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The World After Proposition 8 A Global Survey of the Right to Marry

by S. Elizabeth Foster*

I. INTRODUCTION

Same-sex couples in California have experienced a roller coaster of joyous hope and bitter disappointment in recent times. In May 2008, the California Supreme Court ruled that the right to marry must be made available to all couples, regardless of sexual orientation. Over 18,000 same-sex couples tied the knot, many of whom had been together for decades.

The decision took effect in June 2008. The first couple to be married, Del Martin, 87, and Phyllis Lyon, 83, had been waiting for 55 years. As described by one observer:

Martin wore a purple pantsuit and stood up from her wheelchair to face Lyon, dressed in a blue pantsuit. During the six-minute ceremony, the two held hands as they recited their vows to love and honor each other, for richer or poorer, in sickness and in health. ...Lyon was the first to say 'I do,' her voice resonating in the room. Martin's 'I do' ... was more muted, audible only to those close by. ...The room erupted in cheers - and tears...With Martin back in her wheelchair and Lyon at her side, the brides strode onto the mayor's balcony overlooking the grand City Hall rotunda, surrounded by dozens of cameras and hundreds of well-wishers.¹

The joy felt on their historic and long-awaited wedding day echoed throughout the State. In the months that followed, thousands of couples were married. Friends and families celebrated. The world watched.

This joy was short-lived, however. In November 2008, 52.3% of California voters rescinded the equal right to marry by passing Proposition 8,² which added these words to California's Constitution: "Only marriage between a man and a woman is valid or recognized in California."³

Challenges to Proposition 8 were filed with the California Supreme Court. In May 2009, the Court

voted 6-1 to uphold it. The ruling also upheld the validity of the marriages that had been entered into prior to its passage – granting those 18,000 couples a bittersweet victory.

This article first discusses the May 2008 and 2009 California Supreme Court decisions. It then surveys the seven countries that presently allow civil marriage for same-sex couples (Belgium, Canada, Norway, South Africa, Spain, Sweden, and the Netherlands); five of the countries that have proactively declined to extend civil marriage to same-sex couples (Australia, China, Greece, Latvia, and Nigeria); and three of the countries that currently offer legally-sanctioned alternative arrangements for same-sex couples (Iceland, New Zealand, and Uruguay). Along with an overview of current marriage laws, this article offers a glimpse of some of the actual couples involved and considers aspects of the political, social, and religious climate surrounding the issue of marriage for same-sex couples in the countries surveyed.

II. MARRIAGE EQUALITY IN CALIFORNIA

In its landmark May 2008 decision granting same-sex couples the freedom to marry, *In re Marriage Cases*,⁴ the California Supreme Court interpreted the California Constitution as mandating that the fundamental right to civil marriage be extended to all citizens:

In light of the fundamental nature of the substantive rights embodied in the right to marry — and their central importance to an individual's opportunity to live a happy, meaningful, and satisfying life as a full member of society — the California Constitution properly must be interpreted to guarantee this basic civil right to all individuals and couples, without regard to their sexual orientation.⁵

Just over a year later, in *Strauss v. Horton*,⁶ the California Supreme Court concluded that Proposition 8 had validly amended the California Constitution to revoke this "basic civil right" and that it was the voters' prerogative to do so. The 6-1 majority ruling emphasized "that among the various constitutional protections recognized in the Marriage Cases as available to same-sex couples, it is only the designation of marriage--albeit significant--that has been removed" by Proposition 8.⁷ The ruling left intact California's domestic partnership law.⁸

The May 2009 ruling starkly outlined one important component of the debate in California – whether the word “marriage” is itself significant. Some who seek to reserve the term “marriage” for opposite-sex unions argue that this is merely an issue of semantics and that same-sex couples should be granted equal rights but under a different name (such as domestic partnership or civil union). Those who seek to extend the word (as well as the status) “marriage” to same-sex couples counter by asking this: If it’s only semantics and not substance, then why not extend the designation of “marriage” to same-couples?⁹

Semantics aside, the larger debate involves the scope of equal protection and the extent of fundamental rights under California law. The lone dissenter in the May 2009 decision, Justice Carlos Moreno, cautioned:

*The rule the majority crafts today not only allows same-sex couples to be stripped of the right to marry that this court recognized in the Marriage Cases, it places at risk the state constitutional rights of all disfavored minorities. ... Proposition 8 represents an unprecedented instance of a majority of voters altering the meaning of the equal protection clause by modifying the California Constitution to require deprivation of a fundamental right on the basis of a suspect classification. The majority’s holding is not just a defeat for same-sex couples, but for any minority group that seeks the protection of the equal protection clause of the California Constitution.*¹⁰

Like Justice Moreno, many worry about the legal precedent set by Proposition 8. Which minority group’s fundamental rights will be voted upon next? Supporters of Proposition 8 take the position that the voters have (and should have) the ultimate decision-making power in such matters, a position which the May 2009 decision firmly upheld. On the other hand, given that separation of church and state is a bedrock principle of our American democracy, many are justifiably disturbed when religious views of what constitutes the institution of and the right to marriage are allowed to determine the parameters of state-sanctioned *civil* marriage for *all* citizens, regardless of individual religious belief (or lack thereof).¹¹

The debate continues here in California, with

supporters of marriage equality poised to bring the issue back to the voters as early as November 2010 and supporters of Proposition 8 vowing to keep it on the books. In the meantime, those 18,000 couples who did get legally married when they had the right to do so are advised to take a “wait and see” attitude – and to carry on with their married lives. Only time will determine how their now-unique place in California’s legal landscape will play out.

III. MARRIAGE EQUALITY AROUND THE WORLD

Seven countries currently allow civil marriage for same-sex couples: the Netherlands, Belgium, Spain, Canada, South Africa, Norway, and Sweden. An overview of each of these countries follows.

A. The Netherlands

The Netherlands made history when, at the dawn of the 21st Century, it became the first country to allow same-sex couples to legally marry. By passage of the “Act Opening the Institute of Civil Marriage,” the Netherlands permitted two men or two women to marry.¹²

The first marriages were officiated by Jeb Cohen, then-Mayor of Amsterdam, shortly after midnight on April 1, 2001. Mayor Cohen told the pioneering couples: “There are two reasons to rejoice: You are celebrating your marriage and you are also celebrating your right to be married.” Reflecting a process that many people in California are currently experiencing, Mayor Cohen said: “I admit that 10 years ago I didn’t understand why homosexuals were making such a big deal out of civil marriage. Now I know better.”¹³

One of the couples to marry on that first day, Anne Marie Thus and Helene Fassen, gave an interview for *The Boston Globe* in 2004, shortly after Massachusetts became the first US state to grant marriage equality. The couple offered “words of caution to American advocates of gay marriage. They warn that America ... should not move too fast. As Thus put it: ‘Americans need to spend more time talking about it.’”¹⁴

B. Belgium

On January 30, 2003, Belgium became the second country in the world to grant equality in marriage. The bill passed in its Senate and Chamber of

Representatives by comfortable margins (46-15 and 91-22, respectively).¹⁵ The legislation became effective on June 1, 2003, changing the Belgian Civil Code to read: “*Two persons of different sexes or of the same sex may contract marriage.*”¹⁶

Among those married on that first day were Tom Van Dessel and Jan Thys. One of the grooms spoke of the public importance of what was, for the couple, a very personal decision: “We know what we did is something very important for Belgian society. But we didn’t do it to make a point. We did it because we love each other.”¹⁷

According to one report, the Belgian people “took little interest in the revisions to the marriage laws.”¹⁸ However, others say that “the broad Belgian society still has a way to go ... There is still a stigma attached to being gay in Belgium.”¹⁹ To address this stigma, the Belgian government has run advertising campaigns with taglines such as “Gay, so what?”²⁰

C. Spain

Spain legalized civil marriage for same-sex couples on July 3, 2005. The law passed in the Congress of Deputies by a 187-147 vote.²¹ It adds one sentence to the Spanish Civil Code: “*Marriage will have the same requirements and results when the two people entering into the contract are of the same sex or of different sexes.*”²²

Expressing support for the legislation in a speech to Parliament, President José Luis Rodríguez Zapatero said: “Today, Spanish society is responding to a group of people who have been humiliated, whose rights have been ignored, their dignity offended, their identity denied and their freedom restricted.”²³ He also said: “We are expanding the opportunities for happiness of our neighbors, our colleagues, our friends and our relatives... At the same time, we are building a more decent society.”²⁴

A predominantly Catholic country, Spain’s government nonetheless recognized the crucial difference between civil and religious marriage. While a majority of Spaniards support the new law, it came into effect over strong religious objections.²⁵ The Catholic Church “has vehemently opposed same-sex marriage ... Pope Benedict XVI has condemned gay marriage as an expression of ‘anarchic freedom’ that threatens the future of the family.”²⁶ In response, President Rodríguez Zapatero says: “I deeply respect the opinions of the Catholic Church even if they are

very critical of the government. I ask them to show the same respect.”²⁷

D. Canada

Canada became the fourth country, and the first (and only) in the Americas, to allow marriage for same-sex couples, passing its federal Civil Marriage Act on July 20, 2005. Unlike in Europe, where marriage equality arose from the legislatures, marriage equality in Canada began in the courts. Between 2003 and 2005, courts in nine Canadian provinces extended marriage rights to same-sex couples.²⁸ Marriage ultimately became the subject of federal legislation, and marriage equality was extended to all provinces with the Civil Marriage Act.

The official summary of the Act proclaims that marriage equality is being extended “*to reflect values of tolerance, respect and equality, consistent with the Canadian Charter of Rights and Freedoms.*” The Act states: “*Marriage, for civil purposes, is the lawful union of two persons to the exclusion of all others.*” Addressing a fear that loomed large in the Proposition 8 debate – that churches would be forced to perform marriages for same-sex couples in violation of religious beliefs – the Act provides: “*It is recognized that officials of religious groups are free to refuse to perform marriages that are not in accordance with their religious beliefs.*”²⁹

Observers predict that Canada’s experience may help assuage fears in the US regarding the consequences of allowing same-sex couples to marry. “The big peaceable kingdom on the U.S. border will demonstrate that it is absolutely possible for religious freedom to coexist with the end of discrimination,” says one equal rights advocate.³⁰ Evidencing that the battle may not be over in Canada, an attempt by the Conservative Party to overturn the Civil Marriage Act was launched in 2006 but was defeated in the House of Commons by a vote of 175-123.³¹

E. South Africa

On November 30, 2006, South Africa became the fifth country, and the first (and only) country in Africa, to legalize civil marriage for same-sex couples. Following its bitter history of racial discrimination and apartheid, and considering that homosexuality remains a crime in many African nations, South Africa’s extension of equality in marriage has particular resonance.

As in Canada, the road to equality began in the courts and ended with federal legislation. On December 1, 2005, the Constitutional Court of South Africa ruled in *Minister of Home Affairs v. Fourie*³² that restricting marriage to opposite-sex couples “represents a harsh if oblique statement by the law that same-sex couples are outsiders, and that their need for affirmation and protection of their intimate relations as human beings is somehow less than that of heterosexual couples.”³³ The Court noted that South Africa’s Constitution expressly prohibits unfair discrimination based on sexual orientation.³⁴ Taking an activist approach (the polar opposite of that taken by the California Supreme Court in its May 2009 ruling), the Constitutional Court announced that it was the duty of the courts – not elected officials or the voting public – to “promote the spirit, purport and objects” of the Bill of Rights enshrined in the Constitution by ensuring that fundamental rights are extended to minority groups.³⁵ The Court held that evolving social customs and norms are able to extend civil rights only so far and it is the duty of the courts to extend civil rights the rest of the way: “Doing so is not a choice. Where the common law is deficient, the courts are under a general obligation to develop it appropriately.”³⁶

In directing the South African Parliament to implement a remedy for discrimination in marriage, the Court expressed concern over any “separate but equal” solution that might be proposed, indicating that creation of an inferior or marginal status for same-sex unions would not meet constitutional requirements.³⁷ To implement the Court’s decision, Parliament approved a Civil Union Bill on November 14, 2006. This Bill expanded marriage to include same-sex couples and, simultaneously, extended civil unions to opposite-sex couples.³⁸ Addressing another issue raised in the Proposition 8 debate – whether government employees could be required to issue marriage licenses or solemnize marriages despite personal religious objections – the Bill permits civil marriage officers to opt out of performing marriage ceremonies “on the ground of conscience, religion and belief.”³⁹

F. Norway

On January 1, 2009, equality in marriage became the law in Norway. In June 2008, the lower house of the Norwegian National Assembly (the *Storting*) approved legislation mandating equality in marriage by 84-41. The upper house then approved the bill

by 23-17. Observers reported that the public gallery of the *Storting* erupted in cheers and applause as the vote concluded.⁴⁰

“It is a historic day,” proclaimed one Labor Party member, comparing the extension of marriage rights to the extension of voting rights to women nearly a century earlier.⁴¹

Approximately 85% of Norway’s citizens are registered as members of the Lutheran Church of Norway, which like many churches around the world is divided on the issue of marriage. As do the Canadian and South African marriage laws, Norway’s marriage law expressly grants churches the right, but not the legal obligation, to perform weddings for same-sex couples – thus expressly addressing religious concerns while preserving inviolate the separation of church and state.⁴²

G. Sweden

On May 1, 2009, marriage equality became the law in Sweden. Its Parliament voted overwhelmingly in favor, by a margin of 226-22.⁴³ The debate in Parliament lasted a mere six hours.⁴⁴ The Swedish government’s website described the impact of the new law: “*The decision means that gender no longer has an impact on the ability to marry.*”⁴⁵

The marriage of Alexandra Einerstam and Åsa Andersson was reported to be “a Facebook event since a month before the wedding.” Rather than an official guest list, the couple “welcomed anyone and everyone to celebrate with them in a park in central Stockholm.” Ms. Einerstam described why a domestic partnership was not enough for the couple: “I want to be married. Partnership is not the same. I don’t want to introduce Åsa as my ‘registered partner’ – I love her, she’s my wife.”⁴⁶

Recent polls show that over two-thirds of Sweden’s citizens are supportive of the right to marry for same-sex couples.⁴⁷ Yet postings observed on a Swedish news blog site in May 2009 reflected a diversity of views in reaction to the first weddings:⁴⁸

It seems kind of “FRUITY” to me, but [they] appear to be a charming couple.

YACK, it makes me feel sick to read about it. All the issue is wrong and it can’t be real!!

As for anyone having a problem with gay

marriage, get a life. If two gays get married it does not affect anyone else in any capacity, no matter how much you try to find a way to be offended by it.

IV. COUNTRIES THAT FORBID MARRIAGE FOR SAME-SEX COUPLES

All countries in the world, other than those seven described above, decline to allow marriage for same-sex couples. This means that nearly 190 countries, or over 96% of all nations in the world, limit marriage to opposite-sex couples.⁴⁹

In the vast majority of these countries, the issue of marriage for same-sex couples has simply never been considered by either a court or a legislative body. However, some countries have proactively considered the issue and have decided to expressly forbid marriage for same-sex couples (much like California did with Proposition 8 – except that in no other jurisdiction did the right to marry already exist before it was rescinded).

The following is an overview of some of the countries that have considered, and rejected, marriage for same-sex couples.

A. Australia

In May 2004, Australia codified its definition of marriage as “*the union between a man and a woman to the exclusion of all others, voluntarily entered into for life.*”⁵⁰ The legislation also codified Australia’s prohibition on the recognition as marriage of any same-sex union formed outside of Australia.⁵¹ Proponents of the legislation argued it was necessary to “protect the institution of marriage by ensuring that ... same sex relationships cannot be equated with marriage.”⁵²

In 2006, the legislature of the Australian Capital Territory (ACT) passed the Civil Unions Bill 2006, which granted same-sex couples in the ACT the right to form civil unions. The Bill stated: “*A civil union is different to a marriage but is to be treated for all purposes under territory law in the same way as a marriage.*”⁵³ Much debate followed on the topic of whether a civil union could be different from marriage if it was, in fact, to be treated the same way as marriage. Exercising veto power, then-Prime Minister John Howard and his government overruled the Bill in order “to defend the fundamental institution of marriage against radical laws.”⁵⁴

Despite this opposition to the extension of legal status to same-sex couples, in 2008 the ACT passed a civil partnerships bill and the Australian Parliament granted certain rights to unmarried same-sex couples under federal law. The Civil Partnerships Act 2008, as amended by the Civil Partnerships Amendment Bill 2009, allows civil partnerships to be entered into and formally celebrated in the ACT – making this the first territory in Australia to legalize civil partnerships and ceremonies. The first legally-recognized civil ceremony under the amended Act took place in Canberra in November 2009. The federal government has vowed to overturn the Act. If successful, this could put Australian couples who enter into civil partnerships prior to its revocation in a legal circumstance similar to those 18,000 couples who married in California prior to the passage and upholding of Proposition 8.⁵⁵

B. China

The People’s Republic of China does not currently grant any form of legal recognition to same-sex couples. Its federal Marriage Law describes marriage as a union between one man and one woman.⁵⁶ In 2003, legislation was first introduced in the Chinese Parliament to allow marriage for same-sex couples.⁵⁷ The legislation was introduced for the third time in 2006, and for the third time failed to garner the 30 votes necessary (out of 2000 members) for placement on the legislative agenda.⁵⁸

Although not stated explicitly by Communist Party officials, Chinese policy toward homosexuality has often been characterized by the “Triple No Policy:” no approval, no disapproval, no promotion.⁵⁹ Shanghai’s 2009 gay pride festival (the first one ever held in this city of over 20 million people) did not include the parades and other public gatherings typically featured in western nations. Rather, all events were held behind closed doors. Nonetheless, police shut down two film screenings and one play.⁶⁰

While the Chinese government is not likely to extend marriage rights to same-sex couples in the near future, China’s policy toward its gay citizens is becoming more tolerant. Says one observer, “the gay scene is in the ‘dark before dawn’ phase.”⁶¹ As evidence of changing social and political attitudes, the first-ever “Introduction to Gay and Lesbian Studies” course was taught to overflowing attendees at Shanghai’s prestigious Fudan University just a few years ago. Said its instructor: “The attitude toward homosexu-

ality in China is changing. It is a good process, but it also makes us feel heavy-hearted. What's unfortunate about such heavy attendance is that it indicates that many people have never discussed the topic before. ... Not only are people hiding in the closet, but the topic itself has been hiding in the closet."⁶²

C. Greece

In May 2009, a court in Rhodes, Greece, annulled the marriages of two same-sex couples, one male and one female, that had been officiated in June 2008 by Anastassios Aliferis, Mayor of the Aegean Sea island of Tilos.⁶³ The couples relied on a law that did not specify a gender requirement for civil weddings.⁶⁴ One of the brides, Evangelia Vlami, said she hoped that her wedding would help end discrimination and that: "We did this to encourage other gay people to take a stand."⁶⁵ Ms. Vlami said she was prepared to take her case all the way to the European Court of Human Rights if necessary.⁶⁶

The actions of Mayor Aliferis in performing the marriage ceremonies were likened to those of San Francisco Mayor Gavin Newsom, who performed the initial wedding ceremonies that led to the California Supreme Court's May 2008 decision and, ultimately, to Proposition 8. Says one observer: "Mayors Newsom and Aliferis (whose political careers are incidentally still going strong) both acted in defense of basic human rights."⁶⁷

The court decision annulling the marriages followed a backlash from the Greek government and from religious leaders. In particular, the marriages drew strong criticism from the Greek Orthodox Church, which officially represents 90 percent of all Greek citizens.⁶⁸ One conservative bishop derided the newlyweds as "humanoid couples."⁶⁹ Mayor Aliferis countered this criticism: "It's ludicrous for Greece, the cradle of democracy and human rights, to deny homosexuals equal rights and privileges. Officials should take the time and reassess their views."⁷⁰ However, one resident of Tilos "couldn't believe it," exclaiming: "I know they're people too, but couldn't they have gone on doing what they were doing without getting our community involved?"⁷¹

D. Latvia

In December 2005, Latvia amended its Constitution to define marriage as a union between a man and a woman. The amendment reads: "*The State shall protect and support marriage – a union between a*

man and a woman, the family, the rights of parents and rights of the child."⁷² Marriage for same-sex couples is already expressly prohibited by Latvian Civil Law and was therefore technically unnecessary.⁷³ Nonetheless, the Christian Democratic Party, which proposed the amendment, said it was needed to protect the traditional family from the "threat" of "homosexual lifestyles."⁷⁴ Members of the European Parliament decried the amendment as "homophobic and backward."⁷⁵

Indeed, it was not the first time Latvian lawmakers had singled out gay citizens for unequal treatment. Latvia was the last European Union member state to pass legislation prohibiting employment discrimination based on sexual orientation – enacting such protections only in September 2006 despite this being an express condition for Latvia's accession to the European Union in 2004.⁷⁶ As justification for its support of sexual orientation discrimination, the Christian Democratic Party described homosexuality as a sin and gay people as "degenerate."⁷⁷

The Constitutional amendment was signed into law by then-President Vaira Vēfreiberga. She announced: "Honestly speaking, I, as a president, cannot see clearly the benefit of this amendment to the nation... it does not change anything in substance for the better neither for the worst... it remains that according to the law of Latvia marriage takes place between ... a man and a woman." Justifying her decision to sign the amendment despite this professed non-necessity, she said it "conforms to the wishes of a significant proportion of our society."⁷⁸

E. Nigeria

In January 2009, the Nigerian House of Representatives voted unanimously in favor of legislation banning marriage for same-sex couples.⁷⁹ This new law was passed despite homosexuality already being illegal throughout the nation.⁸⁰ The law defines prohibited "Same Gender Marriage" as "*the coming together of persons of the same sex with the purpose of living together as husband and wife or for some other purposes of same sexual relationship.*"⁸¹ International human rights groups have protested the law, noting that its scope extends far beyond prohibition of marriage and could potentially be extended even to humanitarian workers.⁸²

Nigeria, the most populous country in Africa, is predominantly Muslim in the north and predominantly

Christian in the south.⁸³ In certain northern states, Islamic Sharia law imposes a maximum penalty of death for same-sex relations between men and a maximum penalty of whipping and/or imprisonment for same-sex relations between women.⁸⁴ Then-President Olusegun Obasanjo, a born-again Christian,⁸⁵ supported the marriage ban, describing homosexuality as “clearly un-Biblical, unnatural and definitely un-African.”⁸⁶ One Nigerian government official claimed the pre-emptive law was necessary “because of developments elsewhere in the world” and furthermore: “In most cultures in Nigeria, same-sex relationships, sodomy and the likes of that, is regarded as abominable.”⁸⁷

The Catholic Church of Nigeria supported the marriage ban. Said one church official: “There are wild, weird, ways of life that are affecting our own culture very negatively, we have people who either by way of the media or travelling around the world have allowed new ideas which are harmful to our nation and our belief.” Children wearing t-shirts proclaiming “same sex marriage is an abomination” were brought into the National Assembly chamber to observe the proceedings. Supporters of the law deny that they are inciting hatred: “We don’t hate gay people, but this is the public’s opinion and we have the right to speak.” However, one gay Nigerian speaks for many: “This bill is not necessary, we see no reason why people should be criminalized. I did not choose to be gay. It is trial enough to live in this country, we should not create more laws to make us suffer.”⁸⁸

V. COUNTRIES THAT OFFER ALTERNATE LEGAL ARRANGEMENTS FOR SAME-SEX COUPLES

Over 15 countries around the world currently offer legally-sanctioned alternative arrangements for same-sex couples without offering the right to civil marriage. Following is an overview of the laws in three of these countries.

A. Iceland

Iceland offers same-sex couples the status of “Confirmed Cohabitation” (*Staðfest Samvist*). This legal arrangement first became law in June 1996 by passage of the Law of Confirmed Cohabitation.⁸⁹ In its current version, the Law grants same-sex couples most of the same rights and responsibilities as married opposite-sex couples.⁹⁰ To enter into a

Confirmed Cohabitation, at least one member of the couple must be an Icelandic citizen.⁹¹

In June 2006, by unanimous vote, Parliament expanded the Law of Confirmed Cohabitation to include rights for confirmed cohabitants related to adoption and childbearing.⁹² A further amendment in June 2008 allows a Confirmed Cohabitation to be solemnized in a church or other religious venue as well as with a civil registrar.⁹³ While agreeing to this amendment, the Church of Iceland stopped short of supporting any change in “the traditional definition of marriage as a holy union between a man and a woman.”⁹⁴

The Prime Minister of Iceland, Jóhanna Sigurðardóttir, is the world’s first (and only) openly gay leader.⁹⁵ She entered into a Confirmed Cohabitation with her partner, a journalist and playwright, in 2002.⁹⁶ Reports indicate that the Prime Minister’s sexual orientation is simply not an issue in Iceland. Says one observer: “There are so many openly gay prominent figures in both the public and private sector here that it doesn’t affect who we select for our highest offices. Our minds are focused on what counts.”⁹⁷

B. New Zealand

New Zealand offers same-sex couples the status of “Civil Union.” This legal arrangement first became law in December 2004 by passage of the Civil Union Act 2004, which provides: “*Two people, whether they are of different or the same sex, may enter into a civil union under this Act.*”⁹⁸ Civil Unions generally offer the same rights and responsibilities as marriage in areas such as child custody, tax, and welfare.⁹⁹ The Act allows married opposite-sex couples to convert their marriage into a Civil Union.¹⁰⁰

The Act passed by a vote of 65-55 following vigorous debate, with critics claiming that its passage “undermined marriage.”¹⁰¹ One Member of Parliament (MP) said: “The fact around this bill is that it’s about homosexual marriage. And the overwhelming view of the people of New Zealand is that they don’t want ... that.”¹⁰² In contrast, another MP said he sensed “tremendous joy and enthusiasm” surrounding the new law.¹⁰³ Some MPs said the Act did not go far enough and, by failing to grant full marriage equality, rendered gay individuals second-class citizens.¹⁰⁴

The Act was passed over the objections of various religious officials and organizations. One outspoken

opponent was Auckland-based Destiny Church. It held a rally of 5,000 marchers in black shirts chanting “enough is enough”¹⁰⁵ and accused the New Zealand government of “eliminating our Christian heritage.”¹⁰⁶

C. Uruguay

Uruguay also offers same-sex couples the status of “Civil Union.” This legal arrangement became law by passage of the *Ley de Unión Concubinaria* (Civil Union Law), which took effect on January 1, 2008.¹⁰⁷ The Law renders Uruguay the first (and only) Latin American country to offer legal status to same-sex couples.¹⁰⁸ It applies to “*two people - whatever their sex, identity, orientation or sexual option may be - who maintain an emotional relationship of a sexual nature [and] an exclusive, singular, stable and permanent character without being united in matrimony.*”¹⁰⁹

Under the Civil Union Law, both same-sex and opposite-sex couples are eligible to enter into a civil union, provided they have lived together for at least five years.¹¹⁰ A civil unioned couple has rights similar to those of a married couple on various matters including inheritance, pensions, and child custody.¹¹¹ The Law was passed by unanimous vote of the Senate and signed into law by President Tabaré Vázquez.¹¹²

In a country that is over 60% Catholic, the Catholic Church took a strong stand against the Civil Union Law.¹¹³ The Episcopal Conference of Uruguay said: “In no way can homosexual cohabitation be accepted because it does not meet the basic criteria defining marriage, it is therefore unacceptable to place it in suchlike equal level.”¹¹⁴ Evidencing the government’s continued willingness to extend rights to gay citizens and couples despite such religious opposition, in 2009 Uruguay ended its ban on gays serving in the military and passed a law permitting same-sex couples to adopt children.¹¹⁵ Some observers believe these actions demonstrate “the fact that Uruguay has true separation of religion and state.”¹¹⁶

VI. CONCLUSION

In the final analysis, does the passage of Proposition 8 by the voters and its subsequent upholding by the California Supreme Court mean that California did act “too fast” in granting marriage rights to all of its citizens, as the couple from the Netherlands cautioned against? The thought of “going slow” is a bitter pill to swallow for California couples like Del Martin

and Phyllis Lyon, who had already been together for over half a century and were in the twilight of their long life together when they were finally able to marry.¹¹⁷ Further delay is also troubling for young couples eager to build a life together in a respected, understood, and legally-sanctioned relationship; for children being raised by same-sex parents who face discrimination and ridicule because their families are not considered equal; and for all gay Californians who seek merely the same right to marry that their fellow citizens enjoy.

Beyond the individual lives affected, on a broader policy level, should equality in civil marriage occur only when the majority of California voters think the time is right? Or is the protection of a fundamental right for a minority group – especially after that right has already been granted and exercised – the very foundation of civil rights in California and, indeed, throughout the world? Isn’t protection from “the tyranny of the majority” exactly what our Constitution and our courts are *supposed* to guarantee to minority groups in a civilized society?

Finally, should religion be permitted to dictate how California’s government regulates and protects the individual freedoms and family relationships of its citizens? The United States has a long and proud tradition of welcoming individuals of all faiths to practice as they believe, so long as they allow others to do the same. This is the very essence of separation of church and state. Why should the separation of *civil* marriage from *religious* marriage be any different?

Observation of marriage laws and knowledge of societal debates that are presently occurring in other jurisdictions can inform our mutual discussion of these issues as the debate continues here in California. It is this author’s hope that, before too long, California will once again join the ranks of those other states¹¹⁸ and countries where citizens are treated equally in all respects, including in the fundamental right to marry the person they love.

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ENDNOTES

1. Rachel Gordon, *Couple of 55 years tie the knot – again*, S.F. CHRON., June 17, 2008, at A-1.
2. *Votes For and Against November 4, 2008, State Ballot Measures*, Cal. Sec’y of State Elections Div., available at http://www.sos.ca.gov/elections/sov/2008_general/contents.htm (reporting 7,001,084 votes or 52.3% in favor of Proposition 8 and 6,401,482 votes or 47.7% opposed) (last visited Sept. 14, 2009).
3. CALIFORNIA CONSTITUTION, art. I, § 7.5.
4. 43 Cal. 4th 757 (Cal. 2008).
5. *Id.* at 820.
6. 2009 Cal. LEXIS 4626, modified, 2009 Cal. LEXIS 5416 (Cal. 2009).
7. *Id.* at *32. The Court’s assurance that “only the designation of marriage” was being denied same-sex couples (in view of broad rights provided under the existing domestic partnership law) undoubtedly provided reassurance to Proposition 8 supporters who voted “Yes” but do believe that alternate legal arrangements should be available for same-sex relationships. To “No” voters, however, the Court’s assurance rang completely hollow, especially in view of the Court’s own emphatic discussion in the *Marriage Cases* of the significance of the word “marriage” itself and the Court’s own prior conclusion that using the designation of domestic partnership rather than marriage “must be viewed as constituting significantly unequal treatment” and would “be viewed as of a lesser stature than marriage and, in effect, as a mark of second-class citizenship.” *Marriage Cases* at 845-46.
8. Cal. Domestic Partner Rights and Responsibilities Act, CA. FAMILY CODE, §§ 297-297.5.
9. Another semantics versus substance debate involves use of the phrase “same-sex marriage” or “gay marriage” rather than the single word “marriage” (and then qualifying the word marriage for context, e.g. “marriage for same-sex couples” or “marriage for opposite-sex couples”). Some believe that use of the qualifier “same-sex” or “gay” before the word marriage dilutes the notion that marriage is marriage, period, regardless of the gender of the couple. See, e.g., *Short Answers to Big Questions: Why does our country need “gay marriage”?*, FREEDOM TO MARRY, http://www.freedomtomarry.org/get_informed/marriage_basics/faq.php#1 (last visited Sept. 14, 2009) (“The term ‘gay marriage’ implies that same-sex couples are asking for rights or privileges that married couples do not have, or for something lesser or different. What gay people are seeking is the legal and equal freedom to marry the person they love and care for, just as non-gay Americans do.”).
10. *Strauss*, 2009 Cal. LEXIS at 278-79, 320 (Moreno, J., dissenting).
11. The Mormon Church was a primary sponsor of Proposition 8. Other religious organizations also supported the measure. In an official statement regarding the May 2009 decision, the Mormon Church said: “Today’s decision by the California Supreme Court is welcome. ... The Church of Jesus Christ of Latter-day Saints recognizes the deeply held feelings on both sides, but strongly affirms its belief that marriage should be between a man and a woman....Accordingly, the church stands firmly for what it believes is right for the health and well-being of society as a whole.” Press Release, *LDS Church response to Calif. court decision on Prop. 8*, MORMON TIMES (May 26, 2009) available at http://www.mormontimes.com/around_church/general_authority/?id=7970.
12. Press Release, Two men or two women can marry in the Netherlands as of 1 april 2001, Netherlands Ministry of Justice, (Mar. 26, 2001), available at <http://english.justitie.nl/currenttopics/pressreleases/archives2001/-Two-men-or-two-women-can-marry-in-the-netherlands-as-of--april-.aspx>.
13. *Gay Marriage Goes Dutch*, CBS NEWS, Apr. 1, 2001, <http://www.cbsnews.com/stories/2001/04/01/world/main283071.shtml>.
14. Charles M. Sennott, *In Netherlands, slow road advised for gay marriage*, BOSTON GLOBE, Mar. 8, 2004, available at http://www.boston.com/news/world/articles/2004/03/08/in_netherlands_slow_road_advised_for_gay_marriage/.
15. Lyndon Barnett, *Legal Equality in Belgium*, SYDNEY STAR OBSERVER, May 19, 2009, <http://www.starobserver.com.au/community/2009/05/19/legal-equality-in-belgium/13175>.
16. In Dutch: “Een huwelijk kan worden aangegaan door twee personen van verschillend of van hetzelfde geslacht.” In French: “Deux personnes de sexe différent ou de même sexe peuvent contracter mariage.” BELGIAN CIVIL CODE, art. 143 (book 1, tit. V, ch. 1), available at <http://www.lachambre.be/FLWB/pdf/50/2165/50K2165003.pdf>.
17. Diane Anderson-Minshall, *Old World, New Marriage in Brussels*, PASSPORT ONLINE, <http://www.passportmagazine.com/GayWeddings/Brussels.php> (last visited Sept. 14, 2009).

18. B.A. Robinson, *Same-Sex Marriage (SSM) in Belgium*, RELIGIOUS*TOLERANCE, June 10, 2003, http://www.religioustolerance.org/hom_mar10.htm.
19. Barnett, *supra* note 15.
20. *Id.*
21. Jennifer Green, *Spain Legalizes Same-Sex Marriage*, WASH. POST, July 1, 2005, at A-14.
22. In Spanish: “*El matrimonio tendrá los mismos requisitos y efectos cuando ambos contrayentes sean del mismo o de diferente sexo.*” SPANISH CIV. CODE, art. 44, available at <http://civil.udg.edu/normacivil/estatal/CC/1T4.htm>.
23. Renwick McLean, *Spain Legalizes Same-Sex Marriage*, N.Y. TIMES, June 30, 2005.
24. Green, *supra* note 21.
25. *First gay marriage held in Spain*, BBC NEWS, July 11, 2005, <http://news.bbc.co.uk/2/hi/europe/4673845.stm>; see also McLean, *supra* note 23.
26. Green, *supra* note 21.
27. *Spain approves gay marriage bill*, BBC NEWS, Oct. 1, 2004, <http://news.bbc.co.uk/2/hi/europe/3706414.stm>.
28. Ontario (June 2003), British Columbia (July 2003), Quebec (Mar. 2004), Yukon (July 2004), Manitoba (Sept. 2004), Nova Scotia (Sept. 2004), Saskatchewan (Nov. 2004), Newfoundland and Labrador (Dec. 2004), New Brunswick (June 2005). *Same-sex marriage: The rights in Canadian provinces and territories*, CBC NEWS, <http://www.cbc.ca/news/interactives/map-samesex-marriage/> (last visited Sept. 14, 2009).
29. CIVIL MARRIAGE ACT, Preamble & §§ 1-3, ch. 33 (Statutes Can. 2005), available at <http://www2.parl.gc.ca/HousePublications/Publication.aspx?Docid=3293341&file=4>.
30. Doug Struck, *Same-Sex Marriage Advances in Canada*, WASH. POST, June 29, 2005, at A01.
31. *Same-sex rights: Canada timeline*, CBC NEWS, Mar. 1, 2007, http://www.cbc.ca/news/background/samesexrights/timeline_canada.html.
32. CCT 60/04, CCT 10/05 (S. Afr. 2005), available at <http://www.constitutionalcourt.org.za/site/home.htm> (under “Library quick search/ Keyword or case name:” enter “Fourie”).
33. *Fourie*, CCT 60/04, CCT 10/05 at 45.
34. *Id.* at 4.
35. *Id.* at 8-10. The Court observed that “South Africans and their elected representatives have for the greater part accepted the sometimes far-reaching decisions in regard to sexual orientation and other constitutional rights over the past ten years. It is not presumptuous to believe that they will accept also the further incremental development of the common law that the Constitution requires in this case. ... [G]ays and lesbians are a permanent minority in society who have suffered patterns of disadvantage and are consequently exclusively reliant on the Bill of Rights for their protection; the impact of discrimination on them has been severe, affecting their dignity, personhood and identity at many levels; family as contemplated by the Constitution can be constituted in different ways and legal conceptions of the family and what constitutes family life should change as social practices and traditions change....” *Id.*
36. *Id.* at 8.
37. *Id.* at 93-96. In discussing its duty to extend the right of civil marriage to all citizens, the Court described marriage as “an honourable and profound estate that is adorned with legal and social recognition” and as “a social and legal shrine for love and commitment.” *Id.* at 10-11. Even those Californians who support domestic partnership as a separate but equal alternative to marriage, or who argue that domestic partnership versus marriage is merely an issue of semantics, would be hard pressed to describe domestic partnership as a “profound estate” or as an institution “adorned with legal and social recognition.” Indeed, very few married couples around the world would readily trade in their marriages for a domestic partnership or a civil union.
38. CIVIL UNION BILL, B26B-2006, available at www.gov.za (follow “Documents” hyperlink; then follow “Bills” hyperlink; then follow “2006” hyperlink).
39. *Id.* at § 6.
40. Kevin Bourassa and Joe Varnell, *Norway’s expansion of human rights*, EQUAL MARRIAGE FOR SAME-SEX COUPLES, June 17, 2008, <http://www.samesexmarriage.ca/equality/nor170608.htm>.
41. *Norway Parliament Approves Gay Marriage*, 365GAY:NEWS, June 11, 2008, <http://www.365gay.com/news/norway-parliament-approves-gay-marriage>.
42. *Norway passes law approving gay marriage*, MSNBC, June 17, 2008, <http://www.msnbc.msn.com/id/25218048/>.
43. *Sweden allows same-sex marriage*, BBC NEWS, Apr. 2, 2009, <http://news.bbc.co.uk/2/hi/europe/7978495.stm>.
44. *Sweden Legalizes Same-Sex Marriage*, ADVOCATE, Apr. 1, 2009, http://www.advocate.com/news_detail_ektid77092.asp.

45. *Parliament votes to legalise gay marriage*, FRANCE24, Apr. 2, 2009, <http://www.france24.com/en/20090402-sweden-legalises-gay-marriage->
46. Christine Demstader, *Sweden says "I do" to same-sex marriage*, SWEDISH INSTITUTE, May 1, 2009, <http://www.sweden.se/eng/Home/Lifestyle/Reading/Sweden-says-I-do-to-same-sex-marriage/>.
47. *Id.* ("Surveys suggest ... 70 percent support from the Swedish population for gay marriage.")
48. *May Day nuptials for same-sex couples*, THE LOCAL: SWEDEN'S NEWS IN ENGLISH, May 2, 2009, <http://www.thelocal.se/19196/20090502/>.
49. The number of countries in the world is subject to debate. See Matt Rosenberg, *The Number of Countries in the World: By Most Accounts, There Are 195 Countries in the World*, ABOUT.COM: GEOGRAPHY, <http://geography.about.com/cs/countries/a/numbercountries.htm> (last visited Sept. 14, 2009) (there are 192 members of the United Nations; the US State Department recognizes 194 independent countries but does not count Taiwan, which would bring the total to 195).
50. MARRIAGE AMENDMENT ACT 2004, sched. 1–subsec. 5(1), available at [http://legislation.gov.au/comLaw/Legislation/Act1.nsf/0/91DFFD1199DF26D8CA2574170007CE06/\\$file/1262004.pdf](http://legislation.gov.au/comLaw/Legislation/Act1.nsf/0/91DFFD1199DF26D8CA2574170007CE06/$file/1262004.pdf) (amending Marriage Act 1961). Despite expressly defining marriage as “voluntarily entered into for life,” the Act does not (of course) prohibit divorce.
51. *Id.* at sched. 1–subsec. 88EA.
52. *Marriage Amendment Bill 2004: Explanatory Memorandum*, Parliament of Australia, House of Rep., at 1, available at http://www.austlii.edu.au/au/legis/cth/bill_em/mab2004175/memo1.html (last visited Sept. 14, 2009).
53. Media Release, *Civil Unions Bill To Be Amended* (Nov. 5, 2006), Chief Minister, Australian Capital Territory, available at <http://www.chiefminister.act.gov.au/media.php?v=4410&m=53&s=8> (last visited Sept. 14, 2009).
54. News Release, *Commonwealth To Defend Marriage Against Territory Laws* (June 6, 2006), Australian Attorney-General, available at http://parlinfo.aph.gov.au/parlInfo/download/media/pressrel/L0YJ6/upload_binary/l0yj62.pdf;fileType%3DApplication%2Fpdf.
55. *Sweeping Gay Law Reform Finally Passes*, THE AGE, Nov. 27, 2008, available at <http://www.theage.com.au/national/sweeping-gay-law-reform-finally-passes-20081127-6jgd.html>; CIVIL PARTNERSHIPS ACT 2008, available at <http://www.legislation.act.gov.au/a/2008-14/current/pdf/2008-14.pdf>; CIVIL PARTNERSHIPS AMENDMENT BILL 2009 (NO 2), available at <http://www.legislation.act.gov.au/a/2008-14/current/pdf/2008-14.pdf>; Kelvin Lynch, *First legal gay union ceremony performed in ACT*, EXAMINER.COM, Nov. 25, 2009, <http://www.examiner.com/x-4107-International-LGBT-Issues-Examiner~y2009m11d25-Australia--First-legal-gay-union-ceremony-performed-in-ACT>; Yuko Narushima, *Not a bride in sight as couple tie the knot*, SYDNEY MORNING HERALD, Nov. 26, 2009, available at <http://www.smh.com.au/national/not-a-bride-in-sight-as-couple-tie-the-knot-20091125-jrws.html>; Paul Maley, *Rudd will intervene to overturn gay civil unions in the ACT*, THE AUSTRALIAN, Nov. 25, 2009, available at <http://www.theaustralian.com.au/news/rudd-will-intervene-to-overturn-gay-civil-unions-in-the-act/story-e6frg6n6-1225803463250>.
56. MARRIAGE LAW OF THE PEOPLE'S REPUBLIC OF CHINA, ch. II, available at <http://www.asianlii.org/cn/legis/cen/laws/mlotproc354/>.
57. *China Lawmakers Push for Gay Marriage*, CHINA DAILY, Mar. 3, 2006, available at http://www.chinadaily.cn/english/doc/2006-03/03/content_526336.htm.
58. *Loony ideas on the rise in China's 'parliament'*, TAIPEI TIMES, Mar. 14, 2006, at 1, available at <http://www.taipetimes.com/News/front/archives/2006/03/14/2003297241/print>.
59. Emily Rauhala, *Shanghai Pride: China Gay Pride Festival Its First Ever*, GLOBAL POST, June 15, 2009, http://www.huffingtonpost.com/2009/06/15/shanghai-pride-china-gay_n_215785.html (describing the Triple No Policy as “the Chinese equivalent of ‘don’t ask don’t tell,’ an opaque tactic that critics claim leaves both activists and ordinary people caught in an invisible web of rules that dictate when and how you can ... – or can’t – be gay”).
60. *Id.*
61. *Quiet pink revolution in dark before dawn?*, CHINA VIEW, Dec. 26, 2005, http://news.xinhuanet.com/english/2005-12/26/content_3970520_1.htm.
62. Howard A. French, *A Chinese University Removes a Topic From the Closet*, N.Y. TIMES, Sept. 8, 2005.
63. Anthee Carassava, *Same-Sex Marriages Performed in Greece*, N.Y. TIMES, June 4, 2008.
64. *Greek court rules first same-sex weddings invalid*, REUTERS, May 5, 2009, <http://www.reuters.com/article/worldNews/idUSTRE54449H20090505>.
65. Carassava, *supra* note 63.
66. *Greek court rules first same-sex weddings invalid*, *supra* note 64.
67. Sylvia Sukop, *She Said Yes, but the Government Said No*, HUFFINGTON POST, May 11, 2009, <http://www.huffingtonpost.com/2009/05/11/she-said-yes-but-the-government-said-no>.

- www.huffingtonpost.com/sylvia-sukop/she-said-yes-but-the-gove_b_201669.html.
68. *Greek court rules first same-sex weddings invalid*, *supra* note 64.
 69. *Court annuls Greece's first same-sex marriages*, INDEPENDENT, May 5, 2009, available at <http://www.independent.co.uk/news/world/europe/court-annuls-greeces-first-samesex-marriages-1679188.html>.
 70. Carassava, *supra* note 63.
 71. *Id.*
 72. CONSTITUTION OF THE REPUBLIC OF LATVIA, ch. VIII, art. 110, available at http://www.saeima.lv/Likumdosana_eng/likumdosana_satversme.html (English version).
 73. *LGBT Guide to Europe: Country-by-country: Latvia: Legal information*, ILGA EUROPE, http://www.ilga-europe.org/europe/guide/country_by_country/latvia (last visited Sept. 14, 2009) (Article 35.2 of the Civil Law explicitly prohibits marriage for same-sex couples); see also Letter from Michael Cashman, President, European Parliament Intergroup on Gay and Lesbian Rights, to President Vaira Vīķe-Freiberga (Dec. 20, 2005), available at <http://www.ukgaynews.org.uk/Archive/2005dec/2102.htm>.
 74. Laura Sheeter, *Latvia cements gay marriage ban*, BBC NEWS, Dec. 15, 2005, <http://news.bbc.co.uk/2/hi/europe/4531560.stm>.
 75. *Id.*
 76. *Latvia finally bans sexual orientation discrimination in employment*, ILGA EUROPE, Sept. 22, 2006, http://www.ilga-europe.org/europe/news/latvia_finally_bans_sexual_orientation_discrimination_in_employment.
 77. Laura Sheeter, *Latvia defies EU over gay rights*, BBC NEWS, June 16, 2006, <http://news.bbc.co.uk/2/hi/europe/5084832.stm>.
 78. *Statement by the President of Latvia regarding her decision to sign a constitutional amendment defining marriage as a union of a man and a woman* (Dec. 21, 2005), available at http://www.ilga-europe.org/europe/guide/country_by_country/latvia/latvian_president_signs_homophobic_constitutional_amendment (unofficial English translation).
 79. Kent Mensah, *Nigeria says no to same-sex marriage*, AFRICANEWS, Jan. 17, 2009, http://www.africanews.com/site/list_messages/22712.
 80. See, e.g., Daniel Ottosson, *State-sponsored Homophobia: A world survey of laws prohibiting same sex activity between consenting adults*, May 2008, ILGA EUROPE, available at http://www.ilga.org/statehomophobia/ILGA_State_Sponsored_Homophobia_2008.pdf.
 81. A Bill for An Act to Prohibit Marriage Between Persons of Same Gender, Solemnization of Same and For Other Matters Related Therewith, HB. 150, § 6, available at <http://www.nassnig.org/legislation.php?page=11>. As of September 14, 2009, the website of the Nigerian House of Representatives reported that HB. 150 had been referred to the Committee on Human Rights, Women Affairs and Justice and was yet to be reported out of this Committee. See http://www.nassnig.org/house/bills_progression.php?page=6&year=2008.
 82. *Nigeria gay activists speak out*, BBC NEWS, Mar. 11, 2009, <http://news.bbc.co.uk/2/hi/africa/7937700.stm>. The law provides that any person who “witnesses, abet and aids the solemnization of a same gender marriage commits an offence,” with such actions punishable by up to five years in prison. HB 150, § 4(2), *supra* note 81.
 83. *Nigeria to outlaw same-sex unions*, BBC NEWS, Jan. 19, 2006, <http://news.bbc.co.uk/2/hi/africa/4626994.stm>.
 84. Ottosson, *supra* note 80.
 85. Robert Ruby and Timothy Samuel Shah, *Nigeria's Presidential Election: The Christian-Muslim Divide*, PEW RESEARCH CENTER, Mar. 22, 2007, available at <http://pewresearch.org/pubs/435/nigeria-presidential-election>.
 86. *Nigeria to outlaw same-sex unions*, *supra* note 83.
 87. *Id.*
 88. *Nigeria gay activists speak out*, *supra* note 82.
 89. LAW ON CONFIRMED COHABITATION, Law 87/1996, available at <http://www.unhcr.org/refworld/category,LEGAL,,,ISL,3ae6b4e28,0.html> (official English translation).
 90. *Legal issues: Confirmed cohabitation*, SAMTÖKIN '78, http://www.samtokin78.is/index.php?option=com_content&view=article&id=154&Itemid=161.
 91. LAW ON CONFIRMED COHABITATION, art. II, , *supra* note 89.
 92. *Iceland: Homosexuality and the Law*, GAYICE, July 30, 2009, <http://www.gayice.is/articles/gay-life>.
 93. *Id.*
 94. *First Lesbian Couple in Iceland “Marries” in Church*, ICELAND REV. ONLINE, July 2, 2008, http://www.icelandreview.com/icelandreview/daily_news/?cat_id=16539&cw_0_a_id=308516.
 95. Jonas Moody, *Iceland Picks the World's First Openly Gay PM*, TIME, Jan. 30, 2009; *First gay PM for Iceland cabinet*, BBC NEWS, Feb. 1, 2009,

- <http://news.bbc.co.uk/2/hi/europe/7863923.stm>.
96. *Iceland to appoint first openly gay Prime Minister*, SYDNEY MORNING HERALD, Jan. 29, 2009, available at <http://www.smh.com.au/news/world/the-worlds-first-openly-gay-pm/2009/01/29/1232818574926.html>.
 97. Moody, *supra* note 95.
 98. CIVIL UNION ACT 2004, art. 4(1), available at <http://www.legislation.govt.nz/act/public/2004/0102/latest/DLM323385.html>.
 99. *NZ recognises same-sex unions*, BBC NEWS, Dec. 9, 2004, <http://news.bbc.co.uk/2/hi/asia-pacific/4081089.stm>.
 100. CIVIL UNION ACT 2004, § 18, *supra* note 98.
 101. *NZ recognises same-sex unions*, *supra* note 99.
 102. Angie Knox, *NZ debates gay marriage*, BBC NEWS, Dec. 8, 2004, <http://news.bbc.co.uk/2/hi/asia-pacific/4075463.stm>.
 103. *NZ recognises same-sex unions*, *supra* note 101.
 104. Ainsley Thomson and Ruth Berry, *Passions run high before Civil Union debate ends*, N.Z. HERALD, Dec. 10, 2004, available at http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=9002530.
 105. *Destiny Church New Zealand: Enough is Enough Rally*, Boston Univ. Sch. of Theology Archives, available at http://sthweb.bu.edu/archives/index.php?option=com_awiki&view=mediawiki&article=Destiny_Church%2C_New_Zealand&Itemid=99 (“In August 2004, Destiny members met on Parliament under their ‘Enough is Enough’ rally which drew 5000 protesters against civil unions legislation. The rally attracted considerable criticism. The black t-shirts and track-pants worn by many of the marchers prompted negative comparisons with Nazi storm-troopers in the New Zealand media.”) (last visited Sept. 14, 2009).
 106. *Draft National Statement On Religious Diversity*, from Destiny Churches New Zealand to Race Relations Commissioner, Human Rights Commission, Wellington (Dec. 4, 2006), available at <http://www.destinychurch.org.nz/content/view/54/75/>.
 107. LEY DE UNIÓN CONCUBINARIA, available at <http://www.iusfamiliae.com/modules.php?op=modload&name=News&file=article&sid=21>.
 108. Rex Wockner, *Uruguay Civil-Union Bill Signed Into Law*, S.F. BAY TIMES, Jan. 3, 2008, available at http://www.sfbaytimes.com/index.php?sec=article&article_id=7261.
 109. In Spanish: “*dos personas – cualquiera sea su sexo, identidad, orientación u opción sexual- que mantienen una relación afectiva de índole sexual, de carácter exclusiva, singular, estable y permanente, sin estar unidas por matrimonio.*” LEY DE UNIÓN CONCUBINARIA, art. 2, *supra* note 107; Wockner, *id.* (English translation).
 110. *Uruguay OKs gay unions in Latin American first*, REUTERS, Dec. 18, 2007, <http://www.reuters.com/article/worldNews/idUSN1854039020071219>.
 111. *Id.*
 112. Wockner, *supra* note 108; *Uruguay OKs gay unions in Latin American first*, *supra* note 110.
 113. Thaddeus M. Baklinski, *Uruguay Passes Homosexual Civil Union Law*, LIFESITENEWS, Dec. 20, 2007, <http://www.lifesitenews.com/ldn/2007/dec/07122006.html>.
 114. B.A. Robinson, *Same-sex marriages, civil unions, etc. In other countries: Uruguay*, RELIGIOUS*TOLERANCE, Sept. 24, 2009, http://www.religioustolerance.org/hom_mary.htm.
 115. *Lawmakers in Uruguay Vote to Allow Gay Couples to Adopt*, N.Y. TIMES, Sept 10, 2009.
 116. *Defend Civil Rights: Did Uruguay Just Beat the US on Gay Rights?*, <http://www.care2.com/causes/civil-rights/blog/did-uruguay-just-beat-the-us-on-gay-rights/> (posted Sept. 10, 2009).
 117. Sadly, Del Martin passed away on August 27, 2008, only a few months after celebrating her wedding day. Kate Kendall, *Del Martin*, TIME, Sept. 4, 2008.
 118. As of January 2010, Massachusetts, Connecticut, Iowa (each by state supreme court decision), Vermont and New Hampshire (each by statute), have extended the right of marriage to same-sex couples. *Goodrich v. Department of Public Health*, 798 N.E.2d 941 (Mass. 2003); *Kerrigan v. Commissioner of Public Health*, 957 A.2d 407 (Conn. 2008); *Varnum v. Brian*, 763 N.W.2d 862 (Iowa 2009); An Act to Protect Religious Freedom and Recognize Equality in Civil Marriage (Vt.), Bill S. 115 (Act 0003), available at <http://www.leg.state.vt.us/docs/2010/Acts/ACT003.pdf>; An Act Affirming Religious Freedom Protections With Regard to Marriage and Prohibiting the Establishment of Civil Unions On or After January 1, 2010 (N.H.), HB 73, available at <http://www.gencourt.state.nh.us/legislation/2009/HB0073.html>.