

FAIRNESS

C A M P A I G N

October
2008

Adoption Decision Not Good News

by Bryan D. Gatewood, Attorney

The Kentucky Court of Appeals has continued its rich tradition of unfavorable rulings for the children of gay and lesbian couples. Sadly, these days, right wing courts chose to apply the notion of “equal protection under the law” only when they are construing statutes against gay and lesbian people, and not for the purpose of striking down blatantly discriminatory legislative schemes that harm children. I have been asked to discuss the ramifications of this recent decision for gay and lesbian Kentuckians, as well as steps we can take in the future. As someone who has practiced law in this area for the past eleven years, I have lived through many of the changes in the law with which we must now contend.

What it means—the bad news:

I begin with the bad news, and there is plenty of it. Until the issuance of this opinion, many courts in the Jefferson County Family Court system (and elsewhere in the state) interpreted the state’s step-parent adoption statute as ambiguous, and utilized that ambiguity to allow the second parent in a same sex couple scenario to adopt a child previously adopted or born to a same sex couple. Those days are gone, unless the Kentucky Supreme Court reaches a different conclusion in a future case down the road.

What was perhaps most striking about this decision was that the court of appeals engaged in such a blatant act of right-wing judicial activism. In the case before it, the court actually permitted the adoption by the second parent to stand, because the challenge came too late (adoptions in Kentucky are protected from being attacked after one year). So it was completely unnecessary to even discuss whether such adoptions are valid for the court to decide the case in front of it – but the judges reached out to devastate gay and lesbian parents, and their children, throughout Kentucky.

This seems pretty disheartening, but one of the more subtle rulings of the case is even worse. Many times, usually either because they live in another county, or because they were uncomfortable with the legal interpretation involved with the second parent adoptions, I have assisted parents with what I would term “Agreed Orders of Joint Custody”. Essentially, the adoptive parent or birth parent grants joint custody to his or her partner, with the order being

continued on page 2

Anti-gay Discrimination at McDonald's

After an employee at a McDonald’s restaurant in downtown Louisville called a group of gay customers a series of anti-gay slurs, the American Civil Liberties Union has filed an official complaint with the city under the Fairness ordinance.

On July 26, 2008, Ryan Marlatt, Teddy Eggers, and three other friends had stopped for lunch at a McDonald’s on East Market Street while visiting Louisville for the weekend. While they waited for their food to be prepared, an employee behind the counter referred to them as “faggots” to another employee. Marlatt and Eggers approached the cashier, said they didn’t come to the restaurant to be insulted, and asked to speak with a manager. As they waited for the supervisor on duty to appear, the employee who had called them “faggots” started arguing with them, repeatedly calling them “faggots” in front of other customers and calling one of them a “cocksucker” and “bitch.”

“Nobody should be treated the way my friends and I were at that McDonald’s,” said Eggers of Indianapolis. “When we finally got to speak with a supervisor, she said she didn’t see what the big deal was. I couldn’t believe what was happening.”

continued on page 3

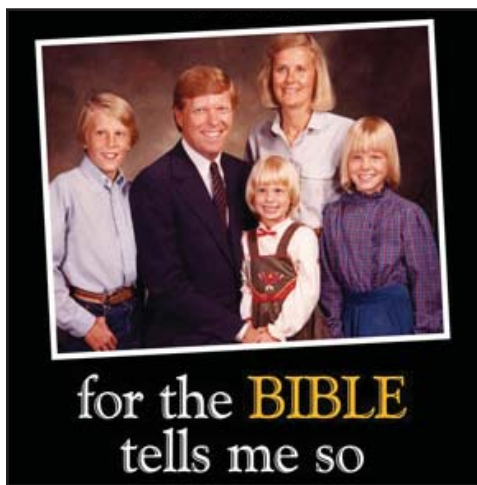
PLAN TO ATTEND

- ★ **Keith Boykin** – Oct. 6, 7 p.m., UofL Pride Week, talk on *Race, Gender, and Sexuality in the 2008 Presidential Election*, Chao Auditorium, UofL, free.
- ★ **Racializing Homonormativity: The Metaphorical and Lyrical Blackface Performance of Shirley Q. Liquor** – Oct. 8, 3 p.m., presented by Kaila Story, Chao Auditorium, UofL, free.
- ★ **Beaux Arts Ball** – Oct. 11, 7 p.m., Marriott Downtown, 280 West Jefferson, benefiting Voices of Kentuckiana. For tickets see www.beauxartsball.com.
- ★ **For the Bible Tells Me So** – Oct. 12, 7 p.m., film screening at Third Luthern Church, 1864 Frankfort Ave, free.
- ★ **ACLU Bill of Rights dinner** – Oct. 16, 5:30 p.m., The Henry Clay, 300 W Chestnut St., see www.aclu-ky.org.
- ★ **Out & About Gala** – Nov. 7, 7 p.m., 21C, 700 W. Main St., to benefit the Fairness Campaign and the Kentucky Fairness Alliance, www.kentuckyfairness.org for details.
- ★ **Anne Braden Memorial Lecture** – Nov. 10, 5:30 p.m., featuring Dr. Barbara Ransby, leading scholar of African American women's history, Comstock Auditorium, UofL, free.
- ★ **Kentucky Alliance's Unity dinner** – Nov. 22, 5 p.m., featuring former U.S. Surgeon General Dr. Joycelyn Elders, Masterson's, call 778-8130 for tickets.

Watch for
CFAIR endorsements
of Fairness-friendly
candidates at
www.fairness.org

Teacher Talk

There are many issues facing LGBT students and educators and few opportunities to sit with other educators and talk about them. If you are an LGBT teacher or straight ally in a public or private school/university, please mark your calendars for **Tuesday, October 21, 5:30-7 p.m.** We will have light snacks, good conversation, and networking around these issues in a safe and inclusive environment at the Fairness Campaign office, 2263 Frankfort Avenue. Please RSVP or send any questions to Kat Crawford, fellow teacher and Fairness Campaign Coordinating Committee member at kat@fairness.org. Hope to see you there and please bring a friend.



Can the love between two people ever be an abomination? Is the chasm separating gays and lesbians and Christianity too wide to cross? Is the Bible an excuse to hate? The documentary *For the Bible Tells Me So* explores these questions. The Fairness Campaign will show this award winning film at Third Lutheran Church on Oct. 12 at 7 p.m.

Through the experiences of five very normal, very Christian, very American families – including those of former House Majority Leader Richard Gephardt and Episcopal Bishop Gene Robinson – we discover how insightful people of faith handle the realization of having a gay child. Informed by such respected voices as Bishop Desmond Tutu, Harvard's Peter Gomes, Orthodox Rabbi Steve Greenberg and Reverend Jimmy Creech, *For the Bible Tells Me So* offers healing, clarity and understanding to anyone caught in the crosshairs of scripture and sexual identity.

Please join us for the screening of this powerful 97-minute documentary and stay for refreshments and an open discussion. Third Lutheran Church is located at 1864 Frankfort Ave, directly across from the School for the Blind. Additional directions can be found at the church's website – www.thirdlutheranchurch.org or call 502-896-6383.

Adoption Decision

continued from page 1

signed and entered by the Family Court. The affect of the recent ruling: Family Court does not have the jurisdiction to enter these orders, and should the original parent change her mind, the order can be set aside on the grounds that the order was never valid because the Court lacked what is called “subject matter jurisdiction”. Again, this is not good news for gay and lesbian parents and their children in Kentucky, although it arguably also applies to heterosexual people who find themselves needing to grant joint custody to another adult for whatever reason.

The result of this ruling is essentially this: you cannot have two parents of the same gender whose relationship to their child will be legally recognized by the state of Kentucky. Instead, only one will be recognized. Further, adults in Kentucky simply cannot give joint custody of their child to an adult of their choosing—apparently the legislature and courts in Kentucky believe that adults are simply not capable of making that decision, and have divested the courts of jurisdiction to assist parents with orders of joint custody that are enforceable.

What it means—the good news:

There is a shred of good news, although it is not necessarily new—gay and lesbian people, individually, are allowed to adopt in Kentucky. The court unequivocally affirmed that right. So, couples can still be parents, but only one parent can have a legally recognized relationship with the child. This keeps Kentucky one step ahead of places like Florida, where gay and lesbian people are flatly denied the right to adopt. Also, the court affirmed the permanency of adoption after one year. So, if you are a gay parent in Kentucky, and the adoption of your child has been final for one year, the judgment of adoption cannot be set aside unless the court finds there was fraud upon the court in the adoption proceeding.

My advice?

I am the dreadful bearer of bad news, but I do still have some advice, even though it may not be exactly what you want to hear. If you are a gay or lesbian couple in Kentucky, here are things you should consider.

First, before deciding to parent, evaluate your relationship carefully. The last thing children need is to be raised by two people for any number of years, only to lose the relationship with one parent completely because of animosity between the parents. That is what can and has happened in Kentucky: apparently systematic bigotry is more important than the well-being of children. I have often advised gay and lesbian parents that if their relationship ends, as can happen with any relationship, they must put the needs of their children above their desire for revenge or their need to feel in control. Failure to do so has resulted in cases like the one we are discussing, which ends up hurting not just the child involved, but all gay and lesbian parents. I know this is not fair, and that I am asking gay and lesbian parents to act like better people than their straight counterparts; unfortunately, that is just where we find ourselves. If you can't make that commitment, you shouldn't be a parent.

Always enter into a thorough written agreement regarding parenting that contains provisions regarding resolution of any disputes that may arise. If you agree to mediation now, it may help keep you out of court later, and thus prevent you from a judicial system that devalues our rights and too often produces harmful decisions like this latest one. That is the best we can do in Kentucky right now.

You might consider moving to southern Indiana. Second parent adoptions are perfectly legal in Indiana, and have been for some time. It is starting to seem that paying taxes in a state where you are treated more fairly might be a rewarding and wise choice.

What can we do?

Lobby the legislature. Very small changes to the law would go a long way. Granting the family court jurisdiction in all custody cases, including cases of voluntary joint custody, would help. Also, amending the “step parent” adoption statute to be a “second parent” statute without a marriage requirement would allow second parent adoptions to go through, whether or not it was a same sex couple, or an unmarried heterosexual couple.

We find ourselves in difficult times. To those of you who are parents (as I now am), you simply must do better than your heterosexual counterparts if the going gets tough. Otherwise your child will pay the price. All of us must work hard towards the day when the Kentucky courts and the General Assembly change that sad reality.

A community forum to discuss the impact of the Court of Appeals' decision on the lives of LGBT families is being planned for Wednesday, October 22 at 6 p.m. at the Fairness office.

Challenging Kentucky Farm Bureau's Regressive Policies

Did you know that the Kentucky Farm Bureau (KFB) is one of Kentucky's largest and most powerful forces at the Capitol in Frankfort? You might think their primary interest would be agricultural policy. Unfortunately, the self-proclaimed, "Voice of Kentucky agriculture," has policy interests that are far more reaching.

Today Kentucky Farm Bureau claims more than 440,000 members, mostly insurance customers, throughout the Commonwealth. The enormous wealth generated from its impressive membership makes the 89-year-old agriculture organization one of the loudest voices in Frankfort.

According to its lengthy policy book, the basis of all its lobbying efforts, KFB also takes strong, typically conservative, positions on issues like LGBT rights, unionization, the environment, capital punishment, prayer in public schools, and reproductive choice.

In January 2005 its anti-LGBT policies became more transparent after the company fired the Rev. Todd F. Eklof from his six-year secular position as its corporate video producer. Less than two months earlier, just days after the passage of a state constitutional amendment officially banning same-sex marriage, Rev. Eklof told his church community he would not perform anymore weddings until he is free to perform them equally for all couples, including same-sex couples.

After his stance was reported in the media, Eklof claims his employers called him into a meeting, reprimanded him, demoted him, and asked for his resignation. He hired an attorney to work out a severance agreement and was fired outright a few weeks later with nothing, "Not even the two weeks severance and vacation pay they owed me," Eklof said.

Rev. Eklof, who has been the minister at Louisville's Clifton Universalist Unitarian Church since 1999, has been suing his former employer ever since. Kentucky Farm Bureau, which has publically stated Eklof was fired over "performance and attendance issues," denies his termination had anything to do with the fact that its policy book specifically states, "The institution of marriage should only be recognized as that legal union of a man and a woman." It also states that, "Alternative lifestyles should not be taught in public schools," which has historically been code for, "No Gay Teachers!"

In June of this year a Jefferson Circuit Judge agreed to allow Rev. Eklof, a heterosexual, to continue with his lawsuit on several counts, including his claim that Kentucky Farm Bureau has violated the Louisville Fairness Ordinance. According to Judge A.C. McKay Chauvin (Division 8, Louisville, KY), "The court finds... that Mr. Eklof's claim alleging violation of the Fairness Ordinance is properly before the Court," and he "must be permitted" to continue.

The Fairness Campaign has been meeting with Rev. Eklof and is currently working with the ACLU and Jobs With Justice to determine how the progressive community might both support his efforts and respond to KFB's anti-LGBT, anti-civil liberties, anti-union agenda. Our next meeting on the matter is scheduled to take place at the Fairness Campaign office, **Monday, October 20, at 5:00 p.m.** Please join us.

**Interested in helping challenge discrimination and support people facing it?
Join the next meeting of the Fairness Discrimination and Response Team (DART)
on Monday, Oct. 27 at 6 p.m. at the Fairness office.**

Anti-gay Discrimination at McDonald's

continued from page 1

The supervisor on duty refused to refund the group's purchase, claiming that only the restaurant's general manager could authorize a refund. Marlatt said he attempted several times in the following weeks to contact both the general manager of the McDonald's and the corporate offices. But when he filed reports with a corporate customer service number for McDonald's, Marlatt said, he never received any sort of response, and every time he called the McDonald's where the incident took place the staff hung up on him.

"It may just be a few dollars for a Big Mac and some fries, but if I'm going to spend my hard earned money anywhere I should be able to do so without being verbally abused," said Marlatt. "The original name-calling was bad enough, but the fact that McDonald's refuses to do anything to make this right just adds injury to the insult."

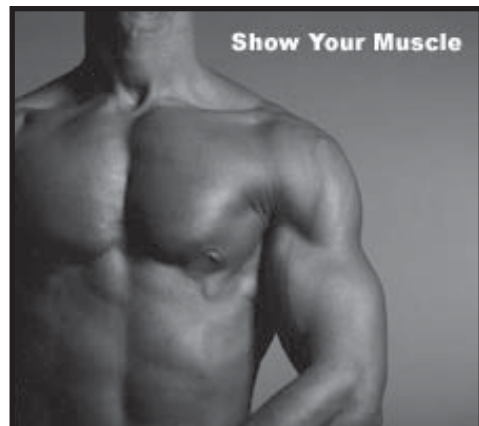
The ACLU Lesbian Gay Bisexual Transgender Project filed a complaint with the local Human Relations Commission on September 16 and an investigation is expected. The Fairness Campaign, ACLU of Kentucky and UofL's Lambda Law Caucus are planning a public response to the discrimination case. Details will be posted soon at www.fairness.org.



Keith Boykin Kick's Off UofL Pride Week

Keith Boykin, author of *Beyond the Down Low* and host of BET's *My Two Cents*, will kick off the University of Louisville's LGBT Pride week with a public lecture entitled *Race, Gender, and Sexuality in the 2008 Presidential Election*. The Monday, October 6 event, sponsored in part by the Fairness Campaign and a host of progressive community and campus groups, will begin at 7 p.m. in Chao Auditorium at Ekstrom Library on the University of Louisville campus. The talk is free and open to the public. A reception and book signing sponsored by Kentucky Fairness Alliance will follow the event.

Mr. Boykin is a leading commentator on issues of race and sexual orientation and has frequently been a political analyst on CNN. He is a graduate of Dartmouth and Harvard. Mr. Boykin served as a special assistant to President Clinton in the White House and in 1997 he was appointed as part of a U.S. presidential trade delegation to Zimbabwe. Mr. Boykin is a founder and board member to the National Black Justice Collation and is especially active around HIV/AIDS issues.



VOTE NOV. 4

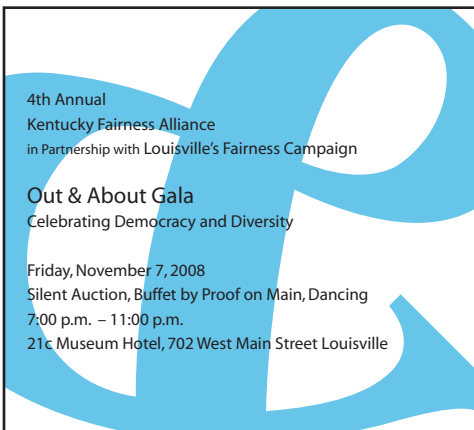


P.O. Box 3431
Louisville, Kentucky 40201

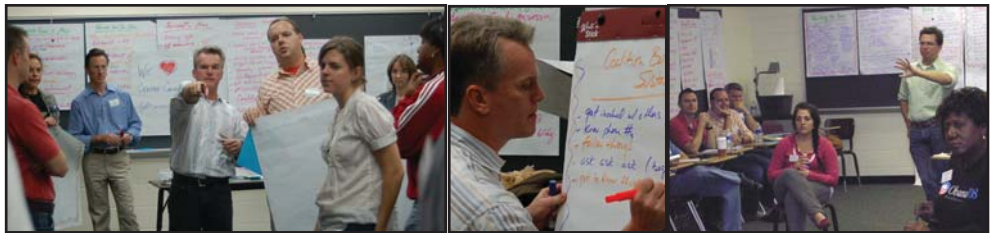
PRESORT STANDARD
US POSTAGE
PAID
LOUISVILLE KY
PERMIT #879

ADDRESS SERVICE REQUESTED

Join us at the *Out & About Gala* Nov. 7 at 21C Museum Hotel



Reservations at kentuckyfairness.org



Fairness Summit Strengthens Coalition

On September 27, representatives of the ACLU of Kentucky, Anne Braden Institute, BGLAD, CFAIR, Fairness Campaign, Lexington Fairness, Kentuckians for the Commonwealth, Kentucky Commission on Human Rights, Kentucky Equality Federation, and Kentucky Fairness Alliance gathered at Centre College for the inaugural Statewide Fairness Summit.

The inspiring daylong gathering brought together coalition partners committed to building a long-term strategy to win passage of a Fairness law for the Commonwealth of Kentucky. Participants laid the foundation for continuing partnerships and cross organizational work groups that will further develop plans to address key strategic objectives such as strengthening our LGBT organizations, building the base of Fairness supporters, voter identification, electoral work, public education, fundraising and more.

The Fairness Campaign will be hosting a community forum in November to share developments from the Summit and invite interested supporters to add their ideas and talents to the work for a statewide Fairness law.

