



OFFICE OF ASSEMBLYMEMBER

Evan Low

TWENTY-SIXTH ASSEMBLY DISTRICT

Assembly Constitutional Amendment 5: Relating to Marriage

SUMMARY

Assembly Constitutional Amendment (ACA) 5 expresses the intent of the Legislature to amend the state Constitution relating to marriage equality.

BACKGROUND

In November 2008, 52 percent of Californians voted in favor of Proposition 8, which amended the state constitution to state “only marriage between a man and a woman is valid or recognized in California.”

In August 2010, Chief U.S. District Judge Vaughn Walker ruled that Proposition 8 was unconstitutional under the due process and equal protection clauses of the Fourteenth Amendment to the U.S. Constitution. In February 2012, the U.S. Ninth Circuit Court of Appeals continued to uphold both of the federal judges’ rulings, and finally the case was taken to the U.S. Supreme Court. On June 26, 2013, the Supreme Court ruled that the appellants in Proposition 8 did not have standing to bring the case, effectively nullifying the amendment.

On June 26, 2015, the U.S. Supreme Court ruled, in *Obergefell v. Hodges*, that state bans on same-sex marriage, as well as bans on recognizing same-sex marriages performed in other jurisdictions, were unconstitutional. The Court’s 5-4 ruling cited the due process and equal protection clauses of the Fourteenth Amendment to the U.S. Constitution. The decision resulted in marriage equality at the federal level.

PROBLEM

Last year, the U.S. Supreme Court published its decision in the case *Dobbs v. Jackson Women’s Health Organization*, which overturned the Court’s previous rulings in *Roe v. Wade* and *Casey v. Planned*

Parenthood of Pennsylvania. Justice Clarence Thomas alluded to the decision’s potential implications for marriage as well, stating in his concurrence to the decision, that the Court “should reconsider all of [its] substantive due process precedents, including *Griswold*, *Lawrence*, and *Obergefell*. Because any substantive due process decision is ‘demonstrably erroneous,’ we have a duty to ‘correct the error’ established in those precedents...”

If the Supreme Court rules to overturn the precedents set in *Obergefell v. Hodges*, same-sex marriage could potentially be put at risk in the state of California. While *Hollingsworth v. Perry* nullified the section of the California Constitution stating marriage to be only valid and recognized when between man and woman, that section of the Constitution still remains and could be re-applied should the Supreme Court revisit and reverse its previous ruling.

SOLUTION

ACA 5 would express the intent of the Legislature to amend the Constitution of the State relating to marriage equality. As a leader on LGBTQ+ rights and inclusivity for the rest of the country, it is California’s duty to ensure that the tens of thousands of LGBTQ+ Californians who are married are protected and that the right to marry remains available to all Californians, regardless of their sexual orientation or gender identity.