



CITY ATTORNEY DENNIS HERRERA

STATEMENT

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Herrera hails Obama Administration's U.S. Supreme Court brief in Prop 8 case

'Federal, state and local governments are united in recognizing that marriage equality's time has finally come,' S.F. City Attorney says

SAN FRANCISCO (Feb. 28, 2013)—City Attorney Dennis Herrera has issued a statement praising President Obama for the amicus brief U.S. Solicitor General Donald B. Verrilli, Jr. will file today in the U.S. Supreme Court urging the invalidation of California's Proposition 8, the 2008 ballot measure that eliminated equal marriage rights for same-sex partners. The forthcoming filing has been confirmed by Obama Administration officials to numerous news outlets, including the [New York Times](#).

In response, Herrera said:

- “When San Francisco challenged the constitutionality of marriage laws that discriminate against same-sex partners in 2004, no government had ever before been on our side of the issue. Nine years later, our federal, state and local governments are united in recognizing that marriage equality's time has finally come. We are delighted to have the legal and moral weight of the federal government on our side in this struggle. President Obama has always recognized—even as a candidate for the presidency in 2008—that Prop 8 was peculiarly irrational in amending California's constitution to eliminate a cherished fundamental right. We hope the U.S. Supreme Court will similarly recognize that Prop 8 was inexplicable by any rationale other than prejudice. It is unconstitutional, and must be struck down.”

The Obama Administration's decision to file an amicus brief in the constitutional challenge to California's Prop 8 evokes notable historical instances in which the United States has weighed in on major civil rights issues even where they lack a direct bearing on the federal government. In *Brown v. Board of Education*, President Harry S. Truman's Justice Department submitted an amicus brief urging an end to state-sanctioned segregation in American public schools. The 1952 brief is regarded as particularly influential in arguing that: “Under the Constitution every agency of government, national and local, legislative, executive, and judicial, must treat each of our people as an *American*, and not as a member of a particular group classified on the basis of race or some other constitutional irrelevancy.”

The challenge to Prop 8, widely regarded as a potentially landmark case for LGBT civil rights, was filed in May 2009 by the American Foundation for Equal Rights on behalf two California couples who sought to marry: Kris Perry and Sandy Stier, and Paul Katami and Jeff Zarrillo. Theodore B. Olson and David Boies, who famously squared off in *Bush v. Gore* in 2000, serve as lead counsel in the case, which is currently entitled *Hollingsworth v. Perry*. Herrera's successful move to intervene in the case shortly after

it was filed enabled San Francisco to become a co-plaintiff, renewing the City's years-long advocacy for the compelling public sector interest to end marriage discrimination against lesbian and gay couples. At the trial level in U.S. District Court, Herrera's legal team provided extensive evidence that state and local governments derive significant societal and economic benefits when same-sex partners enjoy equal marriage rights—and that denying such rights inflicts grave harm on the LGBT community, which in turn harms government and society at large.

In 2004, the City and County of San Francisco became the first government in American history to sue to strike down marriage laws that discriminate against same-sex partners. Over the next several years, it would be joined by almost two-dozen other cities and counties statewide—representing more than 17 million Californians—in support of marriage equality and in opposition to Proposition 8. Eventually the State of California declined to defend Proposition 8 and now it and the United States have filed amicus briefs urging the Court to hold Proposition 8 unconstitutional. Herrera leads the only legal team to have played a role in every aspect of the legal battle for marriage equality in California since 2004, when the office first defended then-San Francisco Mayor Gavin Newsom's decision to issue marriage licenses to same-sex couples in February of that year in several lawsuits. The complete timeline of San Francisco's legal battle for marriage equality since February 2004 is available on City Attorney Herrera's website at:

<http://www.sfcityattorney.org/index.aspx?page=23>

The case is: *Hollingsworth v. Perry*, U.S. Supreme Court, Docket No. 12-144.

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