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# BIBLIOGRAPHY OF ADOPTION CASES

*Last updated: June 29, 2011*

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## 1. Second Parent Adoption Cases

### *Favorable Cases:*

#### **Alaska**

In re A.O.L., No. 1JU-85-25-P/A (Alaska Super. Ct. July 23, 1985) (granting single petition by a woman to share parental rights and responsibilities with the child's biological parents in accordance with Inupiat customs of open adoption);

In re Adoption of Minor Child, No. 1-JU-86-73 P/A (Alaska Super. Ct. March 3, 1987). (Also listed as decided on Feb. 6, 1987).

#### **California**

Sharon S. v. Superior Court, 31 Cal.4<sup>th</sup> 417, 73 P.3d 554 (2003) (allowing single petition of lesbian to adopt her partner's child to proceed. The Court ruled that the provision stating that adoption terminates the parental rights of the biological parent is waivable. Construing this provision "as precluding second parent adoption would unnecessarily eliminate access to a duly promulgated, well-tested adoption process that has become routine in California .. and that is fully consistent with the main purpose of the adoption statutes to promote the welfare of children by the legal recognition and regulation of the consummation of the closest conceivable counterpart of the relationship of parent and child." 73 P.3d at 570 (internal quotations omitted). Also, ruling that termination was required would undermine settled familial expectations for the thousands of families who already had second parent adoptions. The Court rejected the assertion that the existence of the domestic partnership registry would remedy that upheaval, as it does not "broadly secure for California's children the benefits of the availability of second parent adoption, not does it eliminate the uncertainty the Court of Appeal's decision created for existing second parent adoptees and their parents." 73 P.3d at 572.);

Under California's domestic partnership laws, CA FAM § 297-297.5, a domestic partner may adopt his or her partner's child.

### **Connecticut**

In re Adoption of Baby Z., 247 Conn. 474, 724 A.2d 1035 (1999) (denying the joint petition of a lesbian couple to adopt the biological child of one of women. The court denied the petition, claiming that the legislature did not intend to grant non-biological mothers the right to adopt their partners' children. Recognizing that the best interests of the child standard calls for liberal interpretations of the adoption statutes, the court stated that this standard cannot transcend the bounds of the statutes.);

A new law that became effective October 1, 2000 creates a process for second parent adoption, whereby an existing parent (biological or adoptive) may agree to the adoption of the child by another person "who shares parental responsibility for the child." Public Act 00-228, effectively overruling Adoption of Baby Z.

### **Delaware**

In the Interest of Hart, 806 A.2d 1179 (Del. Fam. Ct. 2001) (granting the single petition for adoption by a stepparent filed by the partner of the children's adopted father. The Court focused on the liberal interpretation due the adoption statutes, ruling that the petitioner had standing to petition to adopt the children, that the fact that he is a second parent poses no bar to his petition, and that allowing the petitioner to adopt the children would not alter the parental rights of the originally adoptive father. The Court concluded that petitioner is already a de facto parent/stepparent, and the court had previously applied the stepparent termination provision to a de facto parent to whom the biological parent was not presently married.).

### **District of Columbia**

In the Matter of the Petition of L.S. and V.L. for the Adoption of a Minor (T.) and (M.), (D.C. Super. Ct. 1991) (granting the joint petition by a lesbian couple to adopt the biological child of one of the women and the adopted child of the other. The court waived the parental rights cut-off provision, holding that the language of that provision is directory, rather than mandatory, and concluding that reading the cut-off provision as mandatory would thwart the best interests of the children.);

In re M.M.D. & B.H.M., 662 A2d 837 (D.C. App. 1995) (granting the joint petition of a gay couple to adopt the adoptive child of one of the men. The court held that two unmarried cohabitants in a committed personal relationship may jointly adopt, relying on the reasonableness of the application of the statutory rule of construction importing a plural understanding of all words indicating the singular to the adoption statutes; legislative history; rejection (either for lack of assistance or applicability) of the application of the interpretive canons of *expressio unius*, strict construction, absurd results/obvious injustice, and legislative intent; application of the canon of purposive interpretation; and a determination that adoption by unmarried couples may meet the child's best interests. The court held that the stepparent exception applies in this instance, despite the fact that the two men are not actually married.).

## **Hawaii**

Newspapers reported the granting of 3 second-parent adoptions by Family Court Judge John C. Bryant, Jr. in December 2000. See <http://www.qrd.org/qrd/usa/legal/lgln/2001/01.01> (citing to the Honolulu Advertiser); “Hawaii court approves adoptions for lesbian couples,” Associated Press (AP) Newswires, Dec. 5, 2000.

## **Illinois**

In re Petition of K.M. and D.M. to Adopt Olivia M., 274 Ill. App.3d 189, 653 N.E.2d 888, 210 Ill. Dec. 693 (Ill. App. Ct. 1995) (granting standing to lesbian couples to bring joint petitions to adopt the biological or adopted child(ren) of one of the women and remands for hearing on the best interests of the child. The court held that unmarried same-sex cohabitants have standing to jointly petition for adoption as the statutory provisions allow a reputable person of legal age to adopt, and provisions in the singular should be read to include the plural. Further, the language of the Illinois statutes allows a biological or adoptive parent to preserve her parental rights and also consent to an adoption by another person by joining onto an adoption petition as a petitioner. The court noted that there is no language anywhere in the Act suggesting that this language is limited to married couples.);

In the Matter of the Petition of C.M.A. a/k/a C.M.W. and L.A.W., 306 Ill. App. 3d 1061, 715 N.E.2d 674, 239 Ill. Dec. 920 (Ill. App. Ct. 1999) (vacating the orders of a former judge declaring the judgments allowing two lesbian couples to adopt the biological child(ren) of one of the women to be null and void based on the judge’s “extreme and patent bias against the adoptive parents based upon sexual orientation).

## **Indiana**

In re the Adoption of M.M.G.C., H.H.C., & K.E.A.C., 785 N.E.2d 267 (Ind. Ct. App. 2003) (existence of stepparent exception to parental termination requirement indicates that Indiana law does not require that the rights of an adoptive parent be divested in the event of a second-parent adoption, and, consistent with the state policy that allowing a second parent to share legal responsibility for the financial, spiritual, educational, and emotional well-being with the child is in the child’s best interest, Indiana’s common law permits a second parent to adopt without divesting the rights of the first adoptive parent);

In re Adoption of K.S.P., 804 N.E.2d 1253 (Ind. Ct. App. 2004) (Domestic partner petitioned to legally adopt the biological children of her same-sex partner. The court held that biological mother's two children could be legally adopted by her same-sex domestic partner, without divesting biological mother of her parental rights. Divestment statute was intended to prevent adversarial parenting fights, and this purpose was not served by application of the divesting statute in situations involving stepparent adoptions or second-parent adoptions, where the biological parent and proposed adoptive parent are both integral members of the proposed adoptive family.);

In the Matter of Infant Girl:W, et al. v. Morgan Co. Fam. & Ch., 55 A 01-0506-JV-00289. Lesbian foster parents from Morgan County sought and received an adoption of their foster daughter from a Marion County Superior Court judge, after a Morgan County judge learned that the couple was living together while unmarried, interrupted adoption hearings, and directed the Office of Family and Children to look for a married couple to adopt the child. The Morgan County judge rejected the couple’s petition to release the

child from her status as ward of the Office of Family and Children. The couple is appealing. The state argues that only married couples can file jointly for adoption and that the Marion County judge ruled incorrectly. See “Lesbian couple fights for custody of child,” Associated Press, Oct. 14, 2005, at <http://www2.indystar.com/articles/2/241076-7252-127.html>.

### **Maine**

In re Adoption of M.A., 930 A.2d 1088 (Me. 2007) (holding that Maine’s adoption statute does not bar an unmarried same-sex couple from jointly petitioning for adoption, despite the inclusion of a reference to married couples).

### **Maryland**

In re Petition of D.L.G. & M.A.H., No. 95179001/CAD, 22 Fam. L. Rep. (BNA) 1488 (Md. Cir. Ct., Baltimore City Jun. 27, 1996).

### **Massachusetts**

In re Tammy, 619 N.E.2d 315, 416 Mass. 205 (1993) (affirming the granting of joint petition of a lesbian couple to adopt the biological child of one of the women. The court held that M.G.L. c. 210 allows adoption by two unmarried cohabitants, including adoption by the child’s biological parent, regardless of sexual orientation. The use of the singular “person” regarding who may adopt is construed to include the plural. Further, the statute contains a list of prohibited combinations of people for purposes of adoption and absent from this list is any prohibition regarding unmarried cohabitants. The statute’s use of general language to define who may adopt demonstrates that the legislature did not attempt to limit the categories of who may adopt beyond the list of prohibited combinations. Thus despite the fact that the Legislature may not have envisioned adoption by same-sex partners, there is no statutory bar to this petition. The court further held that the parent’s rights are not terminated by the adoption. Despite the lack of exceptions to the provision in §6 terminating a biological parent’s rights upon the child’s adoption, the court stated that the Legislature could not have intended that the parent’s rights would be terminated when the parent is one of the adopting parties under §2. §6 is directed to the more usual circumstance of adoption by parties other than the biological parents and has never been held to apply when a biological parent joins in the adoption petition of his/her spouse or when the biological parent petitions alone to adopt the child born out of wedlock.);

Adoption of Susan, 416 Mass. 1003 (1993) (holding Tammy to be controlling and holding that the Probate and Family Court has jurisdiction to consider a joint petition of a lesbian couple to adopt the biological child of one of the women);

Adoption of Galen, 425 Mass. 201 (1997) (clarifying that the partner of the child’s biological mother need not be related to the child by blood in order for the joint petition to succeed and remanding for entry of an order explaining the denial of motion requesting waiver of home study or allowing the motion).

## **New Jersey**

In the Matter of the Adoption of Two Children by H.N.R., 285 N.J. Super. 1, 666 A.2d 535 (N.J. Super. Ct. App. Div. 1995) (granting the single petition of a woman seeking to adopt her partner's biological children. The court focused on the mandate that the adoption statutes be liberally construed to meet the best interests of the child, the statute's silence with respect to joint adoption by unmarried persons or to adoption by an unmarried cohabitant of his/her partner's child with the partner's consent, the breadth of the language allowing "any person" to institute an action for adoption, and a broad construction of the stepparent exception.).

In response to a class action suit by the ACLU, the state approved a policy in 1997 prohibiting the Division of Youth and Family Services from discriminating on the basis of sexual orientation or marital status, thereby allowing same-sex couples to adopt jointly. "The Division shall not discriminate in a child's adoptive placement based on the child's or the adoptive parent's race, color, national origin, age, gender, disability, marital status, sexual orientation, state of residence, or religion. The Division shall not delay or deny the adoptive placement of a child due to the race, color or national origin of either the child or the adoptive parent. These factors may be considered in selecting the adoptive home for only the most compelling reasons related to a particular child's special or distinctive needs. The Division representative shall document when the race, color or national origin of either the child or adoptive parent is considered in making the adoptive home selection and how these factors affected the selection." NJ ADC 10:121C-4.1(c).

## **New York**

In the Matter of the Adoption of Evan, 153 Misc. 2d 844, 583 N.Y.S.2d 997 (N.Y. Sur. Ct., N.Y. County 1992) (granting the joint petition of a lesbian couple to adopt the biological child of one of the women and maintaining the parental rights of the biological mother through the court's equitable power to avoid a strict enforcement of the cut off provision when special circumstances exist);

In re Jacob, In the Matter of Dana, 86 N.Y.2d 651, 660 N.E.2d 397, 636 N.Y.S.2d 716 (N.Y. 1995) (granting standing to an unmarried heterosexual couple to petition to adopt the woman's biological child and to a woman to petition to adopt her partner's biological child. The Court of Appeals held that granting appellants standing to adopt is consistent with the words of the statute as well as the goal of encouraging the adoption of as many children as possible regardless of the sexual orientation or marital status of the individuals seeking to adopt them. The Court also held that the parental rights cut-off provision should be read not to apply when the biological parent consents to the adoption and intends to raise the child jointly with the petitioner.);

In re Adoption of Carolyn B., 6 A.D.3d 67, 774 N.Y.S.2d 227 (N.Y.A.D. 4 Dep't 2004) (holding that joint adoption by unmarried gay couple who had established a family unit was in best interests of the child, obviating waste of judicial resources for single adoption and subsequent second parent petition).

## **Oregon**

In re Adoption of M.M.S.A. No. D8503-61930 (Or. Circuit Ct., Multnomah County Sept. 4, 1985) (granting the joint petition of a lesbian couple for one woman to adopt the biological child of the other. The court held that Oregon law did not prohibit the

adoption, but to the contrary required it in the child's best interests. The Oregon statutes allow the court to grant the petition of any person to adopt another if the court is satisfied as to the identity and relations of the people involved, that the petitioner is sufficiently able to raise the child, providing suitable nurturing and education, and that it is fit and proper for the adoption to be effected. This petition met all of those criteria, as well as the policy that any adoption that is in the best interests of the child should proceed.).

### **Pennsylvania**

In re Adoption of R.B.F. and R.C.F., 803 A.2d 1195 (Pa. 2002) (allowing adoption to take place without relinquishment of parental rights when cause is shown that such relinquishment is unnecessary under the particular circumstances of the case. The court noted that it would be absurd to allow same-sex couples to adopt jointly – which the statutes already permit – but not allow one of the partners to adopt the child of the other.).

### **Vermont**

In re B.L.V.B. and E.L.V.B. 628 A.2d 1271, 160 Vt. 368 (1993) (granting the joint petition of a lesbian couple to adopt the biological children of one of the women, holding that “[W]hen the family unit is comprised of the natural mother and her partner, and the adoption is in the best interests of the children, terminating the natural mother's rights in unreasonable and unnecessary.” 160 Vt. at 369.).

This was codified in 1995: “If a family unit consists of a parent and the parent's partner, and adoption is in the best interest of the child, the partner of a parent may adopt a child of the parent. Termination of the parent's parental rights is unnecessary in an adoption under this subsection.” VT ST T. 15A § 1-102(b).

### **Washington**

In re Adoption of (Child A and Child B), No. 88-5-00088-9 (Wash. Super. Ct., Spokane County June 23, 1988) (granting the joint petition of a lesbian couple for one of the women to adopt the biological children of the other);

In re Child 1 and Child 2, No. 89-5-00067-7 (Wash. Super. Ct., Thurston County Nov. 16, 1989);

In re the Interest of E.B.G., No. 87-5-00137-5 (Wash. Super. Ct., Thurston County Nov. 16, 1989) (granting the joint petition of a lesbian couple for one of the women to adopt the biological child of the other. The court notes that the language of the adoption statute is extremely broad regarding who may adopt and that there is “no requirement that if the child has two parents that they be of the opposite sex.” Slip op. at 5-6. The court further holds that the judicial exclusion of gays from the marriage act is irrelevant for the purposes of to this case and notes that other courts in Washington, Oregon, Alaska and California have all granted adoptions to gay co-parents, citing Adoption of Child A and Child B, In re the Adoption of M, In re A.O.L., and In the Matter of the Adoption Petition of Nancy. The court notes that the guiding principle in each state is whether the adoption is in the best interests of the child, concluding that in this instance, it is, focusing on the family meeting the factors relevant in a stepparent adoption, on joint performance of the parenting functions, on the protections the child would have upon the death of either mother or upon their separation, on the benefits the child would receive from the adoptive mother, and on the protection the adopted mother would have from third parties who refused to accept decisions she made on the child's behalf.).

**Other states in which Second Parent Adoptions have been granted include:**

Alabama (selected counties)  
Delaware (selected counties)  
Iowa (selected counties)  
Louisiana (Orleans Parish)  
Michigan (selected counties)  
Minnesota (Aitkin and Hennepin Counties)  
Nevada (selected counties)  
New Hampshire (selected counties)  
New Mexico (selected counties)  
Rhode Island (selected counties)  
Texas (Austin, San Antonio & some other counties)

*Unfavorable Cases:*

**Colorado**

In the Matter of the Adoption of T.K.J. and K.A.K., 931 P.2d 488 (Colo. App. 1996) (denying joint petition by a lesbian couple to adopt each other's biological children. The court held that because the petitioners filed with their petitions a consent to adoption without relinquishing their parental rights, the children were deemed not available for adoption given that the statutes do not allow a person to consent to the adoption of her child by someone to whom she is not married without terminating her parental rights. Further, the court declined to read the provision relating to the court's duty to protect the best interests of the child as overriding the effect of other provisions within the adoption statute. The court read the stepparent exception very strictly, defining stepparent as someone who is married to the parent. The court declined to import the concept of a "spousal equivalent" found elsewhere in the Children's Code, into the definition of a stepparent.).

**Nebraska**

In re Adoption of Luke, 263 Neb. 365, 640 N.W.2d 374 (2002) (denying joint petition of lesbian couple to adopt biological child of one of the women. The Court held that the child was not eligible for adoption because the biological mother had not relinquished her parental rights, as required by statute.).

**New Hampshire**

In re Jason C., 129 N.H. 762, 533 A.2d 32 (1987) (denying the joint petition of two unmarried (formerly married and no longer living together) adults to adopt their foster child. The court read the absence of any procedure for custody determinations in the adoption provisions to indicate that the legislature did not intend to grant adoptions under these circumstances.).

**Ohio**

In re: Adoption of Jane Doe, 130 Ohio App. 3d 288 (Ohio Ct. App., 9th Dist. 1998), appeal not allowed, 85 Ohio St. 3d 1467, 709 N.E.2d 173 (1999), reconsideration denied, 86 Ohio

St. 3d 1408, 711 N.E.2d 234 (1999) (denying the petition of woman to adopt her partner's biological child, stating that the adoption by an adult who was not the child's stepparent would terminate the parental rights of the biological parent by operation of law because the unambiguous language and meaning of the statute required strict construction).

### **Wisconsin**

In The Interest of Angel Lace M. v. Terry M., 184 Wis.2d 492, 516 N.W.2d 678 (1994) (denying single petition of woman to adopt her partner's adopted child and petition of mother to allow her partner to adopt the child upon termination of her ex-husband's parental rights. The court held that while the petitioner met eligibility requirements to adopt, the child was not eligible to be adopted because one parent still retained parental rights, and further that the parent's rights would be automatically terminated if the petitioner were allowed to adopt the child. The court also found no constitutional violation to the child's or petitioner's rights.

## **2. Cases Testing Validity of Second Parent Adoptions**

### **Florida**

Embry v. Ryan, 11 So.3d 408 (Fla. Ct. App. 2009) (Reversing a district court decision refusing to recognize a same-sex adoption judgment from Washington, the Court of Appeals ruled that foreign adoption awards had to be accorded full faith and credit and enforced as if they occurred in Florida, even if they might contravene some Florida public policy, under Fla. Stat. Ann. §63.192 (2008)).

### **Kentucky**

S.J.L.S. v. T.L.S., 265 S.W.3d 804 (Ky. Ct. App. 2008) (Court declined to invalidate second-parent adoption issued under step-parent adoption portion of adoption statute because challenge was time-barred, but concluded that original grant of adoption was in error. Ruled that same-sex second parent adoptions that did not terminate the biological parent's rights were impermissible in Kentucky, and that same-sex partner did not qualify as "step-parent").

### **Michigan**

Giancaspro v. Congleton, 2009 WL 416301 (Mich. Ct. App. 2009) (District Court ruled that while it was compelled to recognize Illinois adoption under Full Faith and Credit Clause, this did not extend to the enforcement of Michigan's Child Custody Act. The Court of Appeals reversed, holding that the legal framework for custody in Michigan did not exclude children adopted out-of-state).

### **Mississippi**

Nancy Polikoff notes, "Although Mississippi recently enacted a prohibition on adoption by same-sex couples in that state, the legislature rejected a portion of the original proposal that would have denied recognition to such adoptions granted in other states." Nancy D. Polikoff, *Recognizing Partners But Not Parents / Recognizing Parents But Not Partners*:

*Gay and Lesbian Family Law in Europe and the United States*, 17 N.Y.L. Sch. J. Hum. Rts. 711, 735 (2000).

### **Nebraska**

Russell v. Bridgens, 264 Neb. 217, 647 N.W.2d 56 (2002) (Nebraska court refused to invalidate Pennsylvania coparent agreement, even though jurisdiction to enter the coparent agreement was predicated on Pennsylvania law. The court noted that it eagerly awaited pending Pennsylvania decisions in dicta. Remanded for determination of custody and support.).

### **North Carolina**

Boseman v. Jarrell, 704 S.E.2d 494 (N.C. 2010) (Supreme Court held that a lesbian partner's second-parent adoption was void because the issuing court did not terminate the parental rights of the biological mother, her partner, as required by statute. Despite voiding the second-parent adoption, the court affirmed the use of the best interest of the child standard to award joint custody to the former partners).

Erez v. Starr, 97 CVD 624 (Gen. Ct. Justice, Durham County Aug. 29, 1997), appeal dismissed, COA99-1534 (N.C. Ct. App. Nov. 27, 2000) (District judge ruled that under the Full Faith and Credit clause of the U.S. Constitution, North Carolina should recognize the adoption of a child by her lesbian co-parent which occurred three years earlier in Washington state. Biological mother argued adoption should be deemed invalid because N.C. statute prohibited recognition of same-sex marriages. See <http://www.qrd.org/qrd/usa/legal/lgl/1997/10.97>; <http://www.nclrights.org/releases/nocar.htm>. See also Barbara J. Cox, *Adoptions by Lesbian and Gay Parents Must Be Recognized by Sister States under the Full Faith and Credit Clause Despite Anti-Marriage Statutes That Discriminate Against Same-Sex Couples*, 31 Cap. U. L. Rev. 751 (2003), citing Nancy D. Polikoff, *Recognizing Partners But Not Parents / Recognizing Parents But Not Partners: Gay and Lesbian Family Law in Europe & the United States*, 17 N.Y.L. Sch. J. Hum. Rts. 711, 735 (2000).).

### **Oklahoma**

Finstuen v. Edmonson, No. CIV-04-1152-C (U.S. Dist. Ct. for the W. Dist. of Okla. Dec. 7, 2005), motion to dismiss denied, unreported, at [http://www.lambdalegal.org/binary-data/LAMBDA\\_PDF/pdf/350.pdf](http://www.lambdalegal.org/binary-data/LAMBDA_PDF/pdf/350.pdf) (Same-sex couples who adopted children while living in other states and later moved to Oklahoma are challenging 2004 law that states Oklahoma "shall not recognize an adoption by more than one individual of the same sex from any other state or foreign jurisdiction." OK ST T. 10 § 7502-1.4 (A). Defendants moved to dismiss, claiming they are protected from suit by Eleventh Amendment immunity. Judge ruled that plaintiffs are seeking prospective equitable relief from state officials for alleged violations of federal law, and thus rejected state's Eleventh Amendment claim. See <http://www.lambdalegal.org/cgi-bin/iowa/cases/record?record=215>).

### **3. Bans on Adoption and Foster Care**

#### *Adoptions Bans on Individuals:*

##### **Florida**

GLBT individuals and same-sex couples cannot adopt. “No person eligible to adopt under this statute may adopt if that person is a homosexual.” FL ST § 63.042(3).

Lofton v. Secretary of Dept. of Children and Family Services, 358 F.3d 804 (11th Cir. 2004), rehearing en banc denied, 377 F.3<sup>rd</sup> 1275 (2004), cert. denied, 125 S.Ct. 869 (2005), (Foster parents and guardians challenged constitutionality of Florida law prohibiting homosexuals from adopting children. The United States District Court for the Southern District of Florida granted summary judgment for state, and appeal was taken. The Court of Appeals, held that: (1) relationships involving foster and legal guardian families did not create liberty interest in family integrity, and (2) statute did not violate equal protection.).

#### *Adoption Bans on Couples:*

##### **Arkansas**

Arkansas Dept. of Human Services v. Cole, 2011 Ark. 145, 2011 WL 1319217 (Ark. 2011) (striking down a ballot initiative banning unmarried couples from adopting as violative of the privacy rights provided for in the Arkansas constitution).

##### **Mississippi**

GLBT individuals may adopt, but law amended in 2000 to prohibit adoption by same-sex couples. “Adoption by couples of the same gender is prohibited.” MS ST § 93-17-3(2).

##### **Utah**

Same-sex couples are effectively prohibited from adopting. “(a) A child may be adopted by: (i) adults who are legally married to each other in accordance with the laws of this state, including adoption by a stepparent; or (ii) any single adult, except as provided in Subsection (3)(b). (b) A child may not be adopted by a person who is cohabiting in a relationship that is not a legally valid and binding marriage under the laws of this state. For purposes of this Subsection (3)(b), "cohabiting" means residing with another person and being involved in a sexual relationship with that person.” UT. CODE §78-30-1(3).

#### *Challenged Foster Care Bans:*

##### **Arkansas**

Approved in 1999, Section 200.3.2 of the Minimum Licensing Standards of the Child Welfare Agency Review Board: “no person may serve as a foster parent if any adult member of that person’s household is a homosexual. Homosexual, for purposes of this rule, shall mean any person who voluntarily and knowingly engages in or submits to any sexual contact involving the genitals of one person and the mouth or anus of another person of the same gender, and who has engaged in such activity after the foster home is approved

or at a point in time that is reasonably close in time to the filing of the application to be a foster parent”;

Howard v. Child Welfare Agency Review Bd., 2004 WL 3154530 (Cir. Ct. of Ark. Dec. 29, 2004), on appeal no. 05-814 (Sup.Ct.Ark.) (Ruled that Section 200.3.2 of the Minimum Licensing Standards, promulgated by the defendant Board, is not a rule or regulation that "promotes the health, safety, or welfare of children," is unconstitutional as being violative of the Separation of Powers Doctrine, does not violate the Equal Protection provisions of the United States Constitution or the Arkansas Constitution, and does not violate the plaintiffs' constitutional rights to privacy or intimate association under either the United States Constitution or the Arkansas Constitution. Declared Section 200.3.2 of the Minimum Licensing Standards unconstitutional under the Separation of Powers Doctrine and enjoined the defendants from enforcement of such regulation.”).

### **Missouri**

In March 2005, a woman was denied her application to become a foster parent solely because she was a lesbian. The decision by the Department of Social Services was overturned in February 2006 in Johnston v. MO Dept. of Social Services Petition, 2005 WL 3465711, No. 0516-CV09517 (Mo.Cir.Ct., February 17,2006). In June 2006, Missouri Attorney General Jay Nixon acknowledged that with the legislature’s repeal of the same-sex sodomy law, the State had no standing to deny foster parent applications of gay and lesbian individuals. See <http://www.aclu.org/lgbt/parenting/25811prs20060608.html>.

### **North Dakota**

Damron v. Damron, 670 N.W.2d 871 (North Dakota, 2003) (The Supreme Court held that modification of child custody from ex-wife to ex-husband within two years of prior custody order, based on ex-wife's homosexual household, was clearly erroneous; overruling Jacobson v. Jacobson, 314 N.W.2d 78.);

Law was amended in 2003 to allow child-placing agencies to refuse placements that violate religious or moral policies. “The department of human services may not deny a license [to a child-placing agency] because of the applicant's objection to performing, assisting, counseling, recommending, facilitating, referring, or participating in a placement that violates the applicant's written religious or moral convictions or policies.” N.D. CENT CODE §50-12-03.

### **Virginia**

Kaufman v. Va. Department of Social Services, motion to dismiss denied (Arlington Co. Circ. Ct. May 3, 2002), settled (Aug. 14, 2002) (Virginia officials refused to allow Kaufman to adopt a foster child from the District of Columbia because she is a lesbian, despite the fact she had previously adopted and successfully raised a foster child. Lambda Legal and the ACLU of Virginia argued for Kaufman that under Virginia law, state officials could not refuse to consider applications from gay men and lesbians and must evaluate applicants on a case-by-case basis, in light of the best interests of the child. Under the settlement, Dept. of Social Services sent its local departments and agencies a directive instructing that consideration of all applications for adopting out-of-state children “will be limited to whether the proposed placement is contrary to the interests of that child” and that “there are no absolute barriers” to potential adoptions.)

*Other Bans:*

**Nebraska**

The HRC reports that “Nebraska law allows any unmarried person or husband and wife to petition to adopt ... However, it appears there is a policy in the Department of Social Services that prohibits lesbian and gay individuals from serving as foster parents.” HRC, Nebraska Adoption Law (available at <http://www.hrc.org/Template.cfm?Section=Home&CONTENTID=24581&TEMPLATE=/ContentManagement/ContentDisplay.cfm>). The HRC appears to refer to the following: “All adults providing foster care shall – ... (3) Not engage in or have a history of behaviors which would injure or endanger the health or morals of children...” Neb. Health and Human Services Manual 6-003.25A, available at [http://www.sos.state.ne.us/business/regsearch/Rules/Health\\_and\\_Human\\_Services\\_System/Title-474/Chapter-6.pdf](http://www.sos.state.ne.us/business/regsearch/Rules/Health_and_Human_Services_System/Title-474/Chapter-6.pdf).

The law regarding adoption is the following: “Except as otherwise provided in the Nebraska Indian Child Welfare Act, any minor child may be adopted by any adult person or persons and any adult child may be adopted by the spouse of such child's parent in the cases and subject to sections 43-101 to 43-115, except that no person having a husband or wife may adopt a minor child unless the husband or wife joins in the petition therefor. If the husband or wife so joins in the petition therefor, the adoption shall be by them jointly, except that an adult husband or wife may adopt a child of the other spouse whether born in or out of wedlock.” NEB. REV. STAT. § 43-101(1).

**4. Secondary Sources**

ACLU Lesbian and Gay Rights Project, Too High a Price: The Case Against Restricting Gay Parenting (2005) (at <http://www.aclu.org/Files/OpenFile.cfm?id=17244>) (Summarizes the social scientific and legal arguments against restricting gay parenting and refutes common arguments for keeping gays from being parents.);

Evan B. Donaldson Adoption Institute, Adoption by Lesbians and Gays: A National Survey of Adoption Agency Policies, Practices and Attitudes (Oct. 29, 2003) (at <http://www.adoptioninstitute.org/whowe/Gay%20and%20Lesbian%20Adoption1.html>) (Indicates that 60 percent of surveyed adoption agencies accept applications from GLBT people and that 40 percent have placed children with such adoptive parents.);

Family Pride Coalition, <http://www.familypride.org>

National Center for Lesbian Rights, <http://www.nclrights.org>

Lambda Legal, <http://www.lambdalegal.org>

ACLU, <http://www.aclu.org>

Ellen Perrin, et al., American Academy of Pediatrics, Technical Report: Coparent or Second-Parent Adoption by Same-Sex Parents, 109 *Pediatrics* 341 (Feb. 2002) (Updated through Oct. 21, 2005 at <http://pediatrics.aappublications.org/cgi/reprint/109/2/339>.) (Indicates that a growing body of scientific literature demonstrates that children who grow up with one or two gay or lesbian parents fare as well as children whose parents are heterosexual.).