MEMORANDUM

Project Summary

In New Jersey, an adult may be adopted by an “unmarried person of full age, a husband with his wife’s consent, a wife with her husband’s consent or a husband and wife jointly” pursuant to N.J.S. 2A:22-1.\(^1\) The statute requires that the “adopting parent[s] . . . are of good moral character and of reputable standing” and that the adoption is “to the advantage and benefit of” the adoptee.\(^2\) The adult adoption statute was enacted in 1925 and amended once in 1991 to remove an outdated reference to the court that has jurisdiction over adult adoption applications.\(^3\)

In 2013, the New Jersey Supreme Court denied the State’s request for a stay of the trial court’s order in *Garden State Equality v. Dow*, that New Jersey must “allow same-sex couples, who otherwise qualify for civil marriage, to marry in New Jersey.”\(^4\) Following the Supreme Court’s decision, the trial court’s order went into effect and same-sex marriage was legalized in New Jersey.\(^5\)

In a letter from Legal Services of New Jersey (“LSNJ”), it was suggested that because “[m]arriage is no longer limited to a husband and a wife,” N.J.S. 2A:22-1 should “be updated to remove unnecessarily gendered language and reflect the current law on marriage.”\(^6\) In addition to the adult adoption statutes, a preliminary search of New Jersey statutes revealed dozens of statutes that continue to employ gendered language when identifying spouses.\(^7\)

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2. Id.
3. L.1925, c. 99, §§ 1, 4, p. 309; L.1991, c. 91, § 78, eff. April 9, 1991 (“Many New Jersey statutes presently contain references to various courts (i.e. county court, county district court, juvenile and domestic relations) which have been abolished. . . . The bill amends many sections of law to correct court-related references.”).
5. Id. at 330 (“State officials shall therefore permit same-sex couples, who are otherwise eligible, to enter into civil marriage beginning on October 21, 2013.”).
6. Letter from Mary M. McManus-Smith, Chief Counsel for Family Law, Legal Services of New Jersey, to Whitney G. Schlimbach, Counsel, NJLRC, at *4 (March 26, 2024) [hereinafter “LSNJ Letter”].
Statute Considered

N.J.S. 2A:22-1 states that:

The Superior Court shall allow an unmarried person of full age, a husband with his wife's consent, a wife with her husband's consent or a husband and wife jointly to adopt an adult person and may change the name of the adult, if the court is satisfied that the adopting parent or parents are of good moral character and of reputable standing in their community, and that the adoption will be to the advantage and benefit of the person to be adopted.\(^8\)

Background

The New Jersey Supreme Court held in Lewis v. Harris, “that denying rights and benefits to committed same-sex couples that are statutorily given to their heterosexual counterparts violates the equal protection guarantee of Article I, Paragraph 1” of the New Jersey Constitution.\(^9\) The Lewis Court instructed the Legislature to “either amend the marriage statutes to include same-sex couples or create a parallel statutory structure which will provide for, on equal terms, the rights and benefits enjoyed and burdens and obligations borne by married couples.”\(^10\)

In response, the Legislature enacted the Civil Union Act, which permitted same-sex couples to enter into civil unions, but not civil marriage.\(^11\) In N.J.S. 37:1-28, the Legislature articulated its “intent . . . to comply with the constitutional mandate set forth by the New Jersey Supreme Court in . . . Lewis v. Harris.”\(^12\) The statute also described the legislative goal of “continuing [New Jersey’s] longstanding history of insuring equality under the laws for all New Jersey citizens by providing same-sex couples with the same rights and benefits as heterosexual couples who choose to marry.”\(^13\)

In 2011, an advocacy group representing six same sex-couples filed a suit “alleg[ing] that civil-union status fails to provide equal treatment to same-sex couples.”\(^14\) Following the trial court’s decision that “civil-union partners are being denied equal access to federal benefits because of the label placed on their relationship” and order “that . . . State officials must allow same-sex

\(^8\) N.J. STAT. ANN. § 2A:22-1 (emphasis added).
\(^10\) Id.
\(^12\) N.J. STAT. ANN. § 37:1–28(e) (West 2023).
\(^13\) N.J. STAT. ANN. § 37:1–28(f).
\(^14\) Garden State Equal., 216 N.J. at 318.
couples . . . to marry in New Jersey,” the Attorney General moved for a stay on behalf of New Jersey.15 The trial court denied the stay and the defendants appealed to the Supreme Court.16

After considering whether a stay was necessary to prevent irreparable harm, as well as the State’s probability of success on the merits, the Supreme Court denied the stay “[l]argely for the reasons stated in [the trial court] opinion,” finding that “same-sex couples who cannot marry are not treated equally under the law today [and that t]he harm to them is real, not abstract or speculative.”17 Therefore, same-sex marriage was legalized in New Jersey on October 21, 2013, in accordance with the opinion in *Garden State Equality*.18

For the next ten years, the legalization of same-sex marriage in New Jersey was based solely on the Supreme Court decision in *Garden State Equality*. However, in 2022, Governor Murphy signed Senate Bill 3416 into law, codifying “same-sex marriage in the statutes.”19 The bill amended N.J.S. 37:1-1, adding the following language: “[l]aws concerning marriage and civil union shall be read with gender-neutral intent.”20

**Analysis**

As pointed out by LSNJ in its letter, the statute authorizing adult adoption (N.J.S. 2A:22-1) does not employ gender-neutral language when referring to spouses.21 The statute permits adoption of an adult by “a husband with his wife’s consent,” “a wife with her husband’s consent,” or “a husband and wife jointly.”22 The gendered terms “husband,” “wife,” “widow” and “widower” are scattered throughout New Jersey’s statutes, despite the fact that New Jersey has authorized same-sex marriage for more than ten years.23

The concern expressed by LSNJ – that the gendered language in the adult adoption statute does not “reflect the current law on marriage” – is applicable to the use of gendered terms to describe a married couple across New Jersey’s statutes.

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15 Id. at 319.
16 Id.
17 Id. at 320.
18 Id. at 330 (“We therefore deny the State’s motion for a stay. As a result, the trial court’s order dated September 27, 2013 remains in full force and effect. State officials shall therefore permit same-sex couples, who are otherwise eligible, to enter into civil marriage beginning on October 21, 2013.”).
19 Statement to S.B. 3416, 219th Leg., 2021 Sess. (Feb. 9, 2021).
20 L.2021, c. 343, § 2, eff. Jan. 10, 2022. N.J.S. 37:1-1 was amended again in 2023 to clarify that these laws should also be read with “race-neutral” intent. L.2023, c. 154, § 3, eff. Sept. 5, 2023; see also N.J. STAT. ANN. § 37:1-1 (West 2023).
21 LSNJ Letter, supra note 6, at *4.
23 The terms “husband” and “wife” appear in several different titles. See supra note 7. However, the terms “widow” and “widower” appear most commonly in Title 43, which governs pensions, retirement and unemployment compensation. N.J. STAT. ANN. §§ 43:1-1 – 43:23-33 (West 2023).
Pending Bills

There do not appear to be any currently pending bills that seek to replace the gendered language in New Jersey’s statutes.

Conclusion

Staff requests authorization to conduct further research and outreach to determine whether New Jersey statutes, including the adult adoption statute in N.J.S. 2A:22-1, would benefit from modification which replaces gendered terms “husband,” “wife,” “widow” and “widower” with gender-neutral terms.