

Dear friends,

As we finish a second year of the pandemic, in lieu of an in-person seminar, I am writing to give you an update on some developments in LGBTQ+ law and politics.

Marriage equality in New Jersey

Last year I wrote that many clients ask whether marriage equality is at risk. At that time, I thought marriage equality nationwide and in New Jersey was safe.

Since then, I changed my mind and here's what I did about it.

Two justices on the US Supreme Court have continued to decry and question the Obergefell decision which found that same-sex couples had a constitutional right to marriage. In a dissent on a denial of certiorari in October 2020, Justice Thomas, joined by Justice Alito, delivered a fiery, four page critique of Obergefell stating that the holding gave same-sex couples a constitutional right to marry thereby giving priority to LGBT rights over religious freedom. “The Court read a right to same-sex marriage into the Fourteenth Amendment, even though that right is found nowhere in the text.” Davis v. Ermold, 592 U.S. ____ (2020).

Justice Thomas said that these matters were best left to states to decide how best to accommodate the “religious liberty of the many Americans who believe that marriage is a sacred institution between one man and one woman.”

And in the much-watched December 2021 oral argument in the Mississippi abortion case, Dobbs v. Jackson, Justice Amy Coney Barrett voiced her opinion that respect for precedent in a prior legal case, known as stare decisis, is ‘not an inexorable command.’”

Given these pronouncements and the present composition of the United States Supreme Court, many advances made by the LGBTQ+ community could be reversed or limited.

Were Obergefell to be overturned, where would that leave same-sex couples in New Jersey?

Our right to marry in New Jersey would hang by a slender thread of a decision by a trial court judge.

Here is why.

On September 27, 2013, Hon. Mary Jacobson, sitting in the Superior Court in Trenton, ruled in Garden State Equality v. Dow, 434 N.J. Super. 163 (Law Div. 2013) that New Jersey's exclusion of same-sex couples from civil marriage violated the equal protection guarantee of the New Jersey Constitution. Judge Jacobson found the legislative "fix" of creating civil unions, a parallel, "separate, but equal" status for same-sex couples failed to meet the intent of the 2006 New Jersey Supreme Court decision in Lewis v. Harris, 188 N.J. 415 (2006). The Harris court unanimously held that same-sex couples are entitled to all of the same rights, privileges, and obligations of marriage as opposite-sex couples.

Reacting to Judge Jacobson's ruling, then Governor Chris Christie immediately sought to quash it by seeking a stay from the New Jersey Supreme Court. That court denied the stay request. Ultimately, the State dropped its appeal.

Same-sex couples in New Jersey immediately started to marry.

So, our right to marry under New Jersey depends on what a single county level ruled. A trial court judge in another county could find differently. An appellate court could deliver an opinion overruling Judge Jacobson. In other words, marriage equality in New Jersey is at risk.

To correct the situation, marriage equality needed to be codified, put into the New Jersey statute books.

I sat down and wrote a simple piece of legislation which would make New Jersey laws on marriage gender neutral. Only a few lines of the existing law needed to be changed. Colleagues Deb Guston and Tom ProI assisted me in the drafting process.

I then set out to figure out the best way to navigate the legislative process.

For years, our community has struggled to get our Legislature and Governor to acknowledge who we are, to recognize how we live our lives and to provide us with legal protection. Back in 2006, when the NJ Supreme Court ruled that same-sex couples were entitled to legal recognition of their relationships, the legislators were too tradition bound to give us marriage rights. When the New Jersey legislature finally passed marriage equality, the Governor vetoed it. Nothing was ever in sync.

Things are different now. Society has evolved. Legislators and the Governor are now our advocates. They listen when we speak, they act when we tell them what we need.

With assistance from Garden State Equality which has the clout, we got Senate President Steve Sweeney to become the prime sponsor of the marriage codification bill. A similar bill was introduced in the Assembly by Assemblywoman Valerie Vanieri Huttle.

Senate President Sweeney made passage a prime focus of the lame duck session.

Here is a link to an article about my appearance before the Assembly Judiciary Committee advocating for passage. [Legislature takes first step toward writing same sex marriage into New Jersey lawPOLITICOsearchSearchClose](#)

As of this writing, the bill has passed both houses and awaits Governor Murphy's signature which is expected. With that, marriage equality in New Jersey will be secure.

Name and gender marker changes for trans and gender non-binary folks

If you are trans or gender non-binary, it is imperative to have your identity documents (birth certificate, driver's license, passport, and Social Security records) align with your gender identity and your new name.

I do a lot of name changes for trans and gender non-binary clients. Some are paying; many others are pro bono referred to me by public interest organizations.

Until recently, the name change process was archaic, a holdover unexamined for over a half century. Two of the requirements of that antiquated process put trans and gender non-binary individuals at immediate and future risk.

Court rules required a person applying for a name change to place two legal advertisements in a newspaper of general circulation in their county announcing the sought change. Clients expressed concern that their private matter was being exposed to a wide audience.

My first response was "Who reads legal advertisements in a newspaper?" That was a glib, unexamined response.

Yes, in an urban county, there may be minimal exposure, but if you live in a rural county where the locals do read the local newspaper, you were being outed as trans or gender non-binary. I used that argument successfully in Salem County to get a judge to waive the publication requirement.

In addition, and of greater import, since these advertisements show up on the Internet, they have a perpetual life. In the future, an employer or a landlord could search my client's name, including their "dead" name and find their past history, irrelevant but potentially damaging.

Earlier in 2021, the Supreme Court rescinded the publication requirement finding this change "will expand equal access to the courts for people who are poor, self-represented, and members of the LGBTQ+

community, **including transgender women of color who disproportionately continue to be targeted victims of violence throughout our nation,**” (bold added). I was impressed with the court’s recognition that this seemingly innocuous rule had potentially devastating impact.

That was not enough. Court records of name changes were still open to the public. They needed to be sealed. Anyone could access a name change court record and then harass the person. An abusive intimate partner, a disgruntled ex or a hostile family member could track down a person even if they went to the expense and trouble of changing their identity.

Through my experience with clients, I have seen firsthand instances of harassment, over state lines and even national borders. There are groups out there who search the court records of trans people and then “dox” them. The term dox means to search for and publish private or identifying information about a particular individual on the internet, typically with malicious intent.

I testified before the New Jersey Supreme Court last summer explaining the need for privacy for the court records of trans and gender non-binary individuals. The Court ruled that as of September 1, 2021, all name changes applications would be under seal and only identified by initials.

No more publication, name change records now sealed, another major victory for our community!

Looking back, looking forward

2021 marked the 50th anniversary of my graduation from Columbia Law School. I opened my own law firm in 1973.

So much has changed. I remember in the 1970's attending legislative hearings about the decriminalization of sexual conduct between same-sex partners. We lived through the AIDS holocaust, watching our peers die and fought for our rights to government assistance and medical research.

And there were the victories: getting legal recognition for our relationships and the resulting benefits and protecting the relationship of a child with two parents of the same gender. As some of you well know, those children of yours whose adoptions we did in the early 1990's have now grown, been educated, and have gone on to productive lives.

Last year, we streamlined the process of legal recognition of queer families when parents are married or in a civil union. The process is called confirmatory adoption. I coined the term "confirmatory adoption" to assuage clients who found it awkward to have to "adopt" their own children. I told them, "It's not an adoption, just a confirmation of your parentage." That phrasing made them more comfortable. Now the term is being used nationwide in similar legislation and starting to win universal recognition.

Winning legal recognition of our relationships meant that same-sex couples were finally freed of the onerous 15% inheritance tax. Before that if one partner inherited anything from the other partner (like one-half the equity in their jointly shared home), they would owe New Jersey 15% of that inheritance due within eight months of death. I had always found that tax the most discriminatory New Jersey law that affected us.

Looking forward, I have two thoughts to share:

1) Support the New Jersey state and local LGBTQ+ organizations.

They do such valuable work.

I remember the support that GAAMC in Morris County provided to me in the 1980's. GAAMC holds a meeting every Monday night, rain or shine, holiday or workday. Knowing that I could go to a safe space every week gave me comfort during a difficult transition.

National queer organizations do great work, but they mostly come to our state to collect contributions and fight battles elsewhere. They are not meant to provide us with local networks, to provide a local meeting place or to work on a daily basis with our community.

I am often asked by clients how they can meet other New Jersey queer folk. It is our state and local organizations who do that work and need support.

Local and state organizations run on shoestring budgets. Next time you think about making a contribution to an LGBTQ+ cause, consider those who do the work here, now and every day.

2) Another question I am often asked is about the future of my law practice. I continue to enjoy great health and abundant energy. I love the work that I do and can't imagine what I would do were I to retire. My plan is to stick around.

That said, all things do come to an end.

It is my goal to have a succession plan in place when the time comes. I feel an obligation to you my friends and clients to make sure that you have a source for guidance and counselling.

When I figure out the path ahead, I will announce it. In the meantime, I look forward to advising you and being your lawyer.

Wishing you, your family and loved ones all the best in 2022.

Very truly yours,

Bill

SINGER & FEDUN, L.L.C.

908-359-7873

www.SingerFedun.com

wsinger@singerfedun.com