

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
November 2, 2010

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October 29, 2010

On September 22, 2010, the Third District Court of Appeal issued a unanimous decision declaring that Florida's law prohibiting lesbian, gay, and bisexual people 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 lesbian, gay, and bisexual people 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 lesbian, gay, and bisexual people and their families, or contact us at www.NCLRights.org/GetHelp.

Q. Does the adoption decision mean that all lesbian, gay, and bisexual people 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 lesbian, gay, and bisexual people, § 63.042(3), Fla. Stat., is unconstitutional. This decision must be followed by all trial courts in Florida. This means that lesbian, gay, and bisexual people 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 lesbian, gay, or bisexual.

Q. Does the adoption decision mean that a lesbian, gay, or bisexual 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 lesbian, gay, and bisexual people 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?

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A. The recent decision removes the ban on adoption by lesbian, gay, and bisexual people. The court did not say whether a person may adopt his/her partner's biological child (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 www.NCLRights.org/GetHelp for more information.

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 lesbian, gay, and bisexual people. 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 www.NCLRights.org/GetHelp for more information.

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 www.NCLRights.org/GetHelp.

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 www.NCLRights.org/GetHelp.

Q. What can I do to make sure that the ability of lesbian, gay, and bisexual people to adopt is protected?

A. While the recent court decision has removed the ban on adoption by lesbian, gay, and bisexual people 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 lesbian, gay, and bisexual people from adopting. Over 30 organizations already have come together for a three year public education campaign to

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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.

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