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## **ACS Issue Brief Says Federal Court Should Issue Narrow Ruling in Calif. Same-Sex Marriage Case**

### **Author Defends an “Appropriately Limited Judicial Role”**

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**Washington, D.C.** – A constitutional law expert who has examined the legal issues surrounding the federal challenge to California’s Proposition 8, the anti-marriage equality ballot measure, concludes in an Issue Brief released today by ACS that the court should take an “appropriately limited judicial role” in striking down that law and leave broader legal questions, such as whether there exists a fundamental right to marry, for more appropriate forums.

In *Perry v. Schwarzenegger*, the U.S. District Court for the Northern District of California should and need not issue an opinion that says the Constitution’s Equal Protection Clause requires all states to allow gay marriage, writes Rebecca L. Brown, Newton Professor of Constitutional Law, University of Southern California Gould School of Law. Instead, Brown, who is also the co-chair of the ACS Issue Group on Constitutional Interpretation and Change, maintains that the federal court should fulfill “the best expectations we have of the federal judicial role, to resolve the case on strong, unassailable, time-honored, and yet narrow, grounds. The result would be that same-sex couples in California would benefit from the ruling, because it would be very precisely tailored to the unique facts of this case.”

California’s domestic partnership law provides both same-sex and different sex couples virtually all of the legal rights and obligations traditionally associated with marriage. Proposition 8, however, denies gay couples the legal status and dignity of marriage, Brown explains. She argues that such an action violates the Constitution’s Equal Protection Clause because California does not have a reasonable and sincere reason for enforcing the inequity. Based on established Supreme Court equal protection jurisprudence, the federal court should conclude that the state has arbitrarily carved out a proportion of the population for burdensome treatment, Brown writes.

“From this principle of accountability,” Brown continues, “it follows that there is actually good reason why the law would look particularly skeptically of Proposition 8’s effort to take away from a subgroup just one of the bundle of rights and obligations otherwise constituting marriage, especially the one that has to do only with status and dignity and has nothing to do with the underlying realities surrounding legally recognized unions.”

The unique situation in California therefore, could compel the federal court to invalidate Proposition 8 without reaching broader questions, Brown concludes. “The highest court of the state of California has interpreted the language of Proposition 8 to create a second-class status, and no public purpose that could plausibly be served by this retroactive reduction in status has been offered to dispel the usual inference that any act of stigmatization is a violation of the state’s obligation to legislate impartially.”

Brown continues, “There is no need to decide, at this time, whether differential treatment of same-sex couples should, for all purposes, be treated as suspect. Nor is there any reason to reach the question whether the fundamental right to marry can be understood in evolving terms or is tethered to traditional conceptions of marriage.”

Brown’s ACS Issue Brief is [available here](#). Please contact the ACS Communications Department to arrange interviews with the author.

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