

# Marriage Law Digest

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**KNIGHT V. SUPERIOR COURT  
CO48378  
California Court of Appeal, Third  
Appellate District  
April 4, 2005**

Plaintiffs challenged Assembly Bill 205, which provided nearly all the benefits of marriage to registered domestic partners. They alleged that AB205 unconstitutionally amends Proposition 22, an initiative measure defining marriage as the union of a man and a woman.

The court ruled that the plain language of Proposition 22 affects only the validity of same-sex marriage and out-of-state recognition of such marriages. Thus, only an Assembly bill that actually changed the definition of marriage would constitute an amendment of Proposition 22. However, the court concluded that domestic partnerships are not marriages and Proposition 22 doesn't apply to them.

The court notes as support for its position that domestic partnerships existed when Proposition 22 was on the ballot so the proposition needed to mention domestic partnerships to affect them. In addition, the court said that ballot arguments included language arguing that Proposition 22 won't take away any rights. Finally, the court noted that domestic partners do not receive some of the benefits of marriage.

The court further held that the legislature could conclude that the domestic partnership law is beneficial to society in the same way that marriage is—they both encourage commitment.

**HENNEFELD V. TOWNSHIP OF  
MONTCLAIR  
Docket No. 007682-2004  
Tax Court of New Jersey  
March 15, 2005**

A disabled veteran living with a same-sex partner sought the full exemption from property tax that would be accorded a veteran living with a spouse. The couple relied on their Canadian marriage, Vermont civil union and New Jersey domestic partnership to argue for this result.

The tax court held that the Canadian marriage can't be recognized in New Jersey because the state legislature had specifically enacted contrary policy in its domestic partnership statute.

Also, since the Full Faith and Credit Clause does not require one state to accept the legislation of another state if it contradicts the recognizing state's policy, New Jersey was not required to recognize the plaintiffs Vermont civil union.

The New Jersey domestic partnership, however, provides the basis for the plaintiffs to receive the exemption since the domestic partnership law was meant to provide access to benefits offered by law to married couples.

**LI V. OREGON  
SC S51612  
Supreme Court of Oregon  
April 14, 2005**

In 2004, the Multnomah County Board of

Commissioners authorized county clerks to issue marriage licenses to same-sex couples. The state Registrar refused to register the licenses based on an attorney general opinion noting that current law defined marriage as the union of a man and a woman. Plaintiffs, same-sex couples and advocacy groups, sued to have the licenses registered and/or to establish that the marriage law was unconstitutional. The trial court held that the Oregon Constitution required the state to offer the benefits of marriage to same-sex couples and that state law required registration of the previously-issued licenses. While this decision was being appealed, the people of Oregon enacted an amendment to the state constitution defining marriage as the union of a man and a woman.

In its decision, the supreme court first held that because the marriage statutes used gender-specific language, state law did not permit issuance of marriage licenses to same-sex couples. Since, the legislature has “exclusive” power over the state law of marriage, the county acted ultra vires in issuing the marriage licenses and they were thus void.

In regards to the effect of the marriage amendment, the court held that it was operative without further legislative action, so even in the absence such action, its terms were binding.

Finally, the court held that the trial court had gone beyond the pleadings (which challenged the constitutionality of the marriage law) when it created the remedy of mandating the extension of benefits to same-sex couples. The supreme court held that the issue of marriage benefits was not properly before it and would not be addressed.

**ARMIJO V. MILES**  
**B166050**  
**California Court of Appeal, Second**  
**Appellate District**  
**March 30, 2005**

Plaintiff sued a doctor and hospital for the wrongful death of her same-sex partner. The couple had not registered as domestic partners at the time of death, so the trial court held that the partner did not have standing to sue.

The court of appeals held that the 2005 domestic partnership statute allowed wrongful death actions to be retroactive and allowed these retroactive claims to be made by individuals who satisfied the criteria for recognition as domestic partners even if they did not register.

Defendant raised a number of constitutional challenges to the retroactive application of the statute (including a bill of attainder claim) which were summarily rejected by the court.

The court also held that Proposition 22 did not invalidate the law because a wrongful death action is not an “exclusive benefit of marriage.”

**LANE V. ALBANESE**  
**2005 Conn. Super. LEXIS 759**  
**Superior Court of Connecticut, Judicial**  
**District of Hartford**  
**March 18, 2005**

A same-sex couple from Connecticut who had contracted a marriage in Massachusetts sought an annulment in Connecticut Superior Court. In deciding whether to grant the annulment, the court first addressed the question of whether it had subject matter jurisdiction.

Given Connecticut policy as described in *Rosengarten v. Downes*, the court lacked subject matter jurisdiction because: (1) the marriage was contracted in violation of Massachusetts law which prohibits same-sex marriages between non-residents, (2) the relief sought was not a matter of “family relations” as described in the jurisdictional statute, and (3) the general rule of recognition included an exception for recognizing marriages that would violate the public policy of the recognizing state.

**DAVENPORT V. LITTLE-BOWSER**  
**Record No. 041180**  
**Virginia Supreme Court**  
**April 12, 2005**

Three same-sex couples sought new Virginia birth certificates with their names listed as parents in recognition of out-of-state joint adoptions.

The majority held that the birth certificate statute plainly allows a listing for “parents” without definition and that it did not contain a special restriction on who can be listed in case of adoption. Additionally, the statute does not specify a particular form (such as one with lines for “father” and “mother”) for a birth certificate in case of adoption. Thus, the Registrar of Vital Statistics was required to issue new birth certificates to reflect the adoptions.

Plaintiffs had also raised constitutional claims, but the court saw no need to address them because of the resolution of the statutory question.

The dissent argued that the General Assembly never intended to authorize the Registrar to list two same-sex parents on a birth certificate. Thus, the court should have deferred to the executive interpretation of the statute. The dissent also believed that the

grant of mandamus was no appropriate here because the remedy sought was not clearly an entitlement of the plaintiffs.