

Jim Obergefell, Ohio Democrats are pushing for a marriage equality bill. Here's why

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Cincinnati Enquirer

Ohio Democrats and LGBTQ advocates are pushing for legislation to enshrine the right to same-sex and interracial marriage amid concerns about future U.S. Supreme Court decisions.

But the bill is only step one in a complicated process that could unfold if federal marriage protections are ever thrown out.

Both the Ohio Constitution and Ohio Revised Code recognize marriage only as a union between one man and one woman. Because of the landmark gay marriage ruling in Obergefell v. Hodges – named for the lead plaintiff and Ohioan Jim Obergefell – Ohio's same-sex marriage bans aren't in effect.

House Democrats fear that could change any time after the U.S. Supreme Court overturned Roe v. Wade last year. With that in mind, they unveiled plans Tuesday for legislation that would codify protections in Obergefell and Loving v. Virginia, which established the right to interracial marriage.

"Knowing that you exist as a lawfully recognized couple, you can't put words to how important that is," Obergefell said Tuesday. "And if you want to form a family, being a married couple is one of those things that helps make that happen for so many people. We all deserve the right, the ability to choose that person we love the most, to commit them, to make our promises to love them and protect them and to have those promises recognized and respected."

Why Dobbs set off alarm for LGBTQ advocates

Concerns about the Obergefell and Loving cases emerged almost immediately after the abortion decision in Dobbs v. Jackson Women's Health Organization. Roe was grounded in the 14th Amendment's guarantee of due process, which also served as the foundation for rulings in both marriage cases.

In his concurring opinion, Justice Clarence Thomas said the decision didn't affect other rights beyond access to abortion. But he suggested the court reconsider Obergefell's precedent in the future, along with cases that overturned sodomy laws and established the right for married people to obtain contraception.

"We cannot take federal protections for granted as we never know when precedent will be overturned," Rep. Jessica Miranda, D-Forest Park, said.

Miranda said House Democrats are talking with Republicans to make the bill bipartisan, so it has yet to be formally introduced. Spokesmen for House Speaker Jason Stephens, R-Kitts Hill, and Gov. Mike DeWine declined to comment.

But even if the legislation passes, proponents would have another hurdle to climb: The constitution.

Ohio Constitution includes gay marriage ban

Nearly 62% of Ohio voters approved an amendment to the state constitution in 2004 declaring: "Only a union between one man and one woman may be a marriage valid in or recognized by this state and its political subdivisions."

If Obergefell is overturned, the Ohio Constitution would supersede anything in state statute. That means opponents of the ban would need to propose another amendment and put it before voters. The federal Respect for Marriage Act would require Ohio to recognize same-sex marriages performed in other states, but not here.

Equality Ohio public policy director Maria Bruno said advocates are currently focused on opposing bills that restrict transgender medical care and bathroom access. But Bruno believes changing the marriage statute is a symbolic step lawmakers can take to begin the conversation, even if the constitution presents another barrier down the road.

"From a legal enforcement standpoint, we currently are functioning under the Obergefell precedent, and therefore we don't have to worry about that conflict," Bruno said. "If it were to become the case that that is overturned, I've got to tell you that constitutional amendment might not stay there. But in the interim, the Legislature correcting the statutory codes still assists in avoiding confusion and clarifying both our values and the actual current state of the law."