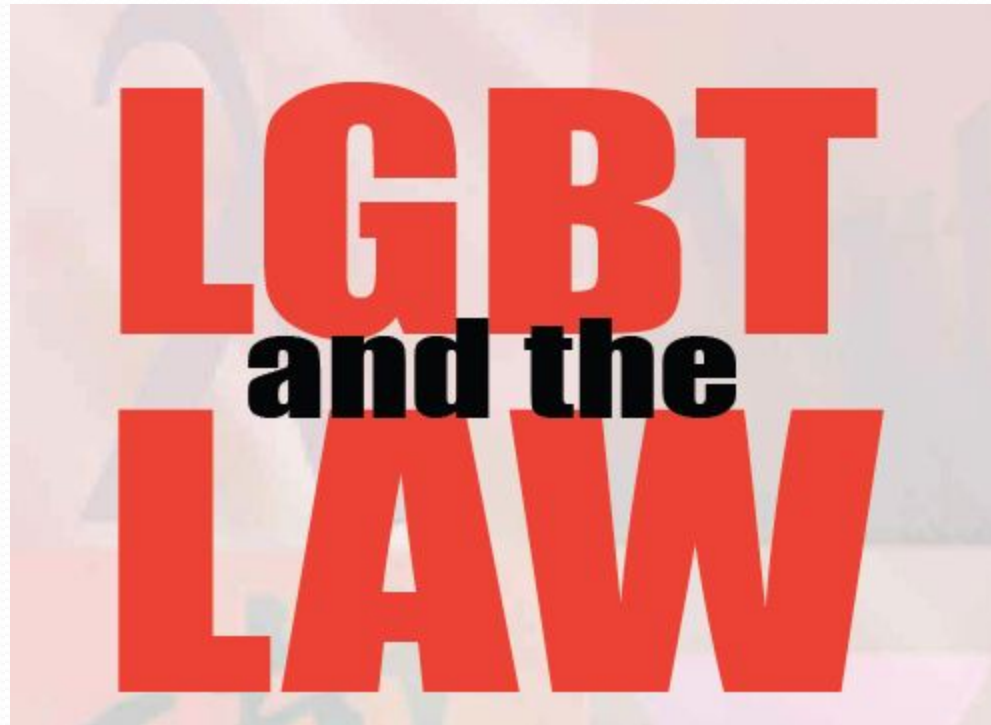
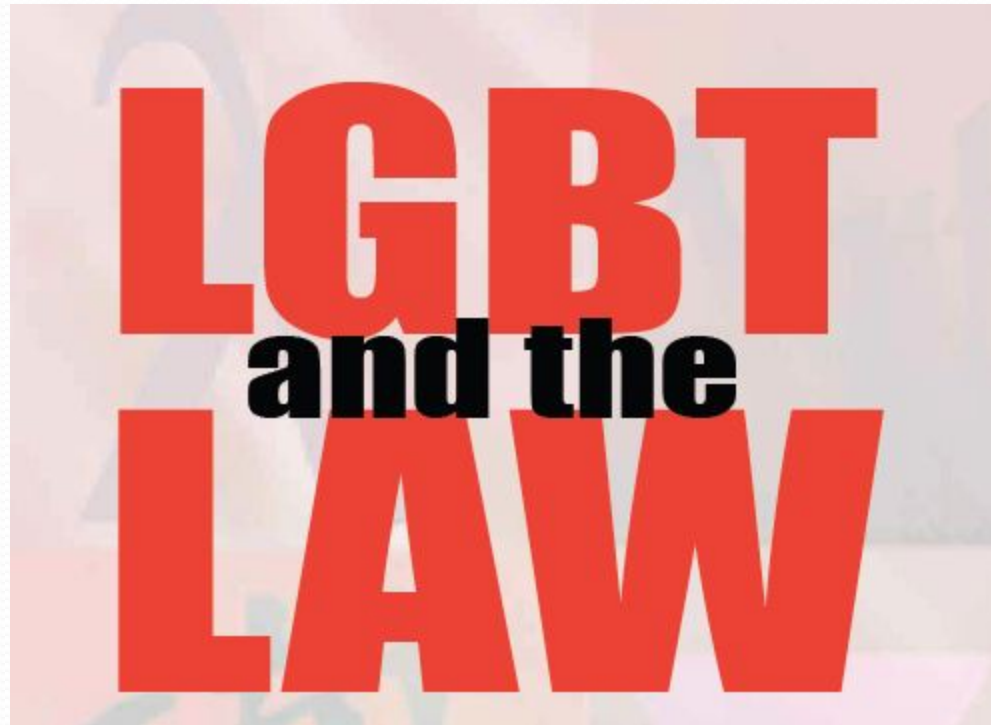


Oakland Community College



Oakland Community College



Diversity isn't something that can always be seen in a driver's license photo or in the spelling of a last name on a business card



- Private practice lawfirm located in Grosse Pointe
- Family law is about 75% of my practice
 - Divorce
 - Paternity
 - Child Custody
 - Child Support
- Much of my pro-bono work is for LGBT clients
- Representing clients in courts throughout southeast Michigan



- The Stonewall Bar Association is a voluntary state-wide professional association of lesbian, gay, bisexual and transgender lawyers and their allies providing a visible LGBT presence within the Michigan legal system
 - The Stonewall Riots
 - Considered by many to be the birth of the modern gay rights movement
 - The Stonewall Inn, located at 51 and 53 Christopher Street, in the Greenwich Village section of Manhattan
 - The riots began 1:20 a.m. Saturday, June 28, 1969, lasted several hours
 - Subsequent clashes with New York City Police for the next 3 days
 - An enduring image is the kick lines of drag queens facing off against riot police
 - The following year saw the first Gay Pride Parades which continue to this day in cities all around the nation
- Stonewall Bar Association members seek to protect and advance the rights of all Michiganders by providing legal representation, advocacy, education and outreach on the issues facing members of the LGBT community

The Law is Evolving – Right NOW!

- For most of America's history, members of the LGBT community were social and legal outcasts, existing in hiding on the margins of mainstream society, and subject to criminal prosecution or worse if their sexual orientation became known
- But in just the last decade,
 - several states have enacted new laws permitting gay marriage,
 - several more have implemented changes to their constitutions to ban gay marriage,
 - the US Supreme Court has ruled that it is unconstitutional to criminalize homosexual sexual conduct between consenting adults in private,
 - and the President of the United States has declared that he would no longer enforce portions of a federal law that had been in place since the Clinton administration.

The Law is Evolving – Right NOW!

- The intersection of family law and LGBT rights is one of the most dynamic areas of law right now
- The pace of change is so fast that this presentation has been revised several times in the past two months, and things may be changed even more by the time you have your morning coffee tomorrow

BAKER v. NELSON, first gay marriage case

- **BAKER v. NELSON**, 409 U.S. 810 (1972)
 - Richard John Baker and James Michael McConnell claimed that Minnesota's refusal to issue them a marriage license violated their rights under the U.S. Constitution
 - On October 10, 1972, the U.S. Supreme Court issued a one-sentence order dismissing the case of "for want of a substantial federal question."
 - That one sentence dismissal has been cited as binding precedent in more than 60 cases since then, as standing for the proposition that banning gay marriage does not offend the constitution

LAWRENCE v. TEXAS changes the law

- **LAWRENCE v. TEXAS** 539 U.S. 558 (2003)
 - False reports of a “man with a gun going crazy”
 - John Lawrence and Tyron Gardner were arrested in Lawrence’s Houston apartment, jailed and charged with a class C misdemeanor for “deviate sexual intercourse with another individual of the same sex”
 - The majority decision held that intimate, adult consensual sexual conduct was part of the liberty protected by the Fourteenth Amendment
 - Holding that "the Texas statute furthers no legitimate state interest which can justify its intrusion into the personal and private life of the individual," the court struck down the anti-sodomy law as unconstitutional

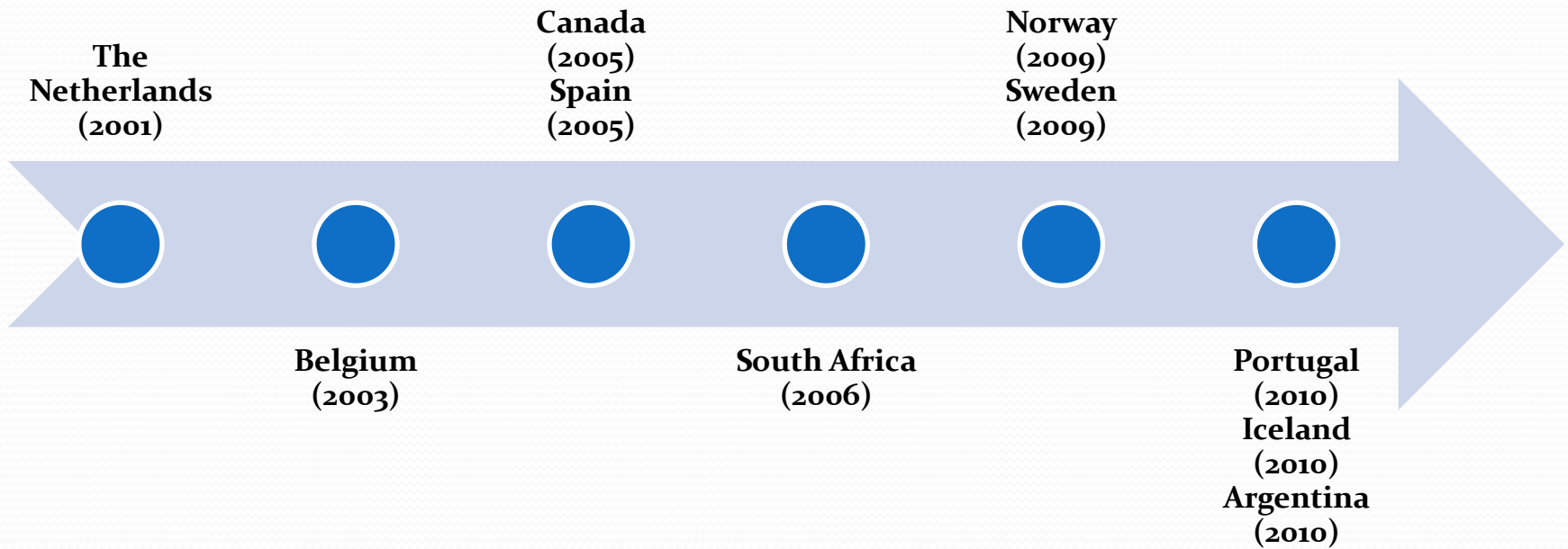
Michigan's anti-sodomy laws

- MCL 750.158 - Crime against nature or sodomy
 - Any person who shall commit the abominable and detestable crime against nature either with mankind or with any animal shall be guilty of a felony, punishable by imprisonment in the state prison for not more than 15 years, or if such person was at the time of said offense a sexually delinquent person, may be punishable by imprisonment in the state prison for an indeterminate term the minimum of which shall be 1 day and the maximum of which shall be life.
- MCL 750.338 - Gross Indecency between male persons
 - Any male person who, in public or in private, commits or is party to the commission of or procures or attempts to procure the commission by any male person of any act of gross indecency with another male person shall be guilty of a felony punishable by imprisonment in the state prison for not more than five (5) years, or by a fine of not more than \$2500.
- MCL 750.338a covers gross indecency between females and makes it a felony
- MCL 750.338b covers gross indecency “between male and female persons” (also a felony)

Let's get Married!



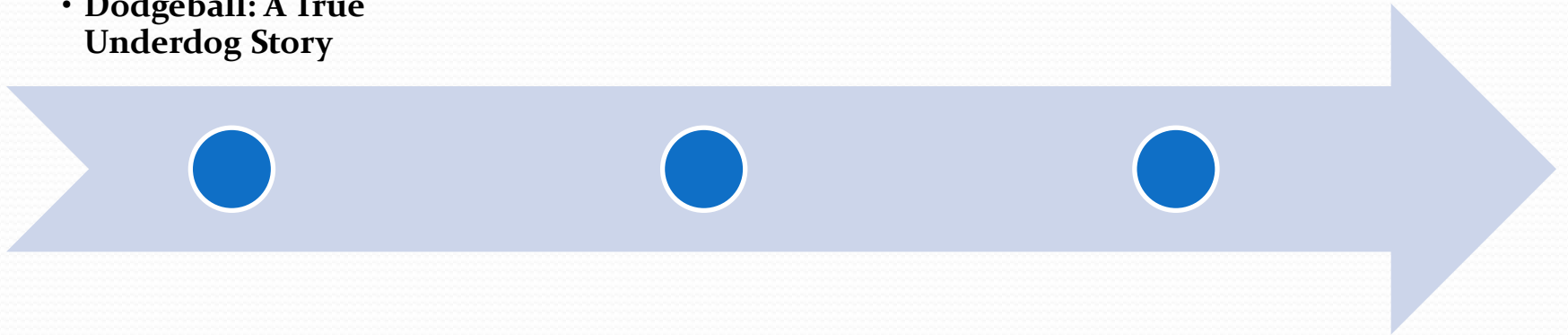
Marriage Equality Around the World



Marriage Equality Around the U.S.

Massachusetts (2004)

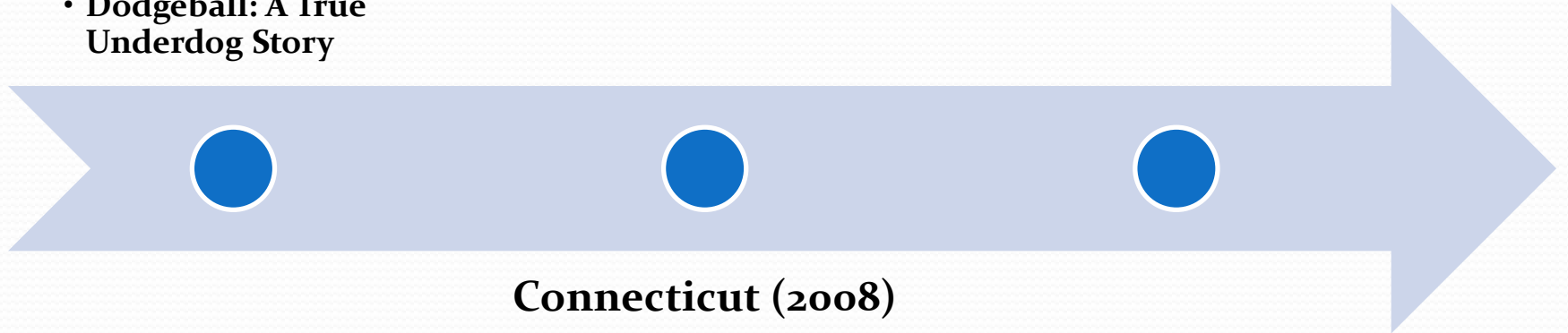
- **Kill Bill: Volume 2**
- **Napoleon Dynamite**
- **Dodgeball: A True Underdog Story**



Marriage Equality Around the U.S.

Massachusetts (2004)

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- **Napoleon Dynamite**
- **Dodgeball: A True Underdog Story**



Connecticut (2008)

- **Iron Man**
- **Kung Fu Panda**
- **Twilight**

Marriage Equality Around the U.S.

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- Napoleon Dynamite
- Dodgeball: A True Underdog Story

Iowa (2009) Vermont (2009) District of Columbia (2009)

- The Hangover
- Saw VI
- Avatar

Connecticut (2008)

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New Hampshire (2010)

- Hot Tub Time Machine
- The Social Network
- Harry Potter and the Deathly Hallows: Part I

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- Avatar

New York (2011)

- No Strings Attached
- Sucker Punch
- Bridesmaids

Connecticut (2008)

- Iron Man
- Kung Fu Panda
- Twilight

New Hampshire (2010)

- Hot Tub Time Machine
- The Social Network
- Harry Potter and the Deathly Hallows: Part I

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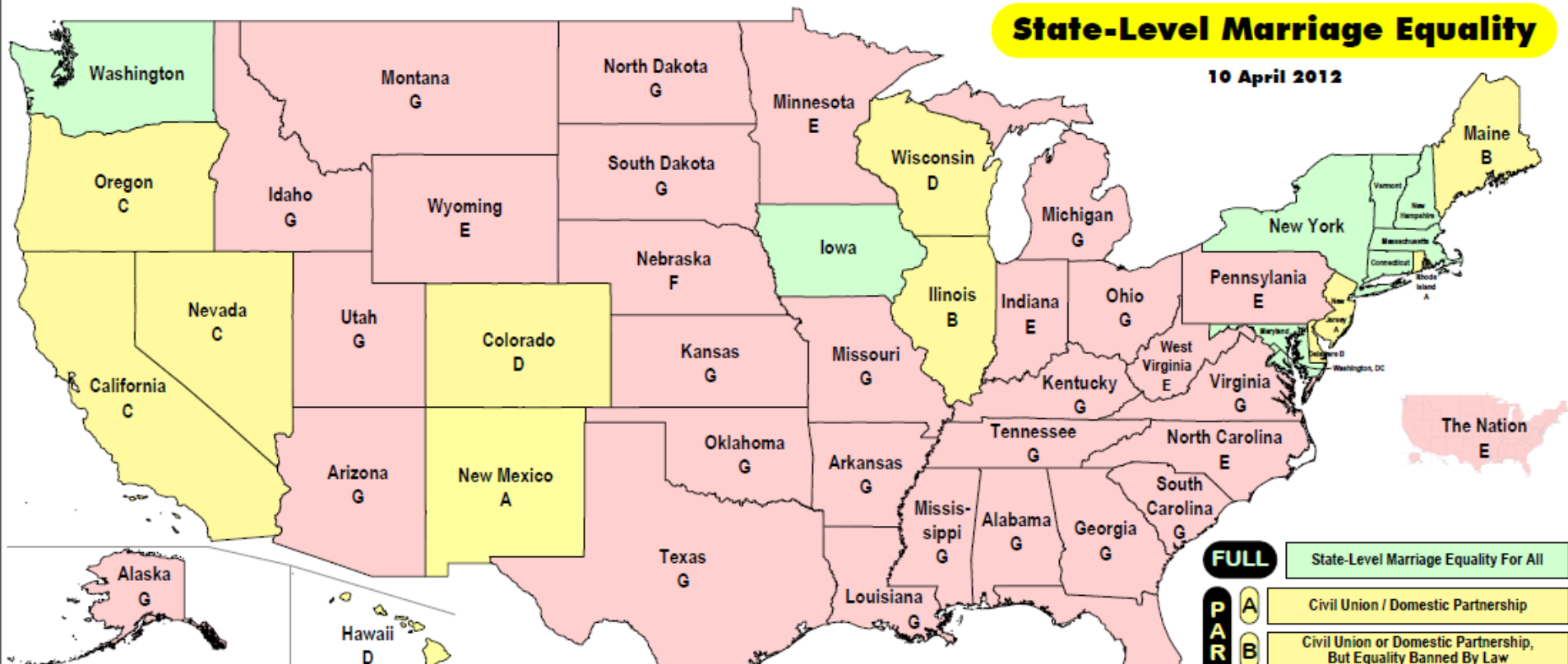
- Hot Tub Time Machine
- The Social Network
- Harry Potter and the Deathly Hallows: Part I

Washington (2012) Maryland (2012)

- The Hunger Games
- Star Wars: Episode I - The Phantom Menace 3D

State-Level Marriage Equality

10 April 2012



42% of Americans live in 21 states that recognize various

(CT, DC, IA, MA, MD, NH, NY, VT, WA); civil union (DE, HI, IL, NJ, RI); or domestic

partnership (CA, CO, ME, NV, NM, OR, WI). Since 1993, all American states have taken positions on marriage equality. Each state allows — or bans — various forms of marriage via its state constitution, via its state laws, or via both its constitution and its laws. Some states have full marriage equality, some restrict equality, and some ban all unions except one-man-one-woman couples, as does the federal 1996 DOMA (Defense-of-Marriage Act). At least 14 federal lawsuits challenging DOMA were filed in trial courts and appeal courts across the nation since 2009.

In 2012 alone, lawmakers, judges, and voters in 20 states, as well as federal judges and Congress, will decide whether to allow — or ban — various levels of marriage equality. Send map feedback to: NFlaherty@MarriageEquality.org.

www.MarriageEquality.org/Current-Status

forms of legal relationships: full marriage partnership (CA, CO, ME, NV, NM, OR, WI).

FULL	State-Level Marriage Equality For All
PARTIAL	A Civil Union / Domestic Partnership
	B Civil Union or Domestic Partnership, But Equality Banned By Law
	C Civil Union or Domestic Partnership, But Equality Banned By Constitution
	D Civil Union or Domestic Partnership, But Equality Banned By Constitution & By Law
BANNED	E Equality Banned By Law
	F Equality Banned By Constitution
	G Equality Banned By Constitution & By Law

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LOVING v. VIRGINIA, 388 U.S. 1 (1967)

- “The freedom to marry has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free men. Marriage is one of the "basic civil rights of man," fundamental to our very existence and survival.” **Loving v. Virginia**, 388 U.S. 1, 12 (1967)

How do you know if a law is unconstitutional?

- Rational basis test
 - reasonable means
 - to an end that may be legitimately pursued by the government
- Strict scrutiny
 - compelling governmental interest
 - narrowly tailored to achieve that goal
 - the least restrictive means
- Intermediate or heightened scrutiny
 - furthers an important government interest
 - in a way that is substantially related to that interest
- One of the key issues in the current court cases is the level of scrutiny that will be applied to laws affecting gays and lesbians

Constitution's "full faith and credit" clause

- Article IV, Section 1 of the United States Constitution
 - “Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State.”
 - Was not applied to the various states who did not recognize valid interracial marriages performed elsewhere

The Defense of Marriage Act (DOMA)

- A federal law that defines marriage as the legal union of one man and one woman
- Signed by President Bill Clinton on September 21, 1996
 - **Section 2** says: “No State...shall be required to give effect to any public act, record, or judicial proceeding of any other State...respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such other State...or a right or claim arising from such relationship.”
 - **Section 3** says: “In determining the meaning of any Act of Congress...the word `marriage' means only a legal union between one man and one woman as husband and wife, and the word `spouse' refers only to a person of the opposite sex who is a husband or a wife.”

The Defense of Marriage Act (DOMA)

- On February 23, 2011, Attorney General Eric Holder wrote:
 - “After careful consideration, including a review of my recommendation, the President has concluded that given a number of factors, including a documented history of discrimination, classifications based on sexual orientation should be subject to a more heightened standard of scrutiny. The President has also concluded that Section 3 of DOMA, as applied to legally married same-sex couples, fails to meet that standard and is therefore unconstitutional. Given that conclusion, the President has instructed the Department not to defend the statute in such cases.”

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The Defense of Marriage Act (DOMA)

- That doesn't mean the law won't be defended, though.
 - On January 5, 2012, the United States District Court for the Northern District of Illinois entered an order in the case of **REVELIS v. NAPOLITANO**, holding that the Bipartisan Legal Advisory Group of the U.S. House of Representatives (BLAG) could intervene, finding that “the House has an interest in defending the constitutionality of legislation which it passed when the executive branch declines to do so.”

The Defense of Marriage Act (DOMA)

- **GOLINSKI v. UNITED STATES OFFICE OF PERSONNEL MANAGEMENT**
 - On February 22, 2012 the United States District Court for Northern California rules that DOMA violates the Fifth Amendment by failing to recognize the lawful marriage of lesbian couple
 - Karen Golinski is a longtime staff attorney for the Ninth Circuit U.S. Court of Appeals seeking federal health benefits for her wife — the case raises tricky and possibly unprecedented recusal questions since that court will now hear the appeal from the district court
- **BLESCH v. HOLDER**
 - Federal District Court for the Eastern District of New York filed April 2, 2012
 - Plaintiffs are five legally married gay couples in which one spouse is a foreign national
 - Under DOMA, none of the couples can get an immigrant visa as a foreign spouse, which would be available to opposite-sex couples
 - The Complaint cites a 1974 case that affirms marriages are valid, if they were valid where they were performed
 - “The INA does not define the term “spouse.” Rather, an individual's marital status typically is governed by the law where the marriage was celebrated. See *Matter of Dela Cruz*, 14 I. & N. Dec. 686 (BIA 1974) (“the law is clear . . . [t]he validity of a marriage is generally governed by the law of the place of celebration”).”

Michigan Laws and Constitutional Amendment

- In 1996, in response to Hawaii potentially issuing marriage licenses to gay couples, following **BAEHR v. LEWIN** 74 Haw. 530, (1993), Michigan enacted changes to its marriage laws to invalidate out-of-state gay marriages.
 - MCL 551.3 Incapacity; persons man prohibited from marrying.
 - A man shall not marry his mother, sister, grandmother, daughter, granddaughter, stepmother, grandfather's wife, son's wife, grandson's wife, wife's mother, wife's grandmother, wife's daughter, wife's granddaughter, brother's daughter, sister's daughter, father's sister, mother's sister, or cousin of the first degree, **or another man.**
 - MCL 551.1 Marriage between individuals of same sex as invalid contract.
 - Marriage is inherently a unique relationship between a man and a woman. As a matter of public policy, this state has a special interest in encouraging, supporting, and protecting that unique relationship in order to promote, among other goals, the stability and welfare of society and its children. **A marriage contracted between individuals of the same sex is invalid in this state.**
 - MCL 551.271
 - (1) Except as otherwise provided in this act, a marriage contracted between a man and a woman who are residents of this state and who were, at the time of the marriage, legally competent to contract marriage according to the laws of this state, which marriage is solemnized in another state within the United States by a clergyman, magistrate, or other person legally authorized to solemnize marriages within that state, is a valid and binding marriage under the laws of this state to the same effect and extent as if solemnized within this state and according to its laws.
 - (2) **This section does not apply to a marriage contracted between individuals of the same sex, which marriage is invalid in this state under section 1 of chapter 83 of the revised statutes of 1846, being section 551.1 of the Michigan Compiled Laws.**

Michigan Laws and Constitutional Amendment

- In 2004, voters approved a constitutional amendment, Michigan State Proposal - 04-2, banning same-sex marriages and civil unions. The ballot proposal was approved by 59% of Michigan voters
 - This proposal to amend the constitution, and others like it across the country, were initiated in response to the November 18, 2003 decision by the Supreme Court of Massachusetts in **GOODRIDGE v. DEPT. OF PUBLIC HEALTH**, 440 Mass. 309 (2003)
 - **GOODRIDGE** held that Massachusetts' law banning gay marriage was unconstitutional, (thereby making it the first state in the US to allow gay marriage)
 - On November 2 of 2004, eleven U.S. states pass constitutional amendments banning same-sex marriage: Arkansas, Georgia, Kentucky, Michigan, Mississippi, Montana, North Dakota, Oklahoma, Ohio, Oregon, and Utah

Michigan Laws and Constitutional Amendment

- STATE CONSTITUTION OF MICHIGAN OF 1963
 - Article I Section 25 “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.”
- **NATIONAL PRIDE v. GOVERNOR**, 481 Mich. 56 (2008)
 - The Michigan Supreme Court applied the constitutional amendment as banning same-sex domestic partner benefits by employers

Michigan Laws and Constitutional Amendment

- 25 states allow marriage between first cousins, though Michigan does not. Those marriages would be legal here.
- Common-law marriages have been against the law in Michigan since 1957, yet they are valid in Michigan if the parties meet the criteria of other states' laws
- Eight states and the District of Columbia now allow gay marriage, but those marriages would be void here under MCL 551.271

Other State Laws

- Thirty states now have now constitutional amendments banning same-sex marriage
- On February 13, 2012, Washington was the seventh state to legalize same-sex marriage after Massachusetts, Connecticut, Vermont, New Hampshire, Iowa, and New York. Residents of Washington D.C. are also able to marry
- Maryland became the eighth U.S. state to allow same-sex marriage March 1, 2012 as Gov. Martin O'Malley signed legislation he said secures the "human dignity" of all residents, including gay and lesbian couples
- New Jersey Governor Chris Christie vetoed that state's Marriage Equality Bill. The bill passed the house and senate on 2/16/2012, and was vetoed on 2/17/2012

Other State Laws – back and forth

- May 6, 2009: Maine Governor John Baldacci signs a same-sex marriage law
- November 3, 2009: Ballot measure in Maine overturns same-sex marriage
- A citizens' initiative for the Maine November 2012 ballot proposes to upgrade domestic partnership to full marriage

- January 1, 1973: Maryland becomes the first state in the US to ban same-sex marriage by statute
- March 1, 2012: Maryland voted to become the eighth U.S. state to allow same-sex marriage

- May 15, 2008: Supreme Court of California legalizes same-sex marriage in the **In re Marriage Cases** ruling
- May 26, 2009: California Supreme Court upholds **Proposition 8**, defining marriage as between a man and a woman, (but rules that previously officiated same-sex marriages shall remain valid)
- August 4, 2010: U.S. District Court of Northern California declares that Proposition 8 violates due process and equal protection clauses in the U.S. Constitution

Perry v. Schwarzenegger – Prop 8 case

- “Moral disapproval alone is an improper basis on which to deny rights to gay men and lesbians. The evidence shows conclusively that Proposition 8 enacts, without reason, a private moral view that same-sex couples are inferior to opposite-sex couples.”
- “Proposition 8 fails to advance any rational basis in singling out gay men and lesbians for denial of a marriage license. Indeed, the evidence shows Proposition 8 does nothing more than enshrine in the California Constitution the notion that opposite-sex couples are superior to same-sex couples. Because California has no interest in discriminating against gay men and lesbians, and because Proposition 8 prevents California from fulfilling its constitutional obligation to provide marriages on an equal basis, the court concludes that Proposition 8 is unconstitutional.”

Why is marriage important?

- In 1997, the General Accounting Office of the Federal Government compiled a list of 1,049 rights and benefits which were related to civil marriage

Why is marriage important?

- In 1997, the General Accounting Office of the Federal Government compiled a list of 1,049 rights and benefits which were related to civil marriage.
- In 2004 they did an update and found there were 1,138 rights

Searching through the MCL for marriage references

- “wife” = 129 hits
- “husband” = 149 hits
- “married” = 129 hits
- “spouse” = 449 hits
- In 2009-2010 there were 267 Bills introduced in the Michigan Legislature that included the word “spouse”

Sex outside of marriage

- Historically, the right to have sex with another consenting adult has only been recognized within the marriage relationship

Sex outside of marriage

- MCL 750.30 Adultery; punishment.
 - Any person who shall commit adultery shall be guilty of a felony; and when the crime is committed between a married woman and a man who is unmarried, the man shall be guilty of adultery, and liable to the same punishment.

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- MCL 750.32 Adultery; cohabitation of divorced parties.
 - If any persons after being divorced from the bonds of matrimony for any cause whatever, shall cohabit together, they shall be liable to all the penalties provided by law against adultery.

Sex outside of marriage

- MCL 750.532 Seduction; punishment.
 - Any man who shall seduce and debauch any unmarried woman shall be guilty of a felony, punishable by imprisonment in the state prison not more than 5 years or by fine of not more than 2,500 dollars; but no prosecution shall be commenced under this section after 1 year from the time of committing the offense.

Second Parent Adoption

- 16 States plus the District of Columbia allow same-sex partners to jointly adopt
- Michigan does not.
 - On September 14, 2004, then-state attorney general Mike Cox issued an advisory opinion that said that since gay marriages are not valid in Michigan, and since Michigan does not permit unmarried couples to jointly adopt, then a gay couple validly married in another state cannot legally adopt together
- Michigan's statutes allow adoption by a single unmarried individual, a married couple, or a stepparent if they are married to a legal parent

Second Parent Adoption

- MCL 710.51 subsection (5)
 - If a parent having legal custody of the child is married to the petitioner for adoption, the judge shall not enter an order terminating the rights of that parent.

Second Parent Adoption

- On January 23, 2012, attorneys Carole Stanyar and Dana Nessel filed suit in US District Court for the Eastern District of Michigan, representing April DeBoer and Jayne Rowse, a lesbian couple, alleging that Michigan violates equal protection by refusing to allow same-sex couples to adopt
 - DeBoer is a nurse in the neonatal intensive care unit at Hutzel Hospital in Detroit and Rowse is an emergency room nurse at Henry Ford Hospital in Detroit
 - They each adopted special needs children that were essentially abandoned by their birth mothers, some of whom had serious substance abuse issues
 - The couple wanted to have the children adopted by both of them, to ensure stability and prevent problems with custody should anything happen to either of them
 - The case remains pending

Child Custody

- In Michigan, there is a presumption that any child conceived during a marriage or born to a married couple is the legal child of the husband. Because gay and lesbian couples cannot marry, this presumption cannot apply
- Because Michigan would also refuse to recognize an out-of-state same-sex marriage as valid, the non-biological parent would have no rights to custody or parenting time as a legal parent
- Other states have similar presumptions, and have applied them to legally married gay couples in their jurisdiction

Child Custody

- The Appeals Court of Massachusetts held that the presumption that the husband of a woman who gives birth to a child as a result of artificial insemination is the father of the child, even if he is not biologically related to the child, also applies to same-sex couples
 - **DELLA CORTE v RAMIREZ**, (Feb. 2, 2012)
- A court in Iowa relied on their Supreme Court ruling striking down a ban on gay marriage to hold that a biologically unrelated legal wife of a lesbian mother may be listed as a parent on the child's birth certificate
 - **GARTNER v. IOWA DEPT. OF PUBLIC HEALTH** (January 4, 2012)

VAN v. ZAHORIK, the controlling Michigan law

- Question: “whether a person with a longstanding relationship to a child, but who is not a biological or legal parent of the child and not related by marriage to the child's biological parent, may pursue parental rights with the child under a theory of equitable parenthood or equitable estoppel.”
- Answer: “the current state of child custody law simply provides no means for Mr. Van, who is not related to the children at issue either biologically or by marriage, to pursue parental rights under either equitable parenthood or equitable estoppel. In short, he has no legal right to continue a relationship with the children.”

HARMON v. DAVIS, Wayne County Circuit

- A 2010 trial court opinion issued by Hon. Kathleen McCarthy
- The case involved the breakup of a long-term lesbian relationship in which one partner gave birth to three children that were raised by the parties for more than ten years
- The biological mom reneged on a parenting time agreement between the parties, and refused to allow the non-biological mom to see the children at all
- The court referenced eight different ways in which a person with no biological relationship can be considered a parent
- The biological mom sought leave to appeal in the Court of Appeals, which reversed the trial court's decision by peremptory order. It held that non-biological mom did not have standing under any theory. The Michigan Supreme Court denied leave to appeal. On remand, the trial court dismissed the case

Biological Parents vs. Birth Parents

- Some lesbian couples in Michigan have been found to be both legal parents where the ovum from one woman was implanted and gestated by the other
- Florida Court of Appeals case **T.M.H. vs. D.V.T.** (12/23/11)
 - Lesbian couple are both legal parents to child born using one partner's egg and the other's womb
 - Overturned trial court ruling that gestational mother was the only legal parent because biological mother had "donated" her ova under application of FL surrogacy statute

Child Support

- The other side of non-biological parent child custody is the issue of child support. If one is not a legal parent, one cannot be obligated to pay support
 - Lesbian mother of two small boys who were born during a valid out-of-state marriage to her partner
 - The couple divorced in a state that did not recognize their marriage, and the non-biological mother was not held to be a legal parent
 - The children received no child support from the ex-spouse, whose annual salary was in excess of six figures
 - The burden of supporting the children fell upon the taxpayers of the State of Michigan

Conclusion

- The intersection of family law and LGBT rights is one of the most dynamic legal issues facing the country right now
 - The laws affecting the LGBT community are going through a period of momentous change
 - During this unsettled period of the law, it is not clear how valid marriages between same-sex couples will be handled in different states
 - The issue of marriage is inextricably linked to adoption, child custody and child support
 - Marriage is so deeply woven into our laws and civil society that new creations like civil unions or domestic partnerships may fail to include important rights