



*United States v. Windsor* and  
the National Implications of  
DOMA

NCCU SCHOOL OF LAW, LAW REVIEW SYMPOSIUM

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# INTRODUCTION

- ▶ "The men and women, and the children too, whose voices join in noble harmony with plaintiffs today, also ask for fairness, and fairness only. This, so far as it is in this Court's power, they and all others shall have."
- ▶ Who said this?
- ▶ ***Judge Arenda L. Wright Allen, 1985 alumna of NCCU School of Law***

# Overturning Same-Sex Marriage Bans

## Post-*Windsor*

- ▶ Kentucky
- ▶ New Mexico
- ▶ Utah
- ▶ Texas
- ▶ Oklahoma
- ▶ Ohio
- ▶ Virginia

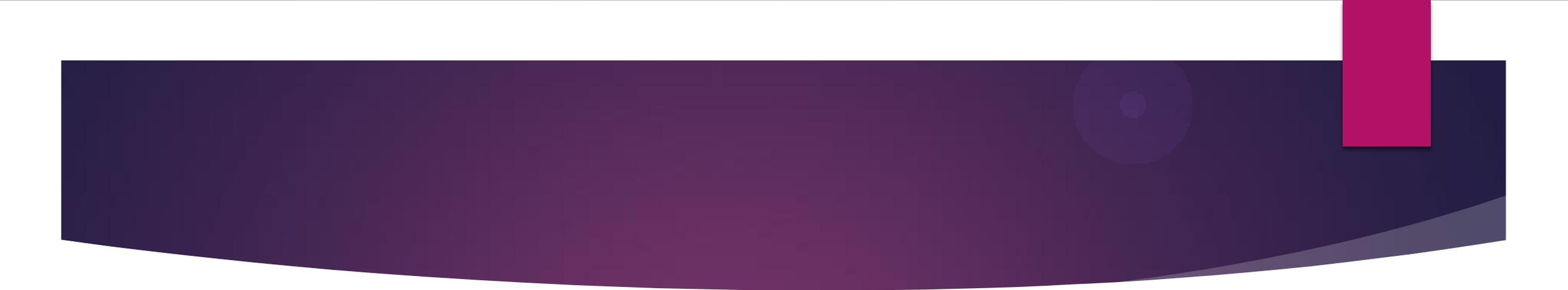
# DISCLAIMER!



- ▶ This presentation does not constitute legal advice. If you have any particularly personal questions, please consult an attorney who can discuss your situation!

# DOMA: A HISTORICAL OVERVIEW

- ▶ The Defense of Marriage Act, or DOMA, was passed by Congress and signed into law by President Bill Clinton in 1996.
- ▶ Section 3 of DOMA codified non-recognition of same-sex marriages for all federal purposes.
- ▶ In *United States v. Windsor*, the Supreme Court declared Section 3 of DOMA as unconstitutional under the Due Process Clause of the Fifth Amendment.
- ▶ SCOTUS became the saving grace to the LGBT community with this decision, right? All problems of LGBT inequality, particularly regarding marriage equality, were fixed, right?



WRONG!

# Post-*Windsor* and DOMA: What This Decision Means for States That Recognize Same-Sex Marriage

- ▶ Ultimately DOMA affirms that all loving and committed couples who are married deserve equal legal respect and treatment from the federal government.
- ▶ Rights and federal benefits granted to those whose states recognize same-sex marriage:
  - ▶ Binational couples
  - ▶ Taxes
  - ▶ Widowers
  - ▶ Servicemembers
  - ▶ Federal employees

# Post-*Windsor* and DOMA: What about States That Don't Recognize Same-Sex Marriage?

- ▶ The *Windsor* decision effectively said that if your state recognizes same-sex marriage, then the federal government must provide federal benefits to same-sex spouses.
- ▶ For legally married couples living outside one of these 17 states or DC, there are still many questions about DOMA implementation regarding protections, responsibilities, and programs.
  - ▶ Why?
- ▶ Legally married same-sex couples living in a state that does not respect their marriages may right away have access to some federal rights and benefits, but not too many others, at least not immediately. Federal agencies have different approaches regarding which state's laws they look to in order to determine if a marriage is valid for federal purposes.

# How are Agencies Deciding?

- ▶ Place of Celebration
  - ▶ IRS
  - ▶ Immigration agencies
- ▶ Place of Domicile
  - ▶ Social Security
  - ▶ Medicare
- ▶ What if statute is silent?
  - ▶ Administrative discretion

## Retroactive application of federal benefits?

- ▶ It depends. As a general matter, if a person is not prohibited by a deadline in the law from seeking benefits, they may file an application and seek certain back benefits.
- ▶ But it is likely that the federal government will, in most instances, adopt a forward-looking approach, ensuring that married same-sex couples are respected as married from the day the Court's ruling takes effect.

# Conclusion

- ▶ All of DOMA is **not** completely repealed, only Section 3. Section 2, which allows states to discriminate against same-sex couples legally married in other states, is still in effect.
- ▶ Respect for Marriage Act