

Proposition 8 was on the wrong side of history

FEW WEEKS before Election Day, I officiated at the wedding of a colleague.

Like 18,000 other weddings that have taken place in California since the state Supreme Court ruled in favor of same-sex marriage, my colleague's wedding was a celebration of the life-long commitment of two people — and of a victory in an ongoing struggle for civil rights.

As my colleague and his partner exchanged vows, it seemed almost impossible that Californians would vote in favor of telling this couple, and thousands of loving couples like them, that their partnership is somehow less than a marriage.

Proposition 8 — which revises the state constitution to take away same-sex marriage rights, in effect deleting the constitution's Equal Protection Clause for gay couples — was an especially painful and personal blow to thousands of families in California.

On the same day that the nation elected its first black president, a slim majority of Californians responded to a campaign based

on fear and disinformation, and cast ballots to enshrine discrimination against another minority group in our constitution.

Recently, Oakland joined San Francisco's lawsuit against Proposition 8, which argues that such a sweeping redefinition of equal protection cannot be made by a simple majority vote.

JOHN RUSSO
My Word

It's going to be hard for any lawyer to argue that

Proposition 8 doesn't deny equal protection to a particular group of people — denying equal rights to same-sex couples was the whole point of the ballot measure.

This is Proposition 8's fatal flaw. Throughout our history, the progression of civil rights has been based on the fundamental constitutional principle that protects against the "tyranny of the majority."

This principle of equal protection is at the heart of our constitutional system. It guarantees that a powerful majority cannot use the

democratic process to take away the rights of an unpopular minority group.

Almost every major step forward in civil rights was made possible by the court's defense of the Equal Protection Clause. The U.S. Supreme Court upheld the right of African Americans to vote and ended school segregation — all in opposition to majority rule.

Gov. Arnold Schwarzenegger is right to compare Proposition 8 to California's old law against interracial marriage, which was supported by a majority of voters in the 1940s, but struck down as unconstitutional by the state Supreme Court.

As Justice Harlan put it in his famous dissent in *Plessey v. Ferguson*, the Supreme Court ruling that upheld segregation: "There is in this country no superior, dominant, ruling class of citizens. Our Constitution ... neither knows nor tolerates classes among citizens."

In a state where we can't raise taxes on luxury yachts without a two-thirds vote, it is bizarre that such a radical change to our constitution can be made by a bare majority.

Ultimately, California's prohibition against same sex marriage will go the same way as "separate but equal" and the exclusion of women from the voting booth.

However, despite the best efforts of the out-of-state theocrats to limit civil rights in California, our state constitution does not permit a second and inferior status for millions of our family members, neighbors and fellow citizens.

Proposition 8 is on the wrong side of history. Ultimately, California's prohibition against same-sex marriage will go the same way as "separate but equal" and the exclusion of women from the voting booth. The only question is when — and how many families will remain unequal in the eyes of the law until then.

John Russo is Oakland City Attorney.