

File No. 230715

Committee Item No. \_\_\_\_\_

Board Item No. 56

# COMMITTEE/BOARD OF SUPERVISORS

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Date: \_\_\_\_\_

Board of Supervisors Meeting

Date: June 13, 2023

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- Assembly Constitutional Amendment No. 5 - 6/5/23
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- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

Prepared by: Lisa Lew

Date: June 9, 2023

Prepared by: \_\_\_\_\_

Date: \_\_\_\_\_

1 [Supporting Assembly Constitutional Amendment No. 5 (Low and Wiener) - Removing the  
2 Ban on Marriage Equality in the California State Constitution]

3 **Resolution supporting Assembly Constitutional Amendment No. 5, introduced by**  
4 **Assembly Member Evan Low and Senator Scott Wiener, to remove the ban on same-**  
5 **sex marriage equality in the California State Constitution and reverse Proposition 8.**

6  
7 WHEREAS, On February 12, 2004, San Francisco became the most high-profile  
8 municipality in the nation to allow same-sex marriage when then-Mayor Gavin Newsom  
9 marked national Freedom to Marry Day by allowing same-sex couples to get married at our  
10 County Clerk’s office in San Francisco City Hall; and

11 WHEREAS, The weddings that took place at City Hall showed the world that change is  
12 possible and that love means love as Del Martin and Phyllis Lyon were married after nearly 51  
13 years together; and

14 WHEREAS, In 2008, Californians adopted Proposition 8 by a narrow 52-48% margin to  
15 amend the California constitution to ban same-sex marriage; and

16 WHEREAS, San Francisco strongly opposed this misguided measure by an  
17 overwhelming 75-25%; and

18 WHEREAS, In 2010, Proposition 8 was overturned by Judge Vaughn Walker in  
19 *Hollingsworth v. Perry*, who found that it was unconstitutional under both the Due Process and  
20 Equal Protection Clauses of the Constitution; and

21 WHEREAS, In 2015, the United States Supreme Court decided *Obergefell v. Hodges*  
22 cases and concluded that the right of same-sex couples to marry exists in every state and that  
23 states must recognize the marriages validly performed in other jurisdictions; and

24 WHEREAS, While the Supreme Court’s decision should be settled law, it is clear there  
25 is a risk of reversal, with Justice Clarence Thomas stating in a concurrence to the *Dobbs v.*

1 *Jackson Women’s Health Organization* case that “in future cases, we should reconsider all of  
2 this Court’s substantive due process precedents;” and

3 WHEREAS, In July 2022, the United States Congress passed the Respect for Marriage  
4 Act to respect same-sex and interracial marriages, as well as those married under another’s  
5 state law, and to provide federal benefits such as Social Security and tax benefits; and

6 WHEREAS, The Respect for Marriage Act does not require states to issue marriage  
7 licenses to same-sex couples and would not reverse Proposition 8; and

8 WHEREAS, A copy of Assembly Constitutional Amendment No. 5 is enclosed in File  
9 No. 230715; and

10 WHEREAS, On February 14, 2023, Assembly Member Evan Low and Senator Scott  
11 Wiener, along with many colleagues, introduced Assembly Constitutional Amendment No. 5 to  
12 repeal Proposition 8 and protect same-sex couples against threats from the United States  
13 Supreme Court; now, therefore, be it

14 RESOLVED, That the San Francisco Board of Supervisors supports Assembly  
15 Constitutional Amendment No. 5 and urges its passage in the California State Legislature;  
16 and, be it

17 FURTHER RESOLVED, That the San Francisco Board of Supervisors directs the Clerk  
18 to submit a copy of this resolution to the Speaker of the State Assembly, Assembly Member  
19 Evan Low, Senator Scott Wiener, and the members of San Francisco’s legislative delegation,  
20 Assembly Members Matt Haney and Phil Ting.

21  
22  
23  
24  
25



## ACA-5 Marriage equality. (2023-2024)

SHARE THIS:



AMENDED IN ASSEMBLY JUNE 05, 2023

CALIFORNIA LEGISLATURE— 2023–2024 REGULAR SESSION

**ASSEMBLY  
AMENDMENT**

**CONSTITUTIONAL**

**NO. 5**

**Introduced by Assembly Member Low**

(Principal coauthors: Assembly Members Cervantes, Jackson, Lee, Ward, and Zbur)

(Principal coauthors: Senators Atkins, Eggman, Laird, Menjivar, Padilla, and Wiener)

(Coauthors: Assembly Members Addis, Aguiar-Curry, Arambula, Bauer-Kahan, Berman, ~~Boerner Horvath~~, **Boerner**, Bonta, Calderon, Connolly, Mike Fong, Friedman, Gabriel, Haney, Hart, Irwin, Jones-Sawyer, Lowenthal, Maienschein, McCarty, McKinnor, Muratsuchi, Stephanie Nguyen, Ortega, Pellerin, Petrie-Norris, Quirk-Silva, Luz Rivas, Robert Rivas, Blanca Rubio, Santiago, Ting, Wallis, Weber, Wicks, Wilson, and Wood)

(Coauthors: Senators Allen, Archuleta, Ashby, Becker, Blakespear, Bradford, Caballero, Cortese, Dodd, Durazo, Glazer, Gonzalez, Hurtado, Limón, McGuire, Min, Newman, Portantino, Roth, Rubio, Skinner, Smallwood-Cuevas, Stern, Umberg, and Wahab)

**February 14, 2023**

A resolution to propose to the people of the State of California an amendment to the Constitution of the State, *by repealing and adding Section 7.5 of Article I thereof*, relating to rights.

### LEGISLATIVE COUNSEL'S DIGEST

ACA 5, as amended, Low. Marriage equality.

*The California Constitution provides that only a marriage between a man and a woman is valid or recognized in California, and federal law permanently enjoins the state from enforcing this constitutional provision.*

*This measure would repeal this unenforceable constitutional provision and would instead provide that the right to marry is a fundamental right, as specified.*

~~The California Constitution declares that defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy are inalienable rights, and that a person may not be deprived of life, liberty, or property without due process of law or equal protection of the laws.~~

~~This measure would express the intent of the Legislature to amend the Constitution of the State relating to marriage equality.~~

Vote: 2/3 Appropriation: no Fiscal Committee: no Local Program: no

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*WHEREAS, Courts have recognized that same-sex couples and interracial couples have the right to marry; and*

*WHEREAS, This measure, if approved by the voters, would repeal language in the California Constitution stating marriage is only between a man and woman; and*

*WHEREAS, This measure, if approved by the voters, would amend the California Constitution to include the fundamental right to marry as furthering the rights to enjoy life, liberty, safety, happiness, and privacy, and the rights to equal protection and due process; now, therefore, be it*

Resolved by the Assembly, the Senate concurring, That the Legislature of the State of California at its 2023–24 Regular Session commencing on the fifth day of December 2022, two-thirds of the membership of each house concurring, hereby proposes to the people of the State of California, that the Constitution of the State be amended as follows:

~~It is the intent of the Legislature to amend the Constitution of the State relating to marriage equality.~~

**First—** *That Section 7.5 of Article I thereof is repealed.*

~~SEC. 7.5. Only marriage between a man and a woman is valid or recognized in California.~~

**Second—** *That Section 7.5 is added to Article I thereof, to read:*

**SEC. 7.5.** *(a) The right to marry is a fundamental right.*

*(b) This section is in furtherance of both of the following:*

*(1) The inalienable rights to enjoy life and liberty and to pursue and obtain safety, happiness, and privacy guaranteed by Section 1.*

*(2) The rights to due process and equal protection guaranteed by Section 7.*

**From:** [Carrillo, Lila \(BOS\)](#)  
**To:** [BOS Legislation, \(BOS\)](#)  
**Cc:** [Barnes, Bill \(BOS\)](#); [Thongsavat, Adam \(BOS\)](#); [Dahl, Bryan \(BOS\)](#); [Gee, Natalie \(BOS\)](#); [Prager, Jackie \(BOS\)](#); [Bell, Tita \(BOS\)](#)  
**Subject:** Safai - Resolution Supporting Assembly Constitutional Amendment 5 – Removing the ban on marriage equality in the California State Constitution  
**Date:** Tuesday, June 6, 2023 3:12:06 PM  
**Attachments:** [Safai - Intro Form - Resolution Supporting Assembly Constitutional Amendment 5 – Removing the ban on marriage equality in the California State Constitution.pdf](#)  
[Safai - Resolution - Supporting Assembly Constitutional Amendment 5 - Removing the Ban on Marriage Equality in the California State Constitution.doc](#)  
[Bill Text - ACA-5 Marriage Equality.pdf](#)

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Dear Clerk Staff,

Please find attached **Safai - Resolution Supporting Assembly Constitutional Amendment 5 – Removing the ban on marriage equality in the California State Constitution** for consideration on the Adoption Without Committee Reference calendar.

Neither The League of California Cities nor The California State Association of Counties have taken a position on this bill.

I am adding staff e-mails from Supervisors Mandelman, Engardio, Dorsey, Walton, and Ronen are included to confirm co-sponsorship.

Thank you,  
Lila

Lila Carrillo, Legislative Aide  
Supervisor Ahsha Safai, District 11  
San Francisco Board of Supervisors  
Office: 415.554.6975

Working from unceded Ohlone Territory

# Introduction Form

By a Member of the Board of Supervisors or Mayor

Time stamp  
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion or Charter Amendment).
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning : "Supervisor  inquiries"
- 5. City Attorney Request.
- 6. Call File No.  from Committee.
- 7. Budget Analyst request (attached written motion).
- 8. Substitute Legislation File No.
- 9. Reactivate File No.
- 10. Topic submitted for Mayoral Appearance before the BOS on

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission
- Youth Commission
- Ethics Commission
- Planning Commission
- Building Inspection Commission

**Note: For the Imperative Agenda (a resolution not on the printed agenda), use the Imperative Form.**

Sponsor(s):

Safaí; Mandelman, Engardio, Dorsey, Walton, and Ronen

Subject:

Supporting Assembly Constitutional Amendment 5 – Removing the ban on marriage equality in the California State Constitution

The text is listed:

Resolution supporting Assembly Constitutional Amendment 5 (Low/Wiener) to remove the ban on same-sex marriage equality in the California State Constitution and reverse Proposition 8.

Signature of Sponsoring Supervisor: Safaí

For Clerk's Use Only