

The Legal Status of Same-Sex Marriage and Unions in the World and in the USA

Lynn D. Wardle

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A. *Legal Allowance of Same-Sex Unions Globally (of 193 Nations / UN):*²

Same-Sex Marriage Generally Legalized in up to Eighteen (18) of 193 Nations (less than 10%)*:

The Netherlands (2001), Belgium (2003), Canada (2005), Spain (2005), *South Africa** (2006), Norway (2009), Sweden (2009), Portugal (2010), Iceland (2010), Argentina (2010), Denmark (2012), Uruguay (2013), New Zealand (2013), France (2013), *Brazil** (2013?), UK (England/Wales) (effective summer 2014); Scotland (effective c. late 2014); Luxembourg (effective January 2015).³ (Also in some particular sub-jurisdictions, municipalities, or states in, e.g., Mexico and the USA)

Same-Sex Non-Marital Unions Mostly Equivalent to Marriage Allowed in Twelve* (12) Additional Nations (of 193 nations) plus some SSM nations and some sub-units of some nations:

Ecuador, Finland, Germany, Slovenia, Andorra, Switzerland, Australia, Austria, Ireland, Liechtenstein, Luxembourg, & Croatia.⁴ *Plus Brazil (uniaio estavel* unregistered cohabitation); minor jurisdictions: Gibraltar, Isle of Man, Jersey. *Pending: Costa Rica,*

Same-Sex Partnerships (Formal but Not Equal to Marriage) Allowed in at least Four (4) More Nations: *See, e.g.,* Colombia, Czech Republic, Hungary, Israel.

¹ Compare *Defining Marriage: State Defense of Marriage Laws and Same-Sex Marriage*, available at <http://www.ncsl.org/research/human-services/same-sex-marriage-overview.aspx> (seen 16 June 2016); Jennifer C. Pizer & Sheila James Kuehl, *Same-Sex Couples and Marriage, Model Legislation for Allowing Same-Sex Couples to Marry or All Couples to Form a Civil Union* (The Williams Institute August 2012); *Status of Same-Sex Relationships Nationwide*, Lambda Legal, August 19, 2011, available at <http://www.lambdalegal.org/publications/articles/nationwide-status-same-sex-relationships.html> (last viewed 20 August 2011); See Lambda Legal, *Recognition of Same-Sex Couples Worldwide, Recognition of Same-Sex Couples in the United States*, September 12, 2011, available at http://data.lambdalegal.org/publications/downloads/fs_recognition-of-same-sex-couples-worldwide.pdf (last seen 9 July 2012); Bea Verschraegen, *The Impact of European Family law on National Legal Systems*, Vol. 2, Central and European Countries after and before the Accession at 63, 63-65 (__ ed. 2011).

² See *Gay Marriage Around the World*, Pew Research, Dec. 19, 2013, at <http://www.pewforum.org/2013/12/19/gay-marriage-around-the-world-2013/#allow> (seen 140703) The Pew Forum on Religion & Public Life, *Gay Marriage Around the World*, Feb. 8, 2013, available at <http://www.pewforum.org/Gay-Marriage-and-Homosexuality/Gay-Marriage-Around-the-World-2013.aspx> (seen 130214). The British House of Commons voted to legalize SSM on Feb. 5, 2013. It is expected to pass another vote in the House of Commons and in the House of Lords by Summer 2013. *Id.*

³ Categorization of some nations is difficult. For example, South Africa legalized “Civil Unions” which can be created by way of “marriage” and can be called “marriages,” but the Marriage Act was not amended and still only allows male-female marriage. See Civil Union Act 17 of 2006(s. Afr.) (available at: <http://www.info.gov.za/view/DownloadFileAction?id=67843>). Likewise, same-sex marriage is permitted in Brazil in 10 of 26 states, and since May 2013 civil registrars were directed to perform same-sex marriages, but the legal status of that directive of the National Judicial Council is debatable. SSM is allowed in sub-jurisdictions of some other nations (e.g., thirteen states in the USA, Mexico (City). (# = law passed but not yet in effect). See *uxembourg approves same sex marriage*, Yahoo! News (18 June 2014), available at <http://news.yahoo.com/luxembourg-approves-same-sex-marriage-203510157.html> (seen 18 June 2014).

⁴ See note re: SSM/CUs in South Africa and Brazil. Some nations with SSM also allow SSCUs. Some local jurisdictions as Greenland & in some states or provinces in Mexico, the USA, & Venezuela allow SSCUs.

B. Legal Rejection of Same-Sex Marriage Globally:

At Least Forty-seven (47) of 193 Sovereign Nations (24%) Have Constitutional Provisions Explicitly or Implicitly Defining Marriage as Union of Man and Woman:

Constitutions of: Armenia (art. 32), Azerbaijan (art. 34), Belarus (art. 32), Bolivia (art. 63), Brazil (art. 226), Bulgaria (art. 46), Burkina Faso (art. 23), Burundi (art. 29), Cambodia (art. 45), China (art. 49), Columbia (art. 42), Croatia (art. 61??, Dec. 2013) Cuba (art. 43), Democratic Republic of Congo (art. 40), Ecuador (art. 38), Eritrea (art. 22), Ethiopia (art. 34), Gambia (art. 27), Honduras (art. 112), Hungary (art. M, Constitution/Basic Law of Hungary (25 April 2011) (*effective Jan. 2012*); Japan (art. 24), Latvia (art. 110 - Dec. 2005), Lithuania (art. 31), Malawi (art. 22), Moldova (art. 48), Mongolia (art. 16), Montenegro (art. 71), Namibia (art. 14), Nicaragua (art. 72), (Panama (art. 58), Paraguay (arts. 49, 51, 52), Peru (art. 5), Poland (art. 18), Romania (art. 44), Rwanda (art. 26), Serbia (art. 62), Seychelles (art. 32), Somalia (art. 2.7, draft Constitution 2012); Sudan (art. 15), Suriname (art. 35), Swaziland Constitution (art. 27), Tajikistan (art. 33), Turkmenistan (art. 25), Uganda (art. 31), Ukraine (ark. 51), Venezuela (art. 77), Vietnam (art. 64). (At least 12 of these imply dual-gender (“men and women have/may”).) *See also* Hong Kong Bill of Rights of 1991 (art. 19); Spain (art. 32, but 2005 SSM law upheld Nov 2012). *Examples:* *Article 24, Constitution of Japan:* “Marriage shall be based only on the mutual consent of both sexes and it shall be maintained through mutual cooperation with the equal rights of husband and wife as a basis. . . .” *Article 110, Constitution of Latvia:* “The State shall protect and support marriage—a union between a man and a woman, . . .” *Article 42, Constitution of Columbia:* the family “is formed . . . by the free decision of a man and woman to contract matrimony” *Uganda Constitution, Art. 31:* “Marriage between persons of the same sex is prohibited.” *Nigeria passed a law criminalizing SSM on May 30, 2013* - (<http://jurist.org/paperchase/2013/05/nigeria-house-approves-bill-criminalizing-same-sex-marriage.php>) . Homosexual conduct is illegal in 87 globally - 37 in Africa + 50 other nations globally. (<http://www.globalequality.org/component/content/article/166> (130601).

C. Legal Allowance of Same-Sex Unions in the USA in Twenty (20) of 50 states + DC + 8/564 Indian Tribes):

Same-Sex Marriage Legal in Twenty (20) USA States (+ DC + many states w/ SSM / crt orders)

Massachusetts (judicial decree 2004), Connecticut (judicial order 2008), Iowa (judicial order 2009), Vermont (2009), New Hampshire (2010), New York (2011), Maine (ballot 2012), Maryland (ballot 2012), Washington (ballot 2012), Delaware (2013), California (July 2013, judicial order not appealed), Minnesota (2013), Rhode Island (2013), New Jersey (judicial order 2013); Hawaii (2013); New Mexico (judicial order 2013); Illinois (law June 2014); Oregon (judicial decree June 2014), Pennsylvania (judicial decree 2014), Indiana (judicial order 2014). – plus the District of Columbia (2010), +8 (of 566) U.S. Indian tribes - the Coquille, Suquamish, Odawa Tribes, Santa Ysabel, and Pokagon Band of Potawatomi Tribe, Colville, Cheyenne and Arapaho Tribes of Oklahoma, and Leech Lake Tribal Council.⁵ (In states where same-sex marriage exists because of judicial decree, the legitimacy of such rule may be debatable.)

Pending Litigation/Appeals: Challenges to laws barring SSM are pending in almost every state with such laws.

Same-Sex Civil Unions Equivalent to Marriage Legal in Three (3) Additional US States:

Oregon (2008), Nevada (2009), & Colorado (2013) (+ some states with SSM).⁶

Same-Sex Unions Registry & Specific, Limited Benefits in One (1) Additional US Jurisdiction

Wisconsin. *Some States with SSM or CU also allows limited benefit relations – HI (1997).*

⁵ Voters approved SSM in 3 states in 2012 (ME, MD, & WA). In at least 6 of the states where SSM now is legal it was the result of judicial decree or initiative (MA, IA, CA, CN, NJ, NM & poss VT).⁵ (# = law passed but not yet in effect). A trial court in New Jersey ruled that it was unconstitutional for the state to not permit same-sex marriage; the state supreme court denied a stay pending appeal on grounds that the state was unlikely to prevail on appeal, and then the Governor withdrew the state's appeal. *See Lynn Wardle, Mich. St. L. Rev. Apps*

⁶ Some states – including HI, IL, NV & DC – also allow heterosexual couples to enter CUs also. Washington offers both SSM and SSCU until June 2014 when it will be available only to persons over 62. Several states that had civil unions now have SSMs instead. VT, CN, NH, RI & DE; some have both. See NCSL, *Defining Marriage: Defense of Marriage Acts and Same-Sex Marriage Laws*, July 26, 2013, at <http://www.ncsl.org/issues-research/human-services/same-sex-marriage-overview.aspx> (seen 130802).

D. Legal Rejection of Same-Sex Unions in the USA:

Same-Sex Marriage Prohibited by State Constitutional Amendment (SMA) in Thirty-one (31) States (60%) (including CA - disregarded by court, and HI where amendment gave legislative control): Alabama, Alaska, Arizona, Arkansas, Colorado, Florida, Georgia, Hawaii,# Idaho, Kentucky,* Kansas, Louisiana, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, North Carolina, North Dakota, Ohio,* Oklahoma,* Oregon, South Carolina, South Dakota, Tennessee, Texas,* Utah,* Virginia,* and Wisconsin.⁷ (* pending appeal or order invalidating SSM ban) (#ssm approved by legislation)

Same-Sex Civil Unions Equivalent to Marriage Prohibited by State Constitutional Amendment in Twenty (20) USA States (40%): Alabama, Arkansas, Florida, Georgia, Idaho, Kansas, Kentucky, Louisiana, Michigan, Nebraska, North Carolina, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Texas, Utah, Virginia, and Wisconsin.

The total vote rejecting same-sex marriage in votes on the 31 state marriage amendments combined was **over 61%** (as of November 2012).

Same-Sex Marriage Prohibited Without Constitutional Amendment (by statute or common law) in Thirteen (13) Additional States.

= law is not yet in full effect.

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⁷ SMA passed in May 2012 in NC (61%); SMA rejected for first time by voters in MN in 2012; initiatives or referenda legalizing SSM approved by voters in ME, MD, and WA in 2012.). Voters have constitutionally banned SSM in 31 states by adopting SMAs. (In AZ voters first rejected SMA in 2006 then approved SMA in 2008; in ME voters first rejected SSM in 2009 then approved in 2012). In 17 of the 26 “blue states” that voted for Obama in 2012 only male-female marriage was then legal: Hawaii, California, Oregon, Nevada, Colorado, New Mexico, Minnesota, Wisconsin, Illinois, Michigan, Ohio, Pennsylvania, Rhode Island, New Jersey, Delaware, Virginia, and Florida. Bill to legalize SSM in IL fails 130530. In 2008 voters in California passed Prop 8 a constitutional amendment barring SSM but it was ruled unconstitutional in a dubious by a federal district court opinion. State officials refused to appeal and the Supreme Court of the United States ruled that the sponsors of Prop 8 lacked standing to appeal. *Hollingsworth v. Perry*, 5700 U.S. __ (2013).