



## FACT SHEET

### Resolution Urging Repeal of Proposition 8 (HR 5)

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*This resolution would put the Assembly on record as supporting the repeal of Proposition 8 and declaring that the initiative was an improper revision to the California Constitution.*

**Status:** Introduced December 2, 2008

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**Sponsor:** Equality California

#### BACKGROUND

The California Legislature made history in 2005 by passing the first bill in the United States that would allow same-sex couples to obtain civil marriage licenses. The Legislature passed a nearly identical bill again in 2007. Both measures were vetoed by Governor Arnold Schwarzenegger.

In a May 2008 decision relying heavily on California's legislative history relating to marriage for same-sex couples, the California Supreme Court declared it unconstitutional to deny same-sex couples the fundamental right to marriage and struck down California's law limiting marriage to opposite-sex couples. Following the Court's landmark decision approximately 18,000 same-sex couples wed in California. The historic "Summer of Love" following the Court's ruling captured international attention and encouraged other states, such as Connecticut and New York, to follow suit in allowing or recognizing marriage for same-sex couples.

In February of 2008, out-of-state extremist organizations began circulating petitions to place a discriminatory marriage measure on California's November ballot. What later qualified as Proposition 8 sought to permanently enshrine discrimination into the California Constitution. Civil rights groups quickly filed suit with the California Supreme Court in the case of *Bennett v. Bowen*, arguing that Prop 8 should not move forward for a popular vote without going to the Legislature first because it was a revision, or structural change to the Constitution, rather than an amendment. The Court declined to hear the case.

On November 4, 2008 Prop 8 passed by a narrow 52 percent margin. Civil rights organizations again filed suit with the California Supreme Court, asking that it overturn the initiative as an invalid revision. The Court accepted review of the case and could rule as early as June 2009. California Attorney General Jerry Brown recently filed his brief in the litigation on behalf of the state, arguing that he could not defend Prop 8 as it is in direct conflict with the guarantees of liberty and privacy contained in the Constitution.

## **PROPOSITION 8 WAS AN IMPROPER REVISION**

Article XVIII of the California Constitution provides that while an *amendment* to the Constitution can be accomplished through the initiative process, a *revision* must originate in the Legislature and must be approved by a two-thirds vote before being submitted to the electorate.

In addition, Article III of the California Constitution establishes separation of powers between the legislative, executive, and judicial branches of government and a system of checks and balances. Under Article III, the courts have the ultimate authority to interpret and enforce the principle of equal protection, and the Legislature has a crucial deliberative role in any proposed revision of our Constitution.

Proposition 8 seeks to eliminate the fundamental right of marriage for a particular minority group on the basis of a suspect classification – sexual orientation – while permitting the majority to retain that fundamental right. The initiative would substantially alter our basic governmental plan by eliminating equal protection as a structural check on the exercise of majority power and by permitting majorities to force groups defined by suspect classifications to fight to protect their fundamental rights under the California Constitution at every election. As such, Proposition 8 is an improper revision, sidestepping the constitutionally required rigors of the legislative process and depriving the Legislature of its role to examine and debate such a significant change to the principles and structure that underlie the California Constitution.

## **WHAT THIS RESOLUTION WOULD DO**

House Resolution 5 would specify that significant revisions to the Constitution mandate distinct procedures and require a two-thirds vote of each house of the Legislature before going to the voters. It would put the Assembly on record that Proposition 8 did not follow the proper process and should be overturned as an invalid revision to the California Constitution. HR 5 would safeguard the integrity of our constitutionally required checks and balances and help to ensure that minority rights are not stripped away at the ballot box by a simple vote of the majority.

## **FOR MORE INFORMATION**

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