

# REPORT OF THE CHIEF LEGISLATIVE ANALYST

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DATE: May 3, 2023

TO: Honorable Members of the Rules, Elections, and Intergovernmental Relations Committee

FROM: Sharon M. Tso *MT*  
Chief Legislative Analyst

Council File No. 23-0002-S38  
Assignment No. 23-04-0202

SUBJECT: Resolution (Krekorian – Hernandez, et al.) to SUPPORT ACA 5 (Low)

CLA RECOMMENDATION: Adopt Resolution (Krekorian – Hernandez, et al.) to include in the City’s 2023-2024 State Legislative Program, SUPPORT for Assembly Constitutional Amendment (ACA) 5 (Low) to overturn Proposition 8 and protect same-sex marriage in California.

## SUMMARY

Resolution (Krekorian – Hernandez, et al.), introduced on March 10, 2023, advises that in 2008, the passing of Proposition (Prop) 8 amended the California Constitution to ban same-sex marriage in the state. In 2015, the U.S. Supreme Court’s decision in *Obergefell v. Hodges* nullified Proposition 8, stating that state bans on same-sex marriage violated the due process and equal protection clauses of the Fourteenth Amendment of the U.S. Constitution. The Resolution further reports that in 2022, the U.S. Supreme Court overturned decades of legal precedent in their ruling for *Dobbs v. Jackson Women’s Health Organization*, stating that the due process clause of the Fourteenth Amendment did not protect a woman’s right to terminate a pregnancy, with Justice Thomas urging the Supreme Court to reconsider all of its substantive due process cases, including *Obergefell v. Hodges*.

ACA 5 (Low), currently pending before the State Assembly, intends to remove Prop 8 language from the California Constitution and protect the right to same-sex marriage. The amendment aligns with previous City efforts to invalidate Prop 8 (C.F. 08-0002-S162) and support marriage equality (C.F.s 11-0002-S49, 11-0002-S1115). The Resolution therefore requests that the City support ACA 5.

## BACKGROUND

In 2008, Prop 8 amended the California Constitution to provide that “only marriage between a man and woman is valid or recognized in California.” This constitutional amendment temporarily halted same-sex marriages in the state from 2008 to 2013. A number of subsequent legal cases heard in district courts, including *Hollingsworth v. Perry*, overturned Prop 8 and allowed same-sex marriages to resume in California, but the 2015 Supreme Court ruling in *Obergefell v. Hodges* extended marriage equality nationwide. Further, in 2022, Congress passed the Respect for Marriage Act, which requires the federal government to recognize same-sex and interracial marriages and affirms that states must recognize valid marriage licenses from other states, but does not require states to issue marriage licenses to same-sex couples.

Although marriage equality is currently protected by the 2015 Supreme Court decision in *Obergefell v. Hodges*, an increase in anti-LGBTQ+ legislation and recent statements and decisions made by the Supreme Court have brought to question whether or not the legal precedent of protecting marriage equality will be

upheld. If the Obergefell decision is overturned, 35 states, including California would prohibit same-sex marriages based on constitutional amendments and statutes currently in place that define marriage as being between one man and one woman.

ACA 5 would bring a ballot initiative before voters in 2024 to remove the discriminatory language of Prop 8 from the California Constitution. Equality California, a sponsor of ACA 5, reports that 71 percent of Californians from across the political spectrum support the freedom to marry for same-sex couples.

DEPARTMENTS NOTIFIED

Civil + Human Rights and Equity Department

BILL STATUS

2/14/23            Introduced

  
\_\_\_\_\_  
Susan Oh  
Analyst

Attachment    1. Resolution (Krekorian – Hernandez, et al.)  
                  2. ACA 5

# ATTACHMENT 1

## RESOLUTION RULES, ELECTIONS, INTERGOVERNMENTAL RELATIONS

WHEREAS, any official position of the City of Los Angeles with respect to legislation, rules, regulations or policies proposed to or pending before a local, state, or federal government body or agency must have first been adopted in the form of a Resolution by the City Council with the concurrence of the Mayor; and

WHEREAS, the Census Bureau found that in 2021 more than 2.7 million Californians, 9% of the state population, identify as Lesbian, Gay, Bisexual, or Transgender (LGBT); and

WHEREAS, in 2008, a narrow majority of Californians voted in favor of Proposition 8, which amended the state constitution to ban same-sex marriage after a campaign in which millions of dollars raised in support of Proposition 8 came from groups outside California; and

WHEREAS, in 2015, the United States Supreme Court nullified Proposition 8 by ruling in *Obergefell v. Hodges* that state bans on same-sex marriage violated the due process and equal protection clauses of the Fourteenth Amendment of the United States Constitution; and

WHEREAS, writing for the majority in *Obergefell* case, Justice Kennedy emphasized “no union is more profound than marriage, for it embodies the highest ideals of love, fidelity, devotion, sacrifice, and family”; and

WHEREAS, the United States Supreme Court held in *Roe v. Wade*, and reaffirmed in *Planned Parenthood v. Casey*, that the due process clause of the Fourteenth Amendment also generally protects a woman’s right to terminate a pregnancy and yet, in 2022, the United States Supreme Court’s new majority overturned decades of well-established legal precedent by stating in *Dobbs v. Jackson Women’s Health Organization* that the Fourteenth Amendment does not protect the right to terminate a pregnancy, and that states may regulate abortion so long as they comply with federal law; and

WHEREAS, in his concurrence in *Dobbs v. Jackson Women’s Health Organization*, Justice Clarence Thomas stated that the Supreme Court should reconsider all of its substantive due process cases, including *Obergefell v. Hodges*; and

WHEREAS, if *Obergefell v. Hodges* were overturned, Proposition 8, which is still in the California state constitution, would critically endanger the right to same-sex marriage in California; and

WHEREAS, Congress in 2022 passed the Respect for Marriage Act, which requires the federal government to recognize same-sex and interracial marriages, but it does not require states to issue marriage licenses to same-sex couples; and

WHEREAS, the Respect for Marriage Act enshrines protections for religious liberty and ensures that religious institutions are not compelled to officiate any marriage inconsistent with their sacraments; and

WHEREAS, Assembly Constitutional Amendment 5 (Low, Wiener) would remove Proposition 8 from the California state constitution, protecting the right to same-sex marriage in California; and

WHEREAS, the right to marry the person one loves, regardless of sexual orientation or gender identity, is fundamental to ensuring the equal rights of millions of Californians;

MAR 10 2023



NOW, THEREFORE, BE IT RESOLVED, with the concurrence of the Mayor, that by the adoption of this Resolution, the City of Los Angeles hereby includes in its 2023-2024 State Legislative Program SUPPORT for Assembly Constitutional Amendment 5 (Low, Wiener) which would overturn Proposition 8 and protect same-sex marriage in California.

PRESENTED BY: Paul Kerkorian

PAUL KREKORIAN  
Councilmember, 2nd District

*Iran Park*

*Carson Prof*

SECONDED BY: Eric Aronson

*Tim McCall*  
*Priya Parra*

*JP*

ORIGINAL

# ATTACHMENT 2

CALIFORNIA LEGISLATURE—2023—24 REGULAR SESSION

## Assembly Constitutional Amendment

No. 5

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### Introduced by Assembly Member Low

(Principal coauthors: Assembly Members Cervantes, Jackson, Lee, Ward, and Zbur)

(Principal coauthors: Senators Atkins, Eggman, Laird, Menjivar, Padilla, and Wiener)

(Coauthors: Assembly Members Addis, Aguiar-Curry, Arambula, Bauer-Kahan, Berman, Boerner Horvath, Bonta, Calderon, Connolly, Mike Fong, Friedman, Gabriel, Haney, Hart, Irwin, Jones-Sawyer, Lowenthal, Maienschein, McCarty, McKinnor, Muratsuchi, Stephanie Nguyen, Ortega, Pellerin, Petrie-Norris, Quirk-Silva, Luz Rivas, Robert Rivas, Blanca Rubio, Santiago, Ting, Wallis, Weber, Wicks, Wilson, and Wood)

(Coauthors: Senators Allen, Archuleta, Ashby, Becker, Blakespear, Bradford, Caballero, Cortese, Dodd, Durazo, Glazer, Gonzalez, Hurtado, Limón, McGuire, Min, Newman, Portantino, Roth, Rubio, Skinner, Smallwood-Cuevas, Stern, Umberg, and Wahab)

February 14, 2023

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Assembly Constitutional Amendment No. 5—A resolution to propose to the people of the State of California an amendment to the Constitution of the State, relating to rights.

#### LEGISLATIVE COUNSEL'S DIGEST

ACA 5, as introduced, Low. Marriage equality.

The California Constitution declares that defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy are inalienable rights, and that

a person may not be deprived of life, liberty, or property without due process of law or equal protection of the laws.

This measure would express the intent of the Legislature to amend the Constitution of the State relating to marriage equality.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

1     *Resolved by the Assembly, the Senate concurring,* That the  
2     Legislature of the State of California at its 2023–24 Regular  
3     Session commencing on the fifth day of December 2022, two-thirds  
4     of the membership of each house concurring, hereby proposes to  
5     the people of the State of California, that the Constitution of the  
6     State be amended as follows:

7     It is the intent of the Legislature to amend the Constitution of  
8     the State relating to marriage equality.