

NYAAFF

New York Attorneys for Adoption and Family Formation

BOARD OF TRUSTEES

PRESIDENT: KATHLEEN A. DI PAOLA
VICE PRESIDENT: REBECCA MENDEL
SECRETARY: LAURIE B. GOLDHEIM
TREASURER: JOSEPH R. WILLIAMS

GREGORY A. FRANKLIN
AMELIA DEMMA
DENISE SEIDELMAN
BRENDAN C. O'SHEA
JEANINE CASTAGNA

MEMBERS

MELISSA BRISMAN
ANTHONY M. BROWN
JEANINE CASTAGNA
AMELIA DEMMA
KATHLEEN A. DI PAOLA
BRIAN ESSER
ELIZABETH SWIRE FALKER
VICTORIA T. FERRARA
ROBIN A. FLEISCHNER
MICHAEL S. GOLDSTEIN
CLIFFORD GREENBERG
KEVIN HARRIGAN
NANCY M. HARTZBAND
STEPHEN LEWIN
FREDERICK J. MAGOVERN
CYNTHIA PERLA MECKLER
SUZANNE NICHOLS
DOUGLAS H. REINIGER
STEVEN L. SARISOHN
LAURIE SLAVIN
MARY WALSH SNYDER
YEKATERINA "KATE" TRAMBITSKAYA
JOSEPH WILLIAMS
DEBBIE S. WOLF

September 10, 2019

Governor Andrew Cuomo
Governor's Office
Attn: Zackary Knaub
State Capitol
Albany, New York 12224

Re: Bill Number A.460/S.3999

Dear Governor Cuomo:

We, the undersigned, are a group of adoption attorneys and other adoption and child-welfare professionals from across New York State, who work with adoptive families, children, child welfare agencies and the court system to protect and advocate for the rights of adoptive children and their families. We submit this letter in support of Bill Number A.460/S.3999, which clarifies the ability of New York courts to grant second-parent or stepparent adoptions to same-sex couples, even if their parentage is already recognized under New York law. The bill has already passed through both the

Mailing Address: 126 State Street, 6th Floor, Albany, NY 12207
Email: kdipaola@theCDSLAWFirm.com

Phone: 518.436.4170

Senate and Assembly, and we urge you to sign the bill into law for the reasons more fully set forth herein.

Pursuant to Section 24 of the Domestic Relations Law, a child born to a married woman is deemed to be the lawful child of the mother and her spouse, regardless of whether the spouse is biologically related to the child, and regardless of her spouse's gender. This situation commonly arises when a same-sex married female couple gives birth to a child, as New York law provides that both mothers are deemed to be the legal parents of the child from the moment of birth. In 2016, the New York Court of Appeals decided the case of *Brooke S.B. v. Elizabeth C.C.* (28 NY3d 1 [2016]) which held that, where same-sex female partners (regardless of their marital status) intend to conceive and raise a child together, they are both deemed to be parents of the child, regardless of a biological relationship and regardless of a formal adoption proceeding. In New York State, birth certificates are routinely issued to same-sex parents, listing both partners as parents of the child. As such, New York law is already highly protective of the parental rights of same-sex families in this State.


Despite this, many same-sex couples still elect to pursue a second-parent or stepparent adoption of their child(ren) in order to secure an additional layer of protection for the non-gestating or non-biological parent. There are a number of reasons for this: first, not every state in the United States (nor every foreign country) shares the presumption that a child born during a parties' marriage is their legal child. Second, a birth certificate is merely "prima facie evidence" of parentage, and does not, without a judicial determination of parentage, provide sufficient protection of a parent's parental rights. If the parents ever relocated or even traveled outside of New York State, they would potentially be placing their parental status in danger if they were to travel to a jurisdiction where laws are hostile towards same-sex families.

Pursuant to a 2018 study put out by the National Center for Lesbian Rights (hereinafter, "NCLR"), "[p]arents *should not have to adopt their own children*, but it is legally advisable for non-biological parents to get an adoption or parentage judgment to ensure that their parental rights are fully protected no matter where they move or travel to, even if they are married" (*Adoption by LGBT Parents*, National Center for Lesbian Rights [2018]). As Cathy Sakimura, deputy director for the NCLR told the New York Times in 2017, "[y]ou can be completely respected and protected as a family in one state and be a complete legal stranger to your children in another" (Rich Vaughn, *2nd Parent Adoption Still Gold Standard to Secure LGBT Parental Rights*, International Fertility Law Group [Nov. 2017]).

Courts across New York State have acknowledged these issues faced by same-sex families and routinely grant adoption orders to non-biological parents, despite their parentage already being otherwise recognized under New York law (*see Matter of Sebastian*, 25 Misc.3d 567 [Surr. Ct. New York Cty. 2009]).

Recently, however, some courts in New York State have questioned their ability to issue an order of adoption where the petitioner is already a legal parent to the child (*see Adoption of Seb C-M* [King's County Surrogates Court 2014]; James C. McKinley, Jr., *N.Y. Judge Alarms Gay Parents by Finding Marriage Law Negates Need for Adoption*, New York Times [Jan. 28, 2014]). This bill clarifies that New York courts have the authority to grant adoption petitions even where the petitioner's parentage is already legally recognized under New York State law. As such, this bill is merely a codification of the legal protection for same-sex couples that already exists in this State. The execution of this bill is important as it provides statutory clarification for courts across the state and makes clear the court's authority to provide this important protection to same-sex couples and their families.

We respectfully urge you to sign this bill into law for the reasons more fully set forth herein.



New York Attorneys for Adoption and Family Formation
By: Kathleen ("Casey") Copps DiPaola, Esq.
President