

Gay Marriage Ban Struck Down in California

California's Proposition 8 banning **same-sex** marriage is unconstitutional, the U.S. Court of Appeals for the 9th Circuit ruled on Tuesday afternoon.

The panel overturned Proposition 8 by a two-to-one vote. Still, the stay prevents marriage licenses from being issued to same-sex couples in California. The case may now move to the U.S. Supreme Court.

Traditional marriage proponents plan to appeal the ruling, which upheld a district judge's decision against the state's amendment protecting marriage as the union of one man and one woman. In its decision, the 9th Circuit affirmed the right of the official Proposition 8 proponents to continue to defend the amendment on appeal.

"No court should presume to redefine marriage. No court should undercut the democratic process by taking the power to **preserve marriage** out of the hands of the people," says Brian Raum, Alliance Defense Fund senior counsel. "Americans overwhelmingly reject the idea of changing the definition of marriage. Sixty-three million Americans in 31 state elections have voted on marriage, and 63 percent voted to preserve marriage as the timeless, universal, unique union between husband and wife."

Two of the three 9th Circuit judges concluded in *Perry v. Brown* that California's marriage amendment—Article I, Section 7.5 of the state constitution—is unconstitutional in part because the court believed claims that voters sought to "target a minority group."

Under California law, effective Jan. 1, 2005, the state legislature passed the nation's broadest "domestic

partnership" law that essentially afforded all the rights, benefits, privileges and obligations to **same-sex couples** as are afforded to opposite-sex couples in a marriage.

The two judges wrote that all Prop 8 did was prevent same-sex couples from using the name "marriage" to describe the essentially identical relationship afforded them by existing California law. Since California is unique in having such a broad **domestic partnership law** and other laws extending rights to "gays and lesbians," this ruling will not apply outside of California. The dissenting judge, N.R. Smith, would have upheld Prop 8 under the "rational basis" test.

Mathew Staver, founder of Liberty Counsel, says the ruling is like kissing your sister. On the one hand, it is not the broad ruling sought by **same-sex marriage advocates** but, he said, on the other hand it also does not allow the people of California to limit the name "marriage" to opposite-sex couples.

"If there is any good news that comes out of this opinion, it is that it's limited to California and does not apply to the other 49 states and territories. This ruling will not open the floodgates to same-sex marriage, as some advancing that cause had hoped," Staver says.

"The court was clearly wrong in finding that there are no rational arguments to support limiting the name 'marriage' to opposite-sex couples. Surely California can limit the name 'marriage' to opposite-sex couples, even in the face of its broad domestic partnership law. Even though the ruling is narrow in scope, it is rulings like these that undermine the legitimacy of the judicial system."