



## The Journey to Marriage Equality in the United States

### OVERVIEW

#### ESSENTIAL QUESTION

How did same-sex marriage become legal in the United States?

#### OVERVIEW

The journey to marriage equality in the United States was a decades-long process that spanned multiple levels of government across the political spectrum. It moved from the jurisdiction of local governments to state courts and legislatures, from the United States Congress to the President of the United States, all the way to the nation's Supreme Court. While the broad movement for LGBTQ+ liberation began in the 1960s, the first steps toward legally achieving marriage equality only started in the 1990s.



In 1991, over twenty years before same-sex marriage became a constitutional right in the United States, three Hawaii couples filed a civil lawsuit against the director of the Hawaii Department of Health, the state agency that governed marriages. As plaintiffs, they argued that the department's denial of marriage licenses to same-sex couples violated the state constitution. Initially known as *Baehr v. Lewin*, the case would take nearly ten years to resolve. By 1993, the Hawaii Supreme Court ruled that the state's exclusive denial of marriage licenses to same-sex couples was discriminatory and required justification by the state. A trial would take place but eventually the state legislature intervened. In 1998, voters approved an amendment to the state constitution that allowed the legislature to exclude same-sex couples from being granted marriage licenses, thus defining marriage in the state as between men and women only. The lawsuit was recognized as a landmark case in the debate over marriage equality and advocates against same-sex marriage had begun pursuing legislative means to blunt any progress nationwide.

Opponents to marriage equality began lobbying for legislation around the country that would narrowly define marriage and exclude same-sex couples. At the federal level, a bipartisan United States Congress passed the Defense of Marriage Act (D.O.M.A.) in 1996, as a direct reaction to the legal proceedings in Hawaii. Later signed into law by President Bill Clinton, D.O.M.A. strictly defined marriage as a union between one man and one woman, removing any federal recognition of marriages between same-sex couples.

While those legislative victories codified marriage at the federal level and in some states, the LGBTQ+ community continued to advocate for marriage equality and found allies in Mayor Gavin Newsom of San Francisco and in the state legislature in Massachusetts. By 2004, Mayor

Newsom was officiating the first same-sex marriage in the United States, and his office was providing California state marriage licenses to everyone that applied. In Massachusetts, the state legislature passed a bill that provided civil union status to same-sex couples, providing state recognition of those unions on par with opposite sex couples' marriages. However, both actions received considerable resistance; Mayor Newsom was rebuked by the California governor and the state courts, while Massachusetts' legislation was challenged as well.

Although progress toward marriage equality had made great strides since *Baehr v. Lewin*, unencumbered access to same-sex marriage had remained elusive. However, lawsuits challenging D.O.M.A. had been moving through the federal court system while public opinion toward marriage equality was becoming much more favorable. Cultural contributions from a variety of artists, like Lady Gaga and her song "Born This Way" featured in this lesson, had been playing a substantial role in informing and influencing the public debate and perception of the LGBTQ+ community for many years. By 2013, the United States Supreme Court ruled in favor of a same-sex couple in *United States v. Windsor*, dealing a fatal blow to D.O.M.A. With the legislation invalidated by the high court the issue of marriage equality moved into a status of legal ambiguity.

In 2015, the Supreme Court's decision in *Obergefell v. Hodges* would provide legal clarity. The court ruled in a 5-4 decision that marriage is guaranteed to same-sex couples by the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. Although *Obergefell* had clearly addressed and resolved the legality of same-sex marriage, opponents of marriage equality continued to resist both in government institutions and in the public forum.

In this lesson, students will explore the civic process and history that led to marriage equality by identifying the court cases and legislation surrounding the debate, examining legal and legislative documents that affected the debate, and identifying how Lady Gaga's "Born This Way" represented the LGBTQ+ community's experience and celebrated their mission.

## OBJECTIVES

Upon completion of this lesson, students will:

### 1. KNOW (KNOWLEDGE):

- The court cases involved in the marriage equality debate
- The legislation that was passed at the state and federal level both in favor of and against marriage equality
- The terminology and format of legal documents and legislation
- Lady Gaga's "Born This Way" as a musical anthem that represented the LGBTQ+ community's experience and celebrated their mission

### 2. MASTERY OBJECTIVE

- Students will be able to identify and explain the civic process that led to marriage equality in the United States by analyzing court documents, congressional legislation, press articles, and music.

## ACTIVITIES

## MOTIVATIONAL ACTIVITY

1. Show **Image 1, Kadish & McCloskey**. (*Note to teacher: Marcia Kadish and Tanya McCloskey were the first same-sex couple to be legally married in the United States on May 17, 2004 in Boston, MA.*) Ask students:
  - According to the clip, what part of the government legalized same-sex marriage?
  - What is the Supreme Court? What branch of the United States Government does it represent?
  - According to the people in the clip, what was important about achieving same-sex marriage? What rights does it provide?
  - How might the issue of same-sex marriage arrived before the Supreme Court? Generally, how does a case come before the Supreme Court?

## PROCEDURE:

1. Play **Clip 1, Marriage Equality**. Ask students:
  - According to the clip, what part of the government legalized same-sex marriage?
  - What is the Supreme Court? What branch of the United States Government does it represent?
  - According to the people in the clip, what was important about achieving same-sex marriage? What rights does it provide?
  - How might the issue of same-sex marriage arrived before the Supreme Court? Generally, how does a case come before the Supreme Court?
  - How might a legal case move through each level of the system?
  - What might “jurisdiction” mean? (*Jurisdiction: a system of law courts that have been granted the authority to make legal determinations and judgements.*)
  - What is an “appeal” and what does it mean within the context of this system and the United States legal system in general? (*Appeal: a challenge to a court’s legal determination and judgement.*)
  - What court is at the highest level of the system? What might it mean for this court to be at the highest level in the system?
  - What is a “justice” on this highest level court? How many justices serve on the highest level court? Why might the number of justices that serve on this court be important?
2. Show **Image 2, Chart of Federal Judicial System**. Ask students:
  - How many levels of the federal judicial system are there? (*If needed, teachers can explain that the state judicial system is typically organized very similarly to the federal system.*)
3. Organize students into groups of four and explain to the class that each group will

explore the civic process and history that led to marriage equality in the United States. Create six separate stations, each with separate documents and images:

- Station 1 – *Baehr v. Lewin*
- Station 2 – Defense of Marriage Act
- Station 3 – San Francisco in 2004
- Station 4 – Massachusetts in 2004
- Station 5 – *United States v. Windsor*
- Station 6 – *Obergefell v. Hodges*

4. Assign each student group to a particular station. Ask them to read the document at the station and answer the corresponding questions on a scratch piece of paper. If time allows, have groups visit other stations.

5. Gather students back together as a class. Have each group write a brief description of their station event on a sticky note. Once filled out, ask students to summarize their station event and attach their sticky note on the board at the front of the classroom in the chronological order it occurred. Go through the timeline as a class. Ask students:

- What is the time span between the first and last event?

- How might one event have led to another?
- What other factors might have played a role in this process?
- Do you think public opinion might have played a role?
- How might public opinion be influenced to evolve and change over time?
- How might music play a role in influencing public opinion?

6. Play **Clip 2, “Born This Way.”** Ask students:

- Why might “Born This Way” be linked to the gay liberation movement? Why might the song be considered an anthem for the gay community?
- As mentioned in the clip, why might the arts be a particularly well suited system for bringing the oppressed into the mainstream?
- Why might anthems be important in any type of movement, community event, or public gathering? Can you think of any other anthems that are played at public events? Why might these public broadcasts of anthems be important for these events?



## SUMMARY ACTIVITY

1. Explain to students that the class will now discuss how the journey to marriage equality is representative of the legislative and judicial process for securing many rights we've come to expect in the United States. Ask students:
  - What were the institutions involved in the debate for Marriage Equality?
  - What levels of government were involved in the debate for Marriage Equality? What government institution had the final say in the debate? Why did it have the final say?
  - Are there foundational documents in our country's history that have determined the process for resolving differences amongst individuals and groups? What might they be?
  - Can you think of other social movements that may have had a similar process and history? What are they?

## EXTENSION ACTIVITY

1. How does equity for the LGBTQ+ community vary around the United States?
  - Guide students to the site: <http://www.lgbtmap.org/equality-maps>
  - Ask students to prepare a brief single page summary on an LGBTQ+ equity issue of their choice based on the options available on the site.
  - Instruct students that they should narrow their focus to be able to accommodate the parameters of the assignment and that they will give a brief presentation of their findings to the class.

## COMMON CORE STATE STANDARDS

### *College and Career Readiness Anchor Standards for Reading (K-12)*

Reading 1: Read closely to determine what the text says explicitly and to make logical inferences from it; cite specific textual evidence when writing or speaking to support conclusions drawn from the text.

Reading 2: Determine central ideas or themes of a text and analyze their development; summarize the key supporting details and ideas.

Craft and Structure 4: Interpret words and phrases as they are used in a text, including determining technical, connotative, and figurative meanings, and analyze how specific word choices shape meaning or tone.

Integration of Knowledge and Ideas 7: Integrate and evaluate content presented in diverse media and formats, including visually and quantitatively, as well as in words.

Integration of Knowledge and Ideas 8: Delineate and evaluate the argument and specific claims in a text, including the validity of the reasoning as well as the relevance and sufficiency of the evidence.

Integration of Knowledge and Ideas 9: Analyze how two or more texts address similar themes or topics in order to build knowledge or to compare the approaches the authors take.

Range of Reading and Level of Text Complexity 10: Read and comprehend complex literary and informational texts independently and proficiently.

### *College and Career Readiness Anchor Standards for Writing (K-12)*

Text Types and Purposes 2: Write informative/explanatory texts to examine and convey complex ideas and information clearly and accurately through the effective selection, organization, and analysis of content.

Research to Build and Present Knowledge 8: Gather relevant information from multiple print and digital sources, assess the credibility and accuracy of each source, and integrate the information while avoiding plagiarism.

Research to Build and Present Knowledge 9: Draw evidence from literary or informational texts to support analysis, reflection, and research.

### *College and Career Readiness Anchor Standards for Language (K-12)*

Language 1: Demonstrate command of the conventions of standard English grammar and usage when writing or speaking.



Language 2: Demonstrate command of the conventions of standard English capitalization, punctuation, and spelling when writing.

Vocabulary Acquisition and Use 6: Acquire and use accurately a range of general academic and domain-specific words and phrases sufficient for reading, writing, speaking, and listening at the college and career readiness level; demonstrate independence in gathering vocabulary knowledge when encountering an unknown term important to comprehension or expression.

### *College and Career Readiness Anchor Standards for Speaking and Listening (K-12)*

Comprehension & Collaboration 1: Prepare for and participate effectively in a range of conversations and collaborations with diverse partners, building on others' ideas and expressing their own clearly and persuasively.

Comprehension & Collaboration 2: Integrate and evaluate information presented in diverse media and formats, including visually, quantitatively, and orally.

Comprehension & Collaboration 3: Evaluate a speaker's point of view, reasoning, and use of evidence and rhetoric.

Presentation of Knowledge 4: Present information, findings, and supporting evidence such that listeners can follow the line of reasoning and the organization, development, and style are appropriate to task, purpose, and audience.

## **NATIONAL CURRICULUM STANDARDS FOR SOCIAL STUDIES – NATIONAL COUNCIL FOR THE SOCIAL STUDIES (NCSS)**

Theme 1: Culture

Theme 2: Time, Continuity, and Change

Theme 3: People, Place, and Environments

Theme 5: Individuals, Groups, and Institutions

Theme 6: Power, Authority, and Governance

Theme 10: Civic Ideals and Practices

## **NATIONAL STANDARDS FOR MUSIC EDUCATION – NATIONAL ASSOCIATION FOR MUSIC EDUCATION (NAFME)**

### *Core Music Standard: Responding*

Interpret: Support interpretations of musical works that reflect creators' and/or performers' expressive intent.



Evaluate: Support evaluations of musical works and performances based on analysis, interpretation, and established criteria.

*Core Music Standard: Connecting*

Connecting 11: Relate musical ideas and works to varied contexts and daily life to deepen understanding.





## RESOURCES

### VIDEO RESOURCES

- *CNN Soundtracks* - Marriage Equality
- *CNN Soundtracks* - Lady Gaga, "Born This Way"

### HANDOUTS

- Station 1 – *Baehr v. Lewin*
- Station 2 – Defense of Marriage Act
- Station 3 – San Francisco in 2004
- Station 4 – Massachusetts in 2004
- Station 5 – *United States v. Windsor*
- Station 6 – *Obergefell v. Hodges*