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Gay Couple Sue In Foster Parent Case Seek To Nullify Rule That Application Ask About Sexual Preference

Ray Richard, Globe Staff

Two homosexual men forced by the state to give up the care of two foster children last May filed suit yesterday seeking to nullify a Dukakis administration regulation that virtually prevents gay couples from serving as foster parents.

The suit was filed in Suffolk Superior Court by Donald Babets and David Jean of Roxbury, from whose home the state removed the children after a Boston Globe story revealed the placement. One of the two children was eventually placed in a Fairhaven foster home. Bristol County District Attorney Ronald A. Pina is investigating a report from an unidentified social worker that the child has been "sexually or physically" abused.

Joining in the suit were the state chapter of the National Association of Social Workers and two women who say they illegally were asked their sexual preference by employees of the state agency that finds homes for foster children.

The regulation requires the state to ask the sexual preference of foster parent applicants and to try to place foster children in "traditional family settings" with relatives or with married couples with other children.

Defendants named in the suit are Gov. Dukakis, Human Services Secretary Philip W. Johnston and social services commissioner Marie A. Matava.

"It's basically a discrimination issue," said John Roberts, director of the Civil Liberties Union of Massachusetts, which prepared the legal action along with Gay and Lesbian Advocates and Defenders.

"It discriminates against single people, divorced people living alone, and couples living together but not necessarily married," he said.

Kenneth Schwartz, general counsel to Johnston, refused to discuss the suit, after the governor's office forwarded press inquiries to him. "It's the legal policy of the commonwealth," he said, "not to comment on pending litigation. I would only say this suit will be vigorously defended, as is any other action against the commonwealth."

After the children were removed from Babets' and Jean's home, gay rights advocates protested the state's action with State House sit-ins and picketed public appearances by the governor. Because their efforts to have the regulation canceled failed, the plaintiffs decided upon the court action, according to Gay and Lesbian Advocates and Defenders director Kevin Cathcart.

"A great deal of energy and effort has been used in the last eight months to convince the administration first not to put the regulation into effect, and then to change the policy," Cathcart said following a news conference at which the court action was announced.

Although the protesters had produced "documentation from social workers and clinical studies" supporting the placement of foster children with gay foster parents, "there was no movement on the part of the administration," he added.

The State Chapter of the National Association of Social Workers maintains that the rule requires social workers to violate their duty under federal law to serve the best interest of foster children and their professional obligation not to discriminate on the basis of sexual preference.

The two women who joined in the suit are Rev. Kathryn Piccard of Dorchester, an Episcopal priest who has cared for 17 foster children, and Catherine Brayden of East Boston, a divorced mother who had a foster child in her home for three years. Both say that under the new regulation they were asked their sexual preference by state foster care workers. This, they say, violated their right to privacy.