

We Are Family

Despite court victories—and no evidence that having same-sex parents harms children—discrimination against lesbian and gay parents continues. Lambda Legal takes a closer look at the challenges facing gay men and lesbians who want to know the joys of parenthood.



“At first, I thought that being a parent was something that gay men couldn’t do,” says San Diego resident and Lambda Legal client Oren Adar. “But both Mickey and I come from incredibly loving families and it felt like the most natural step.”

In April 2006, after a lifetime of dreaming about it and a year of paperwork, Adar and his partner, Mickey Smith, became the adoptive fathers of a ten-month-old boy.

They had sought the adoption in New York, one of sixteen states that allow same-sex couples to petition for joint adoption. Much to their surprise, the application process went smoothly. But a year later, the happy new family

hit a road bump: Their son’s state of birth, Louisiana, refused to issue a birth certificate naming Adar and Smith as his legal parents.

“We were incredibly angry,” says Adar. But like most new parents, their overriding concern was for their son: Not having an updated birth certificate prevented them from enrolling him in their health coverage.

Thus began an ongoing, three-year battle, with Lambda Legal representing them in a federal lawsuit against the Louisiana Registrar of Vital Statistics.

States of Denial

In October 2007, Lambda Legal sued on behalf of Adar and Smith, arguing that the Louisiana registrar

was violating the Full Faith and Credit Clause of the U.S. Constitution, which provides that judgments issued by one state’s court must be respected in other states as well. Louisiana Attorney General Buddy Caldwell disagreed. He argued that Louisiana’s registrar should not honor an adoption that would have been denied under Louisiana’s own state law.

Florida does not allow gay men or lesbians to adopt as individuals or as couples. Mississippi and Utah have an explicit ban on adoption by same-sex couples. Louisiana law, however, while allowing adoption by a single person, forbids joint adoption by unmarried individuals. Combined with its law restricting marriage to a man and a woman and its refusal to recognize marriages of same-sex couples performed out-of-state, Louisiana stands in the way of same-sex couples who wish to realize dreams of parenthood by way of adoption.

Louisiana keeps company with such states as Arkansas, Michigan and Mississippi, which also bar adoption by unmarried couples.

Expert Opinion

The laws of states like Florida and Louisiana defy the overwhelming consensus among our country’s leading mental health and child welfare organizations that whether children thrive or not tends to be based on the quality of their relationships with their parents, the relationship their parents have with each other, and whether the family has adequate resources—not their parents’ sexual orientation.

“Lesbian and gay parents are as likely as heterosexual parents to provide supportive and healthy environments for their children,” writes the American Psychological Association (APA). In 2005, the organization published a study showing conclusively that prejudice against gay and lesbian parents was “completely unwarranted.” At the root of the problem, wrote the APA, are “beliefs [that are] held generally in society and often not based in personal experience, but are frequently culturally transmitted.”

Adar’s experience reflects this. He says he and Smith are often questioned about the whereabouts of their son’s mother, or about why their son’s ethnic background is different than theirs. “People are just curious,” he says. “Once they get to know us, we are looked upon as any other family.”

The Cost of Denial

Without an updated birth certificate, Adar and Smith have encountered discrimination or misunderstanding from schools, health insurance providers, and even airport personnel. Adar and Smith have also been forced to reveal information about the adoption that they had never planned to share or make public.

“We were able to get our son a passport, but it required that we send information that is private,” Adar explains. “Our most recent issue was registering our son for school in our new home. Our son should be afforded the same rights as all other children. Having to prove over and over that we are his parents is humiliating, to say the least.”

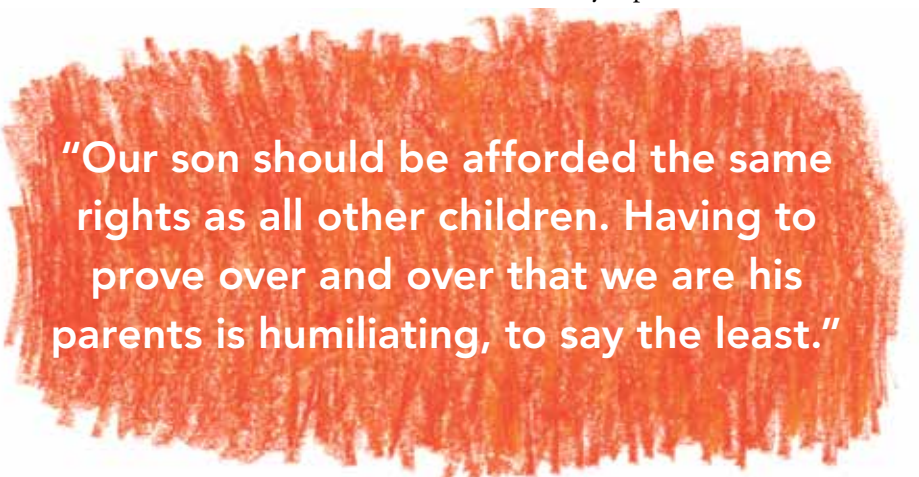
A Nationwide Challenge

Fear and prejudice have jeopardized the family aspirations of other gay men and lesbians. Many have decided to fight back, with Lambda Legal’s help.

Dennis Barros, a veterinarian in Orlando, Florida, hit a different roadblock when he approached a fertility clinic, having already lined up a consenting surrogate. The doctor at the clinic refused to treat him,

citing sperm-donation guidelines that recommend avoiding anonymous sperm donations from men who have sex with men. In Barros’ case, the guidelines were completely inapplicable, and thus the doctor’s denial of services was baseless and discriminatory. Hardly anonymous, Barros was a “directed donor” whose sperm would only be used by him and the surrogate mother with whom he had made arrangements. With the help of Lambda Legal, Barros filed a complaint with the Orlando Human Relations Department; the matter has since moved to court. In the meantime, Barros eventually did have a son, that he now is raising happily.

Lupita Benitez encountered discrimination from doctors in



California who refused to provide infertility treatment to her when she and her longtime partner encountered difficulties trying to start their family. Lambda Legal represented her and won an important ruling from the California Supreme Court making clear that doctors’ offices must abide by the antidiscrimination laws of the state and may not use religion as an excuse to deny care. Benitez and her spouse Joanne Clark today have a beautiful family with three children.

It’s Not Over

In December 2008, the U.S. District Court for the Eastern District of Louisiana decided in Adar and Smith’s favor. The Registrar had to respect Adar and Smith’s adoption and issue a new birth certificate. But Louisiana appealed the ruling.

Last October, Lambda Legal argued the case before a three-member panel of federal judges in the Fifth Circuit Court of Appeals. In February 2010, to Adar and Smith’s relief, the judges affirmed the lower court’s decision.

However, in March 2010, Attorney General Caldwell asked the entire Fifth Circuit to review the panel’s decision.

“Clearly, Mr. Caldwell is consumed with his bias against gay parents to the point of being blinded to the harm he is causing,” says Ken Upton, supervising senior staff attorney for Lambda Legal, who represents Adar and Smith. “His single-minded persecution of a child just because he doesn’t approve of the boy’s parents not only is legally wrong but morally reprehensible.”

Despite affirmation in court and from leading professional organizations, gay parents continue to encounter stigma and fear, which jeopardizes the happiness of families across America and even, as in Adar and Smith’s case, rolls back rights they thought already were secure.

Adar’s fears that being gay could deny him the full joys of parenthood have proven true in part. But although his family cherishes their privacy, they have chosen to stand up. “Equal rights for our children is something that every parent will want to fight for,” he says. He hopes, like families across the U.S., that reality catches up with what’s right—and sooner rather than later. His son will soon need to enroll in kindergarten. **L**