

THE OBAMA DOJ FILES A TIMID BRIEF IN PERRY/PROP 8!

The news was broken, right around 2:00 pm EST by NBC's Pete Williams, that the Obama Administration would indeed file a brief in support of



marriage equality in *Hollingsworth v. Perry*.

Here was the original tweet by NBC's Williams:

Obama Justice Dept to file Supreme Court amicus brief today opposing Prop 8 in Calif and expressing support for same-sex marriage to resume.

Here was Williams' followup story at NBCNews.com. The inherent problem with the original report was that it tended to indicate the Obama Administration was briefing only on the restricted *Romer v. Evans* posture heinously crafted by Judge Stephen Reinhardt in the 9th Circuit.

So, we were left hanging wondering exactly how the Obama Administration really briefed the issue, was it a limited *Romer* brief, or one for full marriage equality and heightened scrutiny under the equal protection and due process clauses that would give all citizens, nationwide, equality as I argued for earlier this week?

We now have the answer, and the brief, and here it is the brief in all its not quite glory:

The Obama Administration has, shockingly (okay, I do not mean that in the least), tried to nuance its way and split babies. Typical cowardly bunk by Mr. Obama. Lyle Denniston at SCOTUSBlog depicted it thusly:

The historic document, though, could give the Court a way to advance gay marriage rights, without going the full step – now being advocated by two California couples who have been challenging Proposition 8 since 2009 – of declaring that marriage should be open to all same-sex couples as a constitutional requirement.

Administration sources said that President Obama was involved directly in the government's choice of whether to enter the case at all, and then in fashioning the argument that it should make. Having previously endorsed the general idea that same-sex individuals should be allowed to marry the person they love, the President was said to have felt an obligation to have his government take part in the fundamental test of marital rights that is posed by the Proposition 8 case. The President could take the opportunity to speak to the nation on the marriage question soon.

In essence, the position of the federal government would simultaneously give some support to marriage equality while showing some respect for the rights of states to regulate that institution. What the brief endorsed is what has been called the "eight-state solution" – that is, if a state already recognizes for same-sex couples all the privileges and benefits that married couples have (as in the eight states that do so through "civil unions") those states must go the final step and allow those couples to get married. The argument is that it

violates the Constitution's guarantee of legal equality when both same-sex and opposite-sex couples are entitled to the same marital benefits, but only the opposite-sex couples can get married.

Honestly, I think Mr. Denniston is being kind. President Obama's position bears the mark of a full throated coward. Clearly, when Mr. Obama said this to ABC News, he was blowing smoke up the posterior of the American public:

...obviously, my personal view, which is that I think that same-sex couples should have the same rights and be treated like everybody else. And that's something I feel very strongly about and my administration is acting on wherever we can.

That statement would say that Obama actually supports full equal protection for ALL Americans. But the position staked out today in the Administration's brief filed by his Solicitor General puts the lie to Obama's rhetoric.

Mr. Obama has consistently lied about his dedication to civil liberties, privacy and the Fourth Amendment, I guess it should not be shocking that he would lie about his dedication to civil rights for all, across all the states, in the form of marriage equality. And that is exactly what he has done. And as Denniston's article makes clear, this decision bore the active participation and decision making of Obama personally. The cowardice is his to bear personally. Thanks for the fish Mr. Obama.

That is the biggest of the *Hollingsworth v. Perry* briefing news today, but certainly not the entirety of it. Also filed today, among others, was a brief by a group of 14 states led by Massachusetts and New York and an interesting brief by NFL players Chris Kluwe and Brendon Ayanbadejo. The brief by the 14 states is

helpful in the way it portrays marriage in the states, both straight and gay, and in that it, on page four, adopts the position of Olson, Boies and the Prop 8 Plaintiffs that the Supreme Court must find for full heightened scrutiny protection for sexual orientation under the Equal Protection and Due Process Clauses. The Kluwe and Ayanbadejo brief, frankly, is not particularly helpful in that regard as it only discussed the limited *Romer* based finding that would leave marriage equality up to the states.

The same group of American businesses who weighed in on the DOMA cases also filed a brief today in *Hollingsworth v. Perry*. In a more negative development, former Solicitor Walter Dellinger also filed an amicus brief today that is literally loathsome and dangerous in its argument against even giving standing for appeal to the Supreme Court. Dellinger embarrassed himself, but so too did Barack Obama. Must be something in the water of centrist Democratic thought.

So, there you have it. It was a rather important, if not quite as fulfilling as should have been, day in the life of the *Hollingsworth v. Perry* litigation. I guess credit should be given to Mr. Obama even for weighing in at all, and undoubtedly most media and pundits will slather him with praise for just that. Somehow, I cannot. The full measure of greatness was there for the taking, and Barack Obama, Eric Holder and Donald Verrilli, Jr. whiffed at the full mark of greatness. They will be remembered for their support, and their failure to truly step up will likely dissipate with time; but let it be said here and now.

In spite of the cowardly and restrictive actions by the "liberal President Obama" the cause of true heightened scrutiny protection for ALL Americans endures and lives on. Just not with the support of the President of the United States of America. that "leader" took the cheap "states rights" cowardly way out. Let us hope Anthony M. Kennedy and the majority of the

Supreme Court have higher morals and muster as men.

[As always on these Prop 8 posts, the absolutely incredible graphic, perfect for the significance and emotion of the *Perry* Prop 8 case, and the decision to grant marriage equality to *all citizens* without bias or discrimination, is by Mirko Ilić. Please visit Mirko and check out his stock of work.]

OBAMA, HOLDER, VERRILLI AND THE MARK OF CIVIL RIGHTS HISTORY

Leaving aside the heinous 3/5 compromise set forth by James Wilson and Roger Sherman at the founding Philadelphia Constitutional Convention, American history is marked by significant moments of dedication to civil rights for its citizens. Far from perfect, it has been a struggle and evolution. As Ralph Waldo Emerson noted:

Nothing great was ever achieved without enthusiasm.

Which is certainly true, from the Founding Fathers, to Lincoln and the Emancipation Proclamation, to the 19th Amendment protecting the right of women to vote, to the Civil Rights Act of 1964, moments of enthusiasm, sweat, toil and, eventually, greatness mark the struggle for equality for all in the United States.

And here we are on the cusp on the next defining moment in the quest for equality for all in the US. It is not for origin, not for skin color, not for gender, but for something every bit as

root fundamental, sexual identity and preference. Marriage equality, yes, but more than that, equality for all as human beings before the law and governmental function.

For all the talk of the DOMA cases, the real linchpin for the last measure of equality remains the broad mandate achievable only through *Hollingsworth v. Perry*, the Proposition 8 case. The case for full equality in *Hollingsworth* has been made beautifully, and strongly, in the Respondent's Brief penned by Ted Olson, David Boies, Theodore Boutrous and Jeremy Goldman.

But there is still a missing voice in the discussion, that of the United States government. The government has the voice, and spoke it loudly in the DOMA litigation, first in a policy declaration letter to Congress, then in lower court briefing and finally in Supreme Court briefing. Mr. Obama's initial policy declaration noted that we must "suspicious of classifications based on sexual orientation" and concluded:

...that classifications based on sexual orientation warrant heightened scrutiny and that, as applied to same-sex couples legally married under state law, Section 3 of DOMA is unconstitutional.

Indeed that is true, but it only takes the equality movement so far, it still leaves room and ability for bias against sexual orientation by individual states, most notably on the front of marriage equality, but potentially a host of other invidious modalities as well.

That is not good enough. It is time for the government, by and through the Obama Administration, to take the final step in cementing full equality for all citizens, not just as to the federal government, but as to the states as well. The government needs to file an amicus brief supporting full equality in *Hollingsworth v. Perry*.

Three men are in the crucible – President Barack Obama, Attorney General Eric Holder and Solicitor General Donald Verrilli, Jr. History will remember these men either way, but they have the opportunity to be remembered among the giants in civil rights history. It is a defining moment for their once and future legacy.

What a major moment in history this is, and will be, if the if the Obama Administration Solicitor General files a brief in support of full heightened scrutiny based protection for sexual orientation.

It brings to mind the scene from “Lincoln” where President Lincoln says

“Now, Now, Now”

and forces the 13th amendment through because “Now” was the moment to eradicate slavery in one fell swoop and waiting posed unconscionable risks and further damning inequality.

Such is exactly the time and place now as to the last recognized measure of fundamental equality, sexual orientation. The *Perry* Plaintiffs’ team has argued well in their brief for the broad principles of due process and equal protection heightened scrutiny that would resolve these issues “Now”. All the stars are aligning. Prominent Republicans have filed an amicus brief. So too a broad swath of leading American businesses. Openly gay Congress members are calling for it.

Now is the time to seize the moment and eradicate discrimination across the board against gay men and women. This is the moment for enthusiasm, and President Obama, Attorney General Holder and Solicitor General Verrilli have a historic opportunity to help make it happen. This is the moment, and they need to step up. Great men take such great steps.

The time is “Now, Now, Now”.

File the amicus brief for full equality in *Hollingsworth v. Perry* gentlemen.

WHY IS RON WEISER SUCH A SISSY?

Note: I apologize for the lengthy outage yesterday. It appears to have been nothing more than a traffic issue, coming from Reddit readers who, like me, agree that HSBC should be subject for the law.

Top MI Republican Ron Weiser addressed the state's Tea Party in August and explained why he was confident the state's Republicans could deliver the State for Mitt. He rather predictably made a bunch of racist comments. He showed no awareness that his candidate had little appeal (especially in the state he tried to consign to bankruptcy) and—in retrospect though it was apparent at the time—little of the organizational ability it took to win a Presidential election.

But as someone who woke up before dawn on Election Day in 2008 to go make sure voters in a very poor precinct in Detroit weren't harassed by Weiser's thugs (I did voter protection in Grand Rapids this year, where GOP challengers didn't show up until it was light), I'm wondering what kind of coward says this.

Obama has hired a lot of people to go help him get that vote out. But if you're not from Detroit, the places where those pool halls and barbershops are, you're not going to be going at 6:30 in November. Not without a side arm.

Of course Obama's team didn't send volunteers like me to pool halls and barbershops because those are simply Weiser's suburban inventions about what people from Detroit do in the day. But I did (at the time a sheltered Ann Arbor resident, just like Weiser still is) drive right

into a fairly dangerous neighborhood in Detroit, park my car, and spend half the day there, starting before 6:30.

Safely. Without a side arm.

The biggest threat of violence came when a white Walt Kowalski type came in in mid-morning and started screaming racist threats at everyone. What I saw from everyone else was quiet resolution and, for many, real excitement about casting their vote, either because they were voting for an African American, or because they were among the sixth of voters at the precinct voting for the first time.

I felt safe at Detroit at 6:30 AM in November 2008.

Maybe Weiser just didn't think about how much less risky Detroit is for people who don't bear its residence ill will?

GENERAL DYNAMICS: THE DIGITAL TALE OF JOHN & JILL AND DAVE & PAULA

Another giant shoe has dropped in L'Affaire Petraeus. Not simply more specifics, but yet another General:

Gen. John Allen, the top American and NATO commander in Afghanistan, is under investigation for what a senior defense official said early Tuesday was "inappropriate communication" with Jill Kelley, the woman in Tampa who was seen as a rival for David H. Petraeus's attentions by Paula Broadwell, the woman who had an extramarital affair with Mr. Petraeus.

In a statement released to reporters on his plane en route to Australia early Tuesday, Defense Secretary Leon E. Panetta said that the F.B.I. had informed him on Sunday of its investigation of General Allen.

Mr. Panetta turned the matter over to the Pentagon's inspector general to conduct its own investigation into what the defense official said were 20,000 to 30,000 pages of documents, many of them e-mails between General Allen and Ms. Kelley, who is married with children.

Really, at this point, what can you even say about the secret storm soap opera that roils within the rarified brass air of the US Military? This was just the last hit for a night that saw the emergence of the Shirtless FBI Guy (now under investigation himself by the Office of Professional Responsibility at DOJ) to a nighttime search of Paula Broadwell's home by the FBI.

There are too many tentacles, evolving too quickly, to go too deep on all the facts that have rolled out even in the last twelve hours. But the General Allen/Jill Kelley bit is fascinating. Remember, the handful of emails Paula Broadwell sent to Kelley reportedly did not mention Petraeus by name. This latest report at least raises the possibility Broadwell was referring to an inappropriate relationship between Kelley and Allen, and not Kelley and Petraeus. I am not saying such is the case, but it is also arguably consistent with the currently known substance of Broadwell's emails to Kelley, so the question is valid to be raised.

A couple of other data points to note. First, Broadwell's father made a somewhat cryptic comment yesterday that may be being explained now:

"This is about something else entirely,

and the truth will come out," he told the Daily News.

"There is a lot more that is going to come out ... You wait and see. There's a lot more here than meets the eye."

He said that his daughter, who's at the center of the controversy that prompted CIA director David Petraeus to resign from his post, is a victim of character assassination, and that there's something much bigger lurking behind the curtain.

Second, as I noted early yesterday morning, Jill Kelley has hired some of the most astoundingly powerful criminal defense and PR help imaginable:

They hired Abbe Lowell, a Washington lawyer who has represented clients such as former presidential candidate John Edwards and lobbyist Jack Abramoff. And the couple are employing crisis PR person Judy Smith, who has represented big names like Monica Lewinsky, Michael Vick and Kobe Bryant.

Now, let's be honest, an innocent recipient of a handful of crank non-threatening emails, as Kelley was commonly portrayed when her name first came out, does NOT need that kind of heavy hitter professional service. Seriously, Abbe Lowell is not only a great attorney, he is as preeminent a counsel as exists for spook and national security defense cases. No one in their right mind pays for that unless they need it, especially 1,000 miles away from his office.

Another oddity occurred last night: The North Carolina home of Paula Broadwell was searched for nearly four hours by a full on execution team from the FBI. From the New York Times:

On Monday night, F.B.I. agents went to Ms. Broadwell's home in Charlotte, N.C.,

and were seen carrying away what several reporters at the scene said were boxes of documents. A law enforcement official, speaking on condition of anonymity because the case remains open, said Ms. Broadwell had consented to the search.

The key word in that quote that strikes me is "consensual". Broadwell has lawyered up too, having hired prominent Washington DC defense attorney Robert F. Muse. If an attorney feels his client is the target of a proposed search, he does not consent, he makes the officers get a warrant and search for only what a court orders and nothing else. You have to wonder what was being searched for that Broadwell and her counsel were not more worried about?

It is still early in the Allen portion of this mess, but it sure does cast the entire matter in a new light. Seriously, 30,000 pages of communications between Allen and Kelley in two years? That is 41 pages a day. When in the world did Allen find time to make war? And keep in mind, Kelley had already been stated to be regularly (up to once a day) emailing Petraeus for some of that period...she must be getting carpal tunnel syndrome.

There is also the pressing question of exactly what the methods and means were for discovering and extracting these 30,000 some odd pages of communications between General Allen and Jill Kelley, and how that came to pass when she was supposedly and innocent victim of Paula Broadwell. There were already great questions in this regard about Broadwell and Petraeus. I will leave that for later, I suspect Marcy may have something to say on those issues.

Four-star generals. Two of them wrapped up in one salacious scandal. The Stones may need to modify their lyrics ever so slightly.

THE COORDINATED LEAKY DRIPS IN THE WHITE HOUSE

As I've noted previously, there has been a hue and cry against the critical and untenable use, and abuse, of secrecy by the United States government. There has always been some abuse of the government's classified evidence for political gain by various administrations operating the Executive Branch, but the antics of the Obama administration have taken the disingenuous ploy to a new art form.

Today, via Politico's old fawning Washington DC gluehorse, Roger Simon, comes an unadulterated (sometimes x-rated) and stunningly tin eared and arrogant admission of what the Obama White House is all about, straight from the lips of Obama consigliere Bill Daley:

Rahm was famous for calling reporters, do you call reporters? I ask.

"I call; I'm not as aggressive leaking and stroking," Daley says. "I'm not reflecting on Rahm, but I'm not angling for something else, you know? Rahm is a lot younger [Emmanuel is 51], and he knew he was going to be doing something else in two years or four years or eight years, and I'm in a different stage. I'm not going to become the leaker in chief."

You've got others for that, I say.

"Yeah, and hopefully in some organized leaking fashion," Daley says, laughing. "I'm all for leaking when it's organized."

Oh, ha ha ha, isn't that just hilarious? Bill

Daley, and the White House he runs, are all for leaking, history bears out even the most highly classified government secrets, and doing so in an organized pre-planned fashion, when it serves their little self-centric petty political interests. But god help an honest citizen like Thomas Drake who, after exhausting all other avenues of pursuit within the government, leaks only the bare minimum information necessary to expose giant government waste, fraud and illegality because he feels it his duty as a citizen.

For citizens like Tom Drake, the “most transparent administration in history” will come down on his head like a ton of nuclear bricks even when they embarrass themselves in so doing. But they are more than willing to exploit and leak to self serve their own interests. What is good for the king is not appropriate for the commoner.

In this regard, I wish to amplify point that Glenn Greenwald has previously made about the pernicious affect of this duplicitous use of classified information. Glenn said:

But the problem is much worse than mere excessive secrecy. Anyone who purports concern over the harmful leaking of classified information should look first to the Obama administration, which uses secrecy powers as a manipulative tool to propagandize the citizenry: trumpeting information that makes the leader and his government look good while suppressing anything with the force of criminal law that does the opposite. Using secrecy powers to propagandize the citizenry this way is infinitely more harmful than any of the leaks the Obama administration has so aggressively prosecuted.

That is exactly right. It is not just that the government keeps unnecessary secrets from the public on information that is critical to their

duties and responsibilities as citizens, it is that the self-serving selective leaking creates an intentionally fraudulent paradigm for the citizenry. It is not only manipulative, is fundamentally dishonest and duplicitous.

When the leaking is so selective and self-serving it is not just the people who are deceived, is the press they rely on as a neutral information conduit from which to make their opinions and determinations. The press then becomes little more than a hollow funnel for opportunistic and dishonest spin. We saw the effects of this in the case of Anwar Awlaki's extrajudicial assassination, and have seen it again in the Scary Iranian Terrorist Murder ruse.

The last bastions against this pernicious practice are the press and courts. Until both start admitting how they are relentlessly gamed and played by the White House, there is little hope for change. And make no mistake, the press ratifies this pernicious conduct by lazily accepting such leaks and reporting without properly noting just how malignant the process is. It is all a joke to Bill Daley and Barack Obama, and the joke is on us.

PS: For a little more on the joy that is White House Chief of Staff Bill Daley, see Digby today. And a fine dissertation of why Daley should be fired on the spot by Joan Walsh in Salon. I would only note that it is not just Rahm and Daley, it is the man who consistently brings this Chicago style heavy handed belligerence to the White House. Mr. Obama's two Chiefs of Staff do not operate apart from him, they ARE him and his Presidency. The buck for this stops at the top.

DC MAYOR GRAY ARRESTED: FINALLY A LEADER IN WASHINGTON DC FINDS HIS SHOES

Washington DC Mayor Gray and several other DC City Council members have been arrested protesting in the streets over the shabby treatment of the District and its women in the “budget compromise” passed last Friday night. If only other leaders in Washington DC had the guts to stand up for their citizens.

THE FOG OF OBAMAWAR IN HI-DEF 1080P

Today, David Cloud portrays the vignette of the cold, detached remote killing in the Afghanistan countryside. Tomorrow it will be open ground in the vicinity of Nogales, Ciudad Juarez, Tijuana or Key West. Hammers like this, once set in motion and cravenly unrestrained by the men in American political leadership and White House, always find more nails. Stay tuned, drone life and remote enforcement is coming to a city and town near you.

REAL REASON FOR US DEFICIT: GE GREED- \$14.2B PROFIT, \$0 TAX

For all the caterwauling from the right, and

stupifyingly from the Obama Administration and Blue Dog left as well, the real reason the United States has the sizable deficit issues it does is due in large part to the fact corporations like GE make billions in profit and pay no taxes.

DOJ'S NEW MIRANDA POLICY BETRAYS CONSTITUTION & POWER OF JUDICIARY

The Obama Administration has sought to improperly alter Constitutional Miranda rights by administrative decree.

THE MISPLACED US DETERMINATION TO INDICT ASSANGE

The US determination to prosecute Julian Assange is not just a destructive and myopic scheme to effect prior restraint in a digital world, it is laughable from the point of legal foundation.