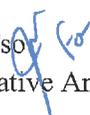# REPORT OF THE
CHIEF LEGISLATIVE ANALYST

DATE: June 11,2024

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

FROM: Sharon M. Tso   Council File No.   24-0002-S9
            Chief Legislative Analyst   Assignment No.   24-06-0394

SUBJECT: Resolution (McOsker, et al. – Yaroslavsky, Hutt) to SUPPORT the "Freedom to Marry"
            Ballot Initiative.

CLA RECOMMENDATION: Adopt Resolution (McOsker, et al. – Yaroslavsky, Hutt) to include in the City's 2023-2024 State Legislative Program, SUPPORT for the California Right to Marry and Repeal Proposition (Prop) 8 Amendment on November 5, 2024, to remove Prop 8 language from the California Constitution and enshrine marriage equality in California.

SUMMARY
Resolution (McOsker, et al. – Yaroslavsky, Hutt), introduced on May 31, 2024, states that since the passing of Prop 8, the California Constitution provides that "only a marriage between a man and woman is valid or recognized in California." Introduced on February 15, 2023, the Assembly Constitutional Amendment (ACA) 5 (Low) is a legislatively referred ballot initiative that aims to enshrine marriage equality in California and will be before voters on November 5, 2024. If approved, the ballot initiative will remove the Prop 8 clause from the California Constitution. The Resolution states that while the clause was deemed unconstitutional by the U.S. Supreme Court's decision in *Obergefell v. Hodges*, the language has remained in the State's Constitution. The Resolution further states that notwithstanding that marriage equality is currently law in the U.S., it is possible that courts can overturn precedent, as was in the case with *Dobbs v. Jackson* to overturn *Roe v. Wade*, and limit the ability of same-sex couples to marry in certain states. ACA 5 seeks to protect the right of marriage equality in California. The Resolution therefore requests that the City support the ACA 5 Freedom to Marry ballot initiative.

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.

Constitutional amendments are required to pass both houses of the Legislature by a two-thirds vote and a majority approval from voters. ACA 5 passed both the Assembly and Senate in June and July 2023, respectively. 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. According to 2021 census data, California has the largest LGBTQIA population in the nation, with 2.7 million residents who identify as part of the community.

The amendment aligns with previous City efforts to invalidate Prop 8 (C.F.s 23-0002-S38, 08-0002-S162) and support marriage equality (C.F.s 11-0002-S49, 11-0002-S1115).

DEPARTMENTS NOTIFIED
Civil + Human Rights and Equity Department

BILL STATUS
7/20/23	Chaptered by the Secretary of State
7/13/23	Passed by Assembly
6/23/23	Passed by Assembly
2/14/23	Introduced

Susan Oh
Analyst

Attachment   Resolution (McOsker, et al. – Yaroslavsky, Hutt)

RESOLUTION

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 governmental body or agency must have first been adopted in the form of a Resolution by the City Council; and

WHEREAS, as it stands today, the California Constitution provides that only a marriage between a man and a woman is valid or recognized in California; however, legal precedence currently permanently enjoins the state from enforcing this constitutional provision; and

WHEREAS, Assembly Constitutional Amendment (ACA) 5 was introduced by Assemblymember Evan Low, (D-Campbell) on February 15, 2023. ACA 5 aimed to enshrine in the California Constitution the right to marriage equality. ACA is a legislatively referred ballot initiative, which will appear on the November 5, 2024, ballot as the "Freedom to Marry Ballot Initiative"; and

WHEREAS, the Freedom to Marry Ballot Initiative, if approved by the voters, will remove the Proposition 8's 2008 clause in the California Constitution: "Only a marriage between a man and a woman is valid or recognized in California." (Cal. Const. Art. I Sec. 7.5.)"; and

WHEREAS, while this language had been deemed unconstitutional in the State soon after, it has remained in the California Constitution since. Following the Supreme Court of the United States' (SCOTUS) landmark ruling in Obergefell v. Hodges in 2015, no State was then permitted to refuse to recognize a lawful same-sex marriage performed in another State on the grounds that it is a same-sex marriage. (Id. at 681.); and

WHEREAS, one year before the Obergefell decision, then State Senator Mark Leno, (D-San Francisco) introduced Senate Bill (SB) 1306 (Chapter 82, Statutes of 2014), which sought to remove the provisions in the Family Code, which stated that marriage is only between a man and a woman. The bill also sought to reset the marriage sections in gender-neutral terms in the State of California; and

WHEREAS, and while it is true that marriage equality is currently the law in the United States; however, it is not impossible that this will not always remain the case because Courts can change. As we saw with the Dobbs v. Jackson (2022) decision, which overturned Roe v. Wade and decades of precedent for bodily autonomy, no legal precedent is safe from judicial changemaking. Especially considering the ideological makeup of today's SCOTUS; and

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WHEREAS, regardless of the probability that the SCOTUS could revisit Obergefell, this ballot initiative seeks to anticipate any possible legal challenge to marriage equality by enshrining marriage equality in the State Constitution; and

WHEREAS, marriage equality is about equal treatment under the law and the ability for LGBTQ couples to enjoy recognition and dignity in the eyes of the State. For these reasons, both the California Supreme Court and the SCOTUS have found that bans on marriage equality are unconstitutional; and

WHEREAS, removing the California Constitution's provision denying marriage equality will not only remove the potential of an unconstitutional infringement on a fundamental right from our constitution but also will ensure that the provision will not go back into effect should the legal precedents on marriage equality ever change:

NOW THEREFORE BE IT RESOLVED that by the adoption of this Resolution, the City of Los Angeles hereby includes in its 2024-2025 State Legislative Program SUPPORT for the "Freedom to Marry Ballot Initiative".
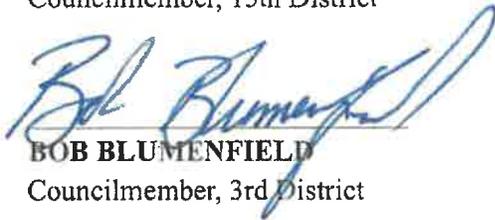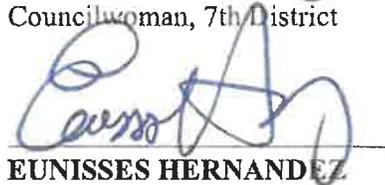
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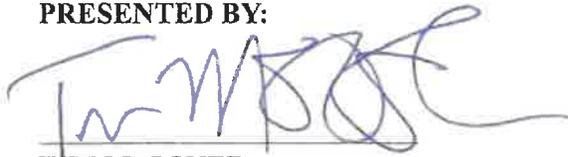
TIM McOSKER
Councilmember, 15th District
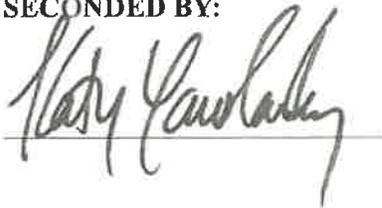
BOB BLUMENFIELD
Councilmember, 3rd District

MONICA RODRIGUEZ
Councilwoman, 7th District

EUNISSES HERNANDEZ
Councilmember, 1st District

SECONDED BY: