

NEWS

Ducey: Arizona gay couples can again adopt, foster together

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Key Points

The appeals court in November overturned Arizona's law limiting marriage to only a man and a woman.

The state from November to February had been issuing adoption and foster licenses to married same-sex couples but then halted the practice.

Gov. Doug Ducey upon learning of the halt ordered the agency to immediately begin providing licenses to married same-sex couples.

Married same-sex couples will be allowed to adopt and foster Arizona children together, effective immediately, according to a statement Gov. Doug Ducey issued Wednesday night.

The statement came shortly after Ducey and his administration learned the Arizona Department of Child Safety in early February had ordered its staff to halt joint foster care licenses and adoptions for same-sex couples.

"With 17,000 children under the state's care, we need more adoption in Arizona, not less. That's why I feel strongly – as I have said many times before – that all loving families should be able to serve as foster parents and adopt," Ducey said in his statement. "Practices have been brought to my attention that do not match those priorities, therefore, I'm instructing the Arizona Department of Child Safety to immediately ensure that all legally married couples in Arizona are able to jointly serve as foster parents and adopt. All children deserve a loving home, and under my watch, I'm committed to making sure government encourages that."

Under past Arizona law defining marriage as between only a man and a woman, the state did not allow married same-sex couples to be licensed to adopt or foster as a married couple. Same-sex couples got around the issue by having one of the partners file as a single person.

Following a November ruling by the U.S. Court of Appeals for the 9th Circuit that overturned Arizona's marriage ban for same-sex couples, the department began issuing licenses to legally married same-sex couples. But then in an internal Feb. 4 memo, agency staff ordered an immediate halt to joint licenses for same-sex couples. The only reason given was because the U.S. Supreme Court on Jan. 16 had agreed to take up the issue.

"Effective immediately, and pending the Supreme Court's ruling, the Department will revert to its previous interpretation of state law, rule and policy," the memo stated.

The memo was issued about a week before Ducey fired agency director Charles Flanagan and replaced him with Greg McKay.

The policy is believed to have stemmed from legal advice from the Attorney General's Office. Ryan Anderson, Attorney General Mark Brnovich's communications director, said the office "provided a clarification on the law on adoption preference based on the Supreme Court's consideration of this issue."

Anderson, after learning of Ducey's statement, said, "This office has consistently maintained that this is a policy decision for the governor or for the Legislature."

The American Civil Liberties Union of Arizona learned of the rule change from couples affected by the change, and in late February sent Brnovich and McKay a letter requesting they end the new policy immediately, and threatening legal action.

"DCS policies violate the 14th Amendment of the U.S. Constitution and infringe on the fundamental rights of married same-sex couples," ACLU of Arizona Legal Director Victoria Lopez wrote. "DCS policies prevent children in foster care from being placed with loving parents at a time when Arizona's foster care system is in crisis."

ACLU of Arizona spokesman Steve Kilar said the organization never received a response from the Attorney General's Office or the agency.

Ducey's statement Wednesday is consistent with his letter earlier this month vetoing legislation that would have allowed counties to deny adoption legal services to same-sex couples.

Maricopa County Bill Montgomery has maintained that the court rulings surrounding marriage bans do not automatically extend to other rights such as adoption. The ACLU has said it intends to sue the county over this position.