

SAME-SEX COUPLES

Arkansas judge OKs foster care

Gay parents pose no obstacle to kids' growth, court finds

- [Bob Egelko, Chronicle Staff Writer](#)

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An Arkansas judge's ruling allowing gays and lesbians to become foster parents contains findings on parental fitness that could have an impact in both the U.S. Supreme Court and a court in San Francisco, where major decisions on the rights of same-sex couples are imminent.

In his ruling Wednesday, Pulaski County Circuit Judge Timothy Fox said the ban enacted by an Arkansas state agency in 1999 had nothing to do with protecting children's health or welfare, but instead was an attempt to regulate "public morality," which is beyond the agency's authority. Fox also issued a series of findings, based on testimony by child welfare and mental health experts:

- Children of lesbian and gay parents are as well-adjusted as other children.
- Being raised by lesbian or gay parents doesn't increase a child's risk of psychological, behavior or academic problems, confusion about gender identity, difficulties in relating to peers, or child abuse.
- There is no evidence that heterosexual parents can guide children through adolescence any better than homosexual parents can.

The issue of whether parents' sexual orientation affects children's well-being is critical not only to the Arkansas case -- which is headed for an appellate court -- but also to a case before the U.S. Supreme Court over Florida's ban on adoptions by lesbians or gays. It could also affect a case in San Francisco Superior Court on California's ban on same-sex marriage.

In California, the issue of the parental fitness of gays and lesbians has been raised by groups of religious conservatives, who argue that marriage exists for procreation and that children are best off with married heterosexual parents. One of those groups' expert witnesses had previously testified for the state in Arkansas, where Fox found him unreliable.

Though the Arkansas ruling is not binding in California, it is "certainly a promising

development in the San Francisco case," said Matt Dorsey, spokesman for City Attorney Dennis Herrera, who has sued to overturn the marriage law.

The law's fate does not necessarily depend on the issue. Attorney General Bill Lockyer, who is also defending the law, disavows claims of parental unfitness; he argues, instead, that California is entitled to preserve the historic definition of marriage while extending equal rights to gay and lesbian couples in a new law, effective today, that gives domestic partners most of the same rights as spouses.

Arkansas and Florida are among the few states with sexual orientation restrictions on adoption or foster parenting. Mississippi forbids adoption by lesbian or gay couples, though not by individuals, and Utah bars all unmarried couples from becoming foster or adoptive parents.

The Arkansas ruling reflects the national trend, which "is overwhelmingly toward rejecting the premise that some parents are better than others, that lesbian and gay parents are less fit," said Shannon Minter of the National Center for Lesbian Rights, a lawyer for 12 same-sex couples seeking the right to marry in the San Francisco case.

But officials in Arkansas and Florida argue that the ideal situation for a child, which a state is entitled to promote in its laws, is to be raised by a mother and father. That position was endorsed by the federal appeals court in Atlanta that upheld a Florida law banning adoption by any gay, lesbian or bisexual.

The state has a legitimate interest in "promoting an optimal social structure for educating, socializing and preparing its future citizens to become productive participants in civil society," the 11th U.S. Circuit Court of Appeals said last January. For an adopted child, the court said, an "optimal home" is "one in which there is a heterosexual couple or the potential for one."

The American Civil Liberties Union has appealed, arguing that the law is based on thinly disguised prejudice and denies good parents to thousands of children. The Supreme Court is scheduled to consider the appeal Friday and could decide to take up the case or let the appellate ruling stand.

Arkansas offers a rationale similar to Florida's for its ban on placement of a foster child in any home inhabited by an adult gay or lesbian.

"We have never argued that it was detrimental to children to be placed with homosexuals but just that it would not be optimal," said Julie Munsell, spokeswoman for the Arkansas Department of Human Services. Foster children in such homes would be under stress, she said, "because the social climate in our state has not been accepting of those lifestyles."

Rita Sklar, executive director of the ACLU of Arkansas, responded that catering to prejudice is no justification for a ban that hurts qualified foster parents and needy children.

The state presented an expert witness, George Rekers, a University of South Carolina medical professor and psychologist whose practice includes changing gays' sexual orientation through therapy. Rekers also was an expert witness for the state in Florida, and his declaration has been submitted to the San Francisco court by an organization opposed to same-sex marriage.

Rekers said studies show that gays and lesbians are inferior as parents and that their households are less stable than those of heterosexuals. Fox, in his ruling, described Rekers' testimony as "extremely suspect" and said the witness "was there primarily to promote his own personal ideology."

Asked by The Chronicle in an e-mail about the judge's comments, Rekers did not answer directly, but described the trial as "utterly corrupt."

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