

**Queer 3.0: LGBTQ Rights in the Internet Era**  
**FYS 6** **FALL 2023**

Lecture Notes (Prof. R. Buckmire)  
Wednesday November 15: "Marriage Equality!"

**READING:** "*Goodridge v. Dept. of Public Health*" By Eskridge & Hunter (pp. 123-130).

**SUPPLEMENTAL READING:** *Obergefell v. Hodges* (syllabus only)

We shall be discussing how marriage equality became the law of the land in the United States.

Timeline of Same-Sex Marriage

1993 *Baehr v. Lewin* becomes first state court of final appeal to rule marriage laws may be unconstitutional.

1996 Defense of Marriage Act signed into law by President Clinton

1998 *Baehr v. Miike* Hawaii loses marriage case at Trial level

1998 Hawaii amends constitution to strip power from courts to interpret marriage law ("The legislature shall have the power to define marriage.")

1999 Vermont Supreme Court rules (*Baker v. Vermont*) that the State must give all rights and privileges of marriage to same-sex couples, defers to legislature to enact change.

2000 Vermont enacts civil unions.

2003 Massachusetts (went into effect May 17, 2004, 50<sup>th</sup> anniversary of *Brown*)

2003 California passes AB 205, Comprehensive Domestic Partnership law (effective Jan 1 2005)

2004 (February 12, San Francisco Mayor Newsom starts issuing licenses in California)

2004 CA Supreme Court voids 4,000+ marriages of same-sex couples (*Lockyer v San Francisco*)

2004 Same-sex couples start marrying in Massachusetts (May 17)

2005 California becomes first legislature to pass marriage law (vetoed by Schwarzenegger)

2006 New York (*Hernandez v. Robles*) and Washington (*Andersen v. King County*) uphold discriminatory marriage laws in closely divided decisions

2006 New Jersey (*Lewis v. Harris*) ruled unanimously that civil unions for same-sex couples are enough, but the differences from marriages for opposite-sex couples must be addressed)

2007 Maryland upholds marriage law (*Conaway v Deane*)

2007 California passes marriage law (vetoed by Schwarzenegger, *again*)

2008 California (*In Re Marriage Cases*) and Connecticut (*Kerrigan v Dept. of Public Health*) strike down marriage bans (In CA voters passed Prop 8 52-48 to ban marriage in the state)

2009 Iowa strikes down marriage laws unanimously (*Varnum v. Brien*)

2009 Vermont enacts marriage over gubernatorial veto, New Hampshire and Maine enact marriage laws legislatively (Maine voters repeal their law in Nov 2009).

2009 CA Sup Court upholds Proposition 8 and rules marriages entered into between June 15 and Nov 3 2008 are valid

2009 District of Columbia enacts marriage equality by statute

2010 U.S. district court judge Vaughn Walker rules that Proposition 8 violates U.S. constitution in *Perry v. Schwarzenegger*

2010 Dec 6 9<sup>th</sup> U.S. Circuit Court of Appeals hears Proposition 8 case

2012 President Obama states support for marriage equality during his re-election campaign

2012 Maine, Maryland and Washington enact marriage equality by passing ballot measures

2012 9<sup>th</sup> U.S. Circuit rules that Proposition 8 is unconstitutional in a 2-1 decision

2013 U.S. Supreme Court invalidates Defense of Marriage Act in *United States v Windsor*

2013 Supreme Court ends Proposition 8 litigation in *Hollingsworth v. Perry*, effectively enacting marriage equality in California by vacating 9<sup>th</sup> Circuit decision, 2010 district court ruling stands

2015 U.S. Supreme Court rules in *Obergefell v. Hodges* that states cannot prohibit same-sex couples from the freedom to marry.

2022 Justice Thomas argues in a concurring opinion in *Dobbs* (which overturned the fundamental right to an abortion holding in *Roe v. Wade*) that other substantive due process cases, including *Obergefell*, should be reviewed by the Court in the future.

### [Goodridge v Department of Public Health \(2003\)](#)

In a judicial first, the Massachusetts Supreme Judicial Court ruled 4-3 that State must issue marriage licenses to same sex couples because "The Massachusetts Constitution affirms the dignity and equality of all individuals. It forbids the creation of second-class citizens."

Interestingly, the Court stayed its decision to go into effect until May 17, 2004 (which many observers noted was the fiftieth anniversary of *Brown v. Board of Education* eliminating race-based segregation in public education).

### [Obergefell v. Hodges \(2015\)](#)

In a landmark civil rights case, the United States Supreme Court ruled 5-4 that the fundamental right to marry is guaranteed to same-sex couples by the Due Process clause of the Fifth Amendment and under the Equal Protection Clause of the Fourteenth Amendment. At the time of the decision authored by Justice Kennedy, thirty-six states and the District of Columbia had already enacted marriage equality, but the remaining states and jurisdictions of the United States must allow same-sex couples all the rights and responsibilities of marriage afforded to opposite-sex couples.