



Supreme Court of the United States

California v. Fraser

By Joseph Resnek

Case Summary

This case is a challenge of California's Marriage Protection Act (Proposition 8), a constitutional amendment which states that "Only marriage between a man and a woman is valid or recognized in California." A gay California resident (Joseph Frazer) filed a lawsuit in federal court seeking to annul the amendment on the grounds that it violates the Fourteenth Amendment to the US Constitution.

Relevant Case Law

United States v. Carolene Products Company (1938)

One of the main issues in this debate is what level of scrutiny should be used to evaluate Proposition 8. If the court is persuaded that it should review Proposition 8 using strict scrutiny, the law will probably be overturned. If the court is convinced it should evaluate Proposition 8 using a lower level of scrutiny, the law will probably be upheld.

In *United States v. Carolene Products Company*, the Court held that in order for a provision to be challenged under a higher level of scrutiny it must meet one of the following conditions:

- it appears to violate a provision of the constitution (known commonly as a facial challenge)
- it distorts or manipulates the democratic process, and
- it discriminates against minorities, especially those who cannot realistically seek redress through the traditional political process.

If a prohibition on gay marriage, specifically Proposition Eight, meets any of these criteria, then it can be considered under an elevated standard of scrutiny—thereby making it measure unconstitutional.

Loving v. Virginia (1967)

In *Loving v. Virginia* the Supreme Court ruled that race-based restrictions on marriage were unconstitutional. This was a reversal of a previous decision (*Pace v. Alabama*, decided in 1883) that had held such restrictions to be valid. *Loving* was a unanimous ruling, overturning a decision of the Virginia Supreme Court that had reviewed the same statute and reached the opposite conclusion. For the purposes of this case, the most important parts of *Loving* were the application of the Fourteenth Amendment and the Court's conclusion that marriage is a fundamental right.

The court wrote as follows: "Marriage is one of the "basic civil rights of man," fundamental to our very existence and survival. To deny this fundamental freedom on so unsupportable a basis as the racial classifications embodied in these statutes, classifications so directly subversive of the principle of equality at the heart of the Fourteenth Amendment, is surely to deprive all the State's citizens of liberty without due process of law."

Lawrence v. Texas (2003)

Lawrence v. Texas was a landmark Supreme Court case which struck down a long-standing Texas prohibition on sodomy. The Court ruled that the anti-sodomy law was unconstitutional by a 6-3 vote, citing the rights to privacy and liberty guaranteed by the Due Process clause of the Fourteenth Amendment. This ruling is especially important because it deals with a law which attempts to enforce “morality” upon the gay community. One of the most compelling arguments in the opinion of the Court was, in essence, that morality does not in itself provide a compelling state interest. In other words, for the purposes of this case, if Proposition 8 is authored solely for the sake of projecting religious or moral convictions, it will not survive strict or intermediate scrutiny.