

# LICENSES TO DISCRIMINATE IN THE PROVISION OF CHILD WELFARE SERVICES

## WHAT ARE LICENSES TO DISCRIMINATE IN CHILD WELFARE SERVICES?

The last four years have seen a surge of bills introduced in state legislatures that aim to diminish the rights of lesbian, gay, bisexual, transgender and queer (LGBTQ) people.

In 2015, state versions of the Religious Freedom Restoration Acts proliferated in states, like Indiana, angered by the imminent arrival of marriage equality; in 2016, state legislatures took aim at the transgender community with bills like North Carolina's infamous HB2; and in 2017 state legislatures pursued more targeted bills that carved out religiously- or morally-based refusals from professional regulation of certain sectors. Among these targeted refusal bills were licenses to discriminate in child welfare services. The number of these nearly doubled in 2017, from 4 to 7, with new laws passed in Alabama, South Dakota, and Texas. 2018 brought new laws in Oklahoma and Kansas, as well as a discriminatory budget proviso in South Carolina. Compounding the alarm about the implications of these state laws, the Trump/Pence administration has doubled down on this discrimination with an executive order that has the potential to expand this kind of discrimination even further in federally administered or funded programs, and is considering granting two states (South Carolina and Texas) a waiver from complying with existing non-discrimination requirements.

To be clear, these laws are about discrimination — they permit taxpayer-funded programs to pick and choose to whom they provide services they have been paid by the government to deliver. Proponents of these bills have been very forthright that the bills are a lingering reaction to marriage equality — their purpose is to enshrine discrimination into law by granting state contractors and grantees who provide taxpayer-funded child welfare services the ability to discriminate with impunity in the

provision of those services against qualified same-sex couples or LGBTQ individuals who want to adopt. However, some of the exemptions are so broad they'd also allow agencies to object to placement with single parents, parents of another faith or an interfaith couple, and others. Some of these bills are also drawn in such a way that there are implications around the agencies being able to responsibly care for LGBTQ youth, and some would implicate youth's reproductive rights as well.

This contrived controversy dates back about a decade as marriage equality spread from just a few states to the entire country. Some providers of child welfare services, citing religious objections, have threatened to cease providing state-funded services if they are forced to serve same-sex couples or other potential parents seeking to adopt a child — from interfaith couples to single parents to a married a couple where one prospective parent had been previously divorced. One of the cruelest consequences of these types of bills is that they would allow agencies to refuse to place foster children with members of their extended families — a practice often considered to be in the best interest of the child — based solely on the agency's religious beliefs. A loving, LGBTQ-identified grandparent, for example, or a stable, eager LGBTQ relative could be deemed objectionable as a matter of religious belief and therefore an unsuitable placement for a child. This is contrary to the guiding principle in child welfare to prioritize the placement of children within their family of origin whenever a relative is able and willing to step in.

Further, some of these laws would allow agencies responsible for caring for LGBTQ youth to refer that child to a provider of the abusive and discredited practice of so-called "conversion therapy", if that was consistent with the agency's religious beliefs, without the state being able to intervene, cancel the contract, or withdraw support in other ways. They would also allow an agency to refuse to give a child access to affirming mental health care, or to prevent them from continuing to receive hormone therapy. Similarly, some of the bills explicitly state that the agency can refuse to provide reproductive health care including contraception or abortion.

Child welfare services should be guided by the overarching principle that guides all family law: all determinations should be in the "best interest of the child". It isn't in the best interest of a child to deny them a qualified, loving family simply because that family doesn't share all of the tenets of the placing agency's faith, and it certainly isn't in the best interest of an LGBTQ child to be denied medical treatment, or subjected to abusive discredited practices, because the host family or child welfare agency wants to change a child's LGBTQ identity. The best interests of the child are served by making a case by case determination about whether placement of a child with a prospective family is in that child's best interest.

## CONCLUSION

The proliferation of these bills in states across the country — not to mention the threat of the federal government adopting similar policies via law, regulation, or policy — should alarm anyone who believes that children in our child welfare system deserve to have their best interests be at the heart of every decision made on their behalf. The justifications for these licenses to discriminate simply don't hold up — and the harms they impose are very real.

It is important to acknowledge that religious organizations who engage in child welfare work are entitled to their religious viewpoints, and that the state cannot and should not be legislating on matters of faith. However, when engaged in taxpayer-funded activity, such as when the state awards a contract to care for children who are wards of the state in a foster care setting, state contractors should not be allowed to pick and choose to whom they provide services they have been paid by the government to deliver. These children are the state's responsibility, and they should not be subjected to discrimination or denial of necessary services simply because the state has delegated the responsibility to care for them to a provider.

License to discriminate in child welfare bills are simply one more effort to write anti-LGBTQ discrimination into law. These bills are not supported by the larger adoption community or by mental health professionals. They are not supported by the data either — data shows that LGBTQ parents are as well equipped to care for children as non-LGBTQ parents, and data also shows that in jurisdictions where religiously-affiliated agencies have withdrawn their operations in protest of having to treat same-sex couples equally that children have not been subjected to longer waits in care. Rather, these laws are harmful and unnecessary. Discriminating against qualified prospective parents using taxpayer dollars does a disservice both to the children who need homes and to the entire state; and allowing those charged with a child's care to discriminate against a child is simply unconscionable.

For more information about licenses to discriminate in the provision of child welfare services, see HRC's report titled, *Disregarding the Best Interest of the Child: Licenses to Discriminate in Child Welfare Services*, on [www.hrc.org](http://www.hrc.org).