

Proposition 8 and same-sex marriage in California

The contentious battle over same-sex marriage in California has followed a unique path that has taken the issue all the way to the Supreme Court.

In February 2004, the city of San Francisco challenged Proposition 22, a California law passed in 2000, that defined marriage as taking place only between a man and a woman. From February to March, the city issued marriage licenses to around 4,000 same-sex couples. In March 2004, however, the California Supreme Court ordered the city to stop issuing the licenses and voided all of the certificates that had been granted to same-sex couples over that two-month period.

In March 2005, a San Francisco Superior Court judge ruled on consolidated cases regarding same-sex marriage in California (*In re Marriage Cases*). The court held that the California ban on same-sex marriage violated the state constitution. However, the California Court of Appeals reversed this decision in October 2006 and held that the ban on same-sex marriage could stand. The California Supreme Court unanimously agreed to review the decision of the appellate court, and it took its time in doing so. When it released its controversial decision permitting same-sex marriage on May 15, 2008, the court ordered its ruling to go into effect in 30 days. Meanwhile, opponents continued to gather signatures to place a constitutional amendment banning gay marriage on the November ballot. On June 3, 2008, the California secretary of state certified ballot proposition 8, which provided simply that: "Only marriage between a man and a woman is valid or recognized in California."

Because of the court's ruling, the State of California began legally performing same-sex marriages on June 16, 2008. On November 4, 2008, voters passed Proposition 8, changing the definition of "marriage" under the state's constitution to apply to one man and one woman. During the five months between June and November, before voters banned the practice, nearly 18,000 same-sex couples had been legally married in California.

Because California is the only state in the nation to first grant and then repeal same-sex marriage, its conduct has been the subject of extensive litigation. Several lawsuits challenging Proposition 8 were filed in the wake of its narrow approval by the voters. The state supreme court ultimately ruled in *Strauss v. Horton* (2009) that the people of California had the right to amend their own constitution. The court also upheld the validity of the same-sex marriages performed in the state between June and November 2008. As a result, same-sex couples who were married during that five-month period remained legally married even though no more same-sex marriages could be performed.

Although marriage continued to be denied to same-sex couples, the state did grant a number of rights consistent with a civil union. This was accomplished through the state's Marriage Recognition and Family Protection Act, which was signed into law by Gov. Arnold Schwarzenegger on October 12, 2009. The act recognized as legally married all same-sex couples from other jurisdictions (states and nations) who were legally married before the passage of Proposition 8. Those married after passage of Prop 8 would be entitled to virtually the same benefits and legal status, but without the "marriage" label. Instead, their relationships would be referred to under state law as "domestic partnerships."

Proposition 8 was also challenged in federal court. On August 4, 2010, U.S. Federal District judge Vaughn Walker concluded in *Perry v. Schwarzenegger* (later *Perry v. Brown*) that the state's ban on same-sex marriage violated the

U.S. Constitution.

Both Schwarzenegger and his successor, Gov. Jerry Brown, declined to appeal the ruling or defend Proposition 8 any further. In response, proponents of Prop 8 appealed the ruling to the U.S. Court of Appeals for the Ninth Circuit. A three-judge panel held oral arguments in the matter on December 6, 2010. However, the panel quickly determined that it could not decide the case until it received a technical clarification about the law from the California Supreme Court. It asked that court to answer the question of whether the proposition's proponents had the legal right to appeal a court decision if the state chose not to do so. In November 2011, the California Supreme Court ruled that state law did allow Prop 8's supporters to defend it in court.

On February 7, 2012, the panel for the Ninth Circuit ruled 2–1 that Proposition 8 was unconstitutional. Under the federal appellate rules, the party who seeks an appeal can ask that the case be heard again by the Ninth Circuit Court of Appeals in an "en banc" procedure. An en banc hearing means that a larger panel of judges is convened to consider the case, usually ranging from 9 to 12 members of the circuit. However, the request for an en banc hearing was denied and supporters appealed their case to the U.S. Supreme Court.

On December 7, 2012, the Supreme Court agreed to hear the case, now called *Hollingsworth v. Perry*, on the questions of whether the law violated the equal protection provisions of the Fourteenth Amendment and whether the supporters of the law had the legal right to appeal the case in court. Oral arguments took place on March 26, 2013. On the last day of its term, June 26, 2013, the Supreme Court issued its decision. The Court ruled that a private party did not have the right to defend the proposition after the state declined to do so. In other words, that the supporters of Prop 8 did not have standing to appeal to the Ninth Circuit. The Court's decision meant that the initial federal district court ruling against Prop 8 became the controlling decision in the case and that same-sex marriages would again be legal in California.

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Further Reading

An Act to Prohibit the Importation of Slaves into any Port or Place Within the Jurisdiction of the United States, From and After the First Day of January, in the Year of our Lord One Thousand Eight Hundred and Eight. *U.S. Statutes at Large* 2 (1861): 426.; California Supreme Court. <http://www.courts.ca.gov/supremecourt.htm>; Moats, David. *Civil Wars: A Battle for Gay Marriage*. Orlando, FL: Harcourt, 2004; Supreme Court of the United States. <http://www.supremecourt.gov/>; U.S. Const. amend. XVI.; Williams, Walter and Yolanda Retter. *Gay and Lesbian Rights in the United States: A Documentary History*. Westport, CT: Greenwood, 2003.

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