BUILDING THE MODERN FAMILY: UNNECESSARY AND ARBITRARY RESTRICTIONS ON ADULT ADOPTIONS AND THE IMPACT ON FREE CHOICE FOR FAMILIAL AFFILIATIONS

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I. INTRODUCTION

The ability to adopt has long been considered a statutory privilege, but in the United States it should be much more. In a nation that values freedom and personal choice, the ability to form a family that garners government recognition should be considered a fundamental civil liberty.[1] In the past, the Supreme Court of the United States of America has declared certain familial privileges such as marriage and the right to regulate conception to be fundamental liberties protected by the constitutional right to privacy and substantive due process found in the Bill of Rights.[2] This protection can and should be extended to the right to adopt in general, and the right to enter into an adult adoption in particular.

Adoption of a minor is a highly regulated area of the law containing many restrictions on who is a proper party to enter into an adoption.[3] The regulation in this area is easily justified; the government has a duty to provide protection for children who have no one capable of acting on their behalf.[4] The "best interest of the child" is the overarching principle governing the regulation of adoption of minors.[5] This standard is applied to ensure that children are given safe and loving homes, and few would argue that such regulation is improper.[6]

The law regarding the adoption of adults, on the other hand, does not need such strict regulation.[7] With the exception of those being adopted to provide care for a disability, most

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[1] *See* the Declaration of Independence, http://www.ushistory.org/declaration/document/
[2] U.S. CONST. amend. V, U.S. CONST. amend. XIV, § 1
[3] Sara L. Johnson, *Required Parties in Adoption Proceedings*, 48 A.L.R.4th 860 (1986).
[4] Michael P. McElroy, *Child's Welfare as Prime Consideration*, 2A Horner Probate Prac. & Estates § 58:9 (2011)
[5] *Id.*
[6] *Id.*
[7] Brynne E. McCabe, *Adult Adoption: The Varying Motives, Potential Consequences, and Ethical Considerations*. 22 QUINNIPIAC PROB. L.J. 300, 305 (2009).

adults are considered capable of acting in their own best interest.[8] Even if a person should make a bad decision, the notion of personal autonomy is very highly valued in this country, and it is not the place of the government to step in and make personal decisions for competent adults. Yet in many states the ability to form a legitimate family unit through adult adoption is highly, and sometimes arbitrarily, restricted.[9] Such restrictions interfere with personal liberty, and should be held to a standard of reasonability and rationality.

This paper considers the modern applications of adult adoption. Part II discusses the history of adoption in general and adult adoption in particular. The history of adoption law in the United States is significant because it affects the way adoption law is interpreted in the courts. Part III gives an overview of current adult adoption law across the United States, and considers the reasonable basis for restrictions in place in various states. Part IV analyzes the three main abuses of the laws on adult adoption, and details how these abuses can be avoided without significantly restricting the access of innocent parties to adult adoption. Ultimately, this paper concludes that adult adoption is unnecessarily and arbitrarily restricted in many states, and these restrictions remove the fundamental right of association in the familial context for many Americans and people all over the world.

II. HISTORY

Adoption is an ancient practice dating back to the Babylonian Code of Hammurabi of 2285.[10] The laws of ancient Greece and Rome provided for adoption.[11] During the classical period, adoption of adults was relatively common, as people sought "to carry on a dynasty,

[8] *Id.*
[9] *Id.* at 309
[10] Amanda C. Pustilnik, *Private Ordering, Legal Ordering, and the Getting of Children: A Counterhistory of Adoption Law,* 20 YALE L. & POL'Y REV. 263, 266 (2002).
[11] *Id.*

occupation, or family name; to care for a parent in old age; or to protect property rights."[12] In fact, "because the risk of mortality decreased as the child grew, the childless preferred to adopt adolescent or adult children, who became their legal heirs and who could see to their funeral rites and commemoration."[13] Because the adoption laws of the ancient nations were created in response to the high infant mortality rate, it is reasonable that adoption of adults would be favored over adoption of young children.[14] A family that sought an heir through adoption, having just lost a child, would naturally prefer the relatively low risk associated with adopting an adult.[15] Legal regulation of adoption, both of children and adults, dropped off considerably after the fall of the Roman Empire.[16] The actual practice of adoption, however, continued relatively unabated.[17]

The law of early England not only refused to affirmatively recognize adoption, but also went so far as to openly condemn it.[18] Commentators on English law denounced adoption, refusing to recognize any heirship that was not a result of biological blood ties.[19] One English legal authority is reputed to have said, "Only God can make heres[20], not man."[21] Other European countries, France in particular, similarly denounced artificial heirship, though not as fervently as England.[22] Yet in spite of the stance legal experts took against adoption, there is significant

[12] http://www.adopting.org/adoptions/adopting-an-adult-how-to-adopt-an-adult-person.html
[13] Oxford Encyclopedia of Ancient Greece and Rome, volume 1, page 167. Michael Gagarin, Elaine Fantham, eds. Oxford University Press, 2009.
[14] *Id.*
[15] *Id.*
[16] Pustilnik, *supra* note 10, at 266.
[17] *Id.*
[18] *Id.*
[19] *Id.*
[20] This is the Middle English word for "heir." Merriam Webster Dictionary.
[21] Pustilnik, *supra* note 10, at 274 (citing Glanvill, vii, 1., quoted in 1 Sir Frederick Pollock and Frederic William Maitland, The History of the English Law Before the Time of Edward I 111ff. (2d ed. 1898)).
[22] *Id.*

documentary evidence that adoptions continued through private contract and testamentary designations.[23]

A. History of Adoption Laws in the Early United States

Adoption occurred in the United States prior to the passage of adoption statutes.[24] In the late 1700s and early 1800s Americans used a variety of methods to adopt, as evidenced by "private legislative enactments, court orders granting a change of name of the adopted child, and various forms of contract" dating back to that time period.[25] Other private adoption methods included the use of indenture contracts, and even the use of deeds, by which children "(like chattel) were deeded as property from their biological parents to their adoptive parents."[26] The focus of early adoption was not on providing care and upbringing for children so much as it was meant to train the children in economically advantageous trades to prevent them from becoming a burden on society.[27] The children were also able to provide an economic benefit to their adoptive parents, as children were largely considered an extension of the workforce prior to the Industrial Revolution.[28] In *Private Ordering, Legal Ordering, and the getting of Children: A Counterhistory of Adoption Law*, Amanda Pustilnik suggests that early American courts may have seen legislative enactments as an attempts to limit the power of the courts, and may have struck down early adoption statutes.[29] Pustilnik avers, "This move by courts could be seen as being directed at affecting the balance of power between courts and legislatures more than as making a statement on adoption."[30]

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[23] Pustilnik, *supra* note 10, at 271.
[24] *Id.* at 279.
[25] *Id.*
[26] Naomi Cahn, *Perfect Substitutes or the Real Thing?* 52 DUKE L.J. 1077, 1109 (2003).
[27] Pustilnik, *supra* note 10, at 268.
[28] *Id.*
[29] *Id.*
[30] *Id.*

Whatever the reason, it appears that adoption did exist as a matter of private ordering prior to the enactment of state statutes starting in the mid-1800s.[31] Eventually, state legislatures began passing statutes in an attempt to create some consistency and predictability in the law.[32] Mississippi and Texas led the way, passing general adoption statutes in 1846 and 1850, respectively, but it was the Massachusetts Adoption of Children Act of 1851 that is the true ancestor of modern adoption law.[33] The Mississippi and Texas statutes were general bills meant to clarify the process for legal formalization of adoption, and the rights gained from formalizing the relationship.[34] The Massachusetts statute, on the other hand, called for judicial oversight of the adoption process, effectively doing away with private order adoptions by requiring court approval of each adoptive relationship:

> The real novelty of the 1851 statute is that it, for the first time, inverts the priority of formal law relative to private action by inverting a portion of the time sequence: under the 1851 statute and statutes modeled on it, legal proceeding must come first and the actual adoption comes after. The Massachusetts statute created a judicial safety-check of the private arrangement.[35]

Under private ordering, a child would be adopted first, and the court would only get involved when the new parents sought legal affirmation of the new relationship.[36] Under the new statute, prospective parents had to first petition the courts and obtain documented consent of the child's birth parents.[37] A judge would then consider the situation of the prospective parents, and grant the adoption if he believed them fit to provide the child with suitable "nurture and education."[38]

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[31] *Id.*
[32] *Id.*
[33] *Id* at 282.
[34] *Id.*
[35] *Id.*
[36] *Id.*
[37] Cahn, *supra* note 26, at 1113.
[38] *Id.* at 1114 (quoting William H. Whitmore, *The Law of Adoption in the United States and Especially in Massachusetts* at 2).

Although the statute did not include the words "best interest of the child," it is often cited as being the first to establish the principle held so dear in modern child adoption law.[39]

The Massachusetts statute served as inspiration and a stepping-off point for other states in their regulation of adoption.[40] Wisconsin, for example, enacted a nearly identical statute in 1853.[41] Although many states used the Massachusetts statute as a model for their own adoption statutes, the specifics of early adoption law varied greatly from state to state.[42]

Naomi Cahn, a Professor of Law at Georgetown University of Law School, attributes the rise of adoption statutes to society's changing view of children.[43] With the rise of industrialization in the nineteenth century, American society moved away from considering children as economic tools.[44] The focus of adoption shifted from an attempt to improve the children by training them in some economically useful trade, to protecting them from harm, respecting their vulnerability, and preserving their innocence.[45] Cahn asserts, "The early adoption laws were enacted as the child-saving movements began to change their focus from poverty to physical abuse and neglect…The widespread development of adoption during the nineteenth century emerged, at least in part, from the benevolent societies established to care for poor and neglected children."[46] This theory would explain why early adoption law failed to contemplate the adoption of adults. Adoption was not a mechanism for forming a family out of persons with no genetic tie as much as it was a mechanism for protecting and providing for a

[39] *Id.* at 1112-14. According to Professor Cahn, Pennsylvania was actually the first state to explicitly mention "the welfare of the child" in their 1855 adoption statute. *Id*.
[40] *Id.* at 1077 n. 158, (citing *The Origins of Adoption*, David J. Rothman and Sheila M. Rothman, eds. (1987)).
[41] *Id.*
[42] *Id.* at 1113.
[43] *Id.*
[44] *Id.*
[45] *Id.* at 1088.
[46] *Id.* at 1089.

vulnerable class of citizens.[47] Since adults are generally able—and expected—to care and provide for themselves, there was no need to consider the adoption of adults under the early law.

This mindset began to change in the twentieth century as non-traditional family units became more widespread.[48] Gradually, society came to recognize that adoption could serve as more than a method for providing for disadvantaged children.[49] As people sought to use adoption as a tool for securing inheritance rights, to provide stable care for disabled adults, or even just to gain legal recognition of a familial bond that they felt, but that lacked genetic validity, states were forced to consider the possibility of allowing the adoption of adults.[50]

Because of the way adoption evolved, the construct of adoption law is very important.[51] The jurisprudential designation of adoption as a purely statutory construct is significant because it affects the way adoptions are regulated.[52] In the United States, an adoption that deviates from the statutory formulation will not be recognized under the law.[53] This restriction is especially noticeable when one examines the history of adult adoption in particular.[54]

There is not a lot of documentation on the history of adult adoption distinct from adoption in general. The public policy of child welfare does not apply in adult adoptions, which may be why the history has not been as strictly scrutinized as that of child adoption. To an extent the histories are intertwined, as adult adoption is really just a branch of a larger legal scheme. Certainly adult adoptions tend to have substantially different aims than adoptions of minors.[55] The primary goals of adult adoption often revolve around inheritance rights.[56]

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[47] *Id.*
[48] McCabe, *supra* note 7, at 306.
[49] *Id.*
[50] *Id.*
[51] Pustilnik, *supra* note 10, at 287.
[52] *Id.*
[53] *Id.*
[54] *Id.*
[55] McCabe, *supra* note 7.

Sometimes the only purpose for adopting an adult is to legally formalize a relationship the parties hold in their hearts, making it in some circumstances a mostly symbolic gesture.[57] Although adult adoption is sometimes used to provide financial security and physical care for disabled or mentally handicapped individuals, there is rarely a consideration of upbringing as it is generally understood.

The early adoption statutes in the United States did not seem to contemplate adult adoption. The Massachusetts act refers only to children, as did other early adoption statutes.[58] Gradually the issue of adult adoption came up in each state. Some states responded by jurisprudentially reading the possibility of adult adoption into already existing adoption statutes.[59] Others responded by passing statutes expressly providing for adult adoption.[60] In California, for example, the original adoption statute specifically pertained to minor children, so the courts refused to extend the privilege to adult adoptees.[61] Based on this judicially created limitation, in 1951 the California legislature enacted a statute authorizing adult adoption that remains in force today, subject to a few amendments over the years.[62]

A few states held out for a long time, refusing to recognize adult adoption or give credit to adult adoptions performed in other states.[63] As social values evolved, eventually all states revised their laws, and as of early 2012 there are legal provisions allowing for adult adoptions in

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[56] *Id.* at 306
[57] *Id.*
[58] Cahn, *supra* note 26, at 1112-14.
[59] Angela Chaput Foy, *Adult Adoption and the Elder Population*, 8 MARQ. ELDER'S ADVISOR 109, 113 (2006); *see also* 21 A.L.R. 3d 1012, "Adoption of an Adult." Mississippi and Missouri, for example, do not have specific provisions for adult adoption. Rather, the controlling statutes are not limited to adoption of minors, and have been read to allow adult adoption. *See* Mississippi Code § 93-12-3 and Vernon's Annotated Missouri Statutes 453.010.
[60] Mandi Rae Urban, *The History of Adult Adoption in California*. 11 J. CONTEMP. LEGAL ISSUES 612, 613, (April 1999); *Id.* n. 5 (citing California Civil Code § 221); *In re Taggart's Estate*, 190 Cal. 493 (1923), and *In Re Morris' Estate*, 56 Cal. Op. 2d 715 (1943).
[61] *Id.*
[62] *Id* at 613.
[63] Foy, *supra* note 59, at 113.

all fifty states and the District of Columbia.[64] Many states leave it open to all, requiring only the consent of the parties.[65] Others strictly limit the availability of adult adoption to people who meet a specific set of criteria.[66] A couple of states look to the purpose of the adoption, and restrict the benefits, rather than the availability of those the courts find lacking.[67]

B. History and Evolution of the Family in American Constitutional Law

In addition to the laws created in individual states, the Supreme Court of the United States handed down a series of opinions during the twentieth century that carved out a fundamental right to liberty and privacy in familial activities and relationships.[68] Beginning in 1923 with *Meyer v. Nebraska*, 262 U.S. 390 (1923) and continuing to this day, the issue of how far the government may intrude in decisions regarding family has long been a point of contention.[69] In some areas, the issue is convoluted by competing interests.[70] Family, by definition, involves multiple people, and occasionally their interests do not correspond.[71] This conflict is most often a problem in custody and visitation disputes, but can also extend to other areas of family law.[72] Adult adoption, however, rarely implicates a conflict of interest between the parties, as the formation of the relationship is largely based on the consent of competent adults.[73]

Although there are currently no cases declaring a fundamental right to adoption in general or adult adoption in particular, the fundamental right to enter into an adult adoption can be culled from a tandem reading of the cases on right to marry and right to live together as a

[64] K.M. Potraker, *Adoption of Adult*, 21 A.L.R.3d 1012 (Originally published in 1968).
[65] *Id.*
[66] *Id.*
[67] *See* South Carolina Code 1976 § 62-2-109.
[68] David D. Meyer, *The Paradox of Family Privacy*, 53 VAND. L. REV. 527, 533 (2000).
[69] *Id.*
[70] *Id.* at 529-30.
[71] *Id.*
[72] *Id.*
[73] McCabe, *supra* note 7.

family.[74] The right to adult adoption, much like the right to marry, involves the ability of competent adults to voluntarily enter into a new family arrangement distinct from the family unit into which they were born.[75] Although adult adoption involves a different dynamic than marriage, both essentially involve the swearing of a familial allegiance between the parties. The rights and duties involved in a marriage are slightly different from the rights and duties of a parent-child relationship, but it is undeniable that there are obligations as well as benefits to entering into the new family unit.[76] As the "traditional" nuclear family becomes increasingly scarce, the interest of the citizens in being able to enter into a voluntary parent-child relationship in adulthood increases in importance.[77] The interest no longer implicates only orphans, but now extends to a number of people who, for various reasons, become estranged from their genetic families.[78] Such people have been known to form psychological parent-child bonds with people outside of their biological unit.[79] These emotional family bonds can be as important and as fulfilling as those created consanguineously, and the parties in the family have significant interest in formalizing their bond.[80]

The cases on family living situations cannot be as clearly analogized as those on marriage, but there is still a connection.[81] In *Moore v. City of East Cleveland*, 431 U.S. 494 (1977), the Court considered a statute that limited residents per dwelling unit to a single family.[82] The petitioners in the case were a grandmother and her two grandsons, who were cousins, rather

[74] Meyer, *supra* note 68, at 533.
[75] McCabe, *supra* note 7, at 301.
[76] Specifically, the obligation of fidelity is distinct to a marital relationship.
[77] McCabe, *supra* note 7, at 319.
[78] *Id.*
[79] *Id* at 306.
[80] *Id.*
[81] Meyer, *supra* note 68, at 543.
[82] *Id.*

than brothers.[83] The statute strictly limited the accepted categories of "family" that could live in the homes.[84] Although the parties in *Moore* were related by blood, the analysis of the Court could apply to the right to adopt.[85] Significantly, the Court stated, "This Court has long recognized that freedom of personal choice in matters of marriage and family life is one of the liberties protected by the Due Process Clause of the Fourteenth Amendment."[86] The Court went on to say; "The Constitution prevents East Cleveland from standardizing its children and its adults by forcing all to live in certain narrowly defined family patterns."[87] Although the discussion revolved around consanguineously related extended family, the language could be applied to the decision to formalize a non-genetic family bond.

Furthermore, as seen in the general history section above, adoption is a deeply rooted tradition stemming from private ordering before it was subject to statutory restrictions.[88] Professor David D. Meyer of Vanderbilt University Law School expressed concern over "judicial holdings that the regulated family activity or relationship is without privileged constitutional status because it lacks 'traditional respect in our society' and thus is not really 'deserving of constitutional regulation."[89] This reasoning should not present a roadblock to granting protection to adult adoption because such activity has a long and distinguished history in this country and others.[90]

Many legal scholars consider *Meyer v. Nebraska* and *Pierce v. Society of Sisters*, 268 U.S. 510 (1925) to be "the foundational family privacy cases," even though the analysis in those

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[83] *Id*. at 496.
[84] *Id.*
[85] *Id.*
[86] *Id* at 499 (citing *Cleveland Board of Education v. LaFleur*, 414 U.S. 632 (1974)).
[87] *Id.* at 506.
[88] Pustilnik, *supra* note 10, at 287.
[89] Meyer, *supra* note 68, at 530.
[90] *See* Oxford Encyclopedia of Ancient Greece and Rome, *supra* note 13.

cases is only loosely based on familial rights.[91] *Meyer*, for example, was brought by a teacher, not a parent, who wanted to be able to teach German to children regardless of a state ban on foreign language instruction.[92] Although the Court did mention the rights of parents in the education and upbringing of their children, the opinion also relied heavily on the petitioner's right to pursue his chosen employment under the contract clause.[93] *Pierce*, which challenged a state law requiring children to attend public school, likewise vacillated between the rights of parents and the rights of private educators.[94] Although these cases are a mixed analysis, they marked the first time the court recognized a constitutional protection for family decisions, and "the Court seemed to say that the core constitutional problem with the laws in these two cases was their interference with the parent-child relationship, the state's attempt to 'standardize…children.'"[95]

Over the past 90 years since *Meyer* was handed down, the Court has shown a great reluctance to declare a broad, overarching constitutional protection for familial rights.[96] Almost every time a broad declaration has been made, as in cases like *Loving v. Virginia,* 388 U.S. 1 (1967)*,* and *Turner v. Safley,* 482 U.S. 78 (1987), the Court shortly thereafter turns around and limits the application of the statement to narrower circumstances.[97] The reason for this seems to be related to social policy regarding the action and parties at issue.[98] As Professor Meyer put it:

> What makes a family relationship or personal decision worthy of heightened constitutional protection under this view is not the particular stakes for the individual, but whether society traditionally has regarded the particular relationship or choice as

[91] Meyer, *supra* note 68, at 533.
[92] *Id.*
[93] Meyer, *supra* note 68, at 533, *citing Meyer v. Nebraska*, *supra*.
[94] *Id.*
[95] *Id.* 533-34, *citing Pierce v. Society of Sisters, supra*.
[96] *Id*. at 534.
[97] *Loving* and *Turner* both declared a fundamental right to marriage, a right that is currently denied to a large classification of citizens.
[98] Meyer, *supra* note 68, at 535.

> off-limits to governmental interference. Thus, in a number of cases where there could be no doubt that there were very larger personal stakes for individuals affected by governmental intervention, the Court nevertheless refused to find a fundamental right on the grounds that the individual's particular choices concerning intimacy or family life were not historically sanctioned.[99]

While the use of adult adoption is relatively recent in American history, it has a long and distinguished past dating all the way back to ancient Greece and Rome.[100] If the standard for heightened protection of a right involves acceptance of the practice throughout history,[101] surely adoption in general and adult adoption in particular meets the criteria for heightened protection under U.S. law. Given the distinguished history of adult adoption practices,[102] it is equitable to require that states not impose restrictions on the availability and benefits of beyond those reasonably necessary to protect a compelling state interest.

IV. OVERVIEW OF CURRENT LAW ON ADULT ADOPTION

American law has long favored the nuclear marital family, to the point that such a model is now considered the "traditional" familial paradigm.[103] Yet over the past several decades, social values have started to shift and evolve.[104] Legal scholars, as well as some judges and legislators, have begun advocating for a "disestablishment" of the family unit.[105] As society as a whole becomes more accepting of "non-traditional" familial arrangements, the public policies that have longs supported strict limitations on what the law recognizes as a legitimate family have come under fire.[106]

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[99] *Id*. at 535-36.
[100] *See* Oxford Encyclopedia of Ancient Greece and Rome, *supra* 13.
[101] Meyer, *supra* note 68, at 536.
[102] *See* Oxford Encyclopedia of Ancient Greece and Rome, *supra* 13.
[103] *Introduction: Nuclear Nonproliferation*, 116 HARV. L. REV. 1999, May, 2003.
[104] *Id.*
[105] Alice Ristroph, and Melissa Murray, *Disestablishing the Family,* 119 YALE L.J. 236 (2010).
[106] *See Id.*; *Introduction*, *supra* note 103; Kavanagh, *infra* note 112.

The recent shift in American cultural understanding of what constitutes a legitimate family gained great recognition amongst the legal community in 2000.[107] That year, the United States Supreme Court decided *Troxel v. Granville*, 530 U.S. 57 (2000), a landmark case involving the rights of grandparents to visitation of their grandchildren after the death of their son.[108] The plurality opinion was written by Justice O'Connor, who noted, "The demographic changes of the past century make it difficult to speak of an average American family."[109] Over the years, this simple observation has become "a quip now popular among family law commentators."[110] Laws restricting the formation and rights of families are falling out of favor, and many citizens, lawyers and layman alike, are clamoring for change.[111]

As we move deeper into the 21st century, the "traditional" family unit of a heterosexual married couple and their mutual offspring is becoming increasingly rare.[112] As far back as 2004, one legal scholar observed:

> Today, nearly one-third of first marriages end within ten years. One in three women giving birth is unmarried. Only sixty-nine percent of children in the United States live in two-parent families. Conservative estimates suggest these families include over six million stepchildren, meaning the exclusive biological family represents the lives of less than sixty percent of children in the United States. At least seventy-five thousand same-sex couples in the United States have children in their homes.
> Twenty-eight million children in the United States grow up in families in which care is not provided exclusively by two heterosexual opposite-sex parents. Instead caregivers increasingly include gay and lesbian families, single parent or "cohabitating" parent families, families with grandparents (either as primary caregivers or in addition to primary caregivers), and various other formations.

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[107] *Troxel v. Granville*, 530 U.S. 57 (2000).
[108] *Id.*
[109] *Introduction*, *supra* note 103, at 2000 (quoting *Troxel v. Granville, supra* note 107).
[110] *Id.*
[111] *Id.*
[112] Matthew M. Kavanagh, *Rewriting the Legal Family: Beyond Exclusivity to a Care-Based Standard*, 16 YALE J.L. & FEMINISM 83, 91 (2004).

> We can clearly disagree about whether these aspects of family life in the United States are good, bad, or mixed, but refusing to recognize them legally will not help matters. Despite the reality that US families take a great many forms, we continue to base our legal decision-making on a model that is not reality for a huge proportion of the affected population.[113]

The old model of the nuclear family is no longer representative of the average American household, and it has not been for quite some time.[114]

One legal scholar suggests that the solution to the bias found in family law is to disestablish the family unit altogether.[115] Disestablishment would not entail dissolution of families.[116] Rather, familial establishments would be treated like religious establishments.[117] Individuals and groups of citizens would be permitted to create whatever family model they see fit.[118] The disestablishment would simply preclude the government from officially sanctioning any particular model, just as the government is precluded from officially sanctioning any particular religion.[119]

The primary concern of opponents to the disestablishment of the family unit is that too much freedom in this area would result in an anarchic society and harm to vulnerable citizens.[120] However, disestablishment would not create a limitless ability for citizens to do as they please.[121] Just as our laws do not permit citizens to abuse others under the guise of free exercise of religion,[122] neither would citizens be permitted to abuse others under the cloak of free exercise of

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[113] *Id.*
[114] *Id.*
[115] Ristroph and Murray, *supra* note 105, at 1238.
[116] *Id.* at 1239.
[117] *Id.*
[118] *Id.* at 1241.
[119] *Id.* at 1240.
[120] *Id.*
[121] *Id.*
[122] Consider the case of Warren Jeffs, who attempted to defend himself from charges of pedophilia and statutory rape by claiming that his religion mandates that older men marry multiple young girls. *See* http://blog.chron.com/sacredduty/2011/08/warren-jeffs-convicted-of-sexual-assault-not-cleared-on-religious-grounds/. The courts did not accept such a defense, as the interest in protecting American youth overwhelms the

familial rights. The disestablishment of the traditional nuclear family would not completely end all legal oversight into private relationships. The government will always have an interest in protecting its citizens, particularly those vulnerable to undue influence of others.[123] Disestablishment will, however, give competent, consenting adults more freedom over their personal relationships, and provide legal security for those who choose to deviate from the current legal model.[124]

While disestablishment will benefit many different familial relationships not currently recognized under the law,[125] it will be of particular use in the area of adult adoption. Adult adoption law in the United States is inconsistent from jurisdiction to jurisdiction.[126] Some states minimize legal restrictions, involving the courts as little as possible and giving the parties maximum freedom.[127] Other states throw up arbitrary roadblocks, requiring that awkward, difficult, and occasionally impossible conditions be met before allowing consenting adults to formalize their family unit.[128] Several states impose extreme restrictions that impose on the constitutional freedom of their citizens.[129] A few impose restrictions that, although slight, are so arbitrary and unpredictable that they infringe upon personal liberty.[130] A majority of the states minimize the restrictions, limiting state involvement to those areas necessary to protect third-party citizens and provide predictability to the procedures involved.[131] Disestablishing the

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right to worship as one pleases. A similar rationale has been advanced regarding other freedoms protected by the first amendment as well, such as the duty of protecting children overwhelming the freedom of expression interest in possessing pedophilic pornography. *See New York v. Ferber*, 458 U.S. 747 (1982). Since Ristroph and Murrays theory analogizes familial disestablishment to the other freedoms provided under the first amendment, it is reasonable to conclude that familial formations will be limited in the same way as other first amendment rights.

[123] *See New York v. Ferber*, 458 U.S. 747 (1982).
[124] Ristroph and Murray, *supra* note 105, at 1251.
[125] *Id.*
[126] 21 A.L.R.3d 1012.
[127] *Id.*
[128] *Id.*
[129] *Id.*
[130] *Id.*
[131] *Id.*

favored nuclear family model will allow many people currently behaving as a family unit to gain legal recognition and benefits for their loved ones.

A. Unreasonably Restrictive States

There are ten states in particular that apply such rigid restrictions to the availability of adult adoptions that they infringe upon individual freedom of familial relationships to the point of being blatantly unconstitutional.[132] Some of these states are driven by a desire to prevent gay and lesbian couples from having access to a legitimate family relationship.[133] In others, the underlying intent of the restrictions is more obscure.[134] Regardless of the reasoning behind the limitations, the result is that citizens who genuinely and in good faith seek to formalize their familial bonds are precluded from doing so at the whim of the government.

1. Statutes Restricting the Rights of Homosexual Couples

Although homosexual relationships have been gaining legal recognition in recent years, some states, Florida and Alabama in particular, still consider such relationships to be against public policy, and structure their laws in a manner that limits the access of homosexual couples to legal recognition as a family.[135] The legal restrictions in Florida are not focused on adult adoption issues.[136] In fact, the law on adult adoption is wide open, as Florida is one of many states to declare that, "Any person, a minor or an adult, may be adopted."[137] What makes Florida's laws so reprehensible is found in their law on adoption in general. Florida is the only

[132] Florida, Alabama, Idaho, Nebraska, Wyoming, South Dakota, Illinois, Arizona, Ohio, and South Carolina.
[133] *See* West's F.S.A. § 63.042; Ala.Code 1975 § 26-10A-6 and official comments thereto.
[134] *See* Idaho Code § 16-1501; Neb.Rev.St. § 43-101; W.S.1977 § 1-22-102; SDCL § 25-6-18; 750 ILCS 50/3; Arizona Revised Statutes § 14-8101; Baldwin's Ohio Revised Code § 3107.02; South Carolina Code 1976 § 63-9-1120.
[135] *See* West's F.S.A. § 63.042; Ala.Code 1975 § 26-10A-6 and official comments thereto.
[136] West's F.S.A. § 63.042.
[137] West's F.S.A. § 63.042(1).

state in the union to have a blanket statutory ban on adoption by homosexuals.[138] However, the statute may soon change. In November of 2008, a Miami trial court held the ban on homosexual adoption to be unconstitutional.[139] In September of 2010, in a landmark case entitled *Florida Dept. of Children and Families v. Adoption of X.X.G.*, 45 So.3d 79 (Fl. App. 3rd Dist. 09/22/10), Florida's Third District Court of Appeal affirmed the holding. In October of 2010, the Attorney General of Florida said he would no longer appeal any decision allowing adoption by homosexuals.[140] At the moment, the legislature has made no move toward amending the statute, nor has the Florida Supreme Court spoken on the matter, so there is still a bit of a grey area that really comes into play when one considers the ability of same-sex couples to secure property rights through adult adoption.[141]

Alabama, on the other hand, has made their position clear regarding the use of adult adoption to secure inheritance rights for homosexual couples.[142] For many years, Alabama allowed adult adoption specifically for the purposes of securing inheritance rights.[143] The original statutes, passed in 1973, were found in Title 43 of the Alabama Code, which governs wills and decedent's estates.[144] Those statutes were repealed in 1990, and at that time only minor could be adopted.[145] In 1998, Alabama reinstated adult adoption, but only for adults that were

[138] West's F.S.A. § 63.042(3)—"No person eligible to adopt under this statute may adopt if that person is a homosexual."
[139] The case before the trial court was known as *In re: Gill.* After a four-day trial which focused on evidence that gay couples are just a competent in parenting as heterosexual couples, Miami-Dade Circuit Court Judge Cindy Lederman declared the restrictions on adoption by homosexuals to be unconstitutional and granted the adoption petition of Martin Gill and his partner. *See* http://www.aclu.org/lgbt-rights/aclu-urges-florida-appellate-court-affirm-ruling-striking-florida-law-barring-gay-people.
[140] http://www.keennewsservice.com/2010/10/27/florida-court-upholds-another-gay-adoption/. Keen news service is an internet based news organization specializing in legal and political news affecting the LGBT community.
[141] *Id.*
[142] Official comment to Ala.Code 1975 § 26-10A-6.
[143] *Id.*
[144] *Id.*
[145] 1990 Alabama Laws Act 90-554.

permanently disabled or intellectually handicapped.[146] In 2004, the statute was broadened to its current state, which now includes:

> An adult under any one of the following conditions:
> a. He or she is an individual with a total and permanent disability.
> b. He or she is determined to be a person with an intellectual disability.
> c. He or she consents in writing to be adopted and is related in any degree of kinship, as defined by the intestacy laws of Alabama, or is a stepchild by marriage.
> d. He or she consents in writing to be adopted by an adult man and woman who are husband and wife[147]

The statute specifically precludes an unmarried adult from adopting another adult.[148] This language, combined with the official comments' strong assertion that this provision is meant to establish a parent-child relationship, not to secure inheritance rights, strongly indicates a legislative desire to restrict all access of homosexuals to a legalized family unit.[149] In the quest to deny gays and lesbians equal protection under the law, the Alabama legislature has taken away inheritance rights from a much larger class of people. The legislature has also made it impossible for a person who forms a genuine parent-child relationship with an unmarried prospective adoptor to formalize the relationship in anyway. Such a blatant denial of equal protection under the law should be viewed as unconstitutional under the 14th Amendment to the Federal Constitution of the United States of America.[150]

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[146] 1998 Alabama Laws Act 98-101 (H.B. 164).
[147] Ala.Code 1975 § 26-10A-6.
[148] *Id.*
[149] Official comment to Ala.Code 1975 § 26-10A-6.
[150] "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST. amend. XIV.

2. Statutes Limiting Access to Adult Adoption to Families with a Relationship During the Adoptee's Minority

The statutes of the other highly restrictive states are not specifically targeted at gay and lesbian couples.[151] For the most part, these states seem to focus on whether the parties established a relationship during the minority of the adoptee.[152] Idaho generally requires that there be a relationship for at least a year during the adoptee's minority, but will allow other adoptions if it can be shown that the parties maintained a parent-child relationship "For such period of time or in such manner that the court after investigation finds a substantial family relationship has been created."[153] The statute basically leaves it up to the court's discretion to decide whether the relationship between the parties is sufficient to warrant legal recognition.[154] The provision is completely lacking in any formal criteria that would put the parties on notice as to when, or even it, their relationship will be deemed sufficient.[155]

Other states are more rigid in their requirement of a relationship during minority.[156] Nebraska liberally allows stepparent adoption, as long as the natural parent in the marriage joins the petition.[157] In all other cases, "The adoption…of the adult child may be permitted if the adult child has had a parent-child relationship with the prospective parent or parents for a period of at least six months next preceding the adult child's age of majority…"[158] The statute also requires that the genetic parents either voluntarily relinquish their parental rights, or have some legal reason for having their rights terminated.[159]

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[151] 21 A.L.R.3d 1012.
[152] *Id.*
[153] Idaho Code § 16-1501.
[154] *Id.*
[155] *Id.*
[156] Neb.Rev.St. § 43-101.
[157] *Id.*
[158] *Id.*
[159] *Id.*

Wyoming goes a little farther and requires that the adopting parent have been "a stepparent, grandparent or other blood relative, foster parent or legal guardian who participated in the raising of the adult when the adult was a child."[160] If the parties did not have a legal relationship when the adoptee was a minor, they are simply precluded from ever having a legally recognized familial relationship.[161] South Dakota takes the limitation the farthest, requiring not only that there have been some sort of relationship during the adoptee's minority, but also that, "It shall be a further prerequisite that the person being adopted shall have lived in the home of the adoptive parent during his minority for a period of at least six months."[162]

Illinois also has a cohabitation requirement, although it is not limited to minors.[163] Illinois requires, "that such adult has resided in the home of the persons intending to adopt him at any time for more than 2 years continuously preceding the commencement of an adoption proceeding."[164] This requirement is waived if the parties can show that the adoptee holds "any of the following relationships to the child by blood or marriage: parent, grand-parent, brother, sister, step-parent, step-grandparent, step-brother, step-sister, uncle, aunt, great-uncle, great-aunt, or cousin of first degree."[165]

Arizona strictly limits the adoption of older adults, but the law seems wide open on younger adults:

> Any adult person may adopt either another adult person who is at least eighteen years of age and not more than twenty-one years of age and who consents to the adoption or another adult person who is a stepchild, niece, nephew, cousin or grandchild of the adopting person, by an agreement of adoption approved by a decree of adoption of the court in the county in which either the person

[160] W.S.1977 § 1-22-102.
[161] *Id.*
[162] SDCL § 25-6-18.
[163] 750 ILCS 50/3.
[164] *Id.*
[165] 750 ILCS 50/1.

> adopting or the person adopted resides. A foster parent may adopt an adult who was placed in the foster parent's care when the adult was a juvenile if the foster parent has maintained a continuous familial relationship with that person for five or more years.[166]

As long as the adoptee is under 21, it would appear that anyone may adopt, but once the adoptee turns 22, only relatives and former foster parents may become legal parents.[167]

Ohio is the final state to strictly limit the availability of adult adoption.[168] The Ohio statute is probably the most complicated of the restrictive statute:

> An adult may be adopted under any of the following conditions:
> (1) If the adult is totally or permanently disabled;
> (2) If the adult is determined to be a mentally retarded person;
> (3) If the adult had established a child-foster caregiver, kinship caregiver, or child-stepparent relationship with the petitioners as a minor, and the adult consents to the adoption;
> (4) If the adult was, at the time of the adult's eighteenth birthday, in the permanent custody of or in a planned permanent living arrangement with a public children services agency or a private child placing agency, and the adult consents to the adoption;
> (5) If the adult is the child of the spouse of the petitioner, and the adult consents to the adoption.[169]

This law allows for those who are basically wards of the state to find parents in adulthood and secure a legal relationship.[170] For everyone else, there must either be a disability or a pre-existing relationship to the prospective adoptor.[171]

South Carolina takes a different approach.[172] The state statutes do not limit the availability of adult adoptions; any adult can adopt any other adult with nothing more than a written petition and a best interest hearing.[173] The problematic restrictions in South Carolina law

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[166] Arizona Revised Statutes § 14-8101.
[167] *Id.*
[168] Baldwin's Ohio Revised Code § 3107.02.
[169] *Id.*
[170] *See* South Carolina Code 1976 § 63-9-1120 and South Carolina Code 1976 § 62-2-109.
[171] South Carolina Code 1976 § 63-9-1120.
[172] *Id.*
[173] *Id.*

are applied to the benefits of the adoption.[174] The statute granting full rights to adoptees is explicitly legislated not to apply to adult adoptions.[175] Rather, the only available legal benefit for adult adoptees is the right of intestate inheritance.[176] The Court of Appeals of South Carolina in *Gorman v. South Carolina Reinsurance Facility,* 333 S.C. 696 (Ct. of App. S. C. 01/12/1999), held that under the statute, an adoptor was not entitled to benefit under a statute that would allow an insurance policy to be transferred to a parent, where the adoptee was an adult.[177] Although the right to inherit through intestacy is a significant benefit, there are other rights that flow from an adoption that are equally, if not more, important.[178] There is a lot to be gained from being legally recognized as next of kin, not the least of which is the ability to visit in restricted hospital wards and be consulted in important medical decisions.[179] In South Carolina these rights are not granted to adult adoptees, which could substantially impair an adoptor's end of life plan.[180] Although some of these rights can be secured through alternative legal methods, such as powers of attorney and wills, there are certain rights, such as the right to sue under a tortuous claim of wrongful death, that can only be passed to legal family members by operation of law.[181] South Carolina's limitations on familial benefits of adult adoptees unduly restrict these rights.[182]

There is no rational reason for so harshly restricting access to adult adoption in the way these statutes do. By limiting availability of adult adoption to parties who had a parent-child relationship in the adoptee's minority, the states deny many people who have formed a legitimate familial bond from being able to formalize their relationship. Take, for example, Sandra and

[174] South Carolina Code 1976 § 62-2-109.
[175] *Id.*
[176] *Id.*
[177] 333 S.C. 696. The South Carolina Supreme Court granted certiorari on August 19, 1999, but there is no subsequent opinion.
[178] Foy, *supra* note 59, at 113.
[179] *Id.* at 119
[180] South Carolina Code 1976 § 62-2-109.
[181] Foy, *supra* note 59, at 199.
[182] South Carolina Code 1976 § 62-2-109.

Ross Titus, and their daughter, Jillian.[183] Jillian met her parents at the age of 26, while she was working as an executive at Nintendo.[184] Sandra and Ross also worked for the company, and the three bonded over their love of Boston Terriers.[185] Jillian had long been estranged from her natural parents, and as her relationship with Sandra and Ross solidified, the trio sought to give their bond legal weight.[186] Asked to comment on the apparent rise of adult adoptions in the United States, Chuck Johnson, president and CEO of the National Council For Adoption, stated, "No matter how old you are, you never lose the desire for family."[187] Fortunately, Jillian and the elder Titus' lived in Washington State, where adult adoptions are openly available.[188] Had the three resided in one of the states discussed above, their options for legitimizing their family unit would have been strictly limited, if available at all.[189] Such restrictions deprive citizens seeking nothing more than to belong to a family the ability to make their relationship valid under the law.

The restrictions discussed above substantially interfere with the rights and interests of parties who wish to enter into adult adoption. There is no readily apparent compelling government interest implicated in the restrictions. As such, these state statutes should be reconsidered and redrafted to allow easier access to adult adoptions.

B. Moderately Restrictive and Ambiguous Laws

Less concerning but still significant are the states with minor restrictions and those with complicated or unclear laws.[190] Some states enforce restrictions that are not so egregious as to

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[183] http://today.msnbc.msn.com/id/43085435/ns/today-today_health/t/picking-your-parents-adult-adoption-creates-new-bond/#.T1a9VsxZy5R
[184] *Id.*
[185] *Id.*
[186] *Id.*
[187] *Id.*
[188] *Id. See also* West's RCWA 26.33.140
[189] *See* Idaho Code § 16-1501; Neb.Rev.St. § 43-101; W.S.1977 § 1-22-102; SDCL § 25-6-18; 750 ILCS 50/3; Arizona Revised Statutes § 14-8101; Baldwin's Ohio Revised Code § 3107.02; South Carolina Code 1976 § 63-9-1120.
[190] 21 A.L.R.3d 1012

shock the sensibilities, yet are seemingly completely arbitrary and fail to provide a compelling justification or purpose.[191] Other states have statutes that seem very liberal on their face, yet the jurisprudential law is conflicting or ambiguous.[192] Without some compelling and rational reason for these restrictions and ambiguities, the states are arbitrarily interfering with personal liberties of the citizens.

Several states, Massachusetts, Nevada, and New Jersey, for example, require that the adoptor be older than the adoptee.[193] New Jersey actually requires that the adoptor be at least 10 years older than the adoptee.[194] Massachusetts and Nevada merely say that an adult may adopt "any other adult person younger than himself or herself."[195] Such a requirement is not extremely offensive. Some people may even consider it sensible. Nonetheless, there is no compelling reason for enforcing such restrictions.

The age restriction is even more difficult to justify when it is not clear how much older the adoptor need be. There are several reasons why the younger party in the relationship may want to be the adoptor. Perhaps the younger of the parties has a supportive, loving natural family, while the older has none.[196] The parties feel a genuine family bond, and wish to secure inheritance rights between them, but would also like to maintain the legal bonds the younger party has with her genetic relatives.[197] It would be unjust to force the younger party to choose between her biological family and the family tie she formed with the other party to the adoption

[191] *See* Mississippi Code § 93-12-3 and Vernon's Annotated Missouri Statutes 453.010.
[192] *See* VA Code Ann. § 63.2-1243; N.J.S.A. 2A:22-1.
[193] Massachusetts General Laws Annotated 210 § 1; Nevada Revised Statutes § 127.190; New Jersey Statutes Annotated 2A:22-2.
[194] N.J.S.A. 2A:22-2.
[195] N.R.S. § 127.190
[196] Gwendolyn L., Snodgrass, *Creating Family Without Marriage: The Advantages and Disadvantages of Adult Adoption Among Gay and Lesbian Parents*, 36 BRANDEIS JOURNAL OF FAMILY LAW 75, 80 (1998).
[197] *Id.*

merely because of some happenstance of birth order.[198] Furthermore, it is undeniable that age does not necessarily correlate to maturity. It is quite possible that the older party my look to the younger for care and guidance. There is simply no compelling justification for uniformly mandating that the adoptor be the older of the parties involved, regardless of the realities of the relationship.

The primary argument against removal of age restrictions is the public policy interest in preserving the traditional family format. The parental role is associated with nurturing and guidance, and it is generally presumed that this requires the additional life experience that comes with age. However, the law does not present age barriers to the formation of parent-child relationships through marriage. Adults are free to marry any other adult (of the opposite sex) without regard to how the age of the prospective spouse compares to the age of any children the parties may already have. Take, for example, the scenario presented in the popular—and aptly named—television show "Modern Family."[199] In the show, the family patriarch, Jay, married a woman much younger than himself after his divorce from the mother of his children.[200] Jay's second wife, Gloria, is loving and devoted, and is often seen making great efforts to bond with her stepchildren.[201] In one episode, it is revealed that Gloria is in fact fourteen months younger than her stepdaughter, Claire, and only slightly older than her stepson, Mitchell.[202] Yet Gloria is legally recognized as a parent by affinity, and if the parties so chose, they could easily enter into an adult adoption, age discrepancies notwithstanding.[203] Several states have reduced formalities for adult adoptions involving step-relations.[204] If the notion of a parent too close in age or even

[198] *Id.*
[199] http://www.imdb.com/title/tt1442437/.
[200] *Id.*
[201] http://www.examiner.com/tv-in-lexington/modern-family-reflects-after-the-fire-review.
[202] *Id.*
[203] 21 A.L.R.3d 1012.
[204] *Id.*

younger than the child is so reprehensible, then it should not be permitted under any circumstances.

The issue of same age or younger stepparents is not merely an inflammatory ploy used by the media to get ratings.[205] It is a real issue facing many adults.[206] Although the majority of stepparents are older than their stepchildren, enough are younger to inspire blogs and support forums on the issue.[207] Many stepparents who are older than their stepchildren would not be enough older to satisfy the age restrictions in some states, which can be as high as ten to fifteen years.[208] Society's willingness to accept parents close in age in a stepparent capacity that could lead to an adoption devalues the argument that public policy requires a parent to be substantially older than their child. To recognize the parental relationship in some circumstances but not others is inconsistent and unreasonable. As such, there should be no minimum age discrepancy required for a valid adult adoption.

Another arbitrary and rather pointless restriction can be found in the laws of Missouri and Mississippi.[209] In those states, an adult adoption is subject to the same procedural requirements as an adoption of a minor.[210] In Mississippi, for example, the right to adopt an adult is found in § 93-17-3 of the Mississippi Code, which states, "Any person may be adopted in accordance with the provisions of this chapter." There is no separate provision for the adoption of an adult; any party who wishes to do so must follow the same procedure as a person adopting a minor.[211] Initially this may not seem very restrictive at all, since most adoptive parents adopt minors and

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[205] see http://www.netplaces.com/stepparenting/the-adult-stepchild/when-you-are-younger-than-your-stepchild.htm; http://members.lovingyou.com/showthread.php?s=7b75b1d756334b2033dcac2160ed3fed&threadid=82713.
[206] *Id.*
[207] *Id.*
[208] *See* N.J.S.A. 2A:22-2*;* VA Code Ann. § 63.2-1243.
[209] *see* Mississippi Code § 93-17-3 and Vernon's Annotated Missouri Statutes 453.010.
[210] *Id.*
[211] Mississippi Code § 93-17-3.

are therefore subject to the same procedure.[212] Upon further consideration, however, it becomes clear that these rules could result in a substantial waste of time and state resources.[213] Getting clearance to adopt a minor is a complicated, time-consuming task.[214] The state is highly invested in protecting innocent children and ensuring they wind up in safe and supportive homes.[215] The interest is not the same when considering an adult adoption. The Mississippi statute requires that no adoption may occur without a home study of the person wishing to adopt.[216] Aside from cases where the adoptee is mentally handicapped, the state simply does not have the same interest in doing a home inspection in an adult adoption as they do in an adoption of a minor. In many cases, the adult adoptee may never even reside in the same house as the adoptor.[217] It is unclear how strictly the courts adhere to the procedure in cases of adult adoption, but there is little doubt that the statute as written gives the court the option to deny a petition for an adult adoption for failure to comply.[218] This procedure is overly burdensome, and the state should create a more relaxed procedural path for adult adoptions.[219]

Finally, there are states like New Mexico, New Jersey, New York, and Virginia, which have facially liberal statutes, but the interpretation by courts is ambiguous and occasionally inconsistent.[220] New Mexico is probably the most vague.[221] The statute states "any adult who has been approved by the court as a suitable adoptive parent pursuant to the provisions of the

[212] Mississippi Code § 93-17-(1-31).
[213] *Id.*
[214] *Id.*
[215] *Id.*
[216] *Id.*
[217] *See* the Titus' story, *supra.*
[218] Mississippi Code § 93-17-3.
[219] It is possible that MO and MS chose this method as the easiest was to avoid the Idaho problem. Idaho passed a statute allowing for adult adoption in the latter half of the 20th century. Unfortunately, the statute was silent on what procedure applied. In *Matter of Adoption of Chaney*, 887 P.2d 1061 (ID 1995), the Idaho Supreme Court held that even though there was a statute authorizing the adoption of an adult, there was no prescribed procedure, so it was technically impossible to actually adopt an adult. In 1996 Idaho passed legislation detailing the procedure for adopting an adult.
[220] *See* N. M. S. A. 1978, § 40-14-5; VA Code Ann. § 63.2-1243; N.J.S.A. 2A:22-1; McKinney's DRL § 110.
[221] N. M. S. A. 1978, § 40-14-5.

Adult Adoption Act" may adopt.[222] There is nothing else in the legislation on adult adoption as to what criteria must be met for a parent to be approved.[223] Perhaps the statute is referencing some provision in the 1994 Uniform Adoption Act written by National Conference of Commissioners on Uniform State Laws;[224] it really is not clear. There is also no readily available case law on what it means to be a suitable parent under this mystery act. Most likely it is not an overly restrictive standard, but a little guidance would be welcome nonetheless.

Virginia has a similarly vague statute.[225] The primary statute allows for adoption of any adult "for good cause shown."[226] What constitutes a "good cause" for seeking to adopt an adult is not defined. Virginia also has a mandatory investigation for any person adopted under this clause,[227] as well as a rather substantial age requirement.[228] There is little in Virginia law to put a party on notice as to whether their adoption may be approved. The few court opinions regarding adult adoption issues focus on other matters, such as inheritance rights, and neglect to interpret the "good cause" standard.[229] As with New Mexico, the Virginia law should provide more guidance to the parties seeking an adult adoption as to whether they meet the requisite standards.

The New Jersey standard for court approval is a little more specific.[230] The statute states that an adoption may take place "if the court is satisfied that the adopting parent or parents are of good moral character and of reputable standing in their community, and that the adoption will be

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[222] *Id.*
[223] *Id.*
[224] The UAA is a model act constructed by National Conference of Commissioners on Uniform State Laws and submitted to state legislatures for consideration. Some states adopted the Act in its entirety, others enacted bits and pieces, while some did not enact it at all. Hollinger, Joan Heifetz. *The Uniform Adoption Act.* The Future of Children LONG-TERM OUTCOMES OF EARLY CHILDHOOD PROGRAMS Vol. 5, No. 3, Winter 1995.
[225] VA Code Ann. § 63.2-1243.
[226] *Id.*
[227] VA Code Ann. § 63.2-1244
[228] The adoptor must be at least 15 years older under VA Code Ann. § 63.2-1243.
[229] *See, for example Kummer v. Donak,* 282 Va. 301 (Va. 2011); *In re Adoption of Moore*, 77 Va. Cir. 408 (2009).
[230] N.J.S.A. 2A:22-1.

to the advantage and benefit of the person to be adopted."[231] The interesting issue in New Jersey is the way the court interprets what will benefit the adoptee.[232] For example, the New Jersey Superior Court in *In the Matter of the Adoption of A,* 118 N.J.Super. 180 (NJ 1972), held that it would not benefit an incarcerated felon to be adopted by a couple who wished to provide him with a caring family. The couple was fully aware of the adoptee's criminal record and incarceration status, and the prospective parents were affirmed to be in good moral and community standing, but the court nonetheless denied the petition.[233] The opinion is vague on why they do not feel the adoptee would benefit, but makes it clear that their real concern is the lack of moral character of the adoptee.[234] Although the statute does not contemplate the character of the person being adopted, the court is willing to read such a provision into it.[235] The odd thing about this case is that a person of objectively low morals would likely benefit a great deal from being adopted by an upstanding family.

New York's statutory provisions are extremely liberal, allowing pretty much anyone to be a party to an adoption with minimal procedural restrictions.[236] The case law, on the other hand, is contrary and at times flatly contradictory.[237] Specifically, the New York courts go back and forth on whether it is permissible for one member of a same-sex relationship to adopt another in order to secure property rights.[238] Fortunately, the issue is likely moot as of the writing of this paper, as in July of 2011 the New York legislature passed a statute allowing

[231] *Id.*
[232] *Id.*
[233] *Id.* at 181-82.
[234] *Id.* at 183.
[235] *Id.*
[236] McKinney's DRL § 110.
[237] *See In the Matter of Adult Anonymous II*, 88 A.D. 2d 30 (NY 1982), *In the Matter of Robert Paul P.* 63 N.Y. 2d 233 (Ct. of App. NY 08/07/1984).
[238] *Id.*

marriage between same-sex partners.[239]

Although the restrictions at issue in these states are not as shocking as the blatantly unconstitutional statutes considered above, there are nevertheless several issues that need to be addressed to ensure that the laws in these states do not arbitrarily interfere with the rights of citizens.

C. Reasonable Restrictions Based on a Compelling State Interest

A large majority of the states currently have rather lenient laws regarding adult adoption. In thirty-two states and Washington D.C., the adult adoption statutes are minimally restrictive, requiring little more than the consent of the parties involved and allowing for liberal inheritance rights.[240] The few restrictions that are applied in these states are based on compelling state interests, usually involving the protection of other citizens who are not party to the adoption.[241]

Louisiana used to be one of the most lenient of all the states, allowing adoption of anyone over the age of seventeen to be effectuated by an authentic act filed in the parish registry.[242] The only caveat was the requirement of a hearing if the adoptor was younger than the adoptee.[243] However, it appears there were some concerns of people exercising undue influence over their adoptors, most likely elderly persons with valuable assets.[244] As a result, in 2008 the Louisiana legislature authorized an amendment requiring a best interest hearing in all adult adoptions

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[239] McKinney's DRL § 10-a, "A marriage that is otherwise valid shall be valid regardless of whether the parties to the marriage are of the same or different sex."
[240] The 32 states are Alaska, Arkansas, California, Colorado, Connecticut, Delaware, Georgia, Hawaii, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Minnesota, Michigan, Montana, New Hampshire, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, Utah, Vermont, Washington, West Virginia, and Wisconsin.
[241] *See, e.g.,* LSA-C.C. Art. 212 and official comments thereto.
[242] Former provision, Louisiana Revised Statutes 9:461.
[243] *Id.*
[244] Official comments to Louisiana Civil Code Article 212.

where the prospective adoptor is not a stepparent.[245] Louisiana family law scholars liken the hearing provision to a similar provision requiring judicial affirmation of a post-marriage marital property agreement.[246] The purpose is to prevent a person in a position of influence from wielding that influence to the detriment of the other, more vulnerable, party.[247]

Several other states also require a hearing to determine the "best interest of the parties."[248] In some ways, this may seem unjust. The United States is a nation that deeply values individual liberty and the right to personal choice. Theoretically, competent adults should be free to do as they please in their personal life, regardless of whether and objective outside observer would consider their choices to be wise or prudent. However, Louisiana's argument concerning the risk of undue influence is compelling.[249] A brief hearing at the time of the adoption would likely be much less damaging, both in monetary and emotional cost, than a prolonged challenge to the inheritance provisions upon the death of one of the parties.

A couple of states have taken this concern a step farther.[250] Minnesota and Utah have legislatively defined particular groups of people as "vulnerable," and require enhanced validation procedures for parties in those categories attempting to enter into an adult adoption.[251]

Even in the most lenient states, the consent of the parties to the adoption alone may not be sufficient.[252] When one of the parties—either the adoptor or the adoptee—is married, most states require the consent of the spouse to enact a valid adoption.[253] Some states require that the

[245] LSA-C.C. Art. 212. Step-parents can still effectuate a valid adult adoption of a stepchild with nothing more than the permission of the natural parent to which they are married and an authentic act filed in the parish registry.
[246] Official comments to LSA-C.C. Art. 212.
[247] LSA-C.C. Art. 212
[248] See, for example NJ ST 2A:22-2; GA ST § 19-8-21; AZ ST § 14-8101
[249] Official comments to LSA-C.C. Art. 212.
[250] *See* Minnesota Statutes Annotated § 259.241; Utah Code Annotated 1953 § 78B-6-115.
[251] *Id.*
[252] 21 A.L.R.3d 1012.
[253] *See, e.g.,* M.S.A. § 259.241; U.C.A. 1953 § 78B-6-115.

adoptor's spouse join as a party to the adoption.[254] Exceptions are often made for couples who are judicially or factually separated, though the required length of the separation varies from state to state.[255] Likewise, many states have a provision that allows a judge to waive spousal consent in certain circumstances.[256]

Additionally, many states limit inheritance benefits with regards to trust created by third parties.[257] Some states do so jurisprudentially.[258] For example, Texas statutorily allows full benefits to those adopted by adults.[259] However, in *Armstrong v. Hixon*, 206 S.W.3d 175 (Tx. App. 13th 10/26/06), the Texas Supreme Court refused to extend the inheritance rights to a trust created by the adoptor's ancestor, who died before the adoption took place. The policy behind the limitation stems from a desire to strictly adhere to the testator's intentions regarding disposition of his property after his death.[260] Because a will is interpreted under the law in effect at the time it was written, the testator could not have reasonably foreseen an heir being created through adult adoption, because at the time the will was executed adult adoptees could not inherit "through" their adoptive parent.[261] This analysis will likely change and restrictions will be lifted in the future as the wills and trusts challenged are executed after 1995, under the new law that allows adopted adults to inherit "from and through" their adoptive parents.[262] The recent cases all involve older wills, executed prior to the change in law.[263] On the other hand, because of concerns regarding parties to an adult adoption collaborating and using adult adoption laws to

[254] *See, e.g.,* North Carolina General Statutes Annotated § 48-5-101.
[255] *See, e.g.,* 15A Vermont Statutes Annotated § 5-103; Montana Code Annotated 42-4-403.
[256] *See, e.g.,* UT ST § 78B-6-116; N.C.G.S.A. § 48-5-102.
[257] 21 A.L.R.3d 1012.
[258] 21 A.L.R.3d 1012.
[259] Vernon's Texas Code Annotated, Family Code § 162.507.
[260] *Id.*
[261] *Id.*
[262] V.T.C.A. Family Code § 162.507.
[263] *See In re Elliston Family Trust*, 261 S.W.3d 111 (Tx. Ct. of App. 2008).

circumvent trust and estate restrictions and access money to which they would not otherwise have access, the courts may find another avenue for restricting access to third party estates.

Other states dealt with their concerns in this area legislatively.[264] Pennsylvania, for example, wrote a clause into their inheritance states that restricts access to the estates of their parties, although not universally.[265] The Pennsylvania statute regarding rules of interpretation of wills states in part:

> [A]ny adopted person shall be considered the child of his adopting parent or parents, except that, in construing the will of a testator who is not the adopting parent, an adopted person shall not be considered the child of his adopting parent or parents unless the adoption occurred during the adopted person's minority or reflected an earlier parent-child relationship that existed during the child's minority.[266]

The construction of the statute does not completely foreclose the possibility of inheritance.[267] Rather, the statute seems designed to verify as much as possible that the parties to the adoption have a genuine parent-child relationship before conveying unbridled rights to the property of the adoptor's ancestors or collateral relations.[268] While in some circumstances this can be a substantial limitation on property right, the state does have an interest in securing the property rights of the settlor of a trust by ensuring that his final wishes are followed as closely as possible, and preventing clever descendants from gaining access to the property through illegitimate means. Several other states have similar statutory provisions.[269]

Another popular restriction is the enforcement of a residency requirement.[270] Several states require that at least one of the parties be a legal resident of the state.[271] Some even require

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[264] 21 A.L.R.3d 1012.
[265] 20 Pa.C.S.A. § 2514.
[266] 20 Pa.C.S.A. § 2514(7).
[267] *Id.*
[268] *Id.*
[269] See, for example, OH ST § 3107.15; RI ST § 15-7-16.
[270] 21 A.L.R.3d 1012.

that the residency be established for a particular length of time.[272] Although a residency requirement, particularly the longer ones, may seem arbitrarily restrictive, the Supreme Court has been willing to uphold residency requirements in other cases.[273] In *Sosna v. Iowa*, petitioners were members of a class-action suit challenging a one-year residency requirement for a divorce statute.[274] The Court held that the residency requirement did not unconstitutionally restrict the petitioners' access to the courts, or the Due Process Clause of the Fourteenth Amendment.[275] The Court considered the statute as part of a "comprehensive statutory regulation of domestic relations, an area that has long been regarded as a virtually exclusive province of the States."[276] The Court stated that Iowa had an interest in the divorce proceedings because the granting of the divorce would affect the parties' legal status and property rights.[277] The State's "parallel interests both in avoiding officious intermeddling in matters in which another State has a paramount interest, and in minimizing the susceptibility of its own divorce decrees to collateral attack" were held sufficient to justify upholding the residency requirement.[278] While an adult adoption would form rights, not destroy them; it certainly alters legal status and property rights as much as a divorce does, so the rationale for upholding a residency requirement for a divorce would stand here as well.

Although even the states with the most liberal adult adoption laws do impose some restrictions on the parties, those restrictions are all part of a legitimate endeavor to protect the citizens of those states, rather than an arbitrary limitation on their freedom. These small

[271] *See, e.g.*, West's Ann.Cal.Fam.Code § 9321.5; N. M. S. A. 1978, § 40-14-5.
[272] Minnesota Statutes Annotated § 259.22—petitioner must have resided in state for 1 year; Montana Code Annotated 42-4-404—petition must have live in state for 90 days; 15A Vermont Statutes Annotated § 5-104—petitioner must have lived in state for 90 days.
[273] *See, for example, Sosna v. Iowa,* 419 U.S. 393 (1974).
[274] *Id.*
[275] *Id.*
[276] *Id.* at 404.
[277] *Id.*
[278] *Id.* at 407.

restrictions are necessary for the protection of third-party citizens, and the smooth operation of the legal system, and are therefore reasonable restrictions on personal liberties.

V. LIMITING ABUSES OF ADULT ADOPTION LAWS

Although adoption restrictions likely were set in a good-faith effort to curb abuses of the laws and protect the parties involved in an adult adoption, they have the unfortunate effect of denying some parties genuinely seeking "a means of solidifying a previously existing, but not legally recognized, family bond" the ability to do so.[279] It is inequitable to restrict the rights of innocent citizens merely attempting to legitimize their familial bond out of fear that a few people may abuse the law. It is much better to loosen the restriction on entering in to the relationship, and examine the individual's use later, should fraud be alleged. Once fraudulent use is proven, a court always has the option of nullifying a bad-faith adoption. The burden should be on those alleging abuse of the law to prove fraud, not on those properly using the law to prove their innocent motives.

As with most areas of the law, there are those who seek to use the right of adult adoption to circumvent other, more restrictive laws. The availability of inheritance rights through adult adoption may make it an appealing avenue for those who seek access to the property of another.[280] As previously discussed, many states are concerned about people using adult adoption to gain inheritance rights through undue influence on the elderly.[281] Likewise many states have limited inheritance rights to prevent parties from using adult adoption as a means of accessing established trusts and estates of third parties.[282] Finally, some states are concerned

[279] McCabe, *supra* note 7, 306.
[280] 21 A.L.R.3d 1012.
[281] *See, e.g.,* Official comments to LSA-C.C. Art. 212.
[282] *Id.*

with about the use of adult adoption by same-sex couples to secure familial rights when marriage is not available.[283]

A. Inheritance and Property Rights

The use of adult adoption to swindle elderly persons is a legitimate cause for concern. The elderly can be vulnerable much in the same way that children are, and the state has a great interest in protecting their vulnerable citizens.[284] Yet the issue is not as clear-cut as it may seem. The point at which the relationship becomes abusive can be difficult to pin down.[285] Many parties who enter into an adult adoption after having legitimately formed a parent-child relationship do so with inheritance rights in mind.[286] In general, an adoption will not be denied or nullified simply because the sole motivation is to gain inheritance rights, but courts should still proceed with caution.[287] Concern about people exercising undue influence over elders has prompted some states, such as Louisiana, to require a best-interest hearing before an adoption will be validated.[288]

Direct inheritance rights are not the only way adult adoption is used to the detriment of others. The courts have also been faced with situations where adult adoption is used to deprive grandparents of their potential rights of access to their grandchildren.[289] One example is the case of *Walls v. Walls*, out of Georgia.[290] The Walls adopted John Connor as a minor. Later in life, Connor married Sharon Williams, and the couple had one child.[291] After the pair divorced, the Walls petitioned the court for temporary and permanent custody of the child, alleging that they

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[283] *Id.*
[284] Foy, *supra* note 59.
[285] *Id.*
[286] *Id.* at 118-19.
[287] *Id.*
[288] LSA-CCA 212
[289] *Walls v. Walls,* 599 S.E. 2d 173 (Ga. 2004).
[290] *Id.*
[291] *Id.*

had been the child's primary caregivers.[292] After the Walls were granted temporary custody of their grandchild, Connor was adopted by his genetic mother.[293] Connor then petitioned the court to rescind the custody order and dismiss the Walls petition for permanent custody on the grounds that they were no longer the child's grandparents and therefore had no legal rights with regards to the child.[294] The court held that although adult adoptions may "affect relationships other than those of the adoptee," it could not be used to retroactively extinguish the rights of the Walls to custody of their granddaughter, as the petition for custody pre-dated the adoption.[295] It appears that the courts will not allow adult adoption to be used for any purpose that appears fraudulent on the facts.

Another major issue is the use of adult adoption to circumvent trust laws and insert a new person onto a class of recipients.[296] The state's interest in upholding the intent of the testator and limiting access to estates of third parties has already been discussed, so it will not be rehashed here. However, there is another angle to consider. A recent controversy in Florida sparks the question as to what the boundary is for legitimately securing inheritance rights, versus fraudulently manipulating trust law.[297] John Goodman, the founder of a Florida Polo Club, recently committed a tort when he ran a stop sign and killed the driver of another vehicle.[298] After "Judge Glenn Kelley previously ruled that a trust set up for Mr. Goodman's two children could not be considered part of his financial worth if a jury awarded damages to Mr. Wilson's family," Goodman formally adopted his girlfriend.[299] Under current law, the adoption allows Goodman's girlfriend/daughter to share equally in the trust previously created for the benefit of

[292] *Id.* at 174.
[293] *Id.*
[294] *Id.*
[295] *Id.* at 175.
[296] 21 A.L.R.3d 1012.
[297] http://www.smh.com.au/world/legal-twist-boyfriend-adopts-his-girlfriend-20120202-1qu8v.html.
[298] *Id.*
[299] *Id.*

his children.[300] Most restrictions on allowing adult adoptees to share in trust funds are based on protecting the intent and property of the third party settlor of the trust.[301] Here, the adoptor is the settlor of the trust, so there is no conflict of interest. Goodman's actions were sound under the law.

What makes Goodman's strategy so controversial is the motive behind the move.[302] The timing indicates that his true motive is to give himself access to the trust.[303] Attorney Scott Smith is quoted as saying, "By way of this adoption, John Goodman now effectively owns one third of the trust assets."[304] It is this fact that so offends the sensibilities of many Americans. Goodman, through his attorney Dan Bachi, claims the adoption was meant to give the girlfriend financial security, and is completely unrelated to the civil case against him.[305] Few people seem willing to accept Goodman's explanation, including his own children.[306] On February 9, 2012, the Palm Beach Post reported, "a guardian acting for the man's teenage children has filed paperwork asking a judge to throw the adoption out…The paperwork, filed last week in Miami, said the adoption defrauded the court, blindsided the children's mother and shirked public policy on adoptions."[307] There seems to be little doubt in anyone's mind that Goodman's actions were meant to give him access to the trust fund, so that he may continue to live the lifestyle of the wealthy if the civil suit against him for the wrongful death of Patrick Wilson should result in a judgment that would leave him destitute.[308]

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[300] *Id.*
[301] *See, e.g.*, 20 Pa.C.S.A. § 2514(7).
[302] http://www.smh.com.au/world/legal-twist-boyfriend-adopts-his-girlfriend-20120202-1qu8v.html.
[303] *Id.*
[304] *Id.*
[305] *Id., see also* http://www.foxnews.com/us/2012/02/09/teenage-kids-fight-dads-adoption-adult-girlfriend/.
[306] *Id.*
[307] http://www.foxnews.com/us/2012/02/09/teenage-kids-fight-dads-adoption-adult-girlfriend/.
[308] *Id.*

Since Goodman's strategy does not violate any current laws, the only strategy is to attack his motives and attempt to get the adoption thrown out, or at least the inheritance rights of the girlfriend restricted, on the grounds of public policy. The problem is that doing so essentially imposes moral criteria on the use of adult adoption, which could cause problems in other cases where one intimate partner adopts the other in an attempt to secure financial resources between the pair.

B. Circumventing Restrictions on Same-Sex Marriage Bans

As illustrated by John Goodman, the practice of adopting one's lover to gain legal benefits is not limited to same-sex couples.[309] Between heterosexual couples, the practice is often driven by a desire to access inheritance benefits available to lineal descendants but not spouses.[310] The problem with allowing such adoptions to be "automatically disregarded as fraudulent and in contravention of the legislative purpose" becomes one of equal protection.[311] The Equal Protection Doctrine cannot support a practice of denying heterosexual partners a legal option available to homosexual partners,[312] and it is important that gay and lesbian couples maintain the ability to adult adopt their partners, at least for the time being.

One legal scholar suggests that the possibility of economic fraud is incentive for courts to look closely and the underlying motivation for adopting a lover, rather than creating an outright ban or an inequitable restriction:

> Being that most states do not provide homosexual couples with any means of legally formalizing a family unit, it seems unreasonable that a petition sought for this purpose should be denied. The movement towards providing these couples with some sort of mechanism, be it civil unions, domestic partnerships, or marriages, to obtain rights equal to those of heterosexual couples, will no

[309] *Id.*
[310] McCabe, *supra* note 7, at 301.
[311] *Id.*
[312] *Id.*

> doubt assist in making these types of creative skirting techniques unnecessary. Being that this method is being used in these cases only to combat a current deprivation, adoptions sought on these grounds should not be rejected as insincere, fraudulent, or in contravention of public policy.[313]

Courts are correct in restricting those adoptions perpetrated with no other purpose than to circumvent trust or inheritance laws, for such uses border on fraud. However, those genuinely seeking to establish a family unit should have access to adult adoption of intimate partners, until marriage laws open up and become available to all citizens equally.[314] Many of these "abuses" would be cured if all citizens were allowed equal access to marriage, as most of the adoptions of lovers are done in an attempt to create a legal family unit in situations where the government has arbitrarily forbidden marriage.[315]

Of course, the obvious problem with allowing such adoptions, regardless of the gender of the parties, is how they will interact with criminal laws against incest.[316] Theoretically incest would not be a concern, as there are no genetic ties between the new parent and child to justify any fear of genetic damage or mutation resulting from a child of the union.[317] With same-sex couples such a concern is actually rather absurd. Yet for some reason, when people hear of a person adopting his or her lover, incest is the first thing on the mind of many.[318] This apparent revulsion is not limited to laymen; in some states the criminal laws mirror their concern.[319] "The definition of incest is broad enough in many states to include not only sex between a parent and

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[313] *Id* at 319.
[314] *Id.*
[315] *Id.*
[316] Terry L. Turnipseed, *Scalia's Ship of Revulsion Has Sailed: Will Lawrence Protect Adults Who Adopt Lovers to Help Ensure Their Inheritance From Incest Prosecution?* 32 HAMLINE L. REV. 95 (2009)
[317] *Id.*
[318] http://www.slate.com/articles/news_and_politics/jurisprudence/2012/02/should_a_florida_millionaire_be_prosecuted_for_incest_because_he_adopted_his_girlfriend_.html.
[319] *Id.*

his or her adult biological child, but also between a parent and his or her adult adopted child."[320] Leaving aside considerations of whether incest between genetic family members truly does result in genetic mutations and deformities, there is no rational reason for people to be so disgusted by this particular form of "incest." It is almost laughable how a simple legal act conveying a few property rights can move a relationship from "perfectly normal" to "disgusting" in society's perceptions. As one legal scholar put it, "one of the reasons incest has been such a durable and effective player on the slippery slope is because almost everyone is repulsed by it, regardless of political affiliation. Those who are undecided over the issue of same-sex marriage might be easily swayed by the invocation of incest."[321] By that token, perhaps an argument in favor of same-sex marriage is that it will greatly reduce occurrence of "incestuous" adoptions.

The reality of the situation is that even in states where relations between adoptive relatives is considered criminal incest, there are very few, if any, prosecutions for incest resulting from adult adoption.[322] Whatever the law on the books, prosecutors have shown little desire for pursuing convictions in such cases.[323] Certainly charging couples that use adult adoption to secure legal rights in lieu of marriage does not fulfill the intent behind the incest laws.[324] Considering the current climate of the law, it is more likely that same-sex marriage will be given legal force before the use of adult adoption is struck down for fear of incest issues.[325]

Although there are some instances of abuse of the laws on adult adoption, said abuses are not so far-reaching as to justify strict limitations on the availability of the law. The favorable

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[320] *Id.*
[321] *Id*. at 97 (citing Cahill, Courtney Megan, *Same-Sex Marriage, Slippery Slope Rhetoric, and the Politics of Disgust: A Critical Perspective on Contemporary Family Discourse and the Incest Taboo*, 99 Nw. U. L. Rev. 1543, 1544 (2005)).
[322] *Id* at 98.
[323] *Id.*
[324] *Id.*
[325] *Id.*

uses of adult adoption provisions far outweigh the illegitimate uses. It would be inequitable to impose harsh restrictions upon the many for the bad behavior of the few.

VI. CONCLUSION

Current notions of family structure under United States law are outdated. As society has evolved over the last century, the laws have failed to keep up with changing cultural expectations. Adult adoption is only one area of the law where the currently regime creates unnecessary and unreasonable restrictions on the personal liberties of American citizens. Although changing the laws on adult adoption will not remedy all of the problems present in American family law, it is a step in the right direction, and may serve as a catalyst for change in other areas. The state laws on adult adoption should be revamped to exclude any unreasonable or arbitrary restrictions. The laws should also be changed to reflect a clear and consistent procedure for entering into an adult adoption.

As the American people move away from the "traditional" nuclear family as their idealized standard family model, the law should expand to take into account the shifting societal viewpoints. One way to begin the adjustment would be to loosen the restrictions on adult adoption. While those restrictions that reasonably further a legitimate government interest, such as the best-interest hearings and the residency restrictions should stand, the arbitrary and occasionally discriminatory restrictions seen in many states should be abolished. Americans should experience a fundamental freedom of familial relationships on par with the freedom they have with regards to religious preferences. This freedom should be universal across the nation, not limited to certain jurisdictions. Discrimination against "non-traditional" family units should be viewed the same way as discrimination against race and gender—as something to be abhorred and abolished.