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County of Santa Clara Joins San Francisco and Los Angeles in Case to Oppose Proposition 8

Case Challenges Initiative Process for Eliminating Constitutional Protection

SAN JOSE, CALIF.—Today, the County of Santa Clara announced that it will join San Francisco and Los Angeles in a petition to the Supreme Court of the State of California to direct State officials to refrain from implementing, enforcing or applying the measure designated on the November ballot as Proposition 8, the California Marriage Protection Act. The jurisdictions have decided to file this lawsuit preemptively, pending the final election results.

"One of the great traditions of our country is that the Constitution guarantees individuals equal protection under the law," said County of Santa Clara County Counsel Ann Ravel. "Constitutional rights cannot be taken away by either a majority vote on an initiative or by a vote of the legislature."

Proposition 8 seeks to alter Article I of the California Constitution by adding: "SEC. 7.5. Only marriage between a man and a woman is valid or recognized in California." Today's petition asserts that the California Constitution does not allow a bare majority of voters to divest a minority group of rights conferred by the equal protection clause. The 1911 Amendment to the California Constitution creating the initiative process provides that, while initiatives can amend the Constitution to help further its purpose, initiatives cannot be used to revise its basic structure, which includes the notion of equality. Thus, Proposition 8 is not a valid constitutional amendment.

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On May 15, 2008, the California Supreme Court issued its opinion in *In re Marriage Cases*, 43 Cal. 4th 757 (2008). That decision held that the portions of the Family Code that limited marriage to a man and a woman violated the rights of gay and lesbian individuals and couples to equal protection, privacy and due process under the California Constitution. This Court concluded that gay and lesbian couples have a fundamental right to marry to the same extent as opposite-sex couples.

"The full rays of equality finally shone down on thousands of gay and lesbian couples when the California Supreme Court ruled that same-sex marriages were legal," said County of Santa Clara Supervisor Ken Yeager. "I hope the Court recognizes that the state constitution's equal protection clause cannot be set aside so capriciously. If discrimination can be written into the constitution, then the rights of any group can be easily taken away."

By its terms, Proposition 8 purports to strip a constitutionally protected minority group of the right to marry even though that right was previously conferred by the equal protection clause of the California Constitution. If implemented, Proposition 8 would force the County of Santa Clara to violate the constitutional rights of its citizens by denying them marriage licenses. The County of Santa Clara has an interest in protecting the rights of its citizens and would be harmed if required to act in contravention of the rights of its lesbian and gay citizens.

The officials named in the lawsuit - the State Registrar of Vital Statistics, Deputy Director of Health Information & Strategic Planning and the Attorney General - have responsibility for providing instruction to and supervising local registrars; prescribing and furnishing vital statistics forms, including marriage license forms, for use by local registrars; and arranging and preserving all registered vital statistics licenses, including marriage licenses, in a comprehensive state index and uniformly enforcing state laws. They are only being sued in their official capacity. The petitioners are asking the State Supreme Court for immediate action.

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