

RECOMMENDATION

The Human Right Commission respectfully submits the following recommendation to the San Jose City Council:

To support and join as amicus, or in other means as permitted by the Court, in support of Plaintiffs, in Case No. 09-cv-02292-VRW in the United States District Court for the Northern District of California:

KRISTIN M PERRY, SANDRA B STIER,
PAUL T KATAMI and JEFFREY J
ZARRILLO
Plaintiffs,

v

ARNORLD SCHWARZENEGGER, in his
official capacity as governor of
California, etc., et al.,;
Defendants

DENNIS HOLLINGSWORTH, et al.,
as official proponents of Proposition 8,
Defendant-Intervenors

MEMO
October 5, 2009

Background

In 2000, the voters of California approved Proposition 22, which prevented California from recognizing same-sex marriages. In a lawsuit that challenged Prop. 22, a San Francisco Superior Court judge ruled same-sex partners were being unfairly discriminated against because of their gender. He ruled they should be legally able to marry. In May, 2008, the California State Supreme Court affirmed that ruling, In Re Marriage Cases.

In 2008, a ballot measure, Proposition 8, was circulated and qualified to go to the voters in the November 2008 election, which passed with a 52% "yes" vote by Californians.

Analysis

In May, 2008, in a 4-3 ruling, the California State Supreme Court, when invalidating Proposition 22, stated that the "California legislative and initiative measures limiting marriage to opposite-sex couples violate the state constitutional rights of same-sex couples and may not be used to preclude same-sex couples from marrying". Upon their ruling, thousands of gay and lesbian couples married and re-affirmed their commitment, rights and responsibilities for one another.

During the election campaign, millions of dollars were spent by both sides of this issue, re-affirming the seriousness of the issue.

The "Yes on 8" campaign, namely those who wanted gay and lesbian couples to lose their equal right to marry, campaigned on a theme of "protecting marriage". Within the media, the "Yes" campaign cited religion and "tradition" in support of its passage. Significant donors to the "Yes" campaign include: The Church of Latter Day Saints and the Catholic Diocese. It should be noted that since its passage, there has been an investigation initiated by the Fair Political Practices Commission (FPPC) into the legality of money raised by the "Yes" campaign.

The "No on 8" campaign, name those who supported gay and lesbian couples in maintain their equal right to marry, campaigned on a theme of equality and "equal rights not special rights" for those couples. Within the media, the "No" campaign had to restate that the rights that were recently granted did not take away from anyone elses rights. Furthermore, the "No" campaign compared this movement to the Civil Rights movement by describing how a majority will try to keep the "status quo" by voting to take away the rights of minorities.

Proposition 8 passed statewide 52% to 48%.

Proposition 8 failed in Santa Clara County and the City of San Jose.

In both lawsuits, Strauss and Perry, the Governor and State Attorney General have supported the overturning of Proposition 8.

Outcomes

As a result of the passage of Proposition 8, marriage licenses ceased being issued to gay and lesbian couples on Election Day.

A lawsuit, *Strauss v Horton*, which sought to overturn Proposition 8, was filed and heard within the California State Supreme Court.

In its *Strauss* ruling, the State Supreme Court: 1) allowed gay and lesbian couples who were married while it was legal, to stay legally married and, 2) upheld Proposition 8 thereby refusing to issue marriage licenses since its passage on Election Day.

Proposition 8's passage and the subsequent court ruling in *Strauss* has now created a tri-level recognition of couples' commitment to one another:

- 1) Marriages of heterosexual couples
- 2) Marriages (between May and November of 2008) of gay and lesbian couples
- 3) Domestic Partnerships which are legal for all consenting adults

This tri-level recognition has caused Californians, including San Jose residents, to question the validity of themselves and their commitment to a partner. They ask themselves "is separate, equal?"

On the day the State Supreme Court issued its ruling in *Strauss*, *Perry* was filed in the United States District Court for the Northern District of California.

Public Outreach

The Human Rights Commission has conducted four meetings to date in which equal marriage rights have been discussed.

At its July 2008 meeting, the Commission considered letters and testimony from members of the public asking for our body to take a position against "any legislation which would place discriminatory language in our State Constitution", which our body did and forwarded to Council.

At its January 2009 meeting, the Commission drafted a recommendation to Council, asking the City to file an Amicus Brief in *Strauss*. Unfortunately the deadline to submit the Amicus expired and the matter was dropped.

At its September 2009 meeting, the Commission listened to testimony from members of the public and reviewed letters from members of the public asking the Commission to support a recommendation to Council asking the City to file an Amicus Brief in support of Plaintiffs in *Perry v. Schwarzenegger*.

It should be noted, as of today's date, the Commission has not received any testimony from any member of the public in opposition of equal marriage rights for gay and lesbian couples.

Coordination

If the Commission supports and adopts this recommendation, it will be forward to Council for review. The City Attorney's office has advised the Commission as to the Amicus Brief process. If Council accepts the recommendation, it would be up to Council on the next steps in directing staff to file an Amicus Brief, including, but not limited to directing the City Attorney to file such a motion.

Respectfully Submitted

David Parker, Vice-Chair
Human Rights Commission
City of San Jose