

POLITICAL LESSONS OF 2008

California's Great Debate

PROPOSITION 8

This initiative measure is submitted to the people in accordance with the provisions of Article II, Section 8, of the California Constitution.

This initiative measure expressly amends the California Constitution by adding a section thereto; therefore, new provisions proposed to be added are printed in italic type to indicate that they are new.

SECTION 1. Title

This measure shall be known and may be cited as the "California Marriage Protection Act."

SECTION 2. Section 7.5 is added to Article I of the California Constitution, to read: *SEC. 7.5. Only marriage between a man and a woman is valid or recognized in California.*

Editor's Note

The final vote in favor of Proposition 8 on the California ballot did not end the debate on gay marriage in the state. The California State Supreme Court will review the constitutionality of the measure with a ruling expected in 2009. Meanwhile, the state's Fair Political Practices Commission, which oversees campaign finance laws, has also agreed to review a complaint that the Church of Jesus Christ of Latter-Day Saints neglected to report a battery of nonmonetary contributions—including phone banks, a Web site, and commercials—on behalf of the measure. Heavy involvement of churches in support of the proposition turned the issue into one of religious liberty as well as gay rights. Before the election, we asked two Adventist attorneys who were vocal about the measure to provide us with a point/counterpoint discussion of the issue and its religious liberty implications. They wrote immediately after the election.



Constitutional Issues and Proposition 8

BY MICHAEL D. PEABODY

On November 4, 2008, in the midst of severe financial insecurity, 52.3 percent of California voters amended the state constitution to eliminate same-sex marriage and provide that only marriage between a man and a woman is valid or recognized within the state.

Proposition 8 created a destabilizing carve-out in the Unruh Civil Rights Act, which provides protection from discrimination within all business establishments in California, including the areas of employment, housing, and public accommodations.¹ It

NO



Un-Golden Moments in the Golden State

BY NICHOLAS P. MILLER

Proposition 8 has revealed a disturbing fault line, not only in California, but more profoundly, in the Seventh-day Adventist Church. A few Adventist pastors and Bible teachers publicly urged that to protect gay marriage is to promote a "righteous society" and that all "good and thoughtful" people would do so.

However, many Adventist religious liberty leaders who endorsed Proposition 8 viewed these statements as a profound misreading of the Scriptures and as revealing deep misunderstandings of the history of law relating to family and marriage. Indeed, we

YES

Rights of
children and
families
were hotly
debated
by both
sides.



NO

describes the protections as follows, "All persons within the jurisdiction of the state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, marital status, or sexual orientation are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever."

In the United States' constitutional democracy, there is no more fundamental principle than equal protection under the law, which is upheld by neutral courts that protect minorities from adverse treatment

by the majority. The California Supreme Court has recognized the fundamental constitutional right to marry since 1948, when it ruled against state laws that had existed since the state's founding that prohibited interracial marriage, and it applied this same analysis to outlaw the prohibition against gay marriage in 2008.² Since sexual orientation was on an equal legal footing with other protected classes, when viewed as a matter of law and not in light of a preferred outcome, the court's ruling is logical and inevitable.

The court clarified that existing protections of the rights of religious groups would "not impinge upon the religious freedom of any religious organization, official, or any other person; no religion will be required to change its religious policies or practices with regard to same-sex couples, and no religious officiant will be required to solemnize a marriage in contravention of his or her religious beliefs."

Disregarding the constitutional implications and relying on inflammatory "facts," proponents of Proposition 8, which had actually been introduced in October 2007, worked to scare voters into reversing the "activist

YES

believe that this defense of society-endorsed sodomy implicates the scriptural admonishment: "Woe unto them that call evil good, and good evil; that put darkness for light, and light for darkness; that put bitter for sweet, and sweet for bitter" (Isa. 5:20).

Many of us who have been defending the separation of church and state in print and in the courts over the last decades believe that the constitutional argument in this instance is largely a smokescreen for a deeper theological agenda. Many Adventists who are defending the so-called separation of church and state Proposition 8 debate were either missing in action, or openly hostile, when it came to issues of keeping church institutions free from state entanglement or the state promotion of religious practices. I know, because I have debated them in the past on this topic, some in the pages of *Spectrum* itself.

The reason that legally protecting traditional marriage does not implicate the separation of church and state is simply this: marriage is a universal human institution that transcends any religious or cultural group.

Laws protecting do not need to be any more Judeo-Christian than laws against murder, theft, rape, and incest. Yes, over time there have been some minor modifications on the precise contours of marriage, polygamy being an obvious case. But even in instances of polygamy, children have a mother and a father.

Biology itself witnesses that children are the product only of the union of a man and a woman. Never in the history of civilization—until the influence of an essentially relativistic and even nihilistic epistemology and values system of recent decades—have same-sex couples been considered appropriate civil institutions for perma-



Yes on 8 supporters

judges" who had voted against the "will of the people." They warned, among other things, that churches could be shut down and pastors fined for refusing to perform gay marriages, despite clear language to the contrary.

Adventists joined the fray, and pastors in California and Arizona, where a similar initiative appeared on the ballot, were asked to distribute fliers promoting Proposition 8 warning that Adventists would "rebel against the authority of God and the wisdom of His law by voting in favor of same-sex marriage."³

In a minor paean to separation of church and state, Adventists added the argument that traditional marriage, unlike the Sabbath, could be legislated because it was in the "second table" of the Decalogue that deals with civil issues. This distinction was not understood by radical evangelicals, who would enact all ten, much less gay rights activists.

Proponents argued that Proposition 8 supported equal treatment because homosexuals, just like heterosexuals, were free to marry members of the opposite sex.⁴ This reversed the Adventist argument that a 1990 U.S. Supreme Court decision had damaged the Free

Exercise Clause when it upheld the denial of unemployment benefits to Native Americans who used sacramental peyote. Though no fans of hallucinogenic drugs, Adventists disagreed with the Court's ruling that neutrally worded laws that treated everybody the same were permissible even if they discriminated against a group.⁵

Proposition 8 proponents instead exposed a clear intent to discriminate against homosexuals by disregarding the emergence of clear double standards. They argued that children are ideally raised by a father and mother but ignored heterosexual cohabitation, divorce, single parenting, and other arrangements. They failed to clearly articulate how gay marriage by third parties could affect heterosexuals, allowing the underlying forces of prejudice to make their arguments for them.

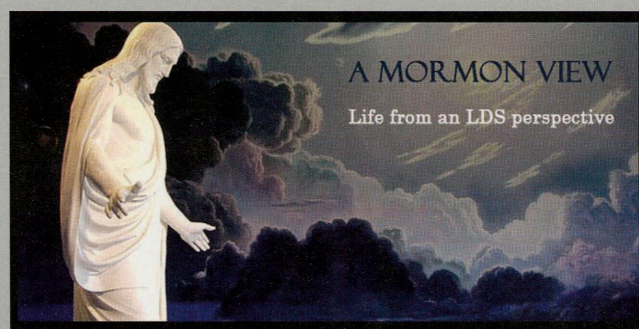
Adventists joined others in exiling a legally protected segment of the population from the shelter of the law and destabilizing the same protections we ourselves enjoy. Perhaps more than any other group aligned with us, we ourselves have experienced discrimination, being punished for working Sundays a century ago and losing jobs today rather than working on Sabbath.

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ment unions or the raising of children.

If we are removed from relying on obvious moral principles from nature in organizing our laws, then nothing on the sexual front is able to be regulated or forbidden: not prostitution; not bestiality; not public nudity or sex acts; not necrophilia; not polygamy—indeed, even the man/boy love society should be given free reign. Some immediately cry "age of consent" as a barrier to some of these extremes. But under the logic of pro-Proposition 8 advocates, consent is not a meaningful limit, except perhaps to aggravated rape.

This is because observations about the importance or relevance or obviousness of the age of consent are equally based on the same kinds of observations of human experience and nature that we use in arriving at our arguments about sexual morality. If our reasoning is rejected wholesale, then it cannot be used to fashion limits that happen to be more politically correct. Indeed, mainstream left-wing groups like the ACLU essentially recognize this when they defend the possession and distribution of child pornography.



We do not argue that homosexual acts should be criminalized. Within a zone of privacy, consenting adults can and should anticipate a certain amount of non-interference from the state. Yet there is a huge, illogical leap from this to argue that the state must then promote and endorse this private, immoral behavior by giving it the imprimatur of marriage and bestowing on those who practice it the right to raise children—children that such unions, left to themselves, cannot produce.

This is to place innocent, non-consenting third parties in a zone deeply violative of historic and traditional

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NO

Historically, Adventists have championed liberty of conscience for all, even if we have disagreed with those we have defended, and we have never advocated constitutional changes to reverse the rights of others, particularly in matters of religion. We as a group have recognized how hard we had fought for our rights, and although we held to our own religious standards we did not seek to enforce them using the power of the state.

Here, Adventists sold the message of freedom of conscience for the definition of "marriage," claiming a property that we did not rightfully own. We joined angry mobs in kicking out the inhabitants, ripping out its legal foundations, and transplanting its entirety to a precipice. The only mitigating factor is that we were not uniformly joined to this purpose.

Looking forward, we are virtually guaranteed that a future constitutional amendment will either reverse Proposition 8 or legally redefine marriages as "domestic partnerships." Procedural legal arguments used to uphold Proposition 8 will support future reversals, and churches will find that they have bound themselves to the negative consequences of

religious establishment.

Instead, we must markedly and consistently regain our moral authority as champions of the principle that "in matters of conscience, the majority has no power."⁶ ■

Notes and References

1. California Civil Code sections 51 through 51.3; see also Government Code Sec. 11135
2. *Perez v. Sharp* (1948) 32 Cal.2d 711; and *In re Marriage Cases* (2008) 43 Cal. 4th 757.
3. From a bulletin insert provided to Adventist Pastors in California and Arizona by the Seventh-day Adventist Church State Council. Available as of this writing at http://churchstate.org/site/1/docs/Final_Final_Bulletin_Insert_Prop_8.pdf
4. *Ibid.*
5. *Employment Division v. Smith* (1990) 494 U.S. 872.
6. Merele D'Abigne, *History of the Reformation*, 1248.

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YES

principles of civil morality—and one that has been shown by many current scientific and empirical studies to be much less adequate for the raising of children. The truly loving, kind, righteous, good, Christ-like thing, we believe, is to protect the welfare of these children rather than the "rights" of those who wish to have their personal wrongs endorsed by the state.

But we are also concerned with the treatment of the Bible by those who oppose Proposition 8. Consider that both the Old and New Testaments teach that homosexual behavior is a violation of the natural law, for which God holds both believers and nonbelievers accountable. The story of Sodom and Gomorrah, and Paul's statements in Romans, make this abundantly clear.

Some argue that understanding the intersection of biblical and civil morality is not always simple. But we believe that what is very clear is this: it is not wise or right to get out front as Adventist thought leaders and promote the societal endorsement of immorality, when obvious moral imperatives—both biblical and civil—point strongly in the opposite direction. Even if one

believed that protecting traditional marriage were somehow a technical violation of the U.S. Constitution—which we strongly maintain it is not—would not the best approach be to maintain a discreet silence?

This is the counsel that Ellen White gave on the question of Bible readings in the public schools. Such readings may have been a technical violation of the U.S. Constitution. But as the practice would promote good morality, she said, in situations like this "silence is golden."

Frankly, once they found themselves unable to stand in defense of basic morality along with the Church's religious liberty leadership, we could have used more golden moments from our brethren in the Golden State who had doubts about Proposition 8. ■

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