

## Life After Proposition 8

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The ban on same-sex marriage in California will continue, at least for now, after the California Supreme Court ruled on May 26, that Proposition 8 validly amended the state constitution to define "marriage" as a union between a man and a woman. Proposition 8 was approved by voters by a margin of 52 percent to 48 percent on Nov. 4,

2008.

The court's decision was based on a determination of whether Proposition 8 was an "amendment" or a "revision" to the state constitution. Revisions to the state constitution require approval by at least two-thirds of both houses of the state legislature before going to voters, unlike amendments which can proceed directly to voters without prior legislative approval. The court examined the legal precedent involving amendments and revisions to the state constitution and concluded that Proposition 8 was a valid amendment because it did not alter the nature of the government plan or framework set forth in the state constitution. (See ¶377 of the *Handbook* for more on same-sex marriage and its effect on benefits.)

Notably, however, the court unanimously ruled that the more than 18,000 same-sex marriages performed during the brief interval that same-sex marriage was legal in the state will continue to be valid and recognized under California law. In deciding so, the court concluded that there was insufficient evidence that voters intended

for Proposition 8 to have a retroactive effect. In addition, the court concluded that retroactive invalidation of these marriages was not necessary to serve the state's interest in preserving the traditional definition of marriage since that would be accomplished prospectively by amending the state constitution to define marriage in the traditional manner as the union between a man and a woman.

In 2008, the court ruled that state laws limiting marriage to opposite-sex couples violated same-sex couples' right to equal protection of the laws as guaranteed by the state constitution prior to the Proposition 8 amendment. The court acknowledged that its decision now to uphold Proposition 8 could be viewed as at odds with its 2008 decision. However, the majority opinion asserted that Proposition 8 carved out a narrow exception to state constitutional rights of equality and privacy, "reserving the official designation of the term 'marriage' for the union of opposite-sex couples ... but leaving undisturbed all of the other extremely significant substantive aspects of a same-sex couple's state constitutional right to establish an officially recognized and protected family relationship."

Despite the significant loss of the right to marry, same-sex couples in California can still obtain the same legal rights and protections as spouses by entering into domestic partnerships. California enacted a domestic partnership law in 1999; this law remained in effect throughout the short-lived legalization of same-sex marriage. Domestic partners are defined under state law as "two adults who have chosen to share one another's lives in an intimate and committed relationship of caring."

A same-sex couple can enter into a domestic partnership in California by filing a Declaration of Domestic Partnership with the secretary of state, provided they meet several qualifications set forth in state law. These include that the couple must both be at least eighteen years old, share a common residence, cannot be related


See *Proposition 8*, p. 2

**Proposition 8** (continued from p. 1)

by blood to a degree that would prevent them from marrying, cannot be married or in an existing domestic partnership with another person, and must be capable of consenting to the domestic partnership. The benefit for same-sex couples entering into a domestic partnership is that state law stipulates that “registered domestic partners shall have the same rights, protections, and benefits” as spouses, as well as “the same responsibilities, obligations, and duties under law.”

From an employee benefits perspective, the California Insurance Equality Act ensures that domestic partners in the state receive equal insurance benefits as opposite-sex spouses. The Act requires insurance plans to offer spousal equivalent benefits to domestic partners so long as the domestic partnership is registered under California law. An important exception, however, is that employers

with self-funded insurance plans or with benefit plans that are insured by contracts issued outside of California are exempted from the mandates of the Act.

The impact of Proposition 8 being upheld is perhaps most severe for out-of-state same-sex couples who had plans to travel to California after November 2008 to wed in order to have the marriage recognized by their own home state. For example, New York currently recognizes same-sex marriages performed in other states since no provision in state law limits the definition of marriage to only opposite-sex couples, even though same-sex marriages may not be performed in New York. Same-sex couples in New York can obtain equal rights and protections as opposite-sex spouses only by marrying in a state that has legalized same-sex marriage. New York does not provide for any other form of statewide same-sex relationship recognition; therefore, domestic partners or partners in a civil union from another state are not entitled to legal rights or protections under state law. 



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