

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

NEW HOPE FAMILY SERVICES, INC.,

Plaintiff,

DECLARATION

-against-

18-CV-1419

SHEILA J. POOLE,

MAD/TWD

Defendant.

Adrienne J. Kerwin, on the date noted below and pursuant to § 1746 of title 28 of the United States Code, declares the following to be true and correct under penalty of perjury under the laws of the United States of America:

1. I am an Assistant Attorney General of counsel in this matter to Letitia James, Attorney General of the State of New York, attorney for defendant Sheila J. Poole, Acting Commissioner of the New York State Office of Children and Family Services (“OCFS”).

2. In light of the July 21, 2020 decision and order of the United States Court of Appeals for the Second Circuit, Dkt. No. 44, defendant supplements her opposition to plaintiff’s motion for a preliminary injunction, Dkt. No. 32, with the accompanying supplemental declaration of Carol McCarthy, dated August 28, 2020, and supplemental memorandum of law.

3. For the court’s convenience, the following exhibits, which are referenced in defendant’s supplemental memorandum of law, are annexed hereto:

Exhibit A: Legislative history of the 2010 amendment to New York Domestic Relations Law §110 (S.1523A; A.5652-B); and

Exhibit B: Plaintiff's motion to modify the preliminary injunction before the Second Circuit.

4. For the reasons discussed in defendant's original submissions in opposition to plaintiff's motion for a preliminary injunction, Dkt. No. 32, incorporated herein, and those discussed in the supplemental declaration of Carol McCarthy and supplemental memorandum of law submitted herewith, plaintiff's motion for a preliminary injunction should be denied.

Dated: August 28, 2018
Wynantskill, New York

s/ Adrienne J. Kerwin

Adrienne J. Kerwin

Exhibit A

LEGISLATIVE HISTORY CHECKLIST
STATUTE CITATION: Domestic Relations Law § 110
LAWS OF: 2010 CHAPTER: 509
POPULAR NAME: n/a

BILL NO: S.1523-A (substituted for A.5652-B)

SPONSOR(S): Rosenthal (Assembly) / Duane (Senate)

DATE INTRODUCED: 2/17/09 (Assembly) / 2/2/09 (Senate)

COMMITTEE(S) THAT CONSIDERED BILL:

SENATE: Children and Families

ASSEMBLY: Judiciary; Rules

DATE OF PASSAGE:

SENATE: 6/24/10

ASSEMBLY: 7/1/10

GOVERNOR'S ACTION: signed 9/17/10

FOLLOWING ARE INCLUDED:

BILL JACKET

BILL DOCUMENTS:

BILL # / TEXT: S.1523,-A; A.5652, -A, -B

MEMORANDA: sponsors memos; Governor's approval memo (see bill jacket)

DEBATE: Senate (6/24/10); Assembly (7/1/10)

RELATED BILLS - PRIOR SESSIONS:

BILL # (S): A.8329 (2005-06); A.3239/S.4756 (2007); A.7449-A/S.7321 (2007-08)

RELATED DOCUMENTS: Sponsors' memos

HEARINGS: n/a

ADDITIONAL SOURCES: Press releases of Assemblymember Rosenthal 7/1/10 & 9/20/10

2018/PW

S 1523-A DUANE Same as [A 5652-B](#) Rosenthal (MS)
 ON FILE: 05/25/10 Domestic Relations Law
 TITLE....Relates to permitting two unmarried persons to
 adopt a child together
 02/02/09 REFERRED TO CHILDREN AND
 FAMILIES
 01/06/10 REFERRED TO CHILDREN AND
 FAMILIES
 03/02/10 1ST REPORT CAL.185
 03/03/10 2ND REPORT CAL.
 03/04/10 ADVANCED TO THIRD READING
 05/24/10 AMENDED ON THIRD READING (T)
 1523A
 06/24/10 PASSED SENATE
 06/24/10 DELIVERED TO ASSEMBLY
 06/25/10 referred to judiciary
 06/29/10 substituted for a5652b
 06/29/10 ordered to third reading rules cal.427
 07/01/10 passed assembly
 07/01/10 returned to senate
 09/07/10 DELIVERED TO GOVERNOR
 09/17/10 SIGNED CHAP.509
 09/17/10 APPROVAL MEMO.25

A5652-B Rosenthal (MS) Same as [S 1523-A](#)
 DUANE
 Domestic Relations Law
 TITLE....Permits adoption by two unmarried adult
 intimate partners
 02/17/09 referred to judiciary
 01/06/10 referred to judiciary
 04/12/10 amend (t) and recommit to judiciary
 04/12/10 print number 5652a
 05/17/10 amend and recommit to judiciary
 05/17/10 print number 5652b
 06/03/10 reported referred to rules
 06/29/10 reported
 06/29/10 rules report cal.427
 06/29/10 substituted by s1523a
S01523 DUANE AMEND=A
 02/02/09 REFERRED TO CHILDREN AND
 FAMILIES
 01/06/10 REFERRED TO CHILDREN AND
 FAMILIES
 03/02/10 1ST REPORT CAL.185
 03/03/10 2ND REPORT CAL.
 03/04/10 ADVANCED TO THIRD READING
 05/24/10 AMENDED ON THIRD READING
 (T) 1523A
 06/24/10 PASSED SENATE
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 07/01/10 passed assembly
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 09/07/10 DELIVERED TO GOVERNOR
 09/17/10 SIGNED CHAP.509
 09/17/10 APPROVAL MEMO.25

LAWS OF NEW YORK, 2010

CHAPTER 509

AN ACT to amend the domestic relations law, in relation to authorizing two unmarried adult intimate partners to adopt a child

Became a law September 17, 2010, with the approval of the Governor.
Passed by a majority vote, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The first undesignated paragraph of section 110 of the domestic relations law, as amended by chapter 254 of the laws of 1991, is amended to read as follows:

An adult unmarried person [~~or~~], an adult [~~husband and his adult wife~~] married couple together, or any two unmarried adult intimate partners together may adopt another person. An adult married person who is living separate and apart from his or her spouse pursuant to a decree or judgment of separation or pursuant to a written agreement of separation subscribed by the parties thereto and acknowledged or proved in the form required to entitle a deed to be recorded or an adult married person who has been living separate and apart from his or her spouse for at least three years prior to commencing an adoption proceeding may adopt another person; provided, however, that the person so adopted shall not be deemed the child or step-child of the non-adopting spouse for the purposes of inheritance or support rights or obligations or for any other purposes. An adult or minor [~~husband and his adult or minor wife~~] married couple together may adopt a child of either of them born in or out of wedlock and an adult or minor [~~husband or an adult or minor wife~~] spouse may adopt such a child of the other spouse. No person shall hereafter be adopted except in pursuance of this article, and in conformity with section three hundred seventy-three of the social services law.

§ 2. This act shall take effect immediately.

The Legislature of the STATE OF NEW YORK ss:

Pursuant to the authority vested in us by section 70-b of the Public Officers Law, we hereby jointly certify that this slip copy of this session law was printed under our direction and, in accordance with such section, is entitled to be read into evidence.

MALCOLM A. SMITH
Temporary President of the Senate

SHELDON SILVER
Speaker of the Assembly

EXPLANATION--Matter in italics is new; matter in brackets [-] is old law to be omitted.

STATE OF NEW YORK

1523--A

Cal. No. 185

2009-2010 Regular Sessions

IN SENATE

February 2, 2009

Introduced by Sens. DUANE, BRESLIN, KRUEGER, SCHNEIDERMAN, SQUADRON -- read twice and ordered printed, and when printed to be committed to the Committee on Children and Families -- recommitted to the Committee on Children and Families in accordance with Senate Rule 6, sec. 8 -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the domestic relations law, in relation to authorizing two unmarried adult intimate partners to adopt a child

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The first undesignated paragraph of section 110 of the
2 domestic relations law, as amended by chapter 254 of the laws of 1991,
3 is amended to read as follows:

4 An adult unmarried person [or], an adult [husband and his adult wife]
5 married couple together, or any two unmarried adult intimate partners
6 together may adopt another person. An adult married person who is living
7 separate and apart from his or her spouse pursuant to a decree or judg-
8 ment of separation or pursuant to a written agreement of separation
9 subscribed by the parties thereto and acknowledged or proved in the form
10 required to entitle a deed to be recorded or an adult married person who
11 has been living separate and apart from his or her spouse for at least
12 three years prior to commencing an adoption proceeding may adopt another
13 person; provided, however, that the person so adopted shall not be
14 deemed the child or step-child of the non-adopting spouse for the
15 purposes of inheritance or support rights or obligations or for any
16 other purposes. An adult or minor [husband and his adult or minor wife]
17 married couple together may adopt a child of either of them born in or
18 out of wedlock and an adult or minor [husband or an adult or minor wife]
19 spouse may adopt such a child of the other spouse. No person shall here-
20 after be adopted except in pursuance of this article, and in conformity
21 with section three hundred seventy-three of the social services law.

22 § 2. This act shall take effect immediately.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [] is old law to be omitted.

LBD01449-08-0

**NEW YORK STATE SENATE
INTRODUCER'S MEMORANDUM IN SUPPORT
submitted in accordance with Senate Rule VI. Sec 1**

BILL NUMBER: S1523A

SPONSOR: DUANE

TITLE OF BILL:

An act to amend the domestic relations law, in relation to authorizing two unmarried adult intimate partners to adopt a child

PURPOSE OF BILL:

The purpose of this bill is to permit adoption by two adult unmarried intimate partners in keeping with the state's policy to ensure the best interests of the child.

SUMMARY:

The bill amends Section 110 of the domestic relations law to permit two adult unmarried intimate partners to adopt a child together. In addition, by replacing current references in the law to husband and wife with the gender neutral term "married couple", this proposal also clarifies that all married couples may adopt a child together.

JUSTIFICATION:

Current statutory provisions in New York State allow an adult unmarried person or an adult husband and his adult wife together to adopt a child. In addition, the statutory provisions permit an adult or minor husband and his adult or minor wife to adopt each other's child.

Courts have misinterpreted the word "together" in the statute to have a preclusive effect on the ability of unmarried couples to adopt a child together. In *Matter of Jacob* and *Matter of Dana*, the Court of Appeals ruled that the unmarried partner of a child's biological mother, whether heterosexual (*Jacob*) or homosexual (*Dana*), who is raising the child together with the child's biological parent, has standing to become the child's second parent by means of adoption. The decision of the court stated that the statute uses the word "together" simply to insure that one spouse does not adopt a child without the other spouse's knowledge or over the other's objection. The court determined that the statute does not preclude an unmarried second parent from adopting his or her partner's children and that this principal applies regardless of the couple's marital status or sexual orientation. See *Matter of Jacob*, 86 N.Y.S. 2d 651 (1995).

Despite these decisions, there is confusion about whether New York law permits a joint adoption by unmarried adult couples, neither of which is the biological parent. This can be particularly problematic for couples adopting children overseas where only one parent adopts in the foreign country and the second parent seeks to adopt in New York State. This legislation codifies the Court of Appeal's decision in *Matter of Jacob* and *Matter of Dana*, and will help ensure that unmarried adult couples may jointly adopt a child together where neither is the biological parent of the child - a question that was not addressed by the Court of Appeals decision. See *In Re Adoption of Carolyn B.*, 774 N.Y.S. 2d 227 (N.Y. App. Div. 2004).

Allowing unmarried adult couples together to adopt a child will also

ensure the child receives the full benefits that the Court envisioned in Matter of Jacob and Matter of Dana including:

- * Social security benefit in the event of a parent's death or disability;
- * Life insurance benefits in the event of a parent's death; The right to sue for wrongful death of a parent;
- * The rule to inherit under the rules of intestacy;
- * Eligibility for health insurance coverage under both parents' health insurance policies;
- * The right to have two parents participate in medical decisions in the event of an emergency;
- * The right to receive economic support from two parents;
- * The emotional security of knowing that in the event of death of parent, the other will have presumptive custody;
- * The right to continue the relationships with both parent and extended families in the event of a separation; and
- * The right to have both parents named on the birth certificate.

In addition, by replacing references to "husband and wife" with the gender-neutral term "married couple", this measure will help ensure that all married couples, regardless of their sexual orientation, have equal rights to adopt a child together.

LEGISLATIVE HISTORY:

Similar to 2009: A.5652 Referred to Judiciary
2007-2008: A.7449A Referred to Judiciary
2005-2006: A.8329 Referred to Judiciary

FISCAL IMPLICATIONS FOR STATE AND LOCAL GOVERNMENTS:

None.

EFFECTIVE DATE:

Immediately.

STATE OF NEW YORK

1523

2009-2010 Regular Sessions

IN SENATE

February 2, 2009

Introduced by Sens. DUANE, KRUEGER -- read twice and ordered printed,
and when printed to be committed to the Committee on Children and
Families

AN ACT to amend the domestic relations law, in relation to authorizing
two unmarried adults to adopt a child

The People of the State of New York, represented in Senate and Assem-
bly, do enact as follows:

1 Section 1. The first undesignated paragraph of section 110 of the
2 domestic relations law, as amended by chapter 254 of the laws of 1991,
3 is amended to read as follows:
4 An adult unmarried person [or], an adult husband and his adult wife
5 together, or any two unmarried adults together may adopt another person.
6 An adult married person who is living separate and apart from his or her
7 spouse pursuant to a decree or judgment of separation or pursuant to a
8 written agreement of separation subscribed by the parties thereto and
9 acknowledged or proved in the form required to entitle a deed to be
10 recorded or an adult married person who has been living separate and
11 apart from his or her spouse for at least three years prior to commenc-
12 ing an adoption proceeding may adopt another person; provided, however,
13 that the person so adopted shall not be deemed the child or step-child
14 of the non-adopting spouse for the purposes of inheritance or support
15 rights or obligations or for any other purposes. An adult or minor
16 husband and his adult or minor wife together may adopt a child of either
17 of them born in or out of wedlock and an adult or minor husband or an
18 adult or minor wife may adopt such a child of the other spouse. No
19 person shall hereafter be adopted except in pursuance of this article,
20 and in conformity with section three hundred seventy-three of the social
21 services law.
22 § 2. This act shall take effect immediately.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets
[] is old law to be omitted.

LBD01449-02-9

**NEW YORK STATE SENATE
INTRODUCER'S MEMORANDUM IN SUPPORT
submitted in accordance with Senate Rule VI. Sec 1**

BILL NUMBER: S1523

SPONSOR: DUANE

TITLE OF BILL:

An act to amend the domestic relations law, in relation to authorizing two unmarried adults to adopt a child

PURPOSE OR GENERAL IDEA OF BILL:

To allow the adoption of a child by two unmarried adults in keeping with the state's policy to ensure the best interests of a child.

SUMMARY OF SPECIFIC PROVISIONS:

Section 110 of domestic relations law, which governs who may adopt, is amended to permit any two unmarried adults together to adopt.

JUSTIFICATION:

Current New York State law allows an adult unmarried person or an adult husband and his adult wife together to adopt a child. In Matter of Jacob and Matter of Dana the Court of Appeals asserted that the unmarried partner of a child's biological mother, whether heterosexual (Jacob) or homosexual (Dana), who is raising the child together with the child's biological parent, has standing to become the child's second parent by means of adoption. The decision of the court stated that the statute uses the word "together" simply to insure that one Spouse does not adopt a child without the other spouse's knowledge or over the other's objection. It does not preclude an unmarried person in a relationship with another unmarried person from adopting.

Despite these decisions, there are still known court cases which have ruled that New York law does not permit a joint adoption of two unmarried adults, neither of which is the biological parent. Unmarried couples seeking to have a child adopted by the second parent are finding that some courts are terminating the rights of one parent and simply granting rights to the other parent. This can be particularly problematic for couples adopting children overseas where only one parent adopts in the foreign country and the second parent seeks to adopt in New York State.

Allowing two unmarried adults together to adopt a child will also ensure the child receives the full benefits that the Court envisioned in Matter of Jacob and Matter of Dana including:

- * Social security benefit in the event of a parent's death or disability;
- * Life insurance benefits in the event of a parent's death;
- * The right to sue for wrongful death of a parent;
- * The rule to inherit under the rules of intestacy;
- * Eligibility for health insurance coverage under both parents' health insurance policies;

- * The right to have two parents participate in medical decisions in the event of an emergency;
- * The right to receive economic support from two parents;
- * The emotional security of knowing that in the event of death of parent, the other will have presumptive custody;
- * The right to continue the relationships with both parent and extended families in the event of a separation; and
- * The right to have both parents named on the birth certificate.

PRIOR LEGISLATIVE HISTORY:

2005-06: A.8329 Referred to Judiciary

FISCAL IMPLICATIONS:

None.

EFFECTIVE DATE:

Immediately.

STATE OF NEW YORK

5652--B

2009-2010 Regular Sessions

IN ASSEMBLY

February 17, 2009

Introduced by M. of A. ROSENTHAL, DINOWITZ, GLICK, HOYT, JAFFEE, LAVINE, O'DONNELL, PAULIN, D. WEPRIN -- Multi-Sponsored by -- M. of A. BING, BOYLAND, BRENNAN, CAHILL, GOTTFRIED, JOHN, KELLNER, MAISEL, PHEFFER, N. RIVERA, SCHIMEL, TITONE, WEISENBERG -- read once and referred to the Committee on Judiciary -- recommitted to the Committee on Judiciary in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the domestic relations law, in relation to authorizing two unmarried adult intimate partners to adopt a child

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The first undesignated paragraph of section 110 of the
2 domestic relations law, as amended by chapter 254 of the laws of 1991,
3 is amended to read as follows:
4 An adult unmarried person [or], an adult [husband and his adult wife]
5 married couple together, or any two unmarried adult intimate partners
6 together may adopt another person. An adult married person who is living
7 separate and apart from his or her spouse pursuant to a decree or judg-
8 ment of separation or pursuant to a written agreement of separation
9 subscribed by the parties thereto and acknowledged or proved in the form
10 required to entitle a deed to be recorded or an adult married person who
11 has been living separate and apart from his or her spouse for at least
12 three years prior to commencing an adoption proceeding may adopt another
13 person; provided, however, that the person so adopted shall not be
14 deemed the child or step-child of the non-adopting spouse for the
15 purposes of inheritance or support rights or obligations or for any
16 other purposes. An adult or minor [husband and his adult or minor wife]
17 married couple together may adopt a child of either of them born in or
18 out of wedlock and an adult or minor [husband or an adult or minor wife]

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [] is old law to be omitted.

LBD01449-06-0

A. 5652--B

2

1 spouse may adopt such a child of the other spouse. No person shall here-
2 after be adopted except in pursuance of this article, and in conformity
3 with section three hundred seventy-three of the social services law.
4 § 2. This act shall take effect immediately.

NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION
submitted in accordance with Assembly Rule III, Sec 1(f)

BILL NUMBER: A5652B

SPONSOR: Rosenthal (MS)

TITLE OF BILL: An act to amend the domestic relations law, in relation to authorizing two unmarried adult intimate partners to adopt a child

PURPOSE OF BILL: The purpose of this bill is to permit adoption by two adult unmarried intimate partners in keeping with the state's policy to ensure the best interests of the child.

SUMMARY: The bill amends Section 110 of the domestic relations law to permit two adult unmarried intimate partners to adopt a child together. In addition, by replacing current references in the law to husband and wife with the gender neutral term "married couple", this proposal also clarifies that all married couples may adopt a child together.

JUSTIFICATION: Current statutory provisions in New York State allow an adult unmarried person or an adult husband and his adult wife together to adopt a child. In addition, the statutory provisions permit an adult or minor husband and his adult or minor wife to adopt each other's child.

Courts have misinterpreted the word "together" in the statute to have a preclusive effect on the ability of unmarried couples to adopt a child together. In *Matter of Jacob* and *Matter of Dana*, the Court of Appeals ruled that the unmarried partner of a child's biological mother, whether heterosexual (*Jacob*) or homosexual (*Dana*), who is raising the child together with the child's biological parent, has standing to become the child's second parent by means of adoption. The decision of the court stated that the statute uses the word "together" simply to insure that one spouse does not adopt a child without the other spouse's knowledge or over the other's objection. The court determined that the statute does not preclude an unmarried second parent from adopting his or her partner's children and that this principal applies regardless of the couple's marital status or sexual orientation. See *Matter of Jacob*, 86 N.Y.2d 651 (1995).

Despite these decisions, there is confusion about whether New York law permits a joint adoption by unmarried adult couples, neither of which is the biological parent. This can be particularly problematic for couples adopting children overseas where only one parent adopts in the foreign country and the second parent seeks to adopt in New York State. This legislation codifies the Court of Appeal's decision in *Matter of Jacob* and *Matter of Dana*, and will help ensure that unmarried adult couples may jointly adopt a child together where neither is the biological parent of the child - a question that was not addressed by the court of appeals decision. See *In re Adoption of Carolyn B.*, 774 N.Y.S.2d 227 (N.Y. App. Div. 2004).

Allowing unmarried adult couples together to adopt a child will also ensure the child receives the full benefits that the Court envisioned in *Matter of Jacob* and *Matter of Dana* including:

- * Social security benefit in the event of a parent's death or disability
- * Life insurance benefits in the event of a parent's death; The right to sue for wrongful death of a parent;
- * The rule to inherit under the rules of intestacy;
- * Eligibility for health insurance coverage under both parents' health insurance policies;
- * The right to have two parents participate in medical decisions in the event of an emergency;
- * The right to receive economic support from two parents;
- * The emotional security of knowing that in the event of death of parent, the other will have presumptive custody;
- * The right to continue the relationships with both parent and extended families in the event of a separation; and
- * The right to have both parents named on the birth certificate.

In addition, by replacing references to "husband and wife" with the gender-neutral term "married couple", this measure will help ensure that all married couples, regardless of their sexual orientation, have equal rights to adopt a child together.

LEGISLATIVE HISTORY:

Similar to 2009: A5652 referred to Judiciary;
2007-2008: A7449A referred to Judiciary;
2005-06: A.8329 referred to Judiciary

FISCAL IMPLICATIONS FOR STATE AND LOCAL GOVERNMENTS: None.

EFFECTIVE DATE: Immediately

STATE OF NEW YORK

5652--A

2009-2010 Regular Sessions

IN ASSEMBLY

February 17, 2009

Introduced by M. of A. ROSENTHAL, DINOWITZ, GLICK, HOYT, JAFFEE, LAVINE, O'DONNELL, PAULIN -- Multi-Sponsored by -- M. of A. BING, BOYLAND, BRENNAN, CAHILL, GOTTFRIED, JOHN, KELLNER, MAISEL, PHEFFER, N. RIVERA, SCHIMEL, TITONE, WEISENBERG -- read once and referred to the Committee on Judiciary -- recommitted to the Committee on Judiciary in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the domestic relations law, in relation to authorizing two unmarried adult intimate partners to adopt a child

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The first undesignated paragraph of section 110 of the
2 domestic relations law, as amended by chapter 254 of the laws of 1991,
3 is amended to read as follows:
4 An adult unmarried person [or], an adult [husband and his adult wife]
5 married couple together, or any two unmarried adult intimate partners
6 together may adopt another person. An adult married person who is living
7 separate and apart from his or her spouse pursuant to a decree or judg-
8 ment of separation or pursuant to a written agreement of separation
9 subscribed by the parties thereto and acknowledged or proved in the form
10 required to entitle a deed to be recorded or an adult married person who
11 has been living separate and apart from his or her spouse for at least
12 three years prior to commencing an adoption proceeding may adopt another
13 person; provided, however, that the person so adopted shall not be
14 deemed the child or step-child of the non-adopting spouse for the
15 purposes of inheritance or support rights or obligations or for any
16 other purposes. An adult or minor husband and his adult or minor wife
17 together may adopt a child of either of them born in or out of wedlock
18 and an adult or minor husband or an adult or minor wife may adopt such a
19 child of the other spouse. No person shall hereafter be adopted except
20 in pursuance of this article, and in conformity with section three
21 hundred seventy-three of the social services law.
22 § 2. This act shall take effect immediately.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [] is old law to be omitted.

LBD01449-03-0

NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION
submitted in accordance with Assembly Rule III, Sec 1(f)

BILL NUMBER: A5652A

SPONSOR: Rosenthal (MS)

TITLE OF BILL: An act to amend the domestic relations law, in relation to authorizing two unmarried adult intimate partners to adopt a child

PURPOSE OR GENERAL IDEA OF BILL: To allow the adoption of a child by two unmarried adults in keeping with the state's policy to ensure the best interests of a child.

SUMMARY OF SPECIFIC PROVISIONS: Section 110 of domestic relations law, which governs who may adopt, is amended to permit any two unmarried adults together to adopt.

JUSTIFICATION: Current New York State law allows an adult unmarried person or an adult husband and his adult wife together to adopt a child. In Matter of Jacob and Matter of Dana the Court of Appeals asserted that: the unmarried partner of a child's biological mother, whether heterosexual (Jacob) or homosexual (Dana), who is raising the child together with the child's biological parent, has standing to become the child's second parent by means of adoption. The decision of the court stated that the statute uses the word "together" simply to insure that one spouse does not adopt a child without the other spouse's knowledge or over the other's objection. It does not preclude an unmarried person in a relationship with another unmarried person from adopting.

Despite these decisions, there are still known court cases which have ruled that New York law does not permit a joint adoption of two unmarried adults, neither of which is the biological parent. Unmarried couples seeking to have a child adopted by the second parent are finding that some courts are terminating the rights of one parent and simply granting rights to the other parent. This can be particularly problematic for couples adopting children overseas where only one parent adopts in the foreign country and the second parent seeks to adopt in New York State.

Allowing two unmarried adults together to adopt a child will also ensure the child receives the full benefits that the Court envisioned in Matter of Jacob and Matter of Dana including:

- *Social security benefit in the event of a parent's death or disability;
- *Life insurance benefits in the event of a parent's death;
- *The right to sue for wrongful death of a parent;
- *The rule to inherit under the rules of intestacy;
- *Eligibility for health insurance coverage under both parents' health insurance policies;
- *The right to have two parents participate in medical decisions in the event of an emergency;

*The right to receive economic support from two parents;

*The emotional security of knowing that in the event of death of parent, the other will have presumptive custody;

*The right to continue the relationships with both parent and extended families in the event of a separation; and

*The right to have both parents named on the birth certificate. PRIOR

LEGISLATIVE HISTORY:; 2005-06: A.8329 referred to Judiciary

FISCAL IMPLICATIONS: None

EFFECTIVE DATE: Immediately

STATE OF NEW YORK

5652

2009-2010 Regular Sessions

IN ASSEMBLY

February 17, 2009

Introduced by M. of A. ROSENTHAL, BRADLEY, DINOWITZ, GLICK, HOYT, JAFFEE, LAVINE, O'DONNELL, PAULIN -- Multi-Sponsored by -- M. of A. BING, BOYLAND, BRENNAN, CAHILL, GOTTFRIED, JOHN, KELLNER, MAISEL, PHEFFER, N. RIVERA, TITONE, WEISENBERG -- read once and referred to the Committee on Judiciary

AN ACT to amend the domestic relations law, in relation to authorizing two unmarried adults to adopt a child

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

- 1 Section 1. The first undesignated paragraph of section 110 of the
2 domestic relations law, as amended by chapter 254 of the laws of 1991,
3 is amended to read as follows:
4 An adult unmarried person [or], an adult husband and his adult wife
5 together, or any two unmarried adults together may adopt another person.
6 An adult married person who is living separate and apart from his or her
7 spouse pursuant to a decree or judgment of separation or pursuant to a
8 written agreement of separation subscribed by the parties thereto and
9 acknowledged or proved in the form required to entitle a deed to be
10 recorded or an adult married person who has been living separate and
11 apart from his or her spouse for at least three years prior to commenc-
12 ing an adoption proceeding may adopt another person; provided, however,
13 that the person so adopted shall not be deemed the child or step-child
14 of the non-adopting spouse for the purposes of inheritance or support
15 rights or obligations or for any other purposes. An adult or minor
16 husband and his adult or minor wife together may adopt a child of either
17 of them born in or out of wedlock and an adult or minor husband or an
18 adult or minor wife may adopt such a child of the other spouse. No
19 person shall hereafter be adopted except in pursuance of this article,
20 and in conformity with section three hundred seventy-three of the social
21 services law.
22 § 2. This act shall take effect immediately.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [] is old law to be omitted.

LBD01449-02-9

NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION
submitted in accordance with Assembly Rule III, Sec 1(f)

BILL NUMBER: A5652

SPONSOR: Rosenthal (MS)

TITLE OF BILL: An act to amend the domestic relations law, in relation to authorizing two unmarried adults to adopt a child

PURPOSE OR GENERAL IDEA OF BILL: To allow the adoption of a child by two unmarried adults in keeping with the state's policy to ensure the best interests of a child.

SUMMARY OF SPECIFIC PROVISIONS: Section 110 of domestic relations law, which governs who may adopt, is amended to permit any two unmarried adults together to adopt.

JUSTIFICATION: Current New York State law allows an adult unmarried person or an adult husband and his adult wife together to adopt a child. In Matter of Jacob and Matter of Dana the Court of Appeals asserted that the unmarried partner of a child's biological mother, whether heterosexual (Jacob) or homosexual (Dana), who is raising the child together with the child's biological parent, has standing to become the child's second parent by means of adoption. The decision of the court stated that the statute uses the word "together" simply to insure that one spouse does not adopt a child without the other spouse's knowledge or over the other's objection. It does not preclude an unmarried person in a relationship with another unmarried person from adopting.

Despite these decisions, there are still known court cases which have ruled that New York law does not permit a joint adoption of two unmarried adults, neither of which is the biological parent. Unmarried couples seeking to have a child adopted by the second parent are finding that some courts are terminating the rights of one parent and simply granting rights to the other parent. This can be particularly problematic for couples adopting children overseas where only one parent adopts in the foreign country and the second parent seeks to adopt in New York State.

Allowing two unmarried adults together to adopt a child will also ensure the child receives the full benefits that the Court envisioned in Matter of Jacob and Matter of Dana including:

- * Social security benefit in the event of a parent's death or disability;
- * Life insurance benefits in the event of a parent's death;
- * The right to sue for wrongful death of a parent;
- * The rule to inherit under the rules of intestacy;
- * Eligibility for health insurance coverage under both parents' health insurance policies;
- * The right to have two parents participate in medical decisions in the event of an emergency;

- * The right to receive economic support from two parents;
- * The emotional security of knowing that in the event of death of parent, the other will have presumptive custody;
- * The right to continue the relationships with both parent and extended families in the event of a separation; and
- * The right to have both parents named on the birth certificate.

PRIOR LEGISLATIVE HISTORY:: 2005-06: A.8329 referred to Judiciary

FISCAL IMPLICATIONS:: None

EFFECTIVE DATE: Immediately

BILL JACKET

CHAPTER 509

LAWS OF 20 10

SENATE BILL 1523-A

ASSEMBLY BILL _____

STATE OF NEW YORK

1523--A

Cal. No. 185

2009-2010 Regular Sessions

IN SENATE

February 2, 2009

Introduced by Sens. DUANE, BRESLIN, KRUEGER, SCHNEIDERMAN, SQUADRON -- read twice and ordered printed, and when printed to be committed to the Committee on Children and Families -- recommitted to the Committee on Children and Families in accordance with Senate Rule 6, sec. 8 -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the domestic relations law, in relation to authorizing two unmarried adult intimate partners to adopt a child

A. 5652-B Rosenthal

DATE RECEIVED BY GOVERNOR:

SEP 07 2010

ACTION MUST BE TAKEN BY:

SEP 18 2010

DATE GOVERNOR'S ACTION TAKEN:

SEP 17 2010

000001

SENATE VOTE 40 Y 21 N

HOME RULE MESSAGE Y N

DATE 6/24/10

ASSEMBLY VOTE 95 Y 44 N

DATE 7/1/10

S1523-A DUANE Same as A 5652-B Rosenthal (MS)

07/01/10	S1523-A	Assembly Vote	Yes: 95	No : 44
06/24/10	S1523-A	Senate Vote	Aye: 40	Nay: 21

Go to Top of Page

Floor Votes:

07/01/10 S1523-A Assembly Vote Yes: 95 No : 44

Yes Abbate	Yes Alessi	Yes Alfano	No Amedore
Yes Arroyo	Yes Aubry	No Bacalles	No Ball
No Barclay	No Barra	Yes Barron	Yes Benedetto
No Benjamin	Yes Bing	Yes Boyland	Yes Boyle
Yes Brennan	Yes Brodsky	Yes Brook-Krasny	No Burling
No Butler	Yes Cahill	No Calhoun	No Camara
Yes Canestrari	ER Carrozza	No Castelli	Yes Castro
No Christensen	Yes Clark	No Colton	No Conte
ER Cook	No Corwin	No Crespo	ER Crouch
No Cusick	Yes Cymbrowitz	ER DelMonte	Yes DenDekker
Yes Destito	Yes Dinowitz	Yes Duprey	Yes Englebright
No Errigo	Yes Espaillat	Yes Farrell	Yes Fields
No Finch	No Fitzpatrick	Yes Gabryszak	Yes Galef
Yes Gantt	Yes Gianaris	No Gibson	No Giglio
Yes Glick	Yes Gordon	Yes Gottfried	ER Gunther A
No Hawley	No Hayes	Yes Heastie	Yes Hevesi
ER Hikind	No Hooper	Yes Hoyt	Yes Hyer-Spencer
Yes Jacobs	Yes Jaffee	ER Jeffries	Yes John
No Jordan	Yes Kavanagh	Yes Kellner	No Kolb
Yes Koon	Yes Lancman	Yes Latimer	Yes Lavine
Yes Lentol	Yes Lifton	No Lopez P	Yes Lopez V
Yes Lupardo	No Magee	Yes Magnarelli	Yes Maisel
ER Markey	Yes Mayersohn	No McDonough	Yes McEneny
Yes McKeivitt	Yes Meng	No Miller J	Yes Miller M
Yes Millman	No Molinaro	No Montesano	Yes Morelle
No Murray	Yes Nolan	No Oaks	Yes O'Donnell
No O'Mara	Yes Ortiz	Yes Parment	Yes Paulin
Yes Peoples-Stokes	Yes Perry	Yes Pheffer	Yes Powell
Yes Pretlow	Yes Quinn	No Rabbitt	ER Raia
Yes Ramos	No Reilich	Yes Reilly	Yes Rivera J
Yes Rivera N	Yes Rivera P	No Robinson	Yes Rosenthal
Yes Russell	No Saladino	Yes Sayward	Yes Scarborough
Yes Schimel	No Schimminger	Yes Schroeder	Yes Scozzafava
Yes Skartados	Yes Spano	Yes Stirpe	Yes Sweeney

No Tedisco	Yes Thiele	Yes Titone	Yes Titus
No Tobacco	Yes Towns	No Townsend	Yes Weinstein
Yes Weisenberg	Yes Weprin	Yes Wright	ER Zebrowski K
Yes Mr. Speaker			

Go to Top of Page

Floor Votes:

06/24/10 S1523-A Senate Vote Aye: 40 Nay: 21

Aye Adams	Aye Addabbo	Aye Alesi	Nay Aubertine
Nay Bonacic	Aye Breslin	Nay DeFrancisco	Nay Diaz
Aye Dilan	Aye Duane	Aye Espada	Nay Farley
Aye Flanagan	Aye Foley	Aye Fuschillo	Nay Golden
Nay Griffo	Nay Hannon	Aye Hassell-Thompson	Aye Huntley
Aye Johnson C	Nay Johnson O	Aye Klein	Aye Krueger
Aye Kruger	Aye Lanza	Nay Larkin	Aye LaValle
Nay Leibell	Nay Libous	Aye Little	Aye Marcellino
Nay Maziarz	Nay McDonald	Aye Montgomery	Exc Morahan
Nay Nozzolio	Aye Onorato	Aye Oppenheimer	Aye Padavan
Aye Parker	Aye Peralta	Aye Perkins	Nay Ranzenhofer
Aye Robach	Nay Saland	Aye Sampson	Aye Savino
Aye Schneiderman	Aye Serrano	Nay Seward	Nay Skelos
Aye Smith	Aye Squadron	Aye Stachowski	Aye Stavisky
Aye Stewart-Cousins	Aye Thompson	Aye Valesky	Nay Volker
Aye Winner	Nay Young		



STATE OF NEW YORK
EXECUTIVE CHAMBER
ALBANY 12224

APPROVAL # 25
CHAPTER # 509

SEP 17 2010

MEMORANDUM filed with Senate Bill Number 1523-A, entitled:

“AN ACT to amend the domestic relations law, in relation to authorizing two unmarried adult intimate partners to adopt a child”

A P P R O V E D

This bill would amend Domestic Relations Law § 110 to add to the delineated list of those who may adopt a child, an unmarried couple comprised of adult “intimate partners.” In adding this language, the bill would make absolutely clear a principle that has already been established by the courts, *see In re Adoption of Carolyn B.*, 774 N.Y.S.2d 227 (4th Dep’t 2004) and that ensures fairness and equal treatment to families that are ready, willing and able to provide a child with a loving home. This includes same-sex couples, regardless of whether they are married. Moreover, since the statute is permissive, it would allow for such adoptions without compelling any agency to alter its present policies. It is a wise, just and compassionate measure that expands the rights of New Yorkers, without in any way treading on the views of any citizen or organization.

There are two aspects of this legislation that I believe warrant my comment, so as to make clear my understanding of this bill as I sign it into law. First, the term “intimate partners,” although at the heart of the bill, is not defined in it. That should not, however, create any confusion. The term is defined elsewhere in New York law, *see* CPL § 530.11(e), and I believe such definitions contained in other titles provide adequate specificity as to the term’s meaning, and would be looked to by agencies and courts in determining the appropriate construction of this law.

Second, I note that this amendment at least clarifies, and at most expands, existing law. It does not in any way limit or restrict it. Therefore, to the extent the law prior to this bill has been, or may be, read to permit any particular individual or individuals to adopt, including individuals who are neither married nor “intimate partners,” there is nothing in this bill that would disturb such a reading.

In sum, this bill will enhance the rights of New Yorkers longing to be parents. As such, it is a welcome addition to New York law.

The bill is approved.

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**NEW YORK STATE SENATE
INTRODUCER'S MEMORANDUM IN SUPPORT
submitted in accordance with Senate Rule VI. Sec 1**

BILL NUMBER: S1523A

SPONSOR: DUANE

TITLE OF BILL:

An act to amend the domestic relations law, in relation to authorizing two unmarried adult intimate partners to adopt a child

PURPOSE OF BILL:

The purpose of this bill is to permit adoption by two adult unmarried intimate partners in keeping with the state's policy to ensure the best interests of the child.

SUMMARY:

The bill amends Section 110 of the domestic relations law to permit two adult unmarried intimate partners to adopt a child together. In addition, by replacing current references in the law to husband and wife with the gender neutral term "married couple", this proposal also clarifies that all married couples may adopt a child together.

JUSTIFICATION:

Current statutory provisions in New York State allow an adult unmarried person or an adult husband and his adult wife together to adopt a child. In addition, the statutory provisions permit an adult or minor husband and his adult or minor wife to adopt each other's child.

Courts have misinterpreted the word "together" in the statute to have a preclusive effect on the ability of unmarried couples to adopt a child together. In Matter of Jacob and Matter of Dana, the Court of Appeals ruled that the unmarried partner of a child's biological mother, whether heterosexual (Jacob) or homosexual (Dana), who is raising the child together with the child's biological parent, has standing to become the child's second parent by means of adoption. The decision of the court stated that the statute uses the word "together" simply to insure that one spouse does not adopt a child without the other spouse's knowledge or over the other's objection. The court determined that the statute does not preclude an unmarried second parent from adopting his or her partner's children and that this principal applies regardless of the couple's marital status or sexual orientation. See Matter of Jacob, 86 N.Y.S. 2d 651 (1995).

Despite these decisions, there is confusion about whether New York law permits a joint adoption by unmarried adult couples, neither of which is the biological parent. This can be particularly problematic for couples adopting children overseas where only one parent adopts in the foreign country and the second parent seeks to adopt in New York State. This legislation codifies the Court of Appeal's decision in Matter of Jacob and Matter of Dana, and will help ensure that unmarried adult couples may jointly adopt a child together where neither is the biological

parent of the child - a question that was not addressed by the Court of Appeals decision. See In Re Adoption of Carolyn B., 774 N.Y.S. 2d 227 (N.Y. App, Div. 2004).

Allowing unmarried adult couples together to adopt a child will also ensure the child receives the full benefits that the Court envisioned in Matter of Jacob and Matter of Dana including:

- * Social security benefit in the event of a parent's death or disability;
- * Life insurance benefits in the event of a parent's death; The right to sue for wrongful death of a parent;
- * The rule to inherit under the rules of intestacy;
- * Eligibility for health insurance coverage under both parents' health insurance policies;
- * The right to have two parents participate in medical decisions in the event of an emergency;
- * The right to receive economic support from two parents;
- * The emotional security of knowing that in the event of death of parent, the other will have presumptive custody;
- * The right to continue the relationships with both parent and extended families in the event of a separation; and
- * The right to have both parents named on the birth certificate.

In addition, by replacing references to "husband and wife" with the gender-neutral term "married couple", this measure will help ensure that all married couples, regardless of their sexual orientation, have equal rights to adopt a child together.

LEGISLATIVE HISTORY:

Similar to 2009: A.5652 Referred to Judiciary
2007-2008: A.7449A Referred to Judiciary
2005-2006: A.8329 Referred to Judiciary

FISCAL IMPLICATIONS FOR STATE AND LOCAL GOVERNMENTS:

None.

EFFECTIVE DATE:

Immediately.



STATE OF NEW YORK
DEPARTMENT OF STATE
ONE COMMERCE PLAZA
99 WASHINGTON AVENUE
ALBANY, NY 12231-0001

DAVID A. PATERSON
GOVERNOR

LORRAINE A. CORTÉS-VÁZQUEZ
SECRETARY OF STATE

MEMORANDUM

To: Honorable Peter J. Kiernan, Esq.
Counsel to the Governor

From: Matthew W. Tebo, Esq.
Legislative Counsel

Date: July 21, 2010

Subject: S.1523-A (Senator Duane)
Recommendation: No comment

The Department of State has no comment on the above referenced bill.

If you have any questions or comments regarding our position on the bill, or if we can otherwise assist you, please feel free to contact me at (518) 474-6740.

MWT/mel



New York State
Office of
Children &
Family
Services

August 11, 2010

Honorable Peter J. Kiernan
Counsel to the Governor
Executive Chamber
State Capitol
Albany, New York 12224

**Re: S.1523-A
Support**

David Paterson
Governor

Dear Mr. Kiernan:

Gladys Carrión, Esq.
Commissioner

This is in response to your request for comments on the above referenced legislation. The bill amends the Domestic Relation Law (DRL) provision that specifies who may adopt to clarify that two unmarried adult intimate partners may adopt a child together even where neither person is the child's biological parent. In addition, the bill substitutes "married couple" or "spouse" for references to "husband" and "wife" in describing who may adopt.

Capital View Office Park

52 Washington Street
Rensselaer, NY
12144-2796

Currently, the DRL provides that an adult unmarried person or a husband and wife together may adopt. Various courts have interpreted this language as precluding two unmarried adults from adopting together. In *Matter of Jacob* and *Matter of Dana* 85 NY2d 651 (1995), the Court of Appeals construed the existing law as permitting the adoption of a child by the unmarried adult partner of the child's biological parent. The Court held that neither the statutory reference to a husband and wife adopting "together" nor the sexual orientation of the couple precluded such an adoption. However, *Matter of Jacob* and *Matter of Dana* did not address the ability of two single persons to adopt a child together where neither person is the biological parent of the child. This legislation clearly permits such adoptions.

The Office of Children and Family Services supports this bill as it is consistent with public policy to facilitate the placement of children, including foster children, in permanent caring homes when it is the best interest of such children.

Thank you for the opportunity to comment on this legislation.

Sincerely,

Karen Walker Bryce, Esq.
Deputy Commissioner and General Counsel



An Equal Opportunity Employer

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NEW YORK STATE
Unified Court System

OFFICE OF COURT ADMINISTRATION

CL #47

ANN PFAU
CHIEF ADMINISTRATIVE JUDGE

MARC C. BLOUSTEIN
LEGISLATIVE COUNSEL

July 19, 2010

Hon. Peter J. Kiernan
Counsel to the Governor
Executive Chamber
State Capitol
Albany, New York 12224

Re: Senate 1523-A

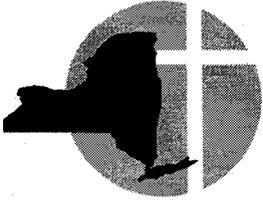
Dear Mr. Kiernan:

Thank you for requesting the comments of this Office on the above-referenced measure, which would amend the Domestic Relations Law to permit two adult unmarried intimate partners to adopt a child together. In addition, by replacing current references in the law to husband and wife with the gender neutral term "married couple," this measure also clarifies that all married couples may adopt a child together. This legislation is consistent with the Court of Appeals's decision in *Matter of Dana and Jacobs*, 86 NY2d 651 (1995), which permits adoptions by unmarried intimate partners.

This measure would have no impact on court administration. Accordingly, we have NO OBJECTION to approval.

Very truly yours,

Marc Bloustein



NEW YORK STATE CATHOLIC CONFERENCE

465 State Street • Albany, NY 12203-1004 • Phone (518) 434-6195 • Fax (518) 434-9796
www.nyscatholic.org e-mail:info@nyscatholic.org

RICHARD E. BARNES
Executive Director

July 29, 2010

Hon. David A. Paterson
Governor of New York State
Executive Chamber
State Capitol
Albany, NY 12224

Re: S.1523-A, Duane/A.5652-B, Rosenthal
Allows for unmarried adoption

Dear Governor Paterson,

The above-referenced bill would allow for adoption by two unmarried intimate partners.

The New York State Catholic Conference strongly **opposes** this legislation.

The Catholic Church teaches that we must treat our homosexual sisters and brothers with dignity and love, as we would all God's children, free of prejudice and hatred. However, evidence tells us that children's welfare is best served by their being reared in a stable home with a married mother and father. Two unmarried adults, whether same-sex or opposite-sex, lack the commitment and incentive to remain together, for the benefit of the adopted child.

Encouraging adoption and marriage between a married man and a woman, therefore, serves the state's interests. Well-reared children who are adopted by a married mother and father are much more likely to grow to be good citizens, thereby, creating wealth, stability and security for the members of the society.

Importantly, this legislation would seemingly mandate religious entities that operate adoption services to facilitate adoption for same-sex intimate partners or same-sex partners married in foreign jurisdictions, in violation of our religious beliefs and faith. Catholic Charities operates adoption services throughout the state. If this legislation was enacted, they might have to stop these invaluable services. Catholic Charities in both the Archdioceses of Boston and Washington, DC had to cease adoption services because of similar legislation and legal opinion.

To address this issue, we propose the following amendment:

"No state or any other governmental agency shall deny, suspend or revoke a license, permission or certification to carry on any activity, including denial of renewal or recertification of such license, permission or certification, against any organization controlled by or in connection with a religious organization or denominational group or entity that refuses to provide any form of assistance or information about adoption on grounds that it would be contrary to the conscience or religious or moral beliefs of that organization or of the

religious organization or denominational group or entity by which it is operated, sponsored or controlled.”

For these reasons, the New York State Catholic Conference strongly opposes this legislation and urges its veto.

Very truly yours,

A handwritten signature in black ink, appearing to read "Richard E. Barnes". The signature is written in a cursive style with a large initial "R" and "B".

Richard E. Barnes
Executive Director



September 17, 2010

Honorable David Paterson
 Governor of New York
 Executive Chamber
 Albany, NY 12224

Dear Governor Paterson:

I am writing on behalf of the Lesbian, Gay, Bisexual and Transgender Community Center, and the 6,000 people who visit us every week to request that you sign Bill A.5652-B. This landmark legislation (permitting unmarried partners, including same-sex couples, to adopt a child together) is important to the LGBT community, as it will permit two unmarried intimate adults – no matter their sexual orientation – to adopt a child and receive full legal guardianship. The right to family creation independent of the gender of the spouses is an important step towards full equality for LGBT New Yorkers, a cause for which you have demonstrated passion.

Under current law, if unmarried parents separate, the parent who is not legally attached to the child may be left with no rights to take part in the child's upbringing. In the event of a death, the child and the surviving partner may be left with no Social Security, life insurance or inheritance benefits. In either such case – separation or death – the event law's effects on the child could be devastating. This law seeks to remedy these harms and will prevent such disastrous situations from occurring.

We encourage you to continue your leadership on this issue and sign this important legislation to better protect LGBT families in New York.

Sincerely,

Glenda Testone
 Executive Director

Cc: Assemblymember Linda Rosenthal and Senator Tom Duane



**Lawyers
For Children, Inc.**
110 Lafayette St., 8th Floor
New York, New York 10013
(212) 966-6420 • Fax (212) 966-0531
www.lawyersforchildren.org

EXECUTIVE DIRECTOR
KAREN J. FREEDMAN, ESQ.

August 3, 2010

DEPUTY EXECUTIVE DIRECTOR
GLENN METSCH-AMPEL, ESQ.

The Hon. David Patterson
Executive Chamber
State Capitol
Albany, New York

Re: A05652B/S1523-A (Permitting Adoption By Two Unmarried Adult Intimate Partners)

Dear Governor Patterson:

We are writing to urge you to sign into law bill No. A05652B/S1523-A, which would permit two unmarried adult intimate partners to adopt children together.

Lawyers For Children ("LFC") is a not-for-profit corporation dedicated to protecting the rights of individual children in foster care and compelling system-wide child welfare reform in New York. For more than 25 years, LFC has provided award-winning legal and social work services to children in cases involving foster care, abuse, neglect, termination of parental rights, adoption, guardianship, custody and visitation. Currently, we represent children and youth in more than 6,000 proceedings in New York City's Family Courts each year.

LFC STRONGLY SUPPORTS THIS BILL FOR THE FOLLOWING REASONS

Adoption provides children with safe, permanent homes and nurturing families. Nearly 1,000 children are freed for adoption each year in New York and more than 3,000 freed children are awaiting adoptive homes¹. A number of those children are living in foster homes with two loving parents who are committed to each other and are committed to raising the child as their own, despite not being married. Because the current statute does not clearly provide that those parents are eligible to adopt, the children are deprived of the opportunity to have both of the people who are raising them be their legal parents. Many studies have shown that children benefit from having legal ties to two parents and receive countless other benefits as children of a two-parent household. We believe that when two qualified adults in a loving relationship want to make themselves available as parents to a child in need of a home, their marital status should not be a factor in their eligibility for consideration. Lawyers For Children enthusiastically supports permitting qualified unmarried partners to be eligible to adopt a child.

¹ Adoption Exchange Association, a cooperative program of the Children's Bureau, the Administration for Children and Families, the Dept. of Health & Human Services, found at <http://www.adoptuskids.org/resourcecenter/rrtpackets/NewYork.aspx>

Providing free legal and social work services to New York City's children since 1984

We hope that we can count on you to continue to support laws to protect the needs of New York State's most vulnerable children. Please contact us if you have any questions about this bill and its benefits for children and families in New York.

Very truly yours,



Karen Freedman
Executive Director



Betsy Kramer
Public Policy and Special Litigation
Project Director

STATE OF NEW YORK

1523--A

Cal. No. 185

2009-2010 Regular Sessions

IN SENATE

February 2, 2009

Introduced by Sens. DUANE, BRESLIN, KRUEGER, SCHNEIDERMAN, SQUADRON -- read twice and ordered printed, and when printed to be committed to the Committee on Children and Families -- recommitted to the Committee on Children and Families in accordance with Senate Rule 6, sec. 8 -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the domestic relations law, in relation to authorizing two unmarried adult intimate partners to adopt a child.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

- 1 Section 1. The first undesignated paragraph of section 110 of the
2 domestic relations law, as amended by chapter 254 of the laws of 1991,
3 is amended to read as follows:
4 An adult unmarried person [~~or~~], an adult [~~husband and his adult wife~~]
5 married couple together, or any two unmarried adult intimate partners
6 together may adopt another person. An adult married person who is living
7 separate and apart from his or her spouse pursuant to a decree or judg-
8 ment of separation or pursuant to a written agreement of separation
9 subscribed by the parties thereto and acknowledged or proved in the form
10 required to entitle a deed to be recorded or an adult married person who
11 has been living separate and apart from his or her spouse for at least
12 three years prior to commencing an adoption proceeding may adopt another
13 person; provided, however, that the person so adopted shall not be
14 deemed the child or step-child of the non-adopting spouse for the
15 purposes of inheritance or support rights or obligations or for any
16 other purposes. An adult or minor [~~husband and his adult or minor wife~~]
17 married couple together may adopt a child of either of them born in or
18 out of wedlock and an adult or minor [~~husband or an adult or minor wife~~]
19 spouse may adopt such a child of the other spouse. No person shall here-
20 after be adopted except in pursuance of this article, and in conformity
21 with section three hundred seventy-three of the social services law.
22 § 2. This act shall take effect immediately.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

LBD01449-08-0

Debates

1 ACTING PRESIDENT SAVINO: Read
2 the last section.

3 THE SECRETARY: Section 2. This
4 act shall take effect immediately.

5 ACTING PRESIDENT SAVINO: Call
6 the roll.

7 (The Secretary called the roll.)

8 ACTING PRESIDENT SAVINO:
9 Announce the results.

10 THE SECRETARY: Ayes, 59. Nays,
11 2. Senators Bonacic and Larkin recorded in
12 the negative.

13 ACTING PRESIDENT SAVINO: The
14 bill is passed.

15 THE SECRETARY: Calendar Number
16 185, by Senator Duane, Senate Print 1523A, an
17 act to amend the Domestic Relations Law.

18 ACTING PRESIDENT SAVINO: Read
19 the last section.

20 THE SECRETARY: Section 2. This
21 act shall take effect immediately.

22 ACTING PRESIDENT SAVINO: Call
23 the roll.

24 (The Secretary called the roll.)

25 ACTING PRESIDENT SAVINO:

1 Senator DeFrancisco, to explain his vote.

2 SENATOR DeFRANCISCO: Yes, I'm
3 going to vote no on this bill.

4 This provides for adoption by
5 permitting two unmarried persons, adult
6 intimate partners, to adopt a child. I have
7 no clue, since the bill does not say anything
8 about it, what the definition of "intimate
9 partners" are.

10 I would think that if we're going
11 to make a category of individuals that could
12 adopt children that are not husband and wife,
13 it would seem to me that category of
14 individuals should be sufficiently defined.
15 "Intimate" means different things to different
16 people. In fact, to our former president, sex
17 means different things to different people.

18 So I think we have to truly have a
19 definition in order to provide a new right,
20 and I vote no for that reason.

21 ACTING PRESIDENT SAVINO: Senator
22 DeFrancisco to be recorded in the negative.

23 Announce the results.

24 THE SECRETARY: Those recorded in
25 the negative on Calendar Number 185 are

1 Senators Aubertine, Bonacic, DeFrancisco,
2 Farley, Golden, Griffio, Hannon, O. Johnson,
3 Larkin, Leibell, Libous, Maziarz, McDonald,
4 Nozzolio, Ranzenhofer, Saland, Seward, Skelos,
5 Volker and Young. Also Senator Diaz.

6 Ayes, 40. Nays, 21.

7 ACTING PRESIDENT SAVINO: The
8 bill is passed.

9 THE SECRETARY: Calendar Number
10 188, by Member of the Assembly O'Donnell,
11 Assembly Print Number 5537A, an act to amend
12 the Penal Law and others.

13 ACTING PRESIDENT SAVINO: Read
14 the last section.

15 THE SECRETARY: Section 2. This
16 act shall take effect immediately.

17 ACTING PRESIDENT SAVINO: Call
18 the roll.

19 (The Secretary called the roll.)

20 ACTING PRESIDENT SAVINO:
21 Announce the results.

22 THE SECRETARY: Ayes, 61.

23 ACTING PRESIDENT SAVINO: The
24 bill is passed.

25 THE SECRETARY: Calendar Number

[page intentionally blank]

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THE CLERK: This act shall take effect immediately.

ACTING SPEAKER JOHN: The Clerk will record the vote.

(The Clerk recorded the vote.)

Are there any other votes?

The Clerk will announce the results.

(The Clerk announced the results.)

The bill is passed.

Mr. Canestrari.

MR. CANESTRARI: Yes, Madam Speaker, we will now go to Page 16, Rules Report No. 427, Ms. Linda Rosenthal. Colleagues, the necessary messages from the Governor are at the Rules Committee now, so we can begin the Rules Committee meeting now.

Thank you.

ACTING SPEAKER JOHN: Page 16, Rules Report No. 427, Ms. Rosenthal -- Colleagues, some quiet in the Chamber so that we can hear the Clerk -- the Clerk will read.

THE CLERK: Bill No. 5652-B, Rules Report No. 427, Rosenthal, Dinowitz, Glick, Hoyt, Jaffee, Lavine, O'Donnell, Paulin, D. Weprin, Titone. An act to amend the Domestic Relations Law, in relation to authorizing two unmarried adult intimate partners to adopt a child.

ACTING SPEAKER JOHN: On a motion by Ms. Rosenthal, the Senate bill is before the House. The Senate bill is

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advanced.

Ms. Rosenthal, an explanation has been requested.

MS. ROSENTHAL: This bill amends Section 110 of the Domestic Relations Law to permit two adult unmarried intimate partners to adopt a child together.

ACTING SPEAKER JOHN: Mr. Conte.

MR. CONTE: Thank you, Madam Speaker. Will the sponsor yield for a couple of questions?

ACTING SPEAKER JOHN: Ms. Rosenthal, will you yield?

MS. ROSENTHAL: Yes.

MR. CONTE: Can you define "two unmarried adult intimate partners" together may adopt?

MS. ROSENTHAL: Yes. Two adult unmarried intimate partners means two same-sex or opposite-sex couples who have their lives intertwined in terms of bank accounts, living lives that are considered as a couple.

MR. CONTE: Where in State law is the term "unmarried adult intimate partners?" Where is that defined in State law?

MS. ROSENTHAL: I'm sorry. Say that again?

MR. CONTE: Where in State law is the definition of two "unmarried adult intimate partners"?

MS. ROSENTHAL: This is common terminology that is understood the way I just explained.

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MR. CONTE: Okay. Are these domestic partners?

MS. ROSENTHAL: They may be, or they may not be.

MR. CONTE: Right. So, the problem that I have with this bill is that we have passed numerous laws in this State that have, one, defined marriage; two, defined domestic partners. And we have detailed with the definition of domestic partners a list of things that would qualify a person to be a domestic partner. I don't see anywhere in State law that defines an intimate partner, and I'm just wondering how the courts or how adoption agencies are going to be able to define what an inmate partner is.

MS. ROSENTHAL: "Intimate partner" is a well-used term that courts understand when they rule on cases involving intimate partners.

MR. CONTE: Can you state any of those?

MS. ROSENTHAL: I mean, it's a common term in marital and other kinds of law.

MR. CONTE: But if it's a common term, we would have used it in other areas of law. We're creating a new law that says "intimate partners." It doesn't say "domestic partners," it doesn't say "two unmarried individuals" can adopt. You're saying an intimate partner, and I'm just wondering where in State law and where the courts are going to be able to define what an inmate partner is.

MS. ROSENTHAL: Well, in the case of *Jacob* and in the case of *Dana*, those terms were used.

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MR. CONTE: Those term were used?

MS. ROSENTHAL: Yes.

MR. CONTE: So, is there any other section of State law that defines "intimate partner"?

MS. ROSENTHAL: Not that I know of.

MR. CONTE: Okay. And in this particular bill, we don't have a definition of what an intimate partner is. So, we're not giving the courts any true definition of a what an intimate partner is.

MS. ROSENTHAL: As I said already, courts know know what "intimate partner" means. It's been commonly used in courts.

MR. CONTE: But, so has the term "domestic partner." It's been around for a number of times and we have made sure that in this State we have defined domestic partner. We have defined what marriage is in this State. But, we have never, in the years that I have -- I have never seen a bill that says an unmarried adult intimate partner. I guess they could be a married adult -- but no, if they're married, it doesn't matter. But, an intimate partner. I'm just wondering --

MS. ROSENTHAL: That's exactly the point. If they're married, it doesn't matter.

MR. CONTE: I understand.

MS. ROSENTHAL: But these are couples who either cannot get married by law or choose not to get married by law, and we want them to be able to have the same rights to adopt as

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people who are married.

MR. CONTE: Right now, many adoption agencies --

MS. ROSENTHAL: You know, in the New York State Court of Appeals *Braschi* case, it does define family, even with same-sex couples, so I think that answers your intimate partner question.

MR. CONTE: No, it defines what a same-sex couple is, and we have defined it in other portions of law dealing with whether it's income taxes, whether it's dealing with being able to go to emergency rooms, we have defined what a domestic partner is. We never defined intimate partner.

I'll get off of that for a second. Right now, there are many religious organizations in New York State that provide for the adoption services and they try to facilitate adoptions for people. Is it your intention that they are going to have to provide for adoptions for same-sex intimate partners or same-sex partners married in other jurisdictions?

MS. ROSENTHAL: You mean if this becomes law?

MR. CONTE: Yes.

MS. ROSENTHAL: It is their choice whether to follow the law, as it is any of our choices to follow or not follow a law. You know, we're actually codifying case law, so it's current policy. Whether groups follow it or not follow it, I can't speak to that. But, if something is the law then it ought to be followed.

MR. CONTE: Well, if we're codifying law, then as

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the sponsor of this bill, I think that we should have a definition of what an unmarried adult intimate partner is. I don't see it here. You tell me that it's in case law and we're codifying case law, but you have failed to define what any two unmarried adult intimate partners are and I just think that that's a glaring mistake from this Legislature.

MS. ROSENTHAL: Well, it's a common term and not all terms used in all bills are defined as such. It's understood within the courts and lawyer communities what intimate partner means.

MR. CONTE: So, in terms of intimate partners -- and I want to just get right back to that -- they have to be living in the same home?

MS. ROSENTHAL: They may be.

MR. CONTE: Maybe.

MS. ROSENTHAL: Yes.

MR. CONTE: Are they brothers and sisters?

MS. ROSENTHAL: Actually, they are not. They are intimate partners, which precludes them from being brothers and sisters.

MR. CONTE: Okay, but intimate in what sense of the word? Is it intimate in the sexual sense of the word or intimate in that they --

MS. ROSENTHAL: As if intimate were a sexual sense with married couples. I don't pry in their bedroom.

MR. CONTE: Marriage has been defined in this

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country and in this State in a variety of ways.

MS. ROSENTHAL: We're not talking about domestic partners, we're talking about --

MR. CONTE: But domestic partners has been defined --

MS. ROSENTHAL: Okay, but we're not talking about domestic partners here, we're talking about couples, and surely you understand the definition of a couple.

MR. CONTE: Okay. It's two people, it's a couple.

MS. ROSENTHAL: Well, not just any two people.

MR. CONTE: They have to be intimate. That's what I'm asking. What is the definition of intimate? Is it they have bank accounts together? Is it they have a house together? Do they have a home to raise this child together with or is it just two people who basically say we kind of like each other, so we will be able to adopt a child?

MS. ROSENTHAL: You know, in relation to adoption, when the courts look at couples, they look to see if they have a commitment to each other, if they have built a life together. They may have the same bank account. They're clearly committed to living lives that are enmeshed and interconnected with each other.

MR. CONTE: But they're not married because they haven't made that much of a commitment --

MS. ROSENTHAL: Well, some --

MR. CONTE: And they're not domestic partners --

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MS. ROSENTHAL: Let me finish.

MR. CONTE: -- because they haven't made that much of a commitment.

MS. ROSENTHAL: Wait a minute. I didn't say that they were or weren't. They could be domestic partners, they might not be. And some cannot get married and some choose not to get married.

MR. CONTE: Okay. So, why didn't we add domestic partners in here?

MS. ROSENTHAL: Not all places have domestic partnerships, so we wanted to include everybody who was adult unmarried intimate partners, couples.

MR. CONTE: Okay. But whether or not they have a bank account together, whether or not they have a home together, that's not going to make a difference, but we're going to leave it up to the courts to decide?

MS. ROSENTHAL: Well, yes. Those qualifications that you just mentioned are among the considerations of the court when they examine adoption cases.

MR. CONTE: But we don't outline that in any particular section of law.

MS. ROSENTHAL: Well, we haven't needed to thus far.

MR. CONTE: So, again, going back to the issue of Catholic Charities or some Jewish organizations that provide for adoptions and their faith does not believe in same-sex marriages,

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same-sex couples, are they going to be forced to --

MS. ROSENTHAL: They can do what they choose to do.

MR. CONTE: Well, if it's the law -- that's what I'm asking. So, they can choose what they want to do. So right now, if two unmarried intimate adults walk into Catholic Charities or walk into a Jewish adoption agency or whatever, and they say that we would like to adopt a child and Catholic Charities says, "Well, are you married?" And they say, "No, we're intimate partners." "Well, we don't do that. You have to go somewhere else." Are they going to have any legal action against Catholic Charities for discriminating against them because they're not married?

MS. ROSENTHAL: Let me explain to you that this is already existing case law, so the question is whether they turn intimate partners away right now. We are codifying what's existing law, existing case law. So, they are under the same obligation now as they would be were this to be law.

MR. CONTE: But if they do not want to facilitate adoptions for same-sex intimate partners or same-sex partners married in other jurisdictions, are they going to be in violation if this State statute and are the individuals who get turned away going to be able to sue that religious organization for not helping them try to adopt a child? Because this can get very emotional for a number of people.

ACTING SPEAKER JOHN: Mr. Titone, why do you rise?

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MR. TITONE: Mr. Conte, will you yield for a question?

ACTING SPEAKER JOHN: Mr. Conte, do you yield?

MR. CONTE: Yes, sure.

ACTING SPEAKER JOHN: The gentleman yields.

MR. TITONE: Mr. Conte, back home we have the Knights of Columbus and they have catering halls. Are you saying that because of their religious beliefs they have the option to not comply with health code?

MR. CONTE: No.

MR. TITONE: So, when a religious institution is involved in the business of social services, are you saying because of their religious beliefs they don't have to comply with our laws?

MR. CONTE: No.

MR. TITONE: Thank you.

MR. CONTE: On the bill, very quickly.

ACTING SPEAKER JOHN: On the bill.

MR. CONTE: My objections are two things: Mainly that the sponsor of this legislation does not define what an adult intimate partner is. We have gone through great debates in this House and across this country to, one, define marriage; two, to define what a domestic partner is, and we have allowed each of those individuals specific rights under New York State law, under United States law, to be able to have the benefits of certain things in this

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country, and this is the perfect spot for that debate to happen, here in the New York State Legislature. But, my problem with this piece of legislation is that there's no definition in this law, in this particular bill, dealing with two unmarried adult intimate partners, allowing them to -- it doesn't say in the law, as we do with domestic partnerships, that we set out a criteria of things that say that you're a domestic partnership, that you've gone to a governmental agency which says you are a domestic partnership, or you have gone to a governmental agency and you have a marriage certificate. Again, we have allowed them to have certain rights and responsibilities under New York State law. So, I believe that this particular law -- and I'll just finish up very quickly -- is going to cause more court cases and also hamper some religious organizations to practice their religious beliefs.

ACTING SPEAKER JOHN: Mr. Titone.

MR. TITONE: On the bill, Madam Speaker.

ACTING SPEAKER JOHN: On the bill.

MR. TITONE: A little bit over eight years ago, a friend of mine, Daniel Stewart, was on his way to work during rush hour. As he got out of the train at the Union Street Station on 14th Street, he noticed that in the garbage at that train station there was what he thought was a doll's leg. He really couldn't believe how realistic it looked, except that by this hour hundreds of people had already been passing by. He noticed that the doll's leg was actually twitching ever so slightly. As you can imagine, that doll's leg actually

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turned out to be a newborn baby boy.

Madam Speaker, this story that I told you did make almost every publication in New York City and certainly the 11 o'clock news that evening. It was very sensationalized. But, I am happy to report -- well, almost happy to report -- that it almost has a happy ending. What happened next was that the little boy, the infant, was taken to the hospital and over several days with medical care he was nursed back to health. Daniel Stewart, along with his partner, Pete Mercurio, went to visit that little boy every day, and every day they saw that he got healthier and healthier and that was great. In order for that little boy to be placed into foster care and then to be put up for adoption, the courts had to have a termination of parental rights hearing. Of course, my friend Dan was subpoenaed to go to that hearing because he had to give testimony of how he found the little boy that was left in the garage there. At that time, the the little boy's name was John Doe, origin unknown. He was subpoenaed, he went to the court, the judge brought him in just to assure him that he would be okay throughout the whole proceeding and explained what the proceedings were. Pete and Danny were there. What was supposed to be a 5- to 15-minute meeting with the judge turned out to be several hours as they got to know each other. They finally had the hearing that day, and during the hearing -- and remember, this is a New York City Family Court Judge whose job it is to determine the best interest of the child -- the judge turned to both Pete and Danny and said, "Why don't you adopt this boy? You seem like a good, healthy, intimate

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couple, stable, loving and actually have a genuine concern and care for this child." Well, eight years later, I'm happy to say that they did adopt -- Kevin is his name, actually. I want to be clear to this Chamber, make absolutely no mistake about it, that this bill -- and I commend my colleague, Linda, for this bill -- this bill is not about gay rights, it's not about civil unions, it's not about domestic partnership. This bill is about the best interest of a child.

Dizzy, or Kevin, but he's known to all his friends as "Dizzy" because he's just so enthusiastic and full of energy, especially when he plays baseball, has everything that we think a child should have growing up. He has loving grandparents on both Pete and Danny's side. He has cousins and aunts and uncles to take him to Disney World and to the Grand Canyon. While Kevin may have a whole family, he certainly does not have all the rights of that family. He only has half of those rights. Should Danny pass away, Peter will no longer be that legal parent. He will no longer have the rights that would be inherited to him from Peter. So, I say that this is not about Daniel and Peter, this is about Kevin and his rights and our obligation, responsibility, to ensure that Kevin's rights are fully protected.

Once again, I want to commend the sponsor and I will be voting yes on this, Mr. Speaker. I do so not only for Peter and for Danny and Kevin, but I also do it for Sal and Wayne who, over 23 years ago, became the very first gay couple in the State of New York to adopt a child. They're from Staten Island. They named that child Hope, and I think that's an appropriate name. I hope today that we all

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see clearly that this is about children, not about gay rights.

Thank you, Mr. Speaker.

ACTING SPEAKER P. RIVERA: Ms. Jaffee.

MS. JAFFEE: Thank you, Mr. Speaker. I want to applaud the sponsor of this legislation and I want to echo what Assemblyman Titone noted. This is about children. This is about children who otherwise would not have a home. This is about children who otherwise might be in foster homes or in group homes but not have loving parents; that is what this legislation is about. Many years ago in my community, two friends of mine who lived nearby wanted to adopt a child, wanted a child. These two men were strong, intelligent and loving human beings and they were having a difficult time. One day they had found out through the system that there was this baby that was in the hospital, had been born to parents with very severe addictions. One of the parents passed away. The other one was incapable emotionally and physically of caring for any child, let alone herself. We worked through the system and were finally able to provide an opportunity for these two men to take this little girl as a foster child and I went to visit them a couple months later. What a lucky little girl. What a lucky little girl. She had the most beautiful room with beautiful paintings, a crib that was magnificent, toys you can't imagine and she was having a normal life. Years later, I met them with the grandparents of this little girl now. Now she was four years old. She was charming and sweet and they were delightful parents and the grandparents were so much involved

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in her life. This is what this legislation is about, providing the opportunity for children to have a home, to have loving parents.

I would urge my colleagues to support this, to support the opportunity for children to grow up in an environment where they can thrive. Thank you.

ACTING SPEAKER P. RIVERA: Mr. Gordon.

MR. GORDON: Yes, Mr. Speaker. Will the sponsor yield for a question, please?

ACTING SPEAKER P. RIVERA: Ms. Rosenthal, do you yield?

MS. ROSENTHAL: Yes.

MR. GORDON: Yes, Linda. If the legislation that we're looking at here is enacted into law and this intimate couple that adopts, that relationship is dissolved, what would the process be for determining custody, or joint custody, shared custody, for moving ahead?

MS. ROSENTHAL: Each parent will have a right to custody the way that happens with other partners, as in current law when relationships dissolve. As you know, this will be determined by the court on what is in the best interests of the child, so custody law would determine that.

MR. GORDON: Okay. So, either the two parties, the two parents either would come to a mutual agreement or, perhaps, resolve the issue in family court then?

MS. ROSENTHAL: Yes.

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MR. GORDON: Thank you.

ACTING SPEAKER P. RIVERA: Ms. Mayersohn.

MS. MAYERSOHN: I was prepared to oppose this bill because I feel that the Senate sponsor has no interest in the well-being of children. He rejected, set aside and killed my "no smoking with kids in the car" bill, and that tells me that his agenda is not as most of us would like it to be. I think I do not know what his agenda is. I know that the interests of kids is not his interest. I vote in the affirmative. Because of my dear friend, Assemblyman Titone and some of the others, I am supporting the bill, but I just want to send a message.

Thank you.

ACTING SPEAKER P. RIVERA: Colleagues, if we can just stay to the merits of the bill, the bill that we are discussing.

Ms. Rosenthal to close.

MS. ROSENTHAL: On the bill. In the past, adoption was viewed as a service to parents who could not conceive their own children, and so we wanted to please them by giving them a little bundle of joy to take care of. In more modern times, we have rightly come to view the issue as taking care of a child who has no one to care for them and that is the focus of this legislation. It is not about institutions. It is not about parent or family structure. It is about who will take the best care of the child. A two-parent family, where you have two people committed to each other who are willing and able to open their homes and provide a stable and full life to a child is the

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ideal goal. To say that this might hurt an institution is to totally deny what this legislation is about. It is about helping children.

The American Association of Pediatrics says, "Children of one or two gay parents fare as well emotionally, cognitively and socially as do children of heterosexuals. A legally-sanctioned co-parent relationship provides important benefits for children as well." And that was an interesting question I was asked earlier by one of my colleagues about what happens if the relationship is dissolved. Well, if they have two parents, they are in a much better situation. Now, among the rights that children get who have two parents are the right to have two names on a birth certificate; the right to get Social Security death benefits; the right, if one of the parents dies, to have a continued stable home with somebody who loves them; the right to inherit under the rules of intestacy; life insurance benefits in the event of a parent's death; the right to have two parents participate in medical decisions in an emergency; and the right to continue the relationships with both parents and extended families in the event of separation. These are things that we want all of our children to have, and to say that that is not the focus of this bill is to be a bit mean spirited and to look for ways to defeat it when, in fact, this is all about children.

In determining whether the child's best interests would be promoted by the the proposed adoption, the adoption court considers the degree of commitment that the petitioners have toward each other. The goal of adoption is not just to place children in

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suitable homes, but to place them in permanent, stable families.

There are thousands upon thousands of children in America who are "waiting on the shelf," as a friend of mine who was adopted called his situation. He was sitting on the shelf. Now, it took a while for him to be adopted, but had couples who are either heterosexual or gay come forward to adopt him, his life would have been better earlier. To deny two committed adults who are willing to open their heart and their home with full love to a child is the goal of this legislation and this is what I hope happens when it's passed and signed. This codifies existing law in the matter of *Jacob* and in the matter of *Dana*. It also clarifies any confusion that may have happened. There was another case of *Caroline B*. I think that all of us can find our way, even if we aren't proponents of marriage equality, that the public welfare is not served if parents who have the ability to take care of children are not given the opportunity to do so. Children belong in stable homes. This bill would allow many, many more of them to be put in stable homes and carry on with their lives.

One last thing I wanted to say is there was recently a study which the Journal of Pediatrics printed about. It was a U.S. national longitudinal lesbian family study psychological adjustment of 17-year-olds who had been brought up by lesbian mothers. It turns out that those children were found to fare better in terms of academic, social and psychological competence than a comparable group raised in a more traditional home. They were less likely to be rule breakers or to exhibit aggressive behavior. They were more likely to be

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deliberately planned, these children, and the mothers were more likely to have resources to raise them and the time to devote to them.

So, the point of the bill is to codify existing case law to ensure that children have the ability and the opportunity to have safe and secure lives, and it's a long time coming that New York State become one of the few already which allows adoption by two adults, unmarried couples. Thank you.

ACTING SPEAKER P. RIVERA: Mr. Conte, why do you rise?

MR. CONTE: Would the sponsor yield for a question, please?

ACTING SPEAKER P. RIVERA: Ms. Rosenthal, will you yield for a question?

MS. ROSENTHAL: Yes.

MR. CONTE: Thank you. The Catholic Conference specifically asked for an amendment to this particular bill. Have you seen their request for an amendment?

MS. ROSENTHAL: You know, I've had this bill for about a couple of years now. Yesterday they approached me, so there's no time for an amendment.

MR. CONTE: Okay. Thank you.

On the bill.

ACTING SPEAKER P. RIVERA: On the bill, Mr. Conte.

MR. CONTE: Thank you. The Catholic Conference

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asked for an amendment for this particular bill because -- and they basically say they want to have the following amendment: "No State or any other governmental agency shall deny, suspend or revoke a license, permission or certification to carry on any activity, including denial of renewal or recertification of such license, permission or certification against any organization controlled by or in connection with a religious organization or denominational group or entity that refuses to provide any form of assistance or information about adoption on grounds that it would be contrary to the conscience or religious or moral beliefs of that organization or of the religious organizations or denominational group or entity by which it is operated, sponsored or controlled." They go on to say that, "Because bills like this have been enacted in Boston, Massachusetts and Washington, Catholic Charities in both the Archdioceses of Boston and Washington, D.C. have ceased adoption services because of similar legislation and legal opinion." They offered up this amendment, which I believe is fair. It basically does not penalize religious organizations for doing what they would like to do and place children in families that they feel are the most beneficial. They feel if this becomes law, that they may be ceasing operations here in New York State, like Boston and like Washington, D.C. And for that reason, Mr. Speaker, I'm going to be opposing this legislation.

ACTING SPEAKER P. RIVERA: Read the last section.

THE CLERK: This act shall take effect immediately.

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ACTING SPEAKER P. RIVERA: The Clerk will record the vote.

(The Clerk recorded the vote.)

Mr. Lavine to explain his vote.

MR. LAVINE: Thank you, Mr. Speaker. An issue arises that, I believe, accounts for some of the no votes with respect to this outstanding bill, and that issue is that some have said that they really don't know how any judge or any court ought to be able to interpret the phrase "intimate couples" or "intimate unmarried adults." So, I just want to say that one of the things I had the privilege of doing when I practiced law was appellate work, very often in the Federal courts. We can go to the classic work on this, which is Sutherland on Statutory Construction that says that when a Legislature passes a bill, you take the words for what the Legislature means. I don't think there is anything at all that's ambiguous about this term. We are talking about people who have particularly close interpersonal relationships. And for anyone, I would submit, who would vote against this because they've got some semantic problem, I think that that is a vote that, with respect to the thousands and thousands of children who are awaiting adoption and who need homes, that is a vote that goes beyond cruel; that is a vote that is destructive.

I'm withdrawing my request and casting my vote in the affirmative.

ACTING SPEAKER P. RIVERA: Mr. Lavine in the affirmative.

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Mr. Kellner to explain his vote.

MR. KELLNER: Thank you, Mr. Speaker. I really want to personally thank the sponsor of this bill. I know how important this piece of legislation is, having been adopted by one of my two parents. You know, one of the things my family greatly feared when my mother got remarried, when she got sick with cancer was what happened if she died if we had not been able to be adopted by my father, who might possibly attempt to take us away if that did occur. So, you know, what the sponsor is doing, what this bill is doing, is keeping families intact, ensuring that we have families in New York State and I thank her for this bill and I vote in the affirmative.

Thank you, Mr. Speaker.

ACTING SPEAKER P. RIVERA: Mr. Kellner in the affirmative.

Ms. Glick to explain her vote.

MS. GLICK: Thank you, Mr. Speaker. I just want to applaud the sponsor for her efforts in trying to address the importance of stability for children who are in the situation where there are, in fact, two unmarried parents. When there's an emergency, both parents should be able to act on behalf of the child. If there's an emergency, as we experienced in my district in 2001, parents had to race to schools to pull their children out of an emergency situation. If one parent is traveling on business and is out of town, there has to be clarity that both parents can act on behalf of those children. Whether

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there's a medical emergency or a public safety emergency, this is the kind of situation where the interests of the child must trump all other considerations. That is why it is important for the legal system to recognize that both parents have the right to act on behalf of that child.

So, I would urge a yes vote and I, again, want to applaud the sponsor for all of her efforts. I will be voting in the affirmative.

ACTING SPEAKER P. RIVERA: Ms. Glick in the affirmative.

Are there any other votes?

The Clerk will announce the results.

(The Clerk announced the results.)

The bill is passed.

Mr. Canestrari.

MR. CANESTRARI: Yes, sir. We will now go to Page 41, Calendar No. 663, Ms. Helene Weinstein, please.

ACTING SPEAKER P. RIVERA: Page 41, Calendar No. 663, the Clerk will read.

THE CLERK: Bill No. 8735-A, Calendar No. 663, Weinstein, Brodsky. An act to amend the Civil Practice Law and Rules, in relation to increasing the property values which are exempt from the satisfaction of a money judgment; and to amend the Debtor and Creditor Law, in relation to increasing the exemptions in bankruptcy.

Related/Prior Legislation

A8329 Grannis (MS) No Same as
Domestic Relations Law

TITLE....Relates to permitting two unmarried persons to adopt a child together

05/18/05 referred to judiciary

01/04/06 referred to judiciary

STATE OF NEW YORK

8329

2005-2006 Regular Sessions

IN ASSEMBLY

May 18, 2005

Introduced by M. of A. GRANNIS, GLICK, O'DONNELL, DINOWITZ, BRADLEY, LAFAYETTE, PAULIN, HOYT, SEDDIO, LAVINE -- Multi-Sponsored by -- M. of A. BING, BRENNAN, CAHILL, A. COHEN, DiNAPOLI, JOHN, N. RIVERA, WEISENBERG -- read once and referred to the Committee on Judiciary

AN ACT to amend the domestic relations law, in relation to authorizing two unmarried adults to adopt a child

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

- 1 Section 1. The first undesignated paragraph of section 110 of the
 2 domestic relations law, as amended by chapter 254 of the laws of 1991,
 3 is amended to read as follows:
 4 Who may adopt; effect of article. An adult unmarried person [~~or~~], an
 5 adult husband and his adult wife together or any two unmarried adults
 6 together may adopt another person. An adult married person who is living
 7 separate and apart from his or her spouse pursuant to a decree or judg-
 8 ment of separation or pursuant to a written agreement of separation
 9 subscribed by the parties thereto and acknowledged or proved in the form
 10 required to entitle a deed to be recorded or an adult married person who
 11 has been living separate and apart from his or her spouse for at least
 12 three years prior to commencing an adoption proceeding may adopt another
 13 person; provided, however, that the person so adopted shall not be
 14 deemed the child or step-child of the non-adopting spouse for the
 15 purposes of inheritance or support rights or obligations or for any
 16 other purposes. An adult or minor husband and his adult or minor wife
 17 together may adopt a child of either of them born in or out of wedlock
 18 and an adult or minor husband or an adult or minor wife may adopt such a
 19 child of the other spouse. No person shall hereafter be adopted except
 20 in pursuance of this article, and in conformity with section three
 21 hundred seventy-three of the social services law.
 22 § 2. This act shall take effect immediately.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
 [-] is old law to be omitted.

LBD11396-01-5

NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION
submitted in accordance with Assembly Rule III, Sec 1(f)

BILL NUMBER: A8329

SPONSOR: Grannis (MS)

TITLE OF BILL: An act to amend the domestic relations law, in relation to authorizing two unmarried adults to adopt a child

PURPOSE OR GENERAL IDEA OF BILL: To allow the adoption of a child by two unmarried adults in keeping with the state's policy to ensure the best interests of a child.

SUMMARY OF SPECIFIC PROVISIONS: Section 110 of domestic relations law, which governs who may adopt, is amended to permit any two unmarried adults together to adopt.

JUSTIFICATION: Current New York State law allows an adult unmarried person or an adult husband and his adult wife together to adopt a child. In Matter of Jacob and Matter of Dana the Court of Appeals asserted that the unmarried partner of a child's biological mother, whether heterosexual (Jacob) or homosexual (Dana), who is raising the child together with the child's biological parent, has standing to become the child's second parent by means of adoption. The decision of the court stated that the statute uses the word "together" simply to insure that one spouse does not adopt a child without the other spouse's knowledge or over the other's objection. It does "not preclude an unmarried person in a relationship with another unmarried person from adopting.

Despite these decisions, there are still known court cases which have ruled that New York law does not permit a joint adoption of two unmarried adults, neither of which is the biological parent. Unmarried couples seeking to have a child adopted by the second parent are finding that some courts are terminating the rights of one parent and simply granting rights to the other parent. This can be particularly problematic for couples adopting children overseas where only one parent adopts in the foreign country and the second parent seeks to adopt in New York State.

Allowing two unmarried adults together to adopt a child will also ensure the child receives the full benefits that the Court envisioned in Matter of Jacob and Matter of Dan including:

- * Social security benefit in the event of a parent's death or disability;
- * Life insurance benefits in the event of a parent's death;
- * The right to sue for wrongful death of a parent;
- * The rule to inherit under the rules of intestacy;
- * Eligibility for health insurance coverage under both parents health insurance policies;
- * The right to have 2 parents participate in medical decisions in the event of an emergency;

- * The right to receive economic support from two parents;
- * The emotional security of knowing that in the event of death of parent, the other will have presumptive custody;
- * The right to continue the relationships with both parent and extended families in the event of a separation; and
- * The right to have both parents named on the birth certificate.

PRIOR LEGISLATIVE HISTORY: New bill

FISCAL IMPLICATIONS: None

EFFECTIVE DATE: Immediately

A 3239 Grannis (MS) Same as [S 4756](#)
 KRUEGER
 Domestic Relations Law
 TITLE....Relates to permitting two unmarried
 persons to adopt a child together
This bill is not active in the current session.
 01/23/07 referred to judiciary
 04/20/07 enacting clause stricken

S4756 KRUEGER Same as [A 3239](#) Grannis (MS)
 Domestic Relations Law
 TITLE....Relates to permitting two unmarried persons to
 adopt a child together
This bill is not active in the current session.
 04/23/07 REFERRED TO SOCIAL SERVICES,
 CHILDREN AND FAMILIES
 06/04/07 RECOMMIT, ENACTING CLAUSE
 STRICKEN

STATE OF NEW YORK

3239

2007-2008 Regular Sessions

IN ASSEMBLY

January 23, 2007

Introduced by M. of A. GRANNIS, GLICK, O'DONNELL, DINOWITZ, BRADLEY, LAFAYETTE, PAULIN, HOYT, LAVINE -- Multi-Sponsored by -- M. of A. BING, BRENNAN, CAHILL, DiNAPOLI, GOTTFRIED, JOHN, N. RIVERA, WEISENBERG -- read once and referred to the Committee on Judiciary

AN ACT to amend the domestic relations law, in relation to authorizing two unmarried adults to adopt a child

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The first undesignated paragraph of section 110 of the
2 domestic relations law, as amended by chapter 254 of the laws of 1991,
3 is amended to read as follows:

4 Who may adopt; effect of article. An adult unmarried person [or], an
5 adult husband and his adult wife together or any two unmarried adults
6 together may adopt another person. An adult married person who is living
7 separate and apart from his or her spouse pursuant to a decree or judg-
8 ment of separation or pursuant to a written agreement of separation
9 subscribed by the parties thereto and acknowledged or proved in the form
10 required to entitle a deed to be recorded or an adult married person who
11 has been living separate and apart from his or her spouse for at least
12 three years prior to commencing an adoption proceeding may adopt another
13 person; provided, however, that the person so adopted shall not be
14 deemed the child or step-child of the non-adopting spouse for the
15 purposes of inheritance or support rights or obligations or for any
16 other purposes. An adult or minor husband and his adult or minor wife
17 together may adopt a child of either of them born in or out of wedlock
18 and an adult or minor husband or an adult or minor wife may adopt such a
19 child of the other spouse. No person shall hereafter be adopted except
20 in pursuance of this article, and in conformity with section three
21 hundred seventy-three of the social services law.

22 § 2. This act shall take effect immediately.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets
[] is old law to be omitted.

LBD05407-01-7



PRINTED ON RECYCLED PAPER

NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION
submitted in accordance with Assembly Rule III, Sec 1(f)

BILL NUMBER: A3239

SPONSOR: Grannis (MS)

TITLE OF BILL: An act to amend the domestic relations law, in relation to authorizing two unmarried adults to adopt a child

PURPOSE OR GENERAL IDEA OF BILL: To allow the adoption of a child by two unmarried adults in keeping with the state's policy to ensure the best interests of a child.

SUMMARY OF SPECIFIC PROVISIONS: Section 110 of domestic relations law, which governs who may adopt, is amended to permit any two unmarried adults together to adopt.

JUSTIFICATION: Current New York State law allows an adult unmarried person or an adult husband and his adult wife together to adopt a child. In Matter of Jacob and Matter of Dana the Court of Appeals asserted that the unmarried partner of a child's biological mother, whether heterosexual (Jacob) or homosexual (Dana), who is raising the child together with the child's biological parent, has standing to become the child's second parent by means of adoption. The decision of the court stated that the statute uses the word "together" simply to insure that one spouse does not adopt a child without the other spouse's knowledge or over the other's objection. It does "not preclude an unmarried person in a relationship with another unmarried person from adopting.

Despite these decisions, there are still known court cases which have ruled that New York law does not permit a joint adoption of two unmarried adults, neither of which is the biological parent. Unmarried couples seeking to have a child adopted by the second parent are finding that some courts are terminating the rights of one parent and simply granting rights to the other parent. This can be particularly problematic for couples adopting children overseas where only one parent adopts in the foreign country and the second parent seeks to adopt in New York State.

Allowing two unmarried adults together to adopt a child will also ensure the child receives the full benefits that the Court envisioned in Matter of Jacob and Matter of Dana including:

- * Social security benefit in the event of a parent's death or disability;
- * Life insurance benefits in the event of a parent's death;
- * The right to sue for wrongful death of a parent;
- * The rule to inherit under the rules of intestacy;
- * Eligibility for health insurance coverage under both parents health insurance policies;
- * The right to have 2 parents participate in medical decisions in the event of an emergency;

- * The right to receive economic support from two parents;
- * The emotional security of knowing that in the event of death of parent, the other will have presumptive custody;
- * The right to continue the relationships with both parent and extended families in the event of a separation; and
- * The right to have both parents named on the birth certificate.

PRIOR LEGISLATIVE HISTORY: 2005-06: Judiciary

FISCAL IMPLICATIONS: None

EFFECTIVE DATE: Immediately

STATE OF NEW YORK

4756

2007-2008 Regular Sessions

IN SENATE

April 23, 2007

Introduced by Sen. KRUEGER -- read twice and ordered printed, and when printed to be committed to the Committee on Social Services, Children and Families

AN ACT to amend the domestic relations law, in relation to authorizing two unmarried adults to adopt a child

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The first undesignated paragraph of section 110 of the
2 domestic relations law, as amended by chapter 254 of the laws of 1991,
3 is amended to read as follows:

4 Who may adopt; effect of article. An adult unmarried person [or], an
5 adult husband and his adult wife together or any two unmarried adults
6 together may adopt another person. An adult married person who is living
7 separate and apart from his or her spouse pursuant to a decree or judg-
8 ment of separation or pursuant to a written agreement of separation
9 subscribed by the parties thereto and acknowledged or proved in the form
10 required to entitle a deed to be recorded or an adult married person who
11 has been living separate and apart from his or her spouse for at least
12 three years prior to commencing an adoption proceeding may adopt another
13 person; provided, however, that the person so adopted shall not be
14 deemed the child or step-child of the non-adopting spouse for the
15 purposes of inheritance or support rights or obligations or for any
16 other purposes. An adult or minor husband and his adult or minor wife
17 together may adopt a child of either of them born in or out of wedlock
18 and an adult or minor husband or an adult or minor wife may adopt such a
19 child of the other spouse. No person shall hereafter be adopted except
20 in pursuance of this article, and in conformity with section three
21 hundred seventy-three of the social services law.

22 § 2. This act shall take effect immediately.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [] is old law to be omitted.

LBD05407-01-7

**NEW YORK STATE SENATE
INTRODUCER'S MEMORANDUM IN SUPPORT
submitted in accordance with Senate Rule VI. Sec 1**

BILL NUMBER: S4756

SPONSOR: KRUEGER

TITLE OF BILL: An act to amend the domestic relations law, in relation to authorizing two unmarried adults to adopt a child

PURPOSE OR GENERAL IDEA OF BILL: To allow the adoption of a child by two unmarried adults in keeping with the state's policy to ensure the best interests of a child.

SUMMARY OF SPECIFIC PROVISIONS: Section 110 of domestic relations law, which governs who may adopt, is amended to permit any two unmarried adults together to adopt.

JUSTIFICATION: Current New York State law allows an adult unmarried person or an adult husband and his adult wife together to adopt a child. In Matter of Jacob and Matter of Dana the Court of Appeals asserted that the unmarried partner of a child's biological mother, whether heterosexual (Jacob) or homosexual (Dana), who is raising the child together with the child's biological parent, has standing to become the child's second parent by means of adoption. The decision of the court stated that the statute uses the word "together" simply to insure that one spouse does not adopt a child without the other spouse's knowledge or over the other's objection. It does "not preclude an unmarried person in a relationship with another unmarried person from adopting.

Despite these decisions, there are still known court cases which have ruled that New York law does not permit a joint adoption of two unmarried adults, neither of which is the biological parent. Unmarried couples seeking to have a child adopted by the second parent are finding that some courts are terminating the rights of one parent and simply granting rights to the other parent. This can be particularly problematic for couples adopting children overseas where only one parent adopts in the foreign country and the second parent seeks to adopt in New York State.

Allowing two unmarried adults together to adopt a child will also ensure the child receives the full benefits that the Court envisioned in Matter of Jacob and Matter of Dana including:

- *Social security benefit in the event of a parent's death or disability;
- *Life insurance benefits in the event of a parent's death;
- *The right to sue for wrongful death of a parent;
- *The rule to inherit under the rules of intestacy;
- *Eligibility for health insurance coverage under both parents health insurance policies;
- *The right to have 2 parents participate in medical decisions in the event of an emergency;

*The right to receive economic support from two parents;

*The emotional security of knowing that in the event of death of parent, the other will have presumptive custody;

*The right to continue the relationships with both parent and extended families in the event of a separation; and

*The right to have both parents named on the birth certificate.

FISCAL IMPLICATIONS: None

EFFECTIVE DATE: Immediately

A 7449-A Rosenthal (MS) Same as [S 7321](#)
 DUANE
 Domestic Relations Law
 TITLE....Relates to permitting two unmarried
 persons to adopt a child together
 04/16/07 referred to judiciary
 01/09/08 referred to judiciary
 03/20/08 amend and recommit to judiciary
 03/20/08 print number 7449a

S7321 DUANE Same as [A 7449-A](#) Rosenthal (MS)
 ON FILE: 04/01/08 Domestic Relations Law
 TITLE....Relates to permitting two unmarried persons to
 adopt a child together
 03/31/08 REFERRED TO SOCIAL SERVICES,
 CHILDREN AND FAMILIES

STATE OF NEW YORK

7449--A

2007-2008 Regular Sessions

IN ASSEMBLY

April 16, 2007

Introduced by M. of A. ROSENTHAL, GLICK, O'DONNELL, DINOWITZ, BRADLEY, LAFAYETTE, PAULIN, HOYT, LAVINE, JAFFEE -- Multi-Sponsored by -- M. of A. BING, BOYLAND, BRENNAN, CAHILL, GOTTFRIED, JOHN, KELLNER, MAISEL, PHEFFER, N. RIVERA, TITONE, WEISENBERG -- read once and referred to the Committee on Judiciary -- recommitted to the Committee on Judiciary in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the domestic relations law, in relation to authorizing two unmarried adults to adopt a child

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The first undesignated paragraph of section 110 of the
2 domestic relations law, as amended by chapter 254 of the laws of 1991,
3 is amended to read as follows:
4 Who may adopt; effect of article. An adult unmarried person [or], an
5 adult husband and his adult wife together ,or any two unmarried adults
6 together may adopt another person. An adult married person who is living
7 separate and apart from his or her spouse pursuant to a decree or judg-
8 ment of separation or pursuant to a written agreement of separation
9 subscribed by the parties thereto and acknowledged or proved in the form
10 required to entitle a deed to be recorded or an adult married person who
11 has been living separate and apart from his or her spouse for at least
12 three years prior to commencing an adoption proceeding may adopt another
13 person; provided, however, that the person so adopted shall not be
14 deemed the child or step-child of the non-adopting spouse for the
15 purposes of inheritance or support rights or obligations or for any
16 other purposes. An adult or minor husband and his adult or minor wife
17 together may adopt a child of either of them born in or out of wedlock
18 and an adult or minor husband or an adult or minor wife may adopt such a
19 child of the other spouse. No person shall hereafter be adopted except

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [] is old law to be omitted.

LBD05407-02-8

A. 7449--A

2

1 in pursuance of this article, and in conformity with section three
2 hundred seventy-three of the social services law.
3 § 2. This act shall take effect immediately.

NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION
submitted in accordance with Assembly Rule III, Sec 1(f)

BILL NUMBER: A7449A

SPONSOR: Rosenthal (MS)

TITLE OF BILL: An act to amend the domestic relations law, in relation to authorizing two unmarried adults to adopt a child

PURPOSE OR GENERAL IDEA OF BILL: To allow the adoption of a child by two unmarried adults in keeping with the state's policy to ensure the best interests of a child.

SUMMARY OF SPECIFIC PROVISIONS: Section 110 of domestic relations law, which governs who may adopt, is amended to permit any two unmarried adults together to adopt.

JUSTIFICATION: Current New York State law allows an adult unmarried person or an adult husband and his adult wife together to adopt a child. In Matter of Jacob and Matter of Dana the Court of Appeals asserted that the unmarried partner of a child's biological mother, whether heterosexual (Jacob) or homosexual (Dana), who is raising the child together with the child's biological parent, has standing to become the child's second parent by means of adoption. The decision of the court stated that the statute uses the word "together" simply to insure that one spouse does not adopt a child without the other spouse's knowledge or over the other's objection. It does not preclude an unmarried person in a relationship with another unmarried person from adopting.

Despite these decisions, there are still known court cases which have ruled that New York law does not permit a joint adoption of two unmarried adults, neither of which is the biological parent. Unmarried couples seeking to have a child adopted by the second parent are finding that some courts are terminating the rights of one parent and simply granting rights to the other parent. This can be particularly problematic for couples adopting children overseas where only one parent adopts in the foreign country and the second parent seeks to adopt in New York State.

Allowing two unmarried adults together to adopt a child will also ensure the child receives the full benefits that the Court envisioned in Matter of Jacob and Matter of Dana including:

- * Social security benefit in the event of a parent's death or disability;
- * Life insurance benefits in the event of a parent's death;
- * The right to sue for wrongful death of a parent;
- * The rule to inherit under the rules of intestacy;
- * Eligibility for health insurance coverage under both parents' health insurance policies;
- * The right to have two parents participate in medical decisions in the event of an emergency;

- * The right to receive economic support from two parents;
- * The emotional security of knowing that in the event of death of parent, the other will have presumptive custody;
- * The right to continue the relationships with both parent and extended families in the event of a separation; and
- * The right to have both parents named on the birth certificate.

PRIOR LEGISLATIVE HISTORY:: 2005-06: A.8329 referred to Judiciary

FISCAL IMPLICATIONS:: None

EFFECTIVE DATE: Immediately

STATE OF NEW YORK

7449

2007-2008 Regular Sessions

IN ASSEMBLY

April 16, 2007

Introduced by M. of A. ROSENTHAL, GLICK, O'DONNELL, DINOWITZ, BRADLEY, LAFAYETTE, PAULIN, HOYT, LAVINE -- Multi-Sponsored by -- M. of A. BING, BRENNAN, CAHILL, GOTTFRIED, JOHN, N. RIVERA, WEISENBERG -- read once and referred to the Committee on Judiciary

AN ACT to amend the domestic relations law, in relation to authorizing two unmarried adults to adopt a child

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The first undesignated paragraph of section 110 of the
2 domestic relations law, as amended by chapter 254 of the laws of 1991,
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7 separate and apart from his or her spouse pursuant to a decree or judg-
8 ment of separation or pursuant to a written agreement of separation
9 subscribed by the parties thereto and acknowledged or proved in the form
10 required to entitle a deed to be recorded or an adult married person who
11 has been living separate and apart from his or her spouse for at least
12 three years prior to commencing an adoption proceeding may adopt another
13 person; provided, however, that the person so adopted shall not be
14 deemed the child or step-child of the non-adopting spouse for the
15 purposes of inheritance or support rights or obligations or for any
16 other purposes. An adult or minor husband and his adult or minor wife
17 together may adopt a child of either of them born in or out of wedlock
18 and an adult or minor husband or an adult or minor wife may adopt such a
19 child of the other spouse. No person shall hereafter be adopted except
20 in pursuance of this article, and in conformity with section three
21 hundred seventy-three of the social services law.
22 § 2. This act shall take effect immediately.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [] is old law to be omitted.

LBD05407-01-7

NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION
submitted in accordance with Assembly Rule III, Sec 1(f)

BILL NUMBER: A7449

SPONSOR: Rosenthal (MS)

TITLE OF BILL: An act to amend the domestic relations law, in relation to authorizing two unmarried adults to adopt a child

PURPOSE OR GENERAL IDEA OF BILL: To allow the adoption of a child by two unmarried adults in keeping with the state's policy to ensure the best interests of a child.

SUMMARY OF SPECIFIC PROVISIONS: Section 110 of domestic relations law, which governs who may adopt, is amended to permit any two unmarried adults together to adopt.

JUSTIFICATION: Current New York State law allows an adult unmarried person or an adult husband and his adult wife together to adopt a child. In Matter of Jacob and Matter of Dana the Court of Appeals asserted that the unmarried partner of a child's biological mother, whether heterosexual (Jacob) or homosexual (Dana), who is raising the child together with the child's biological parent, has standing to become the child's second parent by means of adoption. The decision of the court stated that the statute uses the word "together" simply to insure that one spouse does not adopt a child without the other spouse's knowledge or over the other's objection. It does "not preclude an unmarried person in a relationship with another unmarried person from adopting.

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Allowing two unmarried adults together to adopt a child will also ensure the child receives the full benefits that the Court envisioned in Matter of Jacob and Matter of Dan including:

- * Social security benefit in the event of a parent's death or disability;
- * Life insurance benefits in the event of a parent's death;
- * The right to sue for wrongful death of a parent;
- * The rule to inherit under the rules of intestacy;
- * Eligibility for health insurance coverage under both parents health insurance policies;
- * The right to have 2 parents participate in medical decisions in the event of an emergency;

- * The right to receive economic support from two parents;
- * The emotional security of knowing that in the event of death of parent, the other will have presumptive custody;
- * The right to continue the relationships with both parent and extended families in the event of a separation; and
- * The right to have both parents named on the birth certificate.

PRIOR LEGISLATIVE HISTORY: 2005-06: A8329 referred to Judiciary

FISCAL IMPLICATIONS: None

EFFECTIVE DATE: Immediately

STATE OF NEW YORK

7321

IN SENATE

March 31, 2008

Introduced by Sen. DUANE -- read twice and ordered printed, and when printed to be committed to the Committee on Social Services, Children and Families

AN ACT to amend the domestic relations law, in relation to authorizing two unmarried adults to adopt a child

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The first undesignated paragraph of section 110 of the
2 domestic relations law, as amended by chapter 254 of the laws of 1991,
3 is amended to read as follows:
4 Who may adopt; effect of article. An adult unmarried person [or], an
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8 ment of separation or pursuant to a written agreement of separation
9 subscribed by the parties thereto and acknowledged or proved in the form
10 required to entitle a deed to be recorded or an adult married person who
11 has been living separate and apart from his or her spouse for at least
12 three years prior to commencing an adoption proceeding may adopt another
13 person; provided, however, that the person so adopted shall not be
14 deemed the child or step-child of the non-adopting spouse for the
15 purposes of inheritance or support rights or obligations or for any
16 other purposes. An adult or minor husband and his adult or minor wife
17 together may adopt a child of either of them born in or out of wedlock
18 and an adult or minor husband or an adult or minor wife may adopt such a
19 child of the other spouse. No person shall hereafter be adopted except
20 in pursuance of this article, and in conformity with section three
21 hundred seventy-three of the social services law.
22 § 2. This act shall take effect immediately.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [] is old law to be omitted.

LBD05407-03-8

**NEW YORK STATE SENATE
INTRODUCER'S MEMORANDUM IN SUPPORT
submitted in accordance with Senate Rule VI. Sec 1**

BILL NUMBER: S7321

SPONSOR: DUANE

TITLE OF BILL:

An act to amend the domestic relations law, in relation to authorizing two unmarried adults to adopt a child

PURPOSE OR GENERAL IDEA OF BILL:

To allow the adoption of a child by two unmarried adults in keeping with the state's policy to ensure the best interests of a child.

SUMMARY OF SPECIFIC PROVISIONS:

Section 110 of domestic relations law, which governs who may adopt, is amended to permit any two unmarried adults together to adopt.

JUSTIFICATION:

Current New York State law allows an adult unmarried person or an adult husband and his adult wife together to adopt a child. In Matter of Jacob and Matter of Dana the Court of Appeals asserted that the unmarried partner of a child's biological mother, whether heterosexual (Jacob) or homosexual (Dana), who is raising the child together with the child's biological parent, has standing to become the child's second parent by means of adoption. The decision of the court stated that the statute uses the word "together" simply to insure that one Spouse does not adopt a child without the other spouse's knowledge or over the other's objection. It does not preclude an unmarried person in a relationship with another unmarried person from adopting.

Despite these decisions, there are still known court cases which have ruled that New York law does not permit a joint adoption of two unmarried adults, neither of which is the biological parent. Unmarried couples seeking to have a child adopted by the second parent are finding that some courts are terminating the rights of one parent and simply granting rights to the other parent. This can be particularly problematic for couples adopting children overseas where only one parent adopts in the foreign country and the second parent seeks to adopt in New York State.

Allowing two unmarried adults together to adopt a child will also ensure the child receives the full benefits that the Court envisioned in Matter of Jacob and Matter of Dana including:

- * Social security benefit in the event of a parent's death or disability;
- * Life insurance benefits in the event of a parent's death;
- * The right to sue for wrongful death of a parent;
- * The rule to inherit under the rules of intestacy;
- * Eligibility for health insurance coverage under both parents' health insurance policies;

* The right to have two parents participate in medical decisions in the event of an emergency;

* The right to receive economic support from two parents;

* The emotional security of knowing that in the event of death of parent, the other will have presumptive custody; * The right to continue the relationships with both parent and extended families in the event of a separation; and

* The right to have both parents named on the birth certificate.

PRIOR LEGISLATIVE HISTORY:

2005-06: A.8329 Referred to Judiciary

FISCAL IMPLICATIONS:

None.

EFFECTIVE DATE:

Immediately.

Press Releases



Assemblymember
Linda B. Rosenthal
Assembly District 67



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Translate this page

Rosenthal Expands Adoption Rights for Unmarried and Same-Sex Couples

July 1, 2010

Join the Fight for Better Bus Service on the West Side



Sign the Petition HERE!

Support my bill to ban cat declawing in NYS!



Sign the petition HERE!

New York, NY – New York State Assemblymember Linda B. Rosenthal (D/WF, Manhattan) announced that her bill, A.5652-B, landmark legislation permitting unmarried partners, including same-sex couples, to adopt a child together had passed both the Assembly and the Senate and would soon reach the Governor's desk.

"This is a terrific victory for children lucky enough to have two people committed to raising them with the full protection of the law," said Assemblymember Rosenthal. "It is unfair and mean-spirited to deny children in these circumstances their parents' life insurance payments, right to health insurance and other crucial benefits. Allowing both parents full legal guardianship will guarantee children the ability to have continued access to both parents and extended family in the event of separation and help them avoid the heartbreak and uncertainty that could emerge in the event of one parent's death."

Although this right was previously affirmed in the 4-3 New York State Court of Appeals' ruling *Matter of Jacob and Matter of Dana* in a majority opinion authored by then Chief Judge Judith S. Kaye, the court did not specifically address instances in which neither adult is a biologically related to the child. Unmarried couples have continued to experience difficulties in attaining the rights afforded to them in this decision, and must file two different applications and go through two separate certification processes. This bill would codify the Court of Appeal's decision and end existing legal ambiguities. Current statutory provisions in New York State law permit only an adult person or adult husband and wife to adopt a child.

A New York State Supreme Court Appellate Division reached a similar conclusion in *Matter of Adoption of Carolyn B.*, upholding "both the letter and the spirit of the statute as it has developed: 'encouraging the adoption of as many children as possible regardless of the sexual orientation or marital status of the individuals seeking to adopt them.'"

In her opinion on the *Matter of Jacob and Matter of Dana*, former Chief Judge Judith S. Kaye wrote "Because the two adoptions sought--one by an unmarried heterosexual couple, the other by the lesbian partner of the child's mother--are fully consistent with the adoption statute, we answer this question in the affirmative. 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."

In the State Senate, the proposal was sponsored by Senator Tom Duane. Twenty seven other states offer varying degrees of this protection, although many of these court cases have adjudicated below the state-wide level. This achievement comes at the conclusion of Gay Pride Month. Said Assemblymember Rosenthal, "I look forward to assisting families that seek to take advantage of this new law."

Under existing application of the law, parents face onerous legal burdens and unnecessary anxiety. The full protections offered by the bill include:

- Social security benefit in the event of a parent's death or disability;
- Life insurance benefits in the event of a parent's death;
- The right to sue for wrongful death of a parent;
- The rule to inherit under the rules of intestacy;
- Eligibility for health insurance coverage under both parents' health insurance policies;
- The right to have two parents participate in medical decisions in the event of an emergency;
- The right to receive economic support from two parents;
- The emotional security of knowing that in the event of death of parent, the other will have presumptive custody;
- The right to continue the relationships with both parents and extended families in the event of a separation; and
- The right to have both parents named on the birth certificate.

Assemblymember Rosenthal represents the Upper West Side of Manhattan and parts of Clinton/Hell's Kitchen.

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Assemblymember
Linda B. Rosenthal
Assembly District 67



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Translate this page

Governor Signs Rosenthal Legislation Expanding Adoption Rights for Unmarried and Same-Sex Couples

September 20, 2010

Join the Fight for Better Bus Service on the West Side



Sign the Petition HERE!

Support my bill to ban cat declawing in NYS!



Sign the petition HERE!

New York, NY – New York State Assemblymember Linda B. Rosenthal (D/WFP, Manhattan) and Senator Thomas K. Duane (D – WFP Manhattan) announced that their landmark legislation permitting unmarried partners, including same-sex couples, to adopt a child together was signed into law by Governor David A. Paterson. The new law not only specifies that two unmarried intimate partners may adopt a child together but it also replaces prior references to “husband” and “wife” with the gender neutral term “married couple,” so that the law applies to all married couples.

“This is a terrific victory for the LGBT community and for children lucky enough to have two people committed to raising them with the full protection of the law, and I am excited that Governor Paterson has signed this legislation into law,” said Assemblymember Rosenthal. “Previously, children without two legal guardians could be denied life insurance payments, and had to fight for the right to health insurance and other crucial benefits. By correcting this situation children will be able to have continued access to both parents and extended family in the event of separation and help them avoid the heartbreak and uncertainty that could emerge in the event of one parent’s death. While my goal is nothing less than full marriage equality for all New Yorkers, this is an important interim step for same-sex couples seeking to raise children.”

Senator Duane said, “Until now, same-sex couples who wanted to jointly adopt in New York State had to rely on judicial interpretations of court cases and vague language in State regulations, which may not be the same in Potsdam and Jamestown as in Manhattan and Brooklyn. No longer will same-sex couples who want to jointly adopt be subject to the whims of geography.”

Although this right was previously affirmed in the 4-3 New York State Court of Appeals’ ruling *Matter of Jacob and Matter of Dana* in a majority opinion authored by then Chief Judge Judith S. Kaye, the court did not specifically address instances in which neither adult is a biologically related to the child. Unmarried couples have continued to experience difficulties in attaining the rights afforded to them in this decision, and must file two different applications and go through two separate certification processes. This bill would codify the Court of Appeals’ decision and end existing legal ambiguities. Current statutory provisions in New York State law permit only an adult person or adult husband and wife to adopt a child.

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Under existing application of the law, parents face onerous legal burdens and unnecessary anxiety. The full protections offered by the bill include:

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- The right to sue for wrongful death of a parent;
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Exhibit B

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Thurgood Marshall U.S. Courthouse 40 Foley Square, New York, NY 10007 Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Docket Number(s): 19-1715 Caption [use short title]

Motion for: modification of injunction pending appeal

Set forth below precise, complete statement of relief sought:

New Hope Family Services asks this Court to modify the preliminary injunction pending appeal the Court issued November 4, 2019, by striking the provision that prohibits New Hope from accepting any new prospective adoptive parents for adoption services.

New Hope remains committed to respectfully referring unmarried and same-sex couples to other providers.

New Hope Family Services, Inc. v. Poole

MOVING PARTY: New Hope Family Services, Inc. OPPOSING PARTY: Sheila J. Poole

- Plaintiff Defendant Appellant/Petitioner Appellee/Respondent

MOVING ATTORNEY: Roger G. Brooks OPPOSING ATTORNEY: Laura Etlinger

Alliance Defending Freedom New York State Office of the Attorney General 15100 N. 90th Street, Scottsdale, AZ 85260 The Capitol, Albany, New York 12224 (480) 444-0020 / rbrooks@ADFlegal.org (518) 776-2028 / laura.etlinger@ag.ny.gov

Court- Judge/ Agency appealed from:

Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1): Yes No (explain):

Opposing counsel's position on motion: Unopposed Opposed Don't Know

Does opposing counsel intend to file a response: Yes No Don't Know

Is oral argument on motion requested? Yes No (requests for oral argument will not necessarily be granted) Has argument date of appeal been set? Yes No If yes, enter date: Oral argument on the merits was conducted November 13, 2019

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:

Has this request for relief been made below? Yes No Has this relief been previously sought in this court? Yes No Requested return date and explanation of emergency: New Hope previously asked for this relief from this Court in the form of a preliminary injunction on remand to the district court. Because the appeal remains pending, the Court has not yet ruled on that request, and New Hope fears further delay will cause irreparable harm to its ministry and to its ability to remain open. New Hope requests a decision as soon as possible, or at least within 14 days of this filing, meaning by July 2, 2020.

Signature of Moving Attorney: Roger G. Brooks Date: 6/18/2020 Service by: CM/ECF Other [Attach proof of service]

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

NEW HOPE FAMILY SERVICES,
INC.,

Plaintiff-Appellant,

No. 19-1715

v.

SHEILA J. POOLE, in her official
capacity as Acting Commissioner for
the Office of Children and Family
Services for the State of New York,

Defendant-Appellee.

**NEW HOPE’S MOTION TO MODIFY
INJUNCTION PENDING APPEAL**

On November 4, 2019, this Court granted New Hope a preliminary injunction pending appeal, allowing New Hope to continue engaging in some adoptive services while the Court processed this “expedited” appeal challenging New York’s unconstitutional actions.¹ Oral argument was held on November 13, 2019, approximately five months ago. But the Court has not yet issued a decision, and the prolonged delay now places New Hope’s entire adoption ministry at risk. Accordingly, New Hope respectfully asks that the Court modify the injunction and strike the provision prohibiting New Hope from “accept[ing] any new prospective adoptive parents for adoption services.”

¹ Order Granting Prelim. Inj. Pending Appeal at 5, *New Hope Family Services, Inc. v. Poole*, No. 19-1715 (2d Cir. Nov. 4, 2019), ECF No. 160.

In its order, the Court allowed New Hope to “continue the adoption study process for any individuals who [already had] completed New Hope’s orientation” and to “continue to accept surrenders of children and to place out children with approved adoptive applicants.”² The Court added, though, that “New Hope shall not accept any new prospective adoptive parents for adoption services.”³

New Hope itself proposed that temporary solution in the motion it filed on August 14, 2019.⁴ At the time, New Hope anticipated the Court would resolve this appeal on an expedited basis since the Court had placed the appeal on its Expedited Appeals Calendar.⁵ That appeared to mean a decision within as little as 200 days from when New Hope had filed its notice of appeal.⁶

New Hope filed its notice of appeal in the district court on June 10, 2019.⁷ That means 375 days have now passed since New Hope filed

² *Id.*

³ *Id.*

⁴ Appellant’s Emergency Mot. for Interim Protection Under Fed. R. App. P. 8 at 6–7, *New Hope Family Services, Inc. v. Poole*, No. 19-1715 (2d Cir. Aug. 14, 2019), ECF No. 56-1.

⁵ Notice of Expedited Appeal, *New Hope Family Services, Inc. v. Poole*, No. 19-1715 (2d Cir. July 11, 2019), ECF No. 34.

⁶ Decl. of Kathy Jerman in Opp’n to OCFS’s Mot. to Remove Case from Expedited Appeals Calendar at 2, *New Hope Family Services, Inc. v. Poole*, No. 19-1715 (2d Cir. Aug. 6, 2019), ECF No. 38 (citing Jon O. Newman, *REPORT: The Second Circuit’s Expedited Appeals Calendar for Threshold Dismissals*, 80:2 Brooklyn L. Rev. 429, 433 (2015)).

⁷ Notice of Appeal, *New Hope Family Services, Inc. v. Poole*, 5:18-cv-1419 (N.D.N.Y. June 10, 2019), ECF No. 40.

its notice of appeal. And it has now been 219 days since oral argument without a decision. Thus, New Hope’s request for a more fulsome preliminary injunction on remand also remains unresolved.⁸

In the Court’s order granting an injunction, the Court observed that the “likelihood of New Hope succeeding on the merits requires careful review of complex precedent,” including *Employment Division v. Smith*, 494 U.S. 872 (1990).⁹ *Smith* established the competing “principles” that this Court would have to “[n]avigat[e]” in order to resolve New Hope’s free-exercise claim.¹⁰

But on February 24, 2020, the Supreme Court granted review in a case where another faith-based provider asked the Court to “revisit” and “reconsider” *Smith*.¹¹ That case is factually similar to this one—although here New Hope (which accepts no government money for the services it provides) has made an even *stronger* showing that the challenged law must survive strict scrutiny, which it cannot do.¹² As a result, there is a strong probability that if the Supreme Court reverses the Third Circuit’s decision in *Fulton*, that outcome will control the analysis in this case. Moreover, while the outcome in *Fulton* likely will

⁸ Opening Br. of Appellant at 59, *New Hope Family Services, Inc. v. Poole*, No. 19-1715 (2d Cir. Aug. 15, 2019), ECF No. 62.

⁹ Order Granting Injunction, *supra* note 1, at 3.

¹⁰ *Id.*

¹¹ Pet. for a Writ of Cert. at i, 31–34, *Fulton v. City of Philadelphia*, No. 19-123 (S. Ct. July 22, 2019), 2019 WL 3380520.

¹² Opening Br. of Appellant, *supra* note 8, at 37.

not be known until next spring, there is a strong likelihood the Supreme Court granted review to reverse the Third Circuit's decision: the Roberts Court reverses lower court decisions in roughly 70% of decided cases.¹³

With *Fulton* pending before the nation's highest court and *Smith* apparently on the chopping block, this Court may reasonably wish to wait to decide this appeal in the interest of judicial economy. But even if the Court does not wait for *Fulton*, the Supreme Court's review there guarantees that this litigation will remain unresolved *at least* until next spring when the Supreme Court is expected to issue its *Fulton* decision.

In an earlier affidavit filed in this case, New Hope Executive Director Kathleen Jerman explained how “a prolonged period before the decision below is reversed will significantly damage New Hope's ability to preserve its adoption and foster care ministry.”¹⁴ “In particular, a prolonged delay would impair the ministry's fundraising ability; it would jeopardize New Hope's ability to keep its team of competent

¹³ See Stephen Wermiel, *SCOTUS for law students (sponsored by Bloomberg Law): Scoring the circuits*, SCOTUSblog (Jun. 22, 2014, 10:28 PM), <https://www.scotusblog.com/2014/06/scotus-for-law-students-sponsored-by-bloomberg-law-scoring-the-circuits/>; Ballotpedia, *SCOTUS case reversal rates (2007 - Present)*, [https://ballotpedia.org/SCOTUS_case_reversal_rates_\(2007_-_Present\)](https://ballotpedia.org/SCOTUS_case_reversal_rates_(2007_-_Present)) (compiling “end of term data gathered by *SCOTUSblog*”).

¹⁴ Decl. of Kathy Jerman in Opp'n, *supra* note 6, at 2.

professionals in place; and it would further imperil the viability of New Hope’s adoption and foster care ministry.”¹⁵

On that last point, Jerman worried that a prohibition on accepting new adoptive parents would “effectively function[] as a sunset provision for New Hope’s adoption and foster care services.”¹⁶ “A dwindling pool of adoptive parents not only decreases the number of opportunities for New Hope to place children with adoptive parents over time; it increases the chance that New Hope will not be able to place children who are presented to it because adoptive parents often have highly specific placement preferences.”¹⁷

Unfortunately, it has now been a “prolonged period” since Jerman submitted her affidavit—and then some. And Jerman’s concerns have proven prescient. New Hope recently supervised its first placement *in more than a year*.¹⁸ To put that number in context, before this case, New Hope “placed on average about 8 children per year with adoptive parents.”¹⁹ New Hope currently has only 10 couples remaining on its list

¹⁵ *Id.* at 2–3.

¹⁶ *Id.* at 3. Counsel expressed the same concern at oral argument. Oral Argument at 6:35–45, 14:04–21, *New Hope*, No. 19-1715 (Nov. 13, 2019), <https://www.ca2.uscourts.gov/decisions/isysquery/5fe37c78-6c02-4a1a-a7d0-2beaf59ff2c3/141-150/list/>.

¹⁷ *Id.* at 8–9.

¹⁸ Decl. of Kathleen Jerman in Supp. of New Hope’s Mot. to Modify Inj. Pending Appeal, attached as Exhibit A, at 7.

¹⁹ Decl. of Kathy Jerman in Opp’n, *supra* note 6, at 10.

of approved adoptive parents.²⁰ And it can take six months to a year to help new applicants through the application, orientation, home-study, and approval processes.²¹ Thus, even while New Hope expects an uptick in referrals of children needing to be placed, the dwindling pool of adoptive parents will likely severely hamper its ability to place children.²² If that happens, those inquiries may dry up again—this time for good.²³ And New Hope may be forced to close its doors even while this case remains pending,²⁴ the very harm this Court tried to prevent when it initially entered its injunction.

Conclusion

New York's unconstitutional actions have significantly impaired New Hope's ability to place children in loving adoptive homes. New York should not be allowed to achieve through litigation delay that which the Constitution prohibits—permanently shuttering New Hope's ministry because of its religious beliefs and speech. Handing New York such a victory would be particularly painful if New Hope were forced to close its doors only months before the Supreme Court issues a decision vindicating New Hope's First Amendment rights.

²⁰ Exhibit A at 6.

²¹ *Id.* at 9.

²² *Id.* at 9–10.

²³ *Id.* at 10.

²⁴ *Id.* at 3, 8–10.

Accordingly, New Hope asks the Court to modify its injunction to strike the provision prohibiting New Hope from “accept[ing] any new prospective adoptive parents for adoption services.”²⁵ If the Court deems it appropriate, it may add a requirement that New Hope refer unmarried and same-sex couples to other providers, a practice New Hope intends to continue if allowed to accept new prospective adoptive parents.²⁶

Consistent with Local Rule 27.1(b), counsel for New Hope notified counsel for OCFS of the intended filing of this motion. Counsel for OCFS indicated that OCFS opposes the motion, and counsel for OCFS intends to file a response.

Dated: June 18, 2020

Respectfully submitted,

s/Roger G. Brooks

Roger G. Brooks

NY Bar No. 2260537

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Attorney for New Hope Family Services, Inc.

²⁵ Order Granting Injunction, *supra* note 1, at 5.

²⁶ *See id.* at 4, n.3.

Certificate of Compliance

This document complies with the type-volume limit set forth in Fed. R. App. P. 27(d)(2)(A) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f), this document contains 1,435 words.

This document also complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word 2013 in 14-point Century Schoolbook type-style.

Dated: June 18, 2020

s/ Roger G. Brooks
Attorney for Appellant

Certificate of Service

I hereby certify that on June 18, 2020, a copy of this response was filed electronically with the Clerk of the Second Circuit Court of Appeals. Service on counsel for all parties will be accomplished through the Court's electronic filing system.

s/ Roger G. Brooks
Attorney for Appellant

EXHIBIT A

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

**NEW HOPE FAMILY SERVICES,
INC.,**

Plaintiff-Appellant,

No. 19-1715

v.

**SHEILA J. POOLE, in her official
capacity as Acting Commissioner for
the Office of Children and Family
Services for the State of New York,**

Defendant-Appellee.

**DECLARATION OF KATHLEEN JERMAN
IN SUPPORT OF NEW HOPE'S MOTION TO
MODIFY INJUNCTION PENDING APPEAL**

I, Kathleen Jerman, hereby declare:

**1. I am the Executive Director of New Hope Family Services
("New Hope"). I assumed this position on February 25, 2019.**

**2. I make this declaration to explain the harm that New Hope
and the people we serve are suffering and will continue to suffer as long
as New Hope is not permitted to accept any new prospective adoptive
parents for adoption services while our appeal remains pending, even if
New Hope's constitutional rights are finally recognized and New Hope
is later allowed to fully resume operations.**

A. The existing injunction pending appeal

3. I understand that on November 4, 2019, the Second Circuit Court of Appeals entered an interim order proposed by New Hope’s counsel. Order Granting Preliminary Injunction Pending Appeal at 5, *New Hope Family Services, Inc. v. Poole*, No. 19-1715 (2d Cir. Nov. 4, 2019), ECF No. 160. This order allowed New Hope, “pending decision on this appeal,” to “continue to accept surrenders of children and to place out children with approved adoptive parents,” but the order also prevents New Hope from “accept[ing] any new prospective adoptive parents for adoption services.” *Id.* New Hope has complied with these provisions and will continue to unless the Court grants additional relief.

4. During oral argument, counsel explained this is not a viable long-term solution: “The injunction that we want on remand . . . is the same as the [November 4, 2019] injunction, minus Paragraph 2, which restricts my client’s ability to take new applicants. Because otherwise, it will kill them.” Oral Argument at 6:35–45, *New Hope*, No. 19-1715 (Nov. 13, 2019), www.ca2.uscourts.gov/decisions/isysquery/c4f24b38-b49a-40dd-a270-a795b4fb34c0/141-150/list/.

5. Later in the argument, counsel added that if the restriction on taking new applicants were “left in place throughout a discovery and trial period, it will kill New Hope by strangulation as surely as the effort by OCFS a few weeks ago would have done.” *Id.* at 14:04–21.

6. I provide this declaration to explain why this is true, and to explain how the passage of half a year since that hearing has now made this “strangulation” effect a real threat to New Hope’s continued operations as a Christian adoption agency.

7. During the oral argument, the Court asked New Hope’s counsel if we would “agree to commit [our]selves to referrals of any . . . gay or unmarried couples who sought to adopt with [us] in the interim,” if the Court lifts the restriction preventing us from accepting new prospective adoptive parents. *Id.* at 6:52–59. Our counsel responded, “Yes, Your Honor.” *Id.* at 7:00. I want to confirm that New Hope fully endorses counsel’s statement—if the Court allows us to accept new applicants, we will respectfully refer unmarried and same-sex couples to one of the other adoption agencies in the area while this litigation proceeds, as has been our policy all along.

B. The importance of the size of our pool of adoptive couples

8. New Hope often receives referrals of birth mothers from hospitals, social service agencies, or crisis pregnancy centers, in part because New Hope has a reputation that it will never say “no” to an infant in need of a loving family. New Hope often receives these referrals within a month or less of the expected birth of the child—or even after the child is born.

9. Because of the situations leading to these last-minute referrals, New Hope often places infants considered “hard to place.” This includes infants born with addiction due to the mother’s addiction, infants with physical disabilities or unusual medical needs, infants whose mothers suffer from mental health problems, and infants of a race different than the race shared by most of parents seeking to adopt.

10. In part because of our own faith-based orientation, and also because of the faith and sense of ministry and mission that many of the couples who come to New Hope as adoptive parents bring with them, New Hope has been consistently able to find loving homes even for newborn infants with hard-to-place characteristics.

11. For example, about five years ago we successfully placed an infant with Down syndrome in a loving adoptive home. Three years ago, we did the same for a baby girl who had been born with many of her organs outside her body—an extremely rare condition that necessitated emergency surgery and countless doctors’ appointments since. We also regularly place children born with Neonatal Abstinence Syndrome (NAS), which means the child was exposed to drugs in-utero and often requires time in the Neonatal Intensive Care Unit (NICU).

12. Understandably, not every couple seeking to adopt is prepared to take on the challenges certain children present. Further, even setting aside those challenges, some couples have specific requests with regard to the sex or ethnicity of the child they hope to adopt.

13. In addition, as my predecessor Judith Geyer explained in the district court, New Hope works hard to give each birthmother a meaningful role in choosing a family for her child, giving her portfolios of up to five couples for her to consider before selecting a couple.

Affidavit of Judith A. Geyer in Support of New Hope Family Services’ Motion for Preliminary Injunction at 11, *New Hope Family Services, Inc. v. Poole*, 5:18-cv-1419 (N.D.N.Y. Dec. 12, 2018), ECF No. 15-2.

14. For all these reasons, when a birthmother entrusts her child to New Hope for placement, it is essential for us to have a substantial pool of approved adoptive couples available so that we can find a couple that is both able and willing to adopt the child, no matter what unique challenges the child may present.

C. Our dwindling pool of adoptive couples and reduced number of placements

15. Before this litigation, New Hope typically averaged between 14 and 20 couples on our list of couples approved to adopt. Affidavit of Judith A. Geyer at 12, *New Hope*, 5:18-cv-1419, ECF No. 15-2. We also had been averaging between 8 and 12 placements of children in adoptive homes per year in recent years. *Id.* at 8.

16. Under the Court's November 4, 2019 order, New Hope has only been allowed to work with prospective adoptive couples "who completed New Hope's orientation prior to the commencement of this lawsuit." Order at 5, *New Hope*, No. 19-1715, ECF No. 160. Under this limitation, New Hope is currently working with a total of 18 adoptive couples. Of these, only 10 are approved and waiting for a placement. 1 more couple is in the home-study process and will likely be approved

and ready for a placement within the next 2 months, 3 couples are on hold, 2 couples are waiting to go through the home-study process with us once we become more legally secure, and 2 couples have received placements but have not yet had their adoptions finalized.

17. New Hope receives most of its referrals for adoption placement services from pregnant birthmothers, pregnancy resource centers, and social workers.

18. We filed our lawsuit almost a year and a half ago, on December 6, 2018. For some period between when OCFS threatened to close our adoption ministry and when we filed our lawsuit, many of our traditional referral sources believed that we had already lost our authorization to handle adoptions. As a result, referrals reduced to a trickle, and New Hope did not place any infants *for the next 14 months*.

19. In May of this year, New Hope received a very short-notice referral from a local hospital of a child whose birthmother had mental health issues. Within two days, we were able to place the child with one of the couples that the Court has allowed us to continue working with during our appeal. This was our first placement in 14 months, after

previously averaging between 8 to 12 placements per year. This also, of course, reduced our pool of approved adoptive couples by one.

20. Meanwhile, since we filed our lawsuit in 2018, several couples have withdrawn their names or put their applications on hold for various personal and family reasons, as inevitably happens over time among any group of couples who apply to adopt.

21. As a result of placements and couples' choices to withdraw or place their applications on hold, New Hope currently has 10 couples who stand ready to consider adopting a child if called, with 1 more couple who could be approved within the next two months.

22. I am deeply concerned that with this small number of active candidate adoptive parents, a very few more placements will leave New Hope with an inadequate pool of adoptive parents to allow us to have confidence that we will be able to find a home for each child entrusted to our care, including infants with hard-to-place characteristics.

23. Should this occur, New Hope will not be able in good conscience to accept referrals of birthmothers who want to place their newborns through New Hope. This, in my opinion, would be gravely harmful to the infants involved, to birthmothers, and to New Hope's

reputation among service providers who would otherwise refer birthmothers to New Hope.

24. Unfortunately, once our pool of approved adoptive parents becomes depleted, that problem cannot be fixed quickly. From the time a prospective adoptive couple first contacts us, it can take between six months to a year to help them through the application, orientation, home-study, and approval processes.

25. Our dwindling pool of prospective adoptive couples is especially troubling because, through active outreach efforts that have included calls, in-person conversations, and a new brochure, New Hope has recently succeeded in informing organizations that we have worked with previously that we remain open and able to accept referrals and place infants. As a result of these efforts, a large faith-based pregnancy support ministry in New York recently told me they want to use New Hope as their primary adoption service that they refer birthmothers to—mainly because of our shared beliefs about marriage and family and the best interests of children.

26. Having to turn referrals away based on our dwindling pool of couples will harm New Hope's reputation as an adoption provider that

has been able to place every child entrusted to our care. In my opinion, that harm will have a lasting negative effect on our ability to attract referrals of birthmothers from social-service providers, and also our ability to attract new prospective adoptive parents once we are allowed to do so.

27. In sum, if New Hope's pool of prospective adoptive parents becomes too small, this will inflict exactly the "strangulation" of our ability to continue our historic adoption ministry that our counsel warned of during oral argument. Oral Argument at 14:04–21.

28. Since we filed our lawsuit in December of 2018, we have received calls from *more than 80 couples* who are interested in adopting a child through New Hope. We have had to turn away all of these couples, explaining that we are not presently able to accept any new applications.

29. If the Court allows us to do so, we will begin accepting new applications right away, while respectfully referring to other agencies any unmarried or same-sex couples who approach us seeking to adopt.

I, Kathleen Jerman, a citizen of the United States and a resident of the State of New York, hereby declare under penalty of perjury under 28 U.S.C. § 1746 that the foregoing is true and correct to the best of my knowledge.

Executed this 12 day of June, 2020, at Syracuse,
New York.

Kathleen Jerman
Kathleen Jerman

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

NEW HOPE FAMILY SERVICES, INC.,

Plaintiff,

-against-

SHEILA J. POOLE, in her official capacity
as Acting Commissioner for the Office of
Children and Family Services for the State
of New York,

Defendant.

X

:

:

18-CV-1419

:

(MAD)(TWD)

:

: **SUPPLEMENTAL**

: **DECLARATION OF CAROL**

: **MCCARTHY IN OPPOSITION**

: **TO PLAINTIFF'S MOTION**

: **FOR A PRELIMINARY**

: **INJUNCTION**

X

I, Carol McCarthy, declare under the penalties of perjury, pursuant to 28 U.S.C. § 1746, that the following is true and correct:

1. I am an employee of the New York State Office of Children and Family Services ("OCFS"). I am not a party to the above-captioned action. I have first-hand knowledge of the facts set forth herein and I make this declaration in opposition to Defendant's motion for a preliminary injunction.

2. I have been employed by OCFS since November 13, 2003. I am currently the Director of Adoption Services within the Division of Child Welfare and Community Services. I have been in this position since April 21, 2015.

3. In my role as the Director of Adoption Services, I oversee the Bureau of Permanency Services. The Bureau of Permanency Services is responsible for oversight and administration of child photolistings in The Adoption Album, the Family Adoption Registry, and family photolisting on the state's internal The Adoption Album system. As relevant here, the Bureau also reviews applications and reauthorization for not-for-profit agencies that administer adoptive

placements with New York families. In addition, the Bureau provides information and referral assistance on adoption, foster care, day care and family preservation to parents and professionals via the New York Parents Connection Help Line; processes the placement of children into New York State from other states and from New York into other states through the Interstate Compact on the Placement of Children; reviews adoption subsidy requests for maintenance and medical coverage based on special needs of children; maintains the Putative Father Registry and responds to court inquiries regarding the registration of putative fathers; provides adoption technical support to address local concerns; and enhances public awareness to increase the opportunities for the adoption of New York's waiting children through the preparation of materials and organization and participation in events.

4. OCFS is charged with the responsibility to provide and oversee programs and services involving foster care, adoption and adoption assistance, child protective services, preventive services for children and families, services for pregnant adolescents, and protective programs for vulnerable adults.

5. OCFS regulates and oversees authorized adoption agencies. Only authorized agencies are permitted to provide adoption services in New York State.

6. An authorized adoption agency must meet three requirements: (1) it must be organized under the laws of the state and have the corporate authority to place out children; (2) it must have its actual place of business in New York; and (3) it must be "approved, visited, inspected and supervised by the office of children and family services or . . . submit and consent to the approval, visitation, inspection and supervision of such office as to any and all acts in relation to the welfare of children . . ." N.Y. Soc. Serv. Law § 371(10).

7. In order to meet the first requirement, an agency must file a Certificate of Incorporation with the New York State Department of State. If an agency intends to have an adoption program, it must obtain the approval of OCFS to file its Certificate of Incorporation.

8. Corporate authority can be ended by: (1) the corporation itself filing a Certificate of Amendment to remove that authority; (2) the corporation filing a Certificate of Dissolution to end the corporate entity; (3) expiration of the corporate authority, if the authority was limited in duration; or (4) by court order.

9. In New York State, nearly all authorized adoption agencies have corporate authority for a limited duration and must seek reauthorization prior to expiration. OCFS must provide its approval for each reauthorization.

10. In order to assess if it will approve the reauthorization, OCFS conducts a comprehensive review of the adoption agency, which includes an on-site visit, completion of an adoption services assessment, and drafting of an Adoption Agency Program Review Report. As part of this assessment, OCFS interviews staff members and reviews the adoption agency's application for authorization/reauthorization, business plan, financial information, policies and procedures, forms, and correspondence. OCFS utilizes this review process to determine if the adoption agency is in compliance with state laws, regulations, and policies.

11. Only a small number of agencies, including New Hope Family Services, Inc. ("New Hope") have corporate authority in perpetuity, and therefore do not need to re-file with the Department of State.

12. To meet the third requirement, the adoption agency must be approved, visited, inspected, and supervised by OCFS, or must submit and consent to such oversight. In addition to the approval an adoption agency receives at the time of corporate authorization/reauthorization, the adoption agency remains subject to *ongoing* approval and supervision; OCFS may review the program

and revoke its approval at any time. Such oversight includes determining whether an agency is complying with state law, regulations, and policies, and such compliance may be a condition for ongoing approval.

13. Prior to 2017, it was OCFS' practice to utilize its corporate reauthorization approval process to satisfy its general oversight obligations. In other words, adoption agencies were only reviewed when they sought approval for corporate reauthorization, unless special circumstances warranted additional monitoring or intervention. This practice minimized the need for duplicative visits to authorized agencies.

14. However, as a result of this practice, authorized agencies with perpetual corporate authority, including New Hope, did not have their adoption programs visited and reviewed on a regular basis. In 2017, OCFS discovered and corrected this oversight by visiting and reviewing every authorized agency with perpetual authority. OCFS revised its practice to require an on-site visit for every adoption agency every year; these annual visits consist of a substantially similar review to the one done at the time of corporate reauthorization. If the adoption agency is seeking corporate reauthorization that year, the reauthorization visit replaces the agency visit.

15. OCFS conducted a comprehensive review of New Hope Family Services in 2018 as part of this remedial effort. OCFS did not target New Hope for review because it is a faith-based organization. In fact, in addition to New Hope, all adoption agencies with corporate authority in perpetuity were reviewed as part of this effort.

16. OCFS' review of New Hope in 2018 was its first review subsequent to promulgation of 18 NYCRR §421.3(d). This review was the first time OCFS learned of New Hope's practices with respect to unmarried and same-sex couples.

17. In 2018 and 2019, OCFS did not close any authorized adoption agency in New York State. In 2018 and 2019, approximately twelve adoption agencies with perpetual authority were

removed from OCFS' website because they voluntarily no longer operated an adoption program. These agencies included both faith-based and secular agencies.

18. In addition, approximately five agencies were removed from OCFS' website for a lack of corporate authority. Two others were removed because they closed in response to losing Hague accreditation, and two others were removed because they changed names.

19. 18 NYCRR §421.3(d) protects prospective adoptive parents from harmful discrimination and ensures the ability of otherwise qualified same-sex and unmarried couples to adopt children on an equal basis, thereby expanding the pool of potential families available to children to be placed for adoption.

20. Adoption agencies including New Hope are authorized to accept care and custody of children; the adoption agency then chooses with whom to place the child from its list of approved prospective adoptive parents. Accordingly, prospective adoptive parents who are excluded by an adoption agency lose the ability to adopt the children in that agency's care and custody. Referring a family from one provider to another does not ameliorate this harm; the children in New Hope's custody are not available for adoption through another agency.

21. Moreover, other adoption agencies may not have children in need of a placement or may have long waiting lists of prospective adoptive parents. For newborns and infants, the population New Hope serves, there are typically a greater number of families seeking a child than children in need of a placement. As a result, some prospective adoptive families may wait for years for a child to be placed with them and some may never have a child placed with them. By precluding unmarried and same sex couples from having the opportunity to adopt newborns and infants from New Hope, the likelihood that such couples will ever have an infant or newborn placed with them is necessarily decreased. New Hope's policy therefore narrows the children available to couples.

22. OCFS routinely works with authorized adoption agencies to ensure compliance with all applicable laws so as to maintain the greatest number of resources available to families who wish to surrender or adopt a child. OCFS provides technical assistance, including identifying and providing training, providing guidance on best practices and strategies, assisting with interpretation of laws and regulations, and facilitation of meetings and forums. OCFS also supports agencies when they self-identify an area of need or interest. OCFS works with agencies to develop a Program Improvement Plan (PIP), which assists the program with implementing changes. This collaborative approach minimizes the need for enforcement action, and demonstrates OCFS' commitment to supporting adoption providers in New York State.

23. OCFS has worked collaboratively with New Hope to address issues such as (1) immediate implementation of 18-OCFS-ADM-07: Foster/Adoptive Home Certification Approval Process; (2) requests for non-identifying information and medical information by adoptive families, adoptee or birth parent; including usage of the Adoption Information Registry through the Department of Health; and (3) New Hope's role and limitations regarding the exchange of information related to conditions of a surrender. Dkt. No. 1-6 at p. 3. However, New Hope has fully refused to comply with §421.3(d).

24. Short of asking New Hope for the names of unmarried or same sex couples denied services by New Hope, OCFS has no ability to (1) identify such people, or (2) track down information about whether such individuals were unable to adopt, or suffered any other type of harm, as a result of referral by New Hope. OCFS does not collect such information.

25. In fact, New Hope's method of turning away unmarried and same sex couples through its "recusal and referral" policy prevents such couples from appealing such a decision by New Hope to OCFS. Couples who go through the application process at an agency and are not approved can appeal that denial to OCFS. However, by preventing unmarried and same sex couples

from participating in the application process, New Hope's "recusal and referral" policy effectively leaves such couples with no avenue by which to challenge New Hope's action.

26. Finally, while OCFS fully opposes the granting of a preliminary injunction for the reasons discussed in Defendants' original and supplemental memoranda of law in opposition to Plaintiff's motion, OCFS respectfully requests that any order of the court be sufficiently narrow to prevent discrimination and permit for the placement of children in homes that are in their best interests.

Dated: August 28, 2020
Rensselaer, New York

s/ Carol McCarthy
Carol McCarthy

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

NEW HOPE FAMILY SERVICES, INC.,

Plaintiff,

-against-

18-CV-1419

SHEILA J. POOLE,

MAD/TWD

Defendant.

**SUPPLEMENTAL MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFF'S
MOTION FOR A PRELIMINARY INJUNCTION**

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Date: August 28, 2020

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Defendant, SHEILA J. POOLE, in her official capacity as Acting Commissioner for the New York State Office of Children and Family Services (“OCFS”), in accordance with this Court’s August 19, 2020 Order directing the parties to file supplemental briefs regarding Plaintiff’s reinstated preliminary injunction motion, respectfully submits this supplemental memorandum of law and accompanying declaration of Carol McCarthy and declaration of Adrienne Kerwin in opposition to Plaintiff’s motion for a preliminary injunction

PRELIMINARY STATEMENT

New Hope, a faith-based private agency that provides adoption services in the State of New York, brings this suit asking the Court to excuse it from OCFS’s antidiscrimination regulations, both preliminarily and permanently. New Hope refuses to place children for adoption with unmarried cohabitating couples or same-sex couples. Such discrimination is prohibited by State regulation. See N.Y. Code of R. & Reg., tit. 18, § 421.3(d) (“421.3(d)” (prohibiting authorized adoption agencies from discriminating against applicants for adoption services on the basis of, among other things, sex, sexual orientation, gender identity or expression, and marital status)). Because the antidiscrimination regulation at issue here is neutral and generally applicable, New Hope cannot show a likelihood of success on the merits, or that the public interest is served by the injunctive relief New Hope seeks. Accordingly, Plaintiff’s motion for a preliminary injunction should be denied.

ARGUMENT

As the Second Circuit noted, “[i]n considering a motion for an injunction...a court is not required to view the pleadings in the light most favorable to New Hope.” Dkt. No. 44¹ at p. 77.

¹ The decision is reported at New Hope Family Services, Inc. v. Poole, 2020 U.S. App. LEXIS 22630 (2d Cir. July 21, 2020), but references to the decision herein are made to this Court’s docket.

Instead, when ruling on a motion for a preliminary injunction, the court must determine if New Hope has proven that it is likely to prevail on its claims. Roberts v. New York, 911 F.Supp.2d 149, 176-177 (N.D.N.Y. 2012). Applying this standard to the record before the court, Plaintiff's motion for a preliminary injunction should be denied because Plaintiff fails to satisfy the heightened burden associated with seeking to "stay government action taken in the public interest pursuant to a statutory (and regulatory) scheme." Dkt. No. 44 at p. 76. Additionally, the McCarthy supplemental declaration controverts most of the assertions in the complaint.

POINT I

PLAINTIFF IS NOT LIKELY TO SUCCEED ON THE MERITS²

A. Plaintiff Cannot Prevail on a Free Exercise Claim

When evaluating if a law targets religion, the court should consider the "totality of the evidence," including "the historical background of the decision under challenge, the specific series of events leading to the enactment or official policy in question, and the legislative or administrative history, including contemporaneous statements made by members of the decisionmaking body," as well as "the effect of a law in its real operation." Dkt. No. 44 at p. 38 (quoting Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah, 508 U.S. 520, 534, 535, 540 (1993)). The "effect of a law in its real operation...is strong evidence of its object." Id.

The Second Circuit held that § 421.3(d) "does not on its face discriminate against religion because its prohibitions apply equally to all adoption services, both secular and religious." Dkt. No. 44 at p. 37. Therefore, in order to prevail on this claim, Plaintiff must provide extrinsic evidence to support a finding that § 421.3(d) targets religion. Id. at pp. 37-38.

² The only claims that remain in this case are Plaintiff's First Amendment free exercise and free speech/association claims. At the Second Circuit, Plaintiff did not challenge the dismissal of its equal protection and unconstitutional conditions claim. Dkt. No. 44 at p. 2.

The alleged “evidence” of religious animus that Plaintiff has put before the court fails to satisfy Plaintiff’s burden of establishing a likelihood of success on the merits of Plaintiff’s free exercise claim. First, New Hope’s reliance on the alleged “removal” of faith-based agencies from the OCFS website after § 421.3(d) took effect is entirely misplaced. Dkt. No. 1, ¶¶ 202-203. In 2018 and 2019, OCFS did not close any authorized adoption agency in New York State. McCarthy Supp. Decl. ¶ 17. In 2018 and 2019, approximately twelve adoption agencies with perpetual authority were removed from OCFS’s website because they voluntarily no longer operated an adoption program. Id. These agencies included both faith-based and secular agencies. Id. In addition, approximately five agencies were removed from OCFS’s website for a lack of corporate authority. Id. ¶ 18. Two others were removed because they closed in response to losing Hague accreditation, and two others were removed because they changed names. Id.

Second, the supplemental declaration of Carol McCarthy explains why OCFS “voiced no objection,” Dkt. No. 44 at pp. 45-46, to New Hope’s non-compliance with § 421-3(d) between the regulation’s promulgation in 2013 and the OCFS visit in 2018. An authorized adoption agency must, among other things, (1) be organized under the laws of the State and have the corporate authority to place out children, and (2) be “approved, visited, inspected and supervised by the office of children and family services or . . . submit and consent to the approval, visitation, inspection and supervision of such office as to any and all acts in relation to the welfare of children . . .” N.Y. Soc. Serv. Law § 371(10). McCarthy Supp. Decl. ¶ 6. In order to meet the first requirement, an agency must file a Certificate of Incorporation with the New York State Department of State. If an agency intends to have an adoption program, it must obtain the approval of OCFS to file its Certificate of Incorporation. Id. ¶ 7. In New York State, nearly all authorized adoption agencies have corporate authority for a limited duration and must seek

reauthorization prior to expiration. OCFS must provide its approval for each reauthorization. Id. ¶ 9.

OCFS conducts a comprehensive review of the adoption agency, which includes an on-site visit, completion of an adoption services assessment, and drafting of an Adoption Agency Program Review Report when assessing reauthorization. Id. ¶ 10. As part of this assessment, OCFS interviews staff members and reviews the adoption agency's application for authorization/reauthorization, business plan, financial information, policies and procedures, forms, and correspondence. Id. OCFS utilizes this review process to determine if the adoption agency is in compliance with State laws, regulations, and policies. Id. Only a small number of agencies, including New Hope, have corporate authority in perpetuity, and therefore do not need to re-file with the Department of State. Id. ¶ 11.

To meet the second requirement, the adoption agency must be approved, visited, inspected, and supervised by OCFS, or must submit and consent to such oversight. Id. ¶ 12. In addition to the approval that an adoption agency receives at the time of corporate authorization/reauthorization, the adoption agency remains subject to ongoing approval and supervision; OCFS may review the program and revoke its approval at any time. Id. Such oversight includes determining whether an agency is complying with State law, regulations, and policies, and such compliance may be a condition for ongoing approval. Id.

Prior to 2018, it was OCFS's practice to utilize its corporate reauthorization approval process to satisfy its general oversight obligations. Id. ¶ 13. In other words, adoption agencies were only reviewed when they sought approval for corporate reauthorization, unless special circumstances warranted additional monitoring or intervention. Id. This practice minimized the need for duplicative visits to authorized agencies. Id. However, as a result of this practice,

authorized agencies with perpetual corporate authority, including New Hope, did not have their adoption programs visited and reviewed on a regular basis. Id. ¶ 14. In 2017, OCFS discovered and corrected this oversight by visiting and reviewing every authorized agency with perpetual authority. Id. OCFS revised its practice to require an on-site visit for every adoption agency every year; these annual visits consist of a substantially similar review to the one done at the time of corporate reauthorization. Id. If the adoption agency is seeking corporate reauthorization that year, the reauthorization visit replaces the agency visit. Id.

OCFS conducted a comprehensive review of New Hope in 2018 as part of this remedial effort. Id. ¶ 15. OCFS did not target New Hope for review because it is a faith-based organization. Id. In fact, in addition to New Hope, all adoption agencies with corporate authority in perpetuity were reviewed as part of this effort. Id. OCFS's review of New Hope in 2018 was its first review subsequent to promulgation of § 421.3(d). Id. ¶ 16. This review was the first time OCFS learned of New Hope's practices with respect to unmarried and same-sex couples. Id.

Thus, some adoption agencies were removed from OCFS's website and OCFS did not seek to enforce § 421.3(d) against New Hope until 2018 for reasons unrelated to religion. Accordingly, there is no evidence that OCFS targeted New Hope because it is a faith-based agency.

Third, as stated by the Second Circuit, § 421.3(d) is not inconsistent with the intent of Domestic Relations Law § 110, which expanded the pool of potential adoptive parents. Dkt. No. 44 at p. 84. As the Second Circuit recognized, "a generally applicable anti-discrimination regulation will usually be understood to indicate neutrality rather than religious animosity." Id. p. 45. Plaintiff's reliance on the permissive language of Domestic Relations Law § 110, and one

statement by the Governor at the time of the amendment of that statute, is an attempt to convince the court of its preferred, but unsupported, interpretation of the law. However, (1) Plaintiff's interpretation of the statute is inconsistent with other pieces of legislative history; and (2) the State's interpretation—which is based on the totality of the legislative history—is entitled to deference.

As stated by OCFS Director of Adoption Services Carol McCarthy in her January 4, 2019 declaration, § 421.3(d) “is critically important to the State's adoption policies and practices,” Dkt. No. 32, ¶ 8, and was intended to meet the “important legislative objectives” of prohibiting discrimination, id. ¶¶ 8-9, and serving “the best interests of vulnerable children,” by ensuring a “broad and diverse pool of adoptive parents.” Id. ¶ 9. This interpretation is rational and consistent with Domestic Relations Law § 110. That statute created a “broad[er] and diverse pool” of potential adoptive parents by granting rights to unmarried and same sex couples. In other words, the permissive language of Domestic Relations Law § 110 permitted unmarried and same sex couples to adopt instead of prohibiting it. It did not change the standard for determining the best interests of the child. 18 N.Y.C.R.R. § 421.16. Similarly, in promulgating § 421.3(d), OCFS did not change the factors that an agency must apply or create a new obligation for adoption agencies. Instead, it ensures that certain characteristics of an applicant, unrelated to the ability to parent, not be used as a basis to discriminate or harass applicants seeking to adopt New York's vulnerable children.

Importantly, the anti-discrimination purpose of § 421.3(d) is also not inconsistent with the statement of Governor Patterson in connection with the amendment of Domestic Relations Law § 110, which states that the statute, as amended, would allow for adoptions by unmarried and same sex couples “without compelling any agency to alter its present policies. It is a wise,

just and compassionate measure that expands the rights of New Yorkers, without in any way trading on the views of any citizen or organization.” Kerwin Decl., Exh. A, p. 000025. When read in connection with the Legislative debate on the bill, *id.*, pp. 000038-64, the Governor’s statement can reasonably be read to mean that no agency or organization—religious or otherwise—may be forced to process adoptions that are contrary to their policies or views. Instead, they can choose to stop processing adoptions. This result was discussed in the July 10, 2010 debate in the Assembly before a vote on the amendment:

MR. CONTE: So, again, going back to the issue of Catholic Charities or some Jewish organizations that provide for adoptions and their faith does not believe in same-sex marriages, same-sex couples, are they going to be forced to –

MS. ROSENTHAL: They can do what they choose to do.

MR. CONTE: Well, if it's the law -- that's what I'm asking. So, they can choose what they want to do. So right now, if two unmarried intimate adults walk into Catholic Charities or walk into a Jewish adoption agency or whatever, and they say that we would like to adopt a child and Catholic Charities says, "Well, are you married?" And they say, "No, we're intimate partners." "Well, we don't do that. You have to go somewhere else." Are they going to have any legal action against Catholic Charities for discriminating against them because they're not married?

MS. ROSENTHAL: Let me explain to you that this is already existing case law, so the question is whether they turn intimate partners away right now. We are codifying what's existing law, existing case law. So, they are under the same obligation now as they would be were this to be law.

MR. CONTE: But if they do not want to facilitate adoptions for same-sex intimate partners or same-sex partners married in other jurisdictions, are they going to be in violation if this State statute and are the individuals who get turned away going to be able to sue that religious organization for not helping them try to adopt a child? Because this can get very emotional for a number of people.

ACTING SPEAKER JOHN: Mr. Titone, why do you rise?

MR. TITONE: Mr. Conte, will you yield for a question?

ACTING SPEAKER JOHN: Mr. Conte, do you yield?

MR. CONTE: Yes, sure.

ACTING SPEAKER JOHN: The gentleman yields.

MR. TITONE: Mr. Conte, back home we have the Knights of Columbus and they have catering halls. Are you saying that because of their religious beliefs they have the option to not comply with health code?

MR. CONTE: No.

MR. TITONE: So, when a religious institution is involved in the business of social services, are you saying because of their religious beliefs they don't have to comply with our laws?

MR. CONTE: No.

MR. TITONE: Thank you.

Kerwin decl., Exh. A, pp. 000049-51.

Additionally, the statements by members of the Legislature demonstrate that the intent behind the amendment was to improve the lives of children by permitting adoption by unmarried and same sex couples, and not about the rights of institutions. See e.g. id. at pp. 000053-56. Specifically, Assemblywoman Jaffee stated, “This is about children. This is about children who otherwise might be in foster homes or in group homes but not having loving parents; that is what this legislation is about.” Id. at p. 000055.

Similarly, Assemblywoman Rosenthal stated,

In the past, adoption was viewed as a service to parents who cannot conceive their own children, and so we wanted to please them by giving them a little bundle of joy to take care of. In more modern times, we have rightly come to view the issue as taking care of a child who has no one to care for them and that is the focus of this legislation. It is not about institutions. It is not about parent or family structure. It is about who will take the best care of the child. A two-parent family, where you have two people committed to each other who are willing and able to open their homes and provide a stable and full life to a child is the ideal goal. To say that this might hurt an institution is to totally deny what this legislation is about. It is about helping children.

Id. at pp. 000057-58.

Further, the debate before the Assembly cited the *American Association of Pediatrics* and the *Journal of Pediatrics* to support the adoption of children by gay parents, citing the many positive cognitive, academic, social, emotional and psychological experienced by such children. Id. at pp. 000058-60.

In light of this clear legislative intent, OCFS reasonably interpreted the statute as permitting the agency to require that unmarried and same-sex couples be treated equally because the Legislature recognized that agencies could be required to comply with such a requirement. The Governor's statement can be interpreted consistent with that intent as stating that agencies could continue under the current policies.

Fourth, the "severity" of the potential closure of New Hope's adoption program cannot weigh in favor of a finding of hostility. OCFS routinely works with authorized adoption agencies to ensure compliance with all applicable laws so as to maintain the greatest number of resources available to families who wish to surrender or adopt a child. McCarthy Supp. Decl. ¶ 22. OCFS provides technical assistance, including identifying and providing training, providing guidance on best practices and strategies, assisting with interpretation of laws and regulations, and facilitation of meetings and forums. Id. OCFS also supports agencies when they self-identify an area of need or interest. Id. OCFS works with agencies to develop a Program Improvement Plan (PIP), which assists the program with implementing changes. Id. This collaborative approach minimizes the need for enforcement action and demonstrates OCFS's commitment to supporting adoption providers in New York State. Id.

Consistent with its mission of supporting the continued operation of adoption agencies, OCFS has worked collaboratively with New Hope to address issues such as (1) immediate implementation of 18-OCFS-ADM-07: Foster/Adoptive Home Certification Approval Process;

(2) requests for non-identifying information and medical information by adoptive families, adoptee or birth parent; including usage of the Adoption Information Registry through the Department of Health; and (3) New Hope's role and limitations regarding the exchange of information related to conditions of a surrender. Dkt. No. 1-6 at p. 3. However, New Hope has fully refused to comply with § 421.3(d). McCarthy Supp. Decl., ¶ 23. That New Hope has left OCFS with no choice but to take administrative action to revoke its approval of New Hope's adoption services cannot be used against the state to imply religious animus. And New Hope's suggestion that its religiously-motivated discrimination can be accommodated by allowing it to refer same-sex and unmarried couples is not an appropriate remedial action. As discussed *infra* such a "recusal and referral" policy discriminates against and harms same-sex and unmarried couples.

Finally, New Hope mischaracterizes the media statement to which it cites in support of its hostility argument. Specifically, Plaintiff alleges that a spokesperson for OCFS stated in 2018 "[d]iscrimination of any kind is illegal....There is no place for providers that choose not to follow the law." Dkt. No. 1, ¶ 204. It is simply a statement that agencies need to obey the law, and that OCFS does not condone discrimination. This leaves only the alleged statement by an OCFS staff member who commented to New Hope's director that that "[s]ome Christian ministries have decided to compromise and stay open." Dkt. No. 1, ¶ 192 (brackets in original). Plaintiff cannot meet its burden of establishing that it is likely to succeed on the merits of its free exercise claim based on an alleged single hearsay statement by a staff member of OCFS.

B. Plaintiff Cannot Prevail on a Compelled Speech Claim

While the Second Circuit relied on the necessary exercise of discretion by adoption agencies in determining the best interests of the child to support a finding that New Hope's allegations survive a motion to dismiss, this alone is insufficient to show a likelihood of success on its free speech claim. Dkt. No. 44 at pp. 68-69. Not only do OCFS regulations tell agencies the factors to consider when making that determination, they also dictate what may not be considered. Agency discretion is not unbridled. For instance, existing regulations prohibit the denial of an application for adoption based only on specific characteristics. See 18 N.Y.C.R.R. § 421.16 (directing that various characteristics, including religion, race, income and education may not serve as a basis for rejection). The promulgation of § 421.3(d), and OCFS Informational Letter 11-OCFS-INF-05, added sexual orientation to the list of factors that cannot be an automatic "disqualifier" of applicants for adoption. The State may use its judgment to limit factors that may, or may not, exclude applicants from consideration, and compliance with such factors cannot be deemed "speech" by an agency. Instead, an agency is simply required to follow the law as the State enacted it. For instance, if an agency had a policy that it would not work with and, instead "refer," black people seeking to adopt, such a policy would clearly not implicate free speech. As the Supreme Court has noted, nondiscrimination laws may incidentally affect what an individual may lawfully say. Rumsfeld v. Forum for Academic & Institutional Rights, Inc., 547 U.S. 47, 62 (2006) (noting that an antidiscrimination law could require an employer to take down a sign reading "White Applicants Only" without impinging free speech).

Even if, *arguendo*, § 421.3(d) compels speech, it is narrowly tailored as necessary to avoid discrimination on the basis of, *inter alia*, marital status or sexual orientation and promote

the pool of potential adoptive families. The “recusal and referral” policy that New Hope relies upon discriminates against unmarried and same sex couples both on its face, and in application and therefore does not adequately protect the State interests that § 421.3(d) was promulgated to address.

Newborns and infants (which are the children that New Hope places through its adoption program) available for adoption are very scarce and prohibiting those placed through New Hope from being available to unmarried or same sex couples necessarily narrows the already-limited number of infants and newborns available to such couples. McCarthy Supp. Decl., ¶¶ 20-21. As Plaintiff argued at the Second Circuit, it “expects an uptick in referrals of children needing to be placed,” Kerwin Decl., Exh. B, p. 7, and that “a large faith-based pregnancy support ministry in New York recently [advised New Hope] they [sic] want to use New Hope as their primary adoption service that they refer birthmothers to....” *Id.* at p. 20. This admission proves that, if this court grants Plaintiff’s motion, there will be newborns and infants in New Hope’s care that will be completely unavailable to unmarried and same sex couples simply because of their marital status and/or sexual orientation. This is precisely the kind of discrimination that § 421.3(d) was promulgated to prohibit.

Additionally, before the Second Circuit, New Hope conceded that it has an insufficient number of approved adoptive families with whom to place the expected influx of newborns and infants. *Id.* at pp. 19-21. So, not only will the injunction plaintiff seeks reduce the number of infants and newborns available to unmarried and same sex couples looking to adopt, it will also necessarily limit the pool of adoptive couples available to adopt children placed with New Hope. In other words, granting Plaintiff’s motion for a preliminary injunction will defeat both State interests that support the regulation: (1) prohibiting discrimination based on marital status and

sexual orientation and (2) increasing the pool of families available to adopt New York's children. This illustration demonstrates that New Hope's recusal and referral policy fails to adequately protect potential adopters from discrimination, or provide a broad and diverse pool of potential adoptive families. Accordingly, an agency authorized to facilitate adoptions in this State cannot be excused from complying with a non-discrimination law by sending applicants elsewhere. The act of referral is discrimination in and of itself.

C. New Hope Cannot Demonstrate a Likelihood of Success on its First Amendment Association Claim

At this stage of the litigation, New Hope cannot show a likelihood of success on the merits of its expressive association claim because it is not yet clear that its staff and employees are prohibited from expressing any views. Dkt. No. 44, pp. 73-74. Plaintiff has failed to submit any evidence to support such a claim, and its conclusory assertions are insufficient to entitle it to a preliminary injunction on this record.

POINT II

THE BALANCE OF THE EQUITIES AND THE
PUBLIC INTEREST WEIGH IN FAVOR OF
DENYING THE PRELIMINARY INJUNCTION

New Hope is not entitled to a preliminary injunction for the additional reason that the balance of the hardships weighs against it. As discussed above, if this court grants Plaintiff's motion, there will be newborns and infants in New Hope's care that will be completely unavailable to unmarried and same sex couples simply because of their marital status and/or sexual orientation. Additionally, an injunction will necessarily limit the pool of adoptive couples available to adopt children placed with New Hope. The State's strong public policy of providing equal access to public services and its interest in increasing the pool of families available to

adopt New York's children will be completely undermined if New Hope is permitted to discriminate against people and deprive children of families during the pendency of this lawsuit.

New Hope has failed to inform the court how many unmarried or same sex couples it has turned away and refused to assist in becoming adoptive parents. And that information is available only to New Hope. McCarthy Supp. Decl., ¶ 24. Therefore, it is impossible for OCFS to provide the court with any data or information about how New Hope's recusal and referral policy plays out in reality. Therefore, because the only evidence before the court is that New Hope's policy results in discrimination that can prevent children from being placed in adoptive homes, the equities and public interest weigh against granting the injunction.³

³ If, *arguendo*, the court grants Plaintiffs' motion, any injunction should be narrowly tailored to prevent discrimination based on marital status and sexual orientation, and ensure that all children needing families are presented with the best possible options.

CONCLUSION

For the reasons discussed above, and in Defendant's original opposition papers, Dkt. No. 32, incorporated herein, Plaintiff's motion for preliminary injunctive relief should be denied in its entirety.

Dated: Albany, New York
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