

# Marriage Law Digest

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## NOVEMBER 2009 CASE SUMMARIES

William C. Duncan, Editor

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### DAVIS V. DAVIS

D24407

New York Appellate Division, Second  
Department

November 17, 2009

<http://www.courts.state.ny.us/courts/ad2/caledar/webcal/decisions/2009/D24407.pdf>

In a divorce action, the wife complained that her husband “refused to engage in social interactions with the wife by refusing to celebrate with her or acknowledge Valentine’s Day, Christmas, Thanksgiving, and the wife’s birthday, by refusing to eat meals together, by refusing to attend family functions or accompany the wife to movies, shopping, restaurants, and church services, by leaving her once at a hospital emergency room, by removing the wife’s belongings from the marital bedroom, and by otherwise ignoring her.” She alleged that this constituted “abandonment” a ground for divorce in New York.

The court held that nothing in the statutes or court precedent treats an “absence of social interaction” as abandonment. Only refusal to engage in sexual intimacy meets that criteria.

### GODFREY V. SPANO

No. 147

New York Court of Appeals

November 19, 2009

<http://www.nycourts.gov/ctapps/decisions/2009/nov09/147-148opn09.pdf>

Taxpayers challenged state and local government officials’ orders to recognize out-of-state same-sex marriages. The court dismissed the challenge, holding that the

taxpayers did not have standing to challenge the policy since no money was expended pursuant to the challenged policies (since the relevant government bodies already extended public employment benefits to partners of public employees). The court also held the state statutes allow the president of the Civil Service Commission to define "spouse" and does not limit benefits to spouses so the president of the Commission has great discretion.

A concurrence argued that the general rule of comity is that a marriage valid where contracted is valid everywhere and there is not specific statute prohibiting the recognition of same-sex marriages. Thus, the policy of recognizing the marriages should have been held to be valid. This opinion also argued that the natural law exception for out-of-state recognition does not apply to same-sex marriages because New York law already recognizes same-sex couples in many ways. Rather, the concurrence believes, New York "judicial decisions and statutes express a public policy of acceptance."

### RECENT LAW REVIEW ARTICLES AND BOOKS

Mark D. White, *Same-Sex Marriage: The Irrelevance of the Economic Approach to Law* (October 29, 2009) at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1499996](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1499996). Argues that an economic analysis of the law of marriage is irrelevant to the same-sex marriage issue because

redefining marriage is a matter of principle where "trade-offs" are not appropriate.

Mark Strasser, *You Take the Embryos But I Get the House (and the Business): Recent Trends in Awards Involving Embryos Upon Divorce* 57 BUFFALO LAW REVIEW 1159 (2009). Describes cases involving disputes over frozen embryos during divorce and argues that courts ought to enforce agreements between spouses about distribution of the embryos.

Suzanne B. Goldberg, *Marriage as Monopoly: History, Tradition, Incrementalism, and the Marriage/Civil Union Distinction* 41 CONNECTICUT LAW REVIEW 1397 (2009). Argues that because the state has a monopoly over legal recognition of marriage there is no place for history and tradition to have a role to play in the constitutional analysis of marriage laws.

Shannon Gilreath, *Not a Moral Issue: Same-Sex Marriage and Religious Liberty* 2010 ILLINOIS LAW REVIEW 101. Argues that the importance of "group-based" equality for gays and lesbians should outweigh the individual interests of religious liberty.

Steve Black, *Same-Sex Marriage and Taxes* 22 BYU JOURNAL OF PUBLIC LAW 327 (2008). Argues that same-sex couples should receive the same tax treatment as married opposite-sex couples.

### NEWS STORIES

*French Lesbian Wins Adoption Case* BBC NEWS (Nov. 10, 2009) at <http://news.bbc.co.uk/2/hi/europe/8353558.stm>. Describes a local court decision allowing a woman in a same-sex couple to adopt over the objections of the government.

Tresa Baldas, *Babysitter's Custody Win May Be Short-Lived*, LAW.COM, Nov. 30, 2009 at <http://www.law.com/jsp/law/LawArticleFriendly.jsp?id=1202435853910>. Reporting on a trial court decision granting child custody to a babysitter with whom a child allegedly lived all his life.

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