

January 16, 2009

**I thought you would want to know that Public Justice has just taken a stand to preserve all Californians' fundamental rights in a critically-important constitutional law case now before the California Supreme Court. The case involves Proposition 8 and same-sex marriage, but the key constitutional issue in the case is this -- can a simple majority of the voting public "amend" the California Constitution to eliminate a minority's fundamental rights? Or is the elimination of a minority's fundamental rights such a critical, serious change to the California Constitution that it constitutes a "revision" -- which, under California law, requires approval by a Constitutional Convention or two-thirds of the legislature followed by public ratification. We believe that, no matter how one feels about same-sex marriage, a plain majority vote cannot be sufficient to eliminate anyone's fundamental rights.**



California Supreme Court

To make that crucial point, we have just joined 40 public interest groups and bar associations in an *amici* brief in *Strauss v. Horton*, which challenges Proposition 8, a voter initiative that purported to change the California Constitution to deny gay and lesbian individuals the right to marry. The case does not involve the question of whether gays and lesbians have a fundamental right to marry under the California Constitution; that question has already been answered affirmatively by the California Supreme Court. Instead, the question before the Court is whether a fundamental right -- including, but not limited to, the right to marry -- can validly be eliminated from California's Constitution for any minority (e.g., gays, lesbians, blacks, Jews, etc.) by a simple vote of the majority, or whether the elimination of such a right may only be accomplished by the more stringent requirements established for Constitutional revisions.

As I'm sure you know, Proposition 8 was enacted after a firestorm of intense controversy and prompted a number of constitutional challenges filed by gay and lesbian couples, as well as governmental entities such as San Francisco, Los Angeles, and the County of Santa Clara. Public Justice took no position on Proposition 8, is not involved in electoral politics, and, up to now, was not involved in any of the lawsuits challenging Proposition 8. The lawsuits claim, among other things, that changing the California Constitution to revoke a fundamental right was a constitutional "revision" and thus cannot be accomplished by a majority vote. That is the central issue the California Supreme Court will resolve in *Strauss*.

**We joined the *amici* brief because of the enormous importance of the constitutional law question at stake.** The California Supreme Court has *already* recognized a fundamental right to marry that must necessarily extend to all California citizens, including gay and lesbian individuals. Proposition 8, if upheld, will have obliterated that right for a subset of California's citizenry by a simple majority vote -- a bone-chilling result that has frightening implications far beyond the narrow issue of same-sex marriage. If this approach is permitted to stand, there would be nothing to prevent a majority vote from effectively eliminating the fundamental constitutional rights of any subset of Californians in numerous areas.

This brief was filed on behalf of Public Justice and a host of other public interest groups and bar associations, including the Alameda County Bar Association, Bar Association of San Francisco,

Los Angeles County Bar Association, Marin County Bar Association, Santa Clara County Bar Association, California Employment Lawyers Association, California Rural Legal Assistance, Inc., Consumer Attorneys of San Diego, Impact Fund, American Bar Association of Southern California, and San Francisco Trial Lawyers Association.

To read the *amici* brief in *Strauss*, [click here](#).

Congratulations and thanks to Elizabeth Cabraser, Kelly M. Dermody, and Allison Elgart of Lieff, Cabraser, Heimann & Bernstein, LLP, who authored this important *amici* brief. Thanks to you, too, for helping to make our critical public interest work possible. Working together, we will preserve everyone's fundamental rights.

Arthur Bryant  
Executive Director  
Public Justice  
& the Public Justice Foundation

**P.S. Please forward this email to friends and colleagues who'd be interested. (When you do so, delete the information below about unsubscribing, or they could unsubscribe you.) To make a special contribution, renew your membership, or join us, please [click here](#).**

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