

Dear friends:

2024 will not be remembered as a year of joy. I don't see 2025 to be much better. We all know the reasons. They don't bear repeating here.

### **A. What can you do? Steps to take to protect yourself and your family**

When I meet with clients, I tell them I am not just preparing them for life in New Jersey but also for the worst-case scenario. I usually depict an emergency room in rural Oklahoma at midnight. But it could be worse.

Rather than worrying, here are some positive actions you can take:

1. **Make sure your parentage is secured** by a judgment signed by a judge. Do not rely on a birth certificate. Parentage claims based solely on a birth certificate have been defeated in red and blue states and denied by Social Security.

The “full faith and credit” clause of the US Constitution provides that every state must honor a judgment from another state. Thus, a judicial decree is the gold standard. A birth certificate is not a judgment and thus not eligible for FF&C.

Carry copies of judgments on your hand-held device and in an accessible cloud. You should also consider having paper copies at hand.

2. **Make sure you have updated planning documents in case of death.** Wills are necessary and mandated for anyone whose marital or parental status could be challenged. Of equal if not more importance are beneficiary designation forms. For many, their most significant assets are retirement accounts. Are beneficiary designations on life insurance and retirement accounts correct and consistent with your plan?
  
3. **There are other essential documents.** You need a durable business power of attorney, proxy directive for health care and living will. Everyone does. Once executed, these documents could cover you for years, if not decades.

Just because you are married doesn't mean that you have any authority in your spouse's place to act in the time of a health or financial crisis.

It can take months for someone to be appointed as guardian of an incapacitated person. With a durable power of attorney, you already have all of the authority you need.

What if you do end up in an emergency room in a strange place? What if you and your spouse have different last names? Or even the same last name? Do you want to depend on your undocumented assertions to allow you to make health care decisions for a spouse or child?

When I draft these documents, I continue to use provisions “left over” from before we could get legal recognition of our relationships. Those of us of a certain age remember when we were denied access to our loved one in the ICU because we were not “related.” Unfortunately, these clauses may be needed again.

These documents must be readily available. In the “old days”, clients used to keep a copy at home, a copy at work and a copy in the car. Make decisions which will make you feel secure.

4. **Make sure that your name and gender marker are aligned** on all of your identity documents – most importantly your driver’s license, Social Security records and passport. If they do not, it is relatively easy in NJ to obtain a judicial name change judgment. With a NJ birth certificate, one can change the gender marker by self-attestation.
5. **Are your other documents up to date?** Everyone in your household, including children, should have a current passport. Who knows how the availability of passports might change? Consider getting the new Real ID from the Division of Motor Vehicles.
6. **If your child is over 18**, you as a parent do not have any right to make medical decisions for them or to have access to their medical records. Consider, if appropriate, having your child sign a health

care proxy enabling you to make decisions for them in an emergency.

7. **Don't wait.** If you live in NJ, you can easily have your parentage confirmed. In NJ, you can change your name and gender marker. If you move, you may be in a state where these protections are not available.
  
8. I do have **words of caution** concerning entering a legally recognized relationship. Making that choice has significant ramifications. In NJ, there are three choices: domestic partnership (if over 62 and live together), civil union (a NJ analogue to marriage, recognized by NJ but not the federal government), or marriage.

There are many considerations to review. In certain circumstances, a pre-nuptial agreement might be appropriate. Don't rush into marriage or other forms of legal relationship recognition without understanding what it means.

9. If you or a loved one has an **immigration issue**, get good legal advice immediately. I don't practice immigration law but can provide referrals.

## **B. Good news for polyamorous families**

This December, with the courage and perseverance of our clients, my co-counsel Jill Lebowitz and I convinced a NJ judge to give full legal recognition of an intentional three parent family.

This is a first in New Jersey.

The three parents have been living together as an interdependent family and economic unit. They own real estate together. They mediated a comprehensive parenting agreement. They went to Somerville, MA where they could register as a multiple person domestic partnership.

After their child's birth, we filed a complaint in adoption asking the court to recognize the third parent as a full, co-equal parent. And we won!

It reminded me of the battles in the early 1990's when with the bravery of my lesbian clients we persuaded judges to allow the same-sex partner of a gestational, genetic mom to be a "second parent." It's always about protecting the child's relationships with the adults in their lives.

## **C. Personal news:**

This August, at its Lavender Law meeting, the National LGBT Bar awarded me the Dan Bradley Award, its highest honor.

For me, winning the award has special meaning. The Dan Bradley recognizes my disparate contributions to our community. In my law practice, I have been representing and counseling queer clients for over five decades. I was a founder of the National LGBTQ Bar and served as its General Counsel for 35 years. I was a founding member and first legal chair of Hyacinth Foundation, New Jersey's leading non-profit serving the HIV population. And what I see as my significant achievement, creating the LGBT Family Law Institute which started out to connect US lawyers serving LGBTQ+ clients and has become an international phenomenon.

I knew in advance that I was to receive the Dan Bradley. I had prepared my acceptance speech for an audience of 500+ queer attorneys.

However, at the annual meeting of the Academy of Adoption and Assisted Reproduction Attorneys in Milwaukee, I was totally taken by surprise and left speechless when the Academy named me as the Fellow of Distinction. It was a wonderful, unexpected affirmation from my peers.

In 2024, I had the rare and special honor to become a fictionalized character in a novel written by my friend and colleague Robyn Gigl. If you haven't read the Erin McCabe series, I highly recommend them. Here is a link: [Robyn Gigl](#)

The New York Times lauded volume four as one of the ten best crime novels in 2024. Erin McCabe is a trans criminal defense attorney. All the action takes place in New Jersey. The local references will resonate.

The books are fast paced, “page turners.” Robyn creates enlivened characters with emotional depth. And you may recognize the family creation lawyer Phil Song in “Nothing But the Truth.”

Finally, here is a link to a video that Legal Services New Jersey created in recognition of my work with their trans and gender non-binary clients.

<https://www.youtube.com/watch?v=hKCvNZlbzzQ>

#### **D. What’s ahead in 2025?**

I am scared for the trans and gender non-binary members of our community. They were made scapegoats in the 2024 presidential election, reminiscent of the 1988 Willie Horton ads and the attack on marriage equality in 2004. Now, the president-elect has vowed to stop “transgender lunacy” and make two genders the official US policy.

Opponents want to marginalize trans people, erase them from public life, and deny them health care. To get this in perspective, according to the Williams Institute, 56,000 transgender youth live in states with policies which restrict their access to bathrooms and facilities.

Here’s an example of what to expect.

This past week, Congress passed a defense reauthorization bill, including a pay raise for the troops. Just as the bill came up for a floor vote in the

House, a provision was added to deny gender affirming care for children of military families.

From the NJ delegation, all of the Democrats voted against the bill with that provision, **except** for Congresswoman **Mikie Sherill** and Congressman **Josh Gottheimer**. Both of them have announced that they are running for governor.

These are politicians who have in the past shown support for our community but now take a position which may be more favorable to their career ambition. Don't they understand that kids could die from their actions? Are they really our allies?

When the bill was considered in the Senate, Senator **Andrew Kim** made an impassioned speech criticizing the gender affirming ban. Both Senators **Kim and Cory Booker** voted against the bill.

For over a year, there have been firestorms at NJ school board meetings over trans issues. It's easy to pick on the most vulnerable. Who is next?

In November 2025, NJ will elect a new Governor.

NJ Democrats have not done well in recent elections despite our reputation as a blue stronghold. Murphy narrowly won in 2021. In 2022 and 2024, Democrats lost the only hotly contested House seat. In 2024,



**five** counties flipped from blue to red in the presidential race. Harris won statewide by a mere 5% compared to double digits for Hillary and Biden.

NJ could end up with a Republican governor by the end of the year.

If Democrats are running scared. I don't expect them to be on the frontlines when our rights are challenged. Republicans are rarely our allies. When it comes to trans issues, there are few politicians brave enough to fight. Will they be there when other rights are challenged?

### **E. Pessimistic forecast**

I am pessimistic about the future viability of the 2015 United Supreme Court Obergefell decision which held that same-sex couples had a constitutional right to marriage.

There are presently no cases in the pipeline which could bring this issue to the Supreme Court. But our opponents will be working to find a pathway.

Obergefell was a 5-4 decision. Only two of the justices who voted in favor are still on the court, Justices Sotomayor and Kagan. Chief Justice Roberts and Justices Thomas and Alito dissented. They are still on the court.

Since the announcement of the decision nine years ago, in written decisions in other cases, Justice Thomas and Alito have continuously called for the reversal of Obergefell.

### **If the Supreme Court reverses Obergefell, what does that mean?**

Marriage laws are state by state. If Obergefell falls, state laws will control, like the present situation with abortion.

New Jersey has codified marriage equality. It is highly unlikely some future NJ legislature and governor will rescind the right to marriage. But nationally we have arrived at a situation where nothing is certain.

Even were the right to marry revoked in certain states, existing marriages would still be respected by the federal government under the Respect for Marriage Act signed by President Biden.

What could other states do? Already the US Supreme Court is chipping away at the rights that come with marriage. Other states could limit certain rights associated with marriage only available to certain segments of the population.

### **Trying to end on a good note.**

Thanks to the dedication of State Senator **Andrew Zwicker**, New Jersey has a law which bans book bans. The freedom to read is enshrined in our state law.

Wishing each of you the best in 2025,

Very truly yours,

*Bill*

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