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Same Sex Adoption

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How Bans on Same Sex Adoption Violate the Rights of Children

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Every year about 250,000 children enter the foster care system, and while half may return to their families, the other half will be in need of adoption. ¹ Under the Adoption and Safe Families Act, enacted in 1997 under the Clinton administration, states have an obligation to seek permanency for children. ² States are even required to submit updates as to what measures they are taking to ensure permanency for children and to make sure the needs of the children are met.³ However, many children still simply age out of the system with no familial support and never having experienced a loving home.⁴

Even with so many children having to spend the majority of lives in foster care, many states still refuse to allow adoption by same sex couples.⁵ While only a few states outright deny adoption to same sex couples, many have laws that are made to prohibit adoption by same sex couples.⁶ While some have challenged the laws by claiming that the rights of the parents or prospective parents are violated under the fourteen amendment or equal protection claims, the rights of the children are rarely mentioned. This paper will lead to the conclusion that this ban violates the rights of children. I. First, the paper will examine the leading eleventh circuit case from Florida which upheld the Florida outright ban on same-sex adoption II. Then, the paper will examine if the recent Supreme Court decision regarding the Defense Against Marriage Act may

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³ Id.
⁵ Lifelong Adoption http://www.lifelongadoptions.com/lgbt-adoption/lgbt-adoption-statistics (Last Assessed November 22, 2013)
⁶ Id.
affect the Supreme Court’s decision regarding adoption. III. The paper will then describe current
domestic child welfare policies and then discuss the recent state of the foster care system. IV. The
paper will detail arguments for and against allowing same sex adoption. V. Finally, the paper
will discuss international treaties regarding children and describe how an argument advocating
for the rights of the children in foster care would be a better avenue for allowing same sex
adoption.

I. Florida’s Ban on Same Sex Adoption

Florida is one of two states that have a codified ban on adoption by a homosexual couple. Several cases have challenged the law. The most notable case is Lofton v. Secretary of the Dept. of Children and Family Services. In this case, there were seven plaintiffs all of whom were homosexual couples who served as foster parents. The first plaintiff was Steven Lofton, a registered pediatric nurse, who became the foster parent of a baby who was born HIV positive. He cared for him and the baby reverted to being HIV negative at eighteen months. Lofton asked to adopt the baby, but failed to disclose his sexual preference or that he had a co-habiting male partner. When the Florida Department of Children and Family Services refused to allow him to adopt, he and six others who were denied for similar reasons filed suit alleging various violations of the law.

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7 Id.
8 Id.
9 358 F. 3d 804 (11th Cir. 2004).
10 Id. at 807.
11 Id. at 808.
12 Id. at 808.
13 Id. at 808.
14 Id. at 808.
The court analyzed five legal claims: the right to familial privacy under the Fourteenth Amendment, the right to intimate association, the right to family integrity, the right to sexual privacy, and equal protection on the basis of sexual orientation.\textsuperscript{15} All of these legal arguments failed to overturn the Florida ban on same sex adoption.\textsuperscript{16} The appellate court stated that adoption laws are a creature of statute and not common law; and therefore, the state can regulate adoption as it sees fit.\textsuperscript{17} The Court stated that in "formulating its adoption policies and procedures, the State of Florida acts in the protective and provisional role of in loco parentis for those children who, because of various circumstances, have become wards of the state. Thus, adoption law is unlike criminal law, for example, where the paramount substantive concern is not intruding on individuals' liberty interests…also distinct from such contexts as government-benefit eligibility schemes or access to a public forum, where equality of treatment is the primary concern."\textsuperscript{18}

The court dismissed the family integrity and privacy claims. The Plaintiffs stated that a due process claim under the fourteenth amendment exists as to familial bonds and that emotional connections exists which entitles families to have a legal connection and the right to privacy.\textsuperscript{19} The Court stated that relationships as foster parents do not have a permanent aspect and are not free from state intervention.\textsuperscript{20} In fact, these relationships should be monitored by the state.\textsuperscript{21}

\textsuperscript{15} \textit{Id.} at 812-820.  
\textsuperscript{16} \textit{Id.} At 812-820.  
\textsuperscript{17} \textit{Id.} At 811.  
\textsuperscript{18} \textit{Id.} At 810.  
\textsuperscript{19} \textit{Id.} At 816.  
\textsuperscript{20} \textit{Id.} At 820.  
\textsuperscript{21} \textit{Id.} At 823.
The Plaintiffs also relied on previous privacy rights established by the Supreme Court in *Lawrence v. Texas* and *Roe v. Wade*. In *Lawrence v. Texas*, the Supreme Court struck down a Texas sodomy statute that made it illegal for two adults in engage in sodomy.\(^{22}\) The Supreme Court held that private sexual acts between consenting adults are private and the state has no right to interfere in private adult, consenting sexual relationships.\(^{23}\) In addition, in *Roe v. Wade*, the Supreme Court held that the state cannot completely outlaw abortion and must allow women to have at will abortions in the first trimester of pregnancy as it is a violation of a women’s right to privacy to interfere with a woman’s choice to have an abortion.\(^{24}\) The Court actually found that privacy rights do not extend to the right to adoption.\(^{25}\) While *Roe* and *Lawrence* may allow privacy rights for same sex couples, this right does not extend to the right to allow same sex couples to adopt children.\(^{26}\) The state of Florida argued that adoptions are not private but public and the state supervises adoption, so privacy rights do not apply to a couple trying to adopt.\(^{27}\)

The court also rejected the claim that *Romer v. Evans* would invalidate the Florida ban on gay marriage.\(^{28}\) In *Romer*, Colorado voters approved by referendum an amendment to the Colorado state constitution (Amendment 2) that would have prevented any city, town, or county in the state from taking any legislative, executive, or judicial action to recognize gay and lesbian individuals as a protected class.\(^{29}\) The Supreme Court struck down Amendment Two because it


\(^{23}\) *Id.* at 558.


\(^{25}\) *Lofton v. Secretary of the Dept. of Family and Children Serv.*, 358 F. 3d 804 (11\(^{th}\) Cir. 2004).

\(^{26}\) *Id.* at 360.

\(^{27}\) *Id.* at 360.


\(^{29}\) *Id.* At 621.
targeted a group of people without passing the rational basis test. In *Lofton*, the Florida ban is not so "[s]weeping and comprehensive" as to render Florida's rationales for the statute "inexplicable by anything but animus" toward its homosexual residents. In addition, the Florida classification is limited to the narrow context of access to the statutory privilege of adoption and has a plausible connection with the state's asserted interest. According the court in *Lofton*, Florida’s ban also only targets homosexuals who wish to adopt and does not have a significant impact on the group as a whole.

II. *United States v. Windsor* and the Applicability to Same Sex Adoption

Recently, the Supreme Court added to the growing case law in support of gay rights. In *United States v. Windsor*, the Court held that restricting U.S. federal interpretation of "marriage" and "spouse" to apply only to heterosexual marriages, under the Defense of Marriage Act (DOMA), is unconstitutional under the Due Process Clause of the Fifth Amendment.

Edith Windsor and Thea Spyer, a same-sex couple residing in New York, were lawfully married in Ontario, Canada in 2007. Spyer died in 2009, leaving her entire estate to Windsor. She was barred from doing so by Section three of DOMA which provided that the term "spouse" only applies to a marriage between a man and woman. The Internal Revenue Service found that the exemption

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30 Id. At 621.
31 *Lofton v. Secretary of the Dept. of Family and Children Serv.*, 358 F. 3d 804 (11th Cir. 2004)
32 Id. at 810.
34 Id.
35 Id.
36 Id.
37 570 U.S. ___ (2013) (Docket No. 12-307)
did not apply to same-sex marriages, and made her pay $363,053 in estate taxes.\textsuperscript{38} The U.S. Supreme Court issued a decision declaring Section three of DOMA to be unconstitutional "as a deprivation of the liberty of the person protected by the Fifth Amendment."\textsuperscript{39} The Court focused on Fifth Amendment due process rights which would apply to property and taxes. This case could be applied towards the idea of adoption. If the court is protecting property due process rights for same sex couples, which should be considered less important than family integrity, the Court should find that same sex couples wanting to adopt should be protected as well. Because the case was decided this year, the court may look at the adoption statutes differently especially if a same sex couple is married legally in a different state.

In addition, several state laws only allow married couples to adopt children which for many years have been a defacto rule for not allowing homosexual couples to adopt because most states do not allow gay marriage.\textsuperscript{40} However, under the full faith and credit clause of the United States Constitution, states must honor marriages from other states, and now, with the addition of the DOMA ruling by the U.S. Supreme Court, adoption laws that discriminate against heterosexual couples and homosexual couples could be seen in violation of the DOMA ruling. While DOMA only applies to the federal government, the Supreme Court seems to be saying that the government cannot discriminate against married people. This may eventually extend to the states and allow a legally married couple to adopt in any state. Like the plaintiffs in the DOMA ruling that faced discrimination in the tax arena, the potential same sex plaintiffs in adoption cases can claim that because they are married, they are entitled to the same privileges that

\textsuperscript{38} \textit{Id.}
\textsuperscript{39} \textit{Id.}
\textsuperscript{40} Nadia Stewart, \textit{Adoption by Same-Sex Couples and the Use of the Representation Reinforcement Theory to Protect the Rights of Children}, 17 \textsc{Tex. Wesleyan L. Rev.} 347, 348 (2011).
marriage brings including the right to adopt in certain states. In conclusion, while same sex
couples have had difficulty defeating bans on same sex adoption using constitution law, the new
DOMA decision may lead to another claim that adults could bring to allow same-sex adoption.
However, because the Constitution gives the states deference in adoption decisions, the best
argument would be to argue that the rights of children are being violated by not allowing same
sex adoption.

III. Current Welfare Laws Regarding Children

If the 2013 DOMA ruling does not invalidate same sex bans on adoption, a focus on child
welfare laws may be used to argue for the right to adoption. While the attorneys in the Lofton,
tried to argue a right to a family and family integrity, the Court did not allow this argument to
allow same sex adoption. However, The Adoption and Safe Families Act of 1997, put more
restrictions and obligations on states to bring permanency and stability to children in the foster
care system.\footnote{Adoption and Safe Families Act of 1997 P.L. 105-89 (2010).} This law specifically requires that states document their efforts to adopt children
and provides states with funds to help promote adoption of children.\footnote{Id.} States also are required to
hold permanency hearings for children in the foster care system as well establishing timelines for
filing termination of parental rights hearings.\footnote{Id.} States also must allow foster parents to have a
right to be heard at a hearing for the children.\footnote{Id.} All states allow for homosexual people to be
foster parents and guardians including Florida which is counterproductive for allowing children
to have permanency when the state laws will never allow these foster parents to actually be the

\footnote{Id.}
adoptive parents. The Adoption and Safe Families Act would seem to establish a federal rule that would require states to enforce the idea of permanency and stability in children’s lives. The act emphasizes removing children from unstable or unsafe environments and removes the idea of trying to place children back in their original homes.

Each state has additional child welfare laws and policies in addition to the federal laws. For example, Florida has Guardian and self-reporting statutes that are used to ensure that children are not abused. However, the state has very little laws surrounding the rights of children in foster care or the issues that these children face. Most states have very limited laws regarding the rights of children, and the laws are mostly focused on the idea of protecting children from abuse.

In conclusion, the focus on children in adoption is very limited. The Adoption and Safe Families Act seems to force states to focus on permanency for children, but the state laws only give adoption guidelines that the states deem are in the best interest of child. However, many of these laws may be more a reflection of the ideals of the state rather than what is best for the children in the foster care system.

A. The current foster care system is the most detrimental institution for children.

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45 Lofton v. Secretary of the Dept. of Family and Children Serv., 358 F. 3d 804 (11th Cir. 2004)
46 Id. at 360.

In her paper, Delilah Bruskas\textsuperscript{49}, RN, MN, describes the effects of foster care on children. According to Bruskas,

\begin{quote}
\textquote{Most children in foster care, if not all, experience feelings of confusion, fear, apprehension of the unknown, loss, sadness, anxiety, and stress. Such feelings and experiences must be addressed and treated early to prevent or decrease poor developmental and mental health outcomes that ultimately affect a child’s educational experience and the quality of adulthood.}\textsuperscript{50}
\end{quote}

Bruskas explains that children who are in foster care usually suffer from mental illness or some form of post traumatic stress disorder due to either the homes they come from or the fact that are in stressful situations by being forced to move so frequently.\textsuperscript{51} Because the children are forced to live in a state of uncertainty and move from home to home, they often face hardships in school and have trouble academically.\textsuperscript{52} It is no surprise that only about 1.8% of children in the foster care system actually attend college while the national average of young adults to attend college in America is 24%.\textsuperscript{53} Many of the children simply \textquote{age out of the foster care system and are left with no form of support to attend school or have their basic needs met; the system, in effect, sets these children up for failure.}\textsuperscript{54}

The United States Child Welfare System began using a performance based test in 1994 with the amendment to the Social Security Act.\textsuperscript{55} The new form of the act looked to the outcomes of the children in foster care to decide how well or poorly the system was serving children.\textsuperscript{56} In response, the Children’s Bureau, set up a state analysis test in 2000 to help \textquote{grade}
The state assessments are called Child and Family Services Reviews (CFSRs). These reviews evaluate how well each state is meeting the needs of the children in addition to how well they meet systemic requirements. “Each state attempts compliance in fourteen areas; seven related to the needs of children and seven related to system requirements. Areas of compliance related to the children they serve are divided into three categories: safety, permanency, and well-being.” After the first evaluations were completed in 2004, all of the fifty states failed to meet all of the child welfare requirements and failed in area of permanency. The children in foster care, according to the study, face development delays and struggle through adolescence which explains the high rate of high school dropouts, juvenile crimes, and teen pregnancy. Brukas goes as far as to say that these children are being exploited and suffering greatly from not having the right to have permanent, loving homes.

In her report at NPR new radio, Pam Flesher describes the current states of foster care in Florida and the United States. She focuses mostly on the impediments that children face when they age out of the system. She describes one young man’s journey after foster care, Josh Mendoza, “a shy young man from Tampa, Fla., with soulful eyes and a hint of dark hair along his upper lip. He lived in 14 different group homes after he was removed from his mother's care more than two years ago because she used drugs.” Mendoza lives in Tampa, Florida, and he describes in the article how he has been living in a small studio apartment and trying to find a

57 Id. At 72.
58 Id. At 72.
59 Id. At 72.
60 Id. At 74.
61 Id. At 75.
63 Id.
job. Mendoza is in a special situation because he was able to find help from Connect25, an agency in Tampa that helps young adults learn how to get on their feet and adapt to living on their own after they leave foster care. Flesher reports that in the past before nonprofits were able to help children leaving foster care, the children were dropped off at the nearest homeless shelter, and they were forced to navigate adult life on their with no life skills. Flesher also states that “Researchers say former foster kids who have someone to rely on do better than those who don't.” Many states do not supply any help to a foster child after eighteen, and Florida has even considered cutting the budget to help eighteen years olds find employment and housing upon aging out of the system.

This NPR news report gives a more personal look at the life of foster children and the plight they face when they leave the system. The children are not being taught basic life skills, are not receiving an education, and are not being given a support system. Many states simply do not have the budget to support a child until the age of twenty-one or twenty-five. However, most children in the United States require assistance from their parents until their mid-twenties due to the growing importance of secondary education in the United States. Foster children are not only being deprived of a stable and loving home but also they are being deprived of any opportunity to leave poverty. While states may struggle to support the growing number of foster children, not all states have exhausted all possible opportunities for children. States like Florida can still allow

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65 Id.
66 Id.
67 Id.
68 Id.
same sex adoption. This would allow children to continue having a home and also gives them financial resources and a lifelong family.

B. Social Science supports the idea that homosexual parents are fit to adopt.

Rick Santorum, a republican senator from Pennsylvania, has often advocated against same sex adoption. He has stated, gay parents are “robbing children of something they need, they deserve, they have a right to. You may rationalize that that isn’t true, but in your own life and in your own heart, you know it’s true.”69 He also has claimed that research shows that children of gay parents are worse off than those with a father in prison.70 However, many studies not only contradict this belief but prove the exact opposite of Santorum’s claim. A study published in the Journal of Developmental and Behavioral Pediatrics, followed seventy-eight seventeen year olds with “lesbian mothers who were matched on gender, age, parental education and ethnic background with adolescents in heterosexual-parent families that were drawn from a representative statewide sample.”71 The researchers found no quality of life differences and found that the children were well adjusted when compared to children who came from heterosexual households. According to Nanette Gartrell, the lead researcher in the study, the result may simply show “good parenting”72

In the Lofton opinion, one of the Florida’s state’s interests in limiting same sex adoption was the idea that Florida believed that same sex parents could not help children grow in

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70 Id.
71 Id.
72 Id.
adolescence. The state relied on studies to show that gay parents were not capable of raising children as well as a heterosexual couple. However, one may question Florida’s intention in regards to children. The Burkas study obviously shows that Florida has failed to meet the needs of the children in foster care. Children are not being placed in permanent homes and they are facing social, education, and developmental hindrances due to the fact that they are a part of a loving home. One of the biggest problems for children in foster care is the fact that they have no permanent familial support during and especially after they leave foster care. About sixty percent of children in foster care will go to prison at some point in their lives and about two thirds of the young women will have a child before turning twenty years old. If homosexual parents were allowed to adopt children, the need for permanency could be met on a higher level. Children could find forever homes and find stability and lifelong support from a family. One may claim that Florida’s policy of disallowing homosexual adoptions may have more to do with bias than with the welfare intentions of the children.

Children actually are more affected by their parent’s relationship than their parent’s sexual orientation. According to a recent study from the University of Massachusetts at Amherst, “children are far more affected by the relationship of their parents than their sexual orientation. Researchers in the study compared 104 families — 50 of which had opposite-sex parents, 29 with gay fathers and 25 with lesbian mothers — with regard to how happy and well-

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73 Lofton v. Secretary of the Dept. of Family and Children Serv., 358 F. 3d 804 (11th Cir. 2004).
74 Id. At 825.

functioning the children were.”78 The study actually found that gay parents tend to evenly split childcare duties while heterosexual couples tend to divide child care duties by traditional gender roles.79 The children did not focus on what their parent’s sexual orientation was but how well their parents got along.80 The happier the parents in the relationship, the better off the children were.81 In a similar study in England, social scientists came up with the same results when testing families in England and even said that children who were being raised by same sex parents were “thriving.”82 In addition, several studies support the fact that the simple reality of being gay does not affect children but the love and support they receive affects them. The American Academy of Child and Adolescent Psychiatry has an official statement that states that sexual orientation does not cause children to have psychological problems or cause children to become gay.83 In fact, the issues that children face such as depression or other developmental issues usually stem from their home environment.84

In fact, one of the worst experiences a child goes through in terms of development and stability is a parent’s divorce. Kathy Eugster, a prominent family psychologist, has reported that the family environment is actually what shapes a person in adulthood.85 If a child is forced to see

78 Id.
79 Id.
80 Id.
81 Id.
82 Id.
84 Id.
his or her parents fighting, this will cause serious emotional problems. The child may feel guilt or anxiety. The child may start to resent one parent which could affect his or her adult relationships in the future. In addition, children may face issues in school as well as developmentally due the lack of a stable environment. Also, the idea of having a parent leave is often taken as a form of abandonment to the children. This causes self-esteem issues as well.

Besides a divorce, domestic violence between the parents can have the worst effects on children. Domestic Violence has become a growing issue in the United States. It is even more of a concern for children who witness this type of violent relationship between their parents. Children who grow up witnessing domestic violence are more likely to engage in similar relationships. Boys who witness their father abuse their mother will have a greater likelihood to abuse their future partners, and girls will have a greater likelihood of being in abusive relationships. Studies have shown that children who witness domestic violence will have more aggression or may have nervous disorders. These children will also have a more difficult time in school with completing homework and even making friends. The effects of domestic violence can have a lifelong effect for children who are trapped in the middle.

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86 Id.
87 Id.
88 Id.
89 Id.
90 Id.
92 Id.
93 Id.
94 Id.
95 Id.
While divorce and domestic violence occur in same sex families as well as heterosexual families, the fact is the simple identification of parents as “gay” does not affect the children. The family environment is what affects the children. The Florida case seems to imply that any type of depart from the traditional male-female relationship automatically makes same sex couples unfit parents. However, it is clear from social science research that children do not need any heterosexual family but need a loving and supportive home, and above all, a stable family to love them. Children in the current foster care system do not hope for a mother and father but hope for a parent. Florida and other states do not keep the rights of children in mind when denying homosexual adoption.

IV. International treaties could be used to argue for the rights of children.

The International Convention on the Rights of the Child is a document that every country in the UN has ratified except the United States and Somalia. According to the UNICEF Summary,

“The Convention sets out these rights in 54 articles and two Optional Protocols. It spells out the basic human rights that children everywhere have: the right to survival; to develop to the fullest; to protection from harmful influences, abuse and exploitation; and to participate fully in family, cultural and social life. The four core principles of the Convention are non-discrimination; devotion to the best interests of the child; the right to life, survival and development; and respect for the views of the child. Every right spelled out in the Convention is inherent to the human dignity and harmonious development of every child. The Convention protects children's rights by setting standards in health care; education; and legal, civil and social services.”

Because the United States is only a signatory and has not officially ratified the treaty, there is no international remedy for the United States’ failure to actively try to improve the lives of children.

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and the rights of children in the United States. However, the treaty is persuasive as most of the western world views this treaty as an important document when advocating for children’s rights. The United States is concerned with its international appearance and a judge may look at this treaty if it is put in a brief as a persuasive argument in favour of children’s rights. The treaty requires states to give children the right to a family and to develop to their highest potential. It is difficult for a state to justify why a gay couple cannot adopt when that couple has a nice home and can provide for the child, but the state keeps the child in a group home without stability or love and then allows that child to enter into the world alone and with no resources. This seems to be a compelling argument that a Court may entertain. In addition, as mentioned earlier in the paper, the Adoption and Safe Families Act requires states to exhaust all efforts when a child is in foster care to place that child in a permanent home. The state’s excuse that gay parents are unfit because of who they choose to love seems to be failing argument when a child is left alone in the world with no other options.

The United States is a signatory to the International Convention on the Rights of the Child which does mean that the United States cannot engage in policies that actually impede or nullify the purposes of the treaty. By not allowing gay parents to adopt, the United States can be seen as effectively passing laws that impede upon the goal of the treaty. The United States by allowing states like Florida to outright deny homosexual adoption is affirmatively invalidating the goals of the treaty. This can also be persuasive to a judge when deciding if a gay couple should be allowed to adopt.

98 Id.
The treaty also seems to suggest that children are a “special class that should be protected and given a scrutiny higher than rational basis when their rights are in question.” In her article, Stewart argues that when arguing for same-sex adoption, a strict scrutiny application should be given for children. However, as Steward explains in her article, courts have rejected this argument on the grounds that every person has been a minor and stated that children are not a “discrete and insular minority.” In addition, the Supreme Court has stated that in “determining discreteness and insularity must be a social and cultural as well a political determination, and that judges are best suited for the task. As in the case in many critical legal determinations: ‘A page of history is worth a volume of logic.’” While the Supreme Court has not yet stated children are a special group in need of protection, a case can be argued that children in foster care or those without parents are a special group. When looking at the treaties and domestic laws for child welfare, the laws are attempting to ensure children are safe and given homes and other needs. When a child has parents, the parents can be seen as adequate parties to advocate for the needs of their children. However, orphans or children without stable parents are particularly vulnerable and do not have this same right. While they may be wards of the state, the state has its own interests to account for and do not always have the children’s needs first as parents may. Therefore, it could be a stronger argument to say that children who are wards of the state or in need of adoption should be given this higher scrutiny by the Supreme Court. However, as the paper has mentioned, children are not considered a suspect class or given a heightened protection in the court system. The rationale rests on the idea that everyone is a child at one point and this is

100 Id. At 353.
101 Id. At 353.
102 Id. At 353.
not a disability that is permanent. However, it can be argued that children in foster care represent a special class of people. These children as the studies above how demonstrated, are vulnerable and have no party that truly represents their interests. If the court could accept that these children are a special class and deserve protection, then the state would have a more difficult case to prove.

Therefore, children in need of homes may be a stronger argument for the Court awarding a higher scrutiny when deciding welfare cases. The Supreme Court ruling in Levy v. Louisiana gives the argument that certain groups of children may be considered a suspect class. The Supreme Court ruled that a state statute (La. Civ. Code Ann. Art. 2315) that barred illegitimate children from recovering damages for the wrongful death of a parent, but allowed legitimate children to recover in similar circumstances, was invalid because it denied illegitimate children Equal Protection of the law. Foster children could be considered similar to illegitimate in the Levy case because children in foster care are a suspect class or group because they are unprotected and still deserve equal treatment under the law. Foster children are unprotected and deserve the same rights to family as children that are not in foster care. Therefore, rather than arguing children are a suspect class, arguing that children in foster care are a special class will be a stronger argument.

V. Conclusion and an outline for arguing for same sex adoption from the perspective of the rights of the children.

This article has detailed the current laws surrounding child welfare and the current laws in place that give rights to same sex couples. Florida has completely banned same sex adoptions

citing that the state has a legitimate state interest in disallowing same sex adoptions because gay parents are not fit to raise children. However, as the paper has cited, most of the research shows that same sex parents are completely capable of raising children that are well adjusted and happy. In fact, the foster care system actually hurts children more than simply placing the children in loving and stable homes. In addition, in light of the Federal Adoption Statute, states are obligated to find permanent homes for their foster children, and all fifty states are required by federal law to work towards finding permanent homes for the children in foster care. When arguing for same sex adoption, the arguments are generally centered on the rights of the adults.

If the court does decide that foster children are a suspect class, then arguments from this paper could be successful to overturn the state’s position to ban same sex adoption. It will be difficult for the state to argue that it is primarily concerned with the best interests of the children when children are left in the horrible institution of foster care and have long lasting problems from growing up wards of the state when there are capable parents who can effectively raise the children and give them stable and loving homes and the possibility to have a life outside of poverty. In addition, the western world outside the United States has accepted that children are entitled to have a family and would see the current foster care system as unjust. Finally, no real evidence exists to suggest if a person meets all the financial and parental requirements to adopt that they should be denied the ability to adopt a child based on the fact that they happen to love a member of the same sex.

In conclusion, same sex adoption would be a solution to reducing the overwhelming size of the foster care system in the United States. Children have rights to a family and should be allowed to be adopted. By arguing from the perspective of the children, the state may be persuaded to allow same sex adoption and overturn state bans on homosexual adoption.