



Written by [Rebecca Terrell](#) on January 12, 2010

Same-sex “Marriage” a Constitutional Right?

A federal judge in California is preparing to rule whether a ban on same-sex marriage is unconstitutional. Testimony began January 11 in San Francisco and could last for weeks in a case expected to go all the way to the U.S. Supreme Court.



Representatives of the homosexual community as well as experts from both sides of the debate are expected to testify. The [Los Angeles Times](#) says the trial is unprecedented and quotes attorney Andy Pugno in explaining why: "Actually putting witnesses on the stand has never been done before in any lawsuit claiming a right to same-sex marriage, so this is a very out-of-the-ordinary approach."

The case is *Perry vs. Schwarzenegger*, and it challenges the gay-marriage ban known as Proposition 8 approved in November 2008 by 52 percent of California voters. The plaintiffs, two same-sex couples from the San Francisco area, are suing the State of California for violating what they say is their constitutional right to marry. Their attorneys, David Boies and Theodore B. Olson, gained fame in the Supreme Court case that resolved the 2000 presidential election and declared George W. Bush the victor in Florida. Olson represented Bush in that case, and Boies was Gore's attorney.

The California Supreme Court upheld the legality of Proposition 8 in a ruling in May 2009, but *Perry vs. Schwarzenegger* was filed three days prior. U.S. District Court Judge Vaughn R. Walker, a Republican appointee with a history of supporting same-sex marriage, will rule in the case once testimony is complete. Last week, Walker ruled the trial proceedings could be uploaded on YouTube, but the Supreme Court stepped in to temporarily ban video coverage, as reported by [The Washington Post](#). Same-sex marriage opponents requested the stay, which expires on Wednesday, December 13.

[Project Marriage](#) is a coalition of individuals and groups who defend the traditional definition of marriage. Project Marriage actively campaigned for Proposition 8, and their representatives are among the witnesses scheduled to testify in *Perry vs. Schwarzenegger*. The group's website explains the importance of the case: "A ruling to overturn Prop 8 could nullify the marriage laws in 45 states and imperil the federal Defense of Marriage Act [DOMA]." Under DOMA, the federal government defined marriage as a legal union between one man and one woman, and the law also guarantees that no state has to recognize a same-sex marriage performed in another state.

The website goes on to note that the *Perry* case "is the first marriage case in the history of the nation where a judge has allowed the thoughts, motivations, and personal beliefs of an initiative's sponsors to be put on trial to search for 'improper' intent." Project Marriage spokesmen will testify that marriage involves interests "broader than the personal, private special interests of the adults involved," especially "interests respecting natural childrearing."

The [Los Angeles Times](#) reports that the four plaintiffs will take the stand, as will a handful of academics



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who plan to relate the "history of discrimination against homosexuals and the history of marriage." Their message will convey the belief that Proposition 8 discriminates against homosexuals and that same-sex marriage does not undermine heterosexual marriage.



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