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BARBARA E. KATZ, P.C.  
ATTORNEY AT LAW

**OFFICE LOCATION:**

3128 CLAIRMONT ROAD N.E.  
BROOKHAVEN, GEORGIA 30329

**MAILING ADDRESS:**

P.O. Box 451373  
ATLANTA, GEORGIA 31145

### MARRIAGE EQUALITY AND THE PARENT-CHILD RELATIONSHIP

Since the Supreme Court's marriage equality decision in June 2015, many married same-sex couples have wanted to know how the decision would affect their rights in Georgia and, specifically, whether both of their names would be placed on their child's birth certificate automatically, given their married status.

Before answering this, however, it is important to note that all parents-to-be should make sure that their Wills and health care documents are up-to-date, whether they are same-sex or opposite-sex couples. Most people erroneously believe that being married takes care of all issues involving their estate, but this is not true. If a person dies without a will, their estate is divided amongst their spouse and their children; the spouse does not get everything. To complicate matters, the children receive the money outright, rather than having it held and managed for them in a trust. This is not sound estate planning.

Moreover, you should know that a person's future marriage and/or future birth or adoption of a child actually voids any prior will, unless the will specifically stated that it was written in anticipation of that future marriage or future birth/adoption. So it is possible that, even if you have a will, it is, or will be, null and void, and needs to be re-done.

And now, to answer your question .... for married couples who are adopting, they will be able to file one joint action to adopt their child, rather than having to complete a first adoption and then a second parent adoption, as we were forced to do in the past. After the adoption, Vital Records will list you as "parent" and "parent" on the child's birth certificate.

For married couples who are having a child biologically using artificial insemination, Georgia Vital Records will automatically list both of you as the baby's legal parents. The reason for this is that Georgia law states that any child "born in wedlock" is "presumed" to be the legitimate (legal) child of both spouses. And, this "presumption" is irrebutable where the parents used artificial insemination, as supervised by a physician, and where they both consented to the use of AI.

Georgia's Office of Vital Records is completely on board with this process, and I've had clients whose babies were born after June 26th who, after some initial confusion (the forms still said "mother" and "father"), were able to process the hospital paperwork with no problems.

However, I would be remiss if I didn't warn you that NOT ALL STATES have this same "marital presumption of legitimacy." Moreover, in some states, the "presumption" is rebuttable by DNA proof showing that a parent is not genetically related to the child. Stated another way, the baby's birth certificate is documentary proof of parentage, but it doesn't create the parent/child relationship; that is created by the marriage relationship, and parentage can be challenged in some states by DNA evidence.

Because of this, many LGBT and mainstream legal organizations are advising that, even after the Supreme Court decision, gay parents having children biologically should still get a court order of parentage or complete a stepparent adoption, even if both parents names are on the birth certificate. (See the links below to webpages of various organizations.)

In my political view, all children born in wedlock, whether of gay or straight parents, should be considered legitimate, i.e. the legal child of both parents. However, as a lawyer, I recognize that it's possible that we may have litigation on this issue in the future. Litigation will likely come from known sperm donors seeking parental rights. Or, from the parents themselves, in a divorce. Or, from the biological grandparents, aunts or uncles, should the biological mother die, and the family of origin is opposed to the nonbiological mother having the child. None of this may resonate with you, and you may feel like the risk is very low that you would ever have a problem (especially if there is not a known donor).

However, you should be fully aware of the risk, and make your decision in an informed way.

Assuming you used artificial insemination (with a medical affidavit available from the supervising physician) you will both be considered legal parents under Georgia law, and federal law, for all intents and purposes. But, in other states, your status on the baby's birth certificate could be challenged, in certain situations.

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Organizational Links:

<http://tinyurl.com/nclr-protect-rights>

<http://marriageequalityfacts.org/topic/parentage/#Q1>