



Religious Exemptions and LGBTQ Child Welfare

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Silent Victims: Foster Care and Foster Care Adoption in America

Sponsor: Duke Law School and Center for Adoption Policy

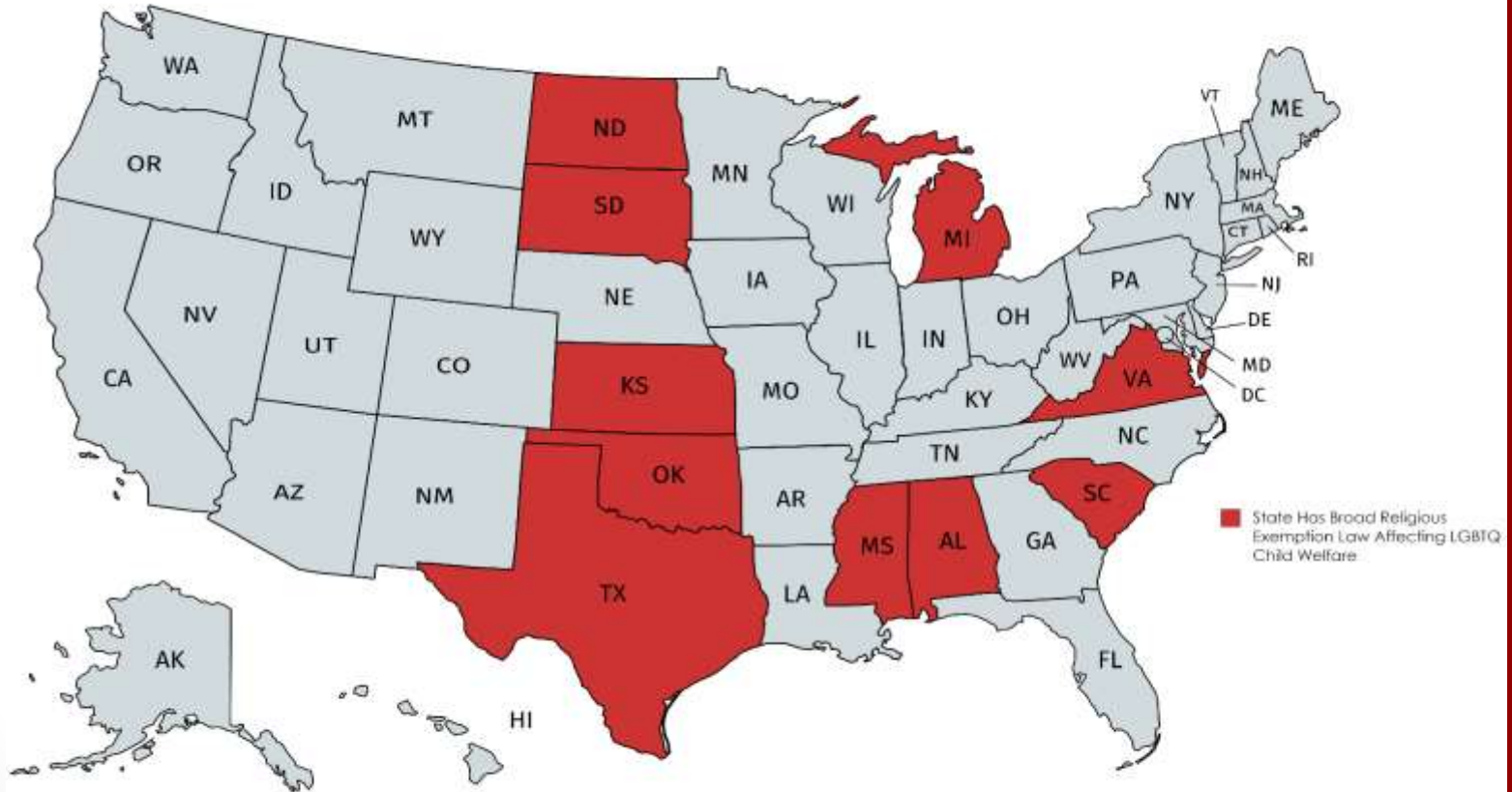
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LGBTQ Youth in the Child Welfare System

- Overrepresented, especially LGBTQ youth of color
- Many have been rejected by their families for being LGBTQ and cannot go back home
- Suffer abuse, harassment, and discrimination at higher rates while in the system
- More likely to experience instability and negative outcomes (including homelessness)



Religious Exemptions and LGBTQ Child Welfare: 10 States



What Broad Religious Exemption Laws Do

Example: HB 1523 (Mississippi)

- Grants protection to 3 religious/moral views:
 1. Marriage “is or should be recognized as the union of one man and one woman”
 2. “Sexual relations are properly reserved to such marriage”
 3. “Male (man) or female (woman) refer to an individual’s immutable biological sex as objectively determined by anatomy and genetics at the time of birth”



What Broad Religious Exemption Laws Do

Example: HB 1523 (Mississippi)

- Prohibits the state from taking adverse action against:
 - Religious entities that provide or refuse to offer foster care or adoption services in a manner consistent with these 3 views.
 - Foster or adoptive parents who “guide, instruct, or raise” a child consistent with any of these 3 views.
 - Any person who declines to participate in the provision of medical treatments, counseling, and surgery related to the gender affirmation process.



How Should We Understand Broad Religious Exemption Laws in LGBTQ Child Welfare?

- Conventional view is a reaction to marriage equality.
- My research looks to criminology, psychology, and sociology to recast these exemptions as the latest point on a much longer historical trajectory of child welfare interventions that subordinate LGBTQ youth based on sexual deviance concepts.



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Religious Exemptions and Sexual Deviance Concepts

1. The special role of the family as a vital institution in shaping sexuality and gender identity development.
2. The malleability of youth's sexual orientation and gender identity development.
3. The stereotyping of LGBTQ adults as sexual predators who are categorically unfit to raise children.



Why the Sexual Deviance Frame Matters

- Shows how these broad religious exemption laws:
 - Enable antiquated theories of sexual deviance to thrive in the child welfare system today.
 - Perpetuate LGBTQ-based inequalities within the child welfare system and in society at large.
- Shows the need for law and doctrine to recognize LGBTQ youth-centered harms when determining whether and how to accommodate religion in child welfare contexts.



Moving Forward

- Strengthen nondiscrimination protections for LGBTQ youth via statute, regulation, and policy.
- Adopt “affirmation” models of LGBTQ child welfare:
 - These require states to proactively create living spaces, support networks, and services, that affirm youth’s LGBTQ identity development and expression.
 - Possible path to recognize third-party harms to LGBTQ youth when accommodating religion in child welfare.



Additional Info

- Jordan Blair Woods, “Religious Exemptions and LGBTQ Child Welfare,” 103 *Minnesota Law Review* (forthcoming 2019), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3241580.
- Bianca Wilson, et al., *Sexual and Gender Minority Youth in Foster Care: Assessing Disproportionality and Disparities in Los Angeles*, THE WILLIAMS INSTITUTE (Aug. 2014), http://williamsinstitute.law.ucla.edu/wp-content/uploads/LAFYS_report_final-aug-2014.pdf.
- Movement Advancement Project, et al., *Kids Pay the Price: How Religious Exemptions for Child Welfare Agencies Harm Children* (Sept. 2017), <http://www.lgbtmap.org/file/Kids%20Pay%20the%20Price%20FINAL.pdf>.

