

Marriage Rights in California

An Educator's Guide

On May 15, 2008, the California Supreme Court made history by ruling in *In Re Marriage Cases* that the California Constitution requires the state to provide equal access to marriage for same-sex couples.

On November 4, 2008, California voters passed Proposition 8, which amended the California Constitution to eliminate the right of same-sex couples to marry.

Proposition 8 is now being challenged in the California Supreme Court.

This Educator's Guide provides:

- Tips for discussing the history of same-sex marriage in California
- Key terminology related to the California Supreme Court's decision
- A step-by-step explanation of the case and what it means
- An overview of Proposition 8
- Links to additional resources about marriage rights in California



How to discuss marriage rights in the classroom

Use your best teaching strategies for any discussion that you believe will be controversial (whether with your students, your administration, or with parents).

- Present background information that will help clarify the discussion; if this is part of a longer assignment, encourage students to explore information from a variety of sources about the issue. (See this resource for background information and additional links.)
- If students raise the issue, provide a safe and respectful environment for discussion.
- Insist on respectful discussion rather than personal attacks. Respond firmly to anti-LGBTQ, racist, and/or anti-religious remarks.
- Provide a safe forum for every student to explore their own thoughts on the topic—whether in discussion or in writing.
- Avoid taking sides, no matter how strongly you feel about the issue.
- Document what happened.

Be prepared for personal questions or challenges directed at you. You may be asked what you think about the case (see above), or you may be asked whether you are LGBT.

If you are LGBT:

Before you come out to your students, think carefully about how this may affect your teaching relationships. We can't recommend when or how you should come out, but here are some considerations to keep in mind:

- Are you out to any of your colleagues? If so, do you know who your strongest allies are? Are you out to any administrators? What level of support do you feel you have from them?
- Are there other out LGBT faculty/staff at your school? What has their experience been?
- What level of support do you feel you will have from your union?
- Do you have tenure?
- What level of support do you feel you will have from the community?

If you do decide to come out to your students:

- Seek support from colleagues (even just to share your excitement!).
- Avoid answering questions that would be inappropriate for *any* teacher to answer (such as about your sex life). Ask yourself: would it be appropriate for a straight colleague to answer this? If not, don't answer it!
- Document what happened.

Coming out as an ally:

- If students ask you about a colleague whom you know to be gay, do *not* out your colleague unless they have given you explicit permission to do so!
- Don't out yourself as straight right away. When an ally allows people to wonder, however briefly, whether or not they are gay, they show that they are comfortable enough with LGBT people that they aren't afraid to be mistakenly identified as LGBT.
- Document what happened.



- **Constitutional Amendment:** A change to the Constitution. In California, a constitutional amendment can be passed through a voter *initiative*.
- **Constitutional Revision:** A change to the Constitution that alters the basic meaning of one or more existing parts of the Constitution. In California, unlike a *constitutional amendment*, a *constitutional revision* must be passed by the legislature before it can be voted on as an *initiative*.
- **DOMA:** This federal legislation (“The Defense of Marriage Act”) became law in 1996, and allows states to choose whether or not they will recognize marriages from other states or countries between same-sex couples. It also denies same-sex couples access to all 1,138 federal rights & responsibilities available through marriage.
- **Domestic Partnership:** This is the system of recognizing same-sex relationships that has been available in California (and several other states) for the past several years. Over time, domestic partnership in California has expanded to include virtually all of the rights and responsibilities that California grants to a marriage. The California Supreme Court’s decision found that only offering domestic partnership to same-sex couples and denying access to marriage was a “separate and unequal” system that violates the California Constitution. (Similar systems exist in other states, but may be called other things, such as “Civil Unions” or “Reciprocal Beneficiaries.” The rights and responsibilities associated with those systems vary from state to state.)
- **Equal Protection Clause:** The Equal Protection Clause of the Constitution requires the government to justify its actions when it treats people unequally. The courts will analyze unequal treatment differently depending on the basis for unequal treatment, using either *strict scrutiny* or *rational basis* review. The likelihood of a law being struck down as unconstitutional depends on the level of review the court applies to the case, with strict scrutiny being the hardest for the government to overcome.
- **Fundamental Right:** A fundamental right is one that cannot be taken away unjustifiably from anyone. When the government interferes with a fundamental right, the government must have been acting to serve a *compelling* governmental interest, and using means that were *necessary* to serve that interest. Marriage is traditionally viewed as a fundamental right. *See also “Strict Scrutiny.”*
- **Initiative:** A proposed law that is put directly before voters, bypassing the legislature. In California, voter initiatives are referred to as “Propositions.”
- **Rational Basis:** This is the level of review used by the Massachusetts Supreme Court in its 2003 marriage equality case. In essence, the court gives the government the benefit of the doubt—if there is any “rational basis” for the unequal treatment, the law will be upheld. It is rare for a court to apply this level of review and then invalidate a law, like the Massachusetts Supreme Court did. *See also Equal Protection Clause.*
- **Separation of Powers:** One of the main claims of those opposing the *In Re Marriage* ruling is that the court overstepped its authority, and that establishing the definition of marriage is a legislative power. This is a “separation of powers” argument, that each branch of the government has a specific role to play, and that no branch of government should cross the line into the powers of another branch. The majority’s position in this case is that the Court’s job is to determine the constitutionality of laws passed in California, whether passed by initiative or by the legislature, and therefore it was the Court’s responsibility to decide whether or not the ban on access to marriage for same-sex couples was constitutional.
- **Strict Scrutiny:** This level of review is so high that it almost always results in the law being overturned. To survive judicial review, the law must be “necessary” to serve a “compelling” state interest. This is the level of review used by the California Supreme Court in the marriage case, both because it found that a fundamental right (marriage) was being affected, and because it found that discrimination on the basis of sexual orientation is a “suspect classification” like sex, race, and religion. *See also Equal Protection Clause and Fundamental Right.*
- **Suspect Classification:** In California, any unequal treatment by the government on the basis of race, sex, or religion has been viewed as a “suspect classification”—meaning that the validity of the government’s unequal treatment based on this classification is inherently suspicious. *In Re Marriage* adds sexual orientation to the list of suspect classifications in California. *See also Equal Protection Clause and Strict Scrutiny.*

Background Information: Access to Marriage for Same-Sex Couples

United States (federal)

Because of the Defense of Marriage Act (DOMA), no federal rights and responsibilities associated with marriage are available to same-sex couples. This includes 1,138 rights and responsibilities, such as social security, veterans' benefits, immigration, and filing joint income taxes.

DOMA also says that if a state (or country) enacts marriage equality for same-sex couples, other states are not required to recognize those marriages. Otherwise, applicable federal laws would usually require states to recognize marriages from other states. If a married same-sex couple moves to another state for work, or is injured in another state on vacation, for example, that state may refuse to recognize their marriage and the couple will have lost all of the rights associated with their marriage just by crossing state lines. This also can impact child custody, spousal support judgments, hospital visitation, and so on.

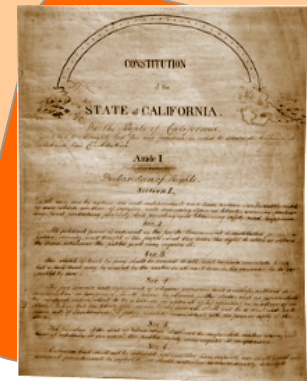
Massachusetts

In 2003, the Massachusetts Supreme Judicial Court ruled that the ban on access to marriage for same-sex couples violated the state constitution. Marriages between same-sex couples began in May of 2004 in Massachusetts. However, until August 2008, Massachusetts law did not authorize the state to perform marriages that would not be valid in the couple's home state. Therefore, same-sex couples had to be Massachusetts residents to marry there (or residents of Rhode Island or New Mexico). Now same-sex couples from any state can marry in Massachusetts. More than 10,000 couples have married in Massachusetts since 2004. Efforts to amend the Massachusetts Constitution (which in that state requires action by the legislature as well as the people) to eliminate the right of same-sex couples to marry have failed.

California

On May 15, 2008, the California Supreme Court ruled that California law banning same-sex couples from marrying violated the California Constitution. Some groups attempted to stay the ruling, but those requests were denied. As of June 16, 2008 at 5:01 p.m. (when the Court's ruling took effect), same-sex couples were able to marry in California. There is no residency requirement for California, so same-sex couples from across the country were eligible to marry in California. Between June 16 and November 4, 2008, over 18,000 same-sex couples married in California.

Proposition 8 was an initiative on the November 2008 ballot that amended the California Constitution to eliminate the right of same-sex couples to marry in California. Legal groups have challenged Proposition 8, saying it was a constitutional revision, not a constitutional amendment, and that therefore it was not passed properly. The California Supreme Court has agreed to hear this challenge, and is expected to rule on the validity of Proposition 8 in 2009.



Connecticut

On October 10, 2008, the Connecticut Supreme Court ruled that it was unconstitutional under the state constitution to deny same-sex couples the right to marry. On November 12, 2008, same-sex couples began to marry in Connecticut.

Other states

No other state requires access to marriage for same-sex couples. A lawsuit is currently pending in Iowa. Several states offer civil unions, domestic partnership, or some other (more limited) relationship recognition to same-sex couples. Until the California Supreme Court's decision, California only had domestic partnership, which conferred most of the rights and responsibilities of marriage on registered same-sex couples. Each state varies widely as to how many rights and responsibilities are associated with a domestic partnership, civil union, or other limited form of relationship recognition for same-sex couples. The following states have some form of relationship recognition for same-sex couples that is separate from marriage: New Jersey (2007); Vermont (2001); New Hampshire (2008); Oregon (2008); Washington (2008); Hawaii (1997); Maine (2004); and Washington, D.C. (2002).

States where the state supreme court ruled that denying access to marriage to same-sex couples did not violate the state's constitution: Washington (2006); New York (2006); Arizona (2003); Maryland (2007).

Twenty-nine states have constitutional amendments banning access to marriage for same-sex couples: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Florida, Georgia, Kansas, Kentucky, Idaho, Louisiana, Michigan, Missouri, Mississippi, Montana, Nebraska, North Dakota, Nevada, Ohio, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, and Wisconsin. In addition, all of the above states rely on the federal DOMA to refuse to recognize marriages between same-sex couples that were entered into in other states.

All other states except for Connecticut, Massachusetts, New York, New Jersey, Rhode Island, and New Mexico have statutes that restrict marriage to opposite sex couples. Although New York will not marry same-sex couples, the governor has ordered the state to recognize marriages from other states between same-sex couples.

Other countries

Civil unions, domestic partnership, or other relationship recognition is available in Australia, Brazil (2004), Croatia (2003), Denmark (1989), Finland, France (1998), Germany (2001), Greenland (1989), Hungary, Iceland, Israel (1994), Italy, Nepal (2008), New Zealand (2005), Norway, Slovenia (2004), Sweden, Switzerland, and the United Kingdom (2005).

Marriage for same-sex couples is available in the Netherlands (2001), Belgium (2003), Canada (2005), Spain (2005), and South Africa (2006).



What happened in California?

- In response to fears that California might soon have to recognize out of state marriages between same-sex couples, Proposition 22 was put on the ballot in 2000. It passed with 62% of the vote. Prop 22 changed California law by stating that California only recognized marriages between opposite sex couples. Because Prop 22 was a ballot initiative, it could only be repealed by another ballot initiative or by the California Supreme Court.



- On February 14, 2004, San Francisco mayor Gavin Newsom extended access to marriage to same-sex couples. More than 4,000 couples from around the world were married in San Francisco between Feb. 14 and March 11 (when the California Supreme Court stopped any further marriages from taking place). Pioneering lesbian activists Del Martin and Phyllis Lyon had been together for over 50 years, and were the first same-sex couple to be married. In August of 2004, the California Supreme Court ruled that the City and County of San Francisco did not have the authority (under the California Constitution) to issue marriage licenses to same-sex couples. (*Lockyer v. City and County of San Francisco*). Additionally, the court voided all of the marriages. However, the court emphasized that its decision did not in any way indicate its view about the validity of the state's current restrictions on marriage equality.
- In March 2004, a group of couples and organizations filed a lawsuit (*In re Marriage Cases*), claiming that California's restrictions on marriage were unconstitutional under the California Constitution. In April 2005, the trial court ruled that excluding same-sex couples from marriage violates the California Constitution by discriminating on the basis of sex and by violating the fundamental right to marry. In November 2006, the Court of Appeals overturned this decision, ruling that California may continue to bar same-sex couples from marriage. The California Supreme Court granted review of the case in December 2006.
- In 2005 and again in 2007, the California legislature passed legislation that would have extended access to marriage to same-sex couples, but both bills were vetoed by Governor Schwarzenegger, who said the issue was for the courts to handle.
- The California Supreme Court heard oral argument in the case on March 4, 2008, and ruled on May 15, 2008 that barring same-sex couples from marriage was unconstitutional under the California Constitution.
- Some groups attempted to delay the start of same-sex marriages in California, arguing that the Court should wait for the voters to decide whether or not to amend the state constitution by approving Proposition 8 in November. The Court rejected that request.
- The Court's ruling took effect at 5:01 p.m. on June 16, 2008. Some counties began marrying same-sex couples at 5:01 p.m., while others waited until the next morning. At 5:01 on June 16, 2008, Del Martin and Phyllis Lyon were again the first couple married in San Francisco. Del Martin passed away six weeks later.



- California does not have a residency requirement for marriage, so couples from all over the world were able to get marriage licenses and marry in California. However, it is likely that those marriages will not be recognized elsewhere in this country (except in Connecticut, Massachusetts and New York) without changes to existing legislation through ballot initiatives, legislative efforts, or court rulings in other states.
- Between June 16 and November 4, 2008, over 18,000 same-sex couples were married in California. The validity of those marriages is in question, although the Governor and the Attorney General have both stated that they believe those marriages should remain valid.
- The California Supreme Court's ruling did not effect what religious institutions would be required to do—the ruling was only about the ability to get a civil marriage license from the state of California. Religious groups are free to recognize or refuse to recognize marriages within their religion as they see fit.

What was the case about?

- In California, domestic partnerships have been available to same-sex couples since 2000. As of 2005, same-sex couples who registered for a domestic partnership had access to virtually all of the rights and responsibilities granted by California to married couples.
- Therefore, this case looked only at the question of whether having a system that recognized same-sex relationships through domestic partnership while recognizing opposite-sex relationships through marriage was constitutional. Was the word “marriage” (and the respect and dignity that comes with it in our society) something that was constitutionally significant?



What did the court say?

In a 4-3 decision, the California Supreme Court ruled that denying marriage to same-sex couples while extending it to opposite-sex couples violates the California Constitution.

In its ruling, the court emphasized two legal points:

- The right to marry is a fundamental right, and the nature of that right is the right to choose the person you will marry. In describing the scope of that fundamental right, the court referenced its 1948 case, *Perez v. Sharp*, which struck down California's ban on interracial marriage.
 - **Note:** California was the first state to say that banning interracial marriage was unconstitutional. In the 1967 case, *Loving v. Virginia*, the United States Supreme Court said that a ban on interracial marriage violated the United States Constitution. In 1958, polls showed that 96% of Americans were opposed to interracial marriage. The first time polls showed that a majority of Americans approved of interracial marriage was in 1997.
- Discrimination on the basis of sexual orientation is subject to *strict scrutiny* under the *Equal Protection Clause* of the California Constitution—the same level of judicial scrutiny as discrimination on the basis of race, sex, or religion. For discrimination by the government to survive strict scrutiny, it must be necessary to serve a compelling interest of the state. The court ruled that the state's interest in preserving the traditional definition of marriage as between opposite-sex couples is not a compelling interest, and also highlighted the harm to same-sex couples and their families when they are denied access to marriage.

Note:

The California Supreme Court is the first high court in the United States to say that *strict scrutiny* is the appropriate level of review for sexual orientation discrimination claims. This will be an important ruling for *all* claims of discrimination by the government on the basis of sexual orientation—not just with respect to marriage.



What happens next?

People who disagreed with the Court's ruling had only one option to prevent marriages between same-sex couples in California: amend the California Constitution. Proposition 8 was an initiative on the November 2008 ballot that would amend the constitution to do this. If the ballot initiative had failed, marriages between same-sex couples would have continued. However, Proposition 8 passed, 52% to 48%. (In 2000, Proposition 22 had passed with 62% of the vote.) Because Proposition 8 passed, same-sex couples can no longer marry in California.

At this point, it is not clear what will happen to the marriages of over 18,000 couples who married in California between June 15 and November 4, 2008. Attorney General Jerry Brown and Governor Schwarzenegger have both said that they will fight to keep those marriages valid, because the Proposition did not say that it was retroactive. During the campaign, supporters of Proposition 8 also said they would not seek to invalidate the marriages.

After the election, several organizations and couples filed suit with the California Supreme Court, arguing that Proposition 8 is unconstitutional, because it is a constitutional revision that changes the meaning of the Constitution, rather than a constitutional amendment. The California Supreme Court has agreed to hear their case—a decision is likely in 2009.

One of the questions the Court will answer in its ruling is the fate of the 18,000 marriages (if they decide that Proposition 8 is valid). Supporters of Proposition 8 have asked the Court to invalidate those marriages. The Attorney General has not only asked the Court to allow the marriages to stand, but he has also argued that Proposition 8 is in fact unconstitutional.

In any case, couples who married in California (like those married in Massachusetts and Connecticut) will still not have access to any of the rights or responsibilities granted to married couples by the federal government, such as immigration, social security benefits, veterans' benefits, recognition of their marriage in other states, or the right to file joint income taxes.



Quotes from the California Supreme Court's decision

From the majority opinion, written by Chief Justice Ronald George:

- "...under this state's Constitution, the constitutionally based right to marry... [includes], most fundamentally, the opportunity of an individual to establish—with the person with whom the individual has chosen to share his or her life—an *officially recognized and protected family* possessing mutual rights and responsibilities and entitled to the same respect and dignity accorded a union traditionally designated as marriage." (Page 6-7)
- "Furthermore, in contrast to earlier times, our state now recognizes that an individual's capacity to establish a loving and long-term committed relationship with another person and responsibly to care for and raise children does not depend upon the individual's sexual orientation, and, more generally, that an individual's sexual orientation—like a person's race or gender—does not constitute a legitimate basis upon which to deny or withhold legal rights." (Page 7)
- "We therefore conclude that in view of the substance and significance of the fundamental right to form a family relationship, the California Constitution properly must be interpreted to guarantee this basic civil right to all Californians, whether gay or heterosexual, and to same-sex couples as well as to opposite-sex couples." (Page 7)
- "...we conclude that strict scrutiny...is applicable here because (1) the statutes in question properly must be understood as classifying or discriminating on the basis of sexual orientation, a characteristic that we conclude represents—like gender, race, and religion—a constitutionally suspect basis upon which to impose differential treatment, and (2) the differential treatment at issue impinges upon a same-sex couple's fundamental interest in having their family relationship accorded the same respect and dignity enjoyed by an opposite-sex couple." (Page 10)
- "...the exclusion of same-sex couples from the designation of marriage clearly is not *necessary* in order to afford full protection to all of the rights and benefits that currently are enjoyed by married opposite-sex couples; permitting same-sex couples access to the designation of marriage will not deprive opposite-sex couples of any rights and will not alter the legal framework of the institution of marriage, because same-sex couples who choose to marry will be subject to the same obligations and duties that currently are imposed on married opposite-sex couples." (Page 11)
- "...retaining the traditional definition of marriage and affording same-sex couples only a separate and differently named family relationship will, as a realistic matter, impose appreciable harm on same-sex couples and their children, because denying such couples access to the familiar and highly favored designation of marriage is likely to cast doubt on whether the official family relationship of same-sex couples enjoys dignity equal to that of opposite-sex couples." (Page 11)
- "...because of the widespread disparagement that gay individuals historically have faced, it is all the more probable that excluding same-sex couples from the legal institution of marriage is likely to be viewed as reflecting an official view that their committed relationships are of lesser stature than the comparable relationships of opposite-sex couples." (Page 11)



- "...retaining the designation of marriage exclusively for opposite-sex couples and providing only a separate and distinct designation for same-sex couples may well have the effect of perpetuating a more general premise—now emphatically rejected by this state—that gay individuals and same-sex couples are in some respects 'second-class citizens' who may, under the law, be treated differently from, and less favorably than, heterosexual individuals or opposite-sex couples." (Page 11-12)
- "In *Perez v. Sharp*, ... this court's 1948 decision holding that the California statutory provisions prohibiting interracial marriage were unconstitutional—the court did not characterize the constitutional right that the plaintiffs in that case sought to obtain as "a right to interracial marriage" and did not dismiss the plaintiff's constitutional challenge on the ground that such marriages never had been permitted in California. Instead, the *Perez* decision focused on the *substance* of the constitutional right at issue—that is, the importance to an individual of the freedom "to join in marriage *with the person of one's choice*"—in determining whether the statute impinged upon the plaintiff's fundamental constitutional right...For this reason, in evaluating the constitutional issue before us, we consider it appropriate to direct our focus to the meaning and substance of the constitutional right to marry, and to avoid the potentially misleading implications inherent in analyzing the issue in terms of "same-sex marriage." (Page 51-53)
- The *Perez* decision continued: "*Marriage is thus something more than a civil contract subject to regulation by the state; it is a fundamental right of free men.*" (Page 54)
- "The family is the basic unit of our society, the center of the personal affections that ennoble and enrich human life. It channels biological drives that might otherwise become socially destructive; it ensures the care and education of children in a stable environment; it establishes continuity from one generation to another; it nurtures and develops the individual initiative that distinguishes a free people. Since the family is the core of our society, the law seeks to foster and preserve marriage." (Page 55)
- "If civil marriage were an institution whose *only* role was to serve the interests of society, it reasonably could be asserted that the state should have full authority to decide whether to establish or abolish the institution of marriage...In recognizing, however, that the right to marry is a basic, *constitutionally protected* civil right—a fundamental right of free men and women...the governing California cases establish that this right embodies fundamental interests of an individual that are protected from abrogation or elimination by the state." (Page 62-63)
- "It is true, of course, that as an historical matter in this state marriage always has been limited to a union between a man and a woman. Tradition alone, however, generally has not been viewed as a sufficient justification for perpetuating, without examination, the restriction or denial of a fundamental *constitutional* right." (Page 66)

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- "...in the present context our recognition that the constitutional right to marry applies to same-sex couples as well as to opposite-sex couples does not diminish any other person's constitutional rights. Opposite-sex couples will continue to enjoy precisely the same constitutional rights they traditionally have possessed, unimpaired by our recognition that this basic civil right is applicable, as well, to gay individuals and same-sex couples." (Page 72)
 - "Whether or not the name 'marriage,' in the abstract, is considered a core element of the state constitutional right to marry, one of the core elements of this fundamental right is the right of same-sex couples to have their official family relationship accorded the same dignity, respect, and stature as that accorded to all other officially recognized family relationships. The current statutes—by drawing a distinction between the name assigned to the family relationship available to opposite-sex couples and the name assigned to the family relationship available to same-sex couples, and by reserving the historic and highly respected designation of marriage exclusively to opposite-sex couples while offering same-sex couples only the new and unfamiliar designation of domestic partnership—pose a serious risk of denying the official family relationship of same-sex couples the equal dignity and respect that is a core element of the constitutional right to marry." (Page 81)
 - "Because a person's sexual orientation is so integral an aspect of one's identity, it is not appropriate to require a person to repudiate or change his or her sexual orientation in order to avoid discriminatory treatment." (Page 97-98)
 - "Because sexual orientation, like gender, race, or religion, is a characteristic that frequently has been the basis for biased and improperly stereotypical treatment and that generally bears no relation to an individual's ability to perform or contribute to society, it is appropriate for courts to evaluate with great care and with considerable skepticism and statute that embodies such a classification. The strict scrutiny standard therefore is applicable to statutes that impose differential treatment on the basis of sexual orientation." (Page 101)
 - "...the provisions of the California Constitution itself constitute the ultimate expression of the people's will, and...the fundamental rights embodied within that Constitution for the protection of all persons represent restraints that the people themselves have imposed upon the statutory enactments that may be adopted either by their elected representatives or by the voters through the initiative process. As the United States Supreme Court explained...'The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's rights to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections.'" (Page 113)
 - "Although the understanding of marriage as limited to a union of a man and a woman is undeniably the predominant one, if we have learned anything from the significant evolution in the prevailing societal views and official policies toward members of minority races and toward women over the past half-century, it is that even the most familiar and generally accepted of social practices and traditions often mask an unfairness and inequality that frequently is not recognized or appreciated by those not directly harmed by those practices or traditions." (Page 115)



From the concurring opinion, written by Justice Kennard:

- “In holding today that the right to marry guaranteed by the state Constitution may not be withheld from anyone on the ground of sexual orientation, this court discharges its gravest and most important responsibility under our constitutional form of government. There is a reason why the words “Equal Justice Under Law” are inscribed above the entrance to the courthouse of the United States Supreme Court. Both the federal and the state Constitutions guarantee to all the “equal protection of the laws,” and it is the particular responsibility of the judiciary to enforce those guarantees. The architects of our federal and state Constitutions understood that widespread and deeply rooted prejudices may lead majoritarian institutions to deny fundamental freedoms to unpopular minority groups, and that the most effective remedy for this form of oppression is an independent judiciary charged with the solemn responsibility to interpret and enforce the constitutional provisions guaranteeing fundamental freedoms and equal protection.” (Page 4-5)
- “Whether an unconstitutional denial of a fundamental right has occurred is not a matter to be decided by the executive or legislative branch, or by popular vote, but is instead an issue of constitutional law for resolution by the judicial branch of the government. Indeed, this court’s decision in *Lockyer* made it clear that the courts alone must decide whether excluding individuals from marriage because of sexual orientation can be reconciled with our state Constitution’s equal protection guarantee. The court today discharges its constitutional obligation by resolving that issue.” (Page 5)

“The freedom to marry has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free men.”

— United States Supreme Court
Chief Justice Earl Warren
writing for the majority,
Loving v. Virginia, 1967



Links to additional resources

- **CA Supreme Court opinion (May 15, 2008)**
www.nclrights.org/site/DocServer/Marriage_Ruling.pdf?docID=3001
- **CA Supreme Court press release (May 15, 2008)**
[www.nclrights.org/site/DocServer/Supreme Court Press Release 051508.pdf?docID=3021](http://www.nclrights.org/site/DocServer/Supreme_Court_Press_Release_051508.pdf?docID=3021)
- **NCLR marriage page**
www.nclrights.org/site/PageServer?pagename=issue_marriage_ca
[www.nclrights.org/site/DocServer/Joint Advisory - Final.pdf?docID=3241](http://www.nclrights.org/site/DocServer/Joint_Advisory_-_Final.pdf?docID=3241)
- **Perez v. Sharp**
http://en.wikipedia.org/wiki/Perez_v._Sharp
<http://lmaw.org/freedom/docs/CA-Perez.pdf>
- **Loving v. Virginia**
www.freetomtomarry.org/get_informed/marriage_basics/history/loving_v_virginia.php
<http://writ.news.findlaw.com/grossman/20070612.html>
- **News stories about the Court's May 15 Ruling**
 - Time:**
www.time.com/time/nation/article/0,8599,1807109,00.html
www.time.com/time/nation/article/0,8599,1849259,00.html?xid=rss-nation
 - The New York Times:**
www.nytimes.com/2008/05/18/us/18gay.html?ref=us
www.nytimes.com/2008/05/16/us/16scene.html?_r=1&fta=y&oref=slogin
www.nytimes.com/2008/05/16/us/16marriage.html?fta=y
www.nytimes.com/2008/05/17/us/17marriage.html?fta=y
- **Polling data**
 - Field Poll:**
May 2008: www.field.com/fieldpollonline/subscribers/RIs2268.pdf
September 2008: www.field.com/fieldpollonline/subscribers/RIs2287.pdf
October 2008: www.field.com/fieldpollonline/subscribers/RIs2292.pdf
 - Gallup Poll:**
May 2008 (same-sex marriage):
www.gallup.com/poll/107305/Ruling-SameSex-Marriage-Bucks-Majority-View.aspx
2007 (interracial marriage):
www.gallup.com/poll/28417/Most-Americans-Approve-Interracial-Marriages.aspx
- **Profiles of plaintiffs**
 - www.nclrights.org/site/PageServer?pagename=issue_marriage_ca_couples
 - www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2008/06/16/MNPQ11A3VF.DTL&tsp=1



■ Proposition 8

Overview:

- CA Voter Guide: www.voterguide.sos.ca.gov/title-sum/prop8-title-sum.htm
- [http://ballotpedia.org/wiki/index.php?title=California_Proposition_8_\(2008\)](http://ballotpedia.org/wiki/index.php?title=California_Proposition_8_(2008))
- [http://en.wikipedia.org/wiki/California_Proposition_8_\(2008\)](http://en.wikipedia.org/wiki/California_Proposition_8_(2008))

Proponents of Proposition 8:

- Protect Marriage: www.protectmarriage.com/

Opponents of Proposition 8:

- No on Prop 8: www.noonprop8.com/
- Los Angeles Times editorial: www.latimes.com/news/printedition/opinion/la-ed-prop8-2-2008nov02,0,7071124.story
- Barack Obama: www.advocate.com/news_detail_ektid56867.asp
- Gov. Schwarzenegger: www.latimes.com/news/local/politics/cal/la-me-protest10-2008nov10,0,4429002.story

■ Post-Election Analysis of Proposition 8

www.time.com/time/nation/article/0,8599,1857980,00.html?iid=sphere-inline-bottom
www.time.com/time/nation/article/0,8599,1856872,00.html
www.impre.com/laopinion/opinion/editorial/2008/11/6/a-california--embarrassment-91362-1.html
 Keith Olberman: www.youtube.com/watch?v=cVUecPhQPqY
 Jonathan Stewart and Mike Huckabee:
www.thedailyshow.com/video/index.jhtml?videoId=213349&title=mike-huckabee-pt.-2
www.sfgate.com/cgi-bin/article.cgi?file=/c/a/2008/11/16/MN5R1435T4.DTL

■ *Strauss v. Horton* (Litigation regarding validity of Proposition 8)

From the California Supreme Court:

www.courtinfo.ca.gov/courts/supreme/highprofile/prop8.htm
www.courtinfo.ca.gov/presscenter/newsreleases/NR66-08.PDF

News Stories

www.mercurynews.com/breakingnews/ci_10986071?nclick_check=1
www.time.com/time/nation/article/0,8599,1868504,00.html?iid=sphere-inline-bottom
www.nytimes.com/2008/12/20/us/politics/20marriage.html
www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2008/12/24/MNB414U5HV.DTL

■ Information about marriage around the world

www.npr.org/news/specials/gaymarriage/map/
<http://pewforum.org/docs/?DocID=235>
www.freedomtomarry.org/get_informed/marriage_basics/history/international_progress.php

■ Links to lesson ideas about marriage rights

www.safeschoolscoalition.org/RG-gay_marriage.html
www.glsen.org/cgi-bin/iowa/educator/library/record/1411.html
www.pbs.org/newshour/extra/teachers/lessonplans/history/gaymarriage_amendments.html

■ Links to other marriage equality groups

Marriage Equality USA: www.marriageequality.org
 National Center for Lesbian Rights: www.nclrights.org
 Join the Impact: www.jointheimpact.com
 Students for Equality: www.studentsforequality.com

