

POLITICS

What's next after Roe's reversal? LGBTQ couples fear their marriages could be the next target.

By Brooke Baitinger
South Florida Sun-Sentinel
Jul 01, 2022 at 8:30 am



Now that the U.S. Supreme Court reversed the right to an abortion, all bets are off when it comes to other human rights decisions.

They aren't sure exactly how or exactly when, but LGBTQ+ people know one thing about the Dobbs decision that reversed Roe v. Wade: If six people with lifetime appointments to the country's highest court could overturn a precedent that was in place for nearly 50 years, there's nothing stopping them from going after Obergefell v. Hodges, the case that established marriage equality in the U.S..

Justice Clarence Thomas indicated as much in a concurring opinion released when the court overturned Roe v. Wade last week. He argued the Supreme Court "should reconsider" all its past due process precedents, "including *Griswold*, *Lawrence*, and *Obergefell*" — the three cases codifying rights to contraception access, same-sex relationships and same-sex marriage.

For months, Florida's LGBTQ residents have fought back against law after law that chipped away at their rights a little here and a little more there. Now they're worried that the decades of work they put into fighting for the right to marry could be taken away from them just like that. That their marriages will be here one instant and suddenly gone in a flash.

"You just don't imagine constitutional rights, once they're won, would ever be taken away," said Todd Delmay, one of the first people to marry someone of the same sex in the state of Florida in 2015. "To see Roe fall, we're very concerned. Not only for our family, but for every child growing up that has been able to see the possibility of forming their family how and when and if they want to."

The legal battle Todd Delmay and his husband Jeff Delmay went through inspired Todd to run for public office. He's running for state representative in Florida House District 100, and while knocking on doors for his campaign the last few months, he said he's heard firsthand from LGBTQ+ couples, parents, and teachers how the state's new anti-LGBTQ+ laws have struck a chord in the community.

[[RELATED: 'Don't Say Gay' bill draws protest and rally from LGBTQ advocates](#)]

One such law, called the Parental Rights in Education law but known among critics as [Don't Say Gay](#), goes into effect Friday.

"People are very well aware of it," he said. "It's already been a year where we have felt under attack, now coupled with the [trans sports ban](#) and the Florida Department of Health [taking away care for trans youth](#), it's just one thing after the other."

Delmay and his husband started campaigning for marriage equality in Hollywood as far back as 2008, when Florida Amendment 2 was added to the state's constitution.

Amendment 2 defined marriage as a union between one man and one woman, and effectively banned same-sex marriage.

“When you talk about same sex marriage, we went through what was a terribly painful process in 2008,” he said. “It was painful to drive around our neighborhood and see neighbors supporting that kind of movement.”

Todd and Jeff Delmay sued to overturn the ban — to “nullify” it, Todd said. The U.S. Supreme Court decided on the Obergefell case, and their case no longer needed to go to the Third District Court of Appeal. The rights they were fighting for were the law of the land.

They and countless other couples married. But Amendment 2, although unenforceable under Obergefell, was never removed from Florida’s constitution.

If the U.S. Supreme Court were to reverse the Obergefell decision, it would leave Florida same-sex marriages vulnerable to nullification. And the state’s conservative Gov. Ron DeSantis and the Republican majority in the state legislature would have [all the power](#) to do it.

[[RELATED: How Biden’s LGBTQ order could affect Florida’s laws and policies](#)]

“It’s unnerving, absolutely. We are on heightened alert,” Jeff Delmay said. “We also know from our experience with marriage equality, with Don’t Say Gay, that what you have to do here is fight. Powering down and throwing our hands up is not an option.”

“Emotionally, I’m tired”

That’s a good strategy according to Elizabeth Schwartz, attorney, activist, and author of the book “Before I Do: A Legal Guide to Marriage, Gay and Otherwise.” Schwartz’s law firm provides legal services for family formation, estate planning and probate

law, relationships and divorce and creative conflict resolution and mediation.

“It’s sad that what’s driving folks’ understandable anxiety and fear is thinking Obergefell could be next, but I also want folks to be realistic and understand there are no pending cases right now that would reverse same-sex marriage,” she said. “While there’s certainly a lot for our community to be concerned about, it doesn’t appear as though marriage equality is in jeopardy.”

Schwartz noted that Justice Brett Kavanaugh and Justice John Roberts wrote in their opinions that marriage equality is not what they’re targeting. But she said also acknowledged it’s impossible to predict what emboldened conservative Christians will do “knowing that their religious freedoms are privileged over all other freedoms by the Supreme Court.”

[[RELATED: Abortion law in Florida changes Friday. Here’s what you need to know.](#)]

She just doesn’t want people to think they must rush to the altar in an attempt to solidify their privileges as a couple without also planning backup plans, such as [estate planning](#) and [confirmatory adoptions](#) for couples who have kids. In fact, it’s a good idea to implement those documents whether you’re married or not, she said.

Schwartz suggests securing a will and a living will, titling deeds and accounts jointly, a durable power of attorney, a designation of health-care surrogate, a declaration naming pre-need guardian, designating a guardian for your minor child, and your stated beneficiary designations in the event of a conflict with your will.

For couples with kids, it’s important they know that marriage’s impact on parental rights is not universal across the country. Even if both names are on a child’s birth certificate, known as a “marital presumption,” that presumption can be rebutted in some jurisdictions.

Consensus among LGBTQ+ legal authorities says to secure parental rights not by relying on administrative documents like a birth certificate, but with a court order. It's practically impossible to argue with a court order saying two people are legal parents, she said.

Some LGBTQ+ couples who were married in another country or state before Obergefell was decided in 2015 recall carrying their legal documents — copies of marriage certificates, wills, health-care power of attorneys, their childrens' birth certificates and court orders — around with them wherever they'd go.

Susan Baxter and her wife Diane Fahr married in Canada in 2005. Prior to getting married, they had registered as domestic partners with the city of Orlando and Orange County.

“I was thrilled to remember that we weren't married in the U.S. — so any legal changes to laws here do not nullify our marriage — but will potentially nullify recognition of our marriage in the U.S.,” Baxter said. “We used to carry around legal documents when we traveled ... we'll be getting those documents out again and make sure we have everything we need, and what updates may need to be made.”

ADVERTISEMENT

They'll also revisit domestic partner registration requirements with their employers and start gathering any documentation needed for any benefits, she said. And they'll talk to their adult son and his husband about steps they may want to consider, as they were married after it was legal in the United States.

“Emotionally, I'm tired,” she said. “I'm tired of the attacks on our rights, I'm tired of wondering if our marriage and our son's marriage will still be valid in the U.S.”

Moving out of state, or even country

That's the sentiment among many LGBTQ+ couples across the state. Many of them are considering moving to states where they're confident their marriage rights will be protected, while others are even considering emigrating to more gay-friendly countries.

[\[RELATED: Florida wants to ban kid-friendly drag shows. But the shows will go on, LGBTQ+ groups say \]](#)

Josh Roth and fiancé Andy Fontaine have been planning their wedding for February, with the nagging fear that marriage equality could be reversed always at the back of their minds.

With the leaked Supreme Court draft opinion in May, it immediately became a front-of-mind concern, Roth said. He started watching videos on YouTube about which countries are the most gay-friendly and what it would take to immigrate there, he said.

"I never want to sound like a crybaby, but it's not fair," he said. "This is not something any of our heterosexual friends have ever had to worry about. This is a happy event for us and it is disheartening that there are forces taking some of that joy away from us."

ADVERTISEMENT

Luckily, they've lived their whole lives with people not recognizing or supporting them, so they're prepared for that reality, Fontaine said. They'll do what they can as citizens, vote in the midterms and keep fighting for their rights, but in many ways they feel their hands are tied.

"The thing really is there's very little we're going to be able to do, and we're aware of that," he said. "The only thing we can do right now it seems is just prepare mentally, emotionally. It's not new to us."

Fontaine says they've coped by surrounding themselves with people who love and

accept them exactly as they are. “The people that will be there for our wedding, they love us regardless of what any city, state or Supreme Court says,” he said. “We’re aware we deserve to recognize our marriage for exactly what it is.”

Roth has considered Australia, the United Kingdom, the Netherlands. They’re about to embark on an international trip to Spain.

“We’ll see if we come back,” he quipped. “This ruling is a snowball that a lot of people across this country would like to turn into an avalanche.”

He’s Jewish, and used to work for a nonprofit Holocaust fundraising center in Central Florida.

“I know through research and through work what the erosion of rights starts, and where it ends,” he said. “I have seen the rhetoric, and the speeches with Don’t Say Gay proposed and debated. Then with [DeSantis’ spokesperson] Christina Pushaw using the word ‘groomer’, that catches on and now you have people across the country using this word ‘groomer’ for every gay person.

[\[RELATED: Just what exactly will be banned by the Florida law dubbed ‘don’t say gay’? A closer look at the new restrictions. \]](#)

“People can claim hyperbole all they want. Again, we have seen in history where these things go,” he said. “The hostility is growing.”

That hostility was enough to finally inspire Tommy and his husband Nick, who asked the Sun Sentinel not to include their last names due to fear of discrimination at work, to sell their house in Vero Beach and move up north, back to Long Island, or maybe Maryland or Delaware.

”It feels like sliding backward with hate”

Tommy is a former FDNY firefighter and an air force rescue veteran. His experience as a firefighter left him disabled with serious health issues. On the bright side, his husband Nick is a nurse.

They moved to Florida, where Tommy had been visiting every year since 1979 when his grandparents moved to the state.

“It was always such a happy place,” Tommy said. “It had Disney World, beaches, everyone was friendly and lovable.”

But he feels in recent years, especially since former President Donald Trump took office, that the state’s happy and welcoming environment started going down the tubes, he said.

He felt betrayed when the Supreme Court released the Dobbs decision on abortions, he said.

“It’s a gut punch. It makes me want to cry,” he said. “You know, we custom-built our house, you feel safe finally. I served my country since I was 17 years old. It feels like sliding backward with hate. I’m afraid for my husband, for my life, because all of this going on is drawing out crazy people.”

He heard teachers in Orange County had to remove pictures of their spouses, had to take down rainbow flags and can’t wear any rainbow colors. “It’s starting to take off,” he said.

In Orange County, school staff report that they’ve been told to take down rainbow “safe space” stickers and LGBTQ elementary teachers have been told to remove pictures of their families from their desks.

Don't Say LGBTQ goes into effect Friday.

(1/4)<https://t.co/eqJWVkt7Ps>

— Equality Florida (@equalityfl) [June 28, 2022](#)

Their daughter just graduated high school, and they feel worried for the world she'll inherit from older generations.

“It’s embarrassing to be parents and worry if her rights are gonna be stripped away from her,” Nick said. “If they’re willing to do that, what else are they willing to touch? It’s scary being a gay couple in Florida because you’ve gotta wonder if your rights are gonna be stripped away.”

They got married in 2016 because they wanted to solidify their relationship. But it also made it possible for them to share health insurance and have bank accounts together. The possibility of losing those benefits is one reason they’re moving, he said.

“They’re playing with people’s lives,” Tommy said. “I’ve done nothing but give myself to this country, and I don’t even want to come home to Florida right now.”

[[RELATED: ‘My child will die.’ These families say Florida’s moves to withhold gender transition care will lead to self-harm](#)]

There are those who fear for their health-care rights not only because of the Dobbs decision, but what could happen to those rights if Obergefell was overturned.

State Rep. Michelle Rayner-Goolsby, D-St. Petersburg, and her wife Bianca Goolsby recently experienced a slice of that fear when Bianca had to have an invasive heart procedure.

“With my wife having her heart procedure, we had to get our affairs in order. Making sure there’s a will, power of attorney,” Rayner-Goolsby said. “It kind of made us reflect on getting some of our paperwork in order to be prepared for what might get thrown at us in the future.”

Brooke Baitinger can be reached at: bbaitinger@sunsentinel.com, 954-422-0857 or on Twitter: [@bybbaitinger](https://twitter.com/bybbaitinger)
