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Marriage and Parenting for Same-Sex Couples in Wisconsin

Since the Supreme Court's decision in *Wolf v. Walker*, the ACLU has received many questions about marriage in Wisconsin. Below are some answers to frequently asked questions. **Please note:** These questions and answers provide general information only and are not intended as legal advice or guidance on specific situations that individuals or couples may face. If you have questions about your specific circumstances, you may wish to consult an attorney who practices in the relevant area of law (e.g., family law, adoption, employment law, trusts & estates law, etc.). If you believe you have been discriminated against because of your sexual orientation or because you are married to a person of the same sex, you may also **contact the ACLU of Wisconsin** at **414-272-4032** or through our website, **www.ACLU-WI.org**. This is not a guarantee of legal representation and you should take whatever steps are necessary to preserve your rights while we review your concerns.

We are married and planning to adopt a child. Will we both be able to adopt?

Yes. Wisconsin's adoption law says that a "husband and wife jointly" may adopt.¹ The *Wolf* decision makes clear that "husband and wife" must be interpreted to include married same-sex couples, so you may adopt the child jointly. We recommend contacting a Wisconsin attorney for advice on adoption.

We are married but only one of us has biological or adoptive relationship with our child? May I adopt my spouse's child?

Yes, "either the husband or wife" may adopt "if the other spouse is a parent" of the child.² Again, the *Wolf* decision requires that the terms "husband" and "wife" be interpreted to include same-sex couples, so you may adopt your spouse's child, if there is no other legal impediment to the adoption. We recommend contacting a Wisconsin attorney for advice on adoption.

We are married and one of us is pregnant. Will we both be automatically recognized as the child's parents upon his or her birth?

Wisconsin statutes create a presumption that a "man" is presumed to be the father of a child born to the child's "mother" while the man and the mother are married.³ Because the *Wolf* decision requires the State to treat same-sex married couples the same as different-sex married couples, the female spouse of a woman giving birth to a child is presumed to be the parent of the child and that presumption should be reflected in official documents, such as birth certificates, which must list both spouses' names as parents. However, to ensure that both your parental rights are protected and because there are certain circumstances in which the presumption could be challenged and some states and countries continue to deny recognition to marriages of same-sex couples, we strongly recommend that couples secure adoptions for the non-biological parent to protect both parents' parental relationship. We recommend contacting a Wisconsin attorney for advice about the presumption of parentage and adoption.

¹ Wis. Stat. § 48.82

² Wis. Stat. § 48.82

³ Wis. Stat. § 891.41. See also Wis. Stat. § 891.40 (establishing parentage based on written consent to wife's insemination with donor sperm under the supervision of a doctor), and § 891.405 (creating presumption of parentage based on a written acknowledgment of parenthood on a state registrar form).