

# Same sex marriage in california essay

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The issue of same-sex marriage in California is a constitutional question that could create a fundamental social and legal change in the interpretation and understanding of marriage. It is a political issue which under the Constitution is to be decided by the people in their sovereign capacity, to make or amend the fundamental law hence, politically relevant.

When the Supreme Court decided early this year allowing same-sex marriage, the people have spoken through Ballot Proposition 8, altering the Constitution to include in Article 1 under the Declaration of Rights this statement: " Only marriage between a man and a woman is valid or recognized in California (Section 7. 5). " This exercise of people's initiative reflects the people's will that even the Judiciary has no power to impugn.

In this regard, it is the people's will that only marriage between opposite sex couples is valid and recognized under California law. Same-sex marriage therefore is illegal. The California Supreme Court decision allowing marriage to same-sex couples is a grave abuse of authority.

. It is a universal practice of constitutional governments that the validity of a Constitution is fundamentally dependent on its acceptance by the majority of the people in a national plebiscite called for the purpose. Without the imprimatur of the people in whom sovereignty resides, a Constitution is deemed not reflective of the people's will. Sovereignty resides in the people and all authority emanates from them.

The powers of the three branches of government proceed from the Constitution whereas, the people in amending the Constitution, does not get their authority from the Constitution for they are the very source of all

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governmental powers including the Constitution itself (Aguirre, An 1995, p. 1). Proposition 22 defining marriage as the union between a man and a woman was declared unconstitutional despite the overwhelming votes of the people. The Court cannot overrule the vote of the people unless the Constitution says so. These votes represent the understanding of the people that the traditional definition of marriage is still valid. The Court's conclusion that the understanding of marriage is no longer valid is unfounded. There is nothing in the Constitution that could compel it to arrive at such a conclusion.

Regardless of popular will, the decision has succeeded in redefining marriage. The change is for the people to adopt through democratic processes and not to be dictated by judges. The rule of law and not rule of the few must prevail. In upholding that the right to marry guaranteed under the Constitution may not deprive same-sex couples to marry based on sexual preference has transgressed a fundamental principle, the separation of power (Section 3, Art. III). The Supreme Court oversteps its authority by putting weight and relying on Legislature's enactments of civil rights protections for gays and lesbians such as the California's Domestic Partnership Act as a basis for granting same-sex marriage.

Through this Act, same-sex partners are allowed to enter into legal unions and enjoy equal benefits and responsibilities under the law as afforded to legal union of opposite-sex couples. In light of this enactment, the present statutory system is to grant the same-sex marriage same dignity and stature as the opposite-sex marriage which is Constitutional. thus supports the

Court's conclusion that denying same-sex marriages infringes this fundamental right. The decision directs the Legislature to repeal the Family Code. Thus, intruding into the jurisdiction of another co-equal branch of government by indirectly granting to it the direct power which it does not possess to amend the Constitution and repeal initiative statute. Repealing the Family Code will automatically invalidate Section 308.5 of the Code. Under the Constitution, Section 308.

5 (Proposition 22) of the Family Code is an initiative statute which is beyond interference by the Legislature (Art. II, sec 10, sub. 6). The decision of the Supreme Court on same-sex marriage has shifted the policy debate and resolution of sensitive issues from the Legislature to the Court (Dissenting opinion, by Baxter J.

In *Re Marriages Cases*, Case No. S 147999, 2008). The Court held in *Re Marriage Cases* that denying the gays and lesbians of their rights to marry denies them their fundamental rights to equality before and under the law. Statutes enacted to accord them protection are discriminatory; still distinguish homosexual relationship from heterosexual relationship (Case No. 147777, 2008). It is an established principle in Constitutional law that the guaranty of the equal protection of the laws is not violated by a legislation based on reasonable classification, provided such classification is based on substantial distinction, must apply equally to all the members of the same class, appropriate or closely related to the purpose of the law and not limited to present condition only (*People v. Cayat*). Definitely there is a substantial distinction between heterosexual and homosexual relationships. Natural

differences exist; the first group is capable of procreation while the latter cannot.

The California Domestic Partnership Act applies equally to all homosexual unions and limited to the present situation. The Act is appropriate to the purpose of the law of providing equal protection, security, recognition and responsibilities under the law. Fundamental rights are not absolute; equality regardless of sex is not inexpugnable. The equal protection clause tolerates inequalities arising from a reasonable singling out of one particular class.

Moreover, the rule of uniformity does not call for perfect uniformity or perfect equality, because this is hardly attainable. The “right to marry” is one of the fundamental rights expressed under the California Constitution. Cognizant that same-sex marriage is a fundamental right to marry protected under the Constitution, the Supreme Court carried on its practice of construing the Constitution in a fashion that champion’s individual choice. The Court relied to a great extent on the case of *Perez v. Sharp* when the court said that “the right to marry is the right to join in marriage with the person of one’s choice.” (32 Cal. 2d 711 [1948] p. 715).

This case is about interracial marriage which was illegal and void then The Court argued that when the case was decided in 1948, it was controversial and opposed by many. Now it is accepted, completely ordinary and unremarkable. The Court went further that marriage is a unique personal choice and prohibiting a person to marry a person of his choice, is forbidding marriage to a unique individual (*Perez* 725, p. 11).

According to Corrigan, J. in his dissenting opinion, this is based on common understanding that marriage is between a man and a woman. He further argued that since it is based on the traditional definition of marriage, it does not support the majority's analysis and decision (" In Re Marriages Cases", Case no. S147999, 2008 p. 4). The Supreme Court held that by prohibiting same-sex marriage, denies the gays and lesbians the dignity, respect and security according to heterosexual couples. Proponents of same-sex marriage argued that the enactment of the California Partnership Act only narrows the gap between heterosexual and homosexual unions, inequality still exists.

It pictures them as second class citizens. California statutes grant them all the substantive legal rights the State can give with the same stature as heterosexual couple except for the word " marriage". Conclusion The overwhelming votes of Proposal 8 and 22 are indications that the people do not desire to allow same-sex marriages. Society still treasure the time-honored understanding of marriage, that of a union between a man and a woman. Sex is a vague term, not precisely limited, determined or distinguished in the Constitution.

It is left for the people to interpret it. The Californian Constitution does not expressly guarantee equality for same-sex marriages.. Positive laws are founded on natural law, a true law. As Marcus Tullus Cicero, a Roman Statesman, put it: " There is indeed a true law, right reason, agreeing with nature, diffused among all men, unchanging, everlasting. . .

. It is not allowed to alter this law, nor to derogate from it, nor can it be repealed (Gamboa, M. J.

1969 p. 3). " Law is the result of unconscious development. Law evolves by a slow process in the same manner as does language.

It is a growth. It finds its roots in the instinctive sense of right of the people. " The foundation of the law", according to Savigny, " has its existence, its reality, in the common consciousness of the people (1969 p 6)".

This existence is invisible. People become acquainted with it as it appears in practice, manners, and customs. By the uniformity of a continuous and continuing mode of action, people recognize that the belief of the people is its common root, and not mere chance. Thus custom is the sign of positive law, not its foundation. While the views of the people on same-sex are still evolving, the Supreme Court as the final arbiter of Constitutional issues interrupted that process and imposes the opinions of its members, instead of presuming the constitutionality of the statutes in defining marriage and domestic partnership. It is argued that the courts are sworn to enforce the law, not to make it.

In other words, a rule is enforced by the court because it is law; it does not become law because the court enforces it.