

Perry, Stier, Katami and Zarrillo v. Schwarzenegger, Brown, Horton, Scott, O'Connell and Logan, (2010) C09-2292 VRW

1. Reference Details

Jurisdiction: United States, District Court for the Northern District of California

Date of decision: 4 August 2010

Link to full case: <https://ecf.cand.uscourts.gov/cand/09cv2292/files/09cv2292-ORDER.pdf>

2. Facts

The plaintiffs were a lesbian and a gay couple who were refused marriage licences on the basis of Proposition 8. Proposition 8 is a 2008 ballot measure which amended the California State Constitution to include the phrase "only marriage between a man and a woman is valid or recognised in California". It prohibits the state from recognising same-sex marriages performed on or after 5 November 2008. Thus, the only valid same-sex marriages are those performed between May 2008 (following the *In Re Marriage* case decided by the California Supreme Court) and the passing of Proposition 8 in November 2008 (declared valid in the case of *Strauss v Horton* by the California Supreme Court). All same-sex marriages after November 2008 would have been void under Proposition 8.

The plaintiffs argued that Proposition 8, by not allowing them to marry, resulted in an instance of systematic policy-based discrimination against lesbians and gays which violated the equal protection clause guaranteed by the Fourteenth Amendment of the U.S. constitution.

Proposition 8 reflects a wider pattern of discrimination against gay and lesbian people in U.S. marriage laws. Presently, only five states allow same-sex marriage and twenty-nine states have introduced constitutional amendments banning same-sex marriage.

The Court considered three issues of fact:

- Whether any evidence supports California's refusal to recognise marriage between two people because of their sex;
- Whether any evidence shows California has an interest in differentiating between same-sex and opposite-sex unions;
- Whether the evidence shows that Proposition 8 enacted a private moral view without advancing a legitimate government interest.

The Court also considered two points of law:

- Whether Proposition 8 violated the U.S. Constitutional guarantee to due process;
- Whether Proposition 8 violated the U.S. Constitution's equal protection clause.

3. Law

- Proposition 8, California Constitution Article I, section 7.5: "Only marriage between a man and a woman is valid or recognised in California";
- Fourteenth Amendment to the U.S. Federal Constitution:
 - Due Process Clause: "No state shall deprive any person of life, liberty or property without due process of law";

- Equal Protection Clause: “No state shall deny to any person within its jurisdiction the equal protection of the law”.

4. Legal Arguments

No party contended, and no evidence at trial suggested, that the county authorities had any ground to deny marriage licenses to plaintiffs other than Proposition 8.

The Plaintiffs

The plaintiffs argued that Proposition 8 violated the Fourteenth Amendment’s Due Process Clause because it violated the procedural rules for amending the California Constitution. The plaintiffs submitted that Proposition 8 also contravened the Due Process Clause as it violated the right to marry, a fundamental right, by not allowing them to marry the partner of their choice. Furthermore, they stated that the alternative of domestic partnerships was inadequate and “invidiously discriminatory”.

They also argued that Proposition 8 violated the Equal Protection Clause of the Fourteenth Amendment. They contended that it discriminated against gay men and lesbians in denying them a right to marry the person of their choice, whereas heterosexual men and women do so freely. Moreover, they submitted that the level of scrutiny given to the claim under the Equal Protection Clause should be strict (and not merely “rational basis review”) because gay men and lesbians constitute a suspect class.

The Defendants

The defendants argued (i) that Proposition 8 complied with California electoral law; (ii) that the denial of marriage to same-sex couples: preserves marriage; allows gay men and lesbians to live private without requiring others to acknowledge or recognise the existence of same-sex couples; and protects children; (iii) that the purpose of marriage was procreation and that the ideal child-rearing environment consists of one male and one female parents; (iv) that marriage is different in nature depending on the sex of the spouses and an opposite-sex marriage is superior to a same-sex marriage; and (v) that same-sex marriage would redefine opposite-sex marriage.

Interveners for the Plaintiff

The City of San Francisco was permitted to submit evidence on behalf of the plaintiffs in respect to the impact of Proposition 8 on local governments.

5. Decision

The Court held that Proposition 8 violated the Plaintiffs constitutional due process and equal protection rights. In reaching its decision, it set out that a state’s interest in an enactment must be secular in nature and that the state does not have an interest in enforcing private moral or religious beliefs without an accompanying secular purpose. Consequently, “moral disapproval alone is an improper basis on which to deny rights to gay men and lesbians.”

In handing down the judgment the Court noted a number of facts which influenced its deliberations, including:

- Individuals do not generally choose their sexual orientation;

- No credible evidence supports a finding that an individual may, through conscious decision, therapeutic intervention or any other method, change his or her sexual orientation;
- Marrying a person of the opposite sex is an unrealistic option for gay and lesbian individuals;
- Domestic partnerships lack the social meaning associated with marriage;
- Proposition 8 has had a negative fiscal impact on California and local governments;
- Gays and lesbians have been victims of a long history of discrimination;
- Religious beliefs that gay and lesbian relationships are sinful or inferior to heterosexual relationships harm gays and lesbians.

In respect to the constitutional right to due process the Court noted that California's domestic partnership laws do not satisfy California's obligation to provide gays and lesbians the right to marry, for two reasons:

First, domestic partnerships do not provide the same social meaning as marriage. Second, domestic partnerships were created "specifically so that California could offer same-sex couples rights and benefits while explicitly withholding marriage from same-sex couples." Proposition 8 was, therefore, found to be unconstitutional because it did not pass the rational-basis review – a level of scrutiny lower than the oft-applied strict scrutiny review.

In respect to the right to equal protection of the law the Court found that Proposition 8's restriction of marriage to opposite-sex couples discriminated on the basis of sexual orientation and sex, because sexual orientation discrimination *is* sex discrimination.

Although the Court declined to find explicitly that discrimination on the grounds of sexual orientation should be subject to a strict scrutiny level of review, it did submit that "[t]he trial record shows that strict scrutiny is the appropriate standard of review to apply to legislative classifications based on sexual orientation."

Instead, the Court held that in respect to the Equal Protection Clause Proposition 8 failed to pass even rational basis review. In the Courts view each justification put forth by the proponents of Proposition 8, for example the need to proceed with caution when implementing social changes or protect the freedom of those who oppose marriage for same-sex couples, was illegitimate.

The Court found that Proposition 8's only justification was "a private moral view that same-sex couples are inferior to opposite-sex couples," and that the proponent's examples of legitimate state interests were "nothing more than post-hoc justifications."

Furthermore, "[t]he evidence at trial regarding the campaign to pass Proposition 8 uncloaks the most likely explanation for its passage: a desire to advance the belief that opposite-sex couples are morally superior to same-sex couples."

Summing up, the Court added:

"Proposition 8 fails to advance any rational basis in singling out gay men and lesbians for denial of a marriage license. Indeed, the evidence shows Proposition 8 does nothing more than enshrine in the California Constitution the notion that opposite sex couples are superior to same-sex couples. Because California has no interest in discriminating against gay men and lesbians, and because Proposition 8 prevents California from fulfilling its constitutional obligation to provide marriages on an equal basis, the court concludes that Proposition 8 is unconstitutional."