



## State Same-Sex Marriage Laws Without *Obergefell*

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### Background

Prior to the U.S. Supreme Court's 2015 decision in the *Obergefell* case, same-sex marriage was a function of state law and varied widely. While a few states legalized same-sex marriage, most had some version of a ban under state law. Of those states, several had same-sex marriage prohibitions embedded within the state constitution, statute, or both.

Following *Obergefell*, state laws outlawing same-sex marriages became null. However, many of these statutes and constitutional provisions were not repealed. As such, if the Supreme Court were to overturn *Obergefell*, the legality of same sex marriages would fall back on to preexisting state laws. NCSL utilized a [report](#) from March 2022 and Westlaw database to provide the information below.

### No Constitutional or Statutory Ban

In 21 states and territories, same-sex marriage would continue to be legal should *Obergefell* be overturned.

- States and D.C. (16)
  - Connecticut
  - District of Columbia
  - Delaware
  - Illinois
  - Maine
  - Maryland
  - Massachusetts
  - Minnesota
  - Nevada
  - New Jersey
  - New Hampshire
  - New Mexico
  - New York
  - Rhode Island
  - Vermont

Compiled by the National Conference of State Legislatures, July 2022

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- **Washington**
- U.S. territories (5)
  - **American Samoa**
  - **Guam**
  - **Northern Mariana Islands**
  - **Puerto Rico**
  - **U.S. Virgin Islands**

### Statutory Ban Only

Statutory provisions can be repealed through a single piece of legislation. Statutory provisions must comply with both the state and federal constitutions. There are five states with statutory bans on same-sex marriage. Of those, four states would be enforceable should *Obergefell* be overturned.

- **Indiana**
  - Enforceable should *Obergefell* be overturned.
- **Iowa**
  - Unenforceable should *Obergefell* be overturned. Statute invalidated by state supreme court as unconstitutional prior to *Obergefell*.
- **Pennsylvania**
  - Enforceable should *Obergefell* be overturned.
- **West Virginia**
  - Enforceable should *Obergefell* be overturned.
- **Wyoming**
  - Enforceable should *Obergefell* be overturned.

### Constitutional Ban Only

State constitutional provisions typically supersede state law. Therefore, a constitutional ban on same-sex marriage could invalidate an existing state law legalizing same-sex marriage should *Obergefell* be overturned. Constitutional provisions must be repealed through a more strenuous process varying by state and typically requiring voter approval. There are five states with constitutional bans on same-sex marriage. Of those, three states would likely go into effect should *Obergefell* be overturned.

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- **California**
  - Constitutional ban was overturned prior to *Obergefell*.
  - Statute explicitly allows for same-sex marriage.
  - Same-sex marriage would likely still be legal should *Obergefell* be overturned.
- **Hawaii**
  - Constitutional provision is unique, as it allows the legislature to limit marriage to opposite-sex couples only but does not require it.
  - Statute explicitly allows same-sex marriage.
  - Same-sex marriage would still be legal should *Obergefell* be overturned.
- **Nebraska**
  - Likely enforceable should *Obergefell* be overturned.
- **Oregon**
  - Likely enforceable should *Obergefell* be overturned.
- **Virginia**
  - Likely enforceable should *Obergefell* be overturned.

### Constitutional and Statutory Bans

Statutory and constitutional bans in these states would go into effect immediately should *Obergefell* be overturned.

- **Alabama**
- **Alaska**
- **Arizona**
- **Arkansas**
- **Colorado**
- **Florida**
- **Georgia**
- **Idaho**
- **Kansas**
- **Kentucky**
- **Louisiana**
- **Michigan**
- **Missouri**
- **Mississippi**

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- **Montana**
- **North Carolina**
- **North Dakota**
- **Ohio**
- **Oklahoma**
- **South Carolina**
- **South Dakota**
- **Tennessee**
- **Texas**
- **Utah**
- **Wisconsin**

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