

BATTLES ARE WON BECAUSE THEY ARE FOUGHT

THE CASE AGAINST 8

HBO DOCUMENTARY FILMS PRESENTS A TRIPOD MEDIA PRODUCTION AND A MOORE'S FILMED GOODS AND SERVICES FILM "THE CASE AGAINST 8"

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THE CASE AGAINST 8

Screening Guide



● About *The Case Against 8* ●

THE CASE AGAINST 8 takes an inside look at the groundbreaking Supreme Court case that overturned Proposition 8, California's ban on same-sex marriage. Five years in the making, the film chronicles the struggle that helped pave the way for marriage equality battles nationwide, with behind-the-scenes access to the two California couples seeking the right to marry and the legal team of conservative Ted Olson and liberal David Boies, who previously faced off as opposing counsel in *Bush v. Gore*. *The Case Against 8* provides a definitive account of the battle that effectively ended marriage discrimination in California and took the issue of marriage equality all the way to the Supreme Court.

The Case Against 8 premiered at the Sundance Film Festival in January 2014, winning a Directing Award. The film had its theatrical premiere and its HBO broadcast premiere in June 2014.

● Directors' Statement ●

In November 2008, our fellow Californians passed Proposition 8, taking away the right of same-sex couples to marry. Within weeks, the American Foundation for Equal Rights (AFER) was formed to fight the proposition and bring the first federal challenge to a state's same-sex marriage ban.

We approached AFER about documenting the process of the legal challenge, with no way to know how far the case would go. Over five years, we spent countless emotional days and sleepless nights with the attorneys and plaintiffs, capturing over 600 hours of footage as they took their case to the Supreme Court.

We are extremely grateful for the incredible access we've been given since the beginning, which allowed us to explore issues of bipartisanship, civil rights, privacy, and dignity. It is our hope that *The Case Against 8* will give audiences the opportunity to experience this historical journey in an in-depth and intimate way.

- Ben Cotner & Ryan White

● Featured Interview Subjects ●

Kris Perry and Sandy Stier – plaintiffs
Paul Katami and Jeff Zarrillo – plaintiffs
Ted Olson and David Boies – lead attorneys in the case
Ted Boutsos, Enrique Monagas – additional attorneys in the case
Chad Griffin, Kristina Schake – board members, AFER
David Blankenhorn – opposition witness

● How to use this guide ●

The Case Against 8 provides a behind-the-scenes look at one of the most important cases in the fight for marriage equality. After watching the film, viewers may have a deeper understanding of the issue but they may also have questions. This guide was designed to enrich the experience of watching the film by providing background information about the case and ways to encourage discussion among viewers.

● A brief history of same-sex marriage in CA ●

Proposition 22, a statute that restricted recognition of out-of-state marriages to opposite-sex couples, was approved by California voters in March of 2000.

In February of 2004, San Francisco Mayor Gavin Newsom authorized the issuance of marriage licenses to same-sex couples, and about 4,000 couples were married in the city within one month. The Supreme Court of California then issued a stay pending review in March of 2004, and ruled in August of that year that the City and County of San Francisco had exceeded its authority and that all of the marriages performed were void.

After years of litigation and appeals in the resulting *In re Marriage Cases*, same-sex marriage first became legal in California in June of 2008, when the state Supreme Court ruled that the existing ban on same-sex marriage violated same-sex couples' rights under the state Constitution.

Proposition 8, which stated that “only marriage between a man and a woman is valid or recognized by California”, was added to the ballot for November of 2008, and passed by popular vote the same day that Barack Obama was elected President.

By early 2009, the lawsuit chronicled in *The Case Against 8* was filed to challenge Proposition 8 in the federal courts.

● A brief history of same-sex marriage in the US ●

In 1996, the Defense of Marriage Act (DOMA) was enacted, denying same-sex couples recognition and benefits under federal law. Multiple plaintiffs challenged the act in court but were not successful, and legislation to repeal the act was introduced in 2009 but failed to pass.

Massachusetts became the first state in the country to legalize same-sex marriage, via a ruling from the state Supreme Judicial Court in 2004.

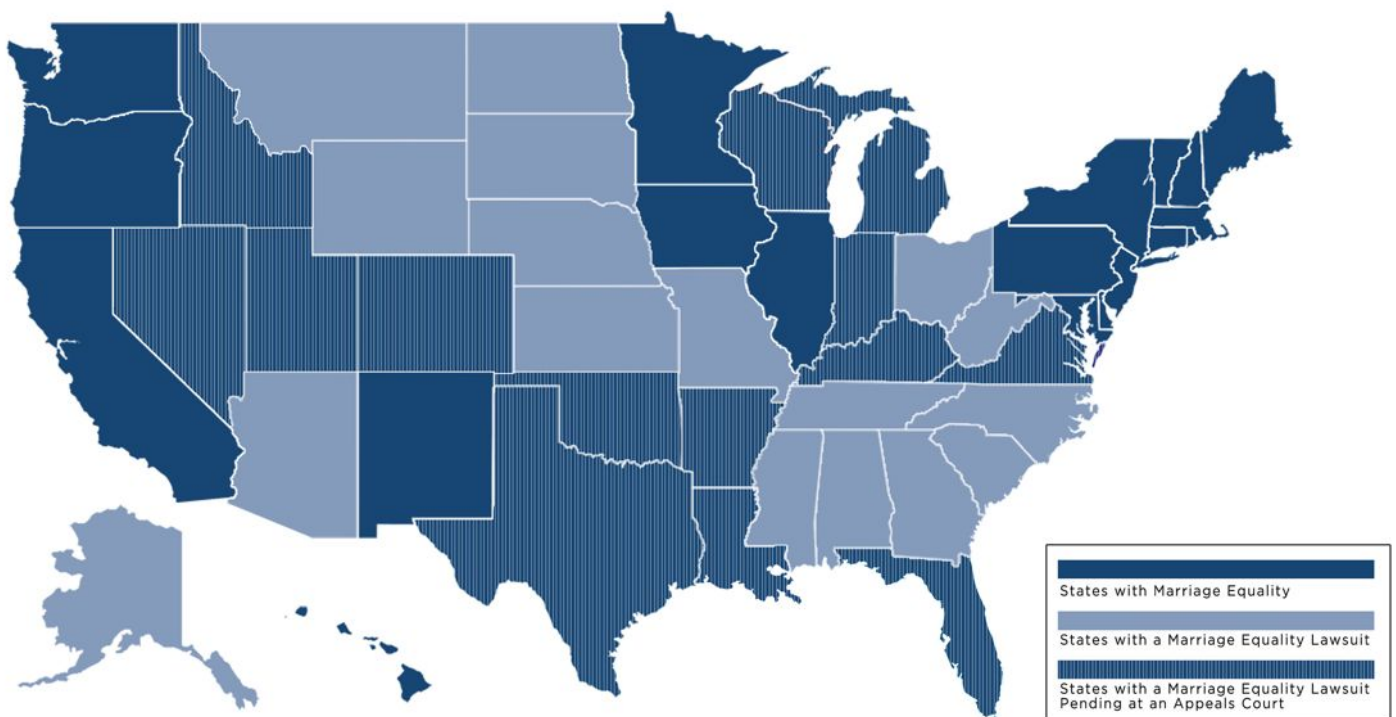
California became the second state in 2008 (before Prop 8 was enacted), followed by Connecticut the same year and Iowa and Vermont in 2009. Between 2010 and 2013, eleven additional states and the District of Columbia officially legalized same-sex marriage.

New York resident Edith Windsor filed a lawsuit in November 2010 to challenge Section 3 of DOMA, which stated that the term “spouse” only applied to opposite-sex marriages.

Because her marriage had not been recognized, Windsor had been charged taxes on the estate left to her by her late wife, taxes that would not have been charged had their marriage been legally recognized.

On June 26, 2013, the same day the US Supreme Court reinstated the legality of same-sex marriage in California by overturning Proposition 8, the court also ruled in favor of Edith Windsor, declaring Section 3 of DOMA unconstitutional and bringing federal recognition and benefits to legally married same-sex couples across the country.

● The current status of same-sex marriage in the US ●



Following the rulings in the DOMA and Prop 8 cases, thirty-nine court orders have been issued in favor of same-sex marriage and only one court has ruled against same-sex marriage (as of September 2014). Nineteen states plus the District of Columbia currently have marriage equality and thirty-one states are currently engaged in marriage equality lawsuits, with fourteen of those states at the appeals level.

Several cases have applied for cert at the Supreme Court, which could hear a case as soon as this term (Spring 2015).

A March 2014 poll showed 59% of Americans support same-sex marriage. By June 2014, forty-four polls in the United States showed a majority of Americans in favor.

(Source: AFER.org)

Hosting a screening

● Itinerary ●

- Be sure to do an audio and video check prior to your screening to ensure the best viewing experience.
- Begin by welcoming guests and telling them about your own discovery of *The Case Against 8* and why you are hosting the screening. Remind everyone to silence phones and to stick around for a post-film discussion.
- Watch the film. Depending on the version you're using, the film is either 112 minutes or 58 minutes including the credits.
- Offer some personal thoughts or observations to get the conversation started before opening the floor for discussion. If there is a large audience or space, be sure to have a microphone so that everyone can be heard.
- If you have any photos from your screening, please send them to info@thecaseagainst8.com so we can share them on our social media outlets.

● Discussion suggestions ●

Viewing the film in a group setting provides the opportunity for constructive education and discussion. Same-sex marriage is a topic about which many people have very strong opinions, but others may be evolving or unsure.

Encourage an atmosphere in which everyone is entitled to present his/her own view while also being open to the ideas of others. All questions are welcome, but here are some examples to get the conversation started.

● Discussion questions for general audiences ●

CLIMATE

With its ruling in *Hollingsworth v. Perry*, the Supreme Court effectively invalidated Proposition 8 but same-sex marriage is still illegal in many states. How does your state define marriage? Does it support marriage equality?

In his closing argument before Judge Walker, Ted Olson said, “The argument that [opposing counsel] Mr. Cooper makes is essentially the same argument that was made to the *Loving* court. And we stand here today thinking, 'How could that have been?' In 1967, that's only 40 years ago, we would've punished as a felony in the state of Virginia the President's mother and father if they had tried to travel there and be married.” Did you realize how recently interracial marriage was prohibited in parts of the country? Can arguments that were made in the interracial marriage debate also be made in the same-sex marriage debate?

Public opinion polls show a shift in American attitudes towards same-sex marriage (see the timeline below: “Marriage Equality in the United States”). Has this been your experience?

Opposition witness David Blankenhorn said in his interview after the trial: "One of the things that caused me to come to a new belief about the whole issue of gay marriage was just like learning a little bit and meeting people. If you just have this tissue of belief that separates you from other people, that you don't really see them and see their lives. That you just kind of have this wall of doctrine or belief, which I had, that keeps you from relationships with other people and trying to see their lives from their point-of-view, that stunts you. That stunted me." Do you know any members of the LGBT community? If so, has it helped you to understand the community's point of view?

Blankenhorn's opinion was much different after the trial than it was before. Is it okay for people to change their minds over time?

President Obama came out in support of same-sex marriage in 2012. Do you think that had an impact?



THE CASE

Despite their political differences, Ted Olson and David Boies came together to challenge the constitutionality of Proposition 8. What reasons did each of them give for doing so? Do you think the marriage debate is divided on party lines?

What arguments did Olson and Boies present in the case? What other arguments have you heard, on either side? Which arguments make sense to you?

When asked what impact same-sex marriages would have on opposite-sex marriages, attorney Charles Cooper was unable to provide an answer. Do you think there would be an effect?

Ted Olson says, "I submit at the end of the day, 'I don't know' and 'I don't have any evidence,' with all due respect to Mr. Cooper, does not cut it. It does not cut it when you are taking away the constitutional rights, basic human rights, and human decency from a large group of individuals. That is not acceptable. It's not acceptable under our Constitution. And Mr. Blankenhorn is absolutely right: the day that we end that, we will be more American." Do you think the "end" of this debate is coming soon?

THE PLAINTIFFS

In her testimony, Kris Perry says: "...if Prop 8 were undone and kids like me growing up in Bakersfield right now could never know what this felt like, then I assume that their entire lives would be on a higher arc. They would live with a higher sense of themselves that would improve the quality of their entire life." What message do you think the prohibition of same-sex marriage sends to LGBT youth?

Paul Katami says in trial preparation: "Anytime you're dealing with people's civil rights (and the right to get married is, to me, a civil right), and you say but something's lacking from there, you've created a second-class of citizen. And you feel that way. So by accepting a domestic partnership, we'd also accept being second-class citizens. And that was unacceptable to us." Do you know someone who is LGBT and would like to be married but cannot under state law? Do you know what rights are and are not the same under the definitions of domestic partnership and marriage?

"The word 'marriage' has special meaning," Jeff Zarrillo says in his testimony. "It's why we're here today. I want to be able to share the joy and the happiness that my parents felt, that my brother felt, my friends, my coworkers, my neighbors, of having the opportunity to be married... He's the love of my life. I love him probably more than I love myself. I would do anything for him. I would put his needs ahead of my own." What does the word "marriage" mean to you?

Kris and Sandy were married in 2004 but then told that their marriage was void. How do you think they reacted when they received that letter? How would you react?



Term Reference

“Cert” – Short for “certiorari”, Latin for “to be more fully informed.” This is the process by which the United States Supreme Court decides whether or not to take a case from one of the lower federal courts. The Supreme Court grants a cert petition in a case in which at least four of the nine Supreme Court justices believe the case deserves review, depending on a variety of factors, including whether a case involves a significant issue of Constitutional interpretation. In the *Perry* case, cert was granted in December 2012.

Circuit Court of Appeals – The courts from which federal district court decisions are appealed. There are 12 “circuits,” or regional courts, in the federal system. Most serve several states. The *Perry* case was heard in the United States Court of Appeals for the Ninth Circuit, which covers California, Arizona, Nevada, Oregon, Washington, Idaho, Montana, Alaska, and Hawaii.

Defense of Marriage Act (DOMA) – A federal law passed in 1996 that defined marriage as a relationship between one man and one woman for the purposes of federal law.

Deposition – The taking and recording of the testimony of a party or witness under oath before a court reporter and sometimes a videographer. Depositions are taken before trial, away from the judge and the courtroom. Depositions are a part of discovery.

Discovery – A pre-trial phase of most civil lawsuits in which the parties obtain evidence from one another pursuant to federal court rules. Disputes over discovery are heard by the judge.

Due Process Clause – The constitutional requirement that no one shall be deprived of “life, liberty, or property, without due process of law.” Both the Fifth and the Fourteenth Amendments to the Constitution have identical due process clauses. The Fifth Amendment applies to the federal government, while the Fourteenth Amendment applies to state governments.

Equal Protection Clause – The constitutional requirement that prohibits the government from denying any person “the equal protection of the laws.” While the Equal Protection Clause is only explicitly found in the Fourteenth Amendment, which applies to state governments, the Supreme Court has held that the Due Process Clause of the Fifth Amendment also requires that the federal government comply with the Equal Protection Clause.

Term Reference continued

Federal District Court – The first level of federal court, which conducts criminal and civil trials. There is at least one federal district court in each state, and large states often have several. The *Perry* case was heard in the United States District Court for the Northern District of California, headquartered in San Francisco, California.

Loving v. Virginia – The 1967 Supreme Court case in which Virginia's law preventing marriages between white citizens and citizens of other races was found to violate the Fourteenth Amendment's Equal Protection Clause.

Solicitor General – The lawyer, appointed by the President, who represents the United States federal government in proceedings before the United States Supreme Court.

Standing – The capacity to bring a lawsuit or make a particular legal claim in court.

Standing is complex, but it essentially requires that a party demonstrate harm by a law or by some sort of action by the government or a government's representative in order to maintain a lawsuit.

United States v. Windsor – The lawsuit in which Edith Windsor challenged the constitutionality of Section 3 of DOMA. DOMA limited the term “marriage” to a legal union between one man and one woman, and the term “spouse” to opposite-sex couples in terms of federal law and benefits. The Supreme Court ruled in favor of Edith Windsor, finding Section 3 of DOMA to be unconstitutional under the Due Process Clause of the Fifth Amendment.



2008-2013 MARRIAGE EQUALITY IN THE UNITED STATES

Public Support

60%

50%

40%

Washington Post/
ABC News

Gallup

2009

2010

2011

2012

2013

Key Events

Supreme Court decision in *Perry* restores marriage equality in California

Supreme Court strikes down DOMA in the *Windsor* case

Marriage equality legislation passes in RI, DE & MN

U.S. Supreme Court hears *Perry* and *Windsor*

Over 50 amicus briefs filed supporting marriage equality

Marriage equality prevails in ME, MD, WA & MN

Second Circuit finds DOMA unconstitutional in *Windsor*

Democratic Party endorses marriage equality

District Court rules DOMA unconstitutional in *Windsor*

President Obama publicly supports marriage equality

NH House rejects attempt to repeal marriage law

Ninth Circuit affirms: Prop. 8 is unconstitutional

Marriage equality signed into law in New York

Federal government ceases defending DOMA in court

Repeal of "Don't Ask, Don't Tell" signed into law

District Court rules Prop. 8 unconstitutional in the *Perry* case

Federal District Court trial of Prop. 8 in *Perry* case

Marriage equality signed into law in Washington, D.C.

Marriage equality signed into law in New Hampshire

AFER files *Perry* case against Prop. 8

Marriage equality signed into law in Vermont

Iowa Supreme Court rules in favor of marriage equality

Prop. 8 passes in California

● Where can you learn more? ●



American Foundation for Equal Rights
www.afer.org



The Human Rights Campaign
www.hrc.org

● Contact Information ●

The Case Against 8
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