

Marriage Equality, Adoption, and the Legal Future for Same-Sex Couples in America

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Abstract

Marriage equality is arguably the most relevant and controversial public policy issue in the United States today. Though 15 states and Washington, D.C. had marriage equality when this paper was researched, there were 30 states that defined marriage as between one man and one woman. U.S. states without marriage equality have interests in restricting the rights of same-sex couples. The 2013 Supreme Court case United States v. Windsor was important because it was the first time a case concerning same-sex marriage appeared before the Court. In this case, the Court found the federal government's definition of marriage as being between one man and one woman unconstitutional. This decision, along with various superior court decisions and social trends, strongly suggests that marriage equality will be implemented throughout the United States in the near future. This paper examines the relationship of marriage equality laws and adoption laws, and questions whether states with a strong interest in restricting marriage rights will attempt to restrict adoption rights. Through the use of quantitative analysis, this research first seeks to determine the relationship between existing state laws on marriage and, separately, on adoption rights. This analysis assesses whether a host of other variables have an influence on the relationship between marriage and adoption. Based on this analysis, the study explores the legal framework that determines how courts should treat challenges to state adoption laws in relation to marriage equality.

Arguably, no public policy issue is more relevant in the United States today than that of marriage equality.¹ Throughout American history, various minority groups have been fighting to be treated equally with respect to marriage. With the passage of the Equal Protection clause of the Fourteenth Amendment of the United States Constitution, citizens secured equal rights without discrimination. However, there is still disagreement between the government and minority groups as to whether minority groups should be afforded equal rights under the law. Homosexuals are a minority group or class that is discriminated against in the United States. In the past 20 years, homosexuals have been fighting for marriage equality because they believe it is a fundamental right; a right which cannot be restricted under the Fourteenth Amendment, regardless of sexual orientation. Similarly, freedom from discrimination and the rights to marry and found a family are protected under various international human rights frameworks – including the 1948 Universal Declaration of Human Rights.

In the 2013 Supreme Court case of *United States v. Windsor*, the justices alluded to the idea of marriage being a fundamental right. The Court found that restricting “marriage” and “spouse” to only heterosexual unions was unconstitutional; in this case, the issue resulted from a contested estate tax exemption for surviving spouses. Although the decision was a success for gay rights advocates, unfortunately the Court has not been able to formally rule whether marriage is a right regardless of sexual orientation. Since marriage is primarily regulated by the states, not the federal government, the decision in *Windsor* does not directly impact states, nor does it give states any direct constitutional imperative to change their existing marriage laws. Given jurisdictional restrictions, the Court has not ruled on the matter as it relates to states, although many believe this will likely happen in the near

¹ There are currently three legally recognized relationships for same-sex couples in the United States: marriage, civil union, and domestic partnership. Marriage awards same-sex couples with the same rights, protections and benefits as opposite-sex couples. Civil unions award fewer rights, protections and benefits to same-sex couples than their married counterparts. Domestic partnerships award the least amount of rights, protections and benefits to same-sex couples. There are 36 states that do not recognize any form of legal relationship for same-sex couples (at the time of writing) and of those, 35 states have either a constitutional amendment or statute that define marriage as between one man and one woman.

future. Currently there are state-level cases making their way through the court system concerning same-sex marriage in Pennsylvania and New Mexico. If the Court determines marriage to be a fundamental right for same-sex couples, marriage equality will have to be implemented throughout the U.S. as a matter of law. This would leave the majority of states that prohibit same-sex marriage with no legal alternative but to allow marriage equality.

States with a strong interest in restricting the rights of same-sex couples may turn to other issues, such as adoption rights, if gay marriage is legalized throughout the United States. Adoption is a legal action indirectly related to marriage. States have the right to regulate adoption based on the reserve powers granted to them in the Tenth Amendment; the federal government has virtually no enforcement authority over adoption except for the movement of children from state to state. The U.S. Constitution, according to a decision in *Lindley v. Sullivan*, does not provide a fundamental right to adopt (Lindley v. Sullivan, 1989). The focus of this study is to determine whether states will turn to alternative and derivative incidental regulations to inhibit the marriage equality movement – specifically in this study, the laws of adoption. If equal marriage laws are implemented throughout the country, will states that oppose marriage equality attempt to restrict adoption rights and other incidental rights of marriage?

Background Perspectives

Theory

The theoretical perspective used in this study is social construction theory, which has its foundation in the concepts of institutions and social systems. Institutions are social systems within a society, and they change and evolve because of human activity; society changes when institutions change. Humans participate in things larger than themselves, which are known as social systems; these include families, corporations, and even whole societies are social systems. People are connected to

systems through their status, which is a position within the system's structure. Characteristics such as gender and occupation are tied to status, for instance, and a person participates in a system by occupying one or more statuses within it. By occupying a status, humans are provided "with paths of least resistance that shape how we experience and participate in those systems" (Johnson, 1997, p. 85). How humans experience and participate in systems is shaped by the role of their status. A role is a collection of cultural ideas – including norms, attitudes, values and beliefs – which "apply to whoever occupies a particular status in relation to whoever occupies another status in the system" (Johnson, 1997, p. 85-86). Social life is complicated by the number of statuses and corresponding roles that individuals occupy, which is known as the problem of role conflict. Various roles call for different levels of engagement with law and cultural practices.

Institutions are necessary social systems in society. Some argue that humans lack "the necessary biological means to provide stability for human conduct" (Berger & Luckmann, 1967, p. 51), and that institutions create order, direction, and stability needed for human existence. One must understand the historical processes by which an institution was produced in order to adequately understand the institution itself. The definition of concepts is part of the history of the institution, even though the definitions evolve over time. Human activity is the driving force behind societal change, which causes changes to concept definition (Berger & Luckmann, 1967). Marriage represents an important institution within society, and current debates about gay marriage rights show how the definition of marriage is changing within U.S. society. Adoption as an institution forms a symbiotic relationship with marriage; the legal rights associated with marriage increase the legitimacy of some adoptions. Meanwhile, adoptions increase the support system and family bond typically associated with marriage. The combination of adoption and marriage form a family unit, which is central to the institution of family in general.

Law

According to the Tenth Amendment of the United States Constitution, any powers not delegated to the federal government are reserved for the states. Since marriage and adoption do not fall under the powers delegated to the federal government by the Constitution, the states have the power to create their own laws on these matters. However, like any law in the United States, states' marriage and adoption laws must not abridge fundamental rights of citizens, which have been granted to them by the Constitution. The legal argument for marriage equality and same-sex adoption can be made under the Equal Protection Clause, as well as according to the right to privacy.

There are three levels of scrutiny by which a law can be reviewed when considering constitutionality and the finding of a fundamental right: strict, intermediate and rational basis. Strict scrutiny is the most rigorous standard of judicial review. The courts apply strict scrutiny in cases involving race discrimination and fundamental rights. Intermediate scrutiny is a less rigorous standard of judicial review by which a law must satisfy less stringent tests. The courts apply intermediate scrutiny in cases involving gender discrimination, for instance. Currently, laws pertaining to same-sex couples are also reviewed under intermediate scrutiny. Rational basis is the least rigorous standard of judicial review (University of Louisiana, n.d.). If marriage is found to be a fundamental right for same-sex couples, laws concerning marriage equality would have to be reviewed under strict scrutiny. In that case, laws that restrict marriage equality would not be upheld.

Marriage

Black's Law Dictionary defines marriage as:

The legal union of a man and woman as husband and wife. Although the common law regarded marriage as a civil contract, it is more properly the civil status or relationship existing between a man and a woman who agree to and do live together as spouses. The essentials of a valid marriage are (1) parties legally capable of contracting marriage, (2) mutual consent or agreement, and (3) an actual contracting in the form prescribed by law (Garner, 2009, p. 50).

Over the last 75 years, the courts have more thoroughly defined the importance of marriage as a societal institution. The Equal Protection Clause of the Fourteenth Amendment is the avenue by which most modern marriage cases have made a constitutional claim. In 1942, the Supreme Court deemed marriage and procreation a basic constitutional liberty in relation to prison inmates (*Skinner v. Oklahoma*, 1942). (A constitutional liberty is defined as an action that a citizen is free to enjoy. Liberties are more easily abridged by governmental forces than a right, thus the definition of marriage is required to change in order to afford more equal rights.) The landmark Supreme Court case for marriage equality was *Loving v. Virginia*. In a unanimous decision, Chief Justice Earl Warren stated: “The freedom to marry, or not marry, a person of another race resides with the individual, and cannot be infringed by the State” (*Loving v. Virginia*, 1967). The Court found that the state’s anti-miscegenation statute violated the Due Process Clause of the Fourteenth Amendment. The decision held that distinctions drawn according to race are subject to the most rigid scrutiny, strict scrutiny. The decision in *Loving v. Virginia* struck down bans on interracial marriage throughout the country. The Court declared that all Americans have the freedom to marry by describing marriage as a vital personal right that is essential to the orderly pursuit of happiness (*Loving v. Virginia*, 1967). The decision in *Loving* is not direct precedent for the current marriage equality argument because the case concerned race, which is held to a higher level of scrutiny. Instead, *Loving* serves as indirect precedent because the case concerns the rights of a group that is traditionally discriminated against.

A variety of other court cases directly relate to marriage rights in the United States. The 1971 case of *Baker v. Nelson* is regarded as the first same-sex marriage case in the United States, although the Supreme Court decided not to hear the case. The case ended at the Minnesota Supreme Court; the U.S. Supreme Court found that there was not a substantial federal question. By choosing not to hear the case, the Supreme Court essentially affirmed the lower court’s decision that denying same-sex couples the right to marry is legal. Seven years later, the Court held that a state’s statute denying someone the

right to marry because they owed child support violated the Equal Protection Clause of the Fourteenth Amendment (*Zablocki v. Redhail*, 1978). The majority opinion in *Zablocki* emphasized that marriage is part of the right to privacy, outlined in the Fourteenth Amendment. Justice Thurgood Marshall's majority opinion explained that marriage is a basic civil right of fundamental importance. This interpretation of marriage gave more importance to marriage by defining it as a right instead of a liberty, which is more easily protected by the government. The first major ruling on gay rights came from the decision in *Bowers v. Hardwick*, when the Court upheld a Georgia law that made it illegal for adult same-sex couples to engage in homosexual acts in private (*Bowers v. Hardwick*, 1986). The last time the Supreme Court considered restrictions on citizens' right to marry, the Court determined four characteristics of marriage common to all groups of Americans. These characteristics included: 1) expression of emotional support and public commitment, 2) spiritual significance, and for some the exercise of a religious faith, 3) the expectation that for most, the marriage will be consummated, and 4) receipt of tangible benefits, including government benefits and property rights (*Turner v. Safley*, 1987).

The Defense of Marriage Act (DOMA) of 1996 was a federal law that defined marriage as being between one man and woman. In the 2013 case *United States v. Windsor*, the Court found that Section 3 of DOMA, 1 U.S.C.S § 7, was unconstitutional (*United States v. Windsor*, 2013). Action was brought against the United States government because the state that a same-sex couple resided in recognized their marriage, yet the federal government failed to recognize the marriage for estate tax exemption purposes. The United States Court of Appeals for the Second Circuit found that the statute was unconstitutional, and the U.S. government appealed. The Supreme Court ruled in favor of the respondent, thus making it illegal for the *federal* government to fail to recognize a legal same-sex relationship. Since the federal DOMA was being challenged, the holding was limited to declaring only that federal law unconstitutional. The decision was five to four with three dissents. The justices alluded to marriage as a fundamental right, as opposed to a constitutional liberty or a basic civil right as defined

in *Skinner*. The decision in *Windsor* does not directly affect state laws; however, the decision protects the federal rights of same-sex couples.

However, state governments continue to restrict who can marry based solely on sexual orientation. In 2000, Vermont became the first state to offer civil unions as a form of relationship recognition for same-sex couples. Since 2000, nineteen states and the District of Columbia have legalized relationship recognition for same-sex couples in the form of marriage, civil unions, and domestic partnerships. There are currently fifteen states, as well as the District of Columbia, that allow same-sex couples to marry whereby they have the same legal rights as different-sex couples: California, Connecticut, Delaware, Hawaii, Iowa, Maine, Maryland, Massachusetts, Minnesota, New Hampshire, New Jersey, New York, Rhode Island, Vermont, and Washington. The state legislature of Illinois passed a law that legalized same-sex marriage, but the law will not take effect until June 1, 2014. There are currently five states that offer relationship recognition for same-sex couples: Colorado, Illinois, Nevada, Oregon, and Wisconsin. Colorado and Illinois offer relationship recognition for same-sex couples as civil unions. Nevada, Oregon and Wisconsin offer relationship recognition for same-sex couples as domestic partnerships (ProCon.org, n.d.).² Civil unions offer more rights, protections and benefits to couples than domestic partnerships; however, neither offer recognition by the federal government.

Adoption

Black's Law Dictionary defines adoption as "the statutory process of terminating a child's legal rights and duties toward the natural parents and substituting similar rights and duties toward adoptive parents" (Garner, 2009, p. 986). Adoption has been an institution in the United States since it began gaining public support in the 1800s. In 1851, Massachusetts passed the first modern adoption law,

² Please note that this information was researched during the fall 2013 semester. For updated information on the status of same-sex marriage on a state-by-state basis, see <http://gaymarriage.procon.org/view.resource.php?resourceID=004857>.

which recognized adoption as a social and legal contract based on child welfare rather than adult interests (Herman, 2012). In the early 1900s, the first specialized adoption agencies were founded. The United States Children's Bureau within the Department of Labor was created by Congress in 1912. The purpose of the Bureau was "to investigate and report on all matters pertaining to the welfare of children and child life among all classes of our people," (Herman, 2012). Five years later, Minnesota passed the first law mandating social investigation of all adoptions, such as home studies. The Bureau set minimum standards for child-placing in 1919. The first organized program of single parent adoptions was created by the Los Angeles County Bureau of Adoptions in order to locate homes for hard-to-place children (Herman, 2012). Nationalization of adoption and child welfare laws began in 1974, around the peak of adoptions in the United States. Congress first passed the Child Abuse Prevention and Treatment Act of 1974, which was reformed in 1978. Since the passage of the Act, 26 national laws on adoption and child welfare have been passed (Child Welfare Information Gateway, 2012).³

Recent litigation on adoption laws have changed the way adoption is defined. The 1989 Seventh Circuit of Appeals case of *Lindley v. Sullivan* found that there is not a fundamental right to adopt. However, this decision is not a binding precedent for the entire United States (*Lindley v. Sullivan*, 1989). The Supreme Court has yet to be presented with the question of whether adoption is a fundamental right. If adoption is found to be fundamental right, laws pertaining to this issue will have to withstand strict scrutiny aligning with similar discussion in context of marriage. Though the decision in *Lindley*

³ The 26 laws are: Indian Child Welfare Act, Adoption Assistance and Child Welfare Act of 1980; Child Abuse Amendments of 1984; Child Abuse Prevention Adoption and Family Services Act of 1988; Child Abuse, Domestic Violence, Adoption and Family Services Act of 1992; Family Preservation and Support Services Program Act of 1993; Multiethnic Placement Act of 1994; Interethnic Provisions of 1996; Child Abuse Prevention and Treatment Amendments of 1996; Adoption of Safe Families Act of 1997; Foster Care Independence Act of 1999; Child Abuse Prevention and Enforcement Act of 2000; Intercountry Adoption Act of 2000; Promoting Safe and Stable Families Amendments of 2001; Keeping Children and Families Safe Act of 2003; Adoption Promotion Act of 2003; Fair Access Foster Care Act of 2005; Deficit Reduction Act of 2005; Safe and Timely Interstate Placement of Foster Children Act of 2006; Adam Walsh Child Protection and Safety Act of 2006; Child and Family Services Improvement Act of 2006; Tax Relief and Health Care Act of 2006; Fostering Connections to Success and Increasing Adoptions Act of 2008; Patient Protection and Affordable Care Act of 2010; CAPTA Reauthorization Act of 2010; and Child and Family Services Improvement and Innovation Act of 2011.

could have been interpreted to create more restrictive adoption laws, the decision did not prevent same-sex couples from securing adoption rights in the nineties. Vermont and Massachusetts were the first states to attain legal rights for same-sex families by legalizing second-parent adoption (Michael, 2004). Although several states had common laws to discourage adoption by homosexuals, no state has a statute categorically excluding gays and lesbians, as a class, from adopting (Isaacs-Blundin, 2006). Florida had a statute that declared homosexuals were ineligible to adopt, but this law was declared unconstitutional in 2010. Connecticut still has a law that takes into account the sexual orientation of the adopter when placing a child. An Arkansas Supreme Court decision in *Arkansas Department of Human Services v. Cole* held that the Arkansas Adoption and Foster Care Act of 2008 was a violation of privacy rights granted by the state's constitution because it forced a citizen to choose between a life of private sexual intimacy or eligibility to adopt or foster children. In several cases – Vermont's *Baker v. State*, Massachusetts' *Goodridge v. Department of Public Health*, and Iowa's *Varnum v. Brien* – recognized that since same-sex couples had the right to adopt children, denying them the right to marry based on child welfare was contradictory (Alexander, 2013). Alexander (2013) argues that the United States Supreme Court has suggested that the rights to marriage and adoption are included in the right to privacy.

There are avenues by which same-sex couples can directly create family bonds, although this study will focus on traditional adoption. Some same-sex couples turn to surrogacy contracts or in vitro fertilization. These methods may sometimes involve second parent adoption in order to provide both parents with legal rights to the child. Ratliff (2011) presents the case that adult adoption is a viable means for same-sex couples to protect themselves. Adult adoption is utilized to formalize a family unit thus adult adoption is also used to ensure benefits to the adoptee. Currently, adult adoption is being utilized for inheritance objectives. The Uniform Probate Code treats adoptees consistently, unlike the same-sex marriage laws of the states (Ratliff, 2011). Adult adoption is sometimes used by same-sex

couples to create a legal relationship to ensure rights that are not afforded to them by other means, such as marriage.

Current debates

The United States is an institutionalized society supported by the structures implicit to social systems (Johnson, 1997). The family unit is at the center of American society and forms the most basic social system and institution. Clifford et al. (2007) define family as “the basic unit in society having as its nucleus two or more adults living together and cooperating in the care and rearing of their own or adopted children” (p. 9), although the definition of family continues to expand in American society. This unit provides members with organization and structure. There are millions of family units functioning within the United States, and each is unique and defined by the statuses and roles within the unit. Family units tend to be characterized as either traditional or non-traditional. The United States Census Bureau (2010) defines the traditional family as “two or more persons related by birth, marriage, or adoption who reside in the same household.” However, the majority of Americans define the family in nontraditional terms, such as “a group of people who love and care for one another” (Bell, 2001, p. 345). Non-traditional families include step families, single parent families, and same-sex parent families.

Over the past 50 years, the United States has seen a dramatic increase in the number of non-traditional families. The increase is the driving force behind the evolution of the definition of family. American Society has started to accept most non-traditional family units as supported by judicial and legislative initiatives, yet some non-traditional families – especially families with same-sex partners – are still fighting for support and recognition. According to Michael (2004), “the law traditionally recognizes two configurations of family based on two different relationships: (1) parent-child families and (2) marriage” (p. 1444). Same-sex couples are barred from marrying in more than thirty states; therefore, the majority of same-sex couples are unable to legally form families through this legal establishment of

the marriage relationship. The only other method for same-sex couples to form families is to create a parent-child family. Same-sex couples are unable to reproduce children by themselves due to limitations of human biology; therefore, these couples must turn to other means to obtain legal custody of a child, such as adoption.

In general, adoption is considered “a statutorily granted privilege rather than a fundamental right” (Michael, 2004, p. 1446). This perspective requires people hoping to adopt to satisfy the procedural requirements for adoption, as well as show that the adoption is in the best interests of the child. Determining the best interests of the child was traditionally interpreted subjectively, which allowed bias to influence decisions. Since the 1920s, social scientists and social workers have conducted numerous studies about adoptive children, as well as adoptive parents. The first major outcome study conducted about adopted children concluded that most children and placements turned out well, while a small percentage did not (Herman, 2012). The occurrence of adoptions by same-sex couples increased as the acceptance of same-sex couples increased, thus allowing for studies to be conducted on children of same-sex couples as well as adoptive same-sex parents.

Studies consistently show that children of same-sex couples are well-adjusting, which refutes the arguments of those who oppose same-sex adoption. Opponents of same-sex adoption argue that the children of same-sex couples do not develop as well of children of opposite-sex couples (Wardle, 2010). Yet the consistent conclusion reached by studies conducted on the children of same-sex couples is that these children are as well-adjusted as children of different-sex parents (Patterson, 2009). The consistencies in these findings are impossible to ignore. After conducting a study that analyzed the association between the emotional and behavioral problems in children and their adoptive parents’ sexual orientation, Averett et al. (2009) concluded that a child’s behavior was not contingent on the sexual orientation of an adoptive parent. With these findings in mind, the sexual orientation of a couple should not be taken into consideration when evaluating what the best interests of the child are. Instead,

what should be considered is the couple's ability to supply the child with a stable and nurturing environment (Bell, 2001).

Multiple studies have been conducted in an attempt to understand the adoption process from a same-sex couple's point of view. There are three areas of adoption that should be examined to understand the process from the couple's perspective: (1) barriers encountered and overcome, (2) challenges experienced and resolved, and (3) joys or successes in adoptive parenting (Brown et al., 2009). An overwhelming majority of parents reported at least one barrier to becoming a lesbian or gay adoptive parent that was specifically related to their sexual identities. Almost all of the parents reported challenges such as legal concerns, issues of acceptance, and community support (Brown et al., 2009). The legal concerns raised by some of the same-sex couples involved their inability to marry or jointly adopt. In states that allow for marriage equality, same-sex couples are likely to marry in order to receive the security and legal protections of marriage (Gotta et al., 2012). In states where marriage equality is not assured, same-sex couples often end up cohabiting and acting like married couples despite legal restrictions. Cohabiting same-sex couples lack legal relationship recognition under the majority of the states' marriage laws; therefore, the couples cannot obtain legal benefits and obligations. This lack of legal relationship status can bring unnecessary stress to the family unit.

Restrictions on same-sex marriage may translate to similar obstacles to adoption rights. According to Wardle (2005), in at least some states, "the DOMAs are likely the tip of an iceberg, manifesting a strong underlying public sentiment against not just homosexual marriage in particular, but against legal recognition of homosexual family forms in general, including...adoption" (p. 567-568). Legal barriers to same-sex adoption are created despite a shortage of qualified adoptive parents. Averett et al. (2009) argue that same-sex couples are an untapped resource for children in need of adoption, and should therefore be considered as potential adoptive parents. There are an estimated two million gay and lesbian potential adoptive parents to adopt the approximately 130,000 children waiting to be

adopted in the United States (Averett et al., 2009). Furthermore, Brown et al. (2009) assert that policies that recognize same-sex relationships should be supported, in part, for their potential to provide emotional and economic benefits to adopted children.

Methodology

This study began by classifying marriage equality laws and adoption laws of the 50 U.S. states and the District of Columbia according to how restrictive they are. The marriage equality laws were evaluated using a five point scale, with one being the most restrictive and five being the least restrictive. The District of Columbia and states with marriage equality were awarded a score of five. A score of four was awarded to states with civil unions, while a score of three was awarded to states with domestic partnerships. States without legislation on relationship recognition for same-sex couples received a score of two. States with constitutional or statutory provisions defining marriage as between one man and one woman, in addition to not recognizing any form of legal relationship for same-sex couples, received a score of one.

The evaluation process for adoption laws has more steps than for marriage equality laws due to the complexity of adoption laws. As indicated above, adoption laws contain three elements: adopter, adoptee, and right to place. Each element was analyzed separately using a point scale; subsequently, the three scores were combined and re-scaled to award each state with an overall score for their adoption laws. First, the adopter element was assessed using a three point scale, with one being the most restrictive and three being the least restrictive. A score of three was awarded when the law allows for any adult to adopt. A score of two was awarded when the law allows for any adult or husband and wife to jointly adopt, or any adult with one restriction to adopt. A score of one was awarded when the law placed two or more restrictions on who may adopt. Second, the adoptee element was assessed using a four point scale, with one being the most restrictive and four being the least restrictive. A score of four

was awarded when the law allows for any individual to be adopted. A score of three was awarded when the law allows for both minors and adults to be adopted, yet there is a restriction placed on one of them. A score of two was awarded when the law allowed for both minors and adults to be adopted, yet there are two or more restrictions placed on them. A score of one was awarded when the law only allows for the adoption of minors. Third, the right to place element was analyzed using a three point scale, with one being the most restrictive and three being the least restrictive. A score of three was awarded when the law allows for blood relatives/legal custodians, state entities, and licensed agencies to place a child for adoption. A score of two was awarded when only two entities were allowed to place a child for adoption. A score of one was awarded when the law only allows for one of the entities to place a child for adoption. After each element was awarded a score, the scores were combined and totaled between three and ten. The totals were assessed using a four point scale, with one being the most restrictive and four being the least restrictive. A score of four was awarded when the total was either nine or ten, thus a score of three was awarded when the total was either seven or eight. A score of two was awarded when the total was either five or six; consequently, a score of one was awarded when the total was either three or four. States with scores of one or two are considered to have strict adoption laws. States with scores of three or four are considered to have flexible adoption laws.

Once the marriage laws and adoptions laws were appropriately coded, a quantitative analysis was conducted to determine the relationship, if any, between the restrictiveness of marriage laws and the restrictiveness of adoption laws.

Additional Variables

Four other variables were considered in this study: religiosity, conservativeness, support for same-sex marriage, and number of orphans. These four variables are hypothesized to have an influence on marriage and/or adoption laws.

Religiosity: Religiosity was coded using a Gallup poll that asked citizens of each state whether religion was important to them and how often they attended church. Each state was then assigned a percentage quantifying how religious it was. According to the data, Mississippi was the state with the highest percentage of very religious citizens (58.4%) and Vermont was the state with the lowest percentage of very religious citizens (19.1%) (Gallup, 2012).

Conservativeness: Conservativeness was coded using a Gallup poll that asked citizens of each state if they described their political views as conservative. Each state was then assigned a percentage quantifying how conservative it was. According to the data, Alabama was the state with the highest percentage of conservative citizens (50.6%) and the District of Columbia had the lowest percentage of conservative citizens (20.5%) (Gallup, 2012).

Public Support for Same-Sex Marriage: Public support for same-sex marriage was coded using a combination of multiple national surveys compiled by the Williams Institute. Each state was then assigned a percentage quantifying how much support it exhibited. According to the data, the District of Columbia had the highest percentage of public support for same-sex marriage (62%), while Alabama and Louisiana had the lowest percentage of public support for same-sex marriage (31%) (Barclay & Flores, 2013).

Number of Orphans: Number of orphans was coded using data provided by the United States Census Bureau and the Children's Bureau. Each state was then assigned a percentage representing the number of orphans in each state. The percentage was calculated by dividing the number of children in public foster care who were waiting to be adopted in 2010 by the number of persons under eighteen in 2010 for each state and the District of Columbia. According to the data, Maryland had the highest percentage of orphans and Washington had the lowest percentage of orphans (Child Welfare Information Gateway, 2013b; Children's Bureau, 2012).

Findings

Upon examining the relationship between marriage laws and adoption laws, this study determined that there is a very weak but positive correlation. The correlation between marriage law scores and adoption law scores is 0.16.

Table 1
Adoption Averages

States	Average Adoption Score
States with Relationship Recognition	3.14
50 States & the District of Columbia	3.00
States without Relationship Recognition	2.93

Note: Relationship recognition states meaning states that have marriage equality, civil unions, or domestic partnerships

Table 1 illustrates the average adoption score for three categories of states: states with relationship recognition, every state and the District of Columbia, and states without relationship recognition. The average adoption score of every state and the District of Columbia is 3.00. States with relationship recognition have an average adoption score of 3.14, which is slightly higher than the national average. Meanwhile, states without relationship recognition have an average adoption score of 2.93, which is slightly lower than the national average. States without any form of relationship recognition tend to have more restrictive adoption laws than states with some form of relationship recognition.

Table 2
Other Variable Correlations

Variables	Marriage Score	Adoption Score
Religiosity (% Very Religious)	-0.70	-0.17
Conservativeness (% Conservative)	-0.79	-0.13
Public Support of Same-Sex Marriage (% Support)	0.78	0.12
Orphans (% Orphans of Under 18 population)	0.08	-0.02

Table 2 depicts the correlations between marriage score and other variables, as well as the correlations between adoption score and variable such as religiosity, conservativeness, public support of same-sex marriage, and percent of orphans. There is a strong and negative correlation between marriage score and religiosity (-0.70) and between marriage score and conservativeness (-0.79). A strong and positive correlation is seen between public support for same-sex marriage (0.78). The correlations of adoption score and religiosity, and adoption score and conservativeness, are negative like their marriage score counterparts; however, the correlations are particularly weak. A positive yet extremely weak correlation exists between adoption score and public support of same-sex marriage.

Table 3
Averages of Other Variables

States	Religiosity (% Very Religious)	Conservativeness (% Conservative)	Public Support of Same-Sex Marriage (% Support)	Orphans (% Orphans of Under 18 population)
All States & District of Columbia	33.55	36.15	39.45	0.17
Marriage/ Strict Adoption States	30.60	30.15	54.00	0.16
Marriage/ Lax Adoption States	31.11	32.48	44.79	0.20
DP & CU/ Strict Adoption States	34.05	38.85	47.00	0.20
DP & CU/ Lax Adoption States	33.43	35.77	50.33	0.14
No relationship recognition/ Strict Adoption States	34.70	44.00	38.14	0.12

No relationship recognition/ Lax Adoption States	44.83	42.97	38.83	0.17
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Notes: DP stands for domestic partnership and CU stands for civil union

Table 3 displays every variable analyzed in the study. States were categorized into groups based on their relationship recognition status and their level of restrictiveness in terms of adoption laws. Based on these categories, the averages of the four other variables were calculated. It was hypothesized that there would be significant differences between the averages of states with marriage equality and flexible adoption laws compared to averages of states with no relationship recognition and strict adoption laws. However, the differences are small and inconsistent. There are slight differences between the several state categories compared to the total state average. These differences are too inconsistent to be effectively analyzed.

Conclusion

This study attempted to accomplish two goals: to analyze and discuss the legal history of marriage equality and adoption, and to attempt to determine whether states with strong interests in restricting the rights of same-sex couples will target adoption laws in response to national recognition of marriage equality. The statistical analysis of multiple variables produced information that does not support the initial hypothesis. Perhaps the constant changing of marriage equality laws was a factor. Law is a traditionally slow to change as compared to society overall; however, institutions can quickly change to meet the new needs of an evolved society.

The question becomes: Where do states go from here? The decision in *Windsor* has put pressure on the federal government and state governments to reevaluate their marriage equality laws. The Supreme Court has yet to rule on whether marriage is a fundamental right, or whether marriage is included in the right to privacy – yet it does not matter if one precedes the other. Both provide a legal

framework and case precedent for the courts to base their decisions on. In viewing marriage as both part of the right to privacy and a fundamental right in itself, coupled with the fall of DOMA, marriage equality throughout the United States is inevitable. There will need to be a Supreme Court decision on the matter of marriage equality in order to have every state comply with the change. However, many states will still have strong interests in restricting the rights of same-sex couples. These interests are tied to levels of religiosity, public support, and conservativeness within the states. Some states may still try to restrict the rights of same-sex couples through adoption laws or other related aspects of the marital relationship, such as property distribution, child support, and custody. The position of the Supreme Court on this issue is immensely important. The Supreme Court may find it necessary to find adoption as a fundamental right depending on how aggressive traditionally pro-DOMA states attempt to restrict the incidental marriage rights of homosexuals.

Marriage equality will most likely be implemented throughout the United States within the next few years. This will mark a major milestone for same-sex couples on their quest to be treated equally under the law. Same-sex couples may need to fight another large battle for their rights, however, if pro-DOMA states can find a way around equality laws. For now, the legal future for same-sex couples appears promising.

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Appendix A

Data Analyzed Table

State	Marriage Score	Adoption Score	Religiosity (% Very Religious)	Conservativeness (% Conservative)	Public Support of Same-Sex Marriage (% Support)	Orphans (% Orphans of Under 18 population)
Alabama	1	3	55.7	50.6	32	0.17
Alaska	1	3	31.3	37.4	46	0.09
Arizona	1	2	36.6	39.4	46	0.19
Arkansas	1	3	52.3	45.3	31	0.10
California	5	3	34.5	33.2	50	0.11
Colorado	4	3	33.5	39.2	50	0.12
Connecticut	5	3	30.5	30.2	57	0.08
Delaware	5	4	35.2	34.7	49	0.11
District of Columbia	5	3	29.7	20.5	62	0.37
Florida	1	3	37.6	38.8	42	0.23
Georgia	1	4	47.9	43.8	37	0.13
Hawaii	5	4	31.4	31.9	54	0.20
Idaho	1	2	45.1	47.1	41	0.25
Illinois	4	3	38	35.1	47	0.11
Indiana	1	3	42.7	43.4	40	0.14
Iowa	5	3	41.3	40.3	45	0.17
Kansas	1	3	45.1	41.7	41	0.31
Kentucky	1	2	45.4	41	33	0.09
Louisiana	1	2	53.3	45.6	31	0.20
Maine	5	3	24.4	36.3	53	0.11

Maryland	5	4	36.7	32.1	48	0.06
Massachusetts	5	2	26.5	28.3	57	0.08
Michigan	1	4	36.5	35.7	43	0.32
Minnesota	5	3	38.2	35.7	43	0.07
Mississippi	1	3	58.4	48.2	34	0.23
Missouri	1	3	42.1	41.5	37	0.22
Montana	1	4	34	43.6	46	0.11
Nebraska	1	3	44.2	45.3	37	0.15
Nevada	3	2	31.4	37.1	47	0.19
New Hampshire	5	4	23.4	36.4	47	0.15
New Jersey	5	1	34.7	32	51	0.32
New Mexico	2	2	43.2	38.8	47	0.09
New York	5	4	31.5	31.7	53	0.21
North Carolina	1	4	49.5	41.2	38	0.10
North Dakota	1	4	41.6	48.6	40	0.10
Ohio	1	2	38.2	37.7	41	0.12
Oklahoma	1	3	47.6	47.3	34	0.12
Oregon	3	4	28.8	33	54	0.20
Pennsylvania	1	3	39.5	38.1	47	0.16
Rhode Island	5	3	29.1	27.8	50	0.16
South Carolina	1	2	51.9	43.7	34	0.38
South Dakota	1	3	45.6	41.6	46	0.15
Tennessee	1	3	50.3	44.2	32	0.22
Texas	1	4	47	42.6	33	0.08
Utah	1	3	56	48	36	0.14
Vermont	5	4	19.1	31	54	0.12

Virginia	1	3	41.1	38.8	43	0.07
Washington	5	4	30.5	32.9	52	0.76
West Virginia	1	3	41.9	43.9	32	0.15
Wisconsin	3	2	36.7	40.6	47	0.15
Wyoming	1	2	32.8	48.6	41	0.19

Note: Data compiled from U.S. Census Bureau, Children's Bureau, the Williams Institute

Appendix B

Adoption Scales

State	Adoption Score	Who May Adopt (scale is 1-3)	Who May Be Adopted (scale is 1-4)	Who May Place (scale is 1-3)	Raw Score (Combination of three scales)
Alabama	3	2	3	3	8
Alaska	3	2	4	2	8
Arizona	2	1	2	3	6
Arkansas	3	2	4	2	8
California	3	2	3	3	8
Colorado	3	2	3	2	7
Connecticut	3	1	3	3	7
Delaware	4	2	4	3	9
District of Columbia	3	2	4	2	8
Florida	3	1	4	2	7
Georgia	4	2	4	3	9
Hawaii	4	2	4	3	9
Idaho	2	1	3	2	6
Illinois	3	2	3	3	8
Indiana	3	2	4	2	8
Iowa	3	2	3	3	8
Kansas	3	2	4	2	8
Kentucky	2	2	1	3	6
Louisiana	2	2	1	2	5
Maine	3	2	4	2	8
Maryland	4	2	4	3	9

Massachusetts	2	2	2	2	6
Michigan	4	2	4	3	9
Minnesota	3	2	4	2	8
Mississippi	3	2	4	2	8
Missouri	3	3	1	3	7
Montana	4	2	4	3	9
Nebraska	3	2	3	3	8
Nevada	2	1	2	2	5
New Hampshire	4	2	4	3	9
New Jersey	1	1	1	2	4
New Mexico	2	2	1	3	6
New York	4	3	4	2	9
North Carolina	4	3	4	2	9
North Dakota	4	2	4	3	9
Ohio	2	2	3	1	6
Oklahoma	3	1	4	3	8
Oregon	4	2	4	3	9
Pennsylvania	3	3	4	1	8
Rhode Island	3	2	3	3	8
South Carolina	2	2	1	3	6
South Dakota	3	1	4	3	8
Tennessee	3	1	4	3	8
Texas	4	3	4	3	10
Utah	3	2	4	2	8
Vermont	4	3	4	3	10
Virginia	3	2	3	3	8

Washington	4	3	4	3	10
West Virginia	3	2	4	2	8
Wisconsin	2	2	1	2	5
Wyoming	2	2	1	3	6

Note: Data compiled from Children's Bureau

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