



Equality California | eqca.org

AJR 85 FACT SHEET Updated 7.16.04

for questions - email: email@eqca.org

phone: 916.554.7681

AJR 85: Resolution Opposing A Federal Marriage Discrimination Amendment

Joint Authors: Leno, Goldberg, Kehoe, Laird

Principal Co-Author: Senator Kuehl

Co-Authors: Senators Figueroa, Karnette, Romero, Sher, and Vasconcellos; Assembly Members Berg, Calderon, Canciamilla, Chan, Chavez, Chu, Cohn, Corbett, Diaz, Dutra, Dymally, Firebaugh, Frommer, Hancock, Jerome Horton, Jackson, Koretz, Levine, Lieber, Liu, Longville, Lowenthal, Montanez, Mullin, Nakano, Nation, Nunez, Oropeza, Parra, Pavley, Reyes, Ridley-Thomas, Salinas, Simitian, Steinberg, Vargas, Wesson, Wiggins, Wolk, and Yee

Sponsor: Equality California

This resolution will put the California Legislature on record in opposition to the proposed Federal Constitutional Amendment that seeks to write discrimination against lesbian and gay Americans into the United State Constitution and prohibit same-sex couples from ever obtaining equal legal protection and recognition for their relationships.

STATUS: Passed Assembly. Pending in Senate Judiciary Committee.

BACKGROUND

The proposed constitutional amendment would bar states from allowing same-sex couples to marry and would prohibit the federal government and all states from conferring "the legal incidents" of marriage on unmarried couples. It would explicitly override any contrary provisions in the U.S. Constitution, any of the fifty state constitutions, or any of the laws of the federal or state governments. This extraordinarily harmful amendment would:

- **Reverse the Constitutional Tradition of Protecting, Not Harming, Individual Liberty Rights:** The amendments to the Constitution are the source of most of the Constitution's protections for individual rights and liberties. The proposed amendment, by contrast, would deny one of the most fundamental human rights to an entire class of people.
- **Sharply Break from the Historical Civil Rights Practice of Allowing Stronger State Laws:** The federal civil rights laws have always provided a floor, not a ceiling, for civil rights protections under state laws. In contrast, the proposed amendment would prohibit states from applying or expanding their own civil rights laws to protect gay and lesbian couples, or unmarried heterosexual couples, and their families. It would forbid states from serving their traditional role as testing grounds for strengthening and expanding civil liberties and protections.



Equality California | eqca.org

AJR 85 FACT SHEET Updated 7.16.04

for questions - email: email@eqca.org

phone: 916.554.7681

- **End the Role of State Governments in Protecting Unmarried Couples and Their Families in Their States:** In exercising their jurisdiction over family law issues, many states have extended important protections to the families of gay men and lesbians and other unmarried couples. This state authority is broadly accepted. In fact, during the vice presidential debates, Vice President Dick Cheney explained that:

"The fact of the matter is we live in a free society, and freedom means freedom for everybody. ... And I think that means that people should be free to enter into any kind of relationship they want to enter into. It's really no one else's business in terms of trying to regulate or prohibit behavior in that regard. ... I think different states are likely to come to different conclusions, and that's appropriate. I don't think there should necessarily be a federal policy in this area."
- **Invalidate All State Domestic Partnership Laws:** By prohibiting states from providing any of the "legal incidents" of marriage to unmarried couples, the amendment could be interpreted to void domestic partnership and civil union laws in at least eight states and in more than 100 counties, cities, and towns across the country. These usually modest laws typically include such fundamental rights as allowing a person to visit his or her partner in a hospital, participate in a partner's medical decisions at his or her request, or obtain health insurance. Some state and local governments also provide health insurance to the partners of state or local government employees. The amendment could also be interpreted to prohibit state and local governments from making their own decisions about providing benefits to their own employees' families.
- **Undermine State Adoption, Foster Care, and Kinship Care Laws:** In many states, unmarried persons--including unmarried relatives, heterosexual couples, gay and lesbian couples, and even unrelated clergy members--have the same rights as married persons to jointly adopt or jointly provide foster care or kinship care. These unmarried persons are providing loving and secure homes to countless children. By barring states from extending any "legal incidents" of marriage to unmarried persons, the amendment could jeopardize the important legal protections that states now provide to these families.
- **Destroy a Wide Range of Other Rights Provided to Unmarried Persons:** By denying unmarried persons all legal protections for any of the "legal incidents" of marriage, the amendment could be interpreted to destroy a wide range of other rights that are important to unmarried people. Those legal protections include state and local civil rights laws prohibiting discrimination based on "marital status," state laws protecting unmarried elderly couples who refrain from marrying in order to keep their pensions, and even state laws allowing a person, in the absence of a spouse, to oppose the autopsy of a close friend because of the deceased person's religious beliefs.



Equality California | eqca.org

AJR 85 FACT SHEET Updated 7.16.04

for questions - email: email@eqca.org

phone: 916.554.7681

PARTIAL LIST OF REGISTERED SUPPORT:

Equality California (EQCA) - Sponsor
 American Civil Liberties Union (ACLU)
 American Humanist Association
 Americans United for Separation of Church and State
 Anti-Defamation League
 Asian Americans for Civil Rights and Equality
 Asian Pacific American Legal Center of Southern California
 California Attorney General Bill Lockyer
 California National Organization for Women
 California Safe Schools Coalition
 California State Controller Steve Westly
 California Teachers Association
 Center for AIDS Research, Education and Services (CARES)
 Chinese for Affirmative Action
 City of Los Angeles Neighborhood Council Gay & Lesbian Caucus
 City of Los Angeles Silver Lake Neighborhood Council
 City of West Hollywood
 Claremont United Church of Christ
 Congregation Kol Ami
 Eleanor Roosevelt Democratic Club
 Gay and Lesbian Community Services Center of Orange County
 Gay-Straight Alliance Network
 Gray Panthers
 Hayward City Councilmember Kevin Dowling
 Human Rights Campaign
 Lambda Letters Project
 Metropolitan Community Church Los Angeles

Metropolitan Community Church of the Coachella Valley
 Mexican American Legal Defense and Educational Fund (MALDEF)
 National Association for the Advancement of Colored People (NAACP) - California State Conference
 National Center for Lesbian Rights (NCLR)
 National Gay and Lesbian Task Force
 Oakland United Methodist Church
 Objective Medical Evaluations
 Older Women's League of California
 Our Family Coalition
 People for the American Way
 PFLAG- Danville/San Ramon Chapter
 PFLAG-Oakland/East Bay
 PFLAG-Pasadena
 PFLAG-Sacramento
 PFLAG-San Diego
 PFLAG-San Francisco
 Pride at Work Southern California
 San Diego Democratic Club
 San Diego LGBT Community Center
 San Francisco AIDS Foundation
 San Francisco Chronicle
 San Francisco LGBT Community Center
 Stonewall Democratic Club of Greater Sacramento
 The Legal Aid Society - Employment Law Center
 Transgender Law Center
 Unitarian Universalist Legislative Ministry
 West Hollywood City Councilmember Jeffrey Prang