



## The Equal Protection Clause Guarantees the Right to Marry

By: Ilya Shapiro – March 4, 2013

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The constitutional case for marriage equality need not go further than the sweeping and universal text of the Fourteenth Amendment's equal protection clause: "No State shall ... deny to any person within its jurisdiction the equal protection of the laws." Ratified in 1868, the clause wrote into the Constitution the ideal of equality first laid out in the Declaration of Independence.

In 2008, however, California voters passed Proposition 8, a ballot initiative restricting the right to marry to opposite-sex couples only. Both the federal district court and the court of appeals ruled that Prop 8 was unconstitutional, for reasons ranging from the violation of a fundamental right to the impropriety of removing rights/benefits once granted.

The Cato Institute joined the Constitutional Accountability Center on an amicus brief supporting marriage equality that focuses on the equal protection clause. As the text and history of the Fourteenth Amendment plainly show, the clause guarantees every individual—whether black or white, man or woman, gay or straight, native-born or immigrant—equality under the law, including the legal right to marry the person of one's choosing.

The breadth of the equal protection clause was no accident. It's clear from the drafting history that the Fourteenth Amendment's framers were determined to eliminate more than simply the burdens of slavery. They wrote the constitutional guarantee broadly to ensure, for example, that white supporters of the Union in the South, as well as Asian immigrants in the West, were protected from arbitrary and invidious discrimination.

The broad and sweeping guarantee of legal equality was understood at the time to secure and protect the equal rights of all individuals. The framers of the Fourteenth Amendment understood marriage to be a personal right that, when established by a state, must be made available on an equal basis to all.

Prop 8 denies gays and lesbians the liberty to marry the person of their own choosing, places a state badge of inferiority on same-sex couples' loving relationships and family life, and perpetrates an impermissible injury to these individuals' personal dignity. It thus subverts the principle of equality at the heart of the Fourteenth Amendment and is an affront to the inalienable right to pursue one's own happiness that has guided our nation since its founding.