



**NATIONAL RESOURCE CENTER
FOR FOSTER CARE
& PERMANENCY PLANNING**

at the Hunter College
School of Social Work

*INFORMATION PACKET:
Gay and Lesbian
Second Parent Adoptions*

By Abby Lynn Bushlow

May 2004

129 East 79th Street • New York, NY 10021
TEL 212/452-7053 • FAX 212/452-7051
www.hunter.cuny.edu/socwork/nrcfcp

A service of the
Children's Bureau/ACF/DHHS

In the United States, formal adoption was originally reserved for white, middle-class, married couples. As more children, including “harder to place” children, began to be available for adoption, various groups (such as single individuals, minorities, the aged, and the poor) advocated successfully for inclusion as prospective adoptive resources. Until very recently, however, state statutes, agency regulations, or agency practices prohibited gays and lesbians from adopting. With the assistance of child advocacy groups, many states are currently allowing gays and lesbians to become adoptive parents. These states now recognize that the best interests of children require finding loving, competent parents, even if these parents do not lead “traditional” lifestyles.

Although gays and lesbians have been able to individually adopt children in many states, partners of gay and lesbian adoptive and biological parents had been unable to adopt the children they were raising together. Virtually all state statutes limited the right to adopt to individuals or to married couples adopting jointly. Furthermore, adoption terminates the existing parent’s legal rights; hence, adoption by a parent’s spouse or partner severs the original parent’s rights. Many states enacted a stepparent exception to this law, allowing heterosexual, legally married spouses to adopt their step-child(ren) (assuming the other biological parent had died or had relinquished his or her rights) without terminating the existing parents’ rights. Understanding that children of gay and lesbian couples deserve the legal protections of a two-parent home, in the 1980’s states began to allow second parent adoptions. Similar to stepparent adoptions, second parent adoptions permit the homosexual partner of an adoptive or biological parent to adopt without terminating the existing partner’s rights. Today, about half of the states allow second-parent adoptions, either by statute or through case law.

Fact Sheet

General Adoption Statistics

Too many children in this country are languishing in foster care, and desperately need adoptive homes. Unfortunately, there are not enough individuals or families who are willing to adopt.

(The following is cited from Child Welfare League of America, www.cwla.org/articles, and from the American Civil Liberties Union (“ACLU,” www.aclu.org/LesbianGayRights/LesbianGayRights).

- ◆ The United States is facing a critical shortage of adoptive and foster parents. As a result, hundreds of thousands of children in this country do not have permanent homes. These children remain within state foster care systems for months or years.
- ◆ It is estimated that there are 500,000 children in foster care nationally.
- ◆ On September 30, 1999, 127,000 children in the public child welfare system were waiting to be adopted.
- ◆ The median age of children in this group was 7.7 years.
- ◆ Many of these children had spent more than 36 continuous months in foster care.
- ◆ In 1999, 46,000 children were adopted from public child welfare agencies.
- ◆ Children who lack permanent homes suffer serious damage. These children frequently become victims of the “foster care shuffle,” in which they are frequently moved to different homes. A child in permanent foster care can live in 20 or more placements by the time he or she reaches age eighteen. Consequently, children trapped in long-term foster care often suffer from increased emotional problems, delinquency, substance abuse, and academic problems.

(The following is cited from Child Welfare League of America (“CWLA,” www.cwla.org/programs/adoption/adoptionfactsheet.htm).

- ◆ Of the 36,000 children who were adopted in 1998, 40% were white, 44% were black, 13% were Hispanic, 1% were American Indian, and 1% were Asian.
- ◆ The average age of children adopted in 1998 was seven years old.
- ◆ On average, these children waited to be adopted 18 months following termination of parental rights.

Gay and Lesbian Parenting Statistics

(The following is cited from Lamda Legal, www.lamdalegal.org).

- ◆ There are an estimated six to ten million lesbian and gay parents in the United States.
- ◆ These parents are the mothers and fathers to an estimated six to fourteen million children throughout the country. Although many of these children were born when their parents were in a heterosexual relationship, in the last decade there has been a sharp rise among gays and lesbians planning and forming families through adoption, foster care, donor insemination, and surrogacy.

Adoption Agency Practices with Respect to Gays and Lesbians

(The following is cited from the Evan B. Donaldson Adoption Institute, www.adoptioninstitute.org).

The Evan B. Donaldson Adoption Institute sought information from adoption agencies concerning their practices toward gay and lesbian prospective adoptive parents. The Institute mailed surveys to all 51 public agencies in the United States, plus 844 private agencies (over half of all agencies listed in the National Adoption Information Clearinghouse). 307 agencies responded. Of the agencies that chose not to participate in the survey, more than one-third reported in follow-up phone calls that they did not work with homosexual prospective adoptive parents. This amount seems to coincide with the percentage of respondents who did not place children with homosexuals. During the year 1999-2000:

- ◆ Adoption agencies were increasingly willing to place children with gay and lesbian adults and, consequently, a steadily escalating number of homosexuals became adoptive parents.
- ◆ 60% of adoption agencies accepted applications from self-identified homosexuals.
- ◆ About two in five of all agencies nationwide have placed children with gay or lesbian adoptive parents.
- ◆ Almost two-thirds of responding agencies had official policies on adoption by gays and lesbians. Of these, 33.6% reported a non-discrimination policy. About one-fifth said that religious beliefs were the basis for rejecting applications from gays and lesbians.
- ◆ Acceptance of homosexuals' applications depended upon the agency's religious affiliation: public agencies (83.3%), Jewish-affiliated agencies (73.7%), private, secular agencies (55.9%), and Lutheran agencies (53.5%) were significantly more likely to make an adoption placement with a gay or lesbian client than all other types of agencies.
- ◆ Agencies serving children with special needs were much more likely to accept applications from homosexuals.

Bibliography

ACLU, April 6, 1999, "Fact Sheet: Overview of Lesbian and Gay Parenting, Adoption and Foster Care," www.aclu.org/LesbianGayRights/LesbianGayRights, retrieved November 24, 2003.

ACLU, April 30, 1998, "In the Child's Best Interests: Defending Fair and Sensible Adoption Policies," www.aclu.org/LesbianGayRights/LesbianGayRights, retrieved November 24, 2003.

ACLU, February 18, 2004, "ACLU Asks Appeals Court to Reconsider Decision Upholding Florida's Anti-Gay Adoption Law," www.aclu.org/LesbianGayRights/LesbianGayRights.cfm?ID=14990&c=104, retrieved May 16, 2004.

ACLU, February 18, 2004, "Brief in Lofton, et al. v. Kearney, et al.," www.aclu.org/LesbianGayRights/LesbianGayRights.cfm?ID=14988&c=104, retrieved May 22, 2004.

ACLU, February 14, 2002, "Landmark ACLU Case Challenging Florida's Gay Adoption Ban Reaches Federal Appeals Court," www.aclu.org/LesbianGayRights/LesbianGayRights, retrieved November 28, 2003.

ACLU, February 20, 2002, "Mainstream Children's Groups 'Unequivocally' Urge Appeals Court to Overturn Florida Gay Adoption Ban," www.aclu.org/LesbianGayRights/LesbianGayRights, retrieved November 28, 2003.

ACLU, March 7, 2000, "Mississippi Advances Unconstitutional Gay Adoption Ban that also Bars Recognition of Gay Adoptions in Other States," www.aclu.org/LesbianGayRights/LesbianGayRights, retrieved November 28, 2003.

ACLU, March 16, 2000, "Unconstitutional Gay Adoption Ban Dies in Mississippi, Local Advocates Attribute Victory to Deluge of Support," www.aclu.org/LesbianGayRights/LesbianGayRights, retrieved November 28, 2003.

ACLU, May 26, 1999, "ACLU Challenges Florida Ban on Lesbian and Gay Adoption," www.aclu.org/LesbianGayRights/LesbianGayRights, retrieved November 28, 2003.

Adoption Online, "Working with Gay and Lesbian Adoptive Parents," www.adoptiononline.com, retrieved November 28, 2003.

APA Online, "Lesbian and Gay Parenting," www.apa.org/pi/parent.html, retrieved November 28, 2003.

CWLA, March 1999, "Adoption Fact Sheet," www.cwla.org/programs/adoption/adoptionfactsheet.htm, retrieved November 28, 2003.

CWLA, January 2002, "Gay Adoption," www.cwla.org, retrieved November 28, 2003.

Evan B. Donaldson Adoption Institute, October 29, 2003, "Adoption by Lesbians and Gays: A National Survey of Adoption Agency Policies, Practices, and Attitudes," www.adoptioninstitute.org.

Family Research Council, "Homosexual Parenting: Placing Children at Risk," www.frc.org, retrieved December 1, 2003.

FPReport online, June 2003, "Special Constituencies Vote on Adoption Policy, Other Issues," www.aafp.org, retrieved November 23, 2003.

In Re Adoption of R.B.F. and R.C.F. and In Re Adoption of C.C.G. and Z.C.G., J-100-2002.

In the Matter of Jacob and In the Matter of Dana, 86 N.Y.2d 651.

Lamda Legal, August 5, 2003, "California Supreme Court Overturns Misguided Second-Parent Adoption Decision," www.lamdalegal.org, retrieved November 30, 2003.

Lamda Legal, September 28, 1997, "Lesbian & Gay Parenting: A Fact Sheet," www.lamdalegal.org, retrieved November 24, 2003.

Lamda Legal, December 16, 1998, "Ohio Appeals Court Denies Second-Parent Adoption to Lesbian Couple," www.lamdalegal.org, retrieved November 30, 2003.

Metropolitan News-Enterprise, May 8, 2003, "High Court, in Case spawned by Lesbians' Breakup, Urged to oid Adoptions by Non-Marital Partners," www.metnews.com/articles.

NAIC, "State Laws Regarding Adoption by Gay and Lesbian Parents," <http://naic.acf.hhs.gov>, retrieved November 24, 2003.

NCLR, August 13, 2003, "American Bar Association Votes to Support Second Parent Adoptions," www.nclrights.org/releases, retrieved December 1, 2003.

NCLR, October 1, 2000, "Lesbians and Gay Men as Adoptive and Foster Parents: An Information Sheet," www.nclrights.org/publications/adoptive-information.htm, retrieved November 30, 2003.

NCLR, August 2003, "Second Parent Adoptions: A Snapshot of Current Law," www.nclrights.org/publications/2ndparentadoptions.htm, retrieved November 30, 2003.

NCLR, "Sharon S. v. Superior Court of San Diego County," www.nclrights.org/cases/sharon.htm, retrieved November 30, 2003.

NOLO, "Gay and Lesbian Parents," www.nolo.com/lawstore/products, retrieved November 24, 2003.

Out in the Mountains, March 1992, "The New American Family: Lesbian Second Parent Adoption Approved in Vermont," www.mountainpridemedia.org/oitm/issues/1992/03mar1992/, retrieved November 27, 2003.

The Center for Lesbian and Gay Civil Rights, December 8, 2000, "Despite Ruling, Options Remain for other Parent, www.center4civilrights.org/Asecparent.htm, retrieved November 24, 2003.

The Center for Lesbian and Gay Civil Rights, August 20, 2002, "Pennsylvania Supreme Court: PA Adoption Law Allows Second-Parent Adoption for Same-sex Couples," www.center4civilrights.org, retrieved November 27, 2003.

The Center for Lesbian and Gay Civil Rights, "Second-Parent Adoptions," www.center4civilrights.org/secadopt.htm, retrieved November 24, 2003.

The Vermont Statutes Online, Title 15AL: Adoption Act, Section 1-102, www.leg.state.vt.us/statutes, retrieved December 1, 2003.

Policy, Legislative, and Case Law Review

In the early 1980's, the National Center for Lesbian Rights ("NCLR") originated the concept of second parent adoptions. Since that time, a steadily growing number of state and county jurisdictions have granted second parent adoptions (NCLR, www.nclrights.org/publications/2ndparentadoptions.htm). Feeling threatened by this trend, in the mid-1990's right-wing organizations launched a nationwide campaign to enact state laws prohibiting lesbians and gay men from becoming adoptive or foster parents. In 1999, nine states introduced legislation unfavorable to lesbian and gay families. In 2000, two states actually enacted discriminatory legislation. However, during the same period, gays and lesbians achieved victories in legislatures and courts. For example, in 1999 New Hampshire repealed its 1988 ban prohibiting lesbians and gay men from becoming adoptive and foster parents (NCLR, www.nclrights.org/publications/adoptive-information.htm).

Currently, according to the NCLR, appellate courts in the following states have approved second parent adoptions: California, the District of Columbia, Illinois, Indiana, Massachusetts, Pennsylvania, New York, New Jersey, and Vermont. Trial court judges in one or more counties of the following states have also granted second parent adoptions: Alabama, Alaska, Delaware, Hawaii, Iowa, Louisiana, Maryland, Minnesota, Nevada, New Mexico, Oregon, Rhode Island, Texas, and Washington. California, Connecticut, and Vermont have statutes expressly permitting second parent adoptions. Appellate courts in the following states have held that second parent adoptions are not permissible under their respective adoption statutes: Nebraska, Ohio, Wisconsin, and Colorado (Ibid). Note, though, that some courts in Colorado have allowed second parent adoptions—See, National Adoption Information Clearinghouse ("NAIC," <http://naic.acf.hhs.gov/pubs>). Florida, Mississippi, and Utah have statutes prohibiting gays and lesbians from adopting (NCLR, www.nclrights.org/publications/adoptive-information.htm).

The following is an overview of various states' policies regarding gay and lesbian second parent adoptions.

Sample States Allowing Lesbian and Gay Second Parent Adoptions

Vermont—

On December 20, 1991 Vermont approved its first gay and lesbian second parent adoption. This adoption was one of the first of its kind in the country. The adoption agency had knowingly placed a child with a lesbian couple, and advised the couple to adopt the child one at a time. The Vermont Department of Social and Rehabilitative Services did not take a staunch position. The Department merely sent a letter to the court taking the position that gay and lesbian second parent adoptions were not permitted, but it did not attend the hearing or file an appeal to the adoption. In reaching its decision, the court first looked at the best interests of the child. The court found that having two parents with full legal rights is in the child's best interests. The court then addressed the issue of whether or not the legal rights of the first adopting parent would have to be terminated. Finding that the case most closely resembled a stepparent adoption, and citing a District of Columbia opinion, the court held that the termination provision does not have to be applied where it is clearly inappropriate. The court also looked at whether the adoption of a child by a gay or lesbian

couple is legal. Vermont law allows a person or husband and wife together to adopt a child. The couple argued that the partner was a “person” under the statute. Further, they contended that the “husband and wife” section doesn’t require that a couple be a husband and wife, but merely requires that both spouses participate in an adoption. The couple maintained that since Vermont law does not specifically prohibit the adoption, the adoption is legal. The judge agreed, and found that Vermont law allows second-parent adoptions (Out in the Mountains, www.mountainpridemedia.org/oitm/issues/1992/03mar1992/).

In 1995, Vermont became the first state to statutorily allow second parent adoptions. Under 15A V.S.A. Section 1-1-2 (b), “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,” (The Vermont Statutes Online, www.leg.state.vt.us/statutes).

California-

Until November 1999, the California Department of Social Services’ administrative rulings prohibited workers from recommending gay and lesbian parents for adoption (“Nolo’s Guide to California Law,” www.nolo.com/lawstore/products). Thereafter, local courts awarded second parent adoptions to gays and lesbians, allowing the partner to gain parental rights without extinguishing the existing parent’s rights. Then, in October 2001, in the case Sharon S. v. Superior Court, an appellate court ruled that second parent adoptions are not valid in California. The facts of the case are particularly interesting. Sharon S. had given birth via artificial insemination. Her partner began proceedings to adopt their son, but they broke up before the adoption was finalized, and Sharon S. tried to block her from adopting. The legality of such adoptions remained uncertain for the next two years, until the California Supreme Court overturned the lower court and reaffirmed the validity of second parent adoptions (Lamda Legal, www.lamdalegal.org).

The California Supreme Court focused on the objectives of the adoption statute, particularly its interest in encouraging and strengthening family bonds. The court stated, “second parent adoptions offer the possibility of obtaining the security and advantages of two parents for some of California’s neediest children.” While California’s statutes provide that adoption terminates the original parent’s rights, the court found that the legislature did not intend to bar an adoption when the parties clearly intend to and agree to preserve the birth parent’s rights. Furthermore, the court stated that since the relevant statutes allow unmarried people to adopt, the state had not expressed any interest in promoting marriage Sharon S. v. Superior Court, S 102671.

In 2002, the California legislature authorized adoptions by registered domestic partners (California Family Code, Section 9000(b), cited in Metropolitan News-Enterprise, www.metnews.com/articles). The statute went into effect after the couple in Sharon S. commenced the adoption procedure.

New York--

In 1995, New York's highest court, the Court of Appeals, held in favor of second parent adoptions. In *In the Matter of Jacob* and *In the Matter of Dana*, 86 N.Y.2d 651, the court began with the principle that adoption is a means of securing the best possible home for a child. Stating that to rule otherwise would mean that the "thousands of New York children actually being raised in homes headed by two unmarried persons could have only one legal parent, not the two who want them," the court stressed that children's best interests are advanced by allowing the two adults to become legal parents. The court also relied on an administrative ruling prohibiting adoption agencies from rejecting adoption petitions solely on the basis of homosexuality. While New York law, like that in most other states, terminates an existing parent's rights upon adoption, the court determined that where the adopted person remains in the natural family unit, complete severance of the initial relationship is not necessary. For example, the legislature already allows for the retention of rights in stepparent adoptions, and allows "open adoptions," where the parties to an adoption can agree to the biological parent retaining specified rights after the adoption.

Pennsylvania—

In *In Re: Adoption of R.B.F. and R.C.F.* and *In Re: Adoption of C.C.G. and Z.C.G.*, the Supreme Court in Pennsylvania upheld the legality of second parent adoptions. The court refused to extend the stepparent statute to gays and lesbians, stating that this statute requires a husband-wife relationship, and that the Commonwealth only recognizes marriages between a man and a woman. Instead, the court based its decision on a section of the statute allowing for a "good cause" exception to the termination of the existing parent's rights. The court also determined that the Adoption Act has no language precluding two unmarried same-sex partners (or heterosexual partners) from adopting a child together. Therefore, it would be "absurd" to prohibit the adoptions merely because the children are the biological or adopted children of one of the partners prior to filing for adoption.

Sample States Prohibiting Gay and Lesbian Second Parent Adoptions

Florida—

Florida is one of three states whose statutes specifically prohibit gays and lesbians from adopting. In 1977, in the wake of Anita Bryant's virulently homophobic "Save Our Children" campaign against gay rights, Florida passed section 63.042(3) (ACLU, www.aclu.org/LesbianGayRights/LesbianGayRights.cfm). This statute states, "No person eligible to adopt under this statute may adopt if that person is a homosexual." The bill's sponsor in the State Senate told a local newspaper at the time that the new law was intended to send a message to gays and lesbians: "[w]e are really tired of you. We wish you'd go back in the closet." (cited in ACLU, www.aclu.org/LesbianGayRights/LesbianGayRights).

In January 2004 the Court of Appeals for the 11th Circuit refused to hold Florida's law unconstitutional (ACLU, www.aclu.org/LesbianGayRights/LesbianGayRights.cfm?ID=14990&c=104). The ACLU had challenged the law, arguing that it unconstitutionally discriminates against gays, and limits opportunities for the 3,000 Florida foster children awaiting adoption (ACLU, www.aclu.org/LesbianGayRights/LesbianGayRights). In depositions for the case, the

state's leading official overseeing adoption policy was asked, "Do you know of any child welfare reason at all for excluding gay people from adopting children?" The official answered, "no." Then, upon being asked if she believes children's best interests would be served if lesbians and gays were allowed to adopt, she responded, "As I previously stated, I think it's contraindicated to rule out such a large population of people who quite possibly could meet the needs [of] waiting children" (Ibid).

The ACLU has filed a motion asking the Appellate Court to reconsider its ruling. Courts are supposed to accord different levels of deference when reviewing a state's laws, depending on the subject matter of the case. The ACLU is arguing that the Appellate Court misinterpreted prior Supreme Court cases, and did not use the requisite level of scrutiny when examining whether or not Florida's law is constitutional. According to the ACLU, in its decision the Court relied on what it called the "unprovable assumption" that heterosexuals make better parents than gay men and lesbian women. The Court based its assumption about parenting on a "study" by a psychologist who was expelled from or censured by several psychological associations for unethical conduct, including misrepresenting and misinterpreting sociological research on sexuality (ACLU, www.aclu.org/LesbianGayRights/LesbianGayRights.cfm?ID=14988&c=104). The Court has not yet issued its decision.

One of the plaintiffs in the lawsuit has a particularly compelling case. Steven Lofton, along with his partner, Roger Croteau, is the foster parent of three children. One of these children, who is almost eleven years old and has lived with them since he was nine weeks old, is available for adoption. Florida is attempting to find a different adoptive home for him, because the state will not allow Mr. Lofton to adopt (ACLU, www.aclu.org/LesbianGayRights/LesbianGayRights). If the Court fails to strike down the law, this boy could lose the only home and family he's ever known.

Mississippi—

Mississippi's statute also prohibits gay and lesbian adoptions. Section 93-17-3 states, "Adoption by persons of the same gender is prohibited" (NAIC, <http://naic.acf.hhs.gov/laws/statutes>). State legislators had attempted to pass an even more onerous bill, under which the state would have been forbidden from recognizing lesbian and gay adoptions that have been previously granted by courts in other states. Several lesbian and gay rights' groups successfully mobilized to form a "Phone Home for Families" campaign against the proposed bill. Former and current Mississippi residents called and e-mailed State House members, telling them that a vote for the anti-adoption bill would be a vote against children. (ACLU, www.aclu.org/LesbianGayRights/LesbianGayRights).

Utah—

In March 2000, Utah enacted legislation prohibiting unmarried cohabiting couples from becoming adoptive or foster parents (NCLR, www.nclrights.org/publications/adoptive-information.htm).

Ohio—

In 1998, an appellate court in Ohio ruled in In Re Adoption of Jane Doe that second parent adoptions are not permitted. The court held, “...it is not within the constitutional scope of judicial power to change the face and effect of the plain meaning of [Ohio adoption law].” (cited in Lambda Legal, www.lambdalegal.org). The court stated that under the Ohio Adoption Act, adoption terminates the existing parent’s rights (Ibid).

According to the Child Welfare League of America (“CWLA”), the policies in most states are unwritten. Instead, informal, variable policies are the rule. For example, Louisiana has no reported cases of lesbians or gay men adopting. However, a former Louisiana social worker admits to having placed children with gay parents (CWLA, www.cwla.org).

Practice Tips

As the above discussion of states' policies demonstrates, lesbians and gays have won the right to second parent adoptions not by raising civil rights issues, but by advocating for the best interests of children (however, in Florida the ACLU is basing its appeal on both issues). Specifically, lesbians and gays have stressed the importance of children having a second parent. Thus, the court in the New York case focused on the adoption statutes' concern for the child's welfare. The court found that the child's welfare necessitates allowing the two adults who function as parents to become the child's legal parents. The court emphasized the advantages accruing to a child as a result of adoption. These advantages include Social Security and life insurance benefits in the event of a parent's death or disability, the right to sue for the wrongful death of a parent, the right to inherit under rules of intestacy, and eligibility for coverage under both parents' health insurance policies. Furthermore, having a second parent ensures that two adults are legally entitled to make medical decisions for the child in case of emergency and that both are under a legal obligation for the child's economic support (See In the Matter of Jacob and In the Matter of Dana). Other advantages of second parent adoptions are that they guarantee the second parent's custody rights are protected if the first parent dies, and they grant the child a right to seek child support from the other parent in the event of separation (The Center for Lesbian and Gay Civil Rights, www.center4civilrights.org/secadopt.htm).

Accordingly, the ACLU has several policy suggestions for opposing anti-gay and lesbian adoption bills (see ACLU, www.aclu.org/LesbianGayRights/LesbianGayRights). As mentioned above, the ACLU acknowledges that opposition to anti-gay and lesbian bills cannot be based on "gay rights." Instead, the ACLU contends that proponents of gay and lesbian second-parent adoption must argue for parents' and professionals' right to decide each adoption on a case-by-case basis, with the goal of meeting the best interests of the child. The important objective is making sure that children have permanent homes, with adults who have the skills to be good parents. The ACLU also cautions against linking adoption to the issue of same sex marriage, which has no bearing on whether a person can parent. The ACLU warns that given the critical shortage of adoptive parents, children will be stuck in foster care permanently if our country continues to adopt exclusionary adoption policies.

The ACLU also recommends a number of public education and legislative strategies. For example, introducing legislators and the public to gay and lesbian families can debunk biases and stereotypes. Additionally, building alliances with children's advocacy groups and other non-gay organizations helps to focus arguments on serving the best interests of children. Adoption is a children's issue, not a gay rights issue, so legislators and the public should hear from child advocacy organizations.

Lesbian and gay groups have already formed alliances with and have been helped by other organizations that demonstrate support for second parent adoptions. The support of these mainstream groups is vital to the continued acceptance of gay and lesbian second parent adoption.

For example, the Child Welfare League of America ("CWLA") strongly supports second parent adoption. CWLA was founded in 1920, and is the nation's oldest and largest organization devoted to the well-being of vulnerable children and families. Its "Standards of

Excellence for Adoption Services” asserts that all applicants for adoption should have an equal opportunity to apply for adoption. It argues that applicants should be assessed on the basis of their parenting abilities and on the perspective of what would be in the child’s best interests, not on the basis of sexual preference (from CWLA’s Standards Regarding Sexual Orientation of Applicants, adopted in 1988, cited in www.aclu.org/LesbianGayRights/LesbianGayRights).

Other organizations support second parent adoptions as well. In February 2002, the American Academy of Pediatrics issued a policy statement supporting gay and lesbian second parent adoption (See www.aclu.org/LesbianGayRights/LesbianGayRights). Similarly, the American Academy of Family Physicians (“AAFP”) has adopted a resolution stating, “The American Academy of Family Physicians is supportive of a safe and nurturing environment, ...for biological, adopted and foster children of all families...” The AAFP’s definition of family is a group of individuals with a continuing legal, genetic and/or emotional relationship. This definition includes gays and lesbians (www.aafp.org). Moreover, in 1976, the American Psychological Association stated that the sexual orientation of natural or prospective adoptive parents should not be the sole or primary variable considered in custody or placement (APA online, www.adoptiononline.com). And in August 2003, the American Bar Association approved a resolution to support laws and court decisions permitting second parent adoptions (NCLR, www.nclrights.org/releases).

The ACLU recognizes that it may not be possible to defeat a harmful adoption bill. Therefore, it has several alternative suggestions. As mentioned earlier, the ACLU recommends a “case by case basis” proposal that puts the focus on the best interests of the child. Another proposal is to conduct a study to determine whether sexual orientation affects parenting ability and whether there is a shortage of qualified adoptive parents. This study would prove to the Legislature that there is not any scientific basis for a ban on lesbian and gay adoptions. A last ditch effort would be to propose a hierarchy of qualified parents. For a full discussion of the ACLU’s proposals, including recommended language for these alternatives, see www.aclu.org/LesbianGayRights/LesbianGayRights.

The Adoption Education Center (www.adoptiononline.com) has suggestions for social workers debating whether or not to place children with gays and lesbians. The Center recommends that social workers assess the person or couple’s strengths and weaknesses and determine if the person or couple is caring and sensitive, if they have the qualities needed to parent a child, and if they have the capacity to nurture a child not born to them. Additionally, workers need to understand the applicants’ self-image, and evaluate the stability of the couple’s relationship.

Gays and lesbians who live in states prohibiting second parent adoptions have other options available to secure their rights and responsibilities as parents. The Center for Lesbian and Gay Civil Rights suggests that couples raising children together in the absence of second parent adoption should consider taking the following legal steps (excerpted from www.center4civilrights.org/Asecparent.htm):

- ◆ Execute a medical consent form or letter allowing the non-legal parent the right to make medical decisions and authorize medical treatment.

- ◆ Sign a consent allowing the non-legal parent to pick up or drop off the child from day care or school.
- ◆ Execute a custody agreement with the partner or a co-parenting contract.
- ◆ Ensure that the legal parent's will is updated to nominate the co-parent as the "guardian" of the child if the legal parent dies.
- ◆ Some local courts may allow couples to file petitions for court orders for shared custody agreements.

Myths Associated with Gay and Lesbian Parenting

Despite many states' recognition of the abilities of gays and lesbians to parent, and despite the need for more prospective adoptive parents, half of the states continue to deny second parent adoptions. Often, this denial is motivated by homophobia. Conservatives have also used "best interests" arguments, but these arguments claim that gays and lesbians would be incompetent and even dangerous parents. For example, the Family Research Council asserts, "The evidence demonstrates incontrovertibly that the homosexual lifestyle is inconsistent with the proper raising of children. Homosexual relationships are characteristically unstable and are fundamentally incapable of providing children the security they need." (www.frc.org).

As a result of the advocacy of groups like the Family Research Council, myths still exist with respect to homosexuals. The following is a brief review of these myths and a discussion of the facts refuting the myths (information cited taken from ACLU, www.aclu.org/LesbianGayRights/LesbianGayRights and CWLA, www.cwla.org):

- ◆ *Myth:* The only acceptable home for a child is one with a mother and father who are married to each other.
- ◆ *Fact:* Children without homes do not have the option of choosing between a married mother and father or some other type of parent(s). There are not enough married mothers and fathers who are interested in adoption. If we do not expand adoptive resources, these children will never have stable and loving homes. Moreover, gay and lesbian parents can and do provide acceptable homes.

- ◆ *Myth:* Children need a mother and a father to have proper male and female role models.
- ◆ *Fact:* Children without homes have neither a mother nor a father as role models. Moreover, children get their role models from many places beside their parents.

- ◆ *Myth:* Gays and lesbians don't have stable relationships.
- ◆ *Fact:* Like other adults, the majority of lesbians and gays are in stable, committed relationships. Some of these relationships have problems, but so do some heterosexual relationships. The adoption screening process is rigorous, and is designed to screen out those who are not qualified.

- ◆ *Myth:* Gays and lesbians don't know how to be good parents.
- ◆ *Fact:* Evidence shows that lesbians and gays can and do make good parents. The American Psychological Association observed, "not a single study has found children of gay or lesbian parents to be disadvantaged in any significant respect relative to children of heterosexual parents." Children of homosexual parents show no difference in levels of self-esteem, anxiety, depression, behavioral problems, or social performance. Studies have also found that children of gay partners report closer relationships to the parent who is not the primary caregiver than do the children of heterosexual couples.

- ◆ *Myth:* Children raised by homosexual parents are more likely to become homosexual.

◆ *Fact:* All of the available evidence demonstrates that the sexual orientation of parents has no impact on the sexual orientation of their children (after all, heterosexuals raise homosexual children). However, studies show that children of gay and lesbian parents are more likely to consider or experiment with same-sex relationships during young adulthood. Furthermore, in studies lesbian mothers have reported that their children, especially daughters, are less likely to conform to cultural gender norms in dress, play, behavior, and aspirations.

◆ *Myth:* Children raised by lesbian or gay parents will be subjected to harassment by their peers.

◆ *Fact:* Children make fun of other children for many reasons. As victims of discrimination themselves, gay and lesbian parents may be more supportive of children facing harassment.

◆ *Myth:* Lesbians and gays are more likely to molest children.

◆ *Fact:* There is no connection between homosexuality and pedophilia. Scientific evidence shows that sexual orientation, whether homosexual or heterosexual, is an adult sexual attraction to other adults. Pedophilia is an adult sexual attraction to children. Heterosexual men commit ninety percent of child sexual abuse.

◆ *Myth:* Children raised by lesbians and gays will be brought up in an “immoral” environment.

◆ *Fact:* There are disagreements in this country about what is moral and what is immoral. If we eliminated all of the people who could possibly be considered immoral, we would have almost no parents left to adopt.

The studies mentioned above have several methodological problems. Their samples tend to be small, heterogeneous (most participants are urban, upper-middle class, white couples), lack control groups, and the studies are often based on self-reporting. Proponents of these studies recognize their limitations, but assert that the similarity of findings support the studies’ reliability. Nonetheless, additional, more comprehensive studies are needed (APA online, www.apa.org/pi/parent.html).

In the end, all the controversy surrounding gay and lesbian second parent adoption boils down to the need to provide homes for the thousands of children awaiting adoption, and the need to safeguard the lives of children of homosexual partners who only have one legal parent. As Steven Lofton, a plaintiff in the Florida case states, “I have been his [the foster child’s] parent in every way...I make sure he is safe. He calls me ‘Dad.’...I love him deeply and want to protect him. But I cannot protect him unless I can adopt him,” (cited in ACLU, www.aclu.org/LesbianGayRights/LesbianGayRights). Much evidence points to the competence of gay and lesbian parents, and their existing children and their potential adoptive children deserve a chance to lead happy lives in a loving, supportive family.

Web Sites and Resources

For general information on adoption as it relates to gays and lesbians, see “Gay & Lesbian Resources,” www.adoptions.com. This site contains links to various websites, including directories of adoption professionals who can help with adoptions, support and advocacy groups for children of lesbian and gay parents, an overview of state adoption laws, prospective birth parents, and book references.

Adoption Online, at <http://adoptiononline.com/>, provides information and services to everyone touched by adoption. The website can also help prospective adoptive parents and prospective birthparents meet.

NAIC is a resource on all aspects of adoption. The website contains a list of publications, organized according to topic, at <http://naic.acf.hhs.gov/pubs/index.cfm>.

The NCLR is a national legal resource center whose commitment is to advance the rights of lesbians and their families through litigation, public policy advocacy, free legal advice and counseling, and public education. Its website has links to general information sources for gays and lesbians, legal organizations that can assist lesbians and gays, and advocacy groups. Access its “Information Sources” at www.nclrights.org/resources.htm.

See Lamda Legal, August 27, 2002, “Overview of State Adoption Laws,” www.lamdalegal.org/cgi-bin/iowa/documents/record?record=399 for a charted overview of each state’s adoption laws. Please note, however, that this information is only current through August 2002, so researchers must compare this chart to more current information.

The Human Rights Campaign Foundation, at www.hrc.org, allows users to find attorney referral services, adoption agencies, and local domestic partner registries.

In its appendix, the Adoption Education Center, www.adoptiononline.com, has information about support groups for gay and lesbian parents organized by state, and lists sources of information specific to gay and lesbian issues in adoption, also state by state. Additionally, the site contains a bibliography of books for gay and lesbian parents.

The APA Online, www.apa.org/pi/parent.html summarizes research findings concerning lesbian and gay parenting. At the end of the article there are links to studies, articles, books and additional resources.

The Queer Resources Directory, at www.qrd.org/ contains information on a wide variety of issues of interest to the gay and lesbian community.