Same-Sex Families and Adoption Discrimination Post Marriage Equality

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With the major judicial holding of Obergefell v. Hodges, the Supreme Court of the United States legally recognized same sex-marriage. Advocates of the lesbian, gay, bisexual and transgender (LGBT) community celebrated in the granting of what many deemed a fundamental right. Now, with the ability to freely marry, same-sex couples are looking to grow their family through adoption, with some adoption agencies seeing a slight increase in upwards of 700 applicants a month. This article will address the legal challenges, and proposed solutions, to expanding American same-sex couples’ legal rights to adopt children outside of the United States.

SAME-SEX INTERNATIONAL ADOPTIONS

A couple looking to adopt a child from another country must comply with federal U.S. law, the laws of the child’s home country, and the state laws of the parent’s residence. Although Obergefell v. Hodges means that same-sex couples can legally marry and therefore access joint adoption across the United States, some potential parents are experiencing obstacles when it comes to adopting a child from another country. Given that there are no international countries who knowingly place a child with a same-sex couple, there are still discriminatory hurdles that LGBT couples face in an attempt to establish a family via adoption.

Currently, when adopting internationally, same-sex couples bear the burden of having one of the potential parents adopt as a single parent, rather than having both parents adopt the child outright. Furthermore, according to Stephanie Murnie from Angel Adoption, before someone can begin the adoption

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2 Telephone interview with Stephanie Murnie (Apr. 22, 2015).
6 Id.
process, they must complete a home study. While some states allow same-sex couples to complete this requirement together, other states do not allow them to complete it at all.\(^7\)

Upon completing the single-parent adoption, couples would then have to seek a second-parent adoption to ensure that both parents have legal rights to the child.\(^8\) Unfortunately, there are more hurdles that same-sex couples face, because there are three states where second parent adoptions are not permitted by state adoption laws.\(^9\) In addition, there are 17 states where state adoption laws are unclear about whether second parent adoptions are permitted.\(^10\)

Not having a second parent adoption can result in the non-custodial parent having a higher burden of proof to obtain visitation or custody rights should the marriage end in a divorce.\(^11\) As it stands, second-non-custodial parents have no rights to the child and cannot pursue visitation or legal custody.\(^12\) Allowing for blatant discrimination from international adoption agencies in disallowing same sex couples to jointly adopt is a matter of flawed United States foreign policy that should be rectified. The decision in Obergefell should not come with caveats that limit the full benefits of marriage and non-discrimination.

PROPOSED ALTERNATIVES

Domestically, current proposed state measures similar to those in the Michigan House of Representatives would condone discrimination by adoption agencies against LGBT individuals.\(^13\) Darlene Nipper, the Deputy Executive Director of the National Gay and Lesbian Task Force, called the proposed

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\(^7\) Murnie, supra note 2.


\(^10\) Id.


Michigan bills “discriminatory, unfair and immoral.”\textsuperscript{14} Mississippi takes it a step further and “prohibits adoptions by couples of the same gender.”\textsuperscript{15} Such measures should be found unconstitutional, and the damage should be rectified.

Allowing adoption agencies and governments, domestic or international, to discriminate against LGBT couples in their pursuit of adopting a child would eradicate the progress that this country has made in terms of equality. With the high number of children who are looking for a loving home, it is a matter of public policy that the United States government ensure that any family, including those made up of LGBT couples, should have a right to adopt them and not be discriminated against.

It is important that with the progress of Obergefell, the rights of the LGBT community, and those looking to adoption as a means of growing their family, be integrated into the framework of current family law. Doing so will ensure that they, too, can provide a nurturing and caring environment for a child that deserves as much.

\textsuperscript{14} Id.