



NATIONAL CENTER FOR LESBIAN RIGHTS



movement advancement project ▶



Protecting Your LGBTQ+ Marriage and Family

COLAGE, Family Equality, GLBTQ Legal Advocates & Defenders (GLAD Law), Movement Advancement Project (MAP), and the National Center for Lesbian Rights (NCLR) have collaborated to answer our families' most pressing questions.

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We have heard from many LGBTQ+ people asking how they can protect and care for their marriages and families. This resource provides information about the state of marriage and family protections and includes tools that you can use moving forward.

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What is the status of marriage equality/*Obergefell v. Hodges* now?

Marriage equality is the law of the land and must be respected in all 50 states and by the federal government. In *Obergefell v. Hodges*, the U.S. Supreme Court held that states must permit same-sex couples to marry, must treat their marriages equally, and must recognize their marriages from other states. This remains binding law in every state. Prior to *Obergefell*, the Supreme Court's 2013 *U.S. v. Windsor* decision said that it is unconstitutional for the federal government to deny federal recognition and benefits to some married couples that it extends to others.

In addition, a federal law enacted in 2022 with bipartisan support called the "Respect for Marriage Act" (RMA) put into federal law the legal protections for married people, who all "deserve the dignity, stability and ongoing protection that marriage affords to families and children." Two parts of the law are particularly relevant here:

(1) RMA prohibits state actors from denying a right or claim arising from a marriage on the basis that the marriage would not be recognized under the law of that State because of the sex, race, ethnicity or national origin of the married individuals. In other words, even if the status of marriage changed and previously enacted state bans went into effect, the RMA requires state actors to respect the marriage.

State marital protections are broad categories, including, e.g. benefits under a state-regulated health plan, workers' compensation benefits for the spouse of an injured worker, the economic protections for a surviving spouse and inheritance, protections for joint ownership of property and more. .

The Congress also relied on its authority to prescribe the "effect" of certain public actions, and prohibits state actors from denying "full faith and credit" to the public acts, records or judicial proceedings pertaining to marriage based on those same characteristics.

In other words, in enacting the RMA, the Congress exercised its powers under the Constitution to require all states to recognize and respect lawfully celebrated marriages without the forbidden discrimination. *Obergefell* should not be revisited or reversed for numerous reasons and our arguments are strong. Even if that worst case scenario came to be, the RMA provides that states would be required to continue to respect existing marriages and future marriages performed in another state that were legal in that state. The RMA language is clear that even if a state has a constitutional or statutory ban on marriage for same-sex couples, and even if the state stops permitting those marriages, that state is nonetheless required to respect a marriage of a same-sex couple legally issued in another state. RMA also allows private and US Attorney General actions to enforce compliance with this law.

(2) As a matter of federal law and the 1000+ laws in which marital status is a factor, RMA puts into statute a rule of federal respect for marriages if the marriage was valid where performed. The same rule applies as to marriages entered outside of the United States as long as that marriage was validly entered where performed and the same marriage could have been celebrated in a State.

This means that if you were legally married in the U.S. or internationally, your marriage must be recognized and respected. This applies to the full range of federal responsibilities and benefits for married couples, divorced spouses and surviving spouses (such as the ability to file federal taxes jointly and access social security survivor benefits or to remain covered by a former spouse's insurance plan). In other words, between the *Windsor* decision ruling that denying federal marriage protections to married same-sex couples denied equal protection, and Congress's passage of the RMA, we have turned the page on federal marriage discrimination.

Public support for marriage equality remains high and for good reason. For couples who marry and their children, marriage is a legal commitment with defined responsibilities and protections and provides a legal and social protection that spouses and their children carry through their daily lives.

Marriage allows families to organize their affairs and to interact seamlessly with their children's schools, health care providers, employers, insurers, government entities and innumerable others. The *Windsor* and *Obergefell* decisions enabled more people to marry and hurt no one. On the other hand, it would be enormously harmful to children and families and disruptive to our society to reconsider marriage equality.

How concerned should we be about threats to marriage?

At the same time, we know that there have been voices expressing a desire to reverse *Obergefell*. A second Trump administration adds to those concerns. ***We know that this is scary, but it is important to remember that nothing has actually changed.***

There are many levels of legal protection in place. The *Obergefell* decision is a mainstream case decided correctly on both equal protection and due process/liberty grounds. The Supreme Court may at some point receive a petition to review a case challenging *Obergefell*, but most petitions are denied. And as to RMA and other federal laws, it presently takes 60 votes in the U.S. Senate to change a law like RMA. The executive branch is powerful, but it cannot simply "undo" marriage equality. Even if marriage equality were challenged in the future, existing marriages will remain intact.

The legal organizations dedicated to advancing and defending the rights of LGBTQ+ people and their families are monitoring the issue of marriage closely and stand ready to defend against any attacks on our marriages and relationships—and we are committed to defending against all attacks on LGBTQ+ people, families, and children.

What can I do right now to feel more secure and protect my marriage?

Marriage provides certain automatic protections in many ways, but it is always helpful to take action to clarify who you want making decisions for

you, taking care of your children, or managing your money and property in case of an emergency. It is helpful for adults - married and unmarried alike - to make documents to clarify their wishes. **These documents are called estate planning documents, and it is best practice for every couple to have them—LGBTQ+ and non-LGBTQ+.** Those documents include:

- Power of Attorney - a legal document that empowers your spouse (or another person) to make financial decisions in case you are unable to do so.
- Health Care Proxy - a legal document that empowers your spouse (or another person) to make health care decisions in case you are unable to do so. This document may also allow you to authorize your spouse to access your medical information and to visit you in the hospital.
- Advance Directive - a legal document that records your wishes regarding medical care in advance, in case you become unable to make decisions or to communicate your wishes. For transgender people, you can include your wishes regarding healthcare issues specific to your transition.
- Will - a legal document where you describe what you would like to have happen to your children and property in the event of your death.

Unmarried partners can also use these documents to protect their relationships and order their affairs. In fact, they are particularly important for unmarried partners since they do not have the benefit of default marriage protections. They are also important for single parents and individuals to designate who will care for them and handle their affairs. A designated individual does not need to be a relative. Without a designation, their parents or other relatives likely will make decisions for them if they get sick, and likely will inherit from them if they die.

Every state has specific rules about estate planning documents and how they should be written and signed in order to be valid and enforceable. Speaking with an attorney is recommended, especially for wills. We can help you with referrals to lawyers to assist you with estate planning documents. Please reach out using the contact information below. You may also wish to

search online for free or low-cost legal services in your area.

Steps LGBTQ+ Parents Can Take to Protect Their Families

As we have long said, the best way for LGBTQ+ parents to protect their family is to ensure that their parent-child relationship is secure in all states by obtaining a court judgment of parentage or adoption. “Parentage” is the legal relationship between a parent and child.

To protect against discrimination, LGBTQ+ parents need to take this action - even if you are married and both parents are listed on a child’s birth certificate.

That’s right, *even* if you are already listed on your child’s birth certificate! This is because while the birth certificate reflects the legal presumption that any child born into marriage is the child of both parents, it is not a legal *judgment* establishing parentage. That means your parentage could be vulnerable to a legal challenge down the road if unexpected circumstances arise.

Establishing this legal security also provides protection when you travel or move between states. Each state has to respect the valid legal judgments of other states.

Further, if you are someone whose identity is not accurately recognized on your child’s birth certificate—maybe you are misgendered, your name has changed, or your parental relationship is listed inaccurately—obtaining a court order of parentage or adoption would address any room for confusion. Transgender parents who transitioned after obtaining a judgment of parentage should consult with a family law attorney in their state about what options exist to align their child’s legal documents with their legal identity.

There are many paths to parentage depending on what state you live in:

- **Parentage Judgment**
 - In some states, parents of children born through assisted reproduction can seek a parentage judgment through a process that is streamlined and allows intended parents—married and unmarried alike—to secure a pre- or post-birth judgment of parentage if they have consented to assisted reproduction. Some states also allow people who are parenting a child but who did not engage in assisted reproduction (sometimes called “de facto” or

“psychological” parents) to secure that relationship through a parentage judgment. It is important to consult with a local family law practitioner or local court clerk in your state. A parentage judgment that is properly issued from a court with jurisdiction is entitled to recognition and respect in every U.S. state and territory.

- **Adoption**

- Many LGBTQ+ parents use co-parent (sometimes called second parent, stepparent, or confirmatory, depending on local law) adoption to confirm or secure an adoption of a child born to their partner through assisted reproduction and gamete (sperm or egg) donation.

Each [state adoption law](#) and process differs. For example, some states require home studies for co-parent adoptions, and other states have a more streamlined process for co-parent adoption. Some states allow all parents to adopt - married and unmarried - while some states only allow married parents to adopt. It is important to consult with a local adoption lawyer if possible or speak with your local court clerk about how adoption works in your state.

Once an adoption is complete, you get a decree of adoption – a court judgment that is entitled to recognition and protection wherever you travel. An adoption decree that is properly issued from a court with jurisdiction is final and irrevocable and cannot be undone by another court or by a change in the law.

- **Voluntary Acknowledgment of Parentage (“VAP”)**

- *Note: In the 12 states where available (California, Colorado, Connecticut, Maine, Maryland, Massachusetts, Michigan (as of Spring 2025), Nevada, New York, Rhode Island, Vermont, and Washington) VAPs are the most affordable and straightforward option for many families, and we encourage families to pursue a VAP at a minimum, particularly since they are free and can be signed right away at birth. However, because respect for VAPs signed by same-sex parents across states has not been fully tested in courts, also getting either a parentage judgment or a co-parent adoption would provide the greatest security in uncertain times.*

- Federal law requires states to provide a simple civil process for acknowledging parentage immediately before or after the birth of a child, known as a Voluntary Acknowledgment of Parentage (VAP).

VAP forms are generally short affidavits in which the person who gave birth as well as the other parent - such as an unmarried genetic father - affirm that they are a parent and take on the rights and responsibilities of parentage.

When correctly filled out and filed in line with state law, a VAP is the equivalent of a court decree of parentage and has the binding force of a court order.

As of November, 2024, eleven states allow LGBTQ+ parents to establish parentage through signing a VAP (sometimes also called an acknowledgement of parentage). Those states are: California, Colorado, Connecticut, Maine, Maryland, Massachusetts, Nevada, New York, Rhode Island, Vermont, and Washington. Michigan has a new law which will go into effect later in 2025, which will allow more people, including LGBTQ+ parents, to establish parentage through signing a VAP.

Each state has slightly different requirements for signing the form. [More information is available at GLAD Laws' FAQ on VAPs.](#) It is important to consult a local family lawyer if you can to see if your state allows LGBTQ+ parents to sign VAPS in your personal circumstances and if so, to ensure you fill out and sign the form correctly.

Where can I find referrals and more information?

Looking for attorneys? Reach out to us for attorney referrals at [COLAGE](#), [Family Equality](#), [GLAD Law](#), and [NCLR](#). The National LGBTQ Bar Association has a Family Law Institute that has attorneys in many states. [Click here to access that directory.](#)

Looking for resources? Check out these resources for additional information:

COLAGE

In the next few days, COLAGE will be releasing a resource that speaks directly to children with LGBTQ+ parents, both youth and adults, about these issues. In the meantime, if your child or the child of an LGBTQ+ parent or caregiver you know is struggling with the recent election results and would like to be in community with other people who have LGBTQ+ parents, please direct them to the COLAGE [upcoming events page](#).

You can also find our guides for Donor Conceived People and People with Trans Parents [on the COLAGE website](#).

Family Equality

- Securing LGBTQ+ Parentage by State: Stepparent, Second Parent, and Confirmatory Adoption:
<https://familyequality.org/resources/securing-lgbtq-parentage-by-state-stepparent-second-parent-and-confirmatory-adoption/>
- Voluntary Acknowledgments of Parentage (VAPs): What LGBTQ+ Parents Need to Know
<https://familyequality.org/resources/voluntary-acknowledgements-of-parentage-vaps-what-lgbtq-parents-need-to-know/>
- Stay up to date on Family Equality's [Family Law and Policy work](#) and follow our [blog](#).

GLAD Law:

- Paths to Parentage Security (from GLAD Law and [Mombian](#))
<https://www.glad.org/lgbtq-paths-to-parentage-security>
- Resources for New England LGBTQ+ Families (contains specific information about New England state parentage laws)
<https://www.glad.org/resources-for-new-england-parents>
- FAQ about Voluntary Acknowledgments of Parentage
<https://www.glad.org/voluntary-acknowledgment-of-parentage/>
- If you live in Pennsylvania, [stay up to date](#) on efforts to update Pennsylvania's outdated parentage laws through the Pennsylvania Uniform Parentage Act.

Movement Advancement Project:

- State maps tracking parental recognition laws: [Movement Advancement Project | Parental Recognition Laws](#)
- Key policies supporting LGBTQ families: [Key-Laws-and-Policies-Supporting-LGBTQ-Families-MAP-062024.pdf](#)
- Fertility healthcare coverage: [Movement Advancement Project | Fertility Healthcare Coverage](#)

National Center for Lesbian Rights:

- [FAQ: Family Law](#)
- [Protecting Your LGBTQ Marriage and Family: What You Need to Know](#)
- [Get Help - National Center for Lesbian Rights](#)

BOTTOM LINE:

LGBTQ+ individuals, spouses, and nonmarital partners can and should take action to protect themselves and their partners through estate planning. LGBTQ+ parents can and should take action to protect their parent-child relationship through a VAP, parentage judgment, or adoption decree. In these times, we urge LGBTQ+ people to act calmly, but with urgency.

Visit our websites and contact our help lines for information about the law and connections to LGBTQ+-friendly attorneys in your area. Contact your state bar association or local legal aid society to see if you are eligible for free or low-cost legal help.

This document is current as of November 25, 2024 and will be updated periodically.