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Preventing Bidding Wars in Washington Adoptions: The Need for Statutory Reform after *In re Dependency of G.C.B.*

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PREVENTING BIDDING WARS IN WASHINGTON ADOPTIONS: THE NEED FOR STATUTORY REFORM AFTER *IN RE DEPENDENCY OF G.C.B.*

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Abstract: In *In re Dependency of G.C.B.*, a Washington court of appeals held that an individual whose parental relationship was involuntarily terminated under the dependency statute lacks standing to later petition to adopt that same child. This Note argues that the Washington adoption statute would not necessarily prevent an equivocating parent who voluntarily relinquished her child from attempting to undo the finality of termination by later seeking to adopt. Nor does the statute effectively limit who can petition to adopt a child to individuals who have been chosen by the child's custodian or who have had the child placed with them. The Note proposes that the Washington adoption statute should be amended to ensure that parents whose relationship with a child is terminated cannot later attempt to relitigate that issue through adoption, and further proposes that eligibility to petition to adopt should be limited so that the child's best interests, not the desires of competing adults, are served.

"Living with a gay couple is not what I want for my child . . . . He deserves a normal, healthy life with me."[1] So said a biological mother more than a year after her parental rights were terminated under Washington's dependency statute following her voluntary relinquishment of the child to the Washington Department of Social and Health Services (DSHS) for adoption purposes.[2] When she learned that the department planned to place her son with a homosexual couple, she began a legal battle to regain custody.[3] First, she alleged that her consent had been obtained through coercion when she was mentally incompetent.[4] While that action was pending, she and her current husband—not the child's biological father—filed a petition to adopt the child.[5] A Washington trial court found that the woman and her husband were, as a matter of law, strangers to the child and thus had the same right to petition to adopt the child as any other person under Washington's adoption law.[6]

1. Michele Ingrassia & Melissa Rossi, *The Limits of Tolerance*, Newsweek, Feb. 14, 1994, at 47.

2. *In re* Dependency of G.C.B., 73 Wash. App. 708, 710–11, 870 P.2d 1037, 1039, *review denied*, 124 Wash. 2d 1019 (1994).

3. *Id.* at 711–12, 870 P.2d at 1040.

4. *Id.* at 712, 870 P.2d at 1040.

5. *Id.* at 713, 870 P.2d at 1040.

6. *Id.* at 715, 870 P.2d at 1042.

In April 1994, a Washington appellate court held in *In re Dependency of G.C.B.*[7] that the biological mother did not have standing to petition to adopt the child.[8] The court reasoned that the statutory provision governing the termination of her parental rights deprived her of standing to appear in any further legal proceedings concerning the child.[9] Although the court was able to dismiss the petition of the biological mother, the case raises the following questions regarding parental termination and adoption under the Washington adoption statute: (1) whether an individual whose parental relationship has been terminated under the adoption statute, as opposed to the dependency statute, may later petition to adopt that same child; and (2) whether there are any limitations on who can petition to adopt a specific child. An examination of these issues reveals the need to amend the Washington adoption statute in order to ensure that a parent whose relationship with a child has been terminated cannot re-establish that relationship through adoption, regardless of whether the termination was entered under the dependency or adoption statute. The statute should also be amended to limit standing to petition to adopt a specific child. These statutory changes will promote continuity of care for the child, maintain the integrity of the public adoption system, and ensure that adoption decisions reflect the best interests of the child rather than the interests of competing adults.

Part I of this Note provides background on Washington adoption law, particularly with respect to the laws concerning how children are freed for adoption, adoption procedure, and limits on revocation of parental relinquishment and consent to adoption. Part II describes the facts, holding, and dicta in *In re Dependency of G.C.B.* Part III analyzes the issues raised by the case. Last, Part IV recommends statutory amendments to the provisions governing termination of parental rights and standing to petition to adopt.

I. ADOPTION IN WASHINGTON

Adoption is the process by which a court[10] gives individuals who are not biologically parent and child the legal status of parent and child.[11]

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7. 73 Wash. App. 708, 870 P.2d 1037 (1994).

8. *Id.* at 717, 870 P.2d at 1042.

9. *Id.*

10. Adoption is a statutory creation that did not exist at common law. *In re* Parsons, 76 Wash. 2d 437, 440–41, 457 P.2d 544, 546 (1969). The statutes governing adoption thus are strictly construed by Washington courts, although not so narrowly as to deny effect to their manifest intent and beneficial aims. *In re* Santore, 28 Wash. App. 319, 326, 623 P.2d 702, 707, *review denied*, 95 Wash.

Adoption addresses the societal need to find stable families for children who are neglected, abused, or unwanted by their biological parents.[12] Additionally, adoption frees biological parents from the burden of raising a child whom they do not want or who they believe would be better off with different parents. It also offers childless individuals an opportunity to be parents.[13]

The stated purpose of adoption in Washington is to find stable homes for children.[14] The principle guiding judicial determinations in adoption proceedings is the best interests of the child.[15] The Washington statute does not specify the factors to be considered by courts in determining the best interests of a child. A judge may thus exercise wide discretion in determining what constitutes the best interests of a particular child.[16] Although the interests of the child are primary, the statute also specifies that the rights of all parties involved in the adoption process—children, biological parents, and adoptive parents—must be protected.[17]

A. Relinquishment and Termination of Parental Rights

In Washington, a child may be relinquished for adoption in one of two ways. Under the adoption statute, a parent may petition to voluntarily relinquish or surrender a child to DSHS, an adoption agency, or directly to a prospective adoptive parent.[18] A written consent to adoption must accompany the petition.[19] If a court approves the petition for

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2d 1019 (1981). In 1984, the existing Washington adoption statute was replaced by a reorganized code. The new adoption code retained many aspects of the previous code, while eliminating confusing or duplicative features caused by amendments to the statute in the years since it first was enacted in 1943. Final Legislative Report, 48th Washington State Legislature, 1984 Regular Session 39 (1984).

11. Joan H. Hollinger et al., *Introduction to Adoption Law and Practice, Adoption Law and Practice* § 1.01[1] (1992).

12. *In re* Adoption of Baby Nancy, 27 Wash. App. 278, 283, 616 P.2d 1263, 1266 (1980), *review denied*, 95 Wash. 2d 1001 (1981).

13. Hollinger, *supra* note 11, § 1.01[1].

14. Wash. Rev. Code § 26.33.010 (1994).

15. Wash. Rev. Code § 26.33.010 (1994).

16. *In re* Hamilton, 41 Wash. 2d 53, 56, 246 P.2d 849, 851 (1952).

17. Wash. Rev. Code § 26.33.010 (1994); *see also In re* Reinius, 55 Wash. 2d 117, 121, 346 P.2d 672, 674 (1959).

18. Wash. Rev. Code § 26.33.080 (1994). Because *In re Dependency of G.C.B.* involved a child who was available for adoption through DSHS, this Note will focus on the issues raised relating to adoption through the department or agencies, not private adoptions.

19. Wash. Rev. Code § 26.33.080(1) (1994). Consent is required from the parent or alleged father. *Id.*

relinquishment to an agency or DSHS, it must enter an order terminating the parent-child relationship and authorizing the custodial agency to place the child with a prospective adoptive parent.[20] Although a court must approve a petition for relinquishment, the judicial proceedings are voluntary and nonadversarial.[21]

Alternatively, a child may be declared "dependent" under the Washington dependency statute[22] and placed in the custody of the state. Dependency proceedings begin when any person files a petition alleging that the child has been abandoned, abused, or neglected, or that the child's psychological or physical development is in danger because he or she has no parent capable of providing adequate care.[23] The legislature has expressed a preference that families remain intact, unless a child's right to basic nurture, health, or safety is jeopardized.[24] More importantly, the United States Supreme Court has recognized that a biological parent has a fundamental liberty interest in the care, custody, and control of his or her child.[25] However, the state has a right and obligation to intervene when the child needs protection from a parent.[26] If the court finds by clear, cogent, and convincing evidence that certain specific allegations[27] are established, it may order the termination of the

20. Wash. Rev. Code § 26.33.090 (1994).

21. *In re* Adoption of Hernandez, 25 Wash. App. 447, 452, 607 P.2d 879, 882 (1980).

22. Wash. Rev. Code §§ 13.34.010–.310 (1994).

23. Wash. Rev. Code §§ 13.34.030–.040 (1994).

24. Wash. Rev. Code § 13.34.020 (1994).

25. Santosky v. Kramer, 455 U.S. 745, 753 (1982); Meyer v. Nebraska, 262 U.S. 390, 399 (1923).

26. *In re* Sumey, 94 Wash. 2d 757, 762, 621 P.2d 108, 110 (1980).

27. Washington's dependency statute provides that an order terminating the parent-child relationship must allege the following:

(1) That the child has been found to be a dependent child under *RCW 13.34.030(2); and

(2) That the court has entered a dispositional order pursuant to RCW 13.34.130; and

(3) That the child has been removed or will, at the time of the hearing, have been removed from the custody of the parent for a period of at least six months pursuant to a finding of dependency under *RCW 13.34.030(2); and

(4) That the services ordered under RCW 13.34.130 have been offered or provided and all necessary services, reasonably available, capable of correcting the parental deficiencies within the foreseeable future have been offered or provided; and

(5) That there is little likelihood that conditions will be remedied so that the child can be returned to the parent in the near future. In determining whether the conditions will be remedied the court may consider, but is not limited to, the following factors:

(a) Use of intoxicating or controlled substances so as to render the parent incapable of providing proper care for the child for extended periods of time and documented unwillingness

parent-child relationship.[28] If no other person has parental rights following the termination order, the court must commit the child to the custody of DSHS or a licensed child-placement agency for the purpose of placing the child for adoption.[29]

The termination of the parent-child relationship can involve an overlap between the juvenile dependency and adoption statutes. For example, it is not uncommon for biological parents to relinquish their children to state agencies after being threatened with an involuntary termination action.[30] The significance of this overlap lies in the fact that the termination provisions under each statute are similar but not identical. A termination order under either the adoption or dependency statute severs all rights, powers, privileges, immunities, duties, and obligations of the parent.[31] However, the termination provision in the dependency statute further provides that "the parent shall have no standing to appear at any further legal proceedings concerning the child."[32] In contrast, the adoption statute provides that an individual whose parent-child relationship has been terminated

> is not thereafter entitled to notice of proceedings for the adoption of the child by another, nor has the parent or alleged father any right to contest the adoption or otherwise to participate in the

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of the parent to receive and complete treatment or documented multiple failed treatment attempts; or

(b) Psychological incapacity or mental deficiency of the parent that is so severe and chronic as to render the parent incapable of providing proper care for the child for extended periods of time, and documented unwillingness of the parent to receive and complete treatment or documentation that there is no treatment that can render the parent capable of providing proper care for the child in the near future; and

(6) That continuation of the parent and child relationship clearly diminishes the child's prospects for early integration into a stable and permanent home; or

(7) In lieu of the allegations in subsections (1) through (6) of this section, the petition may allege that the child was found under such circumstances that the whereabouts of the child's parent are unknown....

Wash. Rev. Code § 13.34.180 (1994). [*Wash. Rev. Code 13.34.030 was amended by Laws 1994, ch. 288, § 1, changing subsection (2) to subsection (4).]

28. Wash. Rev. Code § 13.34.190 (1994).

29. Wash. Rev. Code § 13.34.210 (1994).

30. Hollinger, *supra* note 11, § 1.05[2][d]. The case of G.C.B. demonstrates this overlap, in that Megan Lucas has said that she was told by DSHS that "if I didn't relinquish, they would just take him." *Sonya Live*, CNN, Sept. 28, 1993, *available in*, LEXIS, Nexis Library, NEWS File.

31. Wash. Rev. Code §§ 26.33.130, 13.34.200 (1994).

32. Wash. Rev. Code § 13.34.200(1) (1994).

proceedings unless an appeal from the termination order is pending or unless otherwise ordered by the court.[33]

B. *Limitations on Parental Attempts to Revoke Consent*

Once a relinquishment and consent to adoption has been approved by a court, it may not be revoked except for fraud or duress by the person requesting consent or for mental incompetency on the part of the person giving the consent.[34] A biological parent seeking to set aside a relinquishment must establish one of these grounds by clear, cogent, and convincing evidence.[35] Washington courts have held that inexperience, emotional stress, uncertainty, and indecisiveness are insufficient bases for a revocation.[36] A written consent may not under any circumstances be revoked more than one year after it has been approved by the court.[37]

The limited revocability of relinquishment reflects an important objective of the relinquishment and adoption statutes: protecting the adopting parents, the child, and the new family from later intrusion by the biological parents.[38] Thus, courts have found it contrary to the best interests of the child and the public's interest in the finality of adoption procedures to allow a biological parent to subject a child to another change of custody after the child has been voluntarily relinquished.[39] Also, allowing the consent to be revoked too easily could discourage prospective adoptive parents because they might lose a child after emotional attachments have developed.[40]

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33. Wash. Rev. Code § 26.33.130(4) (1994).

34. Wash. Rev. Code § 26.33.160(3) (1994) provides that "[w]ithin one year after approval, a consent may be revoked for fraud or duress practiced by the person, department, or agency requesting the consent or for lack of mental competency on the part of the person giving the consent at the time the consent was given."

35. *In re* A.S., 65 Wash. App. 631, 635, 829 P.2d 791, 793 (1992); *In re* Adoption of Hernandez, 25 Wash. App. 447, 455, 607 P.2d 879, 884 (1980).

36. *In re* Adoption of Baby Girl K, 26 Wash. App. 897, 904, 615 P.2d 1310, 1315 (1980), *review denied*, 95 Wash. 2d 1003 (1981).

37. Wash. Rev. Code § 26.33.160(3) (1994).

38. *In re* Santore, 28 Wash. App. 319, 327, 623 P.2d 702, 707, *review denied*, 95 Wash. 2d 1019 (1981).

39. *In re* Adoption of Baby Girl K, 26 Wash. App. at 905, 615 P.2d at 1315.

40. *In re* Adoption of Baby Nancy, 27 Wash. App. 278, 284, 616 P.2d 1263, 1267 (1980).

C. *Adoption Procedure*

In adoptions through DSHS or an agency, the biological parents relinquish parental rights, give custody of the child to the agency or department, and consent to adoption.[41] As noted above, DSHS may also obtain authority to place a child for adoption as a result of the termination of parental rights to a dependent child.[42] In either case, the custodial agency is empowered to place the child with prospective adoptive parents and consent to the proposed adoption.[43]

The statute requires that a "preplacement report" be filed with the court before a child is placed with prospective adoptive parents.[44] A preplacement report is a general assessment of the individuals' fitness to be adoptive parents—which is produced by an agency, department, or court-approved individual.[45] The report makes a recommendation to the court regarding their fitness, based upon a study of their home, family, health, economic resources, and criminal records.[46] Any person may at any time request the preparation of a preplacement report, even if no adoption petition has been filed.[47] The custodial agency generally creates the preplacement report[48] and uses this initial assessment of prospective adoptive parents to determine whether they are suitable for a particular child.[49] Although the Washington statute specifically authorizes a custodial agency to make a report on a petitioner for adoption of a child in its custody,[50] nothing in the statute prevents an individual from obtaining a preplacement report from a qualified entity or individual different from the child's custodian.

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41. Wash. Rev. Code § 26.33.080 (1994).

42. *See supra* notes 26–29 and accompanying text.

43. Wash. Rev. Code §§ 13.34.210, 26.33.090(5) (1994).

44. Wash. Rev. Code § 26.33.180 (1994). An exception in made in cases in which a prospective adoptive parent seeks to adopt his or her spouse's child. Wash. Rev. Code § 26.33.220 (1994).

45. Wash. Rev. Code § 26.33.190 (1994); *see also* James B. Boskey, *Placing Children for Adoption*, *in* Hollinger, *supra* note 11, § 3.03[3] (discussing various purposes of a "home study").

46. Preplacement reports can range in quality from superficial approvals to thorough evaluations. As a result, the usefulness can vary considerably depending upon the investigator. Hollinger, *supra* note 11, § 4.12.

47. Wash. Rev. Code § 26.33.190(5) (1994). If no adoption petition has been filed, the report is indexed in the name of the person requesting the report. Any subsequent reports must be filed together with the original report. *Id.*

48. *See, e.g.*, Adoption Through the Division of Children and Family Services, DSHS 22-702X; James B. Boskey, *Placing Children for Adoption*, *in* Hollinger, *supra* note 11, § 3.03[3].

49. Hollinger, *supra* note 11, § 3.03[3].

50. Wash. Rev. Code § 26.33.210 (1994).

Under the Washington adoption statute, any person who is at least eighteen years old and legally competent may become an adoptive parent.[51] A "prospective adoptive parent" initiates the adoption process by filing with the court a petition to adopt a specific child.[52] The petition must include a preplacement report and, if it has been executed, written consent to adoption by the child's legal custodian.[53]

Once a prospective adoptive parent files an adoption petition, the court must order the making of a "post-placement report" to evaluate the placement and determine if it is in the best interests of the child.[54] The report generally must be filed with the court within sixty days after it is ordered,[55] after which time the court determines whether the proposed adoption is in the best interests of the child.[56]

II. IN RE DEPENDENCY OF G.C.B.

A. Facts

When G.C.B. was six months old, DSHS initiated dependency proceedings, alleging that his biological mother, Megan Lucas, had abandoned him.[57] The court placed the child in foster care.[58] The state supported the dependency petition with evidence that the mother had a history of mental instability, substance abuse, suicide attempts, and juvenile offenses.[59] The court declared the child dependent on January 24, 1991, and ordered that he remain in foster care.[60]

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51. Wash. Rev. Code § 26.33.140(2) (1994).

52. The adoption statute provides that "[a]n adoption proceeding is initiated by filing with the court a petition for adoption. The petition shall be filed by the prospective adoptive parent." Wash. Rev. Code § 26.33.150(1) (1994).

53. Wash. Rev. Code § 26.33.150 (1994). The court can, however, dispense with the agency's consent to the adoption. Wash. Rev. Code § 26.33.170 (1994).

54. The adoption statute provides that at the time the petition for adoption is filed, the court shall order a post-placement report made to determine the nature and adequacy of the placement and to determine if the placement is in the best interests of the child. Wash. Rev. Code § 26.33.200 (1994).

55. Wash. Rev. Code § 26.33.200 (1994).

56. Wash. Rev. Code § 26.33.240 (1994).

57. *In re* Dependency of G.C.B., 73 Wash. App. 708, 709, 870 P.2d 1037, 1039, *review denied*, 124 Wash. 2d 1019 (1994).

58. *Id.* at 710, 870 P.2d at 1039.

59. *Id.*

60. *Id.*

In June 1992, G.C.B. was returned to his mother, who had since married and given birth to another child.[61] Less than one month later, Ms. Lucas told DSHS that she wished to return the child to foster care.[62] On August 12, 1992, she signed a "Relinquishment of Custody [and] Consent to Termination/Adoption," which was approved by a court order on September 8, 1992.[63] In response to complaints from Ms. Lucas's grandmother regarding the relinquishment process, DSHS requested a hearing to establish that the relinquishment was voluntary.[64] During the hearing, Ms. Lucas acknowledged that she had signed the relinquishment papers, that no one had threatened her, that she had expressed a desire to relinquish her child, and that she had made her decision voluntarily after consulting with her attorney.[65] On October 15, 1992, the court issued an order approving the relinquishment and consent to adoption,[66] concluding that Ms. Lucas's decision was a "knowing, voluntary and intelligent decision made free from any coercion or duress."[67]

While the court considered the voluntary relinquishment issue, DSHS filed a petition for involuntary termination of the parent-child relationship.[68] The court considered the voluntary relinquishment of custody by Ms. Lucas to be evidence that it was unlikely that parental deficiencies would be remedied so as to permit the return of the child to the home in the near future.[69] The court thus entered an "Order

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61. *Id.*

62. *Id.*

63. *Id.*

64. *Id.* at 710–11, 870 P.2d at 1039.

65. *Id.* at 711, 870 P.2d at 1039.

66. Findings of Fact, Conclusions of Law & Order of Approval of Relinquishment of Custody, Consent to Termination/Adoption & Waiver of Right to Receive Notice of Proceedings at 3–4, *In re* Dependency of G.C.B., No. 90-7-00079-1 (Super. Ct. Juv. Div. Oct. 15, 1992) [hereinafter Approval of Relinquishment], *rev'd on other grounds*, 73 Wash. App. 708, 870 P.2d 1037, *review denied*, 124 Wash. 2d 1019 (1994).

67. *Id.* at 3.

68. Petition for Termination of Parent-Child Relationship at 1, *In re* Dependency of G.C.B., No. 90-7-00079-1 (Super. Ct. Juv. Div. Sept. 15, 1992), *rev'd on other grounds*, 73 Wash. App. 708, 870 P.2d 1037, *review denied*, 124 Wash. 2d 1019 (1994). Although the adoption statute specifies that a court must enter an order terminating the parent-child relationship when it approves a voluntary relinquishment petition, the court did not do so in this case. Approval of Relinquishment at 3–4, *In re* Dependency of G.C.B. (No. 90-7-00079-1).

69. Findings of Fact, Conclusions of Law & Order Terminating Parent-Child Relationship at 3, *In re* Dependency of G.C.B., No. 90-7-00079-1 (Super. Ct. Juv. Div. Dec. 21, 1992), *rev'd on other grounds*, 73 Wash. App. 708, 870 P.2d 1037, *review denied*, 124 Wash. 2d 1019 (1994).

Terminating Parent-Child Relationship" under the dependency statute on December 22, 1992, and granted DSHS permanent custody of the child.[70]

G.C.B. moved through several foster homes with a potential for adoption, but none proved satisfactory.[71] In September 1993, DSHS planned to place G.C.B. with a male, homosexual couple whom the Department had selected as prospective adoptive parents for the child.[72] Ms. Lucas learned of the proposed placement and, at least in part because she did not want the child to be adopted by homosexuals,[73] filed a "Petition to Revoke Consent" in juvenile court.[74] Her efforts to prevent the child's placement with the couple were unsuccessful, and G.C.B. was transferred to their home on September 21, 1993.[75] While the petition to revoke consent was pending, Ms. Lucas and her husband filed a petition to adopt the child in superior court.[76] The petition included the requisite preplacement report recommending that the court grant the petition.[77] The Lucases then moved that the child be placed in their home so that a post-placement report could be made.[78]

B. Legal Issues

The trial court ordered that G.C.B. be placed with the Lucases.[79] Since the statute requires a judge to order the making of a post-placement report when a complete petition to adopt has been filed by prospective adoptive parents, the judge found that the statute mandated placing the

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70. *Id.* at 5.

71. *In re* Dependency of G.C.B., 73 Wash. App. 708, 711, 870 P.2d 1037, 1040, *review denied*, 124 Wash. 2d 1019 (1994).

72. *Id.* The two men are licensed foster parents. *Mom Changes Mind But Gay Couple Wants To Adopt Son*, The Legal Intelligencer, Sept. 21, 1993, at 5.

73. Ms. Lucas argued that her consent should be revoked because it was obtained through duress and fraud on the part of DSHS and she was not mentally competent when it was made. *In re* Dependency of G.C.B., 73 Wash. App. at 712, 870 P.2d at 1040. Although she has said that she was not trying to regain custody because the couple is gay, she also made numerous statements regarding her opposition to adoption of G.C.B. by homosexuals and her belief that he was going to be adopted by heterosexual parents. *Id.*; *see also* Michele Ingrassia & Melissa Rossi, *The Limits of Tolerance*, Newsweek, Feb. 14, 1994, at 47; *Mother Fights a Son's Adoption by Homosexuals*, N.Y. Times, Jan. 1, 1994, at 8; *Two Gay Lovers Fight to Adopt Three-Year-Old*, CNN, Sept. 21, 1993, *available in*, LEXIS, Nexis Library, NEWS File.

74. *In re* Dependency of G.C.B., 73 Wash. App. at 711–712, 870 P.2d at 1040.

75. *Id.* at 712, 870 P.2d at 1040.

76. *Id.* at 713, 870 P.2d at 1040.

77. *Id.*

78. *Id.*

79. *Id.* at 714, 870 P.2d at 1041.

child with the petitioners.[80] The trial judge asserted that danger to a child's welfare is the only reason that a judge should not order placement with petitioners.[81]

DSHS appealed the trial court's order requiring that the child be placed with the Lucases.[82] The court of appeals held that the biological mother's petition to adopt was fatally flawed because the statutory provision regarding termination of the parent-child relationship under the dependency statute deprives a parent of standing to appear in all legal proceedings involving his or her child.[83] Although neither party had brought this provision to the attention of the appellate court, the court found the language dispositive.[84]

Although the appellate court was able to dispense with Ms. Lucas's petition on the basis of a lack of standing, it found the trial court's interpretation of Washington adoption law so erroneous as to warrant further comment on some of the issues raised by the case.[85] The court discussed whether the statutory provisions regarding post-placement reports give petitioners the right to obtain placement of the child whom they wish to adopt. The court asserted that adoption is not open to any and every person who may wish to adopt a particular child.[86] The court reasoned that satisfaction of general eligibility criteria for adoptive parenthood does not convert an individual into a "prospective adoptive parent" with the right to petition to adopt and to demand placement of a specific child.[87] The statute is silent as to whether additional qualifications are necessary to convert an eligible individual into a prospective adoptive parent,[88] or whether filing an adoption petition is sufficient. Nevertheless, the court concluded that both "common sense" and Washington case law give the custodial agency the authority to

80. *Id.*. When the judge learned that the gay couple planned to file a competing petition to adopt G.C.B., he delayed the order to transfer the child for a month so that the gay couple would be able to obtain a post-placement report without having the child returned to them later. *Id.*

81. *Id.* at 715, 870 P.2d at 1041.

82. *Id.* at 709, 870 P.2d at 1038.

83. *Id.* at 716–17, 870 P.2d at 1042. The court also found that since a married petitioner's spouse is required by RCW 26.33.150(4) to join the petition to adopt, Wade Lucas was also ineligible to petition to adopt the child. *Id.* at 718, 870 P.2d at 1043.

84. *Id.* at 717, 870 P.2d at 1042.

85. *Id.* at 718–19, 870 P.2d at 1043–44.

86. *Id.* at 719, 870 P.2d at 1044.

87. *Id.*

88. *Id.*, 870 P.2d at 1043.

choose, and thus limit, who will be the prospective adoptive parents for a particular child.[89]

III. ANALYSIS OF ISSUES RAISED BY *IN RE DEPENDENCY OF G.C.B.*

The wording of the termination provision in the adoption statute creates at least two situations where a parent whose rights have been terminated may be able to re-establish parental rights by subsequently petitioning to adopt the child. This result violates the principle of finality of relinquishment, is detrimental to the public adoption system, and is contrary to the child's best interests. Additionally, the current statute does not limit who has standing to petition to adopt a particular child. Wide-open standing to petition to adopt a particular child does not adequately respect the child's need for continuity of care, the child's perspective on relationships, or the efforts of adoption agencies to find suitable, stable homes for children.

A. Termination Under the Adoption Statute Should Preclude Subsequent Petitions to Adopt the Same Child

The appellate court in *In re Dependency of G.C.B.* held that Ms. Lucas lacked standing to petition to adopt the child whom she previously had relinquished because the termination order had been entered under the dependency statute.[90] Although Ms. Lucas initially relinquished her parental rights voluntarily, DSHS pursued an involuntary termination, and the termination order was entered under the dependency statute, rather than under the adoption statute.[91] Thus, the appellate court's opinion did not address the issue of whether a parent who voluntarily relinquishes her child and has her parental rights terminated under the adoption statute could seek to re-establish parental rights through a subsequent adoption petition.

Termination under the adoption statute as now written does not necessarily prohibit an individual whose parental rights have been terminated from subsequently petitioning to adopt the child either when

89. *Id.*, 870 P.2d at 1044.

90. *Id.* at 716–17, 870 P.2d at 1042.

91. *Id.* at 710, 716, 870 P.2d at 1039, 1042; *see also* Findings of Fact, Conclusions of Law & Order Terminating Parent-Child Relationship at 5, *In re* Dependency of G.C.B., No. 90-7-00079-1 (Super. Ct. Juv. Div. Dec. 21, 1992), *rev'd on other grounds*, 73 Wash. App. 708, 870 P.2d 1037, *review denied*, 124 Wash. 2d 1019 (1994).

no other individual has filed an adoption petition or when the court permits the individual to contest or participate in proceedings initiated by another petitioner. Although the termination provision in the adoption statute has been held to deprive a biological parent of the right to visitation with the child following termination,[92] there is no Washington case law construing the effect of this subsection on a parent's standing to file a petition to adopt the child. Unlike the termination provision under the dependency statute, which denies standing at "any further legal proceedings concerning the child,"[93] the provision in the adoption statute only specifies that the terminated parent loses the right to contest or participate in proceedings "for the adoption of the child by another."[94] Thus, the plain language of the adoption statute does not address a situation in which no other petition for adoption has been filed. Furthermore, even if another person has already petitioned to adopt the child, the provision authorizes a judge to waive the limitations imposed upon parents whose relationship was terminated.[95]

If the order terminating Ms. Lucas's parent-child relationship had been entered under the adoption statute—an appropriate authority given the voluntary nature of her relinquishment[96]—the termination provision may not have been a legitimate ground on which to dismiss her petition. She was not participating in the proceedings for adoption of the child by another, because the gay foster parents had not filed a petition to adopt when the Lucases filed their petition.[97] Even if another petition had already been filed, the trial court—possibly out of sympathy for her biological link to the child or opposition to gay adoption—could have issued an order authorizing her to participate. This possible result contravenes the principle of finality of relinquishment, jeopardizes the integrity of the adoption process, and is not in the best interests of children.

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92. *In re* Welfare of Ferguson, 41 Wash. App. 1, 8, 701 P.2d 513, 517–18, *review denied*, 104 Wash. 2d 1008 (1985). This case, however, involved an attempt by a biological parent to enter into an "open adoption" agreement in which his children would be adopted by another person, but he would retain visitation rights. *See also In re* Dependency of A.V.D., 62 Wash. App. 562, 572–73, 815 P.2d 277, 283 (1991) (finding that termination of parental rights precludes visitation rights for father).

93. Wash. Rev. Code § 13.34.200 (1994).

94. Wash. Rev. Code § 26.33.130(4) (1994).

95. *Id.*

96. *See supra* notes 63–67 and accompanying text.

97. *In re* Dependency of G.C.B., 73 Wash. App. 708, 714, 870 P.2d 1037, 1041, *review denied*, 124 Wash. 2d 1019 (1994).

1. *Allowing the Terminated Parent to Petition to Adopt the Same Child Undermines the Finality of Relinquishment*

The Washington Supreme Court has acknowledged that competing policy considerations affect the issue of the finality of parental relinquishment and consent to adoption.[98] On the one hand, the statutory procedures seek to protect parents from making a hurried, pressured, or ill-informed decision to give up their child.[99] The statute thus requires a judicial hearing no sooner than forty-eight hours after the birth of the child to ensure that the relinquishment and consent to adopt were executed validly.[100] Parents may revoke a valid consent at any time before it is approved by a court or during the forty-eight hours after the birth of the child.[101] For up to a year after approval, a court may order the revocation of consent obtained through fraud or duress, or while the parent was mentally incompetent.[102]

Protection of the biological parents' interests competes with the desire to rapidly place children with individuals who are likely to become permanent caregivers.[103] Washington courts have thus recognized a legislative intent to promote the rapidity, certainty, and finality of consent.[104] The asserted policy rationales behind a limited revocation right include respect for the strong emotional ties formed between the child and the prospective adoptive parents.[105] Courts also have found it contrary to the best interests of the child to allow a biological parent to voluntarily give up the child and then later subject the child to another change of custody.[106] Finally, permitting the biological parents to set aside consent injects uncertainty into the relationship between the child and the prospective adoptive parents, which is contrary to the public's interest in encouraging capable people to adopt.[107]

In re Dependency of G.C.B demonstrates the potential negative consequences of allowing parents to bypass revocation limits. The child had already been through several unsuccessful placements, as well as in

98. *In re* Adoption of Jackson, 89 Wash. 2d 945, 949, 578 P.2d 33, 36 (1978).

99. Joan H. Hollinger, *Consent to Adoption, in* Hollinger, *supra* note 11, § 2.11[1][a].

100. Wash. Rev. Code § 26.33.90 (1994).

101. Wash. Rev. Code § 26.33.160(2) (1994).

102. Wash. Rev. Code § 26.33.160(3) (1994).

103. Hollinger, *supra* note 11, § 2.11[1][a].

104. *In re* Adoption of Jackson, 89 Wash. 2d 945, 949, 578 P.2d 33, 36 (1978).

105. *Id.* at 950, 578 P.2d at 36.

106. *See supra* notes 38–40 and accompanying text.

107. *Id.*

and out of his biological mother's care.[108] The gay couple met with the child six or seven times for as long as four days, after which DSHS determined that the child and prospective adoptive parents were well-suited to each other.[109] The attempt to regain custody by Ms. Lucas disrupted the existing adoption plan, threatened to subject the child to another move, and quite possibly destabilized the relationship between the child and his caregivers. It is possible that other individuals contemplating adoption might be intimidated by the prospect of similarly facing competition from a former parent.

Allowing a person whose parental relationship has been voluntarily terminated to petition to adopt the child undermines legislative efforts—manifest in the limitations governing revocation—to protect the child, the adoptive parents, and the integrity of the adoption process from equivocating parents. *In re Dependency of G.C.B.* demonstrates how giving terminated parents standing to adopt their child creates a loophole in the limitations on the revocation of consent. After filing her petition to adopt, Ms. Lucas brought a motion to dismiss her petition to revoke consent.[110] She admitted that her decision was motivated by a concern that a successful revocation of consent would likely be followed by state efforts to involuntarily terminate her parental rights.[111] By focusing on adoption, she hoped to avoid that possibility.[112] Although her strategy ultimately proved unsuccessful because the termination of parental rights was entered under the dependency statute,[113] the same result might not have followed if the termination order had been entered under the adoption statute. Thus, the current statutory provisions governing the effects of termination under the adoption statute potentially provide opportunities for subverting the legislative goal of ensuring the finality of relinquishment and consent to adoption.

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108. *In re* Dependency of G.C.B., 73 Wash. App. 708, 711, 870 P.2d 1037, 1040, *review denied*, 124 Wash. 2d 1019 (1994).

109. Dee Norton, *Possible Gay Couple's Adoption Bid Halted*, Seattle Times, Sept. 11, 1993, at A10.

110. *In re* Dependency of G.C.B., 73 Wash. App. at 714, 870 P.2d at 1041.

111. *Id.* Her parental rights had, in fact, already been terminated under the provisions governing involuntary termination. *See supra* note 70 and accompanying text.

112. 73 Wash. App. at 714, 870 P.2d at 1041.

113. *See supra* notes 68–70 and accompanying text.

2. *Petitions to Adopt Contrary to Agency Plans Jeopardize the Integrity of the Adoption System*

When a child is relinquished to a custodial agency, the agency acquires the authority to place that child for adoption.[114] An agency performs various services throughout the adoption process, including conducting preplacement studies to evaluate the fitness of prospective adoptive parents, choosing appropriate adoptive parents for the specific child, introducing the child into the adoptive home, and preparing a post-placement report to be used by the court.[115] In Washington State, adoption services provided by DSHS include arranging an initial meeting between the child and the prospective adoptive parents, supervising a period of visitation, and determining whether the placement should occur. Following placement, DSHS workers continue to meet with the new family regularly to answer questions and provide referral information for medical and social support services.[116]

The adoption services provided by custodial agencies are particularly important because many of the children have "special needs." Prospective adoptive children are considered to have special needs if they are older; members of an ethnic minority; have physical, mental, or emotional problems; or are part of a sibling group.[117] Public adoption agencies work primarily with children who have been abused and neglected.[118] Most of the children available through DSHS are six years of age or older.[119] Languishing in foster care exacerbates the trauma already experienced by the child and decreases the likelihood that the child will ever be adopted.[120] Because of the preference that most adoptive parents have for healthy infants, custodial agencies must actively recruit prospective adoptive parents for these children.[121]

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114. Wash. Rev. Code § 26.33.090 (1994).

115. James B. Boskey, *Placing Children for Adoption*, *in* Hollinger, *supra* note 11, § 3.03[3]

116. Adoption Through the Division of Children and Family Services, DSHS 22-702X (Rev. 10/92).

117. Judith K. McKenzie, *Adoption of Children with Special Needs*, 3 Future of Children 62, 62 (Spring 1993).

118. Burton Z. Sokoloff, *Antecedents of American Adoption*, 3 Future of Children 17, 24 (Spring 1993).

119. Adoption Through the Division of Children and Family Services, DSHS 22-702(X) (Rev. 10/92).

120. McKenzie, *supra* note 117, at 63.

121. Joan H. Hollinger, *Adoption: Overview and Major Recommendations*, 3 Future of Children 43, 45 (Spring 1993).

The Washington Supreme Court has recognized that custodial agencies must invest time and effort in finding suitable prospective adoptive parents and developing an adoption plan with them.[122] Courts also have acknowledged the public interest in a system that encourages capable individuals to adopt.[123] Allowing an individual, such as Ms. Lucas, to disrupt the adoption plans of custodial agencies has a detrimental effect upon both the investment of public funds in the adoption process and the willingness of individuals to become adoptive parents.

3. *Permitting Parents Who Voluntarily Relinquished Their Child to Later Petition to Adopt That Same Child Is Not in the Best Interests of the Child*

Social scientists and child development experts offer support to the argument that allowing a parent to undo relinquishment and disrupt adoption plans for the child is contrary to the child's best interests. For example, the authors of the influential book *Beyond the Best Interests of the Child* advocated radical changes in the legal guidelines governing child placement decisions in order to reflect psychoanalytic knowledge about child development.[124] They recommended that placement decisions support the child's need for continuity of care and respect his or her different sense of time.[125]

The purported need for continuity of care for children is based on the observation that stability in relationships, surroundings, and environment is necessary for a child's development.[126] The authors of *Beyond the Best Interests of the Child* found that people experience disruptions in continuity differently, depending on their ages.[127] For example, repeated disruptions in caregiving can limit the ability of infants and young children to form emotional attachments.[128] A change in who parents a child can have a regressive effect upon the child's affections, skills,

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122. *In re* Reinius, 55 Wash. 2d 117, 120 n.2, 346 P.2d 672, 678 n.3 (1959).

123. *In re* Adoption of Baby Nancy, 27 Wash. App. 278, 283, 616 P.2d 1263, 1267 (1980).

124. Joseph Goldstein et al., *Beyond the Best Interests of the Child* 7 (1979).

125. *Id.* at 40.

126. *Id.* at 31. The Washington Supreme Court has recognized the "importance of stability and predictability in parent/child relationships, *even where the parent figure is not the natural parent.*" McDaniels v. Carlson, 108 Wash. 2d 299, 310, 738 P.2d 254, 261 (1987) (emphasis added).

127. Goldstein, *supra* note 124, at 32.

128. *Id.* at 33.

achievements, and social adaptations.[129] Likewise, a move from one house to another may be experienced as a terrible loss by a young child who is unable to rationally assess the reasons for the change.[130]

The authors of *Beyond the Best Interests of the Child* also recommended that placement decisions reflect the child's, not the adults,' sense of time.[131] They asserted that for most children younger than five years, a parental absence lasting longer than two months is perceived as a permanent loss, and new attachments begin to develop with the current caregiver.[132] To accommodate this difference in perspective, the authors would require that placement decisions be made promptly and with finality.[133]

Studies of how well children adjust to adoption also support the need to guard relinquishment decisions from subsequent equivocation by biological parents. For example, one researcher compared the adjustment of children (at various intervals between the ages of eleven and twenty-three) who were adopted, brought up by biological mothers, or raised in long-term foster homes.[134] The biological mothers initially had registered with an adoption agency, but changed their decisions about giving up their children.[135] The researcher found a considerable risk of social maladjustment and school failure among the children raised by biological mothers who originally had planned to relinquish their children for adoption.[136] In contrast, the study found that adopted children had outcomes similar to the population at large.[137] Because of the high frequency of criminal behavior and substance abuse among the biological parents, the researcher concluded that adoption largely reduced the risk of these behaviors being passed on to children.[138] Finally, the study found that foster children tended to compare

129. *Id.* at 18.

130. *Id.* at 12–13.

131. *Id.* at 40.

132. *Id.* at 40–41.

133. *Id.* at 43–45.

134. Michael Bohman & Sören Sigvardsson, *Outcome in Adoption: Lessons from Longitudinal Studies*, in *The Psychology of Adoption* 93, 97 (David M. Brodzinsky & Marshall D. Schechter eds., 1990).

135. *Id.* at 96. Most of the biological mothers were young, unmarried, and worked in unskilled or semi-skilled jobs. *Id.* at 97.

136. *Id.* at 105.

137. *Id.* at 104.

138. *Id.* at 104–05.

unfavorably with adopted children at various ages,[139] suggesting that agency efforts to move children from foster care to adoptive placements should not be jeopardized.

Studies considering the psychological vulnerability of adopted children similarly suggest that children might be better off with their adoptive families than if they had been reared by their biological parents. When researchers use as controls children from an environment comparable to that of the adoptive family, studies often conclude that adopted children face a relatively higher risk of adjustment problems.[140] On the other hand, when adopted children are compared to children from backgrounds similar to those of their biological families, they often compare favorably.[141] Although the state cannot transfer children from their biological parents simply because others would make better

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139. *Id.* at 105. Bohman noted that the foster placements in the study could be considered "de facto adoptions" because most of the children were placed at an early age (mean age nine months) for a permanent stay and about seventy percent were legally adopted before age seven. He suggested that the "strongly negative outcome" among foster children might be attributable, at least in part, to a lack of preparation of foster parents as compared to adoptive parents and the psychological implications of the possibility that the child could someday be returned to the biological parent. *Id.*

140. David M. Brodzinsky, *Long-term Outcomes in Adoption*, 3 Future of Children 153, 154 (Spring 1993).

141. *Id.* at 159. There is no evidence that the homosexual orientation of the adoptive parents would negatively affect the child's adjustment experience. Although there is little research in the area of adoption by homosexuals, studies of children raised by homosexual parents suggest that fears of a negative impact on children are unfounded. *See generally* Carrie Bashaw, Comment, *Protecting Children in Nontraditional Families: Second Parent Adoptions in Washington*, 13 U. Puget Sound L. Rev. 321, 342 (1990) (finding that "the similarities between children raised by heterosexual parents and children raised by lesbian parents far outweigh the differences") (citing Richard Green et al., *Lesbian Mothers and Their Children: A Comparison With Solo-Parent Heterosexual Mothers and Their Children*, 15 Archives Sexual Behav. 2:167 (1986); Richard Green, *The Best Interests of the Child With a Lesbian Mother*, 10 Bull. of the Am. Acad. Psychiatry & L. 1, 14 (1982); Golombok et al., *Children in Lesbian and Single-Parent Households: Psychosexual and Psychiatric Appraisal*, 24 J. Child. Psychology & Psychiatry 4:551 (1983)); Jeffrey S. Loomis, Comment, *An Alternative Placement for Children in Adoption Law: Allowing Homosexuals the Right to Adopt*, 18 Ohio N.U. L. Rev. 631, 661 (1992) (noting that research has disproved assertions that children raised by homosexual parents are more likely to be stigmatized, to face a greater risk of molestation, or to be homosexual) (citing Encyclopedia of Homosexuality 947 (Wayne K. Dynes ed., 1990); Marianne T. O'Toole, *Gay Parenting: Myths and Realities*, 9 Pace L. Rev. 129, 145–46 (1989); Rhonda R. Rivera, *Legal Issues in Gay and Lesbian Parenting*, Gay and Lesbian Parents 199, 211 (Frederick W. Bozett ed., 1987)). The Washington Supreme Court has held that "homosexuality in and of itself is not a bar to custody or to reasonable rights of visitation," and thus requires evidence that the parent's sexual orientation could endanger the child's physical, mental, or emotional health if homosexuality is to be a determining factor in the court's decision. *In re* Marriage of Cabalquinto, 100 Wash. 2d 325, 329, 669 P.2d 886, 888 (1983), *appeal after remand*, 43 Wash. App. 518, 718 P.2d 7 (1986). There is likewise no reason to assume that the homosexuality of adoptive parents would be detrimental to a child's welfare so as to outweigh the child's need for continuity of care.

parents,[142] this research suggests that once a biological parent has voluntarily relinquished and consented to the adoption of her child, and the parent-child relationship has been legally terminated, the child may fare better with the adoptive family.

Application of these social science and child development perspectives to *In re Dependency of G.C.B.* supports the argument that allowing Ms. Lucas to petition to adopt the child would be contrary to G.C.B.'s best interest. Ms. Lucas voluntarily relinquished the child for adoption.[143] The child had been separated from his biological mother for over a year when she filed her petition to adopt[144]—which may very well constitute a permanent separation from the child's perspective. The move would disrupt the continuity of care between the child and his current custodians and potentially delay his integration into a permanent home. These theories and studies suggest that the best outcome for G.C.B. would be to allow him to be adopted by his current caregivers, as opposed to returning him to his biological mother.

B. *Standing to Petition to Adopt a Specific Child Should Be Limited to Individuals With Agency Consent or With Whom the Child Has Been Placed Recently*

In re Dependency of G.C.B. also raised questions about who has standing to petition to adopt a specific child. The trial judge found that the Lucases were legal strangers to the child and thus had the same right to petition to adopt the child as any other person who satisfies the eligibility requirements under the adoption statute.[145] The appellate court, on the contrary, found that meeting the minimum eligibility criteria does not convert a person into a "prospective adoptive parent" with the right to commence adoption proceedings and demand placement of the child. The court said that it would not construe the adoption statute to allow any interested party to petition to adopt the same child, thus turning the adoption determination into a bidding war.[146] Rather, it is the prerogative of the custodial agency to designate who may petition

142. *In re* Moseley, 34 Wash. App. 179, 186, 660 P.2d 315, 319, *review denied*, 99 Wash. 2d 1018 (1983).

143. *In re* Dependency of G.C.B., 73 Wash. App. 708, 710–11, 870 P.2d 1037, 1039, *review denied*, 124 Wash. 2d 1019 (1994).

144. *Id.* at 710, 713, 870 P.2d at 1039–40.

145. *Id.* at 715, 870 P.2d at 1042. *See supra* note 51 and accompanying text.

146. 73 Wash. App. at 722, 870 P.2d at 1045–46.

to adopt the child.[147] Although the court offered several policy rationales against unlimited standing to petition to adopt a particular child,[148] it is not clear from Washington statutory and case law that standing is limited to those individuals who have been designated as prospective adoptive parents for a specific child by the custodial agency.

1. The Washington Statute Does Not Expressly Limit Standing to Petition to Adopt

As the trial court in *In re Dependency of G.C.B.* recognized, the Washington adoption statute does not expressly limit who can petition to adopt a particular child. State adoption statutes use one of three general approaches to establish the criteria governing an individual's standing to petition to adopt a specific child.[149] Some statutes limit petitioners to certain categories of persons specifically described in the statute.[150] Others limit petitioners to those individuals who have obtained a valid consent to adopt the child.[151] Finally, some statutes do not limit who may petition to adopt a child.[152]

Statutory schemes can also combine the above approaches by requiring that an individual possess either consent or placement to establish standing. A recent draft of the Uniform Adoption Act developed by the National Conference of Commissioners on Uniform State Laws[153] limits petitioners to individuals who (1) have been selected as prospective adoptive parents or with whom the child has been placed

147. *Id.* at 719, 870 P.2d at 1044.

148. *Id.* at 722, 870 P.2d at 1045–46.

149. William M. Schur, *Adoption Procedure*, *in* Hollinger, *supra* note 11, § 4.05[3].

150. The Texas adoption statute is an example of statutes that enumerate categories of persons who may adopt. The statute limits standing to (1) stepparents, (2) individuals who have had custody of the child for at least thirty days following placement for adoption purposes, (3) individuals who had custody for at least two of the three months prior to filing a petition to adopt, and (4) other individuals whom the court determines to have substantial past contact sufficient to warrant standing. The statute expressly prohibits a biological parent whose relationship with the child has been terminated from petitioning to adopt the child, unless that person has the consent of the current legal custodian. Tex. Fam. Code Ann. §§ 11.03(d), (g), (h) (West 1986).

151. The Georgia statute provides that satisfaction of eligibility criteria enables an individual to apply to the custodial agency for consideration. Ga. Code Ann. § 19-8-3 (1991). The Georgia Supreme Court has held that the statute creates standing to apply to the custodial agency, but not to contest the legal custodian's absolute discretion in granting the consent necessary for adoption. Drummond v. Fulton County Dep't of Family & Children Servs., 228 S.E.2d 839 (Ga. 1976), *review denied*, 432 U.S. 905 (1977). Agency consent thus effectively limits standing to adopt.

152. Hollinger, *supra* note 11, § 4.05[3][a].

153. Unif. Adoption Act (Tentative Draft 1994).

for purposes of adoption, or (2) have not been selected as prospective adoptive parents, but who have physical custody of the child.[154] The *In re Dependency of G.C.B.* appellate court recommended that the legislature limit standing to individuals with custodial agency consent or individuals who did not have agency consent but who had had the child placed in their care at some point.[155] In making this recommendation, the court of appeals implicitly acknowledged that the current statutory provisions do not expressly limit standing to adopt.

2. *Washington Case Law Regarding Standing to Petition to Adopt Suggests Broad Access*

The question of standing generally does not arise in cases in which a petition for adoption is uncontested.[156] For example, when a parent validly consents to the adoption of his or her child by a specific, eligible person, no one is likely to question the standing of that person to petition to adopt the child. Whether an individual has standing to adopt a particular child becomes an issue when parents or custodians do not consent to an adoption petition, or when more than one party seeks to adopt the same child.[157]

Although no Washington cases before *In re Dependency of G.C.B.* specifically addressed the issue of who has standing to adopt, cases involving competing adoption petitions suggest a broader access to petition to adopt than the court of appeals acknowledged. For example, *In re Adoption of Garay* involved former foster parents who petitioned to adopt after the custodial agency placed the child with another couple for adoption purposes.[158] Although the trial judge ultimately entered a decree of adoption for the parents chosen by the agency,[159] he did not deny the competing party standing to petition to adopt the child. On the contrary, the court joined the competing petitioners as intervenors in the

154. *Id.* § 3-301.

155. *In re* Dependency of G.C.B., 73 Wash. App. 708, 723, 870 P.2d 1037, 1046, *review denied*, 124 Wash. 2d 1019 (1994). The court of appeals also recommended that an individual be allowed to petition to adopt if he or she can convince the court that "the custodian's preadoptive planning, entitled to a presumption of correctness, is so utterly devoid of merit as to constitute an arbitrary and capricious exercise of authority, or that the custodian has abdicated its authority by failing to take any preadoptive planning measures whatsoever." *Id.*

156. Hollinger, *supra* note 11, § 4.05[3].

157. *Id.*

158. *In re* Adoption of Garay, 75 Wash. 2d 184, 185–86, 449 P.2d 696, 698 (1969).

159. *Id.* at 188, 449 P.2d. at 699.

adoption proceeding and considered their evidence.[160] In other cases involving competing adoption petitions, or petitions lacking agency consent, courts have not refused to evaluate petitions on the basis of a lack of standing.[161] However, these cases occurred before the enactment of the current provision requiring a post-placement report.[162]

3. *Post-Placement Report Requirement Injects Uncertainty Into the Issue of Who Has Authority to Make Decisions Regarding Adoptive Placements*

Under the current statute, a court must order the making of a post-placement report when the petition for adoption is filed, in order to assess the placement.[163] The court cannot schedule a hearing on the petition for adoption until both the preplacement and post-placement reports have been filed.[164] These provisions governing the court's evaluation of an adoption petition say nothing regarding who is authorized to make placement decisions. Because the statute does not specifically limit who may be an adoptive parent to individuals who have had a child placed with them for adoption purposes,[165] the trial judge in *In re Dependency of G.C.B.* found that the fact that DSHS had not placed the child with the Lucases did not prevent them from pursuing the adoption.[166] The trial court assumed that it must have had the authority to order a placement in order to evaluate the petition in accordance with the post-placement report requirement.[167]

The court of appeals asserted that nothing in the legislation requiring the making of post-placement reports indicated a legislative intent to take placement decisions from custodial agencies.[168] As the court recognized, provisions in the statute expressly authorize custodial agencies to place

160. *Id.* at 187, 449 P.2d. at 699.

161. *See, e.g., In re* Reinius, 55 Wash. 2d 117, 346 P.2d 672 (1959); *In re* Baby Girl Doe, 45 Wash. 2d 644, 277 P.2d 321 (1954); *In re* Hamilton, 41 Wash. 2d 53, 246 P.2d 849 (1952).

162. Wash. Rev. Code § 26.33.200 (1994).

163. Wash. Rev. Code § 26.33.200 (1994). *See supra* notes 54–56 and accompanying text.

164. Wash. Rev. Code § 26.33.240(1) (1994).

165. Wash. Rev. Code § 26.33.140 (1994).

166. *In re* Dependency of G.C.B., 73 Wash. App. 708, 716, 870 P.2d 1037, 1042, *review denied*, 124 Wash. 2d 1019 (1994).

167. *Id.* at 714, 870 P.2d at 1041.

168. *Id.* at 721, 870 P.2d at 1045.

children who are in agency custody.[169] These provisions seem to give the custodial agency the sole authority to make placement decisions, since that authority is given to no other entity.

On the other hand, there is also no indication that the legislature intended to limit the court's ability to decree an adoption notwithstanding a lack of agency consent. However, this effect necessarily follows from the court's interpretation, in that a court cannot decree an adoption without first obtaining a post-placement report. A court thus could decree an adoption without the consent of the agency only if the child happened to be in the home of the prospective adoptive parents who filed the petition, or if a post-placement report had already been obtained. The former situation could occur if the agency made an initial decision to place the child with foster parents or prospective adoptive parents and later decided to remove the child, either because the agency had chosen others to be adoptive parents or because it determined the placement to be unsuitable. If the parents refused to release the child to the custodial agency, but instead filed a petition for adoption, a judge then could order a post-placement report and make a final determination on the petition. Alternatively, if the petitioners surrendered the child to the agency, but still filed a petition to adopt, the judge could not obtain the necessary post-placement report unless she could order the placement of the child with the petitioners.

Before the enactment of the post-placement report requirement, courts could evaluate an adoption petition even though the child was not residing with the petitioners. The issue of authority to make placement decisions thus did not arise and would not have affected standing to petition to adopt. For example, in *In re Infant Boy John Doe*,[170] the adoption agency placed the child with prospective adoptive parents, but then removed the child because of questions about their fitness.[171] The court was able to evaluate the merits of the petition.[172]

Under the interpretation of the current statute urged by the appellate court in *In re Dependency of G.C.B.*, a court would be unable to evaluate the petition in a similar case unless a post-placement report had already been obtained prior to removal by the agency. Because there is no

169. *Id.* at 720 n.13, 870 P.2d at 1044 n.13. The adoption statute provides that, upon court approval of a petition for relinquishment to a custodial agency, the court must also include an order authorizing the agency to place the child with a prospective adoptive parent. Wash. Rev. Code § 26.33.090(5) (1994).

170. *In re* Infant Boy John Doe, 74 Wash. 2d 396, 444 P.2d 800 (1968).

171. *Id.* at 397, 444 P.2d at 801.

172. *Id.* at 402–03, 444 P.2d at 803–04.

support for the proposition that the legislature intended to limit the ability of courts to decree adoptions, it is not clear that the prerogative to designate prospective adoptive parents who may petition to adopt lies exclusively with custodial agencies. However, limitations on standing would protect the best interests of the child, support the efforts of adoption agencies, and encourage qualified individuals to adopt.

4. *Standing to Petition to Adopt a Specific Child Generally Should Be Limited to Individuals Who Have Agency Consent or Who Recently Had Custody of the Child*

Although proponents of open standing to petition to adopt assert that the process serves the child's best interests by allowing a neutral judge to choose among competing petitions,[173] there are potential negative consequences. Open standing can interfere with a biological parent's intent to arrange a quiet adoption with individuals of her choosing.[174] The burdens of contested adoption litigation can deter prospective adoptive parents.[175] As the *In re Dependency of G.C.B.* court recognized, open standing could result in the child being placed in numerous homes on a temporary basis as competing petitions are evaluated exhaustively by the court.[176] Washington courts have recognized that multiple changes in custody are detrimental to the child's need for continuity of care, whether from a biological parent or other parental figure.[177] Unlimited standing can also push prospective adoptive parents to file for

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173. William M. Schur, *Adoption Procedure*, *in* Hollinger, *supra* note 11, § 4.05[3][a]. Some commentators have expressed fear that judicial discretion to determine a child's best interests allows for decisions based upon "intuition, personal likes and dislikes, armchair psychology, and ideology so deeply rooted that the decision makers are unaware that it is mere ideology." Lucy Cooper & Patricia Nelson, *Adoption and Termination Proceedings in Wisconsin: A Reply Proposing Limiting Judicial Discretion*, 66 Marq. L. Rev. 641, 643 (1983). In a case such as *In re* Dependency of G.C.B., where the proposed adoption plan of the agency would have placed the child with homosexual parents, open standing could provide an opportunity for a judge who opposed adoption by homosexuals to obstruct the adoption by granting adoption to other competing petitioners. Limitations on who has standing to petition to adopt can serve to limit the exercise of judicial discretion.

174. Hollinger, *supra* note 11, § 4.05[3][a].

175. Hollinger, *supra* note 11, § 4.05[3][c].

176. *In re* Dependency of G.C.B., 73 Wash. App. 708, 722, 870 P.2d 1037, 1045, *review denied*, 124 Wash. 2d 1019 (1994).

177. *In re* Welfare of Aschauer, 93 Wash. 2d 689, 695, 611 P.2d 1245, 1249 (1980); *In re* Dependency of G.C.B., 73 Wash. App. at 722 n.14, 870 P.2d at 1045 n.14.

adoption hastily.[178] Overall, there is a danger that the child's interests will be sacrificed to the desires of competing adults.[179]

Limiting petitioners to those who have valid agency consent recognizes the important role that agencies play in the adoption process. Courts lack the ability to care for children until an adoption is decreed, or to find suitable prospective adoptive parents for available children.[180] As a result, cooperation between the courts and custodial agencies is necessary to facilitate the adoption of children whose relationships with their biological parents have been terminated.[181] Custodial agencies invest considerable time and money in finding prospective adoptive parents, preparing them for adoption, and supervising placements.[182] An expansive assertion of authority to make adoptive placement and standing decisions by courts potentially undercuts the ability of custodial agencies to plan adoptions carefully. As the Washington Supreme Court recommended in *In re Reinius*, custodial agencies should be given every reasonable opportunity to carry out adoption planning with the full support of, not competition from, the courts.[183]

On the other hand, the legislature has indicated a willingness to allow courts to decree adoptions notwithstanding the lack of agency consent to a proposed adoption. For example, a court may dispense with a custodial agency's consent if it determines by "clear, cogent and convincing evidence that the proposed adoption is in the best interests of the adoptee."[184] Until the statute was amended in 1988, a court was only authorized to dispense with the agency's consent if it found that "the refusal to consent to adoption [wa]s arbitrary and capricious."[185] The legislative rationale for amending the statute was to lower the hurdle in front of judges who favor a proposed adoption notwithstanding an

178. *In re* Reinius, 55 Wash. 2d 117, 130–31, 346 P.2d 672, 679 (1959) (Hill, J., concurring).

179. Joseph Goldstein et al., *supra* note 124, at 54.

180. *In re* Reinius, 55 Wash. 2d at 141, 346 P.2d at 685 (Ott., J., dissenting).

181. *Id.* at 128, 346 P.2d at 678.

182. *See supra* notes 115–22 and accompanying text.

183. *In re* Reinius, 55 Wash. 2d at 128, 346 P.2d at 678.

184. Wash. Rev. Code § 26.33.170 (1994). Prior to 1988, a court could only dispense with agency or department consent if it found that the "refusal to consent to adoption is arbitrary and capricious." The legislature amended the provision because it believed that the old standard was nearly impossible to prove and precluded courts from overcoming a refusal to consent by an agency even if the proposed adoption was in the best interests of the child. Final Legislative Report, 50th Washington State Legislature, 1988 First Special Session 132 (1988).

185. Laws 1984, ch. 155, § 17 (amended 1988).

agency's refusal to consent.[186] The legislature believed that custodial agencies were obstructing adoptions that were in the best interests of children.[187] As discussed above, a court's ability to decree adoptions to petitioners who lack agency consent would be limited if the court could not grant standing to those petitioners. The court of appeals in *In re Dependency of G.C.B.* proposed that the burden should be on the petitioner to establish that the custodial agency's adoption plan is "so utterly devoid of merit as to constitute an arbitrary and capricious exercise of authority, or that the custodian has abdicated its authority by failing to take any preadoptive planning measures whatsoever."[188]

Unlimited standing to petition to adopt could have a deterrent effect on the willingness of individuals to adopt. The high costs of engaging in a court battle for a child causes some prospective adoptive parents to withdraw from consideration to adopt a particular child rather than endure litigation or wait for competing petitions to be evaluated.[189] Also, most of the children available for adoption through public agencies have special needs, and thus require greater investments than healthy infants in terms of recruitment and preparation of prospective adoptive parents.[190] Deterrence of capable adoptive parents could have detrimental long-term effects on the welfare of these children if they are unable to be adopted.[191]

Last, giving standing to petition to adopt to individuals who either currently have custody of the child or who had the child placed in their care at some point recognizes the emotional and psychological ties that develop between children and their caregivers.[192] However, giving standing to any adult who had the child in his or her care at any time in the past, no matter how distant, favors the adult's sense of time rather than the child's.[193] In a case like *In re Dependency of G.C.B.*, in which the child spent little time in the care of his biological mother, granting

186. Final Legislative Report, 50th Washington State Legislature, 1988 First Special Session 132 (1988).

187. *Id.*

188. *In re* Dependency of G.C.B., 73 Wash. App. 708, 723, 870 P.2d 1037, 1046 (1994).

189. William M. Schur, *Adoption Procedure, in* Hollinger, *supra* note 11, § 4.05[3].

190. *See supra* notes 117–21 and accompanying text. The child in *In re* Dependency of G.C.B. was considered to have "special needs" requiring "special parenting skills." 73 Wash. App. 708, 713 n.4, 870 P.2d 1037, 1040 n.4 (1994).

191. *See supra* note 120 and accompanying text.

192. *See supra* notes 126–32 and accompanying text.

193. *Id.*

standing to her would reflect not the child's perspective on the importance of that relationship, but the mother's.

Statutory provisions governing standing to adopt should recognize and support the important role that custodial agencies play in the adoption process. They should also respect the child's need for continuity of care and the child's perspective on time and relationships. Lastly, the statute should provide an avenue for courts to facilitate adoptions in certain situations in which the custodial agency has completely failed to carry out its responsibilities.

IV. PROPOSED STATUTORY AMENDMENTS

Whether termination is entered under the dependency or adoption statute, it is contrary to the finality of relinquishment and the integrity of the adoption process and detrimental to the child's emotional and psychological development to permit the biological parent to petition to adopt the child. The adoption statute provision governing the effect of termination of the parent-child relationship should be amended to prevent biological parents from subsequently petitioning to adopt the child. This result could be achieved by amending the adoption provision to mirror the one in the dependency statute, or by specifying that individuals who have voluntarily relinquished custody of their child and consented to adoption and termination are ineligible to petition to adopt that child in the future.

The Washington adoption statute should further be amended to limit who can petition to adopt to an individual who (1) has been selected as a prospective adoptive parent or with whom the child has been placed for purposes of adoption recently enough that the relationship will be important to the child, or (2) has not been selected as a prospective adoptive parent, but who has physical custody of the child. The statute should also balance the desire in some circumstances to allow courts to decree an adoption despite the lack of agency consent with the importance of supporting the adoption planning efforts of custodial agencies. Thus, a court should be able to order placement when a petitioner demonstrates that the agency's planning is so utterly devoid of merit as to constitute an arbitrary or capricious exercise of authority, or that it has abdicated its authority by failing to take any preadoptive planning measures whatsoever. These changes will protect the child and the public adoption system from the negative consequences of unlimited standing, while authorizing courts to facilitate adoptions when the agencies have failed in their role.

In *In re Dependency of G.C.B.*, opposition to homosexual parenting may have motivated the decision of the biological mother to attempt to regain custody of her child and the decision of the trial judge to consider her petition and order placement of the child with her. Although the focus in this case was on gay parenting, similar opposition could be inspired by the prospective adoptive parents' race, ethnicity, religion, socio-economic class, or marital status. The statutory provisions governing adoption should be designed, to the extent that it is possible, to prevent their use as tools of prejudice.