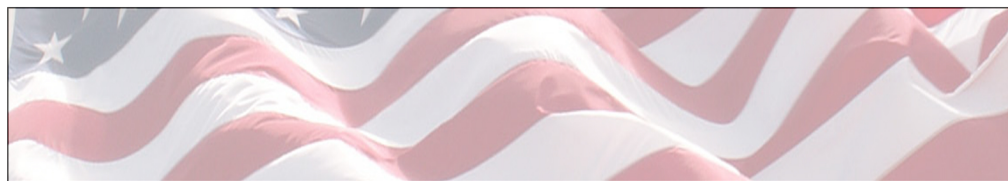
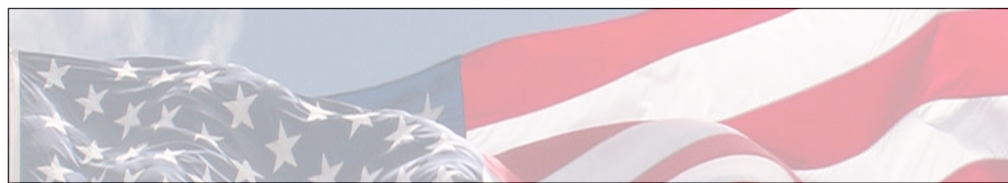




THE STATE OF MARRIAGE EQUALITY IN AMERICA



April 2015

Executive Summary

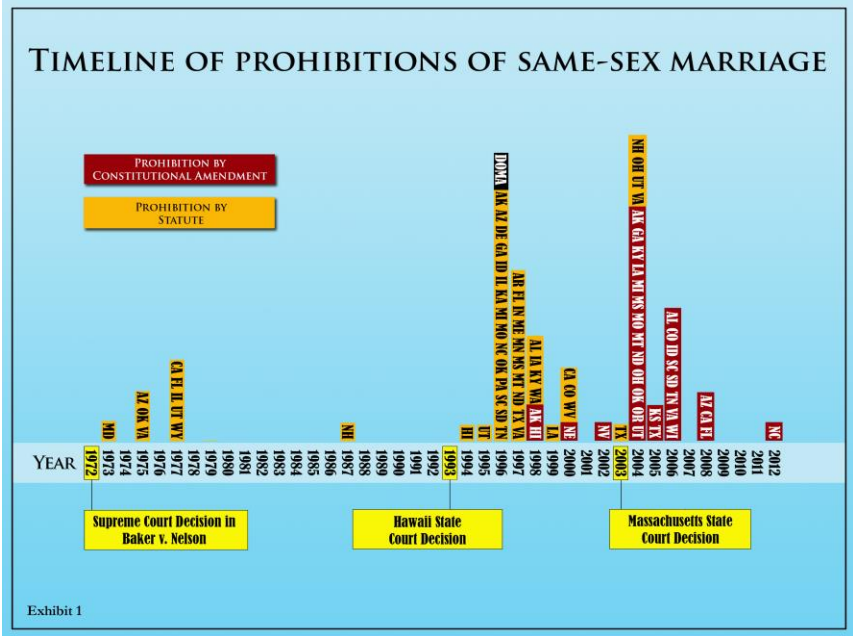
Squarely before the United States Supreme Court this Term is the important issue of marriage equality. Meanwhile, absent authoritative judicial guidance on the subject, the legislatures of many states (Maryland among them) continue to exercise their traditional authority to shape the institution of marriage. Many contend that principles of federalism require states to do this without interference from federal courts. Others say — including, today, numerous states that ordinarily would defend the scope of their powers — that states have sometimes been poor custodians of the rights of minorities. Regrettably, this has been especially true in our Nation’s history when the deliberative process has been contaminated by widespread prejudice and hate. In those contexts and on those occasions, it has been the Supreme Court that has interceded to protect unpopular groups. And just as judicial restraint in the ordinary case has been a vital, venerated part of the Supreme Court’s noble history, when necessary, so too have those now-revered interventions.

In order to better gauge whether states can be relied upon to safeguard the rights of gays and lesbians* — *i.e.*, whether debates in this arena reflect the loud and vigorous discord expected of a pluralistic democracy, or whether the political process has been irreparably corrupted by fear, ignorance, and misinformation — this Report, *The State of Marriage Equality in America*, examines the experiences of states that have both outlawed and allowed same-sex marriage. The findings of this survey are deeply troubling and inspire no confidence. In the end, the Report concludes that the pressing question of marriage equality cannot be adequately addressed by a state political process that has been systematically degraded by animus directed at gays and lesbians.

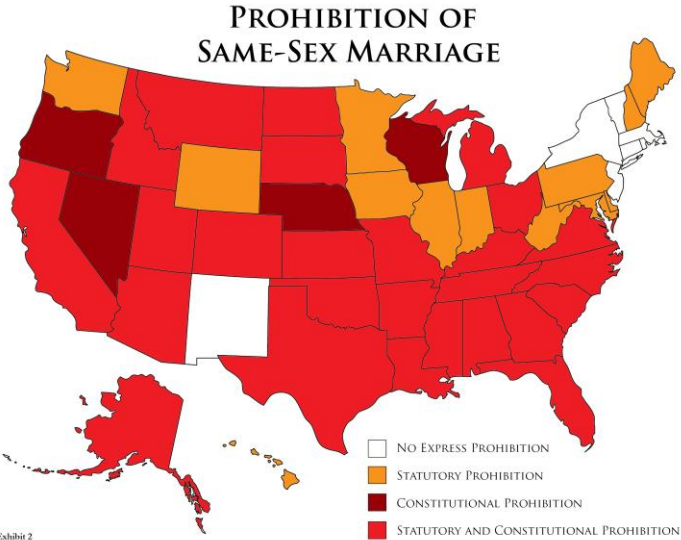
The Report is divided into five sections. The first part explains the anti-democratic impact of animus and the “special role” of courts to protect minorities from laws born of hate, prejudice, fear, and ignorance. But a climate of animus leading to enactments that forbid same-sex marriage is not only a reason to strike down those laws; it is also a reason why the Supreme Court, and not the states, should be entrusted with deciding the matter.

The second section documents a national trend of reactionary anti-gay enactments and shows that these regressive laws were almost universally passed on the heels of three promising advances in the push for marriage equality:

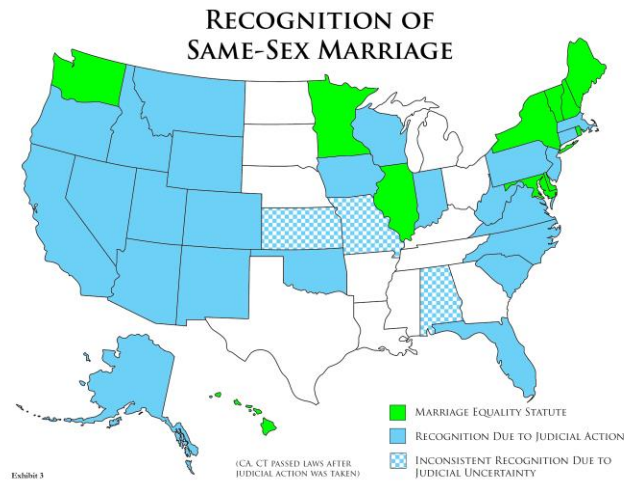
- 1) The rise of the gay rights movement in the 1970s, when some same-sex couples attempted to procure marriage licenses, led to an adverse Supreme Court decision followed by statutory bans in nine states, beginning with Maryland in 1973.
- 2) A Hawaii state court decision in 1993, stating that there *might* be a legal right to same-sex marriage under the state constitution, led to over 30 state legislative bans, four state constitutional amendments, and the federal Defense of Marriage Act (DOMA), all in the decade that followed.
- 3) And during the ten years following a state court’s recognition of same-sex marriage in Massachusetts in 2003, four more states passed legislation, and 27 states passed constitutional amendments, forbidding same-sex marriage.



The next part of the Report explains that, in one state after another, no matter when the ban on same-sex marriage was enacted, the same cluster of conditions — hate, prejudice, ignorance, fear, moral disapproval — repeatedly appear in the discourse and deliberations surrounding marriage equality. Having surveyed states across America, the Report focuses on six representative examples: Virginia, Washington, Alaska, Kansas, West Virginia, and California. Like the history of the four states whose laws are under review by the Supreme Court (*i.e.*, Kentucky, Michigan, Ohio, and Tennessee), the experiences of these six states expose the common climate of animus that permeated civic and political debate in the days before states banned same-sex marriage. This part also supplies numerous additional examples from other states, confirming that this poisonous environment has been the rule and not the exception.



The Report then turns to the encouraging trend of recognition of same-sex marriage in a growing number of states. The difficulty is that of the 35 states that currently permit same-sex marriage, only 11 of those states achieved marriage equality by popular referendum or legislation. Action by state or federal courts was needed in all the rest. Moreover, in the 11 states that followed the political track, progress was slow and exacted a heavy toll. The Report specifically recounts the struggles that led to marriage equality in Maryland, Hawaii, California, and Maine. This part makes clear that today’s gains are the fruits of decades — in Maryland and California, some 40 years — of halting progress. Worse perhaps than these setbacks have been the periodic regressions and political reversals, and the looming cloud of confusion and uncertainty, which have characterized the state-level process. This is no way to sort out a matter as central to the fabric of America as the fundamental rights of citizens with respect to who they love and how they define family.



The final part of the Report rebuts the demand some have made for patience. About 220,000 children are being raised today by gay and lesbian couples across America. For these families, the psychological and tangible impact of same-sex marriage bans is real, sustained, and irreparable, exposing yet another generation of children to grave uncertainty “as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone.” A decade more of delay may be nothing in the slow swing of the pendulum of the law. But to a child enduring insults and indignities on the playground or an adult trying to comfort and care for the love of their life lying in a hospital, a matter of years is forever.

As four federal appellate courts (all except the Sixth Circuit Court of Appeals) and the highest courts in 23 states have now found, the legal argument in favor of the right of same-sex couples to marry is unanswerable. Based upon this Report’s survey of the political experiences of states with laws prohibiting and permitting same-sex marriage, it is clear that the deference traditionally accorded to states with respect to the institution of marriage is not proper when in so many states the democratic process leading to these bans has been compromised by animus, fear, prejudice, and hate.

* Discriminatory laws of course affect bisexual and transgender persons as well as gays and lesbians; it should be noted that this Report does not mean to suggest that one group is impacted more or less than another by use of one term instead of another. As a matter of convention, the Report uses these term “gay” or “gay and lesbian” to refer to anyone in the broader LGBT (lesbian, gay, bisexual, and transgender) community.

The Anti-Democratic Impact of Animus

For decades, the United States Supreme Court has repeatedly made clear that laws driven by “animus” and directed toward a “politically unpopular group” deserve especially close attention under the Equal Protection Clause of the U.S. Constitution.¹ In those cases, because the normal political process cannot necessarily be entrusted to protect the rights of these groups, federal courts rightly have struck down retrograde laws that discriminate and demean for no good reason. Thus, the Supreme Court has struck down a Colorado constitutional amendment that prohibited any legislative, executive, or judicial action to protect gay, lesbian, bisexual, and transgender individuals from discrimination,² rejected the constitutionality of the federal Defense of Marriage Act (DOMA) because it was motivated by “improper animus,”³ and overturned Texas’s statute that criminalized homosexual sodomy.⁴ Similarly, the Court has struck down a city zoning law that discriminated against intellectually-disabled residents as a group because it was based upon irrational prejudices,⁵ as well as a federal law that rendered certain people living in communal residences ineligible for food stamps because the law was based on “bare congressional desire to harm a politically unpopular group.”⁶

The reason for this doctrine is easy to understand. When “animus” in one form or another — whether it is hate, prejudice, fear, ignorance, or some combination thereof — infects the political process with a “desire to harm a politically unpopular group,”⁷ and causes the legislature to enact laws “for the purpose of disadvantaging the group burdened by the law,”⁸ we cannot reasonably expect that the democratic majorities in individual states will vindicate the rights of marginalized minorities and safeguard them from discrimination. This is why, as the Supreme Court recognized long ago, “prejudice against discrete and insular minorities” seriously “curtail[s] the operation of those political processes ordinarily to be relied upon to protect minorities, and . . . may call for a

correspondingly more searching judicial inquiry.”⁹ These types of laws, therefore, “implicate[] the judiciary’s special role in safeguarding the interests of these groups” and justify “extraordinary protection from the majoritarian process.”¹⁰

Animus has therefore functioned as a “doctrinal silver bullet” that may, by itself, constitute a reason to invalidate state and federal laws.¹¹ But a climate of fear, prejudice, and ignorance propelling state enactments that forbid same-sex marriage is not only a reason to strike down those laws; it is also a reason why the Supreme Court, and not the democratic machinery of individual states, should be charged with deciding the matter. This impulse has been at the heart of much of the Supreme Court’s equal protection jurisprudence over the past century.

Yet, in the case now before the Supreme Court, the U.S. Court of Appeals for the Sixth Circuit seemed to believe that “animus” includes only outright hatred and cannot be derived from “concern[s]” involving an “issue that people of good faith care deeply about.”¹² Other courts have not defined “animus” so narrowly, but have instead taken a more realistic view of the variations of belief and sentiment that may motivate legislators and their constituents to support unfair or oppressive legislation. This is wise because, as the California Supreme Court has observed, “even the most familiar and generally accepted of social practices and traditions often masks an unfairness and inequality that frequently is not recognized or appreciated by those not directly harmed by those practices or traditions.”¹³ After all, as Justice Kennedy has explained, profound prejudices can stem from “indifference or insecurity as well as from malicious ill will,” and may result merely “from insensitivity caused by simple want of careful, rational reflection or from some instinctive mechanism to guard against people who appear to be different in some respects from ourselves.”¹⁴

Thus, animus need not manifest itself through virulent demonstrations of pure hatred toward a particular group, nor does animus necessarily appear as prejudice of the most severe and sinister form. Less reprehensible views or a lack of awareness among proponents may suffice to cast

doubt on the equality of protection afforded by laws enacted by a state legislature. For this reason, the Supreme Court has protected minority rights and invalidated discriminatory laws when the state's actions simply rested on "an irrational prejudice,"¹⁵ or where the law sprung from ignorance or a "want of careful, rational reflection,"¹⁶ or from fear of those who "appear to be different" from us,¹⁷ or from "moral disapproval" of a particular group.¹⁸

Unfortunately, as the next part of this Report documents, in states across America, this cluster of conditions — hate, prejudice, ignorance, fear, moral disapproval — recurrently appears in the discourse and deliberations surrounding same-sex marriage. It is no surprise under these circumstances that the rights of minorities have been at greatest risk.

National Trend of Reactionary Anti-Gay Enactments

To begin with, the timing of marriage bans in most states indicates that the laws were reactionary attempts by the majority to reinforce its belief that gay Americans were not entitled to equal status.¹⁹ Nearly all the statutory and constitutional prohibitions in question were enacted during one of three periods: (1) the mid-1970s after the gay rights movement had begun to gain momentum and a number of same-sex couples in certain states had attempted to procure marriage licenses; (2) the mid- to late-1990s after Hawaii courts held that there might be a constitutional right for same-sex couples to marry under the Hawaii Constitution; and (3) the mid- to late-2000s after Massachusetts became the first state to allow marriage for same-sex couples. In fact, some states passed anti-marriage laws during more than one of these two periods, seemingly to make doubly sure that same-sex couples were denied equal status. The timeline attached to this Report as Exhibit 1 shows the years in which these laws expressly banning same-sex marriage, or banning recognition of same-sex marriages from other states, were enacted, whether by statute or by constitutional amendment.

As this historical timeline makes clear, when gay Americans made progress in this country, democratic majorities pushed back by fortifying a discriminatory definition of marriage under state law. The first illustration of this pattern is from the 1970s. Around this time, same-sex couples were attempting to procure marriage licenses across the country. Two particularly notable examples were in Minnesota, where a same-sex couple's attempt to marry led to the U.S. Supreme Court's decision in *Baker v. Nelson*,²⁰ and in Colorado, where a county clerk actually issued a marriage license to a same-sex couple before the Colorado Attorney General opined that same-sex marriages were not legal under state law.²¹ Some states, the first being Maryland in 1973, responded to this trend by enacting explicit bans on same-sex marriage.

In Maryland, “an increasing number of persons of the same sex [were] seeking marriage licenses” by 1972.²² Although then-Attorney General Francis Burch concluded that, based on our state's statute at the time, marriage was implicitly limited to a union between a man and a woman,²³ the General Assembly nonetheless saw the need to become the first state to explicitly memorialize this discriminatory definition in statute.²⁴ The statute passed “overwhelmingly.”²⁵ Many other states that enacted express bans during the 1970s share a similar story. In California, for example, “several same-sex couples sought marriage licenses” during the mid-1970s, and the state legislature responded in 1977 by enacting express legislation to “clarify that the applicable California statutes authorized marriage only between a man and a woman.”²⁶ Similarly, in Arizona, the state legislature in 1975 passed an “emergency bill” to clarify that same-sex couples could not marry after a county clerk issued a marriage license to two men.²⁷

This is not the only factor that explains the backlash against same-sex couples during the 1970s. In fact, around the same time, Anita Bryant began her infamous “Save Our Children” campaign, in which she fought against equal rights for gay Americans by demonizing them as predators who would molest and indoctrinate children.²⁸ It is, for example, no coincidence that

Bryant campaigned in Florida in 1977 to repeal an anti-discrimination ordinance and that, in that same year, Florida also enacted a ban on adoption by same-sex couples and an explicit ban on same-sex marriage.²⁹ Against this general background of hostility toward gays and lesbians, a total of nine states enacted explicit bans on same-sex marriage during the 1970s. This timing is stark evidence of animus.

The same is true for the numerous states that enacted statutory or constitutional bans during the 1990s and 2000s in the wake of state court decisions in Hawaii and Massachusetts. Incredibly, in the five years following a 1993 decision by the Hawaii Supreme Court holding that the state's marriage ban was subject to strict scrutiny under the Hawaii Constitution, over 30 states enacted statutes expressly banning same-sex marriage or banning recognition of same-sex marriages entered into in other states. A few states also passed constitutional amendments banning same-sex marriage during this period. Similarly, within just three years after Massachusetts became the first state to recognize same-sex marriage in 2003, 23 states cemented discriminatory definitions of marriage in their respective state constitutions. And that number continued to grow in subsequent years.

The timing and reactionary nature of these bans is strong evidence of animus, and it illustrates why the federal courts need to intervene to protect the rights of minorities. As one federal court has recognized, in states where statutes or constitutional amendments banning same-sex marriage “were passed in direct response to judicial decisions expanding our conception of same-sex rights,” it shows that the ban was intended “to single out same-sex couples” for discriminatory treatment and “to label same-sex couples as different and lesser, demeaning their sexuality and humiliating their children.”³⁰

Common Climate of Fear, Ignorance, Prejudice, and Hate

No matter when the ban on same-sex marriages was enacted, in virtually every state, an atmosphere of animus surrounded the legislative process. Evidence of widespread prejudice has

already been well documented with respect to the four states whose laws are currently under review (*i.e.*, Kentucky, Michigan, Ohio, and Tennessee).³¹ In Ohio, for example, the primary sponsor of Ohio's constitutional amendment intentionally deceived voters with false messages, insisting that "[s]exual relationships between members of the same sex expose gays, lesbians, and bisexuals to extreme risks of sexually transmitted diseases, physical injuries, mental disorders and even a shortened life span."³² The promotion of this vitriol was not limited to individual rogue legislators. In fact, the official argument for the constitutional amendment that supporters included in a State Issue Ballot Information Guide characterized homosexual relationships as "deviant,"³³ and the chairman of a group that raised over \$1 million in support of the 2004 amendment later said that gay men "force themselves on people" and have "upwards of 200 sexual partners."³⁴

Like the four states whose legislative histories have rightly been the subject of the greatest attention in advance of the Supreme Court argument, the experiences of the approximately 40 other states that at some point enacted statutory or constitutional bans on same-sex marriage reveal an essentially unbroken pattern of prejudice and ignorance shaping the legislative decisions and public debate concerning the rights of gays and lesbians.³⁵ The following illustrations from a diverse array of states provide representative samples of how the deliberative process of state democracies was systematically degraded by a "want of careful, rational reflection,"³⁶ and by passive and affirmative campaigns of misinformation, fear-mongering, and hate.

Virginia. Virginia first enacted a statute expressly prohibiting same-sex marriage in 1975,³⁷ but found it necessary to go even further in 2004 by passing the so-called "Affirmation of Marriage Act" to ban recognition of civil unions in other states.³⁸ The proposed findings of fact in the bill as introduced relied upon misguided fears that schools might be forced "to teach that 'civil unions' or 'homosexual marriage'" should be "equivalent to traditional marriage" and that "churches whose teachings [do] not accept homosexual behaviors as moral will lose their tax exempt status."³⁹

The sponsors reiterated these views in their public statements as well. For example, Richard Black, one of the bill's co-sponsors, publicly stated that “[t]he whole agenda of the homosexual movement is to entice children to submit to sex practices. Those groups lead children to experiment with potentially fatal sex practices that spread AIDS and other sexually transmitted diseases.”⁴⁰ Another co-sponsor, Robert Marshall, authored an op-ed in *The Washington Post* in which he referred to same-sex marriage as “counterfeit marriage” and explained that the Affirmation of Marriage Act was “needed to resist the agenda of activist homosexuals” because the “danger” they posed was “real.”⁴¹ The sponsors also displayed a disturbing prejudice toward gays and lesbians, saying in the proposed findings of fact that “very few homosexuals will ‘marry’ or seek civil unions” and that homosexuality has “life-shortening and health compromising consequences.”⁴²

In 2006, a majority of Virginia’s voters ratified a constitutional amendment (the “Marshall/Newman Amendment”) that defines marriage as a union between “one man and one woman” and provides that the Commonwealth and its political subdivisions will not create or recognize any “union, partnership, or other legal status to which is assigned the rights, benefits, obligations, qualities, or effects of marriage.”⁴³ Before the Marshall/Newman Amendment was adopted, Virginia Delegate Kathy J. Byron advocated in its favor stating: “By changing the definition of marriage, the family, too, would be redefined, ultimately destroying the traditional family.”⁴⁴ Then-Virginia Senator Kenneth Cuccinelli also urged his colleagues to adopt the Marshall/Newman Amendment by claiming that “[t]he homosexual left has been on the attack against marriage and family for 40 years,” and that the amendment was necessary for “regaining lost ground.”⁴⁵

Washington. The story is similar in the State of Washington. That state adopted a Defense of Marriage Act in 1998.⁴⁶ The chief sponsor of the bill “distributed an article on the House floor saying that gays and lesbians are not normal, and told the legislature’s only openly gay member that homosexuals should be put on a boat and shipped out of the country.”⁴⁷ Similarly, “another

legislator said that when individuals engage in homosexual activity they confirm a ‘disordered sexual inclination’ that is ‘essentially self-indulgent.’”⁴⁸ Moreover, during the debate on the 1998 bill, proponents spread unqualified misinformation about same-sex families, testifying that “[f]amilies are adversely affected when children are taught that same-sex marriage is the same as traditional marriage”; that “[s]ame-sex families do not provide proper role models for children”; and that “[r]esearch indicates that children need a mother and a father to provide the best environment for their development.”⁴⁹

Alaska. In Alaska, the state enacted a constitutional amendment banning same-sex marriage in 1998. In arguing for the amendment, a supporter of the ban from the Alaska Family Coalition expressed his disapproval of gay citizens by proclaiming that, if same-sex marriage is legalized, Alaska will be telling its “young people that this is a perfectly normal healthy lifestyle choice” when it is in fact “an unnatural, sinful choice.”⁵⁰ A chief proponent of the ban, Senator Loren Leman, added that “we cannot change th[e] reality” that “[o]ur species was created with two genders” and that “[i]t is false compassion to suggest that tolerance requires us to publicly recognize and sanction and confer special benefits on homosexual relationships.”⁵¹ Along these same lines, during the committee hearings on another discriminatory bill in 2007 that would have expressly banned any form of family status for same-sex couples, an Alaska citizen testified that gay relationships are “just as disgusting to me as being married to an animal.”⁵²

Kansas. In Kansas, voters approved Amendment 1 in 2005 to ban same-sex marriage and *any* form of recognized relationship between same-sex couples. The amendment’s author proclaimed that same-sex marriage is “in defiance of biology, nature, and common sense” and will “further the destruction of the family.”⁵³ Similarly, as the amendment moved through the legislature, one advocate exemplified the moral disapproval at the heart of the ban by referring to homosexuality as “an abomination.”⁵⁴ Members of the legislature, in fact, went so far as to explain that they were

voting for the amendment because recognition of same-sex marriage might lead to the downfall of modern civilization. According to their view, “[m]ost cultures throughout the history of civilization, including all sects of the Judeo-Christian faith have celebrated the singular sanctity of marriage between one man and one woman. Only from that union are children procreated and thus can truly be defined as a family. *Civilizations that have departed from that norm of conduct have soon decayed into oblivion.*”⁵⁵ Finally, another proponent of the ban responded to a charge that the measure was about bigotry with the trite observation, “[a] homosexual has a right to get married, just not to someone of the same sex.”⁵⁶

West Virginia. In 2000, West Virginia enacted its Defense of Marriage Act banning same-sex marriage and prohibiting recognition of same-sex marriages entered into in other jurisdictions. A leading proponent of the ban stated: “Homosexuality is an immoral and unhealthy lifestyle It’s not something our government should encourage or endorse.”⁵⁷ In fact, he warned that “[u]ntil we pass this law, we are not going to be safe.”⁵⁸ Governor Cecil Underwood also expressed his support for the ban stating that “[a]s a former biology teacher, I do not think such legislation should be necessary. But perhaps it is.”⁵⁹

Later, a conservative group, the West Virginia Family Foundation, actively pushed for a constitutional amendment banning same-sex marriage in the wake of other states’ recognition of same-sex marriage. The Foundation’s president said: “What’s happening in California is a direct threat There are several inroads being made by homosexual activists in public policy.”⁶⁰ As evidence of the purported “threat,” he relied on a 2005 West Virginia Supreme Court case in which the lesbian partner of a 5-year-old child’s biological mother, who had raised him since birth, was awarded custody of that child after the biological mother’s sudden death.⁶¹ Most disturbingly, an online advertisement supporting West Virginia’s 2009 constitutional amendment compared gay rights advocates to snipers who were targeting “traditional” families. According to a press account,

“a minute into the video, the crosshairs of a rifle scope appear over the image of a family blowing bubbles. The narrator warns that ‘same-sex marriage is a closer reality in West Virginia than you may think,’ and that activists are ‘working tirelessly to define marriage away from God’s design.’”⁶²

California. As the experiences of so many states described above illustrate, proponents of anti-equality bills and amendments often preyed on misguided fears about the harms that same-sex marriage would supposedly have on children. This was also a central theme in California where, for example, the Proposition 8 campaign “relied heavily on negative stereotypes about gays and lesbians and focused on protecting children from inchoate threats vaguely associated with gays and lesbians.”⁶³ An official information guide disseminated to voters proclaimed that “[Proposition 8] protects our children from being taught in public schools that ‘same-sex marriage’ is the same as traditional marriage.”⁶⁴ In fact, the campaign was “laser-focused to exploit Californians’ deepest and most irrational fears about gay people . . . with cruelly anti-gay propaganda.”⁶⁵

Proposition 8’s supporters especially “played on a fear that exposure to homosexuality would turn children into homosexuals and that parents should dread having children who are not heterosexual.”⁶⁶ The supporters produced a series of commercials trying to scare voters by asserting that same-sex marriage would inevitably be taught in schools and implying — not subtly — that teachers would try to “indoctrinate” young children.⁶⁷ In one advertisement, a young girl returned home from school and announced to her mother that she had “learned that a prince can marry a prince, *and I can marry a princess.*”⁶⁸ A narrator then stated ominously: “Think it can’t happen? It’s already happened [in Massachusetts].”⁶⁹ Another television commercial that aired a few weeks later further played on these indoctrination fears by “show[ing] a class of first graders taking a field trip to see a lesbian teacher’s wedding.”⁷⁰ Moreover, as if the commercials did not sufficiently make the point, Proposition 8 supporters also circulated materials claiming that “[h]omosexuality is linked to

pedophilia,” that “[h]omosexuals are 12 times more likely to molest children,” and that the “gay agenda” is “Satan[ic]” and wishes to “legalize prostitution” and “legalize having sex with children.”⁷¹

Additional Illustrations. Year after year, in state after state, the experience has been the same: the vocal sponsors and advocates of anti-gay legislation created and contributed to a hostile climate where ignorance was compounded by fear, where prejudice was amplified by hate, and where animus systematically penetrated every facet of the debate:

- The sponsor of legislation banning same-sex marriage declared that the law was designed to tell gays and lesbians that “we are tired of you and wish you would go back in the closet.”⁷² (Florida, 1977)
- The sponsor of legislation banning same-sex marriage and prohibiting recognition of same-sex marriages described the law as an expression of the state’s “traditional and longstanding policy of moral opposition to same-sex marriages . . . and support of the traditional family unit” and a reaffirmation that the State’s “policy is and always has been . . . that these so-called marriages are contrary to our public policy.” Another legislator supporting the law stated “I just thank God that I am going back to Oakdale, where men are men and women are women, and believe me, boys and girls, there is one heck of a difference.”⁷³ (Pennsylvania, 1996)
- A proponent of a constitutional amendment said that, if the state allowed same-sex marriage, “we would basically be telling our children this is alright, this is normal and natural, and we don’t believe that’s true.”⁷⁴ (Hawaii, 1998)
- A candidate running for the U.S. Senate invoked the specious slippery slope argument in support of a state initiative: “[Can] a man and a dog . . . get married? Where are you going to draw the line? A son and a mother? A father and a daughter?”⁷⁵ Another advocate focused on describing “homosexuality as a sinful lifestyle.”⁷⁶ (Nebraska, 2000)
- An elected state representative said in support of a constitutional amendment banning same-sex marriage that, “[g]ay people might call it discrimination, but I call it upholding morality.”⁷⁷ (Oklahoma, 2004)
- An official voter information pamphlet claimed that if a constitutional amendment failed, “[e]very public school . . . would be required to teach your children that same-sex marriage and homosexuality are perfectly normal. Pictures in textbooks will also be changed to show same-sex marriage as normal.”⁷⁸ (Montana, 2004)
- The primary sponsor of a constitutional amendment claimed that same-sex couples were not interested in “the emotional or familial benefits of marriage.”⁷⁹ An advocate added that the goal was not “just to pass the amendment,” but also to help “men and women struggling with homosexuality . . . leave the lifestyle.”⁸⁰ (South Dakota, 2006)

- An official statement supporting a constitutional amendment to ban same-sex marriage pleaded with voters to protect children against “selfish” adults and keep homosexuality from being taught in schools.⁸¹ (Arizona, 2008)
- A state legislator stated that “you cannot construct an argument for same sex-marriage that would not also justify philosophically the legalization of polygamy and adult incest.⁸² Another member of the State Senate emphasized the need to avoid becoming a “cesspool of sin” and asserted that “we need to reach out to [gays and lesbians] and get them to change their lifestyle back to the one we accept.”⁸³ (North Carolina, 2012)

In sum, the experiences of states that have forbidden same-sex marriage betray a common climate of prejudice, fear, misinformation, and hate that has permeated debate on the issue across the country for decades. And unfortunately, as all of these illustrations show, this environment of animus has been the rule and not the exception.

The Pain and Pace of Progress

It is a mistake to treat the eventual vindication of gay and lesbian rights in some states as evidence that this issue can be entrusted to the normal political process at the local level. For one thing, the assertion by the Sixth Circuit that over 30 states are currently issuing same-sex marriage licenses obscures the fact that only 11 of those states have done so by referendum or legislation without the intervention of a state or federal court.⁸⁴ When change comes, therefore, it usually comes through the judiciary, rather than through the type of political process on which the Sixth Circuit would have same-sex families rely.

Even in those 11 states where change has come legislatively, it often comes slowly and through a process that subjects same-sex couples and their families to the pain and indignity of public scorn. In some states, same-sex couples have won the right to marry only to have that right stripped away by subsequent democratic majorities. There is thus no reason to expect that the normal political process will vindicate the rights of gays and lesbians when that process has been successful only in a limited number of states and, even then, at great emotional cost. Same-sex

couples should not be forced to endure this slow and painful process in order to obtain recognition of their constitutional rights.

In Maryland, for example, our own experience shows that democratic change on the issue comes too slowly. Maryland became the first state to define marriage by statute as a union between a man and a woman, expressly banning same-sex marriage in 1973 in an apparent response to attempts by same-sex couples to obtain marriage licenses.⁸⁵ Many families suffered that indignity in silence until 1997, when the first legislation legalizing same-sex marriage was introduced.⁸⁶ That bill failed, however, as did several others introduced in subsequent years.⁸⁷

After a decade of legislative frustration, advocates of same-sex marriage turned to the Maryland judiciary for vindication. A trial court struck down the State's marriage ban, holding that tradition is not a legitimate state interest when it is "the guise under which prejudice or animosity hides."⁸⁸ The Court of Appeals, however, overturned the lower court's ruling and found that the statutory ban on same-sex marriage did not violate the Maryland Constitution.⁸⁹ With the state courthouse doors closed to them, advocates of same-sex marriage returned to the General Assembly, which again failed to enact legislation to repeal the ban.⁹⁰ Those advocates then turned to the Attorney General for another incremental step, seeking his opinion as to whether same-sex marriages validly performed in other states would be recognized under Maryland law. In February 2010, Attorney General Douglas F. Gansler concluded that the Maryland courts would recognize such marriages.⁹¹

Even then, the General Assembly still failed to act. In 2011, although the Senate approved proposed marriage equality legislation, the House of Delegates killed the bill by sending it back to committee.⁹² The bill was finally enacted during the 2012 session, but only after it was amended to include provisions that more explicitly accommodated religious objections and to delay its effective

date until after a public referendum that critics hoped would scuttle the law.⁹³ The Civil Marriage Protection Act was ultimately ratified by the voters on November 6, 2012, with 52.4% of the vote.⁹⁴

Although the enactment of marriage equality legislation in Maryland has been a source of pride and a resounding success, the democratic process in Maryland still took nearly 40 years, and in other states the pace of democratic change has been similarly halting and erratic. In both Hawaii and California, for example, change was not only slow, but the affected families also suffered the further indignity of having their judicially-recognized rights withdrawn by democratic majorities.

In Hawaii, the Department of Health had long interpreted the state's marriage statute to prohibit same-sex marriage.⁹⁵ Then, when the Hawaii Supreme Court held in 1993 that the state's marriage ban was subject to strict scrutiny under the State Constitution and remanded the case to the trial court for an evidentiary hearing,⁹⁶ the state's elected officials worked quickly to undermine the court decision. The Hawaii Legislature enacted a statute in 1994 to explicitly define marriage as a union between a man and a woman.⁹⁷ Later, after the trial court in *Baehr* held that the new statute violated the Hawaii Constitution,⁹⁸ the Legislature proposed a constitutional amendment that would strip the courts of jurisdiction to decide the issue and instead leave it to the legislature.⁹⁹ The amendment was ratified in 1998 after a campaign that dismissed same-sex couples as neither "normal" nor "natural."¹⁰⁰ Same-sex couples thus had their judicially-recognized rights stripped away.

Following the constitutional amendment, LGBT rights advocates introduced bills in 2001, 2003, and 2007 that would have authorized civil unions, but they went nowhere.¹⁰¹ Then, in 2010, the Legislature passed such a bill, but it was vetoed by the Governor, who feared that civil unions would be "same-sex marriage by another name."¹⁰² Finally, in 2011, Hawaii took the incremental step of authorizing civil unions,¹⁰³ and enacted full marriage equality only in 2013.¹⁰⁴ The democratic process thus took more than two decades.

The experience in California was even more protracted and more trying for same-sex couples. California's journey began in 1977 after a number of same-sex couples sought marriage licenses based on gender-neutral language in the state's marriage statute.¹⁰⁵ The legislature briskly responded by amending the statute to expressly prohibit same-sex marriage.¹⁰⁶ Although a member of the legislature introduced an unsuccessful marriage equality bill in 1991,¹⁰⁷ the democratic process moved in the opposite direction: in 2000, the state's voters banned same-sex marriage by initiative to make doubly sure that marriage would be defined as between a man and a woman.¹⁰⁸

Meanwhile, the fight for equality through the democratic process stagnated. In 2004, the California State Legislature failed to enact a bill authorizing same-sex marriage in the face of entrenched opposition.¹⁰⁹ Then, in 2005 and 2007, Governor Schwarzenegger vetoed marriage equality legislation, explaining that he was leaving it to the California Supreme Court to confer that right.¹¹⁰ The court did so in 2008, holding that both the 1977 statute and the 2000 initiative violated the California Constitution. Approximately 18,000 same-sex couples then married over the next several months, becoming fully-recognized families under the law.¹¹¹

Yet, later that same year, in November 2008, California's voters approved a constitutional amendment — Proposition 8 — which by its very terms “eliminate[ed] the right of same-sex couples to marry.”¹¹² Those 18,000 couples who had already married languished in legal limbo for over a year until the California Supreme Court held that their marriages would remain valid.¹¹³ Other same-sex couples who one day wished to marry suffered the indignity of having their fellow voters “eliminat[e]” their existing rights. Only after judicial action — when the lower federal courts overturned Proposition 8 and the U.S. Supreme Court held in *Hollingsworth v. Perry* that it lacked jurisdiction — did California's democratic process finally lead to legislation clarifying that same-sex marriage was legal in the state.¹¹⁴ As in Maryland, the process took almost 40 years.

Similarly, in Maine, the democratic process took rights away from same-sex couples and their families before it eventually granted them. After numerous unsuccessful attempts to enact marriage equality legislation during the first decade of the 21st Century, the state legislature finally passed a bill repealing its same-sex marriage ban in 2009.¹¹⁵ However, the legislation was petitioned to referendum and overturned by approximately 53% of the popular vote.¹¹⁶ Although Maine's voters eventually approved same-sex marriage through a later ballot initiative,¹¹⁷ the state's same-sex couples nonetheless suffered the indignity of having a majority of their fellow residents vote to rescind rights that the legislature had seen fit to provide.

The experience in Maryland, Hawaii, California, and Maine thus illustrates the cost of leaving these issues to the individual states: a slow and painful process that can repeal rights before it deigns to grant them. And this has been the story in the states that have *approved* same-sex marriage through the democratic process. In those states where the majority of people and elected officials continue to oppose it, there is little reason to expect them to act with any more "deliberate speed" than they did in the wake of *Brown v. Board of Education*.

In Alabama, for example, the democratically-elected state Supreme Court, in a move evoking Governor Wallace's 1963 "Stand in the Schoolhouse Door," has ordered all Alabama probate judges to disregard a recent federal order that struck down the state's ban on same-sex marriage and required probate judges to begin issuing marriage licenses to gay and lesbian couples.¹¹⁸ In fact, one of the justices of the Alabama Supreme Court has gone so far as to threaten that the court might eliminate *all* civil marriages rather than allow same-sex couples to marry.¹¹⁹ Some Alabama counties apparently made good on that threat and stopped issuing marriage licenses altogether.¹²⁰ Given this type of entrenched opposition, it is not realistic to expect that the electorate in every state will move quickly or voluntarily to vindicate the rights of their fellow citizens.

In the meantime, same-sex couples who may be considering relocating for important life decisions — whether it be a new job or to be closer to elderly parents — are faced with a map of the United States that looks more like a checkerboard than “one Nation, one people.”¹²¹ And in some instances, this checkerboard even exists *within* states, as some counties recognize same-sex marriages while others do not.¹²² In Kansas, for example, the Chief District Judge of each of the state’s 31 judicial districts is essentially responsible for deciding whether to issue licenses for same-sex marriages within his or her district.¹²³ After the U.S. Supreme Court denied certiorari in two cases from the Tenth Circuit, which had struck down marriage bans in Utah and Oklahoma,¹²⁴ some districts began issuing marriage licenses, though the Kansas Supreme Court ordered them to stop.¹²⁵

Then, when the federal district court in Kansas enjoined the state from enforcing its marriage ban, and the U.S. Supreme Court dissolved its stay of that injunction pending appeal,¹²⁶ many judicial districts again began issuing licenses.¹²⁷ They were joined by even more districts when the Kansas Supreme Court lifted its own stay on November 18.¹²⁸ Meanwhile, the state government continues to deny recognition of same-sex marriages pending the resolution on appeal of *Marie v. Mosier*, except for the Department of Health and Environment, which remains bound by the District Court’s injunction.¹²⁹ The result of all of this is a bizarre and confusing patchwork of rules. At last count, only 59 of Kansas’s 105 counties are issuing licenses for same-sex marriages, and the state recognizes those marriages only for some purposes and not for others.¹³⁰ Similarly, in Missouri, local clerks are now granting marriage licenses to same-sex couples in the city of St. Louis, St. Louis County, and Jackson County, but not the rest of the State.¹³¹ Finally, in Alabama, the list of counties that grant marriage licenses to same-sex couples expands and contracts on a seemingly daily basis.

Unless the Supreme Court intervenes, this type of confusion will reign across the nation. Moreover, if the decision is left to individual states, the experience of Maryland, Hawaii, California, and Maine shows that same-sex families can expect to suffer delays and indignities at the hands of

the democratic majorities in their states even if their constitutional rights are ultimately recognized. It is not right to force loving same-sex couples to run this gauntlet to vindicate their constitutional rights, particularly when, as the next part of the Report demonstrates, the resulting delays and indignities have a real human cost on countless American families and their children.

The Consequences and Damage of Delay

To ask families and children to wait their turn until democratic majorities in their respective states decide to recognize their inherent human dignity is simply to ask too much. For hundreds of thousands of children being raised by same-sex couples, the damage is real, sustained, and irreparable. Political theorists and legal academics often comment on the pace of change of jurisprudential doctrines, admiring the slow swing of the pendulum of law. To a child enduring insults and indignities on the playground or an adult trying to comfort and care for the love of their life lying in a hospital, a matter of years is forever.

The Supreme Court has recognized that discriminatory laws like the Defense of Marriage Act cause significant psychological harm to children. These laws “humiliate[] tens of thousands of children now being raised by same-sex couples” by labeling their families as somehow less deserving than other families, and “make[] it . . . difficult for the[se] children to understand the integrity and closeness of their own family and its concord with other families in their community and in their daily lives.”¹³² Just as the Supreme Court held in *Brown v. Board of Education* over sixty years ago, these discriminatory laws foster among children “a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone.”¹³³

In fact, the children of same-sex couples have themselves declared that “denying gays and lesbians their right to marry doesn’t just affect adults”; it affects their children, too.¹³⁴ Children of same-sex parents relate that they have a “corrosive feeling of doubt” that arises from knowing their

parents, unlike their friends' parents, cannot marry.¹³⁵ As one child put it, "It does bother me to say [my parents] aren't married. It makes me feel that our family is less than a family."¹³⁶

Furthermore, the children of same-sex couples report feeling "like . . . lesser citizen[s]" because their "parents' love and commitment to each other isn't considered 'legal.'"¹³⁷ They, therefore, feel that their families are "less worthy than other[]" families.¹³⁸ Similarly, according to one child, efforts by marriage equality opponents to ban official recognition for her parents "felt like a slap in the face."¹³⁹ In some cases, children have even expressed fear that "somebody is going to come and break up their family."¹⁴⁰ Indeed, as the Connecticut Supreme Court observed, "[a] primary reason why many same sex couples wish to marry is so that their children can feel secure in knowing that their parents' relationships are as valid and as valued as the marital relationships of their friends' parents."¹⁴¹ When same-sex couples are prohibited from marrying, the effect on their children is "especially deleterious," as it prevents them from enjoying "the immeasurable advantages that flow from the assurance of a stable family structure in which [they] will be reared, educated, and socialized."¹⁴² If the Supreme Court waits to act on this issue and leaves the matter to the vagaries of individual states, another generation of children raised by same-sex parents runs the risk of growing up with a "feeling of inferiority" that is "unlikely ever to be undone."¹⁴³

This is neither a small problem nor one limited to only a handful of families. Based on a conservative estimate, there are at least 220,000 children nationwide who are being raised by same-sex couples, and nearly one in five same-sex couples in this country have children.¹⁴⁴ Parenting is most common among same-sex couples living in the Southern, Upper Midwest, and Mountain regions of the country.¹⁴⁵ In fact, among those states with the highest proportion of same-sex couples raising biological, adopted or step children are Mississippi, North Dakota, Arkansas, and South Dakota, where constitutional bans on same-sex marriage persist.¹⁴⁶ In fact, even when same-sex couples are able to secure legal recognition in their state of residence they "often have no

guarantee that their rights as parents will be respected by other states”; in this era of unprecedented mobility, job transfers or even out-of-state travel can raise the specter of upending an otherwise secure family unit.¹⁴⁷

It is not just children who suffer psychological harm when their families are excluded from the legitimacy of marriage. As adults age, they are threatened with financial insecurity through the loss of income following retirement and an increased need for medical and long-term care. Older Americans in same-sex relationships who are denied the right to marry are thus also denied the protections and “valuable benefits that are only available on the basis of a legally recognized marital relationship.”¹⁴⁸ As these adults face age-related health and financial concerns, their exclusion from “protections of survivorship and inheritance rights, financial benefits, and legal recognition as a couple in health care settings increase[] the psychological burden associated with aging.”¹⁴⁹

Moreover, in addition to the psychological burden that these family members endure on a daily basis, real, tangible deprivations result from a denial of the right to marry. Because “states and the federal government channel benefits, rights, and responsibilities through marital status,” denial of that status means a denial of the “economic support obligations” and legal protections that derive from marriage.¹⁵⁰ In total, there are 1,138 federal statutory provisions in which marital status is a factor in determining or receiving benefits, rights, and privileges,¹⁵¹ and “[i]n each state, there are somewhere between dozens and hundreds of state protections, rights, responsibilities and benefits that flow from marriage.”¹⁵² These include laws protecting the children of married couples, laws providing financial security after the death of a spouse, and laws safeguarding the right to care and to make medical decisions for a spouse who is ill.

Children of unmarried same-sex parents do not have the same protections that marriage affords the children of heterosexual couples. As an example, one need look no further than the family of two of the plaintiffs in the case before the Supreme Court. Two of the Michigan plaintiffs,

April DeBoer and Jayne Rowse, are unmarried, same-sex partners who together are raising three children. Due to existing provisions in Michigan's adoption laws, DeBoer and Rowse are prohibited from adopting the children as joint parents because they are unmarried. Instead, Rowse alone adopted two children, and DeBoer adopted the third child, but neither mother is legally recognized as the parent of her partner's children.¹⁵³ Many states, like Michigan, prohibit joint adoption by unmarried, same-sex couples.¹⁵⁴ This makes a child of a same-sex union a legal stranger to one of his two parents, which can have serious, tangible consequences. For example, if these two parents that have been denied the legal status of marriage decide to dissolve their relationship, they and their children face custody, visitation, and child support challenges not confronted by married partners.¹⁵⁵ Custody and visitation are not guaranteed to a non-legal parent, and a child may not be entitled to monetary support from a parent with whom he has no legal relationship.¹⁵⁶

Even more disturbingly, when a same-sex partner dies, the denial of the right to marry can leave children and a surviving partner financially unprotected. It is marriage that confers the right to collect Social Security payments when a spouse dies or becomes disabled,¹⁵⁷ provides survivor benefits for the spouse of a public safety officer killed in the line of duty,¹⁵⁸ and awards the right to inherit when a spouse dies without a will.¹⁵⁹ Further, only a surviving "spouse," not a surviving partner, has the authority to file suit and seek damages for a spouse's wrongful death.¹⁶⁰ A child who is not legally related to one of her same-sex parents likewise may be prohibited from recovering these valuable benefits when that parent dies.¹⁶¹

In another devastating example, when one partner of an unmarried, same-sex couple is ill and in need of medical care, she may be denied the care and support of her loved one. Unmarried same-sex couples are excluded from benefits under the Family Medical Leave Act, which provides eligible employees up to twelve weeks of unpaid leave to care for a spouse with a serious health condition.¹⁶² Similarly, a same-sex partner who is intimately familiar with his loved one's wishes

regarding end-of-life care may nonetheless be denied the right to make medical decisions for his partner if the couple is not married.¹⁶³ As demonstrated by these and other preceding examples, restricting the rights of same-sex families denies family members the psychological and economic security that the legal recognition of marriage provides.

As the Supreme Court has recently emphasized, the ability to get married for same-sex couples represents “a dignity and status of immense import.”¹⁶⁴ Those who advocate leaving this matter to the states essentially are asking same-sex couples to wait until their fellow citizens decide to recognize them as equal members of society. This demand blinks reality and is flatly inconsistent with the Constitution’s pledge of equal protection. There is no guarantee that the majority in each state will recognize same-sex marriage any time soon, particularly given the animus that infected the political process that led to these discriminatory laws in the first place, and the difficult and protracted process that has proved necessary to achieve their repeal. Meanwhile, during this excruciating waiting period, same-sex couples and their children suffer myriad injuries every day, both tangible and psychological. At this very moment, certain American families are being labeled by state laws across this country as subordinate, and their children are absorbing “a feeling of inferiority . . . that may affect their hearts and minds in a way unlikely ever to be undone.”¹⁶⁵

In *Loving v. Virginia*, the Supreme Court recognized that “[m]arriage is one of the basic civil rights of man,” and overturned Virginia’s discriminatory anti-miscegenation law on equal protection grounds.¹⁶⁶ The Court did not wait to see if states with anti-miscegenation laws would repeal them through the normal political process. It instead acted decisively to reject the notion that mere tradition was sufficient justification to exclude devoted couples from enjoying the benefits of this “civil right” or to discriminate against a disfavored group solely because they were unpopular. The time has come again for the Supreme Court to reject discriminatory laws that seek to exclude loving

Americans from the benefits of marriage. Until it does, same-sex couples across the country will continue to be labeled as second-class citizens and denied the “dignity and status” of marriage.¹⁶⁷

Conclusion

For decades, the deliberative process with respect to marriage equality has been infected with misinformation and venom. Claiming that elementary education would be rewritten to corrupt families and expose young children to all forms of sexuality; characterizing gays and lesbians as “self-indulgent” and “sinful”; comparing homosexuality to bestiality and pedophilia and polygamy; convincing voters that same-sex marriage leads to disease and mental illness — these are not assertions or arguments worthy of democratic discourse; they are meant to scare and mislead citizens into suppressing and subordinating an unpopular group. Too often and for too long, this strategy of spilling lies and spreading fear has succeeded. This is one risk of a pluralistic democracy, but it is the very risk that the Framers designed the federal courts, and the Supreme Court in particular, to correct.

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- ¹ *Romer v. Evans*, 517 U.S. 620, 632-34 (1996).
- ² *See id.*
- ³ *United States v. Windsor*, 133 S. Ct. 2675, 2693 (2013).
- ⁴ *Lawrence v. Texas*, 539 U.S. 558, 574 (2003).
- ⁵ *City of Cleburne, Tex. v. Cleburne Living Center*, 473 U.S. 432, 441 (1985).
- ⁶ *U.S. Dep't of Agriculture v. Moreno*, 413 U.S. 528, 534 (1996).
- ⁷ *Id.* at 534.
- ⁸ *Romer*, 517 U.S. at 633.
- ⁹ *United States v. Carolene Products Co.*, 304 U.S. 144, 152 n.4 (1938).
- ¹⁰ *Washington v. Seattle School Dist. No. 1*, 458 U.S. 457, 486 (1982) (internal quotation marks omitted).
- ¹¹ Susannah W. Pollvogt, *Unconstitutional Animus*, 81 Fordham L. Rev. 887, 889 (2012).
- ¹² *DeBoer v. Snyder*, 772 F.3d 388, 408 (6th Cir. 2014).
- ¹³ *In re Marriage Cases*, 183 P.3d 384, 451 (Cal. 2008).
- ¹⁴ *Board of Trustees of Univ. of Alabama v. Garrett*, 531 U.S. 356, 374, 375 (2001) (Kennedy, J., concurring).
- ¹⁵ *Cleburne*, 473 U.S. at 450.
- ¹⁶ *Garrett*, 531 U.S. at 375 (Kennedy, J., concurring).
- ¹⁷ *Id.*
- ¹⁸ *Lawrence*, 539 U.S. at 571 (O'Connor, J., concurring); *see also Windsor*, 133 S. Ct. at 2693.
- ¹⁹ *See* Brief of the Human Rights Campaign As Amicus Curiae Supporting Petitioners, *DeBoer v. Snyder*, at 18-19, *available at* <http://thepeoplesbrief.org>.
- ²⁰ *Baker v. Nelson*, 409 U.S. 810 (1972).
- ²¹ William N. Eskridge and Darren R. Spedale, *Gay Marriage: For Better or for Worse? What We've Learned from the Evidence*, 22-23 (2006).
- ²² 57 *Opinions of the Attorney General* 71, 71 (1972).
- ²³ *Id.* at 72-73.
- ²⁴ *See* 1973 Md. Laws, ch. 213.
- ²⁵ Legislative Council, Report to the General Assembly of 1975, at 457-58.

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- ²⁶ *In re Marriage Cases*, 183 P.3d 384, 409 (Cal. 2008).
- ²⁷ Kathleen A. Lahey and Kevin Alderson, *Same-Sex Marriage: The Personal and the Political* 18 (2004).
- ²⁸ Anthony Niedwiecki & William E. Adams, Jr., *Introduction: The Florida Example*, 32 *Nova L. Rev.* 515, 516-17 (2008).
- ²⁹ *Id.* at 516; *see also* *New Florida Laws Prohibit Same-Sex Marriage, Adoption*, *Toledo Blade*, June 8, 1977.
- ³⁰ *Campaign for Southern Equality v. Bryant*, No. 3:14-CV-818-CWR-LRA, 2014 WL 6680570, at *34 (S.D. Miss. Nov. 25, 2014).
- ³¹ *See generally* Brief of the Human Rights Campaign As Amicus Curiae Supporting Petitioners, *supra*.
- ³² *Id.* at 20 (quoting *Obergefell v. Wymyslo*, 962 F. Supp. 2d 968, 975 (S.D. Ohio 2013)).
- ³³ *See* Ohio Sec’y of State, Ohio Issues Report: State Ballot Information for the Nov. 2, 2004 General Election, Question 1, at 4.
- ³⁴ Chad Groening, ‘Gay Games’ Not a Hit in Buckeye State, *One News Now* (Aug. 8, 2014), *available at* <http://onenewsnow.com/culture/2014/08/08/gay-games-not-a-hit-in-buckeye-state#.VO9PSVpN3zK>; Mission: America Radio Show, WRFD (March 3, 2014), *available at* <http://www.rightwingwatch.org/content/burress-many-homosexual-men-have-many-two-hundred-sex-partners>.
- ³⁵ Exhibit 2 shows which states at one point enacted explicit bans against same-sex marriage. The six states that never enacted an explicit ban on same-sex marriage are Massachusetts, New Jersey, New Mexico, New York, Rhode Island, and Vermont (as well as the District of Columbia). Another state, Connecticut, apparently did not enact an express prohibition on same-sex marriage until it passed a statute authorizing civil unions in 2005, which codified that marriage was a union between a man and a woman. There are also a handful of states, including Wyoming, Illinois, Indiana, Delaware, and Minnesota, for which the legislative history of the marriage bans is opaque because it appears that those bans were passed largely without debate, either during the 1970s or in the wake of the federal Defense of Marriage Act.
- ³⁶ *Garrett*, 531 U.S. at 375 (Kennedy, J., concurring).
- ³⁷ *See* Va. Code § 20-45.2.
- ³⁸ *See* 2004 Va. Laws, ch. 983.
- ³⁹ *See* Va. House Bill 751.
- ⁴⁰ “Gay-Straight” Clubs in Schools Anger Foes, *Wash. Times* (Nov. 17, 2004).
- ⁴¹ Robert Marshall, No “New Jim Crow” in Virginia, *Wash. Post* (July 3, 2004).
- ⁴² Va. House Bill 751.
- ⁴³ Va. Const. Art. I, § 15-A.
- ⁴⁴ *Gay Marriage Ban Advances in Va.*, *Wash. Post* (Jan. 14, 2006).

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- ⁴⁵ *Va. Senate Backs Ban on Gay Marriage*, Wash. Post (Feb. 8, 2005).
- ⁴⁶ See 1998 Laws of Wash., ch. 1.
- ⁴⁷ *Andersen v. King Cnty.*, 158 Wash. 2d 1, 32 (2006) (internal citations omitted).
- ⁴⁸ *Id.*
- ⁴⁹ Wash. H.R. Bill Rep., 1998 Reg. Sess., H.B. 1130 at 3 (Feb. 4, 1998).
- ⁵⁰ Chuck Stewart, ed., *Proud Heritage: People, Issues, and Documents of the LGBT Experience* 869 (2014).
- ⁵¹ Kevin G. Clarkson, et al., *The Alaska Marriage Amendment: The People's Choice on the Last Frontier*, 16 Alaska L. Rev. 213, 232 (1999).
- ⁵² Alaska State Legislature, House State Affairs Committee Minutes, March 27, 2007 (statement of Honda Head), available at <http://www.legis.state.ak.us/pdf/25/M/HSTA2007-03-270809.PDF>.
- ⁵³ Tim Huelskamp, *The War on Marriage and Motherhood*, Wash. Times (Apr. 1, 2013).
- ⁵⁴ Scott Rothschild, *Gay Marriage Measure Moves to Final Vote in Kansas House*, Lawrence World-Journal (Feb. 2, 2005).
- ⁵⁵ 2005 Journal of the Kansas House, Statement on SCR 1601 by Del. Frank Miller, et. al., February 2, 2005, available at <http://www.kansas.gov/government/legislative/journals/2005/hj0202.pdf> (emphasis added).
- ⁵⁶ Scott Rothschild, *Gay Marriage Ban in Public's Hands*, Lawrence World-Journal (Feb. 3, 2005).
- ⁵⁷ *Ban on Same-Sex Marriages Proposed in House*, Charleston Daily Mail, Feb. 17, 1999.
- ⁵⁸ *Id.*
- ⁵⁹ *Id.*
- ⁶⁰ *Same-Sex Marriage: Groups divided on vows for gays*, Charleston Daily Mail (June 26, 2008).
- ⁶¹ *Id.*; see also *In re Clifford K.*, 217 W. Va. 625 (2005).
- ⁶² Lawrence Messina, *W.Va. marriage campaign chided for 'gay sniper' ad*, Assoc. Press (Feb. 19, 2009).
- ⁶³ *Perry v. Schwarzenegger*, 704 F. Supp. 2d 921, 1003 (N.D. Cal. 2010).
- ⁶⁴ California Sec'y of State, Official Voter Information Guide: California General Election on Nov. 4, 2008, Prop. 8, at 56 (2008), available at <http://www.voterguide.sos.ca.gov/past/2008/general/argu-rebut/argu-rebutt8.htm>.
- ⁶⁵ Mark Joseph Stern, *Just a Reminder: The Campaign for Prop 8 Was Unprecedentedly Cruel*, Slate (April 4, 2014).
- ⁶⁶ *Perry*, 704 F. Supp.2d at 1003.
- ⁶⁷ See Clifford J. Rosky, *Fear of the Queer Child*, 61 Buff. L. Rev. 607, 672-73 (2013).

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- ⁶⁸ *Id.* at 673 (emphasis added).
- ⁶⁹ *Id.* at 674 n.291.
- ⁷⁰ *Id.* at 674.
- ⁷¹ See Brief of the Organization of American Historians and the American Studies Ass'n as *Amici Curiae* in Support of Respondents, *Hollingsworth v. Perry*, No. 12-144, at 34 (Feb. 28, 2013) (citing statements from record in *Hollingsworth*).
- ⁷² *New Florida Laws Prohibit Same-Sex Marriage, Adoption*, Toledo Blade, June 8, 1977.
- ⁷³ Plaintiffs' Statement of Uncontested Material Fact, *Whitewood v. Wolf*, No 13-1861-JEJ (M.D. Pa. April 21, 2014), available at http://www.aclupa.org/download_file/view_inline/1707/700/ (quoting 1996 Pa. House Legis. Journal 2017, 2022).
- ⁷⁴ AllPolitics, *Hawaii gives legislature power to ban same-sex marriage* (Nov. 3, 1998), http://www.cnn.com/ALLPOLITICS/stories/1998/11/04/same.sex.ballot/index.html?_s=PM:ALLPOLITICS.
- ⁷⁵ *Nebraskans to Vote on Most Sweeping Ban on Gay Unions*, N.Y. Times (Oct. 21, 2000).
- ⁷⁶ Michael Cromartie, ed., *A Public Faith: Evangelicals and Civic Engagement* 98 (2003).
- ⁷⁷ David Harper, *Focus: Gay Marriage Clamor Grows Louder and Louder*, Tulsa World (Mar. 22, 2004).
- ⁷⁸ Montana Sec'y of State, 2004 Voter Information Pamphlet, at 23, available at <http://sos.mt.gov/Elections/archives/2000s/2004/VIP2004.pdf> (emphasis omitted).
- ⁷⁹ Bob Ellis, *Opponents Charge: South Dakota Marriage Amendment Will Harm Heterosexuals*, Dakota Voice (Oct. 2, 2006), available at http://www.dakotavoice.com/200610/20061002_1.html.
- ⁸⁰ Michael Foust, *Marriage Amendment No Guarantee in Conservative South Dakota*, Baptist Press (Oct. 26, 2006), available at <http://www.baptistpress.com/24257/election-06-marriage-amendment-no-guarantee-in-conservative-south-dakota>.
- ⁸¹ See Arizona Sec'y of State, 2008 Ballot Propositions Publicity Pamphlet.
- ⁸² Paige Lavender, *Paul Stam, North Carolina GOP Representative: Gay Marriage Leads to Polygamy, Incest*, Huffington Post (Aug. 31, 2011), http://www.huffingtonpost.com/2011/08/31/gay-marriage-north-carolina_n_943336.html.
- ⁸³ Rob Schofield, *Anti-gay lawmakers speak their (very troubled) minds*, The Progressive Pulse (Sept. 9, 2011), available at <http://pulse.ncpolicywatch.org/2011/09/09/anti-gay-lawmakers-speak-their-very-troubled-minds/>.
- ⁸⁴ Exhibit 3 shows these states. They are Vermont, New Hampshire, New York, Washington, Maine, Maryland, Rhode Island, Delaware, Minnesota, Hawaii, and Illinois. The District of Columbia also recognized marriage equality through the legislative process.
- ⁸⁵ 1973 Md. Laws, ch. 213; see also 57 *Opinions of the Attorney General* at 71.

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- ⁸⁶ See H.B. 609; 1997 Leg. Reg. Sess.
- ⁸⁷ See, e.g., H.B. 1259, 1998 Leg. Reg. Sess.; H.B. 919, 2000 Leg. Reg. Sess.
- ⁸⁸ See *Deane v. Conaway*, No. 24-C-04-005390, 2006 WL 148145 (Cir. Ct. Balt. City, Jan. 20, 2004).
- ⁸⁹ *Conaway v. Deane*, 401 Md. 219 (2007).
- ⁹⁰ See H.B. 351, 2008 Leg. Reg. Sess.
- ⁹¹ See 95 *Opinions of the Attorney General* 3 (2010); see also *Port v. Cowan*, 426 Md. 435 (2012) (agreeing with the Attorney General's analysis two years later).
- ⁹² See S.B. 116, 2011 Reg. Leg. Sess.
- ⁹³ 2012 Md. Laws, ch. 2.
- ⁹⁴ See Maryland Secretary of State, 2008 General Election Official Results, Question 1, available at http://elections.state.md.us/elections/2012/results/general/gen_qresults_2012_4_00_1.html.
- ⁹⁵ See *Baehr v. Lewin*, 74 Haw. 530 (1993).
- ⁹⁶ See *id.*
- ⁹⁷ 1994 Haw. Sess. Laws, ch. 217.
- ⁹⁸ See *Baehr v. Miike*, 1996 WL 694235 (Dec. 3, 1996).
- ⁹⁹ 1997 Sess., H.B. 117.
- ¹⁰⁰ *Hawaii gives legislature power to ban same-sex marriage, supra*; n.74; see also Christie Wilson, *Same-Sex Marriage Issue Has Endured a Long Fight in Hawaii*, Honolulu Advertiser (Jan. 24, 2010).
- ¹⁰¹ See Wilson, *supra* n.100.
- ¹⁰² Herbert A. Sample, *Hawaii governor vetoes same-sex civil unions bill*, Assoc. Press (July 7, 2010), available at http://www.nbcnews.com/id/38118504/ns/us_news-life/t/hawaii-governor-vetoes-same-sex-civil-unions-bill/#.VNOB0U1uhHg.
- ¹⁰³ See 2011 Haw. Sess. Laws, ch.1.
- ¹⁰⁴ 2013 Haw. Sess. Laws, 2nd Spec. Sess., ch. 1.
- ¹⁰⁵ See *In re Marriage Cases*, 183 P.3d at 409.
- ¹⁰⁶ *Id.* (citing 1977 Cal. Stat., ch. 339).
- ¹⁰⁷ See J.P. Tremblay, *Homosexual anti-bias, marriage bills sure to cause a stir*, The Sacramento Union (Jan. 28, 1991).
- ¹⁰⁸ *In re Marriage Cases*, 183 P.3d at 409.
- ¹⁰⁹ See 2004 Sess., A.B. 1967.

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- ¹¹⁰ *E.g.*, Governor's Veto Message, A.B. 849 (Sept. 29, 2005), *available at* http://www.leginfo.ca.gov/pub/05-06/bill/asm/ab_0801-0850/ab_849_vt_20050929.html; *see also* Jill Tucker, *Schwarzenegger vetoes same-sex marriage bill again*, SFGate (Oct. 12, 2007), *available at* <http://www.sfgate.com/bayarea/article/Schwarzenegger-vetoes-same-sex-marriage-bill-again-2497886.php>.
- ¹¹¹ *See* John Schwartz, *California High Court Upholds Gay Marriage Ban*, N.Y. Times (May 26, 2009).
- ¹¹² California Voter Information Guide, 2008 General Election, *available at* <http://vigarchive.sos.ca.gov/2008/general/title-sum/prop8-title-sum.htm>.
- ¹¹³ *Strauss v. Horton*, 207 P.3d 48 (2009).
- ¹¹⁴ *See* 2014 Cal. Stat. ch. 82.
- ¹¹⁵ *See* 2009 Maine Laws, ch. 82.
- ¹¹⁶ *See* Maine Bureau of Corporations, Elections, and Commissions, November 3, 2009 General Election Tabulations, <http://www.maine.gov/sos/cec/elec/2009/referendumbycounty.html> (Question 1).
- ¹¹⁷ *See* Me. Rev. Stat. Ann. tit. 19-A § 650-A.
- ¹¹⁸ *See Ex parte State of Alabama ex rel. Alabama Policy Institute, et al.*, No. 1140460 (Ala. Mar. 3, 2015); *see also Strawser v. Strange*, No. CIV.A. 14-0424-CG-C, 2015 WL 589917 (S.D. Ala. Feb. 12, 2015) (setting forth the recent federal order).
- ¹¹⁹ *See Ex Parte Don Davis*, No. 1140456, Order (Ala. Feb. 11, 2015) (Murdock, J., concurring specially), *available at* <https://acis.alabama.gov/displaydocs.cfm?no=638333&event=4A30ZSZFE>.
- ¹²⁰ Kim Chandler, *Some Judges Refusing to Issue Same-Sex Marriage Licenses*, Montgomery Advertiser (Feb. 18, 2015), *available at* <http://www.montgomeryadvertiser.com/story/news/2015/02/.18/some-ala-counties-refusing-to-issue-gay-marriage-licenses/23657115/>.
- ¹²¹ *Parents Involved in Community Schools v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 868 (2007) (Breyer, J., dissenting).
- ¹²² *See, e.g., Port*, 426 Md. at 443-44 (highlighting conflicts that arose from decisions in Anne Arundel and St. Mary's counties where two same-sex couples had their petitions for divorce granted, and another case in Baltimore City where it was denied).
- ¹²³ *State of Kansas ex rel. Schmidt v. Moriarty*, No. 112,590, Order at 5 (Nov. 18, 2104), *available at* http://www.kscourts.org/State_v_Moriarty/112590Order111814.pdf.
- ¹²⁴ *Herbert v. Kitchen*, 135 S. Ct. 265 (Oct. 6, 2014); *Smith v. Bishop*, 135 S. Ct. 271 (Oct. 6, 2014).
- ¹²⁵ *See* Jean Ann Esselink, *Only One Lesbian Couple Managed To Marry During The Brief Time Same-Sex Marriages Were Legal In Kansas*, The New Civil Rights Movement (Oct. 20, 2014), *available at* http://www.thenewcivilrightsmovement.com/uncumbered/one_lucky_lesbian_couple_managed_to_marry_during_the_time_same_sex_marriages_were_legal_in_kansas.

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- ¹²⁶ See *Moser v. Marie*, 135 S. Ct. 511 (Nov. 12, 2014).
- ¹²⁷ See John Hanna, *Gay Couples Wed in Kansas, But Not in All Counties*, Kansas City Star (Nov. 18, 2014).
- ¹²⁸ See, e.g., Chad Frey, *First Same Sex Marriage in Harvey County Coming*, The Kansan (Nov. 20, 2014), available at <http://www.thekansan.com/article/20141120/NEWS/141129982>.
- ¹²⁹ See Bryan Lowry, *Kansas Agencies Not Recognizing Same-Sex Marriages Despite Court Rulings*, Wichita Eagle (Nov. 19, 2014).
- ¹³⁰ See Equality Kansas, *Marriage Update* (Jan. 26, 2015), available at <http://eqks.org/marriage-update-january-26-2015/>.
- ¹³¹ See Mark Morris & Donald Bradley, *Same-Sex Marriages Begin in Jackson County After U.S. Judge Finds State Ban Unconstitutional*, Kansas City Star (Nov. 7, 2014).
- ¹³² *Windsor*, 133 S. Ct. at 2694.
- ¹³³ 347 U.S. 483, 494 (1954).
- ¹³⁴ Brief of Family Equality Council *et al.* as Amici Curiae Supporting Respondents at 2, *Hollingsworth v. Perry*, 133 S. Ct. 2652 (2013) and *United States v. Windsor*, 133 S. Ct. 2675 (2013) (Nos. 12-144, 12-307) (“Brief of Family Equality Center”) (quoting Samuel Putnam-Ripley, then 14, testifying before the Maine Joint Committee on the Judiciary).
- ¹³⁵ *Id.* at 23 (citing *Honoring All Maine Families: Gay and Lesbian Partners and their Children and Parents Speak About Marriage*, Center for the Prevention of Hate Violence (Apr. 2009) at 4).
- ¹³⁶ *Id.* at 28 (quoting Sarah Wildman, *Children Speak for Same-Sex Marriage*, N.Y. Times (Jan. 20, 2010)).
- ¹³⁷ *Id.* at 26 n.37 (quoting Statement from Kira Findling to Family Equality Council (Jan. 29, 2013)).
- ¹³⁸ *Id.* at 27 (Statement from Maggie Franks to Our Family Coalition (Feb. 3, 2013)).
- ¹³⁹ *Id.* at 29 (quoting Statement from Tsipora Prochovnick to Our Family Coalition (Feb. 5, 2013)).
- ¹⁴⁰ *Id.* at 25 (quoting Transcript of Hearing on Civil Union Act Before N.J. Civil Union Review Comm’n, at 76 (Apr. 16, 2008)).
- ¹⁴¹ *Kerrigan v. Comm’r of Pub. Health*, 289 Conn. 135, 249 (2008).
- ¹⁴² *Id.* (quoting *Goodridge v. Dep’t of Pub. Health*, 440 Mass. 309, 335 (2003)); see also Position Statement, American Psychiatric Association, Support of Legal Recognition of Same-Sex Civil Marriage (July 2005), available at psychiatry.org (“APA Position Statement”) (“There is ample evidence that long-term spousal and family support enhances physical and mental health at all stages of [child] development.”).
- ¹⁴³ *Brown*, 347 U.S. at 494.

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- ¹⁴⁴ Brief of Gary J. Gates as Amicus Curiae On the Merits in Support of Respondent Windsor, at 31-32, *United States v. Windsor*, 133 S. Ct. 2675 (2013) (No. 12-307) (“Brief of Gary J. Gates”). As noted above, this is a conservative estimate. Other sources estimate that between 2.0 million and 2.8 million children in the United States are being raised by LGBT parents. *E.g.*, Movement Advancement Project, All Children Matter: How Legal and Social Inequalities Hurt LGBT Families (“All Children Matter”), 7 (2011), *available at* <http://www.lgbtmap.org/file/all-children-matter-full-report.pdf>.
- ¹⁴⁵ Brief of Gary J. Gates at 34.
- ¹⁴⁶ *See id.* at 35.
- ¹⁴⁷ All Children Matter at 21.
- ¹⁴⁸ Brief of Services and Advocacy for Gay, Lesbian, Bisexual and Transgender Elders (SAGE) *et al.* as Amici Curiae Supporting Respondents at 6, *United States v. Windsor*, 133 S. Ct. 2675 (2013) (No. 12-307) (“Brief of SAGE”).
- ¹⁴⁹ APA Position Statement at 1.
- ¹⁵⁰ *Perry*, 704 F. Supp. 2d at 961-63.
- ¹⁵¹ U.S. General Accounting Office, Defense of Marriage Act: Update to Prior Report at 1 (2004), *available at* <http://www.gao.gov/new.items/d04353r.pdf>.
- ¹⁵² Liz Seaton, *The Debate over the Denial of Marriage Rights and Benefits to Same-Sex Couples and Their Children*, 4 Margins: Md. L.J. Race, Religion, Gender & Class 127, 138 (2004).
- ¹⁵³ *DeBoer*, 772 F.3d at 423-24 (Daughtrey, J., dissenting).
- ¹⁵⁴ *See, e.g.*, Alabama (Ala. Code §§ 26-10A-5, 26-10A-27 (permitting only husband and wife to “jointly” adopt a minor and limiting step-parent adoption to married spouse)); Kentucky (*S.J.L.S. v. T.L.S.*, 265 S.W.3d 804 (Ct. App. Ky. 2008) (holding that two women partners prohibited from jointly adopting a child because they could not legally marry); Nebraska (*In re Adoption of Luke*, 640 N.W.2d 374 (Neb. 2002) (holding that step-parent adoption is unavailable to unmarried couples)). Mississippi law goes one step further and includes an explicit prohibition on “[a]doption by couples of the same gender.” 30 Miss. Stat. § 93-17-3(5).
- ¹⁵⁵ Sam Castic, *The Irrationality of A Rational Basis: Denying Benefits to the Children of Same-Sex Couples*, 3 Mod. Am. 3, 5 (2007).
- ¹⁵⁶ *Id.*
- ¹⁵⁷ *See, e.g.*, 42 U.S.C. § 402(i) (providing for a lump-sum death benefit to a surviving spouse).
- ¹⁵⁸ *E.g.*, Miss. Code Ann. § 25-13-13(3); Texas Gov’t Code §§ 615.021(a), 615.022.
- ¹⁵⁹ *E.g.*, N.D. Code Ann. §§ 30.1-04-02, 30.1-04-03; S.D. Codified Laws §§ 29A-2-102, 29A-02-103; Tenn. Code Ann. § 31-2-104.

¹⁶⁰ *E.g.*, Ga. Code Ann. § 51-4-2; Tenn. Code Ann. § 20-5-106; Texas Civil Prac. & Remedies Code § 71.004.

¹⁶¹ All Children Matter at 75-78 (“A child cannot access [certain Social Security] benefits if a non-legally recognized parent retires, is disabled or dies.”; “Any child who is not a legally recognized child of the deceased is not covered by intestacy statutes, even if the deceased acted as a parent and provided for the child since birth.”; “In most states, a child without a legal tie to the deceased is excluded from suing [for wrongful death].”).

¹⁶² *See* 29 U.S.C. § 2612(a)(1)(C).

¹⁶³ *E.g.*, Ky. Rev. Stat. Ann. § 311.631; N.D. Code § 23-12-13; Texas Health & Safety Code § 313.004.

¹⁶⁴ *Windsor*, 133 S. Ct. at 2692.

¹⁶⁵ *Brown*, 347 U.S. at 494.

¹⁶⁶ *Loving v. Virginia*, 388 U.S. 1, 12 (1967).

¹⁶⁷ *Windsor*, 133 S. Ct. at 2692.

The State of Marriage Equality in America – State-by-State Supplement

The following supplement provides detailed information about the status of marriage equality laws in each of the 50 states and the District of Columbia. The information is provided in a one-page fact sheet for each state.

The graphics bar at the top of each sheet contains information on the number of same-sex couples in the state (at the top left of each page) and the percentage of those couples who are raising children (at the top right of each page), based on data from the Williams Institute at the University of California, Los Angeles.¹

The fact sheet then documents whether same-sex marriage is currently legal in the state and, if so, explains how it became legal. Each fact sheet then traces the background of animus, including hatred, fear-mongering, ignorance, and moral disapproval, that infected the political process in that state over same-sex marriage and/or other issues of importance to the LGBT community.

This supplement offers additional data and sources that show how animus has contributed to discriminatory laws across the country and, in many cases, continues to constitute a significant part of the public discourse on marriage equality and other issues.



6,582

ALABAMA

20%



The state of same-sex marriage is unresolved.

Current Law

On January 23, 2015, the U.S. District Court for the Southern District of Alabama determined that Alabama's prohibition against same-sex marriage is unconstitutional.² The federal court enjoined the state from enforcing its same-sex marriage ban, currently set forth in Article 1, Section 36.03 of the state's constitution and Section 30-1-19 of Alabama's state code, but stayed its decision for a period of fourteen days.³ During that time, Alabama appealed to the U.S. Court of Appeals for the Eleventh Circuit, which, on February 4, 2015, refused to consider the case pending the U.S. Supreme Court's issuance of an opinion in *DeBoer v. Snyder*,⁴ and denied issuing a stay.⁵ Alabama similarly applied to the U.S. Supreme Court for a stay, but was denied.⁶

The federal court's order was scheduled to take effect on February 9, 2015.⁷ However, the night before, the Chief Justice of the Supreme Court of Alabama, Roy Moore, sent an email to the state's probate judges, commanding: "No probate judge shall issue or recognize a marriage license that is inconsistent with [the state's ban on same-sex marriage]."⁸ Probate judges in about two-thirds of the state's 67 counties followed Chief Justice Moore's instructions.⁹ Alabama subsequently filed an emergency petition with the state's Supreme Court, seeking "a clear judicial pronouncement that Alabama law prohibits the issuance of marriage licenses to same-sex couples."¹⁰ On March 3, 2015, the state's highest court issued that pronouncement and ordered the state's probate judges to discontinue issuing marriage licenses to same-sex couples.¹¹ As a result, probate judges are not currently issuing marriage licenses to same-sex couples in Alabama, although at least one judge is still accepting applications for licenses.¹² Other probate judges have stopped issuing marriage licenses altogether.¹³

Background

In 1996, the Governor of Alabama issued an executive order declaring that the state would not recognize same-sex marriages.¹⁴ He stated that he issued the order in response to "pending legislation in Hawaii to legalize homosexual marriage" and "the chance that Alabama would have to recognize those same-sex marriages."¹⁵

In 1998, the State House of Representatives voted 79–12 in favor of a statutory ban prohibiting recognition of same-sex marriage and the State Senate approved the bill 30–0.¹⁶ In 2006, the state also passed a constitutional amendment to prohibit the recognition of same-sex marriage, called the "Sanctity of Marriage Amendment," with 81% of the popular vote.¹⁷ For context, Alabama did not overturn its ban on interracial marriage until 2000—with 40% of the populace voting against that change.¹⁸

Following the federal court's January 2015 decision that same-sex marriage should be legal in Alabama, Chief Justice Moore wrote a letter to Alabama Governor Robert Bentley, urging him to "stop judicial tyranny and any unlawful opinions," and citing to what he termed a "Biblical admonition" against same-sex marriage.¹⁹ Alabama's refusal to abide by the federal court's ruling and issue same-sex marriage licenses "has been compared by many to that state's resistance to school desegregation orders in ... 1963, when Gov. George Wallace (D) stood in the doorway of the University of Alabama to prevent the court-ordered enrollment of black students."²⁰



1,228

ALASKA

23%



Same-sex marriage is legal as a result of a court decision.

Current Law

On October 12, 2014, the U.S. District Court for the District of Alaska held that the state's prohibition against same-sex marriage was unconstitutional.²¹ Several days later, the U.S. Supreme Court declined to issue an emergency stay of the ruling pending the state's appeal of the decision.²² Alaska began issuing marriage licenses to same-sex couples that same month.²³

Background

In 1996, Alaska's legislature approved statutory language that would define marriage as "a civil contract entered into by one man and one woman," and specifying that Alaska would not license same-sex marriages, recognize same-sex marriages performed outside the state, or confer "the benefits of marriage" on same-sex couples.²⁴

In February 1998, the Superior Court of Alaska held that the "choice of a life partner," including a same-sex partner, constituted a "fundamental right," and that the state must identify a "compelling interest" justifying its decision to deny that right to same-sex partners.²⁵ While the plaintiffs' case was pending, the Alaska legislature responded by quickly passing a constitutional amendment, which was approved by the voters in November 1998, stating, "[t]o be valid or recognized in this State, a marriage may exist only between one man and one woman."²⁶ In a floor statement made in support of the amendment, State Senator Loren Lemen referred to the gay men he knew, many of whom had "died" or were "dying of AIDS," and stated "it is false compassion to suggest that tolerance requires us to publicly recognize and sanction and confer special benefits on homosexual relationships."²⁷

"Moral beliefs based on religion" influenced the debate regarding the constitutional amendment.²⁸ For example, the Catholic Bishops of Alaska sent a letter to every Catholic in the state, urging them to vote in favor of the amendment, arguing that "homosexual people do not bring to marriage what marriage of its nature requires."²⁹ Richard Land, member of the Alaska Family Coalition and president of the Southern Baptist Ethics & Religious Liberty Commission, warned that legalizing same-sex marriage would support the "homosexual and lesbian community[s] ... agenda," concluding that "[t]he homosexual community does not want tolerance; they want affirmation. That is something that someone who believes in biblical authority cannot give them."³⁰

In 2005, the Supreme Court of Alaska held that it was unconstitutional to deny public employees "in committed domestic relationships with same-sex partners" the employee benefits offered to their married coworkers.³¹ Same-sex marriage, however, was not legalized in Alaska until 2014.³²



15,817

ARIZONA

16%



Same-sex marriage is legal as a result of a court decision.

Current Law

On October 17, 2014, the U.S. District Court for the District of Arizona held that Arizona's prohibition against same-sex marriage was unconstitutional and enjoined the state from enforcing those laws.³³

Background

In 1996, Arizona passed a statute that prohibited the recognition of same-sex marriages.³⁴ In 2006, Arizona's voters narrowly defeated Proposition 107, which would have amended the state's constitution to include a ban against the recognition of same-sex marriage.³⁵ In the official Proposition 107 "publicity pamphlet," proponents of the amendment argued that voting "yes" would "keep schools, media, organizations, religious denominations, and other societal institutions from being forced to validate, and promote same-sex marriage," and that "the last thing Arizona needs is to redefine marriage in a way that guarantees some children will never have either a mom or a dad."³⁶ The pamphlet further warned that if the amendment did not pass, private businesses could be compelled "to give benefits to same-sex couples or polygamous unions."³⁷

Two years later, in 2008, the people of Arizona voted in favor of a similar amendment, which amended the state constitution to define marriage as between a man and a woman.³⁸ The arguments in favor of the amendment set forth in the state's 2008 Ballot Proposition Guide warned that, should the amendment not pass, "[t]he loser will be the children who must endure the selfish desires of adults," adding that "the downfall of any society begins with the breakdown of strong, traditional families."³⁹ Failure to pass the amendment, proponents argued, would allow "school children [to] be taught that same-sex 'marriage' and homosexuality are perfectly normal and objections to such are hateful."⁴⁰ Other proponents argued that same-sex marriage was "unnatural," comparing it to marriage between a father and his child, or being married to a "dog, tree, underage neighborhood girl or car."⁴¹ Arizona Bishop Thomas Olmstead created a YouTube video, urging that a vote against the amendment would "circumvent[] the institution of the family" and thus "undermine[] peace in the entire community."⁴²

In reaction to the federal court's decision to strike down Arizona's same-sex marriage ban as unconstitutional in 2014, Governor Jan Brewer issued a statement that the ruling "further eroded the authority of states to regulate and uphold our laws."⁴³ Cathi Herrod, President of the Center for Arizona Policy, also reacted to the decision, stating "Today, we grieve. . . . We mourn the loss of a culture and its ethical foundation."⁴⁴



4,226

ARKANSAS

21%



The state of same-sex marriage is unresolved.

Current Law

On May 15, 2014, Pulaski County Circuit Court Judge Chris Piazza clarified his order of May 9th, and held that Arkansas's constitutional and statutory prohibitions against same-sex marriage are unconstitutional.⁴⁵ The next day, the Arkansas Supreme Court stayed the lower court's decision pending appeal.⁴⁶ Although the Court heard oral arguments on November 20, 2014, it has yet to issue a decision.⁴⁷

On November 25, 2014, the U.S. District Court for the Eastern District of Arkansas also held that Arkansas's same-sex marriage bans are unconstitutional.⁴⁸ The federal court issued a stay pending the case's appeal to the U.S. Court of Appeals for the Eighth Circuit.⁴⁹

Thus, although both courts have determined that the state's same-sex marriage prohibitions are unconstitutional, due to both stays, Arkansas's clerks are not yet issuing same-sex marriage licenses.⁵⁰

Background

In 1997, Arkansas's Governor, Mike Huckabee, signed a law that amended the state's code to prohibit same-sex marriage and the recognition of same-sex marriages performed outside the state.⁵¹ In 2004, Arkansas voted 75% to 25% to amend the state's constitution to prohibit the recognition of same-sex marriages.⁵² The campaign supporting the amendment, led by the evangelical Arkansas Family Council Action Committee,⁵³ outspent the opposition \$334,731 to \$2,952.⁵⁴

Following the 2013 decision of the U.S. Supreme Court in *United States v. Windsor*, holding that restricting the federal interpretation of marriage to apply only to heterosexual unions is unconstitutional,⁵⁵ Governor Huckabee stated that "Jesus wept" in response to the Supreme Court's decision.⁵⁶ He accused the justices of acting like they were "bigger than God," stating "May [God] forgive us all."⁵⁷

Governor Huckabee also called for Judge Piazza's impeachment, stating that the jurist "mistook his black robe for a cape and declared himself to be 'SUPER LAWMAKER!'"⁵⁸ When the call for impeachment failed, the state legislature adopted a resolution condemning Judge Piazza for his decision and arguing that he had "overstepped his judicial authority."⁵⁹ State Senator Jason Rapert, who supported the resolution, warned that Judge Piazza "may end up being the poster child for judicial recall in [Arkansas]."⁶⁰ Senator Rapert asked Jerry Cox, President of the Christian conservative Family Council, to work on a judicial recall of Judge Piazza.⁶¹



98,153

CALIFORNIA

16%



Same-sex marriage is legal as a result of a court decision.

Current Law

On August 4, 2010, the U.S. District Court for the Northern District of California in *Perry v. Schwarzenegger* determined that Proposition 8, a voter-enacted ballot initiative that amended California's constitution to prohibit same-sex marriage, was unconstitutional.⁶² Although the state officials named in the case refused to defend the law, the District Court had allowed the official proponents of the initiative to intervene in its defense.⁶³ The decision was ultimately appealed to the U.S. Supreme Court after the U.S. Court of Appeals for the Ninth Circuit affirmed the District Court's decision on the merits.⁶⁴ The Supreme Court, however, did not reach the merits of the case, but instead determined that it should have been dismissed since the interveners, the initiative's proponents, lacked standing.⁶⁵ As a result, same-sex marriage is legal in California.

Background

California first passed a statutory prohibition against same-sex marriage in 1977.⁶⁶ The prohibition gained support after California passed the Consenting Adult Sex Bill in 1976, which removed criminal sanctions for sodomy or oral copulation between consenting adults.⁶⁷ In 2000, after an act to prohibit the recognition of same-sex marriages performed outside of California failed twice in the legislature, the law was passed by voter referendum.⁶⁸ In 2008, the California Supreme Court held that limiting marriage to opposite-sex couples violated the state constitution.⁶⁹

In response to that decision, California voters passed Proposition 8, which amended the state constitution to prohibit the recognition of same-sex couples.⁷⁰ In the Proposition 8 official voter guide, proponents of the proposition argued that Californians "should not accept a court decision that may result in public schools teaching our kids that gay marriage is okay," and that, "while gays have the right to their private lives, *they do not have the right to redefine marriage* for everyone else."⁷¹ "Voting YES," the guide advocates, "protects our children."⁷²

The District Court in *Perry* found that "[t]he testimony of several witnesses disclosed that a primary purpose of Proposition 8 was to ensure that California confer a policy preference for opposite-sex couples over same-sex couples based on a belief that same-sex pairings are immoral and should not be encouraged."⁷³ Ha-Shing William Tam, an "official proponent[]" of Proposition 8 under California law, testified that his organization "encouraged voters to support Proposition 8 on grounds that homosexuals are twelve times more likely to molest children."⁷⁴ Plaintiffs called Mr. Tam as a hostile witness to demonstrate that Proposition 8 was fueled by bias toward the LGBT community.⁷⁵ Indeed, as historian George Chauncey testified during the trial, the Proposition 8 campaign relied on "stereotypical images of gays and lesbians" as "predators or child molesters" even though those stereotypes are "not at all credible, as gays and lesbians are no more likely than heterosexuals to pose a threat to children."⁷⁶



12,424

COLORADO

16%



Same-sex marriage is legal as a result of a directive issued by the State's Attorney General in response to a court decision.

Current Law

On October 6, 2014, Colorado's Attorney General, Governor, and County Clerks filed joint motions to lift stays in the U.S. Court of Appeals for the Tenth Circuit and the Colorado Supreme Court, allowing for legal same-sex marriage in Colorado.⁷⁷ The decision came after the U.S. Supreme Court declined to hear an appeal of the Tenth Circuit's decision, holding that Utah's ban on same-sex marriage was unconstitutional.⁷⁸ According to the Attorney General, the Tenth Circuit's decision effectively invalidated Colorado's ban on same-sex marriage.⁷⁹ Colorado had previously banned same-sex marriage by statute in 2000⁸⁰ and by constitutional amendment in 2006.⁸¹

Background

In 1992, after a number of Colorado municipalities had passed ordinances banning discrimination based on sexual orientation, the state's voters passed Amendment 2, which prohibited all legislative, executive, or judicial action at any level of state or local government designed to protect homosexual persons.⁸² The U.S. Supreme Court held that Amendment 2 was unconstitutional in *Romer v. Evans* in 1996. The Court reasoned that the law violated the equal protection clause of the Fourteenth Amendment because it singled out a certain class of people for disfavored legal status and general hardships,⁸³ "rais[ing] the inevitable inference that the disadvantage imposed is born of animosity toward the class of persons affected."⁸⁴

Almost immediately after, in both 1996 and 1997, the legislature passed two bills that would have expressly prohibited same-sex marriage in Colorado, but Governor Roy Romer vetoed the bills. He explained that he was not opposed to signing a law that would prohibit gay marriage in Colorado, but he thought that the 1996 bill amounted to "gay bashing," and called the 1997 bill "fundamentally negative and divisive."⁸⁵ In 1997, he stated that the "only real effect of this bill is to target gay and lesbian people and to exclude and stigmatize this group in our society."⁸⁶

Nonetheless, even in the face of repeated vetoes and Governor Romer's clear articulation of the animus reflected in those bills, the opponents of marriage equality persisted. In 2000, the state's new governor, Bill Owens, signed a law banning same-sex marriage.⁸⁷ The voters of the state then approved a constitutional amendment banning same-sex marriage in 2006.⁸⁸



7,852

CONNECTICUT

17%



Same-sex is marriage legal as a result of state legislation.

Current Law

On October 28, 2008, the Supreme Court of Connecticut held that same-sex couples were entitled to marriage rights.⁸⁹

Background

In *Kerrigan v. Commissioner of Public Health*, eight same-sex couples filed suit in 2004 in Connecticut's state trial court, seeking a judgment declaring that statutes, regulations, and common law rules that deny otherwise qualified same-sex couples the right to marry violate various provisions of the state constitution, including the due process and equal protection provisions.⁹⁰ While the plaintiffs' action was pending, the legislature passed Public Acts 2005, "which established the right of same sex partners to enter into civil unions and conferred on such unions all the rights and privileges that are granted to spouses in a marriage."⁹¹ The definition of marriage, however, remained "the union of one man and one woman."⁹² The plaintiffs continued to challenge the Connecticut law on this basis.⁹³

The Supreme Court of Connecticut ultimately held that Connecticut's "statutory scheme governing marriage impermissibly discriminate[d] against gay persons on the basis of their sexual orientation."⁹⁴ In so holding, the court based its determination that "sexual orientation meets all of the requirements of a quasi-suspect classification," in part, because "[g]ay persons have been subjected to and stigmatized by a long history of purposeful and invidious discrimination that continues to manifest itself in society."⁹⁵ "[L]aws singling them out for disparate treatment," held the court, "are subject to heightened scrutiny to ensure that those laws are not the product of such historical prejudice and stereotyping."⁹⁶

An amicus brief filed in support of the defendants in *Kerrigan* by the Family Institute of Connecticut claimed that "many of society's ills are rooted in adult alternative lifestyle choices in which children are the chief victims."⁹⁷ "Now," it claimed, "is not the time for Connecticut to retreat from promoting the ideal of children being raised by both their biological parents in stable homes. Leveling marriage into nothing more than a close relationship between two consenting adults would constitute just such a retreat."⁹⁸



2,646

DELAWARE

16%



Same-sex marriage is legal as a result of state legislation.

Current Law

On May 7, 2013, Delaware became the 11th U.S. state to legalize same-sex marriage after Governor Jack Markell signed House Bill 75, which repealed the state's 1996 ban on same-sex marriage.⁹⁹ The law went into effect on July 1, 2013.¹⁰⁰

Background

In 1996, the state passed a law prohibiting same-sex marriages from being performed or recognized in Delaware.¹⁰¹ A month later, advocates attempted to pass a law that would have established legal status for domestic partnerships between same-sex couples and guaranteed such couples visitation rights in health care facilities and prisons.¹⁰² Their efforts were not successful. It was not until 2011 that the state legislature passed a law granting certain rights for same-sex couples in civil unions.¹⁰³

It took ten years for Delaware to pass a law prohibiting discrimination against a person on the basis of sexual orientation in housing, employment, and public accommodations.¹⁰⁴ Although the Delaware Division of Industrial Affairs had received more than 500 complaints of employment discrimination based on sexual orientation by 1999, bills to prevent such discrimination failed each year between 1998 and 2009.¹⁰⁵ As the Williams Institute found, “[u]nsurprisingly, some politicians who opposed this protective legislation have evidenced their animosity toward gays.”¹⁰⁶ For example, in speaking out against an anti-discrimination bill, State Senator Robert Venables contended that he was not a “bigot,” but “[saw] no need for singling out any segment of our society for special treatment”—noting that he had “never ... heard of anyone who claimed to have been discriminated against based on their sexual orientation who was not able to pursue justice through our court system with the laws as currently written.”¹⁰⁷ He argued that the legislation was therefore “really about imposing the social acceptance they want for their behavior to be viewed as ‘normal,’” referring to it as “imposed social acceptance.”¹⁰⁸ In 2008, Senator Colin R.M.J. Bonini stated that one of his purposes for seeking reelection to the Delaware General Assembly was to “oppose gay marriage” and “opposing granting special rights to individuals based on sexual preference.”¹⁰⁹

In March 2004, State Senator John Still proposed an amendment to the Delaware Charter, which would prohibit same-sex marriages in Delaware, and clarify and codify Delaware's Defense of Marriage Act, passed in 1996.¹¹⁰ “[C]ivil unions” and “domestic partnerships,” Senator Still said, “are essentially counterfeit marriages,” and thus should also be prohibited.¹¹¹ In support, he argued that “[m]arriage is the foundation of our society, and has always been between one man and one woman.”¹¹² The Delaware Family Foundation praised Senator Still for proposing the amendment, stating that the amendment would be “necessary because we now have anti-democratic judges and lawless officials in other parts of the country trying to redefine marriage without the consent of the people and against their best judgment and common sense.”¹¹³



4,882

DISTRICT OF COLUMBIA

9%



Same-sex marriage is legal as a result of state legislation.

Current Law

On December 18, 2009, District of Columbia Mayor Adrian Fenty signed into law a statute legalizing same sex marriage.¹¹⁴ The statute took effect March 3, 2010.¹¹⁵ The District was the first jurisdiction south of the Mason-Dixon Line to legalize same sex marriage.¹¹⁶

Background

Following the D.C. Council's vote to recognize same-sex unions performed in other states in May of 2009, a group of protestors gathered at a rally held by Bishop Harry Jackson at Freedom Plaza in Washington, D.C. to express their disapproval. In a video containing excerpts from the rally, protestors can be seen and heard shouting at the Mayor, "Mr. Fenty, you will not get away with this one," and arguing that marriage is "between a man and woman; not two boys or two girls."¹¹⁷ Another rally participant charged that he was there to "stand for righteousness."¹¹⁸ One representative explained that when he talks to his children about the same-sex marriage debate, he explains that "they wanna say that anybody can use anyone's bathroom . . . this is about our children. This is about the future of this nation."¹¹⁹ Another man, chastising the Council's vote, argued that legalizing same-sex marriage is not actually about marriage: "They [the gay community] don't even want the marriage . . . the only thing they want is . . . validation."¹²⁰ The video ends with the congregation of protestors chanting "No same-sex marriage."¹²¹

Although the D.C. Council passed the measure to recognize marriages performed in other states by a vote of 12 to 1, after the vote, ministers "stormed the hallway outside the council chambers and vowed that they [would] work to oust the members who supported the bill."¹²² Councilmember Marion Barry, who cast the lone dissenting vote, warned that "[a]ll hell [would] break lose" if the Council did not proceed slowly on same-sex marriage in D.C.¹²³

The D.C. Council's vote to legalize same-sex marriage in the District later that year took place "after several months of discussions," including two council hearings "at which some 250 witnesses testified."¹²⁴ Still, opponents vowed to put a referendum on the ballot asking voters to overturn it, although the district elections board had previously declined similar requests, citing a D.C. human rights law.¹²⁵



48,496

FLORIDA

13%



Same-sex marriage is legal as a result of a court decision.

Current Law

In August 2014, the U.S. District Court for the Northern District of Florida found Florida's same-sex marriage provisions, which banned both same-sex marriage and the recognition of out-of-state same-sex marriages, to be unconstitutional under the Equal Protection and Due Process clauses of the Fourteenth Amendment.¹²⁶ However, the District Court also stayed its order, until stays were lifted in three other pending federal cases, and then for an additional 90 days to afford the defendants an opportunity to seek a longer judicial stay.¹²⁷ The U.S. Supreme Court ultimately rejected the defendants' application for a further stay,¹²⁸ and same-sex marriage became legal in Florida in January 2015.¹²⁹

Background

Florida was the scene of a venomous anti-gay movement during the 1970s. Led by singer and anti-gay activist Anita Bryant and her organization "Save Our Children," the movement sought to repeal a county ordinance that prohibited discrimination against homosexuals.¹³⁰ Ms. Bryant explained her anti-gay views: "Since homosexuals cannot reproduce, they must freshen their ranks with our children . . . They will use money, drugs, alcohol, any means to get what they want . . . This is a battle of the atheists and the ungodly on one side and God's people on the other."¹³¹ The campaign was successful in repealing the ordinance.

In 1977, the same year the ordinance was defeated, same-sex marriage was banned in Florida by state legislation.¹³² Twenty years later, the state again passed legislation that prohibited the recognition of same-sex marriage, including out-of-state marriages.¹³³ Sen. John Grant, who sponsored the 1997 legislation, stated that a gay lifestyle was "abhorrent and immoral."¹³⁴

Despite having twice legislated to restrict the rights of same-sex couples, in 2008, Florida passed a state constitutional amendment that banned same-sex marriage and denied recognition to out-of-state marriages.¹³⁵ John Stemberger, an organizer for Florida4Marriage.org, an organization driving support for the amendment, said that "The bottom line is kids need a mom and dad. Same-sex marriages subject kids to a vast, untested social experiment."¹³⁶



21,318

GEORGIA

20%



Same-sex marriage is forbidden as a result of state legislation and constitutional amendment.

Current Law

Georgia's statute banning same-sex marriage was passed in 1996.¹³⁷ In 2004, Georgia's electorate ratified a proposed amendment to the state constitution, which prohibits Georgia from recognizing or performing same-sex marriages or civil unions, and even divests the state courts of "jurisdiction to grant a divorce or separate maintenance with respect to any such relationship or otherwise to consider or rule on any of the parties' respective rights arising as a result of or in connection with such relationship."¹³⁸ In April 2014, plaintiffs filed a lawsuit in the U.S. District Court for the Northern District of Georgia challenging the constitutionality of Georgia's laws banning same-sex marriage.¹³⁹ The judge has suspended the proceedings pending the U.S. Supreme Court's decision on the issue.

Background

Senator Mike Crotts, who authored Georgia's 2004 constitutional amendment banning same-sex marriage, urged that the amendment was necessary because of "the 'deficit of decency' in this country" and decried the "tyranny" of judicial decisions that had recognized rights for same-sex couples.¹⁴⁰ Representative Tom Rice similarly supported the constitutional amendment and referred to the effort to support equal rights for same-sex couples as "an 'attempt to embroider ... sin into a lifestyle that [they] want other people to accept.'"¹⁴¹

Georgia's ban on same-sex marriage has had detrimental effects on same-sex couples. For example, courts have relied on Georgia's anti-equality statute to justify the denial of employment to people in same-sex marriages,¹⁴² and child visitation rights to biological parents in same-sex relationships.¹⁴³ Moreover, recent political candidates in Georgia have displayed animus towards the LGBT community by utilizing anti-gay rhetoric to try to prove their conservative bona-fides.¹⁴⁴ One Republican candidate for Governor in 2010 and Senate in 2013 was harshly criticized for courting LGBT voters in an earlier campaign and, in an effort to combat those criticisms, resorted to speaking out against gay parents and gay adoption.¹⁴⁵



3,239

HAWAII

16%



Same-sex marriage is legal as a result of state legislation.

Current Law

Hawaii's legislature passed marriage equality via statute in 2013.¹⁴⁶

Background

In 1993, the Hawaii Supreme Court decided *Baehr v Lewin*, in which it held that the state's interpretation of its marriage law to prohibit same-sex marriage was subject to strict scrutiny under the Hawaii Constitution.¹⁴⁷ The Court remanded the case to the trial court to determine if Hawaii court meet that test.¹⁴⁸ Almost immediately, in what was largely a symbolic act given the pending litigation, the state enacted a statute in 1994 to explicitly limit the definition of marriage to a union between a man and a woman.¹⁴⁹ The state then defended that statute at the trial court by arguing, among other things, that same-sex marriage would harm children and create a "more burdened nurturing domain."¹⁵⁰ The trial court rejected these arguments and found that the statute violated Hawaii's Constitution.¹⁵¹

The trial court decision was stayed pending appeal and, during that time, opponents of same-sex marriage pushed for an amendment to the Hawaii Constitution that would give the legislature the power to define marriage. In 1997, as the legislature considered a possible amendment, protesters "gathered at the Hawaii State Capitol" with homophobic signs stating such things as "Honolulu, not Homolulu" and "If I marry my dog, can I get a tax deduction?"¹⁵² Opponents of same-sex marriage continued to rely on this type of animus and rhetoric throughout the 1998 campaign. The Foundation for a Christian Civilization, for instance, "purchased a full-page advertisement in the Honolulu Advertiser two days before the election," which "quote[d] various religious leaders suggesting that gay persons should be punished for their conduct, that homosexuality 'cri[es] out to Heaven for vengeance,'" and that tolerance of same-sex marriage was a "descent to depravity."¹⁵³ Another proponent of the constitutional amendment said that, if the state allowed same-sex marriage, "we would basically be telling our children this is alright, this is normal and natural, and we don't believe that's true."¹⁵⁴ Hawaii voters ultimately enacted the proposed constitutional amendment with approximately 70% of the vote.¹⁵⁵



2,042

IDAHO

22%



Same-sex marriage is legal as a result of a court decision.

Current Law

In 2014, the U.S. District Court for the District of Idaho held that Idaho's prohibition against same-sex marriage is unconstitutional.¹⁵⁶ The U.S. Court of Appeals for the Ninth Circuit affirmed,¹⁵⁷ and the U.S. Supreme Court has refused to stay the Ninth Circuit's decision.¹⁵⁸ The state now issues marriage licenses to same-sex couples.¹⁵⁹

Background

In 1995, Idaho enacted legislation to explicitly prohibit same-sex marriage, and, in 1996, it enacted additional legislation to prohibit the recognition of same-sex marriages performed outside the state.¹⁶⁰ Subsequently, in 2006, Idaho's electorate also voted in favor of a constitutional amendment to prohibit the recognition of same-sex marriage.¹⁶¹ Supporters of the amendment, including the Cornerstone Family Council, disseminated campaign literature stating that "[i]t is cruel to subject children to experimental families,"¹⁶² and that "[k]ids need the active participation of a mother and a father, and both parents need to be true to their gender designs."¹⁶³ The Council further argued that same-sex marriage would "threaten" heterosexual marriages and that "same-sex marriage will likely contribute to th[e] decline" of marriage.¹⁶⁴ The Council based this conclusion on the notion that "lesbian families" would send the "message to men that fathers are optional," discouraging heterosexual men from committing themselves to one woman or helping to raise their children.¹⁶⁵

When Idaho's prohibition against same-sex marriage was overturned by a federal court in 2014, the Governor echoed these same arguments in his petition for certiorari filed with the Supreme Court : "[A]s fewer heterosexual parents embrace the biological connection norm, more of their children will be raised without a mother or a father....That in turn will mean more children of heterosexuals raised in poverty, doing poorly in school, experiencing psychological or emotional problems, and committing crimes."¹⁶⁶

In March of 2015, the Idaho House voted 44-25 on a non-binding resolution urging Congress to impeach any judge who ruled in favor of same-sex marriage.¹⁶⁷ Representative Paul Shepherd, the resolution's sponsor, argued, "We've gotta take a stand...You can't say an immoral behavior according to God's word, what we've all been taught since the beginning, is something that's just, and that's really kinda what this is all about. We'd better uphold Christian morals. As an example, how about fornication, adultery and other issues."¹⁶⁸



23,049

ILLINOIS

17%



Same-sex marriage is legal as a result of state legislation and a court decision.

Current Law

In 2013, the Illinois legislature passed a law permitting same-sex couples to marry beginning on June 1, 2014.¹⁶⁹ On February 21, 2014, the U.S. District Court for the Northern District of Illinois held that it was unconstitutional to deny marriage licenses to same-sex couples.¹⁷⁰

Background

The Illinois Marriage and Dissolution of Marriage Act authorized marriage only between a man and a woman, and stated that marriage between same-sex individuals was contrary to the public policy of the state.¹⁷¹ On November 5, 2013, the Illinois General Assembly passed Senate Bill 10, amending the statute to allow same-sex couples to marry.¹⁷² However, due to a provision in the state's constitution, requiring that a bill that is passed after May 31st may not become effective until prior to June of the next calendar year, unless the General Assembly votes otherwise, Senate Bill 10 did not go into immediate effect.¹⁷³ As a result, the plaintiffs asked the federal court to intervene on behalf of a class of gay and lesbian couples.¹⁷⁴ Upon review, the District Court held in *Lee v. Orr* that there was “no dispute,” as both the parties and the court agreed, that the “ban on same-sex marriage violates the Equal Protection Clause of the Fourteenth Amendment” and “infringes on the plaintiffs’ fundamental right to marry.”¹⁷⁵ The court also held that there was “no reason to delay further” implementation of the law.¹⁷⁶

However, prior to the 2013 amendments, legislators had attempted to strengthen the state prohibition against same-sex marriage. In 2010, State Senator Bill Brady ran a gubernatorial campaign on a platform that advocated for a constitutional amendment to prohibit same-sex marriage.¹⁷⁷ Brady had voted against a 2005 law to ban discrimination against gays and lesbians in matters of housing and employment.¹⁷⁸

In advance of the 2013 vote, the Illinois Family Institute, an advocacy group dedicated to opposing same-sex marriage in Illinois, urged residents to “[c]ompel [their] lawmakers to defend his or her vote” in favor of same-sex marriage “with actual reasons rather than superficial sound bites,” arguing that “[i]f we say and do nothing as homosexuals and their ideological allies vigorously push to legalize what should be inconceivable, we bear significant responsibility for the presence of pernicious, fallacious ideas in elementary schools.... [and] bequeath to our children and grandchildren a country of diminished rights and greater oppression.”¹⁷⁹

After the Illinois law legalizing same-sex marriage narrowly passed in 2013, legislators immediately introduced a bill to repeal it.¹⁸⁰ Moreover, Susanne Atanus, who won the Republican primary for a U.S. House seat in 2014, campaigned on her belief “in God first,” adding that “God is angry” and “put tornadoes and ... autism and dementia on earth ... in response to gay rights.”¹⁸¹ “We are provoking him,” she believes, “with abortions and same-sex marriage and civil unions.... Same-sex activity is going to increase AIDS. If it’s in our military it will weaken our military.”¹⁸²



11,074

INDIANA

19%



Same-sex marriage is legal as a result of a court decision.

Current Law

In June 2014, the U.S. District Court for the Southern District of Indiana held that Indiana's ban on same-sex marriage was unconstitutional,¹⁸³ and the U.S. Court of Appeals for the Seventh Circuit subsequently affirmed.¹⁸⁴ After the U.S. Supreme Court denied the state defendants' petition for certiorari,¹⁸⁵ Indiana began issuing marriage licenses to same-sex couples and recognizing same-sex marriages.¹⁸⁶

Background

Indiana's law, originally passed in 1986, restricts marriage to male-female couples.¹⁸⁷ In 1997, in the wake of Hawaii's attempt to legalize same-sex marriage, Indiana passed a statutory prohibition against the recognition of same-sex marriage performed outside the state.¹⁸⁸

In 2002, three same-sex couples challenged Indiana's statute in state court, but the court held in 2005 that the prohibition did not violate the Indiana Constitution.¹⁸⁹ Shortly thereafter, the General Assembly attempted to place a constitutional amendment prohibiting the recognition of same-sex marriage on the ballot, but was not successful.¹⁹⁰

In 2011 and 2014, resolutions to amend the Indiana Constitution again passed the General Assembly,¹⁹¹ but the legislature did not approve the amendments' language in time for it to be placed on the 2014 ballot.¹⁹² A sponsor of the 2011 legislation, State House Representative Eric Turner, had previously argued in support of the constitutional amendment, stating in a 2008 press release: "If Indiana's definition of marriage is trashed by activist judges, what stands in the way of other laws preventing other perversions of accepted Hoosier standards of decency?"¹⁹³ "Once traditional marriage is felled," he argued, "arguments against polygamy, adult-child marriages or even marriages between blood relatives become bolder."¹⁹⁴ Another sponsor of the bill, Dave Cheatham, asserted in 2011 that "the research overwhelmingly shows that people in traditional families live longer, the children do better in school and they're healthier."¹⁹⁵

In 2015, the General Assembly passed a "religious freedom restoration" law, which opponents argued would allow businesses to legally discriminate against gay and lesbian customers.¹⁹⁶ Although the legislature originally declined to amend the law to add anti-discrimination language, after much public backlash, Indiana did eventually add such protections.¹⁹⁷ In considering Indiana's religious freedom law, State Representative Matt Pierce stated that he considered it to be "nothing more than a consolation prize for those who feel some disappointment in this General Assembly for not putting a marriage amendment on the ballot in the last election" to ban same-sex marriage.¹⁹⁸



4,093

IOWA

19%



Same-sex marriage is legal as a result of a court decision.

Current Law

In 2009, the Supreme Court of Iowa in *Varnum v. Brien*¹⁹⁹ struck down as unconstitutional a state statute²⁰⁰ defining marriage as between a man and a woman.

Background

Two years after Congress passed the federal Defense of Marriage Act, and in response to same-sex marriage litigation in Hawaii, the state of Iowa amended its marriage statute in 1998 to define marriage as a union only between a man and a woman.²⁰¹ Previous versions of the Iowa code had not affirmatively stated that other types of marriages were invalid.

The Iowa District Court for Polk County, which first heard the *Varnum* case and found in favor of the plaintiffs, described a “long history of prejudice by individuals against lesbian and gay people both in Iowa and nationally.”²⁰² The court found evidence of the relative political powerlessness of the gay community within Iowa through the disregard lawmakers had shown towards the gay community. Among the evidence cited was: the Iowa legislature repeatedly failed to include sexual orientation as a protected category within the state’s civil rights act; declined to pass proposed legislation to address anti-gay bullying in schools; had not passed a civil union or domestic partnership bill; and successfully sued to invalidate the Governor’s order prohibiting sexual orientation discrimination in state employment.²⁰³ In addition, the Iowa House of Representatives passed legislation in 1995 to ban lectures at state universities that would depict gay people in a positive light.²⁰⁴

In 2010, three justices of the Iowa Supreme Court lost retention elections after opponents of the *Varnum* decision launched a campaign to unseat them.²⁰⁵ That same year, Republican candidates for governor sharply criticized *Varnum* and same-sex marriage as part of their campaigns. “Marriage is foundational to society – one man, one woman, designed for procreation, law of nature, law of nature’s God,” said Bob Vander Plaats, who led the campaign against retaining the Iowa justices. “Where today it’s same-sex does it go to I can marry my son? Or anything else people draw up?”²⁰⁶ Another candidate, Iowa State Representative Rod Roberts expressed similar concerns, fearing that the legalization of same-sex marriage would make homosexuality the “new norm” for children.²⁰⁷ A joint resolution to amend the state constitution passed the Iowa House of Representatives in 2011.²⁰⁸ During a hearing on the measure, an advocate who claimed to have undergone gay conversion urged lawmakers not to “buy into the lies of the homosexual advocates.”²⁰⁹



4,009

KANSAS

22%



The state of same-sex marriage is unresolved.

Current Law

On November 4, 2014, the U.S. District Court for the District of Kansas held that Kansas's same-sex marriage ban is unconstitutional, citing precedent from the U.S. Court of Appeals for the Tenth Circuit that reached the same conclusion regarding same-sex marriage prohibitions in Utah and Oklahoma earlier that year.²¹⁰ The District Court issued a preliminary injunction barring enforcement of Kansas's ban, and stayed the effective date of its decision to November 11, 2014.²¹¹ The U.S. Supreme Court subsequently denied the defendants' appeal for a further stay of that order.²¹² Thus, although the appeal of the District Court's decision is currently pending before the U.S. Court of Appeals for the Tenth Circuit,²¹³ many of the state's judicial districts have started issuing same-sex marriage licenses.²¹⁴ This includes Johnson County, where a state trial court judge's October 2014 order directing the clerk of his court to begin issuing marriage licenses to same-sex couples was temporarily stayed by the Supreme Court of Kansas following a challenge filed by the state Attorney General.²¹⁵ The Kansas Supreme Court lifted that stay in response to the federal District Court's decision.²¹⁶

Background

According to state statute, marriage in Kansas is defined as a "civil contract between two parties who are of opposite sex. All other marriages are declared to be contrary to public policy ... and are void."²¹⁷ State law also does not recognize same-sex marriages performed in other states.²¹⁸

In April 2005, Kansans passed a legislatively-referred constitutional amendment that prohibits same-sex marriage and ensures that "[n]o relationship, other than marriage, shall be recognized by the state as entitling the parties to the rights or incidents of marriage."²¹⁹ The amendment was approved by the electorate with 70% of the popular vote.²²⁰

When a similar amendment failed to pass the state legislature in 2004, Reverend Terry Fox "worked hard to elect conservatives" who would vote in favor of the amendment in 2005.²²¹ "This is not a civil rights issue," he assured: "A homosexual has a right to get married, just not to someone of the same sex."²²² During the 2005 legislative session debate, state Representative Bill McCreary called homosexuality "an abomination to the Lord."²²³ State Representative Forrest Knox argued that the government needed to "support traditional families."²²⁴

U.S. Representative Tim Huelskamp, who, as a then-Kansas state senator, authored the 2005 amendment, continues to speak out against gay marriage.²²⁵ In a published opinion piece he authored in 2013, he stated that it is the "opinion of electoral majorities in Kansas" that same-sex couples with children "does not a family make."²²⁶ A "family," rather, is "the same as the Judeo-Christian model God ordained."²²⁷ "Redefining marriage," he concluded, "would further the destruction of the family."²²⁸



7,195

KENTUCKY

18%



Same-sex marriage is forbidden as a result of state legislation and constitutional amendment.

Current Law

On November 6, 2014, the U.S. Court of Appeals for the Sixth Circuit held that Kentucky's ban on same-sex marriage is constitutional.²²⁹ That decision is currently pending before the U.S. Supreme Court.²³⁰

Background

Since 1998, Kentucky has defined marriage by statute as a relationship between a man and a woman.²³¹ The state will also not recognize same-sex marriages performed in other states, stating that "marriage between members of the same sex is against Kentucky public policy."²³² In 2004, Kentucky's constitution was amended to further provide that same-sex marriages are invalid and not recognized in Kentucky, and reiterate that Kentucky will not recognize or validate "[a] legal status identical or substantially similar to that of marriage for unmarried individuals."²³³

In 2004, in support of the proposed amendment to Kentucky's constitution to ban same-sex marriage, State Senator Vernie McGaha stated that, although the state already had a statute banning same-sex marriage, a constitutional amendment was necessary in order to "protect our communities from the desecration of [Kentucky's] traditional values."²³⁴ The constitutional amendment, argued Senator McGaha, would protect the "fundamental fact" that "the sacred institution of marriage joins together a man and a woman for the stability of society and for the greater glory of God."²³⁵ The federal district court, in overturning Kentucky's ban, specifically noted that Kentucky's citizens had "enacted its own moral judgments as law[.]"²³⁶

On April 28, 2015, the U.S. Supreme Court will hear argument regarding the constitutionality of Kentucky's same-sex marriage laws.²³⁷ In his brief filed in that case, Kentucky's Governor, Steve Beshear, attempted to justify his state's ban on same-sex marriage, arguing that the law was not discriminatory because it did not only apply to gay individuals; it also prohibited heterosexual people from marrying people of the same sex.²³⁸



8,076

LOUISIANA

20%



Same-sex marriage is forbidden as a result of constitutional amendment.

Current Law

In September 2014, the U.S. District Court for the Eastern District of Louisiana held that the state's same-sex marriage laws are constitutional, comparing same-sex marriage to marriages between "minors, first cousins, or more than two people."²³⁹

Background

In 1999, the Louisiana legislature enacted a law stating that men and woman may not contract marriage with one another,²⁴⁰ and refusing to recognize "purported marriage[s] between persons of the same sex" because they "violate[] a strong public policy of the State of Louisiana."²⁴¹ Then, in 2004, Louisiana voters approved a state constitutional amendment that further banned same-sex marriages and civil unions, and any other legal status "identical or substantially similar to that of marriage."²⁴² Specifically, Louisiana's constitution states that "[n]o official or court of the state of Louisiana shall recognize any marriage contracted in any other jurisdiction which is not the union of one man and one woman."²⁴³

In April 2014, the Louisiana House of Representatives rejected legislation that would remove the state's ban on certain kinds of sodomy by a wide margin of 27-67, even though the Supreme Court had held in 2003 that such laws are unconstitutional.²⁴⁴ Prior to the vote, the Christian Louisiana Family Forum sent a letter to every legislator, urging each of them to vote against repealing the law, stating "Louisiana's anti-sodomy statute is consistent with the values of Louisiana residents who consider this behavior to be dangerous, unhealthy and immoral."²⁴⁵



3,958

MAINE

14%



Same-sex marriage is legal as a result of popular vote.

Current Law

Maine's voters enacted marriage equality via a popular ballot initiative in 2013.²⁴⁶

Background

Starting in 1996, a group called Concerned Maine Families spearheaded a successful petition drive to place an initiative banning same-sex marriage on the next election ballot.²⁴⁷ According to the group's leader, the initiative would "protect the institution of marriage from the marauding of opportunistic gay activists."²⁴⁸ Under Maine law, the legislature has an opportunity to pass the law before it goes to the voters, and, in 1997, the state legislature enacted the proposed initiative and expressly limited marriage to a union between a man and a woman.²⁴⁹ The findings of fact and statement of purpose in the bill explained that the bill was intended to protect "traditional monogamous marriage," implying that same-sex couples would not be monogamous, and that the law was necessary to protect the "physical and mental health" of children, implying that children would somehow be harmed by marriage equality.²⁵⁰ The sponsors also made no secret of the fact that the legislation was a direct response to fears that Hawaii's Supreme Court decision would lead to a proliferation of same-sex marriage in other states, emphasizing that the bill would "support and strengthen traditional monogamous Maine families against improper interferences from out-of-state influences or edicts."²⁵¹ As one commentator put it, the law was designed to "inoculate" the state from the purported "threat" of same-sex marriage.²⁵²

In 2009, the legislature passed—and the Governor signed—a bill repealing the 1997 legislation and providing for marriage equality. However, the bill was petitioned to referendum and overturned by the voters, marking the first time that a democratic majority stripped away rights that its legislature had seen fit to provide.²⁵³ The opponents of same-sex marriage in Maine relied on fear-mongering and misinformation. "The core message of the 'Yes on 1' media effort was that if the initiative were not passed, 'homosexual marriage [would be] taught in public schools whether parents like it or not' and 'church organizations could lose their tax exemptions' for failing to perform or recognize same-sex marriages" even though those claims had been "readily debunked by legal scholars and the state's governor himself."²⁵⁴ "[A]nti-gay activists generated support for the Maine ballot initiative by appealing to some voters' fear that allowing same-sex couples to marry civilly would pose a threat to their children."²⁵⁵ In one commercial titled "Safe Schools," for example, a guidance counselor urges Mainers to vote against marriage equality "to prevent homosexual marriage from being pushed on Maine students."²⁵⁶



12,538

MARYLAND

20%



Same-sex marriage is legal as a result of state legislation.

Current Law

Maryland enacted marriage equality via statute in 2012.²⁵⁷ The statute was upheld on public referendum during the November 2012 election.

Background

Maryland was the first state to explicitly define marriage in statute as limited to a union between a man and a woman.²⁵⁸ The statute seemed, at least in part, to be a response to attempts by same-sex couples to marry in Maryland. By 1972, “an increasing number of persons of the same sex [were] seeking marriage licenses.”²⁵⁹ Although then-Attorney General Francis Burch concluded that, based on the state’s statute at the time, marriage was implicitly limited to a union between a man and a woman,²⁶⁰ the General Assembly nonetheless memorialized this discriminatory definition in statute.²⁶¹ The statute passed “overwhelmingly.”²⁶²

In later decades, when LGBT rights advocates began to challenge the discriminatory statutory definition of marriage, the opponents of same-sex marriage responded with vitriol. When a state trial court found that the statute was unconstitutional, for example, some marriage equality opponents tried to impeach the judge who had rendered the decision.²⁶³ Similarly, after Attorney General Douglas F. Gansler issued an opinion finding that Maryland courts would recognize same-sex marriages entered into in other states, opponents condemned the opinion and tried to impeach him as well.²⁶⁴ Even after the Maryland General Assembly passed a marriage equality statute, the opponents petitioned the law to referendum and, during the referendum campaign, utilized advertisements claiming “that Maryland marriage equality will lead to school indoctrination” and “exploit[ing] fears about children and homosexuality.”²⁶⁵



20,256

MASSACHUSETTS

17%



Same-sex marriage is legal as a result of a court decision.

Current Law

On November 18, 2003, in *Goodridge v. Department of Public Health*, the Massachusetts Supreme Judicial Court held 4 to 3 that the state's ban on same-sex marriage was unconstitutional.²⁶⁶ Massachusetts was the first state to legalize same sex marriage.²⁶⁷

Background

Massachusetts began issuing same-sex marriage licenses in 2004. Brian Camenker, head of the Massachusetts-based Parents Rights Coalition, referred to the state court's decision as "complete lunacy ... beyond shocking ... madness. ... It's four judges basically turning society inside out with no input from anybody else."²⁶⁸ The Parents Rights Coalition had unsuccessfully advocated for a state constitutional amendment limiting marriage to one man and one woman.²⁶⁹ Following the decision, Camenker stated that he intended to pressure the state legislature to defy the court ruling.²⁷⁰ Archbishop Sean P. O'Malley of Boston also commented, stating "It is alarming that the Supreme Judicial Court in this ruling has cast aside what has been ... the very definition of marriage held by peoples for thousands of years."²⁷¹

Over a decade has passed since same-sex marriage became legal in Massachusetts. Although "[o]pponents" in the state "made doomsday predictions about how gay marriage would damage traditional marriage and lead to problems with children raised in same-sex households," "as the years have passed, public opinion has shifted."²⁷² The Pew Research Center estimates that, between 2004 and 2013, Massachusetts saw 22,406 same-sex marriages.²⁷³ Advocates know that, "[w]ith more same-sex marriages, you [see] more people changing their minds."²⁷⁴

However, there is still opposition to the law. The group MassResistance continues to have a presence, claiming that its goal is to "STOP the destructive agendas targeting you and your family," including acceptance of same-sex marriage.²⁷⁵ In addition to a host of volatile and hateful propaganda posted on its website, the President of MassResistance recently published a 26-minute video setting forth what he believes to be the "unvarnished and disturbing consequences of 'gay marriage,'" which has been "forced on the population."²⁷⁶ MassResistance is considered an active Anti-LGBT Group by the Southern Poverty Law Center.²⁷⁷



14,598

MICHIGAN

18%



Same-sex marriage is forbidden as a result of state legislation and constitutional amendment.

Current Law

Michigan state law and the Michigan constitution prohibit same-sex marriage.²⁷⁸ On March 21, 2014, the U.S. District Court for the Eastern District of Michigan held that Michigan's same-sex marriage ban violates the U.S. Constitution.²⁷⁹ The U.S. Court of Appeals for the Sixth Circuit reversed, and the case is now pending before the U.S. Supreme Court.

Background

Michigan has defined marriage as a relationship between a man and a woman since its territorial days.²⁸⁰ The state affirmed this view in statute in 1996 when it enacted a law proclaiming marriage to be "inherently a unique relationship between a man and a woman."²⁸¹ A second law declared that any marriage between individuals of the same sex would be "invalid" in Michigan, regardless of whether it was entered into legally in another state.²⁸²

In January 2004, after the Supreme Judicial Court of Massachusetts struck down the Commonwealth's prohibition on same-sex marriage, Michigan state representatives introduced a joint house resolution to amend the state constitution to define marriage as "only between one man and one woman."²⁸³ Though the resolution failed to pass the state legislature, a ballot campaign committee, Citizens for the Protection of Marriage, which had strong financial support from the state's seven Catholic dioceses, led the drive in collecting signatures to place the proposal on the 2004 general election ballot.²⁸⁴ A legislative analysis of the ballot proposal articulating arguments of both supporters and opponents described the supporters' view that "[l]egitimizing same-sex marriages . . . could lead to the collapse of other prohibitions, such as polygamy and polyamory (group marriage). Marriage as a cultural institution will be weakened and devalued."²⁸⁵ A majority of Michigan voters approved the amendment, which states: "To secure and preserve the benefits of marriage for our society and for future generations of children, the union of one man and one woman in marriage shall be the only agreement recognized as a marriage or similar union for any purpose."²⁸⁶



10,207

MINNESOTA

16%



Same-sex marriage is legal as a result of state legislation.

Current Law

The Minnesota Legislature passed a bill allowing same-sex marriage in May 2013, which the Governor signed into law on May 14, 2013.²⁸⁷

Background

In 1971, the Supreme Court of Minnesota held that though Minnesota's state statute governing marriage did not explicitly prohibit same-sex marriages, it nonetheless could not be read to authorize marriages between persons of the same sex.²⁸⁸ Thus, the court held, same-sex marriages were prohibited in Minnesota, and such prohibition did not run afoul of the U.S. Constitution.²⁸⁹ Despite this ruling, in 1977 the state amended its marriage statute so that it referred specifically to a civil contract "between a man and woman."²⁹⁰

In 1997, the Minnesota legislature passed a defense of marriage act that clarified, once more, that marriage was only between people of the opposite sex and that no other form of marriage would be recognized, even if it had been recognized in another jurisdiction.²⁹¹ After same-sex marriage was legalized in Massachusetts in 2003, efforts were made in the Minnesota legislature to enact a constitutional ban on marriage "or its legal equivalent" between same-sex partners in Minnesota.²⁹² These efforts were unsuccessful.²⁹³

In May 2011, the legislature passed a bill that proposed an amendment to the Minnesota Constitution, stating that marriage is the union of one man and one woman.²⁹⁴ An op-ed supporting the amendment, penned by Archbishop John Nienstedt, argued that "in a civilized, moral society, we have the right to do what we ought, not to do whatever we want," stating that "[n]ot every desire is a right," and referring to same-sex marriage as "Orwellian social engineering."²⁹⁵ The group Minnesota for Marriage also supported the amendment, calling same-sex marriage an "institution existing for the benefit of adults – not children."²⁹⁶ The Minnesota Family Council also touted a project it called the "Minnesota Worldview Leadership Project," which sought help in passing the amendment from "thousands of other Minnesotans who believe in God's design for marriage."²⁹⁷ The voters rejected the amendment by a narrow margin, 52% to 48%.²⁹⁸



3,484

MISSISSIPPI

26%



Same-sex marriage is forbidden as a result of state legislation and constitutional amendment.

Current Law

In November 2014, the U.S. District Court for the Southern District of Mississippi held that Mississippi's prohibition against same-sex marriage violates the Fourteenth Amendment to the U.S. Constitution.²⁹⁹ At the conclusion of its opinion, the court explained, "Though we cherish our traditional values, they must give way to constitutional wisdom. Mississippi's traditional beliefs about gay and lesbian citizens led it to defy that wisdom by taking away fundamental rights owed to every citizen. It is time to restore those rights."³⁰⁰ The state appealed the decision to the U.S. Court of Appeals for the Fifth Circuit, which stayed the lower court's decision pending the outcome of the appeal.³⁰¹ Mississippi does not currently recognize same-sex marriages.

Background

Mississippi has prohibited same-sex marriage and the recognition of those marriages by statute since 1997.³⁰² In 2004, the legislature and the voters approved a constitutional amendment that prohibited same-sex marriage and recognition of same-sex marriages performed outside the state.³⁰³ The American Family Association, which considers itself "one of the largest and most effective pro-family organizations in the country,"³⁰⁴ conducted a "large-scale campaign to promote the proposal's passage."³⁰⁵ Mississippi's "bills defining marriage and placing the constitutional amendment on the ballot passed with overwhelming support from politicians in both parties."³⁰⁶

In holding that Mississippi's prohibitions were unconstitutional, U.S. District Court Judge Carlton Reeves touched on the long history of discrimination against gay and lesbian people in Mississippi, and the "long tradition of Americans from all walks of life uniting to discriminate against homosexuals."³⁰⁷ He acknowledged that "gay and lesbian Mississippians" were often not protected by the courts, and also "found little refuge in the State legislature."³⁰⁸ Indeed, the opinion notes that, in 2002, a Mississippi justice court judge, "frustrated with advances in gay rights ... 'opined that homosexuals belong in mental institutions.'"³⁰⁹ Judge Reeves wrote that "[d]iscrimination against gay and lesbian Mississippians is not ancient history," as they continue to be "labeled as deviant and forced to repress their sexuality to avoid personal and professional retribution" in the state.³¹⁰ The Mississippi law against same-sex marriage, he held, "perpetuates the false notion of gay inferiority."³¹¹



10,557

MISSOURI

17%



Same-sex marriage is forbidden as a result of state legislation and constitutional amendment.

Current Law

In November 2014, the U.S. District Court for the Western District of Missouri held that Missouri's prohibition against same-sex marriage is unconstitutional.³¹² The state appealed the decision to the U.S. Court of Appeals for the Eighth Circuit, which stayed the lower court's decision pending the appeal.³¹³ Missouri does not currently recognize same-sex marriages, though local officials have granted marriage licenses to same-sex couples in some parts of the state.³¹⁴

Background

In 1996, the Missouri legislature passed a statute that prohibited same-sex marriage.³¹⁵ In 2001, the state revised that statute to prohibit the recognition of same-sex marriages performed outside the state.³¹⁶

In August 2004, a legislatively-approved ballot measure that added a constitutional provision prohibiting the recognition of same-sex marriage was approved by Missouri's voters, with 71% in favor of the amendment and 29% opposed.³¹⁷ Missouri also refused to repeal its anti-sodomy law until 2006, well after the Supreme Court had held that such laws were unconstitutional.³¹⁸ Missouri's law prohibited oral and anal sex only as between same-sex couples.³¹⁹

In a 2011 public speech, U.S. Representative Vicky Hartzler, former Missouri spokeswoman for the Coalition to Protect Marriage, voiced her opposition to same-sex marriage: "Why not allow an uncle to marry his niece? Why not allow a 50-year-old man to marry a 12-year-old girl if they love each other and they're committed?"³²⁰

In one Missouri city, an ordinance protecting individuals from discrimination on the basis of gender identity and sexual orientation was recently overturned by the electorate. In April 2015, voters in Springfield, Missouri voted to repeal protections against discrimination for the city's gay, lesbian, bisexual, and transgender citizens.³²¹ The measure passed with 51.4% of the vote.³²²



1,348

MONTANA

22%



Same-sex marriage is legal as a result of a court decision.

Current Law

The U.S. District Court for the District of Montana overturned Montana's ban on same-sex marriage on November 19, 2014, relying on a recent decision from the U.S. Court of Appeals for the Ninth Circuit that had overturned similar bans in Idaho and Nevada.³²³

Background

In 1997, the Montana legislature enacted a statute banning same-sex marriage and even any “contractual relationship entered into for the purpose of achieving a civil relationship.”³²⁴ A legislative sponsor explained that the bill was necessary as a “preemptive strike” following Hawaii's state court decision that might lead to the recognition of same-sex marriage in that state.³²⁵ Members of the public also stated during the debates on the bill that “gays are driven more by lust than love” and that the bill would stop the “gay agenda” to promote a pro-gay curriculum in schools.³²⁶ Moreover, around the same time, the state legislature refused to repeal Montana's law criminalizing homosexual sodomy even after it had been overturned by the Montana Supreme Court. One elected representative stated that “[i]f we can just get the prosecutors and judges to lock these people up and throw away the key we would save many children from the continued onslaught of [pedophilia].”³²⁷ Another proclaimed that “God has declared homosexual activity to be wrong, and I don't think we serve the other people of this state by contradicting him.”³²⁸

Then, in the wake of the *Goodridge* decision in Massachusetts, the voters of Montana approved a 2004 constitutional amendment to prohibit same-sex marriage. The proponents of the ban “employed inflammatory scare tactics, stating that lesbians and gays are ‘seeking to gain special rights that infringe on the rest of society,’ and warned voters that same-sex marriage will ‘cost all of Montanans both in dollars and in lost freedom.’”³²⁹ These proponents stated in the official Voter Information Pamphlet published by the Secretary of State that if a constitutional amendment failed, “[e]very public school . . . would be required to teach your children that same-sex marriage and homosexuality are perfectly normal. Pictures in textbooks will also be changed to show same-sex marriage as normal.”³³⁰ They also claimed in the pamphlet that churches would be forced to perform same-sex weddings and would lose their tax-exempt status if they refused.³³¹ Representative Jeff Laszloffy, who was also president of the Montana Family Foundation, compared same-sex marriage to polygamy.³³²



2,356

NEBRASKA

20%



Same-sex marriage is forbidden as a result of constitutional amendment.

Current Law

In 2005, the U.S. District Court for the District of Nebraska held that Nebraska's prohibition against same-sex marriage was unconstitutional, concluding that it was based on animus.³³³ On appeal, the U.S. Court of Appeals for the Eighth Circuit reversed and upheld the state's prohibition.³³⁴

In 2015, the federal district court again determined that the prohibition was unconstitutional.³³⁵ The state appealed the decision to the Eighth Circuit, which issued a stay of the lower court's decision pending the appeal.³³⁶ Same-sex marriage is thus not currently recognized in Nebraska.

Background

In 2000, Nebraskans passed Initiative 416 with 70% of the popular vote, amending the state constitution not just to prohibit recognition of same-sex marriage but also to deny same-sex couples *any* form of civil union, domestic partnership, or "other similar same-sex relationship."³³⁷ The ban was spearheaded by the Nebraska Coalition for the Protection of Marriage, a group that was co-chaired by former Governor Kay Orr and which included the Mormon Church and the Nebraska Catholic Conference.³³⁸ Supporters said the amendment was needed to "close the loophole" created by Vermont's recognition of civil unions for same-sex couples, contending that without the amendment, a couple might enter into a civil union in Vermont and seek to have that union recognized in Nebraska.³³⁹

Both candidates in a race for Nebraska's open U.S. Senate seat that year spoke out in support of the amendment. Don Stenberg, the Republican candidate and the state's attorney general, compared marriage between couples of the same sex to marriages between "a man and a dog," a "son and a mother," and a "father and a daughter."³⁴⁰ Ben Nelson, the Democratic candidate and the state's former governor stated, that although "we should be tolerant of people, even if we disagree with them," he would vote in favor of the amendment because he was taught that a homosexual union "was not a moral relationship."³⁴¹



7,140

NEVADA

17%



Same-sex marriage is legal as a result of a court decision.

Current Law

On November 26, 2012, the U.S. District Court for the District of Nevada held that Nevada's prohibition against same-sex marriage was constitutional.³⁴² The plaintiffs appealed to the U.S. Court of Appeals for the Ninth Circuit, which, on October 7, 2014, reversed the lower court's decision and held that Nevada's prohibition was unconstitutional.³⁴³ The state began issuing marriage licenses to same-sex couples on October 9, 2014.³⁴⁴

Background

In 2002, Nevada passed Question 2, a ballot measure that amended the state constitution to prohibit recognition of same-sex marriage.³⁴⁵ The amendment passed with 67% of the popular vote.³⁴⁶

In 2013, Nevada considered an amendment to the constitution that would reverse its 2002 amendment and require the recognition of all marriages regardless of gender.³⁴⁷ In testifying in opposition, Richard Ziser, a conservative activist who led the drive for the 2002 amendment, argued that just as there is no "right to marry a child (pedophilia), a close blood relative (incest), [or] a person who is already married (polygamy)" there is no right to marry a person of the same sex.³⁴⁸ He warned that passing the amendment would allow schools to "teach that homosexual relationships are identical to heterosexual ones," and it would result in "[m]ore children ... grow[ing] up fatherless," leading to "more boys with guns and more girls with babies."³⁴⁹ He further offered that homosexuals are less likely to be sexually monogamous, and if allowed to take part in "the social ideal" of marriage, then "the value of commitment, sexual fidelity, and permanence in relationships" would be eroded, "even among heterosexuals."³⁵⁰

Nevada began issuing same-sex marriage licenses after the Ninth Circuit struck down Nevada's prohibition on same-sex marriage in 2014.³⁵¹ While many celebrated the decision, Janie Hansen, president of Nevada Families for Freedom and a leader in the effort to pass the state's ban in 2002, called the ruling "a tragedy of epic proportions," stating that it was a "very dark day for our children and our grandchildren who will live in a corrupt society which has rejected the importance of family values."³⁵²



3,260

NEW
HAMPSHIRE

17%



Same-sex marriage is legal as a result of state legislation.

Current Law

On June 3, 2009, the Governor of New Hampshire signed a bill legalizing same-sex marriage, which took effect January 1, 2010.³⁵³

Background

New Hampshire enacted an express statutory ban on same-sex marriage in 1987.³⁵⁴ The very same year, during the height of the AIDS epidemic, the New Hampshire state legislature also passed a statute prohibiting same-sex couples from adopting children or becoming foster parents.³⁵⁵ State Senator Jack Chandler, a principal proponent of the adoption ban, implied that the ban was necessary because gay parents would sexually abuse their children; he claimed that allowing gay couples to adopt or raise foster children “is like putting a pound of roast beef in a cage with a lion. You know it’s going to get eaten.”³⁵⁶ The bill’s sponsor further proclaimed that “I’m not against homosexuals . . . They are adult people. They made their own choice and the only one they have to answer to is their maker. They can go on their merry way to hell if they want. I just want them to keep their filthy paws off the children.”³⁵⁷

When the state legislature repealed the state’s same-sex marriage ban in 2009, many marriage equality opponents continued to express their strident views about the issue. State Representative John Cebrowski, who opposed the legislation, said, “You cannot make two similar things into something they were never meant to be.”³⁵⁸ State Representative Laura Gandia called the legislation “the most radical redefinition of marriage that can be imposed,” and State Representative Nancy Elliott said marriage was instituted by God and that “marriage between a man and a woman is perfect and holy.”³⁵⁹



16,875

NEW JERSEY

20%



Same-sex marriage is legal as a result of a court decision.

Current Law

On September 27, 2013, the Mercer County Superior Court granted summary judgment to plaintiffs challenging New Jersey's ban on same-sex marriage in *Garden State Equality v. Dow*.³⁶⁰ After the New Jersey Supreme Court denied a stay of the ruling, New Jersey's Governor dropped his appeal of the ruling on October 21, 2013.³⁶¹

Background

In an amicus brief filed as part of a 2006 legal challenge, which resulted in the New Jersey Supreme Court mandating civil unions, a group calling itself "Clergy of New Jersey" wrote that "If marriage is completely segregated from its religious meanings, and redefined to become merely an economic arrangement or an emotional relationship of love and companionship, where could any line be drawn? Thereafter, there would be no legitimate constitutional basis to confine marriage to just two people, or to prevent other 'unique' marital arrangements in years to come. If the Levitical decrees (e.g., from Leviticus 18: 6-18, prohibiting sex between parents and children, siblings, and in laws as contrary to God's law), relied upon and referenced by Western courts for millennia; are eliminated from consideration in a pure 'civil marriage' paradigm -- why or how would those couplings or others be denied in the future?"³⁶²



5,825

NEW MEXICO

18%



Same-sex marriage is legal as a result of a court decision.

Current Law

On December 19, 2013, the Supreme Court of New Mexico held that “the State of New Mexico is constitutionally required to allow same-gender couples to marry and must extend to them the rights, protections, and responsibilities that derive from civil marriage under New Mexico law.”³⁶³

Background

Though none of New Mexico’s marriage statutes specifically prohibited same-sex marriages, they had been interpreted as precluding same-sex couples from marrying.³⁶⁴ On August 21, 2013, the county clerk of Doña Ana County voluntarily began issuing marriage licenses to same-sex couples. Several other county clerks did the same, while others did not do so until ordered by a court; yet others continued to decline to issue marriage licenses to same-sex couples. A number of lawsuits were initiated in response, including the one resulting in the New Mexico Supreme Court’s ruling.³⁶⁵ Reacting to the Supreme Court decision, Jim Campbell, legal counsel for Alliance Defending Freedom, a party in the case, said that “The New Mexico Supreme Court ignored that time-tested understanding of marriage and replaced it with the recently conceived notion that marriage means special government recognition for close relationships.”³⁶⁶



48,932

NEW YORK

16%



Same-sex marriage is legal as a result of state legislation.

Current Law

On June 24, 2011, Andrew Cuomo, Governor of New York, signed a bill legalizing same-sex marriage, which took effect July 24, 2011.³⁶⁷ Not only does the statute provide that same-sex marriages are valid, it states that “[n]o government treatment or legal status, effect, right, benefit, privilege, protection or responsibility relating to marriage, whether deriving from statute, administrative or court rule, public policy, common law or any other source of law, shall differ based on the parties to the marriage being or having been of the same sex rather than a different sex.”³⁶⁸

Background

The passage of same-sex marriage in New York “followed a daunting run of defeats in other states where voters barred same-sex marriage by legislative action, constitutional amendment or referendum.”³⁶⁹ The legislative vote to approve the bill in New York was a close 33-29.³⁷⁰

The decision to pass the law in New York was contentious, as many legislators feared political repercussion.³⁷¹ However, only State Senator Rubén Díaz, Sr. spoke against the bill. In doing so, he repeatedly interrupted the presiding officer who tried to limit the senator’s remarks, shouting, “You don’t want to hear me.” He said that “God, not Albany, has settled the definition of marriage, a long time ago.”³⁷²

The Catholic Bishops of New York were also upset with the decision. In a joint statement, they “assailed the vote,” contesting that the law alters “radically and forever humanity’s historic understanding of marriage. ... We worry that both marriage and the family will be undermined by this tragic presumption of government in passing this legislation that attempts to redefine these cornerstones of civilization.”³⁷³



18,309

NORTH CAROLINA

18%



Same-sex marriage is legal as a result of a court decision.

Current Law

On October 10, 2014, on the heels of a mandate issued by the U.S. Court of Appeals for the Fourth Circuit,³⁷⁴ the U.S. District Court for the Western District of North Carolina found that “North Carolina’s laws prohibiting same-sex marriage are unconstitutional as a matter of law.”³⁷⁵ Similarly, on October 14, 2014, the U.S. District Court for the Middle District of North Carolina, found that North Carolina’s state constitutional amendment and statutes, “to the extent those laws prevent same-sex couples from marrying and prohibit the State of North Carolina from recognizing same-sex couples’ lawful out-of-state marriages,” violate the federal Constitution.³⁷⁶

Background

In 1996, legislators banned same-sex marriage in the state of North Carolina.³⁷⁷ Despite the statutory ban, the state went even further in 2012, and amended its constitution to ensure that same-sex marriages, including civil unions, were banned, and out-of-state marriages would not be recognized.³⁷⁸ As in debates in other states, legislators’ words revealed the animus and ignorance behind the discriminatory provisions. Senator James Forrester, a sponsor of the constitutional amendment, stated of homosexuals: “We need to reach out to them and get them to change their lifestyle back to the one we accept.” House Majority Leader Paul “Skip” Stam claimed that “[i]n countries around the world where they have legitimized same-sex marriage, marriage itself is de-legitimized.”³⁷⁹ He also equated same-sex marriage with incest: “What I’m saying is, you cannot construct an argument for same sex-marriage that would not also justify philosophically the legalization of polygamy and adult incest.”³⁸⁰ Legislators were not the only ones disseminating such animus. For example, Rev. Patrick Wooden, pastor at the Upper Room Church of God in Christ in Raleigh, with a congregation of 3,000, called homosexuality a “deathstyle” and questioned how one “could support a practice that forces men ‘to wear a diaper or a butt plug just to be able to contain their



559

NORTH DAKOTA

22%



Same-sex marriage is forbidden as a result of state legislation and constitutional amendment.

Current Law

On June 6, 2014, seven same-sex couples filed a lawsuit in the U.S. District Court for the District of North Dakota seeking the right to marry and recognition of marriages performed in other jurisdictions.³⁸¹ The case was stayed by the court pending resolution of the U.S. Supreme Court's ruling in *Deboer v. Snyder*.³⁸²

Background

In 1997, the North Dakota legislature passed a statute that prohibited same-sex marriage in the state.³⁸³ In 2004, the state's voters approved a constitutional amendment that prohibited same-sex marriages and civil unions, as well as recognition of same-sex marriages and civil unions performed outside the state.³⁸⁴ The amendment passed with 73% of the popular vote.³⁸⁵ "The results just go to show that the citizens of North Dakota and America clearly understand the value of natural marriage," said the director of the North Dakota Family Alliance, an organization that led the petition drive to get the amendment on the ballot.³⁸⁶ The North Dakota Family Alliance website proclaims that "[t]he biblical model and institution of marriage is under attack. We have witnessed this by the breakdown of the family and the attempt of others to redefine marriage."³⁸⁷

Shortly before the vote on the amendment, Family Alliance President John Trombley noted that "[t]here are a lot of North Dakotans, if you even mention the word homosexual, they blush and they turn around and they want to get out of the room."³⁸⁸ Trombley claimed that the amendment was not an attack on gay people, but rather "an effort to stop the moral decline of a society.... If they are successful in redefining marriage, what's to prevent a new definition tomorrow that says hey, what about two brothers that love each other, or what about two sisters, or hey, what about a mother and her son, what about a father and his daughter, what about a boy and his dog?"³⁸⁹

In April 2015, nearly two-thirds of the North Dakota House voted to kill a bill which would have banned discrimination based on sexual orientation.³⁹⁰



19,684

OHIO

18%



Same-sex marriage is forbidden as a result of state legislation and constitutional amendment.

Current Law

Ohio's ban on same-sex marriage is currently before the U.S. Supreme Court.

Background

In the wake of the Massachusetts Supreme Court's decision in *Goodridge*, Ohio enacted both a statutory and constitutional ban on same-sex marriage in 2004. The Governor of Ohio explained that both provisions were necessary because "our parents and families are under constant attack within our social culture."³⁹¹ The primary sponsor of the constitutional amendment was a group called Citizens for Community Values ("CCV"), which was accused of intentionally deceiving voters with false messages, insisting that "[s]exual relationships between members of the same sex expose gays, lesbians, and bisexuals to extreme risks of sexually transmitted diseases, physical injuries, mental disorders and even a shortened life span."³⁹² CCV also falsely claimed that marriage equality supporters were advocating in favor of polygamy and incest.³⁹³ Additionally, "[t]he television and media campaign in support of the amendment contained misleading statements, such as '[w]e won't have a future unless [heterosexual] moms and dads have children.'"³⁹⁴ Furthermore, the official argument for the constitutional amendment that supporters included in a State Issue Ballot Information Guide characterized homosexual relationships as "deviant."

CCV and other Ohio groups have also continued to display clear and hateful animus toward the LGBT community. The CCV website, as late as 2011, "allege[d] that an elaborate and militant network of homosexual activists is targeting school children, some as young as elementary school, and encouraging them to engage in sodomy" and that "this indoctrination could result in a rising number of homosexuals in the next ten to fifteen years if concerned, informed citizens do not actively resist the organized effort to normalize homosexual behavior in our society, especially in our schools."³⁹⁵ The chairman of this group later said in public statements that gay men "force themselves on people" and have "upwards of 200 sexual partners."³⁹⁶ In fact, at a public forum in 2004, one proponent of the measure even "stated that it was not necessarily unreasonable to punish gays and lesbians with the death penalty."³⁹⁷



6,134

OKLAHOMA

21%



Same-sex marriage is legal as a result of a court decision.

Current Law

Same-sex marriage has been recognized in Oklahoma since October 6, 2014, when the U.S. Supreme Court declined to review a U.S. Court of Appeals Tenth Circuit decision striking down the state's marriage ban.³⁹⁸

Background

Oklahoma first enacted an express statutory ban on same-sex marriage in 1975.³⁹⁹ Then, after the Hawaii Supreme Court's decision in *Baehr v. Lewin*, Oklahoma passed a defense of marriage act in 1996 prohibiting the recognition of same-sex marriages entered into in other states.⁴⁰⁰ Despite the existence of these statutory bans, the state went further in 2004, the year after the Massachusetts Supreme Court decision in *Goodridge*, and approved a constitutional amendment banning same-sex marriage.

The legislative proponents of the amendment made clear in public statements that the provision was motivated by moral disapproval toward homosexuality. One representative stated, "This is a Bible Belt state Most people don't want that sort of thing here" and that "[g]ay people might call it discrimination, but I call it upholding morality."⁴⁰¹ Similarly, the Senate Republican leader proclaimed that it's "not right" to "legitimize that lifestyle" by saying "two homosexuals can be just as married as two heterosexuals."⁴⁰² He also argued that the state needed leaders who would "draw a line in the sand to help stop the moral decay of this country."⁴⁰³

Oklahoma's reaction to the Tenth Circuit's decision striking down its marriage ban further shows the deep-seated animus toward the LGBT community in the state. During the current legislative session, anti-gay legislators have introduced numerous discriminatory bills.⁴⁰⁴ In fact, one bill, which has already passed the House, would repeal marriage licenses altogether and require instead that officiants to file "certificates of marriage" after performing the ceremony.⁴⁰⁵



11,773

OREGON

16%



Same-sex marriage is legal as a result of a court decision.

Current Law

On May 19, 2014, U.S. District Court for the District of Oregon held that Oregon's prohibition of same-sex marriage was unconstitutional.⁴⁰⁶ The State Attorney General refused to file an appeal on behalf of the state.⁴⁰⁷

Background

In March 2004, Multnomah County in Oregon issued approximately 3,000 marriage licenses to same-sex couples.⁴⁰⁸ While the legality of those marriages were being litigated in state court, Oregon voters passed an amendment to the state constitution that prohibited same sex marriage and recognition of same-sex marriage performed outside the state.⁴⁰⁹ Eventually, the Oregon Supreme Court invalidated the licenses issued in 2004.⁴¹⁰

The state-issued Oregon Voter's Pamphlet provided arguments in favor of and against the amendment. Some of the arguments in favor of the constitutional ban included: "If we 'normalize' homosexual marriage ... it will cause kids to question their sexual identity, and increase experimentation with a behavior that is neither emotionally nor physically healthy" and that "[w]e need to reserve the approval of society for those behaviors that further its success. If we must affirm every behavior, then disorder is the ultimate result."⁴¹¹ The opponents of marriage equality further argued in the voter pamphlet that "[p]roviding equivalent legal standing to unnatural relationships will force devastating and irreversible changes to our society," and that "homosexuals are less likely to enter into long-term partnerships, be sexually faithful to a partner, and have relationships last a lifetime."⁴¹²

The Oregon Family Council, Inc., which founded the Defense of Marriage Coalition to orchestrate the campaign for the amendment, laments that "[o]ur culture tells us that it is acceptable to cohabitate, be promiscuous, trade a spouse in for a newer model, and explore our sexuality and gender identity."⁴¹³



22,336

PENNSYLVANIA

16%



Same-sex marriage is legal as a result of a court decision.

Current Law

On May 20, 2014, in *Whitewood v. Wolf*, the U.S. District Court for the Middle District of Pennsylvania held that Pennsylvania's 1996 ban on same-sex marriage was unconstitutional.⁴¹⁴ The next day, the Governor of Pennsylvania announced that he would not appeal the decision.

Background

The sponsor of Pennsylvania's 1996 legislation banning same-sex marriage and prohibiting recognition of same-sex marriages described the law as an expression of the state's "traditional and longstanding policy of moral opposition to same-sex marriages . . . and support of the traditional family unit" and a reaffirmation that the state's "policy is and always has been – that these so-called marriages are contrary to our public policy."⁴¹⁵ Another legislator supporting the law stated "I just thank God that I am going back to Oakdale, where men are men and women are women, and believe me, boys and girls, there is one heck of a difference."⁴¹⁶

Reacting to the 2014 federal court decision to legalize same-sex marriage, the Pennsylvania Catholic Conference stated that the decision "speaks to the confusion and misunderstanding among many today about the fundamental building block of society: the family. Every child has a basic right to a mother and a father united in marriage as a family. Today's decision does not change that."⁴¹⁷ Randall Wenger of the Pennsylvania Family Institute said "I think we all want a more loving, considerate society but I don't think we get there through a one judge court ruling that strikes down something as fundamental as marriage."⁴¹⁸



2,785

RHODE ISLAND

16%



Same-sex marriage is legal as a result of state legislation.

Current Law

On May 2, 2013, the Governor of Rhode Island signed a bill legalizing same-sex marriage, which took effect August 1, 2013.⁴¹⁹ The law provides that any person who otherwise meets the state's eligibility requirements for marriage may marry "any other eligible person regardless of gender."⁴²⁰

Background

In opposition to Rhode Island's 2013 decision to legalize same-sex marriage, Roman Catholic Bishop Thomas Tobin called the law "immoral and unnecessary."⁴²¹ Bishop Tobin wrote a letter to Rhode Island Catholics, stating that "homosexual acts are . . . always sinful" and that "Catholics should examine their consciences very carefully before deciding whether or not to endorse same-sex relationships or attend same-sex ceremonies. To do so might harm their relationship with God."⁴²²



7,214

SOUTH CAROLINA

19%



Same-sex marriage is legal as a result of a court decision.

Current Law

On November 12, 2014, the U.S. District Court for the District of South Carolina held that the state's prohibition against same-sex marriage was unconstitutional.⁴²³ The court based its ruling on a decision of the U.S. Court of Appeals for the Fourth Circuit, which held earlier that year that Virginia's prohibition against same-sex marriage was also unconstitutional.⁴²⁴ Despite the existence of binding Fourth Circuit precedent, the state nonetheless has appealed the District Court's decision to the Fourth Circuit. An application for stay pending appeal was denied by the U.S. Supreme Court on November 20, 2014,⁴²⁵ and the first marriage licenses were issued to same-sex couples in South Carolina later that day.⁴²⁶

Background

In 1975, the South Carolina Attorney General wrote in a conclusory two-paragraph opinion that "a homosexual may validly be refused employment by the State and if he is employed, discovery of such a practice would be a valid basis for termination of his employment."⁴²⁷ In 1996, the state enacted legislation declaring marriage between persons of the same sex to be "void ab initio" and thus prohibiting the recognition of same-sex marriages performed in other states.⁴²⁸

In November 2006, South Carolina voters adopted a constitutional amendment that defined marriage as the union of a man and a woman and prohibited the recognition of same-sex relationships under any other name.⁴²⁹ The amendment was approved by 78% of voters.⁴³⁰

Animus towards the LGBT community has not limited itself to the same-sex marriage debate. In 2003, State Senator Mike Fair testified against allowing a bar, which represented itself as the city's "Only Gay Restaurant and Nightclub," to receive a liquor license.⁴³¹ In support of his position, the Senator stated that "homosexuality is a public health problem."⁴³² Dr. Stan Craig also opposed the petition on behalf of the Choice Hills Baptist Church, testifying that his opposition was due to "the morality of the people who will patronize the location in question."⁴³³

During this year's legislative session, state lawmakers have proposed several bills seeking to undermine the November 2014 federal court ruling. The new bills seek to "allow exemptions for employees of judges and court clerks who don't want to issue same-sex marriage licenses on the basis of their religious beliefs, prevent punishment of state employees who refuse to provide goods or services to same-sex couples and bar using taxpayer dollars — including government salaries — for activities supporting same-sex marriages."⁴³⁴ One bill even seeks amend the U.S. Constitution to say marriage is between one man and one woman.⁴³⁵



714

SOUTH DAKOTA

21%



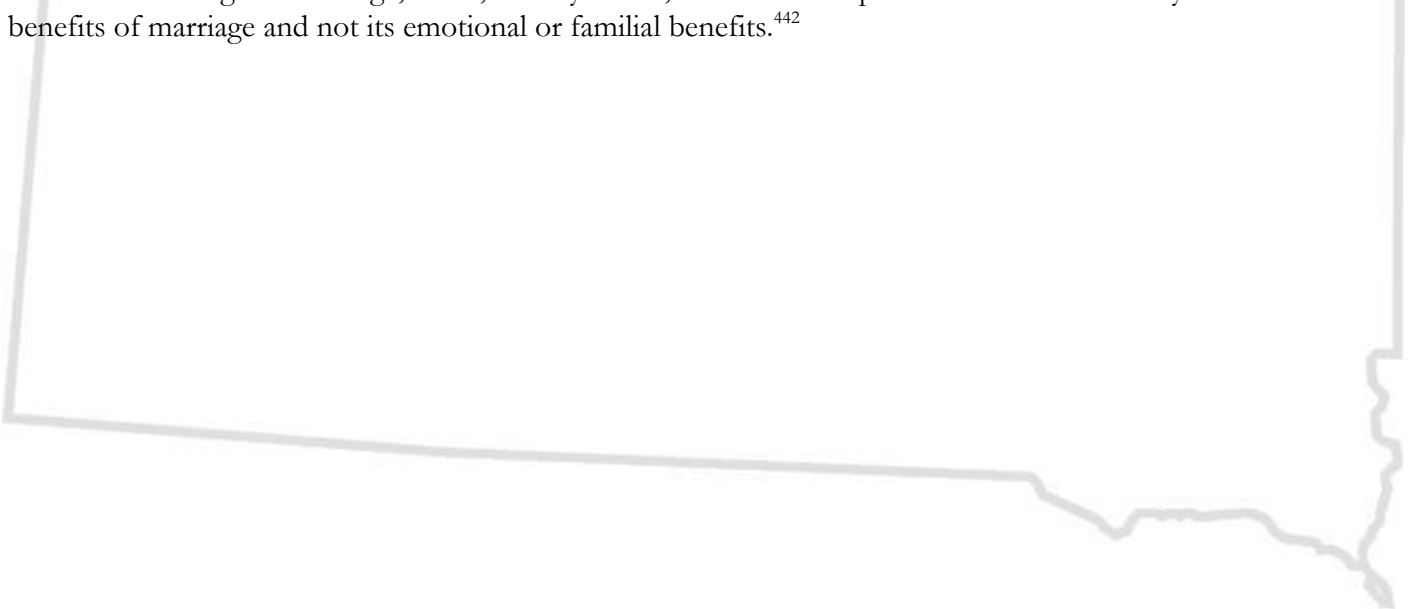
Same-sex marriage is forbidden as a result of state legislation and constitutional amendment.

Current Law

In January 2015, the U.S. District Court for the District of South Dakota held that South Dakota’s prohibition against same-sex marriage was unconstitutional.⁴³⁶ South Dakota appealed the decision to the U.S. Court of Appeals for the Eighth Circuit, which stayed the decision pending appeal.⁴³⁷ South Dakota does not currently recognize same-sex marriage.

Background

In 1996, the state legislature passed a statute prohibiting same-sex marriage in the state.⁴³⁸ In 2006, South Dakota voters approved Amendment C, a constitutional amendment that prohibits the state from recognizing or performing marriages, civil unions, or domestic partnerships between same-sex couples.⁴³⁹ Rob Regier, executive director of the South Dakota Family Policy Council, noted that the amendment was necessary, since “[g]ay activists all over the country—including in South Dakota—have stated their intention for someday to allow men to marry men and women to marry women.”⁴⁴⁰ He also stated that the “ultimate goal” was not “just to pass the marriage amendment” but “to share the truth in love with men and women struggling with homosexuality. If we won this election without helping anybody to leave the lifestyle, I think it would be a huge opportunity lost.”⁴⁴¹ A primary sponsor of the constitutional amendment further claimed that the amendment “simply prohibit[ed] the counterfeiting of marriage,” and, in any event, same-sex couples were interested only in the economic benefits of marriage and not its emotional or familial benefits.⁴⁴²





10,898

TENNESSEE

18%



Same-sex marriage is forbidden as a result of state legislation and constitutional amendment.

Current Law

In 2014, the U.S. District Court for the Middle District of Tennessee granted a preliminary injunction enjoining Tennessee from enforcing its statutory and constitutional bans on same-sex marriage.⁴⁴³ The decision was later reversed by the U.S. Court of Appeals for the Sixth Circuit.⁴⁴⁴ The U.S. Supreme Court granted a petition for a writ of certiorari⁴⁴⁵ and scheduled argument in the case for April 28, 2015.⁴⁴⁶

Background

In 1996, Tennessee enacted a statutory ban on same-sex marriage, which included a prohibition on recognizing the validity of same-sex marriages legally performed in other states or countries.⁴⁴⁷ In 2006, Tennessee voters approved a constitutional amendment banning same-sex marriage as contrary to the public policy of the state.⁴⁴⁸

Tennessee's statute prohibiting same-sex marriage describes the law as consistent with the long-standing public policy of the state "to recognize the family as essential to social and economic order and the common good and as the fundamental building block of our society."⁴⁴⁹ Prior to the law's enactment, State Senator Steve Cohen abstained from voting on the bill in committee, describing the proposal as "an opportunity to take a swipe at people whose sexual orientation is different from our own."⁴⁵⁰ The bill's sponsor, State Senator Jim Holcomb, explained that he filed the measure on grounds of "morality" against an "aberrant lifestyle" caused by having homosexual parents, one domineering parent, or the "lack of a male father figure and the seeking of that relationship in other males."⁴⁵¹

In the lead-up to voters' adopting the 2006 constitutional amendment, numerous legislators spoke in favor of the ban. "It'll be a sad day when queers and lesbians are allowed to get married . . . and kiss in front of the courthouse," said state Representative Eric Watson.⁴⁵² Tennessee Lieutenant Governor John Wilder told reporters that "God made Adam and Eve and not Adam and Steve," and that same-sex marriage was "not in tune with the cosmos," meaning God.⁴⁵³ State Representative Bill Dunn, a sponsor of the constitutional amendment, told reporters his goal was to preserve the "natural order" and prohibit same-sex "counterfeit marriages" that took place in other states.⁴⁵⁴ One Tennessee citizen who voted in favor of the constitutional amendment described same-sex relationships as "damnation to their souls,"⁴⁵⁵ and a married couple that supported the amendment expressed fears that their children would be exposed to the "immorality" of same-sex relationships.⁴⁵⁶

The Tennessee General Assembly passed a resolution in 2013 designating August 31 as "Traditional Marriage Day" in the state.⁴⁵⁷



46,401

TEXAS

20%



Same-sex marriage is forbidden as a result of state legislation and constitutional amendment.

Current Law

As described in greater detail below, same-sex marriage is illegal in Texas under state statute as well as the state's constitution. However, on February 26, 2014, a federal judge ruled that Texas's prohibitions on same-sex marriage violate the U.S. Constitution's guarantees of equal protection and due process.⁴⁵⁸ That court's decision is stayed pending appeal before the U.S. Court of Appeals for the Fifth Circuit. On April 22, 2014, a state court judge similarly concluded that Texas's same-sex marriage ban is unconstitutional.⁴⁵⁹ Most recently, on February 18, 2015, a probate judge in Travis County reached the same conclusion and issued a marriage license to one gay couple before the Texas Attorney General appealed the ruling to the state supreme court.⁴⁶⁰

Background

In 1997, the state of Texas enacted an explicit ban on same-sex marriage, adding a provision to the Texas Family Code that prohibits the clerk of any Texas county from issuing a marriage license to persons of the same sex.⁴⁶¹ Then, in 2003, the Texas Legislature voted to add language to the Family Code banning same-sex marriages and civil unions solemnized in other jurisdictions. This new legislation declared that marriage or a civil union between persons of the same sex is "contrary to the public policy of this state," and any such marriages or civil unions lawfully performed in other jurisdictions would be "void" in Texas.⁴⁶² It further prohibited the state and its agencies and political subdivisions from giving effect to any "right or claim to any legal protection, benefit, or responsibility" derived from a same-sex marriage or civil union.⁴⁶³ Consequently, not only is there no legal avenue for same-sex couples to marry in Texas, there is also no legal avenue for same-sex couples married in other states to pursue a divorce.⁴⁶⁴ The supporters of the 2003 legislation claimed that if the state were to recognize same-sex unions, it "could lead to the recognition of bigamy, incest, pedophilia, and group marriage," and "[i]f the state [did] not draw the line here, it would be difficult to draw it anywhere."⁴⁶⁵

Two years later, the Texas legislature passed House Joint Resolution No. 6, which proposed to amend the Texas Constitution to define marriage as the union "of only one man and one woman" and to bar the state and its political subdivisions from "creat[ing] or recogniz[ing] any legal status identical or similar to marriage."⁴⁶⁶ The joint resolution was placed on the electoral ballot in November 2005 as Proposition 2. In public debate, the amendment's sponsor, State Representative Warren Chisum, likened same-sex marriage to polygamy, asking, "If you start down that road, where do you stop? Do you have multiple partners?"⁴⁶⁷ He suggested, "There's a short step from homosexual marriage to polygamy."⁴⁶⁸ Days before the election, a handful of Ku Klux Klan members held a rally in Austin in support of the ballot measure. Steven Edwards, Grand Dragon of Texas for the American White Knights of the Ku Klux Klan, said the rally was intended to encourage Texans to "come out and vote against the homosexual lifestyle."⁴⁶⁹



3,909

UTAH

20%



Same-sex marriage is legal as a result of a court decision.

In October 2013, the U.S. District Court for the District of Utah declared Utah's prohibition on same-sex marriage to be unconstitutional.⁴⁷⁰ The ruling was affirmed by the U.S. Court of Appeals for the Tenth Circuit,⁴⁷¹ and the state began issuing marriage licenses to same-sex couples on October 6, 2014, after the Supreme Court declined to review the decision.⁴⁷²

Background

In 1977, the Utah legislature passed a statute that prohibited same-sex marriage.⁴⁷³ In 1995, after the Hawaii Supreme Court's decision in *Baehr v. Lewin*, Utah became the first state to pass a Defense of Marriage law, prohibiting recognition of same-sex marriages and civil unions performed outside the state.⁴⁷⁴

In 2004, after Massachusetts legalized same-sex marriage, Utah passed yet another law prohibiting same-sex marriage and its equivalents, such as civil unions and domestic partnerships.⁴⁷⁵ That same year, Utah's voters approved a legislatively-referred constitutional amendment that prohibited same-sex marriage and recognition of same-sex marriages performed outside the state.⁴⁷⁶ The amendment received 66% of the popular vote.⁴⁷⁷

On October 20, 2004, just 13 days before the vote on the amendment, the Mormon Church released an official statement that "sexual relations ... between persons of the same gender ... undermine the divinely created institution of the family. The Church accordingly favors measures that define marriage as the union of a man and a woman and that do not confer legal status on any other sexual relationship."⁴⁷⁸ As of 2012, 62.2% of people living in Utah identified as Mormon.⁴⁷⁹ Matthew Staver, president and General Counsel of Liberty Counsel said the success of the 11 state constitutional amendments to ban same-sex marriage passed in 2004, including the one in Utah, were part of the battle to maintain "the morals and sanctity of human life."⁴⁸⁰

In addition to passing a multitude of laws prohibiting same-sex marriage, the legislative history of Utah's adoption law "demonstrates that it was intended to specifically prevent gay couples from adopting children or otherwise having families. During the senate floor debate, Senator Terry Spencer was asked if a blood relative, such as a grandmother, would be allowed to adopt her grandchild under the bill. Senator Spencer replied that a 'grandmother would not be prohibited from adopting a grandchild of hers, unless [the] grandmother is gay. That's where the prohibition comes.'"⁴⁸¹



2,143

VERMONT

19%



Same-sex marriage is legal as a result of state legislation.

Current Law

In April 2009, the Vermont legislature passed a law permitting same-sex couples to marry beginning on September 1, 2009.⁴⁸² Vermont's governor vetoed the legislation on April 6. The legislature overrode the veto on April 7, 2009. This statute replaced a statute granting civil unions to same sex couples since 2000.⁴⁸³ Vermont was the first state to legalize same-sex marriage through legislation rather than a court decision.

Background

In 1999, following a challenge to Vermont's ban on same-sex marriage, the Vermont Supreme Court ruled that the Vermont Constitution entitles same sex couples "to obtain the same benefits and protections afforded by Vermont law to married opposite-sex couples."⁴⁸⁴ Due to this decision, the Vermont legislature passed a statute granting same-sex couples the right to civil unions. The statute was passed after what then-Governor Howard Dean "later characterized as 'the least civil public debate in the state in over a century'—so uncivil that, at times, the governor wore a bulletproof vest."⁴⁸⁵ At hearings, activists "denounced gays and lesbians as abominations, people who were sure to experience the wrath of God."⁴⁸⁶ State Representative Duncan Kilmartin "charg[ed] that gay unions elevate 'a forbidden sexual practice to the level of marriage, upsetting 3,400 years of Judeo-Christian tradition."⁴⁸⁷

In 2009, during the debate on legalizing same-sex marriage, Representative Kilmartin stated that "same-sex marriage runs counter to 5,000 years of history and tradition" and testified that "[t]he wellspring of our civil rights comes from Jesus Christ dying on the cross."⁴⁸⁸



14,243

VIRGINIA

16%



Same-sex marriage is legal as a result of a court decision.

Current Law

On February 13, 2014, the U.S. District Court for the Eastern District of Virginia held that Virginia's ban on same-sex marriage is unconstitutional.⁴⁸⁹ The U.S. Court of Appeals for the Fourth Circuit affirmed the decision,⁴⁹⁰ and the U.S. Supreme Court denied review on October 6, 2014, making the ruling permanent.⁴⁹¹

Background

The commonwealth of Virginia explicitly prohibited marriage between persons of the same sex in 1975.⁴⁹² After the Supreme Court of Hawaii took steps to legalize same-sex marriage in the mid-1990s, the Virginia legislature amended its domestic relations law to specify that same-sex couples who married in other jurisdictions would not be recognized as married in Virginia.⁴⁹³ Under the amended statute, any same-sex marriage would be "void in all respects" in Virginia and "any contractual rights created by such marriage shall be void and unenforceable."⁴⁹⁴ Several years later, in 2004, Virginia added "civil union[s], partnership contract[s] or other arrangement[s] . . . purporting to bestow the privileges or obligations of marriage" to the list of prohibited same-sex relationships via the Affirmation of Marriage Act.⁴⁹⁵

When the Affirmation of Marriage Act was first presented in the Virginia House of Delegates, its sponsors invoked fear of the "legal sanctions" and "coercion" that would be imposed on those "opposed to homosexual behavior" if same-sex unions solemnized in other states were given recognition.⁴⁹⁶ For example, they warned that "schools in their Family Life and other programs will have to teach that 'civil unions' or 'homosexual marriage' are equivalent to traditional marriage," and "churches whose teachings does [sic] not accept homosexual behavior as moral will lose their tax exempt status."⁴⁹⁷

Shortly after the Affirmation of Marriage Act was enacted, Delegate Robert Marshall, one of its sponsors, authored a letter to the editor in *The Washington Post*, referring to same-sex marriage as "counterfeit marriage" and stating that the Act was "needed to resist the agenda of activist homosexuals" because the "danger" they posed was "real."⁴⁹⁸ Several months later, Delegate Richard Black, another sponsor, publicly stated that "[t]he whole agenda of the homosexual movement is to entice children to submit to sex practices. Those groups lead children to experiment with potentially fatal sex practices that spread AIDS and other sexually transmitted diseases."⁴⁹⁹

In 2006, a majority of Virginia's voters ratified a constitutional amendment defining marriage as a union between "one man and one woman" and prohibiting the commonwealth and its political subdivisions from legally recognizing any other partnership approximating marriage.⁵⁰⁰ The amendment's supporters argued it was necessary for the protection of "the traditional family," which would be "destroy[ed]" if the definition of marriage were changed to include same-sex couples.⁵⁰¹ As then-Virginia Senator Kenneth Cuccinelli urged, "The homosexual left has been on the attack against marriage and family for 40 years. . . All we're doing is regaining lost ground."⁵⁰²



19,003

WASHINGTON

16%



Same-sex marriage is legal as a result of a popular vote.

Current Law

In November 2012, Washington voters approved Referendum Measure No. 74, approving a bill passed by the state legislature earlier that year that permitted same-sex marriages. The measure officially went into effect on December 6, 2012.⁵⁰³

Background

In 1998, Washington adopted the state Defense of Marriage Act.⁵⁰⁴ The provision amended state law to describe marriage as a civil contract that is valid only if “between a male and a female” and to provide that a marriage contract is prohibited for couples “other than a male and a female.”⁵⁰⁵ In addition, the provision invalidated same-sex marriages entered into in other jurisdictions.⁵⁰⁶ The intent of the provision was to recognize the state’s “compelling interest . . . to reaffirm its historical commitment to the institution of marriage as a union between a man and a woman as husband and wife and to protect that institution.”⁵⁰⁷

When the bill was being considered by the State’s House of Representatives, proponents of the bill offered testimony that the legislature “should not denigrate the institution of marriage by allowing same-sex marriage to be recognized,” arguing that “[f]amilies are adversely affected when children are taught that same-sex marriage is the same as traditional marriage,” “[s]ame-sex families do not provide proper role models for children,” “[r]esearch indicates that children need a mother and a father to provide the best environment for their development,” the state “shouldn’t lower [its] moral standards or allow the concept of family to be distorted by a minority,” and “[t]he drive to legalize same-sex marriage is just a political agenda of the homosexual movement.”⁵⁰⁸ The chief sponsor of the provision also “distributed an article on the House floor saying that gays and lesbians are not normal, and told the legislature’s only openly gay member that homosexuals should be put on a boat and shipped out of the country.”⁵⁰⁹ Similarly, another legislator stated that same-sex couples “confirm a ‘disordered sexual inclination’ that is ‘essentially self-indulgent.’”⁵¹⁰

In 2012, Washington legalized same-sex marriage by statute. Opponents mounted a referendum petition in an attempt to veto the law, and the question was put to voters on the state’s 2012 ballot.⁵¹¹ State Representative Dan Swecker expressed his “faith-based opposition to radically redefining the purpose of marriage,” explaining that permitting same-sex marriage would hurt children because “the very best situation for children is to be raised by both a mother and father. Anything less gives the child less.”⁵¹² Preserve Marriage Washington, a chief opponent of the measure, distributed literature warning that “redefining marriage . . . says to children that mothers and fathers don’t matter (especially fathers) – and any two ‘parents’ will do. It proclaims the false notion that a man can be a mother and a woman can be a father And it undermines the marriage culture by making marriage a meaningless political gesture, rather than a child-affirming social construct.”⁵¹³



2,848

WEST VIRGINIA

18%



Same-sex marriage is legal as a result of a court decision.

Current Law

Following the U.S. Supreme Court's refusal to grant certiorari in *Bostic v. Schaefer*,⁵¹⁴ West Virginia ceased enforcement and defense of its ban on same-sex marriage.⁵¹⁵ Later, on November 7, 2014, the U.S. District Court for the Southern District of West Virginia officially overturned West Virginia's same-sex marriage ban, declaring that it was "not narrowly tailored to achieve a compelling state interest."⁵¹⁶

Background

In 2000, West Virginia enacted its Defense of Marriage Act banning same-sex marriage and prohibiting recognition of same-sex marriages entered into in other jurisdictions. A leading proponent of the ban stated: "Homosexuality is an immoral and unhealthy lifestyle It's not something our government should encourage or endorse."⁵¹⁷ In fact, he warned that "[u]ntil we pass this law, we are not going to be safe."⁵¹⁸ Governor Cecil Underwood also expressed his support for the ban stating that "[a]s a former biology teacher, I do not think such legislation should be necessary. But perhaps it is."⁵¹⁹

Later, a conservative group, the West Virginia Family Foundation, actively pushed for a constitutional amendment banning same-sex marriage in the wake of other states' recognition of same-sex marriage. The Foundation's president said: "What's happening in California is a direct threat There are several inroads being made by homosexual activists in public policy."⁵²⁰ As evidence of the purported "threat," he relied on a 2005 West Virginia Supreme Court case in which the lesbian partner of a 5-year-old child's biological mother, who had raised him since birth, was awarded custody of that child after the biological mother's sudden death.⁵²¹ An online advertisement supporting West Virginia's 2009 constitutional amendment further compared gay rights advocates to snipers who were targeting "traditional" families. According to a press account, "a minute into the video, the crosshairs of a rifle scope appear over the image of a family blowing bubbles. The narrator warns that 'same-sex marriage is a closer reality in West Virginia than you may think,' and that activists are 'working tirelessly to define marriage away from God's design.'"⁵²²



9,179

WISCONSIN

16%



Same-sex marriage is legal as a result of a court decision.

Current Law

In June 2014, the U.S. District Court for the Western District of Wisconsin held that the state prohibition against same-sex marriage was unconstitutional. The U.S. Court of Appeals for the Seventh Circuit affirmed, and the U.S. Supreme Court denied review.⁵²³ As of October 6, 2014, same-sex marriage is recognized in Wisconsin.

Background

Between 1995 and 1996, while Hawaii was considering recognition of same-sex marriage, five different bills were introduced in the Wisconsin legislature to prohibit same-sex marriage. In 1997, Attorney General James Doyle issued an informal opinion advising that the state's marriage statute already made same-sex marriage illegal in Wisconsin.⁵²⁴

Nonetheless, in 2003, after the *Goodridge* decision in Massachusetts, a law prohibiting the recognition of same-sex marriage was again introduced in Wisconsin and passed both the House and the Senate before being vetoed by the Governor.⁵²⁵ Again, the Attorney General issued an opinion advising that same-sex marriage was already illegal in the state.⁵²⁶

The opponents of marriage equality were not dissuaded, however. In 2006, the state legislature proposed—and the voters approved—a constitutional amendment, called the Marriage Protection Amendment, which prohibited recognition of same-sex marriage as well as recognition of *any* legal status identical or substantially similar to marriage.⁵²⁷ Julaine Appling, President of Wisconsin Family Action and one of the leading proponents of the 2006 constitutional amendment, has stated that same-sex marriage “produces a weak state.”⁵²⁸ She further argued that same-sex marriage ignores the importance of gender roles: “What [the argument for same-sex marriage] tries to say is the uniqueness of maleness and femaleness is immaterial, irrelevant in the upbringing of a child, and that is fundamentally a denial of reality.”⁵²⁹ Appearing on a talk show in 2014, Appling also stated that a “redefinition” of marriage would erode America’s moral compass and lead to the sanctioning and acceptance of other “sexual sins,” as well as supporting groups that promote pedophilia.⁵³⁰

In 2009, Attorney General J.B. Van Hollen refused to defend the state in a constitutional challenge to a new state law recognizing same-sex domestic partnerships. Van Hollen argued that the legal relationship recognized by the law was too similar to marriage, and thus a violation of the 2006 constitutional amendment.⁵³¹



657

WYOMING

25%



Same-sex marriage is legal as a result of a court decision.

Current Law

In October 2014, the U.S. District Court for the District of Wyoming, relying on binding precedent from the U.S. Court of Appeals for the Tenth Circuit, held that Wyoming's prohibition on same-sex marriage was unconstitutional.⁵³² The state declined to appeal the district court's decision.

Background

In 1977, the Wyoming legislature passed a law that prohibited same-sex marriages, becoming one of the first states to enact an express statutory ban on same-sex marriage.⁵³³

In 1998, Laramie, Wyoming was the site of the notorious hate crime involving Matthew Shepard, an openly-gay University of Wyoming student who was brutally beaten, tortured, tied to a fence, and left to die.⁵³⁴

In 2009, the Wyoming legislature considered a proposed constitutional amendment to define marriage as between a man and a woman.⁵³⁵ During the floor debate, one Representative who argued in support of the amendment compared same-sex marriage to bigamy, and proclaimed, "I just don't know what the next step is."⁵³⁶ Although the proposal did not pass the legislature, opponents of marriage equality tried again in 2011. This time the State Senate approved, by a two-thirds majority, the proposed constitutional amendment banning recognition of same-sex marriage, but the proposal died in the House when it missed a procedural deadline.⁵³⁷

After the federal court ruled that the state's prohibition on same-sex marriage was unconstitutional in 2014, State Representative Gerald Gay, who had supported the unsuccessful 2011 Defense of Marriage constitutional amendment, stated that same-sex marriage would violate "the morality clause of our constitution" and argued that legalizing same-sex marriage would require "look[ing] at something that has for 4,000 years been considered immoral."⁵³⁸

In addition, state lawmakers have, at times, voted down attempts to include gay and transgender people in Wyoming's antidiscrimination laws.⁵³⁹ One lawmaker has even called the personal life of an openly-gay colleague "offensive."⁵⁴⁰

¹ The Williams Institute “is dedicated to conducting rigorous, independent research on sexual orientation and gender identity law and public policy.” See <http://williamsinstitute.law.ucla.edu/mission/>.

The data incorporated in this supplement from each state are available at: Alabama, Census Snapshot:2010,http://williamsinstitute.law.ucla.edu/wp-content/uploads/Census2010Snapshot_Alabama_v2.pdf; Alaska, Census Snapshot: 2010, http://williamsinstitute.law.ucla.edu/wp-content/uploads/Census2010Snapshot_Alaska_v2.pdf; Arizona, Census Snapshot: 2010, http://williamsinstitute.law.ucla.edu/wp-content/uploads/Census2010Snapshot_Arizona_v2.pdf; Arkansas, Census Snapshot: 2010, http://williamsinstitute.law.ucla.edu/wp-content/uploads/Census2010Snapshot_Arkansas_v2.pdf; Colorado, Census Snapshot: 2010, http://williamsinstitute.law.ucla.edu/wp-content/uploads/Census2010Snapshot_Colorado_v2.pdf; Connecticut, Census Snapshot: 2010, http://williamsinstitute.law.ucla.edu/wp-content/uploads/Census2010Snapshot_Connecticut_v2.pdf; Delaware, Census Snapshot: 2010, http://williamsinstitute.law.ucla.edu/wp-content/uploads/Census2010Snapshot_Delaware_v2.pdf; District of Columbia, Census Snapshot: 2010, http://williamsinstitute.law.ucla.edu/wp-content/uploads/Census2010Snapshot_DC_v2.pdf; Florida, Census Snapshot: 2010, http://williamsinstitute.law.ucla.edu/wp-content/uploads/Census2010Snapshot_Florida_v2.pdf; Georgia, Census Snapshot: 2010, http://williamsinstitute.law.ucla.edu/wp-content/uploads/Census2010Snapshot_Georgia_v2.pdf; Hawaii, Census Snapshot: 2010, http://williamsinstitute.law.ucla.edu/wp-content/uploads/Census2010Snapshot_Hawaii_v2.pdf; Idaho, Census Snapshot: 2010, http://williamsinstitute.law.ucla.edu/wp-content/uploads/Census2010Snapshot_Idaho_v2.pdf; Indiana, Census Snapshot: 2010, http://williamsinstitute.law.ucla.edu/wp-content/uploads/Census2010Snapshot_Indiana_v2.pdf; Iowa, Census Snapshot: 2010, http://williamsinstitute.law.ucla.edu/wp-content/uploads/Census2010Snapshot_Iowa_v2.pdf; Kansas, Census Snapshot: 2010, http://williamsinstitute.law.ucla.edu/wp-content/uploads/Census2010Snapshot_Kansas_v2.pdf; Louisiana, Census Snapshot: 2010, http://williamsinstitute.law.ucla.edu/wp-content/uploads/Census2010Snapshot_Louisiana_v2.pdf; Maine, Census Snapshot: 2010, http://williamsinstitute.law.ucla.edu/wp-content/uploads/Census2010Snapshot_Maine_v21.pdf; Maryland, Census Snapshot: 2010, http://williamsinstitute.law.ucla.edu/wp-content/uploads/Census2010Snapshot_Maryland_v2.pdf; Massachusetts, Census Snapshot: 2010, http://williamsinstitute.law.ucla.edu/wp-content/uploads/Census2010Snapshot_Massachusetts_v2.pdf; Michigan, Census Snapshot: 2010, http://williamsinstitute.law.ucla.edu/wp-content/uploads/Census2010Snapshot_Michigan_v2.pdf; Minnesota, Census Snapshot: 2010, http://williamsinstitute.law.ucla.edu/wp-content/uploads/Census2010Snapshot_Minnesota_v2.pdf; Mississippi, Census Snapshot: 2010, http://williamsinstitute.law.ucla.edu/wp-content/uploads/Census2010Snapshot_Mississippi_v2.pdf; Missouri, Census Snapshot: 2010, http://williamsinstitute.law.ucla.edu/wp-content/uploads/Census2010Snapshot_Missouri_v2.pdf; Montana, Census Snapshot: 2010, http://williamsinstitute.law.ucla.edu/wp-content/uploads/Census2010Snapshot_Montana_v2.pdf; Nebraska, Census Snapshot: 2010, http://williamsinstitute.law.ucla.edu/wp-content/uploads/Census2010Snapshot_Nebraska_v2.pdf; Nevada, Census Snapshot: 2010, http://williamsinstitute.law.ucla.edu/wp-content/uploads/Census2010Snapshot_Nevada_v2.pdf; New Hampshire, Census Snapshot: 2010, http://williamsinstitute.law.ucla.edu/wp-content/uploads/Census2010Snapshot_New-Hampshire_v2.pdf; New Jersey, Census Snapshot: 2010, http://williamsinstitute.law.ucla.edu/wp-content/uploads/Census2010Snapshot_New-Jersey_v2.pdf; New Mexico, Census Snapshot: 2010, http://williamsinstitute.law.ucla.edu/wp-content/uploads/Census2010Snapshot_New-Mexico_v2.pdf; New York, Census Snapshot: 2010, http://williamsinstitute.law.ucla.edu/wp-content/uploads/Census2010Snapshot_New-York_v2.pdf; North Carolina, Census Snapshot: 2010, http://williamsinstitute.law.ucla.edu/wp-content/uploads/Census2010Snapshot_North-Carolina_v2.pdf; Ohio, Census Snapshot: 2010, http://williamsinstitute.law.ucla.edu/wp-content/uploads/Census2010Snapshot_Ohio_v2.pdf; Oklahoma, Census Snapshot: 2010, http://williamsinstitute.law.ucla.edu/wp-content/uploads/Census2010Snapshot_Oklahoma_v2.pdf; Oregon, Census Snapshot: 2010, http://williamsinstitute.law.ucla.edu/wp-content/uploads/Census2010Snapshot_Oregon_v2.pdf; Pennsylvania, Census Snapshot: 2010, http://williamsinstitute.law.ucla.edu/wp-content/uploads/Census2010Snapshot_Pennsylvania_v2.pdf; Rhode Island, Census Snapshot: 2010, http://williamsinstitute.law.ucla.edu/wp-content/uploads/Census2010Snapshot_Rhode-Island_v2.pdf; South Carolina,

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