



# A Difference That Makes A Difference

## State Constitutions and the Right to Marry

**"B**y the power vested in me, by the state of . . . " These words are repeated by wedding officials every day, in every state. States control who can marry and when. In Nebraska, teens younger than 19 need their parents' permission to marry, while over the state line in Kansas, people can walk down the aisle at 18. A number of states prohibited interracial couples from marrying until 1967, when the U.S. Supreme Court declared Virginia's law unconstitutional in *Loving v. Virginia*. Today, debate rages around gay marriage. Currently, 19 states have legalized such unions, while 31 states have amended their constitutions to explicitly prohibit legal recognition of same-sex marriage. Washington, D.C., which is technically a federal city, not a state, allows gay marriage.

Legalization of gay marriage has been achieved through judicial review (e.g., in Connecticut, Iowa, and Massachusetts) and through legislation (e.g., in New Hampshire, New York, and Vermont). Gay marriage has had a less fortunate time at the polls; proposed constitutional amendments to outlaw same-sex marriage have frequently been backed by large majorities of voters. This trend may be reversing, however. Public opinion

polls suggest voters are moving toward majority support of same-sex marriage. In 2012 a majority of voters in Maine and Maryland approved referendums on legalizing same-sex marriage. These were the first instances of same-sex marriage proposals' being approved by popular vote, and they were hailed as landmark victories by gay rights advocates.

As of mid-2014, however, the ability of same-sex couples to marry is still very much confined by geography—this is a difference that continues to make a big difference. In some states same-sex couples are, at least legally, treated no differently from heterosexual couples in terms of being able to marry. In other states there is no legal option at all. The bottom line is that the right to marry continues to be almost exclusively something determined at the state level. The problem, of course, is that this right exists in some states and not in others. There are several legal challenges to same-sex marriage currently being litigated in the federal courts, and until the U.S. Supreme Court agrees to hear one of these cases and makes a clear ruling (it declined the opportunity to do exactly this in 2014), legal recognition for same-sex unions will continue to vary across states.

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**Sources:** Jo Becker, "A Conservative's Road to Same-Sex Marriage Advocacy," *New York Times*, August 18, 2009, <http://www.nytimes.com/2009/08/19/us/19olson.html>; Erik Eckholm, "In Maine and Maryland, Victories at the Ballot Box for Same-Sex Marriage," *New York Times*, November 2012, [http://www.nytimes.com/2012/11/07/us/politics/same-sex-marriage-voting-election.html?\\_r=0](http://www.nytimes.com/2012/11/07/us/politics/same-sex-marriage-voting-election.html?_r=0); Initiative and Referendum Institute, "Same-Sex Marriage: Breaking the Firewall in California?" *Ballotwatch*, no. 2 (October 2008), [http://www.iandrinstitute.org/BW%202008-2%20\(Marriage\).pdf](http://www.iandrinstitute.org/BW%202008-2%20(Marriage).pdf); Christine Vestal, "Gay Marriage Legal in Six States," *Stateline*, June 4, 2009, <http://www.stateline.org/live/details/story?contentId=347390>.