



# NEWS RELEASE

Release Number: 66

Release Date: November 19, 2008

JUDICIAL COUNCIL OF  
CALIFORNIA  
ADMINISTRATIVE OFFICE  
OF THE COURTS  
Public Information Office  
455 Golden Gate Avenue  
San Francisco, CA 94102-3688  
www.courtinfo.ca.gov

415-865-7740

Lynn Holton  
Public Information Officer

## California Supreme Court Takes Action on Proposition 8

### *High Court Denies Requests to Stay Enforcement of Proposition 8 and Agrees to Decide Issues Arising Out of Proposition 8*

San Francisco—The California Supreme Court today denied requests to stay the enforcement or implementation of Proposition 8, and at the same time agreed to decide several issues arising out of the passage of Proposition 8.

The court's order, issued in the first three cases that had been filed directly in the state's highest court challenging the validity of Proposition 8, directed the parties to brief and argue three issues:

- (1) Is Proposition 8 invalid because it constitutes a revision of, rather than an amendment to, the California Constitution?
- (2) Does Proposition 8 violate the separation-of-powers doctrine under the California Constitution?
- (3) If Proposition 8 is not unconstitutional, what is its effect, if any, on the marriages of same-sex couples performed before the adoption of Proposition 8?

The court issued its order in three cases filed on behalf of a variety of parties, including same-sex couples who seek to enter into marriage despite the passage of Proposition 8, a same-sex couple who married in California prior to the adoption of Proposition 8, and a number of cities and counties whose officials seek to issue marriage licenses to same-sex couples. Petitioners in each of these cases seek an order directing the relevant state officials to refrain from implementing, enforcing, or applying Proposition 8.

(more)

In response to the petitions, the Attorney General filed a preliminary opposition, in which he urged the court to assume jurisdiction over these cases to decide the important legal issues presented, but also argued that the court should not stay the operation of Proposition 8 pending the court's resolution of the issues. The proponents of Proposition 8 also responded to the petitions, seeking to intervene as formal parties in the action and also urging the court to accept the cases for decision. The court's order granted the motion to intervene filed by the proponents of Proposition 8.

In its order, the court established an expedited briefing schedule, under which briefing will be completed in January 2009 and oral argument potentially could be held as early as March 2009.

Six justices—Chief Justice Ronald M. George, Justice Marvin R. Baxter, Justice Kathryn M. Werdegar, Justice Ming W. Chin, Justice Carlos R. Moreno, and Justice Carol A. Corrigan—signed the court's order, although Justice Moreno indicated that he would grant the requests to stay the operation of Proposition 8 pending the court's resolution of these matters.

Justice Joyce L. Kennard would deny these petitions without prejudice to the filing in the Supreme Court of an appropriate action to determine Proposition 8's effect, if any, on the marriages of same-sex couples performed before Proposition 8's adoption.

A copy of the court's order is attached.

#

S168047/S168066/S168078  
**IN THE SUPREME COURT OF CALIFORNIA**  
**En Banc**

---

KAREN L. STRAUSS et al., Petitioners,  
v.  
MARK B. HORTON et al., State Registrar of Vital Statistics, etc., Respondents.

---

ROBIN TYLER et al., Petitioners,  
v.  
STATE OF CALIFORNIA et al., Respondents.

---

CITY AND COUNTY OF SAN FRANCISCO et al., Petitioners,  
v.  
MARK B. HORTON et al., as State Registrar of Vital Statistics, etc.,  
Respondents.

---

**SUPREME COURT  
FILED**

NOV 19 2008

Frederick K. Ohlrich Clerk

Deputy

The motion for judicial notice filed in S168047 by petitioners on November 5, 2008, is GRANTED.

The requests for a stay of Proposition 8 filed by petitioners in S168047 and in S168066 are DENIED.

Respondent Secretary of State Bowen's request to be dismissed as a respondent in S168066 is GRANTED. (*Kevelin v. Jordan* (1964) 62 Cal.2d 82.)

The motions to intervene in S168047, S168066, and S168078, filed on November 17, 2008, by Proposition 8 Official Proponents et al. are GRANTED. The motions to intervene in S168047, S168066, and S168078, filed on November 10, 2008, by Campaign for California Families, are DENIED.

The State of California, the Attorney General, the State Registrar of Vital Statistics, and the Deputy Director of Health Information and Strategic Planning of the California Department of Public Health are ORDERED TO SHOW CAUSE before this court, when the above entitled matters are called on calendar, why the relief sought by petitioners should not be granted.

The issues to be briefed and argued in these matters are as follows:

(1) Is Proposition 8 invalid because it constitutes a revision of, rather than an amendment to, the California Constitution? (See Cal. Const., art. XVIII, §§ 1-4.)

(2) Does Proposition 8 violate the separation of powers doctrine under the California Constitution?

(3) If Proposition 8 is not unconstitutional, what is its effect, if any, on the marriages of same-sex couples performed before the adoption of Proposition 8?

The return is to be filed by respondents, and a brief may be filed by intervenors, in the San Francisco Office of the Supreme Court on or before Friday, December 19, 2008.

A reply may be filed by petitioners in the San Francisco Office of the Supreme Court on or before Monday, January 5, 2009.

Any application to file an amicus curiae brief, accompanied by the proposed brief, may be filed in the San Francisco Office of the Supreme Court on or before Thursday, January 15, 2009.

Any reply to an amicus curiae brief may be filed in the San Francisco Office of the Supreme Court on or before Wednesday, January 21, 2009.

Moreno, J. joins this order except that he would grant the requests to stay the operation of Proposition 8 pending this court's resolution of these matters.

Kennard, J. would deny these petitions without prejudice to the filing in this court of an appropriate action to determine Proposition 8's effect, if any, on the marriages of same-sex couples performed before Proposition 8's adoption.

---

George

*Chief Justice*

---

*Associate Justice*

---

Baxter

*Associate Justice*

---

Werdegar

*Associate Justice*

---

Chin

*Associate Justice*

---

Moreno

*Associate Justice*

---

Corrigan

*Associate Justice*