

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

Frequently Asked Questions

Last updated: January 27, 2009

On November 25, 2008, a Miami juvenile court judge ruled that the state law prohibiting adoption by gay men and lesbians violates the Florida Constitution and she granted Petitioner's request to adopt his two foster children. *See [In the Matter of the Adoption of John Doe and James Doe, (November 25, 2008)]*. Since that ruling, we have received several inquiries as to how the decision affects other gay men and lesbians. This document attempts to answer the most frequently asked questions.

NOTE: This document is intended to provide information about adoption for gay men and lesbians in Florida. It is not intended to be legal advice, and should not be taken as such. For legal advice concerning your particular situation, please consult an attorney or complete a [complaint form].

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

A. Not yet. In the recent adoption case, [*In the Matter of the Adoption of John Doe and James Doe, (November 25, 2008)*], a Miami trial court found the state law prohibiting adoption by gay men and lesbians, § 63.042(3), Fla. Stat., unconstitutional. The State has appealed the trial court's decision. Thus, at this stage, the ruling applies only to the Petitioner and the two foster children in his care. Although other trial courts presented with adoption petitions filed by lesbians or gay men could find the Miami court's opinion persuasive and reach the same conclusion, they are not required to follow the Miami court's ruling that the adoption statute violates the Florida Constitution. The Miami court's ruling will not have statewide application unless and until it is affirmed by Florida's appellate courts. The case is currently pending before the Third District Court of Appeal and is likely to then go on to the Florida Supreme Court, so it could take some time to get a final resolution of the issue.

Q. Does the adoption decision mean that gay foster parents are now eligible to adopt the children in their care?

A. The first step in adopting a child in foster care is to apply to the Department of Children and Families (DCF). It is our understanding that DCF will continue to apply the gay exclusion while this case is pending on appeal. Thus, we expect that gay and lesbian foster parents' applications to adopt will continue to be rejected by DCF. While courts can grant adoptions in the absence of DCF consent, as mentioned above, as long as the John Doe and James Doe case is pending on appeal, other trial courts are free to reach the same conclusion and invalidate the exclusion as unconstitutional, but are not required to do so.

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. No. In some states, there is a legal procedure that allows an individual to adopt his or her partner's biological or adopted child so that both adults can have a legally recognized parental relationship with the child. It is typically called "second parent adoption" or "co-parent adoption" and is often used by gay and lesbian couples who have formed families together. As explained above, the constitutionality of the statutory ban on adoption by gay people ultimately rests in the hands of the Florida appellate courts. If they find the ban unconstitutional, then that will mean that gay and lesbian people can no longer be categorically disqualified from adopting in Florida. This alone, however, does not mean that the Florida courts will necessarily allow second parent adoptions. Whether such adoptions are permitted under Florida's generally applicable adoption laws will have to be addressed by the courts.

Q. What can I do to further the fight to repeal the ban on adoption by gay men and lesbians?

A. Talk to your legislator, and ask him or her to support legislation that would repeal the ban on adoption by gay men and lesbians. Tell your legislator that you believe the ban on adoption by gay men and lesbians hurts children and families. Educate your friends, family, and colleagues on the adoption ban and explain to them how it harms children and families. Join the ACLU of Florida in our efforts to get the Florida legislature to repeal the adoption ban, by going to our website at http://www.aclufl.org/take_action/index.cfm.