

# Children's Law Center of Indiana



## CHINS

8/3/2006

In **In Re Adoption of M.W.**, 851 N.E.2d 961 (Ind. 2006), the Court denied transfer of **In Re Infant Girl W.**, 845 N.E.2d 229 (Ind. Ct. App. 2006).

Justice Dickson dissented from the denial of transfer. He stated, "The appellant here is seeking transfer following a 2-1 decision of a panel of the Court of Appeals that approved the eligibility of a same-sex couple to adopt a child." Justice Dickson noted that, although the denial of transfer did not constitute approval of the Court of Appeals decision and has "no legal effect other than to terminate the litigation between the parties in the Supreme Court," the Court was missing "a valuable and important opportunity to minimize uncertainty and confusion until such time as the legislature provides explicit superceding reclarification." He pointed out that a related controversy was before the Court in **King v. S.B.**, 837 N.E.2d 965 (Ind. 2005), wherein (1) the majority "issued a narrow decision permitting further consideration of a lawsuit filed by a former same-sex domestic partner seeking the equivalent of adoption rights to a child born of her former partner;" (2) the majority declined to consider the reasoning of his dissent therein that "existing Indiana statutory adoption law prevails over court-made common law; that judicial decisions should not intrude into the legislature's prerogative to determine public policy on social issues; and that the judiciary should not advance special policy interests that are contrary to the public policy demonstrably favored by Indiana citizens;" and (3) the majority specifically "did not reject the points asserted by the dissent, but instead left them unresolved, stating: 'We do not deem ourselves to have decided the various legal issues raised by the dissent.'" Regarding this case, Justice Dickson said that he "would prefer that the Court grant transfer to uphold the legislature's exclusive authority to regulate adoption eligibility and procedure and to apply Indiana's existing adoption statutes as prohibiting adoptions by unmarried couples."