



Written by [Dave Bohon](#) on February 8, 2012

Federal Court Rules Against Traditional Marriage in California

In a long anticipated decision, a federal appeals court has ruled that California's Proposition 8, which effectively defines marriage as only between a man and woman, amounts to an unconstitutional violation of the rights of same-sex couples to marry. A three-judge panel of the 9th Circuit Court of Appeals upheld an earlier decision of openly homosexual U.S. District Judge Vaughn Walker, who ruled in 2010 that the 2008 constitutional amendment, passed by the people of California, violated the equal protection rights of two homosexual couples who had filed suit to overturn the law.



While the latest ruling is a definite victory for proponents of homosexual marriage, the [New York Times](#) noted that the 2-to-1 decision "was much more narrowly framed than the sweeping ruling of Judge Walker, who asserted that barring same-sex couples from marrying was a violation of the equal protection and due process clauses of the Constitution."

The *Times* explained that the two concurring judges "stated explicitly that they were not deciding whether there was a constitutional right for same-sex couples to marry, instead ruling that the disparate treatment of married couples and domestic partners since the passage of Proposition 8 violated the Constitution's Equal Protection Clause."

Wrote Judge Stephen Reinhardt (above) in the majority opinion: "Although the Constitution permits communities to enact most laws they believe to be desirable, it requires that there be at least a legitimate reason for the passage of a law that treats different classes of people differently. There was no such reason that Proposition 8 could have been enacted." Added the judge: "All that Proposition 8 accomplished was to take away from same-sex couples the right to be granted marriage licenses and thus legally to use the designation 'marriage.' Proposition 8 serves no purpose, and has no effect, other than to lessen the status and human dignity of gay men and lesbians in California."

The [Los Angeles Times](#) reported that in his partial dissent, Judge N. Randy Smith argued that "limiting marriage to opposite-sex couples could be justified on the grounds that heterosexual couples are the only couples who can procreate naturally. 'The family structure of two committed biological parents — one man and one woman — is the optimal partnership for raising children,' Smith wrote."

While the ruling only applies to marriage in California, there is speculation as to how this case may impact same-sex marriage across the nation, as the decision is expected to be appealed to the Supreme Court. In its opinion, the 9th Circuit panel alluded to that future. "Whether under the Constitution same-sex couples may ever be denied the right to marry, a right that has long been enjoyed by opposite-sex couples, is an important and highly controversial question," the court said. "We need not and do not answer the broader question in this case."



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Proposition 8's defenders said they would push the High Court to overturn the 9th Circuit ruling. "We are not surprised that this Hollywood-orchestrated attack on marriage — tried in San Francisco — turned out this way," reflected Brian Raum, senior counsel with the [Alliance Defense Fund](#) (ADF), one of the pro-family legal advocacy groups that have helped to defend the state marriage amendment. "But we are confident that the expressed will of the American people in favor of marriage will be upheld at the Supreme Court."

Andrew P. Pugno, general counsel for [ProtectMarriage.com](#), the coalition that has guided the Proposition 8 campaign from its inception, said that "since the beginning of this case, we've known that the battle to preserve traditional marriage will ultimately be won or lost not here, but rather in the U.S. Supreme Court. We will immediately appeal this misguided decision that disregards the will of more than seven million Californians who voted to restore marriage as the unique union of only a man and woman."

Homosexual activists were ecstatic over the ruling, speculating that it will provide the momentum to legalize homosexual "marriage" nationwide. "Very soon, Proposition 8 will be gone forever," said Kristin Perry, who, with her lesbian partner and a male homosexual couple sued to overturn the same-sex marriage ban. "Today marks the culmination of what has been a transformational year."

Joe Solmonese of the pro-homosexual [Human Rights Campaign](#) declared that the ruling "affirms what we all know to be true — our Constitution protects the basic civil rights of all Americans, including lesbian, gay, bisexual, and transgender people. We must all continue our work — in courthouses and statehouses, in church pews and living rooms — until equality is reality for LGBT people and our families everywhere."

By contrast pro-family leaders reacted with disappointment, but expressed hope that the Supreme Court would ultimately rule in favor of the Prop. 8 and traditional marriage.

"Opponents of Prop. 8 insist on changing the definition of marriage for everyone, including children who deserve the opportunity to grow up in a home with their own married mother and father," said Bruce Hausknecht of [Focus on the Family's CitizenLink](#). "But no judge has the right to redefine marriage. Doing so redefines parenthood, and offers yet another instance of social engineering based on the desires of adults rather than the interests of children.... The long road to vindicating the right of more than seven million California voters to establish public policy in this case continues."

Tony Perkins of the [Family Research Council](#) said that the 9th Circuit ruling "substitutes judicial tyranny for the will of the people, who in the majority of states have amended their constitutions, as California did, to preserve marriage as the union of one man and one woman." He added, however, that he was confident "that in the end, the Supreme Court will reject the absurd argument that the authors of our Constitution created or even implied a 'right' to homosexual 'marriage,' and will instead uphold the right of the people to govern themselves."

He noted that voters in 31 states have chosen "to uphold the historic and natural definition of marriage as the union of one man and one woman. Twenty-nine, a majority of American states, have actually inserted such a definition into the text of their state constitutions."

Following the ruling Brian Brown, president of the pro-family [National Organization for Marriage](#), quickly sent an e-mail to proponents of traditional marriage, emphasizing the importance of their support as the case moves to the High Court. "A Supreme Court victory would preserve the marriage laws of 44 states, denying same-sex marriage radicals in their campaign to force gay marriage on the



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entire nation in one fell swoop,” Brown wrote. “But if we lose at the Supreme Court, marriage will be jeopardized not just in California, but in all 50 states. This is it. This is the whole ball game. If we lose here, the laws in 44 states defending marriage will crumble and we CANNOT let that happen!”

Photo: Circuit Judge Stephen R. Reinhardt listens to arguments during a hearing in the Ninth Circuit Court of Appeals, Dec. 6, 2010, in San Francisco: AP Images



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