

Theme Introduction

LGBTQA Law

By Peter Kulas-Dominguez

Welcome to the LGBTQA Law theme issue of the *Michigan Bar Journal*. Yes, even though marriage equality was established in 2015 thanks to the United States Supreme Court decision in *Obergefell v Hodges*, there is still much going on in the law that impacts the LGBTQA community.

Three cases were argued before the United States Supreme Court on October 8. The issues presented include whether federal employment discrimination laws first passed by Congress in 1964 that bar discrimination “because of sex” protect gay, lesbian, and transgender employees.

The issue in two of the three cases is whether discrimination based on sexual orientation is a subset of sex discrimination.¹ There are two questions presented in the third case: whether the word “sex” in Title VII’s prohibition on discrimination “because of...sex” meant to include “gender identity” and “transgender status,” and whether employers are prohibited from applying sex-specific policies according to their employees’ sex rather than their gender identity.²

No matter how these cases come out, the Supreme Court is likely to issue its decisions in spring or summer 2020, potentially putting the Court front and center in the upcoming presidential election.

Exciting, isn’t it? To hold you over until those decisions come down, the three remarkable articles on the following pages address various LGBTQA concerns.

Tim Cordes’s article discusses how various statutes and court rules affected by *Obergefell* remain unchanged four years after the decision. The article addresses the 68-page draft report created by the Michigan Law Revision Commission in 2016 that identified statutes and court rules affected by the *Obergefell* ruling. It goes on to state that while many of the statutory changes predictably concerned marriage, family, and divorce, the report identified laws related to veterans’ benefits, contracts, insurance, licensing, campaign issues, and criminal law. Needless to say, the changes necessary to comply with *Obergefell* are occurring at a glacial pace.

Jay Kaplan’s article tackles the challenges transgender people face when trying to obtain coverage for medically necessary care. Kaplan describes the framework for how insurers

should determine coverage for medical treatment of transgender recipients and how some insurance plans, including Michigan Medicaid, have ignored federal caselaw precedent for years and have had blanket exclusions on trans-related medical procedures. The article also details why insurance providers, including Michigan Medicaid, cannot create policies that arbitrarily deny medically necessary care to transgender recipients.

Finally, an article coauthored by Christopher LeClair and Laura Jeltema sheds light on how reproductive technology affects one’s estate planning. The authors provide insight to parentage issues, current surrogacy laws in Michigan, property-based implications of reproductive materials, and posthumous conception. Clearly, our laws have some catching up to do with technology.

On behalf of the LGBTQA Law Section, I would like to thank the State Bar of Michigan for its continued support of our section and the authors who contributed to this issue. I would also like to extend a warm invitation to any member of the Bar with an interest in LGBTQA issues to join the section or attend one of our upcoming council meetings. ■



Peter Kulas-Dominguez is passionate about assisting families experiencing family-law-related legal issues. Before joining Warner Norcross + Judd in 2017, he had a solo practice for more than seven years, advocating for clients involved in difficult situations such as child protective proceedings. He has presented at the State Bar of Michigan winter and summer conferences

and ICLE’s Family Law Institute.

ENDNOTES

1. See *Bostock v Clayton County, Georgia*, unpublished per curiam opinion of the United States Court of Appeals for the Eleventh Circuit, issued May 10, 2018 (Case No. 17-13801), cert granted, 139 S Ct 1599 (2019) and *Altitude Express Inc v Zarda*, 883 F3d 100 (CA 2, 2018), cert granted, 139 S Ct 1599 (2019).
2. See *RG and GR Harris Funeral Homes v EEOC*, 139 S Ct 1599; 203 L Ed 2d 754 (2019).