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PROGRESSION OF SAME-SEX MARRIAGE IN THE UNITED STATES AND
EUROPE

by
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22 April 2015

Chapter 1: Introduction

The issue of same-sex marriage has been the hot social issue of the decade, even of the generation. This social issue has been debated to and fro in countries around the world. Each country has differing policies towards same-sex marriage. Certain countries in the Middle East hold same-sex relationships as crimes punishable by death. Some countries in Europe hold same-sex marriage as completely equal to heterosexual marriage. Each country is different. Each country is made up of different cultures and this plays a huge role in the debate. This thesis will compare and contrast European countries with the United States in regards to how progressive same-sex marriage laws are in each country. A broad range of countries in Europe was chosen to analyze. A couple of countries chosen belong to the European Union. These countries were chosen on purpose because it will be important to see how the members of the European Union work to decide a social issue like this one or even if they will. Each member has its own cultural perspective and opinions on this subject, so it will be interesting to witness the debates that happen between each representative.

Which European Countries Will Be Researched

There are many things that need to be researched in order to come to a conclusion about whether same-sex marriage should be allowed or not. Things such as politics, the opinion of the political parties in charge, the ever-changing opinion of the public, human rights, whether the right to engage in a same-sex marriage constitutes as a human right, religious views, so on and so forth. All of these things play a role in this debate because all of these things influence the way people think and the opinions they hold. That is why culture plays an important role. Cultures are completely different in every country and

within a country. That is why people of different countries can have such polarized views on this issue. As stated earlier, Middle Eastern countries hold homosexual relationships as punishable by death because through their religion and their culture, homosexual relationships are a violation of human nature. Yet, just across the Mediterranean Sea from the Middle East, many European countries have been very supportive in fighting for gay rights and same-sex marriage. Each country is different and the citizen's views in each country can be different. This needs to be taken into account when analyzing this issue in different countries.

Europe is made up of roughly 50 countries. The cultures in France differ completely from the cultures in Russia. The cultures in Albania differ completely from the cultures in Finland and the other Scandinavian countries. All of these countries are going to have a different opinion and different laws about same-sex marriage. With that said, Europe is very interesting because of the European Union. The European Union is an "economic and political partnership between 28 European countries that together cover much of the continent," (Europa, 2015). Basically this means that these 28 countries agree to follow the same rules and the same laws when it comes to specific things. The idea behind the European Union was to foster cooperation between these countries in order to avoid conflict with each other (Europa, 2015). This made the group of 28 countries interdependent when it came to trading and other economic situations. This eventually evolved from just economic policies to political policies as well. Because these countries voluntarily agree to follow the same political policies, these 28 countries will all have the same policies towards same-sex marriage if the European Union agrees to settle this issue. In this case, the cultures in these 28 different countries will not play as big of a role. It will

play a role when it comes to how/if the European Union decides the issue of same-sex marriage, but once the European Union makes a final decision, it does not matter what the different opinions are in the different countries due to their different cultures. They are bound to follow that decision unless they choose to leave the European Union.

The United States

Just like Europe, the United States is unique in that it holds a lot of different cultures even though it is only one country as opposed to 50 different countries like Europe. The United States is often referred to as a “melting pot” because many different people from different countries immigrated to the United States. This created a wide range of cultures settling in the United States, which created the broad range of opinions on social issues in the United States. Same-sex marriage debates have dominated the social compass in the United States as of the last decade. Not only has it dominated the media, but also the Supreme Court of the United States has been bombarded with court cases regarding same-sex marriage bans in individual states. Before introducing the same-sex marriage bans in certain states, the Defense of Marriage Act (DOMA) needs to be introduced because it is the sole reason for why the states were given the power to create these bans.

Evolution of Same-Sex Marriage in the United States

Gay men and women started to experience this cycle of discrimination based on the denial of marriage through DOMA (1996). DOMA was enacted September 21, 1996 and gave states the right to not recognize same-sex marriage, or to recognize same-sex marriage. It gave all the power to the states. At this point, the federal government only recognized marriage as a sacred union between men and women, whether the states recognized same-sex marriage or not. This became very problematic when partners in a

same-sex marriage would pass away and the surviving spouse would not receive the benefits that heterosexual widows would. It also became problematic when dealing with benefits, social security, and adoption. In 2013, the United States Supreme Court overturned section 3 of DOMA, and forced the Federal government to recognize gay/lesbian marriages as long as that state recognizes the marriage.

The couple that made this happen was Edie Windsor and Thea Spyer through the court case *Windsor v. United States*. This couple was together for forty years before they traveled to Canada and got married in 2007. Their home state of New York recognized their marriage, but because of DOMA the federal government did not (ACLU, 2013). This became very problematic when Spyer passed away due to multiple sclerosis and left everything to her spouse. Unfortunately, the federal government treated Spyer and Windsor like strangers in this matter and taxed everything Windsor inherited. Windsor decided to sue the government for a refund on her taxes and won (ACLU, 2013). This is the court case that made the federal government acknowledge same-sex marriage if the state does. Windsor opened the door for same-sex couples to have more opportunities.

Windsor v. United States (2013) overturned section 3 of DOMA, which forced the Federal Government of the United States to recognize same-sex marriage if a state does. That means that the spouses will receive benefits from the government like any other married couple and that property left to a widow from their same-sex partner will be taxed like a heterosexual widow. However, the fact that each state can have its own laws regarding same-sex marriage is complicated and controversial. Because it was left up to each state to decide how to handle same-sex marriage, many states began to write same-sex marriage bans into their state constitutions. This is what brought the flood of suits.

Same-sex couples began to feel discriminated against because they were told that they could not marry each other, so they filed suit against the state and one case in particular made it all the way up to the United States Supreme Court. The Supreme Court has decided to take the case and decide the issue once and for all in the spring of 2015 through the case *Deboer v. Snyder*. This case could very well determine the entire issue of same-sex marriage country wide for the United States by declaring that the Federal government will decide marriage. If the Supreme Court decides that it will regulate marriage, every state is bound to follow.

A same-sex couple in Michigan is filing suit against the State of Michigan at the United States Supreme Court level because the state of Michigan will not legally let the couple jointly adopt their three children. This case is particularly interesting because it involves three other states in one suit. Although Kentucky, Ohio, and Tennessee are also in the suit, their fights are too narrowly tailored to specifics and do not fight the gay marriage-ban in their states completely (Sherman, 2014). At the start of this suit, only 6 states allowed gay marriage, now that number has grown to 37. This case has gained a lot of momentum in just 3 years. In only a couple of months, the Supreme Court of the United States could choose to settle this nation wide debate, one way or another. It was a big step for the justices to just agree to hear the case, let alone decide on it. It will be interesting to see how the Supreme Court rules, or even if they do. No matter what, this case shows how big of an issue this debate has become. The lives of couples are being turned upside down because a state does not allow them to do things that every other couple gets to do, like raise children together, inherit property after death, and claim insurance. Gay-marriage bans affect all aspects of homosexual people's lives.

Alabama is another example of how this social issue is sweeping across the United States. DOMA gave each state the right to decide marriage laws within their own boundaries. As stated earlier, culture matters. The culture of Alabama historically is very religious and conservative. Conservative and religious people tend to not be supporters of same-sex marriage (Masci, 2015). Because of this, Alabama was one of many states to write a same-sex marriage ban in the state constitution. A couple sued the state of Alabama claiming they were being discriminated against due to their sexuality. The Federal District Court of Alabama agreed with the couple and struck down Alabama's ban on gay marriage. The case was then appealed to the Federal Court of Appeals and the Supreme Court upheld the lower court's ruling. However that did not stop Justice Moore, a justice on the Alabama State Supreme Court, from speaking out against this and instructing other judges to stop performing same-sex marriages (Blinder, 2015). This is a perfect example of why the Supreme Court of the United States needs to make a nationwide ruling on this matter. It has become too big of an issue to leave alone any longer. It has caused massive protests and even illegal activity by judges refusing to follow the new decision.

What Should Happen

Both European countries and the United States are battling this same-sex marriage debate. Couples in these countries are suing either their states or their territories or even the entire country for their right to marry. The issue is whether or not same-sex marriage is a civil right that should be granted across Europe and the United States. If it is a civil right, should it be recognized worldwide or should each state in the United States and the equivalent in European Countries each be allowed to create their own laws around this issue? The European Union holds the power to issue a decision that forces the 28 members

of the European Union to follow. The United States Federal government has the power to issue a decision that binds all 50 states to follow that one ruling or law. This issue has been debated for too long. It is time for a decision granting marriage equality to any couple no matter their sexuality.

Granting marriage equality to same-sex couples is important for many reasons. The biggest reason is that discriminating against someone based on their sexuality is illegal in many cases such as in business, so it should also be illegal in deciding whether someone should be married or not. Another reason is that by not allowing these couples to get married, it makes same-sex relationships seem inferior to heterosexual relationships. Marriage is more than just signing a piece of paper and cutting a cake in a white dress. There are a lot of benefits that come with getting married; literally, couples get benefits. In the United States, tax benefits allow couples to file joint tax returns and create “family partnerships” that distribute income from a family business. Estate benefits allow the spouse to inherit untaxed land that was owned by their deceased spouse, create life estate trusts that are specifically reserved for married couples, and priority is given to the spouse to be a financial conservator if needed. Government benefits include social security, Medicare, public assistance benefits, and more. Employer benefits are given to spouses such as insurance benefits and worker’s compensation benefits (Guillen, 2015). The list goes on and on. France has very similar tax breaks especially when it comes to inheriting land or property after one spouse dies. If two people in a relationship do not sign a marriage contract and one spouse dies, even if the deceased spouse drew up a will designating the property to the surviving spouse, other surviving family members will

automatically be chosen to inherit that property over the surviving spouse (Marriage in France, 2015). Marriage is more than just committing to one another.

The biggest complication same-sex couples run into when they enter into a serious relationship is the issue of adoption. In the United States, some states will not permit same-sex couples to adopt each other's children. That was the driving factor for the current Michigan Supreme Court case. Two people devote their lives to each other but some states will not legally allow them to share the responsibility of raising their children together. This is a very scary situation because if one parent dies, the children will not necessarily be put in the care of the other spouse. This could potentially split families up and ruin the lives of the children. Same-sex couples could also be denied the opportunity to adopt a child that is not their blood. Not only are they denied the privilege of getting married, but also they can potentially be denied the privilege of starting a family just because of their sexual orientation. This is not only happening in the United States. This issue of adoption is happening everywhere same-sex marriage debates are going on.

This issue is global. People around the world are fighting for marriage equality. Back in 2009, Albania's Prime Minister declared his support for same-sex marriage. Prime Minister Sali Berisha is still in office today and is still fighting for marriage equality (Loloçi, 2015). Albania, not long ago, was a conservative communist country that criminalized homosexual behavior and relationships. It was not decriminalized until 1995. Then, in 2013 a law was passed that outlawed discrimination of sexual orientation. Discrimination of sexual orientation was added to the criminal code (Loloçi, 2015). In France, a justice of the government performed a same-sex marriage and then the government annulled the marriage because it did not believe in same-sex marriage (Fulchiron, 2015). This caused a

huge uproar among the citizens of the France. Russia has been very outspoken recently about their anti homosexual laws that sparked a lot of debate world wide when the 2014 Winter Olympics were hosted in the city of Sochi. This issue is global. Countries across the globe are fighting either for marriage equality, or against marriage equality. Either way, this issue needs to be addressed.

The right to marry should be a fundamental human right granted to everyone no matter his or her race, gender, or sexual orientation. By not allowing same-sex marriage, countries and states are discriminating against people based on their sexual orientations. It is never acceptable to discriminate against a human being. It would be completely different to shame people if they were causing harm to other people. They do not harm or even inconvenience the lives of people around them. If they want to choose to get married and this couple getting married does not affect the lives or well being of anyone else, then they should be granted this privilege just like everyone else who is heterosexual. By depriving these couples of same-sex marriage, these couples are deprived of great benefits, tax breaks, and even the right to start a family through adoption. These benefits and tax breaks are made to bind couples together and to share certain responsibilities. These benefits and tax breaks make the lives of married couples easier. By depriving same-sex couples the right to marry they are deprived of a better life. Lastly, marriage brings in a lot of money to every country's government. In 2012, gay marriages were responsible for bring in \$259 million to New York City's economy since it has been legal in 2011 (Ellis, 2012). Same-sex marriage could increase the economies of every country that started to allow same-sex marriage.

Trends in the United States and in some countries in Europe are starting to lean towards being in favor of same-sex marriage. The fight for same-sex marriage has been magnified in the last couple of years and is moving way faster than any other social issue ever has. The United States could very well have this debate settled in the next couple of months. Some European countries also have the momentum to rule on this debate within the year 2015. Public opinion has been constantly changing, but public opinion when it comes to this social issue is only changing more and more in favor of allowing same-sex marriage. It is time for marriage equality to be allowed once and for all.

Chapter 2: Government Structures

Understanding government structures in various developed nations is an important aspect of figuring out how to bring about same-sex marriage in the United States. No two governments are exactly alike, so it is important to understand the government structure of each country because the legalization of same-sex marriage will come about differently. For example, same-sex marriage will most likely be legalized nationwide through the judicial branch in the United States, but in Finland, it was brought about through a citizen's initiative. In order to try to bring change, it is important to know how to go about bringing that change and which route is the best to take. People fighting for same-sex marriage in each country fight in different ways. Understanding what these different fights are is critical for this analysis.

United State's Government Structure

The government structure of the United States is split into three branches. The first branch of government is the legislative branch. The legislative branch houses Congress, which is made up of the House of Representatives and the Senate. The legislative body of government is responsible for drafting laws and then passing them with a majority vote. The next branch of government is the executive branch, which houses the President and the President's Cabinet. The President and the President's Cabinet are responsible for executing Congress' laws and making sure they are implemented into the citizen's lives. The President also has the power to create executive orders, which are essentially laws that are made by the President based on his executive powers. The third branch is the judicial branch, which contains the Supreme Court of the United States and all lower federal courts. The Supreme Court's role is to protect citizen's rights that are explicitly stated in the

Constitution of the United States. The power of the Supreme Court arises when a citizen brings an issue before the court. The Supreme Court is allowed to decide whether this is constitutional or unconstitutional based on its power of judicial review, (see *Marbury v. Madison* 1803). If it is found to be unconstitutional, then it is illegal and will no longer be in effect. The Supreme Court holds a lot of power because it can technically deem an act by the legislative branch or the executive branch unconstitutional. For example, if Congress creates a law and implements it to the lives of citizens and a citizen was wrongfully hurt by that law because it trampled on a fundamental right of theirs, then the Supreme Court can revoke that law by saying it was unconstitutional. That law will no longer be a law and the citizens will no longer have to follow it.

With the issue of same-sex marriage, the Supreme Court is the most efficient route to take. With the overturn of section 3 of DOMA, the states were given the opportunity to decide on how to handle same-sex marriage. Overturning DOMA was how the judicial branch decided to handle the issue and it has caused even more controversy a decade later. Many states decided to write a same-sex marriage ban in their state constitutions because DOMA allowed them to and this has become extremely controversial due to it possibly being unconstitutional. Currently, 13 states, including Michigan, have same-sex marriage bans written in their constitutions (Wolf, 2015). The issue has escalated because same-sex couples are suing their states stating that it is unconstitutional to have these same-sex marriage bans because they are a violation of the equal protection clause of the 14th amendment. The Supreme Court will decide this social issue because the claims that the same-sex marriage bans are in violation of the 14th amendment is a constitutional issue. They have even taken the first step in ending this dispute because they have agreed to hear

and decide the case brought forth by the state of Michigan. The President of the United States of America has announced his support for nationwide same-sex marriage numerous times. Back in 2012 when talking about a discussion he had with his two daughters about their friend's parents being in a same-sex relationship, President Obama said, "It wouldn't dawn on them that somehow their friends' parents would be treated differently. It doesn't make sense to them. And frankly, that's the kind of thing that prompts a change of perspective -- not wanting to somehow explain to your child why somebody should be treated differently when it comes to eyes of the law," (Earnest, 2012). Both the executive and judicial branches of government are ready for a change in the policies toward same-sex marriage in the United States.

Supranational Government Agencies

The European Union was created after World War II in an attempt to make trading and overall cooperation between European Nations easier. It was originally created to just be an economic partnership, but over the years it has evolved to become a political union as well (How the European Union Works, 2015, p. 3). There are currently 28 members belonging to the European Union. These members are Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom. All 28 of these countries agreed to give up some of their sovereignty in order to come together and share certain laws in order to promote equal qualities of life in all member countries (How the European Union Works, 2015 ,p. 3).

Because each of the members agreed to give up part of their sovereignty to become

part of the European Union, the European Union has the power to force each country to implement new laws that comply with the European Union or even change their current laws to not conflict with the European Union (How the European Union Works, 2015, p. 3). An example of this is the implementation of protection for LGBT people from discrimination based off their sexual orientation in the work place. Sexual orientation was added to the list of things that employers are no longer allowed to acknowledge along with gender and race. Albania was forced to comply with this new law because it is in the process of becoming another member state. The European Union was able to create this law because it has its own legislative body and even its own judicial body. Figure 2-1 was taken out of the European Union's Guide to "How the European Union Works" and it does a great job of explaining how laws get passed and then implemented into each member state (How the European Union Works, 2015, p. 6).

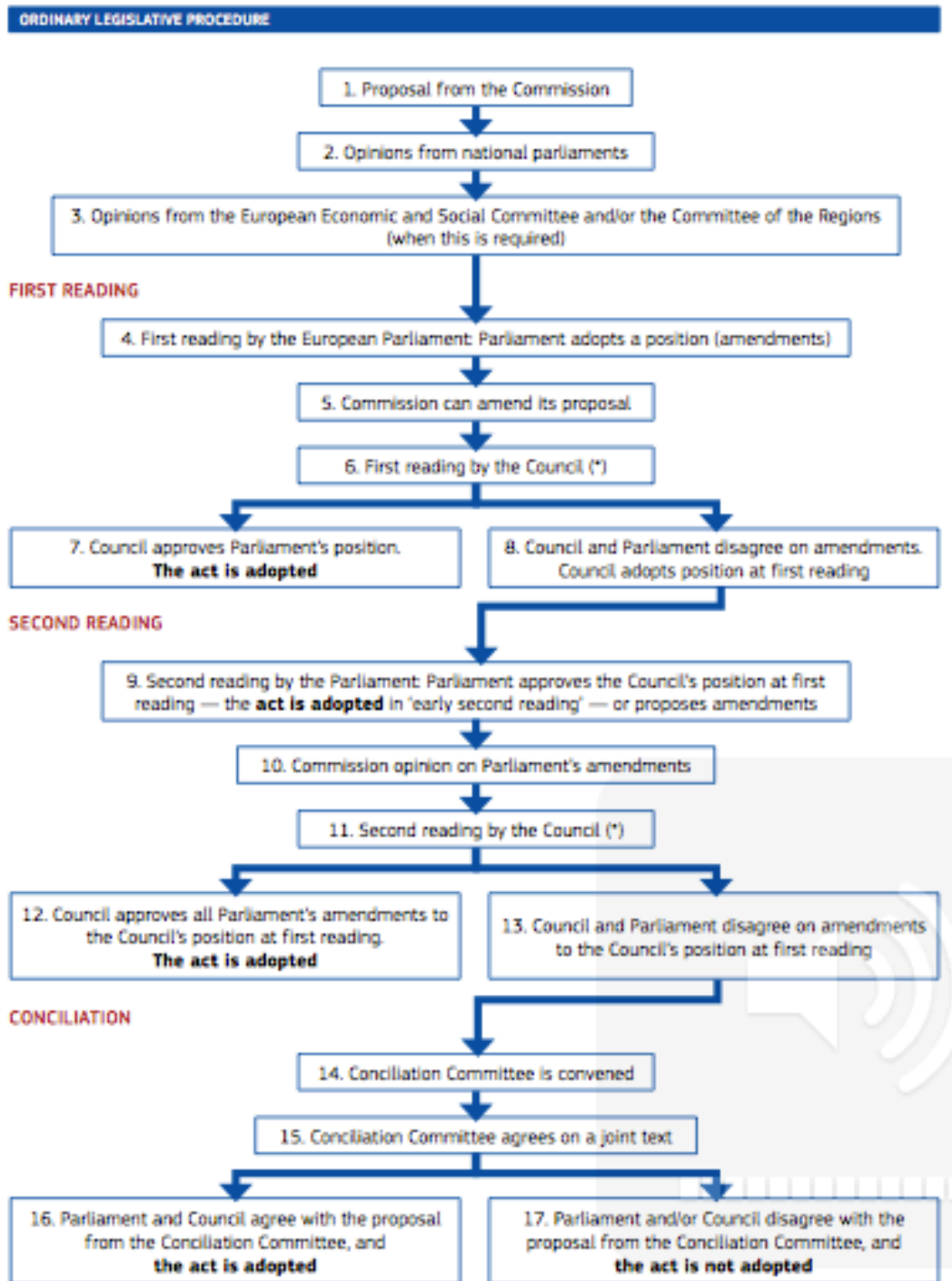


Figure 2-1 (How the European Union Works, 2015, p. 6)

The European Union would be a great resource to use in the fight for marriage equality. If the European Union agreed to draft a law that legalized same-sex marriage, 28 countries so far would have to comply. If they did not comply, then they would be kicked out of the European Union and would not get all the great benefits of free trade, easy travel, peaceful ties with foreign countries, and a lot of protection. These 28 countries would have to weigh the pros and cons of being part of the European Union and legalizing same-sex marriage. The European Union was progressive in protecting the LGBT community, but it has not been willing to take the next step with same-sex marriage. The European Court of Justice, which is the judicial branch of the European Union, could make a big power step and tackle this issue because the European Court of Human Rights, which is part of the Council of Europe, decided that marriage equality is not a basic human right (Gennarini, 2014).

The Council of Europe and the European Union are two different things. All members of the European Union belong to the Council of Europe, but not all members of the Council of Europe belong to the European Union. The Council of Europe is the leading protector of human rights. It is “a treaty designed to protect human rights, democracy and the rule of law (Council of Europe, 2015). The supranational entity only handles human rights violations and the issue of same-sex marriage was recently brought up to be ruled on by the European Court of Human Rights. A biological man had a complete sex change and anatomically became a woman. She and her wife now wanted to be married as a same sex couple. The law said this was not possible because European Courts do not need to recognize same sex marriage. European Court of Human Rights told the same-sex and

transgendered couple that they do not have to “grant access to marriage to same-sex couples” because marriage is not a human right (Gennarini, 2014).

The fight for same-sex marriage is not over with this ruling by the European Court of Human Rights. The European Court of Justice can still tackle this issue and make a ruling to promote marriage equality to the 28 member states. Maybe if the European Union takes a firm stance on promoting this equality, the Council of Europe will follow the lead and implement the law to its 47 member states. The interesting thing about Europe is that an issue does not need to travel through every country. The European Union and the Council of Europe can spread the legalization of a human right to multiple countries at one time. This is really convenient because it will prevent any fighting between countries that do not necessarily agree with the domestic policies of their neighboring country or their close allies. It also expedites the fight to spread equal opportunity to every type of person across the world with one area at a time.

Albania’s Government Structure

Albania is classified as a parliamentary democracy. The President is the head of state and appoints the Prime Minister. The Prime Minister then recommends ministers to serve on the Council of Ministers, the President then nominates if he or she approves, and the Parliament approves the nominations (CIA World Factbook, 2015). The Council of Ministers holds all of the executive power and can write bills to the Parliament for their approval, but approval by Parliament is necessary for the bills to be enacted. Currently, The President of Albania is Bujar Nishani and the Prime Minister is Edi Rama (CIA World Factbook, 2015). The Assembly of the Republic of Albania is the legislative branch of the country. This is a unicameral body of government, which is responsible for all lawmaking.

As stated earlier, the Council of Ministers can recommend legislation to the Assembly, but all the power rests with the Assembly to actually implement the laws. The judicial branch is responsible for the court systems. The President can nominate justices and the Assembly of the Republic of Albania will approve the nominations. There are two high courts in Albania and they are the Constitutional Court and Court of Cassation. The Constitutional Court has nine judges and is responsible for interpreting the Constitution of Albania. The Court of Cassation consists of 14 judges and is the final appeals court in the land (CIA World Factbook, 2015).

Currently, there is no legalization of same-sex marriage in Albania and there is no recognition of same-sex relationships. However, in 2010 there was a law passed that banned discrimination based on sexual orientation. This law was implemented by then Prime Minister Sali Berisha (Loloçi, 2015). In 2009, Albanian Prime Minister, Sali Berisha, spoke out for his support of gay marriage in Albania. There was supposed to be legislation passed that would legalize gay marriage, but there were two laws passed in 2013 that outlawed discrimination of sexual orientation. Discrimination of sexual orientation was added to the criminal code. The reason why Albania added this antidiscrimination law was mostly due to the fact that Albania is working to become part of the European Union and part of the requirements of the European Union are laws that ban discrimination in certain areas including sexual orientation. When it came to the promise of passing the legalization of same-sex marriage, the Assembly of the Republic of Albania needed to give 84 votes in order to amend the Family Code but there were only 71 votes (Loloçi, 2015). This, however, did not prevent Albania from becoming a member of the European Union because

currently the European Union does not require member states to legalize same-sex marriage (Europa, 2015).

In the future, to legalize same-sex marriage in Albania, the quickest possible way will probably be through the legislative branch again. Although the bill did fail before, it did not fail by very many votes. The legislative branch took a huge step in the direction towards marriage equality by protecting the LGBT community with the anti-discrimination law. Albania is also working towards becoming a member of the European Union (Europa, 2015). In order for Albania to be granted candidate status, it had to make certain reforms within the country that all European Union members have and one of those reforms was anti-discrimination against sexual orientation. If Albania continues to want to be part of the European Union, it will have to continue to socially progress, which could mean granting same-sex marriage laws.

Austria's Government Structure

Austria is a Federal Republic with a Parliamentary Democracy (Austria, 2015). The Federal President is the head of state and does not have very many powers except to call new elections and to dismiss cabinet members. The Federal Government appoints a Federal Chancellor who has the most power in the executive branch. He or she can dismiss any member of the cabinet with approval of the President. The Federal Chancellor is not allowed to dictate any of the members of the cabinet, but the power to dismiss these cabinet members can be used as persuasion (Bundeskanzleramt Österreich, 2015). The legislative branch is a bicameral branch. The National Council is responsible for approving bills to become laws by a simple majority vote. The Federal Council does not hold as much power as the National Council. The National Council does not need approval from the

Federal Council and in the cases that it does, Federal Council's veto can be overruled by the National Council (Austria, 2015). The judiciary branch consists of three high courts. "The Constitutional Court deals with constitutional law and the Supreme Administrative Court with public law, the Supreme Court is the highest instance in civil and criminal matters. These three Courts are hierarchically on the same level, there being no superiority or subordination between them," (OGH, 2015).

Austria has a long history of criminalizing homosexuals. Austria once had a strong alliance with the Catholic Church and was heavily controlled by the Nazi Party. Both of these affiliations were strongly against homosexual relations. Then Austria joined the European Union and the European Union forced all member countries to develop laws that protected individuals from being discriminated against based on their sexual orientation (Stewart, 2010, p. 2010). Currently, Austria does not recognize same-sex partnerships. Same-sex couples do, however, have the exact same legal rights as non-married opposite-sex couples. Although it is not very many rights, these couples still receive a wide range of legal rights. The only reason Austria made this new legal provision was because of the court case *Karner v. Austria* (Stewart, 2010, p. 2015). *Karner v. Austria* was not even decided by Austria's Supreme Court. Instead, the European Court of Human Rights ruled it. Their decision was to grant Karner, who was the same-sex partner of a deceased man, the right to inherit his partner's apartment, which was a huge step in the direction of recognizing same-sex partnerships because the law allowed a same-sex partner to be able to inherit something after the death of their partner. Before this case, that was something only afforded to opposite-sex partners (*Karner v. Austria*, 2003).

In order for Austria to move farther and grant marriage equality, it will have to either come from the European Union's European Court of Justice or the European Convention of Human Rights' European Court of Human Rights. Austria's history demonstrates that it has not made a decision on its own to promote rights to the LGBT community. It has relied on complying with the European Union's requirements to promote equal protection to the LGBT community. Austria's government has taken the necessary steps to prove that it is ready to make the changes necessary to spread marriage equality to same-sex couples. It will have to rely on the European Union to force it to progress with the rest of the members.

France's Government Structure

The executive branch of government is comprised of the President and the Prime Minister. The President handles a lot of the foreign policy while the Prime Minister handles the domestic policy (Gouvernement, 2015). The President nominates the Prime Minister with Parliament's approval. Working under the Prime Minister are other ministers who are responsible for their particular ministries like defense, interior, foreign relations, etc. Parliament comprises the legislative branch with two chambers. The National Assembly and Senate make up Parliament, which is the legislative branch. In the event of new bills proposed by the President or the Prime Minister, both chambers of parliament must agree to pass the bills (Gouvernement, 2015). There is a way around Parliament's veto by the President or the Prime Minister, but it is not used often especially when it comes to social issues. One interesting aspect of French law is that laws are passed nationwide except in specific situations, which happen rarely (Stewart, 2010, p. 169). The judiciary branch is very independent of the executive and the legislative branches. There are two different

types of courts, ordinary courts and administrative courts. Ordinary courts handle criminal and civil litigation while administrative courts handle government complaints (Gouvernement, 2015). Instead of having a single court of highest power, there are multiple final courts of last resort in France. The Constitutional Council handles all constitutional questions especially whether laws enacted by Parliament are constitutional or not. The Council of State is the court of last appeal and any appeals from lower courts will be settled in this court (Gouvernement, 2015).

France has acknowledged the existence of gays and lesbians since 1791 (Stewart, 2010, p. 164). It was one of the first countries to decriminalize sodomy, however it was also one of the countries that tried to treat homosexuality as psychological disorder and this was not changed until the 1980s. The first law to protect gays and lesbians was passed in 1985, which forbade discrimination based on sexual orientation (Stewart, 2010, p. 170). Currently, "same-sex marriage is not recognized in France. The Civil Union Contract passed into law in 1999 confers the status of cohabitating partners on homosexual couples, without granting them any parenting or filial rights," (Stewart, 2010, p. 170).

France has continued to be a progressive country when it comes to same-sex marriage. In 2013, France became the 13th country to legalize same-sex marriage. The President signed the same-sex marriage bill into law in 2013 with the approval of Parliament. At first, there was some opposition by protestors who were supporters of right-wing political parties and people belonging to the Catholic Church. Right after the vote came in, there were violent protests from those opposed of legalizing same-sex marriage. The police had to resort to using tear gas and at one point the protestors made a break for the Presidential Palace (Hinnant and Corbet, 2013). Same-sex marriage will

always be strongly supported and strongly protested against. France has proven that a country can legalize a new form of marriage without the entire sanctity of marriage falling apart.

Finland's Government Structure

Finland is described as a Parliamentary Democracy. Since 1917, it has been out of Russia's control and has enjoyed being ruled by the people. The President is the Head of State and has various duties to the people. However, the President mostly handles foreign affairs and leaves the domestic affairs up to the Prime Minister. The Prime Minister gained a lot more power through the new Constitution that was adapted in 2000. Parliament is the legislative branch of government. "Parliament enacts Finnish law, approves the state budget, ratifies international treaties and oversees the government. Parliament is also responsible for choosing the Prime Minister," (Ministry of Foreign Affairs of Finland, 2015). The judicial branch is comprised of three different court systems. The general courts, administrative courts, and special courts. The district courts handle basic criminal and civil matters along with divorces and estate issues. A court of appeals exists and even a Supreme Court makes the final rulings. The administrative courts are in place to judge on matters dealing with administrations of the government (Ministry of Foreign Affairs of Finland, 2015). For example, if a corporation feels an act of the government or the state is illegal, the administrative courts have jurisdiction. Under administrative courts, there are also administrative court of appeals and even an administrative Supreme Court. Special courts consist of the market court, the insurance court, the labor court, and the high court of impeachment. Jurisdiction of these courts is very limited (Ministry of Foreign Affairs of Finland, 2015).

LGBT issues in Finland have generally been kept in the dark, meaning that they have not been talked about openly in the public. LGBT people and activists did not really speak up or fight for their rights because discrimination was always kept to a minimum. In order to join the European Union, Finland had to change their discrimination laws. As stated before, the European Union forces all members to protect the LGBT community from discrimination based on their sexual orientation (Stewart, 2010, p. 149). This sort of sparked a change in public opinion in Finland. Once the European Union made Finns acknowledge gays and lesbians, people who identified themselves as gay and lesbian started to come out and more and more got to know their fellow same-sex relationship neighbors. The Finnish community actually accepted this new group of people and became very accepting (Stewart, 2010, p. 149). Currently, same-sex marriage is not legal, but same-sex couples can file for civil unions (Stewart, 2010, p. 152). "In 2002, the Act of Registered Partnership was accepted. This law treated official unions between people of same-sex in an almost equal way to heterosexual married couples; although, the word marriage was deliberately avoided to appease clerics and other conservative groups," (Stewart, 2010, p. 156).

Finland's current laws regarding same-sex marriage are about to change. In 2014, the citizens of Finland passed a "citizens initiative" and Parliament just passed it. It will go into effect in 2017. This law will allow same-sex marriage and will allow same-sex couples to adopt children.

Russia's Government Structure

Since the demise of the Soviet Union, Russia is a federal presidential republic. The executive power belongs to the President and the Prime Minister. The President of Russia

carries more power than the Prime Minister because he/she is responsible for both foreign and domestic policies. The Prime Minister is the head of the ministries. The ministries are split up into different departments and each department controls different aspects of the government including the Ministry of Justice (Russiapedia, 2015). The legislative branch is Parliament. Parliament is a bicameral branch comprised of the Federation Council and the State Duma. The Federation Council is the upper house and is not directly elected so political factions are not allowed. The Federation Council works with the lower house, the State Duma, to vote on laws, but it has its own roles such as “the declaration of a presidential election, impeachment of the President and decisions on the use of the armed forces outside Russia’s territory,” (Russiapedia, 2015). The State Duma’s primary duty is to review all bills. All bills must first be proposed to the State Duma and must be passed by this house before moving on. The judiciary is made up of three types of courts: general jurisdiction, arbitration court system, and Constitutional Court (Russiapedia, 2015). In terms of same-sex marriage, the Constitutional Court will be the court with jurisdiction to handle this issue because it handles acts of Parliament and the President on whether they are constitutional or not.

Russia has a very strong opinion on same-sex relationships. This country absolutely opposes same-sex relationships and offers no protection for the LGBT communities (Stewart, 2010, p. 361). A lot of this has to do with the history of Russia. Russia has always been an isolated country in the sense that it does not want aid from Western countries. HIV/AIDS is still a problem in this area because it is looked down upon to have this condition; therefore, it is very difficult to get treated. The lack of accepting help from other countries only fuels the fire for people to discriminate against the LGBT community

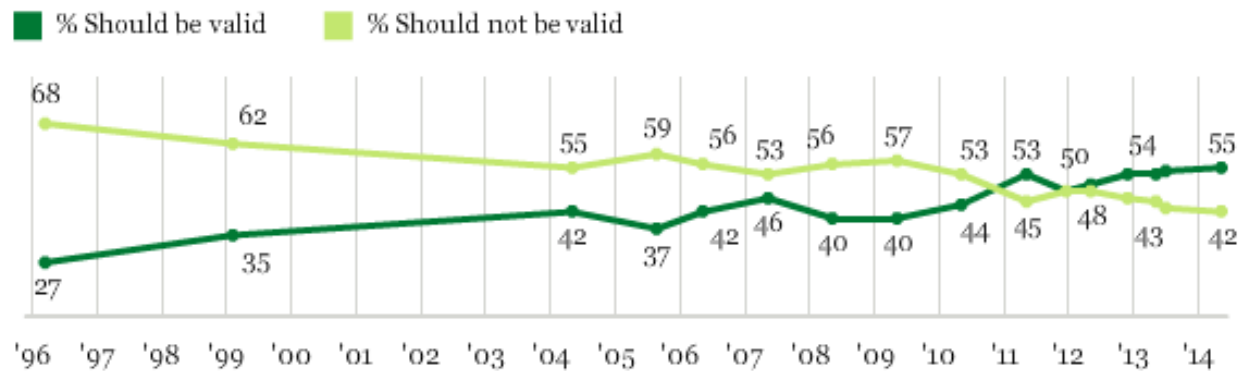
because by not accepting medical help from countries who have the equipment to manage AIDS, people with AIDS are viewed as tainted and contagious. Russia is not part of the European Union and there is no evidence that claims Russia will attempt to seek to be a member any time soon. Modern polling in Russia shows that most citizens are in support of imprisoning and even killing people who identify themselves as gays or lesbians.

As far as any future progress in the area of same-sex marriage goes, it will be a long time before Russia sees any support for the LGBT community. The only way for any changes to be made in Russia will come from pressure from the outside world. There is still a high rate of discrimination going on in Russia and the public opinion on LGBT issues is not in favor of protecting this community.

Chapter 3: History of Same- Sex Marriage

Currently, there is a huge debate going on in the United States about same-sex marriage. The issue of same-sex marriage is the fastest progressing social issue that the United States has ever experienced. Just twenty years ago, the public opinion on gay marriage was not even close to what it is now. Figure 3-1 shows the changing opinions from 1996 all the way to 2014. In 1994, 68% of the population thought that same-sex marriage should not be valid in the eyes of the government. That was supported with only 27% of the population saying that same-sex relationships should be valid legally (Gallop, 2014). This was not just a majority of the population; this was a significant majority of the population feeling that same-sex marriage should not be legal. Although that opinion still held for a long time, the amount of supporters for this opinion began to decline at a steady rate. In 2004, 55% of the population thought same-sex marriage should not be valid and 42% of the population felt it should. 13% of the population changed their opinion. This was almost enough of the population to change the majority. These percentages kept steady for a couple of years and then all of a sudden a switch happened. In 2011, for the first time, a majority of the population held the opinion that same-sex marriage should be valid. It was only a slight majority, but 53% of the population supported same-sex marriage. In just 15 years, the majority of the population of the United States changed their stance on same-sex marriage. It only took 15 years for this one social issue to change the opinion of the population.

Do you think marriages between same-sex couples should or should not be recognized by the law as valid, with the same rights as traditional marriages?



Note: Trend shown for polls in which same-sex marriage question followed questions on gay/lesbian rights and relations

1996-2005 wording: "Do you think marriages between homosexuals ... "

GALLUP®

Figure 3-1 (Gallup, 2014)

Many wonder what the big reason is for the change of heart that the American people held, but one of many reasons is the rise of the millennial generation. Pew Research conducted many surveys and found:

The new survey finds 70% of "Millennials" – born since 1980 and age 18-32 today – in favor of same-sex marriage. That is far higher than the support among older generations. But two other factors also make the views of this group significant. Millennial support for same-sex marriage has grown substantially over the past decade, from 51% in 2003 to 70% today. And Millennials make up a larger share of the adult population today. In 2003, Millennials made up just 9% of the adult population. Today, 27% of adults are in the Millennial generation (Pew, 2013).

This generation is the first generation to overwhelmingly accept people of different ways of

life. A lot of this could have something to do with the views on equal rights. This generation of people was taught in school that discriminating against people of different colors and races was wrong. They learn all the terrible things that African Americans went through up until the Civil Rights Movement and even after. This generation is probably the first generation to see the shift in both parents working and providing for the household. This generation is also taught that women have just as much a right to work as a CEO of a fortune 500 company or as a neurosurgeon or as a corporate attorney as men do. They are taught that gender discrimination is not appropriate and that the United States will not support it. Because of the constant education on equality, this generation of American citizens has begun to transfer their support for equality to the LGBT community. They were taught that someone's color does not dictate who they are, they are taught that someone's gender is not better than others, so why is it that one sexuality is better than all the rest. Why is it that heterosexual people are treated better than gays, lesbians, transgender people, and queer people? If race and gender are all treated the same, as they should be, then sexuality should be as well. This could be one of the major reasons why this particular generation has the opinion they do on same-sex marriage.

Because the Millennial generation has become a major demographic in the voting population, states have begun to change their laws based on the changing views of the population. The laws surrounding same-sex marriage have changed dramatically in the last couple of years. In 1996, President Bill Clinton signed a law, DOMA, which banned the federal government from recognizing same-sex marriage. It took seven years after the signing of DOMA for Massachusetts to become the first state to legalize same-sex marriage (Gay Marriage in the U.S., 2014). Figure 3-2 below represents what a decade from the

Massachusetts ruling did for the United States.

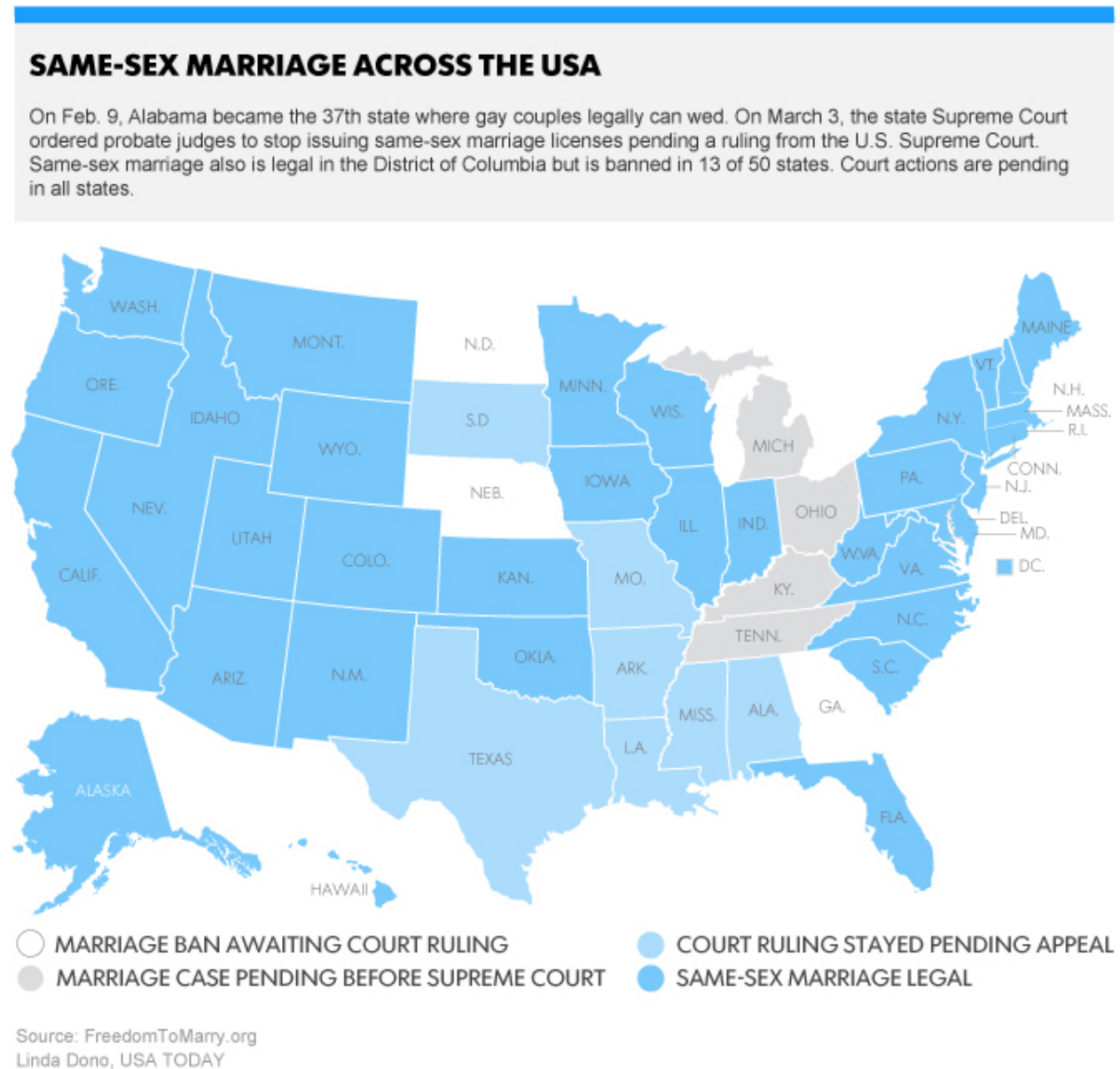


Figure 3-2 (Gay Marriage in the U.S., 2014)

There are now 37 states that recognize same-sex marriage and only three states that have a ban on same-sex marriage where a court case is not pending. Just 20 years ago, the federal government came out and said that it would not support or even recognize same-sex marriage. In 20 years, the citizens of the United States lifted that ban on the federal government and began to implement state laws that allow same-sex marriage. Gender

equality and racial equality did not move anywhere close to as fast as same-sex marriage.

Where does Europe Stand?

Europe as a continent has a wide range of same-sex marriage laws. Some countries have been very progressive in supporting same-sex marriage, while others continue to discriminate and oppress the LGBT community. European countries may have been the first countries to become supporters of same-sex marriage, but this does not mean that they are currently the most progressive regions anymore. This region may have started earlier, but the United States has caught up and has begun to surpass some countries that had a couple- year head start.

The Netherlands was the first country in Europe to legalize same-sex marriage and this happened in 2001 (BBC, 2013). Massachusetts legalized same-sex marriage just two years after the Netherlands. The big difference however, is that the entire country legalized same-sex marriage, whereas just one single state in one country legalized same-sex marriage. The United States is still trying to get on the same level as the Netherlands and other countries such as France that were finally able to legalize same-sex marriage countrywide. Currently, 12 countries in Europe legalized same-sex marriage countrywide: Belgium in 2003, Denmark in 2012, England in 2013, Finland in 2015, France in 2013, Luxembourg 2014, The Netherlands in 2001, Norway in 2009, Portugal in 2010, Scotland in 2014, Spain in 2005, and Sweden in 2009 (Pew, 2015). All of these countries seem to have been progressive around the same time. As stated previously, The Netherlands was the first country to legalize same-sex marriage in 2001 and it just seems like that was a domino effect. It just took The Netherlands to take the first step in order for the 11 other countries to fall in line. It will be interesting to see what other countries fall in line in the future

because public opinion is changing in European countries just like it was in the United States.

Acceptance of homosexuality: Proportion agreeing: 'Gay men and lesbians should be free to live their own lives as they wish'			
	2010/11	Change since 2004/05	Year same-sex unions first legally recognised
Netherlands	93	4	1998
Sweden	90	6	1995
Denmark	90	2	1989
Belgium	87	8	2000
UK	85	9	2005
Norway	84	6	1993
Ireland	84	6	2010
France	83	7	1999
Germany	83	9	2001
Switzerland	83	8	2007
Spain	81	7	2005
Finland	75	12	2002
Czech Republic	67	8	2006
Portugal	63	1	2010
Slovenia	53	-2	2006
Greece	52	-1	X
Hungary	48	-3	2009
Poland	48	5	X
Slovakia	45	-2	X
Estonia	43	2	X
Ukraine	34	-3	X

Figure 3-3 (European Social Survey, 2012)

Figure 3-3 shows public opinion in various countries in regards to how they feel about “gay men and lesbians should be free to live their own lives as they wish” which was conducted by the European Social Survey (European Social Survey, 2012). 12 European countries overwhelmingly agreed with the above statement while 4 additional countries

still agreed, just not to an overwhelming degree. This shows that a majority of the population in 16 European countries out of the 21 surveyed agreed that homosexuals deserve to live the life they wish. This does not necessarily mean that these people would vote to support marriage equality, but it is a good indication of how the populations would probably feel about marriage equality. This chart also shows how public opinion has changed in these surveyed countries. In six years, Finland's public opinion on same-sex marriage has increased by 12% since 2004. This is the largest increase on the chart but 15 other countries have also increased their public opinion in support of the above statement. This is a good sign that public opinion in these countries is following the same trend as the United States. Along with those 16 countries, there are five countries whose public opinion decreased in support of this statement. This could be for various reasons, but it is important to note that not every country in Europe shares in the progression of wanting to move forward with granting marriage equality. This is also represented in the United States where three states currently hold same-sex marriage bans.

Why is Same-Sex Marriage an Issue?

Same-sex marriage has dominated news across the world, but why? Why is this issue all of a sudden a huge debate? Well, the world has changed in a lot of places that made it acceptable for homosexuals to come out and express whom they are. For many years, it was a crime for homosexuals to engage in homosexual relationships. The United States had sodomy laws, Russia still has homosexuality discrimination laws, Albania changed their criminal code in 2013 to outlaw discrimination based on sexual orientation. The fight for marriage equality did not start here, this evolved from society finally getting to know and even understand this newly open group of people. From there, people began to question

why it was that same-sex couples were not allowed to legally marry or collect some benefits that cohabitating, different-sex couples get to collect. The fight against discrimination based on sexuality won in many countries, but that did not make everything equal.

The biggest reason to legalize same-sex marriage is basically to fight against discrimination. Because there is no marriage equality in places that means that some countries are prioritizing certain relationships. These countries are placing different-sex relationships above same-sex relationships; just like men were placed above women and White people were placed above Black people. Having certain relationships deemed superior over other relationships has severe consequences to some people, often but not always because of religious beliefs. One study researched reasons why same-sex couples wanted to get married and reasons heterosexual couples thought homosexual people wanted to get married. The study showed that an alarming amount of heterosexual people thought homosexual couples wanted to get married for superficial reasons (Madrid & Rice, 2013). During the survey, people said that couples in a same-sex relationship were more likely to be dissatisfied in their relationships compared to a different-sex couple (Madrid & Rice, 2013). These people did not have any explanations, they were simply asked to go off of their first instincts. It is important for same-sex relationships to get the respect they deserve in order to change these instincts.

Same-sex couples feel that their relationships are inferior to different-sex relationships because they are not granted the same rights. This starts to have an affect on the relationship; it is an unnecessary strain to the relationship that couples constantly have to fight through. A study was conducted that examined the ways in which legally

recognized same-sex marriage affects the understanding of same-sex romantic relationships for lesbian, gay, bisexual and transgendered (LGBT) individuals (Lannutti, 2008). Results indicated that legally recognized same-sex marriage impacted participants' understanding of romantic relationships by making existing relationships seem more real and by serving as a tool through which participants realized their desires for ideal potential partner and relationship characteristics. The results suggested that legally recognized same-sex marriage is seen as both beneficial and challenging for same-sex couples. This source scientifically shows how societal notions that same-sex relationships are “not real” relationships hinder same-sex couple's relationships. Constantly feeling like a couple's relationship is inferior to another will have lasting psychological issues. Six percent of the participants stated that their relationships were not impacted by whether or not they were legal because to them the opinion of the government was not important (Lannutti, 2008). That was only six percent of the 288 participants. The other 95% said that the government had an impact on their “experience of romantic relationship”.

This issue controls the well being of same-sex couple's lives. It is important to millions of people in the world because they want to be able to live their life the same way everyone else is able to. They want the freedom to choose who to marry and who to legally spend the rest of their life with.

Chapter 4: American Politics at Play

Why is it that an issue not involving violence or drugs or any public safety violation has been in the forefront of American politics? There are many answers to this question, but one important answer is that people are inherently afraid of change. Whether people want to admit it or not, they love to keep the status quo. The logic behind this is that if nothing changes, then nothing worse can happen than what is already happening. When it comes to the legalization of same-sex marriage, people are afraid of the unknown. It is also possible that because most of the population is heterosexual, they cannot relate to the struggles that the denial of marriage puts homosexual people through; therefore, they cannot understand the positives of allowing same-sex marriage. They can only look at the few negatives, which typically involve going against the status quo.

This has been seen for centuries in the United States, not just with marriage but also with any social issue. For example, it was a huge debate to legalize birth control pills. This is not a public safety issue and this issue, just like same-sex marriage, only pertains to a couple and not the entire community because it is a private decision. Many state legislatures passed a law prohibiting people to choose whether to protect themselves from having an unwanted pregnancy or not. The Supreme Court overturned that decision based on the logic that that decision belonged to a couple, or even to just an individual (*Griswold v. Connecticut*, 1964). The same logic applies to same-sex marriage. The decision to take birth control pills is a private decision, just like choosing whom to be married to. This chapter will look at a few pieces of politics that have been in the way for the legalization of same-sex marriage.

The Meaning of Marriage

Marriage has usually carried a religious connotation to it, but a lot of non-religious couples get married. The United States has welcomed all kinds of religions and this opened the floodgates for people without religious affiliations. Marriage went from being a thing two religious people, one man and one woman, wanted to share, to allowing non-religious people, one man and one woman, to also obtain the benefits of matrimony. Religious affiliates once accepted non-religious people to participate in marriage, but these same people are not ready to allow another group of people to participate, same-sex couples, whether they are religious or not. Religious institutions represent the biggest objector to same-sex marriage. The Catholic Church has over 50 million adult participants, and the church has come out to say that they “emphatically reject legalization” of same-sex marriage (Rom, 2007). Evangelical Churches, with 40 million members, came out to say, “The Bible condemns [homosexuality] as sin... We affirm God’s plan for marriage and sexual intimacy- one man, and one woman, for life, “(Rom, 2007). That is not all. The Methodist Church comprises fourteen million adult members and this church has come out to say that they too think marriage should be between one man and one woman (Rom, 2007). Just with that count, 104 million people belong to a religious group that opposes same-sex marriage. That is a big chunk of the American population and something drastic would need to happen in order for religious groups to change their opinions on same-sex marriage.

This big, dramatic change can be as simple as having some religious groups openly come out in support of same-sex marriage. The Unitarian Universalist Association has come out to fully support marriage equality (Rom, 2007). The United Church of Christ, which has

1.3 million members has also come out supporting the legalization of same-sex marriage by saying, “in the Gospel, we find ground for a definition of marriage and family relationships based on affirmation of the full humanity of each partner, lived out in mutual care and respect for one another,” (Rom, 2007). This is a huge step for same-sex marriage. The United Church of Christ was actually the first Christian denomination to come forward expressing their radical view on same sex marriage. This is huge for the fight for marriage equality because it shows that it is possible for people to believe that God does not oppose same-sex marriage and that same-sex marriage is not going to ruin the sanctity of marriage. Instead, by allowing same-sex couples the right to marry, two people who strongly care for each other will be able to take the next step in their relationship and that will actually make the idea of marriage stronger. Marriage has always been based around the idea of two people taking two separate lives and making one life together. Letting a new group of people prove that principle correct will strengthen this principle of marriage.

The reason a lot of these religious groups believe that marriage should be between one man and one woman is because they believe marriage is still based on procreation. Traditionally, people are not supposed to engage in sexual relations until they are married and when people do get married, they are expected to have children relatively quickly after marriage, otherwise what was the point of getting married? However, as times change, this is no longer a valid reason to get married, especially with the widespread use and access of birth control. Society is not as modest as it once was and premarital sex is no longer looked down upon as it once was. That does not stop people from viewing same-sex marriage as unnatural because same-sex couples cannot have biological children together.

When someone applies for a marriage license, they are not asked whether or not

they are fertile and whether or not they want to have children or whether or not they will have children. These questions are not factored into whether someone is granted a marriage license, so it should not be used as an argument to exclude a group of people from getting a marriage license. The court in the *Goodridge v. Department of Public Health* (2003) opinion articulated this argument. The *Goodridge v. Department of Public Health* case involving a suit in Massachusetts stating that the same-sex marriage ban was unconstitutional. In a close race, the court ruled in a 4-3 vote that the same-sex marriage ban was unconstitutional. The opinion stated,

“Our laws of civil marriage do not privilege procreative heterosexual intercourse between married people above every other form of adult intimacy and every other means of creating a family. The matrimonial law contains no requirement that the applicants for a marriage license attest to their ability or intention to conceive children by coitus. Fertility is not a condition of marriage, nor is it grounds for divorce (*Goodridge v. Department of Public Health*, 2003, p. 331).

The court decided that because two people cannot biologically have children together does not mean that the state has any authority to base a marriage denial off of that. A heterosexual couple could be infertile and that would not affect their chances of getting a marriage license. The argument that same-sex marriage is “unnatural” because a same-sex couple cannot bear children together was ruled not a good enough argument in Massachusetts.

Just because a same-sex couple cannot have children together in a traditional, through male/female intercourse, does not mean that they cannot go about it differently.

There are many options for same-sex couples in order for them to become parents, which has sparked another debate against same-sex marriage. A lot of opponents to same-sex marriage believe that same-sex couples will not be good parents and that their children will be stunted by their non-traditional family. There have been many studies researching this thought process. The book *Same-Sex Marriage and Children* by Carlos Ball looks at a lot of these studies and comes to a major conclusion. He concludes that “the studies that have looked at the psychological adjustment and social functioning of children have found no differences in outcomes between the children of lesbian and gay parents and children of heterosexual ones,” (Ball, 2014, p. 87). One study that Ball talks about is a study that involved the children from lesbian couples. In the 1980s, a lot of women would go seek artificial insemination before coming out as being a lesbian. This led to a lesbian couple raising a child and scientists wanted to see if those children suffered any set backs due to the non-traditional family structure. Every study conducted concluded that none of the children raised by same-sex couples experienced any social or mental setbacks (Ball, 2014, p. 89-90). The same trend was found when studying male, gay partners parenting children in a separate study.

The only study that has been known to show that children are setback when raised by same-sex parents is the Regnerus study. This study had 3,000 young adult (ages eighteen to thirty-nine) participants. Of those participants, 175 had lesbian mothers and 73 had gay fathers (Ball, 2014, p. 95). The studied concluded that the adult children of same-sex parents were more likely to report “higher levels of unemployment, depression, cigarette smoking, marijuana use, and criminal arrests and a lower level of attainment than did the adult children of married heterosexual parents”, (Ball,2014, p. 94). The problem

with this study is that the sociologist who conducted the study, Mark Regnerus, admitted that he did not sample adults from stable, homosexual relationships. This information skewed the conclusions when they actually mean that the adults who reported higher levels of depression, marijuana use, criminal arrest, etc. was not due to having homosexual parents, but rather from unstable home lives that has nothing to do with the sexual orientation of the parents. In other words, this was not a valid study where the author controlled for various factors

It has been shown over and over again that children do not suffer from having same-sex parents. Society can have a large negative impact on the psychology of a person. LGBT people have admitted to being impacted negatively by the way people view them.

Consequences of Marriage Discrimination

Homosexual people are affected by the fact that people do not approve of the way they are. It takes a toll on their mental stability when they are constantly being criticized and told that they are not living their lives correctly. It turns out, that there is a term for how they are feeling. It is called minority stress. Minority stress is defined as duress that people who belong to a minority experience due to them being part of a minority (Dentato, 2012). They will usually feel lesser than others because they know that they are different from most people and usually face difficulties because of these uncontrollable circumstances. Minority stress “reduces a person from a whole and usual person to a tainted, and discounted one,” and “the person is devalued, spoiled, or flawed in the eyes of others,” (Riggle and Rostosky, 2007, p. 67).

Homosexual people experience minority stress. They are forced to live in a society where some people do not choose to view them as a full human or as valuable as

heterosexual people. They are seen as being tainted and a lesser individual. This has caused homosexuals to experience an increase in anxiety, depression, substance abuse, eating disorders, and anger. This has also caused there to be a decrease in self-esteem and sense of well-being. Homosexuals also have a unique situation because their minority is not visible to the eye. People cannot tell whether someone is homosexual or not just by looking at them (Riggle and Rostosky, 2007, p. 67-68). They might have their suspicions, but they cannot know for a fact. Because of this, homosexuals have a choice to make. They can conceal who they are, or they can proudly tell people who they really are. Both situations have their setbacks. If someone decides to conceal their sexuality, they will have to pretend to be someone else. If someone decides to come out and express their sexuality, they have to be prepared for some difficult situations. Because of the minority stress, homosexual people are feeling that their lives are not happy. They constantly have to overcome struggle after struggle. Unfortunately, the marriage policy in a few states in the United States is attributing to this negative perception of homosexuals.

In a few states in the United States, same-sex marriage is not allowed. It is either banned all together, or there are other institutions, such as civil unions and domestic partnerships that same-sex couples can enter into. Some of these institutions are civil unions or domestic partnerships. For the sake of minority stress, it does not matter what civil unions or domestic partnerships offer. They are still not civil marriages. They can offer the exact same benefits as civil marriages, but they will still contribute negatively to psychological perceptions of homosexuals. This is because just by giving something a different name in order to disqualify a minority from contributing makes the minorities feel like they are getting an inferior product. Because same-sex couples cannot get married,

they feel like their relationships are not as valued or meaningful as different-sex relationships. That system creates a notion of inferiority that cannot go away until marriage equality is a nationwide thing.

The Evolution of Marriage

Marriage has evolved significantly over the years. For starters, it was custom for people to get married in their early teens back in the 1800s and earlier. Now, there are laws against that. At least in the state of Michigan, a parent needs to sign a consent form if their child is younger than 18 years of age and wants to get married. For obvious reasons, this tradition of marrying in early teens has changed. Teenagers are not financially stable to benefit from marriage and they are deemed too immature to make that decision at such a young age. That is why it is mandatory for a legal guardian to sign a consent form. It also used to be socially and legally acceptable to marry your first cousin. As of 2010, 30 states in the United States have made it illegal for people to marry their first cousins. The laws that certain states have that forbid people from marrying their first cousin made the percentage of people marrying first cousins decrease. "Estimates of marriages between related people, which include first cousins and more distant ones, range from less than 0.1 percent of the general population to 1.5 percent. In the past, small studies have found much higher rates in some areas," (Grady, 2002). The main reason behind this is to protect the children that are created between these relatives. Genetic mutations have a greater chance of exposing themselves when family members who have the same gene mutations reproduce. Their offspring are given a greater possibility of having these gene mutations and suffering because of them.

Both of these examples prove that marriage evolves over time and that there is no

“traditional” view of marriage. Most opponents of same-sex marriage claim that same-sex marriage will violate the “traditional view” of marriage. To them, the traditional view of marriage is one man and one woman engaging in a religious sacrament so they can share a life together and start a family. This is not the case with everyone. Marriage is not always a religious sacrament; it is a civil practice. Marriage is no longer a requirement to start a family. Marriage evolves and it always has.

Marriage used to be denied to interracial couples in some states until 1967. The Supreme Court case that over turned this was *Loving v. Virginia*. Mildred Jeter, a black woman, married a white man named Richmond Loving. This couple went to Washington D.C. to get married and then later moved to Virginia. When they moved to Virginia, they were arrested for violating the state’s anti-miscegenation statute, which outlawed interracial marriage. The couple sued stating that that law violated their equal protection rights granted in the 14th Amendment (*Loving v. Virginia*, 1967). The case went all the way to the Supreme Court of the United States and the courts ruled that the law outlawing interracial marriage was unconstitutional because it violated equal protection under the 14th Amendment. Today, interracial marriages are generally accepted throughout the United States

The point is that marriage has evolved over time. Religious people are not the only ones who can obtain a marriage license. Procreation is not a requirement for marriage. Interracial couples can now get married. It is time for marriage to evolve more to include same-sex couples. The government can claim that government intervention is not necessary, but it was necessary in the *Loving v. Virginia* case. Legislators in the United States will not be willing to step up and solve this debate because they are all worried

about re-election. If they decided to vote in a way that was against their constituents, then they defeated the whole point of being a representative and they will never get re-elected again. The only way for legislators to issue a law promoting marriage equality is if public opinion tells them to. The people of the United States need to make it clear that they want marriage equality. Due to the wide range of people living in the United States, there will not be enough people supporting same-sex marriage to make any thing happen through this route any time soon. Instead, this issue will be settled by the courts, more specifically, the Supreme Court of the United States. The United States Supreme Court has already agreed to hear the Michigan case and their ruling on that case will most likely settle this argument, for now.

Advocacy Groups

When it comes to the issue of same-sex marriage, one thing is for sure; something needs to happen. The outcome may not be known right now, but the end is in sight. In order for this to happen, advocacy groups have been lobbying for years and years trying to persuade legislatures and other public officials to vote their way. Advocacy groups have also been trying to persuade the public to view same-sex marriage the way they do. This may be the most important job for advocacy groups. Advocacy groups can lead to “building a movement, generating public support for new rights claims, and providing leverage to supplement other political tactics,” (McCann, 1994, p. 10). Pro same-sex marriage advocacy groups are trying to make the American public view same-sex marriage as an equal right in order to gain more support in the hopes that same-sex marriage will become legalized nationwide. Anti same-sex marriage advocacy groups are trying to do the complete opposite. They want people to see the downsides to legalizing same-sex marriage in the

hopes that more and more people will start to oppose same-sex marriage. Advocacy groups are a huge reason why public opinion has changed so much over the years.

Pro Same-Sex Marriage Advocacy Group in the United States

Freedom to Marry is a campaign in the United States that is actively working to end marriage discrimination in the United States. The hope is to win the majority of states so that most people are living in a state that supports gay marriage, grow public support to more than 60% in favor of gay marriage, and bring a complete end to federal marriage discrimination through a ruling by the Supreme Court. This campaign has a very detailed website that is very much geared towards educating the population about universal same-sex marriage status.

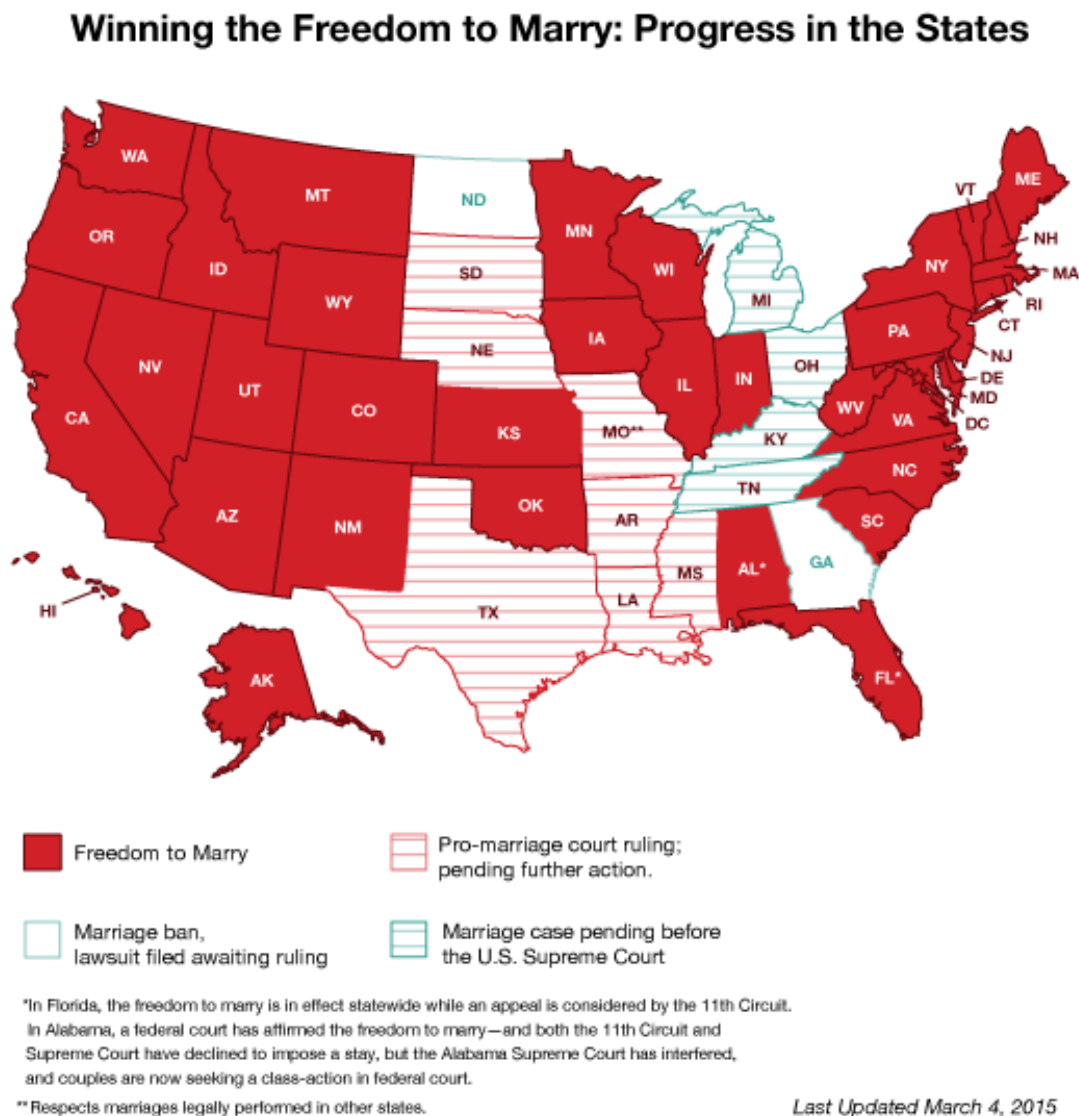


Figure 5-1 (Freedom To Marry, 2015)

Figure 5-1 shows a detailed map depicting same-sex marriage statuses across the United States. The interesting thing about this map is that people can watch the progression of same-sex marriage across the nation. According to the website, Michigan currently has an “anti relationship recognition constitutional amendment” that is going forward to the United States Supreme Court and will be ruled on in the spring of 2015

(Freedom to Marry, 2015). There is even a list of other advocacy groups that are currently working to gain supporters for same-sex marriage.

Freedom to Marry understands how important it is to educate the population and to make as much information accessible to the public as possible. The website has a huge blog and articles are posted that directly relate to same-sex marriage. Articles relating to each specific state are even posted through the interactive map. This advocacy group did not take the direction of a negative campaign. This means that they did not choose to attack any anti same-sex marriage campaigns, instead they took to educating the public and focused on winning the marriage equality fight through public opinion support.

Advocacy Groups Against Same-Sex Marriage

The Family Research Council is a conservative Christian group that is opposed to same-sex marriage. Their vision is “a culture in which human life is valued, families flourish, and religious liberty thrives,” (Family Research Council, 2015). This group really supports the idea of a traditional family structure and does not agree with legalizing same-sex marriage. In fact, it blames same-sex marriage for the decline in couples getting married. In an article on their webpage, Peter Sprigg wrote,

The fact that homosexuals are much less likely than heterosexuals to enter into committed relationships, and are much less likely to solemnize such relationships in marriage even when they have formed them, should seriously call into question the myth of the marriage redefinition movement that there is no difference between homosexual and heterosexual relationships except the gender of their partners (Sprigg, 2014).

This quote pretty much sums up the stance the Family Research Council takes on this issue. Just like Freedom to Marry, this advocacy group also takes to educating the public on this issue. Unlike Freedom to Marry, this group is a lot more vocal about their stance and how their stance relates to people's moral wellbeing. There is a lot of information readily available to the public on the website about a wide range of topics such as abortion, family structures, religion in public, and homosexuality.

On the topic of homosexuality, the website says, "Family Research Council believes that homosexual conduct is harmful to the persons who engage in it and to society at large, and can never be affirmed. It is by definition unnatural, and as such is associated with negative physical and psychological health effects," (Family Research Council, 2015). Under this quote is a long list of articles, written by Peter Sprigg and many other Family Research Council proponents, which support this claim. This belief is their main drive for lobbying legislators. They were huge proponents for DOMA back in the 1990s and continue to support that homosexuality should never be deemed appropriate.

Their campaign headquarters is located in Washington D.C. which gives them easy access to legislators. In fact, on their active website, they have a list of senators and representatives that they publically endorse. This campaign group spends a lot of time trying to get donations and through those donations they fund legislators and other public officials. This helps guarantee that those public officials will vote the way the advocacy group wants them to if they want to continue to get the financial support. This is pretty much how every advocacy group holds power in politics and this plays a huge role in how things get done in Washington D.C.

Pro Same-Sex Marriage Advocacy Groups In Europe

The European Parliament Intergroup on LGBT Rights is a really interesting advocacy group. This advocacy group is made up of parliament members who wish to work to expand LGBT rights across Europe. This is the largest of the European Parliament's 28 intragroups ranging across many different social and political issues (Intergroup on LGBT Rights, 2015). A lot of the work this group does is monitoring what is happening within the European Union when it comes LGBT rights, including same-sex marriage. The members will monitor possible pieces of legislation across the European Union to ensure that LGBT rights are not trampled on or even forgotten.

This group is interesting because it is made up of politicians and people who hold power in office. This group is not made up of citizens who can only suggest what politicians should do and give them financial incentives, it is comprised of people who already hold office and have the power to make things happen. It is also interesting because these politicians take it upon themselves to check other politicians when passing certain legislation to make sure that nothing secretive is happening that could possibly hurt the LGBT community. This is a huge step forward for LGBT people and LGBT activists. This says that LGBT people have supporters in the government and this ensures that their rights are actually protected from the government by other government workers. Gaining the public support from public officials is monumental.

Another European advocacy group is ILGA-Europe, which is the European Region of the International Lesbian, Gay, Bisexual, Transgendered & Intersex Association. Unlike the European Parliament Intergroup on LGBT Rights, this group does not have a government affiliation. ILGA-Europe works to promote awareness of LGBT issues by providing trainings

and support to its member organizations and other LGBT groups on lobbying, advocacy, fundraising, litigation, organizational development and communications,” (ILGA-Europe, 2015). Their vision is simple; to live in a world where discrimination based on sexuality does not exist.

This advocacy group may not be directly involved with the government through employment, but this group does lobby political figures to try and convince them to make decisions that are in the best interests of promoting their vision. On top of lobbying, this group is also involved in educating people on certain issues to ensure that everyone has the information they need in order to make an informed decision. Their information mostly consists of things that support LGBT rights in order to persuade people to believe in what they believe in; however, this is how every advocacy group operates.

Power of Advocacy Groups

Advocacy groups can make a big difference. For one, they lobby political officials to try and get policies pushed that would further their values and goals. This may be the single most important job an advocacy group has. These groups are very much political and will go through great lengths to make sure that they have the support of certain political figures. How is it that they get this power? The answer is, through money. These groups look to get donations from the citizens and any organization that also agrees with their stances. Money gives them power. With the money that gets donated, they can do many things such as hold rallies, protest against certain things, and, most importantly, support certain political figures. Campaigning is expensive. Politicians get their campaign money through different organizations that are willing to help promote that candidate. With this money comes the promise that that candidate will fight and push bills that promote the

views of that advocacy group. If that politician does not act in a way that supports those certain advocacy groups, then those advocacy groups will take that money away and go support another candidate. This puts a lot of pressure on politicians to ensure that they make advocacy groups happy. Advocacy groups are the main reasons why anything really gets done in the United States, especially on the topic of same-sex marriage (Rosenburg, 2008, p. 368). These groups are constantly creating attention to one issue and making sure that their voices get heard. This causes political mobilization and forces legislators to act.

This whole process plays into why same-sex marriage has been so heated and why political figures have not been willing to do anything about in the United States. If politicians take a certain stance, they are most likely going to lose money through different groups that did not support that decision. This is why the non-political branch in the United States is most likely going to decide this issue. The Supreme Court of the United States is made up of judges who are appointed for life. They do not have to worry about re-election or making certain groups happy. They are first and foremost supposed to be protecting the liberties and rights of the citizens in the United States. Once they make their decision, the legislative and the executive branch will be free of making a difficult decision and instead will be forced to implement policies supporting the Supreme Court's decision.

Politics plays a huge role in the same-sex marriage debate. Legislatures are not willing to touch a hot topic because they are all worried about getting re-elected. Too many people in the United States are afraid of what might happen if same-sex marriage is allowed. These people cannot sympathize with homosexual people because they have no basis of understanding their life. However, the progression of marriage over the years proves that marriage may mean one thing in one generation, but that does not mean it

cannot be extended to include more people and still retain the same meaning. Marriage is still about two people wanting to commit to one another for the rest of their lives. This is true in all cultures and all religions. Same-sex couples still qualify under those qualifications. They want to have the right to share the rest of their lives with the person of their choosing. They want to be able to have their relationships recognized as being just as valuable as different-sex relationships. Just like interracial marriage was able to be seen in a new light by others, same-sex marriage can too, if it gets the opportunity.

Chapter 5: How to Progress Same-Sex Marriage

Same-sex marriage has come a long way in a short amount of time. The question remains, how was this change brought about? Was it brought about through court cases? Was it brought about through legislation? If both, then which one was the most efficient? The United States and a few European countries offer great examples of how both of these methods were used to bring about change. Court cases were used when people would file grievances against the state or region that they took residence in because they felt their rights were being violated, or perhaps because they felt there was no majority to back legislation. The courts are in place to decide whether there was a rights violation or not. Legislatures were used if citizens decided that it was time to make a law granting a new option for people. Citizens did not necessarily feel that the denial of same-sex marriage broke the law; instead they just decided that it is time for it to be protected by the law. Both routes have their upsides and downsides, but both are capable of bringing about change.

United States

In the United States, same-sex marriage has pretty much progressed through the courts. Out of the 37 states and Washington D.C., 26 have made same-sex marriage possible through the courts, while 12 states and Washington D.C. made it possible through legislature (Freedom to Marry, 2015). One court case in particular did a lot to pave the way for the legalization of same-sex marriage. The funny thing is that this court case happened well before the same-sex marriage debate started.

In 1993, three same-sex couples filed suit against the state of Hawaii because the state marriage requirements stated that marriage must be between one male and one female. The three couples felt that this violated the state constitution under the state's

equal protection clause and due process clause. *Baehr v. Miike* is the name of the court case. The case originally took place in 1991 when it went through the trial court. The case immediately was dismissed, so the plaintiffs appealed to the Hawaii Supreme Court. The Hawaii Supreme Court analyzed the case to see if the marriage requirements violated the right to privacy and the right to equal protection. The court found that this case did not violate the right to privacy, however, there was potential for this case to violate equal protection because the government was discriminating against a couple based on their sexual orientation. In order for the marriage requirements to be valid, they had to pass a test called strict scrutiny. Under strict scrutiny, the state must have a “compelling state interest” and the means used must be “narrowly tailored” to their decisions. This means that the state must have a strong reason for being involved by treating a certain group differently and that means is the only way to handle the situation. The case was sent back down to trial court, where the trial court ruled that the state of Hawaii did not have a compelling state interest and the denial of marriage to same-sex couples violated the state constitution. But, before a decision could go into effect, the citizens of Hawaii passed an amendment to the constitution that “reserved marriage to opposite-sex couples,” (*Baehr v. Miike*, 1993).

Even though this may seem like a huge loss to the progression of marriage equality, *Baehr v. Miike* actually provided a solid foundation for how same-sex couples would progress in the future. Although Hawaii was not able to grant same-sex couples marriage licenses after *Baehr v. Miike*, Hawaii passed a bill that guaranteed government and private benefits to same-sex couples such as property rights, tort liability, protection under Hawaii domestic violence laws, hospital visitation, and health care benefits (Dupuis, 2002, p. 73).

The major thing to remember in this case is that although same-sex marriage was not brought about, the Hawaii trial courts actually ruled that Hawaii did not have a compelling state interest to deny same-sex couples marriage licenses. It showed that reserving the right to marry to be between one man and one woman could potentially be unconstitutional because it discriminates against a group of people. The federal government of the United States saw the potential of this argument and decided to do something about it. That is how the Defense of Marriage Act came about. As stated previously, the federal government in 1996 enacted the Defense of Marriage Act and it stated that the federal government would not recognize same-sex marriage and it gave that same power to the states. The federal government was worried that couples across the nation would sue their states and become successful through their lawsuits, so they instituted a federal law to prevent that from happening. The couples that sued in *Baehr v. Miike* brought forth the exact argument that the couples in *Goodridge v. Department of Public Health* (2003) used to fight their case, which had a completely different effect.

In *Goodridge v. Department of Public Health* (2003), seven same-sex couples were denied marriage registrations. The Gay and Lesbian Advocate and Defenders (GLAD) represented the seven couples in a suit against the Massachusetts Department of Public Health on the grounds that it violated the equal protection clause of the state constitution. Superior Court Judge Thomas Connolly, who ruled in favor of the Department of Public Health, originally ruled the case on the grounds that this is something for the legislature to handle. Then the plaintiffs appealed directly to the Supreme Judicial Court where the final ruling was issued. The Massachusetts Supreme Judicial Court ruled, "We declare that barring an individual from the protections, benefits, and obligations of civil marriage solely

because that person would marry a person of the same sex violates the Massachusetts Constitution,” (*Goodridge v. Department of Public Health*, 2003, p. 344). The Supreme Judicial Court based their decision heavily on the idea of a stable marriage. The court was aware that a few of the plaintiffs had children and were fighting to have a more stable life for their children. The Supreme Judicial Court addressed their position in this matter by saying,

The exclusive commitment of two individuals to each other nurtures love and mutual support; it brings stability to our society. For those who choose to marry, and for their children, marriage provides an abundance of legal, financial, and social benefits. In return it imposes weighty legal, financial, and social obligations (*Goodridge v. Department of Public Health*, 2003, p. 312).

This was the first time a court ruled in favor of same-sex marriage. This had a huge impact on why same-sex marriage has progressed so quickly. Right after the *Goodridge* decision, Connecticut, New Jersey, and New Hampshire granted the right to form civil unions, which had all the same rights and responsibilities as married couples (Rosenberg 2008, p. 351). The ruling in *Goodridge* made it possible for similar rulings in other states through the judicial route. “Without *Goodridge* and Mary Bonauto and what was accomplished there, none of the rest of this would have ever happened,” said Roberta Kaplan, who successfully argued before the Supreme Court in the *United States v. Windsor*, the case, which brought an end to a federal ban on same-sex marriage (Koenig-Muenster, 2014). *Goodridge* had an incredible impact on the advancement of same-sex marriage. It opened the window for same-sex couples to feel comfortable stepping forward to fight for

their rights because they finally witnessed it. *Goodridge* made same-sex marriage possible throughout the United States.

Although the court system has played a huge role in the advancement of marriage equality, legislatures have also played an important part. Figure 5-1 provides a list of all the states that have legalized same-sex marriage, whether same-sex marriage was enacted through state legislation or a court ruling, and in what year.

<u>State</u>	<u>Legislation or Court Ruling</u>	<u>Year</u>
Oregon	Federal Court	2014
California	California Supreme Court	2013
Idaho	9th Circuit Court of Appeals	2014
Nevada	9th Circuit Court of Appeals	2014
Montana	9th Circuit Court of Appeals	2014
Wyoming	Federal District Court	2014
Utah	10th Circuit Court of Appeals	2014
Arizona	U.S. District Court	2014
Colorado	10th Circuit Court of Appeals	2014
New Mexico	New Mexico Supreme Court	2013
Kansas	U.S. District Court	2014
Oklahoma	10th Circuit Court of Appeals	2014
Iowa	Iowa Supreme Court	2009
Wisconsin	7th Circuit Court of Appeals	2014
Indiana	7th Circuit Court of Appeals	2014
Alabama	Federal Court	2015
Florida	Federal Court	2015
South Carolina	U.S. District Court	2014
North Carolina	4th Circuit Court of Appeals	2014
Virginia	4th Circuit Court of Appeals	2014
West Virginia	4th Circuit Court of Appeals	2014
New Jersey	New Jersey Supreme Court	2013

Pennsylvania	District Court	2014
Connecticut	District Court	2008
Massachusetts	Judicial Supreme Court	2004
Alaska	9th Circuit Court of Appeals	2014
Maine	Popular Vote	2012
Washington	Popular Vote	2012
Minnesota	Legislation	2013
Illinois	Legislation	2014
Washington		
D.C.	Popular Vote	2012
Maryland	Popular Vote	2013
Delaware	Legislation or Court Ruling	2013
New York	Legislation	2011
Rhode Island	Legislation	2013
New		
Hampshire	Legislation	2010
Vermont	Legislation	2009

Figure 5-1 (Freedom to Marry, 2015)

11 states were able to legalize same-sex marriage through the legislative branch in their state governments. In most of these cases, a bill was introduced, approved through the house and senate, and then signed by the Governor. This was the process in Minnesota, Illinois, Washington D.C., Delaware, New York, Rhode Island, New Hampshire, Vermont, and even Hawaii. Twenty years after *Baehr v. Miike*, Hawaii passed legislation that finally gave the couples in the *Baehr* case what they earned. Those same-sex couples were originally allowed to marry when the Hawaii trial court ruled that the state did not have a compelling interest to deny same-sex couples the right to marry. In other cases, the citizens of each state voted in their state elections to legalize same-sex marriage. This was the case in Washington through Referendum 74 and Maryland through question 6 on the

ballot and Washington D.C. (Freedom to Marry, 2015). A possible reason for why more states have passed same-sex marriage laws through the courts is because it only took a few people to bring a case to court as opposed to the majority of the population in each state needed to pass a law through an election or the majority of state legislatures to pass a bill. Less people are involved through the judicial branch. It is also possible that the courts needed to act first because legislators would not have without the push from the courts. Both avenues are effective, but the judicial branch is more efficient due to the fact that less people are involved.

Austria

As stated previously, Austria does not recognize same-sex marriage, but a court case did make marriage equality a possibility in the future. *Karner v. Austria* (2004) gave way for registered partnerships in Austria. Karner was sharing an apartment with his homosexual partner when his partner was diagnosed with AIDS. His partner ended up passing away but before he passed, he left the apartment to Karner. The landlord of the apartment complex sued Karner because he claimed he had no right to inherit the apartment because a same-sex partner was not a “life companion”. The case originated in Favoriten District Court where the court ruled that Karner had a right to the apartment because a homosexual partner was included as family. The landlord appealed to the Vienna Regional Civil Court where the court dismissed the landlord’s appeal. The landlord then appealed to the Supreme Court where the lower court’s rulings were quashed because a homosexual partner was not considered a “life companion”. The landlord won the case because at that time there was no recognition for same-sex couples. Karner appealed to the European Court of Human Rights stating that this violated article 14 of the Convention because he

was being discriminated against because of his sexual orientation (*Karner v. Austria*, 2003). The court took the case because it said that a human rights violation was an issue and needed to be addressed. The court ruled that although the government had an interest in protecting the traditional family unit, denying an apartment to a same-sex partner was not the best way to go about it because this did not necessarily relate to protecting the traditional family unit considering it was a lease case and not a marriage case (*Karner v. Austria*, 2003). Karner was entitled to the apartment.

This case was the first case in Austria to protect rights that same-sex couples possess. A big reason why the court ruled the way it did was because this was a lease case and had nothing to do with the traditional family unit. Had it been a case dealing with same-sex marriage, the court may have ruled differently. But because this case was only dealing with leasing an apartment, the court felt that the state did not have an interest in protecting the traditional family unit considering leasing an apartment does not involve a family unit. Had it been a marriage debate, the court probably would have issued a different ruling.

Karner v. Austria gave way to registered partnerships. This case demonstrated that same-sex couples do have rights. The same-sex partner of a deceased individual does have a right to an apartment if the deceased signed over the lease to the surviving partner. This is how it would work with different-sex couples, so it is only right that same-sex couples received this treatment as well. Austria was able to progress marriage equality from same-sex partners having no recognition what so ever, to same-sex partners registering as partners. They looked to the judicial branch in order to make this happen. Again, courts seem to initiate the change.

France

France legalized same-sex marriage in 2013 through the legislative branch. Jean-Marc Ayrault brought law No.2013-404 to the National Assembly with the support of President Francois Hollande. The National Assembly approved the bill with 329 votes in favor and 229 votes against (Lesur and Linsky, 2013). The Senate approved the bill with a closer race. The vote was 171 to 165 in favor of the bill. Once the bill was about to become a law, a conservative group petitioned the bill to the French Constitutional Council because it thought the bill violated the French Constitution. The French Constitutional Convention declared that the bill did not violate the French Constitution, so it was enacted into law (Lesur and Linsky, 2013). This law allowed same-sex couples to file for legal marriage, but it also allowed people who were not citizens of France to get married as long as their partner took residence in France. It also recognizes marriages that took place prior to this law being enacted if the couple got married in another country.

The French government made sure that this law included as many same-sex couples as possible (Lesur and Linsky, 2013). The French government, however, did leave a couple major things unsettled. For example, the new law allows the couple to exercise parental authority over their children, however, the law still prohibits same-sex couples from adopting children together. One person in the relationship could adopt a child, but the other person would not be able to jointly adopt the child (Lesur and Linsky, 2013). Another example is that this law did not make it possible for same-sex couples to receive IVF treatment if one of the couples was medically incapable of conceiving a child (Lesur and Linsky, 2013). These two provisions in the law make it hard for a same-sex couple to have a

family together. Marriage is one part of the issue, but being able to care for a family the same way different-sex couples do should be part of marriage equality as well.

France looked to the legislative branch to bring about change. Members of the government were willing to fight for this human right and there happened to be enough people in power that agreed. President Hollande announced his support for same-sex marriage when he was running for President (Lesur and Linsky, 2013). The French had enough supporters to where the legislative branch did not feel threatened to tackle this heavy issue. Some countries are not so lucky.

Finland

The citizens of Finland were tired of waiting for the legislative branch to do something about same-sex marriage and there were no lawsuits for the judicial branch to settle, so the citizens decided to enact a citizen's initiative (Reuters, 2014). A citizen's initiative is when a group of people start a petition and get signatures from a large portion of the population that force the legislative branch to put the issue on the ballot to have citizens vote on it. In this case, the citizens voted to legalize same-sex marriage and the legislative branch complied. This law has not gone into effect yet. The citizen's initiative happened in 2014 and was soon put to a vote in Parliament. Parliament voted 105 to 92 in favor of same-sex marriage. The Prime Minister of Finland was very happy with this decision. Prime Minister Alexander Stubb said, "Finland should strive to become a society where discrimination does not exist, human rights are respected and two adults can marry regardless of their sexual orientation," (Reuters, 2015). The law will go into effect in 2017.

Finland took control when it came to this issue. They were the only Nordic country at the time to not institute same-sex marriage, and the citizens felt that it was time for this

to change. Finland is a great example of how citizens are supposed to take control of the government if there is something that a large majority of the population believes in. The citizens wanted a change to be implemented, but were not willing to wait any longer so they decided to do something about it. Their plan worked and now marriage equality has spread to another country. Sometimes both the courts and the legislatures need a little push in order to get things done. Finland's citizens were more than willing to offer that push.

Same-sex marriage has progressed one of three ways so far, either through citizen initiatives, the legislative branch or the judicial branch. In the United States, it took one appellate court case to get the ball rolling and then a lot of states began to implement same-sex marriage one way or another. The majority has used the courts to implement same-sex marriage. This will only come about if a couple is willing to sue the state, typically in violation of the equal protection clause of the state constitutions. Some states have chosen to use the legislative route. This will only happen if legislators are sure that they have the backing of their constituents because they do not want to lose re-election votes. European countries, just like the United States, used a mixture of the branches. France was able to get a bill passed through the National Council because the Prime Minister brought it forward with the backing of the President. Finland brought about change when the citizens forced the legislative branch to act. Austria may not have same-sex marriage, but they were able to bring about a small bit of change through a court case. That small court case had a big impact because it allowed registered partnerships to be offered and these registered partnerships are basically the same thing as marriage without using the word marriage.

In order to determine which route is faster and more efficient, citizen's opinions

play a huge role. Finland was able to use the legislative route because a huge majority of the population was willing to write their names on a petition declaring their support of a law legalizing same-sex marriage. France was able to use the legislative branch to pass a same-sex marriage bill because the President was able to win the Presidency even though he was a same-sex marriage advocate. He must have had a majority support of the population if he was able to win the Presidency with his views. The United State's population is still torn on this issue. The majority of people might be in favor of same-sex marriage, but this majority might not be enough for legislatures to feel comfortable enough to act. Although some states did take this route, the majority of the states that passed same-sex marriage laws went through the courts. It is also most likely that the courts will decide this issue once and for all in the United States in the spring of 2015.

Chapter 6: Why Should Same-Sex Marriage be Legalized?

It is never right to make a group of citizens feel like second-class citizens. The current same-sex marriage laws in certain countries make same-sex couples feel like second-class citizens. This lesson was learned in many countries during the time that racial discrimination was accepted. In the United States, it used to be acceptable to treat African Americans differently than white Americans as long as the treatment was “equal”. The laws establishing “separate but equal” were brought about through *Plessy v. Ferguson* (1896). This case started out as a simple transportation case, but the decision by the Supreme Court of the United States brought about a huge problem in the United States for that time period. It brought about the acceptance of discrimination. Plessy was asked to leave a train car because that train car was reserved for “whites only”. During this time, there were train cars for White people and Black people. In theory, the cars were supposed to be completely equal; however, in reality the “whites only” cars were much more luxurious than the “blacks only” cars, which were cattle cars. Plessy refused to leave and was arrested. The case made it up all the way to the United States Supreme Court. The Supreme Court actually ruled that “separate but equal” was constitutional and that discrimination was legal. A simple transportation case had one of the biggest impacts on American society. “Separate but equal” was applied to just about every aspect in life, including education. It got to the point where there were schools for White people and separate schools for Black people. Regardless of whether the schools were actually equal or not, which they were not, this type of treatment was not and is not acceptable. Eventually the United States overturned *Plessy v. Ferguson* because the court realized the error of its ways. It should never be acceptable to treat a human being any differently from another human being based on

traits such as race, gender, and sexual orientation. This includes same-sex couples today. The right to marriage should not only be granted to certain people. Civil unions and domestic partnerships were created as a way to replace marriage in the lives of same-sex couples. In other words, civil unions and domestic partnerships were reverting back to “separate but equal”. The problem with “separate but equal” is that things are never equal. Simply by reserving a particular car for one group of people or by granting marriage to one group of people and not another, automatically creates inferiority in society. As long as there is a notion of inferiority, there is a notion of discrimination. The United States evolved over time to accept that every human deserves to be treated to the same standards. Laws have been implemented that outlaw discrimination based on race, gender, and sexual orientation in the workplace. So, why is it acceptable to discriminate based on sexual orientation when it comes to marriage? Just like it is not acceptable in the workplace, it should not be acceptable in marriage either.

Marriage is something special that should be between a couple of people who love each other and want to share their lives together. Other people and the government should not have the power to tell someone who they can and cannot be with, especially if those two people are consenting adults. The government gets involved with marriage because it awards tax benefits and many other perks to married couples. However, this does not give the government the power to decide what type of people can and cannot get married. By deciding who can and cannot get married, a group of people is left to feel that their relationship is not as worthy as others and this should not be acceptable.

This happens in countries that do not recognize same-sex marriage. This makes same-sex couples feel inferior to opposite-sex couples. The feeling of being inferior to

another group of people starts to take a toll on any individual. Because of the unfair treatment of same-sex couples, same-sex couples have a better chance of suffering from anxiety and depression (Riggle and Rostosky, 2007, pg. 67-68). Countries such as France and Finland understood the injustice and unfair treatment that the denial of same-sex marriage laws imposed on LGBT people. They decided that it was time to make a change and made same-sex marriage legal nation-wide. The interesting part is that in both of these situations, the citizens played a big part. Citizens in France elected their President after he announced that he fully supported same-sex marriage. Finland's citizens were tired of waiting around for the government to step in and do something, so they decided to do something. They instituted a citizen's initiative and because of that citizen's initiative, same-sex marriage will be legalized nationwide in 2017. These two countries are prime examples of what needs to happen if governments are not willing to act. There are various reasons why governments do not want to act, but they are not good enough.

In the United States, Congressmen and women are very hesitant to touch this hot topic for one reason; they want to get re-elected. No matter which way they would have acted, in regards to whether they would have acted to legalize same-sex marriage or acted to stop the progression of states legalizing same-sex marriage, these legislators would have lost votes for re-election. For example, members of the Freedom to Marry campaign will withdraw any donations they have given to certain politicians if those politicians moved forward to halt the progression of same-sex marriage in states. Members of the Family Research Council will do the same thing to politicians who choose to fight for same-sex marriage. The constant worry for re-election on American politicians' parts is probably the biggest roadblock in American politics. Because of this mindset that politicians' first job is

to win re-election, nothing will get done when it comes to same-sex marriage in the federal legislative branch. That is why the decision of whether to legalize same-sex marriage will be decided in the United States Supreme Court or in state courts or in state legislatures, basically everywhere except for federal legislatures.

Prediction for Spring 2015 in the United States

In the spring of 2015, the United States Supreme Court will hear arguments from four same-sex couples in the court case *Deboer v. Snyder* (2015) and reasons why same-sex marriage bans in four states, Michigan, Ohio, Kentucky, and Tennessee, are unconstitutional (Sherman, 2014). The main complaint stems from the couple from Michigan. This couple was denied the ability to jointly adopt each other's children. This is the first case that the Supreme Court has decided to hear regarding the same-sex marriage issue and it is likely this debate will be settled once and for all. The momentum is swinging for the justices to legalize same-sex marriage nationwide because public opinion has changed a lot over the years and because so many states have already moved in this direction.

Currently, 37 states out of 50 states and Washington D.C. have legalized same-sex marriage. Figure 6-1 below visually demonstrates how fast same-sex marriage has swept across the nation. The individual states are really hard to distinguish, but the grey and yellow contrast really depicts how fast same-sex marriage has swept across the nation in such a short amount of time. In 2008, there were only two states that legalized same-sex marriage. In 2011, that number jumped to seven. In 2013, 17 states legalized same-sex marriage and just two years later that number is up to 37.

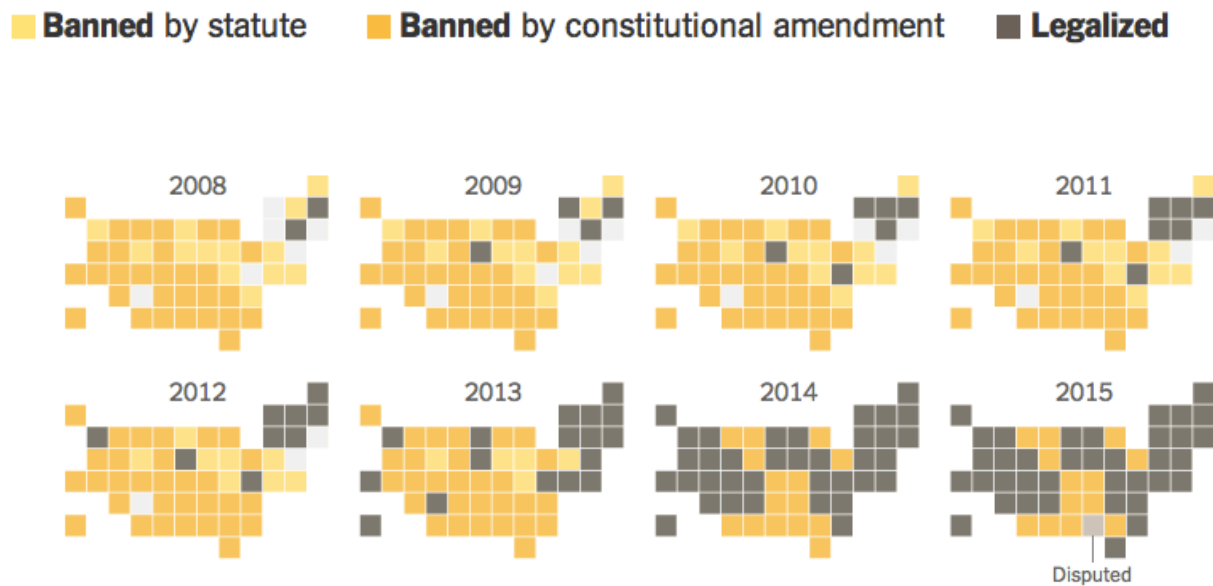


Figure 6-1 (Liptak, 2015)

Most of the states were able to do this through the judicial branch, but 12 were successful through the legislative branch. Just 13 years ago, this seemed like an impossible task for the LGBT community. In 2002, there were zero states that legalized same-sex marriage, even though the battle started back in 1993 through *Baehr v. Miike* in Hawaii. *Baehr v. Miike* was able to start this battle because it laid down the groundwork for fighting the constitutionality of the denial of same-sex marriage. The logic used by the same-sex couple in *Baehr* is the logic that same-sex couples used in Massachusetts and other states that have legalized same-sex marriage through the court system. The logic is that by denying same-sex couples the ability to marry, the couples are denied equal protection (*Baehr v. Miike*, 1993). In each state constitution, equal protection is granted to each citizen of that state. By proving that the denial of same-sex marriage is in violation of equal protection, same-sex couples and advocates of same-sex marriage were able to win their court case

and legalize same-sex marriage. This is the logic currently being argued in the Supreme Court case *Deboer v. Snyder* (2015). In addition to an equal protection clause in state constitution, there is also an equal protection clause in the United States' constitution through the 14th amendment; therefore, the logic used in *Baehr v. Miike* can be used to grant the legalization of same-sex marriage nationwide through the *Deboer v. Snyder* case.

The fact that 37 states have legalized same-sex marriage in the United States will have a big impact on the Supreme Court's decision. This shows the trend that public opinion is moving towards, and the Supreme Court will most likely go with that trend instead of fighting it. In 2013, the majority of the population in the United States thought that same-sex marriage should be legalized and that number keeps growing every year (Gallop. 2014). A reason why this number keeps growing every year could be because for the first time, the majority of the population live in a state that has legalized same-sex marriage. A bigger reason why public opinion has shifted in favor of same-sex marriage has to do with a change in generation. 70% of Millennials, ages 18- 32, are in favor of same-sex marriage (Pew, 2013). Millennials hold a lot of power right now because they are beginning to become a stronger, more influential force in the adult population. 27% of the adult population is made up of the Millennials while the baby boomers are literally dying off, and it's the Millennials' votes that are becoming stronger and stronger. "Millennials (whom we define as between ages 18 to 34 in 2015) are projected to number 75.3 million, surpassing the projected 74.9 million Boomers (ages 51 to 69)", (Fry, 2015). This creates a shift in American politics because a new generation of people is becoming the biggest living generation, which will make politics geared toward their needs, assuming they vote. The Supreme Court is supposed to be an independent branch of government, not concerned

with public opinion; however, this is unrealistic. Each justice on the bench knows how public opinion has changed so quickly on this issue. They will factor this into their decision because going against public opinion could cause great tension across the United States (Rosenberg, 2008, p. 420).

The *Deboer v. Snyder* case in spring of 2015 will most likely reflect the current trend in the United States. That current trend is to legalize same-sex marriage across the United States. In order to figure out which justice is more likely to vote which way, people should look to the *Windsor v. United States* (2013) because that is the most current case dealing with same-sex marriage. *Windsor v. United States* (2013) made it possible for the federal government to recognize same-sex marriage as long as the state does. This case may not have been as controversial as the current case before the Supreme Court, but it was still very controversial at that time. That is why it is important to look at how the justices on the Supreme Court voted in *Windsor v. United States* because it could be a window into the future. During *Windsor*, Justices Kennedy, Ginsberg, Breyer, Sotomayor, and Kagan voted in favor of allowing the federal government to recognize same-sex marriage. When it comes to the current case, it is likely that Justices Ginsberg, Breyer, Sotomayor, and Kagan will be consistent and vote for the legalization of same-sex marriage. These justices are consistently liberal, which means they stand to promote civil rights and liberties. Justices Roberts, Scalia, Thomas, and Alito were the dissenters in *Windsor v. United States*. It is pretty safe to say that Justices Scalia, Thomas, and Alito will be consistent with their votes and vote against legalizing same-sex marriage in the up coming case. These justices are consistently conservative and nothing will change that. Chief Justice Roberts voted against recognizing same-sex marriage in *Windsor v. United States* (2013), but he may not vote the

same in the upcoming case *Deboer v. Snyder* (2015).

Justice Kennedy and Chief Justice Roberts are swing votes in this case. Being a swing vote means that no one knows how these justices will vote because they do not always vote the same way. Chief Justice Roberts was in the minority in the *Windsor v. United States*. However, because he was in the minority in that case does not mean he will vote against legalizing same-sex marriage in this case. His reasoning for being in the minority in *Windsor* had nothing to do with same-sex marriage. He was in the minority because he simply believed the Supreme Court lacked jurisdiction to hear the case. In another same-sex marriage case *Hollingsworth v. Perry* (2012), Chief Justice Roberts also ruled that the court did not have jurisdiction to hear the case, which allowed the banned same-sex marriage law in Massachusetts to remain unconstitutional because the lower court's ruling stayed. Justice Kennedy's position is also unknown at this time because he has a tendency to vote not as conservative as the other conservatives on the bench such as Justices Alito and Thomas and Scalia. He has a tendency to sometimes lean liberal even though he identifies as a conservative. With that said, because he wrote the majority opinion in *Windsor v. United States* and because his opinion was very set on not discriminating against same-sex couples, it is very likely that he will vote to legalize same-sex marriage nationwide. He wrote,

DOMA's principal effect is to identify a subset of state- sanctioned marriages and make them unequal. The principal purpose is to impose inequality, not for other reasons like governmental efficiency. Responsibilities, as well as rights, enhance the dignity and integrity of the person. And DOMA contrives to deprive some couples married under the laws of their State, but not other

couples, of both rights and responsibilities. By creating two contradictory marriage regimes within the same State, DOMA forces same-sex couples to live as married for the purpose of state law but unmarried for the purpose of federal law, thus diminishing the stability and predictability of basic personal relations the State has found it proper to acknowledge and protect (*Windsor v. United States*, 2013, p. 22).

In this opinion, Justice Kennedy is very adamant about making sure that same-sex couples are not discriminated against and it is very likely that he will rule the same way in the upcoming case. If he does rule the same way in the upcoming case *Deboer v. Snyder* (2015) along with the other four liberal justices, then same-sex marriage will be recognized as a federal constitutional right.

The fight for marriage has been at the forefront of American politics for years now. The United States has a chance to settle this debate once and for all in the spring of 2015. Countries such as Finland and France have proven that it is time for same-sex couples to be protected like any other couple. By not recognizing same-sex marriages, same-sex couples are viewed as not having a “real” relationship and looked down upon. It is never acceptable to treat a group of people like less than humans. All humans were born with the right to be treated equally, regardless of race, sex, gender, sexual orientation, etc. The United States and many countries around the world formed their constitution based on this premise and it is time for marriage to be protected as a fundamental right for everyone. The United States is looked at to be a world leader. If the United States fully supported same-sex marriage, then it is possible the European Union would make it a requirement in order to become a member. This would force 28 countries to legalize same-sex marriage. By

legalizing same-sex marriage, the United States could once again become an example for other countries to follow.

Every human being deserves the right to be treated equally in every aspect of life. This includes the right to marry. The decision to marry someone is supposed to be one of the most personal decisions someone makes. By denying someone the right to decide whether to get married or not, they are being denied a fundamental right. They are being denied the right to participate in a celebration of two people coming together to share their lives. They are being denied the right to be happy. Everyone deserves the right to live his or her life with the person of his or her choosing. No one should ever be denied the right to be happy, especially when it comes at no cost to other people around them. Same-sex couples have faced discrimination for too long. It is time for the United States to put an end to this discrimination and live up to the words of the Declaration of Independence: "We hold these Truths to be self evident that all Men are created equal, that they are endowed by their creator with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness" (Declaration of Independence, 1776). No person should be denied the right to live a happy life at no expense to others. It is time to let same-sex couples share the happiness that opposite-sex couples experience and to finally live in a country where discrimination based on sexual orientation is not accepted.

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