

**Office of the Attorney General
Memorandum**

To: Chief Deputy Attorney General

Through: Deputy Attorney General

From: Craig M. Burshem
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Date: March 17, 2010

Subject: DCSE Case Number
Oregon's UIFSA Request for Establishment of Child Support Obligation based
on Washington State Same-Sex Adoption

QUESTION

Does the Full Faith and Credit Clause of the U.S. Constitution require the Commonwealth to recognize an out-of-state adoption by same-sex partners, notwithstanding the federal Defense of Marriage Act (DOMA),¹ the Virginia Marriage Amendment,² and the Virginia Marriage Affirmation Act (MAA)?³

If so, is the Virginia Division of Child Support Enforcement (Division) permitted to establish a child support obligation for the Virginia resident who adopted the child in an out-of-state adoption?

SHORT ANSWER

The Full Faith and Credit Clause requires that Virginia recognize the out-of-state same-sex adoption. There is no public policy exception for adoptions under DOMA and thus no exception under the Virginia Marriage Amendment or the MAA. The Division would therefore be required to act upon an out-of-state request under the Uniform Interstate Family Support Act (UIFSA)⁴ to establish a child support obligation for the Virginia resident who adopted the child.

ISSUE

The custodial parent (CP) and child reside in Oregon; the noncustodial parent (NCP) resides in Virginia. The Oregon child support enforcement agency has filed a request under UIFSA

¹ 28 U.S.C. §1738C.

² Va. Const. Art. I, § 15-A.

³ Va. Code Ann. § 20-45.3.

⁴ Va. Code Ann. §§ 20-88.32 *et seq.* See specifically Va. Code Ann. § 20-88.50 which requires the Virginia child support enforcement agency to provide services to a petitioner under UIFSA.

asking the Division to establish a child support obligation for the NCP, who adopted the child in Washington State and is named as a parent on the child's birth certificate. The NCP has filed a declaratory action asking the Circuit Court to enjoin the Division from pursuing administrative action to establish a child support obligation based on Oregon's UIFSA request. The NCP claims that DOMA, the Virginia Marriage Amendment and MAA prohibit the Commonwealth from recognizing the adoption, which in turn prohibits the Division from establishing an obligation. In response, the Division has filed a motion for plea of sovereign immunity and demurrer.

BACKGROUND

The child was born on _____. The original birth certificate lists the CP as the mother and notes the name of the father is withheld.⁵ The parties were issued a domestic partnership certificate by the City/County of San Francisco in 2000.⁶ In 2001, the NCP filed a petition in Washington for step-parent adoption and relinquishment of the child by the biological father.⁷ The NCP's petition stated that the CP was his "registered domestic partner" and was married to Petitioner "under the rites of the Jewish faith." The Washington Superior Court entered an order terminating the biological father's parental rights by default after he failed to appear.⁸ In 2002, the Washington court entered the decree of adoption, naming the NCP as "second" parent rather than stepparent and ordering California to amend the child's birth certificate to reflect both parties as parents.⁹ California issued a new birth certificate on _____, which lists the NCP as "father" and "parent" with the name "_____" and the CP as the mother.¹⁰

The NCP claims to have undergone gender transition from female to male in 2005. He changed his name from "_____" to "_____"¹¹ Based on this name change, the child's California birth certificate was amended again to reflect NCP's new name, still listing the NCP as "father" and "parent."¹² The NCP's own original New York birth certificate was also amended to change his name, although his gender remained female on the amended certificate.¹³

In 2005, the CP and child moved to Oregon; the parties continued their relationship until 2007. In 2007, the Oregon circuit court entered the parties' stipulated agreement which named the NCP as "legal parent by adoption," noted that the court had personal and subject matter jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), awarded sole legal custody to the CP, and gave the NCP (called "father") no

⁵ State of California, County of Sutter, *Certificate of Live Birth*, _____.

⁶ City and County of San Francisco, *Domestic Partners Certificate*, _____.

⁷ Superior Court of Washington for King County, *Petition for Step-Parent Adoption and for Relinquishment of Child* RCW 26.33, _____.

⁸ Superior Court of Washington for King County, *Order Terminating Parent/Child Relationship by Default*, _____.

⁹ Superior Court of Washington for King County, *Decree of Adoption*, _____. The court crossed out "step" and handwrote "second" before the word "parent."

¹⁰ State of California, Department of Health Services, *Certificate of Live Birth*, _____. (Note: In some documents – including his original birth certificate – the NCP's given name is listed as "_____" but in others, it is spelled "_____".)

¹¹ King County District Court, State of Washington, *Order Changing Name*, _____. Date is also indicated as _____ on document. _____ appears to be the correct date since the order and the _____ date are referenced in a March _____ order.

¹² State of California, Department of Health Services, *Affidavit to Amend a Record*, _____.

¹³ City of New York, Department of Health, Office of Vital Records, *Certificate of Birth*, _____.

parenting time until further order of the court or a written agreement by the parties.¹⁴ Shortly thereafter, Oregon registered Washington's adoption decree at the CP's request.¹⁵

A few months later, the NCP filed a request for joint custody, visitation and child support in California.¹⁶ The NCP stated he underwent a gender change from female to male in 2005. He noted he adopted the child with a "second-parent adoption" in Washington and stated: "There is no dispute regarding paternity or Petitioner's legal status. The parties are in full agreement that Petitioner is the legal parent and father of the child." At the same time, the California court issued to the CP an order to show cause why relief should not be granted to the NCP for child custody, child support, visitation and spousal support; the court also set a custody mediation meeting.¹⁷ Upon the NCP's application, the show cause order was reissued and a hearing date was set because the CP was not served.¹⁸ At the hearing, the California court held that the California matter was not to be re-opened "unless there are specific issues which absolutely cannot be determined by the Circuit Court of the State of Oregon."¹⁹

At that point, the NCP went back to Oregon to seek relief and filed a motion and supporting affidavit seeking modification of the earlier order which gave him no parenting time with the child.²⁰ In the affidavit the NCP stated the child was his "adopted daughter" and "only child" and called himself her "parent." He noted he was her primary caretaker for several years. He said he agreed to the stipulation agreement (_____) under duress. He believed it was in the child's best interest for him to be "reintegrated" into her life and that she "needs the support of both her parents." He requested visitation in both Oregon and Virginia to resume a close relationship with his "daughter" and said he was "willing to do whatever I can to become a part of her life again." The CP filed an affidavit and counterclaim disagreeing with several of the NCP's assertions; she did not feel it would be in the child's best interests to have visitation – particularly cross-country visitation – with the NCP.²¹ She also stated she and the NCP had a domestic partnership agreement in San Francisco which became "void in 2005 due to the passing of a statewide domestic partnership law." The NCP's motion was dismissed.²²

¹⁴ Circuit Court of the State of Oregon for the County of Washington, *General Judgment Re: Custody, Parenting Time and Other Orders (Stipulated)*, _____.

¹⁵ Circuit Court of the State of Oregon for the County of Washington, *Request to Register Child Custody Determination and Foreign Judgment Pursuant to ORS 109.787 and ORS 24.125(2)*, _____, and *Notice of Registration of Child Custody Determination Under 109.787 and Registration of Foreign Judgment Under ORS 24.125(2)*, _____.

¹⁶ California, *Application for Order and Support Declaration*, _____, and *Declaration of Petitioner*, _____.

¹⁷ Superior Court of California, County of San Diego, *Order to Show Cause*, _____.

¹⁸ Superior Court of California, County of San Diego, *Application and Order for Reissuance of Order to Show Cause*, _____.

¹⁹ Superior Court of California, County of San Diego, *Findings and Order after Hearing*, _____.

²⁰ Circuit Court of the State of Oregon for the County of Washington, *Motion and Order to Show Cause Re: Modification of Parenting Time*, _____, and *Respondent's Affidavit in Support of Motion and Order to Show Cause Re: Modification of Parenting Time*, _____.

²¹ Circuit Court of the State of Oregon for the County of Washington, *Petitioner's Affidavit Responding to Motion to Modify*, _____.

²² Circuit Court of the State of Oregon for the County of Washington, *Supplemental Judgment of Dismissal*, _____.

The Oregon Division of Child Support (DCS) sent a request to the Division to establish a current child support obligation, including medical support, plus retroactive support.²³ The request named the NCP as obligor and father, stated the NCP owed a duty of support to the child, and noted that the parties were never married to each other but paternity had been established "by adoption."

In response, the Division sent an administrative summons to the NCP to establish a child support order.²⁴ The NCP responded with a letter to the Division arguing: (1) in Virginia, the same-sex adoption was invalid notwithstanding the California birth certificate; (2) the Division could not advocate for enforcement of same-sex adoptions or issue an administrative support order under Virginia law; (3) an administrative support order would be "a state administrative ruling on the validity of lesbian adoption in Virginia"; (4) it is the Division's duty to uphold current state law; and (5) the Division must have a Virginia order validating the second-parent adoption for child support purposes before it could proceed.²⁵

Shortly thereafter, the NCP filed a complaint in Virginia seeking a declaratory judgment enjoining the Division from proceeding with any administrative action.²⁶ The NCP stated that, under the MAA, the second-parent adoption was unlawful because Virginia would not approve it, nor would Virginia recognize the parties' union, which was "an integral and indispensable part of the adoption." He argues that rights or contracts – in this case, the second-parent adoption – that result from an invalid union are also invalid and that DOMA allows Virginia to decline to recognize a right flowing from the parties' same-sex relationship. The NCP states he is not a biological parent and has no "legal relationship" to the child. The Division's responsive motion asserted that (1) the NCP's declaratory action is barred by the doctrine of sovereign immunity; (2) the Division acted appropriately by issuing the administrative summons in response to Oregon's UIFSA request; (3) the court has no jurisdiction to grant injunctive relief where an adequate remedy at law exists – in this case, the administrative appeal process; and (4) there is no justiciable controversy because the NCP failed to name the CP as a party to his action.²⁷

ANALYSIS

I. RECOGNITION OF THE WASHINGTON STATE ADOPTION DECREE UNDER THE FULL FAITH AND CREDIT CLAUSE

A. Washington Law

Washington law regarding same-sex marriage is similar to Virginia's. In fact, the Washington Supreme Court has held that the Washington legislature is not constitutionally prohibited from defining marriage as a civil contract between a male and a female, prohibiting same-sex marriage, or denying recognition of same-sex marriages that are considered valid in other states.²⁸ Further, same-sex couples do not have the fundamental

²³ Oregon Division of Child Support, *Child Support Enforcement Transmittal #1 – Initial Request*, including *Uniform Support Petition and General Testimony*, _____.

²⁴ Virginia Division of Child Support Enforcement, *Administrative Summons*, _____.

²⁵ Letter from _____ to Virginia Division of Child Support Enforcement, _____.

²⁶ Fairfax County Circuit Court, *Complaint*, _____.

²⁷ Fairfax County Circuit Court, *Commonwealth's Motion for Plea of Sovereign Immunity and Demurrer to Plaintiff's Complaint for Declaratory Relief by Special Appearance and Commonwealth's Memorandum in Support of its Plea of Sovereign Immunity and Demurrer to Plaintiff's Complaint for Declaratory Relief by Special Appearance*, _____.

²⁸ *Anderson v. King County*, 158 Wn.2d 1, 8, 138 P.3d 963, 968 (2006).

right to marry.²⁹ This policy decision is “rationally related to the legitimate state interests of promoting procreation between opposite-sex individuals within the framework of marriage....” To that end, Washington has statutory provisions which specifically prohibit same-sex marriage.³⁰ Washington does have statutory law related to state-registered domestic partnerships – which applies to same-sex relationships as well as relationships between opposite-sex persons when at least one party is 62 years of age or older – but notes that those laws do not affect marriage.

However, Washington clearly separates marriage from adoption and notes that “same-sex couples can and do legally procreate through assisted reproduction and adoption. See RCW 26.33.140 (adoption not limited to married couples).”³¹ Further, “The facts that all opposite-sex couples do not have children and that single-sex couples raise children and have children with third party assistance or through adoption do not mean that limiting marriage to opposite-sex couples lacks a rational basis.”³² Same-sex couples “enter significant, committed relationships that include children, whether adopted, conceived through assisted reproduction, or brought within the family of the same-sex couple after the end of a heterosexual relationship.”³³

Washington adoption law is quite broad – any person who is legally competent and at least 18 years old may be an adoptive parent.³⁴ There are no other restrictions regarding the prospective adoptive parent’s marital status, sexual orientation, or any other factor. Adoption is not conditioned upon any type of relationship – a single person can adopt, as can a same-sex partner.³⁵ In fact, the adoption decree in the instant case contains no mention of the parties’ relationship to one another. If the NCP had been a single person at the time he adopted the child, he would be considered the parent and the Division would pursue a child support obligation. The adoption is independent of the same-sex relationship and is not a right or claim which arose from that relationship.

B. Virginia Law

The NCP argues that, because of Virginia’s MAA,³⁶ the Washington adoption decree cannot be given full faith and credit because the adoption was related to the same-sex relationship and is thus void in Virginia. However, for the reasons outlined above, the MAA does not apply. The only issue here is whether Virginia must give full faith and credit to the Washington adoption decree; the same-sex relationship is irrelevant.

²⁹ *Id.* at 30, 138 P.3d at 979.

³⁰ RCW § 26.04.010(1) states: “Marriage is a civil contract between a male and a female who have each attained the age of eighteen years, and who are otherwise capable.” RCW § 26.04.020 prohibits marriage “[w]hen the parties are persons other than a male and a female” and further states that a same-sex marriage which is valid in another state is not recognized as valid in Washington.

³¹ *Anderson* at 36, 138 P.3d at 982.

³² *Id.* at 37, 138 P.3d at 983.

³³ *Id.* at 41, 138 P.3d at 985.

³⁴ RCW 26.33.140(2). This statute was enacted in 1984 and has not been amended since; it was thus in effect at the time the NCP adopted the child.

³⁵ See *D.R.M. v. Wood*, 109 Wn. App. 182, 34 P.3d 887 (2001), where the Washington Court of Appeals held that the law did not provide for the imposition of a child support obligation against a same-sex partner of the child’s natural parent where the partner had not adopted the child. The court noted, “The adoption statute does not limit adoption to married couples; single people are eligible to adopt.” The court also noted: “...the law does not prohibit adoption based on sexual orientation of the adoptive parent.”

³⁶ Va. Code Ann. § 20-45.3.

Like Washington, Virginia has determined that the only valid and recognized marriage is one between one man and one woman.³⁷ Virginia has determined, as has Washington, that the federal Defense of Marriage Act³⁸ allows Virginia to create an exception to the full faith and credit clause whereby it is not required to recognize marriages which are valid in another state but invalid under Virginia law.³⁹ There is similar statutory law regarding civil unions which are valid in other states but invalid under Virginia law.⁴⁰ Virginia's marriage statutes support its public policy to promote marriage between a man and woman; however, there has been no articulation of such an exception or public policy regarding adoption.

In Virginia, "the parent and child relationship between a child and an adoptive parent may be established by proof of lawful adoption."⁴¹ There is no statutory requirement that limits adoption to an opposite-sex couple or that contemplates refusing to give full faith and credit to such orders from another state. The State Registrar is required to issue a new birth certificate for a child born in Virginia when it receives "[a]n adoption report..., a report of adoption prepared and filed in accordance with the laws of another state or foreign country, or a certified copy of the decree of adoption together with the information necessary to identify the original certificate of birth and to establish a new certificate of birth...."⁴²

The Virginia Supreme Court addressed the birth certificate issue in *Davenport v. Little-Bowser*, where three sets of same-sex adoptive parents sought new birth certificates listing both adoptive parents.⁴³ The State Registrar refused to do so. The trial court held that birth certificates could not list two mothers or two fathers. Further, the trial court said the petitioners were asking the court "to recognize a status that Virginia does not accord to its own citizens"⁴⁴ and "to do something which the public policy of Virginia just simply does not allow."⁴⁵ On appeal, the Virginia Supreme Court noted that there is no statutory definition of "adoptive parents" and held that **"...there is nothing in the statutory scheme that precludes recognition of same-sex couples as 'adoptive parents.'"**⁴⁶ In response to the Commonwealth's argument that its interpretation should be adopted because it is consistent with Va. Code Ann. § 63.2-1901,⁴⁷ which restricts filing of adoption petitions to

³⁷ Va. Const. Art. I, § 15-A.

³⁸ 28 U.S.C. § 1738C states: "No State, territory, or possession of the United States, or Indian tribe, shall be required to give effect to any public act, record, or judicial proceeding of any other State, territory, possession, or tribe respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such other State, territory, possession, or tribe, or a right or claim arising from such relationship."

³⁹ Va. Code Ann. § 20-45.2 states: "A marriage between persons of the same sex is prohibited. Any marriage entered by persons of the same sex in another state or jurisdiction shall be void in all respects in Virginia and any contractual rights created by such marriage shall be void and unenforceable."

⁴⁰ Va. Code Ann. § 20-45.3 states: "A civil union, partnership contract or other arrangement between persons of the same sex purporting to bestow the privileges or obligations of marriage is prohibited. Any such civil union, partnership contract or other arrangement entered into by persons of the same sex in another state or jurisdiction shall be void in all respects in Virginia and any contractual rights created thereby shall be void and unenforceable."

⁴¹ Va. Code Ann. § 20-49.1(C).

⁴² Va. Code Ann. § 32.1-261(A)(1).

⁴³ *Davenport v. Little-Bowser*, 269 Va. 546, 611 S.E.2d 366 (2005). The children were born in Virginia and had Virginia birth certificates. Two of the same-sex adoptions occurred in Washington, D.C.; the other occurred in New York.

⁴⁴ *Id.* at 552, 611 S.E.2d at 369.

⁴⁵ *Id.*

⁴⁶ *Id.* at 556, 611 S.E.2d at 371 (emphasis added).

⁴⁷ Va. Code Ann. § 63.2-1201 states that adoption petitions "...may be filed by any natural person who resides in the Commonwealth, or who has custody of a child placed by a child-placing agency of the Commonwealth, or by an adopting parent of a child who was subject to a consent proceeding..., or by intended parents who are parties to a surrogacy contract."

single individuals or married couples, the Supreme Court stated "...this case does not involve Virginia adoptions."⁴⁸

Because there is nothing in Virginia case law, statutory law or public policy which precludes recognizing same-sex couples as adoptive parents, Virginia must give full faith and credit to the Washington adoption order.

C. Other Rulings

The federal courts have also weighed in on this issue. In *Finstuen v. Crutcher*, the U.S. Court of Appeals considered an appeal by the Oklahoma Commissioner of Health of a district court judgment which ruled that an Oklahoma law barring recognition of same-sex adoptions finalized in other states is unconstitutional. The federal court held that "final adoption orders by a state court of competent jurisdiction are judgments that must be given full faith and credit under the Constitution by every other state in the nation. Because the Oklahoma statute at issue categorically rejects a class of out-of-state adoption decrees, it violates the Full Faith and Credit Clause."⁴⁹ The U.S. Court of Appeals affirmed the ruling, noting that there is "no roving 'public policy exception' to the full faith and credit due judgments."⁵⁰

Likewise, in *Adar v. Smith* – which, like Virginia's *Davenport* case, dealt with refusal of a state registrar to issue a birth certificate naming two same-sex partners as parents based on an out-of-state adoption – the Fifth Circuit Court of Appeals cited *Finstuen* and noted,

As a threshold matter, there is virtually universal acknowledgement that Louisiana owes full faith and credit to the New York adoption decree and *must* recognize that the Adoptive Parents are Infant J's legal parents. Numerous authorities hold that a state must afford out-of-state adoption decrees full faith and credit. The parental rights and status of Adoptive Parents, as adjudicated by the New York court, are not confined within that state's borders and do not cease to exist at Louisiana's borders....⁵¹

Finstuen was also cited in an unpublished 2009 Michigan Court of Appeals case.⁵² The Michigan court considered whether an Illinois second-parent adoption on the basis of a same-sex relationship had to be recognized in Michigan. The plaintiff filed a complaint for custody, support and visitation based on the adoption; the defendant moved for dismissal, contending the Full Faith and Credit Clause did not apply because the action was contrary to both Michigan and federal public policy. The Michigan court disagreed, finding that the *Finstuen* decision was persuasive and concluding that the adoption had to be recognized as valid and binding in Michigan, regardless of whether it could have been granted by a Michigan court.⁵³ The court noted that the main issue was "whether Michigan's legal framework for protecting and promoting the best interests and welfare of children within its jurisdiction excludes children with a parent or parents who could not have adopted them

⁴⁸ *Davenport* at 557, 611 S.E.2d at 372.

⁴⁹ *Finstuen v. Crutcher*, 496 F.3d 1139, 1141 (2007).

⁵⁰ *Id.* at 1152, quoting *Baker ex rel. Thomas v. Gen. Motors Corp.*, 522 U.S. 222, 233, 118 S.Ct. 657, 139 L.Ed.2d 580 (1998). See also *Matter of Sebastian*, 2009 NY Slip Op 29182, 15-16, 25 Misc.3d 567, 584, 879 N.Y.S.2d 677, 690 (2009) ("...federal courts that have considered the issue have held that a judicial order of adoption in one state must be afforded full faith and credit in every other state, and that there can be no 'public policy' exception to that mandatory recognition," quoting *Finstuen*).

⁵¹ *Adar v. Smith*, 2010 U.S. App. LEXIS 3208, 24 (2010).

⁵² *Giancaspro v. Congleton*, 2009 Mich. App. LEXIS 765 (2009).

⁵³ *Id.* at 5.

under Michigan law” – and concluded that it did not.⁵⁴ Further, “[t]he only relevant consideration in this matter is each individual party’s established relationship as an adoptive parent *with the children*, not their relationship with each other” and not whether they could have jointly adopted the children in Michigan.⁵⁵

In 1997 North Carolina had a case with a fact pattern similar to the instant case. The trial court ruled that the Full Faith and Credit Clause required that North Carolina recognize the Washington adoption of a child by her same-sex parent.⁵⁶ The biological mother opposed the same-sex partner’s custody action in North Carolina, arguing that North Carolina law forbade same-sex marriage and North Carolina public policy provided an exception to the Full Faith and Credit requirement. The court noted that North Carolina had “no public policy denying parental status to an individual based upon that person’s sexual preference.” The North Carolina Court of Appeals subsequently dismissed the biological mother’s appeal.

Florida also had a recent case which addressed a Washington adoption by a same-sex partner. The same-sex partner argued that Florida was not required to give full faith and credit to the Washington adoption because doing so would violate “the public policy of Florida prohibiting same-sex couple adoptions.”⁵⁷ The Court of Appeal disagreed – the trial court was required to give the Washington adoption decree full faith and credit. While Florida based its decision in part on its statutory requirement to recognize adoption decrees from other states (which Virginia law does not specifically articulate), the concurring opinion noted that Florida does not specifically exclude same-sex partners from adopting; therefore, the parties’ same-sex relationship “is irrelevant for the purpose of enforcing [the same-sex partner’s] rights and obligations as an adoptive parent.”⁵⁸

The Nebraska Supreme Court has also addressed this issue in *Russell v. Bridgens*. Bridgens adopted a child in Pennsylvania; later, both she and her same-sex partner, Russell, adopted the same child in a “coparent adoption.” In a subsequent action for custody and support, Bridgens alleged that the adoption was invalid under Pennsylvania law. The trial court agreed, reasoning that Pennsylvania law required that Bridgens terminate her parental rights prior to the coparent adoption and that there was no evidence this had been done. Because the Pennsylvania requirements were not met, the Pennsylvania court lacked subject matter jurisdiction to grant the adoption and, therefore, the adoption was not entitled to recognition in Nebraska under the Full Faith and Credit Act. On appeal by Russell, the Nebraska Supreme Court reversed the trial court. In a concurring opinion, the court addressed the issue of *res judicata*. Just as with the instant case, the parties

...together invoked the jurisdiction of the court and received the decree they requested. Under these circumstances, Bridgens cannot now collaterally attack the jurisdiction of the court in the original proceeding. “[She] will not be permitted to ‘blow hot and cold’ by now taking a position inconsistent with that by which [she] previously induced” the entry of the adoption decree....Under established principles of

⁵⁴ *Id.* at 7.

⁵⁵ *Id.* at 10-11.

⁵⁶ *Erez v. Starr*, 97 CVD 624 (Gen. Ct. Justice, Durham County, Aug. 29, 1997), *appeal dismissed*, COA99-1534 (N.C. Ct. App. Nov. 27, 2000).

⁵⁷ *Embry v. Ryan*, 11 So.3d 408, 409 (2009).

⁵⁸ *Id.* at 410-411.

Pennsylvania law, the court's determination is *res judicata*, even if erroneous, and entitled to full faith and credit...⁵⁹

In the instant case, both parties requested the adoption in Washington. The Washington adoption decree states that the adoption was in the best interest of the child and that "all necessary consents to adoption are valid or have been disposed with."⁶⁰ Neither party appealed the adoption.

II. STATUS AND RELEVANCE OF THE DOMESTIC PARTNERSHIP

The NCP claims the Washington adoption flowed from his same-sex partnership and is thus invalid under Virginia's Marriage Amendment. He notes that "the operative language of the [Virginia Marriage Amendment] prohibits the Commonwealth from creating or recognizing relationships that are 'assigned the rights, benefits, obligations, qualities or effect of marriage.'"⁶¹ The NCP states that he was never married to the CP.⁶² Instead, he says the Washington adoption should not be recognized in Virginia because it was based on the parties' domestic partnership, which he claims was "an integral and indispensable part of the adoption because at that time gay second-parent proceedings were identical to married stepparent adoptions in Washington."⁶³

There is some doubt as to whether there was actually a valid, state-recognized domestic partnership between the parties at the time of the adoption. The NCP asserts the parties "entered into a wedding 'ceremony' and domestic partnership...within the city and county of San Francisco, California" and registered as domestic partners there. He claims this domestic partnership "agreement" was "superseded in 2005 [three years after the Washington adoption] by statute due to enactment of the California statewide domestic partnership law."⁶⁴ He further claims he filed a notice to end the partnership in 2006,⁶⁵ which legally ended the partnership.

The domestic partnership was entered into in a locality in California and was not authorized statewide at that time. The federal Defense of Marriage Act (DOMA), which the NCP says provides an exception under which Virginia is not required to give full faith and credit to the adoption order, states: No state, territory, or possession of the United States, or Indian tribe, shall be required to give effect to any public act, record, or judicial proceeding **of any other State, territory, possession, or tribe** respecting a relationship between persons of

⁵⁹ *Russell v. Bridgens*, 264 Neb. 217, 228, 647 N.W.2d 56, 64 (2002), quoting *Reese v. Reese*, 351 Pa. Super. 521, 527, 506 A.2d 471, 474 (1986).

⁶⁰ Superior Court of Washington for King County, *Decree of Adoption*, January 15, 2002.

⁶¹ *Complaint*, filed January 4, 2010, quoting Va. Const. Art. I, § 15-A.

⁶² *Id.* at 2.

⁶³ *Id.* at 3.

⁶⁴ *Id.* at 2-3. NCP presumably references California's Domestic Partner Rights and Responsibilities Act of 2003, which went into effect on January 1, 2005. At the time the parties entered into a domestic partnership agreement in San Francisco in April 2000, the Domestic Partnership Act of 1999 (Assembly Bill 26) had been passed but did not go into effect until July 1, 2000. The 1999 Act preempted any local ordinance or law that provided for the creation of a domestic partnership, "except that a local jurisdiction may retain or adopt policies or laws **that offer rights to domestic partners within the jurisdiction** and impose duties that are in addition to the rights and duties established by state law, as specified" (emphasis added). The Act did not give domestic partners all the same rights or status as married partners; rather, it specifically addressed hospital visitation and health care coverage.

⁶⁵ City and County of San Francisco, *Notice for Ending a Domestic Partnership*, _____.

the same sex that is **treated as a marriage under the laws of such other State,** territory, possession, or tribe, or a right or claim arising from such relationship.”⁶⁶

At the time the parties entered into the “domestic partnership” in San Francisco in 2000, their relationships was not “treated as a marriage” under California law, nor would it have been at the time of the Washington adoption in 2002. Therefore, DOMA would not apply. Because DOMA does not apply, there is no exception created whereby Virginia is not required to give full faith and credit to the Washington adoption decree. If there was no statewide legal recognition of the parties’ domestic partnership, it was not a valid partnership agreement under DOMA. Thus, the adoption could not have been – as the NCP claims – “a right or claim arising from such relationship.”⁶⁷

III. FINALITY OF ADOPTIONS

Regardless of the NCP’s current arguments regarding the validity of the decree, he did not appeal it and cannot now attack it. Under Washington law, “no person may challenge an adoption decree on the grounds of: (a) A person claiming or alleging paternity subsequently appears and alleges lack of prior notice of the proceeding; or (b) The adoption proceedings were in any other manner defective.... It is the intent of the legislature that this section provide finality for adoptive placements and stable homes for children.”⁶⁸

North Carolina recently ruled on an in-state adoption by a same-sex partner. The biological mother argued that the trial court erred in upholding an adoption decree that was void when entered and ruling that the same-sex partner was a legal parent. The Court of Appeals concluded that the adoption decree, even if it was erroneous or contrary to the law, was not void, because of severe statutory restrictions on appeals from final adoption orders. A party is not permitted to question the validity of an adoption based on “any defect or irregularity, jurisdictional or otherwise.”⁶⁹ The legislative intent here is to promote the integrity and finality of adoptions,⁷⁰ which provides permanence and stability for parent-child relationships.

The court held that the only way to attack the decree was to claim that it was void *ab initio*, which the mother attempted to do by arguing the adoption court had no statutory authority to enter a same-sex adoption decree. The court noted that North Carolina law does not specifically mention same-sex adoption, but does contemplate three types of adoption: agency placements, direct placement, and adoption by step-parents.⁷¹ The court noted that the adoption decree did not contain any mention of the parties’ sexual orientation and, thus, the adoption “was not explicitly a same-sex adoption.”⁷² It concluded that the adoption was valid, that the lower court acted within its authority, and that the grant of a waiver to the

⁶⁶ 28 U.S.C. § 1738C (emphasis added). 72 Am Jur2d, *States, Territories, and Dependencies*, § 2 (2010) defines a state thusly: “A state, in the ordinary sense of the federal Constitution, is a political community of free citizens, occupying a territory of defined boundaries, organized under a government sanctioned and limited by a written constitution, and established by the consent of the governed. The ordinary meaning of the term ‘state’ envisions an entity having statewide jurisdiction, rather than an entity have local or limited jurisdiction,” citing *Coyle v. Smith*, 221 U.S. 559, 31 S.Ct. 688, 55 L.Ed. 853 (1911), and *Monsanto Co. v. Cornerstones Mun. Util. Dist.*, 865 S.W.2d 937 (1993).

⁶⁷ *Complaint* at 5.

⁶⁸ RCW § 26.33.260.

⁶⁹ *Boseman v. Jarrell*, 681 S.E.2d 374, 378 (2009) citing N.C.G.S. § 48-2-607(a).

⁷⁰ *Id.* at 380-381.

⁷¹ *Id.* at 379, citing N.C. Gen. Stat. §§ 48-3-202, 48-3-203 and 48-4-101.

⁷² *Boseman* at 380.

mother (allowing the adoption in the first place) was "at most, erroneous and contrary to the law" but did not result in a void decree.⁷³

Virginia's statute regarding attacks on adoption decrees is similarly restrictive:

After the expiration of six months from the date of entry of any final order of adoption from which no appeal has been taken to the Court of Appeals, the validity thereof shall not be subject to attack in any proceedings, collateral or direct, for any reason, including but not limited to fraud, duress, failure to give any required notice, failure of any procedural requirement, or lack of jurisdiction over any person, and such order shall be final for all purposes.⁷⁴

Like North Carolina, Virginia law also authorizes specific types of adoption⁷⁵ and contains no mention of adoptions by same-sex parties. As with the North Carolina case, in the instant case neither party's sexual orientation was referenced in the adoption decree.

CONCLUSION

The NCP asked for and received an adoption decree wherein he was named the child's parent. He was named a parent on the child's California birth certificate – not once, but twice (20-- and 20--). In legal pleadings throughout the years, the NCP has referred to the child as his daughter, called himself her parent and said there was no dispute regarding his legal parental status. As recently as _____ the NCP filed an action in Oregon requesting that he have visitation with his "adopted daughter" and "only child." Only after that motion was dismissed and Oregon made a request for child support did the NCP ever claim to have no legal relationship with the child.

The Full Faith and Credit Clause clearly requires that Virginia recognize the Washington adoption decree. There is no public policy exception regarding adoption under DOMA, and thus no permissible exception under Virginia's MAA or Marriage Amendment. In addition, DOMA, the MAA and the Marriage Amendment do not apply because the parties did not have a domestic partnership recognized by California state law at the time of the adoption.

An adopted child's best interests are served by the finality of the adoption. For that very reason, Washington does not permit subsequent attacks on adoption decrees, nor does Virginia; therefore, the Washington adoption decree is final and valid.

The issue here is the NCP's relationship to his adopted child, not his relationship with the CP. When the NCP asked for and was granted an adoption, he was given the same rights as other parents. With those rights comes the duty to support the child. As an adoptive parent, the NCP has the same responsibility to support his child as any other parent. By not recognizing the Washington decree, Virginia would in effect be taking away one of the child's parents – a parent who is required to provide support for the child.

Based on the foregoing, I recommend that the Division proceed with the appropriate administrative action to establish a child support obligation for the NCP, based on the UIFSA request from Oregon, and continue to defend against the NCP's declaratory action.

⁷³ *Id.* at 381.

⁷⁴ Va. Code Ann. § 63.2-1216.

⁷⁵ Va. Code Ann. §§ 63.2-1221 through 63.2-1244.