

GIBSON, DUNN & CRUTCHER LLP

Theodore B. Olson, SBN 38137.

tolson@gibsondunn.com

Matthew D. McGill (*pro hac vice* application pending)

Amir C. Tayrani, SBN 229609

1050 Connecticut Avenue, N.W. Washington, D.C. 20036

Telephone: (202) 955-8668, Facsimile: (202) 467-0539

Theodore J. Boutrous, Jr., SBN 132009

tboutrous@gibsondunn.com

Christopher D. Dusseault, SBN 177557

Ethan D. Dettmer, SBN 196046

Theane Evangelis Kapur, SBN 243570

Enrique A. Monagas, SBN 239087

333 S. Grand Avenue, Los Angeles, California 90071

Telephone: (213) 229-7804, Facsimile: (213) 229-7520

BOIES, SCHILLER & FLEXNER LLP

David Boies (*pro hac vice* application pending)

dboies@bsflp.com

Theodore H. Uno, SBN 248603

333 Main Street, Armonk, New York 10504

Telephone: (914) 749-8200, Facsimile: (914) 749-8300

Attorneys for Plaintiffs KRISTIN M. PERRY, SANDRA B. STIER,

PAUL T. KATAMI, and JEFFREY J. ZARRILLO

ORIGINAL

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

VRW

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

Plaintiffs,

v.

ARNOLD SCHWARZENEGGER, in his official
capacity as Governor of California; EDMUND
G. BROWN, JR., in his official capacity as
Attorney General of California; MARK B.
HORTON, in his official capacity as Director of
the California Department of Public Health and
State Registrar of Vital Statistics; LINETTE
SCOTT, in her official capacity as Deputy
Director of Health Information & Strategic
Planning for the California Department of Public
Health; PATRICK O'CONNELL, in his official
capacity as Clerk-Recorder for the County of
Alameda; and DEAN C. LOGAN, in his official
capacity as Registrar-Recorder/County Clerk for
the County of Los Angeles,

Defendants.

CV 09 2292

CASE NO.

COMPLAINT FOR DECLARATORY,
INJUNCTIVE, OR OTHER RELIEF

1 Plaintiffs Kristin M. Perry, Sandra B. Stier, Paul T. Katami, and Jeffrey J. Zarrillo complain
2 of Defendants and allege:

3 **INTRODUCTION**

4 1. More than 30 years ago, the Supreme Court of the United States recognized that
5 “[m]arriage is one of the ‘basic civil rights of man,’ fundamental to our very existence and survival.”
6 *Loving v. Virginia*, 388 U.S. 1, 12 (1967). But today, as a result of the passage of Proposition 8 in
7 November 2008, the State of California denies its gay and lesbian residents access to marriage by
8 providing in its constitution that only a civil marriage “between a man and a woman” is “valid or
9 recognized in California.” Cal. Const. Art. I § 7.5 (“Prop. 8”). Instead, California relegates same-sex
10 unions to the separate-but-unequal institution of domestic partnership. *See* Cal. Fam. Code §§ 297-
11 299.6. This unequal treatment of gays and lesbians denies them the basic liberties and equal
12 protection under the law that are guaranteed by the Fourteenth Amendment to the United States
13 Constitution.

14 2. For these reasons, Plaintiffs ask this Court to enjoin, preliminarily and permanently,
15 all enforcement of Prop. 8 and any other California statutes that seek to exclude gays and lesbians
16 from access to civil marriage.

17 **JURISDICTION AND VENUE**

18 3. This case raises questions under the Constitution of the United States and 42 U.S.C.
19 § 1983, and thus this Court has jurisdiction over all claims for relief pursuant to 28 U.S.C. § 1331.

20 4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because Defendant
21 O’Connell resides in this district and all Defendants reside in the State of California. Venue is also
22 proper in this Court because a substantial part of the events giving rise to the claim occurred in this
23 district.

24 **NATURE OF DISPUTE**

25 5. This action pursuant to 42 U.S.C. § 1983 seeks (1) a declaration that Prop. 8, which
26 denies gay and lesbian individuals the opportunity to marry civilly and enter into the same officially
27 sanctioned family relationship with their loved ones as heterosexual individuals, is unconstitutional
28 under the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United

1 States Constitution, and (2) a preliminary and permanent injunction preventing Defendants from
2 enforcing that provision against Plaintiffs.

3 6. In an abundance of caution, and to the extent that they have any continuing legal force
4 after the California Supreme Court's decision in *In re Marriage Cases*, 183 P.3d 384 (Cal. 2008),
5 Plaintiffs also seek (1) a declaration that California Family Code §§ 300 and 308.5, which purport to
6 restrict civil marriage in California to opposite-sex couples, and California Family Code § 301, which
7 also could be read to impose such a restriction, are unconstitutional under the Due Process and Equal
8 Protection Clauses of the Fourteenth Amendment to the United States Constitution, and (2) a
9 preliminary and permanent injunction preventing Defendants from enforcing those provisions against
10 Plaintiffs.

11 7. Plaintiffs Perry and Stier are lesbian individuals in a committed relationship. Plaintiffs
12 Katami and Zarrillo are gay individuals in a committed relationship. Both couples desire to express
13 their love for and commitment to one another by getting married and obtaining official sanction for
14 their family from the State. But Prop. 8 denies them that right in violation of the Equal Protection and
15 Due Process Clauses of the Fourteenth Amendment to the United States Constitution.

16 8. To enforce the rights afforded by the United States Constitution, Plaintiffs bring this
17 suit pursuant to 42 U.S.C. § 1983 for declaratory and injunctive relief against the enforcement of
18 Prop. 8. Plaintiffs also seek to recover all their attorneys' fees, costs, and expenses incurred in this
19 action and any other relief that this Court may order.

20 **THE PARTIES**

21 9. Plaintiff Kristin M. Perry is a California citizen and resides in Alameda County,
22 California.

23 10. Plaintiff Sandra B. Stier is a California citizen and resides in Alameda County,
24 California.

25 11. Plaintiff Paul T. Katami is a California citizen and resides in Los Angeles County,
26 California.

27 12. Plaintiff Jeffrey J. Zarrillo is a California citizen and resides in Los Angeles County,
28 California.

1 13. Defendant Arnold Schwarzenegger is the Governor of the State of California. In his
2 official capacity, the Governor is the chief executive officer of the State of California. It is his
3 responsibility to ensure that the laws of the State are properly enforced. The Governor maintains an
4 office in San Francisco.

5 14. Defendant Edmund G. Brown, Jr., is the Attorney General of the State of California.
6 In his official capacity, the Attorney General is the chief legal officer of the State of California. It is
7 his duty to see that the laws of the State are uniformly and adequately enforced. The Attorney
8 General maintains offices in Oakland and San Francisco.

9 15. Defendant Mark B. Horton is the Director of the California Department of Public
10 Health and, as such, is the State Registrar of Vital Statistics of the State of California. In his official
11 capacity, the Director of the California Department of Public Health is responsible for prescribing and
12 furnishing the forms for the application for license to marry, the certificate of registry of marriage
13 including the license to marry, and the marriage certificate.

14 16. Defendant Linette Scott is the Deputy Director of Health Information & Strategic
15 Planning for the California Department of Public Health. Upon information and belief, Scott reports
16 to Defendant Horton and is the California Department of Public Health official responsible for
17 prescribing and furnishing the forms for the application for license to marry, the certificate of registry
18 of marriage including the license to marry, and the marriage certificate.

19 17. Defendant Patrick O'Connell is the Clerk-Registrar for the County of Alameda.
20 O'Connell is responsible for maintaining vital records of marriages, issuing marriage licenses, and
21 performing civil marriage ceremonies.

22 18. Defendant Dean C. Logan is the Registrar-Recorder/County Clerk for the County of
23 Los Angeles. Logan is responsible for maintaining vital records of marriages, issuing marriage
24 licenses, and performing civil marriage ceremonies.

25 19. Defendants, and those subject to their supervision, direction, and control, are
26 responsible for the enforcement of Prop. 8. The relief requested in this action is sought against each
27 Defendant, as well as against each Defendant's officers, employees, and agents, and against all
28

1 persons acting in cooperation with Defendant(s), under their supervision, at their direction, or under
2 their control.

3 **FACTS**

4 20. Gay and lesbian individuals have faced a long and painful history of societal and
5 government-sponsored discrimination in this country. Although their sexual orientation bears no
6 relation to their ability to contribute to society, gays and lesbians have been singled out for
7 discriminatory treatment. They have faced unconstitutional criminal penalties for private sexual
8 conduct between consenting adults, harassment, hate crimes, and discrimination in employment and
9 many other areas. They have even been the subject of laws stripping them of rights afforded to all
10 other citizens.

11 21. Beginning in the 1970s, gays and lesbians began to seek change and equality through
12 the legislative process in California. Unfortunately, that effort was met with resistance from those
13 who would deny them equal treatment. For example, several same-sex couples sought marriage
14 licenses in the mid-1970s from the county clerks in a number of California counties, but their
15 applications were denied. Then, in 1977, the California Legislature enacted California Family Code §
16 300, which defined marriage as “a personal relation arising out of a civil contract between a man and
17 a woman, to which the consent of the parties capable of making that contract is necessary.”

18 22. Nonetheless, gays and lesbians continued to press for the recognition of their right to
19 equal treatment and were successful in making some gains. One such gain was the creation of
20 domestic partnerships by the California Legislature in 1999. Cal. Stats. 1999, ch. 588, § 2 (adding
21 Cal. Fam. Code §§ 297-299.6). The 1999 legislation defined “domestic partners” as “two adults who
22 have chosen to share one another’s lives in an intimate and committed relationship of mutual caring.”
23 Cal. Fam. Code § 297(a). To qualify for domestic partnership, a couple must share a common
24 residence, each be at least 18 years of age and unrelated by blood in any way that would prevent them
25 from being married to each other, not be married or a member of another domestic partnership, be
26 capable of consenting, and either both be persons of the same sex or include at least one person more
27 than 62 years of age. Cal. Fam. Code § 297(b).

23. Domestic partnership enables same-sex couples to obtain many of the substantive legal benefits and privileges that California law provides to married couples, but denies them access to civil marriage itself. It also treats same-sex couples differently in other respects, including but not limited to the following: (1) To qualify for domestic partnership, both partners must have a common residence at the time the partnership is established, Cal. Fam. Code § 297(b)(1), but there is no such requirement for marriage; (2) both individuals must be 18 years of age to enter into a domestic partnership, Cal. Fam. Code § 297(b)(4), but a person under 18 may be married with the consent of a parent or guardian or court order, Cal. Fam. Code §§ 302, 303; (3) to become domestic partners, both individuals must complete and file a Declaration of Domestic Partnership with the Secretary of State, who registers the declaration in a statewide registry, Cal. Fam. Code § 298.5(a) & (b), but a couple who wishes to marry must obtain a marriage license and certificate of registry of marriage from the county clerk, have the marriage solemnized by an authorized individual, and return the license and certificate of registry to the county recorder, who transmits it to the State Registrar of Vital Statistics, Cal. Fam. Code §§ 306, 359; Cal. Health & Safety Code §§ 102285, 102330, 102355; (4) the marriage laws establish a procedure through which an unmarried man and woman who have been living together as husband and wife may enter into a “confidential marriage” in which the marriage certificate and date of marriage are not made available to the public, Cal. Fam. Code §§ 500, 511, but the domestic partnership law contains no such provision; (5) Article XIII § 3(o) & (p) of the California Constitution grants a \$1,000 property tax exemption to an “unmarried spouse of a deceased veteran” who owns property valued at less than \$10,000, but not to a domestic partner of a deceased veteran; and (6) domestic partners may initiate a summary dissolution of a domestic partnership without any court action, whereas a summary dissolution of a marriage becomes effective only upon entry of a court judgment, Cal. Fam. Code § 299(a)-(c); Cal. Fam. Code § 2400 et seq.

24. After enactment of the domestic partnership law, gays and lesbians again experienced a backlash, this time through the ballot initiative process. In 2000, a majority of California voters approved Proposition 22 (codified at Cal. Fam. Code § 308.5), which provided that “[o]nly marriage between a man and a woman is valid or recognized in California.” In *Lockyer v. City & County of San Francisco*, 95 P.3d 459 (Cal. 2004), the California Supreme Court held that Family Code sections

1 300 and 308.5 prohibited public officials of the City and County of San Francisco from issuing
2 marriage licenses to same-sex couples, but it did not decide whether those laws were constitutional.

3 25. Fearing that Family Code sections 300 and 308.5 might be held unconstitutional,
4 opponents of same-sex marriage began an effort to put an initiative on the November 4, 2008, ballot
5 that would overturn the California Supreme Court's decision by amending the California Constitution
6 to ban same-sex marriage. On April 24, 2008, the proponents of the ban submitted petitions with
7 enough signatures to place what would become Prop. 8 on the ballot.

8 26. On May 15, 2008, the California Supreme Court held that Family Code sections 300
9 and 308.5 were unconstitutional under the privacy, due process, and equal protection guarantees of
10 the California Constitution in *In re Marriage Cases*, 183 P.3d 384 (Cal. 2008).

11 27. On June 2, 2008, the Secretary of State declared that Prop. 8 could be placed on the
12 ballot. The General Election Voter Information Guide stated that Prop. 8 would "[c]hange[] the
13 California Constitution to *eliminate the right* of same-sex couples to marry in California." (Emphasis
14 added). Thus, the express and stated purpose of the ballot initiative was to strip gays and lesbians of
15 constitutional rights afforded to them by the California Constitution and to impose a special disability
16 on gays and lesbians alone by stripping them of state constitutional protections that apply to all other
17 citizens.

18 28. On election day, fifty-two percent of the ballots cast voted to amend the California
19 Constitution to add a new section 7.5 to Article I providing: "Only marriage between a man and a
20 woman is valid or recognized in California." The measure went into effect on November 5, 2008, the
21 day after the election.

22 29. Since November 5, 2008, same-sex couples have been denied marriage licenses on
23 account of Prop. 8.

24 30. Prop. 8 has created a legal system in which civil marriage is restricted solely and
25 exclusively to opposite-sex couples, and in which gay and lesbian individuals are denied the right to
26 enter into a civil marriage with the person of their choice. The inability to marry denies gay and
27 lesbian individuals and their children the personal and public affirmation that accompanies marriage.

28

1 31. Plaintiffs are gay and lesbian residents of California who are involved in long-term,
2 serious relationships with individuals of the same sex and desire to marry those individuals. They are
3 now prohibited from doing so as a direct result of Defendants' enforcement of Prop. 8.

4 32. On May 21, 2009, Plaintiffs Perry and Stier applied for a marriage license from
5 Defendant O'Connell, the Alameda County Clerk-Registrar, but were denied because they are a
6 same-sex couple.

7 33. On May 20, 2009, Plaintiffs Katami and Zarrillo applied for a marriage license from
8 Defendant Logan, the Los Angeles County Clerk, but were denied because they are a same-sex
9 couple.

10 34. As a result of Prop. 8, Plaintiffs are barred from marrying the individual they wish to
11 marry and are instead left only with the separate-but-unequal option of domestic partnership.

12 35. Plaintiffs' inability to have their relationship recognized by the State with the dignity
13 and respect accorded to married opposite-sex couples has caused them significant hardship, including
14 but not limited to the deprivation of rights guaranteed by the Fourteenth Amendment and severe
15 humiliation, emotional distress, pain, suffering, psychological harm, and stigma. Marriage is a
16 supremely important social institution, and the "freedom to marry has long been recognized as one of
17 the vital personal rights essential to the orderly pursuit of happiness by free men." *Loving v. Virginia*,
18 388 U.S. 1, 12 (1967). Each day that Plaintiffs are denied the freedom to marry, they suffer
19 irreparable harm as a direct result of Defendants' violation of their constitutional rights.

20 36. If Prop. 8 is not enjoined, Defendants will continue to enforce this unconstitutional
21 law against Plaintiffs, thereby depriving them of their constitutional rights under the Fourteenth
22 Amendment. The declaratory and injunctive relief sought by Plaintiffs, on the other hand, will
23 require Defendants Horton and Scott to revise the official state forms for the application for license to
24 marry, the certificate of registry of marriage including the license to marry, and the marriage
25 certificate, and will require Defendants O'Connell and Logan to issue them a marriage license. The
26 relief sought also will require Defendants Schwarzenegger and Brown to recognize their marriage as
27 valid within the State of California.

CLAIMS FOR RELIEF

CLAIM ONE: DUE PROCESS

37. Plaintiffs incorporate here by reference paragraphs 1 through 36, *supra*, as if fully set forth herein.

38. Prop. 8 violates fundamental liberties that are protected by the Due Process Clause, both on its face and as applied to Plaintiffs.

39. Prop. 8 impinges on fundamental liberties by denying gay and lesbian individuals the opportunity to marry civilly and enter into the same officially sanctioned family relationship with their loved ones as opposite-sex individuals. For example, by denying those individuals the same “marriage” designation afforded to opposite-sex couples, and instead allowing them access only to the separate and differently named “domestic partnership” relationship, the State is stigmatizing gays and lesbians, as well as their children and families, and denying them the same dignity, respect, and stature afforded officially recognized opposite-sex family relationships.

CLAIM TWO: EQUAL PROTECTION

40. Plaintiffs incorporate here by reference paragraphs 1 through 39, *supra*, as if fully set forth herein.

41. Prop. 8 violates the Equal Protection Clause of the Fourteenth Amendment, both on its face and as applied to Plaintiffs.

42. Prop. 8 restricts civil marriage to individuals of the opposite sex; gay and lesbian individuals are therefore unable to marry the person of their choice. Thus, California law treats similarly-situated people differently by providing civil marriage to heterosexual couples, but not to gay and lesbian couples. Instead, California law affords them and their families only the separate-but-unequal status of domestic partnership. Even if domestic partnership provided all of the tangible benefits and privileges of marriage, it still would be unequal because of the intangible, symbolic difference between the designation “marriage,” which enjoys a long history and uniform recognition, and the different and unequal institution of “domestic partnership,” which is a recent and manifestly unequal creation. Gays and lesbians are therefore unequal in the eyes of the law, and their families are denied the same respect as officially sanctioned families of opposite-sex individuals. By

purposefully denying civil marriage to gay and lesbian individuals, California's ban on same-sex marriage discriminates on the basis of sexual orientation.

43. The disadvantage Prop. 8 imposes upon gays and lesbians is the result of disapproval or animus against a politically unpopular group. The history of the enactment of Prop. 8 demonstrates that it was a backlash that stripped gays and lesbians of the rights previously conferred upon them by the California Supreme Court in *In re Marriage Cases*, 183 P.3d 384 (Cal. 2008). As such, Prop. 8 withdrew from gays and lesbians, but no others, specific legal protections afforded by the California Supreme Court and the California Constitution, and imposed a special disability upon those persons alone. Accordingly, Prop. 8 violates the Equal Protection Clause of the Fourteenth Amendment because it singles out gays and lesbians for a disfavored legal status, thereby creating a category of "second-class citizens."

44. Prop. 8 also violates the Equal Protection Clause because it discriminates on the basis of sex. It distinguishes between couples consisting of a man and a woman and couples consisting of individuals of the same sex. Thus, the limitation on civil marriage depends upon an individual person's sex; a man who wishes to marry a man may not do so because he is a man, and a woman may not marry a woman because she is a woman.

CLAIM THREE: VIOLATION OF 42 U.S.C. § 1983

45. Plaintiffs incorporate here by reference paragraphs 1 through 44, *supra*, as if fully set forth herein.

46. Insofar as they are enforcing the terms of Prop. 8, Defendants, acting under color of state law, are depriving and will continue to deprive Plaintiffs of numerous rights secured by the Fourteenth Amendment to the United States Constitution in violation of 42 U.S.C. § 1983.

IRREPARABLE INJURY

47. Plaintiffs incorporate here by reference paragraphs 1 through 46, *supra*, as if fully set forth herein.

48. Plaintiffs are now severely and irreparably injured by Prop. 8—a state law that violates the Due Process and Equal Protection Clauses of the Fourteenth Amendment. By way of example only, Plaintiffs' injury as a result of Prop. 8 includes the deprivation of rights guaranteed by

1 the Fourteenth Amendment and the severe humiliation, emotional distress, pain, suffering,
 2 psychological harm, and stigma caused by the inability to marry the ones they love and have society
 3 accord their unions and their families the same respect and dignity enjoyed by opposite-sex unions
 4 and families. Plaintiffs' injuries will be redressed only if this Court declares Prop. 8 unconstitutional
 5 and enjoins Defendant from enforcing it.

6 49. An actual and judicially cognizable controversy exists between Plaintiffs and
 7 Defendants regarding whether Prop. 8 violates the Due Process and Equal Protection Clauses of the
 8 Fourteenth Amendment. Defendants are presently enforcing this state law to the detriment of
 9 Plaintiffs.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiffs pray for judgment as follows:

12 1. Plaintiffs respectfully request that this Court, pursuant to 28 U.S.C. § 2201, construe
 13 Prop. 8 and enter a declaratory judgment stating that this law and any other California law that bars
 14 same-sex marriage violate the Due Process and Equal Protection Clauses of the Fourteenth
 15 Amendment and 42 U.S.C. § 1983.

16 2. Plaintiffs respectfully request that this Court enter a preliminary and a permanent
 17 injunction enjoining enforcement or application of Prop. 8 and any other California law that bars
 18 same-sex marriage.

19 3. Plaintiffs respectfully request costs of suit, including reasonable attorneys' fees under
 20 42 U.S.C. § 1988, and all further relief to which they may be justly entitled.

21 Dated: May 22, 2009

22 GIBSON, DUNN & CRUTCHER LLP

23 By: 
 24 Theodore B. Olson

25 and

26 BOIES, SCHILLER & FLEXNER LLP
 David Boies (*pro hac vice* application pending)

27 Attorneys for Plaintiffs KRISTIN M. PERRY,
 28 SANDRA B. STIER, PAUL T. KATAMI, AND
 JEFFREY J. ZARRILLO