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San Diego Union-Tribune

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### Calif AG, gov oppose suspending gay marriage ban

BY LISA LEFF, THE ASSOCIATED PRESS  
FRIDAY, JUNE 12, 2009 AT 8:47 P.M.

**SAN FRANCISCO** — California Attorney General Jerry Brown and Gov. Arnold Schwarzenegger are opposing an effort to lift the state's ban on same-sex marriage while a lawsuit challenging Proposition 8 makes it way through the federal courts.

Brown and a private lawyer for Schwarzenegger wrote in papers filed in U.S. District Court in San Francisco late Thursday that allowing same-sex couples to resume marrying now would create too much uncertainty.

Suspending the ban "would not serve the public interest because it would create significant uncertainty for many persons concerning a relationship in which certainty is of the utmost importance," Brown said. "At this stage of the litigation, these concerns must override the countervailing arguments presented by plaintiffs."

But the attorney general, in a follow-up brief filed Friday evening said he supports the aims of the lawsuit. Brown said he agrees that Proposition 8 "imposed a special disability on gays and lesbians and their families on the basis of sexual orientation," violating the U.S. Constitution's promise of equal protection and due process.

"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," Brown said. "Accordingly, the Attorney General answers the Complaint consistent with his duty to uphold the United States Constitution."

On May 26, the California Supreme Court upheld the voter-approved same-sex marriage ban, which as a constitutional amendment trumped the court's decision from a year earlier striking down a pair of laws that limited marriage to a man and a woman.

Schwarzenegger has not taken a position yet on the validity of the federal challenge to Proposition 8. As a defendant in the case, he has until the end of Tuesday to submit a response.

"Today's filing by Attorney General Jerry Brown underscores that Proposition 8 is a clear violation of the United States Constitution because it denies all people equal rights," said Chad Griffin, president of the American Foundation for Equal Rights, the organization behind the federal lawsuit. "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."

Protect Marriage, the group that sponsored Proposition 8, has asked a federal judge in San Francisco for permission to intervene in the case. Andy Pugno, the organization's lawyer, said he was not surprised by Brown's move.

During the challenge to Proposition 8 that was handled by the state Supreme Court this year, Brown, a Democrat considering running for governor next year, surprised many people by refusing to defend the measure. Schwarzenegger did not take a formal position in that case.

"It's still disappointing that (Brown) would continue to target Prop. 8 even after the California courts said it was valid," Pugno said.

The federal case was filed on behalf of two unmarried gay couples last month by Theodore Olson and David Boies, the lawyers who represented opposing sides in the contested 2000 presidential election. Griffin, a Los Angeles-based political strategist, approached Olson about taking on the case and has recruited director Rob Reiner, producer Bruce Cohen and screenwriter Dustin Lance Black as board members.

A hearing on their request for a temporary injunction that would prevent the state from enforcing Proposition 8 is scheduled for July 2. If a judge grants the request, gay couples could have years to avail themselves of the right to wed before the case gets settled.

Theodore Boutsros Jr., a member of the legal team in the case, said he disagreed with Brown and the governor that lifting the ban when it could be reimposed later would create too much confusion. He noted that that in upholding Proposition 8, the state Supreme Court allowed to let stand the marriages of an estimated 18,000 gay couples who tied the knot before the measure passed.

"The resolution of that issue was quite simple. The government held that those people can continue to be

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don't see any problems with that at all."

Geoffrey Kors, executive director of Equality California, the state's largest gay rights group, said that while he wished Schwarzenegger and Brown supported the injunction, it was more important for them to support the ultimate purpose of the lawsuit.

"We hope the governor shows some leadership instead of doing nothing, having no position at all on an issue of extreme importance in California," Kors said.



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