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March 31, 2023

The Honorable Lori D. Wilson
Member of the Assembly, 11th Assembly District
P.O. Box 942849
Sacramento, CA 94249-0011

Re: AB 957 (Wilson)
Position: Support if Amended

Dear Assemblymember Wilson,

On behalf of the California Association of Certified Family Law Specialists, a non-profit organization with 694 members who are certified family law specialists by the State Bar of California, Board of Legal Specialization, I write to support Assembly Bill 957 if it is amended in ways ACFLS believes will better serve children's interests.

AB 957 has the laudable goal of ensuring a judge considers gender identity issues that children face in the context of child custody proceedings. However, the bill is too narrowly tailored such that similar personal attributes a child has (e.g., sexual orientation) are not given equal consideration, and such attributes might impliedly be considered of less importance than gender identity. Also, the bill too narrowly focuses on the conduct of a parent, instead of instructing the judge to generally address issues a child might face.

ACFLS suggests amending AB 957 so that the proposed language in Family Code section 3011, subdivision (a)(6) is replaced with the following:

Issues a child might be experiencing related to gender identity, gender expression, or sexual orientation.

ACFLS' proposed language is intended to take the narrow focus off a parental conduct and expand the judge's view to generally consider issues a child faces. Children experiencing gender identity, gender expression, or sexual orientation issues face obstacles other than just a parent's acceptance. For example, while a parent might affirm the child's identity, that parent's family might not, the child's school might not, and the child could face other related issues that a judge should consider.

ACFLS' proposed language is also intended to broaden the judge's consideration to include gender expression and sexual orientation. By not listing those other personal attributes, and only identifying gender identity, the bill impliedly places less importance upon gender expression and sexual orientation. Note that in existing Family Code section 3011, subdivision (b), a judge cannot consider a parent or guardian's "gender identity, gender expression, or sexual orientation" in determining the best interests of the child. Thus, the law already places these personal attributes on equal footing in that none can be considered of the parent or guardian. However, AB 957 would only require one attribute – gender identity – to be considered of the child.

In more broadly looking at a child's issues rather than narrowly looking at parental conduct, ACFLS' proposed language would also prevent contested litigation on what is meant by a parent "affirming" gender identity. Affirmation is a general, ambiguous term. The existing language in AB 957 might invite litigation between parents over who really affirms more than the other. Parental conduct should not be the narrow focus of the judge's inquiry into a very complex topic like this. Rather, the judge should be instructed to consider the circumstances and issues a child faces more broadly.

Also, ACFLS proposes adding marijuana to Family Code section 3011, subdivision (a)(4)(A), to close a loophole in the law since marijuana became legalized. An example of such proposed amendment would be (insertion in bold):

The habitual or continual illegal use of controlled substances or the habitual or continual abuse of alcohol, **marijuana** or prescribed controlled substances by either parent.

Lastly, ACFLS proposes that the word “strongly” be deleted from the proposed new language in Code of Civil Procedure section 1277.5, subdivision (a)(2)(B). That term is not one common to statute when instructing a judge on what weight to give evidence. The proposed new language in that subdivision already instructs the judge to consider that affirmation is in the child’s best interest, so adding the modifier “strongly” might provide little benefit though might create more litigation over what is or is not “strong” consideration.

Respectfully submitted,



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