



# Faith and Family Equality

An Analysis of Arkansas's 2008 Battle Over  
Same-Sex Adoption

---

By Sally Steenland and Nan Futrell, with Marta Cook May 2010

Center for American Progress



# Faith and Family Equality

## An Analysis of Arkansas's 2008 Battle Over Same-Sex Adoption

---

By Sally Steenland and Nan Futrell, with Marta Cook May 2010



The Faith and Progressive Policy Initiative of the Center for American Progress works to identify and articulate the moral, ethical, and spiritual values underpinning policy issues, shape a progressive stance in which these values are clear, and increase public awareness and understanding of these values. Faith and Progressive Policy also works to safeguard the healthy separation of church and state that has allowed religion in our country to flourish. In all of its efforts, Faith and Progressive Policy works to promote a society and government that strengthen the common good and respect the basic dignity of all people.

# Contents

## **1 Introduction and summary**

## **5 Building up to 2008**

5 Getting Initiated Act 1 on the ballot

7 The election results

## **8 Supporters and opponents of the Initiated Act 1 campaign**

8 Act 1 supporters

10 Act 1 opponents

## **12 The Initiated Act 1 campaign begins**

14 Media strategy, opinion research, and policy decisions

14 The critical University of Arkansas poll

15 The Department of Human Services's policy change

15 October efforts

16 Election Day

## **18 Postelection developments**

## **20 Lessons learned**

20 Mobilize early

21 Resolve tensions between campaign pragmatists and movement idealists

22 Build a strong infrastructure with extensive grassroots outreach

22 Develop specific faith messages and messengers for different faith traditions

23 Challenge antigay rhetoric

23 Don't write off certain geographic areas or faith communities as unwinnable

23 Tackle religious issues head-on

24 Frame the narrative and keep your opponent on the defensive

24 Humanize the issue

## **25 Conclusion**

## **27 Endnotes**

## **29 About the authors and Acknowledgements**

# Introduction and summary

An estimated 3,700 children in Arkansas were living in state custody—far more than the 1,045 homes available for foster care placement—when voters in the state went to the polls during the 2008 presidential election contest.<sup>1</sup> One of the items on the ballot was an initiative that would ban adoption or foster parenting by “unmarried individuals in cohabiting relationships.” The adoption ban initiative was the most recent attempt by conservatives in the state to make it illegal for gays and lesbians to be foster parents or adopt children in need. Certainly, the need was great. Social workers were putting children in temporary shelters, group homes, even juvenile detention centers while hunting for more permanent places.<sup>2</sup>

Yet on November 4, 2008, Arkansas voters approved the adoption ban. The initiative, called Initiated Act 1, passed with 57 percent of the vote and came after a prolonged battle by religious organizations and advocacy groups on both sides of the issue.

Leaders in the fight supporting Act 1 came from conservative religious and political organizations with strong grassroots capacities and a history of working together on “culture war” issues in Arkansas. In 2004, conservatives had been successful in a ballot initiative campaign to ban same-sex marriage. For years, they had been working through state policies and legislation to ban adoption and foster parenting by same-sex couples. Although some of their previous efforts had failed, Act 1 was a success. Opponents of Act 1 included gay, lesbian, bisexual, and transgender advocacy organizations, medical professionals, children’s rights advocates and experts, and an interfaith alliance comprised mainly of mainline and progressive faith leaders.

Sadly, the situation for children in state custody in Arkansas mirrors that of the nation as a whole, where the number of children in need far outstrips the supply of available foster and adoptive homes. For instance, in 2006, there were approximately 123,000 children in the United States living in foster care waiting for adoptive families.<sup>3</sup>

One might think that faith communities, whether conservative or liberal, would support increasing the number of homes for children in need—and encourage placing children in loving adoptive and foster families eager to bring children into their lives. Conservative churches, especially, are known as strong supporters of adoption. Unfortunately, such support tends to evaporate in certain faith communities when the prospective parents are gay, lesbian, or bisexual.

In Arkansas, conservative religious leaders announced the launch of their campaign in January 2008. Although they initially had difficulty getting enough signatures for the adoption ballot initiative, they made up for this initial weakness during the campaign, with strong grassroots outreach and collaborations with churches, religious advocacy groups, and political organizations. Their messaging emphasized religious teachings and traditional values. The day after they won, a leader of the Act 1 campaign sent a message to allies, claiming that God’s divine providence and their hard work had made victory possible.

Going into the battle, progressive opponents of Act 1 also had a number of strengths. Their campaign was better funded than that of conservatives. Opinion polls were seemingly in their favor, and they had endorsements from an array of experts, including judges and social workers. Act 1 opponents also had an arsenal of poignant stories about children in need and nontraditional families eager to adopt or be foster parents for children without homes.

In some ways, the battle centered on how to define family. Although the language of the ballot initiative was generalized—referring to “unmarried individuals in cohabiting relationships”—its intended targets were lesbian, gay, and bisexual prospective parents. During the campaign, progressives highlighted how the ban would harm children in need, as well as heterosexual couples, but they were outmatched by the efforts of conservative religious forces.

Progressives also had problems of their own. Their campaign was hindered from the start by differing philosophies as to what their messaging and communications strategies should be, conflicting advice from campaign experts, and lack of outreach into the state as a whole. A serious deficit was their lack of strong partnerships with faith communities around the state to rebut conservative messaging. Many of the coalition participants noted their inability to match the extensive built-in networks that their opponents were able to capitalize on.

Soon after the election, the American Civil Liberties Union in Arkansas filed a complaint on behalf of 29 plaintiffs, known as *Cole v. Arkansas*.<sup>4</sup> The plaintiffs included Arkansas families who’d been hurt by the passage of Act 1. One was a heterosexual woman who wanted to be a foster parent but couldn’t because she wasn’t married to her male partner. Another plaintiff was a lesbian grandmother who couldn’t adopt her grandchild, despite the fact there were no other family members able to provide care.

On April 16, 2010—more than two years after the adoption ban won at the polls and went into effect—a state judge struck down the adoption ban, claiming it “infringes upon the fundamental right to privacy guaranteed to all citizens of Arkansas.”<sup>5</sup> Conservatives quickly condemned the ruling and vowed they would appeal the decision to the state Supreme Court.<sup>6</sup> The state attorney general announced that the state would also appeal, while at the same time the Arkansas Department of Human Services told its staff to begin accepting applications from unmarried couples who wanted to be foster or adoptive parents.

“Faith and Family Equality” provides an analysis of the battle over Act 1. In particular, the report looks at the strategies, tactics, messaging, and outreach of religious groups on both sides of the fight. We examine the efforts of Act 1 supporters who sought to ban same-sex adoption—and of Act 1 opponents who wanted to defeat the ban.

An analysis of the battle over same-sex adoption in Arkansas points out the importance of several key factors necessary for success. These factors include:

- Early mobilization
- Statewide grassroots outreach
- Alliances between faith and advocacy groups
- Rapid response to conservative scare tactics
- Faith-based messages targeted to particular faith communities with messengers from those communities.

But perhaps the most important factor we found is the need to build strong partnerships among faith communities and advocacy groups—ones that can create effective faith-based messaging. Such efforts should be undertaken not for their strategic value but because it is the right thing to do.

It is the right thing to do because equality and justice for lesbian, gay, bisexual, and transgender people is more than a civil rights and human rights issue. It is also a deeply moral issue. For people of faith, such equality is premised upon the fact of being worthy and good in God’s eyes. Accordingly, justice stems from the truth that every person—gay or straight—is created in the image of God. To call sinful a person’s core identity is to challenge the wisdom and judgment of God, rather than to celebrate the diversity of God’s creation.

To see this elemental aspect of human rights and equality as separate from essential religious truths is to distort the essence of the issue, especially for people of faith. Religion and faith are embedded in the struggles of gay, lesbian, bisexual, and transgender people for equality and justice. They are inherent in the battle to form families and to parent with dignity.

Not to claim religion as intrinsic to this struggle is to miss the mark and allow opponents to monopolize the moral high ground. A progressive minister who worked against the ballot initiative banning same-sex adoption in Arkansas said, “Religion is hijacked by whomever you allow to hijack it. Without a counter-argument, they win.”<sup>7</sup>

This report offers a cautionary tale for faith communities and advocates, along with lessons that are relevant to states considering similar measures. The report is a reminder that grassroots mobilization of faith communities is crucial in these struggles, that messages must be targeted to key communities with messengers from within those communities—and that in battles so steeped in issues of morality, the cost of minimizing moral parameters is high.

The report should also be cause for hope. An examination of the ballot initiative battle in Arkansas suggests that there is receptivity, even among conservative faith communities, to outreach and targeted messages that support same-sex adoption. As other states consider these measures—and as federal legislation is introduced in Congress—it is crucial for faith communities and advocates to work together to transform the moral vision of family equality and justice into reality for all Americans.



# Building up to 2008

Before 2008, conservatives in Arkansas tried several times to prohibit adoption and foster parenting by same-sex couples. In 2007, a bill was introduced in the state legislature to ban adoption and foster parenting by gay or lesbian individuals, whether they were in a relationship or not.<sup>8</sup> The bill failed to pass for several reasons. Among them was the effective work by State Rep. Kathy Webb (D-District 37), Arkansas's only openly gay elected official, who urged allies to oppose the bill. Another reason was the bill's explicit language, which graphically described sexual acts between same-sex couples. The language also targeted homosexuals outright, which was seen as likely to prompt a legal challenge for being discriminatory.

An earlier attempt to ban same-sex adoption occurred in 1999, when the Arkansas Child Welfare Agency Review Board enacted a regulation that prohibited an individual from serving as a foster parent "if any adult member of that person's household [was] a homosexual."<sup>9</sup> A lawsuit challenging the rule was filed, and the case reached the Arkansas Supreme Court in 2006. In *Department of Human Services v. Howard*, the state's highest court threw out the agency's policy, ruling that the regulation was an unjustified, blanket exclusion of an entire class of people and was impermissibly based upon moral bias.<sup>10</sup>

As a result, the Arkansas Department of Human Services replaced its former policy with a vaguer rule. Rather than barring homosexuals, the rule prevented cohabitating, unmarried individuals from serving as foster parents. But in the wake of the court decision and legislative failures, conservative groups in Arkansas revved up their concern. Jerry Cox, head of the Arkansas Family Council and longstanding warrior for conservative causes, wrote to supporters that since "the Arkansas legislature didn't pass the bill to ban homosexual adoption and foster care... now we need to decide if we should start gathering signatures to place this law on the ballot in 2008."

---

## Getting Initiated Act 1 on the ballot

The Arkansas Family Council led the 2008 fight against same-sex adoption. Four years earlier, the council had successfully fought for a state constitutional amendment banning same-sex marriage. In 2007, it unsuccessfully fought for the antigay adoption bill in the state legislature. The council worked with its Family Council Action Committee, created in 2005 as a political advocacy arm, to carry out its political campaigns. The action



committee drafted language for the 2008 ballot initiative, got the language approved by the state attorney general, and organized volunteers to distribute petitions and collect the required number of signatures to place the initiative on the November ballot.

Yet the action committee encountered several difficulties during this process. The first hurdle related to the language it drafted, which explicitly banned homosexuals from foster parenting or adopting. The attorney general rejected the language as unclear and self-contradictory.<sup>11</sup> The action committee then revised the wording, which was approved. The new wording differed from the earlier version in that it applied to both heterosexual and homosexual unmarried couples.

In this respect, the revised initiative was modeled after a statute in Utah that does not mention sexual orientation,<sup>12</sup> a linguistic tactic aimed to evade constitutional challenge. Another change was that the revised language covered all foster placements and adoptions—including private adoptions of children never placed in state custody.

The Family Action Committee announced the launch of its Act 1 campaign at a news conference in January 2008. Its next task was to collect enough signatures to secure a place on the November ballot. At first, the action committee assumed it would have no difficulty. After all, in 2004 it had no trouble gathering signatures for a constitutional amendment defining marriage as a union between one man and one woman. That amendment passed with 75 percent of the vote.

But the adoption-ban-signature drive was not so effortless. The Family Action Committee had difficulty attracting volunteers—and the volunteers that did show up had a hard time getting signatures. Jerry Cox blamed voter apathy and called the process of distributing petitions and gathering signatures “five times as hard” as it’d been for the marriage amendment.<sup>13</sup> One volunteer remarked with disappointment that churches seemed less supportive of a same-sex adoption ban than they’d been four years earlier of a marriage ban.

The action committee also had financial troubles. As the July 7 ballot initiative deadline approached, it faced a campaign debt approaching \$2,780. At the time, the action committee needed 61,974 signatures to place the initiative on the November ballot, but it fell short by about 4,000 signatures. State law, however, allows for a 30-day extension, so the committee intensified its efforts, distributing 350,000 church bulletin inserts to urge signatures. A month later, the Family Action Committee had 85,389 signatures—about 23,000 more than needed to place Act 1 on the ballot (see box).

## Initiated Act 1 language

The language of Initiated Act 1 read as follows:

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.

---

## The election results

The ballot initiative was long, complicated, and confusing. Informal surveys after the election revealed that some people thought that their “yes” vote was *against* prohibiting same-sex couples from parenting when, in fact, they had voted *for* the prohibition. Whatever the confusion, Initiated Act 1 passed with 57 percent of the vote. The political and religious forces at work for and against Act 1 is the subject of the next section of our paper.

# Supporters and opponents of the Initiated Act 1 campaign

Among the dominant supporters of Act 1 were four conservative groups in Arkansas, all of whom had strong religious roots and connections. They were:

- The Arkansas Family Council
- The Arkansas Family Action Committee , the council’s political arm
- The Families First Foundation of Arkansas
- The Arkansas Faith and Ethics Council

None of the groups had significant campaign coffers,<sup>14</sup> and some experienced early setbacks with lackluster volunteer recruitment,<sup>15</sup> as well as difficulty getting the initiative on the ballot. Nevertheless, they managed to mount a strong campaign that had an extensive grassroots outreach targeting churches.

On the other side, two groups were major opponents of Act 1. Arkansas Families First was a coalition of civil rights activists, medical professionals, children’s rights advocates, faith leaders, and gay, lesbian, bisexual, and transgender rights activists. Unlike its conservative counterparts that had long been in existence, Families First was created specifically to fight Act 1. The other group, the Center for Artistic Revolution, had been formed in 2003 by lesbian, gay, bisexual, transgender, and queer Arkansans, along with straight allies, to advocate for fair treatment and equality. As part of its effort to fight Act 1, the center launched its own campaign, “All Families Matter,” which portrayed gay and lesbian families affected by the adoption ban.<sup>16</sup>

---

## Act 1 supporters

### Arkansas Family Council and Family Action Committee

Taking the lead among conservative groups was the Arkansas Family Council, based in Little Rock and led by its president, Jerry Cox. Since its founding in 1989, the Arkansas Family Council has predominated as Arkansas’s voice of social conservatism—or what it calls traditional family values “in accordance with biblical principles.” The Family Council’s views are explicitly evangelical, from its alignment with James Dobson’s Focus on the Family<sup>17</sup>—a national religious right organization—to its opposition to abortion, gay marriage, stem cell research, assisted suicide, and gambling.

The Family Council and its political advocacy arm, the Family Council Action Committee, led the successful state campaign for a constitutional amendment to ban same-sex marriage in 2004 and backed the unsuccessful antigay adoption bill in the state legislature in 2007. The Family Council and its action committee considers itself the state watchdog on moral values and reviews bills in the Arkansas legislature, evaluating them according to the group’s moral principles.

## Families First Foundation of Arkansas

The Families First Foundation of Arkansas, like the Family Council and its action committee, is an ultraconservative evangelical organization concerned with social issues ranging from abortion and gambling to same-sex marriage and parenting. Associated with the Church of Christ, a nondenominational group of evangelical churches, the Families First Foundation operates out of Marion, Arkansas. Its ministry is overseen by several dozen board members living throughout the state among some 50 church congregations.

The foundation’s work takes the form of grassroots organizing—suggesting sermons, giving seminars, speeches, and worship gatherings. It also sends mailings to congregations that disseminate information about policy and legislation involving various family values issues it monitors. A grateful letter from a minister illustrates the foundation’s efforts, as well as its level of influence:

*The Huntsville, Arkansas congregation was so happy to learn of the Families First ministry. I would like to tell you why. It resolved a frustration we often felt when a law would be passed that was unfriendly toward our biblical principles. All we could do was complain about the new law. None of us are inclined to do petitions or carry protest signs. Families First started letting us know when a family related bill was in a committee’s discussions. We could then start praying about it at a time when it could make a difference ... And, thanks to God and Christian folks who simply voice their concern in a friendly, Christian way, some bad ideas have failed to become bad laws. And, some good ones have become laws.<sup>18</sup>*

The Families First Foundation endorsed Act 1 in a statement that read: “[a]dopting a child or serving as a foster parent is *not* a basic human right. It is a *privilege* granted by those charged with bringing stability to the life of a child. Although it is not always perfect, two-parent heterosexual homes tend to be more stable than any others.” The foundation also called gay adoption a social experiment being used, at children’s expense, to “‘prove’ that gay and lesbian families are ‘just like’ traditional families.”<sup>19</sup>

Indeed, the foundation saw same-sex marriage and parenting as inextricably connected with same-sex marriage, and at the heart of the adoption and foster parenting debate. The foundation’s June newsletter led with the headline, “What Is Best for the Children?” and warned that “[r]ecent Arkansas judicial decisions have been made with strong agenda pressures focusing on adults rather than children.” The article urged readers to turn in signatures by July 7, saying: “There is still time for YOU to gather signatures and encourage YOUR home congregation to become involved.”

## Arkansas Faith and Ethics Council

The Arkansas Faith and Ethics Council is mostly Baptist. It resembles the Family Council Action Committee and the Families First Foundation in its conservative agenda and approach to activism, as well as its strong grassroots outreach among congregations. Although Act 1 was not explicitly discussed on the council’s website, it strongly opposed “the homosexual political agenda,” including the right to adopt children. As with the Families First Foundation, one senses that the council viewed same-sex marriage as the most pernicious threat, with gay and lesbian parenting an offshoot of a greater “evil.”

In addition to a shared political agenda, conservative groups were active in getting out the vote. Their websites posted petition forms for collecting signatures, with instructions for canvassers and signers. They posted links to voters’ guides that let visitors directly contact their representatives, as well as sites where one could register to vote.

Beyond that, the Faith and Ethics Council put out a grassroots activity guide called, “Ten Important Factors in a Church-Led Grassroots Election Campaign.”<sup>20</sup> One of the factors stressed the importance of creating religious messages for religious people and secular messages for nonbelievers. Another called for “co-opting denominational personalities into campaign leadership” to help recruit volunteers, raise funds, register voters, and more. The guide was politically sophisticated and tactically smart.

## Bloggers

Finally, conservative bloggers helped get the word out—a tactic not to be underestimated. One blog, “Arkansas Watch,” appealed to potential Act 1 supporters as early as February 2008 in a post called, “Help Circulate Petition on Homosexual ban on Adoption.”<sup>21</sup> The post said, “[t]he participation of everyone concerned about this issue is critical. Please check to see if your church is circulating these petitions and sign one. If they are not circulating them, check with your pastor to see if you can get them circulated in your church.”

---

## Act 1 opponents

### Arkansas Families First

On January 24, 2008, the same day that the Family Council Action Committee held a press conference to launch its Act 1 petition drive, a group of civil rights activists, gay, lesbian, bisexual and transgender advocates, medical professionals, children’s advocates, ministers, and others formed Arkansas Families First to oppose Act 1.<sup>22</sup>

The coalition brought together a varied mix of expertise. Members included groups working on lesbian, gay, bisexual, and transgender rights, among them the Arkansas ACLU and the

Stonewall Democratic Caucus of Arkansas, as well as child advocacy groups such as the Arkansas Advocates for Children and Families, and the Arkansas Chapter of the National Association of Social Workers.<sup>23</sup> Other coalition members included the Arkansas chapter of the American Academy of Pediatrics, the Arkansas Psychological Association, and the Arkansas Public Policy Panel.

The coalition also included two organizations with outreach to faith communities, the Arkansas InterFaith Alliance, and Just Communities of Central Arkansas. Both groups were headquartered in Little Rock. In hindsight, the lack of an expansive network throughout the state was a significant hindrance, given the high religiosity of Arkansas across the state.<sup>24</sup>

## The Center for Artistic Revolution

The Center for Artistic Revolution was founded in 2003 by lesbian, gay, bisexual, transgender, and queer Arkansans and their straight allies to advocate for fair treatment and equality. CAR's efforts included advocacy, education, and organizing on a range of issues, including civil rights and economic and environmental justice. From its inception, CAR has included cultural and artistic activities in its mission for social change. Its director, Randi Romo, was committed to community organizing and dialogue, and was more attuned to movement building from the bottom up than conventional political campaigning.

## Forming a coalition

Families First and CAR worked with other organizations and individuals in a coalition to defeat the ballot initiative launched by conservatives. One of the coalition's early actions was to hire a campaign director, Debbie Willhite, who was a political consultant and native Arkansan who had recently moved back from Washington, D.C. In late January, Willhite told *The Arkansas Democrat-Gazette* that Families First planned to counter the Family Council Action Committee's efforts with a "decline to sign, think before you ink" education campaign,<sup>25</sup> using churches, public forums, and advertising.

The plan was to persuade as many citizens as possible not to put their names on the petition. Such a strategy had the potential to succeed because conservatives were having difficulty rousing their base and getting petition signatures. Low energy among conservative advocates could have opened the door to a successful campaign by Act 1 opponents. If such a campaign had been undertaken—"a decline to sign, think before you ink" effort to raise public awareness and discourage signatures—adoption rights supporters might have won the battle before it even began. But that campaign did not take off in a substantial way.

Act 1 got on the ballot, and the initiative campaign was underway.

# The Initiated Act 1 campaign begins

From the beginning, progressive opponents to Act 1 faced challenges. First off, the Family Council and its action committee already had a religious grassroots machine in place. Act 1 opponents had no comparable outreach to faith communities. Looking back, a minister who worked with the Families First coalition, said:

*“Never underestimate [the Family Council’s] network. Anything that relates to homosexual issues is strong; they didn’t need as much money... [and] we didn’t have a built-in network.”*

According to Rita Sklar, the executive director of the Arkansas ACLU, “the opposition had been organizing all along. They had a grassroots network through churches; they had petitions in [church] vestibules.”<sup>26</sup> Rev. Steve Copley, a Methodist minister, social justice activist, and leader of the Arkansas Interfaith Alliance, mentioned another conservative advantage: Political activity is usually greater in evangelical churches than mainline ones. This difference made it more difficult for Families First to connect with moderate and mainline churches during the campaign. According to Copley:

*It’s harder to do advocacy in mainline churches. There is a different mindset in evangelical churches; people are more of like mind. In mainstream churches, people cross political views ... [and you’re] not as likely to see ballot petitions... or announcements from the pulpit. It’s not part of the culture. There are people of all stripes theologically and politically in mainstream churches, and there’s concern about how [political advocacy] will be perceived. In an evangelical church, people are happy to discuss [politics]. A pastor will say, “You will sign [this petition].”<sup>27</sup>*

Rev. Copley called it a “difference in the DNA” between mainline and evangelical churches.

It is true that the Families First coalition did not have the strong grassroots network that the Family Council did; yet as one faith leader pointed out, conservative grassroots influence “should have been obvious to us in 2004 [with the Family Council’s campaign for the amendment banning gay marriage].”<sup>28</sup> In other words, progressives knew what they were up against with conservative religious groups, and what was needed to compete and to win.



Less anticipated was an internal struggle among Arkansas Families First coalition members that emerged soon after the group's creation. Steering committee members disagreed over what the campaign strategy and messaging should be. Some thought the message should emphasize children in need who would be harmed if Act 1 passed. Such a message, they said, offered broad appeal to voters who might be alienated by a "gay rights campaign."

Yet other steering committee members opposed that view, claiming that a campaign that didn't mention human rights for lesbians, gays, bisexuals, and transgender Americans and the harm caused to nontraditional families by an adoption ban made no sense. They argued it was foolish to ignore the "antigay" agenda of conservative opponents who were making that a core element of their argument with selected voters.

The friction over campaign strategy played out privately, but ultimately the rift was not healed. A decision was made that the Arkansas Families First campaign would emphasize Arkansas's children in need and how much Act 1 would harm them, rather than discussing the rights of gays and lesbians. In March, Sklar of the ACLU told *The Arkansas Democrat-Gazette*, "This is an issue about children, about providing homes to the children who are most in need in this state."<sup>29</sup> She stressed that while the coalition included gay and lesbian rights groups, they were among many voices speaking for the coalition.

The Center for Artistic Revolution disagreed with the coalition's decision to downplay lesbian and gay rights in campaign messaging and launched its own campaign, All Families Matter,<sup>30</sup> an effort that aimed to confront the homophobia supporters felt was fueling support for Act 1. For Randi Romo, CAR's co-founder and director, Act 1 was undeniably about children in need, but she also believed that Act 1 was about the lives of gay and lesbian families:

*This fight's been going on for over 10 years. The [conservative] Family Council has made every effort... to attack our families and our lives. It isn't a secret [they target homosexuals], and it feels disingenuous [to pretend otherwise].<sup>31</sup>*

The All Families Matter campaign included a series of homemade videos that aimed to capture the human element of same-sex adoption by using everyday individuals and families to talk about the ban's consequences. Featured couples included two lesbian grandmothers who had been committed partners for 16 years. They sipped tea in rocking chairs and recalled shared life experiences, from joyous birthday celebrations to the heart-breaking death of a child. The videos were not limited to gay and lesbian partners. Others featured a grandmother raising her grandson who would lose essential Social Security payments if she married her male partner.

In addition to the video series, CAR organized community dialogues, released public service announcements, and ran ads on community radio stations urging listeners to vote against Act 1.

---

## Media strategy, opinion research, and policy decisions

Among the surprises of the campaign was how limited the media efforts of conservatives were. The Arkansas Family Council Action Committee ran two brief radio ads that provided little detail about Act 1, other than referring to Act 1 opponents as “special interest groups” and claiming that supporting Act 1 meant putting “kids first.”<sup>32</sup>

In contrast, Arkansas Families First produced and distributed a nine-minute DVD that showcased testimonials of child advocates, foster parents, former foster children, social workers, medical experts, and a retired Methodist minister. The coalition also aired a 30-second ad culled from the DVD that ran statewide in mid-October. Even such a mass media appeal, however, was not sufficiently persuasive to voters.

Throughout its campaign, the Families First coalition also relied upon polling to test messages and messengers and to guide its overall strategy. Results from early polling helped shape the coalition’s decision to focus on Act 1’s harm to children rather than inequality for gay, lesbian, and bisexual families. One coalition participant said that the “polling was clear. The more [our messages were] about LGBT issues, the more harm it would do.”<sup>33</sup>

Furthermore, several early focus groups appeared to call for a “stealth strategy”—which entailed not only avoiding gay and lesbian human rights messages, but also keeping the entire campaign below the radar until a few weeks before the election. One coalition participant said, “We thought, ‘If we start talking about this too early, we’ll just give the other side more time to drum things up’ . . . We tried just doing small groups, library gatherings [and] waited ’til the last minute, the last six weeks [to go public].”<sup>34</sup>

In hindsight, coalition leaders seemed conflicted over their campaign strategy. Some maintained they’d made the right decision, while others felt they should have given gay and lesbian families a more visible presence. Still others admitted that as the months went by and it seemed their message was not working, they should’ve been more skeptical about polling research and adjusted their communications and messaging strategy.

---

## The critical University of Arkansas poll

In late October, the University of Arkansas released a poll of registered voters showing that 55 percent of respondents opposed the adoption ban, while 38 percent supported it.<sup>35</sup> According to Dr. Jay Barth, a college professor who served as Arkansas’s representative on the board of the state ACLU and was part of the coalition working to defeat Act 1, “the Arkansas poll didn’t make us complacent, but it gave us some hope.”

Such hope was short lived. Less than two weeks later, 57 percent of Arkansas voters approved Act 1.

Since then, several theories have emerged that seek to explain the discrepancy between the October poll and the election results. One theory is that the October poll relied on a skewed sample in which respondents were wealthier, more educated, and less likely to be Republican than the general population of Arkansas.<sup>36</sup> Another theory is that poll results may have been misleading because of what some called the “Bradley effect”—that is, saying one thing to a pollster, but voting differently in the booth.

In addition, according to one coalition participant, many undecideds who identified as Democrats, ultimately chose not to vote at all. Unlike the rest of the nation, the voter turnout in Arkansas in 2008 was starkly underwhelming—according to one poll, only 65 percent of registered voters showed up to cast ballots.<sup>37</sup>

---

## The Department of Human Services’s policy change

Less than a month before the November election, the Arkansas Department of Human Services discontinued its policy of preventing cohabitating, unmarried individuals from serving as foster parents. While the decision may have seemed like a victory for gay and lesbian families, it worked against them concerning the Act 1 campaign because it fueled conservative paranoia about a “gay agenda.”

Arkansas Family Council President Jerry Cox told *The Arkansas Democrat-Gazette*, “When faced with vocal opposition from a few pro-gay groups in Little Rock, DHS folded and put every foster child at risk. Even though most won’t admit it, these groups and the state Department of Human Services are working together to advance the gay agenda in Arkansas.”<sup>38</sup>

---

## October efforts

As Election Day drew closer, public figures and organizations within and outside of Arkansas voiced their views on the ballot initiative. In early October, a group of 13 retired Arkansas judges—including three former chief justices of the state Supreme Court—announced their opposition to Act 1. Drawing upon their experiences on the bench, the judges argued that children’s best interests were served by case-by-case determinations, not a blanket ban on certain would-be parents.

In addition, 23 Arkansas faith leaders released a statement opposing Act 1. Signers included a rabbi and ministers representing Episcopalian, United Methodist, Baptist, Unitarian-Universalist, and Presbyterian denominations. The letter expressed concern, rooted in faith teachings, for the thousands of children who would be put at risk if capable prospective parents were automatically disqualified and the number of homes available for adoption or foster care were reduced.<sup>39</sup>

In mid-October, the Foster Care Alumni of America, a national association for adults who had been in foster care as children, released a statement urging Arkansas citizens to vote against Act 1 “because it would narrow the potential pool of foster and adoptive parents for needy children in Arkansas.” The Foster Care Alumni statement cited statistics about foster care in Arkansas that included:

- The number of children awaiting placement<sup>40</sup>
- The average length of time children remain in the system before finding a home
- The number of children who turn 18 without having found a permanent home<sup>41</sup>

Later that month, the national child advocacy organization, Voices for America’s Children, joined Arkansas Advocates for Children and Families to publicly condemn the adoption ban.

On the other side, leaders of the Arkansas Baptist State Convention passed a “Resolution on Children at Risk” that supported Act 1.<sup>42</sup> The resolution, passed in late October, said, “Scripture teaches that God’s ideal is that children be nurtured by a father and a mother who are united in the holy covenant of marriage.” It called upon Arkansas lawmakers “to craft legislation, rules and regulations that undergird the biblical ideal for the home.”<sup>43</sup>

With endorsements on both sides of the debate, it was not readily apparent which side had the most influence. Despite the array of experts and evidence presented by Act 1 opponents, it turned out that they lacked something more crucial for a campaign—the grassroots outreach that the Baptist State convention had in spreading the word to congregations throughout the state that its leaders supported Act 1.

---

## Election Day

On November 4, Arkansas voters approved Initiated Act 1 by 57 percent of the vote. Although this was a significant margin, it is important to note that there was some opposition from unlikely places. In polling done immediately after the election by the Washington-based think tank, Third Way,<sup>44</sup> a sizeable minority of born-again Christians—44 percent—said they would have or did in fact vote “no” on the adoption ban after being informed in more detail about what it entailed. If this polling is accurate, it means that Act 1 opponents made a strategic error by not conducting a comprehensive statewide educational outreach to faith communities, including evangelicals.

The same postelection poll confirmed suspicion about the confusing language on the ballot initiative. When first asked about how they voted or would have voted regarding Act 1, without explication by the pollster, a *majority*—54 percent of born-again Christians—said they would have voted against the adoption ban. Clearly, neither opponents nor supporters of Act 1 conveyed accurate messaging regarding the initiative. A strong educational campaign by Act 1 opponents could have been persuasive to more moderate, and even conservative, religious voters.

Furthermore, the Third Way poll tested messages and found the most compelling one for faith communities was that adoption and foster care decisions should be made on a “case-by-case basis” of willing families, instead of a blanket ban on a group of people. The second strongest rationale against the ban was that policy should be focused on “what’s best for children.”

Adding to their confusion was the fact that five ballot measures were up for consideration on election day—three proposed constitutional amendments, one referendum, and Act 1. A week before the election, an editorial in *The Arkansas Democrat-Gazette* cautioned, “Those initiated acts, constitutional amendments, and proposed laws presently under consideration by Arkansas voters are a total mess. Just remember, ‘no’ is the most powerful word in the English language.”

### Complicating factors

The national presidential race was a key determinant in Arkansas’s political dynamic, as it was one of only two states to vote more Republican than it had in 2004.<sup>45</sup> (The other was Oklahoma.) In Arkansas, Democratic presidential candidate Barack Obama had two strikes against him, according to several campaign participants. He wasn’t Arkansas’s former first lady, Hillary Clinton, and he was African American. According to one coalition participant, Democratic voter turnout across the state was “muted by Obama’s candidacy—a mix of bitterness over Sen. Hillary Clinton’s loss and, at least in rural Arkansas, lingering racism.”

Of the Arkansas Democrats who did show up at the polls, almost 30 percent who had voted for Hillary Clinton in the primary voted for Sen. John McCain (R-AZ), who carried the state by a 59 percent majority. Votes for Sen. McCain were closely correlated with votes supporting Act 1. Nearly 7 in 10 of the voters who chose Sen. McCain also voted in support of the adoption ban.

Admittedly, Arkansas was not targeted by the Obama campaign, a fact that may have helped stir resentment among Arkansans. The presumption that Arkansas would go to Sen. McCain may have been a self-fulfilling prophecy. As late as August, the Obama campaign still had no official campaign headquarters in Arkansas, and Obama did not visit the state during the presidential campaign.<sup>46</sup>

Nonetheless, voters were less settled than outsiders assumed. Merle Black, a Southern politics expert from Emory University, told *The New York Times* in August, “McCain’s not ultraconservative, he’s not an orthodox Republican—that might actually help McCain in Arkansas.”<sup>47</sup> Perhaps there was more potential for persuasion among Arkansas’s moveable middle than either the Obama campaign or adoption rights supporters recognized. But the votes were cast, and the fight went from the ballot box to the courtroom. In April 2010, a judge struck down the adoption ban as the state attorney general and conservative groups, including the Arkansas Family Council, prepared to appeal his ruling.

# Postelection developments

Act 1 supporters hailed their victory as a sign of “God’s divine providence.” Opponents called it “a sad moment for all of us and for the children of Arkansas.” The day after the election, Jerry Cox sent out a celebratory letter to Family Council supporters. Cox lavished his readers with praise:

*The Adoption Act carried 57 percent of the vote—an unquestionable margin of victory. This just goes to show that the power of good people acting in unison should not be underestimated. Our opponents poured tens of thousands of dollars into media advertising against us. . . They paid tens of thousands of dollars for polling and campaign assistance. They found “experts” and judges willing to speak out against us. They released videos, held news conferences, formed rallies, and made a notable showing at polling places.*

*By worldly standards, our opponents did everything a group should to win a campaign, but at the end of the day, all the money and all the outsourced expertise just couldn’t compete with the power and the passion of some 2,700 volunteers and 1,000 churches working throughout Arkansas to pass Act 1. I really believe that it was God’s divine providence and your hard work that made this day possible... Because of your dedication, children will be placed in better homes. Because of your determination, a gay agenda that our opponents brought to Arkansas has been put on its heels . . . For now, enjoy this victory that—by the grace and power of God—you won.<sup>48</sup>*

The same day, Family Council Vice President John Thomas told *The Baptist Press*, “Much money had been poured in to defeat the act from out-of-state, pro-gay individuals—millionaires. They had bought a lot of media, a lot of television, and just flooded the markets. Lo and behold, when it was all said and done, we came out victorious by a wide margin. We are just thrilled today.”<sup>49</sup>

Several days later, Jerry Cox told a *New York Times* reporter, “I was very surprised that our margin of victory was as wide as it was. Our campaign was primarily grassroots. The opposition was primarily a media campaign. They did everything they should have done to win. But we won.”<sup>50</sup>

The Families First coalition, smarting from Act 1’s success—and perhaps also from the stumbles of its unsuccessful campaign—cast an eye to the future, vowing to continue the

fight to overturn the ban. The coalition solicited testimonials from individuals and families affected by the ban, asking them to share their stories and concerns

On November 21, the Center for Artistic Revolution organized a rally on the steps of the Capitol in Little Rock to protest Act 1. In front of the Capitol, Rev. Wendell Griffen—a retired judge for the Arkansas Court of Appeals, lawyer, and Baptist minister—urged opponents to continue protesting until the law was repealed.

In December, the Arkansas ACLU sent out an email, asking “anyone who will be immediately harmed by the initiative” to contact them. Just before the end of the year, the ACLU filed a complaint on behalf of 29 plaintiffs,<sup>51</sup> alleging that, “Act 1’s blanket exclusion of a whole class of potentially qualified foster and adoptive parents, both gay and heterosexual—including even those who are kin to the children they seek to foster or adopt—violates the State’s legal duty to place the best interests of children before all else.”

The adoption ban took place January 1, 2009. The ACLU complaint demonstrated that Act 1 was already putting families at risk, from a grandmother wanting to adopt her grandchild to a woman who wanted to become a foster or adoptive parent to a child in state custody. The ACLU prepared to go to trial in May 2010, but in April a state judge struck down the adoption ban, ruling that Act 1 “significantly burdens non-marital relationships and acts of sexual intimacy between adults because it forces them to choose between becoming a parent and having any meaningful type of intimate relationship outside of marriage.”<sup>52</sup> According to the judge, Act 1 “infringes upon the fundamental right to privacy guaranteed to all citizens of Arkansas.”<sup>53</sup>

Conservatives quickly condemned the ruling. Jerry Cox, head of the Arkansas Family Council called the judge’s decision a “classic case of judicial tyranny” and promised to appeal.<sup>54</sup> The state attorney general announced that the state would also appeal, while at the same time, the Arkansas Department of Human Services told its staff to begin accepting applications from unmarried couples who wanted to be foster or adoptive parents.



# Lessons learned

In a web post the day after the election, a blogger for the *Arkansas Times* mulled over possible explanations for Act 1’s passage and concluded, “I’m not ready to argue definitively for any theory, but I think there are contributing factors in the Act 1 outcome in addition to God’s message to Jerry Cox that he wanted to marginalize homosexuals.”<sup>55</sup>

In some ways, same-sex adoption rights supporters were better positioned for success than their conservative opponents. They had more financial resources, a stronger media campaign, and a more diverse coalition of supporters, experts, and activists. Yet Act 1 passed, and not by a small margin.

What’s clear is that the Arkansas campaign contains lessons for same-sex adoption advocates and faith communities in other states—lessons that can provide guidance for future struggles in terms of outreach, strategy, messaging, and organizing. Among those lessons:

- Mobilize early
- Resolve tensions between campaign pragmatists and movement idealists
- Build a strong infrastructure with extensive grassroots outreach
- Develop specific faith messages and messengers for different faith traditions
- Challenge antigay rhetoric
- Don’t write off certain geographic areas or faith communities as unwinnable
- Tackle religious issues head-on
- Frame the narrative and keep your opponent on the defensive
- Humanize the issue

Let’s consider each of these lessons in turn.

---

## Mobilize early

When asked what they should have done differently, virtually all Act 1 opponents say they should have started sooner. A lagging beginning hurt their campaign in terms of message development, fundraising, and alliance building. If they had mobilized earlier, they might have been able to stop the battle before it began by running a successful “decline to sign, think before you ink” campaign as conservative activists were struggling to get enough petition signatures.

Advocates facing similar campaigns should front load their energy and efforts in order to stop such campaigns before they start. And if a campaign does get off the ground, advocates should be ready at the outset with strong faith alliances, messages, messengers, and outreach.

Adoption rights supporters had a number of explanations for their late start, based on a variety of factors. They assumed that Sen. Hillary Clinton would be the presidential nominee and would motivate a large turnout of progressive voters. They heeded the advice of polling experts to stay below the radar, and to polling that said they were winning. But the experience in Arkansas serves as a lesson that nothing can be taken for granted in political organizing, and that it is essential to start early and be prepared.

Turning out voters is equally important. Act 1 opponents were at a disadvantage, with significantly fewer moderates and Democrats going to the polls. Getting out the vote is the ultimate test. No matter how many allies an issue may have, unless they vote they don't count on Election Day.

---

## Resolve tensions between campaign pragmatists and movement idealists

Postelection, opinions remained mixed among Arkansas progressives about whether the decision to focus their campaign message on children's needs instead of discrimination against lesbian and gay families was a mistake—especially given the fact that the “sin of homosexuality” was a hallmark of conservatives' campaign.

For some, the failure to address gay and lesbian issues was a fatal flaw. Others believed that a single-focused message would have done more harm than good. Rev. Wendell Griffen, an African-American Baptist minister, lawyer, and retired judge, says his advice to the coalition would have been to emphasize “that [Act 1] applied equally to heterosexuals and homosexuals ... The issue here was not solely gay marriage or gay rights; but parenting.”<sup>56</sup>

Tensions between pragmatists and idealists are not confined to Arkansas. As elsewhere, it may be that disagreements cannot be resolved to the full satisfaction of everyone. Nonetheless, leaders must recognize that campaigns need unity on such basic aspects as core messaging.

One of the coalition leaders, Rev. Joyce Hardy, said at the 2009 Human Rights Campaign's Clergy Call, “We [in Arkansas] need to have one coalition or at least have all coalitions on the same page, [because] there has been a history of tension between some of the LGBT organizations.” According to Hardy, faith leaders could have been involved as mediators, helping to find common ground. It is essential that campaigns be mindful of the power of a united front.

---

## Build a strong infrastructure with extensive grassroots outreach

The conservative Arkansas Family Council launched its Act 1 campaign with a strong grassroots network solidly in place and a heavy reliance on evangelical churches. In contrast, Act 1 opponents had nothing comparable, despite the fact that in 2004 they faced a similar battle with the Family Council’s network of churches working to pass a ban on same-sex marriage. Progressives lost in 2004, and they lost again in 2008.

Past experience should have been persuasive that a larger budget and media campaign do not compensate for a lack of grassroots outreach in which people talk to their neighbors, family, friends, co-workers and fellow worshippers about issues important to them.

In addition, legal challenges are not sufficient by themselves. They are expensive and labor intensive and need to be part of a larger effort that includes grassroots support.

---

## Develop specific faith messages and messengers for different faith traditions

In Arkansas, some mainline and progressive faith leaders were reluctant to “politicize from the pulpit” and speak out against the adoption ban, fearing they would polarize some congregants.

Other progressive faith leaders, however, were eager to speak out in support of same-sex adoption and foster parenting.

Campaigns must identify and train such faith leaders. In addition, they must realize that “one size fits all” messaging does not work in diverse faith communities and that the most effective messengers are usually those from within a community. This holds especially true when an issue such as same-sex adoption raises questions that faith traditions respond to differently.

In addition to respecting denominational diversity, it is important to respect racial diversity in faith communities. In Arkansas, a number of progressives who worked on the campaign agreed that they should’ve done more to work with African-American faith leaders and communities in opposing Act 1. The steering committee of the progressive Arkansas Families First coalition had no minority representation. In contrast, conservative Jerry Cox and his organizations were actively trying to appeal to conservative black clergy for Act 1 support.

According to Rev. Wendell Griffen, an African-American minister who opposed Act 1, many black congregants are “sensitive to this issue [of foster care and adoption].” Progressive campaign staffers could have found leaders within black congregations who would’ve carried messages that resonated with the needs and experiences of their community and served as spokespeople to the campaign at large.

---

## Challenge antigay rhetoric

Arkansas conservatives worked to frame adoption rights advocacy as part of a broader “gay agenda” in which “outsiders” would intrude upon parental rights and religious liberty. Conservatives framed same-sex adoption and foster parenting as a dangerous experiment, as if gays in Arkansas were using children for their own ends. Conservatives hinted at a homosexual conspiracy, saying that outsiders with millions of dollars were trying to force their alien views on the people of Arkansas.

Such vicious messages must be rebutted quickly and vigorously in a variety of ways, including a strong grassroots and media campaign. It is also important for progressives to ensure that their messages are the dominant ones.

---

## Don't write off certain geographic areas or faith communities as unwinnable

In Arkansas, the efforts of progressive faith leaders were largely concentrated in the Little Rock area, the most progressive part of the state. Some campaign leaders assumed that clergy were organizing in other parts of the state, but had no effective way to ascertain if this was actually happening—and upon learning it wasn't, to correct the situation.

Some progressive faith leaders regretted that the campaign didn't reach the state's more rural areas. They believed there would have been voters, including people of faith, in small towns who would have been open to listening to opponents of Act 1 and their message. Unfortunately, those citizens were never reached.

---

## Tackle religious issues head-on

One of the fiercest arguments of conservative faith communities opposed to human rights for lesbian, gay, bisexual, and transgender Americans is that the Bible says homosexuality is sinful. Most often, this belief is based upon a literal interpretation of the Bible that does not take into account historical context or varied interpretations.

Engaging in a battle of Bible verse is both futile and counterproductive, but nonjudgmental, honest conversations exploring which passages in the Bible are taken literally, and which aren't, and why that might be, can begin to lead to new thinking. Crucial factors in these conversations include lack of judgment, open-mindedness, and trusted participants.

As conservative people of faith grapple with their beliefs in a changing world, it is important to address these beliefs and their sources, rather than dismiss them out of hand.

---

## Frame the narrative and keep your opponent on the defensive

Some campaign analysts said that same-sex adoption rights supporters failed to put forth a compelling vision and message that appealed to sufficient numbers of voters. Furthermore, they failed to effectively challenge conservatives and put them on the defensive when it came to the contradiction between their narrow moralizing and the teachings of most faith traditions.

One of the ministers who opposed Act 1 explained: “If the integrity of the faith is important, [we] should have said, ‘look, we’re not going to let our faith be contaminated by these other religious arguments.’ Religion is hijacked by whomever you allow to hijack it. Without a counter-argument, they win.”<sup>57</sup>

---

## Humanize the issue

Facts are important in a political campaign, but they are not sufficient to win. People are rarely persuaded by facts alone. When confronted with facts that run counter to their values and beliefs, people often dismiss facts as unreliable or irrelevant. As a result, it is crucial to go beyond rational arguments to include appeals that also touch people’s hearts and souls.

Children and families are at the center of the adoption and foster parenting debate. Campaigns should include their stories. They should portray the conditions of children living in state custody, and of those placed in the stable loving homes of gay and lesbian parents. Campaigns should also include the legal barriers faced by straight parents who could be prohibited from allowing gay or lesbian siblings to adopt their children, if something should happen to them.

Such an approach may meet with less resistance than one thinks. As one faith leader said, “In every large religious body, there are people who may be privately known to be gay and often may be leaders or very involved [in the church]. Clergy members should have said, ‘Wait a minute. These are people teaching our children to sing, to play sports.’ How do you stand before your entire congregation and say, ‘All these people are unfit?’”<sup>58</sup>

Facts and expert findings are important elements of a campaign, but they should be balanced with human impact stories, inclusive moral messages, and a vision that resonates with all people, including those of faith.

# Conclusion

The issue of same-sex or second-parent adoption is on the horizon in a number of states (see box). The issue is expected to increase in urgency, as conservatives push back against legislative and societal gains made by gay and lesbian groups with divisive measures such as the Arkansas ballot initiative.

At the same time, the number of gay, lesbian, and bisexual Americans raising children continues to grow. Right now, there are about 1 million lesbian and gay parents raising approximately 2 million children in the United States. Many are foster care families. For instance, lesbian and gay parents are raising nearly one-third (32 percent) of all foster children with disabilities.

On the federal level, legislation has been introduced in the House of Representatives to help children in need by forbidding discrimination against potential foster and adoptive parents. The Every Child Deserves a Family Act aims to end discriminatory state laws and practices that ban certain groups from becoming adoptive and foster parents based on their sexual orientation, gender identity, or marital status.

As legislative measures move forward and as lawsuits fight back, it is essential for progressive advocates and faith communities to join together to win the minds and hearts of Americans on same-sex adoption. It is important to make clear that being pro-family includes support for gay and lesbian parents, recognizing that they provide stable loving homes for thousands of children in need. Furthermore, it is important to translate that support into public demand for policies that help children by prohibiting categorical discrimination against those who are capable and willing to become parents. We must act now to support and strengthen all of America's families.

# Same-sex adoption in the United States according to the National Gay and Lesbian Task Force and the Human Rights Campaign

## Defining the terms

- Second-parent adoption: a legal procedure that allows a second parent to adopt the biological or adopted child of his or her partner.
- Joint adoption: a legal procedure permitting a couple to adopt a child from his or her biological parents or from state custody.

## State laws

States with **full** second-parent and joint adoption rights, including Washington, D.C.:

- California
- Colorado
- Connecticut
- Illinois
- Massachusetts
- New Jersey
- New York
- Vermont
- Washington, D.C.

States with **some** level of legal second-parent and joint adoption rights:

- Alabama (second-parent adoption allowed in some jurisdictions)
- Alaska (second-parent adoption allowed in some jurisdictions)
- Arkansas (joint adoption ban overturned by judge—case to be decided by state Supreme Court)
- Delaware (second-parent adoption allowed in some jurisdictions)
- Hawaii (second-parent adoption allowed in some jurisdictions)
- Indiana (joint adoption, second-parent adoption allowed in some jurisdictions)
- Iowa (joint adoption, second-parent adoption allowed in some jurisdictions)
- Louisiana (second-parent adoption allowed in some jurisdictions)
- Maine (joint adoption allowed statewide)
- Maryland (second-parent adoption allowed in some jurisdictions)
- Minnesota (second-parent adoption allowed in some jurisdictions)
- Nevada (joint and second-parent adoptions allowed in some jurisdictions)
- New Hampshire (joint and second-parent adoptions allowed in some jurisdictions)

- New Mexico (second-parent adoption allowed in some jurisdictions)
- North Carolina (second-parent adoptions allowed in some jurisdictions)
- Oregon (full joint adoption rights, second-parent adoption allowed in some jurisdictions)
- Pennsylvania (second-parent adoption allowed statewide)
- Rhode Island (second-parent adoption allowed in some jurisdictions)
- Texas (second-parent adoption allowed in some jurisdictions)
- Washington (joint adoption, second-parent adoption allowed in some jurisdictions)

States in which joint or second-parent adoption is either **completely illegal or specifically limited to heterosexual married couples**:

- Florida—law specifically states a gay person cannot adopt; this law has been appealed to the state Supreme Court and is pending decision.
- Mississippi—same-sex couples cannot jointly adopt; same-sex second-parent adoption highly unlikely but the law is not explicitly clear on this.
- Utah—same-sex couples are prohibited from adopting.
- Wisconsin—law is unclear but probably unfavorable to same-sex joint adoption; second-parent adoption forbidden.

The 17 states below have **no clear laws on record** regarding joint and second-parent adoption:

- Arizona
- Georgia
- Idaho
- Kansas
- Kentucky\*\*
- Michigan\*
- Missouri
- Montana
- Nebraska\*\*
- North Dakota
- Ohio\*\*
- Oklahoma
- South Carolina
- South Dakota
- Tennessee
- Virginia
- West Virginia
- Wyoming

\* State courts in Michigan have ruled that unmarried couples are not allowed to jointly adopt.

\*\* State courts have ruled that second-parent adoptions are not permitted.

Source: The National Gay and Lesbian Task Force,<sup>59</sup> and the Human Rights Campaign<sup>60</sup>



# Endnotes

- 1 Total number of licensed, nonrelative foster homes in Arkansas in 2008, available at [http://www.hunter.cuny.edu/socwork/nrcfcp/info\\_services/state/Arkansas.pdf](http://www.hunter.cuny.edu/socwork/nrcfcp/info_services/state/Arkansas.pdf).
- 2 American Civil Liberties Union, "Cole v. Arkansas: Brief in Support of Motion for Summary Judgment," February 9, 2010, available at <http://www.aclu.org/lgbt-rights/cole-v-arkansas-brief-support-motion-summary-judgment>.
- 3 U.S. Department of Health and Human Services, Administration for Children & Families, "Children in Public Foster Care Waiting to be Adopted: FY 1999 thru FY 2006" (Department of Health and Human Services, 2008), available at [http://www.acf.hhs.gov/programs/cb/stats\\_research/afcars/waiting2006.htm](http://www.acf.hhs.gov/programs/cb/stats_research/afcars/waiting2006.htm).
- 4 American Civil Liberties Union, "Cole v. Arkansas—Case Profile," April 16, 2010, available at [http://www.aclu.org/lgbt-rights\\_hiv-aids/cole-v-arkansas-case-profile](http://www.aclu.org/lgbt-rights_hiv-aids/cole-v-arkansas-case-profile). 348.
- 5 American Civil Liberties Union, "Cole v. Arkansas—Case Profile," April 16, 2010, available at <http://www.aclu.org/lgbt-rights/cole-v-arkansas-order>.
- 6 The Tolbert Report, "Jerry Cox Comments on Piazza's Ruling Act 1 Unconstitutional," April 16, 2010, available at <http://tolbertreport.com/2010/04/16/jerry-cox-comments-on-piazza%E2%80%99s-ruling-act-1-unconstitutional/>.
- 7 Off-the-record interview with one of the participants of the Arkansas Families First coalition. June 22, 2009.
- 8 Text of Senate Bill 959, State of Arkansas, available at <http://www.arkleg.state.ar.us/assembly/2007/R/Bills/SB959.pdf>.
- 9 Regulation 200.3.2 read in part, "Homosexual, for purposes of this rule, shall mean any person who voluntarily and knowingly engages in or submits to any sexual contact involving the genitals of one person and the mouth or anus of another person of the same gender, and who has engaged in such activity *after the foster home is approved* or at a point in time that is reasonably close in time to the filing of the application to be a foster parent." Emphasis added. Available at <http://www.adoptvt.com/pdfs/LegalResources/2006-07-10-Arkansas-same-sex-adoption-case.pdf>.
- 10 American Civil Liberties Union, "Howard v. Arkansas—Case Profile," March 5, 2007, available at <http://www.aclu.org/lgbt-rights/howard-v-arkansas-case-profile>.
- 11 Letter from the Arkansas Attorney General to Robert S. Shafer, September 5, 2007, available at <http://ag.arkansas.gov/opinions/docs/2007-248.html> (last accessed April 6, 2010).
- 12 Utah's adoption statute provides, "A child may not be adopted by a person who is cohabiting in a relationship that is not a legally valid and binding marriage under the laws of this state." Utah Code Ann. §78B-6-117(1) (2008). It also stipulates that, subject to a series of exceptions, children should be placed with "a man and a woman who are married to each other," *Id.* At §78B-6-117(4) (2008), available at [http://le.utah.gov/~code/TITLE78B/htm/78B06\\_011700.htm](http://le.utah.gov/~code/TITLE78B/htm/78B06_011700.htm).
- 13 Laura Kellams, "Groups pushing causes seek voters' signatures," *The Arkansas Democrat-Gazette*, June 23, 2008.
- 14 Charlie Frago, "Petitions to restrict adoption hit mark," *The Arkansas Democrat-Gazette*, August 26, 2008.
- 15 Kellams, "Groups pushing causes seek voters' signatures."
- 16 Center for Artistic Revolution, "All of Arkansas' Families Matter," available at [http://www.artisticrevolution.org/contents/index.php?option=com\\_content&view=article&id=11&Itemid=100015](http://www.artisticrevolution.org/contents/index.php?option=com_content&view=article&id=11&Itemid=100015).
- 17 Family Council, "About Us," available at [http://familycouncil.org/?page\\_id=13](http://familycouncil.org/?page_id=13).
- 18 Families First Foundation of Arkansas, "A Letter from a Supporting Congregation," available at <http://arfamiliesfirst.org/shell.php?page=letter>.
- 19 Families First Foundation of Arkansas, "Homosexual Parenting," available at [http://www.arfamiliesfirst.org/shell.php?page=homosexuality/homosexual\\_parenting](http://www.arfamiliesfirst.org/shell.php?page=homosexuality/homosexual_parenting).
- 20 Larry Page, "Ten Important Factors in a Church-Led Grassroots Election Campaign to Oppose the Expansion of Legalized Gambling," Arkansas Faith and Ethics Council, available at <http://www.afec.org/issues/gambling/gambling-vote.htm>.
- 21 Arkansas Watch, "Help circulate petition on Homosexual Ban on Adoption," February 28, 2008, available at <http://arkansaswatch.blogspot.com/2008/02/help-circulate-petition-on-homosexual.html>.
- 22 Coalition member groups were the Arkansas Chapter of the American Academy of Pediatrics; the Arkansas Chapter of the National Association of Social Workers; the Arkansas ACLU; the Arkansas InterFaith Alliance; the Arkansas Public Policy Panel; Arkansas Advocates for Children and Families; Stonewall Democrats of Arkansas; the Arkansas Psychological Association; Just Communities of Central Arkansas; and Foster Care Alumni of America. Arkansas Families First, "Coalition Members of Arkansas Families First," available at <http://arkansasfamiliesfirst.org/outreach/coalition/>.
- 23 In December 2008, Arkansas Advocates for Children and Families released a report addressing what it called Arkansas's "child welfare crisis." The report charged the Arkansas Division of Children and Families Services, or DCFS, with failure to meet its responsibility of protecting children in the state foster care system. It noted that in 2008 alone, several children died from abuse while in the Arkansas foster care system. AACF called upon citizens to help protect children by serving as foster parents and urged legislators and policymakers to provide DCFS with the necessary tools. The report concluded, "All Arkansans bear responsibility to ensure that our children have the opportunity to reach their full potential...Arkansas children can't wait any longer" and is available at <http://www.aradvocates.org/assets/PDFs/AACF-2008-child-welfare-report.pdf>.
- 24 Pew Forum on Religion & Public Life, "U.S. Religious Landscape Survey," available at <http://religions.pewforum.org/maps>.
- 25 Arkansas Families First, "Drive kicks off to ban foster care by partners," available at <http://arkansasfamiliesfirst.org/learn/news/07.php>.
- 26 Rita Sklar, telephone interview, June 29, 2009.
- 27 Steve Copley, telephone interview, June 3, 2009.
- 28 Off-the-record interview with participant of Arkansas Families First coalition. June 22, 2009.
- 29 *The Arkansas Democrat-Gazette*, "Adoption-ban group seeks cash," March 23, 2008.
- 30 Center for Artistic Revolution, "All of Arkansas' Families Matter."
- 31 Randi Romo, telephone interview, June 25, 2009.
- 32 Family Council Action Committee, "Radio and Newspaper Ads!" available at <http://adoptionact.familycouncilactioncommittee.com/listen.asp>.
- 33 Off-the-record interview with one of the participants of the Arkansas Families First coalition. July 9, 2009.
- 34 *Ibid.*
- 35 Janine Parry, "The Arkansas Poll, 2008: Summary Report" (Fayetteville, AR: University of Arkansas Department of Political Science, 2008), available at <http://www.uark.edu/depts/plsinfo/partners/arkpoll.php>.

- 36 Bill Bowden, "Arkansas Poll tilts to McCain," *The Arkansas Democrat-Gazette*, October 24, 2008.
- 37 Arkansas Secretary of State, "2008 General Election and Non Partisan Judicial Run-off Election and Special General Election for Prosecuting Attorney 9-W," available at <http://www.arelections.org/index.php?acshow:turnout=1&elecId=181>.
- 38 Seth Blomeley, "Agency accused of 'gay agenda,'" *The Arkansas Democrat-Gazette*, October 11, 2008.
- 39 Max Brantley, "Clergy: Vote 'No' on Initiated Act 1," *Arkansas Times's Arkansas Blog*, October 21, 2008, available at [http://www.arktimes.com/blogs/arkansas-blog/2008/10/vote\\_no\\_on\\_initiated\\_act\\_1\\_8.aspx](http://www.arktimes.com/blogs/arkansas-blog/2008/10/vote_no_on_initiated_act_1_8.aspx).
- 40 In 2008, there were 3,700 Arkansas children in the foster care system. This figure is especially troubling when one considers that there are only 1,100 homes available in the state for permanent placement.
- 41 Foster Care Alumni of America estimates that over the past decade, at least 1,800 children in the Arkansas foster care system never found families before turning 18. Info available at <http://arkansasfamiliesfirst.org/learn/blog/2008/10/foster-care-alumni-of-america-oppose.html>.
- 42 Erin Roach, "Ark. Passes ban on unmarried adoptions," *Baptist Press*, November 5, 2008, available at <http://www.bpnews.net/BPnews.asp?ID=29269>.
- 43 Ibid.
- 44 Greenberg Quinlan Rosner, "Third Way Arkansas," November 5-11, 2008.
- 45 More so than in any other state, a much higher percentage of Arkansans voted for John McCain in 2008 than voted for George W. Bush in 2004. See Tom Baxter, "Arkansas, the reddest, bluest state," *Southern Political Report*, November 14, 2008, available at [http://www.southernpoliticalreport.com/storylink\\_1114\\_663.aspx](http://www.southernpoliticalreport.com/storylink_1114_663.aspx).
- 46 Shaila Dewan, "Obama's Southern Strategy Omits Arkansas, So Far," *The New York Times*, August 16, 2008.
- 47 Ibid.
- 48 Max Brantley, "Why Act 1 was not defeated," *Arkansas Times's Arkansas Blog*, November 5, 2008, available at [http://www.arktimes.com/blogs/arkansas-blog/2008/11/why\\_act\\_1\\_was\\_defeated.aspx](http://www.arktimes.com/blogs/arkansas-blog/2008/11/why_act_1_was_defeated.aspx).
- 49 Roach, "Ark. Passes ban on unmarried adoptions."
- 50 Robbie Brown, "Antipathy toward Obama Seen as Helping Arkansas Limit Adoption," *The New York Times*, November 9, 2008.
- 51 *Cole v. Arkansas*.
- 52 *Sheila Cole v. The Arkansas Department of Human Services, et al, and Family Council Committee, et al*, available at <http://tolbertreport.com/wp-content/uploads/2010/04/Act1Order.pdf>. 60CV-08-14284.
- 53 Ibid.
- 54 The Tolbert Report, "Jerry Cox Comments on Piazza's Ruling Act 1 Unconstitutional."
- 55 Brantley, "Why Act 1 was not defeated."
- 56 Wendell Griffen, telephone interview, June 22, 2009.
- 57 Off-the-record interview with faith leader who participated in Arkansas Families First coalition. June 22, 2009.
- 58 Ibid.
- 59 This pdf file includes a map and detailed information on whether or not second-parent adoption in the state is upheld by court decision, etc. See National Gay and Lesbian Task Force, "Second-Parent Adoption in the U.S.," November 4, 2008, available at <http://www.outfront.org/files/pg332/Secondparentadoption.pdf>.
- 60 Human Rights Campaign, "Parenting Laws: Second Parent Adoption," available at [http://www.hrc.org/documents/parenting\\_laws\\_maps.pdf](http://www.hrc.org/documents/parenting_laws_maps.pdf) (last accessed April 12, 2010).

---

## About the authors

Sally Steenland is the Senior Policy Advisor to the Faith and Progressive Policy Initiative at the Center for American Progress.

Nan Futrell is a former legal intern for the Faith and Progressive Policy Initiative at the Center for American Progress. She will graduate from the University of North Carolina School of Law in May 2010.

Marta Cook is the Fellows Assistant to the Faith and Progressive Policy Initiative and the Progressive Studies Program at the Center for American Progress.

---

## Acknowledgements

We would like to thank the Arcus Foundation for its generous support of this report and our Progressive Faith and Family Equality project. We would especially like to thank Tom Kam, our Arcus program director, for his expert guidance. We greatly appreciate his feedback, insights, and suggestions in our work.

We would also like to thank the many colleagues who provided input into the project and reviewed the report. They include Rev. Susan Thistlethwaite, Sayak Mukherjee, Eleni Towns, Jeff Krehely, Winnie Stachelberg, Josh Rosenthal, Rev. Gene Robinson, Rev. Irene Monroe, Leslie Cooper, Rev. Joyce Hardy, Sean Lund, Jon Hoadley and others.

We would like to thank CAP's editorial team for their expert editing and artistic design, notably Ed Paisley and Shannon Ryan. In addition, we would like to thank the advocates and allies we interviewed in Arkansas for sharing their views and for their commitment to full human rights for gay, lesbian, and bisexual families.

## Note on interviews

In doing our research, we conducted a series of interviews with a number of the participants and leaders in the Act 1 ballot initiative campaign. Some interviews were on the record, while others were background and off the record. The distinctions are noted in the endnotes.

---

---

The Center for American Progress is a nonpartisan research and educational institute dedicated to promoting a strong, just and free America that ensures opportunity for all. We believe that Americans are bound together by a common commitment to these values and we aspire to ensure that our national policies reflect these values. We work to find progressive and pragmatic solutions to significant domestic and international problems and develop policy proposals that foster a government that is “of the people, by the people, and for the people.”

---

---

