

Parental Recognition for Children Conceived Through Donor Insemination

Current as of February 20, 2017

The U.S. Supreme Court held in *Obergefell v. Hodges* (2015) that legally married same-sex couples should receive all the rights and benefits of legally married different-sex couples, including the so-called “presumption of parenthood,” which grants both parents legal recognition as parents for a child born into a marriage. This presumption is rebuttable, but it is an important protection for children, particularly those conceived using donor insemination. One marker of this parental presumption may be allowing both the birth parent and their spouse to be listed on a birth certificate, though this is not sufficient to prove parentage.

Despite the 2015 *Obergefell* decision, several states have refused to extend this parental recognition to children conceived using donor insemination and born to married same-sex couples.

Forty-nine states and the District of Columbia currently extend the presumption of parenthood to legally married same-sex couples for children born into the marriage.

Arkansas

- Supreme Court of Arkansas held in [Pavan v. Smith](#) (2016) that banned the Department of Health from listing both parents on a child’s birth certificate if the parents were a married same-sex couple. The U.S. Supreme Court is currently considering whether to hear the case resulting from a petition for a [writ of certiorari](#) filed in February 2017.

Indiana

- State is currently challenging a [federal judge’s ruling](#) requiring the state to recognize both parents. While the issue is litigated, same-sex couples continue to be recognized.

A number of states grant parental presumption, or other legal recognition, to parents even if they are not in a legally recognized union.

District of Columbia

- Statute recognizes an individual who “consents to the artificial insemination of a woman... with the intent to be the parent” either in writing or by residing together with the child and “openly held the child out as their own” as a parent. [DC 16-909](#).

New Mexico

- Statute recognizes an individual who “consents to assisted reproduction... with the intent to be the parent of a child” is a parent. [NM 40-11A-703 \(2009\)](#).



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Washington

- Grants the presumption of parentage to an individual under certain circumstances even if they are not in a legally recognized relationship with the child's biological parent. [RCW 26.26.116.](#)