

111TH CONGRESS
2D SESSION

H. R. 4806

To prohibit discrimination in adoption or foster care placements based on the sexual orientation, gender identity, or marital status of any prospective adoptive or foster parent, or the sexual orientation or gender identity of the child involved.

IN THE HOUSE OF REPRESENTATIVES

MARCH 10, 2010

Mr. STARK (for himself, Mr. GRIJALVA, Ms. LINDA T. SÁNCHEZ of California, Mr. LEWIS of Georgia, Ms. BERKLEY, Mr. ROTHMAN of New Jersey, Ms. BALDWIN, Ms. CHU, and Mr. HASTINGS of Florida) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To prohibit discrimination in adoption or foster care placements based on the sexual orientation, gender identity, or marital status of any prospective adoptive or foster parent, or the sexual orientation or gender identity of the child involved.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Every Child Deserves
5 a Family Act”.

1 **SEC. 2. CONGRESSIONAL FINDINGS AND PURPOSES.**

2 (a) FINDINGS.—The Congress finds the following:

3 (1) There is a shortage of qualified individuals
4 willing to adopt or foster a child in the child welfare
5 system. As a result, thousands of foster children
6 lack a permanent and safe home.

7 (2) In order to open more homes to foster chil-
8 dren, child welfare agencies should work to eliminate
9 sexual orientation, gender identity, and marital sta-
10 tus discrimination and bias in adoption and foster
11 care recruitment, selection, and placement proce-
12 dures.

13 (3) Of the estimated 500,000 children in the
14 United States foster care system, over 129,000 can-
15 not return to their original families and are legally
16 free for adoption.

17 (A) 51,000 children were adopted in 2007,
18 while 25,000 youth “aged out” of the foster
19 care system.

20 (B) Research shows that youth who “age
21 out” of the foster care system are at a high risk
22 for poverty, homelessness, incarceration, and
23 early parenthood.

24 (C) Increasing adoption rates, in addition
25 to establishing permanency and decreasing risk
26 factors for foster youth, can yield annual na-

1 tional cost savings between \$3,300,000,000 and
2 \$6,300,000,000.

3 (4) Experts agree that in many States, lesbian,
4 gay, bisexual and transgender youth experience dis-
5 crimination, harassment, and violence in the foster
6 care system because of their sexual orientation or
7 gender identity.

8 (5) Approximately 60 percent of homeless les-
9 bian, gay, bisexual, and transgender youth were pre-
10 viously in foster care. According to the Urban Jus-
11 tice Center, many of these young people reported
12 that living on the streets felt “safer” than living in
13 their group or foster home.

14 (6) According to data taken from the 2000
15 Census, an estimated 27 percent of same-sex couples
16 have at least 1 child under 18 years of age living in
17 the home.

18 (7) There are approximately 1,000,000 lesbian,
19 gay, bisexual, and transgender couples throughout
20 the United States who are raising approximately
21 2,000,000 children.

22 (8) As of 2007, gay, lesbian, and bisexual par-
23 ents were raising 4 percent of all adopted children
24 and fostering for 3 percent of all foster children. A
25 report from the Evan B. Donaldson Institute found

1 that an additional 2,000,000 gay, lesbian, and bisex-
2 ual individuals are interested in adoption.

3 (9) According to the Urban Institute, same-sex
4 couples raising adopted children tend to be older
5 than, just as educated as, and have access to the
6 same economic resources as other adoptive parents.
7 Studies confirm that children with same-sex parents
8 have the same advantages and same expectations for
9 health, social and psychological adjustment, and de-
10 velopment as children whose parents are hetero-
11 sexual.

12 (10) An Evan B. Donaldson Adoption Institute
13 study found that one-third of child welfare agencies
14 in the United States currently reject gay, lesbian,
15 and bisexual applicants.

16 (A) The practice of prohibiting applicants
17 from becoming foster parents or adopting chil-
18 dren solely on the basis of sexual orientation or
19 marital status has resulted in reducing the
20 number of qualified adoptive and foster parents
21 overall and denying gay, lesbian, bisexual, and
22 unmarried relatives the opportunity to become
23 foster parents for their own kin, including
24 grandchildren, or to adopt their own kin, in-
25 cluding grandchildren, from foster care.

1 (B) Over 14,000 children are currently in
2 placements with gay, lesbian, and bisexual
3 adoptive and foster parents. If other States fol-
4 lowed the minority of States and discriminated
5 against qualified individuals because of their
6 sexual orientation or marital status, foster care
7 expenditures would increase between
8 \$87,000,000 and \$130,000,000 per year in
9 order to pay for additional institutional and
10 group care, as well as to recruit and train new
11 foster and adoptive parents.

12 (11) Some States allow 1 member of a same-
13 sex couple to adopt, but do not recognize both mem-
14 bers of the couple as the child's legal parents. Rec-
15 ognition of joint adoption provides children with the
16 same rights and security that children of hetero-
17 sexual parents enjoy. These protections include ac-
18 cess to both parents' health benefits; survivor's, So-
19 cial Security, and child support entitlements; legal
20 grounds for either parent to provide consent for
21 medical care, education, and other important deci-
22 sions; as well as the establishment of permanency
23 for both parents and child.

24 (12) Professional organizations in the fields of
25 medicine, psychology, law, and child welfare have

1 taken official positions in support of the ability of
2 qualified gay, lesbian, bisexual, and unmarried cou-
3 ples to foster and adopt, as supported by scientific
4 research showing sexual orientation as a nondeter-
5 minative factor in parental success.

6 (13) Discrimination against potential foster or
7 adoptive parents based on sexual orientation, gender
8 identity, or marital status is not in the best interests
9 of children in the foster care system.

10 (b) PURPOSES.—The purposes of this Act are to de-
11 crease the length of time that children wait for perma-
12 nency with a loving family and to promote the best inter-
13 ests of children in the child welfare system by preventing
14 discrimination in adoption and foster care placements
15 based on sexual orientation, gender identity, or marital
16 status.

17 **SEC. 3. EVERY CHILD DESERVES A FAMILY.**

18 (a) ACTIVITIES.—

19 (1) PROHIBITION.—An entity that receives Fed-
20 eral assistance or contracts with an entity that re-
21 ceives Federal assistance, and is involved in adoption
22 or foster care placements may not—

23 (A) deny to any person the opportunity to
24 become an adoptive or a foster parent on the
25 basis of the sexual orientation, gender identity,

1 or marital status of the person, or the sexual
2 orientation or gender identity of the child in-
3 volved;

4 (B) delay or deny the placement of a child
5 for adoption or into foster care on the basis of
6 the sexual orientation, gender identity, or mar-
7 ital status of any prospective adoptive or foster
8 parent, or the sexual orientation or gender iden-
9 tity of the child; or

10 (C) require different or additional
11 screenings, processes, or procedures for adop-
12 tive or foster placement decisions on the basis
13 of the sexual orientation, gender identity, or
14 marital status of the prospective adoptive or
15 foster parent, or the sexual orientation or gen-
16 der identity of the child involved.

17 (2) DEFINITION.—In this subsection, the term
18 “placement decision” means the decision to place, or
19 to delay or deny the placement of, a child in a foster
20 care or an adoptive home, and includes the decision
21 of the agency or entity involved to seek the termi-
22 nation of birth parent rights or otherwise make a
23 child legally available for adoptive placement.

24 (b) EQUITABLE RELIEF.—Any individual who is ag-
25 grieved by an action in violation of subsection (a) may

1 bring an action seeking relief in a United States district
2 court of appropriate jurisdiction.

3 (c) FEDERAL GUIDANCE.—Not later than 6 months
4 after the date of the enactment of this Act, the Secretary
5 of Health and Human Services shall publish guidance to
6 concerned entities with respect to compliance with this
7 section.

8 (d) TECHNICAL ASSISTANCE.—In order to ensure
9 compliance with, and ensure understanding of the legal,
10 practice, and culture changes required by, this Act in mak-
11 ing foster care and adoption placement decisions, the Sec-
12 retary shall provide technical assistance to all entities cov-
13 ered by this Act, including—

14 (1) identifying laws and regulations inconsistent
15 with this Act and providing guidance and training to
16 ensure the laws and regulations are brought into
17 compliance within the prescribed period of time;

18 (2) identifying casework practices and proce-
19 dures inconsistent with this Act and providing guid-
20 ance and training to ensure the practices and proce-
21 dures are brought into compliance within the pre-
22 scribed period of time;

23 (3) providing guidance in expansion of recruit-
24 ment efforts to ensure consideration of all interested
25 and qualified prospective adoptive and foster parents

1 regardless of the sexual orientation, gender identity,
2 or marital status of the prospective parent;

3 (4) comprehensive cultural competency training
4 for covered entities and prospective adoptive and fos-
5 ter parents; and

6 (5) training judges and attorneys involved in
7 foster care and adoption cases on the findings and
8 purposes of this Act.

9 (e) DEADLINE FOR COMPLIANCE.—

10 (1) IN GENERAL.—Except as provided in para-
11 graph (2), an entity that receives Federal assistance
12 and is involved with adoption or foster care place-
13 ments shall comply with this section not later than
14 6 months after publication of the guidance referred
15 to in subsection (c), or 1 year after the date of the
16 enactment of this Act, whichever occurs first.

17 (2) AUTHORITY TO EXTEND DEADLINE.—If a
18 State demonstrates to the satisfaction of the Sec-
19 retary of Health and Human Services that it is nec-
20 essary to amend State statutory law in order to
21 change a particular practice that is inconsistent with
22 this section, the Secretary may extend the compli-
23 ance date for the State a reasonable number of days
24 after the close of the 1st State legislative session be-

1 ginning after the date the guidance referred to in
2 subsection (c) is published.

3 (3) AUTHORITY TO WITHHOLD FUNDS.—If a
4 State fails to comply with this section, the Secretary
5 may withhold payment to the State of amounts oth-
6 erwise payable to the State under part B or E of
7 title IV of the Social Security Act, to the extent the
8 Secretary deems the withholding necessary to induce
9 the State into compliance with this section.

10 (f) GAO STUDY.—

11 (1) IN GENERAL.—Within 5 years after the
12 date of the enactment of this Act, the Comptroller
13 General of the United States shall conduct a study
14 to determine whether the States have substantially
15 complied with this Act, including specifically whether
16 the States have—

17 (A) eliminated policies, practices, or stat-
18 utes that deny to any otherwise qualified person
19 the opportunity to become an adoptive or foster
20 parent on the basis of the sexual orientation,
21 gender identity, or marital status of the person,
22 or the sexual orientation or gender identity of
23 the child involved;

24 (B) removed all program, policy, or statu-
25 tory barriers that delay or deny the placement

1 of a child for adoption or into foster care on the
2 basis of the sexual orientation, gender identity,
3 or marital status of any qualified, prospective
4 adoptive or foster parent, or the sexual orienta-
5 tion or gender identity of the child; and

6 (C) eliminated all different or additional
7 screenings, processes, or procedures for adop-
8 tive or foster placement decisions based on the
9 sexual orientation, gender identity, or marital
10 status of the prospective adoptive or foster par-
11 ent, or the sexual orientation or gender identity
12 of the child involved.

13 (2) REPORT TO THE CONGRESS.—Within 1 year
14 after completing the study required by paragraph
15 (1), the Comptroller General shall submit to the
16 Congress a written report that contains the results
17 of the study.

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