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## California Supreme Court Issues Pivotal Ruling on Same-Sex Marriage

California Supreme Court observers on both sides were astounded at the Court's decision in the *In re Marriage Cases* (S 147999, May 15, 2008). The ruling declares **unconstitutional** Family Code section 308.5 - the codification of Proposition 22 - which states, "Only a marriage between a man and a woman is valid or recognized in California."

This decision makes a powerful statement about constitutional rights in California, especially coming from what is considered to be one of the most legally conservative of the nation's highest state courts. Despite the recent enactment of domestic partnership legislation granting most of the substantive rights of married couples to registered domestic partners, the ruling in *In re Marriage Cases* declares that the right to marry is such a basic constitutional right that its denial, under a strict scrutiny equal protection standard, violates the California Constitution.

### What does this ruling mean for same-sex couples wishing to marry?

The press has described as volatile the legal situation for same-sex couples wanting to marry now, primarily because of the high probability that the voters will be asked to nullify *In re Marriage Cases* in November 2008 by means of a constitutional initiative on the state's Presidential election ballot. The Family Law Group at Hoge Fenton has been fielding such questions as, "Is this ruling in jeopardy?" Our cautious opinion is that same-sex marriages in California are here to stay.

First, the decision in *In re Marriage Cases* will become final on June 14, 2008 (unless extended by court order), and we feel fairly certain that same-sex marriages between then and the November election will survive any legal challenge.

Second, might the United States Supreme Court overrule *In re Marriage Cases*? We think it highly unlikely. A line of Supreme Court decisions, including *Pruneyard Shopping Center v. Robins*, successfully argued by Hoge Fenton's Phil Hammer, permit the states under the doctrine of federalism to grant broader - but not narrower - rights to their citizens under a state constitution than may be required by the U. S. Constitution.

Third, while we try to avoid political predictions, recent polling has revealed much more favorable attitudes of California voters regarding same-sex marriage as compared to polling of eight years ago. We believe the passage of the nullification amendment in November is far from assured.

Finally, even if the November ballot measure should succeed, the California Supreme Court has, on the rare occasions when the problem has arisen, struck down even constitutional amendments resulting from the initiative process.

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**Philip L. Hammer**, Certified Family Law Specialist, chairs Hoge Fenton's Family Law Group. He and his legal team focus on complex marital dissolutions requiring specialized experience, particularly those involving large assets and complex financial, business, child custody, and legal issues.

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