



LGBT INDY LAW *BLOG*

from the desk of BARBARA J. BAIRD, Attorney at Law

LGBTQ SELF-DEFENSE IN THE TRUMP-PENCE ERA

The election of Donald Trump and Mike Pence, along with a conservative Republican Congress, has been a stark reminder that marriage equality was not the end of the struggle. Much of the progress in LGBTQ civil rights was attributable to the actions taken by the Obama administration, and not by Congress or the courts. This means that a Trump-Pence administration can walk those gains back, and we have seen many examples already.

The resurgence of discriminatory and homophobic policies and attitudes requires that LGBTQ folks be prepared. Here are a few legal self-defense measures you can take NOW:

If you are a same-sex couple raising children, it's critical that both parents have secure legal ties to your children. This means doing a second parent or step-parent adoption, even if you are married and even if both parents' names are on the birth certificate. Only a formal court adoption decree can give adequate security to your parental rights, because a court judgment of adoption must be honored by every state and the federal government. Not so for a birth certificate: Indiana and many other states allow challenges to a parent on the birth certificate who is not biologically related to the child. You may also want to make sure that each child's Social Security number record lists both parents, and obtain a passport for each child that also lists both of you as parents.

Having clear advance directives for your health care continues to be essential for all LGBTQ people, including married couples. In Indiana, even though a spouse can make medical decisions without a health care directive, adult siblings and parents are equally entitled to make medical decisions and could attempt to override the spouse's decisions. A document naming your spouse protects against these disputes.

Wills are still important, even for married couples, and especially if you have children, whether together or by a prior relationship. Without a will, a surviving spouse may not be entitled to inherit everything from the deceased spouse. Guardians should be named for minor children, and trusts created so that they do not get control of their inheritance before they are old enough to responsibly manage those assets.

If you are transgender and have not updated your identity documents, you should start that process immediately. It is most important to obtain gender marker changes on all federal documents, such as passports, social security cards, and immigration records as soon as possible, because the current streamlined policy that was established under Obama could be changed by the Trump-Pence

administration with the stroke of a pen. Even if you do not yet have a legal name change, which takes 3 months or more in Indiana, you might want to get the gender marker changes in your federal records and change your name later.

If you are legally married anywhere, your marriage is recognized nationally and is not in jeopardy. If you are not married, there is no need to rush to the altar. Any movement to reverse Obergefell will take years and will give you plenty of advance notice to take action.

While marriage equality appears to be safe for the time being, in the current political climate, attempts to undermine gay marriage and parental rights (through “religious refusal” laws, for example) are likely to increase with the apparent blessing of the Trump-Pence administration. Take time now to be sure you have your legal house in order.

I have been addressing these issues on behalf of LGBTQ clients for more than 25 years. I can help you navigate these tricky waters to make sure you take advantage of all the legal protections that are available. Please contact the Law Office of Barbara J. Baird for assistance.