

Dobbs v. Jackson Women's Health Organization:

WHAT LGBTQ+ FAMILIES NEED TO KNOW

Updated: June 2023

When the Supreme Court overturned *Roe v. Wade*, it overturned nearly 50 years of precedent. Since the Court released its decision—which suggested looming threats to our ability to create and protect our families—many are looking for answers about what they can do now.

This resource is a work in process that explores some questions we've frequently heard and includes tools that you can use moving forward.

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DISCLAIMER: This fact sheet is not intended to be legal advice, but an overview of the current state of LGBTQ+ family law in the United States. The law is changing quickly and dynamically, so it is important to consult an attorney or contact the authors to discuss the details of your particular situation and ensure that information provided herein is still accurate.

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Dobbs' Impact on the LGBTQ+ Community

How does the *Dobbs* decision impact the LGBTQ+ community?

LGBTQ+ people are directly harmed by the Supreme Court's decision reversing *Casey* and *Roe* and eliminating the fundamental right to abortion. LGBTQ+ people require abortion care for the same broad range of reasons that non-LGBTQ+ people do and, in some instances, are more likely to require such care. ([These issues were presented to the Supreme Court in an amicus brief submitted by numerous LGBTQ+ organizations.](#))

What's more, the Court's willingness, for the first time in its history, to eliminate a fundamental freedom that it had previously recognized is alarming, and the language signals looming threats to other freedoms that are fundamental to our families—and, frankly, to everyone.

I'm LGBTQ+ and worried about my access to abortion. How can I find support and reproductive healthcare in the wake of the *Dobbs* decision?

The Supreme Court ruling in *Dobbs* has devastating consequences for LGBTQ+ people, not only when seeking an abortion but for the children they already have, their health, and their ability to support themselves and their families. And, as the dissenting justices in *Dobbs* recognized, those consequences will fall the most heavily on those with the fewest resources, which disproportionately includes families of color.

It's important to know that in most states, abortion remains legal. People who need care should go to abortionfinder.org. If you need to access abortion in a state other than the one in which you live, [Brigid Alliance](#) is an LGBTQ+ friendly resource. There are also dozens of abortion doulas across the US who are queer and trans, and ready to support you and your family. A great place to start for more information is the [Queer Doula Network](#).

In addition, it is important to remember that emergency contraception, including levonorgestrel morning after pills like Plan B are still available and can be purchased in pharmacies or online without a prescription. While levonorgestrel does not have an impact on an existing pregnancy, it is a safe and effective way to prevent an unwanted pregnancy from occurring.

Dobbs and the Respect for Marriage Act

What is the Respect for Marriage Act?

The Respect for Marriage Act is a federal law signed by President Biden in December 2022. The law says that any marriage validly performed in any state must be respected by the federal government and by every other state government.

How does the Respect for Marriage Act protect my marriage?

The Respect for Marriage Act ensures that even if at some point in the future the 2015 Supreme Court decision affirming the nationwide freedom for LGBTQ people to marry, *Obergefell v. Hodges*, were to be overturned, you will continue to be treated as married by the federal government and by the state government of any state you travel or move to.

How does the Respect for Marriage Act ensure my marriage will be respected if Obergefell is overturned and my state or other states stop permitting same-gender couples to marry?

The Respect for Marriage Act is narrow but mighty. RMA does 2 big things. (1) it requires both states and the federal government to respect existing and future marriages of same-sex couples – that is, married people are treated alike in government programs addressing laws involving rights or obligations such as federal income taxes, social security benefits, survivorship rules, etc; and (2) it prohibits state government actors from using “sex, race, national origin or ethnicity” of the married pair as a basis for denying rights, protections or duties that pertain to or arise from a marriage. In other words, RMA requires respect and nondiscrimination as to marriages, even if it did not (and in practice could not) require marriage licensing as already required by *Obergefell*.

Does the Respect for Marriage Act provide protections for my parent-child relationships?

RMA requires respect for lawful marriages – those that exist now and those that are joined in the future – and sets a floor of respect as to how government actors deal with legal matters involving marriages from other states. RMA could easily factor in if a State used rules that singled out a marriage or spouse because of who they married. The text provides: “No person acting under color of state law may deny full faith and credit to any public act, record or judicial proceeding of any other state pertaining to a marriage, on the basis of sex, race, ethnicity or national origin of the individuals.” Regardless of any concerns about the future, it is always a good idea to protect your parent-child relationship under state law with a legal judgment that is easily respected among the states and by the federal government.

Dobbs, Marriage Equality, and Family Formation

What is the status of marriage equality/*Obergefell v. Hodges* now?

Marriage equality is the law of the land and must be respected in all 50 states and by the federal government. In *Obergefell v. Hodges*, the U.S. Supreme Court held that states must permit same-sex couples to marry, must treat their marriages equally, and must recognize their marriages from other states. This remains binding law in every state. The Justices had different opinions about the impact, if any, of *Dobbs* on *Obergefell v. Hodges* (marriage equality) and *Lawrence v. Texas* (sexual intimacy) and Justice Thomas suggested that *Obergefell* and *Lawrence*, among many other cases, should be revisited. We know that is scary but *Obergefell* remains the law, is constitutionally correct, and we will fight and are determined to win any attempts to undo it should that come to pass.

While alarming, the *Dobbs* opinion does not mean that *Obergefell* or *Lawrence* will be overturned. We are, however, seeing waves of attacks on LGBTQ+ people, families, and children in the states, which is in large part a response to the fact that LGBTQ+ people are now seen and respected as we take part in our communities. We must defend against these measures, show what they are really about, and also protect Supreme Court rulings, including *Obergefell*, *Windsor*, and *Lawrence*, that affirm our vital freedoms around our personal choices and families, and ensure state laws protect our families and children – at home and at school.

What if people or institutions question my marriage now?

Marriage equality remains the law of the land. You are still able to get married, and your existing marriage is valid and must be respected everywhere. As has been true for some time now, the courts, legislative bodies and other institutions engage the claims of those who seek a religious-based right to deny interactions with same-sex couples or to defer to another colleague to perform services. But if you encounter people or institutions questioning your marriage, we strongly urge you to contact us using the information on the final page of this document.

[Jump to “What can I do right now to protect my marriage”](#)

[Jump to “What can I do right now to protect my family”](#)

How will *Dobbs* affect LGBTQ+ family-building as it relates to IVF treatment?

Fertility care such as in vitro fertilization (IVF) is an important path to parenthood for so many people, LGBTQ+ and non-LGBTQ+ alike. Since IVF involves creating embryos and can result in additional embryos, some have expressed worry about the implications of *Dobbs* on this important reproductive health care.

The *Dobbs* opinion did not speak to this issue directly. However, without the protections of *Roe v. Wade*, it is possible that state lawmakers may feel empowered to create barriers for people to access reproductive medical procedures like IVF, or that some will say that existing abortion bans also affect or restrict assisted reproduction. This is deeply troubling for LGBTQ+ people and anyone who needs access to IVF to build their family. Whether your state laws on abortion will restrict IVF remains to be seen, and you should consult with a lawyer with expertise in assisted reproduction in your state before beginning your family-building efforts to understand the legal landscape.

It should be noted, of course, that access to IVF is already a challenging path to parenthood. A limited number of states mandate insurance coverage for IVF, and it is financially inaccessible

Steps You Can Take to Protect Your Family

What can I do right now to feel more secure and protect my marriage?

There are solidly accepted steps for all people to protect their families even apart from marriage. Marriage normally provides automatic protections in many ways, but there may be times when these other protections can cut through the controversy and get you access to your spouse and allow you to care for them if the need arises.

These documents are called estate planning documents, and it is best practice for every couple to have them—LGBTQ+ and non-LGBTQ+. Those documents include:

- **Power of Attorney** - a legal document that empowers your spouse (or another person) to make financial decisions in case you are unable to do so.
- **Health Care Proxy** (or similar document) - a legal document that empowers your spouse (or another person) to make health care decisions in case you are unable to do so. This document may also allow you to authorize your spouse to access your medical information and to visit you in the hospital.
- **Will** - a legal document where you describe what you would like to have happen to your children and property in the event of your death.

Unmarried partners can also use these documents to protect their relationships. These are also important for unmarried partners since they do not have the benefit of default marriage protections.

There are state-specific rules about estate planning documents and how they are to be drafted and executed, and legal support is recommended especially for wills. We can help you with referrals to lawyers to assist you with estate planning documents. Please reach out using the contact information on the last page of this document.

How can LGBTQ+ families take steps to protect themselves right now?

As we have long said, the best way for LGBTQ+ parents to protect their family is to ensure that their parent-child relationship is legally recognized by obtaining a court order of parentage or adoption.

Securing a court judgment or decree of parentage or adoption is essential in protecting your family. This is true even if you are married and are both listed on a child's birth certificate.

That's right, even if you're already listed on your child's birth certificate. This is because while the birth certificate reflects the legal presumption that any child born into the marriage is the child of both parents, it is not a legal judgment establishing parentage and could be vulnerable to a legal challenge down the road if unexpected circumstances arise.

Court judgments and decrees, or their equivalent—which are listed and described below—are proof of legal parentage and must, under the US Constitution, be afforded full faith and credit. This means that they are recognized in every jurisdiction throughout the U.S.

What is an adoption decree / parentage judgment?

There are many paths to parentage depending on what state you live in.

Adoption is one route. Many LGBTQ+ parents adopt a child who was born to other parents, and many LGBTQ+ parents use co-parent (sometimes called second parent or confirmatory) adoption to confirm or secure an adoption of a child born to them through assisted reproduction.

Each state adoption law and process differs. Some states, for example, require home studies for co-parent adoptions, and other states have a more streamlined process for co-parent adoption. It is important to consult with a local adoption practitioner or local court clerk on adoption in your state.

Once an adoption is complete, you get a decree of adoption that is a court judgment that receives recognition and protection in all jurisdictions. An adoption decree that is properly issued from a court with jurisdiction is final and irrevocable and cannot be undone.

Another route to legal parentage is a **parentage judgment**. In some states, parents through assisted reproduction can seek a parentage judgment through a process that is more streamlined than adoption. It is important to consult with a local family law practitioner or local court clerk in your state. A parentage judgment that is properly issued from a court with jurisdiction is entitled to recognition and respect in all jurisdictions.

What is a voluntary acknowledgment of parentage?

Federal law requires states to provide a simple civil process for acknowledging parentage immediately before or after the birth of a child, known as a Voluntary Acknowledgment of Parentage (VAP).

VAP forms are generally short affidavits in which the person who gave birth as well as the other parent - such as an unmarried genetic father - affirm that they are a parent and take on the rights and responsibilities of parentage.

Properly executed, a VAP is the equivalent of a court decree of parentage, has the binding force of a court order, and is valid in all jurisdictions.

As of now, eleven states allow certain LGBTQ+ parents to establish parentage through signing a VAP (sometimes called an acknowledgement of parentage). Those states are: California, Colorado, Connecticut, Maine, Maryland, Massachusetts, Nevada, New York, Rhode Island, Vermont, and Washington.

Each state has slightly different requirements for signing the form. [More information is available at GLAD's FAQ on VAPs](#). It is important to consult a local family lawyer to see if your state allows LGBTQ+ parents to sign VAPS in your personal circumstances.

How do I find attorney referrals?

You can always use the contact information on the last page of this document to reach out to our organizations and ask for attorney referrals!

Also, the National LGBTQ Bar Association has a Family Law Institute that has attorneys in many states. [That directory is here.](#)

I've found an attorney. But, what do I ask them?

You should not hesitate to call or email an attorney and ask basic questions to see whether you want to work with them. Some people contact 2-3 attorneys before deciding who is a good fit for them. Some initial questions to ask a lawyer may include:

- Have you done second parent, confirmatory, or co-parent adoptions before for LGBTQ+ clients?
- What is this process like? What will you need from me? What is the timeframe for something like this?
- How much do you charge for co-parent adoptions? Do you have any sliding scale fees or payment plans available?

What documents should my family travel with?

LGBTQ+ partners, parents and their children should travel with certified copies of all of their important documents in case they are challenged at borders, hospitals, or other venues. We recommend that people travel with (1) certified copy of the birth certificate, (2) certified copy of the court judgment, decree or voluntary acknowledgment, (3) certified copy of marriage certificate (if applicable), and (4) a copy of health care proxies for the adults.

In addition to protecting my own family, what can I do to ensure that our fundamental freedoms are not taken away?

For those who can do so safely, now is the time to come out and be open about your identity and your family. Not everyone knows an LGBTQ+ family, so consider sharing why your family, your children and these protections are so important with friends, neighbors, schools, and faith communities. Tell our stories openly and proudly and be willing to listen, too, to answer good faith questions, because everyone deserves a chance to learn.

Get involved in local organizing efforts, including direct action, to work for robust state protections for LGBTQ+ people and families.

Vote for pro-LGBTQ+ candidates in local and federal elections.

Contact state and federal representatives and let them know you want them to act to protect LGBTQ+ marriage and families.

This factsheet was prepared and distributed by COLAGE, Family Equality, GLAD, and NCLR.



COLAGE

info@colage.org | www.colage.org

COLAGE unites people with one or more lesbian, gay, bisexual, transgender, queer, intersex, and/or asexual parent into a network of peers and supports them as they nurture and empower each other to be skilled, self-confident, and just leaders in our collective communities.

Family Equality

info@familyequality.org | www.familyequality.org

Family Equality exists to create a world where everyone can experience the unconditional love, safety, and belonging of family. Our mission is to ensure that everyone has the freedom to find, form, and sustain their families by advancing equality for the lesbian, gay, bisexual, transgender, and queer (LGBTQ+) community.

GLBTQ Legal Advocates & Defenders (GLAD)

gladlaw@glad.org | www.glad.org

Legal Helpline: 800-455-GLAD; www.GLADAnswers.org

Through strategic litigation, public policy advocacy, and education, GLBTQ Legal Advocates & Defenders (GLAD) works in New England and nationally to create a just society free of discrimination based on gender identity and expression, HIV status, and sexual orientation.

National Center for Lesbian Rights (NCLR)

info@nclrights.org | www.nclrights.org

Legal Helpline: 800-528-6257

NCLR is one of the nation's leading legal advocacy groups for LGBTQ+ people and their families. For 45 years, NCLR has been advocating for the safety, rights, and wellbeing of LGBTQ+ people through litigation, legislation, public policy, and community education.