

# DAVID BOIES: PROP 8 TRIAL ESTABLISHES AS “MATTER OF FACT” THAT MARRIAGE EQUALITY DOESN’T HURT STRAIGHT MARRIAGE

The lawyers for the plaintiffs in Perry v. Schwarzenegger trial had a conference call to preview what they will say in next week’s closing arguments (which Teddy, bmaz, and I will cover from the courthouse).

The most interesting response from the legal team came in response to questions about the defendants’ complaints about having a trial and their efforts to withdraw almost all of their “expert” witness testimony.

In response to that question, David Boies engaged in a bit of trash-talk, noting how much of their witnesses’ testimony either contradicted itself or ended up endorsing key claims made by the plaintiffs.

Boycotting a trial almost never a winning strategy. They identified 8 experts. What happened is that their experts broke down, either at deposition or at trial. They tried to come up with the evidence, they knew they were required to come up with evidence. They tried to build that trial record and they simply failed. They didn’t fail because they’re bad lawyers, they failed because there isn’t any evidence to support the argument they’re advocating.

Ted Olson answered the question, first of all, noting that the defendants’ witnesses couldn’t

hold up under Boies' cross-examination. But he also emphasized the audacity of spending tens of millions of dollars to convince Californians to deprive a class of people of a fundamental right, but then saying they didn't want to defend the same arguments in an independent court of law.

With respect to their complaints about the trial, I find it ironic that people that spent \$40 million dollars to pass Prop 8 suddenly didn't want to defend it when David Boies was going to challenge their witnesses. ... Trials are pursuits of justice. That is how we resolve things in this country, particularly when there's a constitutional matter. So for the proponents of Prop 8 who convinced millions of Californians, to take away rights of portion of Californians. To say, "We don't want to defend what we did in trial of independent American judiciary" is audacious, is the best thing I can say about it.

But the discussion was perhaps presented most simply when Boies explained the value of getting the defendants' witnesses to agree with key aspects of the plaintiffs' arguments over the course of the trial. Boies noted that the trial record demonstrates as "a matter of fact" that there is no harm to heterosexual marriage from permitting gay men and lesbians to marry.