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SAN FRANCISCO FILES BRIEF BACKING FEDERAL CHALLENGE TO PROP. 8

City Attorney Dennis Herrera and Chief Deputy Therese Stewart call
Prop. 8 Unconstitutional in Amicus Brief

EDS: Background at www.equalrightsfoundation.org.

San Francisco brief at www.sfgov.org/site/uploadedfiles/city_attorney/cases/PROP8-USDIST-AMICUS.PDF

JUNE 19, 2009 -- The City and County of San Francisco filed an amicus curiae (friend of the court) brief late Thursday backing the federal challenge to Proposition 8 filed by the American Foundation for Equal Rights and attorneys Theodore Olson and David Boies.

"San Francisco is presently compelled by Proposition 8 to violate the federal constitutional rights of gay and lesbian citizens," City Attorney Dennis Herrera and Chief Deputy Therese Stewart state in their 49-page amicus brief. "[Proposition 8] offends the federal Equal Protection Clause even applying the most deferential test."

Herrera and Stewart spearheaded the successful litigation that led to the California Supreme Court recognizing marriage as a fundamental right guaranteed to all Californians under the state constitution. Those rights were later stripped by Proposition 8, which amended the state constitution.

"City Attorney Herrera and Chief Deputy Stewart have not only been inspiring leaders of this fight, they are also two of the foremost legal authorities in this arena," American Foundation for Equal Rights Board President Chad Griffin said. "Their support bolsters our work to overturn Proposition 8 and guarantee that every American is treated equally under the law."

A hearing on the case is scheduled in the U.S. District Court, Northern District of California, on July 2. The suit was filed last month and also calls for an injunction against Proposition 8 until the case is resolved, which would immediately reinstate marriage rights to same sex couples.

Earlier this week, Gov. Arnold Schwarzenegger, who is named in the suit in his capacity as the state's chief executive, filed papers with the court that did not dispute Proposition 8's unconstitutionality and called for swift action by the courts to ensure people's constitutional rights are protected. Last week, Attorney General Jerry Brown, who is named in the suit in

his capacity as the state's chief legal officer, filed papers that called Proposition 8 unconstitutional.

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

"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.

Olson is a former U.S. Solicitor General who 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 56 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 lawsuit states 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.

"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.

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."

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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