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## FAMILY LAW

### Obergefell v. Hodges

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It is rare that a United States Supreme Court ruling will impact Texas Family Law, but this year, it did so in a big way with its June 26 ruling in *Obergefell v. Hodges*, involving a same-sex couple in Ohio who challenged their state's refusal to recognize same-sex marriage on death certificates. In a deeply divided and controversial 5-4 decision, the U.S. Supreme Court held that same-sex couples have a fundamental right not only to marry, but also have those unions uniformly recognized throughout the United States.

This ruling assures existing Texas state laws regarding same-sex marriages, divorces, adoptions, common law marriage issues, premarital agreements, and most likely standing and parentage issues in child custody litigation will have to be addressed by the Legislature in future sessions.

Perhaps in response to *Obergefell*, the Texas Legislature made several notable changes to the Family Code in 2015, including the addition of several religious liberty enactments in Chapter 2, that protect religious organizations from civil suits for refusing to perform certain services, including marriage ceremonies, that would violate a "sincerely held" religious belief.

The Legislature also codified, in §6.501, many of the temporary injunctive protections that family lawyers have included in their initial divorce filings for years. These changes provide comprehensive protections on issues of property and children at the beginning of a divorce.

The Legislature simplified the granting of a protective order for some by adding in Chapter 81 a presumption that family violence occurred and would be likely to occur in the future—which are the requirements to grant a protective order—if certain specific acts or offenses have occurred.

Courts long have required parties to pay for medical insurance for children in suits affecting the parent child relationship, and now dental insurance also will be included as a requirement akin to child support, effective Sept. 1, 2018.

The most significant Family Code changes occurred in Chapter 107 in suits affecting the parent-child relationship, which addresses the standards for appointments of attorneys ad litem, social studies, and adoptions in pertinent part. In short, the requirements for appointment of an attorney ad litem in child-related cases have become more exacting. Most notably, the Legislature eliminated the sub-chapter for social

studies in contested child litigation, replacing it with new provisions for custody evaluations.

These changes impact all aspects of contested child custody litigation, including the ordering of an evaluation, the evaluator's qualifications, the standards for conducting an evaluation and psychometric testing, provision for introduction of a custody evaluation at trial, provisions for excluding an evaluator's testimony, the requirements for a child custody evaluation report, and the dates by which the report must be filed. Undoubtedly, the standards have become more rigorous in all areas, and the days of a simple social study have, for the most part, ended with the introduction of more thorough custody evaluations that are viewed under more exacting standards.



**Brad LaMorgese** is a partner in the family law boutique Orsinger, Nelson, Downing & Anderson. He regularly represents clients in trials and

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