



# **Arkansas Adoption & Foster Care Act**

**Protecting Children  
Blunting the Gay Agenda  
Constitutionally Sound  
Good Homes for Children in Need**

**An Analysis of the Proposed Arkansas Adoption  
and Foster Care Act**

**Proposed Initiated Act One**

# Proposed Initiated Act One

## The Arkansas Adoption and Foster Care Act

**Summary:** Act One prevents adoptive or foster children from being placed in homes with individuals who have a live-in boyfriend or girlfriend. This act applies equally to homosexuals and heterosexuals. Over 2,500 volunteers gathered more than 95,000 petition signatures in over 1,000 churches to place the Arkansas Adoption and Foster Care Act on the November General Election Ballot. A vote FOR Act One will make the Arkansas Adoption and Foster Care Act a law.

**Family Council Action Committee is proposing the Arkansas Adoption And Foster Care Act for three primary reasons:** **First**, every foster child needs the best home the state of Arkansas can provide. Everyone knows that the best place for children is in a stable home with a married mother and father. If the State of Arkansas is going to create families through adoption or foster care, it should create good ones. Five-thousand years of human history, countless scientific studies, every major world religion, and common sense all tell us that the best place for children is in a stable home with a married mother and father. **Second**, the people of Arkansas should not allow children to be used as a means of promoting the homosexual social or political agenda. In the same way some people have tried to use same-sex marriage as a means of promoting a homosexual agenda, they are now using adoption and foster care. Children should not be used as pawns by any special interest group. Several states have already affirmed that homosexuals may legally adopt children or serve as foster parents. The voters of Arkansas need the opportunity to prevent this from happening in our state. **Third**, Arkansas needs more qualified people who will adopt children or serve as foster parents. The campaign to pass this Adoption and Foster Care Act will cause virtually every person in Arkansas to consider the issues of foster care and adoption. The more people think about these issues the more likely they will decide to become a foster parent or adopt a child.

**Act One protects child welfare:** The Arkansas Department of Human Services does not place foster children in homes with a live-in boyfriend or girlfriend. They recognize that these homes are not good places for foster children. Act One simply writes that good policy into the law, and it extends the same level of protection to adoptive children as well.

**Act One is legally sound:** Since it applies equally to both heterosexual and homosexual cohabiting couples, it is not discriminatory. It does not affect guardianship, custody, or adoptions that have already been finalized. It follows the example of other laws by recognizing the preeminence of child welfare over adult rights. Patterned after a law that has been on the books in the state of Utah for several years, Act One is a well-crafted law that is constitutionally sound. Even opponents of Act One have been unable to find any legal basis for challenging the law.

**Act One blunts the gay agenda in Arkansas:** Like the Arkansas Marriage Amendment that voters passed in 2004, it seeks to blunt a gay political agenda that uses adoptive and foster children for its own purposes. California, Connecticut, Massachusetts, Illinois, Indiana, New Mexico, New Jersey, New York, Nevada, Massachusetts, Maryland, Pennsylvania, Vermont, and the District of Columbia have laws that generally favor same-sex or homosexual adoptions or homosexual foster care. These policies have been enacted as a result of both legislative action and court rulings in those states. Dozens of pro-homosexual organizations across the nation are promoting same-sex adoptions and foster care. Scores of groups recently criticized John McCain for not supporting gay adoptions. Among their other agenda items is their effort to keep gay adoptions and foster care legal throughout the U.S. An organization that promotes gay fatherhood in Boston, MA has already donated \$10,000 to the opponents of the Arkansas Adoption and Foster Care Act.

**Act One promotes the need for good foster and adoptive homes:** The state of Arkansas could find adoptive and foster homes for every child by lowering the standards to allow anyone to adopt or be a foster parent. But, because child welfare matters, we have standards for adoptive or foster parents. Otherwise, sex-offenders, the emotionally disturbed, and other unstable people could use the adoption or foster care system as a way to gain access to children. The discussion of Act One in churches and elsewhere has focused more attention on adoption and foster care. Arkansas has more than enough good homes for every child, and Act One focuses public attention on that need.

# Legal Analysis

**Summary:** The Arkansas Adoption and Foster Care Act is legally sound and can withstand a court challenge. It is not discriminatory, and is focused on the welfare of children and not on the “rights” of adults.

**1. The Adoption and Foster Care Act Is Focused on the Welfare of Children.** The emphasis of the Act is protection of children. It prohibits children in need of adoption or foster care from being placed in an unstable home where there is a live-in boyfriend or girlfriend. In legal terms, it keeps the child out of a home where the potential adoptive or foster parent is “cohabiting with a sexual partner outside of a marriage which is valid under the constitution and laws of this state.”

**2. The Proposed Act is Not Discriminatory.** Opponents have argued that the Act discriminates against gays. Not true. Section 1(b) of the Act specifically states that it “applies equally to cohabiting opposite-sex and same-sex individuals.” There is no discrimination against gays.

**3. The Act Does Affect Wills or Who Can Become Guardian of a Child if a Parent Dies.** Section 2 of the Act specifically states that “this act will not affect the guardianship of minors.” This means that cohabiting individuals, including relatives, can still be the guardian of children. Parents will still be free to name anyone they choose as the guardian of their children. Since it is impossible to legally “will” an adoption, the act does not affect how wills are drawn up. Should a guardian decide he or she wants to adopt the child, Act One allows this as long as the guardian is not cohabiting with a sexual partner outside of marriage.

**4. The Act Does Not Interfere With Finalized Adoptions.** If passed by the voters, the Act will become effective on January 1, 2009. It will not “undo” prior adoptions. In legal terms, the Act will apply “prospectively,” or in the future. See Section 7 of the proposed Act.

**5. Adults Have No “Right” to Adopt or Become a Foster Parent.** While we all enjoy a constitutional “right” to free speech, religion and assembly, there is NO right to adopt or become a foster parent. For good reasons, people are turned down all the time. Adoption or foster parenting are privileges and not guaranteed to all adults. It makes sense when you consider that the focus in an adoption or foster care placement should be on the needs of the child. The focus should not be on the adults. Since the focus is on the child, not all homes or adults are approved. In most states, an adult with a criminal record cannot adopt or be a foster parent. Since the focus is on the needs of the child, the adult’s home must be big enough to handle another child and the adult must have the financial resources to support the child. Since adults do not have a “right” to adopt or become a foster parent, this proposed Act does not violate anyone’s “rights.”

**6. The People of Arkansas Can, and Should, Establish Public Policy and Determine What Is In the Best Interest of Children.** Sections 4 and 5 of the Act state what most Arkansans believe to be true – it is in the best interest of children in need of adoption or a foster home to be 1) raised in a home where the adults are not cohabiting outside of marriage and 2) when choosing homes it is our policy to favor marriage over unmarried, cohabiting homes. If we are choosing homes that are in the best interests of children, then we should favor stable, married homes over unmarried, cohabiting homes.

**7. If Act One passes, it applies only to individuals who cohabit with a sexual partner outside of a valid Arkansas marriage.** Most people will not be affected. Here is what will and will not be allowed.

	Adoption	Foster Care	Guardianship	Custody
Cohabiting Homosexual	No	No	Yes	Yes
Cohabiting Heterosexual	No	No	Yes	Yes
Single Homosexual	Yes	Yes	Yes	Yes
Single Heterosexual	Yes	Yes	Yes	Yes
Married Heterosexual	Yes	Yes	Yes	Yes

# Protecting Child Welfare

**Summary:** The Arkansas Adoption and Foster Care Act has generated a great deal of media attention, highlighting the importance of adoption and foster care in Arkansas, and giving citizens pause to ask themselves about the homes in which adoptive and foster children grow up. While some people may find fault with the proposal, the fact of the matter is that the Arkansas Adoption and Foster Care Act will protect Arkansas' adoptive and foster children by holding the state to a higher standard for the care of its children.

**It will not decrease the number of foster homes.** Opponents of the measure say that the Adoption Act will decrease the number of homes available for children. The fact is, however, that this act will not reduce the number of foster homes available. The state already has a policy preventing foster children from being placed in any home in which there is a live-in boyfriend or girlfriend. DHS does this because they know that these situations are extremely unstable, unpredictable, and unhealthy for children. This act simply writes that current policy into state law.

**More protection for adoptive children.** This act also provides equal treatment and protection of adoptive children and foster children in Arkansas. If asked, people agree that standards designed to protect foster children are equally beneficial for adoptive children. The Adoption Act guarantees that the State of Arkansas will apply the very same level of care in finding a home for adoptive children as they currently do for foster children. All children deserve equal treatment. This act will ensure that they get it. To do anything else is simply unthinkable and unacceptable in Arkansas.

**Clear Adoption and Foster Care Policies.** This act will cut down on the red tape that potential adoptive or foster parents might experience otherwise. Opponents of the Arkansas Adoption and Foster Care Act say they would rather see adoption and foster care decisions made by "experts," on a case-by-case basis. This strategy may sound appealing on paper, but—when applied realistically—it becomes apparent that following their advice would be impossible. The fact is that Arkansas routinely implements blanket policies on adoption and foster care designed to protect all children in need of a home. These policies expedite the adoption and foster care process by providing a clear list of standards and requirements for homes. Without such a list, social workers would be forced to spend days or even weeks determining whether or not a home is suitable for a certain child—and the quality of service and due diligence would vary greatly from one social worker to the next. Sensible adoption and foster care standards that put the welfare of children first may seem cumbersome, but they do a great deal to facilitate—not hinder—finding homes for children. Arkansans could leave those decisions up to social workers, or Arkansans can improve adoption and foster care with the passage of a single law.

**Conclusion:** The Arkansas Adoption and Foster Care Act will hold the state to a higher standard of care for adoptive and foster children. It will prevent children from receiving unequal treatment from the state. And it will improve the process of adopting or fostering children throughout Arkansas.

# Blunting the Homosexual Agenda in Arkansas

In 1999 the State Child Welfare Agency Review Board enacted a policy banning foster children from being placed in homes with an adult homosexual. That same year, the ACLU filed a lawsuit to have the policy overturned. The court suspended enforcement of the policy, pending the outcome of the lawsuit. In December 2004, Pulaski County Circuit Judge Timothy Fox overturned the policy, based on his opinion that the board had no authority to make the policy in the first place. The Arkansas Department of Human Services appealed the ruling to the Arkansas Supreme Court which unanimously upheld the lower court ruling, agreeing that the board had no authority to make the policy. The Court agreed that rulings of this type should be enacted legislatively. They did not rule on the constitutionality of banning homosexual foster care.

The Arkansas Legislature has tried and failed four times to ban homosexuals from adopting children or serving as foster parents. In 1999, the Arkansas Legislature began attempts to ban homosexuals from adopting children or serving as foster parents. Former State Rep. Randy Minton introduced legislation in 1999 and 2001. Both times, the bills were defeated in the House Aging, Children and Youth Committees. The bill introduced in 2001 was narrowly defeated by a committee vote of 10 – 9. In 2005, a bill introduced by Former State Rep. Bob Adams passed the Arkansas House of Representatives, but failed in the Senate Judiciary Committee. In 2007, a bill introduced by Sen. Shawn Womack passed the Arkansas Senate, but was defeated in the House Judiciary Committee.

**How the Arkansas Adoption and Foster Care Act relates to the Arkansas Marriage Amendment that passed in 2004.** In 2004, Arkansas voters passed a state constitutional amendment that defines marriage as the union of a man and a woman. They passed this amendment to protect marriage and to blunt a gay agenda at work across the nation. Instead of protecting marriage, the Arkansas Adoption and Foster Care Act protects children. However, like the Arkansas Marriage Amendment, the Arkansas Adoption and Foster Care Act blunts a gay agenda at work across the nation.

**Adoption and Foster Care in Other States.** California, Connecticut, Massachusetts, Illinois, Indiana, New Mexico, New Jersey, New York, Nevada, Massachusetts, Maryland, Pennsylvania, Vermont, and the District of Columbia have laws that generally favor same-sex or homosexual adoptions or homosexual foster care. While the number of states affirming same-sex adoptions or foster care is increasing, the number of states enforcing laws against it is decreasing. Today, only Florida, Utah, and Mississippi have laws pertaining to same-sex or gay adoptions or foster care. The majority of states have no laws on the books either way. This leaves the door open for state officials in 47 of our 50 states to place adoptive or foster children with homosexuals, cohabiting couples, or same-sex couples.

**Adoption and Foster Care in Arkansas.** Julie Munsell, spokeswoman for the Arkansas Department of Human Services said, “DHS follows a policy, set by the Child Welfare Licensing Review Board, of not placing children in foster homes with unmarried couples.”<sup>1</sup> The policy does not apply to adoptions. According to a 2007 study by the Williams Institute on Sexual Orientation Law and Public Policy, 1,040 children in Arkansas have been adopted by homosexuals.<sup>2</sup> Munsell said there's no way to verify such findings. The state doesn't ask adoptive parents or potential foster parents about their sexual orientation.<sup>3</sup>

**The Gay Adoption Agenda Nationwide.** Dozens of pro-homosexual organizations across the nation are promoting same-sex adoptions and foster care. Scores of groups recently criticized John McCain for not supporting gay adoptions. Among their other agenda items is their effort to keep gay adoptions and foster care legal throughout the U.S. An organization that promotes gay fatherhood in Boston, MA has already donated \$10,000 to the opponents of the Arkansas Adoption and Foster Care Act.<sup>4</sup>

**Conclusion.** It would be incorrect to say that the Arkansas Adoption and Foster Care Act is primarily about gay adoption or foster care. In fact, it treats homosexuals and heterosexuals exactly the same. Even though the proposal is primarily about protecting child welfare, it parallels the Arkansas Marriage Amendment in that it too seeks to blunt a political agenda that uses adoptive and foster children for its own purposes.

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<sup>1</sup> *The Morning News*. “Opposition Organizing Against Unwed Foster Ban” Lyon, John. Sept. 9, 2007.

<sup>2</sup> Adoption and Foster Care by Gay and Lesbian Parents in the United States. The Williams Institute and the Urban Institute. Gary Gates, M.V. Badgett, Jennifer McComber, and Kate Chambers. 2007.

<sup>3</sup> *Arkansas Democrat-Gazette*. “Gay couples creating families with kids despite push for ban.” Kellams, Laura. May 14, 2007.

<sup>4</sup> Arkansas Ethics Reports. Arkansas Ethics Commission. March, 2008.

# Frequently Asked Questions

## **Will this act reduce the number of foster and adoptive homes?**

No. It won't affect the number of foster homes at all. The State of Arkansas does not place foster children with unmarried couples. This takes that good policy, expands it to adoptive children, and makes it a state law. The impact is negligible.

## **Aren't there some professional groups that oppose the Arkansas Adoption and Foster Care Act?**

Given these organizations' liberal stance on other social issues, it's no surprise they oppose this issue. Most of them also opposed the Arkansas Marriage Amendment in 2004, which passed by 75% of the vote. Their opposition to this act is the latest in a long line of extremely liberal positions taken by these professional organizations. Here are some organizations that oppose legislation similar to the Arkansas Adoption and Foster Care Act, along with their positions on other social issues:

American Academy of Pediatrics (Opposes parental consent for abortions; Favors abortion on demand; Favors dispensing contraceptives to teenagers through school clinics; Favors comprehensive, non-abstinence sex education; Supports civil unions and domestic partnership for homosexuals; Opposes the Federal Marriage Amendment); American Psychiatric Association (Favors abortion; Favors homosexuality; Favors same-sex parenting; Favors same-sex marriage; Favors same-sex adoption; Favors same-sex foster care); American Psychological Association (Favors abortion; Favors same-sex marriage; Favors passage of the Federal Equal Rights Amendment; Favors same-sex adoption); National Association of Social Workers (Supports Hate-Crimes Legislation; Supports the U.N. Convention on the Rights of a Child; Supports sex education beginning in kindergarten; Opposes Home Schooling; Opposes corporal punishment in schools).

## **Why not let our trained social workers decide which homes are best for children on a case-by-case basis?**

Under this philosophy, we would have no laws or state regulations regarding who can adopt a child or be a foster parent. The State of Arkansas has never applied this standard. We have state laws that provide guidance to our social workers. Social workers, doctors, lawyers, teachers, and other professionals all operate under state laws and state rules and regulations. These laws exist for the protection of these professionals and for the protection of the public. This is a decision too important to leave simply to the discretion of any one individual or small group of social workers.

## **What is wrong with children being adopted by or placed in foster homes with individuals who cohabit?**

Children in the state foster care system have suffered significant abuse or neglect; otherwise they wouldn't be in state custody. These children need special care and attention in order to recover. The best place for these vulnerable children to achieve a healthy recovery is in a stable home with a married mother and father. Numerous studies indicate that children in married two-parent homes are healthier, they do better in school, they commit fewer crimes, and they enjoy better emotional health. In contrast to married households, many cohabiting homes suffer from critical deficiencies: They are more likely to break up. Child abuse is more prevalent. Alcohol and drug abuses are more likely. Children are more likely to suffer from behavior problems, and do poorly in school, and they're more likely to live in poverty.

## **Will this act allow homosexual family members to adopt or foster children of relatives?**

Unless they are cohabiting with a sexual partner, homosexuals can still adopt children or be foster parents. Act one applies only to individuals with a live-in boyfriend or girlfriend. Cohabiting individuals who want to adopt a child would have the options of getting married or stopping their cohabiting relationship. Since this act does not affect guardianship, cohabiting individuals, gay or straight, could still become guardians of a child.

## **Will this measure prevent single parent foster care or adoptions?**

No. This law will not prevent single individuals from adopting children or serving as a foster parent as long as they do not have a live-in boyfriend or girlfriend.

## **Does Arkansas currently limit any other categories of people from adopting or foster parenting?**

Yes. For example, state law prohibits people who smoke cigarettes from serving as foster parents, and state adoption regulations have age limits for who can adopt children. Bedrooms must have a window, and each foster child must have at least 50 square feet of sleeping space. Altogether, there are numerous state laws and state regulations regarding who may adopt a child or who can serve as a foster parent. These laws and regulations exist to ensure that children are placed in homes that are adequate for healthy child development.

## **Isn't it better for foster or adoptive kids to be placed with unmarried couples than to be without a home?**

The State of Arkansas does not place foster children with cohabiting homosexual or heterosexual couples. Most foster and adoptive children are already in private homes with families. The rest are living in state or privately run children's homes. Each of these facilities is required to meet state standards for operation, and they can lose their license if they fail to comply. When it comes to adoption and foster care, the best way to eliminate any shortage of homes is through efforts on the part of the State of Arkansas, churches, and people in general to decide that good homes are going to be provided to all children.

# Popular Name, Ballot Title, and Text of Act One

## Popular Name

An Act Providing That An Individual Who Is  
Cohabiting Outside Of A Valid Marriage May Not Adopt  
Or Be A Foster Parent Of A Child Less Than Eighteen Years Old

## Ballot Title

A proposed act providing that a minor may not be adopted or placed in a foster home if the individual seeking to adopt or to serve as a foster parent is cohabiting with a sexual partner outside of a marriage which is valid under the constitution and laws of this state; stating that the foregoing prohibition applies equally to cohabiting opposite-sex and same-sex individuals; stating that the act will not affect the guardianship of minors; defining "minor" to mean an individual under the age of eighteen (18) years; stating that the public policy of the state is to favor marriage, as defined by the constitution and laws of this state, over unmarried cohabitation with regard to adoption and foster care; finding and declaring on behalf of the people of the state that it is in the best interest of children in need of adoption or foster care to be reared in homes in which adoptive or foster parents are not cohabiting outside of marriage; providing that the Director of the Department of Human Services shall promulgate regulations consistent with the act; and providing that the act applies prospectively beginning on January 1, 2009.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF ARKANSAS:

Section 1: Adoption and foster care of minors.

(a) A minor may not be adopted or placed in a foster home if the individual seeking to adopt or to serve as a foster parent is cohabiting with a sexual partner outside of a marriage which is valid under the constitution and laws of this state.

(b) The prohibition of this section applies equally to cohabiting opposite-sex and same-sex individuals.

Section 2: Guardianship of minors.

This act will not affect the guardianship of minors.

Section 3: Definition.

As used in this act, "minor" means an individual under the age of eighteen (18) years.

Section 4: Public policy.

The public policy of the state is to favor marriage, as defined by the constitution and laws of this state, over unmarried cohabitation with regard to adoption and foster care.

Section 5: Finding and declaration.

The people of Arkansas find and declare that it is in the best interest of children in need of adoption or foster care to be reared in homes in which adoptive or foster parents are not cohabiting outside of marriage.

Section 6: Regulations.

The Director of the Department of Human Services, or the successor agency or agencies responsible for adoption and foster care, shall promulgate regulations consistent with this act.

Section 7: Prospective application and effective date.

This act applies prospectively beginning on January 1, 2009.