



Modern Families

Working with LGBTQ Birth, Foster, and Adoptive Parents

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LGBTQ

Lesbian, gay, bisexual, transgender, and
queer/questioning

Statistics

- ❖ 400,000+ children in foster care in U.S.
- ❖ 12,000+ children in foster care in GA
- ❖ Approximately 4,000 foster homes in GA
- ❖ # of LGBTQ foster homes in GA = ???
 - ❖ For many years, LGBTQ foster parents had to choose one person to be the “parent” and the other one had to be “roommate/secondary caregiver.”

Federal Law

Obergefell v. Hodges (US Supreme Court)

- ❖ Decided June 26, 2015 by 5 to 4
- ❖ Holding: The Fourteenth Amendment requires a State to:
 1. License a marriage between two people of the same sex; and
 2. Recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed out-of-State.
- ❖ Due Process AND Equal Protection

Obergefell v. Hodges

Kennedy (opinion):

- ❖ “No union is more profound than marriage, for it embodies the highest ideals of love, fidelity, devotion, sacrifice, and family. In forming a marital union, two people become something greater than once they were. As some of the petitioners in these cases demonstrate, marriage embodies a love that may endure even past death. It would misunderstand these men and women to say they disrespect the idea of marriage. Their plea is that they do respect it, respect it so deeply that they seek to find its fulfillment for themselves. Their hope is not to be condemned to live in loneliness, excluded from one of civilization’s oldest institutions. They ask for equal dignity in the eyes of the law. The Constitution grants them that right.”

Obergefell v. Hodges

Roberts (dissent):

- ❖ “If you are among the many Americans—of whatever sexual orientation—who favor expanding same-sex marriage, by all means celebrate today’s decision. Celebrate the achievement of a desired goal. Celebrate the opportunity for a new expression of commitment to a partner. Celebrate the availability of new benefits. But do not celebrate the Constitution. It had nothing to do with it.”

Federal Law

Pavan v. Smith (US Supreme Court)

- ❖ Decided June 26, 2017 by 6 to 3
- ❖ Holding: Arkansas law requiring name of mother's male spouse to appear on birth certificate must be extended to include a mother's female spouse
- ❖ Holding otherwise would be inconsistent with *Obergefell*
- ❖ In *McLaughlin v. McLaughlin*, decided on September 19, 2017, the Arizona Supreme Court applied *Obergefell* and *Pavan* in holding that the statutory presumption that a woman's husband is her child's legal parent must also be extended to "similarly situated women in same-sex marriages"
- ❖ Positive results for same-sex couples, but these cases remind us that states are still pushing back against providing truly equal protection for same-sex parents

Federal Law

Trinity Lutheran Church of Columbia, Inc. v. Comer (US Supreme Court)

- ❖ Decided June 26, 2017 by 7 to 2
- ❖ Holding: The Department's policy violated the rights of Trinity Lutheran under the Free Exercise Clause of the First Amendment by denying the Church an otherwise available public benefit on account of its religious status.
- ❖ 1st Amendment-Free Exercise Clause
- ❖ Blurred the line between the church and the state

Trinity Lutheran Church of Columbia, Inc. v. Comer

Roberts (opinion):

- ❖ “The Missouri Department of Natural Resources has not subjected anyone to chains or torture on account of religion. And the result of the State’s policy is nothing so dramatic as the denial of political office. The consequence is, in all likelihood, a few extra scraped knees. But the exclusion of Trinity Lutheran from a public benefit for which it is otherwise qualified, solely because it is a church, is odious to our Constitution all the same, and cannot stand.”

Trinity Lutheran Church of Columbia, Inc. v. Comer

Sotomayor (dissent):

- ❖ “This case is about nothing less than the relationship between religious institutions and the civil government—that is, between church and state. The Court today profoundly changes that relationship by holding, for the first time, that the Constitution requires the government to provide public funds directly to a church”
- ❖ “This is a case about whether Missouri can decline to fund improvements to the facilities the Church uses to practice and spread its religious views. This Court has repeatedly warned that funding of exactly this kind—payments from the government to a house of worship—would cross the line drawn by the Establishment Clause.”

What are the Feds saying?

- ❖ Obergefell - Same sex marriage is legal and states must give full faith and credit to marriages performed in other states
- ❖ Pavan - Begins to flesh out what it means for same-sex couples to have access to the “constellation of benefits that the States have linked to marriage,” as required by Obergefell
- ❖ Trinity - Churches are allowed to access public funds/benefits

State Law

- ❖ HB 159 —The Adoption Code Re-Write
 - ❖ 2017-2018 Legislative Session
 - ❖ Bi-Partisan Bill that would have updated our 20 year old adoption code
 - ❖ In the Senate Judiciary Committee, a new code section was added that killed the bill
 - ❖ 49-5-25: “A child-placing agency may decide not to accept a referral for foster care or adoption services under a contract with the department based on the child-placing agency's mission as evidenced by its written policy, statement, or other document.”

Why do we care about HB 159?

- ❖ Child placing agencies would be protected when refusing to work with or place with same sex couples.
- ❖ Example of Morality Statement: “In the best interest of children regarding morality and role modeling, there are additional principles to which...subscribes to uphold ethical conduct. We believe this provides the foundation for the values communicated to the children and young people entrusted to our care. We believe that the term “marriage” has only one meaning and that marriage is sanctioned by God which joins one man and one woman in a single, exclusive union.”

Why do we care about HB 159?

- ❖ However, this type of discrimination is already occurring
- ❖ HB 159 as amended would have provided legal authority for this to occur
- ❖ Under Trinity, this would be permissible
- ❖ CPAs receiving federal and state benefits can choose who to work with and still receive funds

Confused???

We are.

Second-Parent Adoption

- ❖ Same-sex parents have been using second-parent adoptions to ensure that both parents are legally recognized
- ❖ Georgia law doesn't explicitly allow for second-parent adoptions, and whether the adoption is granted depends on the judge
- ❖ Now that same-sex marriage is legal, married same-sex couples will be able to use the stepparent adoption statute
- ❖ For same-sex couples who have chosen to remain unmarried, it is unclear whether courts will continue to grant second-parent adoptions

Societal “Law”

- ❖ Still a very contentious subject
- ❖ Religious Freedom v. Equal Rights of Same Sex Couples
- ❖ How does having LGBTQ foster parents affect the child?
- ❖ Need to expand current pool of foster homes—LGBTQ families are an untapped resource
- ❖ Recognizing bias

QUESTIONS?

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