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AG BROWN ANSWERS FEDERAL CHALLENGE TO PROP. 8 WITH AGREEMENT THAT THE INITIATIVE IS UNCONSTITUTIONAL

State's Chief Legal Officer Agrees with Plaintiffs that Prop. 8 Violates 14th Amendment, Equal Protection Clause and Due Process Clause

EDS: Electronic Copy of AG's Filing Available

LOS ANGELES: California Attorney General Jerry Brown responded today to the federal challenge to Proposition 8 filed last month by Ted Olson and David Boies by agreeing that the initiative violates the U.S. Constitution.

"Taking from same-sex couples the right to civil marriage that they had previously possessed under California's Constitution cannot be squared with guarantees of the Fourteenth Amendment," the Attorney General's filing states.

"Today's filing by Attorney General Jerry Brown underscores that Proposition 8 is a clear violation of the United States Constitution because it denies people equal rights," said Chad Griffin, Board President of the American Foundation for Equal Rights. "We are confident that our state's chief legal officer's strong opinion will help this case move quickly through the courts so that every Californian will soon be treated equally under the law."

The American Foundation for Equal Rights is the organization that hired Olson and Boies to lead a federal challenge to Proposition 8 on behalf of two same sex couples who were denied marriage licenses because of the initiative.

Proposition 8 eliminated the right of same-sex couples to marry in California. The suit states that Proposition 8 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 plaintiffs in the case are Kris Perry & Sandy Stier, and Paul Katami & Jeff Zarrillo. They have issued the following joint statement: “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.”

The plaintiffs wish to be married but, because of Proposition 8, have been denied marriage licenses. 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 55 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 was filed May 22 in the United States District Court, Northern District of California.

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 2009, the California Supreme Court upheld Proposition 8 as a valid amendment to the State’s Constitution.

The 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.

“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.

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