



NAVAJO NATION DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

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AG-04-25

**Opinion of the Attorney General
of the Navajo Nation**

October 21, 2025

**Regarding Provisions of the Diné Marriage Act of 2005
that Void and Prohibit Same-Sex Marriages
Contracted Outside of the Navajo Nation**

The Attorney General is the Chief Legal Officer of the Navajo Nation and issues this Opinion pursuant to his authority under 2 N.N.C. § 1965(A). No adverse action may be taken by the Navajo Nation government against any official or employee of the Navajo Nation government who follows the advice contained in this Opinion.¹

I. Question Presented

Does the Diné Marriage Act of 2005 prevent the Executive Branch from recognizing marriages validly performed outside the Navajo Nation for purposes such as determining eligibility for Tribal employment benefits or spousal rights?

II. Short Answer

No. To avoid violating fundamental rights of Navajo members and employees, the Executive Branch must recognize marriages validly performed outside of the Navajo Nation for all entitlement and benefit purposes. The Diné Marriage Act of 2005 must be applied consistent with the Navajo Nation Bill of Rights, which is a fundamental law superior to other laws. Specifically, Section 3

¹ This Opinion relies on the laws of the Navajo Nation on the date this Opinion was issued. If the Navajo Nation Council amends any of the laws relied on or the Navajo Nation Supreme Court issues a relevant opinion, the advice contained in this Opinion will need to be revised accordingly.

guarantees that equality of rights under the law shall not be denied or abridged on account of sex, and that no person will be denied equal protection in accordance with the laws of the Navajo Nation. Implementing a subordinate law that purports to void same-sex marriages validly performed outside of the Navajo Nation denies members, employees, and their families dignity and equal protection within the Navajo Nation on the basis of their sex. Such denial of spousal rights and employee benefits based on sex is a material harm that cannot be harmonized with the Bill of Rights.

III. Analysis

A. Background

The Navajo Creation Story, *Diné Bahane'*, recognizes that there were those among us who were neither male nor female. These people were never regarded as lesser or not considered members of the Nation. Therefore, individuals who do not fit into binary gender roles have always been among us and treated equally.

Traditional teachings thus affirm that gender diversity has long been recognized within Navajo society. The existence of individuals who do not fit a simple male or female gender role is consistent with our history. To grant people lesser rights simply because they do not fit the role of strictly male or female is inconsistent with our history and *Diné bi beenahaz'áanii*.

B. The Navajo Bill of Rights Protects Liberty, Equal Protection, Entitlements, and Benefits

The Navajo Bill of Rights is part of the organic law of the Navajo Nation, a "higher law" that "set[s] the boundaries for permissible action by the legislative, executive, and judicial branches of the Navajo Nation." *Opinion and Order on Reconsideration, Shirley v. Morgan*, No. SC-CV-02-10, slip op. at 12 (Nav. Sup. Ct. July 16, 2010).

Section 3 of the Navajo Bill of Rights affirms that "[l]ife, liberty, and the pursuit of happiness are recognized as fundamental individual rights of all human beings." 1 N.N.C. § 3. These fundamental rights are guaranteed by an equal protection clause that provides "[e]quality of rights under the law shall not be denied or abridged by the Navajo Nation on account of sex nor shall

any person within its jurisdiction be denied equal protection in accordance with the laws of the Navajo Nation[.]” *Id.*

Section 3 of the Navajo Bill of Rights guarantees equal protection without discrimination on the basis of sex for all persons within the Navajo Nation. “The proper analysis of the Navajo Equal Rights guarantee is that there can be no legal result on account of a person’s sex.” *Help v. Silvers*, 4 Nav. R. 46, 48 (Nav. Ct. App. 1983). Meaning that, under the Navajo Bill of Rights, legal entitlements, benefits, and privileges shall not be denied to Navajo members and employees, including members of their families, regardless of whether the Navajo member or employee marries a person who is of the same sex, or a person deemed to be of the same sex based on a government document that indicates binary sex without regard to gender identity.²

C. The Diné Marriage Act of 2005

In 2005, the Navajo Nation Council enacted the Diné Marriage Act of 2005. CJN-34-05 (overriding veto of CAP-29-05). This law amended Title 9 of the Navajo Nation Code to state “[m]arriages contracted outside of the Navajo Nation are valid within the Navajo Nation if valid by the laws of the place where contracted, with the exception of marriages that are void and prohibited by Section 2 of this Title.” 9 N.N.C. § 1(A). Section 2 provides an exclusion that a “[m]arriage between persons of the same sex is void and prohibited.” 9 N.N.C. § 2(A). Thus, while Navajo law generally recognizes marriages validly contracted elsewhere, same-sex marriages, wherever contracted, have not been recognized on the Navajo Nation since 2005.

For context, on November 2, 2004, eleven States passed laws banning same-sex couples from marrying.³ The Diné Marriage Act of 2005 was part of a sweep of legislation across the United States promoted by opponents of same-sex marriage at a time when lesbian,

² See, e.g., *Is Sex Still Binary?* *Med Genet.* 2023 Aug 16;35(3):173-180, available on the NIH National Library of Medicine PubMed Central website at <https://pmc.ncbi.nlm.nih.gov/articles/PMC10842549/> (last checked Oct. 20, 2025).

³ Arkansas, Georgia, Kentucky, Michigan, Mississippi, Montana, North Dakota, Ohio, Oklahoma, Oregon, Utah. See https://ballotpedia.org/2004_ballot_measures (last checked Oct. 20, 2025).

gay, bisexual, transgender, and queer people were advocating for equal protection and equal rights under the law.

D. Same-Sex Marriage Legal Developments Since 2005

a. United States Supreme Court Cases

In *United States v. Windsor*, 570 U.S. 744 (2013), the United States Supreme Court invalidated Section 3 of the federal Defense of Marriage Act ("DOMA"), which defined marriage as "only a legal union between one man and one woman" and defined spouse to refer only to a person of the opposite sex. In that case, Edith Windsor was barred from claiming an estate tax exemption for surviving spouses when her wife passed away because the Internal Revenue Service did not recognize her marriage as valid. The Court held that DOMA violates basic due process and equal protection principles applicable to the Federal government under the U.S. Constitution. 570 U.S. at 769-770. The court found DOMA "touches many aspects of married and family life, from the mundane to the profound," outlining the benefits and protections unavailable to same-sex spouses and their children. 570 U.S. at 771-773. The narrow ruling in *Windsor* prohibited the United States from discriminating against same-sex spouses, but it did not overturn marriage bans in the States.

In *Obergefell v. Hodges*, 576 U.S. 644, 675 (2015), the United States Supreme Court held that "[t]he right to marry is a fundamental right inherent in the liberty of the person, and under the Due Process and Equal Protection Clauses of the Fourteenth Amendment couples of the same sex may not be deprived of that right and that liberty." In its lengthy opinion, the Court provided several bases for its decision, including the safeguarding of children and families, stating: "Without the recognition, stability, and predictability marriage offers, children suffer the stigma of knowing their families are somehow lesser. They also suffer the significant material costs of being raised by unmarried parents, relegated to a more difficult and uncertain family life." 576 U.S. at 646. *Obergefell* made same-sex marriage lawful in all fifty states. It does not bind the Navajo Nation or any other Tribal government not subject to the U.S. Constitution.

Nonetheless, *Windsor* and *Obergefell* are persuasive because the principles articulated (liberty, due process, and equal protection) are consistent with those in the Navajo Bill of Rights.

A same-sex married couple should not be denied rights enjoyed by other married people when they cross the Navajo Nation border or choose to work for the Navajo people. Indeed, under Section 3 of the Navajo Bill of Rights, they are guaranteed fundamental human rights of life, liberty, pursuit of happiness, and equal protection on our land and in our laws.

b. Tribal Marriage Legal Developments

Other tribal nations have reached a similar conclusion, either prior to, or in the wake of *Obergefell*.⁴ For example, in 2017, the Ak-Chin Indian Community Court considered the issue in *Pablo v. Ak-Chin Indian Community*. In that case, an Ak-Chin member challenged an Ak-Chin prohibition against same-sex marriage as a violation of the Ak-Chin Bill of Rights for Community members, which provides that the Community shall not “deny to any [member] within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law.” *Special Masters Report, Pablo v. Ak-Chin Indian Community*, CV-2015-00024-CO (Oct. 20, 2017) (“*Pablo*”); Ak-Chin Indian Community Const., Art. IX, § 1(h) (Aug. 4, 2016). In considering persuasive authority from other jurisdictions, including *Obergefell*, the Special Master acknowledged the Community’s sovereign right to regulate domestic relations, but concluded “those regulations are expressly made subject to the Bill of Rights adopted by the Community.” *Pablo*, at 24. Accordingly, the Special Master held that the right to marry is a fundamental right of liberty of same-sex couples guaranteed under the equal protection and due process clause of the Community’s constitution. *Pablo*, at 1, 34.

c. Federal Respect for Marriage Act

In 2022, Congress formally repealed DOMA and enacted the Respect for Marriage Act, which codifies the full faith and credit principle among States for same-sex, interracial, and international marriages, providing that:

⁴ A list Tribes that recognize same-sex marriage is too lengthy to set forth in full but includes Tlingit and Haida Indian Tribes of Alaska, Cherokee Nation, Chickasaw Nation, Choctaw Nation, Colorado River Indian Tribe, Fort McDowell Yavapai Nation, Osage Nation, Pascua Yaqui Tribe, Salt River Pima-Maricopa Indian Community, San Carlos Apache Tribe, White Mountain Apache Tribe, and Yavapai-Apache Nation, among others. See https://en.wikipedia.org/wiki/Same-sex_marriage_in_tribal_nations_in_the_United_States

No person acting under color of State law may deny-

(1) full faith and credit to any public act, record, or judicial proceeding of any other State pertaining to a marriage between 2 individuals, on the basis of the sex, race, ethnicity, or national origin of those individuals; or

(2) a right or claim arising from such a marriage on the basis that such marriage would not be recognized under the law of that State on the basis of the sex, race, ethnicity, or national origin of those individuals.

P.L. No. 117-228, 136 Stat 2305 (2022). The Respect for Marriage Act does not apply to Tribes or Tribal acts.

E. Comity and Full Faith and Credit Principles

a. Comity and Full Faith and Credit Overview

Comity is defined as "courtesy and respect, a willingness to do something not as a matter of right, but of goodwill and tradition; for example, a court will give effect (comity) to the laws of a foreign territory or state." *English/Navajo Glossary of Legal Terms*, U.S. Dist. Ct., Dist. NM (1985). In *Bahe v. Platero*, the Navajo Nation Supreme Court stated "[w]hen implementing the decisions of governments and leaders through comity, the implementation must support our paramount obligation to protect human beings, especially our children." 9 Nav. R. 610, 614 (Nav. Sup. Ct. 2012).

Full faith and credit is "the recognition and enforcement of the public acts, records, and judicial proceedings of one state by another." Merriam-Webster.com Legal Dictionary, Merriam-Webster.⁵ The principle of full faith and credit flows from the U.S. Constitution, which requires States to give "full faith and credit" to the acts, public records, and judicial decisions of other States. U.S. Const. Art IV, § 1. While the Navajo Nation is not

⁵ See <https://www.merriam-webster.com/legal/full%20faith%20and%20credit> (last checked Oct. 20, 2025).

subject to this Constitutional requirement, our government does both extend, and receive the benefit of, comity and full faith and credit. See, e.g., *Bahe*, 9 Nav. R. at 615 ("We work with these foreign jurisdictions in comity when our people live beyond our borders."); *Bradley v. Lake Powell Medical Center*, 9 Nav. R. 89, 92 (Nav. Sup. Ct. 2007) (holding that the Navajo Nation Labor Commission should have granted comity to a decision of the Arizona Department of Economic Security where the Nation does not have its own unemployment compensation system, and "Navajo people, including Navajo government employees, use the State system for support when they are unemployed through no fault of their own."); *AT&T Corp. v. Coeur d'Alene Tribe*, 295 F.3d 899, 903 (9th Cir. 2002) ("As a general rule, federal courts must recognize and enforce tribal court judgments under principles of comity."); *Kinlichee v. U.S.*, 929 F.Supp.2d 951, 962 (D. Ariz. 2013) (giving full faith and credit to a common law adoption validated by the Chinle Family Court).

b. Federal Law Development Relating to Comity and Full Faith and Credit

Marriage and family law are generally reserved to States and Tribes, rather than exercised by the Federal government. That being said, when the United States enacted DOMA in 1996, it invited States and Tribes to forgo comity and full faith and credit with respect to same-sex marriage, stating that no State or Tribe "is required to give effect to any public act, record, or judicial proceeding of any other State . . . or [T]ribe respecting a relationship between persons of the same sex that is treated as a marriage." P.L. 104-199, 110 Stat. 2419 (1996). However, after *Windsor* and *Obergefell*, DOMA no longer had force or effect.

Subsequently, when Congress enacted the Respect for Marriage Act, it included the following findings in the legislative text:

- (1) No union is more profound than marriage, for it embodies the highest ideals of love, fidelity, devotion, sacrifice, and family.
- (2) Diverse beliefs about the role of gender in marriage are held by reasonable and sincere people based on decent and honorable religious or philosophical premises. Therefore,

Congress affirms that such people and their diverse beliefs are due proper respect.

(3) Millions of people, including interracial and same-sex couples, have entered into marriages and have enjoyed the rights and privileges associated with marriage. Couples joining in marriage deserve to have the dignity, stability, and ongoing protection that marriage affords to families and children.

Unsurprisingly, Congress's findings noted here are consistent with the comity principles stated above by the Navajo Nation Supreme Court in *Bahe v. Platero*.

Unlike DOMA, which expressly allowed Tribes to reject same-sex marriages contracted in other jurisdictions, the Respect for Marriage Act excludes Tribes from the Federal requirement to give full faith and credit to such marriages. 28 U.S.C. § 1738(C); 1 U.S.C. § 7. This exclusion cuts both ways: it enables the Navajo Nation to exercise our sovereign right to apply comity on our own grounds, while also subjecting Navajos married within the Navajo Nation to recognition by other jurisdictions as a matter of comity and respect rather than as a matter of law.

c. Consideration of Impacts When Tribes Do Not Recognize Same-Sex Marriages Contracted in Other Jurisdictions

In *Fraying the Knot: Marital Property, Probate, and Practical Problems with Tribal Bans*, Professor Suzianne D. Painter-Thorne discusses the consequence of Tribal same-sex marriage bans on individuals, referencing the "wide-ranging issues from child custody determinations to pension benefits to property rights," and stating:

a tribal member seeking to marry his same sex partner may have his marriage recognized by his state and the federal government, but not by his tribe. Because of the intertwining of tribal and federal governments with respect to participation in tribal life, this conflict over recognition could be profound for the individual tribal member. In short, tribal

citizens seeking same-sex marriage rights could end up caught between competing sovereigns over the recognition of their marriage.

85 Brook. L. Rev. 471, 473, 482 (2020).

To address these issues, Professor Painter-Thorn recommends that, consistent with Tribal sovereignty, Tribes "should grant full faith and credit or comity to same-sex marriages performed outside the [T]ribe's jurisdiction." *Id.* at 474, 500-510.

F. Implementation of Dine Marriage Act of 2005 Clearly Violates the Bill of Rights

Navajo members and employees rely on Executive Branch entities for access to entitlements and benefits based on marriage determinations for marriages contracted outside the Navajo Nation. The Executive Branch entities charged with recognizing marriages of Navajo members contracted outside the Navajo Nation are the Office of Vital Records and Tribal Enrollment Office.⁶ These entities rely on marriage records to determine whether a member is validly married. Recognition by these entities impact whether spouses qualify for entitlements such as hunting, housing, and secondary preference rights.

The Department of Personnel Management, Retirement Services, and Employee Benefits Program regularly determine marriage qualification for Navajo Nation employees. The determination by these Executive Branch entities impact whether an employee qualifies for benefits, including enrollment of a spouse and their dependent children in medical, dental, vision, and prescription plans; the ability to use sick leave and family medical leave if a spouse or their dependent child has a medical issue; the ability to receive life insurance coverage for a spouse; the ability of a spouse to receive pre-retirement death benefits if an employee dies before retirement; and the application of spousal preference for spouses of Navajo members and veterans.

⁶ Marriage recognition is also subject to validation by the Family Court or Peacemaker Court to make determinations and cure defects for marriages entered into within the Navajo Nation. See 9 N.N.C. § 9.

Currently, these Executive Branch Agencies do not recognize same-sex marriages contracted outside the Navajo Nation because of the language in the Diné Marriage Act of 2005. As a result, even if Navajo Nation members and employees are validly married to a person of the same sex in another jurisdiction, those individuals are currently denied equal recognition and access to meaningful entitlements and benefits from the Navajo Nation. This is unquestionably a denial and abridgment of rights under the law on account of sex, and denial of equal protection in accordance with the laws of the Navajo Nation. As a result, the Diné Marriage Act of 2005 clearly violates Section 3 of the Navajo Nation Bill of Rights.

G. Applying Comity and Full Faith and Credit Will Ensure Equal Access to Entitlements and Benefits

In *Bahe*, the Navajo Nation Supreme Court emphasized that comity is about "reciprocal respect, mutual consideration, and obligation to protect the people." 9 Nav. R. 610, 614. Recognizing the same-sex marriages of members and employees contracted outside the Navajo Nation, through comity and full faith and credit, not only respects the laws of another jurisdiction, but also respects our members' and employees' fundamental rights of life, liberty, and the pursuit of happiness, and their equal rights under the law regardless of sex, as promised in the Navajo Bill of Rights.

H. Guidance on Recognizing Same-Sex Marriages Validly Performed Outside the Nation

While traditional marriage ceremonies in Navajo culture were historically limited to a man and a woman, traditional teachings also emphasize the importance of *k'é*, where we treat our relatives with respect. What's more, the existence of *nádleehi* and others who do not fit binary gender categories demonstrates that inclusion and respect have always been required by *Diné bi beenahaz'áanii*.

Accordingly, denying recognition to same-sex marriages validly performed outside the Navajo Nation is inconsistent with both the spirit of *Diné bi beenahaz'áanii* and the guarantees of the Navajo Bill of Rights regarding liberty, due process, and equal protection. The Diné Marriage Act of 2005's current rejection of same-sex marriage validly performed outside the Navajo Nation unlawfully restricts access to marital and employment benefits based solely on sex, in violation of the Navajo Bill of Rights.

To avoid violating the fundamental rights of Navajo Nation members and employees, Executive Branch agencies should recognize same-sex marriages validly entered into in jurisdictions outside the Navajo Nation, consistent with the pre-2005 language of 9 N.N.C. § 1(A), which recognized foreign marriages irrespective of sex.

I. The Role of the Department of Justice and the Other Branches

The Navajo Nation Department of Justice has a duty to uphold and defend Navajo law. We will not opine that a statute violates higher law unless it patently does so. We will not advise a Navajo official or employee to ignore a statute unless there is no interpretation by which the official or employee can both apply the statute and also abide by the higher law.

The Diné Marriage Act of 2005 purports to void same-sex marriages validly performed outside the Navajo Nation. This clearly violates the protections afforded by the Navajo Bill of Rights, which is higher law. The statute cannot be interpreted in any manner to cure its violation of the higher law.

A Navajo court, with a proper plaintiff and facts before it, is the appropriate forum to determine if a statute is valid. *Opinion, Shirley v. Morgan*, 9 Nav. R. 325, 331 (Nav. Sup. Ct. June 2, 2010) (Nav. Sup. Ct. June 2, 2010) ("The Navajo Nation Bill of Rights, by its own terms and necessary implication, call for judicial review to decide whether another law or an act of the Navajo Nation Government is void because of a violation of fundamental rights.")

The Navajo Nation Council may also rescind the Diné Marriage Act of 2005, or otherwise amend Title 9 of the Navajo Nation Code to be compatible with the Bill of Rights. We encourage Council to do so.

In the meantime, "[n]o adverse action may be taken by the Navajo Nation government against any official or employee of the Navajo Nation government for conduct taken in reasonable reliance upon the advice given in [this] opinion." 2 N.N.C. § 1965.

IV. Conclusion

The provisions of the Diné Marriage Act of 2005 that void and prohibit same-sex marriages validly performed outside the Navajo Nation violate the Navajo Nation Bill of Rights and fundamental principles of *k'e*, which are higher law. To avoid violating the fundamental rights of Navajo members and employees, Executive Branch officials, including those in the Office of Vital Records, Tribal Enrollment Office, Department of Personnel Management, Retirement Services, and Employee Benefits Program, should recognize same-sex marriages that were validly performed outside of the Navajo Nation as valid within the Navajo Nation.

Navajo Nation Department of Justice

A handwritten signature in blue ink that reads "Colin W. Bradley". The signature is written in a cursive style with a long horizontal stroke extending to the right.

Colin W. Bradley, Acting Attorney General