

ERICSA 2015: Building Sweet Futures for .

**EXPLORING
SAME SEX
MARRIAGE AND
CHILD SUPPORT**

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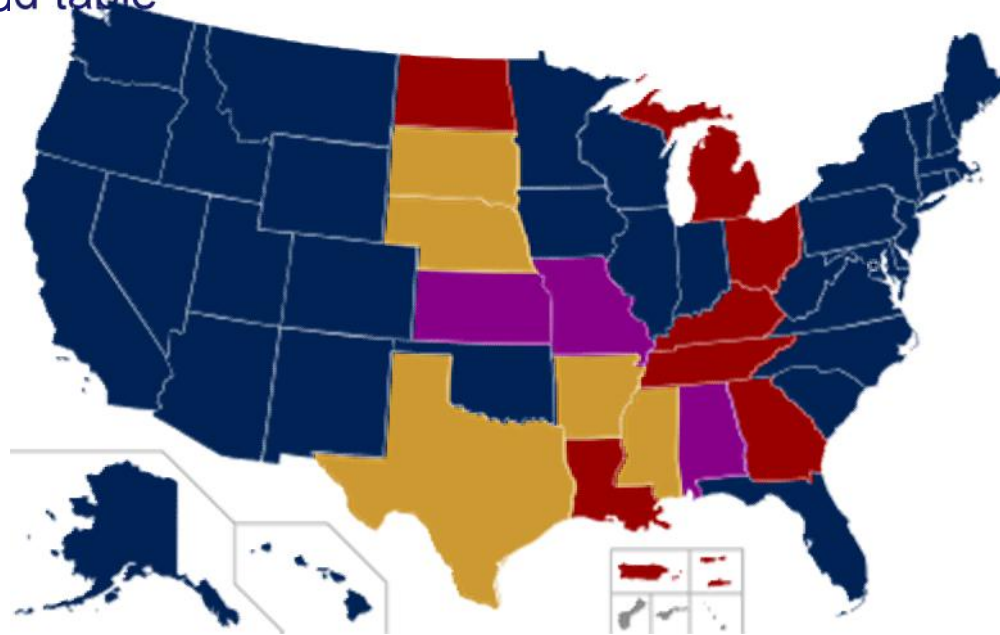
Today we will cover:

- ❖ Status of Same Sex Marriage in the US
- ❖ State versus Federal Law
- ❖ US Supreme Court – Obergefell v. Hodges
- ❖ Intersection IV-D Cases

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State Status Map

Click icon to add table



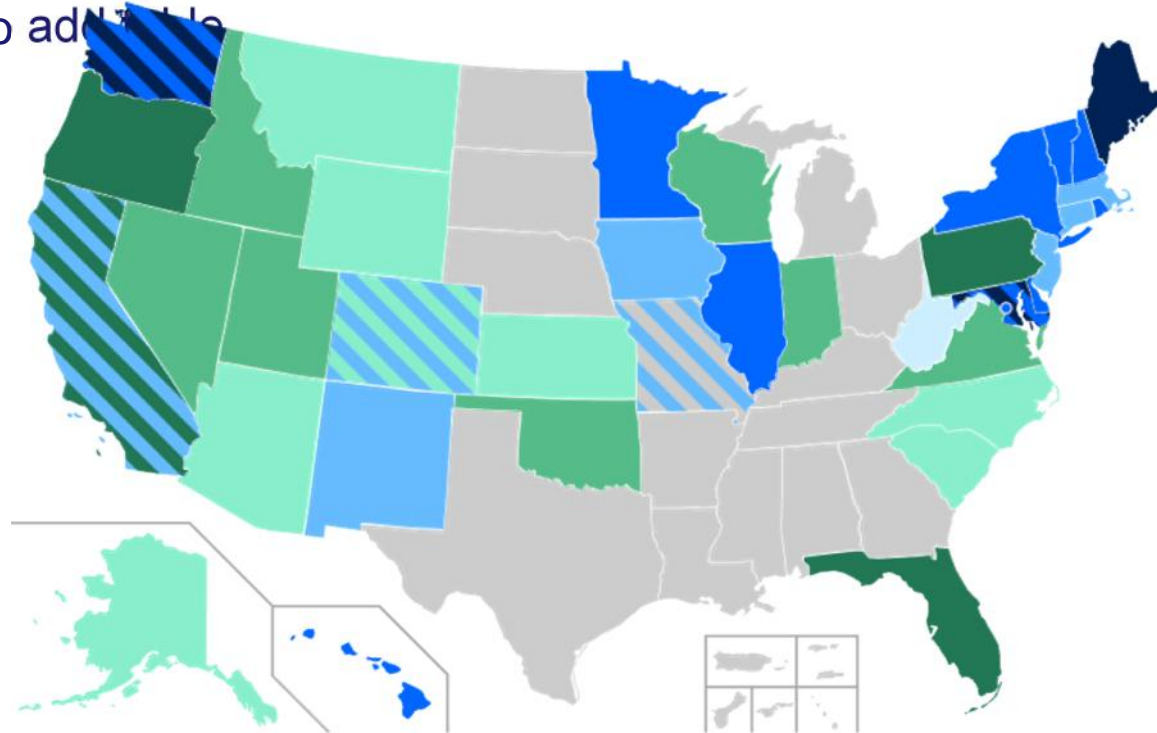
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Blue – Same Sex Marriage Legal
Purple – Current status is complicated
Gray – Neither a prohibition or recognition exists
Yellow – Judicial ruling against same sex marriage
Red – Same Sex Marriage Banned

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Manner Marriage Became Legal

Click icon to add title

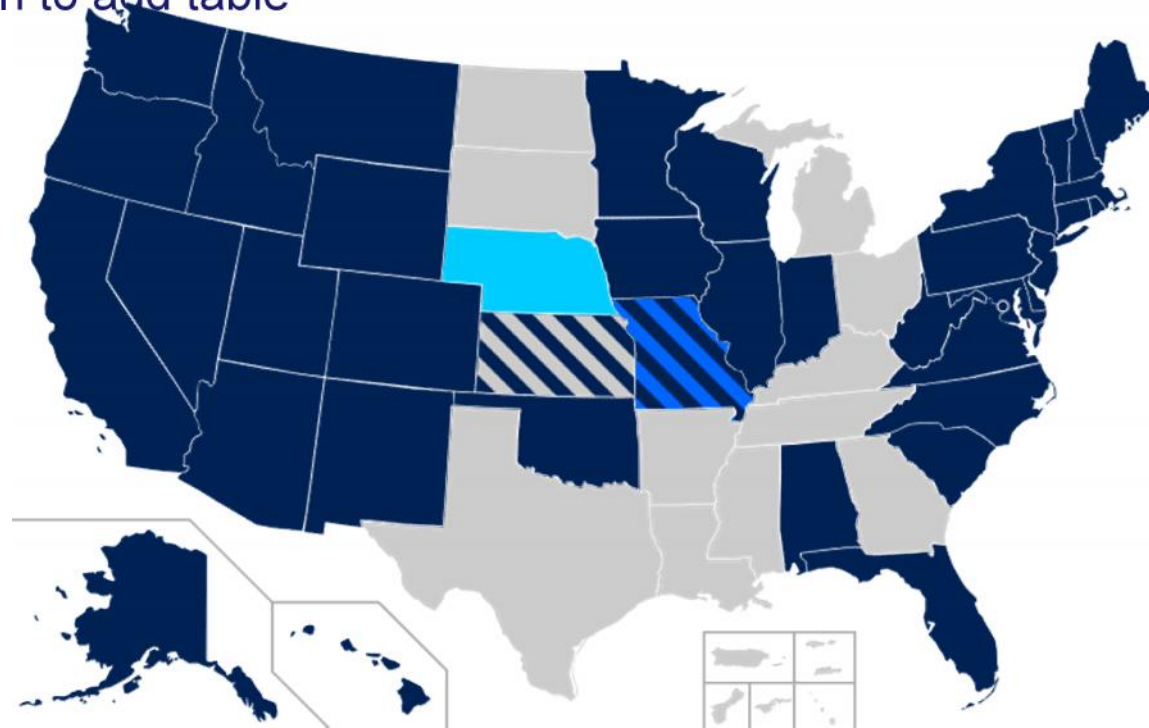


- Dark Blue - Legalized by state via popular referendum
- Blue - Legalized by state via legislative statute
- Light Blue - Legalized by state court decision¹
- Pale Green - Legalized by state action in response to circuit precedent²
- Dark Green - Ordered by federal court without circuit precedent¹
- Green - Ordered by federal court establishing circuit precedent
- Light Green - Ordered by federal court after circuit precedent
- Gray - Same-sex marriage not legal

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Recognition Status

Click icon to add table



Dark Blue – Same Sex Marriage legal

Light Blue – Foreign Same Sex Marriages Recognized

Gray – Same Sex Marriages or Unions Not Recognized at State Level

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Crossing State Lines

- ❖ Marriage and Divorce issues in interstate cases
 - Will states (in particular, non-recognition states) allow parties allow same sex couples to divorce if married in a foreign jurisdiction?
 - How does recognition or non-recognition impact taxes, retirement assets (also, qualified domestic relation orders), social security, and other assets?
 - How does marriage recognition impact parentage presumptions (explored later)?

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State vs. Federal Law

Defense Of Marriage Act (DOMA)

Often viewed as just the 1996 Federal Law against same sex marriage. Actually part of a larger scheme allowing a series of states laws across country to define marriage (25 states acted between 1996-1997):

- (1) exclude same sex marriages from being allowed to happen.
- (2) prevent non-states from having to accept other states that allowed

Constitutional Basis

- (1) Conflicts among the states
- (2) Interstate Commerce

Constitutional Challenge

- (1) Due Process 14th Amendment – States cannot deny people Due Process
- (2) Equal Protection – States cannot deny citizens equal protection under the law

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Whitewood v. Wolf

- ❖ Whitewood v. Wolf, 992 F.Supp. 2d 410 (2014)
- ❖ Pennsylvania Supreme Court's marriage equality decision
- ❖ The ruling allows same sex couples the ability to marry. It is an excellent case for the various arguments regarding the issue.
- ❖ In practice, however, same sex couple's ability to marry varies county by county.

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US v. Windsor

DOMA's unusual deviation from the usual tradition of recognizing and accepting state definitions of marriage here operates to deprive same-sex couples of the benefits and responsibilities that come with the federal recognition of their marriages. This is strong evidence of a law having the purpose and effect of disapproval of that class.... The history of DOMA's enactment and its own text demonstrates that interface with the equal dignity of same-sex marriages, a dignity conferred by the States in the exercise of their sovereign power, was more than an incidental effect of the federal statute. It was its essence...its purpose is to discourage enactment of state same-sex marriage laws and to restrict the freedom and choice of couples married under those laws if they are enacted. The congressional goal was "to put a thumb on the scales and influence a state's decision as to how to shape its own marriage laws."...DOMA's principal effect is to identify a subset of state-sanctioned marriages and make them unequal.

United States v. Windsor, 133 S. Ct. at 2692

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US SUPREME COURT 2015

- ❖ Obergefell v. Hodges
- ❖ Timeline –
 - Process began with Baker v. Nelson on October 10, 1972.
 - Fast forward to 2013 (timelines for the years prior are available).
 - March 26-27, 2013, US Supreme Court hears arguments on Hollingsworth v. Perry (CA Prop 8 Challenge) and Windsor v. US (DOMA Challenge)
 - June 26, 2013, USSC issues decision in both cases: Prop 8's lower court ruling reinstating right to marry is upheld and portions of DOMA are struck down.
 - Numerous circuit courts rule same sex marriage bans unconstitutional.

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Timeline, continued

- October 6, 2014, USSC denies review of lower court rulings upholding the decisions permitting marriage in Colorado, Kansas, N. Carolina, S. Carolina W. Virginia and Wyoming.
- November 6, 2014, 6th Circuit reverses 6 lower court rulings in favor of same sex marriage and upholds the bans in Kentucky, Michigan, Ohio and Tennessee.
- Obergefell v. Hodges is scheduled for oral argument on Tuesday, April 28, 2015.

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Same Sex Marriage and IV-D

- **Presumptions of Parentage (Voluntary Acknowledgements, BOM, de Facto parent)**
 - **Same Sex BOM presumptions exist, but are they recognized in other states?**
 - **Some states have mechanisms for same sex couples to execute VAPs, but like BOM presumptions, will they be acknowledged by another state?**
 - **Is biology required for a VAP? Would surrogacy, donation, or a contractual relationship regarding the same be required to terminate the rights of any biological parent? Will such legal arrangements be honored in all states?**
 - **Presumptions are only presumptions. What happens in a BOM or VAP case where the presumption is challenged? It is a given that the child's biology from one (or both parents) will not withstand a traditional challenge. How does this impact IV-D in recognition versus non-recognition states?**



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Same Sex Marriage and IV-D

- ❖ Establishment of Parentage
- ❖ Consider the following?
 - Can both parents be deemed parents in a form recognized as legal in your state?
 - Will another state recognize that establishment without a court order of parentage, second child adoption, etc?
 - Will the state acknowledge BOM status?
 - What are the mechanisms available for same sex couples to establish parentage in non-recognition states?

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Other Methods of Parentage

- ❖ Adoption
- ❖ Second Parent Adoption
- ❖ Surrogacy
- ❖ de Facto Parentage

- ❖ Consider the status of these parentage methods in your state and the challenges that arise for same sex couples.



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Child Support Orders

❖ Portability

- Under UIFSA, must states honor child support orders between same sex couples?
 - Yes – Non-recognition states cannot invalidate another state’s child support order.
 - Bigger issues arise if you are trying to establish orders between parties in a family that was created in a recognition state, but the family relationship changes with one or both parties in a non-recognition state.
- How will this impact international cases in light of UIFSA 2008?

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