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Fallout from Obergefell: The Dissolution of Unconventional Adoptions to Pave the Way for Same-Sex Marriage Equality

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FALLOUT FROM OBERGEFELL: THE DISSOLUTION OF UNCONVENTIONAL ADOPTIONS TO PAVE THE WAY FOR SAME-SEX MARRIAGE EQUALITY

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I. INTRODUCTION

Roland Bosee Jr., 68, and Nino Esposito, 78, are what some may consider the epitome of the perfect same-sex couple. The Pennsylvania couple has been together since 1970, almost since the day they met. What some may not know, however, is that while Obergefell v. Hodges legalizes same-sex marriage nationwide in June 2015, this loving couple had to fight Pennsylvania state law for over a year and half just to be able to exercise its newfound right to marriage. Roland and Nino were stuck in a peculiar legal limbo because they were not able to formalize their relationship through marriage for one distinct reason: in 2012, Nino adopted his partner Roland, and a person cannot marry his son.

Historically, before same-sex couples were given the right to marry, many of them were not able to form any type of familial legal relationship under the laws of their respective states. That being the case, some same-sex couples turned to other legal alternatives to fill that void, including adoption. They did this for several different reasons including inheritance rights, property rights, and simply to form a binding, meaningful familial relationship with their partner. Because many states do not allow adoptions to be dissolved, same-sex couples have experienced several issues with reversing their adoptions so that they can exercise their newfound right to marriage.

This unusual issue recently became highly profiled in the media when Roland and Nino, the same-sex couple from Pennsylvania who have been together for nearly 50 years, were denied an annulment of Nino’s adoption of

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1 See Chris Potter, Adoption gave gay Fox Chapel couple legal stature; now it disallows them marriage, PITTSBURGH POST-GAZETTE (Oct. 9, 2015, 1:13 PM), http://www.post-gazette.com/local/north/2015/10/09/Fox-Chapel-gay-couple-had-to-legalize-their-status-through-adoption-now-it-keeps-them-from-getting-married/stories/201510110112.
2 Id.
4 See generally id.
6 Potter, supra note 1.
7 See id.
8 Id.
9 See id.
Roland.\textsuperscript{11} Roland and Nino chose to fight for their right and appealed the Pennsylvania court’s decision to deny an annulment of their adoption.\textsuperscript{12} Unsatisfied with his options under the law at that time, Judge Lawrence J. O’Toole begrudgingly denied the annulment, while explaining that he “welcome[d] direction” from the appellate court on this issue.\textsuperscript{13} Direction did eventually come, albeit a year and a half later, when Judge Susan P. Gantman of the Superior Court of Pennsylvania reversed and remanded the case.\textsuperscript{14}

Several other state courts, however, have readily allowed the dissolution of adoptions like these\textsuperscript{15} to allow same-sex couples to enjoy their marriage rights under \textit{Obergefell}. Even though adult adoption by same-sex couples is not necessarily a new phenomenon, it is not an issue that has been widely discussed or legally analyzed. Aptly put, even “though [Roland] is technically an adoptee, he and [Nino] are in another sense orphans, left behind by marriage laws that have changed radically, while other laws remain the same. And they aren’t alone.”\textsuperscript{16}

While the \textit{Obergefell} decision may have made same-sex marriage a constitutional right,\textsuperscript{17} it largely left unexplained how states were to enforce that new right and how they were to overcome any corollary issues resulting from past legal alternatives to marriage that gave legal stature to same-sex relationships. One uncommon example of this legal conundrum demonstrates itself in adult adoption between same-sex couples.\textsuperscript{18} Today, many states differ in their approach to dissolving these unconventional adoptions, if they even allow it at all.\textsuperscript{19} In order to further promote equality under \textit{Obergefell}, courts need to apply a unique and uniform dissolution framework to these special adoptions so that the adoption laws of the states remain stable and so that all couples can have access to and enjoy the fundamental right to marriage.

Part II of this Note provides the necessary background information needed to support the implementation of a new, uniform dissolution framework. Section II.A begins by briefly describing the history of discrimination against same-sex couples in our society that gives the necessary background information needed to lead up to the Supreme Court’s monumental decision of \textit{Obergefell}. Section II.B outlines the legal alternatives that same-sex couples have used in the past to form binding legal relationships with their partners, leading up to the alternative that is the focus of this Note—adoPTION. Section II.C of this Note will

\textsuperscript{11} See Potter, supra note 1.
\textsuperscript{12} Id.
\textsuperscript{13} Id.
\textsuperscript{14} See infra Section II.D.2.iv.
\textsuperscript{15} See Potter, supra note 1.
\textsuperscript{16} Id.
\textsuperscript{17} See \textit{Obergefell} v. Hodges, 135 S. Ct. 2584, 2588 (2015).
\textsuperscript{18} See Potter, supra note 1.
\textsuperscript{19} See id.
examine the adoption phenomenon in diverse contexts and discuss normalized child adoption, before detailing the role of adult adoption in same-sex relationships. Lastly, Section II.D describes the current legal dissolution mechanisms and procedures available to terminate adoptions, focusing first on normalized child adoption and then transitioning to same-sex adoption dissolution through four specific case studies.

Part III of this Note will use the provided historical background, law, and policy to argue for a new, uniform dissolution framework for these restrictive adoptions. Section III.A first argues that these same-sex adoptions are a lingering impediment to same-sex marriage equality by analyzing Obergefell’s failure to provide a remedy for the inherent issues that arise in the context of same-sex adoption, and it then argues that the courts must utilize available resources to develop a new dissolution framework that comports with society’s understanding of same-sex marriage and normalized adoptions.

Section III.B uses the precedent case studies to argue for courts to implement a flexible, uniform dissolution framework so same-sex couples can be released from their adoptions and pursue their rights to marriage. This framework consists of four components that can be used as guidance for future cases arising from these same issues that could be applicable to West Virginia or other states that have not yet resolved the issue in any statewide binding decisions. Section III.C illustrates how this new uniform framework can streamline the dissolution process by applying it to the Bosee case. Section III.D briefly analyzes how restricting dissolution of these same-sex adoption cases hinders reinforcement of Obergefell’s guiding principles. Lastly, Section III.E examines additional implications that have arisen in the Obergefell fallout. The legal world has expressed concern regarding the precedent set by these dissolution cases and the different implications for future same-sex couples and family law in general that may arise in the future.

The purpose of this Note is to demonstrate that even with the recent progress regarding the law and same-sex equality, the history of discrimination is sure to expose itself for a long time to come in novel and unexpected ways. Indeed, as our society continues to change and evolve, the law must also be able to transform in order to keep up with the demands of an equal society.

20 Just because there are no such reported cases in West Virginia does not guarantee that state courts would not find this matter before them if a same-sex couple were to move to West Virginia and subsequently seek to annul their adoption and obtain a marriage license.

21 One concern in the area of adoption law is finality. See Potter, supra note 1. In the past, courts have typically only reversed adoptions for fraud, and changing those laws now for these specific circumstances could potentially endanger adoption decrees in general. Id. While a full discussion is beyond the scope of this Note, this Section will also give a nod to other unresolved legal complications arising from the Obergefell fallout, including other family law issues such as divorce, parentage, and corollary transgender issues. See infra Section III.E.
II. BACKGROUND

Gay and lesbian individuals in America have always faced discrimination, and it continues today. Historically, not only have some of those individuals been forced to adopt their same-sex partner in order to obtain a limited amount of marriage-like benefits, but some are still tainted by this legally constricting parent-child relationship even though marriage is now a readily viable option for them. Without proper guidance for this unusual phenomenon, states are in a disarray about how to dissolve these unconventional adoptions, thus keeping these same-sex couples from crossing over that metaphorical—and literal—threshold. Section II.A begins by discussing the general discrimination lesbian and gay individuals have faced throughout history until this point in time. Section II.B then lays out the types of legal alternatives to marriage that same-sex couples had to choose from in order to create legally binding relationships pre-Obergefell. Section II.C describes the general history and principles behind child adoption and adult adoption, and it also examines the policy considerations behind both. Lastly, Section II.D examines current state mechanisms and procedures available for the dissolution of child adoptions and uses four case studies to illustrate the same when it comes to same-sex adult adoptions.

A. A History of Discrimination in the Gay and Lesbian Communities

While the framers of the Constitution referred to basic human rights such as the freedoms of speech, religion, and association, and the right to be free of cruel and unusual punishment, they did not explicitly provide the right to be free of discrimination based on sexual preference. Throughout history, gay and lesbian individuals have feared and faced what they knew was going to be a difficult future in American society; their paths were often met with disgust, one of the fundamental feelings fueling this opposition:

For a long time, our society, like many others, has confronted same-sex orientations and acts with a politics of disgust, as many people react to the uncomfortable presence of gays and lesbians with a deep aversion akin to that inspired by bodily wastes, slimy insects, and spoiled food—and then cite that very reaction to justify a range of legal restrictions, from sodomy laws to bans on same-sex marriage.

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Same-sex practices have been discriminated against religiously, medically, politically, and legally throughout much of American history. In just a few examples, same-sex practices have caused people to be "beaten in the streets, fired from their jobs, turned away from emergency medical care, denied a legal relationship with their own child, [and] refused the chance to say goodbye to their dying partner of 50 years." Before the United States Supreme Court handed down the *Lawrence v. Texas* decision in 2003, gay couples were still being prosecuted for their intimate actions taken in the privacy of their own homes.

Even with changing social, political, and legal views, the politics of disgust have not yet completely disappeared even with the competing, and aptly named, politics of humanity. The politics of humanity, as Martha Nussbaum describes it, is centered on two factors: respect and sympathy—and both are essential combatants in the war against discrimination. "The politics of humanity asks us to stop viewing same-sex marriage as a source of taint or defilement to traditional marriage but, instead, to understand the human purposes of those who seek marriage and the similarity of what they seek to that which straight people seek."

One may wonder then how the politics of disgust can survive in a nation that grounds itself in the idea that all of its citizens are equal and have a right to equal protection under the law. The gay rights movement gained traction in 1969 and has endured many milestones since then, several of which arose in the

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27 See generally id.


29 Martha C. Nussbaum has been characterized as the "philosopher of feelings," and for the past 30 years, she has been writing about the emotion of disgust aimed at vulnerable populations, including those who are gay. See Rachel Aviv, *The Philosopher of Feelings*, NEW YORKER (July 25, 2016), http://www.newyorker.com/magazine/2016/07/25/martha-nussbaums-moral-philosophies. Martha is a professor of law and philosophy at the University of Chicago, where she has appointments in classics, political science, Southern Asian studies, and the divinity school. *Id.* She has published 24 books and over 500 papers and has received 57 honorary degrees. *Id.*


context of same-sex marriage. While marriage itself has historically been an ever-evolving battlefield between governments and religions, our nation has continually been “embroiled in a culture war about gay marriage . . . [that] has bled into both the federal legal system and various state legal systems.” The result of this war has been an inconsistent legal patchwork of same-sex marriage jurisprudence. Some have described these patchwork legal conclusions as being guided by each individual court’s moral understanding of discrimination. It is these milestones and the dizzying patchwork of legal decisions that eventually led to the Supreme Court’s monumental decision in Obergefell that ruled in favor of legalizing marriage for same-sex couples in every state throughout the nation.

In Obergefell, the same-sex marriage issue arose when 14 same-sex couples and two gay men (whose partners were deceased) filed federal lawsuits in their respective home states, claiming that the states were violating their Fourteenth Amendment rights by denying them the right to marry or by refusing to fully recognize same-sex marriages performed lawfully in another state. While looking to the nation’s history regarding marriage, the Court noted that marriage embodies both “continuity and change” and that in contrast to those beliefs held by those who oppose same-sex marriage, same-sex couples do not seek to devalue marriage, but they seek marriage because “of their respect—and need—for its privileges and responsibilities.”

In reaching its holding, the Court zeroes in on the history of discrimination against same-sex couples and extends the Fourteenth Amendment’s Due Process Clause to same-sex marriage. The Fourteenth Amendment Due Process Clause was designed to protect fundamental liberties as they pertain to “personal choices central to individual dignity and autonomy,

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34 See EVAN WOLFSON, WHY MARRIAGE MATTERS: AMERICA, EQUALITY, AND GAY PEOPLE’S RIGHT TO MARRY 7 (2004). This includes marriage in all contexts and not just marriage as it has evolved in regards to same-sex couples.
37 See Farra, supra note 35, at 1–2.
39 Id. at 2588.
40 Id.
41 Id. at 2589.
including intimate choices defining personal identity and beliefs.” 42 Importantly, the Court explains that while history and tradition may guide and discipline a constitutional inquiry such as this, they do not “set its outer boundaries.” 43 Expanding on that notion, the Court aptly states that “[w]hen new insight reveals discord between the Constitution’s central protections and a received legal stricture, a claim to liberty must be addressed.” 44

The Court in Obergefell relied on four main principles and traditions that shaped its landmark decision. 45 First, the Court recognized that “the right to personal choice regarding marriage is inherent in the concept of individual autonomy.” 46 Second, it found that marriage is fundamental because it supports a two-person union that is unparalleled by any other form in regards to its importance to the individuals involved. 47 Third, it explained that marriage safeguards the family when it comes to childrearing and procreation. 48 Finally, it found that marriage is a keystone of the nation’s social and legal order. 49

Notwithstanding this monumental victory in the LGBTQ 50 community, same-sex couples are still fighting a post-marriage backlash, commonly taking form in the drafting of new anti-gay bills. 51 While the backlash against Obergefell may be seen actively in certain contexts such as marriage, 53 there is more uncertainty in regards to how Obergefell interacts with other existing laws,
including divorce, property, child-rearing issues in the family law context,\textsuperscript{54} transgender issues,\textsuperscript{55} and even previous legal alternatives utilized by same-sex couples to substitute for marriage.\textsuperscript{56}

\textbf{B. Pre-Obergefell: The Unconventional Legal Relationship}

Before the revolutionary decision of Obergefell, 37 states legally endorsed same-sex marriage,\textsuperscript{57} and couples in the remaining states were often forced to utilize alternative legal methods to gain similar advantages that were easily obtained through heterosexual marriage.\textsuperscript{58} These legal advantages to marriage included “creating legally-recognized family relationships, creating property and inheritance rights, and creating heirs.”\textsuperscript{59} Married couples often have advantages over same-sex couples when it comes to employers, the state, and other private sector entities.\textsuperscript{60} Marriage benefits couples in regards to death, taxes, healthcare, and housing;\textsuperscript{61} marriage even makes separation and divorce more streamlined by allowing access to legal and financial guidelines.\textsuperscript{62} In addition to these benefits, the word “marriage” itself carries prestige, status, and other intangible benefits.\textsuperscript{63}

\textsuperscript{54} Kim Bellware, \textit{As Same-Sex Couples Line Up to Wed, Others Celebrate the Right to Divorce}, HUFFPOST (July 1, 2015, 7:32 PM), http://www.huffingtonpost.com/2015/07/01/gay-divorce-new-orleans_n_7707968.html; Filisko, \textit{supra} note 51; see also Gay Marriage Fight, \textit{supra} note 51.

\textsuperscript{55} See N.C. GEN. STAT. ANN. \textsection 143-760, repealed by S.L. 2017-4, \textsection 1 (West 2017); see also Stack, \textit{supra} note 51; Richard Wolf, \textit{Gay marriage victory at Supreme Court triggering backlash}, USA TODAY (May 29, 2016, 4:32 PM), http://www.usatoday.com/story/news/politics/2016/05/29/gay-lesbian-transgender-religious-exemption-supreme-court-north-carolina/84908172/.


\textsuperscript{59} \textit{Id.}

\textsuperscript{60} M.V. Lee Badgett, \textit{The Economic Value of Marriage for Same-Sex Couples}, 58 DRAKE L. REV. 1081, 1084 (2010).

\textsuperscript{61} WOLFSON, \textit{supra} note 34, at 13.

\textsuperscript{62} \textit{Id.}

Legal alternatives to marriage often included civil unions and domestic partnership agreements. As of November 2014, four states allowed for civil unions, six states and the District of Columbia allowed for domestic partnerships, and five states had converted civil unions into same-sex marriage. Civil unions were created to legally provide all of the same state-based rights and responsibilities of marriage for same-sex couples, while at the same time, withholding the coveted marriage label. However, same-sex couples have claimed that these promised rights were not delivered and that inequality will continue when it comes to civil unions because “separate institutions are inherently unequal.”

Domestic partnerships, considered the “lowest level of relationship recognition,” provided minimal rights for same-sex couples and those rights varied among jurisdictions, but they “often involve[d] inheritance rights and next-of-kin status.”

Commonly utilized, same-sex couples also had the option of establishing cohabitation contracts, which were considered a form of partnership agreement. Cohabitation contracts and agreements provide coverage when it comes to property distribution and can even be used to document how children will be supported, which can include terms beyond any recognized legal requirements. Unfortunately, these methods were often subject to hostile claims of undue influence by blood relatives, which were often successful.
Most notably, these contract-based methods did little in helping same-sex couples achieve the most desired advantage of marriage: “the creation of a bona fide family relationship.”

C. The Adoption Phenomenon

While the alternative legal methods mentioned above “benefit[ed] the parties in ways that parallel the legal benefits of marriage, none offer[ed] the benefit of a legal family bond and none carri[ed] inalienable inheritance and estate rights.” Adoption, on the other hand, offered both. Section II.C.1 discusses the historical and general policy considerations for adoption, focusing on conventional, normalized adoption—also known as parent-child adoption. Section II.C.2 examines the history behind adult adoption, the history of adult adoption between same-sex couples, and it briefly discusses the advantages and disadvantages of this peculiar alternative to marriage.

1. General Considerations of Adoption

It is a commonly held belief that children are our “most precious and valuable assets” because they are essential to our nation’s future success. In American society, “[a]doption touches almost every conceivable aspect” of our culture. There is an intimate and direct connection to adoption in our society because it touches, in some way, the lives of 6 out of every 10 Americans. Adoption is a highly profiled phenomenon because, compared to purely biological family units, it endures additional challenges that are unique to the legal adoptive process. Each state differs in its approach to adoption, even though most of the 50 states base the ultimate decision on the “best interest of the child.” Historically, there have been numerous reasons why people have

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74 Id.
75 Id. at 79.
76 Id.
79 Id.
80 Id.
shown interest in child adoption: "These reasons range from simply providing an orphaned or abandoned child with a safe, comfortable, and healthy environment, to protecting children with special needs or preventing abuse."82 Additionally, children have been adopted to provide an heir for the adoptive parents and to carry on the family name for those who do not have biological children.83 Adoption has also been used by stepparents to adopt their spouse’s children.84

One societal drive for adoption of children is the view that “every child deserves to grow up in a permanent, loving family that will give him or her the best chance of becoming a happy, fulfilled and productive adult.”85 Adoption is meant to benefit everyone involved in the “adoption triad.”86 While it is the hope that the adopted child and adoptive parent(s) will benefit from the adoption, they are often not the only parties that benefit.87 The birthmother and father can also benefit: “Adoption can bring a positive ending to a problematic situation and can benefit everyone involved.”88 Adoption is deemed successful when the adoptive parents gain some sense of closure to the legal process.89 This often means the finalization of birth certificates and passports.90 Once the legal process is finalized, the child’s “forever family” has been formed.91 While adoption of a child to form a parent-child relationship may be an ever-present and normalized process in our society, there are other types of adoption that are less conventional—one such example includes adult adoption between same-sex couples to form a legally binding familial relationship.

82 Brynne E. McCabe, Adult Adoption: The Varying Motives, Potential Consequences, and Ethical Considerations, 22 QUINN. PROB. L.J. 300, 300 (2009).
84 Id.
86 Benefits of Adoption, AM. PREGNANCY ASS’N, http://americanpregnancy.org/adoption/benefits-of-adoption/ (last visited Oct. 5, 2017). The adoption triad includes the birthparent(s), the adoptive parent(s), and the child(ren). Id.
87 Id.
88 Id.
90 Id.
91 Id.
2. Adult Adoption Between Same-Sex Couples

While there are various reasons for an adult to adopt a child, “the reasons for adopting an adult [] vary significantly.” This type of adoption has traditionally been used to enable stepparents to adopt the children of their spouse, even if the children are legally considered adults. Other adult adoptions occur when the adoptee was raised by the adopter, but the adoptee was not adopted during childhood. This type of adoption has also occurs when adoptees are reunited with their birth parents during adulthood. Adult adoptions also take place for inheritance purposes and permanent caregiving. The availability of adult adoption varies between jurisdictions, and even though the process for adult adoption, in essence, mimics that of normalized parent-child adoption, there can be additional and diverse procedures and requirements depending on the state.

However, there is another type of adult adoption, one that carries with it its own deep-rooted and unique set of rationales—adult adoption between same-sex couples. Even though this use of adoption has only been quietly discussed, for almost 40 years, same-sex couples have used adult adoption to create something highly sought after in the gay community: “a bona fide family relationship.” Apart from forming meaningful legal ties to a spouse, these adoptions also served to “ensure inheritance and property rights.” Due to the

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92 McCabe, supra note 82, at 300.
93 Turnipseed, supra note 83, at 99–100.
94 Id.
96 Id.; see also John G. Culhane, Before Marriage was Possible, Gay People Adopted One Another. Now Sons Need to Become Husbands., SLATE: OUTWARD (Nov. 10, 2015, 1:22 PM), http://www.slate.com/blogs/outward/2015/11/10/adult_adoption_for_gay_couples_can_the_adoptions_be_undone_for_marriage.html.
99 Green, supra note 56.
100 Snodgrass, supra note 58, at 75.
101 Id.
stigma\textsuperscript{102} that underlies this phenomenon in society, the reality is that there is not much, if any, reliable data on the number of such adoptions.\textsuperscript{103}

Because adoption was not addressed by the common law, the legal procedures for adult adoption in general and the adoption of an adult same-sex partner are governed by statute, much the same as normalized child adoption.\textsuperscript{104} Even though all adoptions are governed by statute, adult adoptions are much less complex, and the procedures for adult adoption differ from child adoption because the inherent concerns plaguing child adoption are no longer at issue when the adoptee is an adult.\textsuperscript{105} Generally, when opposing these types of adoptions, "courts have based their decisions on grounds such as '(1) non-statutory public policy; (2) very narrow statutory interpretation; (3) fraud on the court by attempting to conceal the sexual relationship; and/or (4) incest-related arguments.'"\textsuperscript{106} Refusing courts have at times referred to the fact that same-sex couples are attempting to use the state adoption laws as a legislative work-around to form "quasi-matrimonial vehicle[s]," which is wholly incompatible with the legislative intent behind adoption statutes.\textsuperscript{107} In contrast, many courts supporting these adoptions have simply relied on the fact that most of these statutes allow for the adoption of anyone.\textsuperscript{108}

\textsuperscript{102} Diane Anderson-Minshall, Why Some Couples Must Undo Adoptions to Marry, ADVOC. (Jan. 8, 2016, 7:04 AM), http://www.advocate.com/current-issue/2016/1/08/why-some-couples-must-undo-adoptions-marry (using the words "strong aversion against gay adult adoption" and "ick factor" when explaining why the phenomenon has not been openly discussed in the LGBTQ community).

\textsuperscript{103} Green, supra note 56.

\textsuperscript{104} See Fowler, supra note 98, at 689. Almost all states statutorily permit adult adoption.


\textsuperscript{106} McCabe, supra note 82, at 304; see also Jan Ellen Rein, Relatives by Blood, Adoption, and Association: Who Should Get What and Why (the Impact of Adoptions, Adult Adoptions, and Equitable Adoptions on Intestate Succession and Class Gifts), 37 Vand. L. Rev. 711, 750 (1984) ("The adoption need not change the life-style of either party to the adoption as the obligation of support and other parental obligations associated with the adoption of a minor do not exist in the case of adult adoptions.").


In child adoption, the consent of the biological parents is often a statutory requisite, whereas in adult adoption, most states do not require consent of the adult adoptee's biological parents, but they usually require the consent of both adult parties to the adoption. This is often the same case when it comes to agency involvement, such as social service investigations into the home, even though some states may require these reports or at least “give the judge discretion to order the investigation.” Some states may also require that notice of the petition for adoption be given to certain interested parties, but this is generally not the case. Apart from the statutorily derived requirements for an adult adoption, motive, at times, has also been a concern for courts. Petitions for adoptions would normally not be granted if sought for criminal or fraudulent purposes. Because of the long history of discrimination against same-sex marriage, public policy concerns have also made appearances in the deliberations to grant such petitions. However, there have been other courts that have likened these adult adoption petitions to entering into a civil contract, and thus the need for a significant inquiry into the public policy concerns and relationship and motives of the parties would be null. Lastly, some courts have also ventured into the analysis concerning the “best interests” of the adult adoptee,

109 See Foy, supra note 97, at 117. But see Green, supra note 56 (discussing the adoption process for a same-sex couple in New York where consent of the adoptee’s biological parent was required).
110 Fowler, supra note 98, at 692.
111 Id. at 693.
112 Foy, supra note 97, at 117–18.
114 Russell E. Utter, Jr., The Benefits and Pitfalls of Adult Adoption in Estate Planning and Its Likely Future in Missouri, 80 UMKC L. REV. 255, 258 (2011) (explaining that the value of a mutually beneficial adoption “becomes murkier when the purpose is due to ulterior motives such as for beneficiary status or to circumvent the lack of same-sex marriage laws”).
115 Fowler, supra note 98, at 693 (citing In re Adult Anonymous II, 452 N.Y.S.2d 198, 199 (N.Y. App. Div. 1982)); see also McCabe, supra note 82, at 300. Adult adoption for inheritance purposes has not been blanketed as fraudulent. Ratliff, supra note 113, at 1789.
116 See Fowler, supra note 98, at 690 (finding that “[e]ven when a lesbian or gay couple has met the legal requisites for approval of an adult adoption, courts have denied the adoption petition on the basis that the relationship was not in the best interests of society”); see also Arthur S. Leonard, Lesbian and Gay Families and the Law: A Progress Report, 21 FORDHAM URB. L.J. 927, 949–50 (1994) (explaining that some judges have seen this type of adoption as repugnant to the relationship between a child and parent in our society); Utter, Jr., supra note 114, at 260 (finding that some courts have refused to allow homosexual adoption because such an act would be an aberration of the function of adoption).
117 McCabe, supra note 82, at 306.
much like they do for child adoptions, even though the factors considered in making the best interest determination have differed, if considered at all.\footnote{118}{See id. at 305 (explaining that when determining the best interests of an adult adoptee, courts have considered the legal and economic purposes sought to be achieved by the parties, while other courts have declined to extend the inquiry in any form); see also Richard C. Ausness, Planned Parenthood: Adult Adoption and the Right of Adoptees to Inherit, 41 ACTEC L.J. 241, 255 (2016) ("[I]n adult adoption cases, many statutes do not require an extensive inquiry into whether a proposed adoption is in the ‘best interests’ of the adoptee."). For a contrasting overview of the factors used in the best interest determination of a normalized child adoption, see Determining the Best Interests of the Child, CHILD WELFARE INFO. GATEWAY [hereinafter Best Interests], https://www.childwelfare.gov/pubPDFs/best_interest.pdf (last visited Sept. 8, 2017).}

Even though adopting a same-sex partner has its advantages, the disadvantages of and opposition to this phenomenon have caused this alternative to be an unpopular option in the LGBTQ community.\footnote{119}{Mandi Rae Urban, The History of Adult Adoption in California, 11 J. CONTEMP. LEGAL ISSUES 612, 615 (2000).} One such disadvantage of adult adoption is that there is no legal mechanism comparable to divorce if the intimate relationship between the same-sex couple ends.\footnote{120}{Ratliff, supra note 113, at 1786.} A second repercussion to this method is “the destruction of the adoptee’s inheritance rights with respect to his or her natural parents.”\footnote{121}{Urban, supra note 119, at 615.} Additionally, same-sex couples who partake in adult adoption for various reasons also face the threat of criminal prosecution by the way of affinity-based incest statutes.\footnote{122}{See id.; see generally Turnipseed, supra note 83 (discussing incestuous prosecution of adult adoptions in the wake of Lawrence v. Texas, 539 U.S. 558 (2003)); see also Utter, Jr., supra note 114, at 259 (discussing the incestuous overtones that are inherent in same-sex adoption).} Many same-sex couples are also physiologically and emotionally underprepared for the impact of the adoption on the dynamics of an adult intimate relationship.\footnote{123}{Madeleine N. Foltz, Needlessly Fighting an Uphill Battle: Extensive Estate Planning Complications Faced by Gay and Lesbian Individuals, Including Drastic Resort to Adult Adoption of Same-Sex Partners, Necessitate Revision of Maryland’s Intestacy Law to Provide Heir-at-Law Status for Domestic Partners, 40 U. BALTIMORE L. REV. 495, 516–17 (2011).} This psychological stressor can also be compounded by negative outside reactions from family, friends, and co-workers to this perversion of normalized social roles.\footnote{124}{Id.}

Lastly, because of its irrevocability,\footnote{125}{See discussion supra pp. 111–15.} adult adoption has been considered “the most drastic of the many legal strategies designed to circumvent the illegality of same-sex marriage.”\footnote{126}{Snodgrass, supra note 58, at 75.} The irrevocability of this marriage stand-in may have been one reason why adoption never became the most popular
option utilized by same-sex couples to form their legal relationships.\textsuperscript{127} In a progressive society, the irrevocability of these adoptions has provided new hurdles for same-sex couples since \textit{Obergefell} gave same-sex couples the legal right to marry.\textsuperscript{128} While some courts have successfully dissolved these adoptions without controversy,\textsuperscript{129} other courts have been more reluctant.\textsuperscript{130} Even judges known for their progressive attitudes towards same-sex marriage equality have declined to dissolve these adoptions in order to avoid jeopardizing adoption decrees generally.\textsuperscript{131} In order to better understand why courts are unresolved on the issue, it is necessary to examine the legal mechanisms and authorities used for reversing these adoptions and the policy concerns behind utilizing them in diverse contexts.

\textbf{D. Current Dissolution Mechanisms}

Unlike marriage, where divorce is quite common and streamlined, “divorcing” an adult adopted child is a much more complex and unresolved matter.\textsuperscript{132} In general, adoptions are irrevocable,\textsuperscript{133} but reversals have been honored in unique circumstances.\textsuperscript{134} Adoptions that are vacated after finalization are commonly known as “dissolutions.”\textsuperscript{135} Dissolution causes the legal relationship to be severed, either voluntarily or involuntarily.\textsuperscript{136} Section II.D.1 provides the legal mechanisms in place for courts to employ when dissolving normalized parent-child adoptions and will examine certain circumstances in

\textsuperscript{127} \textit{Id.}; see also Fowler, supra note 98, at 706.

\textsuperscript{128} C. Brian Smith, \textit{A Different Kind of Gay Adoption}, MEL (June 14, 2016), https://melmagazine.com/a-different-kind-of-gay-adoption-874393907211#.iuxffm5ni; see also Ausness, supra note 118 at 244-45 (describing how \textit{Obergefell} has reduced the need for such adoptions).

\textsuperscript{129} See Green, supra note 56.

\textsuperscript{130} See id. (explaining that couples who have not yet had their adoptions vacated in light of the new marriage rights are stranded in kind of limbo and possibly could even face criminal sanctions by the way of incest statutes); Potter, \textit{supra} note 1.

\textsuperscript{131} Potter, \textit{supra} note 1.


\textsuperscript{134} Id.


which these procedures have been properly utilized. Section II.D.2 provides mechanisms and procedures used for the dissolution of conventional adoptions to those which are available for the dissolution of adult adoptions, focusing on case-specific dissolution successes and failures for same-sex couples.

1. Dissolution of Conventional Adoptions

Every child, regardless of how or why the child has entered the adoption world, “has one thing in common – a need for a stable and loving environment with a parent or parents that are dedicated to educating themselves to give their children what they need for a successful life.”137 It is because of this need for a stable and safe environment that dissolution can be detrimental to the child.138 When adoptions fail, children commonly experience grief, depression, and anger—often causing the child to feel the need to lash out in order to gain attention during the tumultuous transition.139 Dissolutions can often be an excruciating last resort and can also be damaging to the other parties involved.140

Accurate data relating to the dissolution of child adoptions are often difficult to obtain because of the private and sealed nature of adoption records.141 Dissolution of these adoptions is also relatively uncommon—studies consistently report that dissolutions occur in approximately 1% to 10% of cases.142 While there may be numerous reasons why adoptions of children dissolve,143 studies have shown that dissolutions have a positive correlation with the increasing age of the child.144 When it comes to children with special needs, adoptive parents have sought dissolutions due to a lack of information regarding services, coupled with their cost.145 Of course, there are other reasons children might not actually

139 Id. at 241–42.
141 Riben, supra note 135.
142 Bergeron & Pennington, supra note 140.
145 Id. at 452.
remain with their supposed “forever family.” The internet is riddled with horror stories of adoptions gone wrong—stories that paint a harrowing scene of dangerous and uncontrollable children. Reasons for seeking dissolution aside, the question then becomes, is dissolution available? And if so, will the petition for dissolution be granted?

The dissolution process can take different forms “depending on the laws of each state, as well as the involvement or lack of involvement of an adoption agency or the state social welfare system.” To dissolve an adoption, courts have considered the best interest of the child and the ability of the adoptive parents to adequately care for the child. Other courts have readily dissolved adoptions in cases where the adoptive parents have presented contractual defenses, including mistake, lack of informed consent, or fraud in obtaining consent. On the other side of the spectrum, courts have been known to refuse to dissolve an adoption absent exceptional circumstances. Because the statutory requirements for adult adoptions often differ from child adoptions, adult adoption dissolution procedures and the accompanying policy concerns will be discussed comparatively in the following Section.

2. Dissolution of Same-Sex and Other Adult Adoptions

One of the main considerations of adult adoption—especially partner adoption—is the permanence of the arrangement. In the event that a same-sex couple would want to separate socially or intimately, the legal bond as parent and child would remain because there is no universal dissolution mechanism that

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147 See id.; see also Riben, supra note 135.
148 While the specific and individual laws of each state are beyond the scope of this Note, this Section will examine the different factors that courts often use in analyzing dissolution petitions.
149 Bergeron & Pennington, supra note 140, at 4. To illustrate the diverse types of adoption statutes and their detail, see COLO. REV. STAT. ANN. § 19-5-214 (West 2017); ME. REV. STAT. ANN. tit. 18, § 9-315 (2017); and W. VA. CODE ANN. § 48-22-704 (West 2017).
150 Riben, supra note 135.
151 See In re Flangel, 409 N.E.2d 521, 522 (Ill. App. Ct. 1980) (finding that the adoptive father was allowed to move to vacate the decree of adoption where his wife had fraudulently induced him to adopt the child); Lane v. Pippin, 158 S.E. 673, 673 (W. Va. 1931) (finding that adoptions should not be disturbed absent fraud or showing that the child’s best interests would be served by the reversal); Beech, supra note 144, at 452.
152 See generally In re Adoption of M., 722 A.2d 615 (N.J. Super. Ct. Ch. Div. 1998) (allowing an adopted daughter to dissolve the adoption as to her recently divorced adoptive father so that the pair could marry and legitimize the child born to them); Beech, supra note 144, at 453.
153 See supra Section II.C.2.
154 Messler, supra note 106, at 1058.
parallels divorce in these circumstances. Similar to child adoption dissolutions, these adoptions will not be vacated "except in very narrow circumstances, or unless the statute provides for it." The division among courts to dissolve these adoptions is illustrated by the four case studies below, which will demonstrate in detail the various dissolution mechanisms and their successes and failures in the context of this unique adoption phenomenon.

i. Buchanan

At the time Donald Ray Buchanan and Thomas Ainora brought their petition for termination of parental rights, they had been in a romantic relationship for over 30 years. In 2002, while residing in Maryland, Mr. Ainora adopted Mr. Buchanan. The two entered into the adoption because, at that time, they were not legally allowed to marry. The couple wanted to legalize their relationship for several reasons, including next-of-kin rights, inheritance rights, and, in general, the ability to take care of one another as they grew in age. In 2013, the couple took up residence in the District of Columbia, and at the time the petition was brought, same-sex marriage was legal. On February 19, 2016, both petitioners testified in family court as to their consent to the petition and their desire to dissolve the adoption so that they could become legally married.

In its analysis, the Superior Court of the District of Columbia began with its equitable powers to grant such a petition. The court recognized its authority to grant the petition under its "inherent equitable powers to do that which justice requires and which is not barred by statute." It found that this authority bestowed the power "to give such relief as it finds is required under the circumstances." It next turned to the issue of whether the legislature had

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156 Fowler, supra note 98, at 706.
158 Id. at *1.
159 Id.
160 Id.
161 Id.
162 Id.
163 Id.
164 Id.
165 Id.
166 Id. (emphasis added).
limited the court’s authority in this circumstance and found that it had not: Even though the District of Columbia Code did outline certain restrictions in regards to terminating parental rights, the court found that the pertinent sections did not apply because their purpose was to deal with minor children. Thus, the unique situation presented in the case before them had not been contemplated by the legislature and was deemed unrelated and unrestricted. The court then focused on the petitioners’ consent to the termination and found that no constitutional rights were being infringed upon.

In the alternative, the court went so far as to say that even if it had been constrained by the legislature, the petition would still be granted because the dissolution was in Mr. Buchanan’s best interest. Just as in child adoption cases, the court found that it had wide latitude in the best interest determination. In its determination, the court looked to the statutory factors listed under the pertinent code section and considered additional factors relevant to the parties’ individual circumstances:

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167 Id. at *2.
168 Id.
169 Id.
170 Id. at *3.
171 Id.
172 D.C. CODE § 16-2353 (2017). The statute lists the “[g]rounds for termination of parent and child relationship”:

(a) A judge may enter an order for the termination of the parent and child relationship when the judge finds from the evidence presented, after giving due consideration to the interests of all parties, that the termination is in the best interests of the child.

(b) In determining whether it is in the child’s best interests that the parent and child relationship be terminated, a judge shall consider each of the following factors:

1. the child’s need for continuity of care and caretakers and for timely integration into a stable and permanent home, taking into account the differences in the development and the concept of time of children of different ages;

2. the physical, mental and emotional health of all individuals involved to the degree that such affects the welfare of the child, the decisive consideration being the physical, mental and emotional needs of the child;

3. the quality of the interaction and interrelationship of the child with his or her parent, siblings, relative, and/or caretakers, including the foster parent;

3A. the child was left by his or her parent, guardian, or custodian in a hospital located in the District of Columbia for at least 10 calendar days following the birth of the child, despite a medical determination that the child was ready for discharge from the hospital, and the parent, guardian, or custodian of the child has not taken any action or made any effort to maintain a parental, guardianship, or custodial relationship or contact with the child;

4. to the extent feasible, the child’s opinion of his or her own best interests in the matter; and

5. evidence that drug-related activity continues to exist in a child’s home environment after intervention and services have been provided pursuant to
Mr. Buchanan has no need for continuity of care or caretakers, nor does he require "placement" as he is an independent adult who has been taking care of himself for decades, and terminating Mr. Ainora's parental rights will have no impact on whether or not Mr. Buchanan is "cared for" in this manner. . . . Mr. Buchanan's physical, mental, and emotional health will only be enriched upon termination, as he will finally be able to marry his partner of over three decades and receive the societal and personal recognition and protection associated with such . . . . Mr. Buchanan's relationship with Mr. Ainora will only be strengthened if they are allowed to marry, and the romantic and loving nature of their relationship will finally be accurately reflected in their legal statuses. Finally . . . Mr. Buchanan's opinion as to his own best interests have been clearly stated through his filing of this Consent Petition, and he wishes for Mr. Ainora's parental rights to be terminated.173

In addition to the factors listed above, the court took into consideration other legal and personal factors, including that as father and son, the pair has been able to enjoy only a very limited amount of legal protections and has been barred from the "plethora of legal, financial, and personal benefits of marriage."174 The court went on to focus on the quality of the parties' relationship, finding that it had always been that of equal partners in a romantic and supportive relationship and that they had never considered themselves to be father and son.175 By granting the petition for termination, the court reasoned that their relationship could "only be strengthened, nurtured, and dignified" as they would finally have the freedom to marry.176

Lastly, the court analyzed the petition in light of public policy and found that the dissolution was in accordance with such policy.177 The court referenced a similar situation, where an adoption was dissolved for another same-sex couple section 106(a) of the Prevention of Child Abuse and Neglect Act of 1977, effective September 23, 1977 (D.C. Law 2-22; § 4-1301.06(a)). Evidence of continued drug-activity shall be given great weight.

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173 Buchanan, 2016 WL 2755848, at *3.
174 Id.
175 Id. at *4.
176 Id.
177 Id.
Fallout from Obergefell in 2010. Most notably, the court’s support of the petition rested on the fact that the legislature already treated adult adoptions differently from adoptions of minor children, insomuch as the legislature had demonstrated that the District of Columbia did “not recognize any real ‘parental rights’ over legal adults to begin with.” In holding, the court granted the petition for dissolution.

ii. In re Adoption of M.

While this case does not involve the adoption between a same-sex couple in the exact context that has been discussed throughout this Note, the Superior Court of New Jersey’s dissolution of an adoption between a father and daughter holds significance because the facts are essentially analogous to same-sex adoption cases—the petitioner daughter in this case also sought dissolution as an adult so that she could later form a legal relationship with her adoptive father by marrying him. In this New Jersey case, the petitioner daughter was adopted in 1991 at the age of 15. The petitioner, at 22 years old, moved to vacate a final judgment of adoption as to her then recently divorced adoptive parents so that she could marry her adoptive father and legitimize the child conceived by them, without being criminalized for incest. Ultimately, the court decided to vacate the adoption for factual and legal reasons and for the sake of the newborn infant.

In its analysis, the court recognized that the relationship between the petitioner and her adoptive father had transgressed the parameters of a parent-child relationship well before the act of conception. Under New Jersey law at the time the petition was sought, an adoption could not be challenged if more than a year had passed since its finalization, and if under a year, it could only be challenged in the instance of “(a) mistake, inadvertence, surprise or excusable neglect, (b) newly discovered evidence [or] (c) fraud, misrepresentation or other misconduct of an adverse party.” Further, the court explained that a judgment

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178 Id.; see also Ellen McCarthy, Wow, What a Long Engagement That Was!, WASH. POST (June 27, 2010), http://www.washingtonpost.com/wp-dyn/content/article/2010/06/24/AR2010062406743.html?sid%3DST2010062502300&sub=AR.
180 Id.
182 Id.
183 Id. at 617.
184 Id. at 616–17.
185 See id. at 617.
186 Id.
187 Id. at 618.
188 Id. at 619.
of adoption, like any other judgment or order, "can be amended, modified or vacated in the interest of justice." Even though the court respectfully recognized the legislature’s desire for finality in judgments of adoptions, it could not ignore that a vacation of a judgment should be granted when confronted with "truly exceptional circumstances" founded on the particular facts of each case. It then stated that the boundaries of this "exceptional circumstances" standard "are as expansive as the need to achieve equity and justice."

Next, the court turned to the guiding public policy considerations underlying revocation, once again relying on the exceptional circumstances determination. Subsequently, the court noted that ordinarily, the ultimate consideration remained in the best interests of the adoptive child and the adoptive parents. Additionally, the court referenced "the inherent equitable authority of a court of chancery." Because family courts are courts of equity, the court explained that "[e]quity involves the obedience to dictates of morality and conscience. The morality of which equity speaks is that of society and not the judge’s personal view of right and wrong. Likewise, equity may not disregard statutory law but looks to its intent rather than its form."

The court then referred to the specific language of the relevant New Jersey statute, which commanded that "due regard shall be given to the rights of all persons affected by an adoption." Using this language, coupled with such other language regarding the best interests of the child, the court found that the legislature implicitly recognized the breadth of consequences that finality can have on adoptions, especially when it comes to the consequences of the passage of time and the change of circumstances, and how those changes can, in unique situations, adversely affect all persons involved in the adoption. Consequently, the court found that based on the truly exceptional circumstances of this case, the interests of all those involved in the adoption had changed measurably.

189 Id. (emphasis added).
190 Id. (emphasis added).
191 Id. at 620 (quoting Hous. Auth. of Morristown v. Little, 639 A.2d 286, 286 (N.J. 1994) (citation omitted)).
192 Id. at 619.
194 In re Adoption of M., 722 A.2d at 619.
195 Id. at 620.
196 Id.
199 In re Adoption of M., 722 A.2d at 620 (emphasis added).
200 Id. at 620–21.
201 Id. at 621.
Unlike any other prior reported opinions, the court found that this case warranted different treatment for three noteworthy reasons. First, unlike prior reported cases, the petitioner was an adult, and thus moved to vacate her adoption post-emancipation, causing the best interest standard to be moot. Second, the purpose of the petition was to remove a legal impediment to marriage, one they would not have faced but for the adoption. While the court found that the advantages to the petitioner and the adoptive father warranted consideration, the court did not necessarily focus on their best interests in coming to its decision. Instead, it did focus on the best interests of the newborn child—which could only be effectuated through dissolution of the adoption. Third, the court found that vacating the adoption under these circumstances would have provided the petitioner no less relief than would have been available to her had she alternatively proceeded under New Jersey law in moving to terminate her adoptive relationship with her father in favor of adoption by another adult.

iii. H.M.A. v. C.A.H.W.

On May 23, 1995, H.M.A. petitioned to adopt C.A.H.W., her long-time companion, for financial purposes and to formalize their intimate relationship. H.M.A.'s petition for adoption was granted on July 17, 1995, and as of 2013, the parties had been together for 33 years. H.M.A. sought to dissolve the adoption so that couple could enter into a civil union, which was statutorily unavailable at the time of the adoption. H.M.A. argued that a civil union offered greater protection for the parties and that it was "a more appropriate way to recognize the strong emotional bond between the parties." Although the Family Court of Delaware recognized the procedural bars to challenging the adoption decree, it declared that it had the authority to reopen and vacate adoptions in specific and limited circumstances. H.M.A. sought relief pursuant to a family court civil rule, arguing that the current arrangement was no longer equitable and the interests of justice required that the court grant

202 Id. at 622.
203 Id.
204 Id.
205 Id.
206 Id.
207 Id. at 622–23.
209 Id. at *1.
210 Id.
211 Id.
212 Id.
213 Id. at *2.
the relief sought.\textsuperscript{214} The pertinent rule stated that dissolution may be granted for the following reasons:

(1) Mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment.\textsuperscript{215}

Under subsection (6), the petitioner must show “extraordinary circumstances.”\textsuperscript{216} Taking into account the change in Delaware law allowing civil unions, the court granted the petition, finding that the case exhibited extraordinary circumstances. The court went on to conclude that it was no longer equitable for the adoption decree to have prospective application because the new civil union statute “provided for greater rights, responsibilities and protections for the parties than the 1995 adoption afforded.”\textsuperscript{217}

\textit{iv. In re: Adoption of Roland Andrew Bosee, Jr.}\textsuperscript{218}

Roland Bosee, Jr., and Nino Esposito met on Easter Sunday in 1970\textsuperscript{219} and have been in a relationship for over 40 years.\textsuperscript{220} Nino, 10 years older than Roland, adopted Roland in 2012, before same-sex marriage was legal.\textsuperscript{221} At that point in their lives—Nino at age 78 and Roland at 68—they never believed that they would legally be allowed to marry.\textsuperscript{222} They sought adoption for financial reasons and to form a legally valid familial relationship.\textsuperscript{223} However, once same-sex marriage became legal, the couple petitioned a Pennsylvania court to dissolve

\begin{footnotes}
\item[214] Id.
\item[215] Id. (quoting DEL. FAM. CT. R. CIV. P. 60(b)).
\item[216] Id. at *2.
\item[217] Id.
\item[219] Potter, supra note 1.
\item[220] In re: Adoption of Roland Andrew Bosee, Jr., No. A-12-038.
\item[221] Potter, supra note 1.
\item[222] Id.
\item[223] Id.
\end{footnotes}
the adoption. After a hearing and oral argument on the issue, the petition was denied on June 11, 2015. The court, in denying the petition, stated that Pennsylvania law did not give the authority to annul an adoption. In reviewing previous cases allowing for revocation, the court found that those cases revolved around the issue of fraud and the failure to give proper notice to the interested parties. Although the court explained that it was "sensitive to the situation in which Nino and Roland found themselves in 2012," it subsequently stated that vacating the adoption "would place in jeopardy and imperil adoption decrees generally." Subsequently, the couple appealed the decision. Even with his denial of the petition, Judge O'Toole explained that he would "welcome[] direction from . . . appellate courts in handling [future] parallel cases." Over a year and a half later, Judge O'Toole did indeed receive direction from Judge Gantman of the Pennsylvania Superior Court on how to dissolve not only the Bosee case, but also future adult same-sex adoption cases in general.

In the unopposed appeal, Nino contended that adoption laws could not be used to bar the annulment of their adoption in favor of their marriage. Nino also argued that the denial "is [no] different from the unconstitutional effect of the . . . laws that were struck down." It also contends that the ruling ignored precedents establishing that "the welfare of the child [Roland] is of paramount importance, even in proceedings to vacate an adoption decree." In other words, Nino alternatively raised the issue of Judge O'Toole's failure to consider the best interests of the adoptee, Roland. Nino explained in the appeal that it was in Roland's best interest to annul the adoption because the couple loved each other and wished to marry—something they could not previously legally do.

The Pennsylvania Superior Court agreed. In its analysis, the court explained that the Orphans' Court is a court of equity, and as such, it applies the

224 Id.
225 In re: Adoption of Roland Andrew Bosee, Jr., No. A-12-038.
226 Id.
228 Id.
229 Id., supra note 1.
230 Id.
231 Id.
232 Id.
234 Potter, supra note 1.
235 Id.
236 Id. at 336.
237 In Pennsylvania, the Orphans' Court has the jurisdiction to hear adoption matters and is the court in which the original dissolution petition was sought. See id. at 335.
principles and rules of equity. In reiterating that Pennsylvania does not have a specific statute relating to the revocation of adoption decrees, it stated that "even in the absence of specific statutes in some jurisdictions, courts granting decrees of adoption do have jurisdiction to revoke those decrees for good cause, the proceeding being equitable in nature and the welfare of the child being a most important phase of the consideration by the court." However, it warned that "[w]hen the rights of a party are clearly defined [by the rules of law], equity should not change or unsettle those rights."

Judge Gantman declared that same-sex marriage had been made legal in Pennsylvania in 2014 and further cited to Obergefell by specifically honing in on the fact that the fundamental nature of marriage is emphasized by the way the nation places marriage "at the center of so many facets of the legal and social order." Furthermore, in support of allowing adults in adoptive relationships to dissolve their adoptions in order to marry, the court cited not only H.M.A. v. C.A.H.W., but in In re Adoption of M. as well. While recognizing that Roland's and Nino's 2012 adoption was the only way to formalize their relationship and obtain the legal rights that they desired, Judge Gantman made clear that the Orphans' Court frustrated the couple's ability to marry in the wake of their new rights to same-sex marriage. In holding, the court found that Pennsylvania law permitted an unopposed revocation of adult adoption under the "wholly new and unique circumstances" of the case and that the Orphans' Court had the authority to grant such relief, even though the right to dissolution was not expressly provided for by any statute. In conclusion, Judge Gantman stated that the Orphans' Court erred when it held that it lacked power to dissolve the adoption and thus reversed and remanded the case for entry of an order granting the dissolution.

The pre-Obergefell world offered several legal alternatives for same-sex couples seeking at least some of the same rights that were automatically bestowed upon heterosexual married couples; all of them fell short, however, in not only providing a bona fide familial relationship, but also the privileges that come along with it. Adult adoption, while seemingly irrevocable, offered what

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237 Id. at 334.
238 Id. at 335 (quoting Adoption of Phillips, 12 Pa. D. & C.2d 387, 396–97 (Somerset Cty. 1957)).
239 Id.
241 In re Adoption of R.A.B., 153 A.3d at 336.
242 Id.
243 Id.
244 Id.
245 Id.
246 See supra Section II.B.
some same-sex couples saw as the next best solution in a discriminatory legal system. Nevertheless, this phenomenon has been rendered irrelevant nationwide by *Obergefell*, which declared that same-sex couples have a fundamental right to marriage in every state. With this newfound right to marriage, same-sex couples who previously turned to adult adoption are now seeking dissolution of their adoptions in the pursuit of equality. The variance in state law regarding revocation of adoption decrees has created a disadvantage for some same-sex couples, delaying their ability to exercise their new rights and frustrating the principles of equality under *Obergefell*. In order to remedy the historical discrimination relating to same-sex marriage and to promote equality as demanded under *Obergefell*, courts need a more efficient and uniform framework to process dissolution cases when it comes to same-sex adult adoption.

### III. Analysis

The above case studies illustrate a small portion of same-sex adoption dissolution cases; there will certainly be more dissolution cases to follow. Roland and Nino are certainly not the only same-sex couple that has suffered or that will suffer in the face of an unresolved area of adoption law. Because states may vary in their approach to dissolving these unconventional adoptions, a unique and uniform dissolution framework needs to be applied to these special adoptions so that the adoption laws of the states remain stable and so that all couples can have access to, and enjoy, the fundamental right to marriage given to them under *Obergefell*.

Section III.A argues for recognition of *Obergefell*’s timely—yet untimely—fallout and explains why it is time for courts to change their current approach to adoption dissolution law. Section III.B gives recommendations for a new dissolution framework that divided courts can use in analyzing upcoming dissolution cases in this context. Section III.C utilizes the *Bosee* case to demonstrate how the uniform dissolution framework can be applied to future real-world adoption dissolution cases. Section III.D examines how unsuccessful dissolution of these adoptions will undermine *Obergefell*’s guiding principles regarding marriage equality. Section III.E explores the future implications that these dissolutions will have in the family law context and briefly analyzes other unresolved challenges in the LGBTQ community that have arisen in the wake of *Obergefell*.

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247 See supra Section II.C.2.
249 See supra Section II.D.2.
250 See Green, supra note 56.
A. Post-Obergefell: A Lingering Cloud over Same-Sex Marriage

In light of the post-Obergefell era, Section III.A.1 analyzes the way in which the Supreme Court's decision has created a solution to one problem while creating another unforeseen issue in family law. The unfortunate reality is that the landmark decision has left some same-sex couples in a legal limbo as they attempt to enforce their new rights to marriage. Section III.A.2 argues for a change in adoption dissolution procedure, focusing on the inherent differences between the child and adult adoption process and varying policy considerations.

1. Obergefell's Fallout and Its Unintended Consequences

Upwards of 20 years ago, the projections for same-sex adoption were largely negative and unfathomable. While some conceded that there was no "immediate substantial harm" from the practice, this unconventional relationship has been considered to be little more than a black cloud lingering over the "the reputation of the institution of adoption, as the defender of children's rights." Regardless of the potential criticism from outsiders, these adult adoptions did take place for numerous reasons and often happened in response to the varying state laws in regards to same-sex marriage and other legal alternatives to marriage, such as domestic partnerships and civil unions. While same-sex marriage was a remote proposition when adult adoption became a recognized option in the LGBTQ community, even optimistic couples realized that even if marriage became an option in their state, there would be a slow process of resolving issues "involving full faith and credit among [the different] states." Although Obergefell has given the same-sex community the legal right to marry in every state, the black cloud of same-sex partner adoption not only lingers over the institution of adoption, but also over the newfound right to the institution of marriage for same-sex couples.

For couples in states that did not recognize same-sex marriage, the need for adult adoption existed up until Obergefell was decided in 2015. One would think that because this practice is no longer needed, it should not be an issue for same-sex couples any longer—but Roland and Nino have shown that this

251 Id.
252 See Snodgrass, supra note 58, at 93.
253 Id.
254 See supra Section II.C.2.
255 See supra Sections II.B, II.C.2.
256 Snodgrass, supra note 58, at 94.
257 Id.
259 Green, supra note 56; see also Ausness, supra note 118, at 244.
assumption is sorely misplaced. There are same-sex couples today who are now suffering from the consequences of their earlier decisions to seek what was once thought of as an irrevocable legal alternative to marriage. Same-sex couples have not only used adult adoptions, but they have also used civil unions, domestic partnerships, and contracts—all which have failed as adequate and parallel legal alternatives to marriage. Even though adoption, as a “pseudo-marriage,” may have had more advantages than some of the other legal alternatives available at the time, it still leaves same-sex couples with all of the inherent disadvantages of adoption and without all of the advantages of marriage that should—and would—be available to them if the dissolution process were streamlined and applied uniformly across the states.

By being trapped in their adoptions, these same-sex couples are without a comparable divorce mechanism if their intimate relationship ends—they forever legally remain as parent and child and are without the aid of the courts in their separation. Moreover, if these couples do try to marry without successfully annulling their adoptions, they may find themselves back in the days before Lawrence v. Texas, where they may be criminally prosecuted for their intimate relations and private activities if their states have affinity-based incest statutes. Furthermore, without a viable dissolution mechanism, many of these couples will be forced to live with the emotional, psychological, and social baggage that accompanies their unconventional legal parent-child relationship status. Adoption may have given them one type of legal familial relationship, but it has not provided them with the true title they seek and have always desired.

There is no doubt that today, given their new rights, same-sex couples would probably never even consider adult adoption as the best way to form their special family bonds or obtain any other advantageous legal rights. And while many gay and lesbian couples may have previously considered the disadvantages of adult adoption to outweigh its advantages, deciding to forego this unconventional legal alternative there are some who did not. For the ones who decided that adult adoption was not in their best interest for personal or legal reasons, their dreams of marriage can now become a reality. But for those other same-sex couples who had no other option but to make that difficult choice and who decided to utilize adult adoption for all that it could offer them, many are still plagued by the disadvantages of that legal alternative and the restriction that

260 Lopez, supra note 155, at 361.
261 See supra Sections II.B, II.C.2.
262 See Zimmer, supra note 155, at 691.
263 See Urban, supra note 119, at 615.
264 Foltz, supra note 123, at 516–17.
265 See Snodgrass, supra note 58, at 94.
266 See supra Section II.C.2.
it now imposes on them in the midst of their newfound rights. With all of its merits, Obergefell failed to give direction to states on how to enforce these new rights and how they are to overcome any corollary issues resulting from past same-sex adoptions, specifically, their timely and efficient dissolution.268

“How to dissolve adult adoptions by gay couples ‘is a question throughout the country.’”269 Because of the states’ lack of conformity in legal dissolution mechanisms and their application, many of these couples—like Roland and Nino—may still be suspended in legal limbo, trapped in their adoptive relationship and consequently being denied the privilege to fully enjoy the advantages that legal marriage could offer them.270 Even though Roland and his partner Nino fought and won their battle to enjoy same-sex marriage, the history of discrimination still has a hold on adopted same-sex couples across the nation who could be the next Roland and Nino.

Even with the authoritative voice of Obergefell ringing in their ears, the power to dissolve these adoptions ultimately rests in the hands of judges271—and what a mighty power that is to two people who have possibly waited almost a lifetime to marry the person they love. Attorneys who practice LGBTQ family law and others who support same-sex equality hold high hopes that these judges will “embrace the opportunity to bring justice . . . and use their equitable powers to right past wrongs.”272 With Obergefell now in their legal toolbox, it is time for judges all over the nation to change the way that they view adult adoption dissolution mechanisms and procedures for same-sex couples. The only way to continue moving forward in same-sex equality is to identify these historical and discriminatory legal restrictions and to develop new tools to work around them. Because the adoption of children and the adoption of adults involve different motives and policy considerations,273 they should receive different treatment in same-sex adoptions as well. In order to further promote same-sex marriage equality under Obergefell, courts should adopt a new, uniform dissolution framework that accurately reflects and takes into considerations these variables.

2. Time for Change

Given the historical lack of equality for same-sex couples, finality may have been a major concern for those same-sex couples seeking adoption as a legal

267 See Potter, supra note 1.
268 Justice Department Guidance, supra note 10.
269 Id.
270 See supra Section II.C.2.
271 Green, supra note 56.
272 Id.
273 See supra Section II.C.2.
alternative to marriage, but times have changed since then. With *Obergefell*, our evolving society has provided increasing rights for same-sex couples and eliminated the need for such concern. Today, many of these same-sex couples fear quite the opposite: instead of fearing that the finality of their adoptions could be at risk, they fear that the finality of these adoptions will prevent them from enjoying all the advantages of marriage that they now have the right to enjoy. The issue in not dissolving these adoptions is that not only did *Obergefell* make same-sex marriage legal, but it also made prohibiting same-sex marriage illegal. Refusing to dissolve these adoptions will weaken the principles behind *Obergefell*, and in essence, will facilitate the prohibition of same-sex marriage.

The need for a new and uniform approach to same-sex adoption dissolution is twofold. First, child adoptions and adult adoptions are often treated differently statutorily and procedurally. Second, the foundational policy considerations surrounding child adoption, and its irrevocability, do not apply in adult adoptions—especially when used by same-sex partners as a legal alternative to marriage. Because of the inherent differences between child adoption and adult adoption in this context, courts should not treat their dissolutions the same way.

### i. Statutory and Procedural Variations

While the process for child adoption may superficially mimic that of adult adoption, the statutory requirements are substantively different because the concerns inherent in child adoption are absent in adult proceedings, and this reality should factor into the dissolution analysis. First, in a child adoption, the biological parents must consent to the adoption—consent of the child is not considered. But in adult adoptions, the adoptee, as an adult, is required to give his own consent and, obviously, would do so in the case of same-sex partner adoption. Therefore, that same adult’s desire and consent in dissolving the adoption should be considered a relevant variable at dissolution. In the case of *In re Adoption of M.*, the court specifically focused on the age of the petitioner, the

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274 See Potter, *supra* note 1 (explaining that finality was big question for same-sex couples who feared losing their adoption status and the legal protections that it carried).

275 See id.

276 Id.

277 See *supra* Section II.A.

278 See McCabe, *supra* note 82, at 304–05.

279 See id.

280 Id. at 304.

281 Foy, *supra* note 97, at 117.

age of the adoptee, and how these circumstances were unlike other dissolutions pertaining to child adoptions.\textsuperscript{283}

Second, state agencies are typically not involved in the adult adoption process\textsuperscript{284} because, unlike in a child placement, investigation into the welfare of the home is unnecessary for an adult.\textsuperscript{285} Third, notice to interested parties, which is normally required in child adoptions, is not normally necessary or relevant for an adult\textsuperscript{286} who is consenting to the adoption of his own volition and whose natural parents are no longer legally responsible for his well-being. Furthering the argument that these variables should be considered at the dissolution stage, the court in \textit{Buchanan} focused on the petitioners' consent to the dissolution and determined that no constitutional rights were being infringed upon because notice to interested parties was irrelevant in these circumstances.\textsuperscript{287} Adult adoptions, unlike child adoptions, have been likened to civil contracts, which removes the need for inquiry into the parties' relationship and any corollary public policy considerations relating to the institution of normalized child adoption.\textsuperscript{288}

\textit{ii. Distinctive Policy Considerations}

Not only have legislatures taken different procedural approaches to child and adult adoption, but the policy considerations for adoption and against dissolution are not applicable for same-sex partners who were only trying to work within the discriminating legal constraints imposed upon them pre-\textit{Obergefell}.\textsuperscript{289} Irrevocability was a valid concern for legislatures when forming child adoption statutes.\textsuperscript{290} Giving children safe, stable, loving, and permanent homes is vital to ensure their success and the future success of our country.\textsuperscript{291} It is no surprise that the best interests of a child would hardly be served by allowing parents to repeatedly cast a child back into the foster care system simply because they changed their minds.\textsuperscript{292} However, even legislatures have realized that in some circumstances, dissolution of child adoptions would be acceptable, and maybe even necessary.\textsuperscript{293}


\textsuperscript{284} See Fowler, supra note 98, at 693.


\textsuperscript{286} Ratliff, supra note 113, at 1789.

\textsuperscript{287} See Buchanan, 2016 WL 2755848, at *2.

\textsuperscript{288} McCabe, supra note 82, at 306.

\textsuperscript{289} See id. at 304.

\textsuperscript{290} See supra Section II.C.1.

\textsuperscript{291} See Stewart, supra note 77, at 349.

\textsuperscript{292} See Mapes, supra note 143.

\textsuperscript{293} See supra Section II.D.1.
Conversely, adult adoptions have not been utilized for the purposes that drive most child adoptions,\textsuperscript{294} and, as such, the societal considerations behind this phenomenon differ drastically and should be taken into consideration at the dissolution stage.\textsuperscript{295} Same-sex partners mainly used this legal mechanism to possess a fraction of the legal rights that were automatically bestowed on heterosexual married couples.\textsuperscript{296} These adoptions were used so that same-sex couples could create a bona fide familial relationship, something they were being discriminatorily denied.\textsuperscript{297}

As seen in \textit{Buchanan}, the court granted the dissolution and decided that statutory limitations would not be imposed on same-sex partner adoptions because the purpose behind the statutes was limited to dealing with minor children and thus the legislature had not contemplated this specific type of situation.\textsuperscript{298} \textit{Buchanan} concretely demonstrates the public policy considerations in treating child and adult adoptions differently.\textsuperscript{299} Interestingly, the court in \textit{Buchanan} did actually dive into a best interest determination even though the petitioner was an adult, much like courts do in the face of child adoption dissolutions. However, instead of focusing on the factors\textsuperscript{300} that would normally be considered in a child dissolution case, the court looked to different factors relating to the unique situation before it.\textsuperscript{301} The court focused on the relationship between the parties and the protections of marriage that had been and would continue to be denied to the petitioners if the dissolution petition was not granted.\textsuperscript{302} The court even went further to explain that the dissolution was in the best interest of the parties because it would only allow for the strengthening of their relationship, albeit in a much more dignified manner.\textsuperscript{303} Likewise, the court in \textit{H.M.A.} also focused on the desirability of the civil union and how it provided greater protections for the couple than the adoption could and how, at the time the adoption took place, it was the only option available.\textsuperscript{304}

Alternatively, like the court behind the dissolution decision of \textit{In re Adoption of M.}, courts could refuse to even approach a best interest determination since adults are post-emancipation—essentially rendering the best

\begin{flushleft}
\textsuperscript{294} Tumipseed, \textit{supra} note 83, at 100.
\textsuperscript{295} McCabe, \textit{supra} note 82, at 304.
\textsuperscript{296} Snodgrass, \textit{supra} note 58, at 79.
\textsuperscript{297} \textit{Id.} at 75.
\textsuperscript{299} \textit{Id.} at *4.
\textsuperscript{300} \textit{See} \textit{Best Interests, supra} note 118.
\textsuperscript{301} \textit{Buchanan}, 2016 WL 2755848, at *3.
\textsuperscript{302} \textit{Id.}
\textsuperscript{303} \textit{Id.}
\end{flushleft}
interest standard moot.\textsuperscript{305} Even though the court in \textit{In re Adoption of M.} did not see the need for a best interest determination as to the petitioner, it still looked to the parameters of the relationship\textsuperscript{306} and focused on how the interests of the parties had changed drastically, considered the truly exceptional circumstances, and weighed those facts against the public policy principle opposed to the revocation of adoptions.\textsuperscript{307} Regardless of whether a court decides to formally utilize the best interest standard in the dissolution analysis of same-sex adoptions, the progressive factors recognized in these successful cases should be given more weight when balanced with the historical irrevocability principle of adoptions. Most notably, the courts in these three cases emphasize their inherent equitable powers to grant relief when justice so requires under the circumstances.\textsuperscript{308}

Unfortunately, for Roland and Nino, the scales of justice were tipped in favor of finality over equality for over a year.\textsuperscript{309} While the initial denial of the dissolution petition in the Bosee case may have been reversed,\textsuperscript{310} there will be other same-sex couples who face these same challenges in the future, and judges need to be equipped with the tools to efficiently and successfully dissolve these adoptions in light of \textit{Obergefell}'s mandate that same-sex couples have the fundamental right to marriage.

\textit{B. Paving the Way: A New Uniform Dissolution Framework}

While the facts and cases represented in this Note exemplify only a small fraction of same-sex partner adoptions and dissolutions, they provide guiding principles on how future courts can approach dissolutions when confronted with the issue. Courts will better be able to abide by and reinforce \textit{Obergefell}'s principles of marriage equality if they can apply a flexible uniform dissolution framework to their same-sex adult adoption cases. This uniform dissolution framework incorporates four components: (1) statutory direction, (2) equitable relief, (3) extraordinary circumstances, and (4) best interest determination.

\textbf{1. Statutory Direction}

Because adoption did not exist at common law and is statutorily derived,\textsuperscript{311} courts should first look to their respective state codes for direction on


\textsuperscript{306} \textit{Id.} at 618.

\textsuperscript{307} \textit{Id.} at 621.

\textsuperscript{308} Buchanan, 2016 WL 2755848, at *1; \textit{H.M.A.}, 2013 WL 1748618, at *2; \textit{In re Adoption of M.}, 722 A.2d at 620.


\textsuperscript{310} \textit{Id.} at *4.

\textsuperscript{311} See Fowler, supra note 98, at 689.
the issue. Almost every state either has specialized adult adoption statutes, or general adoption statutes that have language explicitly or implicitly allowing for adult adoptions. By analyzing the applicable adoption statutes, courts will be able to determine whether relevant termination procedures have already been developed by the legislature. If the court finds that a dissolution procedure has been codified, and allows for dissolution under these unique circumstances, then the court should follow those respective procedures as defined by its state legislature. However, if the codified procedures do not explicitly allow for dissolution of same-sex adult adoptions or if no such procedures currently exist, then courts should move on to the next component in the uniform dissolution framework—equitable relief.

As illustrated in Buchanan, the court analyzed its jurisdiction’s statutory provisions in determining whether any relevant provisions existed in controlling the termination of parental rights. In finding that such a statute did exist, the court ultimately expressed that the provision was not controlling because the legislature intended that it apply only to cases involving minor children. Notwithstanding any limiting statutory provisions, the courts in Buchanan, In re Adoption of M., and H.M.A. recognized their inherent authority to grant equitable relief.

2. Equitable Relief

In the event that a court with jurisdiction to hear adoption matters cannot rectify by relying on its own statutory procedures to effectively dissolve a same-sex adult adoption, or in the event that a state code does not provide any directive procedure whatsoever, a court should then rely on its inherent authority to grant such equitable relief as it finds is required under the circumstances before it. A court should use this inherent power to analyze the merits of these cases however it sees fit. This component would be an appropriate dissolution mechanism, in the sense that it allows courts wide discretion and flexibility in successfully dissolving same-sex adoption cases as it sees fit.

To illustrate, the court in Buchanan ultimately concluded that a restricting code provision was not applicable to adult adoptions, but in erring on
the side of caution, it countered any potential error in that conclusion by utilizing to its advantage the best interests standard referenced in the statute pertaining to child adoptions.\textsuperscript{318} Comparatively, the court in \textit{In re Adoption of M.} refused to apply the best interest standard, claiming that it was reserved for minors, and it instead focused on the "exceptional circumstances" of the case.\textsuperscript{319} By honing in on its equitable powers to vacate an adoption decree, a court will have the flexibility to utilize either the best interests standard or the extraordinary circumstances standard, depending on the unique circumstances of each case, any relevant statutory provisions, and the discretion of the respective judges.

3. Extraordinary Circumstances

If after proceeding through an analysis of the second component of the uniform dissolution framework, a court decides to rely on the extraordinary circumstances approach, then it can utilize the examples illustrated in \textit{H.M.A.} and \textit{In re Adoption of M.} Both of these cases rely on this standard in successfully dissolving adult adoptions.\textsuperscript{320} While not being explicitly defined in those cases, the boundaries of the extraordinary circumstances standard are malleable to the extent needed to achieve justice and equity.\textsuperscript{321}

The nature of same-sex partner adoption in and of itself is extraordinary. \textit{H.M.A.} is a case that parallels the issues faced by numerous same-sex couples who have turned to adoption for limited legal protections.\textsuperscript{322} In terminating the adoption, the court recognized the extraordinary circumstances that surrounded the unconventional adoption, noting that it was no longer equitable for the adoptive relationship to continue because new laws provided the couple with better legal protections that were not offered at the time that they decided to use adoption as a legal means to an end.\textsuperscript{323} The same will now hold true for same-sex couples seeking to dissolve their adoptions so they can exercise their new legal rights to marriage.

Even though \textit{In re Adoption of M.} does not involve same-sex partner adoption, the adopted daughter sought dissolution in that case so that she could eventually marry her adoptive father.\textsuperscript{324} The court, realizing that the adoption decree was the only thing standing in the way of the marriage, found that these

\begin{itemize}
\item \textsuperscript{318} Buchanan, 2016 WL 2755848, at *3.
\item \textsuperscript{319} \textit{In re Adoption of M.}, 722 A.2d at 622.
\item \textsuperscript{320} See \textit{H.M.A.}, 2013 WL 1748618, at *2–3; \textit{In re Adoption of M.}, 722 A.2d at 622.
\item \textsuperscript{321} \textit{In re Adoption of M.}, 722 A.2d at 620 (citation omitted) (quoting Hous. Auth. of Morristown v. Little, 639 A.2d 286, 292 (N.J. 1994)).
\item \textsuperscript{322} See \textit{H.M.A.}, 2013 WL 1748618.
\item \textsuperscript{323} \textit{Id.} at *2.
\item \textsuperscript{324} \textit{In re Adoption of M.}, 722 A.2d at 617.
\end{itemize}
exceptional circumstances warranted the equitable relief.\textsuperscript{325} Same-sex couples are seeking these dissolutions for the same reasons and, as such, would satisfy the extraordinary circumstances component.

4. Best Interest Determination

Alternatively, if the court finds that its equitable powers are indeed restricted by the legislature in terminating these adoptions, it could then actually utilize those limiting provisions in applying the ordinary best interest determination—although instead of focusing on factors relating to a child’s best interest, it would focus on factors relating to the unique circumstances found in same-sex adult adoptions. The best interest standard is the tool most commonly used by states in adjudicating child adoptions and subsequent dissolutions.\textsuperscript{326} That being the case, a presiding court can imitate Buchanan in applying the best interests standard to an adult.\textsuperscript{327} In re Adoption of M. also briefly mentions this common standard, and even though it did not apply it directly to the adult petitioner, it focused on the interests of all parties involved in the adoption and how those interests had drastically changed over time—necessitating the dissolution.\textsuperscript{328}

In using this standard, a court would be able to apply a flexible and non-exhaustive list of factors in analyzing the best interests of the parties. This list could include any factors already statutorily defined\textsuperscript{329} and any additional factors the court deems relevant to the particular circumstances.\textsuperscript{330} These additional factors may include, but are not limited to, relevant personal and legal factors such as the amount of legal protections currently offered to them as compared to the ones available if dissolution were to be granted;\textsuperscript{331} the quality, nature, and length of the parties’ relationship;\textsuperscript{332} the parties’ own opinions of their best interest;\textsuperscript{333} the extent to which certain relevant societal and legal developments have altered the parties’ interests;\textsuperscript{334} and any other factors the court finds applicable under the circumstances. To illustrate how the uniform dissolution framework can simplify and expedite the process of future real-world same-sex

\begin{itemize}
\item \textsuperscript{325} Id. at 622.
\item \textsuperscript{326} Stewart, supra note 77, at 359; see also Mertus, supra note 81, at 182.
\item \textsuperscript{328} See In re Adoption of M., 722 A.2d at 621–22.
\item \textsuperscript{329} Buchanan, 2016 WL 2755848, at *3.
\item \textsuperscript{330} For an example of a court’s application of additional non-statutory factors, see id.
\item \textsuperscript{331} Id.
\item \textsuperscript{332} Id. at *3–4.
\item \textsuperscript{333} Id. at *3.
\item \textsuperscript{334} Id.
\end{itemize}
adoption dissolution cases, the framework will be applied to the Bosee facts as an alternative analytical case study.

C. The Uniform Dissolution Framework in Application: Bosee

Roland and Nino have been together since 1970 and always dreamed of being able to get married. However, up until 2014, Pennsylvania law prohibited same-sex marriage. So, in order to form a legal familial bond and to obtain other significant legal rights, the couple had to make a tough decision, one that has been frowned upon throughout society and the legal community since its inception—in 2012, Nino decided to adopt his adult same-sex partner, Roland. While this may have seemed like the best legal alternative to marriage at the time, the need for this “pseudo-marriage” became null and void in 2015 when the Obergefell ruling declared that same-sex marriage was a fundamental right in every state across the nation. Therefore, Roland and Nino made the decision to dissolve their adoption so that they could enjoy their newfound right to marriage. Unfortunately, this is where their problems with the dissolution process began. Because of the states’ varying laws regarding adoptions and adoption dissolutions in general, some courts have found it difficult to navigate the waters of the legal conundrum that has manifested itself in same-sex adult adoption cases.

Because Pennsylvania statutory law did not expressly allow for adoption dissolutions, the Pennsylvania court, which first heard the dissolution petition, believed that it did not have the authority to grant the petition, and thus denied it. Furthermore, the court erroneously believed that granting this petition would put all adoption decrees in jeopardy regarding their irrevocability. The error in that reasoning is evident by the fact that normalized child adoptions and

335 While the Bosee case has already been successfully resolved, this “alternative” case study will analyze how the Bosee case could have been handled more efficiently using the uniform dissolution framework approach when the dissolution was first sought in the Orphans’ Court.

336 Potter, supra note 1.


338 See Anderson-Minshall, supra note 102.

339 Potter, supra note 1.

340 This is a term that has been used to characterize these types of adult adoptions. See Allison, supra note 107, at 464.


342 Potter, supra note 1.

343 Id.

344 Id.; see supra Sections II.C, II.D.


346 Id.
adult adoptions in the same-sex context are principally different, not only in the statutory and procedural context, but also in the policy considerations that drive the two diverse types of adoption.\footnote{See supra Section III.A.2.}

For some same-sex couples, like Roland and Nino, who are in their elder years, time is of the essence and a year and a half could make all the difference in whether these couples will ever be able to exercise their right to marriage. The couple’s arduous one and a half year-long battle with the Pennsylvania court system could have been avoided if the court could have utilized a uniform framework to apply to the dissolution process of this unique and specialized type of adoption. In applying the uniform dissolution framework to the Bosee case, a court would first start by looking at Pennsylvania law.\footnote{See supra Section II.D.2.iv.} Contrary to the flexible uniform framework, Judge O’Toole of the Orphans’ Court prematurely ended his analysis at component one—statutory direction.\footnote{See supra Section II.D.2.iv.} Because there is no Pennsylvania statute that expressly allows for the dissolution of adoptions,\footnote{In re Adoption of R.A.B., 153 A.3d 332, 335 (Pa. Super. Ct. 2016).} the new framework would then direct the court to move on to the second component of the framework—equitable relief.\footnote{Id. at 334–35.}

The Orphans’ Court, having the jurisdiction to hear adoption matters,\footnote{In re Adoption of R.A.B., 153 A.3d at 335.} is a court of equity and is authorized to apply the rules and principles of equity in revoking adoption decrees for good cause, so long as statutory law is not violated.\footnote{Id. at 334-35.} Since there is no statute in Pennsylvania codifying any standards to be used in dissolving an adoption, good cause exists for the court to then be able to dissolve Roland’s adoption under either the extraordinary circumstances of the case\footnote{See supra Section III.B.3; see generally H.M.A. v. C.A.H.W., No. 95-05-03-A, 2013 WL 1748618 (Del. Fam. Ct. Mar. 28, 2013); In re Adoption of M., 722 A.2d 615 (N.J. Super. Ct. Ch. Div. 1998).} or the best interest standard that is routinely used in normalized adoption cases.\footnote{See supra Section III.B.3; see generally Buchanan, No. 2015 DRB 4111, 2016 WL 2755848 (D.C. Super. Ct. 2016); In re Adoption of M., 722 A.2d 615.}

Under component three’s extraordinary circumstances approach,\footnote{See supra Section III.B.4.} the court could rely on the examples illustrated in H.M.A.\footnote{See supra Section II.D.2.iii.} and In re Adoption of M.\footnote{See supra Section II.D.2.ii.} This standard is highly flexible because the courts do not explicitly define
its boundaries except to say that it is malleable to the extent necessary to deliver justice and equity under the unique circumstances of each case.\textsuperscript{359} There is no doubt that the circumstances of the \textit{Bosee} case and all other same-sex adult adoption cases are extraordinary. The phenomenon of same-sex adult adoption has rarely been discussed in the legal community\textsuperscript{360}—that is until same-sex marriage became legal. Only then did Roland and Nino’s story become highly profiled.\textsuperscript{361} Parallel to the facts that were manifested in \textit{H.M.A.}, the extraordinary circumstances in this case are what make Roland and Nino’s adoption no longer equitable in light of \textit{Obergefell} and the pursuit of equality.\textsuperscript{362} Roland and Nino only used their adoption as a legal means to an end, and that legal means is now obsolete.\textsuperscript{363} Under these extraordinary circumstances, equity would require that Roland and Nino’s adoption be dissolved so that they can exercise their right to marry.

Alternatively, if the court decided that it wanted to apply the best interest standard to Roland’s adoption, then the framework would also allow that discretion under component four.\textsuperscript{364} Instead of focusing on the best interest factors used for normalized child adoptions and dissolutions, the court would consider a list of non-exhaustive factors that best relate to the unique circumstances found in same-sex adult adoption. The court in \textit{Buchanan} used this standard to dissolve the adoption in that case, and its analysis could be used as guidance here.\textsuperscript{365} It is in Roland’s best interest for the adoption to be dissolved because he is afforded fewer legal protections as an adoptee, than he would be if he were legally able to marry Nino. Because of their unique and restricted relationship, they lack the legal, financial, and personal advantages that are inherent in marriage.\textsuperscript{366}

Roland’s best interest is also served by the dissolution due to the nature, quality, and length of his relationship with Nino.\textsuperscript{367} Roland and Nino have been

\textsuperscript{359} \textit{In re Adoption of M.}, 722 A.2d at 620 (citation omitted) (quoting Hous. Auth. of Morristown v. Little, 639 A.2d 286, 292 (N.J. 1994).

\textsuperscript{360} Green, supra note 56.

\textsuperscript{361} \textit{See generally} Potter, supra note 1.


\textsuperscript{363} \textit{Id.}

\textsuperscript{364} \textit{See supra} Section III.B.4. This component could also be utilized if the state did in fact have a restricting statutory code provision that required a best interest determination. In that event, the extraordinary circumstances approach under component three could be bypassed. In regards to the \textit{Bosee} case, no such restricting provision exists; therefore, the facts of this case are analyzed under both the best interest and extraordinary circumstances components, setting forth a complete illustration of the uniform framework.


\textsuperscript{366} \textit{See id.} at *3; \textit{see also supra} Sections II.B, II.C.2.

\textsuperscript{367} \textit{See Buchanan}, 2016 WL 2755848, at *3.
together for over 40 years, and their relationship has always been romantic.\textsuperscript{368} By granting the dissolution and allowing them to marry, their relationship as a couple can only be strengthened, and they will finally be able to possess the legal status that accurately depicts their personal relationship.\textsuperscript{369} Most importantly, however, as an adult, Roland is capable of assessing his own best interests,\textsuperscript{370} and it is his desire to dissolve the adoption so that he can legally marry the love of his life.\textsuperscript{371} In utilizing the flexible four-component framework, every court would have the mechanism necessary to efficiently dissolve these same-sex adult adoptions. By dissolving these adoptions so that same-sex couples can exercise their rights to marry, courts will be further promoting \textit{Obergefell} and its principles of equality.

\textbf{D. Let the Rainbow Flag Fly: Obergefell's Guiding Principles}

The suggestive uniform dissolution framework outlined and analyzed above will allow courts the flexibility and discretion needed to dissolve adoptions that probably would have never taken place had it not been for the history of discrimination against same-sex couples and their fundamental rights. By employing this framework and dissolving these adoptions, \textit{Obergefell}'s guiding principles will be reinforced and will be able to live on in the fight for equality. \textit{Obergefell} reinforced the right to personal choice regarding marriage,\textsuperscript{372} and while the couples who chose same-sex adoption did not have this right at the time they made their decisions, they have it now. Without being able to successfully dissolve their adoptions, these couples are still—for all intents and purposes—without the right to make one of the most intimate decisions a person can make.\textsuperscript{373} Adoption has not been able to parallel the importance of marriage\textsuperscript{374} to those same-sex couples who desire it, and those who cannot dissolve their adoptions are stuck living in the past. Their fundamental right to marriage and to intimate association with the person they love goes beyond simply being free from criminal prosecution,\textsuperscript{375} but without effective dissolution procedures, these couples do not even have that freedom in light of states’ incest statutes.\textsuperscript{376}

\begin{itemize}
\item \textsuperscript{368} Potter, \textit{supra} note 1.
\item \textsuperscript{369} \textit{Buchanan,} 2016 WL 2755848, at *3.
\item \textsuperscript{370} \textit{See id.}
\item \textsuperscript{372} \textit{Obergefell v. Hodges,} 135 S. Ct. 2584, 2589 (2015).
\item \textsuperscript{373} \textit{See id.}
\item \textsuperscript{374} \textit{See id.}
\item \textsuperscript{375} \textit{See id.}
\item \textsuperscript{376} \textit{See Green,} \textit{supra} note 56.
\end{itemize}
For same-sex couples, the right to marry also safeguards their rights in childbearing and procreation.\textsuperscript{377} Being forced to remain in their adoptions in light of changing legal and societal developments alters the nature of their rights to create a larger family unit: This legal conundrum promotes instability, unpredictability, and stigma in forming families—an issue that \textit{Obergefell} sought to remedy.\textsuperscript{378} Lastly, marriage has historically been considered a keystone of our nation's legal and social order.\textsuperscript{379} The implication of restricting the dissolution of these adoptions in favor of finality is two-fold. First, it restricts same-sex couples' access to a multitude of legal benefits that have historically been linked to marriage between heterosexual couples.\textsuperscript{380} Second, they are denied the social prestige and recognition that is central to the institution of marriage in our society.\textsuperscript{381} In a society that continues to progress in the march towards same-sex equality, the denial of these dissolutions is a step in the wrong direction, and what is worse is that these adoptions are neither the beginning nor the end of the LGBTQ issues that have arisen in the \textit{Obergefell} aftermath.

\textbf{E. Where Is the Pot of Gold at the End of This Rainbow?}

The unforeseen impact on same-sex adoption cases and the subsequent erosion of adoption decrees may have been one issue arising under \textit{Obergefell}'s fallout, but it was not the only one.\textsuperscript{382} The concern about the finality of adoption decrees could possibly be squared away with a solid argument that child and adult adoptions should be handled differently,\textsuperscript{383} but other currently unresolved issues stemming from the post-marriage backlash might not be remedied so easily. Not only is enjoying the right to marry still a challenge for some same-sex couples, but subsequent divorce could also be impeded by state laws.\textsuperscript{384} Divorce laws are showing to be implicitly biased against same-sex couples.\textsuperscript{385} The estate of a married couple begins on the date of the marriage—but for the same-sex couples who were only legally allowed to get married last year, this puts them at an unfair disadvantage, especially if they have been building a life

\textsuperscript{377} \textit{Obergefell}, 135 S. Ct. at 2590.
\textsuperscript{378} \textit{See id.}
\textsuperscript{379} \textit{Id.}
\textsuperscript{380} \textit{Id.}
\textsuperscript{381} \textit{See id.}
\textsuperscript{382} \textit{See supra} note 21 and accompanying text.
\textsuperscript{383} \textit{See supra} Section III.A.2.
\textsuperscript{384} \textit{See Bellware, supra} note 54.
\textsuperscript{385} \textit{See id.}
together for decades. \(^{386}\) The question then becomes whether marriage benefits be applied retroactively. \(^{387}\)

In light of *Obergefell*, post-marriage backlash has mainly been rearing its ugly head at a state level, where over 200 anti-LGBTQ bills have been introduced in 2016 alone. \(^{388}\) Many of these ill-intended bills stem from countervailing religious liberty and freedoms laws. \(^{389}\) For example, there have been numerous lawsuits filed against individual businesses and their owners who refuse to participate in same-sex nuptials. \(^{390}\) These cases have prominently involved "a Colorado ‘cake artist,’ Washington state florist and wedding venues in Illinois and New York." \(^{391}\) However, the backlash does not stop there—ironically, it has even been extended to same-sex couples’ rights to form a family and to adopt children. \(^{392}\) Recently, Michigan passed a law that allowed adoption agencies to refuse services to prospective same-sex parents if doing so would violate the organization’s religious beliefs. \(^{393}\)

Another bigger, unresolved issue comes into play with the marital parentage presumption \(^{394}\) which "serves as the foundation for a lifetime of parenting rights and responsibilities." \(^{395}\) While some states, such as California and Massachusetts, are willing to apply the presumption, other states, including Arkansas, Florida, Indiana, and Wisconsin, have not been so gratuitous. \(^{396}\) A corollary issue stemming from increasing LGBTQ rights presented itself to those who identify as transgender when North Carolina passed a law \(^{397}\) in 2016 making "it illegal for transgender people to use public restrooms that match their gender identity." \(^{398}\) While this Note focuses on the dissolution of same-sex adoptions, it recognizes that there are other unresolved issues that need to be remedied when

\[^{386}\text{Potter, supra note 1.}\]
\[^{387}\text{Bellware, supra note 54.}\]
\[^{388}\text{Stack, supra note 51.}\]
\[^{389}\text{Filisko, supra note 51; Gay Marriage Fight, supra note 51 (explaining that these laws “effectively allow[] discrimination to happen by stating that no one’s religious freedom can be substantially burdened without a “compelling reason”’)).}\]
\[^{390}\text{Wolf, supra note 55.}\]
\[^{391}\text{Id.}\]
\[^{392}\text{Gay Marriage Fight, supra note 51.}\]
\[^{393}\text{Id.}\]
\[^{394}\text{In the majority of states, the marital parentage presumption is derived from the woman who gives birth to a child and her husband, who is presumed to be the child’s legal father. Filisko, supra note 51.}\]
\[^{395}\text{Id.}\]
\[^{396}\text{Id.}\]
\[^{397}\text{N.C. GEN. STAT. ANN. § 143-760, repealed by S.L. 2017-4, § 1 (West 2017).}\]
\[^{398}\text{Stack, supra note 51.}\]
it comes to LGBTQ equality. Those remedies are outside of the scope and space available for this Note, but they, too, should not be ignored.

IV. CONCLUSION

Obergefell has highlighted many examples of same-sex inequality that remain in our society, including the unresolved dissolutions of past same-sex adult adoptions due to the disparity of dissolution mechanisms available among the different states. In order to further extend equality under Obergefell, a uniform dissolution framework should be applied to these special adoptions so that the adoption laws of the states can remain stable and so that all couples can exercise their fundamental right to marriage.

By recognizing that adult adoptions are inherently different from child adoptions, courts can overcome the presumed irrevocability of these unconventional adoptions by applying this flexible framework that is guided by precedential dissolution successes. Courts will now have a greater opportunity to reinforce the guiding principles that led to Obergefell’s landmark decision in same-sex marriage equality. The additional unresolved issues discussed in this Note are not the only challenges that have arisen in the fallout months since Obergefell, and they certainly will not be the last. History has been apt to show us that equality takes time, effort, and persistence. Without continual evolvement and adaptation, the history of disgust and discrimination will continue to live on. Albeit with a victory under his belt, Jim Obergefell could not have been more right when he said, “We will have to continue the fight.”

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399 Wolf, supra note 55.

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