

**“The Fundamental Right to Divorce”
Family Law and the Fundamental Right to Travel**

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Workshop on Shifting Foundations in Family Law**

On April 28, 2015, the United States Supreme Court heard historic arguments in a case asserting the federal constitutional right to same-sex marriage. Currently pending before the Court, and likely to be decided prior to this workshop, are two discrete questions:

- (1) Whether states must issue same-sex marriage licenses (the “right to marry” question); and,
- (2) Whether states must recognize same-sex marriages legally entered into in states that permit same-sex marriage (the recognition question).

While many are hopeful, even expecting, that the Court will broaden the rights of same-sex couples by finding an affirmative constitutional right to same-sex marriage, my presentation concerns the dilemmas couples have been facing prior to the Court’s decision relating to the second question – namely, what happens when a state refuses to honor a same-sex marriage entered into in another state where the marriage is legal. This latter question will likely be moot by the time my talk is delivered. Nonetheless, the issue of recognition has proven quite difficult for couples, their children and even their employers as many same-sex couples have been hesitant to leave a recognition state and move to a state where the legality of their family status was uncertain or, worse yet, unrecognized.

Based on the fact that the Supreme Court is literally addressing the concerns I have raised in past writings, *See Something to (Lex Loci) Celebrationis: Federal Marriage Benefits After U.S. v. Windsor*, 41 CON L. QUARTERLY 41 (2013); *Unbreakable Vows: Same-Sex Marriage and the Fundamental Right to Divorce*, 58 VILLANOVA LAW REVIEW 169 (2013), I anticipate my presentation will seek to explain the Court’s June, 2015, decision on same-sex marriage and how its resolution impacts same-sex couples’ fundamental right to travel.

I hope to have an updated abstract provided as soon as the Court issues its ruling.