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# Worries Swirl Over California's Initiatives

*Supreme Court's Dismissal of State's Gay-Marriage Ban Raises Concerns that the Move Sets Precedent Limiting Voter Power*

By TAMARA AUDI

LOS ANGELES—Even as gay-rights advocates in California spent the weekend celebrating the U.S. Supreme Court decision allowing the resumption of same-sex weddings in the state, activists and government experts across the political spectrum were raising concerns the ruling weakens the power of voters to make law through the state's ballot-initiative process.

"You'd be hard pressed to find someone more enthusiastic about the outcome of the Supreme Court decision," California Lt. Gov. [Gavin Newsom](#) said in an interview Friday. As mayor of San Francisco, Mr. Newsom oversaw an administration that married thousands of gay couples in 2004—marriages ruled void by the state Supreme Court later that year. "But I do think the decision raises legitimate questions that are very problematic in the future," said Mr. Newsom, a Democrat.



Reuters

Kris Perry, right, and Sandy Stier, who sued against Proposition 8 and were married Friday, ride in San Francisco's gay-pride parade Sunday.

Proposition 8, a ballot initiative approved by California voters in 2008, banned gay marriage in the state. The U.S. Supreme Court ruled last week that its proponents weren't able to defend the law in court because they lacked the legal standing. Chief Justice [John Roberts](#) said that under federal precedents, the initiative sponsors were merely "bystanders" with no standing to appear in court.

The state's top officials, Gov. Jerry Brown and Attorney General Kamala Harris, both Democrats, had declined to defend Proposition 8, arguing it was unconstitutional.

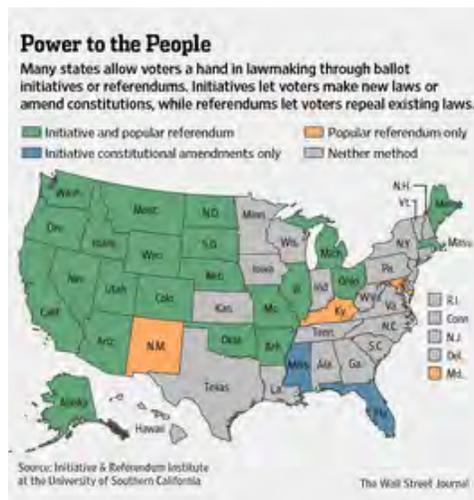
Some proponents of the ballot-initiative process—a central if often troublesome element of California's political system—say they worry that the decision undercuts ballot initiatives' purpose: giving voters power to circumvent state officials and make laws directly.

Others argue that it is the judiciary's job to keep the legislative process in check—and to stop laws that are unconstitutional, even if they are supported by a majority of voters.

"Nobody ever imagined that the people on their own could pass any sort of legislation without some sort of judicial review," said Rick Jacobs, founder of the Courage Campaign, a progressive political-advocacy group in the state. "All the Supreme Court did was underscore that."

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But some advocates of the proposition system argued that the Supreme Court, by refusing to grant the backers of Proposition 8 the standing to defend the law, effectively gave state officials veto power over voter-backed initiatives if they are challenged in federal court, simply by declining to defend those initiatives.

"It's troubling because often initiatives are passed for the very reason that the state legislature or governor don't support a particular law," said Richard L. Hasen, a professor of law and political science at the University of California, Irvine. Mr. Hasen, like some others worried about the implications for the state's ballot initiative system, said he supports gay marriage.

"On a personal basis I'm glad Kamala and Jerry didn't support Prop 8," said Charles Moran, chairman of the California Log Cabin Republicans and an openly gay political consultant based in Los Angeles. "But I'm not happy it set a bad precedent. This could have some long-term impacts on elective politics....Anytime somebody has a statewide ballot initiative I think there's a new question that has to be asked: Will this pass the smell test of the attorney general and the governor?"

What if, Mr. Newsom asked, voters pass a progressive proposition and a conservative Republican governor or attorney general refuses to defend it against legal challenges? Mr. Newsom said he doesn't dispute Mr. Brown's or Ms. Harris's decision to refuse to defend Prop 8, but said there still should be some mechanism for others to defend successful ballot initiatives in federal court.

The issue has attracted unlikely allies. The conservative Howard Jarvis Taxpayers Association—which has no position on gay marriage—said it, too, is concerned about the impact of the ruling on the initiative process.

"Any advocacy organization, no matter where they are in the political spectrum, has to be concerned with this," said Jon Coupal, the group's president. "This has nothing to do with gay marriage. It has everything to do with the defense of the initiative power."

Other states allow ballot initiatives, but California has what many consider the most aggressive and unruly initiative process in the nation. Legislators, on their own, cannot amend an initiative. The process, launched over a century ago to bypass a legislature controlled by railroad interests, is also blamed for many of the state's governmental ills. Critics complain that initiatives hardly tend to be grass-roots endeavors, as it can cost millions to get one on the ballot. Ballots are typically packed with confusing or conflicting initiatives, often backed by big business, lobbying groups or wealthy individuals. Most of them fail.

But the system's defenders say initiatives are still a form of direct democracy worth preserving.

The Jarvis Association's Mr. Coupal said he is looking into building "a left-right coalition" to see if there is a way to fix the problem—possibly through another ballot initiative that would define ballot proponents as agents of the state for the purposes of defending a proposition, and theoretically would give them standing in federal courts. Others have suggested appointing a special state attorney to defend initiatives.

"It's a difficult position to be in," said Mr. Newsom, the lieutenant governor. "On the one hand I'm celebrating, but it's not a decision I agree with. It's the outcome of the decision I'm thankful for."

### **Corrections & Amplifications**

Kris Perry and Sandy Stier, who sued against California's Proposition 8 banning gay marriage, were married Friday. A photo caption in an earlier version of this article incorrectly said they were married Saturday.

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