Legal Scholarship on Same-Sex Marriage
Update No. 41
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I. Articles posted in 2009 on SSRN.com, BePress.com and other digital sources
(updated)
II. Legal scholarship and commentary published in 2009
(updated)
III. Law review articles published in 2008
(updated)
I. Articles posted in 2009 on SSRN.com, BePress.com and other digital sources


Vivia Chen, *The marriage broker: the fight for gay marriage in Iowa changed the nation's legal landscape - and one lawyer's worldview*, 31 American Lawyer No. 7, 67 (July 2009)

Rachel M. Zahorsky, *Doing "work necessary to win": Lambda Legal lawyer led fight for gay marriage in Iowa*, 95 ABA Journal No. 7, 36 (July 2009)

Mark Strasser, *A Little Older, a Little Wiser, and Still Committed*, 61 Rutgers L. Rev. 507 (posted July 9, 2009)


John G. Culhane, *Marriage Equality? First, Justify Marriage (If You Can)*, 1 Drexel L.R. 485 (posted 07/03/09)


Report and Recommendation to NY State Bar Association on Marriage Rights for Same-Sex Couples (05/04/09)

Marc R. Poirer, *Name Calling: Identifying Stigma and the 'Civil Union'/Marriage' Distinction*, 41 Conn. L. Rev. 63 (July 2009)

Deb Wald, Shannon Minter, and Courtney Joslin, *Recognition of marriages between same-sex couples performed outside of California prior to November 5, 2008* (posted 06/22/09; referenced here)
David Novak, Why We Should Oppose Same-Sex Marriage (posted 6/19/09) [based on a publication forthcoming 98 Cal L. Rev. (2010); commented on here.]

Lois A. Weithorn, CAN A SUBSEQUENT CHANGE IN LAW VOID A MARRIAGE THAT WAS VALID AT ITS INCEPTION? CONSIDERING THE LEGAL EFFECT OF PROPOSITION 8 ON CALIFORNIA'S EXISTING SAME-SEX MARRIAGES, 60 Hastings L.J. 1063 (May 2009)

Kerry Abrams and Peter Brooks, Marriage as a Message: Same-Sex Couples and the Rhetoric of Accidental Procreation, Yale Journal of Law and the Humanities, Vol. 21, No. 1, 2009


Jeff Redding, Proposition 8 and the Future of American Same-Sex Marriage Activism, 14 Nexus 113 (2009) (posted 06/05/09)

Tanya Washington, Throwing Black Babies Out with the Bathwater: A Child-Centered Challenge to Same-Sex Adoption Bans, forthcoming in 6 Hastings Race and Pov. L.J.

Gregory N. Johnson, We’ve Heard this Before: The Legacy of Interracial Marriage Bans and the Implications for Today’s Marriage Equality Debates, forthcoming in Vermont L.Rev. (Fall 2009)


Further Thoughts on Proposition 8 and Retroactivity: A Response to Choper

Marriage Rights and Parental Rights: Parents, the State, and Proposition 8 (04/16/09)

Activist Courts, Misleading Wedge Politics and the Tragedy of Proposition 8 (04/09/09)

Thomas H. Burrell, Judicial Regimes and Same-Sex Marriage: Enforcing Judicially Determined Personal Autonomy At the Expense of Majoritarian Democracy, 35 Ohio N. Univ. L. Rev. 619 (posted 04/07/09)

Can a Subsequent Change in Law Void a Marriage that Was Valid at its Inception? Considering the Legal Effect of Proposition 8 on California's Existing Same-Sex Marriages (03/17/09)

DOMA and the Internal Revenue Code (03/22/09)

Marisa Silenzi Cianciarulo, SAME-SEX COUPLES AND THE RIGHT TO MARRY IN CALIFORNIA, NEXUS : A JOURNAL OF OPINION (posted 02/17/09) (citation not yet available?)

Justice Grodin: On Amending and Revising the Constitution: The Issues behind the Challenge to Proposition 8

Jesse Choper: Should Proposition 8 Be Held to be Retroactive?

Fourteen Words that Devastate the Fourteenth Amendment and Equal Protection: Proposition 8 and the Future of Equality

Considering the Legal Effect of Proposition 8 on California's Existing Same-Sex Marriages
II. Legal scholarship and commentary published in 2009

**New:** Kenneth McK Norrie, Recognition of Overseas Same-Sex Relationships in New Zealand, 23 New Zealand Univ. L. Rev. 339 (2009)


Thomas H. Burrell, Judicial Regimes and Same-Sex Marriage: Enforcing Judicially Determined Personal Autonomy At the Expense of Majoritarian Democracy, 35 Ohio N. Univ. L. Rev. 619 (posted 04/07/09)


Vivia Chen, The marriage broker: the fight for gay marriage in Iowa changed the nation's legal landscape - and one lawyer's worldview, 31 American Lawyer No. 7, 67 (July 2009)

Rachel M. Zahorsky, Doing "work necessary to win": Lambda Legal lawyer led fight for gay marriage in Iowa, 95 ABA Journal No. 7, 36 (July 2009)


Julia Halloran McLaughlin, DOMA and the Constitutional Coming Out of Same-Sex Marriage, 12 Wisc. J. L., Gender & Society 145 (2009)

Mark Strasser, A Little Older, a Little Wiser, and Still Committed, 61 Rutgers L. Rev. 507 (2009)


Martha Nussbaum, A Right to Marry? Same-Sex Marriage and Constitutional Law, 56 Dissent Magazine No.3, 43-55 (Summer 2009)

Kerry Abrams and Peter Brooks, Marriage As a Message: Same-Sex Couples and the Rhetoric of Accidental Procreation, 21 Yale J. Law & the Humanities 1 (2009)

Michele Reichlin, Civil unions under the Maryland era: how the illusion of equality is an equal rights avoidance, 38 University of Baltimore Law Review 305 (2009)


Marc R. Poirer, Name Calling: Identifying Stigma and the 'Civil Union'/Marriage Distinction, 41 Conn. L. Rev. 63 (July 2009)


Carlos A. Ball, INTRODUCTION TO SYMPOSIUM: UPDATING THE LGBT INTRACOMMUNITY DEBATE OVER SAME-SEX MARRIAGE, 61 Rutgers L. Rev. 493 (Spring 2009)


Lois A. Weithorn, CAN A SUBSEQUENT CHANGE IN LAW VOID A MARRIAGE THAT WAS VALID AT ITS INCEPTION? CONSIDERING THE LEGAL EFFECT OF PROPOSITION 8 ON CALIFORNIA'S EXISTING SAME-SEX MARRIAGES, 60 Hastings L.J. 1063 (May 2009)


Robin Fretwell Wilson, Same-Sex Marriage and Religious Liberty: Life After Prop 8, 14 NEXUS A JOURNAL OF OPINION 101 (2009) [Symposium].

Jeffrey A. Redding, Proposition 8 and the Future of American Same-Sex Marriage Activism, 14 NEXUS A JOURNAL OF OPINION 113 (2009) [Symposium].

Kerry Abrams and Peter Brooks, Marriage as a Message: Same-Sex Couples and the Rhetoric of Accidental Procreation, Yale Journal of Law and the Humanities, Vol. 21, No. 1, 2009


Jeff Redding, Proposition 8 and the Future of American Same-Sex Marriage Activism, 14 Nexus 113 (2009) (posted 06/05/09)

Lesbian Lawyers on the Front, 19 Curve Magazine No. 5, 49 (Jun. 2009) (profiling lesbian lawyers Jenny Pizer and Kate Kendell) (online text not available as of 6/4/09)

Russell S. Roeca, California's step back. (Proposition 8, a roadblock in the path to equality)(Editorial), The Los Angeles Daily Journal (May 27, 2009): 6(1)

Laura Ernde and John Roemer, Proposition 8 upheld: experts say same-sex marriage decision could let voters remove rights from other groups, The Los Angeles Daily Journal (May 27, 2009): p1(2)


Richard Salas, In re Marriage Cases: the fundamental right to marry and equal protection under the California Constitution and the effects of Proposition 8, 36 Hast. Const. L.Q. 545


Catherine Smith and Jennifer Holladay, A Cautionary Tale: The Obama Coalition, Anti-subordination Principles and Prop 8, 89 Denver Univ. L. Rev. 819 (2009)
Catherine Jean Archibald, De-Clothing Sex-Based Classifications — Same-Sex Marriage is Just the Beginning: Achieving Formal Sex Equality in the Modern Era, 36 Northern Kentucky L. Rev. 1 (2009)


Laura Reidel, Religious Opposition to Same-Sex Marriage in Canada: Limits to Multiculturalism, 10 Human Rights Review 261 (June 2009)


Should California exit the marriage business? As the high court grapples with Prop 8, some wonder if government should stop uniting everyone. Laura Ernde. The Los Angeles Daily Journal 122.59 (March 31, 2009): p1(2).


III. Law review articles published in 2008


New: Carlos A. Ball, Against neutrality in the legal recognition of intimate relationships. (Ninth Symposium Issue of Gender and Sexuality Law), 9 Georgetown J. Gender and the Law 321 (2008)


Judith A. Young, Same-Sex Marriage In California: After Proposition 8 Passed and Before the California Supreme Court Decision on the Challenge to Proposition 8, 36 Lincoln L. Rev. 131 (2008-09)

Marc R. Poirier, Gender, Place, Discursive Space: Where is Same-Sex Marriage?, 3 Fl. Internat'l Univ. L. Rev. 307 (2008)

Matthew W. Clark, The Gospel according to the state: an analysis of Massachusetts adoption laws and the closing of Catholic Charities adoption services (NOTES), 41 Suffolk Univ. L. Rev. 871 (Fall 2008)


Brandon Burkart & Kay Rousslang, Recognition of Same-Sex Marriage (Ninth Annual Review), 9 Georgetown J. of Gender and the Law 1031 (2008)


State constitutional law - same-sex relations - Supreme Court of Michigan holds that public employers may not provide healthcare benefits to same-sex domestic partners of employees. Harvard Law Review 122.4 (Feb 2009): p1263(8).


The cultural property claim within the same-sex marriage controversy. Marc R. Poirier. Columbia Journal of Gender and Law 17.3 (Fall 2008): p343(76).
DUE PROCESS AND EQUAL PROTECTION: A CONSTITUTIONAL APPROACH TO SAME-SEX MARRIAGE
Ashley Musselman

South Texas Law Review
Volume 50, Number 1, Fall 2008

· SYMPOSIUM: GAY MARRIAGE IN THE CONSERVATIVE MOVEMENT
· ARTICLES
· NOT WHETHER BUT HOW: GAY MARRIAGE AND THE REVIVAL OF BURKEAN CONSERVATISM
  Jonathan Rauch
  p.1  +cite
· CAN THE GOVERNMENT PROHIBIT GAY MARRIAGE?
  Jesse H. Choper & John C. Yoo
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· MARRIAGE AND PRACTICAL KNOWLEDGE
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· SAME-SEX MARRIAGE: UNCONSERVATIVE IN PURPOSE, IN APPLICATION, AND IN RESULT
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· A TRADITIONALIST CASE FOR GAY MARRIAGE
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· ARTICLES
  · The Search for Moral Neutrality in Same-Sex Marriage Decisions
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