

To: Drafting Committee for the Non-Parental Child Custody and Visitation Act

From: Catherine Sakimura, National Center for Lesbian Rights (Observer)

Date: March 24, 2017

Dramatically reduced protections for people who have been functioning as parents.

- Today, the majority of states permit non-legal parents who have been functioning as parents to seek visitation and/or custody. These states -- again a majority -- treat this category of people as distinctly different from other non-legal parents, and they do not require such people to make a showing of detriment in order to obtain contact with the child. The current drafts require people in this category to make the same very high showing that is required of all other non-legal parents -- a standard that requires, among other things, a showing of detriment. In the many states that currently have much more protective equitable law, the "other remedies" section (303/19) would not be sufficient to protect these existing protections from being abrogated, as this act would address the same subject matter, using the same factors that courts in equity have used. We are very concerned that this act would take away rights that people who have acted as parents and are not legal parents have already in many states.
- We recognize that the UPA will capture some of these individuals, but it is nonetheless important not to raise the bar in this Act for these potential petitions. Not all states will adopt UPA, some states might choose not to adopt the de facto parent provisions, and there may be some people who will not qualify under the UPA (such as where the child already has two legal parents), but where the person nonetheless has a very strong parent-child bond.

Extremely high standard for grandparents

- Many, if not most grandparents, would be unable to make the showing required under this Act for an award of visitation or custody. Most states do not require a showing of detriment or harm, and most courts and almost all commentators have taken the position that detriment or harm is not required by *Troxel*. If the goal of the act is to protect important relationships with children, this Act does not seem to do a good job furthering that goal. Moreover, from an enact ability standpoint, we wonder if many states would be interested in passing such a restrictive statute.