



Restricting Adoption and Foster Parenting



PROPOSED INITIATIVE ACT NO. 1

(Proposed by Petition of the People)

POPULAR NAME: An act providing that an individual who is cohabitating outside of a valid marriage may not adopt or be a foster parent of a child less than eighteen years old.

BALLOT TITLE: A proposed act providing that a minor may not be adopted or placed in a foster home if the individual seeking to adopt or to serve as a foster parent is cohabitating with a sexual partner outside of a marriage which is valid under the constitution and laws of this State; stating that the foregoing prohibition applies equally to cohabitating opposite-sex and same-sex individuals; stating that the act will not affect the guardianship of minors; defining "minor" to mean an individual under the age of eighteen (18) years; stating that the public policy of the State is to favor marriage, as defined by the constitution and laws of this State, over unmarried cohabitation with regard to adoption and foster care; finding and declaring on behalf of the people of the state that it is in the best interest of children in need of adoption or foster care to be reared in homes in which adoptive or foster parents are not cohabitating outside of marriage; providing that the Director of the Department of Human Services shall promulgate regulations consistent with the act; and providing that the act applies prospectively beginning on January 1, 2009.

Why is the issue on the ballot of a general election?

Amendment 7 of the Arkansas Constitution allows a process by which voters may propose legislative measures, laws and amendments to the Constitution. An initiative petition may propose an amendment to the Arkansas Constitution or an Act. The difference is an initiated act approved by the vote of the people creates a statute and may be altered or repealed by the Arkansas legislature by a two-thirds vote. An initiated constitutional amendment passed by the voters may only be changed by another vote of the people.

To place a measure on the ballot, it is necessary for a sponsor group to submit petitions to the Secretary of State's Office with the signatures of citizens registered to vote in

Arkansas. For an initiated act, a petition must contain the signatures of qualified voters equal to 8 percent of the total number of votes cast for the office of governor in the previous general election. The last gubernatorial election was held in 2006. Eight percent of the total number of votes cast is 61,974.

What does this initiated act do?

The proposed initiated act would make it illegal for any individual cohabitating with another individual outside of a valid marriage to adopt or provide foster care to minors. The measure would apply equally to both homosexuals and heterosexuals. The proposal would apply to all adoptions in Arkansas, including private adoptions of children who have never been in the state foster care system.

In 2006 the Arkansas Supreme Court struck down a state regulation that banned gay people and anyone living in a household with a gay adult from being foster parents. The American Civil Liberties Union brought a lawsuit against the state in 1999 on behalf of two individuals and one couple who wanted to become foster parents but were disqualified from doing so by the ban. The regulation was overturned because it exceeded the powers of the executive branch. In February 2007, the Department of Human Services issued a different executive directive banning all cohabitating adults, regardless of sexual orientation, from serving as foster parents. The proposed initiated act, if passed, would supersede the executive directive and add a regulation regarding adoption.

Adoption and foster parenting options in other states

According to a March 2007 study conducted by The Urban Institute and The Charles R. Williams Institute on Sexual Orientation Law and Public Policy, some states have passed laws or have regulations in place that restrict certain individuals or couples from adopting or fostering children. Several states have policies that explicitly or implicitly state that sexual orientation or marital status cannot be a basis to prevent people from adopting or fostering children.

The following statements are what supporters and opponents have made public either in media statements and literature or on web sites. The University of Arkansas does not endorse or in any way validate these statements.

What do supporters say?

Supporters state that the proposed initiative would not ban all single people from adopting or being foster parents. Single individuals, without a live-in partner, would be free from the restrictions in the proposed initiated act. Supporters have said the measure would not reduce the number of foster and adoptive homes but could possibly increase the number. Supporters believe the act is needed to:

- protect the welfare of children,
- encourage more people to become foster parents by raising awareness of the need, and
- “blunt the political agenda” of gay activists.

What do opponents say?

A coalition of child welfare, faith and social justice groups has formed to oppose the initiative and has stated in the media its intent to file a lawsuit to keep the proposal off the ballot. Opponents claim the ballot



Source: The Urban Institute and The Charles R. Williams Institute on Sexual Orientation Law and Public Policy Joint Study, March 2007

initiative could be detrimental to children in the adoption and foster care systems because it could shrink the pool of prospective parents. Opponents argue that decisions on who can or cannot adopt or serve as foster parents should be left up to those trained to do so, such as social workers and juvenile judges. Opponents have stated the proposed initiated act violates the state constitution because it discriminates against a class of people – those who are unmarried and cohabiting.

When does the legislation take effect, if passed?

The proposed statute, if approved, would go into effect on January 1, 2009.

What does a “FOR” vote mean?

A “FOR” vote would allow an Arkansas law to prevent individuals living in a cohabitating relationship from adopting children or serving as foster parents.

What does an “AGAINST” vote mean?

If the proposal does not receive a majority of the votes, a law would not be enacted.

Where can I find more information?

The complete and official text of each ballot measure can be obtained through the Arkansas Secretary of State’s Office:

- Phone: 501-682-1010
- Web site: <http://www.votenaturally.org>

For additional information, including links to major support and opposition groups, please visit the University of Arkansas Division of Agriculture’s Public Policy Center web site at <http://ppc.uaex.edu> or contact your county Cooperative Extension Service office.

The following is information regarding this proposed initiated act as it will appear on the state’s November 4 general election ballot.

(Popular Name)

AN ACT PROVIDING THAT AN INDIVIDUAL WHO IS COHABITATING OUTSIDE OF A VALID MARRIAGE MAY NOT ADOPT OR BE A FOSTER PARENT OF A CHILD LESS THAN EIGHTEEN YEARS OLD.

(Ballot Title)

A PROPOSED ACT PROVIDING THAT A MINOR MAY NOT BE ADOPTED OR PLACED IN A FOSTER HOME IF THE INDIVIDUAL SEEKING TO ADOPT OR TO SERVE AS A FOSTER PARENT IS COHABITING WITH A SEXUAL PARTNER OUTSIDE OF A MARRIAGE WHICH IS VALID UNDER THE CONSTITUTION AND LAWS OF THIS STATE; STATING THAT THE FOREGOING PROHIBITION APPLIES EQUALLY TO COHABITING OPPOSITE-SEX AND SAME-SEX INDIVIDUALS; STATING THAT THE ACT WILL NOT AFFECT THE GUARDIANSHIP OF MINORS; DEFINING “MINOR” TO MEAN AN INDIVIDUAL UNDER THE AGE OF EIGHTEEN (18) YEARS; STATING THAT THE PUBLIC POLICY OF THE STATE IS TO FAVOR MARRIAGE, AS DEFINED BY THE CONSTITUTION AND LAWS OF THIS STATE, OVER UNMARRIED COHABITATION WITH REGARD TO ADOPTION AND FOSTER CARE; FINDING AND DECLARING ON BEHALF OF THE PEOPLE OF THE STATE THAT IT IS IN THE BEST INTEREST OF CHILDREN IN NEED OF ADOPTION OR FOSTER CARE TO BE REARED IN HOMES IN WHICH ADOPTIVE OR FOSTER PARENTS ARE NOT COHABITING OUTSIDE OF MARRIAGE; PROVIDING THAT THE DIRECTOR OF THE DEPARTMENT OF HUMAN SERVICES SHALL PROMULGATE REGULATIONS CONSISTENT WITH THE ACT; AND PROVIDING THAT THE ACT APPLIES PROSPECTIVELY BEGINNING ON JANUARY 1, 2009.

FOR Proposed Initiative Act No. 1

AGAINST Proposed Initiative Act No. 1

Exercising your voting privilege

We live in a democratic society where voting is a privilege of citizenship. Democracy works best when informed citizens exercise their voting privilege. Please vote November 4, 2008.

References

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- ‘Family’ focus of groups eyeing adoption, foster parenting initiative. *The Morning News*. June 27, 2008.
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- Adoption ban proposal qualifies for ballot. *Arkansas News Bureau*. August 26, 2008.
- Executive Directive: Repeal of the Ban on Homosexuals as Foster Parents*. Arkansas Department of Health and Human Services Division of Children and Family Services. March 15, 2007.

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