



**International Progress towards
Marriage Equality**

February 2010



MARRIAGEEQUALITY

The Netherlands

The Netherlands was the first country to end the exclusion of same-sex couples from marriage in 2001 when their Parliament voted 107-33 to eliminate discrimination from their marriage laws. The law requires that at least one member of the couple be a Dutch national or live in the Netherlands. Today what seems revolutionary in the United States is almost mundane for the Dutch. Anne-Marie Thus, a Dutch lesbian who married in 2001, explains, *"It's really become less of something that you need to explain. We're totally ordinary. We take our children to preschool every day. People know they don't have to be afraid of us."*

Belgium

Belgium became the second country to legalise equal marriage in 2003. Without fanfare, 91 of the 122 deputies in the Belgian Parliament voted for the change. Unlike in the Netherlands, however, gay and lesbian couples were not allowed to adopt children under the original legislation, but Parliament passed co-parenting for same-sex couples in 2006. The law also stipulates that only couples from countries that allow same-sex couples to marry can be married under the law.

Spain

After the unexpected victory of the Spanish Socialist Party in 2004, the newly elected Prime Minister, Jose Luis Rodriguez Zapatero, moved to end the exclusion of same-sex couples from marriage in the country. Despite serious opposition from the Catholic Church, a majority of Spaniards supported the measure and the Parliament voted 187 to 147 in favour of the law. Following passage and enactment in 2005, Zapatero's said: *"We were not the first, but I am sure we will not be the last. After us will come many other countries, driven ... by two unstoppable forces: freedom and equality."*

Canada

On July 20, 2005, Canada became the fourth nation to end discrimination in marriage. The national legislation passed after more than three quarters of Canadian provinces and territories legalized same-sex unions. Since marriage laws in Canada do not have residency requirements, same-sex couples who travel from the other countries to Canada could also get married there. Canadian leaders supported full marriage, as opposed to civil union legislation that exists in some European countries (e.g. Denmark and Sweden). Canadian politicians recognized the importance of full equality. Canada's Prime Minister at the time, Paul Martin, explained, "*We've come to the realisation that instituting civil unions — adopting a 'separate but equal' approach — would violate the equality provisions of the [Canadian Charter of Rights and Freedoms]. We've confirmed that extending the right of civil marriage to gays and lesbians will not in any way infringe on religious freedoms.*"

South Africa

In December 2005, the Constitutional Court of South Africa ruled that denying marriage to same-sex couples violates the country's constitution and gave the Parliament one year to adjust laws to comply with the ruling. The court also made it clear enacting only a civil unions law would not work. On November 14, 2006, Parliament voted 230 to 41 to end the exclusion of same-sex couples from marriage in South Africa, making the nation the first in Africa to do so.

Norway

On June 11, 2008, Members of Parliament in Norway approved a Bill that ended the exclusion of same-sex couples from marriage by 84 votes to 41. Family Issues Minister Anniken Huitfeldt noted, "*The new law won't weaken marriage as an institution. Rather, it will strengthen it. Marriage won't be worth less because more can take part in it.*"

The new law will make marriage gender neutral. The Scandinavian country had already allowed gay and lesbian couples to enter into civil partnerships, but realized that such partnerships did not provide equality. The law was backed by the ruling red-green coalition of the Labour Party, the Centre Party and the Socialist Left Party as well as members of the opposition Conservatives and Liberals. Socialist Left Party leader Kristin Halvorsen, also finance minister, said the bill was for "equal rights" and against all forms of discrimination.

Sweden

Sweden became the seventh country to uphold marriage equality for gay couples with a broad majority of the Swedish Parliament voting in support of a bill to end the exclusion of gay and lesbian couples from marriage on April 1, 2009. The proposal was approved by a 261 to 22 vote, with 16 abstentions. The new legislation is to take effect as of May 1, 2009 and replaces the legislation approved in 1995 that allows gay and lesbian couples to form a union in Sweden via registered partnership. Couples who have registered partnership can keep that status or amend it by an application to the authorities or marry.

Mexico City

23 Dec 2009

Mexico City lawmakers made the city the first in Latin America to legalise same-sex marriage, a change that will give homosexual couples more rights, including allowing them to adopt children. The bill passed the capital's local assembly 39-20 to the cheers of supporters who yelled: "Yes, *we could!* Yes, *we could!*" Leftist Mayor Marcelo Ebrard of the Democratic Revolution Party was widely expected to sign the measure into law. The conservative Nation Action Party of President Felipe Calderon has vowed to challenge the gay marriage law in the courts. The bill calls for changing the definition of marriage in the city's civil code. Marriage is currently defined as the union of a man and a woman.

The new definition will be "*the free uniting of two people.*"

Argentina - 4 Jan 2010

Two Argentinean men have been joined in South America's first same-sex marriage, travelling to the southernmost tip of the Americas to find a welcoming spot to wed. Gay rights activists Jose Maria Di Bello and Alex Freyre were married in Ushuaia, the capital of Argentina's Tierra del Fuego state, exchanging rings at civil ceremony witnessed by state and federal officials. Argentina's constitution is silent on whether marriage must be between a man and a woman, effectively leaving the matter to provincial officials. Tierra del Fuego Governor Fabiana Rios said in a statement that gay marriage "*is an important advance in human rights and social inclusion and we are very happy that this has happened in our state*". An official representing the federal government's antidiscrimination agency, Claudio Morgado, attended the wedding, calling it "historic".

Portugal - 8 Jan 2010

Portugal's parliament has passed a bill allowing same-sex marriage after winning the support of left-wing parties. The Socialist government's bill won the support of all left-of-centre parties. Right-of-centre parties opposed the change and sought a national referendum on the issue, but their proposal was rejected. Voting figures were not immediately available but the President of Parliament Jaime Gama announced that the government's bill had passed, as was widely expected. The proposed law goes to Portugal's conservative President Anibal Cavaco Silva who can ratify or veto. The veto can be overturned by the parliament. If there is no presidential veto, the first same-sex marriage ceremonies could take place in April - a month before Pope Benedict XVI is due on an official visit to Portugal.

"*This law rights a wrong,*" Prime Minister Jose Socrates said in a speech to lawmakers, adding that it "*simply ends pointless suffering.*" The bill removes a reference in the current law to marriage being between two people of different sexes.

Nepal

On November 17, 2008, Nepal's Supreme Court ruled in favour of laws to guarantee full rights to LGBT people, and all gender minorities must be defined as "natural persons" under the law; this included the right to marry. "*This is a landmark decision for the sexual minorities and we welcome it*" said Sunil Babu Pant, Nepal's first publicly gay law-maker and a leading gay rights activist in South Asia. The court asked the government to form a committee to study same-sex partnership laws in other countries and asked that the new law does not discriminate against sexual minorities, including cross-dressing and transgendered people.

On March 22, 2009, Pant said in an interview with the Indo Asian News Service that "*Though the court has approved of same-sex marriage, the government is yet to enact a law*", signalling that while a marriage equality bill has been ordered by the Supreme Court, it has yet to be drafted or voted on, much less legislated. In June 2009, pant said the process has just started. "*Nepal is going through transition and everything seems to move slowly. The seven-member committee has formed and just started working to study same-sex marriage bills in other countries. Hopefully they will draft the suggestion to make same-sex marriage law soon and give it to the Government to approve.*" According to some sources, the Government will introduce a same-sex marriage bill in 2010.

Israel

Same-sex marriage in Israel is supported by most of the population according to a poll from 2009. Currently it is not possible to conduct ceremonies since all marriages in Israel are performed under the auspices of the religious authority of the religion to which the couple belongs. Foreign same-sex marriages, however, are recognised. Furthermore, like unmarried opposite-sex couples, same-sex couples in Israel can access nearly all of the rights of marriage in the form of unregistered cohabitation status.

Protections Elsewhere

Countries that offer many rights to same-sex couples, but stop short of marriage, include Denmark, Finland, Germany, Iceland, New Zealand, Sweden, the United Kingdom, and Uruguay. Countries that offer some spousal rights to same-sex couples, which are far from full marriage equality, include: Andorra, Austria, Brazil, Colombia, Croatia, Czech Republic, France, Hungary, Israel, Luxembourg, Portugal, Slovenia, and Switzerland.

Slovakia has recently begun Parliamentary debates on the issue of marriage equality. The **Italian** Supreme Court is due to hear Italy's marriage equality case sometime in July to September 2010.

U.S. Progress towards Marriage Equality

Massachusetts

On November 18, 2003, the Massachusetts Supreme Judicial Court ruled in *Goodridge –v- Department of Public Health* that there is no rational basis under the law to deny a marriage license to same-sex couples. On May 17, 2004, marriage licenses began to be issued to same-sex couples in Massachusetts. In June 2007, the Massachusetts Legislature defeated the discriminatory, anti-gay, anti-marriage Constitutional amendment. The final 151 to 45 vote was a strong legislative victory for marriage equality.

And finally, in July 2008, the Massachusetts Legislature, along with a signature from Gov. Deval Patrick signed a law which upholds marriage equality for same-sex couples from outside of Massachusetts to get married in MA. Both houses of the state legislature overwhelmingly voted in favour of the law which repealed a discriminatory law from 1913 that had blocked such marriages. "*The 1913 law is outdated and discriminatory; repealing it is the right thing to do,*" Patrick said in a statement.

Connecticut

Connecticut joined Massachusetts as the next state to end the exclusion of same-sex couples from marriage with the Connecticut Supreme Court ruling to uphold the freedom to marry in *Kerrigan and Mock –v- The Department of Public Health* on October 10, 2008. The case was brought by GLAD (Gay and Lesbian Advocates and Defenders) on behalf of eight same-sex couples who sought to end marriage discrimination in Connecticut.

In April 2009 with bipartisan support, the Connecticut legislature voted to reaffirm the court's decision and realign state statutes to uphold the freedom to marry, and the Governor signed the bill into law.

Iowa

The Iowa Supreme Court handed down a unanimous decision in *Varnum v. Brien* in favour of the freedom to marry, bringing marriage equality to America's heartland. **Iowa is the third state** to end the exclusion of same-sex couples from marriage. Gay couples are able to get married since April 27th 2009.

The Iowa Supreme Court is the fourth state high court to uphold the freedom to marry under the state constitution. The Court continued Iowa's history of leadership in civil rights, which includes being among the first to eliminate the ban on interracial marriages, recognise the rights of married women, and desegregate schools.

In 2005, the case seeking to end the exclusion of gay couples from marriage was filed on behalf of six couples seeking to marry in Iowa. At the same time, a public education campaign was launched to educate Iowans about why marriage equality matters for all Iowa's families.

August 2007: The Iowa District Court ruled that it is unconstitutional to deny same-sex couples access to marriage. The opposition filed for an appeal and a "stay" on the decision the next day which were granted.

December 2008: Oral arguments were heard before the Iowa Supreme Court.

April 2009: Iowa ends gay and lesbian couples' exclusion from marriage.

Vermont

Vermont was the first state to create civil unions in 2000. Although not equal to marriage, it was a historic breakthrough at the time.

On April 7, 2009, Vermont became the fourth state to uphold the freedom to marry.

The Vermont legislature passed a bill ending the exclusion of gay and lesbian couples from marriage with a 2/3 majority in each chamber, **effectively overriding the Governor's** veto. Gay couples have been able to apply for marriage licenses September 1, 2009.

New Hampshire

In 2007, New Hampshire's legislature introduced both a marriage equality bill and a civil unions bill. The **civil unions** bill was passed and the governor signed it into law. The new law took effect in January 2008.

On June 3, 2009, New Hampshire embraced the freedom to marry becoming the third state to move past civil unions to marriage. The state house and senate approved a bill to end the exclusion of gay couples from marriage, and the governor signed it into law. Gay couples have been able to apply for marriage licenses since 1 January 2010, when the law came into effect in New Hampshire.

Coquille Tribe

In 2008, the Coquille Tribe legalised same-sex marriage, with the law going into effect in May 2009. The law approving same-sex marriage was adopted 5-2 by the Coquille Tribal Council and extends all of the tribal benefits of marriage to same-sex couples. To marry under Coquille law, at least one of the spouses must be a member of the tribe. In the 2000 US Census, 576 people defined themselves as belonging to the Coquille Nation.

Although the Oregon voters approved an amendment to the Oregon Constitution in 2004 to prohibit same-sex marriages, the Coquille are a federally recognized sovereign nation, and thus not bound by the Oregon Constitution. On May 24, 2009, the first same-sex couple married under the Coquille jurisdiction.

States that pledge non discrimination against marriages between same-sex couples

Massachusetts

Connecticut

Iowa

Vermont

New Hampshire

Rhode Island

New York

District of Columbia (Washington D.C.)

QUICK LOOK AT WHERE IT MIGHT HAPPEN NEXT IN THE U.S.:**California:**

Decades of public education, advocacy and political leadership on marriage equality in California led to the California Supreme Court ruling in May 2008 to uphold the freedom to marry. This led to an estimated 18,000 gay couples being able to marry. Unfortunately, Proposition 8, a ballot initiative to take away marriage equality, narrowly passed in the November 2008 election and gay couples can no longer marry in California. Work is already underway to restore the freedom to marry in California and overturn Prop 8.

New Mexico

Because New Mexico's laws do not prohibit marriage between same-sex couples, there is no impediment to New Mexico same-sex couples marrying in Massachusetts or California and having their marriage honoured in New Mexico. While Massachusetts's government directed that licenses could be given to New Mexico couples, the New Mexico state government has not taken action to ensure that they will be honoured.

New Jersey

Marriage backers in New Jersey, following the 20-14 defeat of a marriage bill in the state Senate in January 2010, are vowing to take the issue back to court. Steven Goldstein, chairman of Garden State Equality, said marriage – not the current civil unions law – is the only way for New Jersey to fulfil a court mandate to treat all couples equally.

New York

New York does honour out of state marriages, with no gay exception. In May 2008, NY Gov. David Paterson directed State Agencies to ensure that the out-of-state marriages of same-sex couples are respected and treated equally under law, the same as New York does with different-sex couples' marriages. Gov. Paterson's order conforms to New York's historic practice and the common-sense principle that it makes more sense to respect marriages than to destabilize them. But couples cannot, as yet, marry at home in New York. On April 16, 2009, New York Governor David Paterson announced that he introduced a marriage equality bill to the New York Assembly and Senate. The Assembly passed it twice in 2009 (it passed in 2007 also), but unfortunately it was defeated in the Senate again on 2 December 2009.

With these advances, 12-percent of the **US population** lives in a state which either has the freedom to marry for lesbian and gay couples or honours out-of-state marriages of lesbian and gay couples. **Nearly forty percent** of the US population (37-percent) lives in a state which provides some form of protections for lesbian and gay couples.

Federal Work on Marriage Equality

12 Jan 2010 "Gay Marriage Ban Goes On Trial In California" Perry v Schwarzenegger

The first federal trial to determine if the U.S. Constitution prohibits states from outlawing same-sex marriage gets under way Monday, and the two gay couples on whose behalf the case was brought will be among the first witnesses. The proceedings, which are expected to last two to three weeks, involve a challenge to Proposition 8, the gay marriage ban approved by California voters in November 2008. Regardless of the outcome, the case is likely to be appealed to the U.S. Supreme Court, where it ultimately could become a landmark that determines if gay Americans have the right to marry. The judge who will render a decision, Chief U.S. District Judge Vaughn R. Walker, has asked lawyers arguing for and against the ban to present the facts underlying much of the political rhetoric surrounding same-sex marriage. Among the questions Walker plans to entertain are whether sexual orientation can be changed, how legalising gay marriage affects traditional marriages and the effect on children of being raised by two mothers or two fathers.

"The case is intriguing, exciting and potentially very significant because it addresses multiple important questions that, surprisingly to many, remain open in federal law," said Jennifer Pizer, marriage director for the gay law advocacy group Lambda Legal. "Can the state reserve the esteemed language and status of marriage just for heterosexual couples, and relegate same-sex couples to a lesser status? Are there any adequate public interests to justify reimposing such a caste system for gay people, especially by a majority vote to take a cherished right from a historically mistreated minority?"

The sponsors of Proposition 8, which passed with 52 percent of the vote, won permission to defend the law in court after Gov. Arnold Schwarzenegger and Attorney General Jerry Brown refused to. The attorney general and the governor are defendants in the case because of their positions in state government.

While other courts have wrestled with the constitutional issues raised by prohibiting same-sex marriages - the Supreme Court last took a look at the issue 38 years ago - Walker's court is the first to employ live witnesses in the task. Among those set to testify are the leaders of the Proposition 8 campaign, academic experts from the fields of political science, history, psychology and economics, and the two plaintiff couples - Kristin Perry and Sandra Stier, who live in Berkeley, and Paul Katami and Jeffrey Zarrillo, who live in Los Angeles.

To read the opening statement, click on this link

<http://www.equalrightsfoundation.org/news/text-of-ted-olsons-opening-statement-in-prop-8-trial-as-prepared/>

Key Quotes from the Iowa Supreme Court's Unanimous Decision in *Varnum v. Brien*

Upholding the Freedom to Marry

"Like the Federal Equal Protection Clause found in the Fourteenth Amendment to the United States Constitution, Iowa's constitutional promise of equal protection 'is essentially a direction that all persons similarly situated should be treated alike'".(page 19)

"We are firmly convinced the exclusion of gay and lesbian people from the institution of civil marriage does not substantially further any important governmental objective. The legislature has excluded a historically disfavoured class of persons from a supremely important civil institution without a constitutionally sufficient justification." (page 67)

"If gay and lesbian people must submit to different treatment without an exceedingly persuasive justification, they are deprived of the benefits of the principle of equal protection upon which the rule of law is founded." (page 67)

Affirming Civil Unions, Domestic Partnerships or Any Other Parallel Mechanism to Marriage are Unequal

“Iowa Code section 595.2 is unconstitutional because the County has been unable to identify a constitutionally adequate justification for excluding plaintiffs from the institution of civil marriage. A new distinction based on sexual orientation would be equally suspect and difficult to square with the fundamental principles of equal protection embodied in our constitution. This record, our independent research, and the appropriate equal protection analysis do not suggest the existence of a justification for such a legislative classification that substantially furthers any governmental objective. Consequently, the language in Iowa Code section 595.2 limiting civil marriage to a man and a woman must be stricken from the statute, and the remaining statutory language must be interpreted and applied in a manner allowing gay and lesbian people full access to the institution of civil marriage.”

(Page 68)

Role of Judiciary

“The legislature, in carrying out its constitutional role to make public policy decisions, enacted a law that effectively excludes gay and lesbian people from the institution of civil marriage. The executive branch of government, in carrying out its role to execute the law, enforced this statute through a county official who refused to issue marriage licenses to six same-sex couples. These Iowans, believing that the law is inconsistent with certain constitutional mandates, exercised their constitutional right to petition the courts for redress of their grievance. This court, consistent with its role to interpret the law and resolve disputes, now has the responsibility to determine if the law enacted by the legislative branch and enforced by the executive branch violates the Iowa Constitution.”

(Page 13)

Protecting Families

“We find that the plaintiffs are similarly situated compared to heterosexual persons. Plaintiffs are in committed and loving relationships, many raising families, just like heterosexual couples. Moreover, official recognition of their status provides an institutional basis for defining their fundamental relational rights and responsibilities, just as it does for heterosexual couples. Society benefits, for example, from providing same-sex couples a stable framework within which to raise their children and the power to make health care and end-of-life decisions for loved ones, just as it does when that framework is provided for opposite-sex couples.” (page 28)

Addressing Religious Opposition

“We give respect to the views of all Iowans on the issue of same-sex marriage—religious or otherwise—by giving respect to our constitutional principles. These principles require that the state recognize both opposite-sex and same-sex civil marriage. A religious denomination can still define marriage as a union between a man and a woman, and a marriage ceremony performed by a minister, priest, rabbi, or other person ordained or designated as a leader of the person’s religious faith does not lose its meaning as a sacrament or other religious institution. The sanctity of all religious marriages celebrated in the future will have the same meaning as those celebrated in the past. The only difference is civil marriage will now take on a new meaning that reflects a more complete understanding of equal protection of the law.” (page 66-67)

Responding to Opposition

“If a simple showing that discrimination is traditional satisfies equal protection, previous successful equal protection challenges of invidious racial and gender classifications would have failed.” (page 53)

“While the objectives asserted may be important (and many undoubtedly are important), none are furthered in a substantial way by the exclusion of same-sex couples from civil marriage. Our equal protection clause requires more than has been offered to justify the continued existence of the same-sex marriage ban under the statute.” (page 63)



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You can find out more about Freedom to Marry by visiting their website –

www.freedomtomarry.org.





MARRIAGE EQUALITY

