



In historic week, a chorus of support for marriage equality

By: [Chris Johnson](#) – March 2, 2013

A slew of legal briefs — signed by parties ranging from NFL players to LGBT advocates to businesses — were filed this week before the U.S. Supreme Court in lawsuits challenging California’s Proposition 8 and the Defense of Marriage Act.

During a news conference held on Thursday by the Respect for Marriage Coalition, a number of parties that filed briefs in the cases spoke out on why they were calling on the Supreme Court to issue rulings striking down Prop 8 and DOMA.

Mike Neuberger, a self-avowed devout Christian from Michigan, held back tears as he explained why he penned his name to a brief against Prop 8 filed by the LGBT group PFLAG. He and his wife, Janice, signed the brief on behalf of his son Lee, his spouse David and their two children.

“I met a lot of people in PFLAG, and signed on to this brief also knowing all the people that helped me besides my own family,” Neuberger said. “For me, marriage, when I say that I’ve been married 41 years to my wife, I usually get applause if I’m speaking somewhere because there’s that respect for marriage that’s understood. Right away, they immediately know the relationship and what we meant to each other. I want Lee and David to have that same recognition when they say they’re married.”

Gay former Rep. Jim Kolbe of Arizona was among the 131 Republicans who signed another brief against Prop 8 — which was also signed by former Republican presidential candidate Jon Huntsman, former California gubernatorial candidate Meg Whitman, director Clint Eastwood as well as Reps. Ileana Ros-Lehtinen (R-Fla.) and Richard Hanna (R-N.Y.). He also spoke at the news conference in terms of DOMA’s impact on bi-national same-sex couples.

“My partner is from Panama,” Kolbe said. “He’s been here for a number of years. He’s a Fulbright scholar, master’s degree in special education, bilingual education specialist, but our getting married does not permit the right to immigrate to this country, so our struggle to get immigration for him has been a long and very difficult one for him.”

Two separate briefs were filed in the DOMA case and the Prop 8 case that were signed by a number of LGBT advocacy groups, including the Human Rights Campaign, the National Center for Lesbian Rights, the National Gay & Lesbian Task Force, the Courage Campaign and the Center for American Progress, as well as other civil rights groups such as the National Council of La Raza and the National Immigration Forum.

Both briefs argue that Prop 8 and DOMA should be ruled unconstitutional because laws related to sexual orientation merit heightened scrutiny in the courts.

“Amici urge the Court to hold that classifications based on sexual orientation are subject to heightened scrutiny, so that governments cannot use invented, after-the-fact rationalizations to mask and justify discrimination based on prejudice, antipathy, or baseless stereotypes,” the Prop 8 brief states. “Discrimination based on sexual orientation bears the same essential hallmarks as other kinds of discrimination that have long received heightened scrutiny, and it should be treated no differently under the law.”

Gay & Lesbian Advocates & Defenders and Lambda Legal, which had filed their cases against DOMA that didn't reach the Supreme Court, also filed their own brief in the case challenging the 1996 anti-gay law.

That 39-page brief also maintains DOMA should be subject to heightened scrutiny, but also argues the law would fail under a lower standard of rational basis review. “DOMA bears each of the various indicia the Court has considered when it has invalidated laws under rational basis review,” the brief states. “DOMA both targets a group disliked at the time of its passage and impacts important personal interests. It arose not out of the usual process of allocating federal rights and benefits but as a one-time departure from the traditional method of predicating eligibility for federal marriage-based protections on a couple's marital status under state law.”

Another brief was filed in the Prop 8 case by National Football League players known for their support for marriage equality: Chris Kluwe, punter for the Minnesota Vikings, and Brendon Ayanbadejo, linebacker for the Super Bowl champion Baltimore Ravens.

The football players argue that professional sports play a major role in shaping public opinion and Prop 8 should be ruled unconstitutional because the earlier decision from the U.S. Ninth Circuit Court of Appeals striking down the measure is consistent with the constitution.

“The NFL, NHL, MLB, and NBA, at the league level, team level, and individual level, are finally speaking out against homophobia and intolerance of LBGTQ individuals,” the brief states. “More and more of us realize that using demeaning slur words like ‘faggot,’ ‘queer,’ and ‘gay’ can have serious, negative consequences.”

The deadline for filing in the Prop 8 case was Thursday and the deadline for filing in the DOMA case was Friday. In the Prop 8 case, oral arguments are set for March 26; they're set the day after on March 27 in the DOMA case. Justices are expected to render a decision before their term ends in June.

A list of other friend-of-the-court briefs filed in the Prop 8 and DOMA cases follows. The Washington Blade has written more extensive articles on some of these briefs already.

Friend-of-the-court briefs against Prop 8

- Amid calls from LGBT advocates, the Obama administration filed a legal brief against California's same-sex marriage ban. The brief focuses on the unconstitutionality of Prop 8, but Obama himself said the reasoning in the brief could be applied to other laws.

- A “red” state coalition of groups that operate where same-sex marriage is illegal — ranging from the Utah Pride Center, to the Campaign for Southern Equality, to Equality Virginia — filed a brief arguing that both Prop 8 and DOMA should be subject to heightened scrutiny.
- A coalition of state attorneys general, including Connecticut Attorney General George Jepsen, D.C. Attorney General Irvin Nathan, Illinois Attorney General Lisa Madigan, filed another brief against Prop 8.
- California Gov. Jerry Brown (D), who has declined to defend Prop 8 in court, also filed a brief calling on the court to strike down the measure.
- Gay California Assembly Speaker John Perez — who’s reportedly on Obama’s short list as the next labor secretary — filed with law professors a brief against Prop 8 arguing that laws preventing equal political participation merit heightened scrutiny.
- Equality California filed a brief against Prop 8 with a different focus, arguing that proponents of the measure don’t have standing to defend the law in court.
- The libertarian think-tank known as the Cato Institute joined the Constitutional Accountability Center filed a brief arguing that Prop 8 violates equal protection under the U.S. Constitution.

Friend-of-the-court briefs against DOMA

- 212 congressional Democrats filed a brief against DOMA, marking the first time ever that House and Senate lawmakers have joined together in calling the anti-gay law unconstitutional.
- The LGBT military group OutServe-SLDN filed a brief against DOMA emphasizing the harm it causes gay service members with same-sex partners.
- A coalition of 278 of municipalities and businesses, including Google, Twitter and Microsoft, filed a brief maintaining DOMA is unconstitutional because it requires employers to discriminate against married gay employees.
- The Family Equality Council and the Gay, Lesbian & Straight Education Network filed a brief with allied organizations against both DOMA and Prop 8.
- The American Bar Association filed a brief asking the U.S. Supreme Court to consider the “serious obstacles” that DOMA imposes on lawyers’ clients who are same-sex couples legally married under state law.
- The Gay & Lesbian Medical Association filed briefs in both the Prop 8 and DOMA cases highlighting for the justices the scientific and clinical evidence that sexual orientation is an innate human characteristic.
- Trevor Potter, gay adviser to John McCain’s 2008 presidential campaign and author of McCain-Feingold, signed a brief against DOMA filed by former federal election commissioners. That brief argues DOMA — when superimposed onto federal campaign finance law — legally bars married gays and lesbians from political expression and association opportunities that are afforded to other married citizens.

