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# OPPORTUNITIES

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THE FLORIDA BAR

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# *Message from the Chair*

You may have read over the past few months about diversity grants made available by The Florida Bar Board of Governors through a Special Committee on Diversity and Inclusion. Serving on that Committee ex officio as Chair of this Section has been an encouraging and rewarding experience. Good ideas come in many shapes and sizes. And while our Section has, over the years, produced more than our share of those good ideas – as well as performed the hard work in executing them -- all good and genuine efforts to promote diversity should find their place in the long journey toward inclusion. New ideas cutting across geographic and demographic lines can serve as jet fuel to our own ideas and efforts.

In that vein, I want to encourage you to give serious thought to new ways that the EOLS can continue to fulfill its role as the leader of diversity within The Florida Bar.

Support. Work. Dialog. Interaction. Cooperation. Camaraderie. These are concepts that have always served us well. In many ways, they underscore the environment that, for more than a decade, EOLS has sought for all legal professionals. In May, I presented the State of the Section to the Bar's Board of Governors. With your help, that will include a list of so many new ideas, potential new members and plans that it will be cause for celebration throughout the streets of Key West and reverberate in the hallowed halls of Tallahassee. Join me as we approach the next decade of EOLS, ready to move to the next level and challenge. Our section can be as good as we make it.

*— Larry D. Smith*

**INSIDE:**



## EOLS Upcoming Annual Convention Events

***in conjunction with The Florida Bar Annual Convention***

***Gaylord Palms Resort & Convention Center***

**Equal Opportunities Executive Council Meeting**

Friday, June 24, 2011 • 9:30 a.m. - 12:00 p.m.
Room Location: Daytona 1

**Equal Opportunities Law Section/Virgil Hawkins Florida Chapter National Bar Association/Florida Association of Women Lawyers Joint Luncheon*****

Friday, June 24, 2011 • 12:00 p.m. - 2:30 p.m.
Room Location: Orange Blossom Ballroom

*****Must purchase ticket in advance.*

*Visit www.floridabar.org for Annual Convention event information.*

# Florida's Gay Adoption Ban Ruled Unconstitutional: Anita Bryant's Shameful Anti-Gay Legacy Finally Goes Down in Flames

**By Mary Meeks and Cristina Alonso**

On September 22, 2010, thirty-three years after enactment of Florida's one-of-a-kind statutory ban prohibiting gays and lesbians from adopting[1], Florida's Third District Court of Appeal declared the ban unconstitutional in a surprise unanimous decision in *Florida Department of Children and Families v. Adoption of X.X.G. and N.R.G.*[2] The case will forever be remembered as the "*Gill* decision," after Martin Gill, the courageous gay man who challenged the ban in order to adopt two young brothers who were placed in his home for foster care.

The *Gill* decision is historic, both in the scope and breadth of its sweeping condemnation of the ban and its harmful consequences to Florida's citizens, as well as its condemnation of the irrational prejudice that lead to its enactment. This article takes an in-depth look at the historical and political context of the enactment of the ban, and the history of anti-gay political campaigns that preceded its enactment. This article will also review the prior legislative and judicial efforts to repeal the ban, and examine in detail the *Gill* decision and other recent decisions that have affirmed the right of Florida's gay citizens to adopt.

The legislative history and other historical facts surrounding the enactment of the adoption ban show that the ban was enacted in a climate of fear and hate against gay people, was based solely on false, demeaning, and irrational stereotypes about gay people, and in fact was motivated by an affirmative intent to punish gays and label them as a menace to children and to society as a whole. The *Gill* decision thoroughly and systematically destroyed all of those false stereotypes, restoring Florida's gay citizens' constitutional right to create families through adoption, and giving hope to Florida's thousands of foster children yearning for forever homes.

## I. Florida's History Of Anti-Gay Campaigns

Throughout America's history there has been a national trend of popular and governmental campaigns to expose and punish gays and lesbians. Florida has been at the forefront of this trend. Florida passed its first anti-sodomy law in 1842[3], which carried the death penalty, although in 1868 the punishment was reduced to 20 years imprisonment.[4] The Florida Supreme Court noted in 1921 that the lighter punishment was adopted not because "the crime is less repulsive now, but perhaps out of humane consideration for the creatures whose low moral and intellectual standard entitles them to ...pity."[5]

In the 1950s and 1960s, police raids of gay and lesbian gathering places became commonplace, and local newspapers frequently published arrestees' names.[6] In 1953, Miami Councilman Bernard Frank encouraged the Chief of Police to completely remove gay "sex degenerates" from the city.[7] A Tampa police captain announced, "[W]e're going to keep after [gays and lesbians] until we run them out of town."[8] Miami-Dade police maintained a list of over 3,000 local individuals suspected of being "practicing homosexuals."[9] In 1954, Miami enacted an ordinance that prohibited businesses that sold alcoholic beverages from hiring or serving any "homosexual person, lesbian or pervert."[10] The Third District Court of Appeal upheld this law, noting approvingly that it was designed "to prevent the congregation . . . of persons likely to prey upon the public by attempting to recruit other persons for acts which have been declared illegal by the Legislature[.]"[11]

In 1956, the Florida Legislature created the Florida Legislative Investigation Committee[12], which was tasked with hunting down gays and lesbians in Florida's public schools, universities, and government agencies.[13] In 1959, the Committee warned that "[t]he greatest danger of a homosexual is his or her recruitment of other people into such practices."[14] Similarly, in its final report in 1964[15], the Committee asserted that "[t]he homosexual's goal and part of his satisfaction is to 'bring over' the young person, to hook him for homosexuality."[16] By the end of its eight-year tenure, the Committee successfully pressed for 64 teachers to lose their teaching certificates, and "served as a clearinghouse for gathering and distributing names of known or suspected homosexuals to federal as well as state agencies."[17]

## II. Anita Bryant's "Save Our Children" Campaign

The adoption ban was enacted immediately after an organized and relentless anti-homosexual campaign led by Anita Bryant[18], a pop singer who sought to repeal a January 1977 ordinance of the Dade County Metropolitan Commission prohibiting discrimination against homosexuals in the areas of housing, public accommodations, and employment. Bryant organized a drive that collected the 10,000 signatures needed to force a public referendum on the ordinance.[19] Bryant's campaign – provocatively called "Save Our Children" – deliberately promoted stereotypes of gay people as dangerous, violent predators who posed a threat to children.[20] A central message of Bryant's campaign was that the ordinance would protect homosexual schoolteachers who "recruited" and molested schoolchildren.[21] Bryant ran newspaper advertisements asserting, "The Other Side of the Homosexual Coin is a

Hair-Raising Pattern of Recruitment and outright Seduction and Molestation."[22] Bryant famously declared at rallies that "[s]ince homosexuals can't reproduce, they must recruit and freshen their ranks."[23]

The *Miami Herald* described Bryant's campaign as "creat[ing] a witch-burning hysteria more appropriate to the 17th century than the 20th."[24] Bryant publicly referred to gays as "human garbage" who sought not "human rights" but "human rots."[25] Other leaders of the campaign struck a similar chord, portraying gays as violent and antisocial, declaring at one May 1977 rally that "[s]o-called-gay folks [would] just as soon kill you as look at you" and that "[h]omosexuality ...could be the end of the United States of America."[26] Bryant's press release, "Why Certain Sexual Deviations Are Punishable by Death," predicted that if "these vile and beastly creatures" were successful in obtaining equal rights, they would bring God's judgment down on the whole community.[27] Public commentators in Florida predicted that acceptance of openly gay people would lead to gay efforts to "recruit" children to homosexuality, sexual abuse of children, and even "the end of the United States of America."[28]

The battle over the Dade County ordinance was widely publicized, as was then-Governor Reubin Askew's support of the repeal effort.[29] Governor Askew was quoted as saying "I don't want a known homosexual teaching my children and I think a person ought to have the right to determine whether they want someone with that lifestyle living on their premises. Would you hire a professed homosexual? I would not."[30]

## III. Legislative History of Adoption Ban

The adoption ban was introduced as a direct consequence of Bryant's campaign.[31] The campaigns were conducted virtually simultaneously: on June 7, 1977, voters repealed the Dade County Ordinance, and the next day Governor Askew signed the adoption ban into law[32]: "No person eligible to adopt under this statute may adopt if that person is a homosexual."[33] The legislative history reveals the very close and utterly transparent connection between Bryant's campaign and the adoption ban, as legislators grounded their support for the adoption ban in Bryant's message that anti-gay discrimination was necessary to discourage homosexuality.[34] The bill's Senate sponsor, Curtis Peterson, called homosexuality "a moral issue that needs to be addressed by the Legislature" and stated that "Biblical teachings" were at the base of his arguments.[35] One of the few voices in the Legislature who spoke out against the ban was then-State Senator Don Chamberlin, who stated that "the heart of this bill is not the subject of adoption – it is discrimination," and accused that the ban was intended to "kill the human spirit."[36]

Notably, while gays and lesbians had never previously been banned from serving as adoptive parents, the Legislature did not rely on any actual reports of problems with gay adoptive parents while considering the bill, relying instead solely on imagined hypotheticals.[37] A review of the official legislative record provided by the Archives relating to enactment of the ban reflects no input from what was then the Department of Health and Rehabilitative Services (the responsible and affected agency), or from anyone else who might have conducted an organized investigation of any benefit sought to be achieved, or harm to be avoided, by the proposed legislation.[38] No scientific or empiri-

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cal evidence was presented at all by the proponents of the ban.[39]

The Florida legislature's intention to stigmatize and demean homosexuals is further confirmed by the passage, on May 30, 1977, of a House amendment to the adoption statute that provided for public disclosure of the reason for an adoption denial: it was passed to protect heterosexuals from the stigma of being thought to be gay.[40] A Senate amendment providing added coverage against such stigmatization for nonhomosexual applicants was added on May 31, 1977, requiring courts to state with specificity their reasons for dismissing a petition for adoption.[41] As the House and Senate gave their final approval to the ban, Senator Peterson was widely quoted saying the bill was intended as a message to homosexuals that "We're really tired of you. We wish you'd go back into the closet."[42] On June 8, 1977, exactly one day after Dade County voters repealed the antidiscrimination ordinance, the Governor of Florida signed the ban into law, in an apparently deliberate orchestration between Bryant's campaign and the legislature's actions.[43]

It is clear from the foregoing history that the adoption ban was enacted in a context of extreme anxiety and irrational prejudice against gays and lesbians, deliberately encouraged by decades of private and governmental campaigns that sought to characterize gays as immoral and dangerous. Florida's adoption ban was enacted based on the false belief that gays were likely to molest children and generally constituted a danger to children.[44] The facts and circumstances surrounding enactment of the adoption ban demonstrate that its singular purpose was to repress and punish gays and lesbians simply for being who they are.



## IV. Legislative Challenges to the Adoption Ban

Since its enactment in 1977, numerous efforts have been made to repeal the ban legislatively.[45] Although bills were routinely introduced over the years calling for repeal of the ban, none of these bills was ever even allowed to the House or Senate floor for debate, until 2010.[46] Although proponents devised a strategy that enabled them to make brief arguments in support of repeal of the ban, votes on the repeal bills were blocked by the House and Senate Republican leadership.[47]

Significantly, in 2002, after the *Lofton* decision discussed below, former Florida Representative (and Speaker Pro-Tem) Elaine Bloom spearheaded an effort by former state legislators who had voted for the ban to call for repeal of the ban.[48] In a statement that was eventually joined by 27 such former legislators, Bloom stated:

> In 1977, we were among the state legislators who helped pass Florida's law prohibiting gay people from adopting children. We now realize that we were wrong. This discriminatory law prevents children from being adopted into loving, supportive homes, and we hope it will be overturned.[49]

The fervent pleas of Bloom and her fellow repentant legislators were summarily ignored.

## V. Prior Judicial Challenges to the Adoption Ban

There have been 4 known judicial challenges to the adoption ban prior to the Gill case. The first known judicial challenge to the ban took place in 1991, in *Seebol v. Farie,* where the trial court held the ban to be an unconstitutional violation of equal protection, due process, and the right to privacy.[50] The decision was not appealed, so it had no application other than allowing the one adoption at issue. Another challenge took place in 1997, in *Amer v. Johnson*, where the trial court rejected the plaintiff's equal protection claim.[51] This decision also was not appealed.

The first challenge to the ban that produced an appellate court decision was *Cox v. Florida Department of Health & Rehabilitative Services*[52], where the ban was challenged on equal protection, due process, and privacy grounds. The trial court entered summary judgment holding the ban to be unconstitutional on all three counts, but the Second District Court of Appeal reversed, finding the record did not support summary judgment in favor of Cox and summary judgment in favor of HRS was warranted on all three counts. The Florida Supreme Court upheld the Second District's decision, except with regard to the equal protection issue.[53]

With regard to the equal protection issue, the Florida Supreme Court noted that the parties waived an evidentiary hearing in the trial court and allowed "the case to proceed to resolution with the parties simply submitting briefs and their own packets of research materials to the trial court."[54] The Supreme Court said:

> The record is insufficient to determine that this statute can be sustained against an attack as to its constitutional validity on the rational basis standard for equal protection under article I, section 2 of the Florida Constitution. A more complete record is necessary in order to determine this issue. Upon remand, the proceeding is limited to a factual completion of the record as to this single constitutional issue and a decision as to this issue based upon the completed record.[55]

After the case was returned to the trial court, Cox abandoned the petition and the equal protection issue was never addressed.

The final judicial challenge to the adoption ban prior to the Gill case was a federal constitutional challenge to the ban based on the 14th Amendment's equal protection clause, which was rejected in *Lofton v. Secretary of Department of Children & Family Services.*[56] In granting summary judgment against the petitioners on a limited factual record, the Eleventh Circuit held the adoption ban was a rational means of furthering Florida's professed interest in promoting adop-

tion by marital families.[57] The court put the burden on the petitioners to negative every conceivable basis which might support the ban, and ultimately held the state's professed rational basis was an "unprovable assumption" that "nevertheless can provide a legitimate basis for legislative action."[58] The petitioners petitioned for rehearing en banc, which was denied with an unusual written opinion, which was intended to refute the "vociferous dissent" written by Justice Barkett.[59] The opinion denying rehearing en banc made the startling admission that the *Lofton* panel had ignored the legislative history of the ban and instead searched for any possible rational basis that could support the ban.[60] In her dissent, Justice Barkett noted that the ban prohibiting gays from adopting was the only categorical prohibition in the adoption statute (as compared to murderers and child molesters, etc.), and was based on constitutionally protected conduct (as declared by the U.S. Supreme Court in the *Lawrence* decision).[61] Justice Barkett noted that the state's proffered rational basis was expressly refuted by the state's own law and practice[62], and that homosexuals as a class were targeted by the ban based solely on impermissible animus and prejudice.[63] Justice Barkett noted that, not only was there no record evidence to support the alleged rational basis, but that the record evidence clearly showed the best interests of the children was "actually subordinated to the state's evident need to discriminate on the basis of sexual orientation."[64] Justice Barkett stated that this conclusion was confirmed by the legislative history of the ban, and set out a detailed account of the origin of the ban.[65]

Ironically, around the same time the *Lofton* decision was issued, Florida's Department of Children and Families ("DCF") called Martin Gill and asked him and his partner to take in two young brothers as foster children.[66]

## VI. The Gill Case And Other Successful Challenges To The Adoption Ban

After the two young brothers became an integral part of the Gill family and Gill petitioned for adoption, DCF refused to approve the adoption. What followed was a long legal battle that ended in September 2010 when the Third District Court of Appeal affirmed the trial court's judgment of adoption, finding the statutory ban on gay adoption unconstitutional.[67]

The Third District's decision begins by noting that DCF agreed that Gill is a fit parent, adoption was in the best interest of the children and "gay people and heterosexuals make equally good parents."[68] Accordingly, Florida's statute barring gays from adopting was the sole hurdle and obstacle that prevented DCF from approving the adoption.

Indeed, the family history, which the Third District detailed, reflects that, as the trial court found, approving the adoption was and is in the best interest of the children. In 2004, DCF removed the children, then four years old and four months old, from their home based on allegations of abandonment and neglect. DCF asked Gill, a licensed foster caregiver who previously served as a foster parent for seven other children, to accept the children on a temporary basis until a more permanent placement could be found. The children arrived with medical problems and other needs. Both children were suffering from ringworm and the four-month-old suffered from an untreated ear infection. The four-year-old did not speak and his main concern was changing, feeding and caring for his baby brother.[69] As the concurring opinion states, "[t]he steps taken by the existing three-person household[70] to address the medical, emotional, and educational needs of the two adoptive children are nothing short of heroic. The improvement in every aspect of the children's care is beyond dispute and was fully corroborated by impartial 'collateral informants' - - the teachers, doctors, and caseworkers who have personally observed the progress made by the children, for example."[71] In short, the children thrived with their new family.[72]

Because of the natural parents' neglect of the two children, DCF petitioned for termination of the natural parents' parental rights, which was granted in 2006. This cleared the way for Gill to apply to adopt the children. The Center for Family and Child Enrichment, Inc. ("The Family Center"), a private nonprofit corporation, monitored the two boys during foster care and evaluated Gill's ability to provide a satisfactory adoptive placement. The Family Center reported that Gill's home presented a suitable environment and that he met all the criteria required to adopt the two boys. DCF stipulated that Gill provided a safe, healthy, stable and nurturing home for the children meeting their physical, emotional, social and educational needs. The Family Center, however, recommended against the application, because Gill is gay and was statutorily prohibited from adopting. DCF denied the application on that basis, though it acknowledged that it would have approved the application if it had not been for the statutory ban.[73]

Gill thereafter petitioned the trial court to adopt the children, asking the court to find subsection 63.042(3) unconstitutional because it violated

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This newsletter is prepared and published by the Equal Opportunities Law Section of The Florida Bar.

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his rights to equal protection, privacy, and due process. Counsel on behalf of the children asserted that the children's rights to equal protection and due process were also violated. The trial lasted four days, during which Gill and DCF presented expert witnesses who testified regarding homosexual and heterosexual parenting capabilities.

The trial court rendered a 53-page judgment, granting the adoption and declaring subsection 63.042(3) unconstitutional. The trial court found, among other things, that the statute violated the equal protection rights of Gill and the children under the Florida Constitution.[74] Gill successfully argued that the statute treated him unequally in violation of the constitutional equal protection provision because the statute creates an absolute prohibition on adoption by homosexual persons, while allowing all other persons - - including those with criminal histories or histories of substance abuse - - to be considered on a case-by-case basis.

On appeal, DCF argued the trial court erred because there was a rational basis for the statute. In rejecting DCF's argument, the Third District began by noting that the adoption statute calls for an individual, case-by-case evaluation to determine if the proposed adoption is in the best interest of the child, and except for homosexual persons, there is no automatic, categorical exclusion of anyone from consideration for adoption.[75] The Third District then went on to reason that there was no rational basis for the difference in treatment, debunking each of DCF's arguments based on the language of the statute itself and the evidence presented at trial.

First, DCF did not advance an argument that the statutory ban on gay adoption reflected a legislative judgment that gays are, as a group, unfit to be parents. Indeed, the argument and evidence was that gay people and heterosexuals make equally good parents. Instead, DCF argued there is a rational basis for the prohibition "because children will have better role models, and face less discrimination, if they are placed in non-homosexual households, preferably with a husband and wife as the parents."[76] But that could not have been the intent of the statute, because as the Third District noted, the statute does not restrict adoptions to heterosexual married couples.[77]

Second, the trial court heard extensive expert testimony and concluded the quality and breadth of research and studies on gay parenting and the children of gay parents reflected no differences in the parenting of homosexuals or the adjustment of their children, such that the court was satisfied that "the issue is so far beyond dispute that it would be irrational to hold otherwise."[78] DCF did not argue on appeal that the trial court's findings in this regard lacked support in the evidence.[79] Rather, DCF argued that the alternative views expressed by their experts supported the existence of a rational basis for the statute.[80] However, as the Third District concluded, the trial court was entitled to reach the conclusion that DCF's experts' opinions were not valid from a scientific point of view.[81] Indeed, the record reflected that one DCF expert, Dr. Schumm, acknowledged that he applied statistical standards that departed from conventions in the field and much of the scientific community disagreed with his conclusions. He went on to concede that some gay parents may be beneficial to some children, and the decision to permit homosexuals to adopt is best made by the judiciary on a case by case basis.[82] The record also reflected that DCF's other expert, Dr. Rekers, failed to present an objective review of the evidence, employed a flawed methodology, and relied on the conclusions of a colleague who was sharply criticized as distorting data and was censured and ousted by the American Psychological Association for misreporting evidence regarding homosexual households.[83]

Third, DCF argued that gays should be barred from adopting "because the homes of homosexuals may be less stable and more prone to domestic violence."[84] The Third District rejected this argument, finding that the record did not support the assertion. "Dr. Peplau testified that gay people or gay couples do not have higher rates of domestic violence than heterosexual couples."[85] In the study he cited, "the highest rate of domestic violence. . . was for women in heterosexual relationships being attacked by their male partner."[86] "This was consistent with a study by the Centers for Disease Control, which found that over an eighteen-year period, ninety-five percent of female homicide victims were women killed by a male domestic partner."[87] These studies and Dr. Peplau's conclusion that sexual orientation is not the strongest predictor of break-up among all the different demographic characteristics, establishes the direct opposite of the position advanced by DCF.

Similarly, DCF's claims that homosexual parents "support adolescent sexual activity and experimentations," were not supported by the record.[88] DCF's experts did not provide any testimony that supported this claim.[89] "Dr. Lamb testified that research showed no difference between children of gay parents and heterosexual parents with respect to the age at which they initiated sexual activity."[90] "Dr. Berlin testified that there is no evidence that the environment in which a child is raised, heterosexual or homosexual, would determine the sexual identity of the child who is raised in that environment."[91]

DCF's other arguments were also rejected by the Third District for the same reason: "they do not provide a reasonable basis for allowing homosexual foster parenting or guardianships while imposing a prohibition on adoption."[92]

Because DCF failed to present any evidence that would support the disparate treatment of gays in that they may serve as foster parents or guardians, but not as adoptive parents, even though all other persons are eligible to adopt as determined on a case by case basis and even where, as here, the adoptive parent is a fit parent and the adoption is in the best interest of the children, the Third District held there was no rational basis for the subsection of the statute barring gays from adopting.[93] Because the court affirmed based on the violation of gay adoptive parents' equal protection rights, the court did not reach the claim of violation of the children's equal protection rights.

While the Third District noted, "our ruling is unlikely to be the last word," given that DCF could appeal to the Supreme Court of Florida[94], DCF did not seek further review, and formally changed its policies to eliminate any reference to the sexual orientation

of individuals seeking to adopt.[95] Attorney General Bill McCollum also did not seek further review. Thus, the Third District's decision stands as the last word on the unconstitutionality of the statute, bringing to an end DCF's inexplicable attempts to separate a loving family and, as Judge Salter noted in his concurring opinion, ending their uncertainty.[96]

The court's decision was buttressed by an impressively long list of amici that supported Gill's challenge to the statute, including physician groups, child advocacy organizations, foster care advocacy organizations, law schools and bar organizations. To name a few: the American College of Pediatricians, the Family Law Section of The Florida Bar, the American Psychological Association, the Public Interest Law Center at FSU College of Law, the Florida International University Juvenile Justice Clinic, The Center for Adoption Policy, The Child Welfare League of America, The Florida Chapter of the American Academy of Pediatrics, The Foster Care Alumni of America, The Foster Children's Project of the Legal Aid Society of Palm Beach County, The National Association of Social Workers ("NASW") and The Florida Chapter of the NASW, The National Center for Adoption Law and Policy, The University of Florida Fredric G. Levin College of Law Center on Children and Families, The University of Miami School of Law Children and Youth Law Clinic; The Nova Southeastern University Law Center Children and Families Clinic, The Barry University School of Law Children and Families Clinic, The Florida's Children First, Inc., the Child Advocacy Clinic at Hofstra School of Law, Lawyers for Children America, and The Florida Chapter of the American Academy of Matrimonial Lawyers.[97] Their participation was not unnoticed as the Third District indicated an appreciation for all amicus curiae briefs in its opinion.[98]

Ultimately, as Judge Salter aptly observed, "the placement of children in [gay parents'] households has allowed bonds and relationships to form that are in the best interests of children-steps toward permanency and stability in young lives that have already known too much pain and separation. In short, the categorical ban and the statutory polestar of 'best interests of the children' after an extended and very successful foster placement (as here) are inimical."[99] And so, the one obstacle to DCF's approval of gay parent adoptions has been eliminated, thereby promoting the best interests of our children, as observed by DCF's Tallahassee-based Chief of Child Welfare Services and Training, as well as the Tallahassee-based Adoption Program Manager reporting to her[100].

Perhaps it is DCF's determination that the categorical ban against adoptions by gay persons is not in the best interest of children and is contrary to current standards and best practices recommended by social services and child development professionals that has put an end to the state's defense of the statute, or perhaps it's the absence of any evidence of apparent harm over the past 33 years following passage of the categorical ban.[101] In any event, DCF and the state have opted not to pursue appellate remedies in other cases, including the 2008 Monroe County circuit court decision finding section 63.042(3) unconstitutional and approving an adoption by a gay parent and attorney, Wane Larue Smith, and the August 2010 Broward County circuit court decision also finding section 63.042(3) unconstitutional and approving an adoption by a gay parent, Robert LaMarche, who holds degrees in psychology and social work.[102]

Additionally, DCF decided to not call any witnesses in another Miami-Dade case, *In re: Adoption of M.J.H.*, in which the trial court and Third District reached the same decision as in the *Gill* case.[103] In that case, the petitioner sought to adopt her baby cousin, after his birth parents' parental rights were terminated. DCF withheld consent to the adoption, solely on the basis that the petitioner is a lesbian. At the evidentiary hear-

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# Foley & Lardner Sponsor National LGBT Bar Association Directory

**By Jack Lord**

Foley & Lardner and the National LGBT Bar Association have proudly announced the Directory of LGBT Law Partners and LGBT-Owned Law Firms, the first comprehensive listing of lesbian, gay, bisexual and transgendered partners and their law firms in the United States. The directory also lists LGBT Florida Bar members located throughout the state.

This first-of-its kind searchable directory is a valuable resource that simplifies the process of finding high quality members of the LGBT legal community. The goal of this directory is to help raise the visibility of LGBT attorneys and firms nationwide. Foley is proud to have contributed to helping make this directory a reality.

The directory also is being used by Legal Aid and other advocacy groups to locate lawyers for pro bono representation on issues of interest to and impactful of the LGBT community.

Michelle Michaels, National Director of Diversity in Foley's Chicago office, summed up the firm's sponsorship of the directory as follows: "At Foley, we've always believed that our strength as a law firm is a direct result of our diversity of thought and people. We are committed to promoting ethnic, gender, sexual orientation and gender identity diversity at our firm, which is why we embraced the opportunity to work with the LGBT Bar on this directory of LGBT attorneys and law firms."

To view the directory itself, visit the "Resources" section of the LGBT Bar Web site at http://www.lgbtbar.org/.

ing, the trial court heard from the petitioner, her partner, uncle, aunt, family friend, neighbor, the adoptee's pre-school administrator, a licensed social worker, child psychologist, and the Guardian Ad Litem. Each witness testified the adoption was in the best interest of the child. Among the exhibits introduced into evidence were two home studies, which were positive. The trial court found the child was happy and thriving and the only way to give him permanency - - what the adoption statute calls for - - was to allow the petitioner to adopt him. DCF did not offer any contrary evidence. Indeed, the trial court found DCF unreasonably withheld its adoptive consent. Based on the same rationale as the *Gill* trial court, the court found the statutory ban unconstitutional and approved the adoption. While DCF appealed the judgment of adoption, it did not seek further review after the Third District affirmed.

## VII. Collateral Issues Related to the Adoption Ban

Aside from judicial challenges to the adoption ban, there have also been two significant decisions solidifying that sexual orientation is irrelevant to child custody determinations and that out-of-state adoptions must be recognized in Florida irrespective of the adoptive parents' sexual orientation.

First, in *Jacoby v. Jacoby*,[104] Mrs. Jacoby successfully challenged the trial court's designation of Mr. Jacoby as a primary residential parent of the parties' children, following the Jacoby's divorce. The parties separated after Mrs. Jacoby informed her husband that she had fallen in love with a longstanding family friend who is a lesbian. Mrs. Jacoby and the children moved into the home of her lesbian partner; Mr. Jacoby stayed in the marital home. After the separation, the parents rotated custody but both thereafter sought primary residential custody of the two girls. Mrs. Jacoby proposed that they live with her and her partner in the home they had shared since the separation. The father, who became engaged while the divorce was pending, intended for the children to live with him, his new wife and her teenaged children in a new home.

Numerous witnesses testified at trial, including the mother, her partner, the father, his fiancée and a court appointed psychologist. The mother had been the children's primary caretaker during the marriage and the initial period of separation, and the father admitted she was a great parent. But the father, too, had become a better and more involved parent during the rotating custody. The psychologist confirmed that both parties were good parents, but he concluded that Mrs. Jacoby had an edge in parenting skills. She was more adept at demonstrating affection, he said. In addition, the children had stronger emotional ties to her, and she could provide a fine home environment. The psychologist also believed that Mrs. Jacoby would be the custodial parent more likely to encourage contact with the noncustodial parent. He recommended that she be assigned primary residential responsibility for the children.

As often happens in child custody cases, each parent attempted to prove examples of the other's lapses in parental judgment. While the trial court refused to consider a number of minor conflicts in deciding which parent should have primary residential responsibility for the girls, the trial court's comments demonstrated that it succumbed to the father's attacks on the mother's sexual orientation, which - - as the Second District noted - - were the primary feature of the case.[105] For example, the final judgment stated that "[t]here is no doubt that the husband feels the current living arrangement of the wife is immoral and an inappropriate place in which to rear their children.... Obviously, this opinion is shared by others in the community."[106]

The Second District found the trial court's comments concerning the negative impact of the mother's sexual orientation on the children were conclusory or unsupported by the evidence. In fact, as the Second District noted, "there was no evidence addressing 'the community's' beliefs about the morality of homosexuals or their child rearing abilities."[107] And further, the Second District held that "even if the court's comments about the community's beliefs and possible reactions were correct and supported by the evidence in this record, the law cannot give effect to private biases."[108] The court concluded that trial court's "reliance on perceived biases was an improper basis for a residential custody determination."[109] Accordingly, the Second District reversed the appointment of the father as the primary residential parent and remanded with directions for a new custody order.

Second, in *Embry v. Ryan*,[110] Lara Embry appealed an order dismissing with prejudice her petition for shared custody of an adopted daughter she raised with her former partner, who was the child's biological mother, Kimberly Ryan. The trial court dismissed the petition after finding that the adoption judgment, which was entered in the state of Washington, need not be recognized in Florida because it was contrary to Florida's public policy of prohibiting same-sex couple adoptions.

The Second District reversed, holding that Florida must give full faith and credit to adoptions granted by other states and further, that Lara Embry "must be given the same rights as any other adoptive parent in Florida."[111] The court based its decision on the Full Faith and Credit Clause of the federal constitution and a Florida statute requiring Florida to honor adoption decrees from other states.[112] Noting that "there are no public policy exceptions to the full faith and credit which is due to judgments entered in another state," the court concluded that "regardless of whether the trial court believed that

### *Send Us Your Comments and Articles!*

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the Washington adoption violated a clearly established public policy in Florida, it was improper for the trial court to refuse to give the Washington judgment full faith and credit."[113] A concurring opinion further noted that Embry's "same-sex relationship with [the other parent] is irrelevant for the purpose of enforcing her rights and obligations as an adoptive parent."[114]

## VIII. Is It Really Over?

The Gill decision is now unchallenged precedent that is binding on all trial courts in Florida, and DCF's current official policy eliminates sexual orientation as a consideration in adoption applications. So, for now, Florida's infamous adoption ban is unenforceable, and gays and lesbians in Florida are able to petition for adoption and be evaluated as potential adoptive parents according to the same rules and standards as heterosexuals. However, remnants of Anita Bryant's legacy still linger in Florida, in the form of "disciples" who have vowed to continue to fight to preclude gays and lesbians from forming adoptive families.[115] Mathew Staver of the Liberty Counsel, an Orlando-based organization that was recently profiled in a report on anti-gay "hate groups" by the prestigious Southern Poverty Law Center based on its "propagation of known falsehoods – claims about LGBT people that have been thoroughly discredited by scientific authorities – and repeated, groundless name-calling,"[116] has announced that he will ask the 2011 Florida Legislature to pass another law to prohibit adoption by homosexuals.[117] Howard Simon, the Executive Director of ACLU of Florida, who represented Martin Gill in his courageous battle to overturn the ban, fully expects either the new Rick Scott administration or the Florida Legislature to attempt to reinstate the ban.[118]

On January 19, 2011, Florida's new Governor, Rick Scott, announced that he had removed former DCF Chief George Sheldon and replaced him with David Wilkins, a leader of a Baptist social agency which only allows adoptions by "professing Christians" who "follow a lifestyle that is consistent with the Christian faith."[119] On that same day, Scott, who had previously announced his position (consistent with his new DCF Chief) that gays should not be allowed to adopt – or foster – children, reiterated his belief that only married (i.e. heterosexual) couples should be allowed to adopt.[120] Adoption advocates worry that, despite the Gill ruling, the new Governor could instruct his new DCF Chief to refuse to allow adoptions by gays in the geographic districts not covered by the Third District Court of Appeal, thus potentially prompting renewed court battles over the ban.[121] Just days after Scott's pronouncements, Florida House Speaker Dean Cannon announced his position that the Governor should "absolutely" enforce the overturned adoption ban.[122] If the Governor does not enforce the ban, then Cannon said that the Legislature is "certainly prepared and willing to do so."[123] Howard Simon cautioned, "We are preparing now for an assault."[124] Stay tuned.

***Mary Meeks*** *is the principal of Mary Meeks, P.A., an Orlando law firm that engages in commercial litigation and employment law issues, and drafts protective documentation for LGBT individuals and families Ms. Meeks received her B.S. and J.D. degrees, both with honors, from Campbell University Law School. She is a Board Member of the National LGBT Bar Foundation and the Central Florida ACLU Legal Panel and former Board Member of the Central Florida Metropolitan Business Association, a member of Equality Florida's Central Florida Steering Committee and the Orlando Anti-Discrimination Committee, is the founder and leader OneOrlando.org (a social justice coalition), and is an Adjunct Professor at Barry Law School. Ms. Meeks has worked closely with Orlando Mayor Buddy Dyer and Orange County Mayors Rich Crotty and Teresa Jacobs on local civil rights initiatives, is a frequent speaker and published author on employment law and civil rights issues, and was a 2008 recipient of Equality Florida's Voice For Equality Award.*

***Cristina Alonso*** *is a Shareholder at Carlton Fields, P.A., in Miami, and a member of its appellate and trial support practice group. Ms. Alonso received her B.A. in sociology, with distinction, from the University of North Carolina at Asheville, and J.D., with honors, from the University of Florida, College of Law. She is a former staff attorney to the Honorable Fred Hazouri, Fourth District Court of Appeal, State of Florida. Ms. Alonso was appellate counsel, along with John Blue, on behalf of Ms. Embry in Embry v. Ryan, 11 So. 3d 408 (Fla. 2d DCA 2009), and appellate counsel on behalf of the National Center for Lesbian Rights, amicus curiae for appellee, in Florida Department of Children & Families v. E.L.A., Nos. 3D10-442, 3D10-443, 35 Fla. L. Weekly D2445, 2010 WL 4227310 (Fla. 3d DCA Oct. 27, 2010).*

*Carlton Fields, P.A. Shareholders, John R. Blue, Sylvia H. Walbolt, Joseph Hagedorn Lang, Jr. and Nancy J. Faggianelli, were appellate counsel on behalf of the American Psychological Association, amicus curiae for appellee, in Florida Department of Children and Families v. Adoption of X.X.G. and N.R.G. ("Gill"), 45 So. 3d 79 (Fla. 3d DCA 2010).*

**Endnotes:**

1 § 63.042(3), Fla. Stat. (1977) ("No person eligible to adopt under this statute may adopt if that person is a homosexual.").

2 45 So. 3d 79 (Fla. 3d DCA 2010).

3 1842 Fla. Laws 19.

4 *See Franklin v. State*, 257 So. 2d 21, 22 (Fla. 1971). The Florida Supreme Court held the anti-sodomy law was unconstitutionally vague, but observed with relief that "society will continue to be protected from this sort of reprehensible act" by Florida's criminal law against "unnatural and lascivious acts." *Id.* at 24. That statute is now unenforceable, as the U.S. Supreme Court has recognized that gay people have the same right as straight people to enter into intimate relationships. *See Lawrence v. Texas*, 539 U.S. 558 (2003).

5 *Ephraim v. State*, 89 So. 344, 345 (Fla. 1921).

6 *Trail Bar Raided as Deviates' Den*, Miami News, Apr. 17, 1960 (cited in Allan H. Terl, *An Essay on the History of Lesbian and Gay Rights in Florida*, 24 Nova L. Rev. 793, 800 (2000) ("Terl, *Essay*")).

7 Bureau of Public Information, *Miami Junks the Constitution*, ONE, Jan. 1954, at 16 (cited in William Eskridge, Jr., *Privacy Jurisprudence and the Apartheid of the Closet*, 24 Fla. St. U. L. Rev. 703, 728 (1997) ("Eskridge, *Privacy*")).

8 Dal McIntire, *Tangents*, ONE, Aug. 1961, at 24 (cited in Eskridge, *Privacy*, at 730).

9 *Metro Has List of Homosexuals*, Miami News, Apr. 25, 1962 (cited in Terl, *Essay*, at 800).

10 Miami, Fla., Ordinance 5135 (1954) (cited in Terl, *Essay*, at 795).

11 *Inman v. City of Miami*, 197 So. 2d 50, 52 (Fla. 3d DCA 1967).

12 This Committee was popularly known as the "Johns Committee" because former Gov-

*continued, next page*

ernor Charley Eugene Johns served as its Chairman.

13 *See* Ellen McGarrahan, *Florida's Secret Shame*, Miami Herald, Dec. 8, 1991, Tropic, at 9 (cited in Terl, *Essay*, at 796).

14 Fla. Legis. Investigation Comm., *Report of the Florida Legislative Investigation Committee to the 1959 Session of the Legislature,* 4-5 (1959) (available at Fla. Dep't of State, Div. of Archives, ser. 1486, carton 1, Tallahassee, Fla.) (cited in Eskridge, *Privacy*, at 748-49).

15 The Report would become known as the "Purple Pamphlet" because of its purple color. More than 2000 books were printed and distributed to legislators, newspapers, and state officials. Eskridge, *Privacy*, at 749.

16 Fla. Legis. Investigation Comm., *Homosexuality and Citizenship in Florida,* 10 (1964) (available at Fla. Dep't of State, Div. of Archives, ser. 1486, carton 1, Tallahassee, Fla.) (cited in Eskridge, *Privacy*, at 749).

17 Eskridge, *Privacy*, at 749.

18 Anita Bryant was crowned Miss Oklahoma in 1958 and second runner-up Miss America in 1959 and was voted "Most Admired Woman in America" by Good Housekeeping magazine three years in a row. She parlayed her wholesome image into a successful career in the Florida Citrus campaign. Ultimately, the controversy over her anti-gay activism ruined her career and her personal life – her citrus contract was cancelled, she and her husband divorced, she filed for bankruptcy, and her singing career fizzled. Pensito Review, *Celebrating Anita Bryant: The Mother of Gay Rights,* June 4, 2007.

19 Newsweek, *Battle Over Gay Rights – Anita Bryant vs. Homosexuals,* June 6, 1977 ("Newsweek, *Battle*").

20 William Eskridge, Jr., *Body Politics: Lawrence v. Texas and the Constitution of Disgust and Contagion*, 57 Fla. L. Rev. 1011, 1015-17 (2005) ("Eskridge, *Body Politics*").

21 Newsweek, *Battle*, at 20-21.

22 *There Is No "Human Right" to Corrupt Our Children*, Miami Herald, June 6, 1977, at 7B (ad) (cited in Eskridge, *Body Politics*, at 1017).

23 *See, e.g.,* Orlando Sentinel, *We Are Almost Rid Of Florida's Cruel Gay-Adoption Ban,* September 26, 2010.

24 Bill Paterson, *Fear Intense on Both Sides of Gay Rights Vote Tuesday*, Wash. Post, June 6, 1977, at A2 (citing The Miami Herald).

25 *Id.*; Newsweek, *Battle*, at 21.

26 Newsweek, *Battle*, at 21.

27 *See* Eskridge, *Body Politics*, at 1017.

28 Newsweek, *Battle*, at 21.

29 *See*, *e.g.*, *Governor Urges Repeal of Dade's Gay Rights Law*, Miami Herald, Apr. 30, 1977.

30 *Id.*

31 *Gay Bills Pass Both Chambers*, Fla. Times Union, June 1, 1977 (stating section 63.042(3) was "an outgrowth of the recent furor over a Dade County ordinance outlawing discrimination against homosexuals"). Florida's law banning marriage by same-sex couples was also introduced and passed during this same period. *See* § 741.04(1), Fla. Stat. Another statutory marriage ban was enacted in 1997. *See* § 741.212, Fla. Stat. A Constitutional amendment banning gay marriage was added in 2008. *See* Art. 1 § 27, Fla. Const.

32 *Askew Signs Bills Banning Homosexual Marriage, Adoption*, Sentinel Star, June 9, 1977.

33 § 63.042(3), Fla. Stat. (DCF later inserted 2 questions into its application form for adoption: "Are you a homosexual?" and "Are you a bisexual?").

34 *See, e.g.*, Transcript of the Florida Senate Floor Debate of Senate Bill 354, May 11, 1977, at 18 (Sen. Barron) (permitting gay people to adopt "might encourage the number of people who would become homosexuals").

35 *Florida has become focus of gay rights,* Tallahassee Democrat, May 1, 1977.

36 *Journal of the Senate,* May 11, 1977, at 370-71 (Reg. Sess. 1977) (Senate Floor Debate).

37 *See*, *e.g.*, Meeting of Senate Committee on Judiciary-Civil, May 3, 1977, at 9 (Sen. Peterson) ("I feel like that [gays adopting] is a possible problem."); Fla. Senate Floor Debate, May 11, 1977, at 12 (Sen. Chamberlain) ("[T]here's no demonstrable social problem.").

38 Chapter 77-140, Laws of Florida.

39 *In The Matter of the Adoption of John Doe*, 2008 WL 5070056, 15 N. 5 (Fla. 16th Jud. Cir., August 29, 2008). *See also*, Tiffani G. Lee, Case Note, *Cox v. Department of Health and Rehabilitative Services: A Challenge to Florida's Homosexual Adoption Ban*, 51 U. Miami L. Rev. 151, 155 (Oct., 1996).

40 Fla. House of Rep. Floor Debate, May 30, 1977, at 3 (Rep. Haben) ("I don't want the stigma that possibly, the reason for denial was the fact that someone was a homosexual.").

41 Fla. Senate Floor Debate, May 31, 1977.

42 *Senator Warns Gays: 'Go back in the closet'*, Miami News, June 1, 1977. *See also Gay Bills*

*Pass Both Chambers*, Florida Times Union, June 1, 1977 ("The problem in Florida has been that homosexuals are surfacing to such an extent that they're beginning to aggravate the ordinary folks who have a few rights of their own,' said Sen. Curtis Peterson.").

43 Assoc. Press, June 8, 1977.

44 *See, e.g.,* Eskridge, *Body Politics,* 1014-17 (describing the "Save Our Children" campaign's focus on false stereotypes of gays as predatory child molesters).

45 *See, e.g.,* Fla. SB 102 (2010); Fla. SB 460 (2009); Fla. SB 500 (2009); Fla. SB 200 (2008); Fla. SB 206 (2007); Fla. SB 172 (2006); Fla. HB 349 (1995); Fla. HB 1461 (1993).

46 Vicki Nantz, *In Anita's Wake: The Irrational War on Florida's Gay Families,* documentary released 2010 (interviews with Equality Florida Executive Director Nadine Smith and State Representative Scott Randolph and footage of floor debate) ("Nantz, *In Anita's Wake*").

47 *Id.*

48 Elaine Bloom letter to the Florida Senate Committee on Children, Families and Elder Affairs, December 3, 2007.

49 *Id.*; Nantz, *In Anita's Wake* (interview with ACLU Florida LGBT Advocacy Project Director Rob Rosenwald).

50 *Seebol v. Farie,* 16 Fla. L. Weekly C52 (Fla. 16th Jud. Cir. Mar.15, 1991).

51 *Amer v. Johnson*, 4 Fla. L. Weekly Supp. 854b (Fla. 17th Jud. Cir. July 27, 1997).

52 656 So. 2d 902 (Fla. 1995).

53 The court denied the due process challenge to section 63.042(3), based on the now-overruled decision in *Bowers v. Hardwick*, 478 U.S. 186 (1986), holding that "the decision to engage in homosexual activity is not a fundamental right." This holding in *Bowers* was overruled when the U.S. Supreme Court found the right to enter into same-sex intimate relationships to be constitutionally protected as a fundamental component of liberty and human autonomy. *See Lawrence*, 539 U.S. at 574.

54 656 So. 2d at 903.

55 *Id.*

56 358 F.3d 804 (11th Cir.), *rehearing en banc denied,* 377 F.3d 1257 (11th Cir. 2004).

57 358 F.3d at 819.

58 *Id*. at 818-19.

59 *See Lofton v. Secretary of Department of Children & Family Services,* 377 F.3d 1275 (11th Cir. 2004). (There were a total of 3 dissenting opinions by 6 of the 12 justices – one more vote and the decision would have been reheard en banc.)

60 377 F.3d at 1278.

61 377 F.3d at 1290.

62 The adoption statute contains no language citing this alleged preference for "marital families," and in fact explicitly authorizes adoption by single individuals, which historically constitutes 25% of Florida's annual adoptions. 377 F.3d at 1290-91. *See also Matthews v. Weinberg,* 645 So. 2d 487 (Fla. 2d DCA 1994), *review denied*, 654 So. 2d 919 (Fla. 1995) (gays and lesbians are authorized to act as foster parents); § 744.309, Fla. Stat. (2006) (gays and lesbians are authorized to act as permanent plenary guardians).

63 *Id.* at 1291, 1296.

64 *Id.* at 1301.

65 *Id.* at 1302-1304.

66 *Gill,* 45 So. 3d at 82.

67 *Adoption of X.X.G. ("Gill")*, 45 So. 3d 79.

68 *Id.* at 82.

69 *Id.*

70 *Id.* at 96 n.15 (stating that the bonds of attachment that have formed over the past six years are not limited to those between Gill and the two adopted children; the children have also established strong bonds with Gill's partner, Tom Roe, and his son; and they with the children).

71 *Id.* at 97.

72 *Id.* at 82.

73 *Id.*

74 *Id.* at 83 (citing Art. 1, § 2, Fla. Const. ("Basic rights.-All natural persons, female and male alike, are equal before the law and have inalienable rights, among which are the right to enjoy and defend life and liberty, to pursue happiness, to be rewarded for industry, and to acquire, possess and protect property....")).

75 *Id.* at 84.

76 *Id.* at 85.

77 *Id.* at 86.

78 *Id.* at 87.

79 *Id.*

80 *Id.* at 88.

81 *Id.* at 90.

82 *Id.* at 88.

83 *Id.* at 89-90.

84 *Id.* at 90.

85 *Id.*

86 *Id.*

87 *Id.*

88 *Id.*

89 *Id.* at 91.

90 *Id.*

91 *Id.*

92 *Id.*

93 *Id.*

94 *Id.* at 80 n.1 (citing art. V, § 3(b)(1), Fla. Const.).

95 *Rick Scott: Adoption Should Be By A Married Couple,* Miami Herald, January 20, 2011 ("Miami Herald, *Rick Scott")*

96 *Gill,* 45 So.3d at 97 n.15. (Martin Gill's adoption of the two boys was finalized on January 19, 2011. *See* Miami Herald, *Rick Scott.)*

97 *Id.* at 80.

98 *Id.* at 81 n.2.

99 *Id.* at 97.

100 *Id.* at 97.

101 *Id.*

102 *Id.* at 97 n.18.

103 *Id. See also Fla. Dep't of Children & Families v. E.L.A.*, Nos. 3D10-442, 3D10-443, 35 Fla. L. Weekly D2445, 2010 WL 4227310 (Fla. 3d DCA Oct. 27, 2010).

104 763 So. 2d 410 (Fla. 2d DCA 2000).

105 *Id.* at 413.

106 *Id.*

107 *Id.*

108 *Id.*

109 *Id.*

110 11 So. 3d 408 (Fla. 2d DCA 2009).

111 *Id.* at 409.

112 *Id.* at 409-10 (citing U.S. Const. art. IV, § 1; § 63.192, Fla. Stat.).

113 *Id.* at 410.

114 *Id.*

115 *Appeals Court: Florida Ban on Adoption by Gays Unconstitutional*, St. Petersburg Times, September 23, 2010 (Mathew Staver, founder of Liberty Counsel, stating "we're going to be in this for the long haul").

116 *Southern Poverty Law Center Adds Family Research Council to Hate Groups List,* November 29, 2010, http://www.splcenter.org/?ref=logo. The Southern Poverty Law Center profiled 18 anti-gay organizations in its most recent report updating its list of "hate groups," including Liberty Counsel and two other groups based in Florida. *18 Anti-Gay Groups and Their Propaganda,* Southern Poverty Law Center Intelligence Report, Winter 2010, Issue No. 140.

117 *Florida AG Abdicates, OKs Homosexual Adoptions*, OneNewsNow, October 27, 2010 (quoting Mathew Staver of Liberty Counsel).

118 Miami Herald, *Rick Scott*. Miami Herald, *New DCF Chief's Resume Mirrors Gov. Rick Scott's,* January 18, 2011 ("Miami Herald, *New DCF Chief*")

119 *Id.*

120 Miami Herald, *Rick Scott.*

121 Miami Herald, *Rick Scott;* Miami Herald, *New DCF Chief.*

122 *Cannon: Gov. Scott Should "Absolutely" Enforce Gay Adoption Ban,* Florida Baptist Witness, January 25, 2011.

123 *Id.*

124 *Id.*

# Minutes

**Equal Opportunities Law Section — Executive Council Meeting**
**The Florida Bar Mid-Year Meeting, Friday, September 24, 2010**

The meeting was called to order and a quorum was established. On proper motion by Ms. Jessica Hew and a second by Ms. Michelle Ku, and after a unanimous vote, Larry Smith was approved as Chair and Stephanie Melia as Secretary.

Minutes of the June, 2010, meeting were unanimously approved upon motion by Ms. Jessica Hew and a second by Ms. Stephanie Melia.

**Chair's Report:**

Chair Smith reported on the Diversity Initiative from the Florida Bar Board of Governors, noting the Section membership is at or below 200 and is losing members. The Section needs to reach out to other sections to grow the membership and do something positive. Chair Smith wants to ensure the Section is a role model for The Bar to do good, inspire people and make money for the Section.

Ms. Mary Ann Etzler reported on FAWL activities which include efforts to organize a community outreach fair in conjunction with local nonprofit organizations, website upgrades including no cost webinars for chapters and participation in Lobby Days in Tallahassee (March 16-17, 2011).

Mr. Harley Herman advised the Section on the status of the Nominating Committee's efforts to find and secure a Vice-Chair who is historically the chair-elect for the following year. Mr. Herman advised that the committee continues to search but noted the need to ensure a full slate of officers was properly elected for this year. After much discussion, Ms. Hew moved to elect an interim Vice-Chair while the nominating committee continued to search for viable candidates. A friendly amendment was added specifically nominating Mr. Herman to the post; it was seconded by Ms. Yu and passed unanimously.

The Chair reiterated his desire to increase Section membership which dropped as of August 2010, though the numbers are proportionate to other section losses when dues are not paid. Ms. Summer Hall confirmed that there had been no new Section memberships this year. A discussion ensued about the Bar's expectations of minimum Section membership and it was noted that the Section needs to give people something they want in order to grow; the Section needs to provide value in accordance with its Mission Statement.

Efforts at greater communication with the Bar members was discussed, including improvements to the website, outreach to the voluntary bar associations and a possible online survey which Ms. Hew will explore further.

The 2010-2011 Proposed Budget was reviewed and upon motion by Mr. Herman and second by Ms. Guerrier was unanimously approved. Ideas for increased revenue such as seminars were discussed.

Mr. Matthew Dietz asked if there were any comments about his email regarding the Florida Bar Initiative on Diversity. Chair Smith advised he had suggested names to President Downs and Francine Walker for inclusion on their committee, however Chair Smith had not received a response. Ms. June McKinney noted that as of 2 days earlier, the committed members had not been appointed, though Arnell Bryant Willis and Doris Foster Morales were appointed as co-chairs at the most recent Board of Governors meeting. Mr. Gene Pettigrew assured the Section that the committee was not designed to take over the Section's purpose, that the Section would be represented on the committee and the limited purpose of the committee was strictly to allocate the monies from the Leadership Grants and it was never the intention of the Bar to make this a "super committee" on diversity, but rather the committee scope and purpose should remain limited. Mr. Pettigrew confirmed no monies had been disbursed yet. Mr. Herman moved to authorize the Chair to finalize a letter containing the Section's comments to the Bar by the end of October 2010. The motion was seconded by Ms. Hew and unanimously approved.

The Chair then entertained reports from the committees on current progress and projects.

**Information Committee:**

Ms. Hew detailed efforts to disseminate a quarterly newsletter to include an interview, a statement from the Chair and at least one substantive article. Mr. Herman updated the Section on continuing progress in the Charles Howard effort in Illinois.

**Public Agency Committee:**

Ms. Ku noted her fellow member, Pury Santiago was at a medical appointment and could not attend the meeting. Ms. Ku reported the difficulty in our current economy to obtain funding to attend meetings and it was noted that we now have the ability to have conference call attendance. Ms. Hall also advised that all Florida Bar offices have video conference capabilities which can be reserved in advance.

**Budget Committee:**

As noted, the budget was approved earlier in the meeting. It was suggested that the Section explore pairing with other, larger Sections to provide CLE's and earn some money for the Section.

The Chair reported on the Council of Sections, noting the Family Law Section had reached out, expressing an interest to provide a joint CLE. The Chair noted we need to cross the lines, bridge the gap between sections and reminded the members that everyone has to play their part and help the Section grow. The Chair noted that the Section has to make itself relevant. The Chair did note there were other Sections in worse shape, at least one had filed for bankruptcy.

The Minority Mentoring Picnic is scheduled for November 13, 2010 in Miami. Ms. Guerrier moved that the Section appropriate the monies to sponsor a table at the picnic at the bronze level (with the hope that a table could be "comped" by the organizers of the picnic). Ms. Hew seconded the motion and it was approved unanimously. Ms. Hall will create a line item in the budget for the funding.

The next meeting is scheduled for June 24, 2011 at the Gaylord Palms in Orlando.

There being no further business, the meeting was adjourned on proper motion by Mr. Herman and second by Ms. Hew.

## GOAABA'S MISSION:

Asian Americans and Pacific Islanders represent 3.8 percent of the Greater Orlando population, and we are proud to call Central Florida our home. As attorneys, we recognize our special responsibility to help under-represented segments of the community; to improve legal access to the courts; and to serve as a legal bridge between our ethnic communities and the Greater Orlando region.

Founded in October, 2009, the mission of the Greater Orlando Asian American Bar Association (GOAABA) is to:

•Represent and advocate the interests of the Asian community of the Greater Orlando region

•Encourage and promote the professional growth of the members of the Association

•Serve as a legal bridge between our many and diverse Asian and Asian-American communities and the Greater Orlando region

•Act as an information resource for all.

GOAABA is affiliated with the National Asian Pacific American Bar Association (NAPABA), based in Washington, D.C.; the Asian American Federation of Florida; and the the Orange County Bar Association.

We welcome your ideas and any comments which will allow GOAABA to better serve our clients and the community and to allow us to become full partners in Central Florida.

**www.GOAABA.wordpress.com**

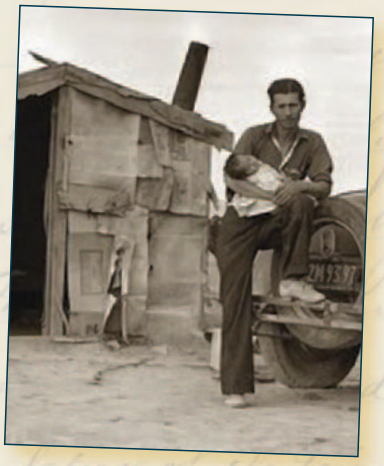
Greater Orlando
Asian American
Bar Association

GOAABA
Greater Orlando Asian American Bar Association

# Do the right thing – let's get rid of the Alien Land Law!

# WHAT IS THE ALIEN LAND LAW?

Florida is the only state in the Union which still maintains the following constitutional prohibition against aliens owning real property under Article I, Section 2 of the Florida Constitution: "all natural persons, female and male alike, are equal before the law and have inalienable rights, among which are the right to enjoy and defend life and liberty, to pursue happiness, to be rewarded for industry, and to acquire, possess and protect property *except that the ownership, inheritance, disposition and possession of real property by aliens ineligible for citizenship may be regulated or prohibited by law.* No person shall be deprived of any right because of race, religion, natural origin or physical disability."



The restriction on alien ownership of land began in the late 1800s and continued through the early 1900s through the passage, state by state, of laws restricting Chinese and Japanese immigrants from owning real property. When challenged in the courts, the U.S. Supreme Court upheld various states' Alien Land Laws on the ground that a state could rightly restrict property ownership to U.S. citizens and that doing so did not amount to racial discrimination. *See* Asian American Federation of Florida, Florida Alien Land Law, available at http://www.asianamericanfederation.org/Issues/Alien%20Land%20Law/florida_alien_land_law.htm. When the State of Florida adopted the Alien Land Law in 1926, it targeted Asian immigrants, although its application is not restricted to the Asian population.

Although the Alien Land Law is no longer actively enforced, Florida is the last state in the nation that still has an Alien Land Law.[1] It has been five to ten years since the last three states repealed these diversity laws. In 2001, Wyoming repealed its Alien Land Law, and in 2002, Kansas repealed its Alien Land Law.[2] Lastly, after a ballot failed to gain sufficient votes in 2002, New Mexico repealed its Alien Land Law in 2006.[3] In November 2008, Florida's legislature attempted to eliminate this language from Florida's Declaration of Rights by including it on a statewide ballot for voters. However, this attempt failed to achieve the necessary majority of 60% in the November 2008 election and, therefore, what has become known as the "Alien Land Law" remains in Florida.

On December 14, 2006, Senate Joint Resolution 166 was introduced.[4] This resolution was entitled "A joint resolution proposing an amendment to Section 2 of Article I for the State Constitution, relating to basic rights."[5] On October 19, 2008, the *Orlando Sentinel* published an article and discussed Amendment 1, stating:

> Supporters of the amendment argue the outdated language harks back to a period of racial bigotry that no longer holds a place in Florida society and should no longer adorn the state's formative document.
> …
> The laws cropped up in various states amid fear that Asian immigrants -- primarily from Japan -- would work for less than Americans on farms in the West and buy up vast stretches of land, with California in 1913 the first to adopt the policy. In Florida, the state constitution was amended to allow the Legislature to regulate or ban property ownership by foreigners ineligible for citizenship -- a standard tailored to target Asians.[6]

On November 4, 2008, Florida voted on the proposed Amendment 1, which attempted to repeal the Alien Land Law. Amendment 1 failed by a vote of 47.9% (3,369,894 votes) to 52.1% (3,669,812 votes).[7] Sixty percent (60%) was required to pass the ballot measure.[8] After Amendment 1's failure, the subsequent joint resolutions introduced in the Florida Senate and House of Representatives have not included the term "aliens ineligible for citizenship." On October 10, 2009, Senator Eleanor Sobel introduced Senate Joint Resolution 84. Similarly, on March 1, 2010, House Representatives Yolly Roberson, Julio Robaina, and Kevin Rader introduced House Joint Resolution 1553. Unfortunately, on April 30, 2010, SJR 84 died in the Committee on the Judiciary. Likewise, HJR 1553 died in the Rules & Calendar Council on April 30, 2010.

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[1] Dara Kam, *Symbolic amendment eradicating discriminatory law likely to fail*, The Palm Beach Post News (Oct. 5, 2008), http://www.palmbeachpost.com/state/content/state/epaper/2008/10/05/amend1_1005.html.

[2] *Amendment 1: Property Rights of Ineligible Aliens – Failed 47.9%-52.1%*, Collins Center for Public Policy, https://www.communicationsmgr.com/projects/1373/property-rights-ineligible-aliens.asp.

[3] *See* Footnote 1.

[4] S.J. Res. 166, Reg. Sess. (Fla. 2007).

[5] On February 1, 2007, Florida House Representative Ronald A. Brise also sponsored a similar resolution in the House – House Joint Resolution 677. H.J. Res. 677, Reg. Sess. (Fla. 2007). A copy of House Joint Resolution 677 is attached hereto as Appendix B.

[6] Aaron Deslatte, *The Overshadowed Amendments*, Orlando Sentinel (Oct. 19, 2008), http://articles.orlandosentinel.com/2008-10-19/news/LID19_1_florida-constitution-amendment-1-amendment-2.

[7] http://ballotpedia.org/wiki/index.php/Florida_Amendment_1_%282008%29.

[8] Section 5(e), Art. XI of Florida Constitution.

## THE FLORIDA CONSTITUTION

ARTICLE I SECTION 2

***Basic rights.*** *—All natural persons, female and male alike, are equal before the law and have inalienable rights, among which are the right to enjoy and defend life and liberty, to pursue happiness, to be rewarded for industry, and to acquire, possess and protect property;* ***except that the ownership, inheritance, disposition and possession of real property by aliens ineligible for citizenship may be regulated or prohibited by law.*** *No person shall be deprived of any right because of race, religion, national origin, or physical disability.*

History.—Am. S.J.R. 917, 1974; adopted 1974; Am. proposed by Constitution Revision Commission, Revision No. 9, 1998, filed with the Secretary of State May 5, 1998; adopted 1998.

## WHAT CAN YOU DO?

Contact Florida's State Senators and Representatives, not just in your area, but also statewide. Let them know that Florida needs to remove the Alien Land Law from the Florida Constitution.

GOABBA is here to help! Please go to GOAABA's website, www.GOAABA.wordpress.com for more information.


# Critical Contacts:

Florida Capitol Office
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Tallahassee, FL 32399-1100

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Sen. A. Gardiner, Dist. 9
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Rep. D. Hukill, Dist. 28
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Rep. J. Tobia, Dist. 31
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(850) 488-2528

Rep. L. Metz, Dist. 25
1101 The Capitol
(850) 488-0348

Rep. R. Workman, Dist. 30
308 House Office Building
(850) 488-9720

# Get involved!

***The committees of the section are anxious for you to join them in their projects!***

**DISABILITIES COMMITTEE**

*Seeks to improve access to legal education, the legal profession, and the judiciary for persons with disabilities. This committee works with the other committees to ensure that issues specific to attorneys with disabilities are adequately addressed.*

**EDUCATION COMMITTEE**

*The education committee is responsible for arranging legal seminars and similar programs for the education of attorneys in the field of equal opportunities law.*

**INFORMATION COMMITTEE**

*The information committee is responsible for furnishing articles for publication in Florida Bar media; for publishing and distribution of a section newsletter; for composition and dissemination of discussions and articles among the news media and to the general public regarding equal opportunities law issues; for conducting hearings, informational meetings, seminars, and institutes among the general public on issues of equal opportunities law; and for notifying the public and attorneys of proposed or enacted legislation affecting minorities, women, or the physically and mentally challenged.*

**LEGISLATIVE COMMITTEE**

*The legislative committee shall from time to time make recommendations to the executive council regarding requests for the section to adopt a legislative position and to disseminate news and opinions of proposed or enacted legislation on equal opportunities law matters among the various committees of the section.*

**COORDINATION AND LIAISON COMMITTEE**

*The coordination and liaison committee shall foster liaison and cooperation among the various sections and committees of The Florida Bar on matters of concern to the section and shall foster liaison and cooperation among the section and other bodies concerned with the health, welfare, and financial security of minorities, women, and the physically and mentally challenged.*

**PUBLIC AGENCIES COMMITTEE**

*The public agencies committee will seek to improve the delivery of public services to minorities, women, and the physically and mentally challenged. Among such public agencies sought to be aided by such committee are legal aid societies, governmental agencies, departments and bureaus, and the like.*

## Equal Opportunities Law Section Membership Application

This is a special invitation to become a member of the Equal Opportunities Law Section of The Florida Bar. Membership in the Section will provide you with interesting and informative ideas. It will help keep you informed on new developments in the field of Equal Opportunities Law. As a Section member, you will meet lawyers sharing similar interests and problems and work with them in forwarding the public and professional needs of the Bar.

To join, complete this application form and return it with your check in the amount of $30 made payable to The Florida Bar. Mail both to THE FLORIDA BAR, 651 EAST JEFFERSON STREET, TALLAHASSEE, FL 32399-2300.

NAME: _____FLA BAR #_____

ADDRESS: _____

CITY/STATE/ZIP:_____