

RIA wildfire erupted on Twitter after Clarence Thomas put same-sex marriage on conservative hit list with 'Roe v. Wade;' It could make LGBTQ+ financial planning apparatus obsolete

Thomas became second Supreme Court Justice to lament the loss of state control over marriage, casting a shadow over RIAs who long struggled with a potential 50 sets of rules to help gay couples plan a life together.

Thursday, August 25, 2022 – 9:56 PM by [Oisin Breen](#)



 **0 Comments**



Jeff Levine: Do we have the skillset necessary to provide same-sex couples the sort specialized planning advice they'd need?

A Supreme Court Justice struck a nerve in the RIA world -- and set off an [RIA Twitter wildfire](#) -- with an implicit threat to burn down the fragile bridge between RIAs and their LGBTQ+ clients.

Justice Clarence Thomas triggered the uproar when he recently professed a desire to overturn the high court's ruling in [Obergefell v. Hodges](#), which requires states to issue marriage licenses to same-sex couples and to recognize same-sex marriages.

Obergefell prevents fragmented, state-by-state, marriage laws for same sex couples. Its absence could hand advisors up to 50 different sets of rules.

Such a repeal would infinitely complicate planning because it would reintroduce dizzying bureaucratic complexity, unravel existing financial plans and templates and render some institutional knowledge obsolete.



Justice Clarence Thomas:
We should reconsider...
Obergefell.

"[It] opens up a Pandora's Box of potentially society-redefining changes ... But as a planner ... the tax difference alone for some couples could

be tens of thousands of dollars per year," says Jeff Levine, chief planning officer of TAMP and RIA, Buckingham Wealth Partners, which administers \$56 billion in assets.

"If we reverse *Obergefell*, do we have the skillset necessary to provide same-sex couples the sort specialized planning advice they'd need?

"And if not, what will our game plan be? Go out and acquire that knowledge? Find a good referral source?" he asks, via email.

Clear intentions

RIAs should be able to reassure their clients that *Obergefell* remains a legal fortress, says Ari Sonneberg, partner of The Wagner Law Group in Boston.

"The topic has been discussed informally, [but] considering the unlikelihood of a change in the law, we're not at the point of alerting clients or preparing a newsletter addressing this issue -- although we're well-prepared to do so if a change did occur," he says, via email.

"The majority opinion, penned by Justice Alito, went out if its way ... to state nothing 'should be understood to cast doubt on precedents that do not concern abortion,'" Sonneberg adds.

But in his concurring opinion to the Court's 6-3 decision overturning *Roe v. Wade* in [June](#), Thomas made clear his intentions were otherwise.

"We should reconsider all of this Court's substantive due process precedents, including *Griswold*, *Lawrence* and *Obergefell*."



Ari Sonneberg: We're not at
the point of alerting clients.

Justice Samuel Alito shared the same position in [2020](#).

[Griswold](#) prevents states from making access to contraception illegal for married couples. [Lawrence](#) prohibits states from criminalizing consensual gay sex.

(Sur)reality

Many advisors and industry observers took to Twitter after Thomas' June comments to express fear that RIAs could find themselves slammed should the Court ever overturn *Obergefell*.

"Surreal that we now have to be thinking this way," tweeted Brian Portnoy, founder of behavioral finance start-up Shaping Wealth.

"[Post-Obergefell preparation] is 100% a legitimate financial planning question," [tweeted](#) Dave Nadig, former CEO of ETF.com and an analyst at VettaFi.

"I thought we were past this, and we would not have to be planning for such archaic measures, once again. It's deeply saddening and frustrating and puts an undue financial burden on those in the LGBTQIA+ community," adds Corey Beal, CEO of Portland, Ore. LGBTQ+ RIA Empowering Finance, via email.

For now, Alito and most attorneys say Thomas won't have a quick path to overturn *Obergefell*.



Roberta Kaplan says RIAs should take cold comfort in Justice Alito's reassurances.

Real fears

But that's easy for non-LGBTQ+ people to say because they won't face the consequences, according to Beal.

GeoWealth is the Modern Advisor's TAMP

ADVISOR DRIVEN, TECH ENABLED – GeoWealth is the Modern Advisor's TAMP

[Supercharging Your RIA's Growth](#) [Home Office Models, Your Way](#) [See Our Platform](#)

Alito, who is right-leaning on the court, led the fight to repeal *Roe*, which extended federal protection for women to make their own choice about abortion.

"The LGBTQIA+ [Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, Asexual] community has every right to be scared and thinking proactively about the fall of *Obergefell*," she says. "[It's] a known evil.

"There was more time and cost for those in same-sex partnerships. I'd estimate it's at least 25% to 30% more expensive time-wise, expense and estate planning-wise pre-*Obergefell* than post."

Cold comfort

Before the Court's 2015 ruling in *Obergefell*, RIAs needed specialists on the payroll and vastly more time to manage the extra layers of bureaucracy LGBTQ+ clients required -- adding a full week to an advisor's yearly workload, on average.

"Having uniform rules across all the states is always easier, both from a knowledge perspective, as well as a practical perspective ... dramatically different rules ... can be challenging, to say the least," says Levine.

An estimated [4.5%](#) of the U.S. population identifies as LGBTQ+.

If the [average advisor](#) with 150 clients spends 30% more time per LGBTQ+ client, a company as large as Buckingham, with 1,200 advisors, could have to add as many as 26,000 hours -- or three years -- to its annual advisor workload.

RIAs should take cold comfort in reassurances from Justice Alito, according to Roberta Kaplan, partner at the New York City law firm of Kaplan Hecker & Fink.

Kaplan was the lead attorney in a 2013 lawsuit challenging the "Defense of Marriage Act (DOMA)," a federal law that defined marriage for all federal purposes as a legal union between one man and one woman as husband and wife.

A U.S. Appeals Court ruling striking down the law eventually made its way to the Supreme Court, as *U.S v. Windsor*. The court [declared DOMA unconstitutional](#) in a 5-to-4 ruling.

"The very same arguments that [Alito] makes in the draft [of the *Roe v. Wade* document], he made in his dissents in *Windsor* and *Obergefell*, almost exactly the same language," Kaplan told [Grid](#), a general interest news website.

Future challenges

The court is seemingly far less predictable than during the bulk of its storied history, according to Levine.

"In light of current circumstances and prior statements, it's fair to question how seriously people should take Justices when they say certain decisions should/would remain in place," he argues, in a [tweet](#).

"My job is to think about future planning opportunities and challenges. In light of [June's *Roe v. Wade*] decision, and particularly the Thomas



Corey Beal: "The LGBTQIA+ community has every right to be scared."

concurring opinion, I'm wondering whether same-sex couples should be considering reestablishing pre-Obergefell planning ASAP," Levine [continued](#).

Of the roughly 13,500 RIAs in the country today, many employ LGBTQ+ advisors, and many more have LGBTQ+ clients, but few have a contingency plan should the court overturn *Obergefell*.

Such an outcome would raise fees and potentially disincentivize signing new suddenly more labor intensive LGBTQ+ business.

Indeed, firms without the needed expertise might have to jettison LGBTQ+ clients to stay on the right side of their fiduciary obligations, says Beal.

"We're legally bound to put [client] interest ahead of our own, and as a professional we should know where our expertise lies.

"If financial professionals want to work with anyone outside of their expertise ... they should invest in the learning and expertise needed ... or decline to work with them and refer."

The law concurs, says Sonneberg.

"If an RIA is not capable of acting in the best interest of a gay client, regardless of the circumstances, then he or she should not be acting at all on behalf of that client."

Where it hurts

The breadth of the potential fallout for advisors in terms of reorganization is also enormous, especially when children are involved, according to a number of sources.

"The scope of the impact would include employee benefit issues, for both ERISA-covered and non-ERISA benefit plans, family leave, health insurance, tax filing status and related tax benefits and adoption, among others," says Sonneberg.

Bereavement leave, sick leave, power of attorney issues, housing rights, tuition reductions, adoption rights, and property ownership as joint tenants could also need close scrutiny, according to Beal.

"Marriage impacts so much of the financial planning sphere," Levine [tweets](#).

"[We'd] need to re-evaluate everything, from parental rights to how the loss of Social Security income could impact retirement preparedness, to tax planning with single returns, gifting and on and on."



Dave Nadig: It's 100% a legitimate financial planning question.



Sonya Dreizler: The emotional impact ... is palpable and all around devastating.

As a result of changes made to the SECURE Act of 2020, same sex couples no longer able to marry would also have to withdraw all assets held in inherited retirement accounts within a decade, in the event of death, unless they are aged within 10 years of each other, according to Levine.

Key issues that advisors would have to work out again from scratch in terms of LGBTQ+ clients' financial plans hinge on a number of other factors, too, including whether they have or want children, estate size, and their life goals as a couple.

Protected status

Yet advisors will not have to rework their plans for every LGBTQ+ client, because of grandfathering, according to Sonneberg.

"In the unlikely event that the legality of same-sex marriage became jeopardized as a result of the overturning of existing case law, it could not affect the legal recognition, ex post facto of such marriages," he explains.

"Workarounds would be limited to couples who were not previously married," he adds.

"Workarounds" might mitigate a legal turnabout but that hardly begins to help with the psycho-spiritual damage done by restoring underclass status to certain citizens in the United States.

"The emotional impact merely questioning the validity of Obergefell has had is palpable and all around devastating," says Sonya Dreizler, co-founder of diversity lobbyist and professional financial industry networking organization Choir, via email.

"We've heard from numerous industry professionals that where states fall on the political spectrum with regard to LGBTQIA+ rights, gun control, and reproductive healthcare may have an impact on where they choose to do business and attend events in the future," she explains.



Brian Portnoy: Surreal that we now have to be thinking this way.

Humiliating position

Beal is hopeful RIAs untouched by LGBTQIA+ issues will embrace the gravity of the threat on behalf of the community.

"Very few RIAs work with the LGBTQIA+ community, and finance as a whole is a very conservative field. I wish the entire RIA community was up in arms ... but this isn't the case," she says.

"Joy, freedom, happiness, and so many more emotions coursed through me [when Obergefell] was announced

"As a financial planner I was ecstatic to finally be able to work with my LGBTQIA+ clients in the same capacity afforded to my non-LGBTQIA+ clients," she [continues](#).

"[But now] knowing that your very basic right to love can be taken away or legislated in any manner is a humiliating and ridiculous position to be in and that it can also financially impact you negatively is also a double whammy and unacceptable."



➤ POST A COMMENT

RIABiz Directory
The Industry Sourcebook for RIAs

🔍 | + LISTING

MARKETCOUNSEL
THE ADVISER'S ADVISOR®

MarketCounsel | Hamburger Law Firm



LPL Financial

[+ ADD YOUR LISTING](#)

RIABiz Directory sponsored by:



White Paper Postings

RetireOne — Portfolio
Income Insurance –
Understanding the Benefit...



» SPECIAL SECTIONS

» COMMON TAGS

» RECENT ARTICLES

» POPULAR WRITERS

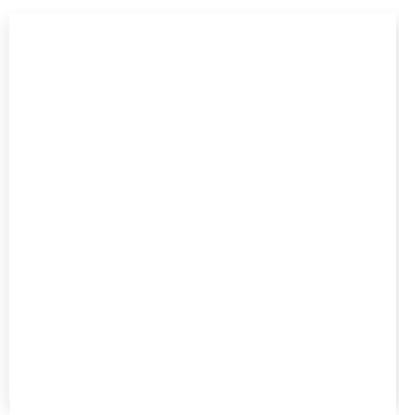
Texas just pronounced BlackRock guilty of pandering to sustainable investing interests -- and BlackRock is having none of it

Despite the ESG reprieve BlackRock's CEO granted the fossil fuel industry in May, it's answer to the Texas power play is 'no,' it tells Bloomberg

Friday, August 26, 2022 – 8:03 PM by [Brooke Southall](#)



 **0 Comments**



Mark McCombe: We think that it's time to a little bit say, 'No.'

Brooke's Note: When two superrich, superpowered natural allies come to blows, first of all you get popcorn. The next move is to ask what change in the galaxy brought about such an unlikely shift in alliances. BlackRock and Texas can mostly both take care of themselves. That is what makes this conflict a story in the making as Texas doubles down on its business friendly mantra and may have decided that BlackRock is its perfect foil.

Don't mess with Texas. That sweeping advice may go double for BlackRock, if you gratuitously accuse it of going hard on oil and gas companies.

A BlackRock executive delivered a brass knuckle blow against state regulators, both attacking their integrity and questioning their understanding of free enterprise.

“One of the most important things you can do is instill confidence that the business environment is going to be pro-free

market and pro-capital,” Mark McCombe, senior managing director, chief client officer, told Bloomberg.

See: [BlackRock CEO preaches a very RIA-like](#)

[future -- after three awesome wins in five months that total more than \\$200 billion -- where his \\$7 trillion manager gets every asset in exchange for unmatched 'completeness'](#)

BlackRock's unflattering statements about Texas were a reaction to the state's creation of a [10-firm black list calling out](#) major firms like BlackRock, UBS and BNP Paribas claiming they boycott fossil fuel firms.

The Republican state comptroller Glenn Hegar is encouraging governmental entities to use his list as a “filtration system” in forming business relationships, he said in an interview.

The list is the product of [inquiries](#) sent to more than 150 companies in March and April, asking whether sustainable investing and financing objectives took precedence.

Hegar was following a [GOP-backed state law](#) that keeps Texas governments from doing business with companies with ESG goals it deems hostile. Texas leads in crude and natural gas production in the United States.

BlackRock pushback

The \$8 trillion Wall Street firm's unblinking stance about how it chooses to invest follows a couple of years when BlackRock CEO Larry Fink leaned hard into environmental, social, and governance (ESG) investing.

But he also recently backpedaled -- albeit citing the Ukraine war as a black swan that forced its hand. See: [BlackRock to curb ESG 'social justice' proposals with its voting power this proxy season and embrace big oil, claiming Ukraine war, Russian embargo demand climate goals reset](#)



Daniil Shapiro: 'The boundaries of sustainable investing are being redefined.'

GeoWealth is the Modern Advisor's TAMP

ADVISOR DRIVEN, TECH ENABLED – GeoWealth is the Modern Advisor's TAMP

[Supercharging Your RIA's Growth](#)

[Home Office Models, Your Way](#)

[See Our Platform](#)

"I don't want to be the environmental police. It's wrong to ask the private sector to tell the entire society we have to move forward," said CEO, Larry Fink, in a Bloomberg Television interview, Jul. 2.

Daniil Shapiro, associate director for product development at Boston consultancy Cerulli Associates, says, via email, "the boundaries of sustainable investing are being redefined in real-time." He was referring to Fink's seeming mood shift from a May RIABiz interview.

Now BlackRock is being called an overreaching cop, but McCombe isn't buying it.

"This may look like a localized issue down in Texas, but if you play it out, it's a little bit of a worrying sign," McCombe told Bloomberg in the interview.

"We think that it's time to a little bit say, 'No.' From our perspective as the world's biggest investor, this is not good for the investment climate."

Twisting facts

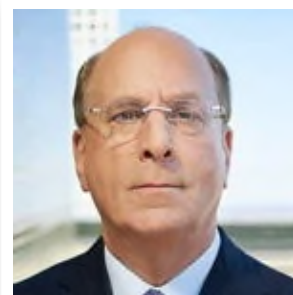
Texas continues to be an ideological battlefield, even if it has attracted financial firms, seeking lower taxes and less state regulation.

Fidelity, Vanguard and TD Ameritrade have all moved major operations there citing its business friendly atmosphere -- related both to tax breaks and the low cost-of-living.

Schwab [moved its whole company](#) base. See: [Charles Schwab & Co. may skip out of San Francisco entirely with Google, Facebook and Salesforce driving rents and talent costs sky high](#)

BlackRock sidestepped the issue of ESG and sustainable investing filters in its Bloomberg interview and simply called out Texas in broad strokes for its free enterprise impieties.

It also criticized its alleged shoddy research and alleged twisting of facts related to its survey report compilation and takeaways.



Larry Fink: 'I don't want to be the environmental police.'

"What they've done by taking this very arbitrary decision is to, effectively, say to every company out there, not just financial services companies out there, that this may be you at some point in time," McCombe, told Bloomberg.

"If we don't need facts to actually arrive at a list, then you know what's the basis upon which I want to do business in Texas?"

No boycott

BlackRock apparently won't be list-shamed by Texas as a basis for how it does business in the Lone Star State.

UBS for now is taking a less aggressive stance. It said it “firmly” disagrees with its inclusion on the list, in a [Bond Buyer article](#).

“We provided their office with extensive information on our policies and practices, demonstrating that UBS does not boycott energy companies even under a broad interpretation of Texas law,” a company statement said.

 [BlackRock](#) | [UBS](#)

Related Moves

Dimensional Fund Advisors, long the flagship of factor investing, struggles to chart a course as a nimble rival and big foot competitors cut into its market--and exploit its slow move to ETFs

Vanguard, BlackRock and Avantis rattle a complacent Dimensional Fund Advisors with fee cuts and ETF roll outs based on 'smart beta.'

August 8, 2022 – 9:57 PM

UBS bets its 'wealth' future on ex-Schwabbie Naureen Hassan, a corporate digital A-lister, who analysts give a fighting chance to transcend PaineWebber's ossified culture

Still a \$2-billion cash-flow cow, the Swiss bank's 6,000-broker, US-based wirehouse is milking aging broker relationships with aging investors but needs a new kind of human presence, empathy, mindset and smarts to draw in Gen Z.

July 15, 2022 – 9:35 PM

Vanguard Group shows up as 'alpha' disciple with two new fixed-income fund launches as it surpasses PIMCO's \$2 trillion with ex-Goldman Sachs partner now calling the shots

The \$8 trillion Malvern, Pa. manager owns beta investing, but RIAs are demanding higher income -- hence market timing and cherry picking -- from their fixed-income allocation.

August 10, 2021 – 7:46 PM



 POST A COMMENT

RIABiz Directory

The Industry Sourcebook for RIAs

 |  LISTING

Allworth Financial

The American College of Financial Services



ADD YOUR LISTING

RIABiz Directory sponsored by:



White Paper Postings

RetireOne — Portfolio
Income Insurance –
Understanding the Benefit...



» SPECIAL SECTIONS

» COMMON TAGS

» RECENT ARTICLES

» POPULAR WRITERS

RIABiz

[About Us](#)

[Contact](#)

[Subscribe](#)

[Advertise](#)

DIRECTORY

ARCHIVES

[401\(k\) Stories](#)

[Breakaway Stories](#)

[Conferences](#)

[ETFs](#)

[Hybrid RIA](#)

[RIA Compliance](#)

[RIA Custodians](#)

[Robo-Advisors](#)

[TAMPs](#)

[Women of Wealth Management](#)

[People Moves](#)

[Technology](#)

CONNECT



RIABiz, Mill Valley, California

Copyright © 2009-2022 RIABiz Inc. All rights reserved.