

# CASE NO. 10-840

IN THE SUPREME COURT OF  
THE STATE OF ARKANSAS

THE ARKANSAS DEPARTMENT OF HUMAN SERVICES, ET AL.

and

FAMILY COUNCIL ACTION COMMITTEE, ET AL.

v.

CASE NO. 10-840

SHEILA COLE, ET AL.

APPELLANTS

INTERVENOR-APPELLANTS

APPELLEES

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ON APPEAL FROM THE CIRCUIT COURT OF PULASKI COUNTY

THE HONORABLE CHRIS PIAZZA, CIRCUIT JUDGE

**MOTION BY LAMBDA LEGAL DEFENSE AND EDUCATION  
FUND, INC. AND OTHER CIVIL RIGHTS ORGANIZATIONS  
FOR PERMISSION TO FILE A BRIEF *AMICUS CURIAE*  
IN SUPPORT OF APPELLEES-CROSS-APPELLANTS**

Come now Lambda Legal Defense and Education Fund, Inc.; Children of Lesbians and Gays Everywhere; Family Pride Coalition; Human Rights Campaign; Human Rights Campaign Foundation; National Gay and Lesbian Task Force; Parents, Families and Friends of Lesbians and Gays; Stonewall Democratic Club of Arkansas; Southern Poverty Law Center; and Anti-Defamation League, and, pursuant to Rule 4-6(a) of the Rules of the Supreme Court and Court of Appeals of the State of Arkansas, move for leave to file a brief *amicus curiae* in this appeal. In support of this motion, applicants state as follows:

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## INTERESTS OF THE APPLICANTS AND NECESSITY OF THE BRIEF

Proposed *amici* are organizations dedicated to the advancement of civil rights, including the rights of lesbian and gay individuals. These organizations, described in greater detail below, rely on federal rights to due process and equal protection as critical bulwarks against government discrimination. Pursuant to Rule 4-6(a), applicants respectfully submit that this *amicus* brief is necessary for the following reasons.

Proposed *amici* believe that the voter-initiated legislation challenged in this appeal, Ark. Code Ann. §§ 9-8-301-306 (2010), titled “An Act Providing That An Individual Who Is Cohabiting Outside Of A Valid Marriage May Not Adopt Or Be A Foster Parent Of A Child Less Than Eighteen Years Old” (“Act 1”), violates both the Arkansas and the United States Constitutions. Act 1 infringes the fundamental right of adults to maintain intimate cohabiting relationships and serves no rational, much less compelling and narrowly tailored, child welfare purpose.

The proposed brief *amicus curiae* specifically addresses the federal constitutional rights to due process and equal protection, guaranteed under the Fourteenth Amendment, which Act 1 impermissibly denies to unmarried cohabiting prospective foster and adoptive parents. *Amici* submit this brief to respond to the conclusion erroneously reached by the court below that Act 1 does not infringe these federal rights, as well as to the arguments advanced on this question by the Appellants-Cross-Appellees. This brief is submitted in support of Appellees-Cross-Appellants to assist this Court in its consideration of the federal rights at stake and appropriate application of federal standards of review. The brief offers the perspective of the applicant civil rights organizations on these questions central to this appeal, and does not enlarge the issues presented by the parties.

**PROPOSED AMICI**

**LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC.** (“Lambda Legal”) is a national legal organization committed to advancing the civil rights of lesbian, gay, bisexual and transgender (LGBT) people through litigation, public policy advocacy and education. Lambda Legal has served as counsel in cases in the United States Supreme Court establishing the federal constitutional rights of lesbian and gay adults, including *Lawrence v. Texas*, 539 U.S. 558 (2003), which confirmed that unmarried, same-sex couples have a fundamental federal right to maintain intimate relationships, and *Romer v. Evans*, 517 U.S. 620 (1996), which struck down an anti-gay voter-initiated state constitutional amendment violating the federal guarantee of equal protection. Lambda Legal also was counsel in *Jegley v. Picado*, 349 Ark. 600, 80 S.W.3d 332 (2002), which struck down this State’s same-sex sodomy prohibition and confirmed the constitutional right to privacy protected under the Arkansas Constitution.

A decade ago Lambda Legal established its Youth in Out-of-Home Care Project (“YOHCP”) to raise awareness and advance reforms on behalf of LGBT youth in child welfare, juvenile justice and homeless systems of care and on behalf of the adults who care for these young people. As part of its effort to ensure permanency for children in the child welfare system, the YOHCP has worked to combat misguided efforts to prohibit otherwise qualified lesbian and gay adults from becoming foster or adoptive parents. Lambda Legal has participated as counsel or *amicus curiae* in cases challenging discrimination against prospective lesbian and gay foster or adoptive parents, including, for example, *State ex rel. Kutil v. Blake*, 223 W. Va. 711, 679 S.E.2d 310 (2009); *Dep’t of Human Servs. v. Howard*, 367 Ark. 55, 238 S.W.3d 1 (2006); and *Lofton v. Sec’y of the Dep’t of Children & Family Servs.*, 358 F.3d 804 (11th Cir. 2004).

**CHILDREN OF LESBIANS AND GAYS EVERYWHERE** (“COLAGE”), founded in 1990, is the only national youth-driven network of people with an LGBT parent. Although LGBT families are just like other families in many ways, people with LGBT parents face the every day reality that their families are treated differently. Growing up with a family that is discriminated against can be isolating and challenging. COLAGE helps the over two million children with nearly one million LGBT parents in the United States become strong advocates for themselves and their families. Based on COLAGE’s 20 years of expertise in LGBT family matters, it urges the court to ultimately overturn Arkansas voter-initiated Act 1 and, in so doing, recognize and respect the legal rights due to all families.

**FAMILY EQUALITY COUNCIL**, founded in 1979, is a national organization working to achieve social and legal equality for LGBT families by providing direct support, educating the American public, and advancing policy reform that ensures full recognition and protection under the law. Family Equality Council has more than 50,000 supporters and is the only national organization exclusively dedicated to securing equality for LGBT parents and their children. Many of the organization’s members serve or have served as foster parents and have adopted children from the foster care system. Family Equality Council believes that a state has an obligation to serve the best interests of each and every child in its care and that no state should deny the thousands of children in foster care access to qualified adults who are willing to provide them with loving, caring and safe homes.

**HUMAN RIGHTS CAMPAIGN** (“HRC”), the largest national LGBT political organization, envisions an America where LGBT people are ensured of their basic equal rights, and can be open, honest and safe at home, at work and in the community. Given the overwhelming social science evidence and opinions of leading child welfare, psychological and

children's health organizations that sexual orientation is irrelevant to parental ability, HRC believes that no one should be barred from the opportunity to serve as a foster parent or become an adoptive parent because he or she is gay, lesbian or bisexual. Likewise, no child should be denied a loving, nurturing home because of a state law based on nothing more than bias against a class of citizens. HRC has over 750,000 members and supporters, including more than 3,300 in the State of Arkansas, all committed to making fair treatment in parenting laws a reality.

**HUMAN RIGHTS CAMPAIGN FOUNDATION** ("Foundation") is an affiliated organization of the Human Rights Campaign. The Foundation's cutting edge programs develop innovative educational resources on the many issues facing LGBT individuals, with the goal of achieving full equality regardless of sexual orientation or gender identity or expression. The Foundation's Family Project is the most comprehensive and up-to-date resource for and about LGBT families. It provides legal and policy information about families, including resources about how to become a parent and how to protect the parent-child relationship, and provides public education in a range of areas, including adoption and foster care.

**NATIONAL GAY AND LESBIAN TASK FORCE** ("Task Force"), founded in 1973, is the first national LGBT civil rights and advocacy organization. The Task Force works to build the grassroots political strength of the LGBT community at the local, state and national levels in order to eliminate prejudice, violence and injustice against LGBT people. The Task Force conducts its work organizing in local communities, working at all levels of government to promote equitable laws and public policies, hosting the largest annual LGBT activist conference, and producing research, policy analysis and strategies to advance greater understanding of, and equality for, LGBT people.

**PARENTS, FAMILIES AND FRIENDS OF LESBIANS AND GAYS NATIONAL**

("PFLAG") is a national non-profit organization with more than 250 chapters and 200,000 members and supporters in all 50 states. PFLAG has two chapters in the State of Arkansas. PFLAG promotes the health and well-being of LGBT persons, their families and friends through support, to cope with an adverse society; education, to enlighten an ill-informed public; and advocacy, to end discrimination and to secure equal civil rights. As a family-based organization, PFLAG is deeply committed to supporting and advocating for the rights of same-sex couples and individuals who seek to become foster or adoptive parents, and to ensuring that LGBT families are honored with the same rights and responsibilities granted to heterosexual couples and their families.

**STONEWALL DEMOCRATIC CLUB OF ARKANSAS ("SDCA")** is a grassroots organization that seeks to advance equal rights for all people, regardless of sexual orientation or gender identity. The SDCA supports the Democratic Party and Democratic candidates who support its mission. The SDCA works to define and implement the platform policies of the Democratic Party at local, state and national levels to reflect the needs and desires of the LGBT community and leads the Democratic party to continue improving its record on issues important to the LGBT community, and standing up for LGBT families and LGBT civil rights.

**SOUTHERN POVERTY LAW CENTER ("Center")**, founded in 1971, is a nationally recognized leader in the area of civil rights litigation. The Center has litigated numerous pioneering civil rights cases on behalf of women, minorities, factory workers, mentally ill persons, children in foster care, prisoners facing barbaric conditions of confinement and many other victims of injustice. Although the Center's work is concentrated in the South, its attorneys

appear in courts throughout the country to ensure that all people receive equal and just treatment under federal and state law.

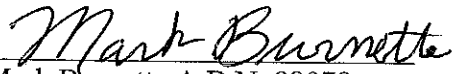
**ANTI-DEFAMATION LEAGUE** (“League”) was founded in 1913 to advance goodwill and mutual understanding among Americans of all creeds and races, and to secure justice and fair treatment to all. Today, it is one of the world’s leading civil and human rights organizations combating anti-Semitism, all types of prejudice, discriminatory treatment and hate. The League is committed to protecting the civil rights of all persons, and to assuring that each person receives equal treatment under the law.

Dated: October 27, 2010

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**CERTIFICATE OF SERVICE**

I, Mark Burnette, certify that on October 27, 2010, I caused the above and foregoing **Motion by Lambda Legal Defense and Education Fund, Inc. and Other Civil Rights Organizations for Permission to File a Brief *Amicus Curiae* in Support of Appellees-Cross-Appellants** to be served by U.S. mail, postage pre-paid, on the following persons at the addresses indicated:

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