

# ***Adar v. Smith***

## Case Background

September 26, 2011

In 2006, Oren Adar and Mickey Smith, a gay couple, legally adopted their Louisiana-born child in the state of New York, where a judge issued an adoption decree. When they attempted to get an accurate new birth certificate listing both fathers as parents, in part so Smith could add his son to his health insurance, Louisiana State Registrar Darlene Smith refused, telling him that Louisiana does not recognize adoption by unmarried parents and relying on a determination by the Louisiana attorney general that she did not have to respect an adoption from another state that Louisiana would not have granted under Louisiana law if the couple had lived and adopted there.

### **LEGAL ARGUMENTS**

Lambda Legal filed suit on behalf of Adar and Smith in October 2007, saying that the registrar violated the Full Faith and Credit Clause of the U.S. Constitution by refusing to recognize the New York adoption decree, and that denying a birth certificate only to children of unmarried parents violates the Equal Protection Clause of the Fourteenth Amendment to the Constitution. The Constitution requires that judgments issued by a court in one state be given legally binding effect in other states. Further, a state may not disadvantage some children over others simply to express disapproval of a child's parents because they are unmarried.

### **WHAT'S AT STAKE**

Same-sex couples rearing children often face challenges and obstacles simply because they do not look like families that comprise different-sex, married couples with children. If a state is permitted to withhold the only accurate identity document uniformly accepted to establish parentage, it can harm children in a way that is far-reaching and has great impact. Such a result would require families to take extraordinary measures to protect and care for their children, especially when living in or traveling to such states. Moreover, because the burden the state inflicts could never be justified beyond a blatant desire to express disapproval of parents who have legally adopted children, permitting states to engage in this conduct inflicts great harm on the dignity of these families.

### **WHY AN ACCURATE BIRTH CERTIFICATE IS NECESSARY**

The inability to obtain an accurate birth certificate has created multiple obstacles for Adar and Smith to overcome in exercising their rights and responsibilities as parents, especially as a birth certificate is the only common identity document that establishes identity, parentage and citizenship. An accurate birth certificate is uniformly recognized, readily accepted, and often required in many legal contexts, including determining the parents' and child's right to make medical decisions for other family members at the necessary moments; determining custody, care, and support of the child in the event of a separation or divorce between the parents; obtaining a social security card for the child; obtaining social security survivor benefits for the child in the event of a parent's death; establishing a legal parent-child relationship for inheritance purposes in the event of a parent's death; claiming the adopted child as a dependent on the parents' respective insurance plans; registering the child for school;

claiming the child as a dependent for purposes of federal income taxes; and obtaining a passport for the child and traveling internationally.

In this particular case, the lack of an accurate birth certificate has posed multiple obstacles for Adar and Smith, by complicating Smith's ability to enroll his son on his company health plan, impeding the couple's ability to enroll their son school, and resulting in the couple being stopped at an airport when airport personnel wanted proof of their relationship with the child.

### **CASE HISTORY**

In 2008, U.S. District Court Judge Jay Zainey ruled against the Louisiana state registrar and entered judgment ordering her to issue an accurate birth certificate identifying both Adar and Smith as the boy's parents, saying her continued failure to do so violated the U.S. Constitution. The state appealed the ruling, and in 2010 a three-judge panel of the Fifth Circuit Court of Appeals unanimously affirmed the District Court judgment, holding that the Louisiana State Registrar must respect Adar and Smith's New York State adoption decree and issue an accurate birth certificate listing both parents. Louisiana Attorney General Buddy Caldwell filed a petition seeking a rehearing before the full Fifth Circuit Court, and in April 2011 a sharply divided Court reversed the two prior rulings and denied Adar and Smith's son an accurate birth certificate.

In July, Lambda Legal filed a petition for a writ of certiorari asking the U.S. Supreme Court to hear the case, arguing that the Fifth Circuit ruling ignores nearly 100 years of well-established Supreme Court law making it clear that states are not free to disregard judgments made in other states based on the first state's public policy preferences. Moreover, the Fifth Circuit ruling conflicts with other federal circuits across the country. Left untouched, Lambda Legal argued that the Fifth Circuit ruling carves out an exception to the uniformly recognized respect for judgments that states have come to rely upon and leaves adopted children and their parents vulnerable in the interactions with officials from other states.

In August, the nation's leading child welfare organizations joined family law and constitutional scholars in support of Lambda Legal's petition for a writ of certiorari, filing six separate friend-of-the-court briefs. The signatories included: National Association of Social Workers; Child Welfare League of America; Center for Adoption Policy; Tulane Law School; Juvenile Justice Project of Louisiana; and more than 60 legal scholars.