

Abortion fight won, conservative Christians mimic *Dobbs* tactics to go after same-sex marriage

by [Jack Jenkins](#)

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A man holds as US flag and a pride flag outside the Supreme Court in Washington after the Supreme Court legalized same-sex marriage nationwide on June 26, 2015. (AP Photo/Jacquelyn Martin, File)

If you listened closely at a meeting of mostly evangelical Christian communicators, activists, and lawyers that took place in Dallas in February, you could hear more than a few panel discussions and hallway conversations repeatedly circle back to the same topic: same-sex marriage.

Having helped to engineer the demise of *Roe v. Wade* after half a century of anti-abortion activism, attendees at the National Religious Broadcasters conference openly discussed plans to make shorter work of *Obergefell v. Hodges*, the landmark 2015 Supreme Court ruling that legalized same-sex marriage nationwide.

“*Obergefell* is on very shaky ground,” Mathew Staver, founder of the conservative Christian nonprofit legal group Liberty Counsel, which leaders describe as a [ministry](#), told the audience of one panel at the conference. “It’s not a matter of, in my opinion, if it will eventually be overturned, but when it’ll be overturned.”

It’s a brazen claim critics and legal analysts have dismissed as unlikely in the short term. But conservative Christian advocates say they are emboldened by President Donald Trump’s election and the Supreme Court’s decision to overturn *Roe v. Wade* in 2022, and hope justices will eventually respond to a growing list of efforts to overturn *Obergefell* cropping up across the country.

Among them is the legal case surrounding Kentucky county clerk Kim Davis, who made headlines after *Obergefell* was decided when she refused to grant a marriage license to a same-sex couple, citing her conservative Christian faith. She has lost repeatedly in court and even spent time in jail for her defiance. But in July 2024, the Staver and the Liberty Counsel filed an [appeal](#) on her behalf arguing the Supreme Court overstepped in *Obergefell*, only to be denied in early March.

Staver has vowed to press on, but Micah Schwartzman, professor at University of Virginia Law School and director of the Karsh Center for Law and Democracy, said the prospects for a Davis victory remain thin.

“That case is going nowhere, as best I can tell,” Schwartzman said.

While Justice Clarence Thomas left room in his concurring opinion in *Dobbs v. Jackson Women’s Health Organization* for the court to reconsider the *Obergefell* decision, no other justices joined him, and Justice Brett Kavanaugh declared in his own concurrence that “overruling *Roe* does not mean the overruling of those precedents, and does not threaten or cast doubt on those precedents,” referring specifically to *Obergefell*.

Support for same-sex marriage remains high among US adults, [according to a 2024 report by Public Religion Research Institute](#), which showed that about 67 percent agreed it should be legal. Solid majorities of White mainline Protestants, White

Catholics and Hispanic Catholics back same-sex marriage, as do high percentages of Jewish Americans (80 percent), Buddhists (82 percent) and the religiously unaffiliated (86 percent).

But Schwartzman said those who depend on or support LGBTQ rights still have reason to be concerned. “There are political constituencies that want to see *Obergefell* reversed, and they know that a majority of the justices, at least with respect to writing on a blank slate, objected to *Obergefell* and thought *Obergefell* was wrongly decided—including the chief justice, John Roberts, who dissented in *Obergefell*,” he said.

Lawsuits aren’t the only route to getting *Obergefell* back in front of the justices. Speaking on a panel to the religious broadcasters the day before Staver’s, Katy Faust, who founded the activist organization Them Before Us, suggested her group was focused on a legislative challenge.

“Just because gay marriage was legalized in 2015 that does not mean this is a dead issue,” she said. “We have to fight against it, because five Supreme Court justices do not determine whether or not children deserve, need or have a right to their own mother and father.”

In an interview, Faust pointed to legislative efforts intended to chip away at *Obergefell* that are already underway. Oklahoma state Sen. Dusty Deever, a Calvinist Southern Baptist pastor who [co-authored a 2023 statement](#) in support of Christian nationalism that defined “marriage as the covenant union of a biological male and a biological female” as a core value, introduced two bills in January seen as targeting *Obergefell*.

The first, the “Covenant Marriage Act,” would create a \$2,500 state tax credit for people who opted in to “covenant marriages” that are “based on the traditional understanding of marriage” and could only be dissolved “in cases of abuse, adultery, or abandonment.” The tax credit could be carried forward for up to five years.

The effect of the bill, Schwartzman said, would be to create “two classes of marriage, one that’s privileged and one that’s treated as second class or disadvantaged.”

In the last few months, similar bills have been introduced in [Tennessee](#), [Missouri](#), and [Texas](#). Versions of covenant marriage are already legal in Arizona, Arkansas,

and Louisiana, where House Speaker Mike Johnson married his wife in a covenant ceremony in 1999, [according to the Associated Press](#). (Deever's bill, which died in committee last month, appears to be unusual for its inclusion of a tax credit for covenant marriages.)

Less attention has been paid to another bill introduced by Deever: the Promote Child Thriving Act, which creates a \$500 annual state tax credit per child for a mother and father filing jointly and escalates to \$1,000 if the child was born after the marriage of the parents.

Faust suggested Deever's bill appears patterned after a template produced by her group whose aim is to create a "competing track" that focuses on "biological connections between parents and child, and rewarding that family formation."

"It takes the focus off of the adults and their relationship, and their own identification and romantic bonds, and puts it on to what marriage is and historically has been—which is an institution that is responsible for the procreation and raising of the next generation," she said.

The legislation is not an end in itself. If the Promote Child Thriving Act or a bill like it is signed into law and faces a constitutional challenge, "that could create the kind of live issue that the justices could then rule on," Faust said. Staver agreed the strategy "certainly has legs" and could constitute a "direct challenge" to *Obergefell* if passed.

Staver and Faust also pointed to a resolution passed in January by Idaho's lower house asking the US Supreme Court to reverse its 2015 ruling. The resolution, known as a memorial, argued the ruling misunderstands "liberty" to mean people should "seek dignity from the state" instead of God, and that the result causes "collateral damage" to other liberties "including religious liberty."

In South Dakota, a seemingly identical resolution recently passed out of committee, while a North Dakota version passed that state's House but [failed to win approval](#) in its Senate. A version in Montana was recently [tabled](#) by the state Senate, and another in Michigan is currently [languishing in committee](#).

While Staver admitted the resolutions are largely symbolic—"If you filed suit against it, there's no enforcement aspect to it," he said—the movement "sets the tone" for other efforts.

Introduced by state Rep. Heather Scott, who has [argued](#) that the US is a “Judeo-Christian based country,” Idaho’s resolution also called *Obergefell* “illegitimate overreach” and asked the justices to restore the “natural definition of marriage, a union of one man and one woman.”

During debate, state Rep. Clint Hostetler repeatedly quoted the Bible, saying, “We could go hours and hours pointing to Bible verses in Scripture that validates the institution of marriage given by God and how it’s between a man and a woman.”

The tone has not been unified, however. Rep. Ilana Rubel, a Democrat representing Boise and the minority leader of the Idaho House, later fired back: “We talked about scripture—we don’t legislate according to scripture.”

In many cases, locals, including one [United Church of Christ pastor](#), have testified against the resolutions, objecting that they don’t represent all religious Americans or even all Christians. In South Dakota, Sioux Falls resident Christine Morgan told a committee hearing: “My church and many other churches are open, supportive and welcoming of LGBTQ+ couples. This feels like a very pointed attack from one specific subset of a large belief system.”

Schwartzman said the raw number of cases challenging same-sex marriage is more determinative than any individual effort. “One of the strategies that led to Dobbs was that states were willing to ping the court repeatedly to test whether the court’s commitment to *Roe* was sound,” he said. “It’s not just that there was one case that did it—there were many cases over many years asking the court to reconsider its earlier decision.”

According to Schwartzman, the combined activism he’s seen so far resembles the “early stages” of the campaign to overturn *Roe v. Wade*. Their success “doesn’t turn on whether any of those particular efforts win or lose,” Schwartzman said. Instead, “it turns on whether they gain momentum and show that they have sufficient public support to give the justices enough reason to reconsider the earlier decision.”

Overturing *Roe*, of course, took decades. Yet Staver and his allies insist they’re working on a shorter timeline. Asked when he thinks *Obergefell* will be reversed, Staver initially said “within my lifetime” before clarifying he had an even smaller window in mind.

“Within the next four years,” he said. “I think we’re close. We just need the right case.” —Religion News Service