

# JUDGES & THE COURTS

## FACT SHEET

### Marriage Equality: A Win for Women

June 2015

*In Obergefell v. Hodges, the Supreme Court held that state laws that deny same-sex couples the right to marry or provide that only a marriage between a man and a woman will be recognized under state law violate the Constitution. This historic decision affirms that all Americans have the right to equal protection under the law.<sup>1</sup> While critical to all same-sex couples and families, the decision has particular practical significance for women in same-sex couples.*

#### **Obergefell v. Hodges**

In *Obergefell v. Hodges* the Court considered cases arising out of four states—Kentucky, Michigan, Ohio and Tennessee. Each case involved constitutional challenges by same-sex couples who were either denied the right to marry or whose marriages—performed in a state that permitted same-sex couples to marry—were not recognized by their current state of residence.

In a 5-4 decision, the Court struck down the bans on marriage between same-sex couples, concluding that “the reasons marriage is fundamental under the Constitution apply with equal force to same-sex couples.”<sup>2</sup> The Court’s decision guarantees that same-sex couples may get married and have their marriages recognized in all 50 states.

#### **OBERGEFELL MEANS SAME-SEX COUPLES WILL HAVE EQUAL ACCESS TO IMPORTANT BENEFITS AND LEGAL PROTECTIONS**

Here are just a few of the benefits and legal protections couples in same-sex relationships will now have access to when they marry:

- **Legal parentage and adoption of children:** Children born to a woman in a married same-sex couple will now be presumed to be the legal child of both spouses. Same-sex married couples should also now

be able to adopt a child jointly or (when the child already has a legal parent-child relationship with one spouse) through second-parent adoption and thus both be recognized as the legal parents of the child. Legally recognizing same-sex marriages means that the many protections and benefits tied to the parent-child relationship will now be available to same-sex couples and their children.<sup>3</sup>

- **Social Security:** Certain benefits are available to the spouses, surviving spouses, and divorced spouses of workers covered by Social Security, if they are legally married in their state of residence. In light of the *Obergefell* decision, coupled with the Court’s previous decision striking down the Defense of Marriage Act’s ban on federal recognition of marriage between same-sex couples,<sup>4</sup> all same-sex couples who are legally married will be able to receive these benefits.
- **Veterans benefits:** The Department of Veterans Affairs provides numerous benefits and services to spouses and surviving spouses of individuals who served in the armed services. Prior to *Obergefell*, access to some of these spousal benefits was predicated on having a valid marriage in the couple’s state of residence at the time of marriage or at the time of making a claim. Now that all states must recognize marriages between same-sex couples, married same-sex couples will be able to access these veterans benefits.<sup>5</sup>

- **Next of kin status for health care decision-making:**

Same-sex spouses in all states will now be presumed to have the legal decision-making authority, or opportunity to be appointed by a court, to make medical decisions should one spouse become incapacitated, just as opposite-sex couples do.<sup>6</sup>

- **Inheritance:** Married same-sex couples will now receive the same intestacy rights as married opposite-sex couples. Currently, all 50 states and the District of Columbia have enacted laws to ensure that when one spouse dies without a will, priority is given to the surviving spouse for distribution of the decedent spouse's estate.<sup>7</sup>

- **Workers compensation survivor benefits:** All 50 states and the District of Columbia allow spouses and children to receive workers compensation benefits when a working spouse is killed in an on-the-job accident. The Court's decision makes these benefits available to same-sex spouses.<sup>8</sup>

- **Access to health insurance through an employer:** Individuals who had previously been barred by state law from marrying their same-sex partner were often denied access to health insurance through their partner's employer health insurance plan. A report from 2012 found that only 31% of employers offered health insurance to the unmarried same-sex partners of their employees.<sup>9</sup> The Supreme Court's decision means more individuals in same-sex relationships will be covered under their partner's health insurance plans.

- **State income taxes:** Currently, 44 states and the District of Columbia tax personal income. The decision in *Obergefell* means that same-sex couples may now file joint returns with attendant tax benefits.<sup>10</sup>

## THE LEGAL AND FINANCIAL PROTECTIONS PROVIDED BY MARRIAGE ARE PARTICULARLY IMPORTANT FOR WOMEN IN SAME-SEX RELATIONSHIPS

Women make up about 53% of LGBT adults and 51% of same-sex couples.<sup>11</sup> But when marriage is available, women are more likely than men to marry their same sex partners.<sup>12</sup> One analysis found that in the eight states that provided data by gender, 62 percent of same-sex couples who sought legal recognition of their

relationship were female couples.<sup>13</sup> Female same-sex couples are also the majority of same-sex couples raising children.<sup>14</sup> This means the practical impact of *Obergefell* will be especially significant for the millions of women in same-sex relationships, as they will disproportionately enjoy new legal benefits and protections.

These benefits and protections are particularly needed, because women are also more likely than men to be poor,<sup>15</sup> and thus female same-sex couples are particularly at risk of financial instability, compared to opposite-sex couples and male same-sex couples. An analysis by the Williams Institute concluded that female same-sex couples face poverty at a rate of 6.9%. That rate is 4.0% for male same-sex couples and 5.4% for different sex couples.<sup>16</sup> In addition, LGBT parents, who are more likely to be women, are more likely to live in poverty than other couples. The rate of poverty for female same-sex couples with children is 15.4%, while the rate married opposite-sex couples with children is 9.3%.<sup>17</sup>

Women in same-sex relationships were also more likely to live in poverty when residing in a state without marriage recognition. In the states that recognized same-sex marriages, the poverty rate for females and opposite-sex couples was 5.9% and 5.8% respectively. In states that did not recognize same-sex marriages however, 8.0% of female same-sex couples were poor, compared to 5.8% of opposite sex couples.<sup>18</sup>

By prohibiting state laws banning same-sex marriages and requiring states to recognize lawful out-of-state, marriage between same-sex couples, the Court's decision grants access to crucial benefits that provide increased financial stability and make it easier for these women, and all married same-sex couples, to make ends meet.

The *Obergefell* decision is tremendously important for millions of American LGBT women. It grants same-sex couples "equal dignity in the eyes of the law," which is critical not only for its symbolism but for its real-world impact.<sup>19</sup>

<sup>1</sup> 135 S.Ct. 1039 (2015).

<sup>2</sup> *Obergefell v. Hodges*, No. 14-556 2015 WL 2473451, at \*12 (U.S. June 26, 2015).

<sup>3</sup> See generally Brief for American Bar Association as Amicus Curiae, *Obergefell v. Hodges*, 135 S.Ct. 1039, (2015) (No. 14-556), at 11-14; Brief for Legal Services NYC as Amicus Curiae Supporting Petitioners, *Obergefell v. Hodges*, 135 S.Ct. 1039, (2015) (No. 14-556) at 6.

<sup>4</sup> See *United States v. Windsor*, 133 S.Ct. 2675, 2695-96 (2013) (holding that federal recognition extends to legally married, same-sex couples).

<sup>5</sup> Department of Veteran Affairs, Office of Public and Intergovernmental Affairs, *Important Information on Marriage*, available at <http://www.va.gov/opa/marriage/>.

<sup>6</sup> See generally Brief for American Bar Association at 14-17; Brief for Legal Services NYC at 8.

<sup>7</sup> See generally Brief for American Bar Association at 18-20; Brief for Legal Services NYC at 7.

<sup>8</sup> See generally Brief for Legal Services NYC at 8.

<sup>9</sup> The Kaiser Family Foundation and Health Research & Educational Trust, "Employer Health Benefits: 2012 Annual Survey," (2012), accessed June 8, 2015, <http://kaiserfamilyfoundation.files.wordpress.com/2013/03/8345-employer-health-benefits-annual-survey-full-report-0912.pdf>.

<sup>10</sup> See generally Brief for American Bar Association at 23-25; Brief for Legal Services NYC at 7.

<sup>11</sup> Gary J. Gates & Frank Newport, Special Report: 3.4% of U.S. Adults Identify as LGBT, GALLUP (Oct. 18, 2012), <http://www.gallup.com/poll/158066/special-report-adults-identify-lgbt.aspx>.

<sup>12</sup> M.V. Lee Badgett & Jody L. Herman, *Patterns of Relationship Recognition by Same-Sex Couples in the United States*, THE WILLIAMS INST. 4 (Nov. 2011), accessed June 26, 2015, <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Badgett-Herman-Marriage-Dissolution-Nov-2011.pdf>.

<sup>13</sup> *Id.*

<sup>14</sup> Brief of Gary J. Gates as Amicus Curiae on the Merits in Support of Respondent Windsor, *Obergefell v. Hodges*, 135 S.Ct. 1039, 37 (2015) (No. 12-307).

<sup>15</sup> National Women's Law Center, *Interactive Map: Women and Poverty, State by State* (Sept. 25, 2014), available at <http://www.nwlc.org/resource/women-and-poverty-state-state>.

<sup>16</sup> Randy Albelda, et al., *Poverty in the Lesbian, Gay, and Bisexual Community*, THE WILLIAMS INST. (2009), accessed June 8, 2015, <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Albelda-Badgett-Schneebaum-Gates-LGB-Poverty-Report-March-2009.pdf>.

<sup>17</sup> *Paying an Unfair Price: The Financial Penalty for LGBT Women in America*, Center for American Progress & Movement Advancement Project (March 2015), accessed on June 25, 2015, <http://www.lgbtmap.org/file/paying-an-unfair-price-lgbt-women.pdf>.

<sup>18</sup> M.V. Lee, Badgett, Laura E. Durso, and Alyssa Schneebaum, "New Patterns of Poverty in the Lesbian, Gay, and Bisexual Community," THE WILLIAMS INST. (June 2013), accessed June 26, 2015, <http://williamsinstitute.law.ucla.edu/wp-content/uploads/LGB-Poverty-Update-Jun-2013.pdf>.

<sup>19</sup> *Obergefell*, 2015 WL 2473451, at \*28.