2012

Voiding Motherhood: North Carolina's Shortsighted Treatment of Subject Matter Jurisdiction in Boseman v. Jarrell

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VOIDING MOTHERHOOD: NORTH CAROLINA’S SHORTSIGHTED TREATMENT OF SUBJECT MATTER JURISDICTION IN BOSEMAN V. JARRELL

SUSANNA BIRDSONG*

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Michelle and Sarah are social workers in North Carolina who fell in love in 2004 and have been a committed couple ever since. In 2007, they decided to have a baby. Michelle became pregnant via artificial insemination and their son Thomas (named for Sarah’s beloved grandfather) was born in 2008. Since same-sex marriage is not a legal option in North Carolina (and even if it were, it would only provide a presumption of legal parenthood for Sarah), Michelle and Sarah began discussing ways that Sarah could legally formalize her status as Thomas’s mother. They discovered second-parent adoption, and decided to wait until their family was complete before undertaking the somewhat costly process. Two years later, in 2010, Michelle gave birth to Thomas’s younger sister Lottie. In December 2010, before Sarah completed the
adoption process and finalized a legal relationship with her children, the Supreme Court of North Carolina, in Boseman v. Jarrell, voided a finalized second-parent adoption. 7 This denied future access to the second-parent adoption process in the state, absent legislative action. 8 North Carolina stands alone as the only state in the country that has retroactively voided a final second-parent adoption on subject matter jurisdictional grounds, although it is now one of several states that deny access to the process prospectively. 9

This Comment argues that North Carolina erred when it voided a final second-parent adoption on subject matter jurisdictional grounds, and further advocates that the state should allow second-parent adoptions using the well-established “best interests of the child” standard. 10 Part II examines the state-specific evolution of second-parent adoption law. 11 Part II also identifies and explains the historic jurisdictional deference that state courts are afforded in the adoption arena and contrasts second-parent adoptions that have been challenged on subject matter jurisdictional grounds in various states. 12 Part III argues that the Supreme Court of North Carolina wrongly stripped lower courts of the ability to hear second-parent adoption cases, contradicting the state’s adoption statutes and decades of jurisprudence on subject matter jurisdiction. 13 Part III further advocates that the North Carolina General Assembly should act to repudiate the Supreme Court of North Carolina’s decision and clarify its adoption statutes by explicitly permitting second-parent adoptions using the established best interests of the child standard as a rationale for the

7. See Boseman v. Jarrell (Booseman II), 704 S.E.2d 494, 496 (N.C. 2010) (holding that North Carolina courts do not have subject matter jurisdiction to grant second-parent adoptions, thus voiding such adoptions ab initio (from the beginning)).

8. See id. (stating recognition of second-parent adoption must be granted by the North Carolina General Assembly).

9. See NAT’L CTR. FOR LESBIAN RIGHTS, supra note 4, at 3-4 (highlighting that as a general rule, courts have recognized that a final adoption cannot be challenged because of the importance of permanence and stability for families).


11. See infra Part II (surveying existing second-parent adoption statutes and case law in the United States).

12. See infra Part II (explaining the source of subject matter jurisdiction and contrasting North Carolina’s treatment of it in the adoption arena with other states that have ruled on second-parent adoption subject matter jurisdiction challenges).

13. See infra Part III (arguing that the court read the statutory language without considering the overarching statutory purposes of protecting the best interests of the child and ensuring finality in adoption decisions).
change. Part IV suggests that in amending state adoption statutes to allow for second-parent adoption, the legislature would act in the best interests of society as well as the child. Finally, Part V concludes that by stripping the state’s lower courts of subject matter jurisdiction to hear second-parent adoption cases, the Supreme Court of North Carolina erred as a matter of law and public policy and the legislature should act to remedy the court’s error.

II. BACKGROUND

A. The Evolution of Second-Parent Adoption in the States

The institution of adoption is strictly a creation of statute, with the primary purpose of “creat[ing] a legal connection between an adoptive parent and child who are not biologically related, thereby conferring on each legal rights and obligations that did not previously exist between them.” As a general rule, before a child can be adopted, the parental rights of the child’s biological parents must be terminated. Most states recognize one exception to this ‘cut-off’ provision: a stepparent’s ability to adopt his or her spouse’s child without necessitating a termination of the remaining parent’s parental rights.

Another exception that has gained attention in the last two decades, called second-parent adoption, is seen as an extension of the stepparent exception, and allows a same-sex partner to adopt his or her partner’s biological child without a termination of the biological parent’s parental rights. While only four states currently have statutes that expressly permit second-parent adoptions, second-parent adoptions have been

14. See infra Part III (suggesting that the North Carolina General Assembly should overturn the North Carolina supreme court’s decision in Boseman v. Jarrell).
15. See infra Part IV (discussing social science research that the General Assembly should use in its reasoning).
16. See infra Part V (concluding that the Supreme Court of North Carolina’s decision in Boseman v. Jarrell employed circular reasoning and myopic vision when it deprived state courts of subject matter jurisdiction and families of security).
18. See, e.g., N.C. GEN. STAT. § 48-1-106(c) (2011) (stating that an adoption decree dissolves the parent-child legal relationship between the adoptee and his or her biological or former adoptive parents).
19. See, e.g., id. § 48-1-106(d) (clarifying that an adoption by a stepparent does not have any effect on the relationship between the child and the parent who is the stepparent’s spouse).
20. See, e.g., In re Adoption of Tammy, 619 N.E.2d 315, 321 (Mass. 1993) (concluding that the state legislature did not intend that a biological parent’s rights should be terminated when that parent is a party to the adoption petition).
21. See CAL. FAM. CODE § 9000(b) (West 2011) (stating that a domestic partner
legitimized in many other states at common law. To date, eighteen states and the District of Columbia have allowed the option of second-parent adoption for same-sex couples statewide, while in another eight states, same-sex couples have successfully petitioned for second-parent adoption in some jurisdictions. Since there are only a handful of states that permit same-sex marriage or formalized domestic partnership options that would create a presumption of parenthood for both partners, second-parent adoptions remain one of the only avenues in many states for gay and lesbian couples to secure their family ties.

B. The Best Interests of the Child Standard

The best interests of the child standard was born out of child custody disputes and places primary emphasis on what is best for the child at issue rather than for his or her parents. The standard gives a judge wide latitude in a custody dispute to resolve what is best for a child, allowing for the consideration of factors such as the child’s physical, mental, and emotional well-being. The state’s interest in promoting the best outcomes for children is apparent not only in judicial decisions, but in legislative language as well; many state adoption statutes use language that reflects the best interests of the child standard and its ideals. Thus, courts use statutory language incorporating the best interests of the child standard when reviewing and granting second-parent adoptions, drawing on it to justify granting or maintaining such adoptions, even though they are not specifically conceived of in the statutes.


24. See Linda Elrod, Finding the Best Interests of the Child, Child Custody Prac. & Proc. § 4:1 (2012) (stating that the welfare of a child is an important state interest that a state has a duty to protect by assessing the best interests of the child).

25. See id. (explaining that the standard allows for fact-finding that tries to predict the most successful outcomes for a child).

26. See, e.g., N.C. Gen. Stat. § 48-1-100(b)(1) (2011) (stating that the main purpose of the adoption statutes is to “advance the welfare of minors . . . by facilitating the adoption of minors in need of adoptive placement by persons who can give them love, care, security, and support”).

27. See, e.g., Goodson v. Castellanos, 214 S.W.3d 741, 748 (Tex. App. 2007)
C. Adoption and Subject Matter Jurisdiction

Adoption matters fall squarely within the purview of state courts, creating a jurisdictional patchwork of statutory interpretation and court decisions that form a visible pattern.28 The majority of courts that have considered second-parent adoption cases have construed the adoption statutes to allow for the possibility of second-parent adoption.29 In states that have denied second-parent adoptions, all have employed strict construction of adoption statutes to hold that, other than an exception for a stepparent, an unrelated person cannot adopt a child without first terminating that child’s legal relationship with his or her biological parents.30

At the appellate level, several second-parent adoptions in various states have been challenged on subject matter jurisdictional grounds.31 A challenge based on subject matter jurisdiction goes to the validity of the adoption from the start, and attempts to void the adoption based on the court’s lack of authority to grant it.32 Challenges of this nature are distinguishable from appeals, which dispute a court’s conclusions of law (noting that the district court granted a second-parent adoption in part because it was in the best interests of the child).

28.

29. See Jason N.W. Plowman, When Second-Parent Adoption Is the Second-Best Option: The Case for Legislative Reform as the Next Best Option for Same-Sex Couples in the Face of Continued Marriage Inequality, 11 SCHOLAR 57, 67-69 (2008) (highlighting that courts usually employ liberal construction of statutes and analyze legislative intent in deciding the legitimacy of second-parent adoptions).

30. See, e.g., In re Adoption of Luke, 640 N.W.2d 374, 379 (Neb. 2002) (holding that a same-sex partner could not adopt a child who had not been legally relinquished by his biological parent first); In re Adoption of Jane Doe, 719 N.E.2d 1071, 1073 (Ohio Ct. App. 1998) (finding that the trial court did not err in holding that the biological mother’s parental rights would terminate upon adoption of the child by a non-stepparent); In re Angel Lace M., 516 N.W.2d 678, 683 (Wis. 1994) (holding that because the biological mother’s parental rights remain intact, the child was not eligible to be adopted by her mother’s partner).

31. See Schott v. Schott, 744 N.W.2d 85, 89 (Iowa 2008) (determining that the district court had subject matter jurisdiction to grant the adoptions at issue, so even if the lower court misinterpreted the statute, the adoptions could not be voided); Hansen v. McClellan, No. 269618, 2006 WL 3524059, at *2 (Mich. Ct. App. Dec. 7, 2006) (per curiam) (confirming the subject matter jurisdiction of a trial court that granted a second-parent adoption, despite the court’s potential error in interpreting the adoption statutes); Goodson, 214 S.W.3d at 752 (noting that it would be “inequitable and unconscionable” to allow a parent to use the court system to both grant and then destroy an adoption); In re Paternity of Christian R. H., 794 N.W.2d 230, 231 (Wis. Ct. App. 2010) (holding the trial court that granted second-parent adoption erred as matter of law, but refusing to void decision despite error, citing the importance of final judgment).

32. See, e.g., Boseman II, 704 S.E.2d 494, 498 (N.C. 2010) (holding that because the adoption court granted an adoption not recognized by the adoption statutes, the adoption court lacked subject matter jurisdiction to enter the adoption decree).
rather than attempting to render it completely unable to act.\textsuperscript{33} Jurisdictional challenges to final adoptions are considered options of last resort, when the challenger has neglected to file a timely appeal.\textsuperscript{34} All challenges to second-parent adoptions based on a lack of subject matter jurisdiction have failed, with one exception—the Supreme Court of North Carolina’s decision in \textit{Boseman v. Jarrell}.\textsuperscript{35} Courts that have denied these jurisdictional challenges have done so out of deference to the broad jurisdiction of lower courts as well as out of consideration for the best interests of the child.\textsuperscript{36} Traditionally, when a state court is deciding a matter that is similar or identical to issues previously decided by other state courts, opinions from other states are considered influential and persuasive, especially when a state court considers making a decision that is contrary to other state courts’ interpretations of law and policy.\textsuperscript{37}

State courts are considered courts of general jurisdiction, and are able to “adjudicate any justiciable controversy that is not exclusively consigned to some other tribunal.”\textsuperscript{38} As a general rule, state courts that have jurisdiction over traditional adoption cases also have jurisdiction over second-parent adoptions.\textsuperscript{39} A state court’s subject matter jurisdiction is defined either by state constitution or by statute, and regardless of the defining source is often a broad grant of jurisdiction.\textsuperscript{40} Many state courts, including the Supreme Court of North Carolina, have noted that a trial court cannot be divested of subject matter jurisdiction because of a malfunction in

\begin{itemize}
\item \textsuperscript{33} See, e.g., \textit{Goodson}, 214 S.W.3d at 748 (noting that even if a judgment was based on an erroneous reading of the statutes, that type of error would not deprive the district court of jurisdiction and would not make the decree void).
\item \textsuperscript{34} See, e.g., \textit{Schott}, 744 N.W.2d at 88-89 (pointing out that final adoption orders are only vulnerable to attack after the timeframe for appeals has run in cases involving jurisdictional or due process issues).
\item \textsuperscript{35} See \textit{Boseman II}, 704 S.E.2d at 496 (holding the adoption decree at issue void ab initio).
\item \textsuperscript{36} See \textit{Goodson}, 214 S.W.3d at 748 (holding that a lower court maintained subject matter jurisdiction over second-parent adoptions and that even if the lower court erred as a matter of law, the adoption should be undisturbed because that was best for the child at issue).
\item \textsuperscript{37} See \textit{State v. Warren}, 114 S.E.2d 660, 666 (N.C. 1960) (displaying the relevance of other state court decisions when a North Carolina court’s decision on a matter would be contrary to all others).
\item \textsuperscript{38} See \textit{RESTATEMENT (SECOND) OF JUDGMENTS} § 11 (2001) (contrasting the general jurisdiction of state courts with the limited jurisdiction of federal courts).
\item \textsuperscript{39} See Mark A. Momjian, \textit{Annotation, Cause of Action for Second-Parent Adoption}, 25 \textit{CAUSES OF ACTION} 2d 1, § 38 (2011) (discussing general adoption jurisdictional issues).
\item \textsuperscript{40} Compare \textit{WIS. CONST. art. VII, § 8} (stating that state courts have original jurisdiction in all civil and criminal matters within the state, except as provided by statute), \textit{with N.C. GEN. STAT. § 48-2-100(b)} (2011) (broadly defining the boundaries for a state court’s subject matter jurisdiction over adoption cases by requiring only minimal residency requirements of the parties).
\end{itemize}
following proper procedure or even because of an error of law.41 Further, the modern trend is to “reduce the vulnerability of final judgments to attack on the ground that the tribunal lacked subject matter jurisdiction.”42 This reduction of vulnerability is especially important in adoption cases, where the best interests of the child often involve finality and stability.43

D. Second-Parent Adoption in North Carolina: Boseman v. Jarrell

Although the Supreme Court of North Carolina’s decision in Boseman v. Jarrell differed dramatically from other courts that have decided second-parent adoption cases on subject matter jurisdictional grounds, the facts of the cases at issue in North Carolina and other states remain strikingly similar.44 Julia Boseman was the state’s first openly gay legislator, and her partner, Melissa Jarrell, was a university athletics coach.45 They decided to have a child together, and Jarrell became pregnant via artificial insemination in 2002.46 In 2005, a district court in Durham, North Carolina entered an adoption decree that made Boseman a legal parent of their son Jacob without terminating Jarrell’s parental rights.47 The adoption petition was made with Jarrell’s full knowledge and consent.48 The next year, the couple ceased their relationship and Jarrell attacked the final adoption

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41. See, e.g., Boseman II, 704 S.E.2d 494, 507 (N.C. 2010) (Hudson, J., dissenting) (“[W]hen the parties are voluntarily before the [c]ourt, and . . . a judgment is entered in favor of one party against another, such judgment is valid, although not granted according to the orderly course of procedure.” (quoting Peoples v. Norwood, 94 N.C. 167, 172 (1886))).

42. See RESTATEMENT (SECOND) OF JUDGMENTS § 11 cmt. e (2001) (further noting that the cost of scrutinizing the subject matter jurisdiction of lower courts is increased vulnerability to interruption and post-judgment attack).


44. Compare Boseman II, 704 S.E.2d at 497-98 (invoking a lesbian couple’s custody battle and a biological mother’s argument that her former partner’s adoption of the child at issue should be voided as contravening the adoption statutes of the state), with In re Paternity of Christian R. H., 794 N.W.2d 230, 231-33 (Wis. Ct. App. 2010) (illustrating a very similar factual background and argument in a dispute over a parentage order).


46. See Boseman II, 704 S.E.2d at 497 (noting that the parties decided that Jarrell would actually bear the child, but “both parties would otherwise jointly participate in the conception process”).

47. See id. (finding that the adoption court did not comply with statutory requirements by not terminating Jarrell’s parental rights while simultaneously granting parental rights to Boseman).

48. See id. (relying on information that the parties sought the adoption together).
decree, claiming that the Durham district court did not have jurisdiction to grant the adoption in the first place.\footnote{See id. at 498 (describing the beginnings of a bitter custody battle that included Jarrell trying to preclude Boseman’s petition for custody by claiming that the adoption was invalid).} Although the Supreme Court maintained Boseman’s relationship with Jacob by granting her custody rights, it held that her adoption of Jacob, and thus her status as his legal parent, was void ab initio.\footnote{See id. at 504 (holding that Boseman retained custody rights because Jarrell acted inconsistently with her parental rights by ceding decision-making authority for her son).} The court reasoned that based on the language provided in the state’s adoption statutes, the lower court never had subject matter jurisdiction to grant the adoption in the first place; thus, Jarrell’s collateral assault on Boseman’s adoption was allowed even though she failed to file a timely appeal.\footnote{See id. at 496 (holding that because the General Assembly did not provide North Carolina courts with subject matter jurisdiction to create the type of adoption procured by Boseman and Jarrell, the adoption decree was void ab initio).} In finding for Jarrell and reversing the opinion of the court of appeals below, the Supreme Court of North Carolina became the first state court to void a final second-parent adoption based on a lower court’s lack of subject matter jurisdiction.\footnote{See id. at 500-01 (noting that lower courts do not have the power to issue modified adoption decrees, and rather must adhere strictly to the provisions of the statute).}

### III. ANALYSIS

#### A. The Supreme Court of North Carolina Erred in Stripping Lower Courts of Subject Matter Jurisdiction in the Area of Second-Parent Adoptions Because a Trial Court Granting a Second-Parent Adoption in North Carolina at Most Commits an Error of Law.

When the Supreme Court of North Carolina ruled that state courts do not have subject matter jurisdiction to decide second-parent adoption cases, the court failed to appreciate the broad grant of subject matter jurisdiction afforded to lower courts deciding adoption matters in the state.\footnote{See N.C. GEN. STAT. § 48-2-100 (2011) (granting subject matter jurisdiction over adoption cases to North Carolina courts, with the only prerequisite that parties be domiciled in the state for a particular length of time or that an agency licensed by the state or county have legal custody of the adoptee).} In Boseman v. Jarrell, the court overstepped its bounds by stripping the lower court of subject matter jurisdiction rather than finding, at most, that the lower court erred as a matter of law.\footnote{See Ellis v. Ellis, 130 S.E. 7, 9 (N.C. 1925) (citing the well-known principle that when a court has jurisdiction over the subject before it, “the binding force and effect of a judgment is not impaired because the same has been erroneously allowed, though the error may be undoubted and apparent on the face of the record”).} Statutorily, for jurisdiction over...
adoption cases to attach, parties seeking adoptions in North Carolina must meet only one of two residency requirements; yet the Supreme Court read in an additional requirement that to maintain subject matter jurisdiction, a lower court must not allow the parties before it to waive statutory provisions pertaining to the complete severing of biological parental ties. By finding that a court presiding over an adoption steps out of its jurisdictional bounds when it waives certain statutory provisions and enters an adoption order, the court introduced a new interpretation of subject matter jurisdiction that rejected the statutory language and decades of precedent.

A narrow and literal interpretation of the state’s adoption statutes should have resulted in the Supreme Court, at most, ruling that the lower court erred as a matter of law by granting a second-parent adoption, because such an adoption scheme is not conceived of specifically in the statutes. This holding would have enabled the lower court’s ruling to be overturned on timely appeal, while respecting the traditional province of the lower courts to enforce the statutes and grant adoption decrees.

Because errors of law are voidable but not void, in order for this potential error of law to have been substantively reviewed and possibly overturned, Jarrell should have appealed the final adoption decree within the timeframe allotted by the statute. Since Jarrell challenged the adoption almost two years after its finalization, instead of appealing within thirty days of the final decree as required by statute, the Supreme Court should have rejected her challenge. Instead, the Supreme Court allowed a collateral challenge to a final adoption order, trampling the jurisdictional

55. See N.C. GEN. STAT. § 48-2-100 (2011) (requiring only that parties be domiciled in the state for six months—or in the case of infant adoptees, from birth—before jurisdiction attaches over adoption matters); see also Boseman II, 704 S.E.2d 494, 506 (N.C. 2010) (Hudson, J., dissenting) (noting that if the General Assembly had intended such an additional requirement, it would have included it in the ‘Jurisdiction’ section of the statute).

56. See Boseman II, 704 S.E.2d at 506 (Hudson, J., dissenting) (“This new approach to subject matter jurisdiction—to ignore statutory requisites and instead create our own—runs counter to the language of N.C.G.S. § 48-2-100, and decades of jurisprudence on subject matter jurisdiction.”).

57. See id. (declaring that if the trial court was not authorized to issue a second-parent adoption, the most its adoption decree could amount to is an error of law, and it would only be subject to challenge within the statutory time limits for appeal).

58. See Ellis, 130 S.E. at 9 (basing its holding on the principle that a trial court’s subject matter jurisdiction cannot be stripped because its judgment was in error).


60. See N.C. GEN. STAT. § 48-2-607(b) (defining the parameters of final adoption appeal); see also Boseman v. Jarrell (Boseman I), 681 S.E.2d 374, 378 (N.C. Ct. App. 2009) (noting that Jarrell failed to meet the requirements for an appeal, and further holding that the adoption decree was merely voidable and not void), aff’d in part as modified, rev’d in part, 704 S.E.2d 494 (N.C. 2010).
territory of the lower court as well as the rights of an adoptive parent and child. The court should have allowed Jarrell’s attempt to circumvent the traditional adoption appeals process to fail, and in doing so should have highlighted that finality and stability in adoption cases are in the best interests of the child.

B. The Supreme Court of North Carolina Should Have Considered Other State Precedents Regarding Adoption and Subject Matter Jurisdiction as Highly Persuasive Authority Because the Court Stands Alone as the Only Court in Any Jurisdiction That Has Retroactively Stripped Lower Courts of Subject Matter Jurisdiction to Decide Second-Parent Adoption Cases.

Numerous decisions from other states have rejected challenges to a court’s subject matter jurisdiction in second-parent adoption cases, and the Supreme Court of North Carolina should have considered such decisions as highly persuasive authority. Although a state court in North Carolina is not bound by the decisions rendered in any other state, if other state courts have decided a similar issue, their analyses should be considered informative to a North Carolina court deciding a comparable case. This is especially true when a state court’s decision on a similar matter would stand out as contrary to the decisions of all other courts in other jurisdictions, as does the Supreme Court of North Carolina’s decision in Boseman v. Jarrell. To date, North Carolina stands alone as the only state that has stripped its courts of the ability to preside over second-parent adoptions.

61. See Haker-Volkening v. Haker, 547 S.E.2d 127, 130 (N.C. Ct. App. 2001) (noting that a court’s subject matter jurisdiction “is not to be confused with the way in which that power may be exercised in order to comply with the terms of the statute . . . .”); see also Lavelle, supra note 45, at 481 (discussing the policy rationales for upholding the adoption, including the interests and rights of the minor child).

62. See New Brief for Plaintiff-Appellee at 25, Boseman v. Jarrell (Boseman II), 704 S.E.2d 494 (N.C. 2010) (No. 416PA08-2) (emphasizing that allowing Jarrell’s collateral attack to proceed disregards the importance of the finality of judgments).

63. See, e.g., Goodson v. Castellanos, 214 S.W.3d 741, 748 (Tex. App. 2007) (holding that a mother’s challenge to her former partner’s adoption of their child was not made within the limits of appeal, and an attack on the court’s subject matter jurisdiction was without merit); see also State v. Warren, 114 S.E.2d 660, 666 (N.C. 1960) (stating that the North Carolina supreme court was not bound by the decisions of other state courts, but highlighting that if many other state courts had decided the same issue, their judgments should be considered “highly persuasive”).

64. See, e.g., State v. Mbacke, 721 S.E.2d 218, 222 (N.C. 2012) (bolstering its rationale by pointing out similar conclusions reached by other state courts (citing Warren, 114 S.E.2d at 666)).

65. See Warren, 114 S.E.2d at 666 (noting that decisions from other states become highly relevant when North Carolina’s decision on a matter would be contrary to all others).

66. See Boseman II, 704 S.E.2d 494, 496 (N.C. 2010) (holding that because the General Assembly did not vest state courts with subject matter jurisdiction to create
The Supreme Court of North Carolina should have considered recent decisions from other states especially relevant as it considered *Boseman v. Jarrell.*67 A Wisconsin appellate court recently held that although second-parent adoption was long ago rejected as a legitimate option under Wisconsin’s adoption statutes, a trial court’s grant of parenthood status to a biological mother’s lesbian partner was final and out of the court’s reach to overturn, due to the lack of a timely appeal.68 The appellate court ruled in the interest of stability for the child and finality of the judgment, even though it found that the lower court definitively erred by “reaching beyond the statutes to construct its own basis for conferring parental rights.”69 The Wisconsin court’s description regarding the finality of second-parent adoptions as a balancing act between “the judiciary’s interest in achieving fair resolutions of disputes and the policy favoring finality of judgments” is noteworthy and pertinent to decisions regarding the finality of second-parent adoptions in any state.70

Additionally, the Supreme Court of North Carolina should have considered the rationale of an appellate court in Texas that denied a subject matter jurisdictional challenge and upheld a second-parent adoption even after assuming the lower court erred as matter of law, ruling in favor of strict adherence to the statutory appeals process.71 The Texas court also employed judicial estoppel in precluding the challenge to a final adoption decree by noting that “[i]t would be inequitable and unconscionable to allow Goodson to invoke the jurisdiction of a court for the sole purpose of creating a parent-child relationship between Castellanos and K.G. and then subsequently allow her to destroy that same relationship because her

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67. Compare *id.* with *In re Paternity of Christian R. H.*, 794 N.W.2d 230, 236 (Wis. Ct. App. 2010) (noting that although the Wisconsin court held that second-parent adoptions were not allowable by statute, it further held that the biological parent had not filed an appeal in the timeframe permitted, therefore allowing the final adoption and the lower court’s error of law to stand).

68. See *In re Paternity of Christian R. H.*, 794 N.W.2d at 234; see also *In re Interest of Angel Lace M.*, 516 N.W.2d 678, 683 (Wis. 1994) (denying a second-parent adoption and holding that a minor is not eligible for adoption unless the parental rights of both biological parents have been terminated).

69. See *In re Paternity of Christian R.H.*, 794 N.W.2d at 234 (finding that the lower court’s erroneous ruling did not void the original parenthood order for purposes of Wis. Stat. § 806.07(1)(d), a statute that emphasizes finality).

70. See *id.* at 235 (reconciling Wisconsin law with federal law by noting that federal courts often raise finality concerns and deny relief under Federal Rule of Civil Procedure 60(b)(4) “where an erroneous legal conclusion forms the sole basis for the request”).

71. See *Goodson v. Castellanos*, 214 S.W.3d 741, 749 (Tex. App. 2007) (adhering to the six month limit on appeals to final adoption orders and noting that all reasonable efforts should be made to avoid the destruction of a parent-child relationship when it is not in the best interests of the child).
relationship with Castellanos had ended.”72 Similar reasoning should have been employed by the Supreme Court of North Carolina in Boseman v. Jarrell, due to the factual similarities between the two cases.73

In Boseman v. Jarrell, Melissa Jarrell pursued a jurisdictional challenge that struck at the legitimacy of the adoption after her relationship with Julia Boseman ended because she realized that it was the only way to challenge the adoption without violating the statute of limitations on adoption appeals.74 North Carolina’s supreme court should have acted as the Texas court did in Goodson v. Castellanos by utilizing judicial estoppel to prevent Jarrell from using the court system to achieve the nullification of an adoption she had earlier actively pursued.75 There is no evidence in the court’s opinion in Boseman that it considered or distinguished the rulings issued by other state courts regarding subject matter jurisdictional challenges to second-parent adoptions.76

Although a court certainly strives to interpret law and policy to the best of its ability, the importance of the finality of the judgment outweighs a court’s potentially erroneous ruling in matters relating to adoption, given the significance of stability and security for children and families.77 In both the Wisconsin and Texas decisions, the courts held or assumed that the lower courts had erred as a matter of law in granting the parentage rights at issue, but left lower courts’ subject matter jurisdiction over adoption proceedings and the adoptions themselves intact.78 The Supreme Court of North Carolina should have followed their lead in Boseman v. Jarrell by affirming the ruling of the court of appeals below in recognition of the lower court’s broad grant of general jurisdiction and out of deference to the

72. See id. at 752 (admonishing the final adoption challenge).
73. Compare id. (prohibiting the final adoption challenge as not appealable due to statutory limits), with Boseman II, 704 S.E.2d 494, 501 (N.C. 2010) (rejecting Boseman’s argument that statutory limits barred any contest of the legality of the adoption decree because a legal nullity may be challenged at any time).
74. See Boseman II, 704 S.E.2d at 501 (finding that the statute of limitations on adoption appeals in North Carolina does not preclude challenges to a court’s subject matter jurisdiction because a void judgment has no legal effect).
75. See Goodson, 214 S.W.3d at 752 (disallowing Goodson’s challenge to the lower court’s subject matter jurisdiction to preside over a second-parent adoption and noting that Goodson was a willing participant in the adoption until her relationship with her partner ended).
76. See Boseman II, 704 S.E.2d at 498-501 (citing only North Carolina precedents).
77. See, e.g., Goodson, 214 S.W.3d at 749 (noting that the short appeals timeframe was adopted in order to comport with the state’s public policy to provide a safe, stable, and nonviolent home for children).
78. See In re Paternity of Christian R.H., 794 N.W.2d 230, 231 (Wis. Ct. App. 2010) (holding that although the lower court erred, the error did not void the court’s decision); Goodson, 214 S.W.3d at 748 (assuming without deciding that the lower court erred as a matter of substantive law, yet maintaining that such error would not deprive the lower court of jurisdiction or render the judgment void).
legislature’s preference for finality in adoption proceedings.79

C. The Supreme Court of North Carolina Erred by Ignoring the Legislative Intent and Proper Statutory Construction of the State’s Adoption Statutes Because the Court Refused to Consider the Statutes’ Overarching Goals of Stability, Finality, and the Best Interests of the Child.

The Supreme Court of North Carolina’s ultimate goal in statutory interpretation and construction is to ensure that the legislature’s intent is furthered, not undermined; yet in Boseman v. Jarrell there is little evidence that the court considered the state adoption statutes’ overarching goals of stability, finality, and the best interests of the child.80 The court is obligated to consider the underlying policy considerations of a statute and guarantee that a statutory analysis does not frustrate the statute’s ultimate reason and purpose; yet there is no evidence that in Boseman v. Jarrell the Supreme Court of North Carolina respected and adhered to its role in that regard.81

By ignoring key statutory provisions of the state’s adoption statute—namely section 48-1-100, regarding legislative findings and intent, and section 48-2-607(a), regarding the finality of adoptions—and instead focusing on a narrow interpretation of the state’s direct placement adoption requirements, the state supreme court failed to recognize the North Carolina legislature’s intent to prioritize finality and stability for children over correcting errors made by trial courts.82 The statutory language describing the purpose of adoption clearly shows that the legislature’s

79. See Boseman I, 681 S.E.2d 374, 381 (N.C. Ct. App. 2009) (finding that the adoption court acted within its jurisdictional bounds, and holding that, at most, the grant of direct placement adoption in this case was an error of law), aff’d in part as modified, rev’d in part, 704 S.E.2d 494 (N.C. 2010).


81. See Campbell v. First Baptist Church of the City of Durham, 259 S.E.2d 558, 564 (N.C. 1979) (explaining that a court should always construe a statute in a manner that will protect its intent from circumvention by making sure that the “ills that prompted the statute’s passage [are] redressed”); In re Hardy, 240 S.E.2d 367, 372 (N.C. 1978) (noting the importance of interpreting a statute’s plain language in a way that harmonizes with its underlying purpose).

82. Compare Boseman II, 704 S.E.2d at 501 (denying the possibility of a modification to direct placement adoption by finding that the General Assembly intended that the adoption decree had to sever the previous parent-child relationship), with N.C. GEN. STAT. § 48-2-607(a) (2011) (“[A]fter a final order of adoption is entered, no party to an adoption proceeding nor anyone claiming under such a party may question the validity of the adoption because of any defect or irregularity, jurisdictional or otherwise, in the proceeding, but shall be fully bound by the order.”).
primary goal is consistency and security for minor children and that the
adopted child’s interests should be prioritized over the interests of any
adult. Further, the legislature emphasizes that the adoption statutes
should be liberally construed and applied to promote these overarching
goals. The lower court and the court of appeals that initially granted and
reviewed, respectively, the adoption at issue in Boseman v. Jarrell, adhered
to this statutory construction and legislative intent; yet, the state supreme
court chose to disregard the intended impact of the statute as a whole. By
voiding this second-parent adoption, the state supreme court frustrated the
objective of the statute and undermined the state legislature’s purpose in
creating it.

The Supreme Court of North Carolina reached its decision to void the
adoption (rather than, at most, conclude that the lower court erred as a
matter of law) by holding that the adoption at issue failed to sever the
biological parent-child relationship as required by the statute governing
direct placement adoptions, and that by not severing biological parent-child
ties before completing the adoption, Boseman and Jarrell were granted an
adoption that was not statutorily available. The court failed to consider
that the primary reason for the requirement that a biological parent’s rights
be terminated before an adoption is completed is the legislature’s
expectation that the child will be placed in a new home with a new
family. This rationale becomes inappropriate when the biological parent
and the adoptive parent plan to raise the child together, and frustrates the
legislative goal of protecting and promoting the best interests of the child
by requiring that one parent’s rights be terminated to facilitate adoption by

83. See N.C. Gen. Stat. § 48-1-100(b)(1) (2011) (noting the primary purpose of
adoption is to advance the welfare of minors by “protecting minors from unnecessary
separation from their original parents [and] facilitating the adoption of minors . . . by
persons who can give them love, care, security, and support”); see also id. § 48-1-100(c)
(subjugating the interests of adults to children’s needs, interests, and rights).

84. See id. § 48-1-100(d) (stating that the adoption statutes should be liberally
construed and used to promote the statutes’ underlying purposes and policies).

85. See Boseman II, 704 S.E.2d at 500 (holding that because the statutory language
is clear and unambiguous, courts do not have power to liberally construe the language).

86. See N.C. Gen. Stat. § 48-1-100 (2011) (intending clearly and unambiguously
that the statute be used to promote stable and loving homes for minor children in the
state).

87. See Boseman II, 704 S.E.2d at 500 (concluding that because the legislature’s
language was “clear and unambiguous” in relation to the requirements for direct
placement adoptions, the court did not retain the ability to liberally construe the statute
as specified in § 48-1-100(d)).

88. See In re Adoptions of B.L.V.B., 628 A.2d 1271, 1274 (Vt. 1993) (finding that
the traditional termination of parental rights provision was in place because of the
anticipation that the adoption of children would remove them from the care of their
biological parents).
Promoting the best interests of the child as the legislature intended would undoubtedly include assisting two capable adults, instead of just one, to legally parent and provide for the child throughout his or her life.

Other state courts have rejected a strict interpretation of the provision mandating termination of parental rights before an adoption can occur when that interpretation would produce “an absurd outcome” that would “nullify the advantage sought by the proposed adoption: the creation of a legal family unit identical to the actual family setup”, the North Carolina supreme court should have taken such language under consideration. Instead of prioritizing the needs and interests of the minor child, which would certainly include maintaining legally binding ties to two parents instead of one, the North Carolina supreme court accepted a collateral attack to a final adoption decree and voided the adoption at issue, thereby leaving the child in a more precarious financial and emotional position. Not only does this decision contradict the best interests of the child, but it also contradicts the best practice, long recognized by North Carolina courts, of construing adoption statutes broadly and liberally to further those interests.

When there are two possible ways of construing an adoption statute, as is clearly possible given the differing opinions of the lower courts and the state supreme court in Boseman v. Jarrell, a court should adopt a construction that furthers, rather than undermines, the purpose of the statute. To that end, the Supreme Court of North Carolina should have followed the example of other state courts that have liberally construed

89. See, e.g., Strasser, supra note 10, at 1024-26 (positing that it is for this reason that legislatures devised the specific stepparent exception to the requirement that biological parental rights terminate upon adoption).


92. But see Boseman I, 681 S.E.2d at 380-81 (citing the importance of having two parents dedicated to the emotional and financial well-being of a child, and the state’s interest in maintaining those legal ties).

93. See Locke v. Merrick, 28 S.E.2d 523, 527 (N.C. 1944) (noting that adoption not only benefits those immediately impacted but also the public, and therefore the statute should not be construed technically, “nor compliance . . . examined with a judicial microscope” (quoting Carter Oil Co. v. Norman, 131 F.2d 451 (1942))).

94. See, e.g., Coastal Ready-Mix Concrete Co. v. Bd. of Comm’rs of Nags Head, 265 S.E.2d 379, 385 (N.C. 1980) (declaring that the best way to determine the purpose of the statute and legislative intent is to examine the language of the statute, its spirit, and what it seeks to accomplish (citing Stevenson v. City of Durham, 188 S.E.2d 281 (N.C. 1972))).
adoption statutes to allow for second-parent adoptions that are not otherwise specifically identified in the statutes. Those courts cited the legislative intent and purpose of adoption statutes in deciding to uphold such an adoption decree, and the North Carolina supreme court should have followed suit. In employing reasoning similar to the Supreme Court of Iowa in *Schott v. Schott*, the Supreme Court of North Carolina could have acted to further the intent of the legislature and protect the interests of adopted children rather than narrowly and mechanically applying the exact language of a statutory subsection. North Carolina’s adoption statutes are not substantively dissimilar from those in other states, and no such different and drastic result was warranted in *Boseman v. Jarrell*.

Ignoring well-reasoned statutory interpretations from other states as well as its own, the North Carolina supreme court read the state adoption statutes to exclude second-parent adoptions. In doing so, the court destabilized the life of the little boy at the center of the controversy in *Boseman v. Jarrell* and further jeopardized the security and stability of the children in North Carolina who have been adopted via this mechanism in the past. The Supreme Court of North Carolina should have decided, as have courts in other jurisdictions, that second-parent adoptions, although not specifically conceived of in the state’s adoption statutes, furthered the intentions of the legislature to advance the welfare of minors. In holding otherwise, the court neglected its responsibility to advance legislative

95. *See*, e.g., *Goodson v. Castellanos*, 214 S.W.3d 741, 748-49 (Tex. App. 2007) (noting that all reasonable efforts to prevent destruction of a parent-child relationship is in the best interests of the child); *Schott v. Schott*, 744 N.W.2d 85, 88 (Iowa 2008) (emphasizing the importance of stability for children and finality of judgments for families).

96. *See*, e.g., *Goodson*, 214 S.W.3d at 749 (holding that legislative intent precluded untimely appeals to adoption decrees because of the possible trauma to children and families that results from the destruction of a parent-child relationship created by adoption).

97. *See* *Schott*, 744 N.W.2d at 88 (allowing a district court’s original grant of second-parent adoption to stand, despite the fact that second-parent adoptions are not conceived of in the state’s statutes, because the adoption statute contained language that it was to be “construed liberally” to promote the best interests of the child).

98. *Compare* N.C. GEN. STAT. § 48-1-106 (2011) (noting that the decree of adoption severs the relationship between biological parent and child, with an exception for a stepparent adoption), *with* IOWA CODE § 600.3 (2011) (noting that an adoption may not be filed until parental rights have been terminated, with a few narrow exceptions not including second-parent adoption).

99. *See* *Boseman II*, 704 S.E.2d 494, 498, 501 (N.C. 2010) (overruling the lower court’s decision that the adoption at issue comport with the “intent and purposes of both our adoption law as a whole and the specific provisions of it at issue here”).

100. *See* id. at 509-10 (Hudson, J., dissenting) (finding the majority failed to protect the best interests of adoptees by neglecting guidance explicitly stated in the legislative priorities).

101. *See*, e.g., *Goodson*, 214 S.W.3d at 749 (emphasizing the importance of stability and finality for children).
objectives and protect North Carolina families and children.102

D. The North Carolina General Assembly Should Repudiate the Supreme Court’s Ruling in Boseman v. Jarrell by Amending the State’s Adoption Statutes to Specifically Include Second-Parent Adoptions Because It Is in Keeping with the Best Interests of the Child Standard.

The Supreme Court of North Carolina’s ruling in *Boseman v. Jarrell* defied proper statutory construction and legislative intent; thus, the state’s statutes warrant legislative amendment to clarify the meaning and purpose of adoption and to protect the best interests of children.103 Because adoption is a statutory creation, the legislature is a fitting place for adoption reform and expansion.104 The North Carolina supreme court routinely deflects policy decisions to the legislature out of deference, calling it a body better equipped to “weigh all the factors surrounding a particular problem, balance competing interests, provide an appropriate forum for a full and open debate, and address all of the issues at one time.”105 Further, a legislature can act to repudiate court decisions that it finds contrary to the interpreted law’s purpose and intent by explicitly amending statutory language to overrule, in effect, the court’s decision.106

Although arguments made previously in this Comment note that the state supreme court could have and should have maintained the adoption in *Boseman v. Jarrell* on various grounds, it instead voided it, leaving the issues of second-parent adoption and jurisdiction over adoption proceedings open for General Assembly action.107 The General Assembly should accept this challenge to act by explicitly amending the state’s adoption statutes to clarify the lower courts’ ability to decide all adoption

102. But see *Boseman I*, 681 S.E.2d 374, 381 (N.C. Ct. App. 2009) (upholding the adoption, citing the best interests of the child and the legislature’s directive that adoption statutes be liberally construed to that end), aff’d in part as modified, rev’d in part, 704 S.E.2d 494 (N.C. 2010).

103. See *Boseman II*, 704 S.E.2d at 509-10 (Hudson, J., dissenting) (stating that the majority failed to protect the best interests of minor adoptees by neglecting guidance explicitly stated in the legislative priorities).

104. See, e.g., *In re Adoption of R.B.F.*, 803 A.2d 1195, 1199 (Pa. 2002) (noting that adoption is unknown at common law, and is rather a creature of statute).

105. See *Rhyne v. K-Mart Corp.*, 594 S.E.2d 1, 8 (N.C. 2004) (finding the General Assembly better situated to make policy than the state supreme court).


107. See *Boseman II*, 704 S.E.2d at 548-49 (“[U]ntil the legislature changes the provisions of Chapter 48, we must recognize the statutory limitations on adoption decrees that may be entered.”).
matters and further protect children and families by unambiguously allowing second-parent adoptions.108

By emphasizing in new statutory language that the lower courts retain jurisdiction over adoption matters in all cases that meet the minimum residency requirements, including those adoptions not specifically conceived of in the statutes, the General Assembly would resuscitate the trial court’s role as the appropriate arbiter of the best interests of the children involved in adoptions.109 Because lower courts are closest to the facts and circumstances of the cases at issue, these courts are the best places for determining whether the particularities of a proposed adoption meet the statutory requirements and further the primary legislative purpose of advancing the welfare of minors.110 An amendment of this nature would allow lower courts the latitude to decide cases based on the best interests of the child, with an understanding that an overreach outside statutory bounds would equate to an error of law, reversible upon appeal.111

Further, an explicit amendment allowing second-parent adoption would promote the legislature’s intent that adoption should promote the best interests of the child and would protect the hundreds of children in the state who have already been adopted via this mechanism.112 In clarifying the language of the statute to explicitly allow for second-parent adoptions, the legislature would be acting in the best interests of the child by protecting their financial and emotional benefits, including the provision of Social Security and life insurance benefits to the child in the event of a parent’s death or disability, the right to inherit under laws of intestacy, the right to

108. See, e.g., Plowman, supra note 29, at 77 (positing that because adoption is a purely statutory construction, the legislature is a natural setting for adoption reform).

109. See, e.g., In re D.R.F., 693 S.E.2d 235, 238 (N.C. Ct. App. 2010) (noting that a trial court’s decision regarding the best interests of the child is discretionary and will be overturned only upon a showing that it was “so arbitrary that it could not have been the result of a reasoned decision” (citing White v. White, 324 S.E.2d 829, 833 (N.C. 1985))).

110. See Smithwick v. Frame, 303 S.E.2d 217, 393 (N.C. Ct. App. 1983) (concluding that it is the trial court’s job to determine the ultimate facts of the case, meaning that a trial court must weave together evidentiary findings and conclusions of law (citing Woodward v. Mordecai, 67 S.E.2d 639 (N.C. 1951)); see also N.C. GEN. STAT. § 48-1-100(b)(1) (2011) (prioritizing the well-being of children in adoption proceedings).

111. See, e.g., In re Paternity of Christian R. H., 794 N.W.2d 230, 231-33 (Wis. Ct. App. 2010) (demonstrating the security of a trial court’s ability to decide adoption cases and the ability of a reviewing court to overturn an error of law if timely appealed).

sue for wrongful death of a parent, and eligibility for health insurance coverage under both parents’ health insurance policies.\textsuperscript{113}

The General Assembly should amend the adoption statutes to include second-parent adoption and make clear that it is doing so in an effort to further the best interests of the child.\textsuperscript{114} In a different opinion, a Wisconsin Supreme Court justice supported the legislature’s role in expanding adoption statutes to include second-parent adoption by using the best interests of the child standard:

Hopefully our legislators will continue to work to advance the interests and protection of our children by listening to their constituents, reviewing our current laws, and debating the wisdom of statutory changes. Children cannot protect their own interests. The legislature can protect those interests by vigilantly overseeing the children’s code and ensuring a statutory scheme that indeed provides for the best interests of our kids.\textsuperscript{115}

By amending the current adoption statutes, the General Assembly would clarify that state courts with jurisdiction over adoption proceedings are best positioned to determine whether a placement is in the best interests of the child, and would provide them with the statutory justification to make those determinations, regardless of the marital status or familial relationship of the adopting parties.\textsuperscript{116} A second-parent adoption amendment would serve both the financial and emotional best interests of the child and would offer legal recognition and security to a child’s relationship with a person that the child recognizes as a parent, whether the law does or not.\textsuperscript{117}

A second-parent adoption amendment to North Carolina’s adoption statutes would allow the General Assembly to determine the precise scope of such an amendment and provide explicit guidance for lower courts going forward.\textsuperscript{118} An amendment with a narrower scope would remedy the

\textsuperscript{113} See, e.g., In re Jacob, 660 N.E.2d 397, 399 (N.Y. 1995) (noting the numerous benefits to a child when his legal ties to two parents are solidified via second-parent adoption).

\textsuperscript{114} See Barbara Bennett Woodhouse, Waiting for Love: The Child’s Fundamental Right to Adoption, 34 CAP. U. L. REV. 297, 324 (2005) (recognizing states’ gradual movement away from limitations on who may adopt and broadening the base of prospective parents to better serve the best interests of the child).

\textsuperscript{115} See In re Angel Lace M., 516 N.W.2d 678, 687 (Wis. 1994) (Geske, J., concurring) (agreeing that the legislature rather than the court is the proper forum to change adoption policy but urging the legislature to take up the matter in the best interests of the child).

\textsuperscript{116} See, e.g., CONN. GEN. STAT. § 45a-724(3) (2011) (allowing the parent of a child to authorize another person who shares parental responsibility to adopt the child).

\textsuperscript{117} See Elrod, A Child’s Perspective, supra note 43, at 249-51 (observing that attachment between a child and parent forms early and is dependent on the quality and nature of the interaction between them, rather than the legal designation of the parent).

\textsuperscript{118} Compare CONN. GEN. STAT. § 45a-724(3) (allowing the parent of a child to authorize another person who shares parental responsibility to adopt the child), with
situation at issue in Boseman v. Jarrell, allowing a parent’s partner to adopt that parent’s biological child regardless of their marital status. Alternatively, an amendment with a more expansive scope would allow for the adoption of children with one parent by anyone who shares in the responsibility of parenting. Whether narrow or expansive in scope, a second-parent adoption amendment would expand options for heterosexual couples who are not married as well as gay and lesbian couples who cannot marry, and it would reflect the legislature’s acknowledgment of societal shifts that have created different types of families with children no less deserving of two legal parents, and no less deserving of a legal system that promotes and preserves their best interests.

IV. POLICY IMPLICATIONS AND SUGGESTIONS

Although the Supreme Court of North Carolina should be commended for its decision in Boseman v. Jarrell to maintain Julia Boseman’s custodial relationship to her former son, Jacob, the court’s decision voiding Boseman’s legal adoption of Jacob establishes a dangerous precedent and, as stated above, should be overturned by legislative action. Such action would not only further the best interests of the child, but would also be in the best interests of society at large, because when children are afforded two parents rather than one, the risk of their financial vulnerability and possible dependence on the state is decreased.

The General Assembly’s approval of second-parent adoptions in furtherance of the best interests of the child should be grounded in explicit and well-researched findings that gay parents are equally as capable of providing loving homes, stability, and security for adopted children as their

VT. STAT. ANN. tit. 15A, § 1-102(b) (West 2010) (allowing the partner of a parent to adopt the child of the parent if that adoption is in the best interests of the child).

119. See, e.g., VT. STAT. ANN. tit. 15A, § 1-102(b) (indicating that termination of a parent’s parental rights in an adoption pursuant to this subsection).

120. See, e.g., COLO. REV. STAT. ANN. § 19-5-203(1)(d.5)(I) (West 2011) (expanding the parameters of when a child may be adopted to include second-parent adoption when the child has one legal parent).

121. See, e.g., PEW RESEARCH CTR., THE DECLINE OF MARRIAGE AND RISE OF NEW FAMILIES 66 (2010), available at http://www.pewsocialtrends.org/files/2010/11/pew-social-trends-2010-families.pdf (noting that the number of cohabiting couples has more than doubled since 1990, the first year that such a designation was available by the U.S. Census).

122. See Boseman II, 704 S.E.2d 494, 551 (N.C. 2010) (holding that Boseman retained custody rights because Jarrell voluntarily ceded decision-making authority to her).

123. See Locke v. Merrick, 28 S.E.2d 523, 527 (N.C. 1944) (finding that adoption benefits both the parties at issue and the public (citing Carter Oil Co. v. Norman, 131 F.2d 451 (1942))); see also Pickett v. Brown, 462 U.S. 1, 12-14 (1983) (recognizing a state’s legitimate interest in lowering the number of children on welfare and protecting state revenue).
heterosexual counterparts.\textsuperscript{124} Grounding a potential second-parent adoption amendment in the research and opinions of well-regarded and reputable sources, the sponsors and supporters of such an amendment will be better situated to address potential counter-arguments and resistance from members of the General Assembly wary of such an amendment out of misguided and misinformed concern for the best interests of the children at issue.\textsuperscript{125}

A statutory amendment explicitly permitting second-parent adoption would make clear to state courts and the general population that the state values family stability and financial and emotional support for children, regardless of the sexual orientation of their parents.\textsuperscript{126} The North Carolina General Assembly should act in the upcoming legislative session to restore the broad jurisdiction of lower courts to determine adoption cases and affirm the right of a non-biological parent to a secure, stable legal relationship with his or her adopted child.\textsuperscript{127}

V. CONCLUSION

In \textit{Boseman v. Jarrell}, the Supreme Court of North Carolina erred in stripping lower courts of subject matter jurisdiction to decide second-parent adoption cases, and the North Carolina General Assembly should thus act to clarify its adoption statutes and restore the lower courts’ ability to decide all adoption cases.\textsuperscript{128} Because the grant of a second-parent adoption in North Carolina should amount, at most, to an error of law, the state supreme court overstepped its bounds in limiting the jurisdiction of the lower courts to determine adoption cases by reading in additional jurisdictional requirements not required by statute.\textsuperscript{129} The Supreme Court

\begin{footnotesize}
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\item See, e.g., Brief for Am. Psychological Ass’n & Nat’l Ass’n of Soc. Workers as Amici Curiae Supporting Plaintiff-Appellee, Boseman v. Jarrell, 690 S.E.2d 530 (N.C. 2010) (No. 416PA08-2), at *1 (displaying empirical research that concludes lesbian and gay parents do not differ from heterosexuals in their parenting skills and that children raised by gay and lesbian parents do not show deficits as compared to children raised by heterosexual parents).
\item See Ellen C. Perrin et al., \textit{Technical Report: Coparent or Second-Parent Adoption by Same-Sex Parents}, 109 \textit{Pediatrics} 341, 341-43 (2002) (finding that parents’ sexual orientation is not a variable that, in itself, predicts an ability to provide a home environment that is optimal for raising a child).
\item See \textit{In re Angel Lace M.}, 516 N.W.2d 678, 687 (Wis. 1994) (Geske, J., concurring) (urging the legislature to determine whether second-parent adoption would further the best interests of the child).
\item See \textit{Boseman II}, 704 S.E.2d 494, 505-06 (N.C. 2010) (Hudson, J., dissenting) (arguing that the majority opinion fashion, erroneously, an entirely new formulation of what it means for a lower court to have subject matter jurisdiction).
\item See Ellis v. Ellis, 130 S.E. 7, 9 (N.C. 1925) (noting that when a court has
\end{enumerate}
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of North Carolina should have considered other state courts’ second-parent adoption precedents before charting new and dangerous territory that revoked a lower court’s power to grant an adoption and deprived a child of the benefit of two legal parents.\textsuperscript{130} Such consideration is warranted when a state court considers ruling contrary to all other states’ decisions on a similar matter.\textsuperscript{131}

Further, by interpreting the state adoption statute without consideration for the adoption statute’s overall purpose and intent, the state supreme court employed myopic vision to void a final adoption that was otherwise in the best interests of the child involved.\textsuperscript{132} The court has an obligation to further, not undermine, the legislature’s intent to promote adoptions in the best interests of children, and in \textit{Boseman v. Jarrell}, there is scant evidence that the court appreciated its role in that regard.\textsuperscript{133} As a result, the General Assembly has an obligation to step in and amend the state’s adoption statutes to ensure security and stability for all adopted children in North Carolina.\textsuperscript{134}