

Escondido Democratic Club Presentation – June 11, 2009 - Charles L. Pratt, Esq.

I. Marriage Time Line

Perez v. Sharp *October 1, 1948*

The California Supreme Court becomes the first court in U.S. history to strike down race restrictions on marriage. The court says that the freedom to marry is precious and important, and declares that "**the essence of the right to marry is the right to join in marriage with the person of one's choice**".

Loving v. Virginia *June 12, 1967*

The *Loving* decision makes it illegal to restrict interracial couples from marrying in the United States. The court also reaffirms marriage as a civil right by saying, "**The freedom to marry has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free men.**"

Baehr v. Lewin *May 5, 1993*

The Hawaii Supreme Court rules that the government must show a sufficient reason for excluding same-sex couples from marriage, or stop discriminating. Trial court rules in 1996 that there is no good reason for denying marriage to committed same-sex couples. A constitutional amendment later blocks the courts from ending the marriage discrimination, but this launches the national conversation about marriage equality.

The Defense of Marriage Act *September 21, 1996*

Congress passes a federal "Defense of Marriage Act" (DOMA) defining marriage in federal law as a union of one man and one woman. DOMA allows individual states to legalize gay and lesbian marriages, but says the federal government would not recognize such unions, nor must states opposed to them.

Civil unions begin in Vermont *July 21, 2000*

Vermont Supreme Court rules that same-sex couples are entitled to the same rights as different-sex married couples; the Vermont legislature establishes civil unions, a separate legal status, rather than marriage itself.

Lawrence v. Texas *June 26, 2003*

The U.S. Supreme Court holds that the Constitution provides deep protection for decision regarding family, intimacy, love, and, yes, sex—and that gay people share equally in the right to make these important personal life-defining decisions. The case strikes down so-called "sodomy" laws nationwide, and holds that majority or government "moral disapproval" is not a sufficient basis for infringing Americans' freedom.

➤ **Massachusetts Marriage Equality** *November 18, 2003*

The Massachusetts Supreme Judicial Court rules in *Goodridge* that the state constitution mandates marriage equality for same-sex couples. Three months later, the Massachusetts Supreme Judicial Court reaffirms its decision in another opinion, informing lawmakers that only marriage rights — not separate mechanisms such as civil unions — provide equal protection constitution to same-sex couples.

CA Marriage Bill Passed *September 6, 2005*

California Legislature passes historic marriage bill, first state in country to pass a bill ending the exclusion of same-sex couples from marriage.

CA Marriage Bill Vetoed by Gov. Schwarzenegger *September 29, 2005*

New Jersey Civil Unions *October 25, 2006*

New Jersey Supreme Court unanimously rules that same-sex couples are entitled to all of the state-level spousal rights and responsibilities. A month later, the Legislature establishes civil unions.

California Marriage Equality *May 15, 2008 – overturned by Prop 8*

The CA Supreme Court in ***In Re: Marriage Cases*** upholds marriage equality: "**limiting the designation of marriage to a union 'between a man and a woman' is unconstitutional and must be stricken from the statute**" LGBTs get "suspect class" status, state must have "compelling interest" to discriminate.

New York to Recognize other States' Marriages *May 2008*

NY Gov. David Paterson **directs state agencies** to ensure that the out-of-state marriages of same-sex couples are respected and treated equally under law. But couples cannot as yet, marry in New York.

➤ **Connecticut Marriage Equality** *October 10, 2008*

The Connecticut Supreme Court ruled in *Kerrigan and Mock v. the CT Department of Public Health* for marriage equality: "**Interpreting our state constitutional provisions in accordance with firmly established equal protection principles leads inevitably to the conclusion that gay persons are entitled to marry the otherwise qualified same sex partner of their choice.**" "Although marriage and civil unions do embody the same legal rights under our law, they are by no means equal. The former is an institution of transcendent historical, cultural and social significance, whereas the latter is not."

Prop 8 Passes 52-48 *November 4, 2008*

Proposition 8 passes in California; halts marriages for same-sex couples. With a narrow margin, Proposition 8 passes as a result of over \$40 million spent by opponents on scare-tactics and lies. A legal case is filed to challenge the enactment of discrimination as a result of the Proposition passing.

➤ **Iowa Marriage Equality** *April 3, 2009*

The Iowa Supreme Court found that excluding same-sex couples from marriage violates the Iowa Constitution's equal protection guarantee and affirmed the right for all families to be equal: "**Society benefits, for example, from providing same-sex couples a stable framework within which to raise their children and the power to make health care and end-of-life decisions for loved ones, just as it does when that framework is provided for opposite-sex couples.**"

➤ **Vermont Marriage Equality** *April 7, 2009*

The Vermont legislature passed a bill ending the exclusion of gay couples from marriage with a 2/3 majority in each chamber, effectively **overriding the Governor's veto**. Gay couples should be able to start applying for marriage licenses by September 1, 2009.

➤ **Maine Marriage Equality** *May 6, 2009*

Maine's Governor John Baldacci signed into law a freedom to marry bill overwhelmingly approved by the Senate and House.

➤ **New Hampshire Marriage Equality** *June 03, 2009*

The amended marriage equality bill passed both the New Hampshire Senate and House. Governor Lynch signed the bill at 5:15 p.m., making New Hampshire the 6th state in the U.S. to legalize marriage equality.

II. CA Supreme Court Rejects Prop 8 Challenges (6-1) *May 26, 2009*

Main points of majority holding resolving 3 petitions: www.courtinfo.ca.gov/courts/supreme

- Scope of Prop 8 is narrow, only applies to term "marriage," doesn't limit other fundamental rts.
- Prop 8 constitutional provision only applies prospectively, leaving 18K marriages intact
- Amendment v. revision: Prop 8 not a revision, doesn't change basic gov. "plan or framework."
- Majority via initiative may diminish a judicially asserted constitutional right
- Initiative doesn't abrogate fund. rt. of privacy; initiative may limit rights labelled: "inalienable"
- J. Moreno: decision. undermines equal protection, places at risk rights of all disfavored minorities

III. Proposed initiative(s) to reinstate same-sex marriage by amending the CA Constitution

(1) Repeals the current provision in California's Constitution that states only marriage between a man and a woman is valid or recognized in California. (2) Provides that the initiative is not intended, and shall not be interpreted, to modify or change the curriculum in any school. (3) Clarifies that the initiative is not intended, and shall not be interpreted, to mandate or require clergy of any church to perform a service or duty inconsistent with his or her faith.

IV. David Bois and Ted Olson lawsuit filed in Federal District Court. *May 22, 2009*

The lawsuit states that Proposition 8 creates a class of "second-class citizens" and thereby violates the U.S. Constitution. The suit also calls for an injunction against Proposition 8 until the case is resolved. "**This unequal treatment of gays and lesbians denies them the basic liberties and equal protection under the law that are guaranteed by the Fourteenth Amendment of the United States Constitution.**"

<http://www.alliancealert.org/2009/20090527.pdf>