Hiding Behind Faith

BY KATHRYN A. CALO • MAY 22, 2017

A reasonable amount of uncertainty, speculation, and even fear is expected with any change. Recently, we have seen a change among states and laws governing child welfare agencies and same-sex adoption.

On May 3, 2017, Alabama Governor Kay Ivey signed into law a bill that allows "faith-based" adoption and foster agencies to refuse services to same-sex couples if it violates the agency's religious convictions. The bill (House Bill 24) provides that "[t]here is no compelling reason to require a child placing agency to violate its sincerely held religious beliefs in providing any service, since alternative access to the services is equally available." Opponents of the bill argue that this law amounts to legalized discrimination against the LGBT community. The bill was amended by the Senate prior to its passage to exclude any agencies that receive state or federal funding. Nonetheless, it is estimated that 30% of Alabama's adoptions are placed through these private "faith-based" agencies.

Texas has followed suit with its House of Representatives approving a bill that would allow agencies to refuse services if they conflict with the agency's religious beliefs. Unlike Alabama's bill, the proposed Texas bill would extend to agencies who receive state funding and would extend beyond the LGBT community including to non-Christians and prospective parents who have been divorced. If ultimately enacted as law, agencies would be free to deny services for religious reasons and the state would be prohibited from instituting any penalties. This has stirred much controversy especially because it would allow agencies funded by tax dollars to deny services to the taxpayers. It is estimated that 25% of Texas' welfare agencies are "faith-based."

So what does this all mean? With the enactment of these laws, we can expect to see challenges in the federal courts. If you live in Massachusetts, it is unlikely you will see this type of legislation approved or enacted due to the breadth of our anti-discrimination laws. The same is probably true for the handful of other states with similarly enacted anti-discrimination laws. As for the remainder of the country, it remains to be seen where they will come down on this issue or whether the Supreme Court will weigh in.

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