



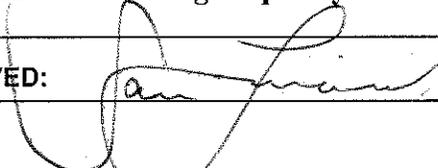
Memorandum

TO: RULES COMMITTEE

FROM: Councilmember Sam Liccardo

SUBJECT: Marriage Equality

DATE: May 30, 2012

APPROVED: 

J-30-12

RECOMMENDATION

Agendize for Council adoption

- (a) A resolution reaffirming, in explicit and unequivocal terms, the Council's support for marriage equality, provided that the resolution does not direct the Mayor to sign any document purporting to reflect beliefs that he does not hold; and
- (b) Direct the City Attorney to join with appropriate municipalities or like-minded organizations as an *amicus curiae* to defend the Ninth Circuit's decision in *Perry v. Brown* that Proposition 8 violates the 14th Amendment of the U.S. Constitution (i.e., on *en banc* review in the Ninth Circuit Court of Appeals, and/or before the United States Supreme Court).

BACKGROUND

It is hardly remarkable that San Jose's City council should take a stand in support of marriage equality; we've done so repeatedly in the past. In 2008, I led a motion—supported by eight of my colleagues—to sign an *amicus curiae* brief to support the challenges to Proposition 8 before the California Supreme Court. In 2004, the Council voted overwhelmingly to recognize same-sex marriages of City employees performed in other jurisdictions. The Council has remained committed to ensuring that LGBT couples have access to the equal employee benefits as heterosexual couples. Certainly, we can re-affirm our commitment to making this next stride in the long march of American civil rights. The proposed resolution attached to the memorandum of Councilmembers Chu, Kalra, and Rocha certainly does that.

More troubling, however, is the final paragraph of the proposed resolution, which calls for the Mayor “to stand with more than 216 other U.S. mayors and with the U.S. Conference of Mayors by signing the Mayors for the Freedom to Marry statement in support of the freedom of same sex couples to marry.”

It would be the right thing for Mayor Reed to sign the pledge. Nonetheless, that decision remains Mayor Reed's—and nobody else's—to make. I will leave it to the City Attorney to address whether the Council has the legal authority under the City Charter to direct the Mayor to say anything.

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My concern, rather, lies in the moral realm. The idea of Mayor Reed signing something in which he doesn't believe--as T.S. Eliott reminds us--amounts to "commit[ting] the right deed for the wrong reason," for which there is "no greater treason."

Last Memorial Day weekend, we remembered those who sacrificed their lives to protect our Constitutionally-granted freedoms. The right to marry the person of one's choosing should stand among those freedoms. Yet it stands among other freedoms—such as the right to speak freely, and without any form of legal mandate to speak contrary to one's own beliefs. None of us lose those First Amendment rights by our election to public office.

Of course, it is not lost on most observers that this is a highly divisive issue, and one raised amid the simmer of several political battles over this City's fiscal and political future. In the last three years, I have yet to see any Council memorandum calling on President Obama to make a declaration similar to that articulated in the proposed resolution; indeed, he was unwilling to make such pronouncements until only weeks ago.

Cultural wars are not merely the province of the religious right. Let's step back from divisive political battles by merely affirming our strong, unequivocal support of marriage equality, and allow the Mayor and the Council's dissenters to do what our Constitution marvelously enables each of us to do, without fear or legal consequence: to dissent.