



## NATIONAL CENTER FOR LESBIAN RIGHTS

### **Marriage, Domestic Partnerships, and Civil Unions: An Overview of Relationship Recognition for Same-Sex Couples in the United States**

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#### **I. Legal Marriage**

Civil marriage is a legal status that automatically confers over a thousand federal rights and benefits<sup>1</sup> and hundreds of additional state rights and benefits. Many of these rights are intended to help families in times of crisis, such as an automatic right to visit a spouse in a hospital or to make medical decisions for an incapacitated spouse. Some of these rights can be obtained, at least partially, through private agreements or other legal procedures; however, most cannot.

In addition to these important benefits, marriage is understood world-wide as an expression of a couple's love and commitment and has enormous personal and social significance for many people.

#### **A. Jurisdictions With Marriage For Same-Sex Couples**

Internationally, same-sex couples are permitted to legally marry in the Netherlands, Belgium, Canada, Spain, and South Africa. In 2004, Massachusetts became the first state in the United States to allow same-sex couples to marry.<sup>2</sup> In May 2008, the California Supreme Court struck down laws barring same-sex couples from marriage, making California the second state in the United States to allow same sex-couples to marry.<sup>3</sup>

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<sup>1</sup> In 2004, the U.S. General Accounting Office identified 1,138 federal rights and responsibilities that turn on marital status. The GAO report can be accessed at <http://www.gao.gov/new.items/d04353r.pdf>.

<sup>2</sup> See *Goodridge v. Dep't. of Pub. Health*, 798 N.E.2d 941 (Mass. 2003). For more information about marriages in Massachusetts, visit the website for Gay & Lesbian Advocates & Defenders, at [www.glad.org](http://www.glad.org).

<sup>3</sup> See *In re Marriage Cases*, 43 Cal.4th 757 (Cal. 2008). For more information about *In re Marriage Cases*, see [www.nclrights.org](http://www.nclrights.org).

In addition to Massachusetts and California, same-sex couples have sought the freedom to marry in a number of other states.

## **A. Pending Cases**

Currently, cases challenging the exclusion of same-sex couples from the right to marry are pending in Connecticut and Iowa.

### **(1) Connecticut**

In August, 2004, seven same-sex couples from across Connecticut filed suit in New Haven Superior Court, challenging the State's discriminatory exclusion of same-sex couples from the right to marry in a case called *Kerrigan & Mock v. Connecticut Department of Public Health*.<sup>4</sup> The couples argued that denying same-sex couples the right to marry violates the equality and liberty provisions of the Connecticut Constitution. GLAD argued the case before the Connecticut Supreme Court on May 14, 2007, and a decision is pending.

### **(2) Iowa**

In December of 2005, six same-sex couples brought a lawsuit in Polk County, Iowa challenging the constitutionality of the Iowa statute that limits marriage to one man and one woman. The case is *Varnum v. Brien*.<sup>5</sup> In August of 2007, the Iowa district court ruled that the law violated the equal protection and due process clauses of the Iowa constitution. The judgment was stayed, and the case is now pending before the Iowa Supreme Court.

## **B. Previous Legal Challenges**

The first lawsuit challenging the exclusion of lesbian and gay couples from civil marriage was decided in 1971.<sup>6</sup> Since 1971, there have been numerous challenges across the country. All of these challenges were unsuccessful until 1993.

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<sup>4</sup> See *Kerrigan v. State of Connecticut*, 49 Conn.Supp. 644 (Conn. Super. 2006). This case was brought by Gay & Lesbian Advocates & Defenders (GLAD). For more information, see [www.glad.org](http://www.glad.org).

<sup>5</sup> This case was brought by Lambda Legal. For more information, see [www.lambdalegal.org](http://www.lambdalegal.org).

<sup>6</sup> *Baker v. Nelson*, 191 N.W.2d 185 (Minn. 1971).

### (1) Hawaii

In 1993, the Hawaii Supreme Court held that denying same-sex couples the right to marry could violate the state constitution because it discriminated on the basis of sex.<sup>7</sup> The case was then sent back to the trial court to give the state an opportunity to demonstrate a compelling justification for the discrimination. In 1996, after a trial, the lower court found that the state had failed to present a sufficient justification for limiting marriage to different-sex couples.<sup>8</sup> In November 1998, while this decision was on review before the Hawaii Supreme Court, the voters of Hawaii passed a state constitutional amendment allowing the state legislature to limit marriage to different-sex couples. The litigation was then dismissed as moot by the Hawaii Supreme Court.<sup>9</sup>

### (2) Alaska

In 1998, an Alaska trial court held that the exclusion of same-sex couples from the right to marry violated the state constitutional right to privacy and the right to be free from discrimination on the basis of sex.<sup>10</sup> Just after the decision was issued, the voters amended the Alaska Constitution to permit discrimination against same-sex couples in marriage.

### (3) Vermont

On December 20, 1999, the Vermont Supreme Court held that refusing to provide committed same-sex partners with the benefits and privileges granted to married couples violated the Vermont Constitution's Common Benefits Clause.<sup>11</sup>

In response to the court's decision, the Vermont legislature enacted a law permitting same-sex couples to enter into civil unions.

Couples in a Vermont civil union are granted all of the state-conferred rights, benefits, and responsibilities of marriage, and private entities are required to treat marriages and civil unions equally. Persons in a civil union, however, are not granted any of the 1,138 federally-conferred rights, benefits, and responsibilities of marriage, including the right to certain social security benefits and spousal immigration rights.

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<sup>7</sup> *Baehr v. Lewin*, 852 P.2d 44 (Haw. 1993).

<sup>8</sup> *Baehr v. Miike*, 1996 WL 694235 (Haw. Cir. Ct. Dec. 3, 1996).

<sup>9</sup> *Baehr v. Miike*, 994 P.2d 566 (Haw. 1999).

<sup>10</sup> *Brause v. Bureau of Vital Statistics*, 1998 WL 88743 (Alaska Super. Ct. Feb. 27, 1998). The decision is also available at: <http://www.qrd.org/qrd/usa/legal/alaska/brause-v-alaska>.

<sup>11</sup> *Baker v. State*, 744 A.2d 864 (Vt. 1999).

#### (4) Massachusetts

On November 18, 2003, in *Goodridge v. Department of Public Health*,<sup>12</sup> the Massachusetts Supreme Judicial Court held that denying marriage and its protections to same-sex couples is unconstitutional under the equality and liberty provisions of the Massachusetts Constitution. After reviewing and rejecting the rationales proffered by the state, the court concluded:

The marriage ban works a deep and scarring hardship on a very real segment of the community for no rational reason. The absence of any reasonable relationship between, on the one hand, an absolute disqualification of same-sex couples who wish to enter into civil marriage and, on the other, protection of public health, safety, or general welfare, suggests that the marriage restriction is rooted in persistent prejudices against persons who are (or who are believed to be) homosexual. "The Constitution cannot control such prejudices but neither can it tolerate them. Private biases may be outside the reach of the law, but the law cannot, directly or indirectly, give them effect." *Palmore v. Sidoti*, 466 U.S. 429, 433, 104 S. Ct. 1879, 80 L.Ed. 2d 421 (1984) (construing Fourteenth Amendment). Limiting the protections, benefits, and obligations of civil marriage to opposite-sex couples violates the basic premises of individual liberty and equality under law protected by the Massachusetts Constitution.<sup>13</sup>

The court then construed "civil marriage to mean the voluntary union of two persons as spouses, to the exclusion of all others" and directed the Legislature to comply with the court's opinion.<sup>14</sup>

In January 2004, the Massachusetts State Senate asked the court to issue an advisory opinion on whether a law allowing same-sex couples to enter into civil unions would comply with the court's opinion in *Goodridge*. On February 4, 2004, the court submitted an advisory opinion to the Senate stating unequivocally that civil unions would *not* provide full equality to same-sex couples as mandated by the Massachusetts constitution.<sup>15</sup> The court explained that having a separate institution just for same-sex couples compounds, rather than corrects, the constitutional infirmity. Establishing a separate "civil union" status for same-sex couples "would have the effect of maintaining and fostering a stigma of exclusion that the Constitution prohibits," the court explained.<sup>16</sup> "The history of our nation has demonstrated that separate is seldom, if ever, equal."<sup>17</sup> Massachusetts began granting marriage licenses to same-sex couples in May 2004.

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<sup>12</sup> *Goodridge v. Dep't. of Pub. Health*, 798 N.E.2d 941 (Mass. 2003)

<sup>13</sup> *Id.* at 341-42.

<sup>14</sup> *Id.* at 343, 344.

<sup>15</sup> *Opinions of the Justices to the Senate*, 440 Mass. 1201 (Mass. 2004).

<sup>16</sup> *Id.* at 1208

<sup>17</sup> *Id.* at 1206.

## (5) Arizona

On July 15, 2003, an Arizona gay couple filed a lawsuit asking the Arizona Court of Appeal to invalidate two state laws providing that only different-sex couples are eligible to marry, and asking the court to order the court clerk of Maricopa County to issue them a marriage license.<sup>18</sup> On October 8, 2003, the Court of Appeals held that the fundamental right to marry “does not encompass the right to marry a same-sex partner.” The Arizona Supreme Court denied further review.

## (6) Florida

Before 2005, several lawsuits seeking marriage equality for same-sex couples were filed in both state and federal court in Florida. Some of these cases also sought determinations that the federal Defense of Marriage Act is unconstitutional. On January 19, 2005, a federal district court in one such case, *Wilson v. Ake*,<sup>19</sup> rejected the plaintiffs’ claims and held that the federal DOMA is constitutional. Other than *Wilson*, all of the marriage equality lawsuits were dismissed prior to any determination on the merits.

## (7) Indiana

In *Morrison v. Sadler*,<sup>20</sup> three Indiana same-sex couples filed a suit seeking the right to marry or, alternatively, full recognition of their civil union status. The trial court dismissed the case. On January 20, 2005, the Indiana Court of Appeals held that excluding same-sex couples from the right to marry did not violate the Equal Privileges and Immunities Clause of the Indiana Constitution, the “remedy by due course of law” provision of the State Constitution, or the State Constitution’s provision guaranteeing the right to privacy. The plaintiffs did not appeal this decision to the Indiana Supreme Court.

## (8) New Jersey

In June, 2002, seven New Jersey couples sued for the right to marry in the case *Lewis v. Harris*. On November 5, 2003, the trial court granted the State’s motion to dismiss, and on June 14, 2005, the New Jersey Court of Appeal, in a split 2-1 decision, held that excluding same-sex couples from the right to marry did not violate the New Jersey Constitution.<sup>21</sup>

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<sup>18</sup> *Standhardt v. Superior Court ex rel. County of Maricopa*, 206 Ariz. 276 (Ariz. Ct. App. 2003).

<sup>19</sup> *Wilson v. Ake*, 354 F.Supp.2d 1298 (M.D.Fla. 2005).

<sup>20</sup> *Morrison v. Sadler*, 821 N.E.2d 15 (Ind. Ct. App. 2005).

<sup>21</sup> *Lewis v. Harris*, 378 N.J. Super. 168 (N.J. Super. A.D. 2005).

On October 25, 2006, the New Jersey Supreme Court overturned the Court of Appeal, holding that it was unconstitutional to deny same-sex couples the rights and benefits provided of marriage.<sup>22</sup> The court reserved the question whether those rights and benefits must be called marriage and directed the legislature to provide either marriage or another form of relationship recognition. In a powerful concurring and dissenting opinion, arguing that *only* marriage would provide equality under the law, Chief Justice Deborah T. Poritz wrote:

What we name things matters, language matters... Labels set people apart surely as physical separation on a bus or in school facilities... By excluding same-sex couples from civil marriage, the State declares that it is legitimate to differentiate between their commitments and the commitments of heterosexual couples. Ultimately the message is that what same-sex couples have is not as important or as significant as “real” marriage, that such lesser relationships cannot have the name of marriage.<sup>23</sup>

In December of 2006, the New Jersey legislature passed a civil unions law, which took effect in February of 2007. In February, 2008, a commission appointed by the state to investigate the impact of civil unions concluded that civil unions were not providing equality for same-sex couples in New Jersey.<sup>24</sup>

## (9) New York

In *Hernandez v. Robles*, one of several cases brought in 2004 that challenged New York’s marriage laws, a Manhattan trial court ruled in favor of the plaintiffs. The court held that excluding same-sex couples from marriage violated the fundamental right to marry and discriminated on the basis of sexual orientation.<sup>25</sup> On July 6, 2006, the state’s highest court, the New York Court of Appeal, held that the state constitution does not require that same-sex couples must be given equal access to marriage.<sup>26</sup>

## (10) Oregon

On April 20, 2004, in a lawsuit brought by nine same-sex couples, an Oregon trial court held that denying same-sex couples the right to marry violated the Oregon Constitution. In its decision in *Li v. State*, the court also ordered the state of Oregon to honor and register the more than 3,000 marriages that had been granted to same-sex couples by

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<sup>22</sup> *Lewis v. Harris*, 188 N.J. 415 (N.J. 2006).

<sup>23</sup> *Id.* at 467.

<sup>24</sup> First Interim Report Of The New Jersey Civil Union Review Commission, dated February 19, 2008, available at <http://www.state.nj.us/lps/dcr/downloads/1st-InterimReport-CURC.pdf>.

<sup>25</sup> 794 N.Y.S.2d 579, 2005 WL 363778 (N.Y. Super. Ct. 2005).

<sup>26</sup> *Hernandez v. Robles*, 855 N.E.2d 1 (N.Y. 2006).

Multnomah County.<sup>27</sup> In November 2004, while that decision was on appeal to the Oregon Supreme Court, the voters of Oregon approved an amendment permitting discrimination against same-sex couples in marriage.

On April 14, 2005, the Oregon Supreme Court held that amendment preempted Plaintiffs' claims. The court also held that the county did not have the authority to issue the marriage licenses that previously had been granted to same-sex couples and that those licenses were therefore void.<sup>28</sup>

### (11) Washington

In the summer of 2004, two trial courts in Washington State held that denying same-sex couples the right to marry violated the Washington State Constitution.<sup>29</sup> The cases were consolidated on appeal. On July 26, 2006, the Supreme Court of Washington issued its decision in *Andersen v. King County*, holding that the Washington marriage ban did not violate the state constitution.<sup>30</sup>

### (12) Maryland

In July of 2004, nine same-sex couples filed suit seeking the right to marry under the Maryland Constitution, in *Deane and Polyak vs. Conaway*.<sup>31</sup> In January of 2006, the Baltimore Circuit Court held that the denying same-sex couples the right to marry unconstitutionally discriminates on the basis of sex. The Maryland Court of Appeals, the state's highest court, agreed to hear the case immediately, bypassing the intermediate appellate court. On September 18, 2007, the court ruled 4-3 against the same-sex couples, holding that the marriage law did not impermissibly discriminate on the basis of sex or sexual orientation or infringe the fundamental right to marry under the Maryland constitution.<sup>32</sup>

### (13) California

In March, 2004, the National Center for Lesbian Rights, along with Lambda Legal and the ACLU, filed suit on behalf of Equality California, Our Family Coalition, and same-sex couples seeking the right to marry in California. The City of San Francisco filed a similar lawsuit. The cases, *Woo v. Lockyer* and *City and County of San Francisco v.*

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<sup>27</sup> *Li v. State*, 2004 WL 1258167 (Or. Cir. Ct. 2004).

<sup>28</sup> *Li v. State*, 338 Or. 376, 110 P.3d 91 (Or. 2005).

<sup>29</sup> *Andersen v. King County*, 2004 WL 1738447 (Wash. Super. Ct. 2004); *Castle v. State*, 2004 WL 1985215 (Wash. Super. Ct. 2004).

<sup>30</sup> *Andersen v. King County*, 158 Wash.2d 1, 10 (Wash. 2006).

<sup>31</sup> *Deane v. Conaway*, 2006 WL 148145 (Md. Cir. Ct. 2006).

<sup>32</sup> *Conaway v. Deane*, 401 Md. 219 (Md. 2007).

*Lockyer*, were consolidated along with four others. These six consolidated cases are known as *In Re Marriage Cases*.<sup>33</sup>

On April 13, 2005, San Francisco Superior Court Judge Richard Kramer held that excluding same-sex couples violates the California Constitution by discriminating on the basis of sex and by violating the fundamental right to marry. The court rejected the State's argument that the creation of a domestic partnership law remedies the constitutional infirmity of the marriage exclusion, explaining: "[t]he idea that marriage-like rights without marriage is adequate smacks of a concept long rejected by the courts: separate but equal."<sup>34</sup>

On November 13, 2006, the California Court of Appeal overturned Judge Kramer's ruling in a 2-1 decision, holding that California may continue to bar same-sex couples from marriage.<sup>35</sup> On May 15, 2008, the California Supreme Court reversed the Court of Appeals decision, ruling that lesbian and gay couples are entitled to the same fundamental right to marry as heterosexual couples as protected by the California constitution.<sup>36</sup> The court held that denying same-sex couples the right to marry, even though they had the option of entering domestic partnerships, violated both their constitutional right to marry and the equal protection guarantees in the California Constitution:

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.<sup>37</sup>

The decision explicitly struck down Proposition 22, a voter-passed initiative passed in 2000 that prohibited recognizing marriages of same-sex couples, as well as a second statute excluding same-sex couples from marriage in California. In addition, the court held that laws that classify based on sexual orientation are subject to the most demanding level of constitutional review, strict scrutiny.<sup>38</sup>

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<sup>33</sup> For more information about *In Re Marriage Cases*, see [www.nclrights.org](http://www.nclrights.org).

<sup>34</sup> A copy of Judge Kramer's opinion is available at [www.nclrights.org](http://www.nclrights.org).

<sup>35</sup> *In re Marriage Cases*, 49 Cal.Rptr.3d 675 (Cal. App. 1st Dist. 2006).

<sup>36</sup> *In re Marriage Cases*, 43 Cal.4th 757 (Cal. 2008), A copy of the Supreme Court's opinion is also available at [www.nclrights.org](http://www.nclrights.org).

<sup>37</sup> *Id.* at 820.

<sup>38</sup> *Id.* at 840-41.



## II. More Limited Forms of Relationship Recognition

### A. Civil Unions

A civil union is a separate legal status that provides all the rights and responsibilities of marriage under a different name. While civil unions are a tremendous advance in the struggle for equal treatment of same-sex couples, they fall far short of full equality. First, parties to a civil union are denied all of the 1,138 federally conferred rights, benefits, and responsibilities of marriage.<sup>39</sup> Second, it is uncertain whether other states will honor civil unions. Third, they do not provide the same dignity, security, and clarity as marriage, and they do not have the same personal, social, or spiritual meaning. The New Jersey and Vermont legislatures have set up panels to determine whether civil unions are sufficient to provide equal rights to same-sex couples. The New Jersey Civil Union Review Commission reported on February 19, 2008, that civil unions fail to provide same-sex couples with the same rights as married couples.<sup>40</sup> The Vermont Commission on Family Recognition and Protection published a report on its findings and recommendations on April 21, 2008.<sup>41</sup> Although the report did not make a specific recommendation on whether Vermont should grant gay and lesbian couples access to civil marriage, it did note that “Vermont take seriously the differences between civil marriage and civil union in terms of their practical and legal consequences for Vermont’s civil union couples and their families.”<sup>42</sup>

#### (1) Vermont

Vermont became the first state to allow same-sex couples to enter into civil unions on April 26, 2000. After the Vermont Supreme Court’s ruling in *Baker v. State*, the Vermont legislature created this separate legal status for same-sex couples. The law took effect on July 1, 2000. The law provides: “Parties to a civil union shall have all the same benefits, protections and responsibilities under law, whether they derive from statute, administrative or court rule, policy, common law or any other source of civil law, as are granted to spouses in a marriage.”<sup>43</sup>

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<sup>39</sup> The General Accounting Office (GAO) analysis of the federal rights, benefits, and responsibility conferred on the basis of marital status can be accessed at: <http://www.gao.gov/new.items/d04353r.pdf>.

<sup>40</sup> The full report of the New Jersey Civil Union Review Commission can be found at: <http://www.nj.gov/oag/dcr/downloads/1st-InterimReport-CURC.pdf>.

<sup>41</sup> See “Report of the Vermont Commission on Family Recognition and Protection” (April 21, 2008) available here: [http://www.leg.state.vt.us/WorkGroups/FamilyCommission/VCFRP\\_Report.pdf](http://www.leg.state.vt.us/WorkGroups/FamilyCommission/VCFRP_Report.pdf). For more information about the Vermont Commission on Family Recognition and Protection, visit: <http://www.leg.state.vt.us/WorkGroups/FamilyCommission>.

<sup>42</sup> “Report of the Vermont Commission on Family Recognition and Protection” at 29.

<sup>43</sup> VT. STAT. TIT. 15 § 1204.

A civil union may be entered by any same-sex couple so long as both persons are at least 18 years old, capable of consenting, not already in a marriage or civil union, and not related by blood to any degree that would bar them from marrying. The process of obtaining a civil union license is similar to that of marriage – a license can be obtained from any town clerk, the license must then be presented to an officiant who completes the information and signs the license. The officiant then returns the certificate to the town clerk’s office to be officially registered.

## **(2) Connecticut**

On April 20, 2005, Connecticut became the second state to pass legislation permitting same-sex couples to enter into civil unions. The law took effect October 1, 2005, and affords those legally joined in a civil union all the same benefits, protections, and responsibilities under state law that are granted to spouses in marriage in categories such as state and municipal taxation, family leave benefits, hospital visitation and notification, state public assistance benefits, and court privileges. To enter into a civil union in Connecticut, at least one partner must be a state resident.<sup>44</sup>

It is not clear how Connecticut will treat marriages between same-sex couples, civil unions, or comprehensive domestic partnerships from other states and countries. However, the Connecticut Attorney General has opined that Connecticut would recognize out-of-state civil unions and domestic partnerships similar in scope to Connecticut civil union but will not recognize marriages between same-sex couples.<sup>45</sup>

## **(3) New Jersey**

New Jersey has allowed same-sex couples to enter into civil unions since February 19, 2007. In *Lewis v. Harris*, 188 N.J. 415 (N.J. 2006), the New Jersey Supreme Court held that committed same-sex couples in New Jersey must be given the same rights as different-sex married couples. The court allowed the legislature to determine whether to allow same-sex couples to marry or to create a separate status such as civil unions. On December 21, 2006, New Jersey passed legislation allowing same-sex couples to enter into civil unions.<sup>46</sup> The law provides parties to a civil union with the same benefits, protections, and responsibilities as spouses in a marriage.<sup>47</sup>

Before it passed civil union legislation, New Jersey allowed same-sex couples to enter into domestic partnerships, which had fewer rights and responsibilities than civil unions. Beginning July 10, 2004, New Jersey recognized domestic partnerships between same-

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<sup>44</sup> CONN. GEN. STAT. § 46b-38aa, et seq.

<sup>45</sup> Op. Conn. Att’y Gen., Sept. 20, 2005, *available at* <http://www.ct.gov/AG/cwp/view.asp?A=1770&Q=302438>.

<sup>46</sup> N.J. STAT. ANN. § 37:1-28, et al.

<sup>47</sup> N.J. STAT. ANN. § 37:1-31.

sex couples and different-sex couples over the age of 62.<sup>48</sup> After February 19, 2007, only couples over the age of 62 may enter into domestic partnerships.<sup>49</sup> All couples who registered as domestic partners before February 19, 2007, and who had not terminated their partnerships, retained their domestic partnership status.

#### **(4) New Hampshire**

New Hampshire has recognized civil unions between same-sex couples since January 1, 2008.<sup>50</sup> New Hampshire became the fourth state to recognize civil unions when Governor John Lynch signed the bill into law on May 31, 2007. Parties to a civil union have all same rights, obligations, and responsibilities as married couples under New Hampshire law.<sup>51</sup> Same-sex couples who have entered into civil unions or marriages outside of New Hampshire are treated as parties to a civil union under New Hampshire law.<sup>52</sup>

### **B. Domestic Partnership**

The term domestic partnership refers to a committed relationship between two people who are not married. Domestic partnerships are recognized by dozens of cities and a handful of states. In some places, registration is limited to same-sex couples; in others places, it is open to both same-sex and different-sex couples. The rights and responsibilities accorded to persons in a domestic partnership vary, sometimes dramatically, from jurisdiction to jurisdiction. For instance, California and Oregon provide domestic partners with nearly all of the rights and responsibilities of married couples under state law, while other jurisdictions provide much more limited rights. None of these domestic partnership laws provide any federal rights or benefits.

#### **(1) California**

Since January 1, 2005, registered domestic partners in California have nearly all of the rights and responsibilities given to married spouses under California state law.<sup>53</sup> Similar to civil union statutes, California Family Code section 297.5(a) provides that registered domestic partners have the same rights, protections, benefits, responsibilities, obligations, and duties as married spouses. Prior to the expansion of the domestic

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<sup>48</sup> N.J. STAT. ANN. § 26:8A-1, et seq.

<sup>49</sup> N.J. STAT. ANN. § 26:8A-4.1.

<sup>50</sup> N.H. REV. STAT. § 457-A:1, et seq.

<sup>51</sup> N.H. REV. STAT. § 457-A:6.

<sup>52</sup> N.H. REV. STAT. § 457-A:8.

<sup>53</sup> A.B. 205, 2003-2004 Reg. Sess. (Cal. 2003). For more information about A.B. 205 and related legislation, see [www.nclrights.org](http://www.nclrights.org).

partnership law in 2005, California recognized a more limited form of domestic partnership beginning January 1, 2000.<sup>54</sup>

## **(2) Maine**

On April 28, 2004, Maine's Governor John Baldacci signed the state's first domestic partnership law into effect.<sup>55</sup> The law took effect on July 30, 2004. The law provides a handful of rights to domestic partners, including the right to intestate succession, the right to elect against the will, the right to make funeral and burial arrangements, the right to receive victim's compensation, and preferential status to be named as guardian and/or conservator in the event of the death of a domestic partner.

## **(3) District of Columbia**

The District of Columbia allows both same-sex and different-sex couples to register as domestic partners with many rights and responsibilities, including inheritance, hospital visitation and medical decision-making, joint tax filing, alimony, domestic partner benefits for D.C. employees, and many property rights.<sup>56</sup> Although the domestic partnership law went into effect on June 11, 1992, Congress prevented the District of Columbia from spending funds to implement the law until 2002. Originally, the law only granted a few rights to domestic partners, but these rights have expanded considerably in the last few years.<sup>57</sup>

## **(4) Oregon**

Since February 1, 2008, Oregon provides domestic partnerships with nearly all the rights and responsibilities of marriage under state law.<sup>58</sup> Domestic partnerships in Oregon are only available to same-sex couples. Oregon's H.B. 2007, establishing domestic partnerships, was signed into law on May 9, 2007. This law was supposed to go into effect on January 1, 2008, but the law was suspended temporarily while a federal district judge considered a challenge to the law by the Alliance Defense Fund, a group opposed to LGBT rights.<sup>59</sup> Anti-LGBT groups had failed to gather enough signatures to place on the ballot a referendum repealing the domestic partnership law on the ballot, and they challenged the state's process for disqualifying petition

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<sup>54</sup> A.B. 26, 1999-2000 Reg. Sess. (Cal. 1999).

<sup>55</sup> ME. STAT. TIT. 15 § 321.

<sup>56</sup> D.C. STAT. § 32-702, et seq.

<sup>57</sup> See, e.g., D.C. Law 16-79, 16th Council, 2006 Reg. Sess. (D.C. 2006).

<sup>58</sup> H.B. 2007, 74th Leg., 2007 Reg. Sess. (Or. 2007).

<sup>59</sup> See *Lemons v. Bradbury*, No.CV-07-1782-MO, 2008 WL 336823 (D.Or. Feb 01, 2008).

signatures. On February 1, 2008 the judge determined that the state's process was valid and allowed the domestic partnership law to go into effect.<sup>60</sup>

## **(5) Washington**

As of July 22, 2007, domestic partnerships are available in Washington to same-sex couples as well as different-sex couples over the age of 62.<sup>61</sup> The Washington domestic partnership bill was signed into law on April 21, 2007. Washington domestic partnerships provide only limited protections, including hospital visitation rights, inheritance rights, and the ability to authorize medical decisions for one's partner.

### **C. Reciprocal Beneficiaries**

#### **(1) Hawaii**

Hawaii is the only state that recognizes "reciprocal beneficiaries." While the Hawaii marriage lawsuit was pending, the Hawaii legislature passed the Reciprocal Beneficiaries law in 1997.<sup>62</sup> The Reciprocal Beneficiaries law allows any two single adults who are not eligible to marry under state law<sup>63</sup> to have access to approximately 60 state-conferred rights, benefits, and responsibilities of marriage, including the right to sue for wrongful death, the right to inherit intestate, the right to hospital visitation, the right to make medical decisions, and some property rights.

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<sup>60</sup> *Id.*, aff'd, --- F.3d ----, 2008 WL 3522418 (9th Cir. August 14, 2008).

<sup>61</sup> REV. CODE WASH. § 26.60.010, et seq.

<sup>62</sup> HAW. REV. STAT. § 572C-6.

<sup>63</sup> HAW. REV. STAT. § 572C-4.