



Gay marriage, Rob Portman and the Supreme Court: a timely convergence

By Stephen Koff
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WASHINGTON, D.C. -- He could be hailed as farsighted, a serious leader who opened his party's doors for all people and generations. Rob Portman could be the Republican Party's first post-gay-marriage presidential candidate.

Social conservatives say a Portman presidency, let alone candidacy, cannot happen for that very reason – that Republicans will vote in primaries to reject someone who flipped on gay marriage. Social conservatives see the issue as fundamental to their values.

Yet several forces, political as well as demographic, may converge to render a presidential candidacy by Portman, the Ohio Republican U.S. senator, as at least nominally viable. Key to this is the fact that a Portman candidacy could align with a U.S. Supreme Court decision that would end the legal and constitutional fight over same-sex marriage. Such a ruling could come by next summer, well before the Republican voters go to the first 2016 caucuses and primaries.

And public opinion against gay marriage is falling already. In a New York Times-CBS News poll early this year, 56 percent of people said it should be legal for same-sex couples to marry. While only 40 percent of Republicans said they felt that way, the age breakdown was telling. Republicans ages 18-44 had the same opinion as the general public – that gay marriage should be allowed -- and at the same 56 percent share.

"It's not just a majority of Americans who agree with him," Evan Wolfson, founder and president of Freedom to Marry, a pro-gay-marriage group, said of Portman. "It's not just a majority of Independents who agree with him, But also a majority of younger Republicans. And a majority of younger evangelicals support the freedom to marry. And that majority will continue to increase every month, every year."

Patrick Egan, a New York University political scientist who has studied public opinion and gay and lesbian issues in politics, said, "My sense is that in their heart of hearts, Republican Party leaders would very much like to see the issue of gay marriage taken off the political agenda for 2016 and beyond."

Portman and his aides say repeatedly that he currently regards himself as a candidate for nothing more than reelection to the Senate in 2016. But in repeated interviews and conversations, Portman and others also make clear that come this November, if the field looks open to his kind of serious, policy-oriented candidacy, the former House member, White House budget director, trade ambassador and current senator could get into the presidential race. Until then, Portman is publicly putting his efforts into raising millions of dollars as fundraising chairman of the National Republican Senatorial Committee, with a goal of getting Republicans elected to a majority in the Senate. That would give the party control over both houses of Congress.

After that, the timing of a Portman presidential candidacy could be extraordinary, though challenging, for a Republican who publicly supports gay marriage rights.

David Lampo, director of publications at the Cato Institute, a libertarian think tank, said a Supreme Court decision striking down prohibitions on gay marriage "would be a godsend" to someone like Portman.

"It kind of takes it off the table, at least as far as a presidential issue, because the marriage issue, which was certainly the most contentious of all gay issues, will be settled," said Lampo, author of the book "A Fundamental Freedom: Why Republicans, Conservatives, and Libertarians Should Support Gay Rights." He is a board member of Log Cabin Republicans, a GOP group supporting gay rights.

Would Rob Portman's support for gay marriage help or hurt his candidacy? Read the article, then comment below.

Kenneth Sherrill, an emeritus political science professor at the City University of New York's Hunter College, agrees that if the Supreme Court were to unambiguously declare that states may not block gay marriage, it could bolster Portman's political prospects.

"It makes it easier for him," said Sherrill, who for years has studied the political implications of gay and lesbian issues. "It makes it easier because his position has been validated by the Supreme Court. It makes it easier for him to raise money."

And it could help Portman stand out in a field of candidates who all assuredly love their children.

"Any time a candidate can run as a good and loving father, that candidate is at an advantage," Sherrill said. "Any time you can run as having a wholesome family – not an artificial wholesome family – it helps."

Portman dropped his opposition to gay marriage after one of his sons, Will, then a student at Yale University, came out as gay. Since then, the senator has said that without the gay marriage issue in his way, it is easier to find common ground with young people on other issues, such as taxes and the economy.

Sherrill already has a suggestion for a commercial – borrowed from the playbook of New York Mayor Bill de Blasio, whose wife and son are black -- featuring Rob and Will Portman in the family's kitchen. Will Portman would discuss economic issues and other things of concern to the country. He would not mention gay marriage or his coming out.

He would not need to. The unstated message: It's not an issue and this is a loving family.

Gay rights supporters and political analysts say that top Republicans are increasingly wary of anti-gay-marriage rhetoric. When the Supreme Court in 2013 invalidated key parts of the Defense of Marriage Act, or DOMA, which denied federal benefits to same-sex couples, House Speaker John Boehner said he was disappointed but did not vow to fight on. The DOMA ruling led to lower court rulings invalidating state bans on gay marriage, setting the scene for possible Supreme Court involvement on whether states could deny the marriage right to gay and lesbian couples.

"I believe in traditional marriage," Boehner told reporters after the DOMA ruling. "But there are people on both sides of this issue with very heartfelt feelings about it, and I respect those views.... The court's made its decision."

Portman's entrance into the presidential race depends upon other factors, including whether his friend, former Florida Gov. Jeb Bush, gets in. Portman served in the cabinet of Bush's brother, former President George W. Bush. Portman, who has also worked as an attorney, is a serious thinker who has indicated that his party needs a strong, centrist candidate, one with conservative credentials but also one who does not pander in a way that can hurt with independent and swing-state voters.

Political analysts say Portman fits the mold.

But until now, there's been that gay marriage issue to consider, and it has generally been discussed as an obstacle.

Portman made clear in 2013, as did his Senate office this week when discussing this article, that he wanted states to decide the issue rather than having it forced on them by the court.

"Judicial intervention from Washington would circumvent that process as it's moving in the direction of recognizing marriage for same-sex couples," Portman wrote in an op-ed in the Columbus Dispatch after announcing his change of heart and wanting to explain it to middle-Ohio voters. "An expansive court ruling would run the risk of deepening divisions rather than resolving them."

An aide said this week that Portman wants Ohioans to support same-sex marriage "because they think it's the right thing to do, not because a court in Washington told them it's what they have to do."

But the point may be moot because parties in gay marriage cases across the nation are asking for a Supreme Court ruling anyway, saying the question should not wait. Several federal appeals courts have upheld the right to gay marriage, and a decision that would affect Ohio is pending in the Sixth U.S. Circuit Court of Appeals in Cincinnati.

If the U.S. Supreme Court decides to take the case and throws out obstacles to gay marriage, and if Portman runs for president – none of these is entirely speculative -- Portman could campaign as the Republican who saw the light. He was "history-making," and his change of heart came at a turning point, said Gregory Angelo, executive director of the Log Cabin Republicans.

"Good Republicans can agree to disagree," Angelo said. "Good Republicans can stand on either side of this issue." But "shrewd Republicans," he said, understand that opposition to marriage equality is a losing proposition for the party.

Perhaps so, say political analysts. But shrewd Republicans, some of whom disagree with Angelo, also know that before a candidate can appeal to independents and swing voters, he or she must win party primaries and caucuses.

This could still be a problem for Portman.

"Not even a chance," said Connie Mackey, president of the Family Research Council's political action committee, when asked about Portman's prospects in early primaries. The Family Research Council is a leading national group on socially conservative issues.

"First of all," she said, Portman "walked away from a tough fight that we've all been fighting for a long time. Second of all, he caved. He was one way, firmly. In fact, he was somebody we looked at as a vice presidential candidate way back with McCain. But when you cave, you're not showing a backbone that is necessary, we think, for holding a high office."

Even a Supreme Court ruling won't change that, she said.

"Like Roe v. Wade, you fight on," she said, referring to the case that established a woman's right to abortion. "It isn't a matter of strip mining or coal or something," where parties might weigh the pros and cons of alternatives. "It's a matter of culture changing when marriage changes between one man and one woman, so it's a fight that conservatives see as one of changing the entire culture. So they'll fight on."

They will also fight, Mackey said, to make sure the Republican platform states clearly that the party opposes same-sex marriage. That's important because the platform, finalized every four years at the party's nominating convention, provides the foundation for what the party believes.

Portman "won't have a shot at running for the presidency because the social issue part of the platform and those conservatives who worked to put it there will not let it happen," Mackey said.

The Roe v. Wade comparison is likely to be made a lot. But Lampo, of Cato, said there is a better Supreme Court case for comparison: Loving v. Virginia. In that case, the court in 1967 said that Virginia's statute banning interracial marriage violated the Fourteenth Amendment's equal protection and due process clauses.

Once the court ruled, Lampo said, "no states tried to take up measures to somehow bring back restrictions against interracial marriage. In one fell swoop it kind of wiped that issue away, and I think that's what would happen if the Supreme Court establishes the right to same-sex marriage."

As for the GOP's regular anti-gay-marriage platform plank, a group called the Young Conservatives for the Freedom to Marry, affiliated with the Freedom to Marry, is working to make that history, too.

Separately, the American Unity PAC, backed by hedge fund billionaire Paul Singer, is providing financial support this year for Republican congressional and state candidates who support gay marriage. Singer is a major Republican donor and could be key to a Portman run.

In Portman's 2010 Senate race, Singer and others from his Elliott Management donated \$114,717 altogether, the second biggest sum to Portman from any single employer or group, according to the Center for Responsive Politics.

Portman also knows Singer through the National Republican Senatorial Committee, a group whose fundraising Portman currently chairs in hopes of electing a Senate majority this November. Singer gave the group \$32,400 in April, Federal Election Commission reports show.

Well-funded third-party groups, or so-called Super PACS, are expected to play a significant role in the 2016 presidential race. In the 2012 Republican primaries, Las Vegas casino magnate Sheldon Adelson was behind a super PAC that helped Newt Gingrich's campaign with millions of dollars in outside support until Gingrich dropped out. Singer's firm, Elliott Management, has not returned a message asking to discuss a possible Singer financial role in a Portman presidential race.

Portman would need plenty of exposure on other issues in states such as Iowa and New Hampshire. The irony is that Portman, a member of the Senate finance and budget committees, has built his career on economic issues, not social issues. He says he still staunchly opposes abortion, but he is more often in the national press because of his role in attempted budget deals – and, since last year, because of gay marriage.

"Most Americans have never heard of Rob Portman," said Egan, the New York University professor. "If you've heard about Rob Portman and you're not from Ohio, it's probably because you heard him make his announcement about his son and gay marriage. So for better or worse, he is a guy whose reputation with voters both in Republican primaries and the general public" is based on the single fact that he changed his position on gay marriage after his son came out.

In Republican primaries, the issue makes it tough for Portman, Egan said.

"Here I think is the problem for somebody like Portman," he said. "The kinds of folks who show up at Republican caucuses in Iowa and in the primary in South Carolina, I would say that 70 to 75 percent of those folks are against gay marriage. And when your reputation both within and outside the Republican party is based on the fact that you took this stance, I would view that as a really big barrier, even if that issue were to be taken off the table by a Supreme Court ruling."

Sherrill, the emeritus professor at Hunter College who studied issues like this for 40 years, isn't as sure of that. It could depend, he said, on how many conservatives on the Supreme Court voted to strike down states' gay-marriage bans. If there were at least two – he guesses Chief Justice John Roberts and Justice Anthony Kennedy – their votes could give Portman cover with conservative primary election voters, Sherrill said.

"I think that if the Supreme Court made that decision, it would confer a kind of legitimacy on him," Sherrill said of Portman. "That would be very helpful."

So would the way Portman came to his position, he said. Other supporters of gay marriage talk about it in terms of morality, just as opponents do. Some have questioned why it took a son's coming-out for the senator to decide that gay marriage is fine.

But that, Sherrill says, is something that Republicans may understand.

"Politically within the Republican Party, it's probably more palatable to say 'I came to this decision because I love my son and I want my son to have a good life,'" Sherrill said, "than it is to say 'I came to this decision because I thought it was the right thing to do and morally just.'"