

The State of Relationship Recognition in 2014

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Takeaways

Our fourth annual State of Relationship Recognition report documents the landslide of positive changes that have taken place over the last year for gay and lesbian couples, including:

- Marriage becoming legal in seven more states;
- A transformation in how the federal government treats gay couples, now that the Defense of Marriage Act has been struck down; and
- The failure of opponents' religious liberty arguments to halt this momentum.

In November 2008, California passed Proposition 8 by 600,000 votes—an amendment to enshrine in the state constitution a ban on marriage for same-sex couples. Its unexpected passage capped a 30-state winning streak for marriage opponents and was a low point in the movement to allow gay and lesbian couples to marry. Less than six years later, in this—our 4th annual *State of Relationship Recognition* report—we find that for the first time in history more than half the country now lives in a state or locality that allows gay and lesbian couples to marry or form a legally-recognized union.

Eighteen years after the *Defense of Marriage Act* (DOMA) was enacted and six years after Proposition 8 passed, it is nearly impossible to underestimate the transformation in America. The last year alone has brought remarkable change on this front: 44% of Americans now live in states where gay couples

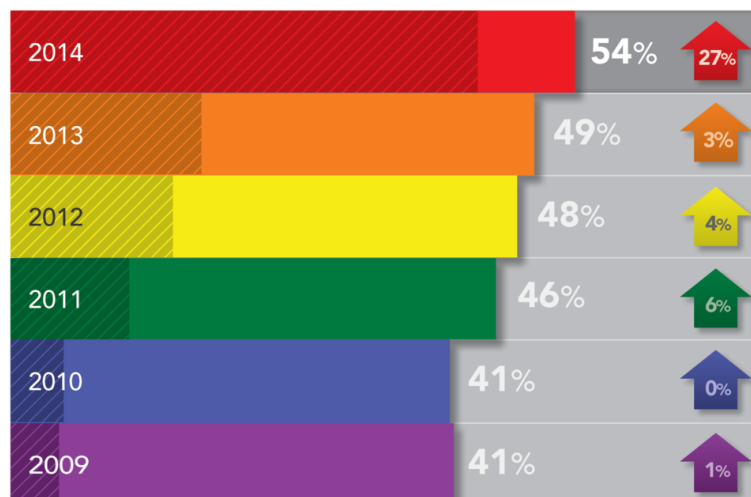
can marry; 54% live in a jurisdiction that legally recognizes gay couples' relationships. If the speed of change in the last year is any indication, the day when all committed couples can make the lifetime promise of marriage and have that relationship respected at both the state and federal level may not be far off.

Relationship Recognition is on The Rise

The numbers say it all...

When Third Way published its first *State of Relationship Recognition* report in 2011, only 11% of the country's population lived in one of the six states (or the District of Columbia) that allowed gay and lesbian couples to marry.¹ Today, the percentage of Americans living in states that recognize the commitment of gay couples by allowing them to marry has increased four-fold—to 44% of Americans across 19 states. Seven of those states have legalized marriage since the beginning of last summer (California, Hawaii, Illinois, New Jersey, New Mexico, Oregon, and Pennsylvania), increasing the number of Americans living in marriage states by more than 78 million in just over a year.²

Percentage of Americans Living in Jurisdictions with Relationship Recognition³



Darker shades represent marriage, lighter shades represent civil unions or domestic partnerships. Arrows represent increase in marriage from the previous year.

Further, more than 13 million additional Americans live in a state that recognizes civil unions (Colorado) or domestic partnerships (Nevada and to a lesser extent, Wisconsin). ⁴ And nearly 18 million Americans who live in states without formal relationship recognition are residents of a city or county that has its own domestic partnership registry—including several which were enacted over the last year in states like Florida, Georgia, Kansas, and Montana. ⁵ Altogether, 54% of Americans now live in a place with some sort of established legal recognition for gay couples—making 2014 the very first year an American is more likely to live in a place with relationship recognition than in a place without it.

Breakdown of U.S. Population Living in Jurisdictions with Relationship Recognition Laws ⁶

Living in a state that allows gay couples to marry	43.73%
Living in a state with a civil union/domestic partnership law that purports to give all the state protections of marriage	2.50%
Living in a state with lower level domestic partnership benefits	1.84%
No statewide protections but living in a city or county that has domestic partnerships	5.79%
Total living in a state or locality with a relationship recognition law	53.86%

...but there's more.

The fact of the matter is that marriage has spread over the past year even faster than these numbers show. Since the Supreme Court struck down the *Defense of Marriage Act* (DOMA) just over one year ago, 26 consecutive judicial rulings have struck down laws prohibiting gay couples to marry across the country—without a single court ruling the other way. ⁷ In some states—like Oregon and New Jersey—the governor or attorney general chose not to appeal the Court's decision, and gay couples have been able to marry in those states ever since. In others, the ruling was appealed but not immediately stayed—allowing more than 3,300 gay couples in Arkansas, Michigan, Wisconsin, Indiana, and Utah to marry

during a small window of time that has since closed.⁸ Other rulings—striking down the marriage bans in Colorado, Florida’s Monroe County, Kentucky, Oklahoma, Tennessee, Texas, and Virginia—were immediately stayed pending appeal and are still moving through the court system.⁹

Currently, there are 59 pending marriage cases in the federal courts, with at least one in every circuit except the 2nd and DC circuits (because gay couples can already marry everywhere in their jurisdictions). There are also 33 separate pending marriage cases in the state courts—including cases to either legalize marriage for gay couples or recognize marriages performed legally in another state in every single state where it is not yet legal for gay and lesbian couples to marry.¹⁰ And because the state of Utah has announced it will appeal the ruling striking down its marriage ban to the Supreme Court, we may now have a case that will grant marriage nationwide within the next year.¹¹

We’ve Come a Long Way Since DOMA

United States v. Windsor was a milestone...

When Edie Windsor sued the federal government for refusing to recognize her marriage to her late wife Thea, which was legal in her state, she hoped to get back the more than \$350,000 in estate taxes she would not have had to pay if her wife had been a man. What she might not have expected was that her name would go down in history as the plaintiff who brought down DOMA. But in June 2013, five Justices of the Supreme Court ruled that Section 3 of DOMA violated the Constitution by saying that the federal government would ignore the lawful marriages of gay couples in states that allow such unions.¹² Edie got her money back—but she also ensured that all gay couples living in states that recognize their marriages have access to the protections that relationship provides.

...and the Administration has run with it.

While the Court's ruling in *Windsor* was a landmark moment, it did not change the fact that every spousal protection offered by the federal government uses its own test to determine the validity of a marriage, and some (including Social Security) are defined in statutes that base eligibility on whether a person's marriage is valid in the state where they reside. This meant that despite the Court's ruling last summer, married gay couples living in states where their marriages were not recognized could still be denied certain federal protections. However, in the year since the Court's decision, the Obama Administration has done everything in its authority to ensure that gay couples have access to as many federal marriage protections as they could, including:

- Allowing married gay couples to file joint federal income taxes regardless of the laws of their state; ¹³
- Expanding federal employee spousal benefits, including health insurance, life insurance, and flexible spending accounts, to married gay couples in every state; ¹⁴
- Issuing a new Department of Labor rule that ensures married gay employees can take time off to care for their spouses under the *Family & Medical Leave Act*, regardless of whether their state recognizes their marriage; ¹⁵
- Ensuring that gay couples who apply for Social Security benefits while living in a state with relationship recognition but who later move won't have their benefits withheld; ¹⁶
- Allowing gay couples in civil unions or state-recognized domestic partnerships to obtain Social Security benefits in states where those relationships are legal but marriage is not; ¹⁷

- Making sure that certain veterans benefits—including the transfer of GI bill education benefits to dependents, access to life and family group life insurance programs, and eligibility for dependent and survivor education assistance—apply to all married gay couples, even those who live in non-marriage states; ¹⁸
- Issuing a new Department of Veterans Affairs rule that allows gay couples in domestic partnerships or civil unions to have a joint burial; ¹⁹
- Mandating that married gay couples cannot be forced to testify against one another in court and that married gay inmates in every federal prison receive the same rights as all other married inmates, including visitation, compassionate release for spousal incapacitation, and the opportunity to attend a spouse's funeral; ²⁰
- Allowing married gay couples to file for domestic support obligations, like alimony, and to file jointly for bankruptcy; ²¹
- Granting lesbian widows and gay widowers in every state eligibility for compensation programs for surviving spouses of public safety officers; ²² and,
- Extending all Department of Defense benefits to married gay couples in any state. ²³

Executive action cannot ensure that married gay couples have full access to all the protections of marriage at the federal level—but support continues to increase in Congress for the *Respect for Marriage Act*, using the simple rule that for all federal benefits, a marriage will be respected if it was legal in the state in which it was celebrated.

Efforts to Use Religious Liberty to Stop the Momentum Haven't Worked

Supporting marriage for gay couples has solidified as the moderate position—endorsed by the Democratic Party at large and increasing numbers of Republicans, including four sitting Republican Senators, one of whom is considered a serious contender for his party’s 2016 presidential nomination.²⁴ Even for those policymakers who remain opposed to marriage for gay couples, strident opposition has become difficult to defend. For that reason, many marriage opponents have tried to open a new front in this debate: religious liberty. Americans deeply value religious liberty, but they do not believe it is in conflict with marriage for gay couples, and thus attacks on those grounds have failed to take hold.

Public opinion shows Americans deeply value religious liberty and believe that it is already sufficiently protected.

Last summer Third Way combined forces with the Human Rights Campaign and Anzalone Liszt Grove to undertake a multi-round public opinion research project examining how Americans feel about religious exemptions from laws that protect gay and lesbian people. The results of that research unequivocally demonstrated that Americans believe our Constitution and current laws already sufficiently protect religious liberty, and they oppose passing new laws that would allow government employees or private businesses to deny services to gay couples on the basis of religion—including services specifically related to the celebration of a gay couple’s marriage. If this is the path marriage opponents plan to walk, the data show they may not get far:

- By a margin of 48 points, 71% of Americans don’t think a county clerk should be able to refuse to issue a marriage license to a gay couple based on her religious beliefs in a state where that marriage would be legal. And 69% say an immigration officer should not be able to refuse to review the visa application for a gay spouse of an American citizen.²⁵

- 69% of Americans don't think a business owner should be allowed to refuse to serve a gay customer because of his sexual orientation, regardless of the business owner's religious beliefs. ²⁶
- 64% of Americans oppose new laws that would allow small businesses to deny wedding-related services to gay couples based on an owner or employee's religious beliefs—and *every single demographic group* had a higher percentage in opposition than in support. ²⁷
- Only 10% of Americans believe that a business performing a wedding-related service like baking a cake or arranging flowers for a gay couple's wedding ceremony serves as an endorsement of that marriage—compared to the 57% who say that business is just fulfilling a contract and nothing more. ²⁸
- 67% of Americans agree with the statement that “our laws already strike the right balance when it comes to religious liberty and small business, and we should not change that.” ²⁹

Marriage opponents couldn't make religious exemptions stick in Arizona.

Arizona serves as a case study for how overly-broad religious liberty exemptions lack public support. In February, the Arizona legislature passed a bill that would have allowed businesses and individuals to refuse to provide services to anyone based on sincere religious beliefs—a not particularly veiled attempt to allow businesses to turn away gay customers. ³⁰ Though the bill passed both chambers of the state legislature, the public backlash was swift and powerful. Three Republican state senators who helped pass the bill announced they regretted their votes and urged the governor to veto it. ³¹ Major businesses, including Apple, AT&T, and American Airlines, spoke out against the bill. ³² Discussions began to swirl as to whether the NFL would move the 2015 Super Bowl out of the state if the bill was signed into

law.³³ The state's two Republican Senators—John McCain and Jeff Flake—and former Republican presidential candidates Newt Gingrich and Mitt Romney all called on the state's governor to veto the legislation.³⁴

And so only six days after the Arizona State House passed SB 1062, Republican Governor Jan Brewer vetoed it.³⁵ Not only did she stop the bill from becoming law, she also scolded the state legislature for making such a bill the first piece of legislation to reach her desk in 2014—saying her priorities were on things like passing a budget and growing the state's economy.³⁶

Marriage opponents would be remiss to rely on the *Hobby Lobby* decision.

Though the Supreme Court ruled in the *Hobby Lobby* case that the *Religious Freedom Restoration Act* permits employers to refuse to include contraceptive coverage in employee health insurance plans, that decision should not be read to give carte blanche to discrimination on religious grounds. To the contrary, Justice Alito, the author of the majority opinion, actually went out of his way to make *Hobby Lobby* a narrow decision, explicitly specifying that the decision “provides no such shield” to “the possibility that discrimination in hiring, for example on the basis of race, might be cloaked as religious practice to escape legal sanction.”³⁷ While Alito does not directly address LGBT discrimination, he is clear that “our decision in these cases is concerned solely with the contraceptive mandate”—and marriage opponents have a tough road to hoe if they try to expand the legal reasoning in this case to apply to discrimination against gay individuals or couples.³⁸ That's because civil rights laws are different—unlike in *Hobby Lobby*, where the Court struck down the coverage requirement by saying an existing non-profit accommodation showed there were less restrictive alternatives to ensure access to contraception care, there is no less restrictive way to protect against discrimination.

Conclusion

Relationship recognition for gay couples has come a long a way since DOMA was enacted in 1996—and much of that progress has been in the last year since that law was struck down as unconstitutional. The percentage of Americans living in states that allow gay couples to marry has grown to 44%—a number that more than doubled between summer 2013 and summer 2014. This year marks the very first time the majority of Americans—54%—live in a place with relationship recognition, and that proportion will only continue to rise as court cases across the country are resolved in our favor. All of this is thanks in part to the precedent established in *United States v. Windsor*, striking down DOMA and giving the Obama Administration the room it needed to extend as many federal marriage protections as it could to gay couples nationwide. At the end of the day, Americans are coming to realize that if two people love one another and are willing to undertake the responsibility and commitment of marriage, it's not for us to judge or deny them that opportunity.

Appendix A: State Relationship Recognition Laws

STATE	TYPE	LAW
California	Marriage	<i>Hollingsworth v. Perry</i> (formerly <i>Perry v. Brown</i> and <i>Perry v. Schwarzenegger</i>)
Colorado	Civil Union	Colo. Rev. Stat. § 14-15-101 et seq
Connecticut	Marriage	<i>Kerrigan and Mock v. Connecticut Department of Public Health</i> ; Public Act No. 09-13
Delaware	Marriage	Del. Code Ann. tit. 13 §101
District of Columbia	Marriage	The Religious Freedom & Civil Marriage Equality Amendment Act of 2009; DC Code Sec. 46-401et seq.
Hawaii	Marriage	Hawaii Marriage Equality Act; Hawaii Revised Statutes Chapter 572
Illinois	Marriage	Religious Freedom and Marriage Fairness Act; Public Act 098-0597 amending 750 ICLS 5/
Iowa	Marriage	<i>Varnum v. Brien</i>

Maine	Marriage	Me. Rev. Stat. Ann. tit. 19–A, sec. 650–A
Maryland	Marriage	MD. FAMILY T. 2, Subt. 2–201 et seq
Massachusetts	Marriage	<i>Goodridge v. Department of Public Health</i>
Minnesota	Marriage	Act of the 2013 Session H.F. No. 1054
Nevada	Domestic Partnership Registry	NRS Title 11 Chapter 122A.010 et seq
New Hampshire	Marriage	N.H. Rev. Stat. Ann. Title XLIII Chapter 457 Section 1–a
New Jersey	Marriage	<i>Garden State Equality et. al. v. Dow, et. al.</i>
New Mexico	Marriage	<i>Rose Griego, et al. v. Maggie Toulouse Oliver, et al.</i>
New York	Marriage	Domestic Relations Law Article 3 § 10–a.
Oregon	Marriage	<i>Geiger v. Kitzhaber</i> (Consolidated with <i>Rummel and West v. Kitzhaber</i>)
Pennsylvania	Marriage	<i>Whitewood v. Wolf</i>
Rhode Island	Marriage	General Laws Title 15, Ch. 1–1
Vermont	Marriage	15 V.S.A. § 8
Washington	Marriage	RCW 26.04.010 § 3
Wisconsin	Domestic Partnership Registry	Wis. Stats. 770.001 et seq

Appendix B: Localities with Domestic Partnership Registries in States Without Recognition Laws

LOCALITY	STATE	LAW
Bisbee	Arizona	Bisbee City Code Article 17
Flagstaff	Arizona	Flagstaff City Code 14–01–001–0001 et seq
Phoenix	Arizona	Phoenix City Code Chapter 18 Article X
Tucson	Arizona	Ordinance 9898/ Tucson Code 17–70

Eureka Springs	Arkansas	Eureka Springs Code Title 7 Chapter 60
Broward County	Florida	Broward County Code Part II Chapter 16 ½ Article VIII
Clearwater	Florida	City Code Part II Subpart A Chapter 13
Gainesville	Florida	City Code Part II Chapter 2 Article VIII
Key West	Florida	Key West Code of Ordinances §§38-291 through 296
Leon County	Florida	Leon County Code of Laws Chapter 9 Article V
Miami-Dade County	Florida	Miami-Dade County Code Part III Chapter 11A Article IX
City of North Port	Florida	Ordinance No. 2013-34; Part II, Chapter 15 of the North Port City Code
Orange County	Florida	Orange County Code Part II Chapter 22 Article V
Palm Beach County	Florida	County Code Chapter 2 Article I Section 2-6
City of Pensacola	Florida	Ordinance No. 41-13; Chapter 5-3 of the Code of the City of Pensacola
Pinellas County	Florida	Pinellas County Code Part II Chapter 70 Article III
City of Punta Gorda	Florida	Ordinance 1783-14; Article I, Chapter 19 of the Punta Gorda City Code
City of Sarasota	Florida	Code of the City of Sarasota Part II Chapter 18 Article VIII
Tampa	Florida	City Code Chapter 12 Article V
City of Tavares	Florida	City of Tavares Code Part II Chapter 2 Article VI
Venice	Florida	City of Venice Code Subpart A Chapter 40 Article I
Volusia County	Florida	County Code Part II Chapter 41 Article I
Athens-Clark County	Georgia	ACC Code §1-23-1
Atlanta	Georgia	Atlanta Code of Ordinances, Ch. 94, Article VII
Avondale Estates	Georgia	Domestic Partnership Registry Resolution
Decatur City	Georgia	Resolution R-13-19
Fulton County	Georgia	Code of the Laws of Fulton County, Article V, Ch. 154

City of Lawrence	Kansas	Ch. 10, Article 2 of the Code of the City of Lawrence, Kansas, 2006 Edition
Topeka	Kansas	City of Topeka Ordinance No. 19905; Code of the City of Topeka Section 2.150
New Orleans	Louisiana	City Code Ch. 87
Ann Arbor	Michigan	Ann Arbor City Code Ch. 110 §§9.85-9.95
City of East Lansing	Michigan	East Lansing Ordinance No. 1305; Article III, Chapter 22 of the Code of the City of East Lansing
Clayton	Missouri	Bill No. 6299, Clayton Municipal Code Ch. 225 Art. IV
Columbia	Missouri	Columbia Code of Ordinances 12-72-12-77
Jackson County	Missouri	Civil Union Registry
Kansas City	Missouri	Kansas City Council Resolution No. 030953
Olivette	Missouri	Bill No. 2676, City of Olivette Municipal Code Title 2 Ch. 245
St. Louis	Missouri	Saint Louis City Revised Code Ch. 8.37
University City	Missouri	Municipal Code Chapter 3
Missoula	Montana	Resolution Number 7801
Asheville	North Carolina	Resolution No. 11-43
Carrboro	North Carolina	Town Code §3-2.1
Chapel Hill	North Carolina	Resolution 95-4-24/R-11c and Ordinance 95-4-24/O-8a
Athens	Ohio	City of Athens, Ohio Code of Ordinances, Title 3 Ch. 3.11
Cleveland	Ohio	Title I, Ch. 109
Cleveland Heights	Ohio	Cleveland Heights Codified Ordinances Ch. 181
Cincinnati	Ohio	Ordinance No. 131; Chapter 767, Cincinnati Municipal Code
Columbus	Ohio	Columbus City Code Title II Chapter 229
Dayton	Ohio	City Code Title III Chapter 30 Division 4
Oberlin	Ohio	Ordinance No. 12-67 AC CMS

Toledo	Ohio	City Code Part One Title One Chapter 114
Yellow Springs	Ohio	Ch. 632 of the Village codified ordinances
Travis County	Texas	Austin City Council Domestic Partner Resolution
Salt Lake City	Utah	City Code Title 10 Chapter 3

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