

WHAT DOES THE ADOPTION DECISION MEAN FOR ME AND MY FAMILY?

A Collaborative Effort by the Following Local, State and National Organizations:



Frequently Asked Questions
October 29, 2010

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On September 22, 2010, the Third District Court of Appeal issued a unanimous decision declaring that Florida's law prohibiting gay men and lesbians from adopting children is unconstitutional. See [*Florida Dep't of Children and Families v. In re: Matter of Adoption of X.X.G. and N.R.G.* (September 22, 2010)]. The State of Florida announced that it will not appeal that decision to the Florida Supreme Court. We have received several questions about what this case means for gay men and lesbians who want to adopt.

NOTE: This FAQ is intended to provide information but is not intended to be legal advice, and should not be taken as such. For legal advice about your particular situation, please talk to a trusted attorney who has experience in adoption law and/or issues related to lesbians and gay men and their families, or contact us at lgbtproject@aclufl.org.

Q. Does the adoption decision mean that all gay men and lesbians are eligible to adopt in Florida?

A. Yes. In the recent adoption case, *Florida Dep't of Children and Families v. In re: Matter of Adoption of X.X.G. and N.R.G.* (September 22, 2010), the Third District Court of Appeal said that the state law prohibiting adoption by gay men and lesbians, § 63.042(3), Fla. Stat., is unconstitutional. This decision must be followed by all trial courts in Florida. This means that gay men and lesbians can apply to adopt and they must be considered based on the same criteria applied to everyone else. Your petition to adopt cannot be denied just because you are gay or lesbian.

Q. Does the adoption decision mean that a gay or lesbian foster parent can adopt children s/he is caring for?

A. Yes. The first step in adopting a child in foster care is to apply to the Department of Children and Families (DCF). After the court's decision, DCF changed its adoption form to remove all questions about sexual orientation and has told its staff that gay men and lesbians should be considered using the same criteria applied to everyone else.

Q. My same-sex partner and I had a child using an anonymous sperm or egg donor and my partner is the biological parent. Does the recent adoption decision mean that I can adopt our child and become his or her legally recognized second parent?

A. The recent decision removes the ban on adoption by gay men and lesbians. The court did not say whether a person can adopt his/her partner's biological children (a procedure known in other states as "second parent adoption"). There are some important legal issues that you and your partner need to know if you are thinking about a second parent adoption. Please contact us at (lgbtproject@aclufl.org) for more information.

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Q. My partner and I want to adopt a child from foster care or through a private adoption agency. Can we jointly adopt a child?

A. The recent decision removes the ban on adoption by gay men and lesbians. The court did not say whether two unmarried adults can adopt jointly. There are some important legal issues that you and your partner need to know if you are thinking about adopting together. Please contact us for more information: lgbtproject@aclufl.org.

Q. Is there anything else that my partner and I need to know?

A. Yes. Adoption is a very important decision and it is very important that you choose a trusted adoption attorney and professional who knows and understands the issues that you and your family face. This is true whether you want to adopt a child you and your partner are already raising or if you and your partner want to adopt a child from foster care or through a private adoption agency. Because the rights of your family are at stake – and possibly also the rights of the whole LGBT community – it is important for you to get the right information as early in the adoption process as possible.

Q. What if I speak to an agency representative or attorney who tells me I cannot adopt because of my sexual orientation?

A. If you contact someone who tells you that you cannot adopt because you are gay, lesbian, or bisexual, please provide them the link to this FAQ and contact us for assistance lgbtproject@aclufl.org.

Q. Where can I get more information about adoption and what the recent case means for me and my family?

A. For more information about the recent decision, the changes in the law and what this means for you and your family contact us at lgbtproject@aclufl.org.

Q. What can I do to make sure that the ability of gay men and lesbians to adopt is protected?

A. While the recent court decision has removed the ban on adoption by gay men and lesbians after 33 years on the books, there is still work to do. We have learned throughout history that we must also win in the court of public opinion to make sure that this victory is not taken away. Indeed, our opponents have already announced that they will try to bring back the ban through the legislature or by a ballot initiative that would amend Florida's constitution to prohibit gay men and lesbians from adopting. Over 30 organizations already have come together for a three year public education campaign to inform and educate Floridians about why the adoption ban must end here. See www.aclufl.org/training. This campaign, which began a year ago, is more important than ever. Join us in making sure that this victory will not be taken away.