

# OAKLAND CITY COUNCIL

Resolution No. 81700 C.M.S.

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND  
*Barbara J. Park*  
08 DEC -4 AM 10:21

INTRODUCED BY COUNCILMEMBER

**RESOLUTION MEMORIALIZING THE COUNCIL'S NOVEMBER 18, 2008 UNANIMOUS DECISION IN CLOSED SESSION AUTHORIZING CITY OF OAKLAND TO JOIN AS A PARTY PETITIONER, *CITY AND COUNTY OF SAN FRANCISCO, ET AL., V. HORTON, ET AL.* (CALIFORNIA SUPREME COURT, CASE NO. 168078), A PETITION FOR WRIT OF MANDATE ASKING THE CALIFORNIA SUPREME COURT TO STRIKE DOWN PROPOSITION 8, THE 2008 VOTER INITIATIVE MEASURE THAT ELIMINATES THE FUNDAMENTAL RIGHT TO MARRY FOR SAME-SEX COUPLES**

**WHEREAS**, in May of 2008 the California Supreme Court held that state laws that limited marriage to a man and a woman violated the rights of lesbian and gay individuals and couples to equal protection, privacy and due process under the California Constitution; and

**WHEREAS**, Proposition 8, an initiative measure, which purports to amend the California Constitution to strip a constitutionally protected minority group of the fundamental right to marry, was placed on the November 4, 2008 general election ballot and passed; and

**WHEREAS**, Proposition 8 seeks to overturn the California Supreme Court's ruling and transfer final authority to enforce the Equal Protection Clause from the courts to a political majority; and

**WHEREAS**, Proposition 8, therefore, not only strips from an unpopular minority its fundamental right to equal protection by enshrining discrimination in the Constitution, it also prevents the courts from exercising their historically significant power to protect unpopular minorities from discrimination; and

**WHEREAS**, the City and County of San Francisco, the City and the County of Los Angeles and Santa Clara County filed a Petition for Writ of Mandamus, *City and County of San Francisco, et al. v. Horton, et al.*, asking the California Supreme Court to issue a writ of mandate directing the respondents in the litigation to refrain from implementing, enforcing or applying Proposition 8; and

**WHEREAS**, on November 19, 2008, the Supreme Court accepted the case and ordered the California Attorney General and other State respondents to show cause why the relief that the Petitioners seek should not be granted; and

**WHEREAS**, the Petition was filed on the ground that the California Constitution does not allow a bare majority of voters to use the amendment process to divest a politically unpopular group of its fundamental right under the California Constitution to equal protection of the laws; and

**WHEREAS**, such a sweeping redefinition of equal protection would require a constitutional revision rather than a mere amendment; and

**WHEREAS**, the initiative power is available to amend, not to revise (i.e., make fundamental changes in the permanent and foundational principles of) the Constitution; and

**WHEREAS**, Article XVIII of the California Constitution provides different vehicles for amending and revising the Constitution; and

**WHEREAS**, while Article XVIII allows a solitary citizen, without any public deliberation or review, to draft and circulate an initiative petition to amend the Constitution, a revision to the California Constitution requires (1) a two-thirds vote by the State Legislature or a constitutional convention and then (2) popular ratification by the voters; and

**WHEREAS**, if a bare majority can deprive an unpopular group of the right to marry, then a mere majority also could amend the Constitution to ban interracial marriage, or to enshrine the right to discriminate against racial minorities in the California Constitution, or to declare that children of undocumented immigrants shall not receive government benefits or that Muslims may not use public facilities or ride public transportation without first obtaining a special permit; and

**WHEREAS**, the cities of Fremont, Laguna Beach and San Diego and the Boards of Supervisors in the counties of Alameda, San Mateo, Marin, and Santa Cruz have agreed to join the litigation as party petitioners; and

**WHEREAS**, the City of Oakland has a long, unflinching history of championing diversity and supporting, enacting and enforcing laws and policies that prohibit discrimination on the basis of race, gender, sexual orientation, disability, national origin, age, color and other arbitrary classifications; and

**WHEREAS**, pursuant to the Brown Act, Open Meeting Law, Government Code section 54956.9(c), the City Council held a closed session to decide whether to join the litigation challenging the validity of Proposition 8; and

**WHEREAS**, in accordance with the Brown Act, Government Code section 54957.1(a) (2) the Council's decision to join the litigation was orally reported out in open session; now therefore be it

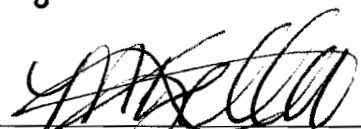
**RESOLVED:** that the City Council of the City of Oakland hereby memorializes its decision authorizing the City of Oakland to join as a party petitioner *City and County of San Francisco, et al. v. Horton, et al.*, a petition for writ of mandate asking the California Supreme Court to invalidate Proposition 8, an initiative measure that makes fundamental and pervasive revisions to the California Constitution that cannot be accomplished through the initiative process.

IN COUNCIL, OAKLAND, CALIFORNIA, DEC 9 2008  
PASSED BY THE FOLLOWING VOTE:

AYES - BRUNNER, KERNIGHAN, NADEL, QUAN, BROOKS, REID,  
CHANG, AND PRESIDENT DE LA FUENTE - 8

NOES - 0  
ABSENT - 0  
ABSTENTION - 0

ATTEST:

  
LATONDA SIMMONS  
City Clerk and Clerk of the Council of the  
City of Oakland, California