



## REPORT TO COUNCIL City of Sacramento

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Staff Report  
February 3, 2009

Honorable Mayor and  
Members of the City Council

**Title:** City of Sacramento Amicus Support of Petitions Before the California Supreme Court Challenging the Constitutionality of Proposition 8

**Location/Council District:** City-wide

**Recommendation:** Decide whether to adopt a resolution to authorize the City Attorney's Office to take the necessary steps to have the City of Sacramento join as amicus curiae with seven California cities and two California counties in support of the position that Proposition 8, which amended Section 7.5 of Article I of the California Constitution, is unconstitutional under the California Constitution. As amended, Section 7.5 currently reads: "Only marriage between a man and a woman is valid or recognized in California."

The primary challenges to Proposition 8 are that the change to Section 7.5 of Article I constitutes a revision of, rather than an amendment to, the Constitution, and the proper procedures for revising the California Constitution (which require involvement of the legislature or a constitutional convention) were not followed; and that Proposition 8 violates the separation of powers doctrine under the California Constitution.

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Richard Archibald, Assistant City Attorney (916) 808-5346

**Presenters:** Eileen Teichert, City Attorney (916) 808-5346  
Richard Archibald, Assistant City Attorney (916) 808-5346

**Department:** City Attorney's Office

**Division:** N/A

**Organization No.** 09300

**Organization No. 09300****Description/Analysis**

**Issue:** The constitutionality of Section 7.5 of Article I of the California Constitution is currently pending before the California Supreme Court in the combined cases known and referred to as the "the Proposition 8 cases."<sup>1</sup> Section 7.5, amended by Proposition 8 in November 2009, provides that "[o]nly marriage between a man and a woman is valid or recognized in California. Proposition 8 was a response to the decision of the California Supreme Court in the "*In re Marriage Cases*," a decision in which the Supreme Court held unconstitutional the provisions of the Family Code that had been added by initiative and that limited marriage to a man and a woman. The Court found that the provisions in question violated the rights of gay and lesbian individuals and couples to equal protection, privacy and due process under the California Constitution. The City of Sacramento joined as an amicus in support of the challenge to the constitutionality of the Family Code provisions.

Pursuant to the request made by Councilmember McCarty at the January 27, 2009 Council meeting, the Council is presented with the issue of whether the City of Sacramento should join as amicus curiae with seven California cities and two counties that Section 7.5 of Article I, as amended by voter approval of Proposition 8 on the November 4, 2009 ballot, is unconstitutional under the California Constitution. The list of cities and counties that have currently agreed to join as amicus in support of Petitioners in the Proposition 8 cases is set forth in the discussion in Attachment 1.<sup>2</sup>

**Policy Considerations:** N/A.

**Committee/Commission Action:** None.

**Environmental Considerations:** N/A.

**Rationale for Recommendation:** N/A

**Financial Considerations:** The recommendation contained in this report does not result in a fiscal impact. If the Council adopts the resolution to direct the City Attorney's Office to seek to have the City join as amicus in support of the petitions challenging the constitutionality of Proposition 8, the costs should be minimal. The amicus briefs have already been prepared by attorneys for another jurisdiction.

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<sup>1</sup> In re Proposition 8 Cases, S168047, 168066, 168078.

<sup>2</sup> In addition to the listed cities and counties that joined as amicus curiae, other local jurisdictions filed as petitioners in the Proposition 8 cases.

**Emerging Small Business Development (ESBD):** No goods or services are being provided under this report.

Respectfully Submitted by:

  
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**Eileen M. Teichert, City Attorney**

Recommendation Approved:

  
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**Ray Kerridge**  
City Manager

**Table of Contents:**

Report	pg. 1
<b>Attachments</b>	
1 Attachment 1	pg. 4
2 Resolution	pg. 5

## ATTACHMENT 1

The City of Sacramento has been asked to join as amicus curiae in the combined cases known and referred to as the "*Proposition 8 Cases*"<sup>3</sup> in support of the petitions challenging the constitutionality of Section 7.5 of Article I of the California Constitution. As amended by Proposition 8 in November 2009, Section 7.5 of Article I current reads:

Only marriage between a man and a woman is valid or recognized in California.

The primary challenges to Proposition 8 are that the change to Section 7.5 of Article I constitutes a revision of, rather than an amendment to, the Constitution, and the proper procedures for revising the California Constitution (which require involvement of the legislature or a constitutional convention) were not followed; and that Proposition 8 violates the separation of powers doctrine under the California Constitution. The petitions challenging Proposition 8 were filed in the California Supreme Court by a number of parties, including the City and County of San Francisco, the County of Santa Clara and the City of Los Angeles, and the California Supreme Court agreed to hear the petitions in the first instance.

The following seven cities and two counties applied for and were granted permission to file an amicus curiae brief in support of the petitions to declare Proposition 8 unconstitutional.

The City of Berkeley  
The City of Cloverdale  
The City of Davis  
The Town of Fairfax  
The City of Long Beach  
The City of Palm Springs  
The City of West Hollywood

The County of Humboldt  
The County of Sonoma

If so directed by the City Council, the City Attorney's Office would seek leave to have the City of Sacramento join as a party to the amicus curiae brief in support of the petition challenging the constitutionality of Proposition 8.

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<sup>3</sup> In re Proposition 8 Cases, S168047, 168066, 168078.

## RESOLUTION NO.

Adopted by the Sacramento City Council

Title: **CITY OF SACRAMENTO AMICUS SUPPORT OF  
PETITIONS BEFORE THE CALIFORNIA SUPREME  
COURT CHALLENGING THE CONSTITUTIONALITY OF  
PROPOSITION 8**

### **BACKGROUND**

A. On May 15, 2008, the California Supreme Court issued its decision in *In re Marriage Cases*, 43 Cal. 4<sup>th</sup> 757 (2008), and held that the provisions of the California 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.

B. The City of Sacramento joined as an amicus in the *In re Marriage Cases* in support of those challenging the constitutionality of the provisions of the California Family Code.

C. On November 4, 2008, the voters approved Proposition 8, an initiative measure that amended Section 7.5 of Article I of the California Constitution to read:

Only marriage between a man and a woman is valid or  
recognized in California.

D. Following the passage of Proposition 8, a series of petitions challenging the constitutionality of Proposition 8 and its amendment of Section 7.5 of Article I of the California Constitution were filed with the California Supreme Court. The California Supreme Court has agreed to hear these petitions in the first instance, and the cases are known and referred to as "The Proposition 8 Cases." The petitions challenge the constitutionality of Proposition 8 on various grounds, including that the amendments constitute a revision, rather than amendment, of the California Constitution, and the proper procedures for revising the California Constitution (which require involvement of the legislature or a constitutional convention) were not followed; and that Proposition 8 violates the separation of powers doctrine under the California.

E. A number of California cities and counties have joined as amicus curiae in support of the petitions challenging the constitutionality of Proposition 8.

F. The City of Sacramento has a long history of supporting diversity and inclusion and domestic partnerships, and opposing discrimination on the basis of sexual orientation. This includes the prohibition on discrimination based on sexual orientation found in Chapter 9.20 of the City Code, first enacted in 1986; the prohibition on discrimination against victims of AIDS and AIDS-related conditions found in Chapter 9.20 of the City Code, first enacted in 1987; and the domestic partnership program found in Chapter 2.120 of the City Code, first enacted in 1992.

G. It is therefore appropriate that the City seek to join the other California cities and counties as amicus curiae in support of the petitions challenging Proposition 8.

**BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:**

The City Attorney's Office is directed to take the necessary steps before the California Supreme Court to enable the City of Sacramento to join as amicus curiae with the other California cities and counties that have filed an amicus brief supporting the petitions challenging Proposition 8 on constitutional grounds.