

MOTION BY SUPERVISOR LINDSEY HORVATH

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**Support for Proposition 3: Constitutional Right to Marriage**

In November 2008, California voters approved Proposition 8, effectively banning same-sex marriage and ripping away the right to marriage from thousands of Californians who dreamt of building lives together. Proposition 8 added language to the California Constitution stating, “Only marriage between a man and a woman is valid or recognized in California.”

In 2013, the United State Supreme Court held, in Hollingsworth v. Perry, that the proponents of Proposition 8 did not possess the legal standing to defend the law in court. This upheld the District Court’s decision that the Proposition violated the Fourteenth Amendment of the U.S. Constitution and was therefore unconstitutional, allowing for marriages to continue in California.

In 2015, the United States Supreme Court followed up on that ruling by determining, in Obergefell v. Hodges, that the Fourteenth Amendment requires all states to grant same-sex marriages and recognize same-sex marriages granted in other

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states. This was only two years after the Court, in *United States v. Windsor*, struck down the Defense of Marriage Act, which was the federal law that denied recognition of same-sex marriages.

In the *Obergefell* decision, Justice Anthony Kennedy wrote for the majority, “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.”

In a rebuke to California’s history of preventing same sex and interracial marriage, the California Legislature led by Assemblymember Evan Low and Senator Scott Weiner proposed Assembly Constitutional Amendment (ACA) 5 to remove the offending Proposition 8 language from the California Constitution and enshrine the right to marry for all Californians. ACA 5 became what is now Proposition 3.

On February 28, 2023, this Board sent a 5-signature letter in support of ACA 5 expressing the Board’s support for the LGBTQ+ community and the importance of enshrining the right to marriage in the California Constitution.

**WE THEREFORE MOVE** that the Board of Supervisors take an official position to support Proposition 3, which would amend the State Constitution by repealing

language stating that marriage is only between a man and a woman, and would provide that the right to marry is a fundamental right regardless of gender or race/ethnicity.

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