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NJ Marriage Equality Bill Reflects Concern That SCOTUS Will Overturn 'Obergefell'

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No more 'slender thread'

The legislation, introduced Feb. 9, would incorporate into statute a 2013 ruling from a state judge, granting same-sex couples the right to marry. Because the New Jersey measure is premised on rights under the state Constitution, supporters say it goes a long way toward protecting the right to gay marriage for the state's residents, no matter what the Supreme Court does.

Belle Mead, New Jersey, attorney William Singer, who helped draft the legislation, said same-sex couples who are his clients often express concern that their marriages can be invalidated. Singer, of Singer & Fedun, said his clients cite concerns about statements by Alito and Thomas in their dissenting opinions in Obergefell v. Hodges, the 2015 Supreme Court ruling granting same-sex couples the right to marry.

"I became aware that the ability for same-sex couples to marry hung on the slender thread of a trial court decision, and that bothered me," said Singer. "I felt it was time for the law to reflect the reality of people's lives."

The bill codifies Mercer County Superior Court Judge Mary Jacobson's ruling in *Garden State Equality v. Dow*. It is written in a gender-neutral man-



PHOTO BY LISA F. YOUNG

ner to reflect the right of nonbinary persons to marry, but otherwise its substance makes no change to marriage law. Marriages between siblings or between certain other relatives are still prohibited.

Singer, who represents LGBT families with adoptions, estates and probate, said the bill would not significantly change the practice of law except to provide "the practical ability to calm our clients, to point out that even if the U.S. Supreme Court overturns Obergefell, their marriage is protected under New Jersey statute."

Thomas Prol, who was the first openly gay president of the New Jersey State Bar Association, participated in

the bill's drafting along with Singer and Debra Guston. Prol said the trial court decision was "vulnerable and legally tenuous," but the legislation "cements marriage equality and the rights of committed same-sex couples and their families."

Guston, an attorney in Glen Rock, New Jersey, said that a Supreme Court ruling overturning marriage equality entirely is a possibility, but more likely is a ruling dealing with benefits of marriage, such as a ruling barring a mother's spouse from being listed on the birth certificate when a baby is born.

"What lawyers are afraid of is this Supreme Court could begin chipping away at the value of marriage and make it less valuable for same-sex couples than for different-sex couples. In the short run, that's what were concerned about," Guston said.

Besides the potential of adverse rulings from the Supreme Court, supporters of the legislation felt the time was right to codify marriage equality because "we think that we have many friends in the legislature. This will not be a hard sell," said Guston.

Enactment of the bill would allow lawyers representing LGBT clients to provide some assurance that they need not fear having their marriages invalidated, Guston said.

"We like certainty. We want our laws to be reliable. We think this bill does that and will help us better counsel our clients about the value of marriage and make them feel comfortable that their marriage will be recognized, at least in their home state," she said.

Lawrence Lustberg of Gibbons in Newark said he supports enactment of the bill. Lustberg represented Garden State Equality in the landmark case that yielded the 2013 ruling granting New Jersey same-sex couples the right to marry.

Lustberg said if the U.S. Supreme Court overturned *Obergefell*, same-sex couples' right to marriage would be endangered in many other states, but not in New Jersey.

"There's nothing the U.S. Supreme Court can do to undo that—nothing," Lustberg said of the *Garden State Equality v. Dow* ruling. "Nonetheless, [the legislation] is a strong statement of our policy, and as a general matter, the legitimacy of our system of justice is enhanced whenever an unconstitutional statute such as the prior statute is taken off the books." ■

NJ Marriage Equality Bill Reflects Concern That SCOTUS Will Overturn 'Obergefell'

By Charles Toutant

Supporters of a bill to codify marriage equality in New Jersey say the measure is needed to guard against potential rulings against same-sex marriage from the U.S. Supreme Court.

Lawyers who represent the LGBT community in estate matters and family law say the New Jersey bill would provide some relief from the persistent worries their clients express about opposition to marriage equality by Justices Samuel Alito and Clarence Thomas.

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