

Establishing Parentage and Support for Modern Families

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Establishing legal parentage is crucial for LGBTQ+ parents to secure their full parental rights and ensure children have access to support from both parents. Without legal parentage, a non-biological or non-adoptive parent may be treated as a legal stranger with no custody or decision-making authority². Legal parentage provides certainty in areas like custody, medical decisions, inheritance, and child support obligations. For LGBTQ+ families, this is especially important because historically only one partner (often the biological parent) was recognized, leaving the other with no rights or responsibilities. Proactively securing parentage protects the child's relationship with both parents and guarantees that both can be held accountable for support. A court order or adoption decree is considered the gold standard for proving parentage, since administrative documents (like birth certificates) can be subject to challenge³. In short, establishing parentage confers essential legal security – it affirms parental rights and enforces parental duties such as financial support.

LGBTQ+ families face unique challenges in this realm. Until recently, same-sex couples often had no access to marriage or joint adoption, which meant traditional paths to dual parentage were closed. Even after marriage equality, gaps remain. For example, a married same-sex spouse can now be listed on a birth certificate in Virginia, but that alone may not guarantee parental rights if challenged⁴. Courts and agencies have sometimes been slow to adjust, and bias or inconsistent laws can put LGBTQ+ parents at risk. Without legal parentage, a parent who has raised a child since birth could be denied custody or even visitation in the event of a breakup⁵. These potential

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² In *Hawkins v. Grese*, 68 Va. App. 462, 809 S.E.2d 441 (2018), the Virginia Court of Appeals ruled that even though both parties of a former same-sex couple raised the child at issue, only Grese, as the biological parent, was recognized as the child's legal parent for purposes of a custody determination.

³ Family Equality Council, *Virginia LGBTQ Family Law Guide* (2018), <https://familyequality.org/wp-content/uploads/2018/06/Virginia-LGBTQ-Family-Law-Guide-WEB.pdf#:~:text=of%20Parentage%20should%20be%20obtained,should%20be%20backed%20up%20with> (last visited Mar. 2, 2025).

⁴ “Whenever a couple is using donor eggs or sperm, it’s important to establish a ‘non-donor agreement.’ This agreement makes clear the intent of who the actual parents are and establishes who is a donor with no parental rights.” Challenges Remain for LGBTQ Couples in Virginia, Rinehart Bryant, PLLC, <https://rblawva.com/challenges-remain-for-lgbtq-couples-in-virginia/#:~:text=Whenever%20a%20couple%20is%20using,donor%20with%20no%20parental%20rights> (last visited Mar. 2, 2025).

⁵ “In the case of *Hawkins v. Grese*, 68 Va. App. 462, 809 S.E.2d 441 (2018), the Virginia Court of Appeals ruled that even though both parties of a former same-sex couple raised the child at issue, only Grese was the child's parent as the biological parent for purposes of a custody determination.” Custody Between Same-Sex Couples in Virginia, Curcio Green, <https://www.cgglawyers.com/custody-between-same-sex-couples-in->

hardships make it critical for LGBTQ+ couples to understand the law and take steps to formalize their parent-child relationships from the start. The following sections provide an in-depth analysis of how legal parentage and support obligations are established for LGBTQ+ couples in Virginia, with comparisons to other states, recent developments, and practical guidance.

Defining Legal Parentage

Legal parentage refers to the recognized parent-child relationship in the eyes of the law. A legal parent has the full bundle of parental rights (custody, decision-making, etc.) and responsibilities (financial support, care, etc.) for a child⁶. This status can arise in several ways. The most common types of legal parents are: (1) Biological parents, meaning those who are genetically related or give birth to the child; (2) Adoptive parents, who gain parental status through a court adoption process; (3) Presumed parents, typically a person the law presumes to be a parent by virtue of marriage or other circumstances; and (4) Intended parents, those who are designated to be the parents of a child born via assisted reproduction or surrogacy based on an agreement or court order. Each of these categories carries equal legal weight once established – an adoptive parent or intended parent has the same legal standing as a biological parent. For instance, when an adult adopts a child, a legal parent-child relationship is created “for all purposes,” including custody rights and child support duties⁷.

These distinctions are important for LGBTQ+ couples because their family-building often involves non-traditional methods. A biological parent in a same-sex couple may be only one of the two partners (*e.g.* the birth mother in a lesbian couple or the genetic father in a gay male couple via surrogacy). The other partner can only become a legal parent through an intentional legal process (such as adoption or a parentage order) unless covered by a presumption. A presumed parent is commonly the spouse of a woman who gives birth – historically phrased as the “husband” in paternity laws, but Virginia has updated this to be gender-neutral⁸. Under Virginia’s current law, “the gestational mother of a child is the child’s mother” and “the spouse of the gestational mother...is the child’s other parent,” regardless of gender⁹. This means that in

virginia/#:~:text=In%20the%20case%20of%20Hawkins,purposes%20of%20a%20custody%20determination (last visited Mar. 2, 2025).

⁶ “In addition to, or instead of, having your own biological child, you and your partner might want to adopt a child. Adoption is a court procedure by which an adult legally becomes the parent of someone who is not their biological child. Adoption creates a parent-child relationship recognized for all purposes—including child support obligations, inheritance rights, and custody.” *Adopting a Child*, NOLO, <https://www.nolo.com/legal-encyclopedia/free-books/living-together-book/chapter7-6.html#:~:text=In%20addition%20to%2C%20or%20instead,obligations%2C%20inheritance%20rights%2C%20and%20custody> (last visited Mar. 2, 2025).

⁷ NOLO, *supra*.

⁸ H.B. 623, 2020 Gen. Assemb., Reg. Sess. (Va. 2020) (amending Va. Code Ann. § 20-38.1 (1950)). (This bill also updates numerous provisions of the Virginia Code to substitute “spouse” for “husband” or “wife,” and make other statutory terms gender-neutral.)

⁹ “The ability to qualify as an ‘intended parent’ now applies to all married couples, regardless of gender, and to an unmarried individual who enters into a surrogacy agreement.” Family Equality Council, *Virginia LGBTQ Family*

Virginia a birth mother's wife is now presumed to be the child's parent just like a husband would be. In practice, legal parentage for LGBTQ+ parents can be secured by aligning with one of the recognized categories – if not by biology or marital presumption, then by formal adoption or court orders. Virginia does not recognize a purely equitable or *de facto* parent status absent statutory or adoptive ties; as the Virginia Court of Appeals bluntly noted, an unmarried, non-biological, non-adoptive partner “is not a parent” under Virginia law¹⁰. Therefore, understanding these definitions and routes to parentage is vital for LGBTQ+ couples to ensure both partners attain legal parent status.

Challenges for LGBTQ+ Couples

LGBTQ+ couples have faced, and in some cases continue to face, significant legal and social barriers in establishing parentage. Historically, same-sex partners were not recognized as parents of a child unless they went through lengthy adoption processes (which some states outright prohibited). Before nationwide marriage equality (2015), many state laws—including Virginia's prior statutes—explicitly denied recognition of same-sex relationships, making it difficult or impossible for two mothers or two fathers to both be legal parents¹¹. For example, Virginia's now-defunct “Marriage Affirmation Act” once barred any agreement that conferred marriage-like rights on same-sex couples¹²; this law was used in an attempt to ignore a Vermont court's order recognizing a lesbian mother's parental rights in the famous *Miller-Jenkins* case. Although that attempt failed on appeal and Vermont's order was ultimately honored, the episode illustrates the hostile legal environment LGBTQ+ families historically navigated. In many states, adoption

Law: A Resource Guide for LGBTQ-Headed Families (2019), <https://familyequality.org/wp-content/uploads/2018/06/Virginia-LGBTQ-Family-Law-Guide-WEB.pdf#:~:text=July%201%2C%202019%20to%20read,Also%2C%20the%20Virginia> (last visited Mar. 2, 2025) (citing Va. Code Ann. §§ 20-156 *et seq.* (1950), amended by “Jacob's Law,” H.B. 1979, 2019 Gen. Assemb., Reg. Sess. (Va. 2019)).

¹⁰ “The Court found that this finding was constitutional as it did not ‘discriminate between same-sex and opposite-sex couples,’ as an unmarried ‘non-biological/non-adoptive parent is not a parent irrespective of gender or sexual orientation.’” *Hawkins v. Grese*, 68 Va. App. 462, 809 S.E.2d 441 (2018).

¹¹ “In June 2004, the Vermont court issued a temporary custody order providing that Janet have visitation and contact with Isabella. Lisa, however, refused to obey the order and instead filed a new custody proceeding in Frederick County Circuit Court on July 1, 2004. Ignoring state and federal statutes on child custody jurisdiction, the Virginia judge held that he had jurisdiction over the case. He relied on the recently enacted ‘Marriage Affirmation Act,’ which declares civil unions and other agreements ‘purporting to bestow the privileges and obligations of marriage’ between persons of the same sex to be unenforceable. We have joined Janet's original lawyer in appealing the case to the Virginia Court of Appeals, and our appellate brief was filed on December 7, 2004. Oral arguments were heard on September 14, 2005. While awaiting the Virginia Court of Appeals' ruling, the Vermont Supreme Court on August 4, 2006, held that Vermont has jurisdiction over the case, and that Lisa was in contempt of court order for refusing to allow visitation. On November 28, 2006, the Virginia Court of Appeals concurred with the Vermont Supreme Court's ruling.” *Miller-Jenkins v. Miller-Jenkins*, ACLU of Virginia, <https://www.acluva.org/en/cases/miller-jenkins-v-miller-jenkins#:~:text=Court%20on%20July%201%2C%202004,4%2C%202006%20held%20that%20Vermont> (last visited Mar. 2, 2025).

¹² ACLU of Virginia, *supra*.

agencies also discriminated against gay or transgender individuals. Notably, Florida had a ban on gay adoptions (struck down in 2010), and Mississippi had a ban on same-sex couple adoptions until it was invalidated in 2016 as unconstitutional. These prohibitions left children in legal limbo and dissuaded couples from pursuing parentage through adoption. Even where no explicit ban existed, courts often applied heteronormative assumptions, making LGBTQ+ parents fight simply to be recognized.

Today, in the wake of *Obergefell v. Hodges* (2015) which legalized same-sex marriage, many of the overt legal barriers have been removed – but some challenges persist. One issue is that the law has not uniformly caught up with the realities of LGBTQ+ family formation. For instance, Virginia now treats same-sex married couples equally in its custody and parentage laws, but couples who are unmarried (or who had children before they could legally marry) may still fall into gaps. The *Hawkins v. Grese* case in Virginia starkly demonstrated this: two women jointly raised a child, yet when they split, only the biological mother was deemed a “parent,” and the other (who neither gave birth nor adopted) was a legal stranger with no rights. The court sympathized that removing one mother figure was harmful to the child, but said “the law of the Commonwealth left it little option,” since Virginia does not recognize *de facto* parent status¹³. Such outcomes highlight the continuing gap for families that do not fit the traditional mold. Social attitudes and implicit biases can also pose challenges. Some judges or court officials may not be fully versed in LGBTQ+ family issues, potentially leading to inconsistent rulings.

Additionally, while Virginia’s public agencies must treat all married couples equally in adoption placements¹⁴, private adoption agencies in Virginia are legally permitted to turn away LGBTQ+ applicants under a “conscience clause” law¹⁵. This 2012 Virginia law allows licensed private agencies to refuse placements that violate their religious or moral convictions, a provision widely seen as a setback for same-sex couples. Similar religious exemption laws exist in other states, creating a patchwork where LGBTQ+ couples may be welcomed by one agency but rejected by another. All these factors mean that LGBTQ+ families must often take extra legal steps and precautions to secure parentage and protect against discrimination.

¹³ “Though Hawkins undoubtedly has a close relationship with B.G. and is in a sympathetic and difficult position, the circuit court did not violate her constitutional rights by declining to recognize her as a parent of B.G. In fact, the case relied upon by the circuit court expressly rejecting the *de facto* parent doctrine in Virginia, *Stadter v. Siperko*, 52 Va. App. 81, 661 S.E.2d 494 (2008), is factually similar to this one. In *Stadter*, a woman sought visitation with her ex-partner’s biological child after the end of their same-sex relationship. She asked the court to treat her as a parent under the *de facto* parent doctrine. This Court noted that the *de facto* parent doctrine was simply being urged as a tool for overcoming a constitutional presumption in favor of parents in custody disputes. *Id.* at 90–91, 661 S.E.2d at 498. We pointed out that such a tool already exists in Virginia—the ‘person with a legitimate interest’ classification of Va. Code Ann. § 20-124.1 (1950). *Id.* at 91–92, 661 S.E.2d at 499.” *Hawkins v. Grese*, 68 Va. App. 462, 809 S.E.2d 441 (2018), <https://casetext.com/case/hawkins-v-grese-1> (last visited Mar. 2, 2025).

¹⁴ Va. Code Ann. § 63.2-1709.3(A) (1950), <https://law.lis.virginia.gov/vacode/title63.2/chapter17/section63.2-1709.3/> (last visited Mar. 2, 2025).

¹⁵ Va. Code Ann. § 63.2-1709.3 (1950).

Custody Considerations

Established legal parentage (or the lack thereof) plays a pivotal role in custody and visitation rights, especially if a couple separates or divorces. In Virginia, if both adults are legal parents of the child (for example, a same-sex married couple who ensured both names are on the birth record or completed an adoption), then custody disputes are handled just like any other custody case. The fact that the parents are LGBTQ+ does not change the legal standards: Virginia courts apply the best interest of the child factors and do not give preference to one parent over the other based on gender or biological connection. In fact, since marriage equality, “all laws pertaining to custody of children apply to these couples” just as to heterosexual couples¹⁶. That means if two legal parents divorce, each has equal standing to seek custody or visitation, and a court will decide these matters by evaluating what arrangement serves the child’s best interests (considering factors like the child’s relationship with each parent, each parent’s ability to care for the child, etc., per Va. Code Ann. § 20-124.3 (1950)). When both parties are recognized as parents, neither can unilaterally cut off the other’s parental rights without a court process. For example, if both women in a lesbian marriage are legal parents and they split up, one cannot simply deny the other access to the child. A custody order or agreement would need to be put in place, just as with any divorcing parents.

By contrast, if only one partner has established parentage, the other faces an uphill battle in a custody dispute. Virginia (like many states) affords a parental presumption in favor of a legal parent over any third party. A person who is not a legal parent is generally treated as a “non-parent” or “interested third party” in the eyes of the court, with very limited ability to claim custody or visitation. Such a person would have to prove that continuing in the sole custody of the legal parent would harm the child, or that the legal parent is unfit – a very high bar to overcome. The *Hawkins v. Grese* case exemplifies this scenario. Even though Ms. Hawkins had acted as a mother for years, because she had never married the child’s biological mother nor adopted the child, the court deemed her only an “interested party” who had to rebut the presumption favoring the biological mother¹⁷. The court found that showing it would benefit the child to have Hawkins remain in his life was “insufficient” to overcome the legal parent presumption, absent proof of unfitness or harm¹⁸. In effect, Virginia’s stance was that *any* unmarried, non-adoptive caregiver – whether gay or straight – is not a legal parent and cannot be

¹⁶ *Hawkins v. Grese*, 68 Va. App. 462, 809 S.E.2d 441 (2018).

¹⁷ “It further held that Hawkins, as a non-parent, interested party, did not rebut the parental presumption in favor of Grese’s custody of B.G. The circuit court couched these decisions in language that clearly showed grave concern that separation from Hawkins would cause B.G. continued harm but the circuit court concluded that the law of the Commonwealth left it little option.” *Id.*

¹⁸ “Taking the evidence in the light most favorable to Grese, the prevailing party below, the circuit court’s judgment that Hawkins was not a parent of B.G. and that the evidence presented by Hawkins was insufficient to rebut the parental presumption in favor of custody of B.G. by Grese is not plainly wrong and therefore should not be overturned. For these reasons, the judgment of the circuit court is affirmed.” *Id.*

awarded custody on equal footing¹⁹. The result was that Hawkins lost all custody and visitation rights, despite the emotional bond with the child. This case highlights why establishing parentage is so critical before a crisis occurs: if Hawkins had been able to adopt the child or if the couple had married and obtained a parentage order, the custody outcome could have been very different.

To avoid such painful situations, proactive legal measures are advised. Pre-birth and post-birth legal actions can secure parentage and thereby ensure custody rights. In some cases (particularly involving surrogacy), court orders *before* birth can be obtained to declare the intended parents as the legal parents once the child is born. Virginia law allows intended parents in a surrogacy arrangement to petition the court for pre-approval of a surrogacy contract (which can include terms about custody and parentage at birth)²⁰. Similarly, many LGBTQ+ parents pursue a confirmatory adoption or parentage order soon after birth – even if both names are on the birth certificate – to solidify their legal status. For instance, a non-biological mother in a lesbian couple might file a step-parent adoption or obtain an order of parentage in the weeks or months following the child’s birth, rather than waiting. Taking these actions early means that if the couple separates later, both are undeniably legal parents and stand on equal footing in custody determinations. It’s worth noting that even with the marital presumption now gender-neutral in Virginia²¹, lawyers often counsel same-sex couples to get a court order (adoption or adjudication of parentage) as additional protection. This is because a birth certificate listing both parents is considered an “administrative record” that may not carry the same legal weight outside the issuing state or against certain challenges²². In sum, established parentage through marriage, adoption, or court order ensures that custody and visitation issues will be resolved based on best interests, rather than technical arguments over who counts as a parent.

Courts also occasionally grapple with custody cases involving more than two individuals – for example, a known sperm donor or a surrogate who has a change of heart. Generally, Virginia law does not easily allow a third party to assert parental or custody rights against the wishes of the legal parents, absent extraordinary circumstances. A donor who provides sperm with the agreement that he will have no role is legally not a parent under Virginia’s assisted conception

¹⁹ “[T]he usual understanding of ‘family’ implies biological relationships, and most decisions treating the relation between parent and child have stressed this element.” *Smith v. Org. of Foster Families for Equal. & Reform*, 431 U.S. 816, 843 (1977).

²⁰ “Virginia’s Status of Children of Assisted Conception Chapter 9, Section 20-162 and Chapter 9, Section 20-163 outline the requirements and rights of a surrogate.” *Surrogacy in Virginia*, ConceiveAbilities, <https://www.conceiveabilities.com/surrogates/surrogacy-laws/virginia/> (last visited Mar. 2, 2025).

²¹ H.B. 623, 2020 Gen. Assemb., Reg. Sess. (Va. 2020), <https://familyequality.org/wp-content/uploads/2018/06/Virginia-LGBTQ-Family-Law-Guide-WEB.pdf#:~:text=July%201%2C%202019%20to%20read,Also%2C%20the%20Virginia> (last visited Mar. 2, 2025) (amending Va. Code Ann. § 20-38.1 (1950)).

²² “[A]n Order or Declaration of Parentage should be obtained. As previously noted, a birth certificate is an administrative record that can be subject to challenge and should be backed up with the weight and force of a court order.” Family Equality Council, *Virginia LGBTQ Family Law: A Resource Guide for LGBTQ-Headed Families* (2019), <https://familyequality.org/wp-content/uploads/2018/06/Virginia-LGBTQ-Family-Law-Guide-WEB.pdf#:~:text=July%201%2C%202019%20to%20read,Also%2C%20the%20Virginia> (last visited Mar. 2, 2025).

statute²³, and thus would not have standing to seek custody. Conversely, if LGBTQ+ co-parents never formalize the second parent's status, a biological parent might try to exclude the other from the child's life entirely. To protect the child and the non-legal parent in such co-parenting situations (especially if the parents are not married), it is wise to have a written custody and visitation agreement in place and to formalize parentage when possible. Some LGBTQ+ parents even obtain custody orders or guardianships by consent if they cannot do an adoption, to at least give the non-biological parent legal custodial rights short of full parentage²⁴. Overall, the takeaway is that custody and visitation rights flow from legal parentage. Securing that status for both partners is the best way to ensure that, if the relationship ends, both continue to have a legally recognized bond with the child.

Adoption as a Path to Parentage

Adoption remains a key path for LGBTQ+ parents to establish legal parentage, especially for the non-biological or non-gestational parent. In Virginia, as in all states, a married spouse can adopt their partner's child through a stepparent adoption, which is typically a streamlined process. Virginia law permits "any single unmarried adult or married couple" to petition to adopt, and nothing in Virginia law expressly prohibits LGBTQ+ individuals or couples from adopting²⁵. Since marriage equality, a same-sex spouse is entitled to petition for adoption of their partner's child just as a different-sex spouse would²⁶. The usual requirement for stepparent adoption is that the child has only one legal parent currently. If the other legal parent is deceased or their rights have been terminated (or if there was no second parent to begin with, as in the case of a sperm donor conception), then the remaining parent's spouse may adopt without terminating anyone's rights²⁷. In Virginia, the spouse seeking to adopt must file jointly with the legal parent, indicating the parent's consent to share parenting rights²⁸. Once granted, a stepparent adoption gives the child two legal parents, and the adoptive parent assumes equal rights and responsibilities going forward. Virginia's stepparent adoption process is generally efficient – often no home study or

²³ Va. Code Ann. § 20-158(8)(3) (1950), <https://law.lis.virginia.gov/vacode/title20/chapter9/section20-158/#:~:text=3,spouse%20of%20the%20gestational%20mother> (last visited Mar. 2, 2025).

²⁴ "All same-sex couples raising LGBTQ children should keep copies of the following documents easily accessible: adoption or order of parentage decree, birth certificate, guardianship or custody order or Agreement, co-parenting agreement, marriage license, and medical powers of attorney." Family Equality Council, *Virginia LGBTQ Family Law: A Resource Guide for LGBTQ-Headed Families* (2019), <https://familyequality.org/wp-content/uploads/2018/06/Virginia-LGBTQ-Family-Law-Guide-WEB.pdf> (last visited Mar. 2, 2025).

²⁵ Family Equality Council, *supra*.

²⁶ "In Virginia, individuals petitioning to adopt as a stepparent must petition jointly with the spouse who is the legal parent to indicate the legal parent's consent." *Id.*; see also Va. Code Ann. § 63.2-1241 (1950).

²⁷ "The court may order the proposed adoption and change of name without referring the matter to the local director if (i) the birth parent or parent by adoption, other than the birth parent or parent by adoption joining in the petition for adoption, is deceased." Va. Code Ann. § 63.2-1241(B) (1950).

²⁸ "The petition shall be the joint petition of the birth parent or parent by adoption and such parent's spouse or other person with a legitimate interest, but the birth parent or parent by adoption shall unite in the petition for the purpose of indicating consent to the prayer thereof only." Va. Code Ann. § 63.2-1241(A) (1950).

lengthy investigation is required – though practices can vary by jurisdiction. Some courts or judges still err on the side of caution and may, for example, order a brief investigation or even a hearing before finalizing a same-sex stepparent adoption²⁹. There is also lingering inconsistency: a few courts have been known to appoint a guardian ad litem for the child or require background checks for the adopting parent (steps sometimes waived in opposite-sex adoptions)³⁰. These extra hurdles, while not mandated by statute, underscore why having experienced counsel is helpful. Overall, however, most married LGBTQ+ couples in Virginia can complete a stepparent adoption smoothly, securing an adoption decree that is concrete proof of parentage.

For couples who are not married, or for situations where marriage is not an option or not desired, second-parent adoption is the concept of one partner adopting the child without the first partner losing any parental rights. This was a crucial tool for same-sex couples in many states prior to marriage equality. In Virginia, second-parent adoption (by an unmarried partner) is not explicitly provided for by statute – Virginia law historically required the adoptive petitioner to be either a single person or a married couple adopting together, which left no clear avenue for an unmarried couple to both become parents. In practice, before 2015 some Virginia families used creative legal strategies (like one partner adopting as a single parent and then the other doing a second-parent adoption in another jurisdiction) to work around these limitations. Nationally, states have varied on this issue. As of recent years, about 20 states explicitly allow unmarried couples to petition for adoption of the same child (either via statute or appellate court decisions)³¹. For example, New York’s law permits “unmarried intimate partners” to jointly adopt a child (N.Y. Dom. Rel. Law § 110)³², and Delaware law similarly allows cohabiting adults to adopt jointly³³. In many other states, however, joint adoption by an unmarried couple is not directly permitted. Instead, the workaround is a two-step process where one person adopts and then the second person adopts

²⁹ “While typically most same-sex married couples can do a stepparent adoption without any issue, there are still some jurisdictions and/or judges that will not proceed directly to a final order but instead will require a ‘report of investigation’ by the local department of social services which requires a background investigation and at least one visit to the adoptive parents’ household. Also, while there is nothing in the statute that requires that a hearing take place, a very small number of courts will mandate a hearing, and some will require the appointment of a guardian ad litem to represent the child. As of July 1, 2020, the requirement of a national criminal background check on the adopting parent will be eliminated. However, legislation continues to be introduced each year to keep the requirement.” Family Equality Council, *supra*.

³⁰ Family Equality Council, *supra*.

³¹ “Not all states allow second parent adoption. According to Family Equality, 20 states allow unmarried couples to petition for second parent adoption. And, in some states, it might be more difficult for same-sex couples to petition successfully for a second parent adoption. For a detailed breakdown of second parent adoption with a focus on adoptions by same-sex couples, check out the National Center for Lesbian Rights’ publication Legal Recognition of LGBT Families.” *Adopting a Child*, NOLO, <https://www.nolo.com/legal-encyclopedia/free-books/living-together-book/chapter7-6.html> (last visited Mar. 2, 2025).

³² “A few states’ laws explicitly allow unmarried couples to jointly adopt a child. For example, in New York, ‘unmarried intimate partners’ can jointly adopt. (N.Y. Dom. Rel. Law § 110 (2022).)” *Id.*

³³ “And in Delaware, state law recognizes the right of a couple who cohabitates to jointly adopt. (Del. Code tit. 13, § 903(2)(d) (2022).) In some other states, such as Washington, the courts have interpreted statutory law to allow joint adoption by unmarried couples.” *Id.*

later as a stepparent once the first adoption is finalized³⁴. This two-step “second parent adoption” achieves the same result (both end up legal parents without terminating either’s rights), but it can be more cumbersome.

Post-*Obergefell*, the need for second-parent adoption has diminished in theory because same-sex couples can marry and use stepparent adoption. However, not every couple marries, and some LGBTQ+ couples prefer not to or face other barriers to marriage. Additionally, some states (like Colorado, Maine, and others that have reformed parentage laws) now allow a confirmatory adoption or parentage judgment that can be done even for married couples, to explicitly confirm both parents’ rights without a full adoption process. It’s important to note that an adoption decree from any state must be honored in all other states by law. The U.S. Supreme Court made this clear in *V.L. v. E.L.* (2016), where it unanimously held that Alabama had to recognize a Georgia same-sex second-parent adoption. The Court ruled that under the Full Faith and Credit Clause, a valid adoption order from one state is binding nationwide³⁵. This gives adoptive families peace of mind that their parentage will be secure even if they move or travel out of state.

When comparing adoption to other methods of establishing parentage, adoption has the benefit of finality and universal recognition. An adoption order is a judgment that cannot be collaterally attacked on the basis of biology. In contrast, being on a birth certificate or even being a presumed parent by marriage could be challenged in certain scenarios (for instance, a biological donor might attempt to assert rights, or a state with hostile laws might question a same-sex spouse’s parentage if no court order exists). For this reason, organizations like Family Equality and many attorneys strongly recommend that same-sex couples pursue a confirmatory adoption even if they are married and already listed as parents on the birth record³⁶. The adoption proceeding essentially double-locks the parentage by creating a court decree that is difficult to overturn. That said, adoption can be more costly and time-consuming than some other routes. Some states have introduced easier administrative routes for LGBTQ+ families; for example, California permits a simplified step-parent adoption process and has forms for confirming parentage in assisted reproduction cases, and a few states allow voluntary acknowledgment of parentage forms for non-biological parents in lieu of adoption. Still, no matter the method, the end goal is to have both

³⁴ “A majority of states, though, allow joint adoption only by married couples. This doesn’t rule out the possibility that both people in a committed relationship won’t ultimately be able to adopt the same child, though. Rather, it means that in many cases, one partner might have to adopt the child first, and then the other partner might be able to later petition to adopt the child as a ‘second parent.’” Nolo, *Adopting a Child*, <https://www.nolo.com/legal-encyclopedia/free-books/living-together-book/chapter7-6.html> (last visited Mar. 2, 2025).

³⁵ “[V]alidly-granted second-parent adoptions issued in other states should be recognized in Virginia under the 2016 United States Supreme Court ruling in *V.L. v. E.L.*, which requires all states to give full faith and credit to adoption orders from other states, as well as the 2005 Virginia Supreme Court decision of *Davenport v. Little-Bowser*, which requires the Virginia state registrar to recognize out-of-state adoption orders for children born in Virginia and issue an amended birth certificate.” *Davenport v. Little-Bowser*, 269 Va. 546, 611 S.E.2d 366 (2005); Va. Code Ann. § 32.1-261(1) (1950).

³⁶ Family Equality Council, *Virginia LGBTQ Family Law: A Resource Guide for LGBTQ-Headed Families* (2019), <https://familyequality.org/wp-content/uploads/2018/06/Virginia-LGBTQ-Family-Law-Guide-WEB.pdf> (last visited Mar. 2, 2025).

individuals recognized as legal parents. Adoption remains a tried-and-true path to get there, with the reassurance that an adoptive parent will have the same permanent, enforceable rights and obligations as any natural parent. In Virginia and beyond, the significance of that cannot be overstated – as one Virginia guide succinctly put it, an adoption decree is the “single best irrefutable and undeniable proof of parentage” for a same-sex couple³⁷.

Assisted Reproductive Technology (ART) and Legal Implications

Many LGBTQ+ couples rely on Assisted Reproductive Technology to have children, including methods like in vitro fertilization (IVF), sperm or egg donation, and surrogacy arrangements. Each of these scenarios raises specific legal issues that must be managed carefully to protect parental rights. Virginia, like most states, has statutes addressing children born through ART. Virginia’s “Status of Children of Assisted Conception” law (Va. Code Ann. § 20-156 *et seq.*) lays out rules on parentage for children conceived via medical technology. Under this law, the woman who gives birth (the gestational mother) is deemed the child’s mother, and if she is married, her spouse is deemed the other parent by law (regardless of gender)³⁸. This provides a marital presumption in the ART context, now inclusive of same-sex spouses as of a 2019 statutory update that replaced “husband” with gender-neutral “spouse”³⁹. Importantly, Virginia law also states that a donor – defined as someone who contributes sperm or egg for assisted conception – is not a legal parent of the resulting child, unless that donor is the gestational mother’s spouse⁴⁰. In other words, if a lesbian couple conceives with donor sperm, the sperm donor has no parental rights or obligations by operation of law, and the birth mother’s spouse (if she has one) is the presumptive parent.

This default rule is a protective measure to ensure that known donors cannot later claim paternity, and likewise that they cannot be held liable for child support, so long as the donation was part of an assisted conception process. Similarly, an egg donor is not considered the mother of a child gestated by another woman. These principles align with the practices in most states and with the Uniform Parentage Act, which generally provide that the donors (who lack intent to parent) are not legal parents.

³⁷ “An adoption decree is the single best irrefutable and undeniable proof of parentage. We strongly recommend that same-sex couples with children ALWAYS get an adoption decree that recognizes both parents as legal parents, even if you are married and appear on the birth certificate.” Family Equality Council, *supra*.

³⁸ Va. Code Ann. § 20-158(A)(1) (1950).

³⁹ “Assisted reproductive technology (ART) is the use of medical technology to assist with pregnancy or childbirth and includes methods such as in vitro fertilization or use of an egg donor, sperm donor, embryo donor, and/or a surrogate carrier. Assisted conception is governed by state laws in Virginia, including both Virginia’s parentage statutes and assisted reproductive technology statutes, which were amended effective July 1, 2019, so as to clearly be made gender neutral and applicable to LGBTQ families.” Family Equality Council, *supra* (citing Va. Code Ann. §§ 20-156 *et seq.* (1950), amended by “Jacob’s Law,” H.B. 1979 (2019)).

⁴⁰ “A donor is not the intended parent of a child conceived through assisted conception, unless the donor is the spouse of the gestational mother.” Va. Code Ann. § 20-158(A)(3) (1950).

That said, couples must adhere to certain procedures to take advantage of these protections. One cautionary tale is *Bruce v. Boardwine* in Virginia, a 2015 case that garnered national attention. In that case, a single woman (Bruce) used at-home insemination with sperm from a male friend (Boardwine) to get pregnant, without involving a doctor or a written donor agreement⁴¹. When the child was born, the mother attempted to block the biological father (the friend) from asserting any rights, arguing he was just a “donor” under Virginia’s assisted conception statute. The Virginia Court of Appeals disagreed. It held that the statute did not apply because the insemination was not done via “medical technology” (no physician or clinic was involved)⁴². The court reasoned that the law’s reference to “any intervening medical technology” indicated the legislature intended to cover clinical procedures like IVF or doctor-supervised insemination, not kitchen-table methods^{43,44}. Because the statute didn’t shield this scenario, the biological father was able to establish paternity through DNA and was granted parental rights⁴⁵.

In short, the mother’s attempt to bypass formalities backfired. The informal approach meant the sperm donor was treated as a father, with rights to custody/visitation and corresponding support obligations. The *Bruce* case highlights a critical lesson: when using ART, follow the legal protocols. Prospective LGBTQ+ parents should use licensed physicians or fertility clinics for donor insemination or IVF procedures whenever possible and have clear written agreements with any donor or carrier involved. Had Bruce used a doctor or a sperm bank, the law would have

⁴¹ “Bruce wanted to conceive a child she could raise on her own, without the involvement of a father. Bruce apparently believed that if she became pregnant in a way that did not involve sexual intercourse, the biological father would not have a claim to any parental rights. To accomplish this goal, Bruce approached Boardwine, a longtime friend, and asked him to be a sperm donor. After some hesitation, Boardwine agreed. Although the parties discussed a written contract regarding any resulting pregnancy, none was ever signed.” *Bruce v. Boardwine*, No. 1250-14-3, 2015 Va. App. LEXIS 95 (Va. Ct. App. 2015).

⁴² “The statute’s plain language does not support Bruce’s interpretation. The word ‘medical,’ in its ordinary use, means ‘of, relating to, or concerned with physicians or with the practice of medicine’ and ‘requiring or devoted to medical treatment.’ Webster’s Third New International Dictionary 1402 (unabr.1981). The statute does not encompass all technology. Instead, its language is limited to ‘medical technology.’ The plain meaning of the term ‘medical technology’ does not encompass a kitchen implement such as a turkey baster.” *Bruce v. Boardwine*, *supra*.

⁴³ “The phrase ‘medical technology’ is noteworthy because it does not appear in the Uniform Status of Children of Assisted Conception Act.” *Bruce v. Boardwine*, *supra*.

⁴⁴ “The statute’s plain language does not support Bruce’s interpretation. The word ‘medical,’ in its ordinary use, means ‘of, relating to, or concerned with physicians or with the practice of medicine’ and ‘requiring or devoted to medical treatment.’ Webster’s Third New International Dictionary 1402 (unabr.1981). The statute does not encompass all technology. Instead, its language is limited to ‘medical technology.’ The plain meaning of the term ‘medical technology’ does not encompass a kitchen implement such as a turkey baster.” *Bruce v. Boardwine*, *supra*.

⁴⁵ “The *Boardwine* Court held that ‘assisted conception does not apply and that he established his paternity through DNA testing.’” *Bruce v. Boardwine*, No. 1250-14-3, 2015 Va. App. LEXIS 95 (Va. Ct. App. 2015), <https://caselaw.findlaw.com/court/va-court-of-appeals/1698099.html> (last visited Mar. 2, 2025).

classified Boardwine as a mere donor with no rights⁴⁶⁴⁷. The case underscores that courts will look at the intent and the process – not just the biology – but one must fit within the statute’s requirements to reap its protection.

Surrogacy is another ART pathway with significant legal implications. Surrogacy involves a woman (the surrogate) carrying a pregnancy for the intended parent(s). There are two types: *gestational surrogacy* (where the surrogate is not genetically related to the child) and *traditional surrogacy* (where the surrogate’s own egg is used). Virginia law permits surrogacy under a detailed statutory scheme in Chapter 9 of Title 20. Surrogacy contracts are legal but must be approved by a court in advance to be fully enforceable (Va. Code Ann. § 20-160 (1950))⁴⁸⁴⁹. Typically, the intended parent(s) – who may be a married couple or a single individual in Virginia – petition the court with the proposed surrogacy agreement. Virginia requires certain conditions to be met, including (for gestational surrogacy) that one of the intended parents contribute a gamete or that there is a medical need for surrogacy⁵⁰. Once a surrogacy is court-approved and the child is born, the court will issue orders to reflect parentage: the intended parent(s) can be declared the legal parents and the surrogate (and her spouse, if married) will relinquish any parental rights (Va. Code Ann. §§ 20-162, 20-163 (1950))⁵¹. Virginia’s law even anticipates the need for flexibility – for example, it does not require the intended parents to be genetically related to the child as long as they legally own any embryo used⁵². For LGBTQ+ couples, surrogacy is especially relevant to gay male couples (who require an egg donor and a gestational carrier) and to

⁴⁶ “The General Assembly patterned Virginia’s assisted conception statute, Va. Code Ann. § 20-156 *et seq.*, after the Uniform Status of Children of Assisted Conception Act. The statute defines the child’s father as ‘[t]he husband of the gestational mother of [the] child.’ In contrast, a ‘donor is not the parent of a child conceived through assisted conception, unless the donor is the husband of the gestational mother.’ In *L.F. v. Breit*, the Supreme Court explained that the origin and purpose of the assisted conception statute is to protect the interests of married parents by ensuring that ‘a married couple could obtain sperm from an outside donor without fear that the donor would claim parental rights.’” *Bruce v. Boardwine*, *supra* (citing *L.F. v. Breit*, 285 Va. 163, 736 S.E.2d 711 (2013)).

⁴⁷ “The statute defines a ‘donor’ as ‘an individual, other than a surrogate, who contributes the sperm or egg used in assisted conception.’ In turn, Va. Code Ann. § 20-156 defines ‘assisted conception’ as ‘a pregnancy resulting from any intervening medical technology, whether in vivo or in vitro, which completely or partially replaces sexual intercourse as the means of conception.’” *Bruce v. Boardwine*, *supra*.

⁴⁸ “[T]he prospective intended parent may enter into a written agreement whereby the surrogate may relinquish all her rights and duties as parent of a child conceived through assisted conception, and the prospective intended parent may become the parent of the child....” Va. Code Ann. § 20-159 (1950).

⁴⁹ “‘Surrogacy contract’ means an agreement between the intended parent, a surrogate, and her spouse, if any, in which the surrogate agrees to be impregnated through the use of assisted conception, to carry any resulting fetus, and to relinquish to the intended parent the custody of and parental rights to any resulting child.” Va. Code Ann. § 20-156 (1950).

⁵⁰ “Virginia permits married couples and single individuals to pursue surrogacy.” ConceiveAbilities, *Surrogacy in Virginia*, <https://www.conceiveabilities.com/surrogates/surrogacy-laws/virginia/> (last visited Mar. 2, 2025).

⁵¹ “Virginia’s Status of Children of Assisted Conception Chapter 9, Section 20-162 and Chapter 9, Section 20-163 outline the requirements and rights of a surrogate.” ConceiveAbilities, *supra*.

⁵² “In Virginia, intended parents do not need a genetic connection to the embryo so long as they can prove ownership of the embryo.” ConceiveAbilities, *supra*.

some lesbian couples or trans parents who cannot carry a pregnancy. It's crucial in such cases to have comprehensive contracts spelling out everyone's intent and to obtain the appropriate court orders so that the intended parents are recognized immediately at birth.

Some states, like New York (as of 2021) and California, have very surrogacy-friendly laws that allow pre-birth parentage orders and enforceable contracts; other states (like Michigan) ban compensated surrogacy entirely, and a handful impose criminal penalties for surrogacy contracts. Virginia falls somewhere in the middle – it allows surrogacy with oversight, and altruistic (uncompensated beyond expenses) surrogacy is explicitly permitted⁵³. The good news is that Virginia law does not discriminate on the basis of sexual orientation in surrogacy: LGBTQ+ intended parents are treated the same as any others, and the statutes are gender-neutral in describing who may be a parent. Indeed, guidance confirms that “Virginia allows surrogacy for all individuals including the gay and LGBTQ+ community, regardless of sexual orientation”^{54,55}.

For those using sperm or egg donors, beyond the statutory rule that donors are not parents, it's wise to have a written donor agreement. A donor agreement typically clarifies that the donor relinquishes any parental claims, and that the recipient(s) will be the sole parents. While Virginia's law covers this if medical tech is used, a written agreement provides extra evidence of intent and can address things like future contact, medical information, etc. The Rinehart Bryant law firm notes that “whenever a couple is using donor eggs or sperm, it's important to establish a ‘non-donor’ agreement” to make clear who the intended parents are⁵⁶. Such an agreement, combined with proper procedure, helps preempt any disputes. In situations of IVF, if embryos are created and frozen, couples should also be aware of the legal status of those embryos and have agreements about their disposition (especially in case of divorce or death). Virginia's statutes (and some case law) provide some guidance on embryo ownership and do require consent of a spouse for use of embryos after a death (Va. Code Ann. § 20-158(B) and (E) (1950)).

Assisted reproduction can enable LGBTQ+ people to become parents, but it comes with legal paperwork and potential pitfalls. Key takeaways are use licensed professionals for any insemination or IVF; have explicit contracts (surrogacy agreements, donor agreements) reflecting everyone's intent; and seek court orders when available (pre-birth or post-birth) to confirm the intended legal parentage. By doing so, couples can avoid scenarios like the *Bruce v. Boardwine* case and ensure that from the moment of birth (or as soon as legally possible

⁵³ “[A]ltruistic surrogacy is permitted in Virginia. Even if you have a surrogate, you may still choose to partner with a surrogacy agency to navigate your journey.” ConceiveAbilities, *supra*.

⁵⁴ “Virginia allows surrogacy for all individuals including the gay and LGBTQ+ community, regardless of sexual orientation.” ConceiveAbilities, *Surrogacy in Virginia*, <https://www.conceiveabilities.com/surrogates/surrogacy-laws/virginia/> (last visited Mar. 2, 2025).

⁵⁵ ConceiveAbilities, *Same-Sex Parents*, <https://www.conceiveabilities.com/parents/same-sex/> (last visited Mar. 2, 2025).

⁵⁶ Rinehart Bryant, PLLC, *Challenges Remain for LGBTQ Couples in Virginia*, <https://rblawva.com/challenges-remain-for-lgbtq-couples-in-virginia/#:~:text=Same,or%20egg%20donors%20are%20utilized> (last visited Mar. 2, 2025).

thereafter), both partners are the only recognized parents of their child⁵⁷⁵⁸. This also closes any door that might otherwise be open for donors or surrogates to claim parentage or for others to question the family's legal status. With thorough planning and legal counsel, ART can be navigated safely, allowing LGBTQ+ couples in Virginia to build their families with confidence in their parental rights.

Interstate Conflicts and Discrimination in Family Courts

Family law can become especially complex when multiple states are involved, and this is true for LGBTQ+ parentage as well. Because each state governs its own family law, there have been instances where one state's recognition of an LGBTQ+ parent was not initially recognized by another state. This lack of uniformity can lead to interstate conflicts.

A prime example is the Miller-Jenkins custody saga in the 2000s. There, a lesbian couple entered a civil union in Vermont and had a child; when the couple separated, the birth mother (Lisa) moved to Virginia (at a time when Virginia law refused to acknowledge same-sex unions or parental rights) and filed for sole custody. A Virginia trial judge, citing the state's anti-gay Marriage Affirmation Act, initially agreed that Virginia need not recognize the other mother (Janet)'s parental status⁵⁹. This created a direct conflict with Vermont, where the family had originated and where a court had already recognized Janet as a parent and awarded her visitation. Ultimately, the Virginia Court of Appeals and later the Virginia Supreme Court resolved the conflict in favor of honoring the Vermont orders: Virginia courts held that under the federal Parental Kidnapping Prevention Act and Full Faith and Credit Clause, Vermont's custody and

⁵⁷ "The General Assembly patterned Virginia's assisted conception statute, Va. Code Ann. § 20-156 *et seq.*, after the Uniform Status of Children of Assisted Conception Act. The statute defines the child's father as '[t]he husband of the gestational mother of [the] child.' In contrast, a 'donor is not the parent of a child conceived through assisted conception, unless the donor is the husband of the gestational mother.' In *L.F. v. Breit*, the Supreme Court explained that the origin and purpose of the assisted conception statute is to protect the interests of married parents by ensuring that 'a married couple could obtain sperm from an outside donor without fear that the donor would claim parental rights.'" *Bruce v. Boardwine*, No. 1250-14-3, 2015 Va. App. LEXIS 95 (Va. Ct. App. 2015) (quoting *L.F. v. Breit*, 285 Va. 163, 175, 736 S.E.2d 711, 717 (2013)).

⁵⁸ "If Boardwine is a 'donor' under this statute, then he is not J.E.'s 'parent,' and he would have no statutory right to custody or visitation." *Bruce v. Boardwine*, *supra*.

⁵⁹ "Ignoring state and federal statutes on child custody jurisdiction, the Virginia judge held that he had jurisdiction over the case. He relied on the recently enacted 'Marriage Affirmation Act,' which declares civil unions and other agreements 'purporting to bestow the privileges and obligations of marriage' between persons of the same sex to be unenforceable. We have joined Janet's original lawyer in appealing the case to the Virginia Court of Appeals, and our appellate brief was filed on December 7, 2004. Oral arguments were heard on September 14, 2005. While awaiting the Virginia Court of Appeals' ruling, the Vermont Supreme Court on August 4, 2006, held that Vermont has jurisdiction over the case, and that Lisa was in contempt of court order for refusing to allow visitation. On November 28, 2006, the Virginia Court of Appeals concurred with the Vermont Supreme Court's ruling." *Miller-Jenkins v. Miller-Jenkins*, ACLU of Virginia, <https://www.acluva.org/en/cases/miller-jenkins-v-miller-jenkins> (last visited Mar. 2, 2025).

parentage orders must be respected, despite Virginia's (then) public policy against same-sex unions⁶⁰.

By 2008, the Virginia Supreme Court made clear that Vermont's determination that both women were parents, and that Janet had visitation was binding in Virginia⁶². This case underscores that, even before same-sex marriage was legal nationwide, mechanisms like the Full Faith and Credit Clause could compel cross-state recognition of parental rights. However, it took years of litigation and was very hard on the family involved. The lesson from *Miller-Jenkins* is that having a court decree of parentage or adoption in one state is powerful – other states are constitutionally required to honor it – but in the absence of such a decree, families might find themselves in a legal grey zone if they move to or encounter a state with less friendly laws.

Even after *Obergefell* and related decisions, some interstate issues remain. Suppose an LGBTQ+ family resides in a state that, for example, has not updated its parentage laws to explicitly include same-sex couples or that does not allow certain forms of adoption. If that family travels or relocates, will their parent-child relationships be recognized everywhere? Generally, marital relationships and adoptions should be universally recognized now. The U.S. Supreme Court's decision in *Pavan v. Smith* (2017) reinforced that states must apply parentage presumptions equally – in *Pavan*, the Court struck down Arkansas's refusal to list a woman's same-sex spouse on a birth certificate, holding that the “constellation of benefits that the States have linked to marriage” must be granted on equal terms to same-sex couples⁶³. Thus, any state that honors the marital presumption for husbands must do so for wives of birth mothers as well.

However, complications can arise with non-marital situations or when parents separate. For example, if an unmarried LGBTQ+ couple with a child moves from a state that had recognized both as parents (perhaps through a *de facto* parent doctrine or a parentage judgment) to a state that does not acknowledge *de facto* parents, the second parent's rights could be in jeopardy absent an adoption or court order. Another scenario: a transgender parent might face a lack of understanding in a new state's court regarding their legal gender and parental status (though legally, a parent's gender change shouldn't affect their parental rights, biases could play a role). There have also been cases of judges in certain jurisdictions displaying bias against LGBTQ+ parents—for instance, historically, some courts used a parent's sexual orientation as a negative

⁶⁰ “[T]he Virginia Court of Appeals held in April 2007 that the Frederick County Circuit Court must give full faith and credit to Vermont's orders. The Virginia Supreme Court reviewed that decision and heard arguments on April 17, 2008.” *Miller-Jenkins v. Miller-Jenkins*, *supra*.

⁶¹ “On June 6, 2008, the Virginia Supreme Court upheld the Court of Appeals decision giving Vermont jurisdiction. The Court declined to overrule the 2006 Court of Appeals ruling that Vermont had custody over the case under the federal Parental Kidnapping Prevention Act and held that the 2006 opinion was the final word on all of the relevant legal issues.” *Miller-Jenkins v. Miller-Jenkins*, *supra*.

⁶² *Id.*

⁶³ “The law was invalidated because it infringed ‘the constellation of benefits that the States have linked to marriage.’” *Hawkins v. Grese*, 68 Va. App. 462, 809 S.E.2d 441 (Va. Ct. App. 2018) (quoting *Pavan v. Smith*, 137 S. Ct. 2075, 2077 (2017)).

factor in custody cases (the infamous *Bottoms v. Bottoms* case in Virginia in 1995 awarded custody to a grandmother over the mother, largely because the mother was lesbian, with the court citing the mother's relationship as "illegal" at the time⁶⁴).

While overt discrimination of that sort is now rare and likely unconstitutional (especially after *Lawrence v. Texas* nullified sodomy laws), subtler biases can still surface. A judge might, for example, favor a biological parent over an equally fit non-biological parent due to unconscious assumptions, or could impose extra requirements on a same-sex couple seeking adoption (as noted earlier). Although, given the current political environment, it does seem anything is possible.

From a jurisdictional standpoint, one major protective principle is Full Faith and Credit for court judgments. If you have an adoption decree or a parentage order from one state, every other state must recognize it as valid⁶⁵. Thus, one strong way to avoid interstate problems is to obtain formal court orders (like adoption) in your home state. Another important set of laws are the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) and Uniform Interstate Family Support Act (UIFSA), which every state (including Virginia) has adopted. The UCCJEA provides rules to determine which state's courts have jurisdiction to make custody decisions, generally giving priority to the child's "home state" and preventing dueling custody orders. Under the UCCJEA, once a state has made a custody determination, other states should not modify it except in limited circumstances, which helps avoid a scenario like two states issuing conflicting custody orders (exactly what happened initially in *Miller-Jenkins*). The UIFSA, on the other hand, governs interstate child support and establishment of parentage across state lines (discussed more in the next section). Together, these uniform laws are designed to reduce interstate friction. Still, when one state's law does not substantively recognize an LGBTQ parent and another's does, legal conflict can arise until a higher authority (either a higher court or the Constitution) resolves it.

Another area of concern is forum shopping or relocation: one parent might try to move to a state with laws perceived to be more favorable to their side of a dispute. For example, before same-sex

⁶⁴ "We have held, however, that a lesbian mother is not per se an unfit parent. *Doe v. Doe*, 222 Va. 736, 748, 284 S.E.2d 799, 806 (1981). Conduct inherent in lesbianism is punishable as a Class 6 felony in the Commonwealth, Va. Code Ann. § 18.2-361; thus, that conduct is another important consideration in determining custody. And, while the legal rights of a parent should be respected in a custody proceeding, those technical rights may be disregarded if demanded by the interests of the child." *Bottoms v. Bottoms*, 249 Va. 410, 457 S.E.2d 102 (1995), <https://www.apa.org/about/offices/ogc/amicus/bottoms> (last visited Mar. 2, 2025) (citing *Forbes v. Haney*, 204 Va. 712, 716, 133 S.E.2d 533, 536 (1963)).

⁶⁵ "The Full Faith and Credit Clause of the Constitution requires the Alabama state courts to recognize a Georgia state court's adoption order. In a *per curiam* opinion, the Court held that a state may only refuse to afford full faith and credit to another state's judgment if that court did not have subject-matter jurisdiction or jurisdiction over the relevant parties. In this case, Georgia law gives the state courts jurisdiction over adoption cases, and there is no established Georgia rule to the contrary, so the judgment should be afforded full faith and credit by other state courts." *V.L. v. E.L.*, 577 U.S. ____ (2016), <https://www.oyez.org/cases/2015/15-648> (last visited Mar. 2, 2025).

marriage, a biological mother might have moved to a state less likely to recognize her former same-sex partner as a parent (indeed, this was Lisa Miller's tactic).

Today, such a strategy is less likely to succeed due to the full faith and credit requirement and uniform laws, but it can still create legal headaches and delays. Parents who anticipate such issues sometimes preemptively register their orders in the new state's courts or seek legal advice to ensure continuity of recognition. If discrimination is encountered in a family court – say, a judge or guardian ad litem seems biased against an LGBTQ+ parent – litigants can seek to recuse the judge or appeal an unfair decision. High-profile cases and evolving social norms have made blatant discrimination far less acceptable; for instance, a state court cannot deny an adoption solely because the petitioners are gay without running afoul of equal protection (as a Mississippi federal court held in 2016 when striking down that state's ban on same-sex adoption⁶⁶). Likewise, a court that refused to enforce a custody order or child support order just because the parents are a same-sex couple would likely be reversed on appeal.

Interstate recognition of LGBTQ+ parentage has improved significantly—especially for marriages and adoptions—but caution is still warranted. The best way to avoid interstate issues is to secure parentage judgments (adoption or court orders) and keep copies of all vital documents when traveling or moving. If challenged, constitutional principles like full faith and credit and equal protection are strong allies for LGBTQ+ parents. And while no one can guarantee an individual judge's attitudes, the legal landscape is increasingly on the side of ensuring families are recognized consistently across state lines. If an issue does arise, higher courts have shown willingness to step in, as the U.S. Supreme Court did in *V.L. v. E.L.* by summarily reversing Alabama's refusal to honor a lesbian adoption, thereby sending a clear message that “parental rights by adoption are to be respected nationwide”⁶⁸. The trend is toward greater uniformity and less tolerance for discriminatory non-recognition—a relief for LGBTQ+ families who simply want their legal parent-child relationships to be secure wherever they go.

⁶⁶ “Federal judge overturns Mississippi's adoption ban on same-sex couples.” *The Guardian*, Mar. 31, 2016, <https://www.theguardian.com/us-news/2016/mar/31/federal-judge-overturns-mississippi-adoption-ban-same-sex-couples> (last visited Mar. 2, 2025).

⁶⁷ “It seems ‘highly unlikely that the same court that held a state cannot ban gay marriage because it would deny benefits—expressly including the right to adopt—would then conclude that married gay couples can be denied that very same benefit,’ U.S. District Judge Daniel Jordan wrote.” “Judge strikes down Mississippi ban on adoption by same-sex couples,” *Reuters*, Mar. 31, 2016, <https://www.reuters.com/article/world/us/judge-strikes-down-mississippi-ban-on-adoption-by-same-sex-couples-idUSKCN0WY35Q> (last visited Mar. 2, 2025).

⁶⁸ “The Alabama Supreme Court therefore erred in refusing to grant that judgment full faith and credit.” “U.S. Supreme Court Rules Alabama Must Grant Full Faith and Credit to Georgia Adoption,” *American Bar Association, Child Law Practice*, Apr. 2016, https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol-35/april-2016/u-s--supreme-court-rules-alabama-must-grant-full-faith-and-credi (last visited Mar. 2, 2025).

Establishing and Modifying Child Support in Virginia (Interstate Issues)

When it comes to child support, establishing a legal parent-child relationship is a prerequisite to creating a support obligation. Generally, a court cannot order someone to pay child support unless that person is a legal parent (by birth, adoption, or adjudication) of the child⁶⁹. In a traditional scenario, paternity (for a father) must be proven or acknowledged before support is imposed. For LGBTQ+ couples, this means that the non-biological parent must have taken steps to be legally recognized (such as adoption or a parentage order); otherwise, they usually cannot be forced to pay support – and conversely, the child cannot benefit from their financial support. For example, if two men are raising a child born to one of them (biologically) and the other never adopted, in Virginia the biological father is the only legal parent and only he can be required to support the child. The flip side is that the non-legal parent in that case also has no right to seek custody or visitation, as discussed above. This general rule holds true in most states.

In Virginia, a court cannot order child support without legal proof of parentage⁷⁰. The policy behind this is that child support statutes create obligations for parents, not for third parties or volunteers. However, an emerging question is whether someone who functioned as a *de facto* parent could ever be held liable for support. A few states have begun to explore that. In Maryland, for instance, where *de facto* parent status is recognized for custody purposes, commentators suggest a court *might* use that doctrine to also impose support on a former *de facto* parent⁷¹. But in Virginia, which does not recognize *de facto* parents, such an outcome is unlikely without formal parentage.

Now, assuming both partners *are* legal parents (*e.g.*, after an adoption or via the marital presumption), each can indeed be held responsible for child support, just like any other parents. Virginia calculates child support using its guidelines which consider both parents' incomes, the child's needs, and the custody arrangement (Va. Code Ann. § 20-108.2 (1950)). In a divorce or separation, if one legal parent has primary custody, the other can be ordered to pay guideline

⁶⁹ In Maryland, the general rule is that, before child support can be ordered, there must be proof of adoption or of a biological parent relationship with the child. In practice, this means proof of the father's paternity and proof of paternity is required before child support payments can be ordered. As noted here, '[a] court can't order child support without legal proof of paternity.' In Virginia, according to Va. Code Ann. § 20-49.1 and § 63.2-1913, legal proof of parentage, typically established through a DNA test, is required before a child support order can be entered, meaning a court will need to confirm paternity before establishing a child support obligation. Va. Code Ann. §§ 20-49.1, 63.2-1913 (1950).

⁷⁰ "In Virginia, according to Va. Code Ann. § 20-49.1 and § 63.2-1913, legal proof of parentage, typically established through a DNA test, is required before a child support order can be entered, meaning a court will need to confirm paternity before establishing a child support obligation." Va. Code Ann. §§ 20-49.1, 63.2-1913 (1950).

⁷¹ "The *de facto* parent doctrine ... Maryland now recognizes what is called the *de facto* parent doctrine[,] ... [which] exists where a person claims custody of a child 'based upon the party's relationship, in fact, with a nonbiological, non-adopted child.' When a person seeks to prove status as a *de facto* parent, and based on current 'legal trends ... if a spouse in a same-sex marriage can prove that the other nonbiological, non-adoptive parent is/was a 'parent, a Maryland divorce court might consider that sufficient to order child support payments.'" Timothy J. Stahl, *Same-Sex Divorces: Can I Be Ordered to Pay Child Support?*, <https://www.tstahllaw.com/blog/2022/july/same-sex-divorces-can-i-be-ordered-to-pay-child/> (last visited Mar. 2, 2025).

child support. Notably, once parentage is established, support obligations follow regardless of the parents' genders or the method of the child's conception—the law is gender-neutral in that respect. For instance, in a lesbian couple that is legally married and both recognized as mothers, if they split and the birth mother ends up with primary custody, the other mother would be treated as a non-custodial parent and likely required to pay child support under the same formula that a father would in a similar situation. Virginia's courts have handled such cases post-*Obergefell* in the same manner as any child support case, applying the guidelines to two mothers or two fathers as needed.

When one or both parents live outside Virginia, the Uniform Interstate Family Support Act (UIFSA) provides the framework for establishing, enforcing, or modifying child support across state lines. Virginia has codified UIFSA at Va. Code Ann. §§ 20-88.32 through 20-88.95 (1950). Under UIFSA, only one state's order for child support is in effect at any given time (to prevent competing orders), and that state retains "continuing, exclusive jurisdiction" over the order as long as one of the parties (or the child) remains in that state^{72,73}. If Virginia is the state that issued the support order, it keeps jurisdiction to modify that order so long as at least one party still lives in Virginia or the parties' consent to Virginia's jurisdiction⁷⁴. If all parties have left Virginia and moved elsewhere, generally the jurisdiction to modify would shift to a state where one of them resides. In practice, establishing a new child support order when parents reside in different states can be done by either: (a) registering and enforcing an existing order from the home state in the other parent's state, or (b) if no order exists yet, using long-arm jurisdiction to have one state (often the custodial parent's state) assert authority over the out-of-state parent.

Virginia's long-arm statute for support (Va. Code Ann. § 20-88.35 (1950)) outlines various bases for reaching an out-of-state parent, such as if the child was conceived in Virginia, if the parent lived with the child in Virginia at some time, if the parent resided in Virginia and provided prenatal support, or if the parent personally served consents to jurisdiction, among other grounds⁷⁵. For example, if a non-custodial parent moves to Maryland but the child and custodial parent remain in Virginia, a Virginia court can usually claim jurisdiction to establish a support order as long as one of the § 20-88.35 conditions is met (commonly, that Virginia was the child's home state or the place of conception). Alternatively, the custodial parent could seek assistance from Virginia's Division of Child Support Enforcement to have Maryland enforce support via a

⁷² Va. Code Ann. § 20-88.39 (1950).

⁷³ "If a tribunal of another state has issued a child support order pursuant to this chapter or a law substantially similar to this chapter that modifies a child support order of a tribunal of the Commonwealth, tribunals of the Commonwealth shall recognize the continuing, exclusive jurisdiction of the tribunal of the other state." Va. Code Ann. § 20-88.39(C) (1950).

⁷⁴ "At the time of the filing of a request for modification, the Commonwealth is the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued; or [e]ven if the Commonwealth is not the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued, the parties consent in a record that the tribunal of the Commonwealth may continue to exercise its jurisdiction to modify its order." Va. Code Ann. § 20-88.39 (1950).

⁷⁵ Va. Code Ann. § 20-88.35 (1950).

UIFSA petition—effectively asking the Maryland courts to establish a support order under Maryland law on Virginia’s behalf.

Modifying child support when parents are in different states also follows UIFSA’s rules. If Virginia issued the original order, Virginia would typically handle modifications unless neither parent nor the child lives in Virginia any longer, in which case another state can assume jurisdiction to modify (after registration of the order). The key point for LGBTQ+ couples is that none of these interstate procedures treat them differently; the challenges are more about logistics and jurisdiction than about sexual orientation.

One potential wrinkle: if one state does not recognize the person as a parent, would that affect support? Under full faith and credit, if a parent-child relationship was judicially established (*e.g.*, through an adoption in Virginia), another state cannot deny that status. So, an out-of-state court should enforce a Virginia support order against a parent even if that state’s law wouldn’t have recognized the parent’s status originally. For example, if a lesbian non-birth mother legally adopted her child in Virginia and then moved to a state that (hypothetically) had not allowed such an adoption, that state’s courts must still treat her as a legal parent for enforcement or modification purposes. Indeed, a real-world parallel occurred in *V.L. v. E.L.*, where the Alabama courts initially refused to acknowledge an adoption decree obtained by a same-sex couple in Georgia, which included child support and visitation provisions – the U.S. Supreme Court stepped in to say Alabama had to give full faith and credit to Georgia’s judgment⁷⁶. This principle would apply to support orders as well.

In Virginia, once a child support order is in place, it can be modified if there’s a material change in circumstances (change in income, custody, etc.), but the proper venue for that depends on UIFSA’s jurisdiction rules. Virginia’s statutes (Va. Code Ann. § 20-88.39 and § 20-88.76 (1950)) reflect the rule that only one state at a time should modify an order⁷⁷. If a parent wants to modify an out-of-state order in Virginia, they must meet the statutory requirements – typically, neither the child nor any party still lives in the state that issued the order, or the parties agree to transfer jurisdiction to Virginia (Va. Code Ann. § 20-88.76 (1950)). Conversely, if Virginia issued the order and the custodial parent moves to another state, Virginia might continue to handle modifications until jurisdiction shifts. Practically, parents can register the existing order in the new state and then seek modification there if eligible under UIFSA. This ensures that, for example, a non-custodial parent who moved out of Virginia can still get a modification (like a reduction in support if income drops) without having to return to Virginia, once jurisdiction transfers.

⁷⁶ “The Alabama Supreme Court erred in refusing to grant that judgment full faith and credit.” *V.L. v. E.L.*, 577 U.S. ___, 2016 WL 854160 (2016), https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol-35/april-2016/u-s--supreme-court-rules-alabama-must-grant-full-faith-and-credi (last visited Mar. 2, 2025).

⁷⁷ Va. Code Ann. § 20-88.76 (1950).

Establishing and enforcing child support for LGBTQ+ parents in Virginia follows the same framework as any other case: first, there must be a legal parent-child link, and second, one must navigate any interstate elements via UIFSA. The major hurdle specific to LGBTQ+ situations is ensuring that both parties are legal parents in the first place so that support can be ordered. If that hurdle is cleared (through birth, adoption, or adjudication), then the fact that it's two mothers or two fathers is immaterial to the support calculation or enforcement. Virginia's courts will treat both as parents who owe a duty to support their child. In cases involving multiple states, Virginia law and UIFSA provide mechanisms to claim jurisdiction over out-of-state parents and to collaborate with other states' courts. It is wise for the parent seeking support to consult an attorney or the state support enforcement agency, as they can help file the necessary petitions to ensure a child support order is entered and can be collected even if the other parent is beyond Virginia's borders. With the legal parentage established, children of LGBTQ+ couples have the same right to financial support from both parents as any other children – and the legal system offers tools to secure that support across state lines.

Recent Legal Developments

The legal landscape for LGBTQ+ parentage has evolved rapidly in the past decade, with significant case law and statutory changes expanding recognition of LGBTQ+ families. One of the watershed moments was the Supreme Court's decision in *Obergefell v. Hodges* (2015), which not only granted marriage equality but also laid the groundwork for equal parenting rights within marriage. *Obergefell* emphasized that marriage is a keystone of our social order and that related rights (such as birth certificates for children of the marriage) must be extended to same-sex couples⁷⁸.

Following directly from that, the Supreme Court in *Pavan v. Smith* (2017) struck down an Arkansas law that prevented married lesbian couples from having both names on their child's birth certificate. In *Pavan*, the Court made clear that states must provide same-sex spouses the same rights as opposite-sex spouses in the context of parental recognition, noting that the intent of *Obergefell* was to give same-sex couples “the constellation of benefits... linked to marriage” including the right “to be listed on a birth certificate” when a state would do so for a heterosexual couple⁷⁹. This decision has had nationwide impact – any state practices that still differentiated based on gender in presuming a parent have been reformed or challenged. For instance, after *Pavan*, states like Indiana and Arizona, which initially resisted listing a birth mother's wife as a parent, have had to comply and treat the wife as a presumed parent.

⁷⁸ “Barring procreation or adoption, pre-*Obergefell*, different-sex marriages did not automatically result in the spouses becoming legal parents of each other's children and the analysis of the *Obergefell* majority opinion does not compel a different conclusion with respect to same-sex marriages, far less unmarried couples of any sexual orientation.” *Hawkins v. Grese*, 68 Va. App. 462, 809 S.E.2d 441 (2018).

⁷⁹ “*Pavan* relied on *Obergefell* to overturn an Arkansas law which required the father of a child to be listed on that child's birth certificate. The consolidated appellants in *Pavan* were two legally married lesbian couples. As with B.G., the fathers were anonymous sperm donors.” *Hawkins v. Grese*, *supra*.

Another major development has been in state courts addressing the rights of non-biological parents in unmarried couples. Several state high courts issued landmark decisions around 2016 redefining “parent” beyond strictly biological or adoptive terms. The New York Court of Appeals did so in *Matter of Brooke S.B. v. Elizabeth A.C.C.* (2016), overruling an old precedent and holding that a partner who shows by clear and convincing evidence that the parties agreed to conceive and raise a child together can be recognized as a parent with standing to seek custody/visitation⁸⁰. This allowed a non-biological lesbian mother in that case to be considered a parent to the child she had co-parented since birth. Similarly, the Supreme Judicial Court of Massachusetts in *Partanen v. Gallagher* (2016) interpreted the state’s paternity statute gender-neutrally to find that an unmarried woman could be a legal parent to the children her partner bore via assisted reproduction, because they jointly planned and parented the children even without marriage. Massachusetts essentially said biology isn’t required if there was a holding out as parents and a mutual agreement. Around the same time, the Maryland Court of Appeals in *Conover v. Conover* (2016) recognized *de facto* parent status, which confers parental standing to someone who acted as a parent with the consent of the legal parent.

These cases reflect a broader trend: courts are increasingly willing to protect the parent-child relationship that exists in fact, preventing a legal parent from unilaterally cutting off a child’s other caretaker. While Virginia’s courts have not adopted such a doctrine (*Hawkins v. Grese* reaffirmed Virginia’s stricter stance), these developments in other states could influence future legislative changes or court decisions in the Commonwealth. Advocates are making “emerging legal arguments” rooted in equal protection and the child’s best interests to urge states like Virginia to provide avenues for non-biological parents in unmarried relationships to establish parentage (either through a statute or a judicial doctrine). So far, Virginia has chosen to stick to adoption and marriage as the solutions, but it’s an area to watch.

On the legislative front, the Uniform Parentage Act (UPA) of 2017 has been a significant recent development. This model law, updated by the Uniform Law Commission, includes many provisions to address LGBTQ+ family issues. UPA 2017 explicitly provides for gender-neutral presumptions (so the marital presumption applies equally to same-sex spouses)⁸¹, allows for Voluntary Acknowledgments of Parentage (VAP) to be used by intended parents regardless of gender, and includes *de facto* parent provisions and paths to establish parentage for children born via assisted reproduction (including surrogacy). It also permits courts to recognize more than two parents in extraordinary cases if not doing so would be detrimental to the child (for example, if a child has two mothers and a father figure, some states allow all three to be legal parents). States like California and Washington have adopted versions of this updated UPA, and others (Connecticut, Maine, Rhode Island, Vermont among them) have enacted similar comprehensive parentage reform laws in the last few years.

⁸⁰ *Hawkins v. Grese*, 68 Va. App. 462, 469 (2018) (“Hawkins’ arguments regarding the manner in which her constitutional rights were allegedly violated are a bit convoluted.”).

⁸¹ Uniform Parentage Act (2017).

These laws are making it easier for LGBTQ+ parents to secure their rights (*i.e.*, allowing unmarried couples to sign a VAP at the hospital to acknowledge the non-biological parent from birth, or allowing confirmatory adoptions without a home study). Virginia has not yet adopted the UPA 2017, but it did amend its assisted conception statute in 2019 to be gender-neutral⁸², which was a step in that direction. In 2020, Virginia also went through its code and removed outdated language that prohibited same-sex marriage or defined marriage in heterosexual terms⁸³, a cleanup following *Obergefell*. Bills have been introduced in Virginia’s legislature in recent sessions to further equality in family law (*e.g.*, proposals to allow second-parent adoption by unmarried couples, or to ban discrimination by adoption agencies), though not all have passed. Legal service organizations continue to push for modernization so that LGBTQ+ parents need not rely on patchwork solutions.

We have also seen developments regarding discrimination in the child welfare system. In *Fulton v. City of Philadelphia* (2021), the U.S. Supreme Court ruled in favor of a Catholic foster care agency’s right (under the Free Exercise Clause) to an exemption from nondiscrimination rules, which means some agencies may continue to refuse to work with same-sex foster or adoptive parents. While *Fulton* was narrow and based on the specifics of Philadelphia’s contract, it highlights the ongoing tension between religious freedom claims and LGBTQ+ equality in family formation. States like Virginia, with its “conscience clause” law, effectively already allow such refusals⁸⁴. On the other hand, some states have moved in the opposite direction, explicitly prohibiting discrimination against prospective parents based on sexual orientation or gender identity in adoption and foster care. These evolving policies can impact where and how LGBTQ+ individuals seek to adopt or foster children.

Another recent focus is the security of LGBTQ+ families in a shifting judicial climate. After the Supreme Court’s decision in *Dobbs v. Jackson Women’s Health Org.* (2022) – which overturned *Roe v. Wade* – a concurring opinion by Justice Thomas mused about revisiting other substantive due process cases, including *Obergefell*. This has caused some concern in the LGBTQ+ community about the stability of marriage equality long-term. In response, many LGBTQ+ couples who had relied solely on marriage presumptions are rushing to get second-parent adoptions or parentage orders as a safeguard (often dubbed the “adoption rush” post-*Dobbs*)⁸⁵.

⁸² H.B. 623, 2020 Gen. Assemb., Reg. Sess. (Va. 2020) (amending Va. Code Ann. § 20-38.1 (1950)).

⁸³ Va. Code Ann. §§ 2.2-520, 2.2-2901.1, 2.2-3900 *et seq.* (1950).

⁸⁴ “Private agencies in Virginia are, by law, allowed to discriminate against same-sex couples. Lawmakers added a ‘conscience clause’ to adoption laws which gives religious agencies the option to refuse adoption to any couple that ‘would violate the agency’s written religious or moral convictions or policies.’ This clause is a setback for same-sex couples in the state, so it’s important to keep this in mind if your family is looking to adopt and seeking to work with private agencies.” Rinehart Bryant, PLLC, *Challenges Remain for LGBTQ Couples in Virginia*, <https://rblawva.com/challenges-remain-for-lgbtq-couples-in-virginia> (last visited Mar. 2, 2025).

⁸⁵ Chabeli Carrazana, *Attorneys See Surge of LGBTQ+ Parents Seeking to Adopt Their Children Before New Trump Term*, PBS NewsHour, <https://www.pbs.org/newshour/politics/attorneys-see-surge-of-lgbtq-parents-seeking-to-adopt-their-children-before-new-trump-term> (last visited Mar. 2, 2025).

Attorneys have reported a surge in same-sex parents formalizing their legal ties to their children, just in case the legal landscape shifts in the future⁸⁶.

Additionally, states are taking action: some have codified *Obergefell* protections in state law or even in state constitutions to ensure marriage (and thus parentage via marriage) remains intact regardless of federal changes. Virginia, for example, still has an unenforceable same-sex marriage ban in its state constitution; efforts are underway to repeal that, with legislative votes in progress, but it requires a multi-year process to amend the constitution. Keeping an eye on these broader legal currents is important for practitioners counseling LGBTQ+ clients—the consensus emerging advice is to “belt and suspenders” every family’s legal security (*i.e.*, don’t rely solely on presumptions when you can get an adoption decree, given political uncertainty).

In terms of judicial decisions in Virginia specifically, besides the ones already discussed (like *Hawkins v. Grese*), there have been a few noteworthy cases. The Virginia Court of Appeals in recent years decided *L.F. v. Breit* (2013) and *Stoicescu v. Vaughn* (2021) dealing with assisted conception and donor agreements, which, while involving different-sex situations, set precedents relevant to LGBTQ+ cases (*L.F. v. Breit* allowed an unmarried father who had signed a co-parenting agreement with the mother to be recognized as a parent despite not being married – suggesting that written agreements can bolster parentage claims in Virginia even outside marriage⁸⁷⁸⁸). Another case, *Bruce v. Boardwine* (2015, discussed earlier), prompted the legislature to consider clarifying the definition of assisted conception; indeed, Virginia’s 2019 amendment to § 20-158 may have been in part to ensure that same-sex female couples using known donors are covered under the presumption (previously it referred to “husband” which would not have included a female partner)⁸⁹. This shows how case law and legislation interact to refine the law.

⁸⁶ Attorneys report a significant increase in inquiries about these legal protections. Legal experts note that while they don’t expect marriage equality to be overturned soon, parental rights could be more vulnerable to state-level challenges under a Trump administration. Our family law practice provides affordable second parent adoption options for same-sex married couples throughout the Commonwealth of Virginia and we have seen a marked increase in demand for couples with each passing day. Author’s personal knowledge (derived from author’s experience practicing family law in Virginia).

⁸⁷ “[A] ‘donor is not the parent of a child conceived through assisted conception, unless the donor is the husband of the gestational mother.’ In *L.F. v. Breit*, the Supreme Court explained that the origin and purpose of the assisted conception statute is to protect the interests of married parents by ensuring that ‘a married couple could obtain sperm from an outside donor without fear that the donor would claim parental rights.’ If *Boardwine* is a ‘donor’ under this statute, then he is not J.E.’s ‘parent,’ and he would have no statutory right to custody or visitation.” *Bruce v. Boardwine*, No. 1250-14-3, 2015 Va. App. LEXIS 95 (Va. Ct. App. 2015) (quoting Va. Code Ann. § 20-158(A)(3) (1950); *L.F. v. Breit*, 285 Va. 163, 175, 736 S.E.2d 711, 717 (2013)).

⁸⁸ “[T]he origin and purpose of the assisted conception statute is to protect the interests of married parents by ensuring that ‘a married couple could obtain sperm from an outside donor without fear that the donor would claim parental rights.’ If *Boardwine* is a ‘donor’ under this statute, then he is not J.E.’s ‘parent,’ and he would have no statutory right to custody or visitation.” *Bruce v. Boardwine*, *supra*.

⁸⁹ H.B. 623, 2020 Gen. Assemb., Reg. Sess. (Va. 2020) (amending Va. Code Ann. § 20-38.1 (1950)).

Finally, we should mention that some forward-looking legal arguments are gaining traction. One is the idea of children's rights to maintain relationships with their psychological parents. In some recent cases, advocates argued that the child has a liberty or equal protection interest in not being cut off from a person they view as a parent, even if that person isn't a biological parent. While not yet widely adopted, this framing flips the script to focus on the child's perspective. Another development is increasing recognition of multi-parent families. California pioneered a law in 2013 allowing courts to declare more than two parents if not doing so would be detrimental to the child (e.g., if a biological father and a married lesbian couple all have a parental relationship with a child, the court could recognize all three). A few other states like Maine and Washington have similar provisions. This hasn't been tested much in Virginia, but as complex family structures become more common, it could arise (i.e., a known donor who remains involved as a father along with a same-sex couple). The trend in other jurisdictions suggests a slow move toward more flexible family definitions.

Recent years have seen significant strides in solidifying LGBTQ+ parentage rights: from high court rulings like *Obergefell* and *Pavan* guaranteeing equal treatment, to state court breakthroughs recognizing non-traditional parents, to legislative reforms modernizing parentage laws. Virginia has incorporated some of these changes (gender-neutral language, equal birth certificate access) but lags in others (no *de facto* parent or second-parent adoption statute). Legal professionals must stay alert to both binding changes (like Supreme Court decisions) and persuasive ones (like other states' innovative rulings) that could influence Virginia law. The momentum is generally toward inclusion and equality in parentage, ensuring that families formed in love and intention are honored in law. However, given the potential headwinds in the federal courts and varying state approaches, continued advocacy and cautious lawyering remain important to protect LGBTQ+ parents and their children.

Practical Tips for Legal Professionals Assisting LGBTQ+ Clients

Attorneys and legal professionals working with LGBTQ+ families should take a proactive, detail-oriented approach. Below are some practical tips and a checklist of best practices to ensure parental rights and support obligations are secured:

- **Confirm Parental Status Early:** Determine each parent's legal relationship to the child from the outset. If a client is the non-biological or non-gestational parent, plan to establish their parentage as soon as possible (through adoption, voluntary acknowledgment, or court order). Don't assume that being on a birth certificate alone is enough – it's safer to have a court decree backing it up. Encourage clients to pursue a step-parent or second-parent adoption **even if** they are married and listed on the birth certificate. This pre-empts challenges and is recognized in all states.
- **Use Agreements and Document Intent:** For couples using known donors or carriers, draft clear agreements. A sperm or egg donor agreement should state the donor has no parental rights or duties and clarify the intended parents' rights. While such agreements may not be legally determinative in all scenarios, they provide crucial evidence of intent and can prevent misunderstandings. Likewise, if clients are co-parenting without being

married, consider a co-parenting agreement that outlines their shared intent to parent, and if possible, incorporate that into a court-approved consent custody order. Though Virginia may not formally recognize a co-parenting agreement as creating parentage, it can be persuasive in court and serve as evidence if disputes arise.

- **Leverage the Marital Presumption (If Applicable):** If your clients are a married same-sex couple having a child, ensure the hospital knows to list the spouse as a parent on the birth certificate (Virginia's forms now allow this for "mother"/"parent" rather than just "mother"/"father"). While you should still follow up with an adoption, having both names on the birth certificate is important for everyday dealings (*e.g.*, getting a passport, enrolling in school) and is a first layer of protection thanks to *Pavan* and related cases.
- **Follow Medical Procedures for ART:** Advise clients that if they are conceiving via ART, they must do so in a manner consistent with state law. In Virginia, that means using a licensed physician for donor insemination or IVF so that it clearly falls under "assisted conception" as defined by statute⁹⁰. Discourage informal at-home insemination with a known donor without medical oversight, as it could jeopardize the non-biological parent's rights and give the donor a window to claim paternity (as in *Bruce v. Boardwine*). If at-home methods are the only option, fully inform clients of the risks and explore whether a post-birth paternity/parentage adjudication (terminating the donor's rights and confirming the intended parent's) is feasible.
- **Secure Orders of Parentage in Surrogacy:** If dealing with a surrogacy case, meticulously follow Virginia's statutory requirements. Obtain court approval of the surrogacy contract before the birth (Va. Code Ann. § 20-160 (1950)) and then a birth order or adoption after birth as needed. Ensure that the surrogate and if applicable her husband have executed all necessary consents. Given the complexity, it's wise to collaborate with an experienced ART law attorney or refer the client to one. Also, remind clients pursuing surrogacy out-of-state to get legal advice both in the surrogacy state and in Virginia to ensure the orders will be recognized and registered here.
- **Interstate Coordination:** When clients are moving or living across state lines, review any existing orders (custody, adoption, support) and help register them in the new state if needed. For example, under UIFSA, a support order from Virginia can be registered in

⁹⁰ "The statute defines a 'donor' as 'an individual, other than a surrogate, who contributes the sperm or egg used in assisted conception.' Va. Code Ann. § 20-156. In turn, ... § 20-156 defines 'assisted conception' as a pregnancy resulting from any intervening medical technology, whether in vivo or in vitro, which completely or partially replaces sexual intercourse as the means of conception. Such intervening medical technology includes, but is not limited to, conventional medical and surgical treatment as well as noncoital reproductive technology such as artificial insemination by donor, cryopreservation of gametes and embryos, in vitro fertilization, uterine embryo lavage, embryo transfer, gamete intrafallopian tube transfer, and low tubal ovum transfer." *Bruce v. Boardwine*, *supra*.

⁹¹ "The statute's plain language does not support Bruce's interpretation. The word 'medical,' in its ordinary use, means 'of, relating to, or concerned with physicians or with the practice of medicine' and 'requiring or devoted to medical treatment.' The statute does not encompass all technology. Instead, its language is limited to 'medical technology.' The plain meaning of the term 'medical technology' does not encompass a kitchen implement such as a turkey baster." *Bruce v. Boardwine*, *supra* (citing Webster's Third New International Dictionary 1402 (unabr. 1981)).

another state for enforcement or modification (and vice versa). Under the UCCJEA, if a client with a custody order moves, consider filing a certified copy of that order with the new state's court for enforcement purposes. This can prevent a disgruntled ex from attempting to relitigate parentage or custody in a new forum. Be prepared to educate out-of-state courts on your client's legal status (providing copies of statutes or case law if the concept of two mothers or two fathers is novel to that court).

- **Anticipate and Address Bias:** While overt discrimination is less common now, subtle biases can occur. Prep your client for any evaluations or home studies—sadly, LGBTQ+ parents might still feel they're held to a higher standard by some evaluators. Provide character references and evidence of the child's well-being proactively in contested cases. If a guardian ad litem is appointed, make sure they understand the family dynamics (for instance, ensure they know not to mis-gender a parent or misunderstand who's who in a two-dad household). If you sense a judge or official is treating your client unfairly due to bias, create a record of it and consider escalating (through a motion to recuse or an appeal) if it impacts the outcome. Virginia does not have an explicit anti-bias rule in custody statutes regarding sexual orientation, so it's up to the attorney to assert the client's constitutional rights if necessary.
- **Keep Copies of Key Documents:** Advise your clients to maintain an organized file of all vital documents related to their family. This includes adoption decrees or parentage orders, birth certificates (with parents listed), marriage certificates, any custody or guardianship orders, and powers of attorney for medical care of the child. In an emergency or when dealing with schools, doctors, or travel, having these on hand is invaluable. For instance, a copy of the adoption order can quickly resolve issues if a hospital questions a non-birth mother's right to consent to treatment. Some LGBTQ+ parents carry a portable file or have digital scans on their phone for easy access. Specifically, Family Equality recommends keeping copies of the adoption/parentage decree, the child's birth certificate, any guardianship or custody agreement, any co-parenting agreement, the parents' marriage license, and medical power of attorney forms for the child. Ensuring clients have these documents readily available can save time and stress.
- **Stay Informed and Leverage Resources:** The field of LGBTQ+ family law is dynamic. Encourage continuing education for yourself and your clients. Follow updates from advocacy groups like Family Equality, the National Center for Lesbian Rights (NCLR), GLAD, and Lambda Legal, which often provide state-by-state guides and emerging issue briefs. For example, NCLR's publications on the Uniform Parentage Act or second-parent adoption can offer insight into arguments that might work in Virginia or help you advise clients who spend time in other jurisdictions⁹². Also, be aware of support networks

⁹² "Not all states allow second parent adoption. According to Family Equality, 20 states allow unmarried couples to petition for second parent adoption. And, in some states, it might be more difficult for same-sex couples to petition successfully for a second parent adoption. For a detailed breakdown of second parent adoption with a focus on adoptions by same-sex couples, check out the National Center for Lesbian Rights' publication *Legal Recognition of*

in Virginia such as Equality Virginia or local LGBTQ+ family groups, as they can be good referrals for clients in need of community or non-legal support.

- **Document, Document, Document:** In any disputed case (or potential dispute), build your evidence. If your client is a non-biological parent seeking custody, gather evidence of their role: photos, correspondence where the other parent acknowledges them as a parent, school records listing them as a parent, etc. If support is an issue, document any financial contributions made by a non-legal parent or promises of support, as this could support an equitable estoppel argument (some courts outside Virginia have enforced child support based on promises/behavior). While Virginia hasn't explicitly adopted that approach, it doesn't hurt to be prepared in case the law continues to evolve.
- **Counsel on Estate Planning:** While not strictly within "parentage," estate planning is crucial for LGBTQ+ parents. Advise clients to make wills that name the desired guardian for their child in case of death, especially if one parent isn't legally recognized yet (to avoid a scenario where a biological family member could challenge for custody). Also recommend healthcare proxies and powers of attorney between partners relating to the child – for instance, each parent should authorize the other to make medical decisions for the child, which is routine if both are legal parents but even more important if one's status is still in process. These precautions can provide a safety net for the family.

Finally, reassure your clients. Many LGBTQ+ parents come into a lawyer's office with anxiety fueled by horror stories of the past. Part of our job is to explain how far the law has come—that Virginia now *does* recognize their families in most respects—and to map out a plan to address any remaining vulnerabilities. By following a thorough checklist and utilizing the tools now available, we can help LGBTQ+ families achieve the stability and security that all families deserve. Each step, from a second-parent adoption to a well-drafted agreement, is one more layer of protection for the children at the heart of these matters. With careful legal guidance, LGBTQ+ parents in Virginia can confidently build their families, knowing their parental rights and obligations will be recognized and enforced both at home and beyond.

LGBT Families." Nolo, *Adopting a Child*, <https://www.nolo.com/legal-encyclopedia/free-books/living-together-book/chapter7-6.html> (last visited Mar. 2, 2025).

Supplemental Material

Introduction to Basic LGBTQ+ Terms

- **LGBTQ+** – An acronym for *lesbian, gay, bisexual, transgender, and queer* (with the “Q” sometimes also meaning *questioning*, especially in youth contexts). The “+” acknowledges the inclusion of other sexual orientations and gender identities beyond these five^{93,94}. In short, LGBTQ+ refers to a diverse community of people whose sexual orientations are not exclusively heterosexual and/or whose gender identities are not exclusively cisgender.
- **Sexual Orientation** – Describes a person’s enduring physical, romantic, and/or emotional attraction to others. Examples include being straight, gay, lesbian, bisexual, pansexual, asexual, etc. Importantly, sexual orientation is inherent (not a choice) and is independent of a person’s gender identity⁹⁵. (*i.e.*, a transgender person can have any sexual orientation.) It’s advised to avoid terms like “sexual preference,” which misleadingly imply that orientation is a choice or can be changed⁹⁶.
- **Gender Identity** – One’s internal, deeply-felt sense of being male, female, both, neither, or another gender entirely. Everyone has a gender identity; for most it aligns with their birth-assigned sex, but for transgender and non-binary people it does not⁹⁷. Gender

⁹³ Human Rights Campaign, *Glossary of Terms*, Human Rights Campaign, <https://www.hrc.org/resources/glossary-of-terms#:~:text=LGBTQ%2B%20,by%20members%20of%20our%20community> (last visited Mar. 2, 2025).

⁹⁴ “Acronym for lesbian, gay, bisexual, transgender, and queer. The Q generally stands for queer when LGBTQ organizations, leaders, and media use the acronym. In settings offering support for youth, it can also stand for questioning. LGBT and LGBTQ+ are also used, with the + added in recognition of all non-straight.” GLAAD, *Media Reference Guide: LGBTQ Terms*, GLAAD, <https://glaad.org/reference/terms#:~:text=Acronym%20for%20lesbian%2C%20gay%2C%20bisexual%2C,straight> (last visited Mar. 2, 2025).

⁹⁵ “Many Americans refrain from talking about sexual orientation and gender identity or expression because it feels taboo, or because they’re afraid of saying the wrong thing. This glossary was written to help give people the words and meanings to help make conversations easier and more comfortable. LGBTQ+ people use a variety of terms to identify themselves, not all of which are included in this glossary. Always listen for and respect a person’s self-identified terminology.” Human Rights Campaign, *Glossary of Terms*, Human Rights Campaign, <https://www.hrc.org/resources/glossary-of-terms#:~:text=Sexual%20orientation%20,independent%20of%20their%20gender%20identity> (last visited Mar. 2, 2025).

⁹⁶ “Avoid the offensive term ‘sexual preference,’ which is used to inaccurately suggest that being gay, lesbian, or bisexual is voluntary and ‘curable.’” GLAAD, *Media Reference Guide: LGBTQ Terms*, GLAAD, <https://glaad.org/reference/terms/#:~:text=match%20at%20L610%20heterosexual%20,sexual%20experiences%20to%20know%20their> (last visited Mar. 2, 2025).

⁹⁷ “Please note: gender identity is not visible to others. You cannot look at someone and ‘see’ their gender identity.” GLAAD, *Media Reference Guide: Transgender Terms*, GLAAD, <https://glaad.org/reference/trans-terms#:~:text=Gender%20Identity%20A%20person%E2%80%99s%20internal%2C,note%3A%20gender%20identity%20is%20not> (last visited Mar. 2, 2025).

identity is not visible just by looking at someone⁹⁸ – it’s about how a person feels and knows themselves to be. Notably, the American Academy of Pediatrics reports that most children have a stable sense of their gender identity by around age 4⁹⁹.

- **Gender Expression** – The outward presentation of gender through things like clothing, hairstyle, makeup, speech, and behavior. This is how a person expresses their gender to the world. A person’s gender expression may or may not conform to traditional expectations of femininity or masculinity¹⁰⁰. For example, wearing dresses, having short or long hair, or mannerisms can all be part of gender expression – and people of any gender identity can have any type of expression. (Simply having an unconventional gender expression does **not** necessarily mean someone is transgender or non-binary¹⁰¹.)
- **Sex Assigned at Birth** – The designation of *male*, *female*, or *intersex* that is given to an infant at birth, usually by a doctor or midwife, based on the baby’s external anatomy¹⁰². This term acknowledges that what is put on one’s birth certificate (typically “M” or “F”) is determined by visible biological characteristics and might not reflect the person’s true gender identity. (You may also hear “birth sex” or “natal sex,” but sex assigned at birth is preferred as it clearly marks it as an assigned label¹⁰³.)

⁹⁸ “A person’s internal, deeply held knowledge of their own gender. Everyone has a gender identity. For most people their gender identity matches the sex they were assigned at birth. (See cisgender below.) For transgender people, their gender identity does not align with the sex they were assigned at birth. Many people have a gender identity of man or woman (or, for children, boy or girl). For other people, their gender identity does not fit neatly into one of those two binary genders.” GLAAD, *Media Reference Guide: Transgender Terms*, GLAAD, <https://glaad.org/reference/trans-terms#:~:text=gender%20identity,and%20%E2%80%9Csee%E2%80%9D%20their%20gender%20identity> (last visited Mar. 2, 2025).

⁹⁹ “By age four: Most children have a stable sense of their gender identity.” Am. Acad. of Pediatrics, *Gender Identity and Gender Confusion in Children*, HealthyChildren.org, <https://www.healthychildren.org/English/ages-stages/gradeschool/Pages/Gender-Identity-and-Gender-Confusion-In-Children.aspx> (last visited Mar. 2, 2025).

¹⁰⁰ Gender expression is the “external appearance of one’s gender identity, usually expressed through behavior, clothing, body characteristics or voice, and which may or may not conform to socially defined behaviors and characteristics typically associated with being either masculine or feminine.” Human Rights Campaign, *Glossary of Terms*, Human Rights Campaign, <https://www.hrc.org/resources/glossary-of-terms#:~:text=Gender%20expression%20,being%20either%20masculine%20or%20feminine> (last visited Mar. 2, 2025).

¹⁰¹ “Please note that many cisgender people have gender expressions that are gender non-conforming. Simply having a non-conforming gender expression does not make someone trans or nonbinary.” GLAAD, *Media Reference Guide: Transgender Terms*, GLAAD, <https://glaad.org/reference/trans-terms#:~:text=match%20at%20L739%20A%20term,Nor> (last visited Mar. 2, 2025).

¹⁰² Human Rights Campaign, *Glossary of Terms*, Human Rights Campaign, <https://www.hrc.org/resources/glossary-of-terms#:~:text=Sex%20assigned%20at%20birth%20,based%20on%20their%20external%20anatomy> (last visited Mar. 2, 2025).

¹⁰³ “The sex (male or female) assigned to an infant, most often based on the infant’s anatomical and other biological characteristics. Sometimes referred to as birth sex, natal sex, biological sex, or sex; however, sex assigned at birth is the recommended term.” Nat’l LGBT Health Educ. Ctr., *LGBTQIA+ Glossary for Health Care Teams* (Aug. 2020), <https://www.lgbtqiatheducation.org/wp-content/uploads/2020/10/Glossary->

- **Cisgender** – An adjective for someone whose gender identity aligns with the sex they were assigned at birth. In other words, a cisgender person is *not* transgender. For example, if someone is born and labeled female and they identify as a woman, they are a cisgender woman. (“Cis-” is a Latin prefix meaning “on the same side,” the opposite of “trans-.”) This term often goes unmentioned because cisgender people are seen as the societal “norm,” but it’s useful for clarity since everyone has a gender identity (either cis or trans).
- **Transgender** (often shortened to *trans*) – An umbrella term for people whose gender identity and/or expression differs from what is typically expected based on the sex they were assigned at birth¹⁰⁴. For example, a person assigned male at birth who knows herself to be a woman is a transgender woman. *Being transgender is not a mental disorder* – it simply means one’s true gender is not the one they were labeled with initially. Also, being transgender does not determine sexual orientation¹⁰⁵. Transgender people can be straight, gay, bisexual, etc., just like anyone else. Some trans people medically or socially transition (see transition), but not all do, and they are no less valid as trans.
- **Lesbian** – A woman who is emotionally, romantically, or sexually attracted to other women¹⁰⁶. This term is typically used by women (and some non-binary people) who experience attraction to women. Some lesbians may simply call themselves “gay,” and that’s okay – terms are a matter of personal preference. Avoid the term “homosexual” for lesbians or gay men; it is clinical and has been used negatively in the past.
- **Gay** – A common adjective describing people (often men, but not always) who are primarily attracted to the same gender. For example, a gay man is attracted to men. “Gay” can also be used broadly: gay women, gay men, gay people¹⁰⁷. Like “lesbian,” it refers to attraction toward the same gender. This term is preferred over “homosexual,” which is considered outdated and may be offensive¹⁰⁸.

2020.08.30.pdf#:~:text=comfortable%20with%20the%20terms%20gay%2C,birth%20is%20the%20recommended%20term.

¹⁰⁴ Human Rights Campaign, *Glossary of Terms*, Human Rights Campaign, <https://www.hrc.org/resources/glossary-of-terms#:~:text=Transgender%20,straight%2C%20gay%2C%20lesbian%2C%20bisexual%2C%20etc> (last visited Mar. 2, 2025).

¹⁰⁵ “Transgender people may identify as straight, gay, lesbian, bisexual, etc.” Human Rights Campaign, *Glossary of Terms*, Human Rights Campaign, <https://www.hrc.org/resources/glossary-of-terms#:~:text=Transgender%20,straight%2C%20gay%2C%20lesbian%2C%20bisexual%2C%20etc> (last visited Mar. 2, 2025).

¹⁰⁶ Human Rights Campaign, *Glossary of Terms*, Human Rights Campaign, <https://www.hrc.org/resources/glossary-of-terms#:~:text=Lesbian%20,this%20term%20to%20describe%20themselves> (last visited Mar. 2, 2025).

¹⁰⁷ Human Rights Campaign, *Glossary of Terms*, Human Rights Campaign, <https://www.hrc.org/resources/glossary-of-terms#:~:text=Gay%20,this%20term%20to%20describe%20themselves> (last visited Mar. 2, 2025).

¹⁰⁸ “Avoid identifying gay people as ‘homosexuals’ an outdated term considered derogatory and offensive to many lesbian and gay people. Ask people how they describe themselves before labeling their sexual orientations.” GLAAD, *Media Reference Guide: LGBTQ Terms*, GLAAD,

- **Bisexual (Bi)** – Someone who is attracted to more than one gender. A bisexual person might be attracted to both men and women, or to people of various genders, not necessarily at the same time or in the same way or intensity¹⁰⁹. Bisexuality does *not* mean an exact 50/50 split of attraction, and it isn't confusion or a phase—it is a valid sexual orientation. (Sometimes “bi” is used as an umbrella term inclusive of pansexual and other multi-gender attractions, or people use bi+ to denote this inclusivity¹¹⁰¹¹¹.)
- **Pansexual** – Someone who can be attracted to people of any gender. “Pan-” means “all,” indicating that gender is not a limiting factor in their attractions. A pansexual individual may feel attraction to men, women, non-binary people, and others across the gender spectrum¹¹². Pansexuality is often described as being *gender-blind* in one's attractions. (Sometimes pansexual is used interchangeably with bisexual; usage varies. The key is that pansexual people assert that *all* genders can be potential partners¹¹³.)
- **Asexual (Ace)** – Describes a person who experiences little or no sexual attraction toward others¹¹⁴. Being asexual is a spectrum—some “ace” people might feel no sexual attraction at all, while others have conditional or occasional attraction. Asexuality is not the same as celibacy (which is a choice to abstain from sex); it's an orientation describing one's innate experience of attraction. Asexual people might still feel romantic attraction (*e.g.*, being *homoromantic* or *heteroromantic* without sexual attraction) and many have fulfilling

<https://glaad.org/reference/terms/#:~:text=Gay%20An%20adjective%20used%20to,before%20labeling%20their%20sexual%20orientations> (last visited Mar. 2, 2025).

¹⁰⁹ Human Rights Campaign, *Glossary of Terms*, Human Rights Campaign, <https://www.hrc.org/resources/glossary-of-terms#:~:text=Bisexual%20,Sometimes%20used%20interchangeably%20with%20pansexual> (last visited Mar. 2, 2025).

¹¹⁰ “Bisexual people need not have had specific sexual experiences to be bisexual; in fact, they need not have had any sexual experience at all to call themselves bisexual.” GLAAD, *Media Reference Guide: LGBTQ Terms*, GLAAD, <https://glaad.org/reference/terms/#:~:text=Bisexual%2C%20Bi%2C%20Bi%2B%20An%20adjective,hyphen%20in%20the%20word%20bisexual> (last visited Mar. 2, 2025).

¹¹¹ GLAAD, *Media Reference Guide: LGBTQ Terms*, GLAAD, <https://glaad.org/reference/terms/#:~:text=bisexual%3B%20in%20fact%2C%20they%20need>, (last visited Mar. 2, 2025).

¹¹² “Describes someone who has the potential for emotional, romantic or sexual attraction to people of any gender though not necessarily simultaneously, in the same way or to the same degree. Sometimes used interchangeably with bisexual.” Human Rights Campaign, *Glossary of Terms*, Human Rights Campaign, <https://www.hrc.org/resources/glossary-of-terms#:~:text=Pansexual%20,Sometimes%20used%20interchangeably%20with%20bisexual> (last visited Mar. 2, 2025).

¹¹³ Human Rights Campaign, *Glossary of Terms*, Human Rights Campaign, <https://www.hrc.org/resources/glossary-of-terms#:~:text=Pansexual%20,Sometimes%20used%20interchangeably%20with%20bisexual> (last visited Mar. 2, 2025).

¹¹⁴ “Often called ‘ace’ for short, asexual refers to a complete or partial lack of sexual attraction or lack of interest in sexual activity with others.” Human Rights Campaign, *Glossary of Terms*, Human Rights Campaign, <https://www.hrc.org/resources/glossary-of-terms#:~:text=Asexual%20,little%20or%20conditional%20sexual%20attraction> (last visited Mar. 2, 2025).

relationships. This term is often misunderstood, so it's important to recognize that a lack of sexual attraction is a valid orientation by itself¹¹⁵.

- **Queer** – An umbrella term for people who are not exclusively heterosexual and/or not cisgender. “Queer” can describe a spectrum of identities and orientations that deviate from societal norms¹¹⁶. For example, someone who feels neither “straight” nor fits into specific labels might call themselves queer. This word has a complex history – it was once used as a slur, but many LGBTQ+ people (especially younger generations) have reclaimed “queer” as an empowering identity term¹¹⁷. However, because not everyone is comfortable with it, it should be used with care (typically only if someone self-identifies as queer or in academic contexts for the community broadly).
- **Intersex** – An umbrella term for individuals born with biological traits (chromosomes, genital anatomy, *etc.*) that do not fit typical definitions of male or female bodies¹¹⁸. Intersex variations are naturally occurring – for example, a person might have XY chromosomes but female-typical anatomy, or ambiguous genitalia, or differences in hormone production. Being intersex is about physical/biological sex characteristics, not gender identity; intersex people, just like non-intersex people, can have any gender identity (male, female, non-binary, *etc.*). Historically the term “hermaphrodite” was used, but that term is outdated and offensive – intersex is the respectful term. Many intersex infants and children in the past underwent unnecessary surgeries to make their bodies fit binary notions of male or female, a practice that advocacy groups today are working to stop in favor of letting intersex individuals make their own choices about their bodies when they are older.
- **Non-binary** (Enby) – An adjective for a person who does not exclusively identify as male or female. Non-binary individuals may identify as both genders, somewhere in-between, or neither of the two traditional genders¹¹⁹. This is an umbrella category that can include

¹¹⁵ “Asexuality exists on a spectrum, and asexual people may experience no, little or conditional sexual attraction.” Human Rights Campaign, *Glossary of Terms*, Human Rights Campaign, <https://www.hrc.org/resources/glossary-of-terms#:~:text=Asexual%20,little%20or%20conditional%20sexual%20attraction> (last visited Mar. 2, 2025).

¹¹⁶ “Queer is often used as a catch-all to include many people, including those who do not identify as exclusively straight and/or folks who have non-binary or gender-expansive identities.” Human Rights Campaign, *Glossary of Terms*, Human Rights Campaign, <https://www.hrc.org/resources/glossary-of-terms#:~:text=Queer%20,parts%20of%20the%20LGBTQ%2B%20movement> (last visited Mar. 2, 2025).

¹¹⁷ “This term was previously used as a slur, but has been reclaimed by many parts of the LGBTQ+ movement.” Human Rights Campaign, *Glossary of Terms*, Human Rights Campaign, <https://www.hrc.org/resources/glossary-of-terms#:~:text=Queer%20,parts%20of%20the%20LGBTQ%2B%20movement> (last visited Mar. 2, 2025).

¹¹⁸ “Intersex people are born with a variety of differences in their sex traits and reproductive anatomy. There is a wide variety of difference among intersex variations, including differences in genitalia, chromosomes, gonads, internal organs, hormone production, hormone response, and/or secondary sex traits.” Human Rights Campaign, *Glossary of Terms*, Human Rights Campaign, <https://www.hrc.org/resources/glossary-of-terms#:~:text=Intersex%20,response%2C%20and%20For%20secondary%20sex%20traits> (last visited Mar. 2, 2025).

¹¹⁹ “Non-binary people may identify as being both a man and a woman, somewhere in between, or as falling completely outside these categories.” Human Rights Campaign, *Glossary of Terms*, Human Rights Campaign, <https://www.hrc.org/resources/glossary-of-terms#:~:text=Non,fluid> (last visited Mar. 2, 2025).

identities like *genderqueer*, *agender*, *bigender*, or *genderfluid*. Non-binary people often use pronouns like they/them, but pronoun preferences vary (some use she or he, or neopronouns). Many non-binary people also consider themselves transgender (since they don't identify with their birth-assigned gender), though not all do – non-binary stands on its own as a valid identity¹²⁰. The key is that gender is seen as a spectrum or multitude rather than just two options.

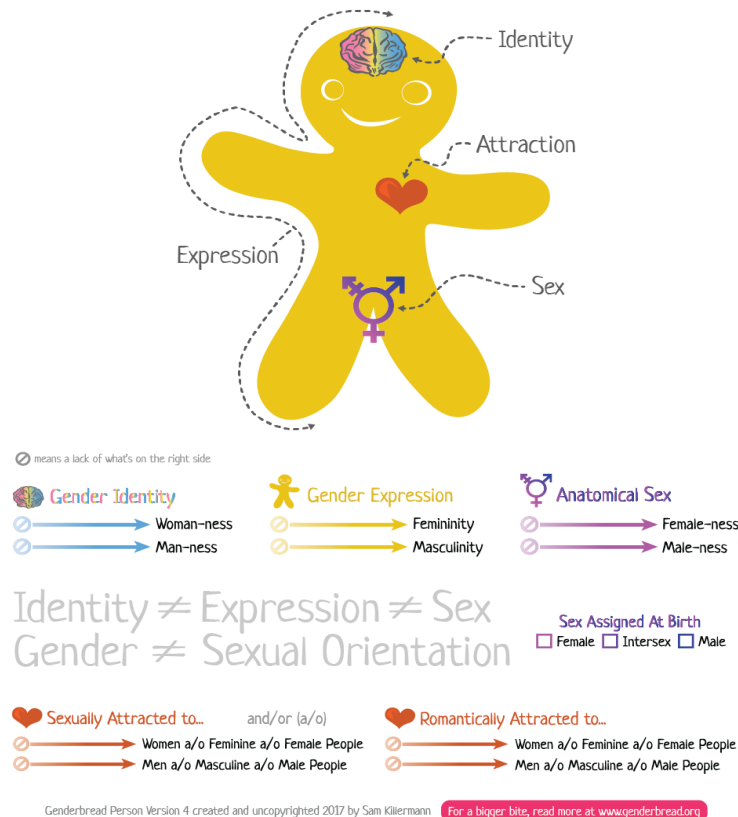
(Additional terms: There are many more terms in the LGBTQ+ lexicon. For instance, Two-Spirit is a term used by some Indigenous North American cultures for gender-diverse roles, and Questioning refers to those still exploring or unsure about their orientation/gender. This glossary highlights some of the most frequently used core terms. Always respect individuals' self-described terms—if you're unsure what a word means, it is okay to kindly ask or look it up in a reputable source.)

¹²⁰ “While many also identify as transgender, not all non-binary people do. Non-binary can also be used as an umbrella term encompassing identities such as agender, bigender, genderqueer or gender-fluid.” *Id.*

Understanding the Genderbread Person Model

The Genderbread Person is a popular educational model (often shown as a gingerbread-figure infographic) that breaks down the concept of “gender” into four distinct components: gender identity, gender expression, biological sex, and sexual orientation. It was created by educator Sam Killermann as a visual aid to illustrate that each of these aspects of a person is separate – they may influence each other but do not always align in expected, binary ways¹²¹. The Genderbread Person is drawn as a cute gingerbread figure with different symbols (for brain, heart, etc.) to show where each aspect might “live,” and it uses spectrums or sliders to show that, for example, masculinity and femininity aren’t either/or absolutes but points on a continuum. This model is widely used in LGBTQ+ education because it helps dispel common misconceptions (like assuming someone’s appearance or birth sex tells you their gender identity or orientation) in a friendly, accessible manner.

The Genderbread Person v4 by its pronounced METROsexual.com



¹²¹ “The Genderbread Person is a visual aid created by Sam Killermann in 2021 that aims to explain the complex nature of gender and break it down into different components. It has since been used as a tool to promote understanding and discussions around gender identity, gender expression, biological sex, and sexual orientation. The Genderbread Person aims to provide a detailed and nuanced understanding of these concepts compared to traditional binary models.” (<https://diversio.com/learning-from-the-genderbread-person/#:~:text=The%20Genderbread%20Person%20is%20a,compared%20to%20traditional%20binary%20models>)

The four components of the Genderbread Person model are:

1. **Gender Identity** – *How you think about yourself.* This is your internal sense of your own gender¹²². The Genderbread Person describes identity on a continuum from “woman-ness” to “man-ness,” but importantly, not everyone lies at one end or the other. It includes identities like woman, man, genderqueer, non-binary, etc., or a combination thereof. It’s entirely internal – it’s about who you feel you are, in your mind and heart. For example, a person assigned male at birth might internally know that she is a woman – that female gender identity is her innermost sense of self, even if her appearance or body might not have initially reflected that. The model emphasizes that gender identity is independent from anatomy; it’s all about one’s *brain* (hence the Genderbread Person graphic often places “gender identity” in the head area).
2. **Gender Expression** – *How you present yourself to the world.* This refers to the external manifestations of gender¹²³ – in the Genderbread graphic it’s shown on the whole body because it’s outward. Expression includes things like clothing, hairstyle, mannerisms, voice, and pronouns – all the ways you express or perform gender in society. The Genderbread Person charts this on a spectrum from “feminine” to “masculine,” and a person can fall anywhere on that spectrum (or change their expression day to day). For instance, someone with a male gender identity might wear makeup and skirts, which society reads as a “feminine” expression; conversely, someone with a female identity might have a buzzcut and wear suits, giving a more “masculine” expression. The key point is that expression does not always match society’s expectations for one’s identity or sex – and that’s okay. Many people have gender expressions that mix masculine and feminine elements. The Genderbread model teaches us not to assume someone’s gender identity just from their expression. (It’s also worth noting that concepts of masculine or feminine expression can be culturally relative¹²⁴ – what’s considered masculine in one culture might be seen differently in another.)
3. **Biological Sex** – *The physical and biological characteristics of the body.* This component covers anatomy, chromosomes, hormones – all the traits we consider when we talk about someone being biologically male, female, or intersex¹²⁵. The Genderbread Person places

¹²² Diversio, *Learning from the Genderbread Person*, Diversio, <https://diversio.com/learning-from-the-genderbread-person/#:~:text=1.%20Gender%20Identity%20%28woman,neither%2C%20or%20something%20else%20entirely> (last visited Mar. 2, 2025).

¹²³ “It encompasses [behaviors], clothing, hairstyles, and mannerisms. It’s important to note that gender expression doesn’t have to align with social norms.” *Id.*

¹²⁴ “External manifestations of gender, expressed through a person’s name, pronouns, clothing, haircut, voice, and/or behavior. Societies classify these external cues as masculine and feminine, although what is considered masculine or feminine changes over time and varies by culture.” GLAAD, *Media Reference Guide: Transgender Terms*, GLAAD, <https://glaad.org/reference/trans-terms#:~:text=Gender%20Expression%20External%20manifestations%20of,%28See%20transition%20below> (last visited Mar. 2, 2025).

¹²⁵ “It includes factors such as chromosomes, genitalia, and hormone levels.” Diversio, *supra*.

“biological sex” on a continuum from “female-ness” to “male-ness,” acknowledging that not everyone fits neatly into the binary. For example, most people have sex characteristics that align consistently as male or female, but intersex people have a mix of traits (so they might sit in the middle of the spectrum). Even among non-intersex people, there’s natural variation – *e.g.*, hormone levels and body traits differ widely. In the graphic, biological sex is often symbolized by the genital area. The Genderbread model uses this category to teach that biological sex is not simply one of two options; and critically, that sex is different from gender. One’s body does not always dictate one’s identity. (Sometimes terms like “assigned female at birth (AFAB)” or “assigned male at birth (AMAB)” are used to discuss biological sex in relation to gender identity, emphasizing that it was a label given at birth rather than an identity.)

4. **Sexual Orientation** – *Whom you are attracted to*. This facet describes the gender(s) to which a person feels romantic or sexual attraction (if any)¹²⁶. In the Genderbread diagram, this is often represented by a heart, linking it to love/attraction. Orientation is plotted from attraction to women/femininity to attraction to men/masculinity – and people can be attracted to one, both, multiple, or neither. For example, someone could be very attracted to women, somewhat attracted to men, or *not* attracted to anyone (as in asexual people). This part of the model underlines that who you love is separate from who you are. In other words, being a certain gender doesn’t predetermine your orientation. A common misconception is to mix up gender identity and sexual orientation – but the Genderbread Person makes it clear that, say, identifying as a man (identity) is independent from whether you love men, women, both or neither (orientation)¹²⁷.

Putting it all together: The Genderbread Person shows that each of these four elements exists on its own spectrum, and an individual’s identity, expression, physical sex traits, and attractions can each fall at different points. A person could, for example, have a male identity, an androgynous expression, be biologically female, and be attracted to women – and every combination is okay. The model is a teaching tool to visualize that human diversity can’t be boxed into two strict “male” vs “female” or “gay” vs “straight” categories. As the accompanying explanation notes, these dimensions can vary independently – knowing one aspect (like someone’s sex assigned at birth) doesn’t necessarily tell you anything about the other

¹²⁶ *Id.*

¹²⁷ GLAAD, *Media Reference Guide: Transgender Terms*, GLAAD, <https://glaad.org/reference/trans-terms#:~:text=Gender%20Expression%20External%20manifestations%20of,%28See%20transition%20below> (last visited Mar. 2, 2025).

aspects¹²⁸. The Genderbread Person also emphasizes that gender (identity/expression) is not a simple binary but a complex, multifaceted experience for many people¹²⁹.

By breaking gender and orientation into these components, the Genderbread Person helps people understand not, and she might be attracted to men, or to women, or to others – each attribute is a separate, for instance, that a transgender woman (identity) might present very femininely or piece of her puzzle. This encourages a more respectful and accurate understanding of LGBTQ+ individuals. Rather than making assumptions, one should recognize these aspects: *Who are you? How do you express? What are your physical traits? To whom are you attracted?* Each is valid on its own. Resources from medical and psychological experts reinforce that this model is grounded in fact: All major U.S. medical associations agree that gender identity has biological and psychological roots, and that sexual orientation is a natural part of human diversity¹³⁰¹³¹.

The Genderbread Person model is a compassionate, easy-to-understand tool that teaches us that gender is not one-dimensional. It dispels the misconception that terms like *male* or *female* or *gay* tell the whole story about a person. Instead, by understanding gender identity, gender expression, biological sex, and sexual orientation as distinct concepts, we can better respect people's identities and use correct terms. This helps create a more inclusive environment, as recommended by LGBTQ+ advocacy organizations and health professionals. As one educational

¹²⁸ “Killermann created the Genderbread Person to start conversations around gender and sexual diversity. The infographic helps people understand that these dimensions can vary independently from one another. It emphasizes that gender is not a simple binary but a complex and multifaceted experience.” Diversio, *Learning from the Genderbread Person*, Diversio, <https://diversio.com/learning-from-the-genderbread-person/#:~:text=Killermann%20created%20the%20Genderbread%20Person,a%20complex%20and%20multifaceted%20experience> (last visited Mar. 2, 2025).

¹²⁹ Diversio, *Learning from the Genderbread Person*, Diversio, <https://diversio.com/learning-from-the-genderbread-person/#:~:text=Killermann%20created%20the%20Genderbread%20Person,a%20complex%20and%20multifaceted%20experience> (last visited Mar. 2, 2025).

¹³⁰ “Everyone has a gender identity—transgender or not—and kids start to have a sense of whether they’re a boy or girl (or neither) early on. The American Academy of Pediatrics says that most children have a stable sense of their gender identity by age 4, and a study of transgender adults published in December 2021 in *Sexual Medicine* showed that they first felt like a different gender from the one they were told they were at around age 6.” Beth Levine, 7 *Things You May Want to Know About Trans People but Aren’t Sure How to Ask*, *Everyday Health* (Feb. 2, 2022), <https://www.everydayhealth.com/emotional-health/things-you-may-want-to-know-about-trans-people-but-arent-sure-how-to-ask/#:~:text=Everyone%20has%20a%20gender%20identity,were%20at%20around%20age%206> (last visited Mar. 2, 2025).

¹³¹ Diversio, *supra*.

guide puts it, “*Identity ≠ Expression ≠ Sex ≠ Orientation*” – knowing this helps avoid misunderstandings and supports everyone in being their authentic selves¹³²¹³³.

¹³² Sam Killermann, *The Genderbread Person v4*, It’s Pronounced Metrosexual (Oct. 18, 2018), <https://www.itspronouncedmetrosexual.com/2018/10/the-genderbread-person-v4/#:~:text=In%20gigantic%20letters%2C%20between%20the,Sexual%20Orientation.%E2%80%9D> (last visited Mar. 2, 2025).

¹³³ “Think of it as the ‘lowest bar possible to clear, in order to take something beneficial away from the handout.’ If someone walks away thinking ‘there are these different components of gender, and they’re not all necessarily the same,’ and that’s it, fine. Step one in understanding: check.” *Id.*