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LaRue Smith, 44, left, and his partner, Dan Skahen, 33, shown Monday in Key West, are two of 11 plaintiffs in a lawsuit alleging that the state ban on gay couples adopting children is an unconstitutional violation of due process and privacy rights. The Key West couple do not want to adopt a child of their own, but they want to adopt Smith's niece, Christina, in the event her heterosexual parents die.

LISA FUSS / Miami Herald

## State: End gay parenting suit

*It was aimed at a law prohibiting homosexuals from adopting children.*

THE ASSOCIATED PRESS

**KEY WEST**

The state has asked a federal judge to throw out an American Civil Liberties Union class-action lawsuit aimed at overturning a Florida law that prohibits homosexuals from adopting children.

Casey Walker, a private attorney representing the state, told U.S. District Judge James Lawrence King during a Monday hearing that the ACLU's primary clients could not claim discrimination because they had not applied to adopt.

Walker asked the judge to dismiss the suit. The judge said he will rule later, but gave no specific date.

The ACLU filed the suit last year saying the state's ban violates homosexuals' right to equal treatment under the law. The group also alleges that the ban violates the rights of children languishing in foster care who might be adopted by a homosexual couple or individual.

Florida is the only state that specifically bans gays from

adopting. Utah recently enacted a law that bans unmarried couples who live together and have sexual intercourse from adopting, whether they are heterosexual or homosexual.

The ACLU's lead plaintiff is Steven Lofton, a 41-year-old nurse. He and his partner of 15 years are the foster parents for three children ages 8 to 12. The men have raised the children since birth. Two of the children were born HIV-positive and now have AIDS.

The ACLU argues that Lofton and his partner, Roger Croteau, should be allowed to adopt the children. The three children still remain wards of the Florida Juvenile Court, which last year allowed the men and the children to move from Miami to Oregon.

The group also is representing Wayne LaRue Smith, his partner Dan Skahen, and Smith's sister and brother-in-law, Brenda and Gregory Bradley. The Bradleys, who live in Reno, Nev., want Smith, a Key West attorney, to adopt their 3-year-old daughter should they die.

Florida's law would prohibit that.

"I find it offensive that the state can oversee such a personal decision," Smith said Monday.