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12-8-2010

### December 8, 2010: Uphold Proposition 8

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#### Repository Citation

Ledewitz, B. (2010). December 8, 2010: Uphold Proposition 8. Retrieved from <https://dsc.duq.edu/ledewitz-hallowedsecularism/484>

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Title: Uphold Proposition 8

Date: 2010-12-08T08:36:00.001-05:00

12/8/2010—Readers of this blog know that I opposed Proposition 8, which reversed the judicial imposition in California of same-sex marriage. But I liked Prop 8 anyway because it allowed for a public referendum on the issue of gay marriage. I just was disappointed in the outcome. Despite my support of gay marriage, I hope the Ninth Circuit Court of Appeals reverses District Judge Vaughn R. Walker's ruling striking down Proposition 8 on grounds of discrimination. My reason for this is prudential rather than legal. I don't want to fan the resentments of many Americans that they are treated like subjects rather than citizens. I don't want the courts to try to solve the social issue of gay marriage like they tried to fix abortion back in 1973. I want gay marriage left to the democratic process. I especially feel this way because California already has the category of Registered Domestic Partners, which although I'm sure is not precisely the same as gay marriage, does seem to alleviate the obvious and specific discriminations that gay couples would otherwise face. Given the status of domestic partnership, the case against Proposition 8 amounts to forcing the people of California to take a symbolic stand endorsing gay marriage. This seems to me to be harmful to democracy. While the courts did basically the same thing for mixed race marriage that they are being asked to do here, the courts acted very late in that instance, 1967, long after national sentiment had changed on the issue of race. Count me as a judicial conservative who thinks that this discrimination against the rights of gay people should not yet be overturned by the courts.