Resisting Challenges to Interstate Recognition and Enforcement of Adoption Judgments Granted to Same Sex Couples

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What recourse do adoptive parents have when they submit a valid adoption order from their home state to the Registrar of Vital Records in their adopted child's birth-state, but the Registrar refuses to provide a revised birth certificate for the child indicating the facts of the child's birth and her new legal adoptive parentage? More specifically, can the Registrar in a child's birth-state refuse to issue a revised certificate with the names of the child's adoptive parents if they are a same-sex couple? Are states bound under their own laws and under the full faith and credit clause of the U.S. Constitution to recognize adoptions valid under the law of the state that approved them even though they would not be permitted if initiated in the state where recognition is sought?

Reprinted here are excerpts from the *amicus curiae* brief I submitted in *Davenport v. Little-Bowser*, a case ultimately decided by the Virginia Supreme Court which raises this question in the context of a refusal by the Virginia Registrar to implement its own state law and list the names of both adoptive parents of Virginia-born children who were legally adopted in other states by same sex couples. The Registrar claimed that its refusal was justified on the grounds that these adoptions offended Virginia's "public policy" because they are by same sex couples who would not be permitted to adopt if they resided in Virginia. In the brief, I argue that the full faith and credit clause of the United States Constitution requires all states to honor adoptions granted under the laws of another state and show that no federal or state court has ever recognized an exception to this rule, as applied to final *judgments*, on the basis of a "public policy" objection.

Usually, when birth certificates are discussed in relation to contemporary adoption law and policy, the focus is on whether adopted individuals are entitled to see their original birth certificates, which in most states are sealed once an adoption is granted. The focus is typically not, as it is in the *Davenport* case, on the vital role of the new certificates that every state issues, substituting the names of a child's adoptive parents for the names of the birth parents, while retaining the facts of the child's date and place of birth. Although these new birth certificates are "legal fictions," implying that the adoptive parents are the child's birth parents, they are also a convenient, often indispensable, means for conveying an important truth – that the child is the legal child of the named adoptive parents. Without these new birth certificates, adoptive families may not be able to prove their children's birth and legal parentage, thereby significantly impairing their ability, among other things, to obtain passports, social security numbers, health care, insurance, admission to school, or driver's licenses.

Although the *Davenport* case arose against the backdrop of widespread enactment of state laws or constitutional amendments that bar recognition of same sex marriages or civil unions, of which Virginia's is among the most restrictive, the case is not about the incidents of those relationships, but about the incidents of an adoption. Nor is the case directly about the issues raised in the recent unsuccessful constitutional challenge to Florida's specific statutory prohibition against adoption by "practicing homosexuals,"

Lofton v. Sec'y Dept Children & Family Servs., 358 F.3d 804 (11th Cir. 2004), *rehearing en banc denied* 377 F.3d 1275 (11th Cir. 2004)), *cert. denied*, 543 U.S. 1081 (2005).

Even though Virginia does not permit adoptions by unmarried couples, the state does not have a statute barring adoption by homosexuals, and in February 2005, the Virginia legislature defeated a measure that would have required social workers and adoption agencies to investigate the sexual orientation of prospective adoptive parents and allow judges to take these findings into account when deciding whether to approve an adoption. *Davenport* is about the application of Virginia's vital records laws to adopted children and the risks to these children and their families if they are denied a universally accepted means for proving their legal identity. The case is also an unwelcome harbinger of similar efforts and legislative proposals in a number of other states to discriminate against children because of their parents' sexual orientation. See Endnote 7, *supra.*

NOTE: *Davenport v. Little-Bowser* was decided by the Virginia Supreme Court in April 2005 (269 Va. 546; 611 S.E.2d 366). The Court ruled that the Virginia Department of Vital Records (1) must issue new birth certificates for children born in Virginia and adopted by lesbian and gay parents in other states and (2) that the new certificates must list the names of both adoptive parents. The Court held that the Department of Vital Records must comply with a state law requiring that new birth certificates be issued to all adopted children: "Clearly the statute… anticipates the listing of adoptive parents without specific restrictions." The Court rejected the state's argument that issuing the new certificates would violate Virginia's "public policy" against adoptions by lesbians or gays. "This case is about issuing birth certificates under the provisions of Virginia law; it is not about homosexual marriage, nor is it about same-sex relationships, nor is it about adoption policy in Virginia." *Id*. at 369.

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The following excerpts from the brief of *Amicus Curiae* Professor Joan Heifetz Hollinger submitted to the Virginia Supreme Court in *Davenport v. Little-Bowser* may be helpful to children's advocates who face similar challenges in other states to the interstate recognition and enforcement of all or some aspects of an adoption of a child by a same sex couple.

I. Statement of the Case

This case concerns a challenge to Virginia's practice of refusing to issue new birth certificates that list both legal parents of children born in Virginia and validly adopted by same-sex couples in other jurisdictions.

II. Statement of Interest of Amicus Curiae

Professor Hollinger is a leading American scholar on adoption law and policy as well as on the psychosocial aspects of adoptive family relationships. As a faculty member at the University of California, Berkeley Boalt Hall Law School since 1993, and before that, as a Professor of Law at the University of Detroit in Michigan, she has been

devoted to research, teaching, and advocacy on family law issues, especially as they affect the welfare of children. [Additional details of professional experience and expertise omitted]

Amicus submits its brief in support of the Plaintiffs/Appellants adoptive parents and their children, and presents the following position: Va. Code 32.1-261(A) requires the State Registrar to issue a new birth certificate when a child born in Virginia is validly adopted in another state. Virginia's refusal to apply this provision to children adopted by same-sex couples in other states is an unprecedented violation of the Full Faith and Credit Clause of the federal Constitution and needlessly compromises the safety and well-being of a subset of adopted children by depriving them of the one universally recognized means of proving their legal identity and parentage.

III. Statement of Facts

This case is about four children who were born in Virginia and legally adopted in other states, where they now live with their adoptive families. When a child born in Virginia is adopted in another jurisdiction, the Virginia statutes provide –as do the analogous statutes in all other states—that the State Registrar of Vital Records and Health Statistics [Registrar], upon being presented with a certified copy or report of the adoption decree, "shall establish" a new birth certificate stating the names of the adoptive parents and shall seal the child's original birth certificate; Va. Code § 32.1-261.[1] In these cases, however, the Registrar refused to issue accurate new birth certificates with the names of both adoptive parents because the adoptive parents of each child are a same sex unmarried couple.

The adoptive parents and their children [Plaintiffs] sought a writ of mandamus from the Virginia Circuit Court ordering the Registrar to issue the new certificates. The families contend that the Registrar's refusal violates Va. Code § 32.1-261, which is mandatory, not a discretionary, statute, as well as the Full Faith and Credit and Equal Protection Clauses of the United States Constitution. While not denying that the Plaintiffs had presented the necessary proof of their valid adoption decrees from sister states, the court nonetheless held that the Registrar's refusal to provide accurate certificates of the children's birth and legal parentage was justified because the adoptions offended Virginia's "public policy" of not allowing unmarried or same sex couples who reside in Virginia to adopt.

The Plaintiffs appealed the Circuit Court ruling to the Virginia Supreme Court, which agreed to hear the appeal and to consider Professor Hollinger's amicus brief along with the briefs of the parties to the appeal.

IV. Argument

A. The Constitutional Mandate of Full Faith & Credit Requires States To Honor Adoption Decrees from Other States, Even Where the

Adoption Statutes of One State is Contrary to the Public Policy of Another State.

Article IV, Section 1 of the United States Constitution requires that each state give full faith and credit to the judicial proceedings of every other state.[2] *See Wright v. Eckhardt*, 267 Va. 24, 591 S.E.2d 668 (2004). To satisfy the constitutional mandate, the judgment of a state court should have the same credit, validity, and effect in every other court of the United States, which it had in the state where it was pronounced; *Underwriters Assur. Co. v. N. C. Guaranty Assn., 455 U.S. 691* (1982). A decree or order of adoption is a final judgment made by a state court –a judgment that establishes the legal relationship of parent and child between an adoptive parent or parents and a child—and as such, it is entitled to recognition in every other state. Joan Heifetz Hollinger, ed. Adoption Law and Practice 3 vol., at § 4.07 (Matthew Bender Co., 1988-2004) [hereinafter "ALP"]

It is well-settled that a state cannot refuse to give full faith and credit to a judgment issued by a court in another state court because of disagreement with the public policy basis for that decision. The United States Supreme Court recently addressed this issue and reiterated that its "decisions support no roving public policy exception to the full faith and credit due judgments." *Baker v. General Motors Corp.*, 522 U.S. 222, 233 (1998); *see also Coghill v. Boardwalk Regency Corp.*, 240 Va. 230, 396 S.E.2d 838, 839-840 (1990) (holding that "*even though the sister state's judgment reflects policies hostile to those of the forum state,"* and Virginia courts might not have *awarded* the judgment made by another state, the courts had no choice but to *enforce* a judgment already awarded by another state.). Thus, even if Virginia's public policy on second parent or joint adoptions by same sex couples is contrary to that of the other states where the adoptions at issue in this case were granted, that difference in policy provides no basis for refusing to recognize these adoptions by not issuing new birth certificates as required by Virginia's own statutes for both in-state and out-of-state adoptions of children born in Virginia.[3]

What the Circuit Court concluded it cannot do—recognize the adoption in another state by a person not the spouse of a biological parent when the biological parent retains parental rights—is *precisely* what the Full Faith and Credit Clause requires the court to do. Contrary to the court's conclusion, the inability of Virginia residents who are unmarried couples to adopt and Virginia's policy objecting to such adoptions are irrelevant to the requirement, under Virginia's own statutes, to issue new birth certificates to the out-of-state adoptive families in this case.

Adoption statutes differ from state to state in important aspects. Indeed, despite their common themes, state adoption laws are not and never have been uniform, nor have they been consistently applied by the courts, lawyers, or child welfare agencies. *See* Joan Heifetz Hollinger, Adoption Law, The Future of Children Vol. 3 • No. 1, 43-61 (1993). To give only a few examples, there are significant differences among the states concerning the requirements for obtaining parental consents or relinquishments; the standards for assessing the suitability of prospective adoptive parents; the legality of

private or non-agency adoptive placements; the kinds of adoption-related expenses that can be charged to adoptive parents; the laws governing access to an adopted child's medical records or to the names of the birth parents; the legality of post-adoption contact agreements. *See* Hollinger, ALP, ch.1.

Despite these differences, which reflect significant disagreements on important public policy issues, state courts consistently have honored their constitutional obligation to recognize adoptions validly granted in other states. *See, e.g.*, *Delaney v. First Nat'l Bank*, 73 N.M. 192, 386 P.2d 711 (1963) (New Mexico must recognize adoption validly granted in Colorado, even though the adoption was contrary to the public policy of New Mexico); *Estate of Morris*, 56 Cal. App.2d 715 (Cal. App. 1943) (California must recognize adoption validly granted in Rhode Island, even though the adoption was contrary to the public policy of California).[4] In fact, there appear to be no reported cases in which a state has refused to give full faith and credit to an adoption decree from another state on public policy grounds. *See* Herma Hill Kay, *Adoption in the Conflict of Laws: The UAA, Not the UCCJA, Is the Answer*, 84 Calif. L. Rev. 703, 741 (1996) (surveying interstate adoption case law and concluding that the requirement of full faith and credit "is noncontroversial as applied to a judgment granting an adoption"); *see also* Hollinger, ALP, at § 4.07.

Another important policy matter on which states differ is the availability of adoptions by same-sex couples. Currently, such adoptions have been granted by trial courts in more than 25 states, approved by appellate courts in nine states,[5] expressly permitted by statute in at least three states [California, Connecticut, Vermont], and denied by appellate courts in four states and prohibited by statute or regulation in several others.[6] *See* Hollinger, ALP, at § 3.06[6]. Even in states that do not permit such adoptions, however, courts have affirmed that an adoption validly granted in one state must be recognized in all others. In *Russell v Bridgens*, 264 Neb. 217, 647 N.W.2d 56 (2002), the Nebraska Supreme Court held that Nebraska must give full faith and credit to an adoption granted to a lesbian couple in Pennsylvania, even though Nebraska would not have granted the adoption under its own adoption statutes. *Russell*, 264 Neb. at 220, 647 N.W.2d at 59 ("A judgment rendered in a sister state court which had jurisdiction is to be given full faith and credit and has the same validity and effect in Nebraska as in the state rendering judgment.").

The Circuit Court in this case suggested that Plaintiffs are seeking greater rights than children living within Virginia have because a child in Virginia presumably could not be adopted by two same sex parents. To the contrary, if Plaintiffs prevail, Plaintiffs would have the exact same right as any child adopted in Virginia – the right to a new, accurate birth certificate. Plaintiffs cannot have greater rights than children adopted in Virginia courts by same-sex parents because no such children exist. The court's specious reasoning could be extended to deny to Plaintiffs *any* of the incidents of adoption (above and beyond birth certificates) and actually underscores the violation of the Full Faith and Credit Clause at issue in this case.

The logical extension of the court's conclusion is that anytime another state provides a right broader than Virginia grants, courts and public officials in Virginia need not recognize a judgment based on that right. For example, a couple in Virginia can receive a no-fault divorce only after a one-year waiting period, Va. Code § 20-91(A)(9)(a). This law reflects a public policy discouraging no-fault divorce. Yet, suppose that a resident of another state legally obtains a no-fault divorce in that state, with no waiting period, and subsequently seeks to marry a Virginia resident in Virginia. Under the court's reasoning, Virginia may decline to permit the marriage because a Virginia resident could not obtain such a "quickie" no-fault divorce and subsequently marry in Virginia.

Of course, the Virginia Supreme Court would not condone such a result. There is no issue of inequitable treatment in either case: the Virginia resident is not similarly situated to the nonresident – one has a divorce, the other does not; and Plaintiff adoptive parents are not similarly situated to unmarried Virginia couples who wish to adopt – Plaintiffs have legal adoption decrees, the Virginia couples do not. The Full Faith and Credit Clause compels recognition of the divorce, *Williams v. North Carolina*, 317 U.S. 287 (1942); it also compels recognition of the adoption judgments at issue here.

This Court must not become the first in the country to disregard this clear constitutional mandate. This Court must not permit Virginia public officials to deny full faith and credit to valid adoptions from other jurisdictions.[7] Such a decision would impair the integrity of interstate adoptions, inviting other states to withhold recognition of adoptions that contravene their own public policy on other grounds. The result of such a breach would be devastating for adopted children, who deserve the same security and stability in their family relationships as other children enjoy.

B. Refusing To Provide An Adopted Child With A Birth Certificate That Lists The Child's Legal Parents Compromises The Child's Safety and Well-Being

A judgment of adoption creates the legal status of parent and child between the child and the adoptive parents. As a consequence of an adoption, the child acquires a new legal identity that is in all respects equivalent to the relationship between other children and their legal biological parents. To verify and recognize this new legal identity, every state is under a mandate, first enacted in most states in the early or middle years of the twentieth century,[8] to issue a new birth certificate to an adopted child, born within the state, upon submission of a certified copy or other authenticated documentation of the adoption decree. The new certificate retains the information concerning the date and place of the child's birth from the original certificate and substitutes the names of the new adoptive parents for the names of the child's original parent or parents. Once the new certificate is issued, it has the same legal function as any other valid certificate of birth.

A birth certificate is universally recognized as reliable proof of an individual's identity and parentage. This is true in every state. Every state has enacted a version of Article 3, Part 8 of the proposed Uniform Adoption Act of 1994, which provides that upon receipt of a certified decree of adoption from another jurisdiction, the state registrar

shall issue a new birth certificate for an adoptee born in that state.[9] There is no discretion under the laws of the states to refuse to enter a new birth certificate with the names of the adoptive parents as set forth in the adoption decree.

Because every state issues new birth certificates for adopted children, public officials and others require the submission of a birth certificate to verify a child's legal parentage in virtually every circumstance in which parentage must be determined. By refusing to provide some adopted children with legally accurate birth certificates, Virginia has placed these children in a difficult and stigmatizing situation. In addition to violating the constitutional mandate of full faith and credit, this policy is harmful to children. It disrupts their secure relationships with peers and third parties, including public officials, and needlessly complicates their ability to prove their identity.

A birth certificate is generally required, for example, in order to register a child for school and to establish who has a right to be listed as an emergency contact or to pick up a child from school or a childcare center.[10] A birth certificate is also required to establish who is authorized to sign for medications distributed by the school nurse or to make medical decisions for a child. When one of the parents named on the birth certificate is not available in an emergency, any difficulty or delay in being able to verify the other parent's legal status may place the child at risk. Indeed, this risk is present in all situations in which parental consent for medical treatment of a child is required. School officials, childcare center, doctors, nurses, and other health care and social services providers have all been trained to expect and accept birth certificates as proof of legal parentage.

A birth certificate is generally required in order to conduct legal or financial transactions for a minor child, such as setting up an account in the child's name or for the child's benefit. A birth certificate is required if a child inherits personal or real property from grandparents or other extended family members. Because adopted children inherit from as well as through their adoptive parents in most states, their birth certificate is especially important in avoiding uncertainty about their status as intestate distributees or as members of a class of children or heirs named in someone else's will.

Similarly, a child must produce a birth certificate when applying for social security benefits as a surviving child of a deceased parent or for other types of survivor benefits.[11] A birth certificate is required to collect on insurance policies naming a child as a beneficiary or to verify a child's entitlement to a parent's pension or other retirement benefits. It is also required to obtain a United States passport for a child under fourteen years of age, and many countries require a parent traveling with a minor child to provide the child's birth certificate as well as a passport. Conversely, an adult child may have to produce a birth certificate to verify that he or she is entitled to act on behalf of an incapacitated parent.

In sum, failing to provide adopted children with legally accurate birth certificates compromises their safety and well-being, while serving no legitimate purpose. In every situation in which legal parentage must be established, a birth certificate is the document

that is universally known and accepted to prove parentage. Although alternative means of proving parentage are available, these are less convenient and are more likely to result in delays and bureaucratic hassles. A subset of adopted children should not have to bear the burden of proving who they are in the wide variety of circumstances where everyone else simply produces a birth certificate. Any other document, although it may provide an alternative means of proof, is an inadequate and inferior alternative. At a minimum, relying on another document will add an additional administrative burden. In some circumstances –such as obtaining a passport or a social security number—it is not clear that any alternative document will be accepted. At worst, the inability to produce an accurate birth certificate may delay or even prevent a child from receiving needed medical treatment or otherwise being properly cared for in an emergency.

In addition, requiring some adopted children to bear this extra burden of proof is embarrassing and stigmatizing. For school-age children, the experience of having their parentage questioned may be particularly upsetting. Children want to be treated the same way as their peers. By having a birth certificate that accurately lists their legal parents, children are protected from public embarrassment; there is no need to explain who their parents are or the circumstances of their adoption. Like everyone else, adopted children and their families should be able to decide for themselves when, and with whom, to discuss how their families came into being. Adopted children deserve the same respect for their personal and familial privacy as everyone else, regardless of who their adoptive parents may be. There is no justification for Virginia's policy of discriminating against some adopted children because the state disfavors certain kinds of adoptive parents. Moreover, in addition to ending its unconstitutional refusal to issue new birth certificates to the adopted children in this case, Virginia should give greater deference to another and more well-established public policy embodied in its statutes, which is to treat adopted children as in all respects legally equivalent to children raised by their biological parents.

V. Conclusion

For the reasons stated above, *Amicus* respectfully requests the Supreme Court of Virginia to reverse the decisions of the Circuit Court and direct the Circuit Court to grant Summary Judgment for Plaintiffs/Appellants.

ENDNOTES

[1] When a Virginia-born child is lawfully adopted in another state:

> The State Registrar shall establish a new certificate of birth for a person born in this Commonwealth upon receipt of . . . 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 . . .Va. Code § 32.1-261(A)

> When a new certificate of birth is established pursuant to subsection A of this section, the actual place and date of birth shall be shown. It shall be substituted for the original certificate of birth. Thereafter, the original certificate and the evidence of adoption… shall be sealed and filed and not be subject to inspection except upon order of a court of this Commonwealth… Va. Code § 32.1-261(B).

[2] The Full Faith and Credit Clause, U.S. Const. art. IV, § 1, provides: "Full faith and Credit shall be given in each State to the public Acts, Records, and Judicial Proceedings of every other State." The federal statute that implements this basic constitutional provision, *28 U.S.C. Section 1738*, provides: "The record and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form. Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its territories and Possessions as they have by law or usage in the courts of such State, territory or Possession from which they are taken."

[3] This case involves the application of federal full faith and credit requirements to the final judgments of sister state courts; it does not involve adoption granted by other countries. Foreign adoption decrees are subject to principles of "comity" and, while presumptively valid and entitled to recognition by each state in this country, may be subject to public policy objections. When the federal regulations implementing the Hague Convention on Intercountry Adoption are finally promulgated, full faith and credit rules –not simply principles of comity-- will apply to adoptions approved by Convention countries. Section 501 of the Intercountry Adoption Act of 2000, 42 U.S.C. 14951, provides that when an adoption granted in a child's country of origin is certified by the Secretary of State as having been completed in accordance with the Hague Convention's guidelines, the adoption shall be recognized in the U.S. as final and valid for the purposes of all federal, state, and local laws.

[4] In *Estate of Morris*, 56 Cal. App.2d 715 (Cal. App. 1943), the California appeals court ruled that a Rhode Island adoption decree allowing an uncle to adopt his adult niece was entitled to full faith and credit in California in determining the definition of "lineal ancestor" for purposes of an inheritance tax, even though this kind of adoption was not permitted in California. *See also Wheeler v. Winters*, 134 S.W.3d 774 (Mo. App. 2004) (Missouri trial court properly gave full faith and credit to a Kansas stepparent adoption in a petition for grandparent visitation by the parents of the natural father); *Kugle v. Harpe*, 234 Ala. 494, 176 So. 1617 (Ala. 1937) (Alabama must give full faith and credit to adoption validly granted in Georgia); *Long v. Long*, 251 Cal.App.2d 732 (1967) (California must give full faith and credit to Colorado adoption whose validity was not questioned); *Hubbard v. Superior Court of Yuba County*, 189 Cal. App.2d 741 (1961) (refusing to grant request to open records of California adoption proceedings for the purpose of collaterally attacking their validity in New York; the adoptions are no longer subject to collateral attack in California and New York is obligated to accord them full faith and credit); *Wright v. Brown*, 1 So.2d 871 (Fla. 1941) (Florida must give full faith and credit to adoption validly granted in Michigan).

[5] Appellate decisions approving adoption by same-sex couples include: *Sharon S. v. Superior Court of San Diego*, 31 Cal. 4th 417, 73 P.3d 554 (Cal. 2003); *In re M.M.D. & B.H.M.*, 662 A.2d 837 (D.C. App. 1995); *K.M. and D.M.*, 274 Ill. App.3d 189, 653 N.E.2d 888 (Ill. App. Ct. 1995); *In re Adoption of M.M.G.C.*, 785 N.E.2d 267 (Ind. App. Ct. 2003); *Adoption of Tammy*, 416 Mass. 205, 619 N.E.2d 315 (Mass. 1993); *In re Adoption of Two Children by H.N.R.*, 285 N.J. Super. 1, 666 A.2d 535 (N.J. Super. 1995); *In re Jacob*, 86 N.Y.2d 651, 660 N.E.2d 397 (N.Y. 1995).

[6] Appellate decisions rejecting adoption by same-sex couples include: *In the Matter of the Adoption of T.K.J.*, 931 P.2d 488 (Colo. Ct. App. 1997); *B.P. v. State (In re Luke)*, 263 Neb. 365, 640 N.W.2d 3742 (2002); *In re Adoption of Jane Doe*, 130 Ohio App.3d 288, 719 N.E.2d 1071 (1998); *In re Angel Lace M.*, 516 N.W.2d 678 (Wis. 1994). Florida's statute and regulations prohibiting all adoptions by "practicing homosexuals" was upheld against a constitutional challenge in *Lofton v. Sec'y Dept Children & Family*

Servs., 358 F.3d 804 (11th Cir. 2004), *rehearing en banc denied* 377 F.3d 1275 (11th Cir. 2004), *cert. denied*, 543 U.S. 1081 (2005). Mississippi bars adoptions by gay couples but not individuals; Utah and Virginia bar adoptions by unmarried couples; but restriction on gays serving as foster or adoptive parents have been withdrawn in Arkansas and Missouri. See www.taskforce.org charts of current foster and adoptive parent regulations.

[7] Faced with a statute similar to Va. Code § 32.1-261 and a refusal by state authorities to issue new birth certificates identifying both same-sex adoptive parents who had legally adopted a Mississippi-born child in another state, a Mississippi court concluded that the refusal violated both the statute and the Full Faith and Credit requirement. *Perdue v. Mississippi Board of Health*, unpub. Order and Opinion. The Attorney General of Oklahoma reached a similar conclusion and ordered the State Registrar to issue new birth certificates to Oklahoma-born children adopted by same sex couples in other states; however the legislature then enacted a statute—the first of its kind-- that purports to deny recognition in Oklahoma of any adoption granted in another state or country to a same sex couple, regardless of where the child was born. 2004 OK. ALS 176; 2004 OK. Laws 176. **UPDATE NOTE:** A federal district court struck down the law in May 2006. The court ruled in *Finstuen v. Edmondson*, 2006 U.S. Dist. LEXIS 32122 (W.D. Okla. May 19, 2006) that the Oklahoma law violated the full faith and credit clause of the federal constitution and denied equal protection to children adopted by same sex parents: "[t] very fact that the adoptions have occurred is evidence that a court of law has found the adoptions to be in the best interests of the children. . . . To now attempt to strip a child of one of his or her parents seems far removed from the statute's Purpose [which] is to provide child with secure and permanent family…" The case has been appealed to the Federal Court of Appeals for the 10th Circuit. For further updates, see www.lambdalegal.org. See, also Robert G. Spector, *The Unconstitutionality Of Oklahoma's Statute Denying Recognition To Adoptions By Same-Sex Couples From Other States*, 40 Tulsa L. Rev. 467 (2005).

[8] *See* Elizabeth Samuels, The Idea of Adoption: An Inquiry into the History of Adult Adoptee Access to Birth Records, 53 Rutgers L. Rev.367, 376-77, 386-87 (2001).

[9] In Virginia, of course, this rule is codified at Va. Code § 32.1-261, *see discussion supra*. As noted in the comments to this section of the Uniform Adoption Act, these state statutes follow the Revised Model State Vital Statistics Act, as drafted by the U.S. Dept. of Health and Human Services and a committee of State Registrars of Vital Records. See Comment to Section 3-802 of the Uniform Adoption Act.

[10] *See*, *e.g.*, Va. Code § 22.1-3.1 (2004) ("[N]o pupil shall be admitted for the first time to any public school in any school division in the Commonwealth unless the person enrolling the pupil shall present, upon admission, a certified copy of the pupil's birth record.").

[11] In fact, federal law specifically provides that "In the administration of any law involving the issuance of a birth certificate, each State shall require each parent to furnish to such State . . . the social security account number (or numbers, if the parent has more than one such number) issued to the parent." *See* 42 U.S.C. § 405. *See also* Va. Code § 32.1-257.1 (2004) (requiring parents to report their social security numbers, pursuant to 42 U.S.C. § 405).