

State agency won't fight to keep Florida's ban on gay adoptions

Court decision holds it unconstitutional

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A state agency Tuesday gave up its fight to prolong Florida's 33-year-old ban on gays adopting, the only such law in the country.

The action came less than three weeks after a Miami appellate court ruled the law unconstitutional.

Unless Attorney General Bill McCollum appeals -- which lawyers in the case say is likely to fail -- the ban is effectively dead.

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The Florida Department of Children & Families opted not to ask the state Supreme Court to rule on a lower court decision allowing Frank Martin Gill of North Miami and his partner to adopt two brothers. Such an appeal, DCF spokesman Joe Follick said, "would have less than a limited chance" of success.

"The ban on gay adoption is unconstitutional statewide," Follick said in a statement. After last month's ruling by the 3rd District Court of Appeal, he said, "We immediately revised our forms and removed questions asking about sexual orientation for adoptions."

Gill lauded the DCF decision. "I think that law is the most discriminatory of any of the laws in the past several years in the entire United States," he said. "I'm kind of in disbelief that the law is still there, that it's managed to be there for 33 years."

Dan Skahen, a part-time resident of Key West and Fort Lauderdale who along with partner Wayne LaRue Smith was allowed to adopt a special-needs child in a separate case, was heartened by the DCF decision. "It's been a long fight for us," he said.

The only way the 1977 law could be kept alive is if McCollum appeals the 3rd DCA ruling to the state Supreme Court and wins. The Attorney General's Office argued the case on behalf of its "client," the DCF. Should it appeal, it would be as if a lawyer continued with a case after a client backed off.

Attorney general spokeswoman Ryan Wiggins declined in a statement Tuesday to say what her office may do, other than have "a conversation with DCF about what the next actions will be."

In upholding the lower court's decision, the appeals court relied on experts who said "gay people and heterosexuals make equally good parents," Judge Gerald Cope wrote for the three-judge appellate panel in a 28-page decision.

"They proved beyond a shadow of a doubt that gay people do no harm as parents," Gill said.

Florida had allowed gays to serve as foster parents but not take the ultimate step of adoption.

The DCF cited the "depth, clarity and unanimity" of the appellate ruling in its decision not to appeal.

Howard Simon, executive director of the ACLU of Florida, which over 18 years and four lawsuits has fought the ban, said the appellate court's decision was well-butressed by evidence.

"The District Court of Appeal has not left the attorney general with anything to appeal," Simon said. "We're hoping that the attorney general makes the same decision that the DCF has made."

Adoptive parent Smith, who is also a lawyer, said the only reason McCollum might take the case to a higher court would be politics. But politics may no longer play a role, because the attorney general, a Republican, has already lost his primary bid for the governor's office to Rick Scott in a race where both candidates courted right-wing voters.

And Smith said public opinion polls support lifting the ban on gay adoption. "It's pretty apparent across the board that the majority agrees the law is ill-advised," he said.

Smith said prospective gay parents started calling him Tuesday upon learning of the DCF decision. "There are a lot of kids who are going to have homes who would not have homes without this decision," he said. "That's what it comes down to."

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