

## Legal challenges grow in wake of Proposition 8 passage

Mary Barron | Nov. 14, 2008



### SAN FRANCISCO

The NAACP and a coalition of racial justice groups weighed in on the side of gay marriage Friday and brought a new argument to the table. They filed their own legal challenge to California's Proposition 8, the constitutional amendment voters just approved that rescinds same-sex marriage.

"This is a very powerful and dramatic turn of events," said Shannon Minter, an attorney with the National Center for Lesbian Rights. "The message behind the petition filed today is that a threat to one is a threat to all."

[\(John Allen on U.S. bishops reaction to passage of Proposition 8.\)](#) [1].

[\(California bishops' official statement after passage of Proposition 8.\)](#)[2]

The petition specifically supports the right of gay couples to marry. It also makes a vigorous equal-protection argument, stating that if a majority vote can take away a right from one group it can do the same to others. Of the four legal challenges filed against Proposition 8, this is the first to argue that it sets a precedent that could be used to undermine rights of racial minorities and immigrants.

Bringing the case are:

- the California Conference of the National Association for the Advancement of Colored People
- the NAACP Legal Defense and Educational Fund,
- the Mexican-American Legal Defense and Educational Fund,
- the Asian Pacific American Legal Center, and
- the Equal Justice Society.

The civil rights groups had previously contributed briefs in the lawsuit that legalized same-sex marriage in California earlier this year. But by filing their own case now, based on defense of their own rights, they are "moving things up to another level," Minter said.

The lawsuit is the fourth legal challenge of Proposition 8 filed with the California Supreme Court, which could

decide as early as Wednesday whether or not to hear the cases. One suit was brought by Minter's group and its partners ? Lambda Legal and the American Civil Liberties Union ? who together won the state Supreme Court ruling that created a right to same-sex marriage in California. A lesbian couple who married after the court ruling went into effect in May also filed a challenge. Another was filed by the cities of San Francisco and Los Angeles and Santa Clara County.

All four challenges make the case that Proposition 8 should not take effect because "voters cannot make such a serious change to the constitution's underlying principles through a simple majority vote," Minter said. The California Constitution says a serious change must be made through a more deliberative process under which two-thirds of the Legislature would need to approve the change and then present it to voters.

Phone calls and emails seeking reaction from the California Catholic Conference, which coordinated the church's participation in the campaign to pass Proposition 8, were not immediately returned as the workweek ended. But Stockton Bishop Stephen Blaire, president of the state bishops' conference, has said the success of the amendment is not meant to disparage people or take away their civil rights.

"Under California law, same-sex couples who register as domestic partners will continue to have 'the same rights, protections, and benefits' as married persons," Blaire said in a written statement on the conference website. "Proposition 8 simply recognizes that there is a difference between traditional marriage and a same-sex partnership."

But the church also teaches against racism and in favor of the rights of immigrants, so the new legal argument bears scrutiny.

Bill Roth, a San Jose technology executive who heads the California chapter of Catholic Democrats, had argued in favor of gay marriage in pre-election debates at church forums in northern California. He was usually paired against a member of the Knights of Columbus arguing the church's position. Roth couched his support in terms of the Catholic virtue of solidarity.

A similar solidarity with the gay and lesbian community is demonstrated by the civil rights groups' lawsuit, which seems to leave the church in an awkward position, standing on the opposite side of those groups, Roth said. "I think it draws the bishops' position as being against some of their core constituencies. I think it's going to damage some of the other work they do in areas like poverty and restorative justice."

On the other hand, the stance of the civil rights groups may put them on conflicted paths with their own core constituencies. Exit polls from the Nov. 4 election showed 70 percent of African American voters and more than half of Latino voters supported the amendment that the NAACP and Mexican-American Fund are now challenging.

Religious money and volunteers ? Mormon, Catholic and evangelical ? fueled the campaign for Proposition 8, and voting correlated with frequency of church attendance. Exit polling by Edison Media Research showed 59 percent of California Catholics voters cast ballots for Democratic President-elect Barack Obama. But they switched to the conservative position when it came to gay marriage. Sixty-four percent voted to amend the state constitution so that "Only marriage between a man and a woman is valid or recognized in California."

Overall, the amendment was approved by 52 percent of California voters.

Attorney General Jerry Brown is planning to respond to the lawsuits Monday, arguing to uphold the amendment.

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