; an after-school drop-in center; HIV/AIDS services and education; the alternative Harvey Milk School; and the Project First Step program for homeless youth. The Hetrick-Martin Institute also engages in national advocacy. In addition to providing direct services and advocacy, the agency is starting a new program that allows youths to take leadership roles in the programs it offers. See Greg Greeley, *Service Organizations for Gay and Lesbian Youth*, in *HELPING GAY AND LESBIAN YOUTH*, *supra* note 2, at 111, 117-18.

24. Gay and Lesbian Adolescent Social Services (GLASS) is a licensed foster care agency in Los Angeles that recruits, licenses, and certifies gay adults as foster parents for the children in its group homes and foster care programs. It is the only agency in California which primarily serves gay, lesbian, and bisexual youth, and is the only agency in the country which runs group homes for gay youth who are products of the legal system. See Sullivan, *supra* note 6, at 58-59. GLASS also provides group homes for gay, lesbian, bisexual, transgendered, transvestite, and HIV-positive adolescents. Additionally, GLASS operates a school in partnership with the Los Angeles Unified School District; conducts an intensive case management project for teens at high risk for HIV infection; offers mentoring to young gay men and lesbians through its "Paradigm Project"; provides advanced college placement courses and scholarships to academically gifted gay and lesbian youth; and has designed a Single Room Occupancy residence program for young adult graduates of the GLASS residential programs. See *id.* The Youth Services Department of the Los Angeles Gay and Lesbian Community Services Center provides service information and referrals, material assistance, life stabilization, and medical assistance, as well as a Youth Talkline, a Pen Pal program and a Youth Rap Group. The core of the Youth Services Program is the Kruks/Tilsner Youth Shelter, a 24-bed transitional living program for runaway, homeless, and throwaway youth. The program is designed to teach these youths the life skills necessary to become productive members of society. Los Angeles has an on-campus high school counseling program, Project 10, that is committed to keeping students in school, off drugs, and sexually responsible. The services offered include training for school administrators as well as counseling and education for the students. See Greeley, *supra* note 23, at 111, 114.

25. These programs offer nurturing and safe environment for young people who have had difficulty with their own families or within the existing child welfare programs. See Gerald P. Mallon, *Toward a Competent Child Welfare Services Delivery System for Gay and Lesbian Adolescents and Their Families*, 3/4 J. MULTICULTURAL SOC. WORK, 177-94 (1997). In Washington, D.C., the Sexual Minority Youth Assistance League (SMYAL) is the primary agency that deals with lesbian, gay, bisexual and transgendered youth. See Greeley, *supra* note

foster parenting have allies in many states. In Iowa, a gay male couple from the town of Eldora was named as the foster parents of the year for 1996 by the Iowa Foster and Adopted Parents Association.<sup>27</sup>

They achieved this honor after being nominated by their seventeen-year old foster son. Over the preceding seven years, they had been foster parents to thirteen children, one of whom they adopted. A representative of Iowa's Department of Human Services told the Des Moines Register that the state doesn't ask questions about an applicant's sexual orientation and does not require that applicants be heterosexual. "We have a set of standards," said the Bureau Chief, "and we apply them to all applicants." Iowa places 15-20% of its foster children with parents who are unmarried.<sup>28</sup> We don't know, of course, how many of them are gay.

Perhaps more dramatic was the response of social workers in Nebraska in 1995, when the state social services agency proposed to ban gay men and lesbians from serving as foster parents. The head of the agency suggested the policy without any articulated justification or evidence of problems or bad outcomes for children in gay or lesbian foster homes.<sup>29</sup> The Nebraska chapter of the National Association of Social Workers not only opposed the proposed ban, but publicly announced that implementing the ban would violate the code of ethics of their state licenses, which bans discrimination on the basis of sexual orientation and marital status.<sup>30</sup> They talked about what a difficult position it would put the state social workers in, by forcing them to choose between violating the law and violating their own code of ethics.

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23, at 111, 124-25. The services offered by SMYAL include: facilitated youth groups, a drop-in program, a help line, a speakers' bureau, a counselor training program, a peer HIV education program and various education campaigns for suicide prevention and general awareness of lesbian and gay issues. *See id.*

26. The Boston Alliance of Gay and Lesbian Youth (BAGLY) is a youth-run social support group for lesbian, gay, and bisexual youth. The organization offers meetings for new members as well as separate men's and women's groups. They offer informal drop-in days for socializing as well as a peer counseling program. In 1992, the youth who run BAGLY asked their Adult Advisory Board to form an organization to provide social services to lesbian and gay youth. This organization, PROUD, is composed of BAGLY; Youth Works, which is a set of services to help youth with career counseling, GED mentoring and life; and Home Base, planned as an emergency and transitional shelter for lesbian and gay youth.

27. *See* Holli Hartman, *Gay Couple Top Foster Parents*, DES MOINES REG., June 1, 1996, at 1.

28. *See id.*

29. *See* Interview with Kate Kendall, National Center for Lesbian Rights (NCLR) (Mar. 19, 1997). The NCLR was instrumental in developing a strategy that stopped the policy from ever being implemented. *See id.*

30. *See* Paul Hammel, *Policy on Gay Foster Parents Prompts Concern Over Ethics*, OMAHA WORLD HERALD, Feb. 6, 1995, at 11.

The news, of course, is not uniformly good. In Ohio last year, a guardian ad litem challenged a placement of a child by the Department of Human Services with lesbian foster parents.<sup>31</sup> Although the agency announced that it did not discriminate on the basis of sexual orientation, the judge said that he was against gay and lesbian foster homes, and that he was willing to "go to war against the DHS policy."<sup>32</sup> In December 1996, a Kansas City, Missouri newspaper reported that the state's unwritten policy against licensing gay and lesbian parents had been violated.<sup>33</sup> This policy is a verbal one, announced in training sessions. The newspaper knew the policy had been violated because a former employee of the state's division of family services reported that he had been ordered to license a lesbian foster parent. When he refused, citing religious reasons, another employee completed the licensing. The story also noted proposed legislation in Missouri, which is still pending, that would ban foster parenting and adoption by lesbians and gay men.<sup>34</sup>

Over the past few years, bills have been introduced in a handful of state legislatures that would implement such a ban.<sup>35</sup> So far none have passed, and we need to know why. We need to know how in each and every state it has been possible to stop this legislation. Right now legis-

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31. See *Court's Judge Balks at Foster Parents—A Guardian Challenged a Child's Placement in a Foster Home Shared by 2 Women Believed to be Lesbians*, DAYTON DAILY NEWS, July 5, 1996, at 4B.

32. *Id.* A similar attack on lesbian and gay foster parents by an individual child welfare employee occurred recently in Texas. See Sam Howe Verhovek, *Homosexual Foster Parent Sets Off a Debate in Texas*, N.Y. TIMES, Nov. 30, 1997, § 1 at 20. The controversy over the Department's practices arose when a child welfare supervisor, Rebecca Bledsoe, ordered the emergency removal of an infant from his foster home because she discovered that the licensed foster parent is a lesbian. See *id.* Ms. Bledsoe took this action despite the report of a caseworker that the child was thriving under the care of his foster parent and her partner. See *id.* The Texas Department of Protective and Regulatory Services defended its practice of allowing lesbians and gays to serve as foster parents by quickly overruling Ms. Bledsoe's decision and demoting her from supervisor to caseworker. See *id.*

33. See Donna McGuire, *Homosexual Foster Parents Cause Debate; Missouri Lawmaker Wants to Exclude Gays from State Program*, KAN. CITY STAR, Dec. 29, 1996, at B1.

34. See *id.*

35. See S.B. 1197, 100th Gen. Ass'y (Tenn. 1997); H.B. 3197, 112th Sess., Gen. Ass'y (S.C. 1997); S. Res. 29, 45th Leg., 2d Sess. (Okla. 1995); H. Res., 45th Leg., 2d Sess., (Okla. 1995); H.B. 29, 89th Gen. Ass'y, 1st Sess. (Mo. 1997); H.B. 1171, 54th Leg. (Wash. 1995). In South Carolina and Missouri, the legislation was sent to committee but was not acted upon before the adjournment of the regular 1997 session. The legislation was carried over to the regular 1998 session in both states. In Tennessee, the regular 1997 session was adjourned with no action on the legislation and no carryover to the 1998 session. In addition, a representative in the Arizona state legislature has announced plans to introduce legislation in January 1998 that would prohibit lesbians and gays from being foster parents. See Karina Bland & Michael Murphy, *Lawmaker Would Ban Gays from Being Foster Parents*, ARIZ. REPUBLIC, Nov. 26, 1997, at A1. The proposed legislation would require that all licensed foster parents be legally married. See *id.*

lation is pending in Tennessee and South Carolina, as well as Missouri. I recently had a conversation with Abby Rubinfeld, the former legal director of the Lambda Legal Defense and Education Fund.<sup>36</sup> She now lives in Nashville with her partner and their two children. She reported that it seems overwhelmingly likely that the legislation in Tennessee will pass, and that it was not proposed in response to any crisis, bad story, or bad outcomes. Rather, it was just part of the right wing agenda of two newly elected state legislators who had decided to push it. In that state, no one in any of the mainstream mental health organizations or the state agency was coming out against it.

I talked with her about strategy and about how to present the images of gay and lesbian foster parents as a positive phenomenon. I asked her about the placement of gay and lesbian teenagers in gay and lesbian foster homes. She knew that there had been some placements, but suggested right away that this might be the worst sort of example to put before the public as evidence of successful gay and lesbian foster parenting, and that it would not be a politically viable component of opposing the proposed ban to suggest that such placements were success stories.

There are two likely reasons that this particular form of placement is so controversial. One is the notion that such foster parents will make these children become gay or lesbian, especially if they are in a questioning state.<sup>37</sup> And, of course, according to opponents, foster children are by definition in a questioning state of mind, since they couldn't possibly be gay or lesbian. The idea that gay foster parents would somehow force their sexuality on foster children is especially pronounced when you have a teenager who has already identified as gay, lesbian, or questioning. The other likely reason is the continued myth that gay men sexually abuse children, and that therefore any teenager placed with gay foster parents would be at risk for being sexually abused.<sup>38</sup>

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36. See Interview with Abby Rubinfeld, former Director of the Lambda Legal Defense and Education Fund (Mar. 25, 1997).

37. See Susan J. Becker, *Child Sexual Abuse Allegations Against a Lesbian or Gay Parent in a Custody or Visitation Dispute: Battling the Overt and Invidious Bias of Experts and Judges*, 74 DENV. U. L. REV. 94-95 (1996). Gay and lesbian community centers or other social service programs often do not provide services to persons under age 18 for fear that they will be accused of "recruiting" youth into homosexuality. See Durby, *supra* note 4, at 25. Lesbians and gay men may also be dissuaded from playing any role as individuals in helping gay and lesbian teenagers for the same reason. See Taylor, *supra* note 8, at 46.

38. A study by researchers at The Children's Hospital in Denver confirmed that homosexuals are no more likely to sexually abuse children than heterosexuals. See Carole Jenny et al., *Are Children at Risk for Sexual Abuse by Homosexuals?*, PEDIATRICS, July 1994, at 41-44. It found that of the 269 reported incidents of child abuse where an adult was the alleged abuser, in only two cases was the adult identified as a homosexual. See *id.* Research has also proven that "[t]he vast majority of sex crimes committed by adults upon children are heterosexual, not homosexual." SAM HOUSTON STATE UNIVERSITY, CRIMINAL JUSTICE CENTER, RESPONDING

In the course of any kind of public campaign against the ban on gay and lesbian foster parenting, if you tout a success story about gay and lesbian teenagers, you will come head on against these controversies. I think that there is no choice but to confront them. We need to do it. We also need to be openly part of a strategy that affirms both the value of gay and lesbian foster parents for gay and lesbian teenagers, and the value of state agencies licensing gay and lesbian foster parents across the board.

I would like to conclude by saying that I am not arguing that gay and lesbian teenagers should only be placed with gay and lesbian foster parents. I certainly think heterosexuals can provide a safe and affirming environment in which to help their gay and lesbian foster children grow into adulthood. But if an agency openly licenses gay and lesbian foster parents, it is more likely to look for positive heterosexual foster placements for gay and lesbian teenagers and therefore will be better able to serve the needs of all the gay and lesbian youth in their care.<sup>39</sup>

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TO CHILD SEXUAL ABUSE: A REPORT TO THE 67TH SESSION OF THE TEXAS LEGISLATURE (1980).

39. One author argues that gay and lesbian teenagers should not be matched with gay and lesbian foster parents. See Joseph Evall, *Sexual Orientation and Adoptive Matching*, 25 FAM. L.Q. 347 (1991). Evall suggests both heterosexual and homosexual parents are able to teach their homosexual child coping skills that are necessary to survive in our homophobic and heterosexist world. See *id.* Although homosexuals are more likely to have learned the particular coping skills, Evall rejects using sexual orientation as a proxy for the ability to teach children to cope. See *id.* While I agree with Evall that gay teenagers do not require foster parenting by gay adults, I believe he misses the point that the open licensing of gay and lesbian foster parents sends an affirming message to all gay foster children and thus is necessary to the well-being of gay foster children, including those whose foster parents are heterosexual.

