

Prop. 8 Battle Reaches New Heights in Calif. Supreme Court

Alliance Defending Freedom (ADF) attorneys representing the official proponents of Proposition 8 asked the California Supreme Court on Friday to order the state's county clerks to enforce the state's marriage amendment.

The U.S. Supreme Court's June 26 decision in *Hollingsworth v. Perry* did not rule on Proposition 8's constitutionality, and the district court's 2010 injunction does not apply statewide.

"Everyone on all sides of the marriage debate should agree that the legal process must be followed. Public officials should enforce the marriage amendment because they are not bound by the district court's injunction," says senior counsel Austin R. Nimocks. "The U.S. Supreme Court did not rule on the constitutionality of Proposition 8, and the district court's injunction does not apply statewide; therefore, county clerks should abide by the state Constitution."

Immediately after the U.S. Court of Appeals for the 9th Circuit lifted its stay of the district court order on June 28, California State Registrar Tony Agurto ordered all county clerks to begin issuing marriage licenses in violation of state law. Even though the registrar does not have the authority to issue such orders to county clerks, California Attorney General Kamala Harris publicly stated she will take legal action against any clerk who declines to follow the registrar's directive.

The petition filed in *Hollingsworth v. O'Connell* demonstrates that the district court's 2010 injunction does not bind all

county clerks. Because of that, the petition explains, "This Court's case law requires executive officials charged with ministerial duties to execute those duties regardless of their or others' views about the constitutionality of the laws imposing those duties."

Additionally, according to the petition, "Article III, section 3.5 of the California Constitution prohibits government agencies and officials from declaring state law unenforceable, or declining to enforce state law, on the basis that the law is unconstitutional, unless an appellate court has first made that determination. The Ninth Circuit's decision in *Perry* has been vacated; hence there is no appellate decision holding that Proposition 8 is unconstitutional. Petitioners are thus entitled to a writ of mandate requiring Respondents to comply with state law defining marriage as a union between a man and a woman."

"The more than 7 million Californians that approved Proposition 8 have a right to see the rule of law—and the constitutional initiatives that the people enact—respected," Nimocks says.