

RESOLUTION SUPPORTING THE EQUAL TREATMENT OF ALL QUALIFIED PERSONS
REGARDLESS OF GENDER OR SEXUAL ORIENTATION REGARDING THE
PLACEMENT OF CHILDREN IN FOSTER CARE AND ADOPTION

WHEREAS, there exists a need for foster care and adoption placement of children, and there exists a shortage of qualified interested applicants;

WHEREAS, failed placements, government funded foster care systems, shelters, and the number of children who continue to await adoption grow longer, stretching a child's age ever closer to the age of majority;

WHEREAS, some qualified parents are denied the opportunity to provide homes for these children because of servicing agencies applying discriminatory restrictions upon parents based upon their gender or sexual orientation;

WHEREAS, the American Academy of Matrimonial Lawyers ("AAML") recognizes that the scientific community has held no child welfare interests are advanced by the disparate treatment of qualified persons based upon gender or sexual orientation;

WHEREAS, a servicing agency's denial of placement based upon the gender or sexual orientation of a qualified applicant serves to widen the gap for qualified individuals willing and interested in providing a home for children in need;

WHEREAS, the AAML position opposes policies or funding that support servicing agencies who refuse to provide placement services based upon a moral or religious belief over the applicant's gender or sexual orientation;

WHEREAS, the AAML position is that the core focus of child placement services should be the best interests of the child;

WHEREAS, the AAML concludes that the best interests of the child standard has the greatest opportunity to meet the needs of vulnerable children and to close the shortage gap for qualified persons who want to foster or adopt.

WHEREAS, the AAML further concludes that State legislatures should not support legislation promoting such discriminatory practices.

NOW, IT IS RESOLVED that the American Academy of Matrimonial Lawyers urges States to support legislation for the equal treatment of qualified persons in the placement of children in foster care and adoption, regardless of a servicing agency's moral or religious beliefs over the applicant's gender or sexual orientation; that policies and funding should focus efforts on the best interests of these vulnerable children; that States should create or alter policies to ensure the best interests of the child standard overrides discriminatory treatment; and recommends that its Chapters support measures that will close the placement shortage gap through the elimination of servicing agencies' discriminatory approval practices based on gender or sexual orientation.

Adopted by the American Academy of Matrimonial Lawyers Board of Governors on November 10, 2017.

SUPPORTING STATEMENT: AAML RESOLUTION AGAINST DISCRIMINATORY PRACTICES IN THE
PLACEMENT OF FOSTER CARE & ADOPTION

The purposeful targeting of persons based upon their gender or sexual orientation has crept into State laws, as "religious exemption laws", allowing individuals and organizations to discriminate based upon personal moral and religious beliefs. Fundamental religious rights are now being used as a license to discriminate against persons based upon gender or sexual orientation. If allowed to continue, this sophistry has the potential for unlimited abuse using First Amendment protections as a shield.

Religious exemption laws directly affect vulnerable children awaiting foster care and adoption placement. National statistics estimate that there are 427,910 children in foster care.¹ This is exacerbated by a decline in the number of adoptions of children born in the United States.² The use of religious exemption laws work to unnecessarily prevent these children from being placed in permanent homes.

Gender and sexual orientation have repeatedly been held to be irrelevant in the assessment of parenting abilities by the scientific community and established professional groups such as, the American Academy of Pediatrics, the American Psychological Association, and the Child Welfare League of America.³ The greatest opportunity to meet the needs of vulnerable children is the "best interests of the child" standard. The majority of States have statutory standards defining the best interests of the child.⁴ These standards incorporate the States' goals, purposes, and objectives when determining placement for a child.

Under religious exemption laws, however, a service agency is allowed to pre-empt the best interests of the child standard for its own discriminatory application that may exclude qualified parents based upon their gender or sexual orientation. This discriminatory application creates an immediate twofold effect: (1) increases the shortage in the number qualified parents that want to provide permanent homes to vulnerable children, and (2) increases the cost to States who must continue to provide care as a result of non-placement of children. States that currently authorize such religious exemption laws in foster care and adoption placements, include:⁵

States targeting persons in foster care and adoption	Statute or Bill
Alabama	Ala. Code § 38-7C-5 (2017)
Michigan	Mich. Comp. Laws Ann. § 722.124(e)-(f) (2015)
Mississippi	H.R. 1523, 2016 Leg., Reg. Sess. (Miss. 2016)
North Dakota	ND Cent. Code § 50-12-07.1 (2003)
South Dakota	S.D. Codified Laws § 26-6-38 (2017)
Texas	Tex. Hum. Resources Code Ann. § 45.004 (2017)
Virginia	Va. Code Ann. § 63.2-1709.3 (2012)

Legislation, funding, or the support of harmful discriminatory practices using religious freedom as a protective shield create the potential for numerous other discriminatory practices on the basis of religious beliefs. Laws that stigmatize individuals or promote stereotypic notions of inferiority should be denied any possibility to foster discriminatory behavior. In particular, States should remove religious exemption laws that support discriminatory practices in the placement of foster care and adoption.

¹ Children's Bureau, Administration on Children, Youth and Families (Mar., 2017), <https://www.childwelfare.gov/pubPDFs/foster.pdf#page=1&view=Introduction>.

² Children's Bureau, Administration on Children, Youth and Families (Jan., 2016) <https://www.childwelfare.gov/pubPDFs/adopted0812.pdf#page=21&view=Conclusion>.

³ Am. Civil Liberties Union of Neb., *Steward and Steward v. Heineman* (2015), <https://www.aclunebra.org/en/cases/steward-and-steward-v-heineman>.

⁴ Children's Bureau, Administration on Children, Youth and Families (Mar., 2016), https://www.childwelfare.gov/pubPDFs/best_interest.pdf#page=2&view=best interests definition.

⁵ Movement Advancement Project, *State Religious Exemption Laws* (July, 2017), http://www.lgbtmap.org/equality-maps/religious_exemption_laws/religious_exemption_services.