

Argument in Favor of Prop 8 (i.e., in favor of limiting marriage to heterosexual couples)

Timeline and Historical Background to Proposition 8

- In 2000 Proposition 22 was approved by California voters. As a result, the text “only marriage between a man and a woman is valid or recognized in California” was added to the California Family Code.
(<http://primary2000.sos.ca.gov/VoterGuide/Propositions/22text.htm>)
- In 2005, California’s domestic partnership law was modified so that domestic partnership has essentially the same rights and benefits as marriage. Same sex couples can enter into domestic partnerships. (http://www.ucop.edu/sas/sfs/docs/ab205_q-a.pdf)
- In 2008, the California Supreme Court ruled that the sections of the California Family Code that prevented same sex couples from getting married, including the text added by Prop 22, were unconstitutional. The law was mainly viewed as unconstitutional on the grounds that it discriminated against people on the basis of sexual orientation, and the court viewed its ruling as similar to previous cases in the 1960s in which laws prohibiting interracial marriage were overturned because they were discriminating on the basis of race. (court opinion: <http://www.latimes.com/media/acrobat/2008-05/38894545.PDF>)
- In response to the 2008 California Supreme Court ruling, Prop 8 has been added to the ballot for this November’s election. Prop 8 proposes to add the same text that was in Prop 22 to the California Constitution. The reasoning behind this is that if the text is in the constitution itself rather than in the California Family Code, it cannot be ruled unconstitutional and overturned by state courts.

General Approach to Making Decisions about Laws and Policy

- First step: determine the moral status of the issue based on Bible and what Jesus says. This dictates what I should do personally, regardless of what the law says. In this case, I believe the Bible clearly states that homosexual behavior is wrong (see Yucan’s paper for interpretations of the various Biblical passages) and that marriage is intended to be for heterosexual couples.
- Second step: based on the moral status determined above, consider how, if at all, it should be applied as law. Just because Jesus and the Bible say something is wrong, that does not necessarily mean we need to make a law against it. Examples: adultery is wrong, but it is not illegal. Greed is wrong, but it is not illegal. However, murder and stealing are wrong, and they are both illegal. Factors that need to be balanced here include tolerance for other viewpoints and lifestyles, the general American principle of preserving the freedom of individuals to make their own choices, how the law or policy will affect the “powerless” members of society who are not able to look out for their own interests, playing a prophetic role in pointing out what is right or wrong, and protecting the interests of Christians.

Minor Argument in Favor of Prop 8

- Given that homosexual behavior is morally wrong, giving more societal approval to it encourages a behavior that is morally wrong. There is a difference between passively allowing something (i.e., not making it legal) and actively encouraging and giving incentives for it (i.e., giving official recognition). There is some merit to this argument

because giving the title “marriage” to same sex unions could convey a higher level of social acceptability and approval than the title “domestic partnership.” Also, even if same sex unions cannot be called marriage, they will still be allowed under state law, so the change would not require people in same sex unions to change their behavior or make the behavior illegal. However, whether not allowing same sex unions to be called marriage would actually make any difference in people’s behavior is questionable, and I don’t think this is an exceptionally strong argument for Prop 8.

Main Argument in Favor of Prop 8

- In overturning Prop 22, the California Supreme Court established a civil rights protection for sexual orientation like that that the California Constitution provides for race, despite the fact that such protection is explicitly spelled out for race but is not for sexual orientation. Two cases in which interracial marriage prohibitions were overturned because they were held to be racially discriminatory were repeatedly cited in the ruling as models for the court’s decision about gay marriage. Creating a broad civil rights protection for sexual orientation that is on par with protection against racial discrimination has the potential to result in restricted ability for Christians and others who believe that homosexuality is morally wrong to act on those beliefs. This is more likely to directly affect Christian social service organizations and Christians working in jobs that are not overtly religious (i.e., “normal” jobs) than churches and pastors.
- Many of the impacts referenced above would apply as a result of other state laws (e.g., the Unruh Act) even if Prop 8 did pass, so passing Prop 8 would not completely resolve the issue. However, it would provide a counterpoint to the court opinion that created same sex marriage in California, which is important since that court opinion explicitly laid out the view that discrimination on the basis of sexual orientation is on essentially the same type of level as discrimination on the basis of race.
- I believe passing Prop 8 would temper the view that sexual orientation merits civil rights protection on the same level as race and help prevent even broader application of the view spelled out in the court opinion, which could eventually result in restrictions on religious freedom for Christians and those of other religions that believe homosexual behavior is wrong.

Additional Details on the Above Main Argument

- In general I do not agree with creating a civil right for a behavior that is morally wrong. While some would disagree with this, I do not believe that sexual orientation is a completely biologically determined trait like gender or skin color. Even if there is some biological predisposition one way or the other, which is possible, ultimately I still believe that sexual orientation is a choice that people make.
- Creating a civil rights protection for sexual orientation similar to that in place for race or gender has the potential to have negative impacts on religious freedom.
 - When interests of religious freedom and preventing racial discrimination have collided in court cases, religious freedom has usually lost. This has been seen in previous cases in which courts ruled that racial discrimination based on sincerely held religious beliefs was still not acceptable. That is, the equal protection clause of the Fourteenth Amendment outweighs the First Amendment’s right to religious freedom in most cases. It is unfortunate that Christians were on the side

supporting racial discrimination, which we do not support, but the point is that if the organization has practices that go against generally accepted social policy re: civil rights, then society's interest in preventing discrimination usually outweigh the interest of promoting free exercise of religion. One example of such a case is *Bob Jones University v. United States*, in which the university's federal tax exemption was revoked for refusing to admit students who supported interracial dating.

- In recent cases, a similar trend of ruling in favor of preventing discrimination over allowing for exercise of religious beliefs has been observed with sexual orientation. Examples:
 - Catholic Charities in Massachusetts, which stopped placing children with adoptive parents entirely after being told it could not continue its practice of refusing to place children with same sex couples.
 - Doctors at fertility clinic in San Diego County who were found to have discriminated against a lesbian couple to whom the doctors refused to provide in vitro fertilization, even though the doctors had referred the couple to another doctor in another practice who did perform the procedure for the couple, who did successfully conceive a child.