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Prop 8 Lawyers Honored At D.C. Events

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By Lou Chibbaro Jr. on May 19, 2011

The two lead attorneys in the widely followed lawsuit seeking to overturn the California ballot measure that bans same-sex marriage in the state and the attorney who successfully argued the Supreme Court case that overturned anti-gay sodomy laws were honored this week in Washington.

The Cato Institute, an LGBT supportive libertarian think tank, held a forum on Wednesday that featured presentations by conservative Republican lawyer Theodore Olson and Democratic attorney David Boies, who have teamed up to fight Proposition 8.

D.C.'s Whitman-Walker Health, formerly known as Whitman-Walker Clinic, was scheduled to present Olson, Boies and Washington attorney Paul Smith with its Joel A. Toubin Memorial Award at a reception Thursday evening. The award recognizes their legal work in support of the rights of LGBT people.

Smith was the lead attorney challenging state sodomy laws in the 2003 case known as *Lawrence v. Texas*, in which the high court ruled that laws banning intimate sexual relations between people of the same sex in the privacy of their home were unconstitutional.

In interviews with the Blade, Olson and Smith each said they were hopeful that the *Lawrence* decision would provide an important legal foundation for the Supreme Court to overturn Proposition 8 when that case reaches the high court possibly within the next two years.

Olson worked as U.S. Solicitor General defending federal laws before the Supreme Court during the administration of President George W. Bush. He later represented Bush in a highly controversial Supreme Court case credited with deciding the outcome of the 2000 presidential election in favor of Bush over then Vice President Al Gore in a dispute over challenged ballots in Florida.

Olson told the Blade he doesn't see his role in seeking to overturn what he calls a "highly discriminatory" ballot measure as a contradiction to his status as a conservative.

"I think those of us in the political world who care about individual rights and individual liberty and individual freedom and treating our fellow citizens with respect and decency and fairness and understanding ought to be in favor of changing laws that discriminate against people on the basis of sexual orientation," he said.

The California-based American Foundation for Equal Rights, which retained Olson and Boies to challenge Prop 8 in court, was initially questioned by some LGBT groups and progressive legal experts for taking on too great a risk in seeking to bring the case before the U.S. Supreme Court. Some argued that the conservative-leaning court could very likely uphold Prop 8's constitutional standing, setting a potentially harmful legal precedent.

Olson said he and Boies considered those concerns when they decided to take on the case.

"We felt it was important to go forward because we've been approached by persons who felt their constitutional rights were being denied to them," he said. "And we felt that as lawyers, we couldn't say, well we're not going to represent you or we're not going to try to vindicate your constitutional rights."

Smith said he's hopeful that the Supreme Court will uphold a lower federal district court ruling in Massachusetts, which declared as unconstitutional a provision in DOMA that bars the federal government from recognizing same-sex marriages legalized by states.

He said he and other attorneys seeking to overturn the DOMA provision banning federal recognition of same-sex marriages received an important boost when the Justice Department decided earlier this year to no longer defend the law in court. President Barack Obama has said he favors the full repeal of DOMA by Congress.

The president said he also believes DOMA is unconstitutional and determined the Justice Department should end all efforts to defeat the law in court. The Republican-controlled U.S. House of Representatives has since stepped in to arrange for legal counsel to defend DOMA as it makes its way to the Supreme Court.

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