

## The Last Hypo: Prop 8

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On November 4, 2008, voters in California approved by a 52-48 margin a measure entitled Proposition 8. Proposition 8 modified the California State Constitution to restrict the definition of marriage to a state-sanctioned union between one man and one woman and eliminated the ability of same-sex couples to marry. The proposition did not affect domestic partnerships in California, which are open to gays and lesbians as well as straight couples.

On November 5, 2008, three separate lawsuits were filed in California state courts. The plaintiffs are six unmarried gay and lesbian couples, the advocacy group Equality California, and the cities of San Francisco and Los Angeles (both of which have large gay and lesbian populations). Each suit seeks to overturn Proposition 8 on the basis of claims made under the federal constitution. (The suits also contain arguments made under the California State Constitution, but those have been assigned to another legal team.) All the parties expect that this issue will eventually be heard by the U.S. Supreme Court.

### If your last name starts with A-M

You are a staff attorney at the California State Attorney General's office. Jerry Brown, the Attorney General, is sympathetic politically to the claims of gays and lesbians and publicly opposed Proposition 8. However, Brown has vowed to argue vigorously in favor of the law's constitutionality. Brown has appointed you to draft a short memo discussing the Federal 14th Amendment issues involved in the case. Among these are (1) whether gays and lesbians are a protected class for equal protection purposes, (2) whether there is a valid gender discrimination claim under equal protection, (3) whether gays and lesbians have a fundamental right to marry under the due process clause, (4) whether Proposition 8 withstands rationality based review. Brown also wants you to discuss any legal strategy that you feel is important, including (but not limited to) the ideological composition of the Supreme Court, the relative strengths of the legal claims, and the current state of public opinion.

### If your last name starts with N-Z

You are a civil rights attorney affiliated with Equality California. The lead attorney on the Proposition 8 case has requested that you prepare a memo discussing any Federal 14th Amendment issues involved in this case. Among these are (1) whether gays and lesbians are (or ought to be) a protected class for equal protection purposes, (2) whether there could be a valid gender discrimination claim under equal protection, (3) whether gays and lesbians have a fundamental right to marry under the due process clause, and, as a last-case scenario, (4) whether Proposition 8 withstands rationality based review. The lead attorney also wants you to discuss any legal strategy that you feel is important, including (but not limited to) the ideological composition of the Supreme Court, the relative strengths of the legal claims, and the current state of public opinion---including the politically volatile issue of pushing for the overrule of a voter-sanctioned constitutional provision.