

# California State PTA

Legislation Study Committee Report – For CAPTA BOM, August 2024

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**November 5, 2024, Statewide Ballot Measure**

## **Proposition 3: MARRIAGE EQUALITY**

From the California State Legislature:

[ACA 5 \(Low\) - Resolution Chapter 125, Statutes of 2023. Marriage equality.](#)

The California Constitution provides that only a marriage between a man and a woman is valid or recognized in California; federal law permanently enjoins the state from enforcing this constitutional provision.

This measure would repeal this unenforceable constitutional provision and would instead provide that the right to marry is a fundamental right, as specified.

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**Purpose of this study report:** *According to the California State PTA Standing Rules (1.4), statewide ballot positions are considered by the Board of Directors and forwarded to the Board of Managers for adoption. This study has been prepared to provide the necessary background for the Interim Legislation Action Committee to recommend a position on this ballot measure and for BOD and BOM members to consider adoption of a position based on that recommendation.*

**Study Committee Members:** *Kathleen Fay (Chair), Carol Kocivar, Karen Ford Cull, and Kari Gray, in consultation with Anita Avrick and Hourri Khatchadorian.*

### **EXECUTIVE SUMMARY**

**Proposition 3: CONSTITUTIONAL RIGHT TO MARRIAGE. LEGISLATIVE CONSTITUTIONAL AMENDMENT.** This ballot measure will be put before voters in the November 5, 2024, California General Election. If passed, it would amend the California Constitution to recognize the fundamental right to marry, regardless of sex or race, and remove language in the California Constitution stating that marriage is only between a man and a woman. The CAPTA Board of Managers is being asked to take a SUPPORT position on this statewide ballot measure.

## Background

Language in the California Constitution stating that marriage is only between a man and a woman came from California's Proposition 8, passed in 2008. Advocates sued to challenge its constitutionality on grounds that it violated the Due Process Clause and Equal Protection Clause of the U.S. Constitution. The Ninth Circuit on appeal agreed with the federal district court and the plaintiffs that Proposition 8 was unconstitutional, and the U.S. Supreme Court did not address the merits of the case in its decision to uphold the Ninth Circuit ruling (*Perry v. Brown*, 671 F.3d 1052 (2012), *Hollingsworth v. Perry*, 570 U.S. 693 (2013).) Thus, after 2013, while the language added by Proposition 8 was still in the California Constitution, it was no longer enforceable.

While *Perry v. Brown* established marriage equality as a constitutional right in California, the U.S. Supreme Court had not yet decided if this right applied nationwide. That landmark moment came with the Court's decision in *Obergefell v. Hodges* in 2015. In a five-to-four ruling, the Court found that the Due Process Clause and Equal Protection Clause of the Fourteenth Amendment provided LGBTQ individuals a fundamental right to marry, and that no state law banning same-sex marriage is Constitutional (*Obergefell v. Hodges*, 576 U.S. 644, 675 (2015).) Accordingly, the Court reasoned, no state may refuse to recognize a lawful same-sex marriage performed in another State on the grounds that it is a same-sex marriage.

While the California Legislature has previously made the state's statutes conform with the legal precedent on marriage equality, the California Legislature has yet to conform the language in the California Constitution. Assembly Constitutional Amendment 5 (Low) passed both houses of the Legislature by a two-thirds vote, and was Chaptered by Secretary of State - Res. Chapter 125, Statutes of 2023; ACA 5 must now be approved by a majority of the voters of the state as an item on the ballot. This process recognizes that amendments to the Constitution are not meant to be a regular or common occurrence, and that the Constitution serves as the principal, guiding document of the state. ACA 5 removes discriminatory and unconstitutional language from California's Constitution.

## How the Legislature proposes to amend California's Constitution

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

First— That Section 7.5 of Article I thereof is repealed.

Second— That Section 7.5 is added to Article I thereof, to read:

SEC. 7.5.

(a) The right to marry is a fundamental right.

(b) This section is in furtherance of both of the following:

(1) The inalienable rights to enjoy life and liberty and to pursue and obtain safety, happiness, and privacy guaranteed by Section 1.

(2) The rights to due process and equal protection guaranteed by Section 7.

**Fiscal Impact:** No change in revenues or costs for state and local governments.

**Proposition 3 Supporters:** Sierra Pacific Synod of The Evangelical Lutheran Church in America; Dolores Huerta Foundation; Equality California

**Proposition 3 Opponents:** Jonathan Keller, California Family Council; Rev. Tanner DiBella

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## PTA AUTHORITIES

► **National PTA Resolution:** [Protection of and Support for LGBTQ+ Individuals](#)

*Adopted: by the 2016 Convention delegates*

*Amended: by the 2023 Convention delegates*

Resolved, That National PTA seek and support legislation that specifically recognizes LGBTQ+ as a protected group and addresses discrimination based upon sexual orientation, gender identity and gender expression;

► **National PTA Position Statement:** [Citizenship and Equality](#)

*Adopted: by the 2002 Board of Directors*

National PTA supports...

- Prohibiting discrimination on the basis of race, gender, socioeconomic status, ethnicity, national origin, language, religion, age, physical and academic ability, and sexual orientation;

► **California State PTA Legislation Platform**, *Adopted by Convention Delegates – May 2024*

General Principles for Consideration of Proposed Legislation

1. Equity in every aspect of life for all children and youth, while recognizing that each child is unique with individual needs and talents.
3. Effective governance systems and practices that are rooted in social justice to effectively serve the needs of children, youth, and families.
10. Equal justice for all.

Legislation Planks – California State PTA will support legislation that:

9. Includes parents/guardians in decisions that affect the education and well-being of their children, and promotes their involvement in their children's education and schools.

17. Promotes public policy that contributes to the stability of families and to the adequate physical, emotional, and financial support of children and youth.

► **CAPTA Resolution: [LGBTQ+ INCLUSIVENESS IN HEALTH EDUCATION CALIFORNIA](#)**

*Adopted by Convention Delegates May 2015*

RESOLVED, That the California State PTA seek and support legislation that creates a safe and accepting environment in schools, specifically with updated health education standards that deal with issues of sexual orientation, gender identity, and gender expression;

► **CAPTA Position Statement: [Family Responsibility and Accountability](#)**

*Adopted March 1989, Reviewed and deemed relevant April 2022 – Family Engagement*

California State PTA believes all children and youth are entitled to **equitable privileges**, equal justice, and equitable opportunities. In order for children to develop into mature, productive adult citizens, PTA believes they need:

- **Stability in their family settings;**
- Physical and social-emotional support conducive to healthy growth and development;
- Financial support to meet basic needs and, to the extent possible within the family's means, to enrich the child's development.

California State PTA believes the family is the basic unit in our society responsible for the support and nurturing of children. **PTA further believes that both parents/guardians, whether living together or apart, have joint responsibility to support and educate their children, and to promote optimal development of each child.** This means:

- Support of children until age 18;
- Support of children (until age 24) who are unmarried or otherwise unemancipated and who are students in good standing, attending high school or an accredited institution for higher learning or vocational training.

PTA supports programs that hold parents/guardians accountable for meeting these responsibilities.

► **CAPTA Position Statement: [Inclusiveness and Diversity](#)**

*Adopted April 1991, Reviewed and deemed relevant November 2017 – Membership*

**“The National Congress of Mothers, irrespective of creed, color or condition, stands for all parenthood, childhood, homehood.”**

*– Alice McLellan Birney, 1898, Cofounder of National PTA*

Those words, true in 1898, are even truer today. PTAs everywhere must understand and embrace the uniqueness of all individuals, appreciating that each contributes a diversity of views, experiences, cultural heritage/traditions, skills/abilities, values and preferences. When PTAs respect differences yet acknowledge shared commonalities uniting their communities, and then develop meaningful priorities based upon their knowledge, they genuinely represent their communities. When PTAs represent their communities, they gain strength and effectiveness through increased volunteer and resource support.

Conversely, PTAs must recognize that prejudice exists based upon socio-economic status, race, ethnicity, language ability, gender identity, sexual orientation, religious beliefs, and physical abilities. Such **discrimination is hurtful, unfair, hostile and unwelcoming. When PTAs tolerate these acts, they repel members, lack representative leadership, and fail to serve all. Prejudice diminishes a PTA's ability to advocate effectively for all children, youth and families.**

Therefore, California State PTA believes that **PTAs at every level must:**

- **Openly assess beliefs and practices to assure inclusiveness and guard against discrimination;**
- Make every effort to create a PTA board and membership that is inclusive and reflective of its community;
- Encourage that all PTA activities at the school be planned by a committee which is representative of the population;
- Foster programs and practices that eliminate bias, prejudice and misunderstanding within their communities;
- Become acquainted with the leaders of the many diverse groups in the community and collaborate with them to increase parent, family and community involvement;
- Educate its leaders and members to the needs, cultural beliefs, traditions and family structures of the population they serve; and
- **Propose change wherever discriminatory practices are perceived.**

**California State PTA values and appreciates diversity, which enriches and strengthens the structure of our society within our state and nation.**

† This position statement should be used in its entirety with no portion quoted out of context.

► **National PTA: (Previous legislative action)** – National PTA co-sponsored H.R.5 - The Equality Act – 117th Congress (2021-2022), an act to prohibit discrimination on the basis of sex, gender identity, and sexual orientation, and for other purposes.

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## **Ballot Arguments (as filed with the California Secretary of State)**

### Argument in Favor of Proposition 3:

VOTE YES on Proposition 3 - Protect Your Freedom to Marry!

Proposition 3 protects every Californian's right to marry- regardless of gender or race.

Proposition 3 would update our state constitution to align with existing law that allows marriage for same-sex couples, reflecting current court decisions and our values as Californians.

Proposition 3 is supported by a broad and bipartisan coalition of civic and faith leaders as well as civil rights leaders.

Why we need Proposition 3:

Although marriage equality for same-sex couples has been the law of the land in the United States for years, California's Constitution still says that same-sex couples are not allowed to marry. Recent threats against fundamental rights have made it clear California must be proactive in protecting the freedom to marry regardless of gender or race.

Proposition 3 removes discriminatory language from the California Constitution that states marriage is only between a man and a woman and replaces it with a provision that establishes the right to marry as a fundamental right, enshrining protections for same-sex and interracial couples.

California has always been a leader in protecting civil rights and individual freedom. Proposition 3 continues that legacy.

The proposition respects the freedom of religion in California. It would not change the existing rights of clergy and religious denominations to refuse to perform a marriage.

Supporters of Proposition 3 urge you to vote YES:

"Proposition 3 protects the right of every Californian, regardless of gender or race, to marry the person they love." -- Equality California

"As a faith leader, I support Proposition 3 because it protects the right to marry while respecting faith communities' First Amendment rights." - The Rev. Jeff R. Johnson, bishop of the Evangelical Lutheran Church in America's Sierra Pacific Synod

"This ballot measure comes at a pivotal moment when the U.S. Supreme Court has made clear its willingness to revoke hard-won rights, endangering the freedoms of millions of Californians." - American Civil Liberties Union of Northern California

"Although marriage equality for same-sex couples has been the law of the land in the United States for years, California's Constitution still says that same-sex couples are not allowed to marry. Let's fix it by voting YES on Proposition 3. Honoring the fundamental rights of all people and fighting discrimination wherever it exists is a California value. Prop 3 helps further California's commitment to protecting civil rights for all its residents." - Dolores Huerta, President, Dolores Huerta Foundation

YES on Proposition 3 means FREEDOM and EQUAL RIGHTS for all.

Assemblymember Evan Low

Tony Hoang, Executive Director, Equality California

Jodi Hicks, CEO, Planned Parenthood Affiliates of California

### Rebuttal to argument in favor of Proposition 3

The authors of Proposition 3 claim it's about the "freedom to marry," but that's not true. This extreme amendment goes TOO FAR and puts vulnerable people at risk. It's not just about updating our state laws. This measure takes away essential safeguards that protect marriage and children.

Supporters say we need Prop 3 due to "discrimination." But same-sex marriage has been legal since 2015, and no one is trying to change that: not the Supreme Court nor anyone else. There is simply NO REASON to pass this dangerous measure.

Proposition 3 removes ALL protections on marriage, including limits on children, close relatives, and three or more people marrying each other. All civilized societies prohibit these things because they HURT PEOPLE. That's why the unclear wording of Prop 3 will cause huge problems.

Backers claim to care about civil rights and fairness. However, Proposition 3 puts what adults want ahead of what children need. By saying mothers and fathers aren't necessary, it IGNORES years of studies and basic common sense affirming that kids do best when raised by both parents in a stable home.

California can support equal rights without this risky and unnecessary measure. Proposition 3 THREATENS our shared values of healthy families, healthy children, and a healthy society. It's not about equality; it's about radically changing marriage and family.

Let's protect our kids, families, and communities. Vote NO on Proposition 3!

Jonathan Keller, President  
California Family Council

Rev. Tanner DiBella, Founder  
The American Council of Evangelicals

### Argument Against Proposition 3:

Californians should vote NO on Proposition 3, the so-called "Freedom to Marry" initiative. Supporters say it updates our constitution to match current laws, but it actually changes the definition of marriage in DANGEROUS and unexpected ways.

The big problem with Proposition 3 is that it overrides all laws on marriage. A "fundamental right" to marry means it would remove protections against child marriages, incest, and polygamy. Is this what we want for California? The unclear wording of Prop. 3 would lead to SERIOUS PROBLEMS that harm our society.

You may hear we need this measure to protect against possible Supreme Court decisions. But same-sex marriage has been legal across the country since 2015. Proposition 3 is fixing a problem that doesn't exist and is instead causing HARM.

Some supporters say "extremist politicians" could threaten marriage rights. But it is the backers of Proposition 3 who are EXTREME by wanting to remove all marriage guidelines. Sadly, all the talk about "equality" hides the RADICAL changes behind this proposal.

Current laws and court decisions already protect the right to marry, regardless of gender, sexual orientation, race, or ethnicity. These laws also protect children, prevent exploitation, and keep marriage as a union between two consenting adults. But Proposition 3 would REMOVE these defenses.

Instead of protecting civil rights in California, this measure risks the civil rights of children. It even opens the door to polygamy - marriage between more than two people. This would only exploit vulnerable women and children. Is this the kind of "EQUALITY" we want in our state?

By changing the definition of marriage, this measure also suggests that children don't need both a mom and a dad. This goes against years of research showing that kids do best when raised by their mother and father in a stable, married home.

Children without a mother or father are more likely to have emotional issues, take part in risky behaviors, struggle in school, and face financial problems. Proposition 3 INCREASES RISKS to kids' emotions, physical health, and education.

California is a leader in diversity and acceptance. But TRUE PROGRESS doesn't mean getting rid of all rules and protections. We should update our laws carefully while keeping necessary safeguards.

Instead of rushing to redefine marriage in ways that EXCLUDE a child's mother or father, we should insist that all adults conform to the needs of children. Proposition 3 FAILS this test badly.

Don't be tricked by talk of "love" and "acceptance." Proposition 3 is a RECKLESS and unneeded measure that would hurt our state. It removes important protections for marriage while pretending to expand rights.

Californians deserve better than this poorly written and HARMFUL proposition. We can protect marriage and civil rights without allowing child brides, incest, and polygamy. Vote NO on Proposition 3 to keep common-sense marriage rules and protect our children, families, and society.

Jonathan Keller, President  
California Family Council

Tanner DiBella, President  
The American Council for Evangelicals



### Rebuttal to argument against Proposition 3

Proposition 3's opponents are wrong. Here are the facts:

Proposition 3 PROTECTS the right of Californians to marry, regardless of gender or race.

Proposition 3 DOES NOT change California's laws regarding age requirements for marriage or the number of people in a marriage.

Aaron Tang, a constitutional law expert at the University of California, Davis, notes, "Proposition 3 removes outdated language in the California Constitution prohibiting marriage between same-sex couples."

For decades, Proposition 3's opponents have sought to deny marriage rights to same-sex couples. They want to keep discriminatory language in the state constitution. That is why they oppose Proposition 3.

### FAITH LEADERS & CIVIL RIGHTS GROUPS SUPPORT YES ON 3

The vast majority of Californians believe that every Californian, regardless of gender or race, should have the right to marry the person they love. That's why Proposition 3 is supported by a broad and bipartisan coalition of faith leaders, civil rights advocates, and family-centered organizations.

California has always been a leader in protecting civil rights and individual freedom. Proposition 3 continues that legacy.

### VOTE YES ON PROPOSITION 3 - PROTECT YOUR FREEDOM TO MARRY

Senator Scott Wiener

Mia Kirby, Senior Regional Organizing Lead, Human Rights Campaign

Maria Roman, Vice President, TransLatin@ Coalition

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Note: All ballot arguments are subject to court-ordered changes

## **Analysis**

The ruling by the U.S. Supreme Court in *Obergefell* was decided in a 5-to-4 vote, and no longer includes two of the Justices who were a part of the majority decision. In *Dobbs v. Jackson Women’s Health Organization (2022)*, Justice Thomas opined in his separate concurrence that the court “should reconsider all of [the] Court’s substantive due process precedents, including *Griswold*, *Lawrence*, and *Obergefell*.” Regardless of the probability that the Supreme Court actually revisits *Obergefell*, the state need not wait until the issue is imminent to align the state Constitution with the state’s ideals (*Office of the California Senate, Floor Analyses, 7/12/2023*).

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 U.S. Supreme Court have found that bans on marriage equality are unconstitutional. Yet the U.S. Supreme Court’s decision on marriage equality does not by operation remove unconstitutional provisions from the law. Instead, those unlawful provisions remain unless specifically removed by an act of the Legislature, capable of revival if legal precedent changes. Proposition 3 [ACA 5 (Low)] corrects this concern: removing the California Constitution’s provision denying marriage equality will not only remove an unconstitutional infringement on a fundamental right from the face of the state’s principal guiding document, but also will ensure that the provision will not come back into effect should the legal precedents on marriage equality ever change.

## **Conclusions**

PTA policies and positions strongly support protecting the rights of LGBTQ+ youth and families.

PTA policies support equal rights under the law.

PTA recognizes all types of families.

Courts have held that language stating that marriage is only between a man and a woman violates the equal protection clause and due process clause of the California Constitution and the U.S. Constitution.

Proposition 3 provides for the protection of marriage equality so that the rights of California’s LGBTQ+ individuals and families are guaranteed in the California State Constitution.

## **Recommendation**

This Study Committee recommends that California State PTA take a SUPPORT position on Proposition 3 for the November 5, 2024, General Election, a legislative constitutional amendment to recognize the fundamental right to marry, regardless of sex or race, and remove language in the California Constitution stating that marriage is only between a man and a woman.

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## **Appendices**

### **Reference Materials:**

California State PTA: Resolutions, Position Statements, Standing Rules, resources

California Secretary of State Resources: Official ballot measure information

California Courts: The Judicial Branch of California

National PTA: Resolutions, Position Statements, resources

Supreme Court of the United States resources

California State Legislature – Legislative Information resources

**Excerpt:**

U.S. Supreme Court Majority Opinion, Justice Anthony Kennedy – *Obergefell v. Hodges*

The nature of injustice is that we may not always see it in our own times. The generations that wrote and ratified the Bill of Rights and the Fourteenth Amendment did not presume to know the extent of freedom in all of its dimensions, and so they entrusted to future generations a charter protecting the right of all persons to enjoy liberty as we learn its meaning. . . .

A first premise of the Court’s relevant precedents is that the right to personal choice regarding marriage is inherent in the concept of individual autonomy. . . . Like choices concerning contraception, family relationships, procreation, and childrearing, all of which are protected by the Constitution, decisions concerning marriage are among the most intimate that an individual can make. Indeed, the Court has noted it would be contradictory “to recognize a right of privacy with respect to other matters of family life and not with respect to the decision to enter the relationship that is the foundation of the family in our society.” . . .

A second principle in this Court’s jurisprudence is that the right to marry is fundamental because it supports a two-person union unlike any other in its importance to the committed individuals. . . . Marriage responds to the universal fear that a lonely person might call out only to find no one there. It offers the hope of companionship and understanding and assurance that while both still live there will be someone to care for the other. . . .

**A third basis for protecting the right to marry is that it safeguards children and families and thus draws meaning from related rights of childrearing, procreation, and education. The Court has recognized these connections by describing the varied rights as a unified whole: “[T]he right to ‘marry, establish a home and bring up children’ is a central part of the liberty protected by the Due Process Clause.” Excluding same-sex couples from marriage thus conflicts with a central premise of the right to marry. Without the recognition, stability, and predictability marriage offers, their children suffer the stigma of knowing their families are somehow lesser. . . .**

Fourth and finally, this Court’s cases and the Nation’s traditions make clear that marriage is a keystone of our social order. . . . Marriage remains a building block of our national community. . . . [T]he right to marry is a fundamental right inherent in the liberty of the person, and under the Due Process and Equal Protection Clauses of the [Fourteenth Amendment](#) couples of the same-sex may not be deprived of that right and that liberty. The Court now holds that same-sex couples may exercise the fundamental right to marry. No longer may this liberty be denied to them. . . .

No union is more profound than marriage, for it embodies the highest ideals of love, fidelity, devotion, sacrifice, and family. In forming a marital union, two people become something greater than once they were. As some of the petitioners in these cases demonstrate, marriage embodies a love that may endure even past death. It would misunderstand these men and women to say they disrespect the idea of marriage. Their plea is that they do respect it, respect it so deeply that they seek to find its fulfillment for themselves. Their hope is not to be condemned to live in loneliness, excluded from one of civilization’s oldest institutions. They ask for equal dignity in the eyes of the law. The Constitution grants them that right.