

# Deseret News

## Religious liberty and LGBT rights: Solutions elusive in adoption conflict

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Academics and advocates took first steps recently toward what they hope will be solutions to a high-stakes clash that has dragged child welfare into the culture war over LGBT and religious rights.

Signaling a willingness on the part of religious groups to find a solution, an attorney who had represented faith-based adoption agencies in legal conflicts with LGBT groups declared same-sex couples should not be prevented from fostering or adopting children.

“Gay couples can be fantastic parents and should not be banned from adopting or fostering children,” Stephanie Barclay, former legal counsel for the [Becket Fund for Religious Liberty](#) and now an associate law professor at Brigham Young University, said at a conference last week sponsored by the Cato Institute.

Another law professor offered the solution of government certificates that could shield same-sex couples from feelings of humiliation brought from rejection by a faith-based adoption agency that won't accept LGBT clients.

But the legal director of a leading gay rights advocacy group was skeptical of how these solutions would play out in the real world, where adoption agency workers and same-sex couples interact.

“There is no willingness (to compromise) there because they want to be able to express their ... animus towards LGBTQ people and they don't want LGBTQ people to be able to adopt,” Sarah Warbelow, of [Human Rights Campaign](#), told the Deseret News.

Such distrust underscores the difficulty in forging a solution to a conflict that centers on whether faith-based adoption agencies that receive government funding have a right to refuse to work with same-sex couples seeking to foster and adopt children.

The debate has galvanized the attention of LGBT and religious rights advocates, a conflict playing out in legislatures and courtrooms across the country. Conservative Christians and their Republican allies see the issue as one of religious freedom and, in some cases, free speech; Democrats and LGBT rights activists as one of equal treatment under the law.

Prominent stakeholders in the conflict met June 19 at the Cato Institute, a libertarian think tank, for a conference aptly titled “Solomon’s Decree: Conflicts in Adoption and Child Placement Policy.”

Robin Fretwell Wilson, director of the Family Law and Policy Program at the University of Illinois College of Law, said the key to finding compromise is a willingness on both sides to let go of a “purity” model — one in which neither side gets everything it wants.

“We need all hands on deck,” she said. “Every loving couple that can care for children ... should be able to do so without being humiliated. It also means we have to keep every one of these agencies, including the religious agencies, in the marketplace doing that important work for children.”

The conference convened the same week the Becket Fund appealed a federal court ruling that found Catholic Social Services in Philadelphia couldn't contract with the city as a foster care provider so long as the agency violated the city's nondiscrimination policies by refusing to fully serve same-sex couples. Catholic Social Services says it would have to shut down its foster care program without the city contract.

The July 13 ruling was the first but won't be the last on the conflict. In a Michigan federal court, the ACLU is suing the state for contracting with faith-based adoption agencies that refuse to evaluate married same-sex couples as potential parents. The Deseret News covered the case in-depth earlier this month.

And in Congress, House Republicans amended an appropriations bill to allow adoption agencies that receive government funding to refuse to work with same-sex couples if doing so would violate their religious beliefs. The amendment would permit the Department of Health and Human Services to withhold 15 percent of the federal funding the state receives for foster care services if that state was found to discriminate against a religious agency for following its religious convictions.

Meanwhile, 400,000 children nationally stand in need of foster care and 20,000 kids per year reach adulthood never having had a family to call their own.

### **‘The Anti-Discrimination Wars’**

In the plush conference room at the Cato Institute, attendees gathered in anticipation of the first panel, entitled “The Anti-Discrimination Wars.”

“We are richer as a country when we have a plurality of voices” working to provide safe homes to children in need, Barclay said, including both faith-based and secular agencies.

She explained that most faith-based agencies object to the requirement to provide a written endorsement for a couple to be licensed to adopt.

When a couple approaches an agency expressing an interest in foster care or adoption, the agency conducts a home study evaluating the potential parents' qualifications, which includes a

written statement evaluating the couple's relationship. The agency then makes a recommendation to the state, which decides whether to give the couple a license.

Barclay says that many faith-based organizations cannot endorse the relationship between same-sex married couples or unmarried couples in writing without violating deeply held religious beliefs, such as the Catholic teaching that marriage is a sacred union between a man and a woman.

For that reason, many faith-based agencies would prefer to "stand aside" and refer same-sex couples elsewhere for home evaluations. In the case of St. Vincent Catholic Charities of Michigan, after a same-sex couple has been licensed by the state, it can still adopt a child in St. Vincent's custody.

Warbelow of the Human Rights Campaign said while she has no qualms with private agencies acting according to their religious beliefs, they should not be allowed to accept public money and refuse services to particular groups of people.

"These agencies ... want to say, you don't model the Holy Family, you're not deserving and we won't allow you to foster kids in crisis, even though you are perfectly qualified to do so," she said. "That's not in the best interest of the child, not by a long shot."

Warbelow said the best way to serve the interests of children was to make "more families available, not fewer families," which she said is what religious organizations do when they turn away same-sex couples.

Barclay said no one is stopping same-sex couples from fostering and adopting children, as there are plenty of other agencies available that are providing this service. But Warbelow says that's often not true in rural areas, where there are fewer service providers.

"If you're in Texas or Montana in a rural area ... you (are) out of luck if the only agency there is an agency that refuses to work with same-sex couples," said Warbelow.

Although research in this area is limited, a 2011 Clark University study lends some support to Warbelow's claim, with 18 percent of their sample of same-sex couples indicating they had difficulty finding adoption agencies willing to work with them in rural areas, in some cases those agencies were faith-based.

Warbelow was skeptical of the argument that shuttering faith-based agencies that can't comply with nondiscrimination laws would have a devastating impact on the child welfare system.

Yet these reactions are more evidence of the difficulty of reaching some kind of solution: Are there really gay couples unable to adopt because of these agencies and if so, how many? And if religious-based adoption organizations are prevented from working with individual states will it fundamentally disrupt the ability to find homes for children?

Faith-based agencies do not dominate the children welfare arena, according to a Heritage Foundation report, but they are an "active and substantial part of it," writes Stephen Monsoma, a

professor of political science at Pepperdine University in his book, "Pluralism and Freedom: Faith-Based Organizations in a Democratic Society."

In 2016, Catholic Charities agencies around the country served around 10,500 children through its foster care and adoption services, states the Heritage Foundation report.

“Finding statistics for every faith-based agency is difficult, but the evidence gathered from annual reports, interviews, and data requests strongly suggests the number of children served is significant,” the report continues.

Barclay told the Deseret News the issue is not really about funding, but state contracts, without which faith-based agencies cannot provide public adoption and foster care services. Even if the agencies could find alternate sources of funding, losing government contracts would bar them from providing these services on behalf of the state.

Barclay said religious agencies can be particularly skilled at recruiting new families by engaging faith communities that believe it is their calling to be involved in the difficult work of foster and adoption, and in reuniting sibling groups and placing children with special needs.

“Religious faith has motivated and guided charitable work from the founding era until today,” Barclay says. “Faith-based organizations were often the first groups historically to provide foster and adoption services to vulnerable children, and they continue to be some of the best at providing these services.”

### **A viable solution?**

Wilson presented the first and, so far, only solution.

Her plan, modeled after the Child Care and Development Block Grant Program, would give money directly to families ready to adopt, allowing them to choose the agency — religious or secular — that best fits their needs.

Her goal is to put foster and adoptive parents “in the driver’s seat,” while sparing gay couples the humiliation of being rejected.

At the same time, her plan would allow faith-based agencies to remain in the marketplace to do what they do best, such as recruiting families in faith communities to adopt and foster children.

Barclay said Wilson’s plan would not resolve the conflict at the heart of the Michigan case, as the ACLU’s clients have specifically sought to adopt from a faith-based agency, despite having access to other providers.

Warbelow said she thinks that Wilson is “coming at this from a good heart in trying to find a solution,” but didn’t feel it addresses the bigger issue of more parents available to help more kids.

“I haven’t seen a proposal yet that doesn’t result in fewer prospective parents for kids who are in dire circumstances,” she said, particularly in remote areas where willing same-sex couples have limited to no opportunities to help.

On that point, Wilson said she hopes her plan will result in more agencies able to meet the needs of big and small communities across the country. She says the current funding structure favors large agencies who can bear the high upfront costs associated with providing child welfare services. She says her plan would help distribute funds more broadly, easing the "chokepoint" between LGBT couples and faith-based agencies in communities with a limited number of providers.

Despite the differences expressed at the conference, Wilson says she remains hopeful both sides will come together.

"We can take the children out of culture wars where they do not belong," said Wilson. "If we have learned anything this week, it's that we need to do this now."