

## Gay rights, religious freedom, and the battle over adoption

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When Walter Olson and his now-husband, Steve Pippin, first enrolled their adopted son Timothy in preschool more than 15 years ago, they weren't exactly sure what to expect.

At that time, before seismic social changes helped reshape the daily rhythms of LGBTQ Americans and redefine the legal definition of marriage, it was still more or less a socially daring act for a gay couple to seek to adopt, Mr. Olson says.

"People expect that we must have faced more barriers than there actually were," notes Mr. Olson, a senior fellow at the Cato Institute's Robert A. Levy Center for Constitutional Studies in Washington, D.C. "But almost every local experience that we had was totally friendly and welcoming," he says. The school district in their suburban New York community had, in fact, officially begun to recognize same-sex parents the year they enrolled their son in preschool.

Still, the process was neither simple nor without its frustrations. "As adopters, we knew that not all agencies would serve us," he says, noting how they were prepared to encounter rejection in the process.

In certain respects, the issue of LGBTQ families seeking to foster or adopt children has only become more volatile since the time Mr. Olson and Mr. Pippin decided to adopt. Like other arenas of American society after the U.S. Supreme Court made same-sex marriage a constitutional right in 2015, the country's array of local and interstate placement agencies has become yet another battlefield in the cultural clash between the advocates of religious freedom and LGBTQ equality.

As a thinker with libertarian and conservative leanings, however, Mr. Olson also sees a deeper ideological clash between those who understand the country as well-served by the robust traditions of American pluralism and religious freedom, and those who would seek instead what might be called a rigorous egalitarian secularism.

In Democratic states, legislators have instituted nondiscrimination rules for adoption and foster care agencies that receive government funds. Many Republican states, on the other hand, have gone the opposite route, passing religious freedom laws that permit faith-based agencies to decline to place children with same-sex couples – or even with those who do not share their religious views.

“You have kind of a push-pull in opposite directions in the U.S. right now,” says Robin Fretwell Wilson, professor of law and the director of the Institute of Government and Public Affairs at the University of Illinois.

Last month, Tennessee became the 11th state to protect religious adoption and foster care agencies, allowing them to work only with families that conform to their religious beliefs. At least eight of these states, including Alabama, Michigan, South Dakota, and Texas, have passed such protections in just the past three years.

Some religious agencies have also declined to place children in the homes of those who do not share their religious views. In South Carolina, the state’s largest agency and the recipient of federal funds declined to offer foster services to a Jewish woman in 2018, since she did not share its Christian views. In early February, the Trump administration granted the agency a waiver from federal nondiscrimination rules passed during the Obama administration.

In states like Massachusetts and Illinois, as well as in cities like Washington and Philadelphia, however, long-standing agencies run by Catholic Social Services have felt forced to shut down after officials required those receiving government funding to abide by newly instituted nondiscrimination rules.

Similar disputes have roiled many states over the past few years as certain religious wedding vendors have also sought to decline to participate in the ritual aspects of same-sex weddings, in many cases running headlong into various nondiscrimination principles that govern public accommodations and businesses.

The stakes surrounding foster care and adoption are in many ways more profound, experts say, since children, most of whom are coming out of dire life situations, are caught in the middle of this ever-rancorous culture war.

“The most important thing in my view, and I think in the view of most Americans, is to find these kids homes and permanent families,” says Professor Wilson, who was herself adopted as a child. “And to get that done, I think we have to have all hands on deck, meaning that if you look at those who adopt or foster most in the United States, it’s single women, it’s gay and lesbian couples, and it’s religious people.”

But the issue is not simply a matter of pragmatics, says Dana Prince, a professor at the school of applied social sciences at Case Western Reserve University in Cleveland. Allowing religious agencies to reject LGBTQ families is part of a larger ideological animus that is often expressed in harmful ways across society.

“What we have at stake here is more than just discriminating against a couple or an individual who wants to step into a role as a foster parent,” says Dr. Prince. “We’re also potentially allowing more discrimination against youth who are in care, and who may be LGBT themselves.”

In fact, at 19% to 25% of foster care children, LGBTQ youth are overrepresented among the estimated 400,000 children currently in the system, according to researchers at The Williams Institute at UCLA School of Law. Many have been rejected by their biological families.

“And what are we doing with those kids?” she says. “For whatever reason, if your case ends up being managed through a religiously based organization, you might then face rejection from their caseworkers, who aren’t trained or aware or sensitive to the particular needs of LGBT kids.”

In her work with LGBTQ youth in Ohio, she’s witnessed children who have been moved from home to home up to 25 times, often because of religious incompatibilities. Such moving around in the system has long-term effects on children when they become adults, regardless of their sexual orientation or gender identity, she says.

Advocates of a more pluralistic system like Mr. Olson, however, believe that specialized agencies that serve specific populations can be beneficial for their special needs. There are Native American agencies that seek to place children with Native American families, and Roman Catholic agencies that try to maintain the religious needs of Catholic kids, as well as specialized agencies serving those with special health needs.

Some have concerns. “I guess I’m troubled by a vision of diversity and pluralism that says the way that we respect diversity is by allowing LGBTQ people to be excluded from certain parts of public life, and from certain publicly funded agencies,” says Susan Hazeldean, a professor at Brooklyn Law School in New York. “I don’t think that’s the right way to have a diverse society that would welcome everyone.”

Mr. Olson, however, believes a mix-and-match system can be beneficial for a wide range of populations with specific needs – and that those battling each other on this issue should be, in theory at least, natural allies.

“Even though gay advocates and religious advocates have gotten to be on opposite sides of these legal battles, there are reasons why they should understand each other, because those two groups, more than almost any others, are drawn to adoption,” he says. “These two groups, I’d like to think, in a good world should be cooperating with each other, recognizing that the other is doing something that they also value.”

Indeed, one of the most important reasons America became a pioneer in same-sex adoptions decades ago was the number of gay and lesbian couples and individuals who felt called to give care to infants born with HIV.

“It was one of the first crossings of the bridge to gay adoption,” he says. “Extraordinary cases in which gay couples and individuals with humanitarian motives made the case to let those kids have a parent, at least for the couple of years that they were going to be alive. Often it was only gay people who would step forward.”

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And part of the reason this was possible, he says, is that there is still a robust pluralism in the U.S. system, with numerous choices available to Americans.

“The fact is, because we don’t have a centralized set of rules in this country, it means that people who are determined to become parents, or to help kids in need, will often find a good match,” he says. “America might have taken longer than European countries to get to gay marriage, but it was still the pioneer on gay adoption, because in America, to a large extent, if you wanted to adopt or start a family, you could just go ahead and do it.”