**Protecting Yourself & Your Family as we Move Into 2025**

***Marriage***

*Obergefell v. Hodges,* 576 U.S. 644 (2015), which granted marriage equality, is the law of the United States. This federal decision relying on the 14th Amendment to the U.S. Constitution protects the right to marriage for every person regardless of sexual orientation and requires all state governments to recognize marriages performed in other U.S. States.

Many people are concerned that with a new administration, marriage equality may be threatened, since the United States Supreme Court was willing to overturn its prior decision granting women the right to privacy in making decisions regarding abortion. Although the U.S. Supreme Court overruled *Roe v. Wade*, a 50-year-old precedent, in *Dobbs v. Jackson Women’s Health Organization*, 597 U.S. 215 (2022), there were many lower court cases which preceded it signaling very clearly that the issue was ripe for reconsideration. Typically, it takes years for a case to work its way through the legal system to be considered by the Supreme Court, thereby giving us substantial notice that an important case needs our attention. If *Obergefell* were at risk, we would have similar advance warning, as we did with *Dobbs*, that this challenge was occurring. Currently, there are no such known challenges.

The *Obergefell* decision cannot be overturned by Presidential Executive Order. The *Obergefell* decision cannot be overturned by legislation because the decision recognizes and protects a Constitutional right for U.S. citizens. The only two ways the decision can be overturned is by the United States Supreme Court reversing the decision or a new Federal Constitutional Amendment banning marriage equality. A Constitutional Amendment is highly unlikely and would take several years to pass.

Marriage is a legal commitment that conveys rights and responsibilities on each partner; it requires a complex legal process to undo. We do not recommend rushing into marriage out of concern that marriage equality will be overturned in some way in the near future.

If *Obergefell* were to be overturned by the U.S. Supreme Court, the right to marry could be curtailed. If the right to marry is limited, it is unlikely that marriages which already exist at that time would be nullified. Legal rulings generally do not have retroactive application, and we do not anticipate any attempt to dissolve pre-existing marriages.

***Adoption and Parentage***

If you have an adoption decree or a parentage order, whether you are a same-sex or a different-sex family, and that order was issued by a Wisconsin circuit court, your parental rights are Constitutionally protected under the Full Faith and Credit clause of the U.S. Constitution. The U.S. Supreme Court confirmed this in *V.L. v. E.L.,* 577 U.S. 2 (2016). We recommend you have a certified copy of the court order in a safe, accessible location.

Since 2016 and the decision in *Torres v. Seemeyer*, 207 F. Supp 3rd 905 (2016 ), many Wisconsin families have relied on the birth certificate issued by the State of Wisconsin listing both partners in a marital relationship as a child’s parents as evidence of their familial relationship.

The *Torres* decision “ungendered” the statutes in Wisconsin which address parentage presumptions and, specifically, addressed situations where children are born with the assistance of a sperm donor. As a result, married partners of any sex who use a donor to conceive a child can both be listed on a child’s birth certificate. Additionally, in Wisconsin, courts recognize that children born during a marriage are presumed to be the legal child of the two parties to that marriage, regardless of gender.

Understandably, many families with both parents’ names on the certificate or who have birthed children during their marriage have not taken the extra legal step to obtain a court order securing those legal connections because adopting your own child – and the screening process adoption requires - might not feel comfortable or necessary when you are already recognized on the birth certificate. We are unaware of any Wisconsin court that has done anything other than uphold the legal status of both parents for a child born during a valid same-sex marriage, despite the status being challenged in a few cases during divorce The *Torres* decision, however, only interpreted Wisconsin law. And the granting of a birth certificate is not a court order; it is a governmental administrative act.

Having a court order provides Constitutional protections and portability that a birth certificate alone does not. In line with the ACLU, LAMBDA Legal, and other national organizations advocating for equal rights, we recommend you obtain a confirmatory adoption. This is, of course, a very personal decision, and we are happy to talk to you to discuss your family and whether this is right for you.

***IVF and Surrogacy***

If you are building your family through IVF, surrogacy or the use of donor eggs, sperm, or embryos, the law of Wisconsin has not changed. The presumptions of parentage set forth in Wis. Stat. § 891.40 and the Wisconsin Supreme Court’s decision in *In re the Paternity of F.T.R, Rosecky v. Schissel*, 2013 WI 66, 349 Wis. 2d 84, stand. Parentage orders continue to be available through the Wisconsin courts to confirm and protect the rights of the intended parents.

However, as noted above, if you used a known donor and do not yet have a court order, you may want to consider a termination of parental rights and confirmatory adoption to secure the Constitutional protections of a court order.

If you are at a point where you are looking for long-term storage of embryos, sperm, or eggs, we recommend (1) choosing a storage facility in a state where the laws are favorable to assisted reproduction, (2) obtaining a written storage agreement with clear consents regarding future disposition of your frozen genetic material, and (3) having a lawyer review the consents. If your genetic material is already frozen, you will want to review the consents and, if needed, consider using a professional cryotransport service to move your embryos, sperm or eggs.

***Estate Planning – Including Powers of Attorney***

Estate planning includes much more than just directing how your property is distributed upon your death. We recommend every adult have a comprehensive estate plan including health care and financial powers of attorneys and advance directives to ensure the person you wish to make both financial and health care decisions for you is legally able to do so if you are unable to make decisions for yourself. We recommend naming an alternate health care and financial agent to ensure you are able to direct who assists you at this critical time.

Your estate planning documents should clearly identify your spouse and children by name and, if any of your heirs are transgender, you should ensure their legal name and gender are correct in your estate planning documents, but you may also reference their chosen name and status for clarity and recognition.

If you are a parent, it is essential you make a clear nomination of guardian(s) for your minor children and, if you have frozen embryos, eggs, or sperm, we recommend you include information on where they are stored and ensure your estate planning directives are consistent with your disposition instructions at the IVF clinic or storage facility.

***Travel & Immigration***

The landscape ahead for immigration is unclear. We recommend all U.S. citizens obtain a passport now for themselves and for their minor children, if eligible, even if you don’t have any current plans for international travel. As a reminder, a passport is required for travel among our North American neighbors (Canada and Mexico) as well as the rest of the world.

If you reside outside of the U.S. and are expecting a child who will be born in the U.S. via surrogacy and who is expected to move outside the U.S. after birth, we recommend - upon confirmation of pregnancy - you immediately begin working to obtain your travel documents for the country where the child will live. We recommend you contact your country’s consulate (typically the closest are in Chicago) to ensure you will have a smooth travel experience and will be able to obtain the necessary travel documents for your child to return home with you.

If you are a U.S. citizen who adopted a minor child from another country at any time, please ensure that you have available all immigration paperwork showing the legal status in which the child was brought into the U.S. If the child automatically acquired citizenship under U.S. immigration law, we strongly recommend that you have their Certificate of Citizenship in your files, even if the child has a U.S. passport by now. If a Certificate of Citizenship cannot be located, we recommend seeking legal advice to determine if a Certificate of Citizenship can be obtained at this stage.

If you are a foreign national living in the U.S. who is considering divorce, if your immigration status is connected to your spouse, we strongly recommend seeking legal advice both for family and for immigration purposes, to minimize the risk that your immigration status is impacted.

If you or your family members may be eligible for family-based immigration benefits under current law, we strongly recommend seeking legal advice and consider initiating the process sooner rather than later. We anticipate the new administration may attempt to eliminate or restrict certain family-based immigration categories, and legal options that are currently available may be diminished in the near future.

***Gender Identification***

Unfortunately, we do anticipate numerous legislative and legal challenges related to gender identification and legal protections for transgender people. This may take many forms, from limiting access to gender-affirming health care to removing workplace discrimination protections to prohibiting gender-affirming identification on legal documents.

If you or your child would like to amend your gender on any federal or state identification documents, we recommend you consider doing so as soon as possible. Many of these changes require a court order obtained with supporting medical documentation. Wisconsin currently requires a court order and either a male or female designation when changing the birth record. While U.S. passports currently allow for a non-binary (X) gender marker, those policies may not be continued. Currently, gender changes for a passport and social security can, typically, be completed without a court order. There are forms on-line to do so.

At DeWitt LLP we have a team of attorneys available to assist you in protecting yourself and your family. Please contact us at 608.255.8891or through our website at [www.dewittllp.com](http://www.dewittllp.com) to schedule an appointment.