

California Proposition 8 (2008)

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Proposition 8 is titled **Eliminates Right of Same-Sex Couples to Marry**. Technically, the phrase "Eliminates Right of Same–Sex Couples to Marry" is the "Official Title" only in the sense that it is the title prepared by the Attorney General for use in the Official Voter Information Guide; it is not the title of Proposition 8 itself. Section 1 of Proposition 8 itself provides the official title of the proposed constitutional amendment. That section, entitled "Title," reads as follows: "This measure shall be known and may be cited as the 'California Marriage Protection Act.'". It is an initiative measure on the 2008 California General Election ballot. If passed, the proposition would change the California Constitution to eliminate the right of same-sex couples to marry in California. A new section would be added stating "only marriage between a man and a woman is valid or recognized in California."

The measure was submitted for the ballot by petitioners with the title "California Marriage Protection Act." The title and summary were revised by Attorney General Jerry Brown to more "accurately reflect the measure." The Superior Court of California ruled in favor of these revisions, stating, "The title and summary is not false or misleading because it states that Proposition 8 would 'eliminate the right of same-sex couples to marry' in California. The California Supreme Court unequivocally held that same-sex couples have a constitutional right to marry under the California Constitution."¹

Background

Until 1977, California did not explicitly define marriage as being between a man and a woman, but court decisions, and some statutes, dating from both statehood and the 1872 codification of the civil law, assumed as much. In 1977, the legislature amended Civil Code section 4100 (predecessor to what is now codified at Family Code section 300) to read that marriage is "a personal relation arising out of a civil contract between a man and a woman". In 2000, voters passed with 61% of the vote, ballot initiative Proposition 22, which changed the California Family Code to formally define marriage in California between a man and a woman. However, other laws have been passed by the legislature (since 1999) which recognize domestic partnerships and afford them some of the rights of marriage.

A number of developments arose in the wake of Mayor Gavin Newsom's 2004 decision to perform same sex marriages in San Francisco. The 3,995 marriages were annulled by the California Supreme Court, but San Francisco began a legal challenge that was consolidated with other cases as *In re Marriage Cases*. On May 15, 2008 the California Supreme Court, by a vote of 4–3, ruled that the statute enacted by Proposition 22 and other statutes that limit marriage to a relationship between a man and a woman violated the equal protection clause of the California Constitution. It also held that individuals of the same sex have the right to marry under the California Constitution. The court

subsequently refused to issue a stay of its order. As of June 17, 2008, marriage between individuals of the same sex is currently valid or recognized in the state.

While the case was under way, Governor Arnold Schwarzenegger vetoed two legislative bills approving same-sex marriage. Anticipating that either the courts or the legislature might overturn Proposition 22, opponents of same-sex marriages introduced several attempts to place a constitutional amendment before voters that would prohibit same-sex marriages—and in some cases, domestic partnerships as well. Prior to 2008, none had made it to the ballot.

Initiatives

In late 2007 and 2008, at least four different groups sponsored new ballot initiatives for a constitutional amendment prohibiting same-sex marriages. The one that did obtain enough signatures, is the "California Marriage Protection Act" (officially titled the "Limit on Marriage" Constitutional Amendment by the California Attorney General), sponsored by ProtectMarriage.com. During the initiative process, what is now Proposition 8 had been assigned the number 07-0068. Among the individual sponsors is Gail Knight, the widow of Pete Knight, who sponsored Proposition 22. A rival proposal, the "Right to Protect Marriage Initiative", sponsored by the organization voteyesmarriage.com, was unable to obtain enough signatures, which the organization claimed was due to inability to raise funds.

Proposed amendment

If passed, the amendment would override the ruling in *In re Marriage Cases* that struck down both the 1977 law and Proposition 22. The Constitution, as amended, would add a new section (Section 7.5) to Article I, placing it between the state Equal Protection clause and nondiscrimination in business and the professions. This new section would read:

Only marriage between a man and a woman is valid or recognized in California.

According to Joan Hollinger, a professor at the University of California, Berkeley, Boalt Hall School of Law, "Constitutional scholars agree that the amendment cannot be effective retroactively."

Ballot summary language

In November 2007, California Attorney General Jerry Brown prepared a title and summary for the signature-gathering petition that reads:

LIMIT ON MARRIAGE. CONSTITUTIONAL AMENDMENT. Amends the California Constitution to provide that only marriage between a man and a woman is valid or recognized in California. Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local government: The measure would have no fiscal effect on state or local

governments. This is because there would be no change to the manner in which marriages are currently recognized by the state.

After the measure qualified for the general election the Attorney General revised the descriptions of Prop. 8 for the upcoming Voter Information Guide. On July 22, the California Secretary of State made the proposed ballot information available for public review. The new ballot label (condensed version of the title and summary) reads:

ELIMINATES RIGHT OF SAME-SEX COUPLES TO MARRY. INITIATIVE CONSTITUTIONAL AMENDMENT. Changes the California Constitution to eliminate the right of same-sex couples to marry in California. Provides that only marriage between a man and a woman is valid or recognized in California. Fiscal Impact: Over next few years, potential revenue loss, mainly sales taxes, totaling in the several tens of millions of dollars, to state and local governments. In the long run, likely little fiscal impact on state and local governments. ^[24]

Through a spokesperson, the Attorney General explained that "the change was necessary because of the dramatic turn of events that have taken place since the petitions were circulated: namely that the California Supreme Court legalized same-sex marriage and thousands of gay couples have since wed." The text of the actual proposed amendment has not changed.

Proposition 8 supporters immediately mounted a legal challenge to the changes, contending that Attorney General Brown had inserted "inflammatory" language that would "unduly prejudice voters against" Proposition 8. Opponents to the measure declared their support for the language, while representatives of the Attorney General vouched for the neutrality and accuracy of the language. On August 8, 2008, a judge turned down this legal challenge, affirming the new title and summary. Proponents of Prop. 8 immediately appealed to the decision. The Court of Appeal denied their petition the same day, and they did not seek review by the Supreme Court of California.

Legal challenges

- On June 4, 2008, the California Supreme Court denied a petition to stay its order on Proposition 22.
- On July 16, 2008, the California Supreme Court dismissed a motion for pre-election review of Proposition 8 which would determine whether it was a constitutional amendment or constitutional revision. Were the court to have found Proposition 8 to be a constitutional revision, it would have been removed from the ballot. The question of whether Proposition 8 is a constitutional amendment or constitutional revision remains unresolved.
- On August 8, 2008, the Superior Court turned down a legal challenge aimed at reversing the renaming and rephrasing of the official Proposition 8 language.

Proponents and opponents

By Election Day, the measure's opponents and supporters expect to spend about \$40 million. Volunteers on both sides will have spent thousands of hours getting their messages across to the state's 16.2 million registered voters. More than 9,500 people from all 50 states and the District of Columbia have contributed nearly \$22 million to support or oppose the measure, while institutions have kicked in another \$7.8 million.

Proponents

The ProtectMarriage.com organization sponsored the initiative that placed Proposition 8 on the ballot and continues to support the referendum. Other significant supporters include Republican State Senator Tom McClintock and 20 other Republican State Senators and Assemblymembers.

Republican presidential nominee and U.S. Senator John McCain released the following statement of support for the proposed constitutional amendment:

I support the efforts of the people of California to recognize marriage as a unique institution between a man and a woman [...]. I do not believe judges should be making these decisions."

Former Speaker of the House Newt Gingrich has released a video in which he emphasizes his support to "defend and protect marriage" and to "overrule the judges" by "vot[ing] yes on Proposition 8."

Religious organizations which support Proposition 8 include the Roman Catholic Church, Knights of Columbus ^[40], Union of Orthodox Jewish Congregations of America, The Church of Jesus Christ of Latter-day Saints, a group of Evangelical Christians led by Pastor Jim Garlow (head of Skyline Church in San Diego) and Pastor Miles McPherson (former San Diego Charger and head of the Rock Church in San Diego), American Family Association, Focus on the Family and the National Organization for Marriage.

The California Catholic Conference has released a statement in support of the proposition. The Catholic Bishops of California have stated that "by drawing on the revelation of Scripture, the wisdom of Tradition, the experience and insights of holy men and women as well as on what can be known by reason alone," they have decided "that marriage is the ideal relationship between a man and a woman for the purpose of procreation and the continuation of the human race."

The Church of Jesus Christ of Latter-day Saints, or Mormon Church, has publicly supported the Proposition and encouraged their membership to support it, by asking for money donations and volunteer time. The Church's political stance includes "The Church does not: Endorse, promote or oppose political parties, candidates or platforms", but reserves "the right as an institution to address, in a nonpartisan way, issues that it believes have significant community or moral consequences or that directly affect the interests of the Church."

Opponents

Equality for All is the lead organization opposed to Proposition 8. They also run the NoOnProp8.com campaign. Republican California Governor Arnold Schwarzenegger stated that although he has opposed and has vetoed legislative bills that would legalize same sex marriage in California, he is opposed to the initiative and other attempts to amend the state's constitution. Schwarzenegger released the following statement on May 15, 2008 regarding the ruling:

I respect the Court's decision and as Governor, I will uphold its ruling. Also, as I have said in the past, I will not support an amendment to the constitution that would overturn this state Supreme Court ruling.

Democratic presidential nominee and U.S. Senator Barack Obama said he supports extending "fully equal rights and benefits to same-sex couples under both state and federal law....And that is why I oppose the divisive and discriminatory efforts to amend the California Constitution, and similar efforts to amend the U.S. Constitution or those of other states," as has the U.S. House Speaker and California Representative (8th District) Nancy Pelosi.. Both Dianne Feinstein and Barbara Boxer, the two senators representing California, have voiced their opposition to Proposition 8, as have the mayors of San Francisco, Los Angeles, and San Diego: Gavin Newsom, Antonio Villaraigosa, and Jerry Sanders respectively.

The state's four largest newspapers have editorialized against Proposition 8: the *Los Angeles Times* the *San Francisco Chronicle*, the *San Diego Union-Tribune*, and *The Orange County Register*. Other papers to have editorialized in opposition include the *San Jose Mercury News*, and *The New York Times*.

Google has announced their official corporate opposition to Proposition 8, viewing the question "fundamentally as an issue of equality."

All six Episcopal diocesan bishops in California jointly issued a statement opposing Proposition 8 on September 10, 2008..

Southern California's largest collection of rabbis voted overwhelmingly to oppose Proposition 8. Leaders of the Board of Rabbis of Southern California -- with representatives from the Reconstructionist, Reform, Conservative and Orthodox movements -- said they wanted to protect the civil rights of gay and lesbian couples. The resolution did not address the sanctity of gay marriage. Instead, it urged a no vote on Proposition 8 so that same-sex couples can continue to marry under civil law.

Jewish groups in the San Francisco Bay Area came together to present an event against Proposition 8. The September 17, 2008 event was presented by the Jewish Community Relations Council and the LGBT Alliance of the Jewish Community Federations of San Francisco, the Peninsula, Marin, and Sonoma Counties; the Jewish Community Federation of the Greater East Bay; and the Progressive Jewish Alliance. Other Jewish

groups who sponsored the event and who oppose Proposition 8 include Kol Tzedek, Congregation Beth Am, Congregation Emanu-El, Keshet, Congregation Sha'ar Zahav, Kulanu, Nehirim, Congregation Shomrei Torah, Congregation Sherith Israel, Jewish Mosaic, National Council of Jewish Women, Jews for Marriage Equality, No on Prop 8 - Equality for All campaign, and the ACLU of Northern California.

Both Steven Spielberg and Brad Pitt have donated \$100,000 to campaigns opposing Proposition 8.

Opinion polls

A simple majority of votes cast is required to enact a constitutional amendment.

Date of opinion poll	Conducted by	Sample size	In favor	Against	Undecided
6 October 2008 ^{[81][82]}	SurveyUSA	670	47%	42%	10%
25 September 2008 ^{[83][84]}	SurveyUSA	661	44%	49%	8%
24 September 2008 ^[85]	Public Policy Institute of California	1,157	41%	55%	4%
16 September 2008 ^[86]	The Field Poll	830	38%	55%	7%
27 August 2008 ^[87]	Public Policy Institute of California	1,047	40%	54%	6%
17 July 2008 ^[88]	The Field Poll	672	42%	51%	7%
28 May 2008 ^[89]	The Field Poll	1,052	42%	51%	7%

23 May 2008 ^[90]	Los Angeles Times/KTLA	834	54%	35%	11%
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Reliability of polling data

There is some debate about the extent to which opinion polls accurately reflect the electorate's views on same-sex marriage, due in part to social desirability bias (i.e. voters telling pollsters what they think the pollsters want to hear). The magnitude of such an effect is hotly contested.

In the 2000 primary election, Proposition 22 passed with a margin eight points greater than predicted by one polling organization. The Field Poll immediately prior to the election showed 53% of likely voters in favor. Other polls conducted in the same month showed 57% of voters supported the measure. The actual vote in favor was 61.4% of votes cast (of all ballots, 58.6% voted yes, 36.9% voted no, and 4.5% did not vote).

An analysis by Patrick J. Egan of New York University suggests that such gaps have been falling steadily over recent years. Seven of the states that voted on marriage bans in 2006 have polling data available. In those, the average gap between polled support for the measure and the final outcome was under one percentage point.