

Protecting State to State

Children:

Raising a family is challenging enough, but same-sex couples face a number of state-level legal obstacles different-sex couples do not. These obstacles include discriminatory laws in certain states and noncompliance with fair laws by state and local officials in other states. Lambda Legal is fighting to ensure that equal treatment under state and federal law is not lip service, but reality. And whether these legal battles are disputes over birth certificates or the legitimacy of a partner's custodial rights, Lambda Legal has been there to do the work as national experts on the increasingly important issues that arise from the different state-to-state laws and attitudes toward lesbian and gay parenting.

Many gay and lesbian parents are able to make choices to live in states with a legal climate that favors their family while many others are bound by jobs and other obligations and are not able to choose. With family in mind, many also have at least a subconscious list of states they hope to avoid. In reality, some of this anxiety is misplaced in that the law favors recognition of parent-child relationships recognized by other states — and Lambda Legal has worked hard in the past several years to make sure courts enforce this principle.

We have done a lot of work on behalf of adopted children and their parents. Part of this work involves enforcing laws present throughout the states that require an adopted child's birth certificate to reflect the adoptive parents' names. However, local officials have sometimes resisted complying in the case of our families. Several years ago, we represented a 5-year-old boy who was born in Mississippi and was adopted by Cheryl Lynn Goldstein and Holly Perdue in Vermont. The registrar in Mississippi refused to issue a new birth certificate with both of the women's names listed as parents. But in 2003, a court in Jackson ordered the registrar to do so, holding that Mississippi law is clear that the birth certificates are to be amended with the adoptive parents' names.





Cheryl Lynn Goldstein and Holly Perdue

In a case brought by the ACLU of Virginia, we filed a friend-of-the-court brief at the Virginia Supreme Court to argue that three same-sex couples who adopted Virginia-born children must receive amended birth certificates bearing their names. In 2005, the court agreed and required the registrar to issue the revised birth certificates. In addition to that victory, a federal court in Louisiana last December rejected the state registrar's argument that different rules applied to birth certificates for our clients. The court reasoned that the registrar was inventing "restrictions and requirements that simply are not present in the text of the statute."

An adoption decree conclusively establishes parental status, and Lambda Legal has fought hard against attempts to have states ignore adoptions from other states. In Michigan, we represented Diane Giancaspro, who had adopted her partner's children in Illinois. A Michigan trial judge refused to allow Diane to seek custody and visitation, but the Michigan Court of Appeals held that the trial judge was wrong to conclude that the Michigan constitutional amendment barring marriage for same-sex

couples had any effect on the legal relationship between a parent and child and made clear that there is no "gay exception" to Michigan's child custody laws. In February, the Michigan Court of Appeals held that Diane is a legal parent by virtue of her Illinois adoption and is entitled to seek custody and visitation under Michigan law.

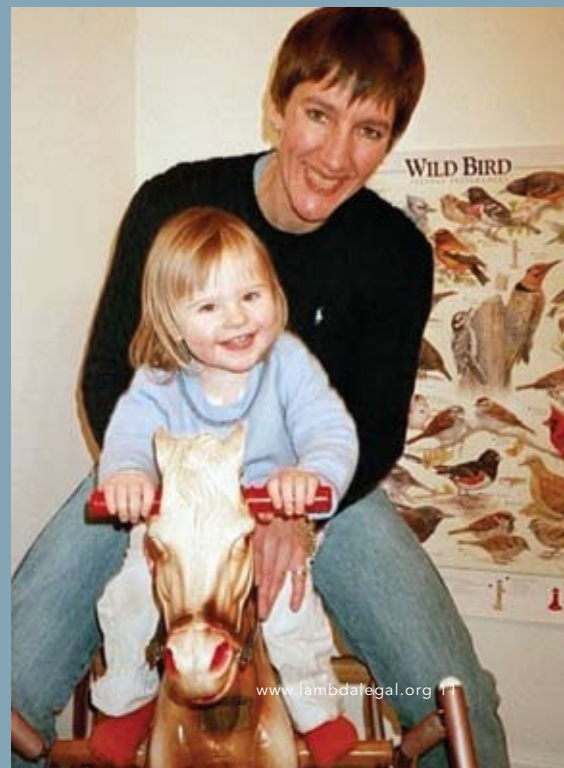
Lambda Legal has become the leader in dealing with "dueling" state custody proceedings. We have three separate cases pending in which a court has issued an order recognizing the parental rights of a nonbiological parent when a biological parent is urging a second state not to respect the first state's order. We have already secured an important victory from the Virginia Court of Appeals for our client Janet Jenkins in the first and leading case on the subject, *Miller-Jenkins v. Miller-Jenkins*. In a second case out of Virginia, we represent a male couple fighting to make sure Virginia respects their custodial rights decreed by a court in North Carolina. In the third case, we represent a woman who began custody proceedings in California, only to have her former partner try to file a separate case in Alabama a year later. The Alabama Court of Civil Appeals correctly realized last year that Alabama had no jurisdiction under the circumstances, and we are making sure the Alabama Supreme Court agrees.

Occasionally, a state actually seeks to disrupt parent-child relationships already recognized by another state. But Lambda Legal is quick to intercede, pressing the courts to adhere to the rule that, under the Constitution, any one state must respect the judgments of another state — the chief principle of the Full Faith and Credit clause. In 2004, the Oklahoma Attorney General issued what should have been a routine opinion, saying that Oklahoma law required the registrar to revise birth certificates with the names of our clients, who had adopted Oklahoma-born children. The Oklahoma legislature responded by passing a bill banning *any* recognition of adoptions by same-sex couples. We went to federal

court and, in 2007, secured a landmark victory from the Tenth Circuit Court of Appeals in Denver, *Finstuen v. Crutcher*. The court ruled that Oklahoma must recognize all final adoption decrees under the Full Faith and Credit clause.

In a case brought by the National Center for Lesbian Rights, we asked a Florida appellate court last summer to respect an adoption decree from Washington state. Emphasizing our victory in *Finstuen*, and all the constitutional principles involved, we also pointed out to the Court that the answer was simple: the Florida legislature had passed a law 35 years earlier. It read that a judgment from another jurisdiction "establishing the relationship by adoption . . . shall be recognized in this state." The Florida court agreed with our arguments and those advanced by NCLR and ruled the adoption must be recognized.

No parent should need to worry that their legal relationships to their children will suddenly become vulnerable just by moving from one state to another. Nor should one expect to receive discriminatory treatment from state and local officials in carrying out their duties. Lambda Legal's work with same-sex parents and their children is one of our main priorities and, region to region, we are leaders in ensuring that these parent-child relationships are protected and that our families can live healthfully and happily, secure in their equality under the law. **L**



left photo: Heather Finstuen and Ann Magro with their daughters
right photo: Janet Jenkins with her daughter