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May 27, 2009

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PROP. 8 CHALLENGED IN FEDERAL COURT; TED OLSON & DAVID BOIES TO ARGUE CASE

*Attorneys Argued Bush v. Gore on Opposite Sides; Now Joined to Strike Down Prop. 8
Filing also calls for injunction against same-sex marriage ban until case is resolved, which
would immediately reinstate the right of all Californians to marry*

EDS: Background and video of today's event at: www.equalrightsfoundation.org.

LOS ANGELES - A lawsuit filed in federal district court states that Proposition 8 – which eliminated the right of same sex couples to marry in California -- creates a class of “second-class citizens” and thereby violates the U.S. Constitution. The suit also calls for an injunction against Proposition 8 until the case is resolved, which would immediately reinstate marriage rights to same sex couples.

“This unequal treatment of gays and lesbians denies them the basic liberties and equal protection under the law that are guaranteed by the Fourteenth Amendment of the United States Constitution,” the suit states.

The suit was filed by two same-sex couples who wish to be married but, because of Proposition 8, have been denied marriage licenses.

The plaintiffs are represented by Theodore B. Olson and David Boies. Olson, a former U.S. Solicitor General, represented George W. Bush in 2000's Bush v. Gore, which decided the presidential election. Boies represented Al Gore in that case. Olson, widely regarded as one of the nation's preeminent constitutional lawyers, has argued 54 cases in the U.S. Supreme Court.

Boies ranks as one of the leading trial lawyers of his generation, having secured landmark victories for clients in numerous areas of the law. This is the first time they have served alongside each other as co-counsel. The case is a project of the American Foundation for Equal Rights. It was filed Friday in the United States District Court, Northern District of California.

Today, a preliminary injunction was filed with the court requesting an immediate halt to the enforcement of Proposition 8 pending the case's outcome.

“Yesterday, the California Supreme Court said that the California Constitution compels the State to discriminate against gay men and lesbians who have the temerity to wish to express their love and commitment to one another by getting married,” Olson said. “These are our neighbors, coworkers, teachers, friends, and family, and, courtesy of Prop 8, California now prohibits them from exercising this basic, fundamental right of humanity. Whatever discrimination California law now might permit, I can assure you, the United States Constitution does not.”

“Mr. Olson and I are from different ends of the political spectrum, but we are fighting this case together because Proposition 8 clearly and fundamentally violates the freedoms guaranteed to all of us by the Constitution,” Boies said. “Every American has a right to full equality under the law. Same sex couples are entitled to the same marriage rights as straight couples. Any alternative is separate and unequal and relegates gays and lesbians to a second class status.”

In May 2008, the California Supreme Court ruled that the state’s law prohibiting same sex marriage was unconstitutional under the privacy, due process and equal protection guarantees of the California Constitution. Proposition 8 was passed in November 2008 to amend the California Constitution to eliminate the equal rights it guaranteed to same sex couples. On May 26, the California Supreme Court upheld Proposition 8 as a valid amendment to the State’s Constitution.

The plaintiffs in the case are Kris Perry & Sandy Stier, and Paul Katami & Jeff Zarrillo. They issued the following joint statement today: “We and our relationships should be treated equally under the law. Our goal is to advance the cause of equality for all Americans, which is the promise that makes this nation so great.”

Today’s lawsuit argues that the California’s Constitution -- as amended by Proposition 8 -- violates the Fourteenth Amendment of the United States Constitution, a provision with which all state laws must comply.

Relegating gays and lesbians to “separate but unequal” domestic partnerships violates the U.S. Constitution, the suit states. California’s domestic partnership law is not an adequate substitute for access to the State’s institution of civil marriage, the suit states, because domestic partnerships do not provide all of the legal and government benefits and protections that marriage does.

“More than 30 years ago, the United States Supreme Court recognized that marriage is one of the basic rights of man,” the suit states, referring to the Court’s decision in *Loving v. Virginia*, which struck down bans on interracial marriage.

According to the suit, Proposition 8:

- Violates the Due Process Clause by impinging on fundamental liberties.
- Violates the Equal Protection Clause of the Fourteenth Amendment.
- Singles out gays and lesbians for a disfavored legal status, thereby creating a category of “second-class citizens.”
- Discriminates on the basis of gender.
- Discriminates on the basis of sexual orientation.

Kris Perry and Sandy Stier have been together for 9 years and are the parents of four boys. Perry is Executive Director of First 5 California, a state agency that promotes education and health for children under five. She holds a BA from UC Santa Cruz and an MSW from San Francisco State University. Stier is Information Technology Director for the Alameda County Behavioral Health Care Services Agency. She is originally from Iowa and is a graduate of the University of Iowa.

Perry and Stier first tried to marry in 2004, after the City of San Francisco began issuing licenses. They live in Berkeley, CA. Paul Katami and Jeff Zarrillo have been together for 8 years. Katami is a fitness expert and business owner who graduated from Santa Clara University before receiving his graduate degree from UCLA. Zarrillo is the General Manager of a theater exhibition company. A native of New Jersey, Zarrillo graduated from Montclair State University. Having wanted to marry each other for more than two years, they considered options including traveling to other states for a “civil union,” but felt any alternative fell short of marriage. They live in Burbank, CA.

The newly created American Foundation for Equal Rights is dedicated to protecting and advancing equal rights for every American through legal and policy advocacy. For more information, visit www.equalrightsfoundation.org.

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ABOUT THEODORE B. OLSON

Theodore B. Olson was Solicitor General of the United States from 2001-2004 and was Assistant Attorney General in charge of the Office of Legal Counsel in the U.S. Department of Justice from 1981 to 1984. Except for those two intervals, since 1965 he has been a lawyer with Gibson, Dunn & Crutcher in Los Angeles and in Washington, D.C., where he is currently a partner and Co-Chair of the Appellate and Constitutional Law Group.

Mr. Olson is one of the nation’s premier appellate and United States Supreme Court advocates. He has argued 55 cases in the Supreme Court, including *Bush v. Palm Beach County Canvassing Board* and *Bush v. Gore*, stemming from the 2000 presidential election. He has prevailed in more than 75 percent of his arguments before the Supreme Court.

Mr. Olson's Supreme Court arguments have included cases involving separation of powers; federalism; voting rights; the First Amendment; the Equal Protection and Due Process Clauses; sentencing; jury trial rights; punitive damages; takings of property and just compensation; the Commerce Clause; taxation; immigration; criminal law; copyright; antitrust; securities; telecommunications; the environment; the internet; and other federal constitutional and statutory questions.

As Solicitor General, Mr. Olson was the Government's principal advocate in the of the United States, and was a legal adviser to the President and the Attorney General. As Assistant Attorney General for the Office of Legal Counsel during the Reagan Administration, Mr. Olson was the Executive Branch's principal legal adviser, rendering legal guidance to the President and to the heads of the Executive Branch departments on a wide range of constitutional and federal

statutory questions, and assisting in formulating and articulating the Executive Branch's position on constitutional issues.

Mr. Olson has served as private counsel to two Presidents, Ronald W. Reagan and George W. Bush, in addition to serving those two Presidents in high-level positions in the Department of Justice. He has twice received the United States Department of Justice's Edmund J. Randolph Award, its highest award for public service and leadership. He has also been awarded the Department of Defense's highest civilian award for his advocacy in the courts of the United States, including the Supreme Court, on behalf of that Department. He was a visiting scholar at the National Constitution Center in 2007.

Mr. Olson served in the President's Privacy and Civil Liberties Oversight Board from 2006 to 2008. He is Co-Chair of the Knight Commission on the Information Needs of Communities in a Democracy. He is also a member of the Board of Trustees on the Ronald Reagan Presidential Foundation and a member of The Steering Committee on The Sandra Day O'Connor Project on the State of the Judiciary.

Mr. Olson is a Fellow of both the American College of Trial Lawyers and the American Academy of Appellate Lawyers. The *National Law Journal* has repeatedly listed him as one of America's Most Influential Lawyers. *The American Lawyer* and *Legal Times* have characterized Mr. Olson as one of America's leading advocates. In December of 2007, *Washingtonian* magazine listed him as number one on its list of the finest lawyers in the nation's capital. *The New York Times* columnist William Safire has described Mr. Olson as this generation's "most persuasive advocate" before the Supreme Court and "the most effective Solicitor General" in decades.

Mr. Olson received his law degree in 1965 from the University of California at Berkeley (Boalt Hall) where he was a member of the *California Law Review* and Order of the Coif. He received his bachelor's degree from the University of the Pacific, where he was recognized as the outstanding graduating student in both forensics and journalism. Mr. Olson has written and lectured extensively on appellate advocacy, oral communication in the courtroom, civil justice reform, punitive damages, and constitutional and administrative law.

ABOUT DAVID BOIES

Mr. Boies is Chairman of the law firm of Boies, Schiller and Flexner LLP. The firm has offices in New York, Washington D.C., California, Florida, Nevada, New Hampshire, and New Jersey.

Mr. Boies was born in Sycamore, Illinois on March 11, 1941. He attended the University of Redlands (1960-62); and received a B.S. from Northwestern University (1964); an LL.B., magna cum laude, from Yale University (1966); and an LL.M. from New York University (1967).

Mr. Boies served as Chief Counsel and Staff Director of the United States Senate Antitrust Subcommittee in 1978 and Chief Counsel and Staff Director of the United States Senate Judiciary Committee in 1979. In 1991-1993 Mr. Boies was counsel to the Federal Deposit Insurance Corporation in its litigation to recover losses for failed savings and loan associations,

and in 1998-2000 Mr. Boies served as Special Trial Counsel for the United States Department of Justice in its antitrust suit against Microsoft. Mr. Boies also served as the lead counsel for former Vice-President Al Gore in connection with litigation relating to the 2000 election Florida vote count. Mr. Boies has taught courses at New York University Law School and Cardozo Law School.

Mr. Boies is the author of numerous publications including *Courting Justice*, published by Miramax in 2004 and *Public Control of Business* (co-authored with Paul Verkuil), published by Little Brown in 1977.

He is a member of Phi Beta Kappa; New York Bar (1967); Fellow, American College of Trial Lawyers; Fellow, International Academy of Trial Lawyers. Mr. Boies is the recipient of LL.D.s from the University of Redlands (2000) and New York Law School (2007). His awards include the Milton Gould Award for Outstanding Oral Advocacy, the Pinnacle Award from the International Dyslexia Association, the Lifetime Achievement Award from the LD Access Foundation, the Outstanding Learning Disabled Achievers Award from the Lab School of Washington, and the William Brennan Award from the University of Virginia (2000). Mr. Boies was named the Antitrust Lawyer of the Year by the New York Bar Association (2003); the Lawyer of the Year by the National Law Journal (1999 and 2000); and the Commercial Litigator of the Year by Who's Who International (2005 and 2008).

In 2008 Mr. Boies successfully defended NASCAR against antitrust charges and, with his partner Donald Flexner, collected a record \$4 billion for their client American Express in its litigation against Visa and MasterCard.