



Written by [James Heiser](#) on August 19, 2010

ABA Advocates Federal Legalization of Homosexual Marriage

Constitutionalists are expressing their disappointment, and even outrage, over the decision by the House of Delegates of the American Bar Association (ABA) to openly advocate the legalization of homosexual 'marriage' on the federal level.

The action by the ABA was not a surprise to advocates of homosexual "marriage"; instead, the House of Delegates' decision is being understood by such advocates as consistent with other ABA actions in recent years. In the words of Steve Weinstein, [writing for EDGE](#) (a publication which purports to be "the largest network of local Gay, Lesbian Bisexual and Transgender (GLBT) news and entertainment portals in the world"):



The American Bar Association in recent years has actively supported gay causes. The once-conservative organization has done an about-face on marriage, the military and other hot-button issues.

On this point, constitutionalists would probably agree with Mr. Weinstein; a growing number of conservative attorneys may view the ABA's action as contradicting both sound law and good judgment. In fact, the former president of the Ohio Bar Association decried the action of the House of Delegates as "suicidal." A story at CNSNews.com ("[American Bar Association Calls for Homosexual Marriage Nationwide](#)") reports:

The ABA's policy-making House of Delegates adopted Resolution 111, which states: "RESOLVED, That the American Bar Association urges state, territorial, and tribal governments to eliminate all of their legal barriers to civil marriage between two persons of the same sex who are otherwise eligible to marry."

The only voice of opposition came from former Ohio Bar Association President Leslie Jacobs, who said that it would be "cowardice" for him to remain silent about the issue. Jacobs urged his ABA colleagues to avoid overreaching into areas of contentious social policy.

"We owe it to this House [of Delegates] to avoid action that would jeopardize the Association," he said. "I personally believe it can be suicidal for the House to defer to an impulse to impose social and political and cultural values on the entire membership of the ABA - rather than to reflect some clear consensus of the bar."

"When an attitudinal value is not broadly shared, and when people of goodwill have sharply divergent views that are fundamental and - frankly - irreconcilable, it is axiomatic I believe that lawyers will be found not only to disagree with each other but to be engaged as advocates on both



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sides of the proposition on the merits, whether in litigation or in legislation,” Jacobs said.

The action by the ABA was undertaken in the midst of the legal crisis in California over the fate of Proposition 8 and only a week after a federal judge, Vaughn Walker, deemed the action undertaken by a clear majority of California voters to be “unconstitutional.” [According to the Christian Post:](#)

Notably, the adoption of resolution 111 on Wednesday came one week after U.S. District Judge Vaughn Walker ruled California’s Proposition 8 unconstitutional.

And the keynote speaker of the 2010 ABA Annual Meeting in San Francisco was David Boies, who co-counseled with Ted Olson to overturn Prop. 8.

Prop. 8, which California voters passed in 2008, effectively defined marriage in the state’s constitution as the union of one man and one woman.

Last week, however, Walker determined that people of the same sex do have the right to marry and that the decision of the majority to define marriage as the union between a man and a woman violates that right.

On Thursday, Walker denied a motion to stay the judgment he made, effectively allowing gay marriages to resume in the state starting next Wednesday.

In an 11-page ruling, the judge said proponents of the stay did not show a likelihood of success on appeal nor the possibility of any irreparable harm absent a stay.

With the timing of the ABA action thus closely coinciding with the action of Judge Walker, conservative attorneys, as well as other constitutionalists, are left with few alternatives but to continue the Proposition 8 fight all the way to the Supreme Court. Organizations such as the Alliance Defense Fund (ADF) are continuing the fight in California, and within the legal community, in general. As the *Christian Post* reports:

Ahead of the resolution’s passage, the Christian legal group Alliance Defense Fund stressed that the ABA does not speak for all U.S. lawyers and noted how three-quarters of American lawyers do not belong to the ABA.

“The fact that ADF and other lawyers disagree with ABA on a number of controversial issues demonstrates the gross inaccuracy of ABA’s claim that it speaks for the U.S. legal profession,” remarked ADF Senior Legal Counsel Doug Napier, who resigned from the ABA because of its stance on controversial political issues.

The August 18 ruling of the Ninth U.S. Circuit Court of Appeals in *Perry v. Schwarzenegger* is proof that the fight over homosexual “marriage” is far from over. With implementation of Judge Walker’s ruling effectively “on hold” for the rest of 2010, the ADF and others will continue to fight for the traditional, legal definition of marriage.

Photo: Nadia Chayka, left, and her fiance Luke Otterstad, both proponents of Proposition 8, hold up a sign outside of the Phillip Burton Federal Building in San Francisco, Wednesday, Aug. 4, 2010: AP Images



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