



GUTTING EQUALITY OUT OF THE CONSTITUTION

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“Gay couples’ right to marry has been unconstitutionally withheld.”

The right of gay people, or anyone else for that matter, to marry the person of their choice is not a new or special right. It is a right that they have had all along, rooted deeply in the State’s constitution. The constitution is a covenant of sorts between the government and the people. A covenant is a guarantee to fulfill a promise, to protect and to provide for. The constitution is a covenant with all of its citizens, not just some. Its purpose is to create a place for everyone at the table; it is the heartthrob of a democracy. A constitution makes certain that the position of the minority is not undermined or eclipsed by the majority. It is not a random collection of laws. A constitution is an intricate system of inter-related concepts. A change in one place has dramatic rippling effects throughout.

On May 15, 2008, the California Supreme Court both acknowledged and affirmed that gay people have had the right to marry the person of their choice all along. Furthermore, it ruled that historically denying them the freedom to exercise this right has been unconstitutional. The State’s refusal to issue marriage licenses to gay couples has been an infringement on their equal protection under the law. The Supreme Court ruling did not create a new right. By banning legal barriers it cleared the way to exercising the *pre-existing* right to marry. In many respects, this decision is similar to the intent and impact of the Voting Rights Act of 1964. That act didn’t give African-Americans a new right to vote; it affirmed the right that had been denied them. It eliminated the barriers to voter registration like the recent Court decision eliminated the barriers to obtaining a marriage license.

Proposition 8 is open-heart surgery with a sword. It is specifically designed to gut out of our State’s constitution the pre-existing right of our gay neighbors, family members, and co-workers to marry the person of their choice like everyone else. Proposition 8 does not prevent a new right from being created; nor does it heroically save anything. Quite the contrary, Proposition 8 destroys. It intentionally kills the equal protection covenant in the constitution by obliterating pre-existing rights. The constitution is the bible of our civil society. You don’t cut out the part you don’t like, simply because it says that everyone is equal to you.

Courts at all levels have consistently ruled that the right to marry is an inherent freedom derived from our humanity, not from governmental decree. Marriage is among those inalienable rights that are part of “life, liberty, and the pursuit of happiness” as noted in our Declaration of Independence. However, since the State has the exclusive authority to issue marriage licenses, it is the gatekeeper into the legal institution of marriage.

The precedent for the recent California Supreme Court decision was its 1948 ruling that lifted the ban on inter-racial marriages, *Perez vs Sharp*. At that time, a marriage license was denied a couple if the two were not the same race. Until the recent ruling, a marriage license was denied a couple if the two were the same gender. The arguments in both cases were essentially the same. The supporters of lifting the bans argue that all people and all marriages are equal and should be seen as so. The opposition argues that all people and all marriages are not equal and assert that it is important to preserve the public perception of the supremacy of some and the inferiority of the others.

“Proposition 8 guts out of the State constitution the equal right to choose.”

However, under its covenant of equal protection, the State cannot deny equal access to any of its institutions, or treat people differently in them, based on race, religion, sexual orientation, gender, or any other measure of one's personage.

There are those who say that they don't like gay people's behavior, that it violates natural law. However, the right to marry is so inalienable that it cannot be revoked because of one's behavior. This article is in no way suggesting that gay couples are unnatural or criminal in any way. It is, however, a reminder to those who do believe so, that individuals who have committed the most heinous of crimes, those incarcerated for life, who have lost nearly all of their freedoms, still retain the right to marry. Marriage is that basic to our humanity.

Gay marriages and families already exist. The question is "Will we fully recognize them?"

The elephant in the room is not so much the definition of marriage as it is the definition of family. Proponents of Prop 8 believe that by controlling who can marry, they can control how families are formed. Let us be perfectly clear. The issue before the voters is essentially the same that was before the Supreme Court. The question was *not* "Should same sex couples be allowed to form families?" The question before the Court and before the voters is **"Will we acknowledge the gay families among us as 'families'?"** The families are already here. The gay couples that sued in the recent court ruling for the right to get a marriage license have been "married" for years by our common law standards. Common law acknowledges that commitment and longevity form a marriage; marriage is about content, not merely composition.

Proposition 8 doesn't stop "gay marriages." It simply sets up a segregated legal system of separate but not equal in the same way that "colored" people were allowed "their own" whatever which never received full societal support. Proposition 8 is the old worn out

"There goes the neighborhood!" There is nothing so different about these families that they deserve to be treated differently. They are dealing with all of the same issues that families deal with such as mortgages, health care, retirement, education, economic security, taxes, aging parents, etc. If families are the cornerstone of society, then why would we reject any family, or prevent anyone from having one because they are gay? What greater family value could be expressed than the desire to have your union recognized as a marriage? Denying the existence of these families merely rids us of the responsibility to care for our neighbors as ourselves.

Gay families want nothing more than to be a family. What if the roles were reversed and someone tried to gut you out of the constitution so that your marriage was no longer a marriage and your family was no longer a family? The lack of fairness would be clear if it were happening to you. Times are tough these days; everyone is struggling and concerned. Gay families are just as vulnerable as anyone else's family. As a society, we are all in this boat together. To toss some of our families out of the boat into treacherous waters to fend for themselves is not fair. Asking them to survive on domestic partnership is no more than throwing them a buoy that may prevent them from drowning but will never carry them to the safe shores with everybody else. To take away from our neighbors, other tax paying citizens, the right to be a family in order to "save the family" is both a contradiction and an injustice.

"Proposition 8 masquerades as Proposition 22 and fabricates fears."

Proposition 8 attempts to reinstitute Proposition 22 from the 2000 election which passed but was recently declared unconstitutional by the California Supreme Court, a conservative Court primarily comprised of Republican appointees. This recent marriage case was the most deliberated case in the Court's history. There was nothing "activist" about their decision.

The only activists are the ones ignorant of the law who are taking the law into their own hands, pushing their own agenda as “the will of the people.”

Minus legal legs to stand on, the Proposition 8 campaign is fabricating scenarios such as churches losing their tax exemptions or curriculum being forced on children in schools. These are bold lies conjured up to scare the public by bearing false witness against their neighbors.

Proposition 8 empowers the government to dictate the pool of individuals from which one must choose as a marriage partner. We don't need the government controlling our lives and legislating our spousal choices. Choosing whom to marry is perhaps one of the most important and sacred decisions most of us will ever make in our lives. A marriage license should only empower the government to publicly record and institutionally protect that sacred decision, not to make it.

It should also be noted that the California legislature based on merit, before the Court's decision and without any pressure from the Court, passed legislation in 2005 and 2007 to lift the bans that restricted marriage from all of its citizens. Both times these bipartisan agreements were vetoed by Governor Arnold Schwarzenegger who was awaiting this Supreme Court decision. In 2007, the Governor received an unprecedented number of court briefs from numerous sources including the counties of San Diego, Orange, and Los Angeles, encouraging him to let the legislation stand. Now that the Court has ruled, the Governor upholds its decision. Like many Californians, the Governor does not support gay marriage, yet he staunchly opposes Proposition 8, as should everyone else, for the following reason:

“Taking away constitutional rights is un-American”

Regardless of opinions about marriage, Proposition 8 is a dangerous legal tactic that weakens the stability of our democracy. Amending the constitution is a grave matter. Historically amendments expand rights; amendments shouldn't take them away. A constitutional amendment is not just an ordinary law. The legislature cannot amend the constitution without a “super majority,” a 66% vote. However, the public can do so through the initiative process with a simple 51% majority.

Placing the constitutional rights and freedoms of minorities on a ballot for popular vote is recklessly irresponsible. Would the right for women to vote have passed a public litmus test? Would racial integration have won any popularity contests? Proposition 8 sets a most dangerous precedent of impulsively crystallizing current public opinion into a constitutional amendment. What's next? Do we carve out the right of American born children to a public education because their parents are undocumented? Do we ban Muslims from running for public office or teaching our children in schools? Do we take away the right to a fair trial when the public is convinced of someone's guilt based on the media? Exactly what's next? We are governed by the rule of law. Let us not destabilize our society by changing our constitution to fit the public sentiment of the day which, as evidenced by opinion polls, is always changing. Taking away constitutional rights, for whatever reason, is simply un-American. Vote No on Proposition 8.

***Even if you don't support gay couples marrying,
VOTE NO ON PROPOSITION 8***