



CITY COUNCIL

Darryl Moore
Councilmember District 2

CONSENT CALENDAR
February 24, 2009

To: Honorable Mayor and Members of the City Council

From: Councilmember Darryl Moore
Mayor Tom Bates
Councilmember Jesse Arreguin
Councilmember Kriss Worthington

Subject: Support of SR7 and HR5, Urging The Repeal of Prop 8

RECOMMENDATION

Adopt a Resolution putting the City of Berkeley on record urging the repeal of Proposition 8 and supporting Senator Mark Leno and Assemblymember Tom Ammiano's bills, SR7 and HR5 respectively, that would put each of their State legislative bodies on record urging the repeal of Proposition 8 and declaring that the initiative was an improper revision to the California Constitution.

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.

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. On November 4, 2008 Prop 8 passed by a narrow 52 percent margin. Various civil rights organizations quickly 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.

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 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 minority groups to fight to protect their fundamental rights under the California Constitution at every election.

FISCAL IMPACTS OF RECOMMENDATION

None

CONTACT PERSON

| | | |
|---------------------------------|--------------------|--------------|
| Councilmember Darryl Moore | Council District 2 | 510-981-7120 |
| Mayor Tom Bates | Mayor | 510-981-7100 |
| Councilmember Jesse Arreguin | Council District 4 | 510-981-7140 |
| Councilmember Kriss Worthington | Council District 7 | 510-981-7170 |

Attachments:

- 1: Resolution
- 2: Copy of SR7
- 3: Copy of HR5

RESOLUTION NO. ##,###-N.S.

SUPPORTING SENATE RESOLUTION 7 AND HOUSE RESOLUTION 5

WHEREAS, the people of California have established strict safeguards in the California Constitution that protect the core underlying principles of our government, including the most basic principle that all people are entitled to equality before the law; and

WHEREAS, Proposition 8, which was passed by a bare majority on November 4, 2008, seeks to make a radical and unprecedented change to the core underlying principle of equality by taking away a fundamental right only from the members of a particular minority group; and

WHEREAS, Proposition 8 defeats a core purpose of our Constitution, which is to protect the basic rights of all Californians; and

WHEREAS, Proposition 8 endangers the freedom and equality of all Californians by rendering the fundamental rights of any group subject to elimination by a simple majority vote; and

WHEREAS, Proposition 8 should not have been enacted through the initiative process; and

WHEREAS, if Proposition 8 is given effect, it will be the first time the initiative process has successfully been used to change the California Constitution to take away a fundamental freedom from a particular group and to mandate government discrimination against a minority; and

WHEREAS, Senate Resolution 7, authored by Senator Mark Leno, and House Resolution 5, authored by Tom Ammiano, would put their respective State legislative bodies on record urging the repeal of Proposition 8 and declaring that the initiative was an improper revision to the California Constitution.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City of Berkeley also goes on record as urging the repeal of Proposition 8, due to its improper use of the initiative process to revise the California State Constitution.

BE IT FURTHER RESOLVED that the City of Berkeley supports the efforts of Senator Mark Leno and Assemblymember Tom Ammiano to have the California State Senate and Assembly to also urge the repeal of Proposition 8.

BILL NUMBER: SR 7 AMENDED
BILL TEXT

AMENDED IN SENATE DECEMBER 18, 2008

INTRODUCED BY Senator Leno
(Principal coauthors: Senators Kehoe and Steinberg)
(Coauthors: Senators Alquist, Calderon, Cedillo, Corbett, DeSaulnier,
Hancock, Pavley, Wolk, and Yee)

DECEMBER 1, 2008

Relative to same-sex marriage.

LEGISLATIVE COUNSEL'S DIGEST
HOUSE OR SENATE RESOLUTIONS DO NOT CONTAIN A DIGEST

WHEREAS, Article XVIII of the California Constitution mandates distinct procedures for revision and amendment of the California Constitution; and

WHEREAS, Article XVIII provides that, while a proposed amendment to the California Constitution can be accomplished through the initiative process, a proposed revision of the California Constitution must originate in the Legislature and must be approved by a two-thirds vote of each house of the Legislature before being submitted to the electors; and

WHEREAS, The California Supreme Court, in *Livermore v. Waite* (1894) 102 Cal. 113 and subsequent decisions, has held that a revision is a substantial change to the "underlying principles" of the California Constitution or to the structure of our "basic governmental plan"; and

WHEREAS, Subdivision (a) of Section 8 of Article II of the California Constitution defines the initiative power as the ability to propose and pass statutory laws and constitutional amendments, but not constitutional revisions; and

WHEREAS, Article III of the California Constitution establishes a separation of powers between the legislative, executive, and judicial branches of California's government; and

WHEREAS, Under the separation of powers doctrine established by Article III of the California Constitution, the courts have the ultimate authority to interpret and enforce the principle of equal protection, particularly where government discrimination on a suspect basis or the selective denial of a fundamental right on a suspect basis is at issue; and

WHEREAS, The distinct procedures mandated for revision and amendment of the California Constitution, and the crucial deliberative role of the Legislature in any proposed revision of our Constitution, constitute key structural checks in the system of checks and balances mandated by Article III of the California Constitution; and

WHEREAS, The distinction between revision and amendment, and the distinct procedures assigned to each, in Article XVIII of the California Constitution, as well as

the separation of powers mandated by Article III, are entitled to the highest respect as the expression of the people's will; and

WHEREAS, The principle of equal protection, which prohibits unequal government treatment of historically targeted minority groups and ensures that laws enacted by a majority must apply equally to all people, is a foundational principle underlying our Constitution and our democratic system of government; and

WHEREAS, The requirement of equal protection of the laws plays an essential structural role in our basic governmental plan by providing a necessary check on the exercise of majority power and, in particular, by prohibiting the enactment of measures that facially single out a historically targeted minority group for adverse treatment and selective exclusion from an important right; and

WHEREAS, The Legislature is specially suited to examine and debate significant changes to the principles and structure that underlie the California Constitution, and is structured for precisely such a task; and

WHEREAS, Proposition 8, which was titled "Eliminates the right of same-sex couples to marry," was put forward as an initiative measure and enacted by the electors by a bare majority of the vote in the November 4, 2008 — general election; and

WHEREAS, Proposition 8 purports to amend the California Constitution to eliminate a fundamental right only for a particular minority group on the basis of a suspect classification, while permitting the majority to retain that fundamental right; and

WHEREAS, Proposition 8 would severely undermine the foundational principle of equal protection by establishing that any disfavored minority can be targeted to have its fundamental rights stripped away by a simple majority vote; and

WHEREAS, Proposition 8 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; and

WHEREAS, Proposition 8 would violate the separation of powers doctrine by stripping the courts of their core, constitutionally mandated function and traditional authority to enforce equal protection to prevent government discrimination against minority groups and the selective denial of fundamental rights on suspect bases; and

WHEREAS, Proposition 8 would also violate the separation of powers doctrine by intruding on the vital role of the Legislature in vetting revisions to the California Constitution and by sidestepping the constitutionally required rigors of the legislative process; now, therefore, be it

Resolved by the Senate of the State of California, That the Senate opposes Proposition 8 because it is an improper revision, not an amendment, of the California Constitution and was not enacted according to the procedures required by Article XVIII of the California Constitution; and be it further

Resolved, that the Secretary of the Senate transmit copies of this resolution to the author for appropriate distribution.

BILL NUMBER: HR 5 INTRODUCED
BILL TEXT

INTRODUCED BY Assembly Member Ammiano
(Coauthors: Assembly Members Evans and John A. Perez)
DECEMBER 2, 2008
Relative to same-sex marriage.

LEGISLATIVE COUNSEL'S DIGEST
HOUSE OR SENATE RESOLUTIONS DO NOT CONTAIN A DIGEST

WHEREAS, Article XVIII of the California Constitution mandates distinct procedures for revision and amendment of the California Constitution; and

WHEREAS, Article XVIII provides that, while a proposed amendment to the California Constitution can be accomplished through the initiative process, a proposed revision of the California Constitution must originate in the Legislature and must be approved by a two-thirds vote of each house of the Legislature before being submitted to the electors; and

WHEREAS, The California Supreme Court, in *Livermore v. Waite* (1894) 102 Cal. 113 and subsequent decisions, has held that a revision is a substantial change to the "underlying principles" of the California Constitution or to the structure of our "basic governmental plan"; and

WHEREAS, Subdivision (a) of Section 8 of Article II of the California Constitution defines the initiative power as the ability to propose and pass statutory laws and constitutional amendments, but not constitutional revisions; and

WHEREAS, Article III of the California Constitution establishes a separation of powers between the legislative, executive, and judicial branches of California's government; and

WHEREAS, Under the separation of powers doctrine established by Article III of the California Constitution, the courts have the ultimate authority to interpret and enforce the principle of equal protection, particularly where government discrimination on a suspect basis or the selective denial of a fundamental right on a suspect basis is at issue; and

WHEREAS, The distinct procedures mandated for revision and amendment of the California Constitution, and the crucial deliberative role of the Legislature in any proposed revision of our Constitution, constitute key structural checks in the system of checks and balances mandated by Article III of the California Constitution; and

WHEREAS, The distinction between revision and amendment, and the distinct procedures assigned to each, in Article XVIII of the California Constitution, as well as the separation of powers mandated by Article III, are entitled to the highest respect as the expression of the people's will; and

WHEREAS, The principle of equal protection, which prohibits unequal government treatment of historically targeted minority groups and ensures that laws enacted by a

majority must apply equally to all people, is a foundational principle underlying our Constitution and our democratic system of government; and

WHEREAS, The requirement of equal protection of the laws plays an essential structural role in our basic governmental plan by providing a necessary check on the exercise of majority power and, in particular, by prohibiting the enactment of measures that facially single out a historically targeted minority group for adverse treatment and selective exclusion from an important right; and

WHEREAS, The Legislature is specially suited to examine and debate significant changes to the principles and structure that underlie the California Constitution, and is structured for precisely such a task; and

WHEREAS, Proposition 8, which was titled "Eliminates the right of same-sex couples to marry," was put forward as an initiative measure and enacted by the electors by a bare majority of the vote in the November 4, 2008, general election; and

WHEREAS, Proposition 8 purports to amend the California Constitution to eliminate a fundamental right only for a particular minority group on the basis of a suspect classification, while permitting the majority to retain that fundamental right; and

WHEREAS, Proposition 8 would severely undermine the foundational principle of equal protection by establishing that any disfavored minority can be targeted to have its fundamental rights stripped away by a simple majority vote; and

WHEREAS, Proposition 8 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; and

WHEREAS, Proposition 8 would violate the separation of powers doctrine by stripping the courts of their core, constitutionally mandated function and traditional authority to enforce equal protection to prevent government discrimination against minority groups and the selective denial of fundamental rights on suspect bases; and

WHEREAS, Proposition 8 would also violate the separation of powers doctrine by intruding on the vital role of the Legislature in vetting revisions to the California Constitution and by sidestepping the constitutionally required rigors of the legislative process; now, therefore, be it

Resolved by the Assembly of the State of California, That the Assembly opposes Proposition 8 because it is an improper revision, not an amendment, of the California Constitution and was not enacted according to the procedures required by Article XVIII of the California Constitution; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the author for appropriate distribution.

