

Better than OK

>>> Lambda Legal Shuts Down
Oklahoma's Adoption Invalidation Law



Greg Hampel and Ed Swaya, with their daughter Vivian

Remember those family road trips from childhood? That distinctive mix of anticipation and boredom? Imagine, though, a road trip where passing into another state meant that your family — even your identity — was completely up in the air. Your parents cease being your parents — you are, in fact, a legal orphan.

Believe it or not, this was actually a possibility under the Adoption Invalidation Law, an Oklahoma law passed in 2004 and recently struck down by the 10th U.S. Circuit Court of Appeals. Lambda Legal successfully argued that this extreme law was unconstitutional, and in the process won a major breakthrough for LGBT families all over the country. Jon Davidson, Lambda Legal's Legal Director, stated, "This is a monumental decision, not just for the couples involved in the case, but for lesbian and gay parents and their children nationwide."

The Adoption Invalidation Law went beyond keeping families living in Oklahoma from being legally recognized. It also meant that children adopted by same-sex couples traveling through or temporarily staying in Oklahoma lost their legal relationships with their parents once within Oklahoma state lines. In the fall of 2004, Lambda Legal filed a lawsuit against Oklahoma's governor and attorney general. Ken Upton, senior staff attorney in Lambda Legal's Dallas office, put it plainly: "This was the most extreme example of punishing children because you don't approve of their parents."

The law was passed in an apparent reac-

tion to the earlier actions of Greg Hampel and Ed Swaya. Hampel and Swaya, eventually plaintiffs in the successful lawsuit against the state, lived in Washington State with their adopted daughter, Vivian. Vivian's birth certificate was issued in Oklahoma, where she was born and adopted by the couple in 2002. When the couple attempted to get an amended certificate that listed both parents, the Oklahoma health department refused. Within weeks of successfully contesting this action with Lambda Legal as counsel, the Oklahoma legislature passed the Adoption Invalidation Law, which forbade police officers, child welfare officials and other representatives of the state from recognizing relationships between same-sex couples and their adoptive children. While this extreme law was defended as an act to protect children, it actually compromised their rights to care by the persons closest to them — their parents, who were denied recognition by the state on the basis of their sexual orientation.

"If Vivian were hurt," said Swaya at the time of filing the lawsuit, "would an Oklahoma hospital recognize Greg and me as her lawful parents? I'm not prepared to take that risk. I have a very real fear that as a parent I wouldn't be allowed to make critical decisions for my daughter when she needs me the most."

Hampel and Swaya, along with two other couples in the case, were eventually awarded justice. The outcome in the case, however, has meaning beyond just righting wrongs in these individual scenarios. It has far-reaching effects

for the future of LGBT families.

Consider: a birth certificate is an important document in demonstrating a child-parent relationship. Yet many states routinely deny or make it more difficult for gay couples and their children to obtain this document. The court in this case held that the Oklahoma statute violated the United States Constitution by refusing to honor adoption decrees obtained in other states. The U.S. Constitution's Full Faith and Credit clause — requiring states to respect and enforce court judgments issued in other states — is consistently recognized as an important principle in the country's national legal structure. The outcome in this case reflects that recognition. This legal victory will likely discourage other states from attempting to write this type of outrageous discrimination into law.

In a broader sense, the court's decision defeated a new strategy by antigay forces to marginalize LGBT families and render them invisible to society. Ensuring government recognition of our relationships is instrumental in seeking equality. It is much easier for private discrimination against LGBT families to flourish if the government discriminates. This decision protects children's legal relationships with their parents, thereby protecting their overall welfare.

We couldn't be more proud of this victory for same-sex parents and their children all over the country, another legal win in our enormously productive summer of equality! **L**

Marriage IN THE Midwest

BY CAMILLA TAYLOR,
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Camilla Taylor

Word traveled quickly when Lambda Legal won the first successful decision in a marriage equality case in the American Midwest. At 3:00 p.m. on August 30, 2007, an Iowa trial court ruled that denying same-sex couples the right to marry violates the Iowa Constitution's guarantees of liberty and equality. The next day, same-sex couples all over Iowa woke up to a new world, feeling for the first time as though their families were embraced and treated fairly by their community.

That morning, a line of same-sex couples eager to marry formed outside the county recorder's office in Des Moines to apply for licenses. But attorneys representing the county quickly announced their intention to appeal the ruling and asked the court to put a hold on the issuance of marriage licenses. The court granted their request and temporarily barred marriage licenses for same-sex couples until the Iowa Supreme Court hears the case. This type of hold frequently happens when a ruling significantly changes the status quo and in no way negates our court victory.

One young couple from Ames, Iowa — Tim McQuillan and Sean Fritz — managed to marry each other before a local

minister and file their certificate with the recorder's office before the temporary hold went into effect that morning at 11:05 a.m. They now enjoy a valid marriage in their home state of Iowa. The rest of Iowa's happy same-sex couples eagerly await a ruling from the Iowa Supreme Court.

The trial court's decision striking down the exclusion of gay and lesbian couples from marriage is a ringing call for full equality, holding that Iowa's discriminatory marriage ban must be "nullified, severed and stricken" from Iowa law. The ruling also deserves praise for the respect with which it treats gay and lesbian parents and their children: "[T]his Court does not accept as valid any assertion that same-sex couples, as a class, are in any way inferior to opposite-sex couples insofar as their child-rearing capabilities are concerned." It went on to say that the exclusion of gay and lesbian couples from marriage "defeats the state's admitted interest in the welfare of all of its children, regardless of whether they are parented by different-sex couples, same-sex couples or any other family unit."

Putting the case in historical context, the court noted that striking down the marriage ban falls within Iowa's noble

tradition of courageously standing up for civil liberties long before its sister states. The court wrote: "Iowa Courts have generally been at the forefront in preserving the civil rights of their citizens in areas such as race, gender and sexual orientation." It pointed to cases from 1839 to the present in which Iowa courts were leaders in rejecting claims by slave owners under the Fugitive Slave Act, in calling for a gender-neutral rule in custody battles between spouses and in overturning antigay restrictions on parents' visitation with their children.

We are optimistic that the Iowa Supreme Court, too, will live up to its longstanding commitment to fair treatment for all Iowans. Meanwhile couples including Lambda Legal's plaintiffs will have to wait for the Iowa Supreme Court to rule before they get to walk down the aisle. But they are thrilled to be one step closer. "This is kind of the American Dream," Jen BarbouRoske told the *Des Moines Register* on decision day. "I'm still feeling kind of shaky. It's pure elation, I just cannot believe it." **L**



Newlyweds Tim McQuillan and Sean Fritz embrace. AP Photos.

CASE HIGHLIGHTS

- **December 2005:** Lambda Legal files marriage lawsuit in Iowa District Court.
- **April 2006:** Twenty-six state legislators represented by an antigay legal organization move to intervene in the case as defendants.
- **August 2006:** Court denies legislators' application.
- **December 2006:** Court grants our motion to add three of our clients' children as parties to the case.
- **January 2007:** Plaintiffs file affidavits from leading child development and other experts who explain the need for marriage rights for same-sex couples.
- **May 2007:** Court hears oral arguments.
- **August 2007:** Victory! The Iowa District Court rules that it is unconstitutional to deny same-sex couples access to marriage. The opposition appealed and asked for a "stay" on the issuance of marriage licenses the next day, which was granted.