

House Resolution

No. 5

**Introduced by Assembly Member Ammiano
(Coauthors: Assembly Members Evans and John A. Perez)**

December 2, 2008

House Resolution No. 5—Relative to same-sex marriage.

1 WHEREAS, Article XVIII of the California Constitution
2 mandates distinct procedures for revision and amendment of the
3 California Constitution; and

4 WHEREAS, Article XVIII provides that, while a proposed
5 amendment to the California Constitution can be accomplished
6 through the initiative process, a proposed revision of the California
7 Constitution must originate in the Legislature and must be approved
8 by a two-thirds vote of each house of the Legislature before being
9 submitted to the electors; and

10 WHEREAS, The California Supreme Court, in *Livermore v.*
11 *Waite* (1894) 102 Cal. 113 and subsequent decisions, has held that
12 a revision is a substantial change to the “underlying principles” of
13 the California Constitution or to the structure of our “basic
14 governmental plan”; and

15 WHEREAS, Subdivision (a) of Section 8 of Article II of the
16 California Constitution defines the initiative power as the ability
17 to propose and pass statutory laws and constitutional amendments,
18 but not constitutional revisions; and

19 WHEREAS, Article III of the California Constitution establishes
20 a separation of powers between the legislative, executive, and
21 judicial branches of California’s government; and

22 WHEREAS, Under the separation of powers doctrine established
23 by Article III of the California Constitution, the courts have the

1 ultimate authority to interpret and enforce the principle of equal
2 protection, particularly where government discrimination on a
3 suspect basis or the selective denial of a fundamental right on a
4 suspect basis is at issue; and

5 WHEREAS, The distinct procedures mandated for revision and
6 amendment of the California Constitution, and the crucial
7 deliberative role of the Legislature in any proposed revision of our
8 Constitution, constitute key structural checks in the system of
9 checks and balances mandated by Article III of the California
10 Constitution; and

11 WHEREAS, The distinction between revision and amendment,
12 and the distinct procedures assigned to each, in Article XVIII of
13 the California Constitution, as well as the separation of powers
14 mandated by Article III, are entitled to the highest respect as the
15 expression of the people's will; and

16 WHEREAS, The principle of equal protection, which prohibits
17 unequal government treatment of historically targeted minority
18 groups and ensures that laws enacted by a majority must apply
19 equally to all people, is a foundational principle underlying our
20 Constitution and our democratic system of government; and

21 WHEREAS, The requirement of equal protection of the laws
22 plays an essential structural role in our basic governmental plan
23 by providing a necessary check on the exercise of majority power
24 and, in particular, by prohibiting the enactment of measures that
25 facially single out a historically targeted minority group for adverse
26 treatment and selective exclusion from an important right; and

27 WHEREAS, The Legislature is specially suited to examine and
28 debate significant changes to the principles and structure that
29 underlie the California Constitution, and is structured for precisely
30 such a task; and

31 WHEREAS, Proposition 8, which was titled "Eliminates the
32 right of same-sex couples to marry," was put forward as an
33 initiative measure and enacted by the electors by a bare majority
34 of the vote in the November 4, 2008, general election; and

35 WHEREAS, Proposition 8 purports to amend the California
36 Constitution to eliminate a fundamental right only for a particular
37 minority group on the basis of a suspect classification, while
38 permitting the majority to retain that fundamental right; and

39 WHEREAS, Proposition 8 would severely undermine the
40 foundational principle of equal protection by establishing that any

1 disfavored minority can be targeted to have its fundamental rights
2 stripped away by a simple majority vote; and

3 WHEREAS, Proposition 8 would substantially alter our basic
4 governmental plan by eliminating equal protection as a structural
5 check on the exercise of majority power and by permitting
6 majorities to force groups defined by suspect classifications to
7 fight to protect their fundamental rights under the California
8 Constitution at every election; and

9 WHEREAS, Proposition 8 would violate the separation of
10 powers doctrine by stripping the courts of their core,
11 constitutionally mandated function and traditional authority to
12 enforce equal protection to prevent government discrimination
13 against minority groups and the selective denial of fundamental
14 rights on suspect bases; and

15 WHEREAS, Proposition 8 would also violate the separation of
16 powers doctrine by intruding on the vital role of the Legislature
17 in vetting revisions to the California Constitution and by
18 sidestepping the constitutionally required rigors of the legislative
19 process; now, therefore, be it

20 *Resolved by the Assembly of the State of California, That the*
21 *Assembly opposes Proposition 8 because it is an improper revision,*
22 *not an amendment, of the California Constitution and was not*
23 *enacted according to the procedures required by Article XVIII of*
24 *the California Constitution; and be it further*

25 *Resolved, That the Chief Clerk of the Assembly transmit copies*
26 *of this resolution to the author for appropriate distribution.*

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