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# Hollingsworth v. Perry: United States Supreme Court Grants Certiorari to Hear the 'Prop 8' Case

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## Hollingsworth v. Perry: United States Supreme Court Grants Certiorari to Hear the 'Prop 8' Case

MARCH 18, 2013 BY [EXECUTIVE ONLINE EDITOR](#) [1 COMMENT](#)

As the marriage equality battle enters the U.S. Supreme Court, which will take up both the Defense of Marriage Act and California's Proposition 8, Shawn Barnett, Golden Gate University Law Review's Managing Editor, offers a Case Summary of *Hollingsworth v. Perry*, starting all the way back in 2008 with *In re Marriage Cases*.

A generation ago, the notion of a legal basis for same-sex marriage was so disregarded that the United States Supreme Court dismissed a case involving the issue without even writing an opinion. On February 7, 2012, the United States Court of Appeals for the Ninth Circuit affirmed a decision striking down a ban on same-sex marriage in the nation's most populous state as violative of the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

While forty years had passed between the two decisions, the controversy surrounding same-sex marriage in California lay dormant until 2004 when then-San Francisco Mayor Gavin Newsom became a prominent figure in the fight for marriage equality. He was the driving force behind a protest described as "civil disobedience," issuing marriage licenses to same-sex couples. This protest, and the four thousand marriages that took place before a court injunction halted them, were the triggering events of an issue that has divided the state for the better part of the last decade.

Those marriages led to a series of lawsuits culminating in a ruling by the California Supreme Court declaring the denial of same-sex marriages unconstitutional, followed by a state constitutional amendment effectively reversing that ruling. The controversy culminated in the Ninth Circuit's decision, discussed here. Eight years and over seventy-three million dollars later, this controversy seems to have been decided—at least for Californians—with the opinion in *Perry v. Brown*.

The United States District Court for the Northern District of California was the first federal court to consider Proposition 8. Judge Vaughn Walker issued his judgment for the plaintiffs, finding Proposition 8 unconstitutional based on the Equal Protection Clause of the Fourteen Amendment of the United States Constitution because Proposition 8 discriminated against same-sex couples without any rational reason for doing so.

The Ninth Circuit has twice considered the issue of same-sex marriage. After the District Court's decision, a three-judge panel heard the appeal. This opinion, authored by Judge Stephen Reinhardt, affirmed the District Court's conclusion that Proposition 8 violated the Fourteenth Amendment of the U.S. Constitution. The majority agreed with the District Court that Proposition 8 violated the Fourteenth Amendment of the United States Constitution. Finding no other basis than discrimination against same-sex couples as the motivation behind Proposition 8, the court determined that it was invalid. The second time the Ninth Circuit weighed in on Proposition 8, it was to deny a request for a rehearing *en banc*.

On December 7, 2012, the Supreme Court of the United States granted the writ of certiorari requested by the defenders of Proposition 8. Now titled *Hollingsworth v. Perry*, the Supreme Court directed both parties to argue "[w]hether the Equal Protection Clause of the Fourteenth Amendment prohibits the State of California from defining marriage as the union of a man and a woman" and "[w]hether petitioners have standing under Article III, § 2 of the Constitution in this case."

While the Ninth Circuit's ruling and subsequent denial for rehearing appears to be a victory for marriage equality, the narrow holding of *Perry* had focused specifically on the validity of

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Proposition 8 as an amendment to the California Constitution, rather than on same-sex marriage as a fundamental right. However, with the granting of certiorari to a case involving the Defense of Marriage Act, it would appear that the Supreme Court will decide both cases on their merits and make a determination of the rights of same-sex couples to marry under the Fourteenth Amendment.

To allow for a full understanding of the case now before the Supreme Court, this Case Summary covers both opinions by the Ninth Circuit Court of Appeals; that is, the initial three-judge decision and the subsequent denial for rehearing en banc.

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