

## Panel rules California voter-approved ban on same-sex marriage unconstitutional

Mark Pattison Catholic News Service | Feb. 7, 2012

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Demonstrators for and against same-sex marriage rally outside the 9th U.S. Circuit Court of Appeals in San Francisco in December. (CNS photo/Stephen Lam, Reuters)

**WASHINGTON** -- By a 2-1 vote, a three-judge panel of the U.S. 9th Circuit Court of Appeals struck down the California ban on same-sex marriage, saying that it violates the 14th Amendment to the U.S. Constitution, which guarantees citizens due process and equal protection under the law.

The majority opinion, issued Feb. 7, said that the state, which had given homosexual couples the right to marry, could not revoke that right.

The National Organization of Marriage Education Fund, in a statement issued by its director, Brian S. Brown, accused the judges of "finding a 'right' to same-sex marriage in the United States Constitution!"

"This sets up an all-or-nothing showdown at the United States Supreme Court," said Brown, who asked for contributions to help fund a possible Supreme Court challenge to the lower court's ruling.

An estimated 18,000 same-sex marriages had been performed in California before 52 percent of the state's voters in 2008 approved Proposition 8, which banned same-sex marriages in the state.

ProtectMarriage, which put Proposition 8 on the ballot and fought in court to uphold it, can appeal the decision, either to the full 9th Circuit or directly to the U.S. Supreme Court. In the meantime, the appeals panel said no same-sex marriages can be performed.

The appellate court majority said it did not answer the question of "whether under the Constitution same-sex couples may ever be denied the right to marry," calling it "an important and highly controversial question."

"Although the Constitution permits communities to enact most laws they believe to be desirable, it requires that there be at least a legitimate reason for the passage of a law that treats different classes of people differently," said the majority decision, written by Judge Stephen Reinhardt. "There was no such reason that Proposition 8 could have been enacted."

"Proposition 8 served no purpose, and had no effect, other than to lessen the status and human dignity of gays and lesbians in California," it added.

All Proposition 8 did, the court said, was to strip same-sex couples of "the right to obtain and use the designation of 'marriage' to describe their relationships. Nothing more, nothing less. Proposition 8 therefore

could not have been enacted to advance California's interests in childrearing or responsible procreation, for it had no effect on the rights of same-sex couples to raise children or on the procreative practices of other couples. Nor did Proposition 8 have any effect on religious freedom or on parents' rights to control their children's education."

The 9th Circuit issued its opinion in an appeal filed by supporters of traditional marriage after now-retired U.S. District Court Judge Vaughn Walker ruled the voter-approved initiative was unconstitutional under the due process and equal protection clauses of the 14th Amendment to the U.S. Constitution.

The group challenged Walker's standing in the case, because the judge, who is gay, did not disclose his sexual orientation or reveal that he had a longtime romantic partner until after he had retired from the court. The 9th Circuit panel said it found no evidence Walker was biased.

The three-judge panel's decision is on hold at least until the deadline passes for ProtectMarriage to file an appeal, meaning no same-sex marriages would be conducted in California in the near future.

Currently, seven states and the District of Columbia permitted same-sex marriage. Among the states considering a same-sex marriage bill is Washington, which falls within the jurisdiction of the 9th Circuit. The governor, Christine Gregoire, a Catholic, has said she will push for its passage in the state legislature.

The passage of Proposition 8 inserted language into the state constitution that marriage was between one man and one woman, overriding the California Supreme Court, which struck down a pair of laws in the summer of 2008 that had restricted marriage to one man and one woman.

A Pew Forum analysis on attitudes toward same-sex marriage by religion released Feb. 7 said Catholics supported same-sex marriage 52 percent to 37 percent, with 11 percent undecided as of an October 2011 survey. That is up from a 46 percent favorable opinion (42 percent unfavorable) in a survey conducted in August and September 2010.

Hispanic Catholics are split, 42 percent to 42 percent, on same-sex marriage, while white Catholics approve of same-sex marriage by a margin of 57 percent to 35 percent.

Overall, same-sex marriage was favored by Americans 46 percent to 44 percent in the 2011 poll; in the 2010 survey, it was opposed 48 percent to 42 percent. The only religious groups remaining opposed to same-sex marriage in the latest survey were white evangelicals, 74 percent to 19 percent, and black Protestants, 62 to 30. Protestants overall remain opposed to gay marriage, 58 to 34.

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