Legal Protection For All The Children: Dutch-United States Comparison Of Lesbian And Gay Parent Adoptions (al)

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I. INTRODUCTION

The current lesbian baby boom made the front cover of the November 1996 Newsweek, (1) which is widely distributed in both the Netherlands and the United

States. Estimates are that twenty thousand children are being reared in Dutch lesbian and gay families. (2) The number in the United States varies from one and a half million to five million depending on which study is consulted. (3) The parents of these children nurture, educate, pamper, and generally raise them in the same ways heterosexual parents raise their children. (4) Although children raised by same-gender couples are generally reared by two loving parents, the nonbiological parent does not have the same legal options as would a nonbiological parent in a heterosexual elationship. A nonbiological parent in a heterosexual relationship has greater options to establish rights and responsibilities relating to the children she is raising. However, recent developments in both the United States and the Netherlands have begun to change the precarious legal status of the nonbiological parent in these families. The policies of both the Netherlands and the United States recognize that, if possible, it is best to have two parents in the household. (5) For instance, if one parent dies and the remaining parent remarries, the adoption legislation in both countries makes it possible for the stepparent to adopt a child born of the previous union. (6) In addition to the stepparent situation, it is the general policy in the United States that

adoption is preferable to institutionalization or foster care. (7) On the other hand, in other than the stepparent context, adoption in the Netherlands has not been a widely accepted legal solution for children whose parents are unable, or unwilling, to care for them. (8) In fact, it has only been in 1997 that the Dutch legislature extended adoption rights to persons other than married couples; (9) in April of 1998, single persons and unmarried heterosexual couples were allowed to adopt for the first time in modern Dutch history. (10)

While both the Netherlands and the United States have policies allowing stepparent adoptions, legal obstacles in both countries have hindered or prevented

adoptions when the petitioners were lesbians or gay men, even if these individualswere the de facto parents of the children they sought to adopt. However, recent court decisions in several of the U.S. states have granted same-gender parent adoptions, and a legislative proposal in the Netherlands (11) would allow same-gender couples to jointly adopt the children they have been raising together.

The purpose of this Article is to examine these recent changes and to compare the different routes these changes have taken. The second section of the Article examines the present status of the case law in both countries. It begins with an analysis of the court decisions in the United States, in which case law now makes it legal in many states for gays and lesbians to adopt, either as "co-parents" (12) or as "strangers" (13) of the child. The section also includes an analysis of the recent Dutch case before the Hoge Raad, involving a request for a co-parent adoption by two women who were raising their children together as a family. The third section sets out the current status of Dutch law as it affects gay and lesbian co-parents, including present adoption laws, joint parental authority, and registered partnerships. The fourth section

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examines proposed legislation in the two countries concerning the right of same-gender couples, and homosexual individuals in general, to adopt. The fifth section includes a comparison and analysis of the Dutch and American legal histories concerning same-gender co-parent adoptions. It examines the differences in the two countries' legal systems, the social status of homosexuals, the social acceptance of adoption, and each country's underlying assumptions about family law. The Article concludes by pointing out how recognition of same-gender co-parent adoption is in the best interest of the children raised by same-gender couples.

II. CASE LAW

A. American Case Law

1. Co-parent Adoptions

Many gay men and lesbians have children. (14) Gay men may have children from prior marriages or they may find a willing surrogate to carry their child. They may father children born to lesbian friends or they may adopt a child as a single parent. Lesbians may also have children from previous marriages, or they may adopt a child as a single parent. Most often, however, lesbian couples decide that one or both of the women will have children by alternative insemination (15)--either with a known donor or with an anonymous donor through the services of a sperm bank. (16) In many of these situations, the co-parent wants to adopt the children in order to provide legal protection for the children who are being raised in these two-parent households. (17)

In the United States, only Florida has specific legislation prohibiting homosexuals from adopting children. (18) In the other forty-nine states, however, it is possible for lesbians and gay men to file a petition in court requesting to adopt a child, either as a single person seeking to adopt or as joint petitioners seeking to co-adopt. The court must then decide whether the petition falls within the language of the state's adoption code. Consequently, same-gender co-parent adoption petitions have been attempted in several states in the United States.

Because there was no specific legislation that authorized same-gender co-

parent adoptions in these states at the time these cases were decided, (19) individuals in civil-law countries like the Netherlands may assume, incorrectly, that when the state courts issue rulings on same-gender co-parent adoptions, the courts' decisions are not "law." (20) This is a misunderstanding of the status of a court's decision in the common-law system by those accustomed to civil-law systems. When an appellate state court interprets its state's adoption code concerning whether to allow same-gender co-parent adoptions, (21) that interpretation attaches to the adoption code and the court's interpretation becomes the law of the state. Under the common law, in all subsequent adoption cases, the adoption code must be applied according to the appellate court's interpretation. (22) It is through this lawmaking ability of the common-law courts that the law concerning same-gender co-parent adoptions has been established in several states, even though that state's legislation does not specifically address these types of adoptions.

Both trial (23) and appellate courts (24) have ruled on same-gender co-parent adoptions. Among these courts, there have been three state appellate courts that have denied the adoptions requested by same-gender co-parents, (25) while six states'

appellate courts (26) and at least seven states' trial courts (27) have decided in favor of same-gender co-parent adoptions. Regardless of the differences in the outcome of the decisions, however, the courts' analyses usually start from the same place-- with an examination of the statutory language of the state's adoption code. Most of the court decisions initially point out that adoption was unknown in the common law--adoption has been created totally by legislative enactment. Consequently, the courts must use rules of

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statutory construction and interpretation to determine whether same-gender co-parent adoptions are permitted within the adoption code. As mentioned earlier,

however, almost all adoption codes are silent on this issue.

Generally the courts deciding this issue start from the foundational rule of statutory construction, the plain-meaning rule. According to this rule, the court must apply the statutory language according to its plain meaning. (28) To ascertain the plain meaning of the statutory language, courts often resort to common dictionary definitions of the words. (29) When the words themselves are ambiguous in their meaning or application, however, the courts also consider the legislative intent of the words for additional guidance. (30) The use of this statutory-interpretation procedure, however, has resulted in contradictory decisions in the cases involving same- gender co-parent adoptions.

In the decisions of the three appellate courts that denied the adoption petitions filed by same-gender co-parents, the courts first relied on the plain meaning of the words of the adoption code to find that the words did not include situations involving same-gender co-parent adoption petitions. (31) The courts used a strict, formalistic construction of the words involved in the codes. For example, the Connecticut Code states that a single person, a married couple, or a stepparent is allowed to adopt a child. (32) The court found that a same-gender couple did not fit within this statutory language. (33) The same-gender couple was not adopting as single persons because the adoption petition was for a joint adoption, and because same-gender couples were not married, they could not adopt as a married couple. Finally, because the same-gender couple was not married, there could be no stepparent or spouse within the formalistic use of the plain-meaning rule. (34)

It also appears that in the three states in which the appellate courts denied the same-gender co-parent adoptions, the adoptions were more highly regulated. (35) For example, the Connecticut statute required that, if the child was not being adopted by the legal parent's spouse or "blood relative," then the only way the adoption could occur was by the natural parent's rights being terminated and a state agency placing the child for adoption. (36)

In addition, the three appellate courts that denied the adoptions found that

the legislative intent did not support these adoptions because the legislative history was silent on the issue; this led the judges to conclude the legislature probably did not contemplate same-gender co-parent adoptions. Consequently, the courts deferred to the legislature to decide this issue, stating that the legislature was a more appropriate body to determine the question of same-gender co-parent adoptions. (37)

Interestingly, two of the three courts' decisions stated that granting the requested adoptions would be in the best interests of the children. (38) However, a majority of the judges decided that the statutory language and legislative intent required the exercise of judicial restraint, preventing the courts from granting the adoptions. (39)

The vigorous dissents in the Wisconsin and Connecticut Supreme Court decisions expressed dismay with the majority opinions' unwillingness to apply the statutory-interpretation provisions in the adoption and children's codes, which state that the codes are to be "liberally construed to effect the objectives contained in the [statute]," (40) or that the codes must be "liberally construed in the best interests of the child." (41) Even in the Colorado case, which did not contain a dissenting opinion, Judge Ruland concurred stating that "if one assumes again that the adoption is in the best interests of the child, then why should the child be deprived of the legal commitments and benefits from a decree which provides a second parent to that child?" (42) Judge Ruland ended his concurring opinion with a statement in which he hoped "that the issue will be addressed soon either by the General Assembly or in an

appropriate court proceeding [challenging the adoption code as violating constitutionally mandated equal protection rights]." (43)

Although three state appellate courts have declined to grant same- gender co-parent adoptions, a much larger number of courts have granted the adoption petitions. (44) In granting same-gender co-parent adoptions, these courts also have applied the plain-meaning rule of statutory construction, as well as relying on the legislative intent of the adoption codes. The use of the plain-meaning rule has generally resulted in the courts finding the codes' language "ambiguous" because the codes do not directly address the situation in which a same-gender couple is seeking to adopt a child together, particularly when one of the petitioners is the child's legal parent. In attempting to deal with this ambiguity, the courts have adopted one of two main analyses. The most common analysis is that the same-gender co-parent adoption is analogous to the codes' provisions authorizing stepparent adoptions. Consequently, because the co-parent adoptions are factually similar to stepparent adoptions, the courts apply these provisions to grant the adoptions. (45) This approach is known as the "functional equivalent" analysis, and is most commonly applied in situations in which the co-parent is seeking to adopt with the consent of the legal parent. (46) This is the approach also used by one of America's most eminent legislative study group, the National Conference of Commissioners on Uniform State Laws, which incorporated the adoption of a child by a same-gender co-parent into the Uniform Adoption Act, under the provision entitled "Adoption of Minor Stepchild by Stepparent." (47) The official Comment to the code cites, with approval, state-court decisions that have used the functional equivalent approach in granting these adoptions. (48)

The other, less common, analysis is to treat the adoption request as a joint petition of adoption by two single adults. In this situation, the legal parent and the co-parent file a joint petition of adoption, usually with the legal parent also filing a consent to the adoption by the co-parent. In granting the joint petition, the court first cites the section of the adoption statute that allows a single adult to adopt. Then the court cites the rule of statutory construction that states the singular includes the plural, thereby allowing two single adults to adopt together. Finally, because the statute is silent about the consequences of a joint adoption by two single adults, the court rules that, as joint petitioners, the two adults both become legal parents upon the granting of the adoption. (49)

The courts that grant same-gender co-parent adoptions also rely on the legislative intent of the adoption codes to support their statutory- interpretation analysis. Most states' adoption codes specifically state that the adoption statutes should be interpreted to promote the best interests of the child. (50) Even if the code does not state this principle specifically, under the common law, all proceedings involving children, including adoptions, are governed by this general and overriding legal principle--court decisions involving children must be made in the best interests of the child. (51) Because of the facts presented in these cases, the courts find that to deny the adoption contravenes this overriding legal principle.

Although the various state-court decisions that grant the adoptions are interpreting statutory language that differs from state to state, the factual analysis and rationale in these co-parent adoption cases are remarkably similar. The cases generally involve a lesbian relationship in which the couple has decided to have children and one, or both, of the women have had a child by alternative

insemination. (52) The children have been born into a two-parent family and have been raised by both women as equal co-parents. The petition for adoption by the co-parent is an attempt by the couple to legalize what is occurring in fact--that the children have two parents. The adoption is the only legal solution that creates this parent-child relationship. The language of the first case in which the appellate court granted a same-gender co-parent adoption clearly shows this analysis:

> The intent of the legislature was to protect the security of family units by defining the legal rights and responsibilities of children who find themselves in circumstances that do not include two biological parents.
>
> . . .
>
> To deny the children of same-sex partners, as a class, the security of a legally recognized relationship with their second parent serves no legitimate state interest.
>
> . . .
>
> By allowing same-sex adoptions to come within the stepparent exception of section 448, we are furthering the purposes of the statute as was originally intended by allowing the children of such unions the benefits and security of a legal relationship with their de facto second parents.
>
> . . .
>
> [I]t is the courts that are required to define, declare and protect the rights of children raised in these families, usually upon their dissolution. At that point, courts are left to vindicate the public interest in the children's financial support and emotional well-being by developing theories of parenthood, so that legal strangers who are de facto parents may be awarded custody or visitation or reached for support. Case law and commentary on the subject detail the years of litigation spent in settling these difficult issues while the children remain in limbo, sometimes denied the affection of a "parent" who has been with them from birth.

> . . .
>
> It is surely in the best interests of children, and the state, to facilitate adoptions in these circumstances so that legal rights and responsibilities may be determined now and any problems that arise later may be resolved within the recognized framework of domestic relations law.
>
> We are not called upon to approve or disapprove of the relationship between the appellants. Whether we do or not, the fact remains that [the co-parent petitioning for the adoption] has acted as a parent of [these two children] from the moment they were born. To deny legal protection of their [parent- child] relationship, as a matter of law, is inconsistent with the children's best interests and therefore with the public policy of this state, as expressed in our statutes affecting children. (53)

The courts granting the adoption discuss the importance of providing legal protection to the emotional reality that the children of same-gender partnerships have two parents. In addition, the social and economic implications of granting the adoption in the United States are quite significant. The highest appellate court in the state of New York spoke directly to these issues when it stated:

> The advantages which would result from such an adoption include Social Security and life insurance benefits in the event of a parent's death or disability, the right to sue for the wrongful death of a parent, the right to inherit under the rules of intestacy, and eligibility for coverage under both parents' health insurance policies. In addition, granting a second parent adoption further ensures that two adults are legally entitled to make medical decisions for the child in case of emergency and are under a legal obligation for the child's economic support.

> Even more important, however, is the emotional security of knowing that in the event of the biological parent's death or disability, the other parent will have presumptive custody, and the children's relationship with their parents, siblings and other relatives will continue should the [co-parents] separate. (54)

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A review of the various courts' descriptions of the facts in these cases shows that the judges are using the legal standard of best interests of the child within the real-life context of the child's present circumstances. The factual findings of the courts reveal that the gay or lesbian parents have deliberately planned to have children and arranged their lives so that both parents could be involved in raising their children. For example, the facts of the cases in the highest appellate courts describe the co-parents as persons who have "shared parenting responsibilities" and who have "arranged their separate work schedules around the child's needs." (55) It was not uncommon for one of the co-parents to quit her employment in order to be in the home and raise the child. (56) In fact, a study comparing children in lesbian and nonlesbian American, British, and Dutch homes found that "[ninety] percent of the lesbian [co-parents] took an active role in raising the children, while only about [thirty-seven] percent of the heterosexual fathers did the same." (57) Another recent study in the state of Minnesota found that "[i]n general, gay/lesbian families tended to score most consistently as the healthiest and strongest of the family structures," with married couples and their families scoring a strong second place for the healthiest and strongest family structure. (58)

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Therefore, when the facts presented at the adoption hearing overwhelmingly supported that the children in same-gender co-parent households were clearly benefited by the court granting the adoption, the U.S. courts that grant these adoptions did so by interpreting the adoption statutes as allowing these adoptions because the overriding purpose of the adoption codes is to further the best interests of the children.

Regardless of the legal analyses used in the state courts to grant same-gender co-parent adoptions, these adoptions have exactly the same force in law as all other adoptions granted to opposite-gender couples. Therefore, in the common-law system, all adoption decrees have exactly the same legal status and legal consequences, regardless of whether the court grants the adoption to an opposite-gender couple pursuant to the direct statutory language, or grants it pursuant to the court's broad interpretation of that statutory language. There is no distinction between the legal rights and responsibilities of both sets of adoptive parents. The only distinction is a factual one--for example, a child, jointly adopted by his or her legal mother and the mother's female partner, will have two legal parents who are women and will not have a legal parent who is a man, because the father's parental rights will have been terminated by the adoption.

2. Stranger Adoptions

Both the United States (59) and the Netherlands (60) permit an opposite-gender couple who does not have a previous legal relationship with the child to petition to adopt the child. The United States even encourages it. (61) In addition, in some states

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where gay men and lesbians have filed petitions for "stranger" adoptions, most have ended in a favorable decision for the petitioners. (62) Single persons can adopt children in forty-nine states and the District of Columbia. (63) The U.S. public policy that

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supports adoption by single individuals is the legislative position that it is in the best interest of a child to be placed permanently with an adoptive parent in a home environment, rather than with an institution or in temporary foster care, which in the United States can result in numerous placements for the child. (64) This public policy also saves the government the cost of keeping a child in an institution or in foster care.

In the reported decisions that have granted "stranger" adoptions, the courts have applied the previously discussed rules of statutory construction, together with the general legislative intent of furthering the best interests of the child. For example, in the Ohio case of In re Adoption of Charles B., (65) the trial court granted the adoption of an eight-year-old boy, who had serious physical and mental disabilities, to a gay

man. The case was appealed, and the Ohio Court of Appeals reversed the adoption, finding as a matter of law that homosexuals were not eligible to adopt. (66) The Ohio Supreme Court overturned the appellate court's ruling and reinstated the adoption. (67) In doing so, the Ohio Supreme Court cited the Ohio statute that stated that an "unmarried adult" (68) may adopt "any minor." (69) By using the plain-meaning rule, the court found that this statutory language did not exclude Mr. B. from being an adoptive parent. (70) Next, the Ohio Supreme Court stated the "polestar by which courts in Ohio, and courts around the country, have been guided is the best interest of the child to be adopted." (71) In reviewing the evidence presented at trial, the Ohio Supreme Court found that, despite many attempts to place Charles B. in the homes of married couples, no couple would follow through with adopting the boy. (72) Mr. B. was Charles' psychological counselor and the evidence showed that "Mr. B. ha[d] been the one consistent and caring person in the life of Charles B." (73) All the witnesses, except the Administrator of Social Services, testified in favor of the

adoption. In affirming the trial court's granting of the adoption by finding it in the best interest of Charles B., the Ohio Supreme Court cited the holding in a prior Ohio adoption case that stated:

> Permanent placement in a judicially approved home environment through the process of adoption is clearly preferable to confining the child in an institution or relegating the child to a life of transience, from one foster home to another, until such time as the certified organization determines that it is proper to give its consent to an adoption. (74)

In a similar case in California, the state Department of Social Services recommended against the adoption of a two-year-old boy, who had contracted AIDS from his mother in the womb, by two lesbian partners who had served as the boy's foster parents since he was six weeks old. (75) This joint adoption proceeding by two same-gender adults was one of the first in California. The Alameda County Superior Court judge rejected the Department's recommendation against the adoption and granted the joint adoption. Since then, numerous joint adoptions by same-gender parents have been granted in California and other states. (76) The courts in these cases are finding that same-gender couples who have similar characteristics to a married couple, such as a long- term committed relationship and the skills to be good parents, are just as appropriate adoptive parents as married heterosexual couples. (77)

B. Dutch Case Law

A recent test case (78) before the Hoge Raad (79) challenged the disparity of the Dutch law's treatment between children raised under heterosexual relationships and children raised under homosexual relationships. In this case, two women had a committed relationship and were living together. They had each given birth to a child

who had been conceived with the sperm of the same donor father. (80) The two jointly requested the court to allow them to adopt each other's children. The couple argued that the Dutch adoption laws that prevented co-parent adoption violated the European Convention on Human Rights (ECHR). (81) The ECHR prevents the state from interfering with family life, which would include the relationship between these two women. (82) Consequently, the petitioners argued that the application of Dutch law, which prevents two women from adopting while allowing a married man and woman in similar circumstances to adopt, was a violation of the equal-treatment clause of the ECHR. (83)

In an analysis similar to the U.S. court decisions that refused to allow same-gender couples to adopt, (84) the Hoge Raad declined to decide this case based on the division of powers within the different branches of government. The Hoge Raad said that this type of decision was a political decision and should be determined by the legislative branch, not the judiciary. It stated that same-gender parent adoptions require a "more elaborate legal recognition ... than is now the case in national law" and "the way in which this should be provided requires legal-political choices which ... go beyond the legal task of the Judge." (85) By taking this position, the Hoge Raad avoided any discussion of the legal issue raised by the petitioners that there is

a conflict between the Dutch Adoption Laws and the ECHR. Instead, it immediately deferred to the legislature.

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Although the Hoge Raad's stance seems logical at first glance, it ignores the fact that it did not follow this hands-off policy in other cases involving the protection of children within a heterosexual relationship. For example, when unmarried and divorced heterosexual couples asked the Hoge Raad to recognize their joint parental authority, it agreed to address the issue and found that these couples could have joint authority. (86) These decisions were treated as advisory to the legislature. (87) After the Hoge Raad decisions, the legislature changed the law. (88) Consequently, the decision of the Hoge Raad involving the lesbian couple, which it deferred to the legislature, has been criticized, particularly because of the Raad's unwillingness to decide the questions concerning violations of the ECHR. (89)

Another criticism of the Hoge Raad's decision addresses its language in the opinion in which it expresses concern that same-gender adoptions would leave intact the parental rights of the biological parent who is of the opposite gender of the adopting couple. For example, it stated that in the situation of two women adopting a child, "not every relationship with the biological father is broken [by adoption.]" (90) It also stated that when the adoption petitioners are men, "the legal relationship with the biological mother remains." (91) This analysis creates a different set of rules for adoptions by same-gender couples than it does for adoptions by opposite-gender couples. Under the present law concerning stepparent adoptions, the legal father or mother can veto the adoption; if, however, a sperm donor is not a legal father, then he has no right to veto an adoption. (92) Consequently, if a single woman has a child through alternative insemination, for example, there is no legal father. However, if she later marries or cohabits with a man, he can adopt the child as the child's stepparent and there is no concern about cutting off the rights of the biological father. The Hoge Raad's assumption that adoption by a female co-parent in the same situation would leave intact the unrecognized rights of the donor father simply does not make sense. Also, under the current adoption law, when a biological mother consents to her child's adoption, the adoption decree severs her legal ties with the child. (93) The Hoge Raad's decision, however, suggests the opposite result if the

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adopting couple consists of two men. (94) Again, if the biological mother consents to a joint adoption by two persons, then it seems logical that her rights would be abolished, regardless of whether the adopting couple is heterosexual or two men.

Although the Hoge Raad did not want to address the substantive claims of the petitioners in this case, it did address some of the factors the legislature might consider in studying the legal-political choice of recognizing same- gender co-parent adoption. (95) For example, the Raad stated, "[t]hus the question should be answered which requirements should be made [in granting adoptions]--be it in the way of marriage or not--of a long lasting relationship between the adopting person and his or her partner in order to do right in the interest of the child." (96) This statement by the Court, however, suggests that the legislature should assess whether same-gender parent relationships will be long lasting, so that the adoption is in the interest of the child. By requiring a detailed, factual inquiry into the nature and duration of a same-gender couple's relationship, the Hoge Raad scrutinizes gay and lesbian relationships much more closely than their heterosexual counterparts.

A far better solution is the one the Dutch Government recently proposed. In a press release announcing the Government's bill on adoption by same-gender couples, it stated the following:

> Under the terms of the bill, couples of the same gender wishing to adopt a child must meet the same criteria as partners of different gender. For example, they must have been jointly caring for the child for at least one year and must have been living together for at least three years. There is no requirement that they should be married or officially registered as partners. A new condition which will apply for all adoptions within the Netherlands is that all possibility of the child being cared for by its original parent(s) must have disappeared. (97)

Consequently, the most appropriate solution is for the legislature to enact the same requirements for all adopting couples, regardless of whether the couples are of the same or opposite genders--the couple must have cohabited for at least three years continuously prior to the filing of the adoption request (98) and the couple must have taken care of and raised the child for at least a year prior to the filing of the adoption request. (99) This type of enactment would be consistent with Dutch constitutional law,

which prohibits discrimination against gays and lesbians. (100) It would be in line with the Dutch position on complete legal protection to all Dutch families. (101) Finally, this approach would not violate the provisions of the ECHR.

III. CURRENT STATUS OF DUTCH LEGISLATION

A. Adoption Laws

Although recent Dutch legislation allows single people to adopt children regardless of their sexual orientation, (102) the current law in the Netherlands does not allow same-gender couples to adopt children as co-parents. The adoption law requires that the couples be of opposite genders. (103) This requirement has resulted in unequal treatment of adoptive couples based on the couples' gender. For example, suppose Maria and Paul, a cohabiting but unmarried couple, decide to have children. However, they soon discover Paul is unable to father a child. Consequently, they decide that Maria will try to become pregnant by alternative insemination or Maria decides to adopt a child as a single person. Paul can adopt the child as the child's co-parent without affecting Maria's rights as the child's legal parent. This result is possible because this situation involves a woman who becomes the legal mother and a man who becomes the legal father.

Co-parent adoption is not possible under current Dutch law, however, if the two persons wanting to become parents are of the same gender. For example, if Irene and Anna, a cohabiting lesbian couple, decide to have children, Irene may become pregnant by alternative insemination or she may adopt a child as a single person. However, the child's co-parent Anna cannot adopt their child because the child already has a legal mother. Current Dutch adoption law does not recognize the possibility of a child having two mothers, even though this is how the child is being raised.

B. Joint Parental Authority

Although current Dutch law does not allow a same-gender co-parent to adopt, a non-legal co-parent may ask the judge for joint parental authority with the legal parent. (104) So, returning to the previous example of Irene and Anna, through joint parental authority, Anna has several of the rights and responsibilities of a legal parent. For example, Anna has the duty to support the child she and Irene are raising together, (105) and, with Irene's consent, she can request the child's name be changed. (106) Also, if Anna is a Dutch national, it is possible for a non-Dutch child to obtain Dutch nationality through Anna. (107) In addition, Anna can request visitation rights if she and Irene separate. (108)

There are, however, significant differences between a co-parent who has only joint parental authority and a parent who is the child's legal or adoptive parent. Most striking is the difference in the language used to describe a person who has joint parental authority. To use the previous example of Anna and Irene, the co-parent with joint parental authority, Anna, is referred to in the legislation as "the other person" (109) or "the nonparent," (110) while in reality she is psychologically, economically, and in all other respects the child's parent. A second distinction is that the child cannot inherit automatically from Anna because the text of the legislation

does not mention the right of inheritance; (111) this right can be created only by the couple incurring the additional expense of retaining an attorney to prepare the appropriate legal documents. (112) In addition,

Anna and Irene's child cannot inherit from Anna's relatives or through Anna's family because joint parental authority does not create family-law relationships; Anna's parents, siblings, and other relatives have no legally protected relationship to Anna and Irene's child. Finally, any rights Anna obtains through joint parental authority automatically terminate when the child turns eighteen years old. (113) None of these problems would exist if Anna were a man because she could adopt the child she is raising with Irene.

In 1996 the Dutch State Secretary of Justice, who is responsible for family law, openly acknowledged in the Senate that there is a significant distinction between the rights of legal parents and their children when compared to the limited rights granted to parents with joint parental authority. (114) She clearly stated that "there are essential differences between blood-relationship parenthood (bloedverwantschap) and joint parental authority (gezagsouderschap)." (115) Therefore, it is openly recognized that joint parental authority is not equivalent to adoption; it does not carry the same legal consequences and protections that are available through adoption.

Some of the legal inequities experienced by same-gender parents were recognized in 1997 by the Commissie inzake openstelling van het burgerlijk huwelijk voor personen van hetzelfde geslacht (Committee on Opening Up Civil Marriage to Same-Gender Partners), known as the Kortmann Committee. (116) For example, the Kortmann Committee recommended that in a registered partnership, when a child is born to one of the partners, the couple should automatically have joint parental authority concerning the child. (117) Of course, this would apply only to lesbian couples. The Kortmann Committee also called for more parental rights regarding joint parental authority. For instance, benefits under tax laws, social security, and inheritance laws should be similar to those that opposite-gender parents have with regard to their children. (118) The Kortmann Committee further advocated that "stranger" adoptions should be made available to same-gender couples, but only in

those cases in which the child's biological parents have shown little or no interest in the child.

A majority of the members of the Kortmann Committee were also in favor of opening up civil marriage to same-gender couples. However, this progressive step was tempered by the full Kortmann Committee. A majority of the members did not accept the notion that a civil marriage of a same-gender couple would automatically create two legal parents for the children being raised by the same-gender couple. These members believed that the only way to create a two- parent family in this situation was through adoption by the co-parent. Consequently, even the majority of the members of the Kortmann Committee have different standards regarding married heterosexual couples and future married homosexual couples. If a child is born of a married heterosexual couple, the child is presumed to be the child of the husband, even if in reality the child is not his. This is true even if the couple secretly obtains sperm from a sperm bank because the husband is physically incapable of fathering children. The child may never know the truth about his or her origin. This situation seems inconsistent with the case of two married women who also deliberately use alternative insemination in order to become parents. At least in the case of the two women, the child knows the truth about having a sperm-donor father.

C. Registered Partnerships

Current law in the Netherlands permits two people of the same gender to register their relationship and have a civil ceremony that is equivalent to the civil-marriage ceremony used by opposite-gender couples. (119) When persons in a same-gender relationship register their partnership, the couple then obtains almost all the legal rights that accrue to a heterosexual marriage. However, two notable exceptions exist. (120) First, this new legal institution does not affect the legal status of each of the partner's children. Persons in registered partnerships do not even have joint parental authority over each other's children. The second difference is that homosexuals cannot adopt their partners' children, whereas current legislation permits unmarried heterosexual couples to adopt each other's children. (121) The Dutch Government

appears to have recognized this inconsistency in current Dutch law because it recently introduced a bill to the Dutch parliament that would allow same-gender co-parent adoptions.

IV. PROPOSED LEGISLATION CONCERNING SAME-GENDER CO-PARENT ADOPTIONS

A. Dutch Legislative Proposal--Allowing Same-Gender Co-Parent Adoptions

On July 8, 1999, the Dutch Government introduced a bill that would amend the Dutch adoption code to allow same-gender co-parent adoptions. (122) The bill provides for equal treatment to both same-gender and opposite-gender co-parents who are seeking to adopt a child together. For example, couples do not need to be married or registered partners to adopt a child together; however, they must have been living together as a couple for at least three years, and they must have been jointly caring for the child for at least one year prior to the filing of the adoption request. (123) In addition, it must be proved to the court "that the child has nothing to expect anymore from its [birth] parent or parents." (124) Therefore, if the bill is enacted, then there will be no distinction between heterosexual and homosexual couples seeking to adopt Dutch children. (125)

B. U.S. Legislative Proposals--Anti-Homosexual Backlash

As stated earlier, under the U.S. legal system, when there is no prohibitory legislation forbidding same-gender-parent adoptions, the courts theoretically have the legal authority to rule on these adoptions. However, if there is prohibitory language preventing same-gender co-parent adoptions, or language prohibiting gay and lesbian

persons from becoming adoptive parents, then the court must follow the legislative mandate, unless the adoption petitioners argue the legislation violates a constitutional provision. Although Vermont has enacted a statute that allows same-gender couples to adopt, (126) and three other states have considered similar legislation, (127) several state legislatures have proposed legislation specifically prohibiting homosexuals from adopting; (128) from 1997-1999, six states have introduced legislation that would restrict gay and lesbian adoptions. (129)

For example, in Texas, a state legislator introduced a bill that would prohibit the state from placing children in foster-care or adoptive homes if there is any homosexual activity occurring, or likely to occur, in the home. (130) In Utah, the Board of Child and Family Services, which is the state agency in charge of managing the care of children in state foster care, voted in January 1999 to restrict adoptions to married couples and single parents. (131) The decision specifically prohibits unmarried couples, polygamists, and homosexuals from adopting children in the state's foster-care program. (132) At the same time, the Arkansas Child Welfare Agency approved a regulation banning gays and lesbians from becoming foster parents. (133) Consequently, it appears that positive responses to gay and lesbian co-parent adoptions, within a

state's judicial branch, have resulted in opposite responses in the legislative branch, with the introduction of legislative proposals to prohibit same-gender parent adoptions altogether. (134)

If the prohibitory legislation passes, it is likely that lesbian and gay couples who want to adopt children will challenge the legislation in lawsuits seeking to strike down the state statutory prohibitions as violations of state or federal constitutional provisions. Such a suit was filed in New Jersey, in which two hundred unmarried couples sued the Division of Youth and Family Services challenging the state's policy of not approving adoptions requested by unmarried couples. The lawsuit was settled when the state of New Jersey entered into a court-approved consent decree, allowing unmarried heterosexual and homosexual couples to adopt children together. (135) Consequently, if there is prohibitive legislation enacted in the various states, then the legal battle will go back into the courts, but this time with constitutional arguments challenging state legislation.

V. COMPARISON AND ANALYSIS OF THE DUTCH AND U.S. LEGAL HISTORY CONCERNING SAME-GENDER CO-PARENT ADOPTIONS

At first glance, a comparison of the Dutch and U.S. legal history of lesbians and gay men attempting to become adoptive parents appears to contradict the general impressions about these two nations. The general impression is that the Netherlands is far more protective of the rights of lesbian and gay persons. For example, the Dutch Constitution Article 1 prohibits discrimination on any ground whatsoever, and the Netherlands allows same-gender partnership registration, (136) which is similar to civil marriages, in addition to having a national law that specifically forbids discrimination against lesbians and gay men. (137) Despite this legal history, however,

current Dutch law prohibits homosexual co-parents from adopting children that they have raised from birth. (138)

On the other hand, in the United States the majority of the state courts that have dealt with this issue have granted adoptions to lesbians and gay men as joint petitioners. (139) These adoptions have been granted in the absence of specific legislation allowing them, and the end result is that same-gender co-parent adoptions have exactly the same legal effect and application as adoptions granted to heterosexual married couples. (140) This means that the same-gender co-parent adoptions result in full parent-child relationships between the child and the adoptive parent (without severing the parent-child relationship with the legal parent), thereby resulting in the child becoming a legal heir of the adoptive parent; this includes the right to intestate inheritance from and through the adoptive parent. In the United States, even the birth certificate is changed, showing the child was born of two mothers or two fathers. (141)

Conversely, as the Dutch Government is following through with its promise to introduce legislation allowing same-gender couples to adopt children together, (142) the majority of the bills introduced in those U.S. states that have had bills concerning lesbian and gay parent adoptions attempt to halt the court decisions granting them. Consequently, completely opposite results appear to come about in each country's legislative and judicial branches. On the one hand, the courts in the United States have been far more accepting of gay and lesbian co-parent adoptions than the Dutch Supreme Court. On the other hand, the Dutch parliament is now on the verge of considering national legislation to allow same-gender co-parent adoptions at a time when state legislation is being introduced in several U.S. states to prohibit these adoptions. There are, however, logical explanations for these two contradictory phenomena.

A. Differences in Legal Systems

One of the more obvious reasons for the different outcomes in the courts of the Netherlands and the United States is the difference in their legal systems. Under the U.S. common-law system and history, courts may exercise the authority to create law in those areas in which the legislature has not legislated, or when the court finds that legislation is ambiguous. (143) Consequently, those courts that have granted the

same-gender co-parent adoptions have done so by relying on the lack of legislative prohibitions for same-gender co-parent adoptions and by applying the general legal principle of the best interests of the child in interpreting ambiguous statutory language. (144) However, in the civil-law system, courts are to apply parliamentary acts and, unless parliament has enacted authorizing legislation, the general rule is that the court is prohibited to "create" law where none exists. (145) In the civil-law system, law is created by and emanates from the legislative branch; a court must apply that legislation. (146) Given these different perspectives of the roles of the court, it is not surprising that the Dutch Supreme Court deferred to parliament, refusing to grant same-gender co-parent adoptions.

B. Differences in the Social Status of Homosexuals

The differences in the legislative responses in the Netherlands and the United States may also be easily explained by the social status of homosexuals within the two countries. As stated earlier, the Netherlands

has been far more liberal in recognizing and protecting the rights of lesbians and gay men. This started as early as 1810 when the Dutch adopted the French Criminal Code, thereby decriminalizing same-gender sexual conduct, (147) and in 1971 the Dutch Parliament adopted legislation making the legal age of consent for sexual contact the same for heterosexuals and homosexuals. (148) In 1983, an amendment of the Dutch Constitution included a general nondiscrimination clause, which has been interpreted to include discrimination based on sexual orientation. (149) Most significantly, in 1992, discrimination based on sexual orientation became a criminal offense in the Netherlands. (150)

In contrast, public opinion in the United States continues to be divided over homosexuality. In several states, same-gender sexual contact is still a crime; even in the very same states where the courts have granted same-gender co- parent adoptions. (151) Politically-conservative and fundamental-religious lobbying groups

have discovered that the average U.S. citizen's fear of homosexuality and the lack of education about homosexuality are useful tactics in advancing the conservative political agenda. (152) Consequently, in the state legislative arena, where legislators are likely to have uninformed opinions of lesbians and gay men, one finds there can be a strong anti-gay backlash, based on fear and stereotypical beliefs about homosexuality. (153)

On the other hand, the state courts that are granting gay and lesbian co-parent adoptions are doing so because the facts in the cases show that the adoptions are clearly in the best interests of the children involved. (154) Because the children in almost all of these cases have lived their entire lives with the persons requesting the adoptions, the children already view the second parent as a true parent in all respects. To deny the adoption would not alter the actual living arrangement of the child. In

fact, granting the adoption provides the child with another adult who would now be legally responsible for the child. In the United States, which has no nationalized health care and which is currently cutting back many forms of public assistance affecting children, to deny the adoption would be extremely detrimental to the child. To deny the adoption may deny the child a second parent who might be able to provide health insurance, child support, and a social-security pension that can be used to support the child in case the second parent dies or becomes disabled. In addition, the facts in these cases show a loving and caring couple, so the judges are not operating based on stereotypes of lesbians and gay men, but rather operating in the context of dedicated and caring parents, who have created a healthy and happy home for the children they are raising. (155) This explains why the majority of U.S. state courts are granting these adoptions, while state legislatures concurrently propose anti-gay legislation based on stereotypes and fears of homosexuality.

In the Netherlands, however, public opinion polls about homosexuality show that the majority of Dutch citizens believe in recognizing and protecting the rights of sexual minorities. (156) Therefore, because of these radically different social positions on the rights of homosexuals, it is not surprising that the Netherlands has a bill that proposes allowing same-gender co-parent adoptions while some U.S. state legislatures are introducing bills to prevent these adoptions.

C. Differences in the Social Status of Adoption

Perhaps a less obvious, but extremely influential, difference in the Dutch and U.S. responses to same-gender co-parent adoption is the difference in the social status of adoption itself. The Dutch have been late in enacting legislation recognizing same-gender co-parent adoption, and the Hoge Raad has not granted same-gender co-parent adoptions because, unlike the situation in the United States, adoption is not a favored institution in the Netherlands. For example, it would surprise most U.S. legal scholars to discover that adoption legislation was not enacted in the Netherlands until 1956. (157) In contrast, most adoption legislation was passed in the U.S. between the mid- and late 1800s, and yet U.S. legal scholars on adoption comment that adoption

is a "recent" addition to the U.S. legal system. (158) In the United States, the percentages of adoptions per-capita are far higher than in the Netherlands. For example, in the state of Kansas, which has a population of two and one half million people, the statistics in 1998 showed that two thousand adoptions were granted by the state courts. (159) In contrast, in the Netherlands, which has a population six times that of Kansas, there were only 1,048 adoptions granted in 1997. (160)

There are historical reasons for the contrasting views on the acceptability of adoption between the Netherlands and the United States. One of the historical reasons is the European tradition of placing children in apprenticeships at a very young age in order for the child to learn a trade. It did not matter if the child had biological parents or was an orphan. (161) The majority of children were placed outside their natural parents care and the thought of the master or mistress adopting the apprentice as his or her own child would never have been a consideration.

This system of putting out children never developed to the same extent in the United States, however. At a time when Europe was coping with overpopulation, famine, and intense competition for land and natural resources, the United States had abundant resources, except for a shortage of cheap labor. (162) Immigrant populations began to pour into the urban centers on the east coast. (163) During the mid-1880s, child-protection societies developed in urban areas with high immigrant populations, with the goal of caring for vagrant immigrant children. (164) Many of these children were sent on orphan trains to the western regions of the country, where labor was in short supply. (165) In addition, disease claimed the lives of many adults, leaving children without natural parents. (166) Their children were placed with older siblings, aunts, uncles, and other relatives or friends, who cared for them. (167) Because adoption was not recognized in the common law, the adults who wanted to adopt these children began to file private bills in the state and territorial legislatures, requesting private legislation granting the adoptions. Eventually, the legislatures enacted adoption legislation because the requests for private legislation evidenced a need for a statutory remedy. (168)

Litigation over the consequences of an adoption soon settled the issues of rights of inheritance and status of adoptive children. Although some courts initially were hesitant to grant co-equal inheritance rights to adoptive children if there were surviving biological children or other blood relatives, (169) a consensus was soon reached, perhaps because of the lack of competition for resources that adoptive children were to be treated the same as biological children. (170) Not only did the state legislatures amend the adoption laws to make this result clear, but inheritance statutes were also amended to include adopted children as lawful heirs. (171)

Another difference in present-day thinking that distinguishes the Netherlands from the United States is the difference in the foster-care system. Foster care in the Netherlands is the solution to caring for children whose parents are unable to care for them, even if the child stays with the foster parents for long periods of time. (172) The social policy behind U.S. foster care, however, was that it is a temporary placement until the child can be returned to the biological parents or the parental rights are terminated and the child is freed for adoption. (173) Consequently, placing the child with the parents or placing the child in an adoptive home relieves the government from having to pay for these children's care in foster homes. Permanent foster care has never been a popular solution in the United States because it would require continued government funding through taxpayer dollars to support such a system. As a result, there are over 100,000 children who are eligible for adoption in the United States, (174) whereas there are only fifty to one hundred Dutch children in that situation. (175) In the United States, the general acceptability of the legal fiction of adoption differs significantly from the position in the Netherlands, where it is unnecessary to sever biological ties of a child as long as the child is cared for, loved, and protected (and publicly supported) in foster care. (176)

There is another important and compelling reason why U.S. courts find that same-gender co-parent adoptions are in the best interests of the child. In many of the U.S. states, if a person is not a legal parent of a child, that person is treated, in the

eyes of the law, as a stranger to the child. (177) Even if that person is a de facto parent, no legal relationship, with rights of visitation or custody or obligations of support, can be recognized or enforced by the courts. (178) Dutch law, however, has the middle ground of granting joint parental authority to the co-parent. Although joint parental authority is inadequate to protect the co-parent and child relationship when compared to adoption, its availability under Dutch law provides at least some measure of protection in a same-gender co-parent situation. (179) In the United States, however, adoption is the only legal solution that can protect the psychological and emotional relationship that exists between the child and the nonbiological co-parent. Many of the courts granting same-gender co-parent adoptions specifically state this fact in their decisions. (180)

D. Differences in Underlying Assumptions About Family Law

Several analytical inconsistencies occur within the Dutch legal system, and in particular the Hoge Raad decision denying same-gender co-parent adoption, because the Dutch family-law system is premised on a mythical biological model of parent-child relationships. It appears that the Hoge Raad cannot conceptualize a family that does not follow the Raad's view of nature--that there must be one male parent and one female parent biologically connected to every child. (181) However, many areas of Dutch law do not attempt to determine the biological parentage of a child. (182) For example, when there is an "assumed" father, no blood tests are required, which in reality avoids actually confirming whether the man is truly the father. A married man and woman are presumed to be the parents of any child born during the marriage, with the real possibility that a nonbiological parent is recognized as the legal parent. Thus, in many instances, the concept of "parent" is based on a legal fiction. Consequently, it should not seem like an anomaly for the Dutch legal system

to recognize the reality of same-gender co-parenting--that the child is a member of a family, that the child has a parent-child relationship with both adults, and that the gender of the parents is irrelevant to the fact that a family exists.

Another concern about gay and lesbian co-parent adoptions, expressed in the Hoge Raad opinion, was that a child should be able to know his or her biological origin. (183) There is no denying that there is always a third person in the background of co-parent adoptions for both heterosexual and homosexual families. In both lesbian and gay households, the parents are cognizant of the fact that children may want to know who their mother or father is. Most children in gay or lesbian households, because they do not fit squarely into the typical model of "family," question their perceived differences. (184) Knowing these questions will surface, many gay and lesbian parents have prepared for the inevitable questions by trying to decide before conception or adoption how to explain their unique family situation, and in cases that do not involve anonymous sperm donors, parties decide how involved the other biological parent will be and how much information about the child will be shared with the other biological parent. (185) However, without the availability of co-parent adoption, there is some concern in the Dutch lesbian community that, if the alternative insemination is by a known sperm donor, the man may assert legal rights regarding the child.

Additionally, under present Dutch law there does not seem to be this same

concern for finding the origin of a child in a heterosexual family. (186) In fact, when heterosexual couples conceive through the use of alternative insemination, for example, many times this fact is kept secret. (187) In the situation of a child who has same-gender parents, in contrast, the child obviously will know that there was another person involved in his or her conception, whereas in the example of a heterosexual couple secretly relying on alternative insemination, the child may never know his or her true origin. Thus, in the situation of the heterosexual couple, the needs of the child to know his or her origin are subsumed and easily sacrificed. Consequently, it does not make sense to worry about the origin of children in same-gender parent families and to have a total lack of concern about a child's origin when the situation involves a heterosexual couple.

Interestingly, U.S. judges do not have the same conceptual problems concerning what constitutes a family. In the United States, the judges who grant same-gender co-parent adoptions consider these adoptions the same as any other adoption, having all the same legal consequences. (188) The long history of adoption in the United States has created a comfort level with accepting this legal fiction. (189) In fact, this acceptance is evidenced by the willingness of the courts to follow even the statutes that require the birth certificate of an adopted child be changed as a matter of public record. According to U.S. adoption law, the original birth certificate of an adoptive child is sealed and a new birth certificate is issued, showing the child to be the biological child of the adoptive parents. (190) In the case of birth certificates of children adopted by same-gender couples, the newly issued birth certificate actually states that the child was born to two women, in the case of lesbian co-parent adoptions, or born of two men, in the case of two men adopting a child together. (191) In addition, at least one court in California has issued a pre-birth decree that a child about to be born is the biological child of two women in a same-gender relationship. (192) In this case, the egg was donated by one of the women, inseminated from anonymous donor sperm by in vitro fertilization. The fertilized egg was then implanted where it gestated in the other woman. (193) In another case, a trial court in

Alaska entered an adoption decree that resulted in the child having three parents; the court maintained the parental rights of biological mother and father, who consented to the adoption, when the court granted the adoption petition of the biological mother's female partner. (194) Consequently, American judges are not confined nor constrained by the limits of biology.

One final Dutch assumption about family law that has been used to oppose same-gender co-parent adoptions is the argument that the best environment for raising children is one that includes a male and female role model. (195) However, this argument fails on several levels. First it ignores the reality of the children who are the subjects of the adoption petitions. These children are already well integrated into families that have same-gender parents. To deny the adoption because a child should have the role model of an opposite-gender parent does not provide the child with an opposite gender parent; instead it denies the child legal protections, and it ignores the emotional connection between this child and his or her second parent. It is obvious that denying same-gender co-parent adoptions will not prevent same- gender couples from having children together, but denying the adoptions does leave the children of these relationships in much more precarious situations, financially and emotionally. Another reason this argument fails is the reality that many children of heterosexual relationships are being raised by a single parent, with no opposite gender role model present in the home. It is discriminatory to deny same-gender co-parent adoptions based on this rationale since there is no guarantee that individuals in opposite-gender adoptions will stay together and continue to be involved in the child's life. It also should be pointed out that children have many adult role models in their lives, both male and female. It is unrealistic to think that parents are the only adults who can and do influence a child's development. Finally, the most compelling reason to reject this argument is that it is premised on gender stereotyping, which is a form of sex discrimination. That a male provides a certain role model and a female provides a different role model is founded on rigid notions of what it means to be a man or a woman, and this thinking narrows the possibilities for a child's future, rather than enhancing them.

VI. CONCLUSION

The recently proposed Dutch legislation that would allow same-gender co- parent adoptions steps away from the mythical biological model of parenthood and adopts a more child-centered approach, which also is found in the U.S. court decisions granting same-gender co-parent adoptions. The Dutch legislative proposal and the U.S. court decisions provide legal protection for the child and are based on the psychological and economic best interests of the child.

Recognizing same-gender co-parent adoptions means that the co-mothers or co- fathers have equal parental authority and responsibilities. Both parents will be financially responsible for the child, thereby reducing the chances that the state will have to supplement the raising of a child in economic terms. Not only will there be two parents financially responsible for the child, but the child can also inherit without the parents incurring the additional expense of hiring an attorney to assist them in drafting wills. The child will also be able to have not only the nationality of the birth mother, but also the nationality of the adopting

parent. In the event that the partnership ends, both parents will have equal custody and visitation rights. If one of the parents dies, the child, as long as he or she is a minor, can claim social- security benefits. With adoption, the child has a greater chance of being surrounded by extended family members who will care for and be an ongoing support system for the life of that child. Finally, and maybe most importantly, adoption provides legal protection for the reality of the child's life-the fact that this child does have two parents. (196)

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(1). See Barbara Kantrowitz, Gay Families Come Out, NEWSWEEK, Nov. 4, 1996, at 50. American "[e]stimates range from 6 million to 14 million children with at least one gay parent. Adoption agencies report more and more inquiries from prospective parents--especially men--who identify themselves as gay, and sperm banks say they're in the midst of what some call a 'gay by boom' propelled by lesbians." Id. Rock star Melissa Etheridge made headlines when she announced that she and her long-time domestic partner, Julie Cypher, were going to have a baby. Etheridge and Cypher have declined to reveal how the baby was conceived. Etheridge plans on adopting the baby after the birth. See Mark Miller, We're a Family and We Have Rights, NEWSWEEK, Nov. 4, 1996, at 54.

(2). See HANS WARMERDAN & ANNEMIES GORT, MEER DAN GEWENST: HANDBOEK VOOR LESBISCHE EN HOMOSEKSUELE OUDERS (1996).

(3). See Garry Cooper, Network Briefs, FAM. THERAPY NETWORKER, July-Aug. 1997, at 15.

(4). See A. BREWEAYS, DONOR INSEMINATION: FAMILY RELATIONSHIPS AND CHILD DEVELOPMENT IN LESBIAN AND HETEROSEXUAL FAMILIES (1997) (in which the book's general conclusion states that lesbian families do not raise their children differently from heterosexual families). Recently, at the Society for Research and Development on Child Development, papers were presented on studies of children in lesbian and non-lesbian homes. The studies were done in the United States, Britain, and the Netherlands. The findings showed there were no significant differences except in one aspect: "[ninety] percent of the lesbian [co-parents] took an active role in raising the children, while only about [thirty-seven] percent of the heterosexual fathers did the same." Cooper, supra note 3.

(5). For example, in cases of stepparent adoptions, the judge has the authority to waive certain statutory requirements, such as a social worker's report on the appropriateness of the adoptive home. See Mass. Ann. Laws ch. 210, § 5A (Law. Co-op. 1994). In other states, these reports may not be required at all in stepparent adoptions. See Ark. Code Ann. § 9-9- 212(c) (Michie 1993); Ind. Code Ann. § 31-19-7-1 (West Supp. 1997); Kan. Stat. Ann. § 59-2132(h) (1994); Mont. Code Ann. § 40-8-122(1) (1995); N.D. Cent. Code § 14-15-11(5) (1999).

(6). See statutes cited supra note 5. Between 1980 and 1990, stepparent adoptions of Dutch children have more than tripled, from 105 in 1980 to 357 in 1990. See NORA HOLTRUST, AAN MOEDERS KNIE: DE JURIDISCHE AFSTAMMINGSRELATIE TUSSEN MOEDER EN KIND 191, 205-10 (1993).

(7). For instance, in Alabama, subsidies are given after an adoption, see Ala. Code § 26-10-25 (1992); Florida says in its statute that "[t]he Legislature finds that 7 out of 10 children placed in foster care do not return to their biological families after the first year and that permanent homes could be found for many of these children if their status were reviewed periodically." Fla. Stat. Ann. § 39.45(1) (West 1988). Maryland states that one of its goals is to "encourage efforts at adoption of the child." Md. Code Ann. § 5-544 (1991) (Family Law). The Nebraska legislature states that "[t]he Legislature finds that there are children in temporary foster care situations who would benefit from the stability of adoption." Neb. Rev. Stat. § 43-155 (1993). Nevada is particularly concerned about special-needs children and states that it has a "fundamental interest in promoting adoption for children with special needs because the care, motional stability, and general support and encouragement required by such children can be best, and often only, obtained in family homes with a normal parent-child relationship." Nev. Rev. Stat. § 127.410, art. 1(b) (1995). See also Dutch Adoption Laws, Stb. 772 (Neth.) (1997); BW, art. 227-232 (Neth.) (1997) (allowing both unmarried heterosexual couples and single persons to adopt).

(8). In the United States, there are over 100,000 children who are eligible for adoption. See Proclamation No. 7145, 63 Fed. Reg. 59,203 (1998). "Preliminary reports from forty-two states for federal fiscal year 1998 project adoptions of at least 36,000 foster children, which includes increases of 7,859 over the average number of adoptions from the previous three years." Joe Kroll, 1998 U.S. Adoptions from Foster Care Projected to Exceed 36,000, ADOPTALK (N. Am. Council on Adoptable Child., St. Paul, Minn.), Winter, 1999 < http://members.aol.com/nacac/1998_Adoptions.html>. About 50 to 100 Dutch children are available for adoption each year. See DE GROTE ALMANAK VOOR INFORMATIE EN ADVIES 525 (Utrecht, NIZW, 1997) [hereinafter DE GROTE]; Kamerstukken II 1994/95, 22 700, nr. 5, p. 13. In 1996, 704 foreign-born children were adopted by Dutch citizens; in 1995, there were 661; and in 1994, only 594. See Persbericht Ministerie van Justitie, 13 maart 1997.

(9). Wet van 24 December 1997 tot herziening van het afstammingsrecht alsmede van de regeling van adoptie. See Dutch Adoption Laws, Stb. 772 (Neth.) (1997); BW, art. 227-232 (Neth.) (1997).

(10). The persons adopting must be 18 years older than the child, and the parents (the legal parents, not a donor or biological father who has not recognized the child) must consent to the adoption request. See Dutch Adoption Laws, Stb. 772 (Neth.) (1997); BW, art. 228 lid 1(c), (d) (Neth.) (1997). The criteria for adoptions by couples require that the couples have cohabited for three continuous years before the adoption request and that they have taken care of and brought up the child for at least one year. See Dutch Adoption Laws, Stb. 772 (Neth.) (1997); BW, art. 228 /.f. (Neth.) (1997). A single person must have taken care of and brought up the child for three continuous years before he or she can adopt. See Dutch Adoption Laws, Stb. 772 (Neth.) (1997); BW, art. 228 /.f. (Neth.) (1997).

(11). See Wijziging van Boek 1 van het Burgerlijk Wetboek [Amendment of Book 1 of the Civil Code, Adoption by Persons of the Same Sex]. See Kamerstukken II 1998-99, 26673 [Parliamentary Paper], nr. 2 [Legislative Proposal] and nr. 3 [Explanatory Memorandum], translated in Kees Waaldijk, Text of Dutch Bill and Explanatory Memorandum on Adoption by Persons of the Same Sex (July 8, 1999) <http://ruljis.leidenuniv.nl/user/cwaaldij/www/NHR/transl- adop.html> [hereinafter Waaldijk translation].

(12). "Co-parent" adoptions refer to those adoptions in which a person in a same-gender relationship who is not the legal parent of the child adopts his or her partner's child, without severing his or her partner's parental rights to the child.

(13). "Stranger" adoptions refer to those adoptions in which neither adoption petitioner is the legal parent of the child.

(14). See Kantrowitz, supra note 1; See also WARMERDAM & GORT, supra note 2.

(15). The term "alternative insemination" is used in place of "artificial insemination" because of the connotation of the word "artificial," which implies that the child conceived under this procedure is not real. "Alternative insemination" as used in this article refers to medically assisted alternative insemination as well as self-insemination.

(16). See Craig W. Christensen, Legal Ordering of Family Values: The Case of Gay and Lesbian Families, 18 CARDOZO L. REV. 1299, 1351 (1997).

(17). See cases cited infra notes 26-27 (for citations to the American cases). See also the Dutch case HR 5 September 1997, NJ 1998, 686, rek.nr. 8940.

(18). See Fla. Stat. Ann. § 63.042(3) (West 1985). New Hampshire also had a statute prohibiting homosexuals from adopting children, N.H. Rev. Stat. Ann. § 170-B:4 (1994). However, on May 3, 1999, the statute was repealed, H.B. No. 90, 1999 Sess. (N.H. 1999). The Florida statutory prohibition may be challengeable under a recent U.S. Supreme Court decision, Romer v. Evans, 517 U.S. 620 (1996), in which a Colorado law was declared unconstitutional. The Colorado law had the effect of prohibiting any discrimination protection for gays and lesbians; the Supreme Court found the law violated the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. See id. The American Civil Liberties Union is preparing a lawsuit in Florida to challenge the constitutionality of the Florida statute, see Joan Lowy, Resistance Organizes Nationwide Against Gays Adopting, Com. Appeal, Mar. 14, 1999, at A21, 1999 WL 4140884.

(19). In 1995, the Vermont legislature enacted specific legislation that allowed co-parent adoptions, but this was only after the Vermont Supreme Court had issued the decision of Adoptions of B.L.V.B. and E.L.V.B., 628 A.2d 1271 (Vt. 1993), which interpreted the prior Vermont adoption code in such a way as to permit same-gender co-parent adoptions. See Vt. Stat. Ann. tit. 15A § 1-102(b) (1999) which states: "If a family unit consists of a parent and the parent's partner, and adoption is in the best interest of the child, the partner of a parent may adopt a child of the parent. Termination of the parent's parental rights is unnecessary in an adoption under this subsection." Id.

(20). Kamerstukken II 1996/97, 22 770, nr. 22, p. 2. Verslag van een onderzoek naar de wetgeving inzake interlandelijke adoptie en toepassing daarvan in de praktijk in een aantal landen van herkomst en landen van ontvangst (Den Haag: Ministerie van Justitie, 1996), p. 19-29, 24-25. This quote misstates the status of the cases that have been decided in the U.S. state courts.

(21). To suggest that adoption petitions may not be filed by unmarried partners of the same or opposite sex because the legislature has only expressed a desire for these adoptions to occur in the traditional nuclear family constellation of the 1930's ignores the reality of what is happening in the population. Courts have long construed statutes to meet the changing needs of our growing society, providing the interpretation honors the inherent legislative purpose. See Matter of Camilla, 620 N.Y.S.2d 897, 902 (N.Y. Fam. Ct. 1994).

(22). This will remain the law of the state unless the legislature enacts legislation specifically prohibiting same-gender co-parent adoptions.

(23). A lower trial court's interpretation of a state statute must be followed by the parties in the case, but that interpretation does not apply in any other of the state's courts.

(24). A state appellate court's interpretation of a state statute becomes state-wide law, and the appellate court's ruling must be followed in all of that state's lower courts.

(25). See Colorado: In re Adoption of T.K.J. and K.A.K., Children, 931 P.2d 488 (Colo. Ct. App. 1996); Connecticut: In re Adoption of Baby Z, 724 A.2d 1035, (Conn. 1999); Wisconsin: In Interest of Angel Lace M., 516 N.W.2d 678 (Wis. 1994). There also have been two trial courts in Pennsylvania that have ruled against same-gender co-parent adoption petitions, In re Adoption of R.B.F. and R.C.F., PICS Case No. 98-2395 (Pa. C.P. Lancaster Oct. 22, 1998), available in <http://www.law.com/pa> (subscription required) and In re Adoption of C.C.G. and Z.C.G., PICS Case No. 99-1342 (Pa. C.P. Erie June 18, 1999), reported in Danielle Rodier, Another Setback for Same-Sex Parents' Rights, PA. L. WEEKLY, July 19, 1999. However, in another Pennsylvania trial court, the judge has granted a same-gender co-parent adoption petition. See In re Adoption of E.O.G. & A.S.G., 28 D. & C. 4th 262 (Pa. C.P. York 1993).

(26). See District of Columbia: In re M.M.D., 662 A.2d 837 (D.C. 1995); Illinois: In re Petition of K.M. and D.M., 653 N.E.2d 888, (Ill. App. 1995); Massachusetts: Adoption of Galen, 680 N.E.2d 70 (Mass. 1997), Adoption of Tammy, 619 N.E.2d 315 (Mass. 1993), Adoption of Susan, 619 N.E.2d 323 (Mass. 1993); New Jersey: In re Adoption of Two Children by H.N.R., 666 A.2d 535 (N.J. Super. 1995); New York: Matter of Jacob, 660 N.E.2d 397 (N.Y. 1995) (also involving Matter of Dana, which the court combined with Matter of Jacob); Vermont: Adoptions of B.L.V.B. and E.L.V.B., 628 A.2d 1271 (Vt. 1993).

(27). See Alaska: In re A.O.L. No. 1-JU-85-25-P/A (Alaska 1st Jud. Dist. July 23, 1985), In re Adoption of a Minor (C), No. 1-JU-86-73-P/A (Alaska 1st Jud. Dist. Feb. 6, 1987); California: In re Adoption of N.L.D., No. 18086 (Cal. Super. Ct. San Francisco Sept. 4, 1987), In re Adoption Petition of Achtenberg, No. AD 18490 (Cal. Super. Ct. San Francisco 1989), In re Adoption of Carol, No. 18573 (Cal. Super. Ct. San Francisco 1989), In re Adoption of Nancy M., No. 18744 (Cal. Super. Ct. San Francisco 1990); Emily Doskow reported being the attorney of record for more than 50 adoptions in the county courts of California in Adoption Options for Gay and Lesbian Couples: An Interview with Emily Doskow, 20 FAM. ADVOC. 40, 44 (1997) [hereinafter Adoption Options]; Indiana: In re Adoption of Hentgen-Moore, No. 91CO1-9405-AD-009 (Ind. Cir. Ct. White County Mar. 24, 1995); Oregon: In re Adoption of M.M.S.A., No. D8503-61930 (Or. Cir. Ct. Multnornah Sept. 4, 1985); Pennsylvania: In re Adoption of E.O.G. & A.S.G., 28 D. & C.4th 262 (Pa. C.P. York 1993); Texas: Suzanne Bryant reported an adoption in a Texas court, Suzanne Bryant, Second Parent Adoption: A Model Brief, 2 DUKE J. GENDER L. & POL'Y 233 n.a (1995); Washington: Interest of E.B.G. No. 87-5- 00137-5 (Wash. Super. Ct. Thurston Mar. 29, 1989), In re Adoption of Child A and Child B, No. 88-5-00088-9 (Wash. Super. Ct. 1988), In re Adoption of Child No. 1 and Child No. 2, No. 89-5-00067-7 (Wash. Super. Ct. Thurston 1989); John Stevenson reported an adoption in a Washington state court, John Stevenson, Judge Postpones Decision on Lesbian Custody: Lawyer Argues that N.C. "Public Policy" Invalidates Adoption, HERALD-SUN (DURHAM, N.C.), July 11, 1997, at C1.

Because most trial-court decisions are not published, an accurate number of how many states' trial courts have granted same-gender co-parent adoptions is difficult to obtain, particularly since adoption cases in many states are confidential. According to a 1996 report by the Lambda Legal Defense and Education Fund, courts in at least 21 states have granted same-gender co-parent adoptions. See John Cloud, A Different Fathers' Day, TIME, Dec. 29, 1997-Jan. 5, 1998, at 106.

(28). "A court will interpret words in the statute according to their usual or 'plain' meaning as understood by the general public." BLACK'S LAW DICTIONARY 796 (6th ed. 1991).

(29). See Eric S. Lasky, Note, Perplexing Problems with Plain Meaning, 27 HOFSTRA L.REV. 891, 897 (1999). "This literal meaning is determined by considering the dictionary meanings of the statute's words, supplemented by basic rules of grammar." Id.

(30). See id. at 922.

(31). See In re Adoption of T.K.J. and K.A.K., Children, 931 P.2d 488, 492 (Colo. Ct. App. 1996); In re Adoption of Baby Z, 724 A.2d 1035, 1047-48 (Conn. 1999); In Interest of Angel Lace M., 516 N.W.2d 678, 681-83 (Wis. 1994).

(32). See Conn. Gen. Stat. 45a-724-770 (1999).

(33). See Adoption of Baby Z, 724 A.2d at 1058-59.

(34). See id.

(35). See id. See also Adoption of T.K.J. and K.A.K., 931 P.2d at 488; In Interest of Angel Lace M, 516 N.W.2d at 678.

(36). Conn. Gen. Stat. § 45a-764 (1999). See also Adoption of Baby Z, 724 A.2d at 1047.

(37). "The members of our legislature, as elected representatives of the people, have the power and responsibility to establish the requirements for adoption in this state. The courts simply cannot play that role." Adoption of Baby Z, 724 A.2d at 1060. "The determination whether this legislative decision is or is not in keeping with the changing social mores of the public at large is the role of the democratic process and not of the courts." Adoption of T.K.J. and K.A.K., 931 P.2d at 496.

> I write separately only to encourage the Wisconsin legislature to visit ch. 48 in light of all that is occurring with children in our society. The legislators, as representatives of the people of this state, have both the right and the responsibility to establish the requirements for a legal adoption, for custody and for visitation. This court cannot play that role. We can only interpret the law, not rewrite it.

In Interest of Angel Lace M., 516 N.W.2d at 687 (Geske, J., concurring).

(38). "In the present case, everyone involved agrees that the adoption is in Angel's best interests." In Interest of Angel Lace M., 516 N.W.2d at 688 (Heffernan, C.J., dissenting). "We recognize that all the child care experts involved in this case have concluded that the proposed adoption would be in Baby Z's best interests." Adoption of Baby Z, 724 A.2d at 1060.

(39). See Adoption of Baby Z, 724 A.2d at 1064; Adoption of T.K.J. and K.A.K., 931 P.2d at 488; In Interest of Angel Lace M., 516 N.W.2d at 687.

(40). In Interest of Angel Lace M., 516 N.W.2d at 687 (Heffernan, C.J., dissenting).

(41). Adoption of Baby Z, 724 A.2d at 1068 (Berdon, J., dissenting).

(42). Adoption of T.K.J. and K.A.K., 931 P.2d at 497 (Ruland, J., specially concurring).

(43). Id.

(44). See cases cited supra notes 26-27.

(45). See Matter of Jacob, 660 N.E.2d 397 (N.Y. 1995); Adoptions of B.L.V.B. and E.L.V.B., 628 A.2d 1271 (Vt. 1993).

(46). Id.

(47). UNIF. ADOPTION ACT § 4-102 (1994) (Standing to Adopt Minor Stepchild), U.L.A. Comment, 1999 Main Volume. The Uniform Adoption Act was proposed by the National Conference of Commissioners on Uniform State Laws in 1994. The Uniform Adoption Act does not have the force of law, but is the National Conference's proposal of what its committee members believe a model code for adoption should include. Legislatures in the United States can enact the Uniform Adoption Act as law if the majority of legislators vote in favor of the Uniform Act.

(48).

> In addition to permitting individuals who are within the formal definition of "stepparent" to adopt a minor stepchild under this Article, Section 4-102 allows an individual who is a de facto stepparent, but is not, or is no longer, married to the custodial parent, to adopt as if he or she were a de jure stepparent. To file a petition under this Article, the de facto stepparent or "second parent" has to have the consent of the court and the custodial parent, whose parental rights will not be terminated by an adoption under this Article. In addition, for the court to grant the petition, the other requirements of this Article have to be met, including the court's determination that the adoption is in the minor adoptee's best interests. See, e.g., Adoption of B.L.V.B., 628 A.2d 1271 (Vt. 1993) (de facto stepmother allowed to adopt her unmarried partner's biological children because it "serves no legitimate state interest" to deny the children "the security of a legally recognized relationship with their second parent"). See similar analysis in Matter of Evan, 153 Misc.2d 844, 583 N.Y.S.2d 997 (Surr. 1992).

UNIF. ADOPTION ACT § 4-102 (1994) (Standing to Adopt Minor Stepchild), U.L.A. Comment, 1999 Main Volume.

(49). See In re M.M.D., 662 A.2d 837, 845-49 (D.C. 1995).

(50). See Matter of Jacob, 660 N.E.2d at 397, in which the court stated "[t]his profound concern for the child's welfare is reflected in the statutory language itself: when 'satisfied that the best interests of the ... child will be promoted thereby,' a court 'shall make an order approving the adoption. (Domestic Relations Law, 114)." Id. at 399.

(51). See Adoptions of B.L.V.B. and E.L.V.B., 628 A.2d 1271 (Vt. 1993), in which the court stated, "[i]n interpreting Vermont's adoption statutes, we are mindful that the state's primary concern is to promote the welfare of children, and that application of the statutes should implement that purpose." Id. at 1273 (footnotes omitted).

(52). See the following highest-appellate-court opinions in the states of Vermont, New York, and Massachusetts: Adoptions of B.L.V.B. and E.L.V.B., 628 A.2d at 1271; Matter of Jacob, 660 N.E.2d at 397, Adoption of Galen, 680 N.E.2d 70 (Mass. 1997), and Adoption of Tammy, 619 N.E.2d 315 (Mass. 1993).

(53). Adoptions of B.L.V.B. and E.L.V.B., 628 A.2d at 1274-76. Contrary to the American courts, the Dutch courts do not truly look at the best interest of the child in every situation. See HR 5 September 1997, NJ 1998, 686, rek.nr. 8940.

(54). Matter of Jacob, 660 N.E.2d at 397 (citations omitted).

(55). Id. "G.M. and P.I. [co-parents] have shared parenting responsibilities since Dana's birth and have arranged their separate work schedules around her needs." Id.

> For some time prior to the birth of Galen, Nancy and Laura planned together for one of them to have a child, and in 1995 Galen was conceived by Nancy from an anonymous donor from

> California .... The petitioners share all parenting responsibilities, including all decisions concerning Galen's health, education, and welfare.

Adoption of Galen, 680 N.E.2d at 71.

> For several years prior to the birth of Tammy, Helen and Susan planned to have a child .... Susan successfully conceived a child through artificial insemination .... Since her birth, Tammy has lived with and been raised and supported by, Helen and Susan. Tammy views both women as her parents, calling Helen "mama" and Susan "mommy." Tammy has strong emotional and psychological bonds with both Helen and Susan .... Both women jointly and equally participate in parenting Tammy ...

Adoption of Tammy, 619 N.E.2d at 316.

(56). "In July 1996, Nancy was not working so that she could be at home with Galen, and Laura financially supported both Nancy and Galen." Adoption of Galen, 680 N.E.2d at 71.

(57). Cooper, supra note 3.

(58). The least strong family structures in the Minnesota study were co- habiting unmarried heterosexual couples, especially when there were children present in the home. The researchers hypothesized as follows:

> The strength of the gay/lesbian families is striking, particularly in contrast to those heterosexual couples who are cohabiting. While neither group is legally married, their results in terms of family strength are at opposite ends of the spectrum. Perhaps same-sex couples, in their struggle to adapt in a relatively hostile culture, have developed certain strengths- better communication skills or support systems, for example.

Judy Watson Tiesel, Minnesota Family Strength Project, Research Summary, at 5 (John Everett Till, ed. 1997, 1999) (on file with the authors). The full report is available at Family and Children's Service, 414 South Eighth Street, Minneapolis, MN 55404-1081; the telephone number is 612-341-1611.

(59). For example, compare Kan. Stat. Ann. § 59-2112(b) and (c), which define agency adoptions and independent adoptions, with Kan. Stat. Ann. § 59-2112(d), which defines stepparent adoptions.

(60). See Dutch Adoption Laws, Stb. 772 (Neth.) (1997), BW, art. 227-228 (Neth.) (1997). Unmarried opposite-gender couples also can adopt.

(61). I.R.C. 23 (CCH 1997) provides a tax credit up to $5,000 ($6,000 in the case of a child with special-needs) for "qualified adoption expenses" that include reasonable and necessary adoption fees, court costs, attorney fees, and other expenses. In addition, several states offer subsidies for adopting special needs children. For example, see Kan. Stat. Ann. § 38-319 et seq. (1993), the Adoption Support Act, which gives the Secretary of Social and Rehabilitation Services the discretion to provide either a lump sum payment or continuing financial assistance to families who adopt a "hard-to-place" child. A child may be considered hard to place due to age, racial or ethnic background, mental, emotional, or physical handicap, or because the child is part of a sibling group. Factors to be considered in setting the amount of payment include the size of the family, the usual living expenses of the family, the special needs of any family member, and the family income.

Stranger adoption is not encouraged in the Netherlands mainly because there are few Dutch children available for adoption. See DE GROTE, supra note 8. Most Dutch children who might be considered for adoption are placed in foster care. See HOLTRUST, supra note 6. If opposite-gender Dutch people want to adopt, they look for children born in "Third World" countries. See DE GROTE, supra note 8. Added to the burden of adoption by same-gender couples, it is the assumption by Dutch officials that Third World countries would refuse to allow adoption if they were aware that the parents are gays or lesbians. See

Kamerstukken II 1996/97, 22700, nr. 22, p. 3; Kamerstukken II 1997/98, 22700, nr. 23, p. 4; DE GROTE, supra note 8; and Kamerstukken II 1994/95, pp. 6-8.

(62). In re Adoption of Charles B., 552 N.E.2d 884, 886 (Ohio 1990). See also In re M.M.D., 662 A.2d 837 (D.C. 1995) and In re Petition for Adoption of a Minor Child, No. A-8-94 (D.C. Super. Ct. May 4, 1995) (appendix to In re M.M.D.); Elaine Herscher, AIDS Child with 2 Lesbian Moms/How Couple Fought State for Adoption, S.F. CHRON., Nov. 27, 1989, at A8; Adoption Options, supra note 27; Cloud, supra note 27, which reported an adoption of a foster child by two gay men; and Karen Buckelew, Lesbian Adoption Ignites Protest, DAILY RECORD (BALTIMORE, MD), Jan. 13, 1999, which reported an adoption of twins by two lesbians.

(63). Ala. Code. § 26-10A-5 (1996); Alaska Stat. § 25.23.020(2) (Michie 1996); Ariz. Rev. Stat. Ann. § 8-103 (West 1997); Ark. Code Ann. § 9-9-204(2) (Michie 1995); Cal. Fam. Code § 8601 (West 1994); Colo. Rev. Stat. Ann. § 19-5-202(1) (West 1997); Del. Code Ann. tit. 13, § 903 (1996); D.C. Code Ann. § 16-302 (1997); Fla. Stat. Ann. § 63.042(b) (West 1997); Ga. Code Ann. § 19-8-3(a) (1997); Haw. Rev. Stat. Ann. § 578-1 (Michie 1996); Idaho Code § 16-1501 (1997); 750 Ill. Comp. Stat. Ann. 50/2 (West 1997); Ind. Code Ann. § 31-3-1-1 (West 1997); Iowa Code Ann. § 600.4 (West 1997); Kan. Stat. Ann. § 59-2113 (1996); Ky. Rev. Stat. Ann. § 199.470(1) (Michie 1997); La. Civ. Code Ann. art. 1198 (West 1997); Me. Rev. Stat. Ann. tit. 19, § 531 (West 1981); Md. Code Ann., Fam. Law § 5-309 (1996); Mass. Gen. Laws Ann. ch. 210, § 1 (West 1997); Mich. Comp. Laws Ann. § 710.24 (West 1997); Minn. Stat. Ann. § 259.22 (West 1997); Miss. Code Ann. § 93-17-3 (1996); Mo. Ann. Stat. § 453.010 (West 1997); Mont. Code Ann. § 40-8-106 (1996); Neb. Rev. Stat. § 43-101 (1996); Nev. Rev. Stat. § 127.030 (1995); N.H. Rev. Stat. Ann. § 170-B:4 (1995); N.J. Stat. Ann. § 9:3-43 (West Supp. 1997); N.M. Stat. Ann. § 32A-5-11 (Michie 1997); N.Y. Dom. Rel. Law § 110 (McKinney 1997); N.C. Gen. Stat. § 48-1-103 (1996); N.D. Cent. Code § 14-15-03 (1997); Ohio Rev. Code Ann. § 3107.03 (West 1997); Okla. Stat. Ann. tit. 10, § 60.3 (West 1997); Or. Rev. Stat. § 109.309 (1996); 23 Pa. Cons. Stat. Ann. § 2312 (West 1997); R.I. Gen. Laws § 15-7-4 (1996); S.C. Code Ann. § 20-7-1670 (Law. Co-op. 1996); S.D. Codified Laws § 25-6-2 (Michie 1997); Tenn. Code Ann. § 36-1-115 (1996); Tex. Fam. Code Ann. § 162.001 (West 1997); Utah Code Ann. § 78-30-1 (1997); Vt. Stat. Ann. tit. 15A, § 1-102 (1996); Va. Code Ann. § 63.1-221 (Michie 1997); Wash. Rev. Code Ann. § 26.33.140 (West 1997); W. Va. Code § 48-4-2 (1997); Wis. Stat. Ann. § 48.82 (West 1997); Wyo. Stat. Ann. § 1-22-104(B) (Michie 1997). Some of the adoption statutes have allowed single persons to adopt children since the first enactment of adoption codes in the United States. For example, in 1895 the U.S. Congress enacted an adoption code that specifically allowed a single person to file a petition for adoption. See Law of Feb. 26, 1895, ch. 134, 28 Stat. 687.

(64). See Kroll, supra note 8.

(65). See Adoption of Charles B., 552 N.E.2d at 884.

(66). See In re Adoption of Charles B., 535 N.E.2d 311 (Ohio Ct. App. 1989). As stated earlier, only one state's adoption code prohibits homosexuals from adopting. See statutes cited supra note 18.

(67). See Adoption of Charles B., 552 N.E.2d at 884.

(68). Id. See also Ohio Rev. Code Ann. § 3107.03(B) (West 1995).

(69). Ohio Rev. Code Ann. § 3107.02(A) (West 1995).

(70). See Adoption of Charles B., 552 N.E.2d at 886.

(71). Id.

(72). See id. at 884-85, 887. At the time Mr. B. filed his petition to adopt Charles B., the boy had been in four different foster-care homes and all of the married couples chosen as potential adoptive parents by the County Department of Human Resources demonstrated a lack of commitment to adopting Charles.

(73). Id. at 885.

(74). Id. at 889 (citing In State, ex rel. Portage Cty. Welfare Dept., v. Summers, 311 N.E.2d 6, 13 (Ohio 1974)).

(75). See Herscher, supra note 62, at A8. Interestingly, some state agencies that regulate adoptions have established guidelines stating unmarried persons will not be recommended as adoptive parents, even though the state statutes specifically provide that a single person can file a petition for adoption. In California, for example, the Department of Social Services had a policy against recommending single persons as adoptive parents. However, if the facts show that the adoption is in the best interests of the child, the recommendation will set out the evidence that supports the adoption, even though the final recommendation is against the adoption because the state agency has a policy against recommending adoptions to unmarried people. Invariably, the court grants these adoptions, despite the Department's recommendation against them, using the agency's favorable factual evidence to support the adoption. See Adoption Options, supra note 27. The Department of Social Services, under the current administration of California Governor Gray Davis changed this policy in November of 1999. Elaine Herscher, At Long Last, They Are Family, State permits adoptions by unmarried couples, S.F. CHRON., Jan. 11, 2000.

(76). See In re M.M.D., 662 A.2d 837 (D.C. 1995) and In re Petition for Adoption of a Minor Child, No. A-8-94 (D.C. Super. Ct. May 4, 1995) (appendix to In re M.M.D.). See also Cloud, supra note 27, which reported an adoption of a foster child by two gay men, and Buckelew, supra note 62, which reported an adoption of twins by two lesbians.

(77). For example, in a case that authorized the adoption of a two-year- old girl by two gay men, the Court of Appeals for the District of Columbia ruled as follows: "unmarried couples, whether same-sex or opposite-sex, who are living together in a committed personal relationship, are eligible to file petitions for adoption under D.C. Code § 1-305. We so hold." In re M.M.D, 662 A.2d at 863. See also Adoption Options, supra note 27, at 45.

One of the main arguments against adoption by homosexuals is that the child will also adopt the sexual orientation of the parent. This myth has been refuted in scientific studies. "There are few, if any, data pointing to a role- modeling influence of a parent's homosexual orientation on the sexual orientation of a child. It may appear facile, but nevertheless is accurate, to state that nearly all homosexuals had heterosexual parents." Richard Green et al., Lesbian Mothers and Their Children: A Comparison with Solo Parent Heterosexual Mothers and Their Children, 15 ARCHIVES SEXUAL BEHAV. 2, 167 (1986). Another argument against homosexual adoptions is that the child will be stigmatized by other children and teased. A counter-argument is:

> almost all children experience being different from others in one way or another. That sensation can be valuable or traumatizing or, occasionally, both. Many children today, for example, live in divorced, bi-racial, or single-parent families; alternately, their families may be culturally, ethnically, religiously, or physically different from those of classmates and neighbors. There can be no question that such children will be teased by playmates. Teasing is what children do .... Perhaps, in fact, fostering respect for diversity can come to be seen as an important task for government, social welfare organizations, schools, churches, and, indeed, for society itself.

WENDELL RICKETTS & ROBERTA ACHTENBERG, HOMOSEXUALITY AND FAMILY RELATIONS 90 (Frederick Bozett & Marvin Sussman eds., 1990). See also Palmore v. Sidoti, 466 U.S. 429, 432 (1984) in which the U.S. Supreme Court overturned a Florida court's decision to switch child custody to a white child's father after the mother married a black man, on the assumption that the child would suffer harassment based on her mother's marriage. The Court said that:

> There is a risk that a child living with a stepparent of a different racemay be subject to a variety of pressures and stresses not present if the child were living with parents of the same racial or ethnic origin.
>
> The question, however, is whether the reality of private biases and the possible injury they might inflict are permissible considerations for removal of an infant child from the custody of its natural mother. We have little difficulty concluding they are not.

Id. at 433.

(78). See HR 5 September 1997, NJ 1998, 686, rek.nr. 8940.

(79). The Hoge Raad is comparable to the United States Supreme Court.

(80). The donor father, in the presence of a lawyer known as a notaris (civil-law notary), signed an agreement between the donor and the petitioners stating that the donor would not exercise any rights nor have any duties regarding the children. See HR 5 September 1997, NJ 1998, 686, rek.nr. 8940.

(81). See Eur. Conv. on H.R., art. 8. In 1994, the European Parliament passed a resolution which calls for an end to the unequal treatment of homosexuals relating to the legal and administrative provisions of the social- security system, adoption laws, laws on inheritance, housing, criminal law, and any other legal provisions. See Resolution on Equal Rights for Homosexuals and Lesbians in the European Community 61/40, 1994 O.J. (C A3-0028/94).

(82). See Eur. Conv. on H.R., arts. 8, 12.

(83). See HR 5 September 1997, NJ 1998, 686, rek.nr. 8940; see also Eur. Conv. on H.R., art. 14.

(84). "The determination whether this legislative decision is or is not in keeping with the changing social mores of the public at large is the role of the democratic process and not of the courts." In re Adoption of T.K.J. and K.A.K., 931 P.2d 488, 497 (Colo. Ct. App. 1996).

> I write separately only to encourage the Wisconsin legislature to visit ch. 48 in light of all that is occurring with children in our society. The legislators, as representatives of the people of this state, have both the right and the responsibility to establish the requirements for a legal adoption, for custody and for visitation. This court cannot play that role. We can only interpret the law, not rewrite it.

In Interst of Angel Lace M., 516 N.W.2d 678, 688 (Wis. 1994) (Geske, J., concurring).

(85). HR 5 September 1997, NJ 1998, 686, rek.nr. 8940.

(86). The Hoge Raad created joint parental authority for divorced parents; HR 4 mei 1984, NJ 1985, 510. The Hoge Raad allowed joint parental authority for nonmarried parents; HR 21 maart 1986, NJ 1986, 585.

(87). This may seem contrary to the concept that there is no judicial review in civil-law countries. In many ways, the Dutch do practice a limited form of judicial review, of which the previously cited cases are examples. See HR 21 maart 1986, NJ 1986, 585.

(88). See Wet van 24 December 1997 tot herziening van het afstammingsrecht alsmede van de regeling van adoptie, Stb. 772 (Neth.) (1997), BW, art. 251 lid 2 (Neth.) (1997).

(89). "If the international fundamental rights that are directly applicable are invoked, it is the task (and the duty) of the Supreme Court to pronounce a judgment on this." Elsbeth Boor, Noot, Rechtspraak-Nr. 833 HR 5 September 1997, 14 NEMESIS 1, 22 (1998) (Duck Obbink trans., 1998). See also HR 5 September 1997, NJ 1998, 686, rek.nr. 8940.

(90). HR 5 September 1997, NJ 1998, 686, rek.nr. 8940.

(91). Id.

(92). See BW, art. 228 lid 1 sub d (Neth.) (1997).

(93). See BW, art. 229 lid 1 (Neth.) (1997).

(94). See HR 5 September 1997, NJ 1998, 686, rek.nr. 8940. See also Boor, supra note 89; Frieda van Vliet, Van achterdeur naar zij-ingang: Commissie Kortmann en gelijkgeslachtelijke leefvormen, 14 NEMESIS 1, 13 (1998).

(95). See HR 5 September 1997, NJ 1998, 686, rek.nr. 8940.

(96). Id.

(97). RVD/Directie Voorlichting, 13 November 1998. See Waaldijk translation, supra note 11.

(98). See BW, art. 227 lid 2 (Neth.) (1997).

(99). See BW, art. 228 lid 1 sub f (Neth.) (1997).

(100). See STATUUT NED. Art. 1 (Neth. Const.).

(101). See Notitie Gezin: De maatschappelijke positie van het gezin 5 (Rijswijk: Ministerie van Volksgezondheid, Welzijn en Sport [Ministry of Public Health, Welfare and Sports]) (1996). This position appears to grant complete protection to Dutch lesbian and gay families. Because the law does not detail any specific legal protection, however, these rights are nebulous.

(102). Under BW, art. 227 lid 1 (Neth.) (1997) homosexual persons are not excluded. There is nothing in this legislation specifically prohibiting gay and lesbian single persons from adopting. See Dutch Adoption Laws, Stb. 772 (Neth.) (1997), BW, art. 277 lid 1 (Neth.) (1997). There are several criteria for adoptions by single individuals or heterosexual unmarried couples. See statutes and code sections cited supra note 10.

(103). See Wet van 24 December 1997 tot herziening van het afstammingsrecht alsmede van de regeling van adoptie. See also Stb. 772 (Neth.) (1997), BW, art. 227 (Neth.) (1997).

(104). See Wet van 30 Oktober 1997 tot wijziging van, onder meer, Boek 1 van het Burgerlijk Wetboek in verband met de invoering van gezamenlijk gezag voor een ouder en zijn partner en gezamenlijke voogdij. See Stb. 506 (Neth.) (1997). See generally Ineke de Hondt, Niet Trouwen, wel Kinderen: Juridische Aspecten van het Ongehuwd Ouderschap 48-57, 82-85 (Den Haag: VUGA, 1998). If a child is born to a heterosexual couple, the authority is assumed. However, for homosexual couples, there is an additional expense to gain this right because they must consult with an attorney who drafts the legal papers that are necessary to obtain these rights. See S.F.M. Wortmann, Als een eigen kind: Rede uitgesproken bij de aanvaarding van het ambt van bijzonder hoogleraar in het personen-, familie- en jeugdrecht aan de Rijksuniversiteit Groningen 17-18 (Den Haag: 1998).

(105). See BW, art. 253w (Neth.) (1997).

(106). See BW, art. 253t lid 5 (Neth.) (1997).

(107). See BW, srt. 6 lid 1, sub d van het voorstel van wet houdende wijziging van de Rijkswet op het Nederlanderschap met betrekking tot de verkrijging, de verlening en het verlies van het Nederlanderschap (Kamerstukken II 1997/98, 25891,nrs. 1-3).

(108). See Wortmann, supra note 104, at 18. If the couple separates, the non-legal co-parent must request visitation and there is no presumption that the co-parent should be granted visitation (BW, art. 377f) whereas the legal father, if there is one, has a legally recognized right of visitation (BW, art. 377a). Further, the legal mother must inform the legal father, if there is one, of all major decisions she makes concerning the child, such as choices regarding the child's religion (BW, arts. 377b, c). However, the legal mother in a joint-parental-authority situation does not have to inform the separated non-legal co-parent of these decisions.

(109). Els van Blokland, Zorg, gezag en ouderschap: Wetsvoorstellen afstammingsrecht en gezamenlijk gezag, 13 NEMESIS 3, 85 (1997). The title of paragraph 3A of the Burgerlijk Wetboek (Civil Code) reads "Gezamenlijk gezag van een ouder met een ander dan een ouder." (Joint parental authority of a parent with a person other than a parent).

(110). See van Blokland, supra note 109.

(111). See BW, arts. 4:879 juncto 251, 252 (Neth.) (1997).

(112). If the child is named in the co-parent's will, however, the child will be treated as the co-parent's child for inheritance-tax purposes.

(113). See BW, art. 252w (Neth.) (1997), See also Wortmann, supra note 104, at 15-16. Parents will be financially responsible until the child is 21 years of age but they only have parental authority until the child is 18 years of age.

(114). The State Secretary did say, however, that in adoption proceedings, the best interest of the child should be the primary focus, not the nature of the domestic situation. Logically, this means that the gender of the adopting co-parent should be irrelevant. See Rapport over ouderschap en partnerschap 41 (1996).

(115). Id.

(116). Commissie inzake openstelling van het burgerlijk huwelijk voor personen van hetzelfde geslacht. See Rapport (Den Haag, Oktober 1997). This committee is known as the Kortmann Committee because it is named after its Chairperson, Professor S.C.J.J. Kortmann.

(117). See id. at 9

(118). See id.

(119). Unmarried heterosexual couples are also allowed to register. See Stb. 324 (Neth.) (1997).

(120). There are some differences. If a Dutch female citizen meets a man on holiday in a foreign country and marries him there, Dutch law recognizes that marriage. If the person she meets is a woman, she cannot register the partnership without the foreigner getting a permit. See id. See also BW, art. 80a lid 2 (Neth.) (1997). Also, opposite-sex couples can be married in church. In addition, registered partnerships can be ended without seeking the permission of a court; opposite-sex marriages can only be annulled through court proceedings. See Stb. 324 (Neth.) (1997).

(121). See BW, art. 227 (Neth.) (1997). Also, Dutch homosexuals cannot adopt foreign children. See Wet van 8 December 1988, houdende regelen inzake de opneming in Nederland van buitenlandse pleegkinderen met het oog op adoptie (Wet opneming buitenlandse pleegkinderen), Stb. 566 (Neth.) (1988).

(122). See Wijziging van Boek 1 van het Burgerlijk Wetboek [Amendment of Book 1 of the Civil Code, Adoption by Persons of the Same Sex]. See Kamerstukken II 1998-99, 26673 [Parliamentary Paper], nr. 2 (voorstel van wet) [Legislative Proposal] and nr. 3 (memorie van toelichting) [Explanatory Memorandum], Waaldijk translation, supra note 11.

(123). See Kamerstukken II 1998-99, 26673 [Parliamentary Paper], nr. 2 (voorstel van wet) [Legislative Proposal] and nr. 3 (memorie van toelichting) [Explanatory Memorandum], Waaldijk translation, supra note 11.

(124). Id.

(125). However, there is an exception in the area of foreign adoptions. Under the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, which was adopted by the Hague Conference on Private International Law, foreign or intercountry adoptions are allowed only if the couples are married, although one person, regardless of whether he or she is single or in a relationship, may also adopt under the provisions of the Convention. This Convention was adopted by the Netherlands on October 1, 1998.

(126). See Vt. Stat. Ann. tit. 15 § 1-102(b) (1999).

(127). New Hampshire had a statute prohibiting homosexuals from adopting children. See N.H. Rev. Stat. Ann. § 170-B:4 (1994). However, on May 3, 1999, the statute was repealed. See H.B. No. 90, 1999 (N.H. 1999). A bill was introduced in Arkansas that would have prohibited discrimination based on sexual orientation when an agency placed a child for adoption and when an adoption petition was presented to the court. See H.B. No. 1933, 82nd Gen. Assembly (Ark. 1999). This bill was introduced because the Arkansas Child Welfare Agency adopted a policy prohibiting the placement of foster-care children with homosexuals. The bill died in committee on March 12, 1999. See Lowy, supra note 18. A bill has been recently introduced in the Connecticut legislature to allow unmarried persons to adopt, in response to the court's decision in In re Adoption of Baby Z, 724 A.2d 1035 (Conn. 1999), in which the Connecticut Supreme Court interpreted the Connecticut adoption statutes as not allowing unmarried persons to adopt children together.

(128). See Lowy, supra note 18; see also statutes cited supra note 18.

(129). According to the American Civil Liberties Union, in the 1997-98 legislative year, bills that would prohibit gays and lesbians, or same-gender couples, from adopting were introduced, but not passed, in Georgia, Missouri, and Oklahoma. See <http://www.aclu.org/issues/gay/docket98.html>. In the 1998-99 legislative year, similar bills have been introduced in Alabama, Indiana, H.B. No. 1055, 111th Leg. 1st Sess. (Ind. 1999) and Texas, H.B. Nos. 382, 1181, 76(R) Leg. (Tex. 1999).

(130). "If the department or other state entity is the managing conservator of a child, the department or other state entity may not place the child in an adoptive home in which homosexual conduct occurs or is likely to occur." H.B. No. 382, 76(R) Leg. (Tex. 1999).

(131). See Lowy, supra note 18; see also statutes cited supra note 18.

(132). See Lowy, supra note 18.

(133). A bill was introduced in the Arkansas legislature to reverse this agency regulation. The bill would have prohibited sexual-orientation discrimination in placing children for adoption or in foster care, but the bill died in committee, failing to obtain committee approval by one vote. See id.

(134). In Connecticut, however, the opposite response occurred when the court decided that unmarried persons could not adopt together. There is now a bill before the Connecticut legislature to allow unmarried couples to adopt, in response to In re Adoption of Baby Z, 724 A.2d 1035 (Conn. 1999), which found the Connecticut adoption code did not allow unmarried couples to adopt together.

(135). See Cloud, supra note 27.

(136). See Wet van 5 juli 1997 tot wijziging van Boek 1 van het Burgerlijk Wetboek en van het Wetboek van Burgerlijke Rechtsvordering in verband met opneming daarin van bepalingen voor het geregistreerd partnerschap. See Stb. 324 (Neth.) (1997).

(137). See Equal Treatment Act, Stb. 230 (Neth.) (1994) (Algemene wet gelijke behandeling, Wet van 2 maart 1994). Various U.S. states and cities also protect lesbians and gay men from discrimination. See Ky. Rev. Stat. Ann. § 304.12-013(5) (Michie 1995) (sexual orientation cannot be considered a factor in granting health insurance); Minn. Stat. Ann. § 363.12 (1991) (sexual orientation discrimination is against state policy); N.J. Stat. Ann. § 10:5- 4 et seq. (West 1993) (sexual orientation discrimination is prohibited in considerations for housing, employment, accommodations); N.M. Stat. Ann. § 24-6A-6 (Michie 1995) (sexual orientation cannot be a consideration for determining which individuals should receive organ transplants).

(138). See Stb. 772 (Neth.) (1997); BW, art. 227 (Neth.) (1997).

(139). See cases cited supra notes 26-27.

(140). See id.

(141). The American Civil Liberties Union reports that it successfully obtained a changed Arizona birth certificate listing two men as the birth parents of a child the men adopted in California. See <http://www.aclu.org/issues/gay/docket98.html> (State by State Report, Ariz., Gay Adoption).

(142). See Waaldijk translation, supra note 11.

(143). See RICHARD B. CAPPALLI, THE AMERICAN COMMON LAW METHOD 181-82 (1997).

(144). See cases cited supra notes 26-27.

(145). See Clarence Morrow, Louisiana Blueprint Civilian Codification and Legal Method for State and Nation, 17 TULANE L. REV. 351, 537 (1943). However, see the cases cited supra note 86, in which the Hoge Raad recognized, without legislation, joint parental authority for divorced parents and for unmarried parents.

(146). See Albert Tate, Jr., Civilian Methodology, 44 TULANE L. REV. 674-76 (1970) (quoting Morrow, supra note 145, at 553-54).

(147). See Sr., art. 245 (Neth.) (1810).

(148). See AwGB, art. 245, Sr. juncto art. 1 e.v. (Neth.) (1971).

(149). See STATUUT NED. art. 1 Gw (Neth. Const.) (1983).

(150). See Sr., arts. 137c, e (Neth.) (1992).

(151). The jurisdictions that have granted same-gender co-parent adoptions that have sodomy statutes are Massachusetts, Mass. Gen. Laws Ann. ch. 272, § 34 (West 1990), and Texas, Tex. Penal Code Ann. §§ 21.01(1), 21.06 (West 1994). See also cases cited supra notes 26-27 (which cite to same-gender co- parent adoptions in these states). See also the following sodomy statutes: Ala. Code § 13A-6-65(a)(3) (1982); Ariz. Rev. Stat. Ann. § 13-1411-12 (West 1989); Ark. Code Ann. § 5-14-122 (Michie 1987); Fla. Stat. Ann. § 800.02 (West 1976); Idaho Code § 18-6605 (1990); Kan. Stat. Ann. § 21- 3505 (1988); Md. Ann. Code art. 27, § 553-554 (1987); Mich. Comp. Laws Ann. § 750.158, 750.338-.338(b) (West 1991); Minn. Stat. Ann. § 609.293 (West 1987); Miss. Code Ann. § 97-29-59 (1972); Mo. Ann. Stat. § 566.090 (West 1979); Mont. Code Ann. § 45-2-101, 45-5-505 (1990); N.C. Gen. Stat. § 14-177 (1986); Okla. Stat. Ann. tit. 21, § 886 (West 1983); R.I. Gen. Laws § 11-10-1 (1981); S.C. Code Ann. § 16-15-120 (Law. Co-op. 1985); Utah Code Ann. § 765-403 (1978); Va. Code Ann. § 18.2-361 (Michie 1988).

(152). See Rob Boston, The Religious Right's Gay Agenda, CHURCH & STATE, Oct. 1, 1999, at 9.

> Writing to supporters recently, [the Rev. Jerry] Falwell thundered, "[t] hese perverted homosexuals ... absolutely hate everything that you and I and most decent, God-fearing citizens stand for .... Make no mistake. These deviants seek no less than total control and influence in society, politics, and our schools and in our exercise of free speech and religious freedom .... If we do not act now, homosexuals will own America."

Id. "Shrill condemnations of gay people have been a standard Religious Right tactic for years ... but lately the Religious Right's attacks on gays and lesbians seem to have increased in both frequency and severity." Id. "Leaders of the Christian Reconstructionists movement, which advocates imposing Old Testament's legal code on the United States, argue that homosexual acts should merit the death penalty." Id. "According to Religious Right dogma, homosexuality is a matter of personal choice, not biological destiny." Id. "Pat Robertson, founder and president of the Christian Coalition ... called homosexuality 'a pathology. It is a sickness, and it needs to be treated.... Many of those people involved with Adolf Hitler were Satanists, many of them were homosexuals. The two things seem to go together.'" Id.

(153). Representative Warren Chisum, a Republican Texas state legislator, introduced a bill in the Texas legislature which would prohibit placing a foster-care child in a home where "homosexual conduct is occurring or likely to occur." A news report quoted him as saying that gay and lesbian homes are "just a more violent atmosphere we're placing these children in-predictably more violent than regular heterosexual family situation." Scott S. Greenburg, Bills Aim to Bar Adoption by Gays, COX NEWS SERV., Feb. 13, 1999.

(154). See cases cited supra notes 26-27.

(155). Even the courts that deny the adoptions admit that the adoptions would be in the children's best interests. See In Interest of Angel Lace M., 516 N.W.2d 678, 688 (Wis. 1994) (Hefferen, C.J., dissenting).

(156). For example, as early as 1990, opinion polls of the Social and Cultural Planning Office suggested that 95% of the Dutch population believe that one should let homosexuals be as free as possible to live in their own way. The same poll suggested that 89% believe that homosexuals should have the same housing rights as married couples, 93% believe that they should have the same inheritance rights, and 47% that they should have the same adoption rights. See Social en Cultureel Rapport 1992, at 465 (Rijswijk: Sociaal en Cultureel Planbureau, 1992).

(157). See Wet van 26 Januari 1956, Stb. 42 (Neth.) (1956) (in werking getreden op 1 November 1956).

(158). "The American law of adoption, however, is of quite recent vintage ...." Stephen B. Presser, The Historical Background of the American Law of Adoption, 11 J. FAM. L. 443, 443 (1971).

(159). See 1998 KAN. SUP. CT. ANN. REP. 1.

(160). See KWARTAALBERICHT RECHTSBESCHERMING EN VEILIGHEID, 1998-III, at 420 Jaargang 11, (Voorburg/Heerlen: Centraal Bureau voor de Statistiek, 1998).

(161). See Presser, supra note 158, at 453-55.

(162). See id. at 460.

(163). See id. at 472-80.

(164). See id.

(165). See Connie DiPasquale, Somewhere Over the Rainbow: Children of the Orphan Trains, 7 KAN. HERITAGE NO. 1, at 11 (Kan. Hist. Soc'y, 1999).

(166). See Presser, supra note 158, at 472-73.

(167). See id.

(168). See id. at 456-64.

(169). See id. at 489-514.

(170). See id. at 460.

(171). See John Francis Brosnan, The Law of Adoption, 22 COLUM. L. REV. 332, 341 (1992); see also Leo Albert Huard, The Law of Adoption: Ancient and Modern, 9 VAND. L. REV. 743, 752-53 (1956).

(172). See BW, art. 1:254-279 (Neth.) (1997).

(173). Currently, in the United States, there is a project to dramatically increase the number of adoptions of children who currently are in foster care. President Clinton's Adoption 2002 initiative has a goal of doubling the number of adoptions of children in foster care by the year 2002. See Proclamation No. 7145, 3 C.F.R. 111 (1998).

(174). See id.

(175). See DE GROTE, supra note 8; Kamerstukken II 1994/95, 22700, nr. 5, p. 13.

(176). See BW, art. 1:254-279 (Neth.) (1997). As of September 1997 there were 8,575 Dutch children in foster care under the Dutch governmental department in charge of court-ordered foster care children, the Family Control Institute (gezinsvoogdij-instelling, referred to as OTS). See Ministerie van Justitie; Directoraat-Generaal preventie, Jeugd en sancties; Directe Preventie, Jeugd en Sanctiebeleid.

(177). For example, the Supreme Court of Vermont, which was the first American appellate court to approve the granting of same-gender co-parent adoptions, Adoptions of B.L.V.B. and E.L.V.B., 628 A.2d 1271 (Vt. 1993), refused to grant visitation and custody rights to a woman who had raised, but did not adopt, the child born to her lesbian partner. The woman seeking contact with the child had not adopted the child because the birth mother would not consent to an adoption since their relationship had deteriorated at the time of the Vermont's Supreme Court adoption decision. The Vermont Supreme Court found that a person who is not a legal parent has no rights of visitation or custody to a child, even if that person is the de facto parent of the child. See Titchenal v. Dexter, 693 A.2d 682 (Vt. 1997). See also Allison D. v. Virginia M., 573 N.E.2d 27 (N.Y. 1991); McGuffin v. Overton, 542 N.W.2d 288 (Mich. Ct. App. 1995).

(178). See cases cited supra note 177.

(179). See supra notes 104-115 and accompanying text.

(180). See supra note 54 and accompanying text.

(181). See supra notes 90-94 and accompanying text.

(182). See BW, art. 1:199 (Neth.) (1997) (which states that the legal father of a child born to a married woman is her husband).

(183). See supra notes 90-91 and accompanying text. The Hoge Raad stated that "both the interests of [the biological father] as well as the interests of the child deserve attention." HR 5 September 1997, NJ 1998, 686, rek.nr. 8940.

(184). The petitioners in the case before the Hoge Raad had stated in their grounds for the adoption that "[i]f the request [for the adoption was granted] this would not alter the fact that the aforementioned children are biological descendants of a male person. This knowledge, which may be relevant for the child's identity, is not denied to them." Id.

(185). Some lesbian couples have made agreements with male acquaintances who are willing to donate their sperm. The agreement spells out to what extent the man will be involved with the child after it is born. Unfortunately, the agreement does not always work out as planned. Some men become attached to the child once born and begin to demand more involvement in the child's life. If the situation cannot be resolved between the parties, it frequently leads to a lawsuit. See Christensen, supra note 16, at 1358-62 (for a discussion of the U.S. cases in which a known sperm donor has asserted parental rights to a child born through self-insemination).

> The lesbian couple preserving the option to respond to a child's curiosity about her origins may find that the emotions unleashed by limited casual contact are not so easily contained. And the gay man, desirous of vicariously experiencing the joys of parenthood, may find himself expecting ever greater involvement when the abstract idea of sperm donorship gives way to the reality of interaction with a child he helped create.
> Id. at 1362.

(186). For example, see BW, art. 1:199 (Neth.) (1997), which states that the legal father of a child born to a married woman is her husband.

(187). To counteract this secrecy, there has been European legislation proposed that would no longer allow the sperm donor to remain anonymous. See TK 1992-93, 23207 nrs. 1-3, 7. See also Rb Breda, 20 Juni 1989, TvGR 1989/80 Hof Den Bosch 18 September 1991, TvGR 1991/79 (Valkenhorst I); Hof Den Bosch 25 November 1993, NJ 1993; 211, HR 15 April 1994, TvGR 1994/45 (Valkenhorst II), in which the Hoge Raad overrode a mother's refusal to reveal to her biological child, who was born out of wedlock, the identity of the child's father.

(188). See cases cited supra notes 26-27.

(189). See Presser, supra note 158, at 460.

(190). See for example, Kan. Stat. Ann. § 65-2423 (Supp. 1998).

(191). See supra text accompanying note 141.

(192). See Carol Ness, Lesbian Moms Gain Rights, S.F. EXAMINER (May 2, 1999) <http://www.sfgate.com/examiner/archives/1999/05/02/NEWS9735/dtl>.

(193). See id.

(194). See In re A.O.L. No. 1JU-85-25-P/A (Alaska 1st Jud. Dist. July 23, 1985).

(195). For example, see Commissie gelihke behandeling, Oordeelnummer: 2000-04, 9 februari 2000, a decision of the Equal Treatment Commission that found three of the Netherlands in vitro fertilization clinics were violating the equal treatment law, Equal Treatment Act, Stb. 230 (Neth.) (1994) (Algemene wet gelijke behandeling, Wet van 2 Maart 1994), by refusing to treat lesbians in the belief that children should be raised by a mother and a father.

(196). See Nancy Polikoff, This Child Does Have Two Mothers: Redefining Parenthood to Meet the Needs of Children in Lesbian-Mother and Other Nontraditional Families, 78 GEO. L.J. 459 (1990).