

40 Years

Working Together for Children
1976 - 2016



June 14 – 17, 2016
Merrillville, Indiana

Indiana Child Support Conference

IV-D and LGBT Parents

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Same Sex Marriage





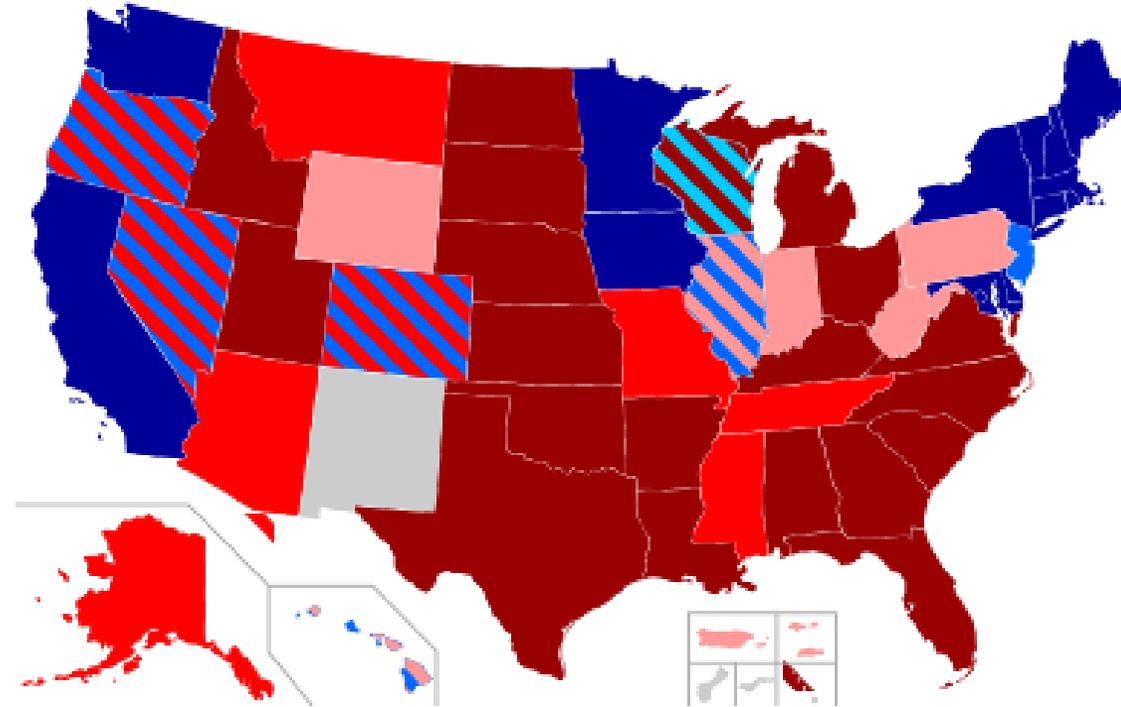
- It all began when . . .
- The Hawaii Supreme Court ruled in 1993 that laws denying same sex couples the right to marry violated equal protection unless the State could show a “compelling reason” for such discrimination. *Baehr v. Lewin*, 852 P.2d 44 (Hawaii 1993)



DOMA

- Congress passed the Defense of Marriage Act (DOMA) in 1996, before any State had the chance to legalize same sex marriage
- As enacted, DOMA had 2 operative sections:
 - Section 2 allows States to refuse to recognize same sex marriages performed under the laws of other States
 - Section 3: For all federal laws, regulations, or interpretations, “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.”

On August 1, 2013, the United States was a nation divided on same sex marriage



- Same-sex marriages granted
- Unions granting privileges similar to marriage
- Legislation granting limited/enumerated privileges
- No specific prohibition or recognition of same-sex marriages or unions
- State statute bans same-sex marriage
- State constitution bans same-sex marriage
- State constitution bans same-sex marriage *and* some or all other kinds of same-sex unions

United States v. Windsor,
United States Supreme Court, 133 S. Ct. 786 (2012)



United States v. Windsor

- Facts
- Advocacy
- Questions Presented
- Majority Opinion
- Dissent



Obergefell v. Hodges,
United States Supreme Court, 135 S. Ct. 2584 (2015)



Obergefell v. Hodges

- Facts
- Questions Presented
- Decision
 - History of Marriage
 - Substantive Due Process
 - Equal Protection



The Equal Protection Clause

Marriage Equality

- The Effect of Marriage Equality on the IV-D Program
 - Marriage Recognition
 - Parentage Recognition
 - What else?



LGBT Families Take Many Forms

- Gay men and lesbians seeking to adopt, either individually or together with a partner in a joint adoption
- Planned families
- Individuals who come out as lesbian or gay after having children in a different-sex marriage that is dissolving or previously ended



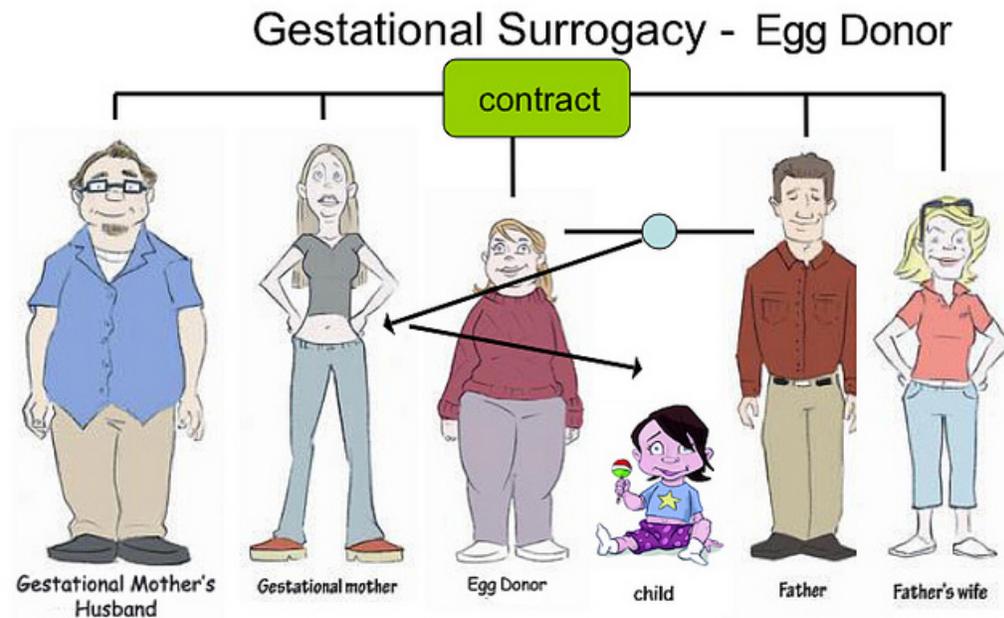
Adoption by LGBT Parents

V.L. v. E.L., et al., 577 U.S. __ (Mar. 7, 2016)



Planned Families

- Assisted Reproduction
- Surrogacy
- Other Methods



Individuals who come out as lesbian or gay after having children in a different-sex marriage that is dissolving or previously ended

- Issues involving visitation and custody
- *See Palmore v. Sidoti*, 466 U.S. 429 (1984) (“Private biases may be outside the reach of the law, but the law cannot, directly or indirectly, give them effect.”)
- Clause in stipulated divorce orders: “No overnight visitors unless married to him or her”

- *De Facto Parents?*

YES

- Oklahoma, *Eldredge v. Taylor*, 339 P.3d 888 (Okla. 2014)
- Washington, *In re Parentage of J.B.R.*, 336 P.3d 648 (Wash. App. 2014)
- New Jersey, *K.A.F. v. D.L.M.*, 96 A.3d 975 (N.J. Super. 2014)

- *De Facto Parents?*

NO

- Illinois, *In re Parentage of Scarlett Z.D.*, 28 N.E.3d 776 (Ill. 2015)
- Wyoming, *LP v. LF*, 338 P.3d 908 (Wyo. 2014)
- Vermont, *Moreau v. Sylvester*, 95 A.3d 416 (Vt. 2014)

More Cases Involving LGBT Parents



- *Conover v. Conover*, 120 A.3d 874 (Md. App. 2015)
- *Adoption of a Minor*, 29 N.E.3d 830 (Mass. 2015)
- *In re Guardianship of Madelyn B.*, 98 A.3d 494 (N.H. 2014)
- *Ramey v. Sutton*, 362 P.3d 217 (Okla. 2015)
- *Jason P. v. Danielle S.*, 226 Cal. App. 4th 167 (Cal. App. 2014)

Families with more than two parents

CA Family Code § 7612(c)

- In an appropriate action, a court may find that more than two persons with a claim to parentage under this division are parents if the court finds that recognizing only two parents would be detrimental to the child.
- In determining detriment to the child, the court shall consider all relevant factors, including ... the harm of removing the child from a stable placement with a parent who has fulfilled the child's physical and psychological needs for care and affection, and who has assumed that role for a substantial period of time.

Uniform Law Commission's Amendment of the Uniform Parentage Act

- The Uniform Law Commission adopted the Uniform Parentage Act (UPA) in 2000, which was a complete revision of a 1973 uniform act
- In 2002, further changes to the UPA were promulgated, extending the act to also provide balanced coverage to questions of parentage arising in non-marital circumstances.
- The UPA (as revised in 2000 and amended in 2002) has been adopted in 11 states

Uniform Law Commission's Amendment of the Uniform Parentage Act

- The UPA covers a number of topics, including: the parent-child relationship, voluntary acknowledgements of paternity, a registry of paternity, genetic testing, proceedings to adjudicate parentage, and children of assisted reproduction
- As a result of the recent Supreme Court decision in *Obergefell v. Hodges*, as well as other developments in the states since the last revision of the UPA, amendments are needed
- The scope of the proposed amendments is limited to issues related to same-sex couples, surrogacy, and the right of a child to genetic information

Uniform Law Commission's Amendment of the Uniform Parentage Act

- Issues
- Gender Neutrality
- Tough Questions
- Real Life Implications

Questions?



Thank you for your time!