



The Massachusetts Parentage Act Coalition

April 5, 2022

Chair Michael Day
Chair Jamie Eldridge
Joint Committee on the Judiciary
Massachusetts State House
24 Beacon Street
Boston, MA 02133
Via E-Mail

RE: The Massachusetts Parentage Act (S 1133 / H 1714)

Dear Chair Day and Chair Eldridge:

As you know, these are difficult times for the transgender and LGBTQ communities. They are facing vicious attacks, particularly against transgender youth and their families, across the country, even in New England, on multiple fronts. It has never been more important for states to act to secure basic protections that allow LGBTQ people to simply live their lives as other community members do.

LGBTQ families, marital and non-marital alike, face tremendous discrimination. Although Massachusetts has had marriage equality since 2004, marriage equality nationwide did not occur until the 2015 case of Obergefell v. Hodges, 135 U.S. 2017 (2015), and there remain substantial efforts in several states to push back against protections for LGBTQ families. Recently, for example, courts in Indiana, Iowa, and Maine have found that the marital presumption of parentage does not apply to married same-sex couples because of a lack of a biological connection. This undermines the parental rights of spouses and poses a very real threat to LGBTQ families and their children.

Legal parentage is the protection that children need to secure their parent/child relationships and to avoid tragic consequences. In Massachusetts, our parentage laws are forty years out of date and exclude certain children and families, particularly those in the LGBTQ community. Furthermore, the statutes have never been updated in the twenty years since Goodridge v. Department of Public Health, 440 Mass. 309 (2003). Massachusetts statutes are in need of

comprehensive reform so that every child has access to a legal parent-child relationship regardless of the circumstances of their birth.

The Massachusetts Parentage Act -- which was revised and re-filed this session and is based on the best-practice model Uniform Parentage Act of 2017 -- is a top priority piece of legislation this session for the LGBTQ community because it affects the lives of children every single day. The bill provides the equality and inclusion that Massachusetts children and families so desperately need. The bill also answers the call of the Supreme Judicial Court, which on numerous occasions over the past two decades, from the 2001 Culliton case to the 2020 Adoption of Daphne case, has asked the legislature to comprehensively update parentage laws. See Culliton v. Beth Israel Deaconess Medical Center, 435 Mass. 285 (2001); Adoption of Daphne, 484 Mass. 421 (2020).

The Coalition has received broad support for this important equality and justice measure, including endorsements from the *Boston Globe*, *Massachusetts Lawyers' Weekly*, and the Boston City Council. So many recognize the dire need to protect the fundamental rights of *all* children, regardless of the circumstances of their birth.

We would like to highlight an important issue: Section 508 - the protection of children who have de facto parents. As you know, the Uniform Parentage Act of 2017 recommends that states ensure that de facto parents are equal, legal parents. In recent years, six states - including Connecticut, Maine, Rhode Island and Vermont -- have enacted statutes protecting children of de facto parents.

De facto parentage is one of the paths to parentage, and it prioritizes children by protecting their relationship to a person who has functioned as their parent. A recent study soon to be published by Professor Doug NeJaime of Yale Law School and Professor Courtney Joslin of UC Davis Law school has reviewed over 600 de facto parent cases nationwide over a span of 40 years. The study concludes that de facto parent status protects children -- particularly those from families facing economic insecurity -- and may in many circumstances serve to keep children out of the child welfare system. In Massachusetts, de facto parent status has been available since 1999, but it has allowed only visitation, a second-class status that perpetuates harm to children and families because only legal parentage allows access to the building blocks of stability and well-being -- decision making, child support, access to benefits and more.

Over the decades, the insufficiency of current de facto parent law has become clear, particularly within the LGBTQ community. Section 508 of the bill reflects an extremely rigorous standard -- higher than the current law -- and contains a standing requirement, seven factors that must each be proven by clear and convincing evidence, as well as explicit protections for survivors of domestic violence. In response to concerns raised, our Coalition has suggested further additions

to the bill language that would raise the standards even higher, to make this status the most protective and rigorous statute in New England. It is critical to include protections for children of de facto parents in H1714 / S1133.

We are families, children, individuals, and organizations from across the state of Massachusetts and beyond. We thank you for your work on the Massachusetts Parentage Act to date, and we urge you to report the bill out favorably.

Sincerely yours,

The Massachusetts Parentage Act Coalition including
Academy of Adoption & Assisted Reproduction Attorneys
ACLU of Massachusetts
Association of Family & Conciliation Courts Massachusetts
American Society for Reproductive Medicine
BAGLY
Boston IVF
Cappelli Law LLC
CCRM Boston
Center for Surrogacy & Egg Donation
Children's Law Center of Massachusetts
Circle Surrogacy & Egg Donation
Citizens for Juvenile Justice
COLAGE
Conceiveabilities
Family Equality
Fenway Health
Fertility within Reach
Friends of Children
GLBTQ Legal Advocates & Defenders
Greater Boston Family Law Inn of Court
Greater Boston PFLAG
Kauffman Law & Mediation
Keshet
Massachusetts Gay & Lesbian Caucus
Massachusetts LGBTQ Bar Association
Massachusetts PPD Fund
Massachusetts Society for the Prevention of Cruelty to Children
Massachusetts Transgender Political Coalition
MassEquality

Massachusetts Medical Society
Modern Family Law
NASW-MA
New England Fertility Society
Nichols, DeLisle & Lightholder
OUT Metrowest
Reproductive Equity Now
Resolve New England
SeedTrust

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Co-Sponsors of the Massachusetts Parentage Act