

Establishing Parentage and Support for Modern Families

Welcome to the 62nd Annual ERICSA 2025 Training Conference and Expo.

This presentation by Lawren D. Burroughs, Esq. explores the legal landscape for modern families, focusing on parentage establishment and child support obligations.



by Lawren Burroughs





Understanding Some Basic Terminology



LGBTQ+

Acronym for lesbian, gay, bisexual, transgender, and queer/questioning. The "+" acknowledges other sexual orientations and gender identities.



Sexual Orientation

A person's enduring physical, romantic, and emotional attraction to others. It's inherent, not a choice.



Gender Identity

One's internal sense of being male, female, both, neither, or another gender entirely.

The Genderbread Person Model



Gender Identity

How you think about yourself - your internal sense of gender.



Gender Expression

How you present yourself - clothing, hairstyle, mannerisms, voice, and pronouns.



Biological Sex

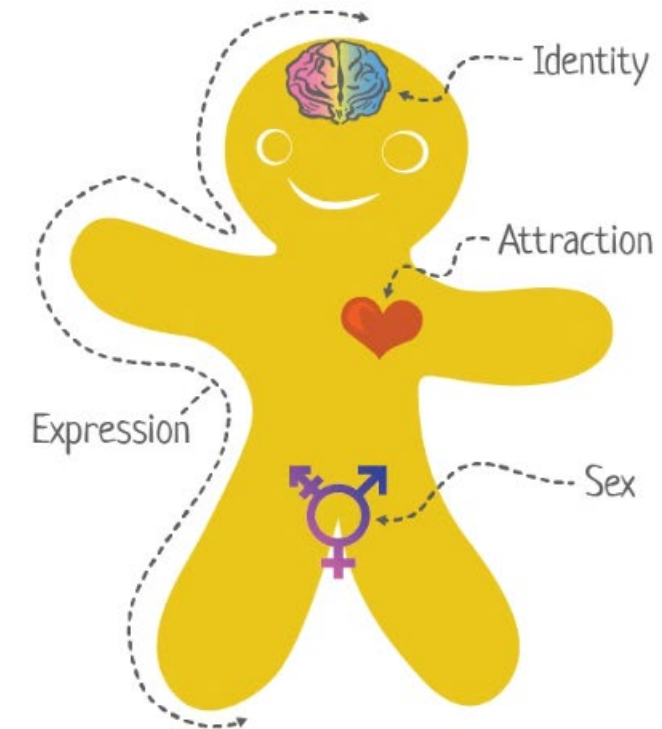
Physical characteristics - anatomy, chromosomes, and hormones.



Sexual Orientation

Who you're attracted to - independent from your gender identity.

The Genderbread Person v4 by its pronounced METROsexual.com



⊘ means a lack of what's on the right side.

 Gender Identity

⊘ → Woman-ness
⊘ → Man-ness



Gender Expression

⊘ → Femininity
⊘ → Masculinity



Anatomical Sex

⊘ → Female-ness
⊘ → Male-ness

Identity ≠ Expression ≠ Sex
Gender ≠ Sexual Orientation

Sex Assigned At Birth
⊘ Female ⊘ Intersex ⊘ Male

❤ Sexually Attracted to... and/or (a/o)

⊘ → Women a/o Feminine a/o Female People
⊘ → Men a/o Masculine a/o Male People

❤ Romantically Attracted to...

⊘ → Women a/o Feminine a/o Female People
⊘ → Men a/o Masculine a/o Male People

Why Establishing Parentage Matters

Legal Recognition

Without legal parentage, a non-biological parent may be treated as a legal stranger with no custody or decision-making authority.

Child's Security

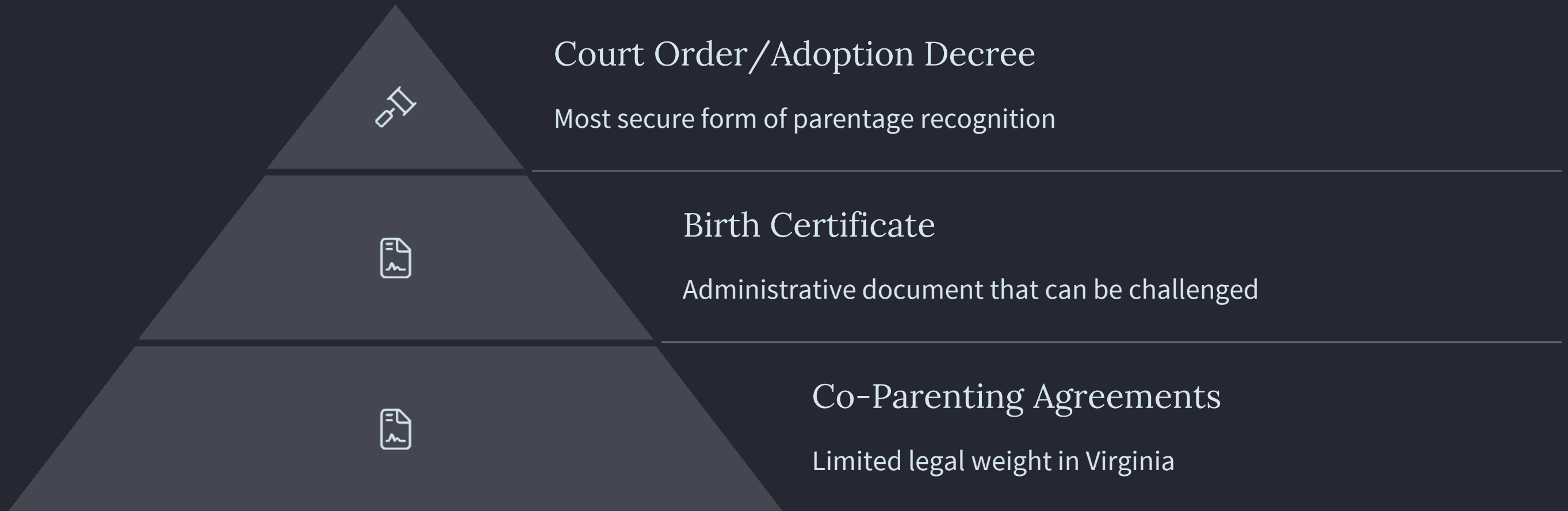
Legal parentage ensures children have access to support, inheritance rights, and continued relationships with both parents.

Parental Rights

Secures the full bundle of rights including custody, medical decisions, and inheritance for both parents.



The Gold Standard: Court Orders



A court order or adoption decree is considered the gold standard for proving parentage, since administrative documents like birth certificates can be subject to challenge.

Defining Legal Parentage

Biological Parents

Those genetically related or who give birth to the child



Adoptive Parents

Those who gain parental status through court adoption process



Intended Parents

Designated parents in assisted reproduction or surrogacy



Presumed Parents

Those presumed by law due to marriage or other circumstances





Equal Legal Standing

100%

Legal Rights

An adoptive or intended parent has the same legal standing as a biological parent once established.

100%

Parental Duties

All legal parents have equal responsibilities for child support and care.

100%

Protection

Legal parentage provides certainty in custody, medical decisions, and inheritance.

Virginia's Current Law

Gender-Neutral Language

"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 gender.

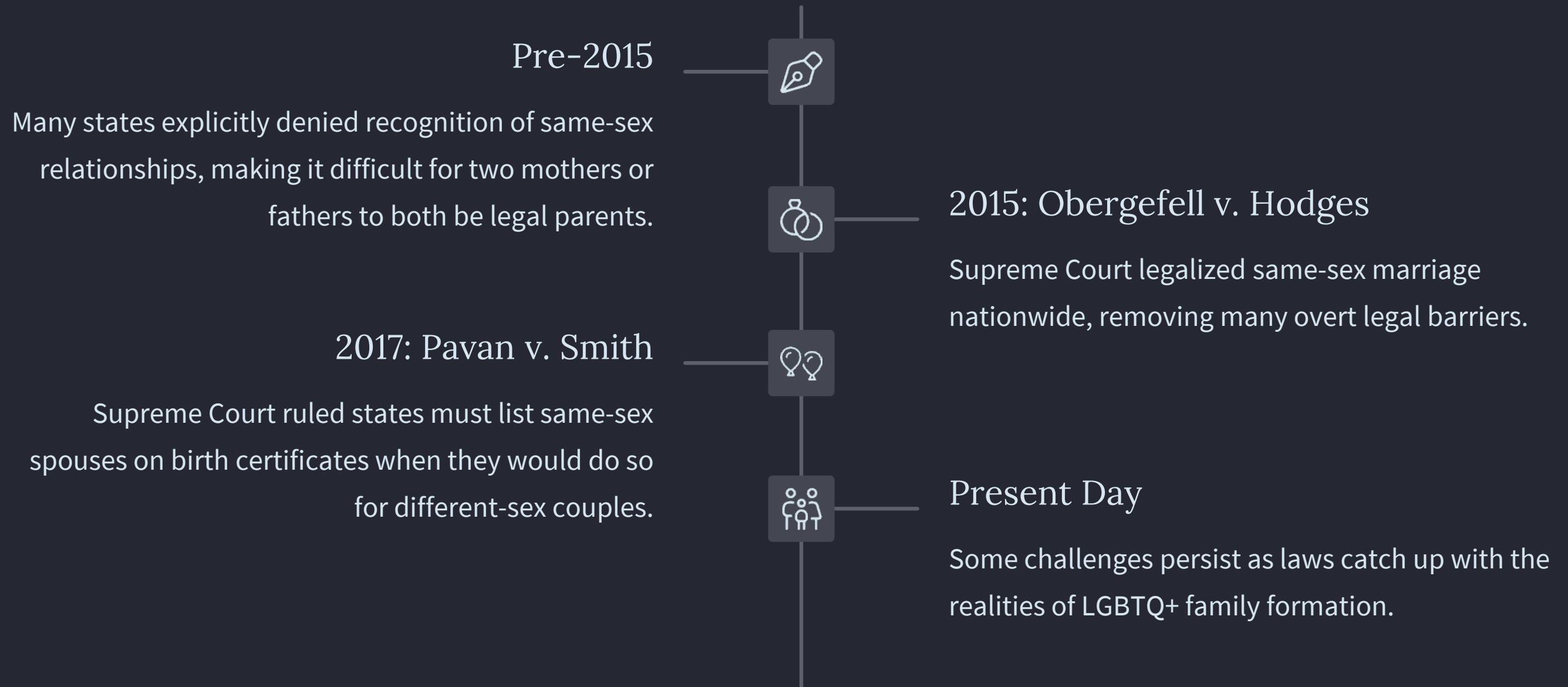
Marital Presumption

A birth mother's wife is now presumed to be the child's parent just like a husband would be.

No De Facto Recognition

Virginia does not recognize a purely equitable or de facto parent status absent statutory or adoptive ties.

Historical Challenges for LGBTQ+ Families



Virginia's Marriage Affirmation Act



Discriminatory Law

Once barred any agreement conferring marriage-like rights on same-sex couples



Miller-Jenkins Case

Used to attempt to ignore a Vermont court's order recognizing a lesbian mother's rights



Ultimately Overturned

Courts eventually honored the Vermont order despite Virginia's hostile legal environment



Current Challenges in Virginia



Gaps for Unmarried Couples

Couples who are unmarried or had children before legal marriage may fall into legal gaps.



"Conscience Clause" Law

Private adoption agencies in Virginia can legally turn away LGBTQ+ applicants under religious exemptions.



Hawkins v. Grese Case

Court ruled only the biological mother was a "parent," leaving the other mother with no rights despite years of co-parenting.



Judicial Bias

Some judges or court officials may not be fully versed in LGBTQ+ family issues, leading to inconsistent rulings.

Custody Considerations: Legal Parents

Equal Standing

If both adults are legal parents, custody disputes are handled just like any other case. The fact that parents are LGBTQ+ does not change legal standards.

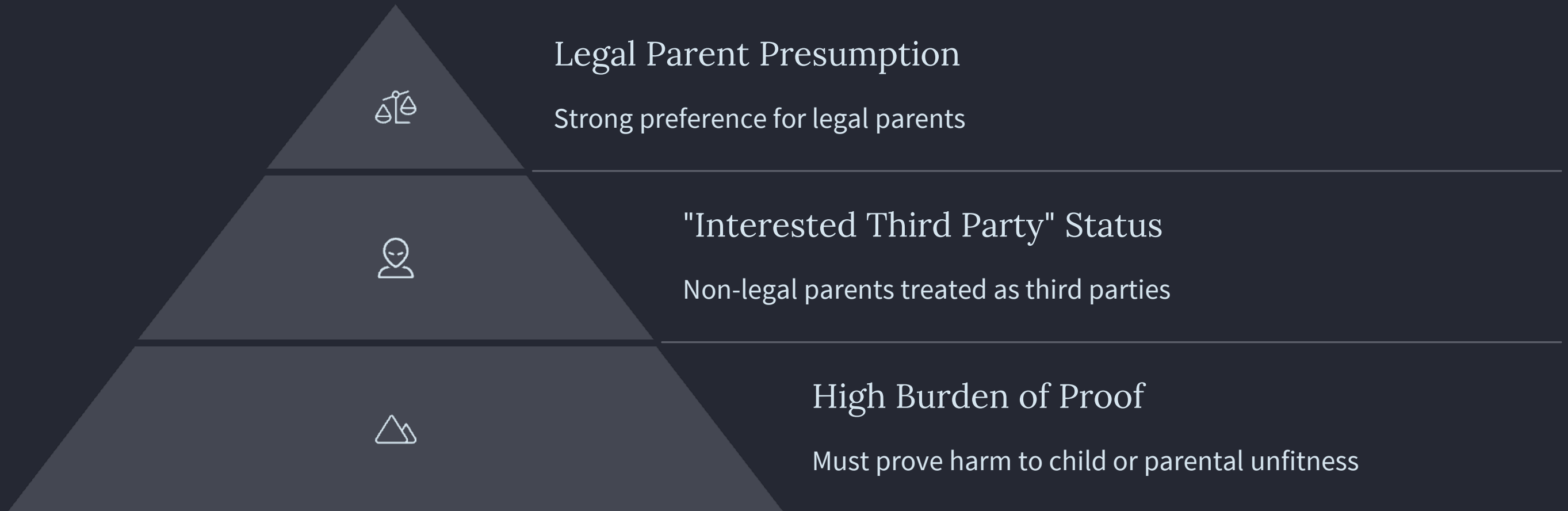
Best Interest Standard

Virginia courts apply the best interest of the child factors without preference based on gender or biological connection.

Post-Marriage Equality

"All laws pertaining to custody of children apply to these couples" just as to heterosexual couples.

Custody Challenges for Non-Legal Parents



A person who is not a legal parent faces an uphill battle in custody disputes. Virginia affords a strong parental presumption in favor of legal parents over any third party.

Proactive Legal Measures

Pre-Birth Orders

Court orders before birth can declare intended parents as legal parents once child is born

Court Orders

Obtain custody orders or guardianships if adoption isn't possible



Birth Certificate

Ensure both parents are listed, though this alone is not sufficient protection

Confirmatory Adoption

Pursue adoption or parentage order soon after birth to solidify legal status

Adoption as a Path to Parentage

Virginia Law

Virginia permits "any single unmarried adult or married couple" to petition to adopt, with no express prohibition for LGBTQ+ individuals or couples.

Stepparent Adoption

A streamlined process where a married spouse can adopt their partner's child. Since marriage equality, same-sex spouses have equal rights to petition.

Joint Filing

In Virginia, the spouse seeking to adopt must file jointly with the legal parent, indicating consent to share parenting rights.

Stepparent Adoption Process



Joint Petition

Legal parent and spouse file together showing consent



Investigation

Some courts waive this step, others require background checks



Guardian Ad Litem

Some courts appoint a representative for the child



Court Approval

Final decree grants full parental rights and responsibilities



Second-Parent Adoption

For Unmarried Couples

One partner adopts the child without the first partner losing any parental rights. Crucial tool for same-sex couples prior to marriage equality.

Virginia Limitations

Not explicitly provided for by statute in Virginia. Historically required creative legal strategies to work around limitations.

National Variation

About 20 states explicitly allow unmarried couples to petition for adoption of the same child, while others require a two-step process.





Full Faith and Credit Protection

100%

National Recognition

An adoption decree from any state must be honored in all other states by law.

2016

V.L. v. E.L. Case

Supreme Court unanimously held that states must recognize out-of-state same-sex adoptions.

50

State Coverage

All states must honor valid adoption orders under the Full Faith and Credit Clause.



Benefits of Adoption



Finality

An adoption order is a judgment that cannot be collaterally attacked on the basis of biology.



Double Protection

Even with marriage and birth certificates, adoption "double-locks" parentage with a court decree.



Universal Recognition

Adoption decrees are recognized across all states and jurisdictions.



Equal Rights

An adoptive parent has the same permanent, enforceable rights and obligations as any natural parent.

Assisted Reproductive Technology (ART)

In Vitro Fertilization

Fertilization outside the body with embryo transfer

Surrogacy

Another person carries pregnancy for intended parents



Sperm Donation

Using donated sperm for insemination

Egg Donation

Using donated eggs for fertilization

Virginia's ART Laws

Status of Children of Assisted Conception

Virginia Code § 20-156 et seq. lays out rules on parentage for children conceived via medical technology.

Gestational Mother Presumption

The woman who gives birth is deemed the child's mother, and if married, her spouse is deemed the other parent regardless of gender.

Donor Status

A donor who contributes sperm or egg is not a legal parent of the resulting child, unless that donor is the gestational mother's spouse.



Bruce v. Boardwine Case Study

At-Home Insemination

Single woman (Bruce) used at-home insemination with sperm from a male friend (Boardwine) without involving a doctor or written agreement.

Parentage Dispute

Bruce attempted to block Boardwine from asserting rights, arguing he was just a "donor" under Virginia's assisted conception statute.

Court Ruling

Virginia Court of Appeals held the statute didn't apply because insemination wasn't done via "medical technology" (no physician involved).

Outcome

Biological father established paternity through DNA and was granted parental rights.

Key Lesson from Bruce v. Boardwine

100%

Medical Involvement

Use licensed physicians or fertility clinics for donor insemination or IVF procedures.

100%

Legal Documentation

Have clear written agreements with any donor or carrier involved.

?

DIY Risk

Informal approaches can lead to unintended legal parentage outcomes.



Surrogacy in Virginia



Legal Framework

Virginia permits surrogacy under a detailed statutory scheme in Chapter 9 of Title 20.



Court Approval

Surrogacy contracts must be approved by a court in advance to be fully enforceable.



Intended Parents

Can be a married couple or single individual in Virginia.



Post-Birth Orders

Court issues orders reflecting parentage after birth, with surrogate relinquishing rights.





Surrogacy Requirements in Virginia

Genetic Contribution

For gestational surrogacy, one of the intended parents must contribute a gamete or there must be a medical need for surrogacy.

Embryo Ownership

Intended parents do not need a genetic connection to the embryo as long as they can prove ownership of the embryo.

Non-Discrimination

Virginia law does not discriminate based on sexual orientation in surrogacy: LGBTQ+ intended parents are treated the same as any others.

Donor Agreements



Written Agreement

Clarifies donor relinquishes parental claims



Intent Evidence

Provides proof of who intended parents are



Medical Information

Can address future contact and health data

"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 are."

Interstate Conflicts in Family Law

State Governance

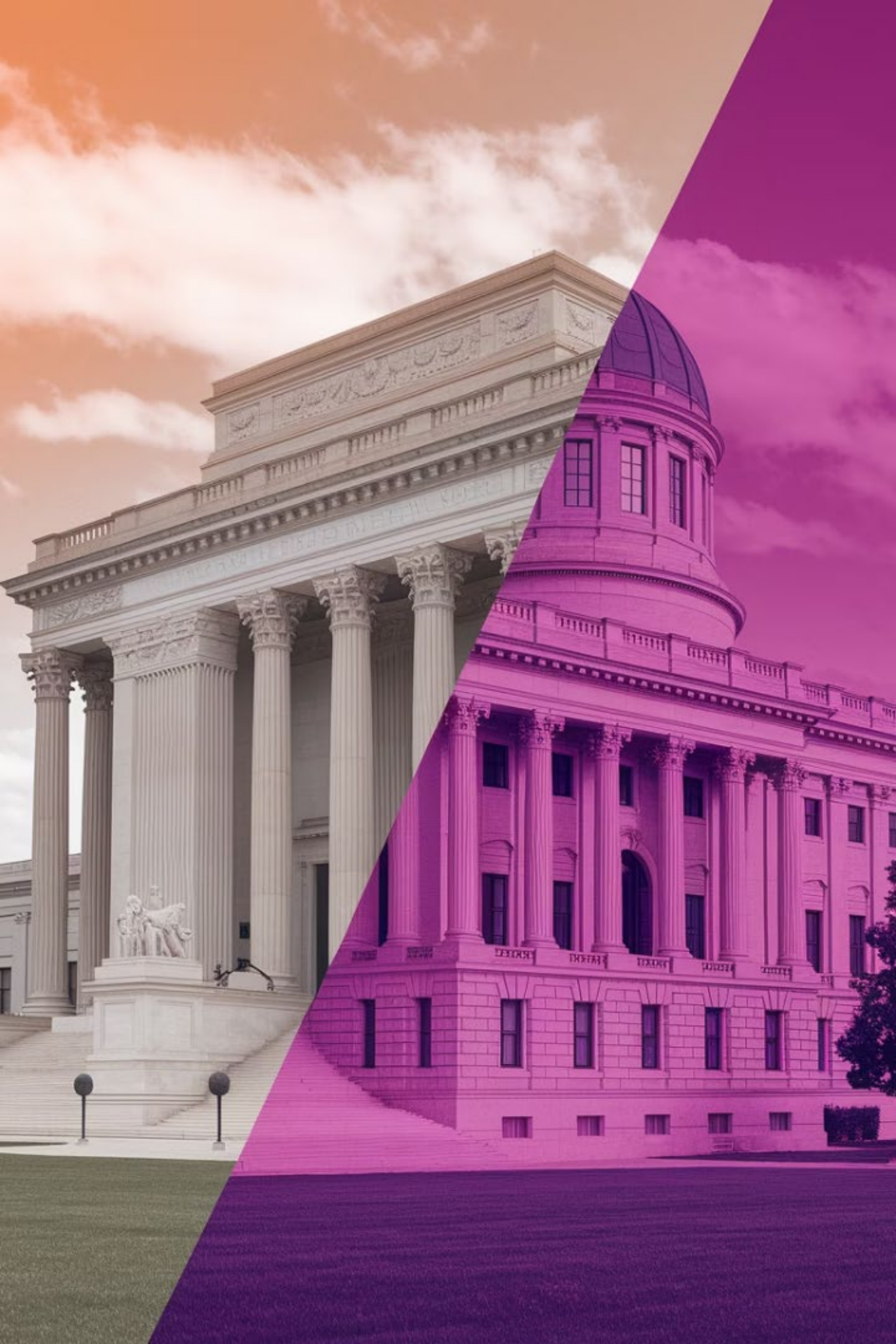
Each state governs its own family law, which can lead to conflicts when multiple states are involved.

Recognition Issues

One state's recognition of an LGBTQ+ parent might not be initially recognized by another state with less friendly laws.

Court Conflicts

Different courts may issue contradictory orders regarding the same family, creating legal limbo for parents and children.



Miller-Jenkins Custody Saga



Vermont Civil Union

Lesbian couple entered civil union in Vermont and had a child together.



Separation and Relocation

Birth mother (Lisa) moved to Virginia and filed for sole custody, attempting to exclude non-biological mother (Janet).



Virginia Court Initially Agrees

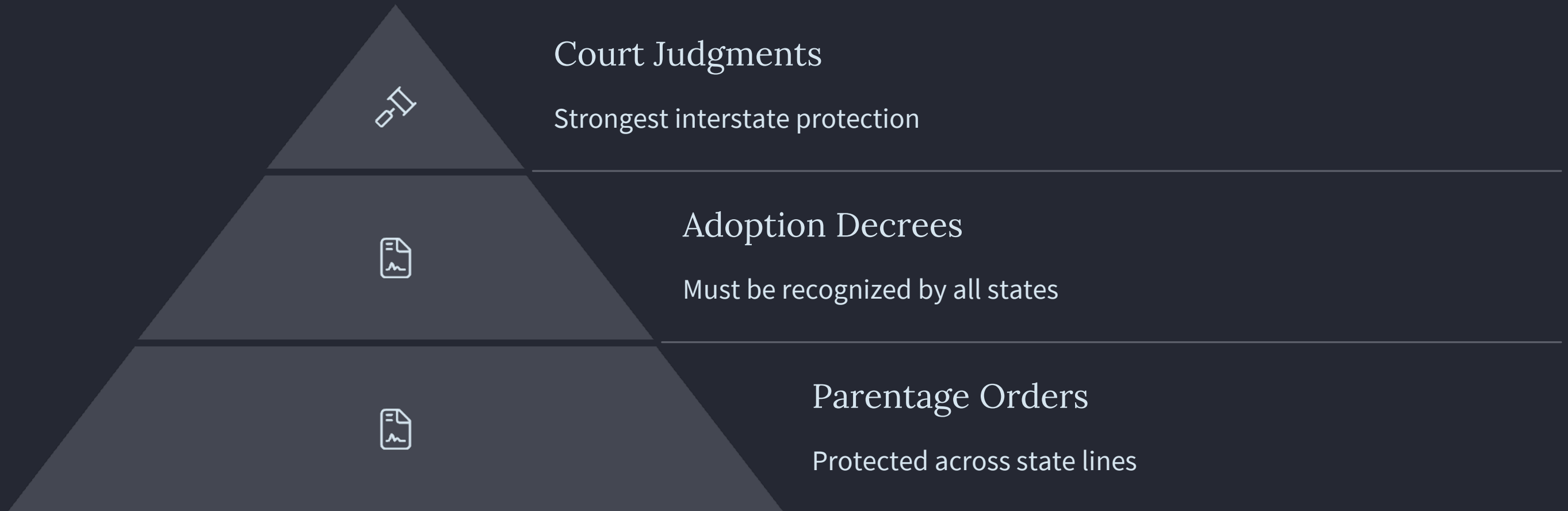
Virginia judge cited state's anti-gay Marriage Affirmation Act to deny recognition of Janet's parental status.



Appeals Reverse Decision

Higher courts ruled Vermont's orders must be respected under federal law, despite Virginia's then public policy.

Full Faith and Credit Protection



If you have an adoption decree or a parentage order from one state, every other state must recognize it as valid. This provides crucial protection when families move or travel.

Uniform Laws for Interstate Issues

UCCJEA

Uniform Child Custody Jurisdiction and Enforcement Act determines which state's courts have jurisdiction for custody decisions, generally giving priority to the child's "home state."

UIFSA

Uniform Interstate Family Support Act governs interstate child support and establishment of parentage across state lines.

Purpose

These uniform laws reduce interstate friction and prevent conflicting orders from different states.



Forum Shopping Concerns



Strategic Relocation

One parent might move to a state with more favorable laws



Jurisdiction Disputes

Conflicts over which state's courts should hear the case



Preventive Measures

Register orders in new state's courts proactively



Discrimination in Family Courts

Historical Bias

Some courts used a parent's sexual orientation as a negative factor in custody cases (e.g., *Bottoms v. Bottoms* in Virginia, 1995).

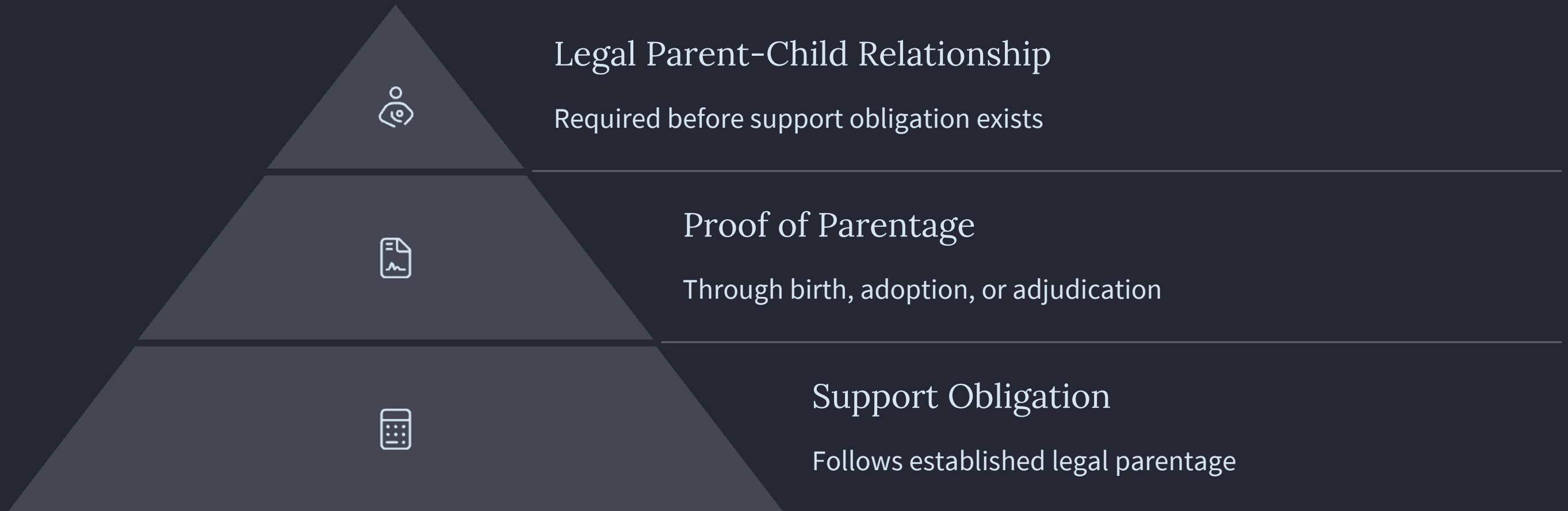
Current Landscape

Overt discrimination is now rare and likely unconstitutional, but subtler biases can still surface.

Addressing Bias

Parents can seek to recuse biased judges or appeal unfair decisions based on constitutional principles.

Child Support Prerequisites



A court cannot order someone to pay child support unless that person is a legal parent of the child. For LGBTQ+ couples, the non-biological parent must have taken steps to be legally recognized.

Child Support for Legal LGBTQ+ Parents



Equal Treatment

Once parentage is established, support obligations follow regardless of parents' genders or method of conception.



Virginia Guidelines

Support calculated using standard formula considering both parents' incomes, child's needs, and custody arrangement.



Same-Sex Application

Courts handle cases involving two mothers or two fathers in the same manner as any child support case.



Post-Obergefell Practice

Virginia courts apply guidelines to same-sex parents just as they would to different-sex parents.



Interstate Child Support: UIFSA Framework

One Order Rule

Only one state's order for child support is in effect at any time

Jurisdiction Transfer

Can shift if all parties leave the original state



Continuing Jurisdiction

Original state retains jurisdiction as long as one party remains there

Registration Process

Orders can be registered and enforced across state lines



Virginia's Long-Arm Jurisdiction

Reaching Out-of-State Parents

Virginia's long-arm statute (Va. Code § 20-88.35) outlines bases for asserting authority over an out-of-state parent.

Qualifying Connections

Jurisdiction can be claimed if child was conceived in Virginia, parent lived with child in Virginia, or parent provided prenatal support in Virginia.

Agency Assistance

Virginia's Division of Child Support Enforcement can help establish and enforce support across state lines.

Modifying Interstate Support Orders



Original State Jurisdiction

If Virginia issued the order, it typically handles modifications



Residency Changes

Jurisdiction may shift if neither parent nor child lives in original state



Registration Process

Register existing order in new state before seeking modification



Consent Option

Parties can agree to transfer jurisdiction to a new state





Watershed Legal Developments

1

2015: Obergefell v. Hodges

Supreme Court granted marriage equality, laying groundwork for equal parenting rights within marriage.

2

2016: V.L. v. E.L.

Supreme Court unanimously held that all states must give full faith and credit to adoption orders from other states.

3

2017: Pavan v. Smith

Supreme Court ruled states must provide same-sex spouses the same birth certificate rights as opposite-sex spouses.

State Court Breakthroughs

Matter of Brooke S.B. (NY, 2016)

New York Court of Appeals held that a partner who shows clear evidence of agreement to conceive and raise a child can be recognized as a parent.

Partanen v. Gallagher (MA, 2016)

Massachusetts court interpreted paternity statute gender-neutrally to recognize an unmarried woman as legal parent to her partner's children.

Conover v. Conover (MD, 2016)

Maryland Court of Appeals recognized de facto parent status, conferring standing to someone who acted as a parent with consent of the legal parent.

Uniform Parentage Act (UPA) 2017



Gender-Neutral Presumptions

Extends the marital presumption of parentage equally to all spouses regardless of gender identity.



Voluntary Acknowledgments

Modernizes Voluntary Acknowledgment of Parentage forms to include all intended parents without gender restrictions.



De Facto Parent Provisions

Legally recognizes individuals who have demonstrated consistent parental responsibilities, despite lacking biological connections.



Multiple Parents Possibility

Empowers courts to recognize more than two legal parents when necessary to prevent demonstrable harm to the child.

Virginia's Legislative Progress

2019 Amendment

Virginia amended its assisted conception statute to be gender-neutral, a step toward UPA principles.

2020 Code Cleanup

Removed outdated language prohibiting same-sex marriage or defining marriage in heterosexual terms.

Ongoing Efforts

Bills introduced to further equality in family law, though not all have passed.



Religious Freedom vs. LGBTQ+ Equality

Fulton v. Philadelphia (2021)

Supreme Court ruled in favor of Catholic foster care agency's right to exemption from nondiscrimination rules.

Virginia's "Conscience Clause"

State law allows agencies to refuse to work with same-sex parents based on religious beliefs.

Opposing Trends

Some states have moved to explicitly prohibit discrimination against prospective parents based on sexual orientation or gender identity.

Post-Dobbs Concerns

2022

Dobbs Decision

Supreme Court overturned Roe v. Wade, raising questions about other substantive due process cases.

"Adoption Rush"

Surge in same-sex parents formalizing legal ties to children as safeguard against potential legal changes.

State Protections

Some states codifying Obergefell protections in state law or constitutions.



Virginia Case Law Developments

L.F. v. Breit (2013)

Allowed unmarried father who signed co-parenting agreement to be recognized as parent despite not being married—suggesting written agreements can bolster parentage claims.

Bruce v. Boardwine (2015)

Prompted legislature to consider clarifying definition of assisted conception, leading to 2019 amendment to include same-sex female couples.

Hawkins v. Grese (2018)

Reaffirmed Virginia's strict stance on legal parentage, refusing to recognize de facto parent status.



Emerging Legal Arguments



Children's Rights Focus

Child's right to maintain relationships with psychological parents



Multi-Parent Recognition

Some states allowing more than two legal parents in certain cases



Equal Protection Claims

Constitutional arguments for non-biological parents in unmarried relationships



Practical Tips: Confirm Parental Status Early

Assess Current Status

Determine each parent's legal relationship to the child from the outset.

Plan for Non-Biological Parents

If client is non-biological parent, establish parentage as soon as possible through adoption, acknowledgment, or court order.

Don't Rely on Birth Certificate Alone

Encourage clients to pursue step-parent or second-parent adoption even if listed on birth certificate.



Document Intent and Agreements



Donor Agreements

Clear statements that donor has no parental rights or duties



Co-Parenting Agreements

Outline shared intent to parent if not married



Court-Approved Orders

Incorporate agreements into consent custody orders when possible

While 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



Hospital Notification

Ensure hospital knows to list spouse as parent on birth certificate.



Birth Certificate

Virginia forms now allow "mother"/"parent" rather than just "mother"/"father".



Practical Benefits

Having both names helps with everyday dealings like passports and school enrollment.

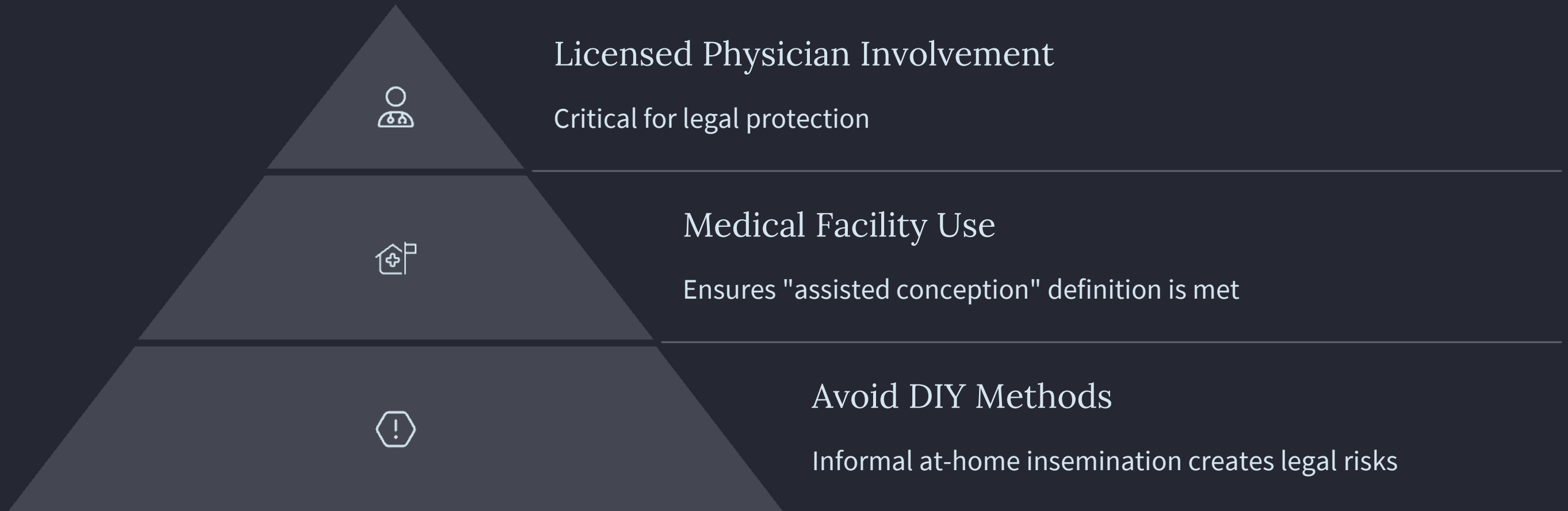


Follow Up with Adoption

Still pursue adoption for strongest protection despite birth certificate listing.



Follow Medical Procedures for ART



Advise clients that if they are conceiving via ART, they must do so in a manner consistent with Virginia law to protect the non-biological parent's rights.



Secure Orders in Surrogacy Cases



Pre-Approval

Obtain court approval of surrogacy contract before birth



Surrogate Consent

Ensure surrogate and spouse execute all necessary consents



Birth Order

Secure parentage order immediately after birth



Expert Collaboration

Work with experienced ART attorneys for complex cases

Interstate Coordination

Register Orders

File existing orders in new state if clients are moving

UIFSA Enforcement

Utilize interstate support mechanisms when needed



Educate Courts

Be prepared to explain LGBTQ+ family structures to unfamiliar courts

UCCJEA Protection

Use uniform laws to prevent jurisdiction conflicts



Anticipate and Address Bias

Preparation

Prepare clients for evaluations or home studies, as LGBTQ+ parents might still face higher scrutiny from some evaluators.

Proactive Evidence

Provide character references and evidence of child's well-being in advance for contested cases.

Guardian Ad Litem Education

Ensure appointed representatives understand family dynamics and use correct terminology for LGBTQ+ families.



Stay Informed and Leverage Resources



Family Equality

Provides state-by-state guides and resources for LGBTQ+ families



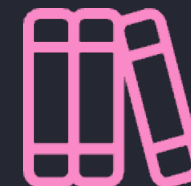
Equality Virginia

Local support network and advocacy organization



National Center for Lesbian Rights

Offers publications on parentage and adoption



Continuing Education

Stay current on rapidly evolving LGBTQ+ family law

Document, Document, Document



Photo Evidence

Gather photos showing non-biological parent's role in child's life.



Correspondence

Save emails/texts where other parent acknowledges them as a parent.



School Records

Maintain copies of forms listing them as a parent.



Financial Contributions

Document any support provided by non-legal parent.



Estate Planning Considerations

Wills

Advise clients to make wills naming desired guardian for their child, especially if one parent isn't legally recognized yet.

Healthcare Proxies

Recommend healthcare proxies between partners relating to the child, authorizing each to make medical decisions.

Powers of Attorney

Create powers of attorney to ensure non-legal parents can act on behalf of children in emergencies.



Reassurance and Progress

Acknowledge Progress

Explain how far the law has come—Virginia now recognizes LGBTQ+ families in most respects.

Map Out Protection Plan

Create a checklist of legal steps to address any remaining vulnerabilities.

Focus on Children

Emphasize that each legal step adds another layer of protection for the children at the heart of these matters.

Key Takeaways



Secure Legal Parentage Early

Don't wait for a crisis—establish both parents' legal status proactively.



Court Orders Are Essential

Birth certificates alone aren't enough; adoption decrees or parentage orders provide strongest protection.



Follow Proper ART Procedures

Use licensed medical professionals and proper documentation for assisted reproduction.



Maintain Documentation

Keep organized records of all legal documents establishing parentage and family relationships.



Thank You



Lawren D. Burroughs, Esq.

Burroughs Law Office, P.C.

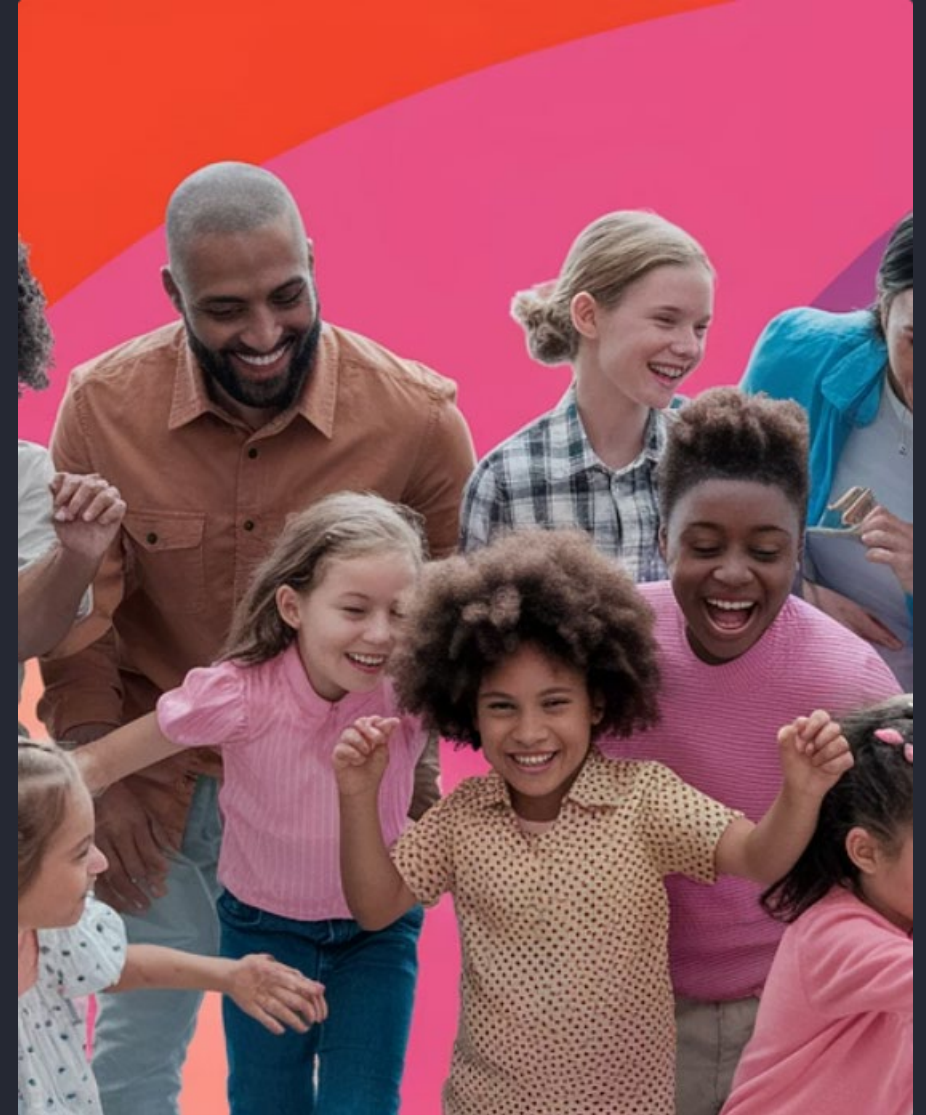
4445 Corporation Ln, STE 225



Contact Information

Tel: (757) 363-0077

Website: www.burroughs.law



Questions?

Thank you for your attention and participation in today's presentation.