

Alex Berg ([00:02](#)):

Hi, and welcome to Making the Case with Lambda Legal, a podcast from Lambda Legal highlighting impactful cases and policy work. I'm Alex Berg, a journal and host, and I cover all things LGBTQ plus, and the issues that impact us. For this season's final episode, I'll be discussing several overlapping cases, all strung together by the thread of discrimination against LGBTQ people in the context of child welfare and other federally funded programs. In *Easter v. HHS*, *Marouf v. Becerra*, *Rogers v. HHS*, and *Facing Foster Care in Alaska v. HHS*, Lambda Legal is fighting to protect LGBTQ plus people to ensure children who can't safely return home have a loving family available to care for them, and to expand the meaning of safe and loving homes. Joining me today is deputy legal director for litigation, Camilla Taylor, and senior council and youth in out of home care project director, Currey Cook. As I mentioned, we'll be discussing several cases. So, for more detailed information after this episode, be sure to check out [lambdalegal.org/makingthecase](http://lambdalegal.org/makingthecase). Let's get to my conversation with Camilla and Currey. Welcome back, Camilla. And hello, Currey.

Camilla Taylor ([01:17](#)):

Thanks for having us.

Currey Cook ([01:17](#)):

Hi. Nice to be here.

Alex Berg ([01:19](#)):

So, let's just jump right in. Camilla, let's start with *Easter v. HHS*. Tell us about Kelly Easter and her case.

Camilla Taylor ([01:26](#)):

Sure thing. Kelly Easter lives in Nashville, Tennessee. She's a real estate agent. She works very hard, but she had a lovely house with an empty bedroom. And when she heard about all the unaccompanied children who found themselves in foster care and federal programs, she decided that she wanted to open her home to a foster child, give a foster child, a loving place to live. And she tried to apply. She tried to apply to this federal program through Bethany, a child welfare agency in Nashville, which was operating this federal program. But Bethany was funded by the United States Conference of Catholic Bishops, which receives the federal grant, and then sub grants it to the child welfare agencies on the ground. And Bethany told her that it could not license her as a foster parent in this federal program because she is a lesbian, and it turned her away.

She tried for over a year and a half to apply to be a foster parent. She told the federal government through email that she was being excluded simply because she's a lesbian, and the federal government didn't do anything about it, and Bethany didn't allow her to do it until she sued. And after she sued, the United States Conference of Catholic Bishops sent a letter to Bethany saying that this was all a misunderstanding and actually it had no religious objection to licensing lesbian foster parents after all. So, because of her lawsuit, as of mid-July, Kelly is now a licensed foster parent in Nashville, Tennessee, who is going to have a refugee child, hopefully placed in her home.

Alex Berg ([02:54](#)):

We'll dig even further into this as it sounds like it's starting to come full circle, but how does this connect to other recent cases like *Marouf v. Becerra* and *Rogers v. HHS* that Lambda Legal is arguing in the child welfare space.

Camilla Taylor ([03:07](#)):

This is not the only case involving discrimination by a publicly funded child welfare agency against people who wish to be foster parents, but are excluded from these government programs because they are lesbian, gay, bisexual, or simply because they don't conform to the religion of the agency that is performing these child welfare services at taxpayer expense. We have one case on behalf of Fatma Marouf and Bryn Esplin, who are a same-sex couple who live in Dallas Fort Worth. They tried to apply to be foster parents in a federal refugee program, and they were turned away because quote, "They did not mirror the holy family." The Catholic Child Welfare Agency was funded also by the United States Conference of Catholic Bishops, which receives the federal grant and passes it down to the child welfare agencies on the ground. And they said that they had a religious objection to licensing same sex couples. And we are also representing clients in a child welfare agency case that involves state child welfare agency funds, in addition to federal funds.

And it's not a federal refugee program, but instead it's child welfare services performed for children who are in state foster care. And that's the Rogers case that Currey is involved in.

Alex Berg ([04:20](#)):

On that note, Currey, can you talk to Lambda Legal's work in the child welfare space? How are these cases part of Lambda Legal's mission?

Currey Cook ([04:27](#)):

Well, first and foremost, Lambda Legal stands for equality for LGBTQ individuals, and particularly when we're thinking about government funded or government run systems of care, just protecting individuals who are seeking government services or seeking [inaudible 00:04:45] in government programs from discrimination is a core part of Lambda Legal's mission. And then also, Lambda Legal has a long history, dating back probably 20 years now, of engaging in the child welfare space, both advocacy for LGBTQ plus young people and young people living with HIV, and also families, including foster and adoptive parents who are seeking to become involved and provide homes for kids in the child welfare space. We know, unfortunately, there's been a long history of discrimination in the spaces, youth not being affirmed and supported, experiencing discrimination themselves, foster and adoptive parents being turned away because of who they are, or their faith or desire not to practice a particular faith.

And then also we know that LGBTQ young people in care have often been funneled into group homes or institutions or other congregate care settings, because if they can't safely return home to their parent or parents and they need a place to stay, there have not been an array of foster homes available who will accept them and welcome them into their homes. And while that's really true for all children in care, it's been disproportionately LGBTQ youth who have not been able to be in a family home setting. So, really working hard to make sure that everyone who steps up to be a foster parent is welcome regardless of who they are or what they believe really expands the pool of foster homes that are available for everybody. But if we're thinking about LGBTQ perspective foster and adoptive parents, they are, of course, more likely to be accepting of LGBTQ children in their homes.

So, that really helps kind of reduce this placement in congregate care group homes or other settings that are really harmful for young people and end up kind of funneling them into homelessness when they leave care, because they really haven't connected with a permanent family if they can't safely return home. So, for reason central to our mission, and also because we've really actively worked in the child welfare space for years and years

Alex Berg ([06:49](#)):

Currey, from what you're saying about Lambda Legal's work, I can really get a sense of just how far reaching the impact is on both the children who are within these systems, and then LGBTQ plus people who wish to be foster parents. Can you tell us a little bit more about the Rogers case specifically?

Currey Cook ([07:06](#)):

Sure. We represent Aden Rogers and Brandy Welch. They are a married team sex couple who live outside of Greenville, South Carolina, and they sought to foster. They have had a history of fostering within their family and really wanted to step up and provide a home for a child in need and were seeing the need in South Carolina, the agency itself saying, "We really need foster homes. We don't have enough." So, they stepped up and we're turned away by an entity that provides foster care services on behalf South Carolina government, Miracle Hill Ministries. In order for folks to be foster parents with Miracle Hill Ministries, they have to be evangelical Christian and sign a doctrinal statement of faith, including a tenant that marriage is only between a man and a woman. Brandy and Aden belong to the Unitarian Universalist Church and our same sex couple, so they were turned away by Miracle Hill, and Miracle Hill is, for a long time, been the largest and most well resourced child placing agency in the area where they live in Greenville.

Alex Berg ([08:13](#)):

It sounds like there are so many upsetting layers to this case that first of all, it really only recognizes one set of religious beliefs, and then on top of that, just the sheer discrimination against a same sex couple, and then on top of that, that there is a real need for homes for these kids. So Currey, thank you for unpacking that case for us. Camilla, shifting back to Kelly Easter's case for a moment, let's discuss what the USCCB's religious objections were and how they claimed they had no religious objections to single foster parents, which conveniently leaves out what to do if Kelly is in a relationship. Can you speak to this point?

Camilla Taylor ([08:51](#)):

Yeah. We're thrilled that Kelly is now licensed to be a foster parent and is now eligible to have a child from this federal refugee program placed in her home. However, there are questions that remain about what might happen if she enters a relationship, because we know that the United States conference of Catholic Bishop still objects to same sex couples being licensed jointly to be foster parents. And I think it's also important to remember that the position of the United States Conference of Catholic Bishops on single foster parents has changed over the years. It used to license single non-gay parents as foster parents prior to 2015. And in 2015, the Supreme Court ruled that same-sex couples have a fundamental right to marry that must be equally assured by the states, and that struck down the remaining marriage bans nationwide. And as a result of that ruling, same-sex couples were now applying jointly as married couples in order to be foster parents.

And at that time, we know from a whistle blower, in the case we're litigating on behalf of Fatma Marouf and Bryn Esplin that the United States Conference of Catholic Bishops went through a policy change, and they decided that same sex couples should never be licensed. Not that they were licensing them before, but in order to justify excluding them, they were going to require that all foster parents "mirror the holy family" in order to be eligible to be licensed, even though they are operating a federal and state child welfare program at taxpayer expense. And to mirror the holy family, that means you have to have a married man and a woman, and they started excluding single non-gay foster parents as

well. And the whistleblower who's working with us in Fatma Marouf and Bryn Esplin's case tells us that she was responsible for calling some of these single women who were in the process of being licensed as foster parents to tell them that they were no longer eligible to apply.

One of these women had just lost her husband a couple of years ago and was upset not just because her husband had died tragically, but that the fact of the death of her husband excluded her from participation in this program. And another woman had left her husband because of domestic violence, and she was excluded for that reason. So, this policy of licensing only married couples hurt not just lesbians and gay men, but also people who enter different sex relationships who were single, who were excluded as well, sometimes in very hurtful ways.

Alex Berg ([11:16](#)):

Yes, that phrasing of mirroring the holy family feels so explicitly exclusionary of anyone who is not in heterosexual marriage. But one of the other things I was so struck by was the kids who are at the center of these cases and how it feels like they often get lost in all this. Currey, you're Lambda Legal's youth and out of home care director. Do we see people who discriminate based on their religious beliefs often in foster care and adoption?

Currey Cook ([11:44](#)):

Yes, unfortunately, we do, and have historically. There have been a lot of faith-based entities and agencies that have been a part of the child welfare system for years. Many of them are fantastic, and are open to everybody and do a wonderful job providing affirming and supportive services to LGBTQ plus youth and welcome all families, but there have definitely been a portion, historically and currently, that do discriminate and don't affirm and support LGBTQ plus youth. And obviously the child welfare system is there, at least in theory, to protect and serve and center the wellbeing of children. So, there's no world in which not having a completely affirming and supportive child welfare system should exist, but unfortunately it has. And we also know that a couple of states, like Texas and Arizona, have passed laws that have explicitly allowed entities that provide child welfare services, through contracts, to be able to share or impart their religious belief on children in their care, in addition to just having generally discriminatory practices. So, it remains a pretty major problem.

Alex Berg ([13:01](#)):

Camilla, how did you take into consideration what you've learned in past religious exemption cases or case work in prepping or arguing these cases?

Camilla Taylor ([13:08](#)):

Well, I think Currey makes an excellent point, that the purpose of these programs is to care for children. And the best interest of children, that's supposed to be the touchstone that government uses in determining how and where to place the young people who find themselves in federal and state child welfare programs. If you are in foster care, you are one of the most vulnerable people in this country, with respect to all sorts of different things, with respect to your mental health, your ability to access healthcare, your ability to get a good education, and of course, having a stable foster parent who is loving and who is going to give you a safe place in order for you to grow and develop is key. So, one of the things that we have seen through all of these cases, a throughline in all of them, is the way in which children are harmed when you exclude eligible foster parents from the pool, because there's a national shortage of potential foster parents.

So, that's one of the key things that we've learned. I think it's also important that we hold the government to account for allowing these faith-based child welfare agencies to put their own religious objections above the needs of these children. And that defeats the purpose of this program. It's unconstitutional. It's not what we, as taxpayers, are paying for. And fundamentally, it's harmful to the wellbeing of children, the most vulnerable children who are in government care,

Alex Berg ([14:29](#)):

That is such a crucial point, Camilla. Currey, I want to ask you another forward looking question. Recently, HHS pulled a waiver the Trump administration granted to South Carolina to permit their child welfare agencies to discriminate. And Lambda Legal just had a big victory in the Facing Foster Care in Alaska, the HHS case. Can you explain what all that means in terms of protection for children and families, including prospective foster parents, based on their sexual orientation or gender identity? What further work can be done?

Currey Cook ([14:58](#)):

Sure. I just want to echo what Camilla said just moments before, because it's a perfect setup for the discussion about Facing Foster Care in Alaska, which is really that having the providers wishes or needs or religious belief centered really does completely flip the script on the entire child welfare system, right? It's supposed to be about being there for everybody involved to meet their needs, not the needs of the folks who are providing the services. And that is exactly what the HHS grants rule was really all about. It was a regulation promulgated in 2016, under the Obama administration, and set out that all beneficiaries and participants in HHS funded grant programs, of which there are \$500 billion worth, should be treated fairly and equitably, including having their marriages respected, but most importantly, by having a list of protected classes, including sexual orientation and gender identity.

So, there's an expectation that everyone who may need those services or programs, including the state foster care program, which is also funded through HHS grants, has that expectation of being treated fairly when they are trying to access those programs or services that they need or want to participate in. So, the Trump administration came in and decided to grant a waiver for religion as a protected class, as it appeared in the HHS grants rule, and did a big open-ended waiver to all South Carolina faith-based agencies so they could discriminate. After all of this, with the Miracle Hill Ministries situation that I talked about a little bit earlier came to light in the press. That was followed up by an executive order by Governor McMaster in South Carolina, that sort of gave carte blanche to these agencies to use religious criteria. So, fast forward a little bit, and the Trump administration issued a non enforcement decision saying, "Oh, by the way, we're just not going to enforce that 2016 grants rule at all."

And then in January, right as the Trump administration was leaving, one of the so-called midnight regulations, they just decided to get rid of all the predicted classes at all in the 2016 grant rule and promulgate a new one, a 2021 HHS grants rule. So, we ended up filing a legal challenge, with our friends at Democracy Forward and Cravath, Swaine & Moore, on behalf of Facing Foster Care in Alaska, Sage Family Equality and True Colors United challenging that as being in violation of the administrative procedure act. And just a few weeks ago, lo and behold, the agency, HHS, said that they had not actually done a legally sufficient job of analyzing all the substantive comments, posing the rule. And so they were agreeing to vacate the rule in its entirety. And the case is dismissed, and the 2016 rule is back in place. So, a major victory. And still though, we do have this non enforcement decision in place by HHS.

So, while it's essential that these protections exist, there's so much more work to be done in making sure that that is pulled and we have a legal challenge that's ongoing around that, so people

know that they can actually file a grievance file a complaint and know that these critical protections are being enforced.

Alex Berg ([18:24](#)):

Now, over the course of doing this podcast, I've learned that winning comes in a lot of different forms. And because Easter is now being allowed to participate in the program through the US Office of Refugee Resettlement, she is voluntarily dismissing her case against HHS for the time being. Camilla, just to wrap things up here, can you speak to how this result came about, what it means for the plaintiff, and what it means for future LGBTQ plus people who want to foster or adopt from organizations that receive federal funding?

Camilla Taylor ([18:51](#)):

Well, as a result of this case, Kelly Easter can now realize her dream of being a licensed foster parent in Tennessee, and she will be considered as a potential home for placement for a refugee child in foster care. And that's wonderful. What's a shame, however, is that she tried for a year and a half to be a licensed foster parent, but she was turned away as a result of the religious beliefs of the United States Conference of Catholic Bishops. And if they had discovered earlier that they didn't actually object to licensing single, lesbian foster parents, a child could have been placed in her home much earlier and would've had a loving place to stay instead of being potentially in a group setting, or potentially even not being permitted to enter the refugee program and being stuck abroad, because that's how this program works. That's a shame. It's a shame for all of the other single foster parents who've been excluded for so long from participating in this program.

And it's a shame that the United States Conference of Catholic Bishops still has a religious objection to same sex couples, which means that Kelly may well be filing another lawsuit if she enters into a relationship, and then suddenly her participation in this program is up in the air. We're really concerned that if a child is placed with her and she enters a relationship with another woman, that child potentially could have that placement made vulnerable, and even be yanked from the home. We don't know. We don't know because this program turns on the religious objections of a federal grantee that is operating a federal program for children in federal custody.

Alex Berg ([20:21](#)):

Well, regardless of what happens, we will definitely have you back to give us an update, depending on the outcome. Currey and Camilla, thank you so very much for joining me today.

Camilla Taylor ([20:29](#)):

Thank you.

Alex Berg ([20:33](#)):

Thank you so much for listening to this season of Making the Case. On a personal note, I learned so much from talking to these incredible attorneys, and I hope you did too. If you'd like to learn more about the show, head over to [lambdalegal.org/making-the-case](http://lambdalegal.org/making-the-case). Making the Case is hosted by me, Alex Berg, and written and produced by Erika Kramer for Lambda Legal. Our show is recorded and mixed by Erik Monical from Mouth Media Network. Original music was made in Making the Case by Meghan Rose. If you are enjoying Making the Case, please be sure to rate the show five stars and leave us a nice review. This helps more listeners discover the show and helps spread the word on Lambda Legal's great



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