Legal Scholarship on Same-Sex Marriage
Update No. 24
June 22, 2009

I. Articles posted in 2009 on SSRN.com, BePress.com and other digital sources (updated)
II. Law review and legal newspaper articles published in 2009
III. Law review articles published in 2008
I. Articles posted in 2009 on SSRN.com, BePress.com and other digital sources

· **New**: 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](http://www.jdsupra.com/post/documentViewer.aspx?fid=b83f2331-c977-41e9-9031-89b2085e4354))
· 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)
· **Judicial Regimes and Same-Sex Marriage: Enforcing Judicially Determined Personal Autonomy at the Expense of Majoritarian Democracy** (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. Law review and legal newspaper articles published in 2009

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Tun Ying, Crying Wolf?: In re Marriage Cases and Charges of Judicial Activism, 14 NEXUS A JOURNAL OF OPINION 45 (2009) [Symposium].


Ronald Steiner, Understanding the Prop 8 Litigation: The Scope of Direct Democracy and Role of Judicial Scrutiny, 14 NEXUS A JOURNAL OF OPINION 81 (2009) [Symposium].


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)


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

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)


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).

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