



Written by [Dave Bohon](#) on April 11, 2011

## Ark. High Court Overturns Ban on Cohabitants' Adoption

The Arkansas Supreme Court has struck down a law passed by voters in 2008 that prohibited cohabiting couples from adopting children or serving as foster parents, limiting the process to single individuals or married couples.



In the state high court's unanimous opinion, Justice Robert Brown wrote that Act 1 was unfair in that it prohibited couples living in a sexual relationship outside of marriage from serving as caregivers for children in state care. "We hold that a fundamental right to privacy is at issue in this case and that, under the Arkansas Constitution, sexual cohabitators have the right to engage in private, consensual, noncommercial intimacy in the privacy of their homes," wrote Brown. "We further hold that this right is jeopardized by Act 1, which precludes all sexual cohabitators, without exception, from eligibility for parenthood, whether by means of adoption or foster care."

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Homosexual activists, who had dubbed the measure the "gay adoption ban," applauded the ruling, with Joe Solmonese of the Human Rights Campaign saying that it "removed a discriminatory barrier for loving gay and lesbian couples who, child welfare experts agree, are equally able parents."

Rita Sklar of the Arkansas branch of the American Civil Liberties Union (ACLU), which represented the case for a lesbian wishing to adopt a child with her partner, had complained that the law "wouldn't even allow a relative — gay or straight — to foster or adopt a child with whom they had a close relationship, so long as that relative was unmarried and living with a partner. The court clearly saw that this ban violated the constitutional rights of our clients and thousands of other Arkansans." Sklar said the ruling would be a "relief for the over 1,600 children in the state of Arkansas who need a permanent family."

The [Washington Times](#) quoted the plaintiff in the case, Wendy Rickman, as saying that she and her partner Stephanie Huffman could now "look forward to the opportunity to go through the adoption process once more and to welcome another child into our family."

Attorney Byron Babione of the Alliance Defense Fund, which defended the law on behalf of the Arkansas group [Family Council Action Committee](#), said that the court's decision "tragically places more importance on the sexual interests of adults than on protecting children." Babione told [Baptist Press News](#) that the court decision would likely reach beyond Arkansas to other states. "There is no doubt a political movement afoot to undermine and destroy marriage as we know it," he said, "and to eradicate



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protections that are in place for children when those protections conflict with adult sexual desires.... This lawsuit was part of a campaign to place adult wants and desires over the best interests of children.”

Babione said the court’s decision tells individuals that “you can go shack up with your boyfriend or girlfriend and that if you decide that you want to play house and have kids, the state has to allow you to come in and seek a child.” He added that it is “mind-boggling that we’ve come to a point in our society where you have a state Supreme Court basically saying that adult sexual desires and wants are the chief end of civil government at the expense of the best interests of children.”

Jerry Cox, president of the Arkansas Family Council Action Committee, called the court’s decision to overturn the will of the Arkansas electorate, who had passed the ban, “a classic example of judicial tyranny. We have said all along that Act One was about child welfare, and 57 percent of the voters in 2008 agreed. They declared that the State of Arkansas has an obligation to adoptive and foster children to ensure that they are placed in the best possible homes. The Arkansas Supreme Court has chosen to run roughshod over the people’s will and refused to uphold a good law that protected the children in the state’s care.”

The decision by the Arkansas court, which upheld a lower court ruling, leaves only two states with similar bans — Utah, which prohibits all un-married couples from adopting, and Mississippi, which bans only homosexual couples (but not homosexual singles). According to the Associated Press, Florida was the only state to completely prohibit adoption by homosexuals until an appeals court ruled the ban unconstitutional last September.



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