

Reforming Welfare Reform:

A Call to Amend the Personal Responsibility and Work Opportunity Reconciliation Act in a Way That Recognizes, Respects, and Values All Families While Effectively Alleviating Poverty

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I. Introduction

Just days before signing into law the Defense of Marriage Act (DOMA) – one of the farthest-reaching pieces of anti-gay federal legislation ever passed – President Bill Clinton endorsed a lesser-known, yet equally discriminatory, piece of legislation known as the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA).¹ The Act, which replaced the pre-1996 welfare program, Aid to Families with Dependent Children (AFDC), with the current program, Temporary Assistance to Needy Families (TANF),² not only drastically restructured the system by which federal funding is delivered to welfare recipients,³ it formulated goals explicitly aimed at promoting heterosexual marriage and discouraging out-of-wedlock births among recipients.⁴

Specifically, PRWORA allows states to provide financial incentives and additional support to opposite-sex married couples receiving TANF benefits⁵ and explicitly endorses such initiatives in its pro-marriage Congressional findings.⁶ The Act also provides incentives to states for their efforts to decrease out-of-wedlock births by promoting marriage,⁷ rather than safe-sex education and other preventative strategies.

These marriage initiatives, which are aimed at promoting “traditional family values” and have been launched by states in an effort to comply with PRWORA’s requirements and ultimately receive TANF funds, implicitly exclude and unfairly burden lesbian, gay, bisexual, and transgender (LGBT) families in need of public assistance.⁸ Moreover, PRWORA’s perception and promotion of families headed by married heterosexual couples as the only meaningful, legitimate type of familial configuration perpetuates gender stereotypes and discounts the value of families headed by single parents, same-sex couples, and nonparent kin. Most importantly, the diversion of funds from true poverty-fighting programs, such as job training and education opportunities, to PRWORA-inspired marriage-promotion programs ignores the real needs of all poor families and has ultimately failed to reduce poverty.⁹

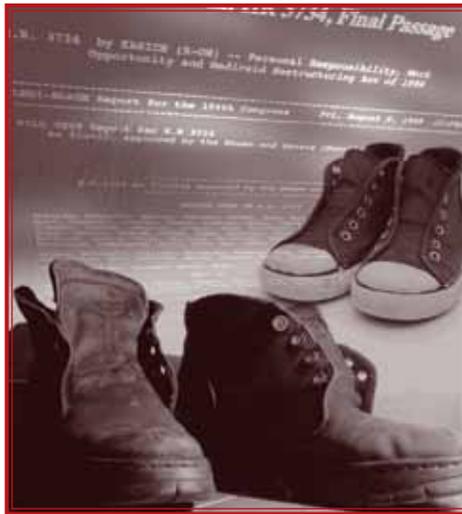
While some lawyers and legal scholars have developed

litigation-based strategies for challenging PRWORA’s discriminatory intent towards and impact on LGBT families in need of public assistance, I argue that the best and most comprehensive means of combating the Act’s perpetuation of inequality is through legislative reform. In doing so, I assert that the perceptions and politics underlying PRWORA and TANF affect all LGBT individuals and families – not just those living in poverty – as well as heterosexuals seeking

freedom from and admonishment of government-promoted gender hierarchies. Consequently, I conclude that legislative reform is a better approach than litigation to addressing the problems presented by PRWORA not only because of the defects inherent in litigation-based strategies in this area, but, more importantly, because public policy that values all families and rejects gender discrimination is more broadly applicable to individuals and families of all socioeconomic levels.

First, Part II below discusses the implications of welfare reform, both for states as a result of administrative changes and individual families as a result of PRWORA’s marriage promotion policies. Part III summarizes

the primary possible litigation-based challenges to PRWORA’s discriminatory provisions and highlights their shortcomings and potential pitfalls. Lastly, Part IV proposes a legislative overhaul as the best vehicle for eliminating the problems presented by the Act and provides specific recommendations for reform. ■



Katrina Young is a 2011 graduate of the Temple University Beasley School of Law. For the complete essay go to: www.philadelphiabar.org/WebObjects/PBA.woa/Contents/WebServerResources/CMSResources/ginsburg-2011.pdf References 1,2,3,4,5,6,7,8 and 9 are all available through the online version of the essay.