



DEPARTMENT OF THE ATTORNEY GENERAL

NEIL ABERCROMBIE
GOVERNOR

DAVID M. LOUIE
ATTORNEY GENERAL

For Immediate Release
May 5, 2014

News Release 2014-15

MARRIAGE EQUALITY

HONOLULU – Attorney General David M. Louie announced today that the State of Hawaii will no longer defend the old law that defined marriage as only between a man and a woman.

“Last year, Hawaii changed the law to ensure marriage equality for same-sex couples,” said Louie. “Its passage has turned the page in history on the issue of discrimination. There are no longer grounds to defend the previous law.”

As a result, the state, through Director of Health Dr. Linda Rosen, will stop defending the case of Jackson v. Abercrombie in federal court. The Jackson case was originally filed in 2011 by a same-sex couple who sought to declare Hawaii’s old marriage law unconstitutional under the Due Process and Equal Protection Clauses of the United States Constitution. In response, the state filed two separate answers, with two separate teams of lawyers. One team, representing Gov. Neil Abercrombie, agreed with the plaintiffs and asserted that the old law was unconstitutional. Another team, representing then Director of Health Loretta Fuddy, defended the law on the grounds that it was constitutional. The Hawaii Family Forum, an outside advocacy group, intervened in the case and filed papers also defending the law as constitutional. Judge Alan Kay upheld the constitutionality of the law in 2012, and the case was then appealed to the Ninth Circuit Court of Appeals. The appellate court recently called for further briefing about the case. The state, through Director Rosen, will now decline to further defend the law. The state, through Gov. Abercrombie, will continue to assert that the old law was unconstitutional.

Attorney General Louie explained his reasoning as to why the state, through Director Rosen, has changed its position. “The law, policy and public sentiment in Hawaii has clearly and dramatically changed in favor of marriage equality,” said Louie. In November 2013, the Legislature passed the Hawaii Marriage Equality Act (Act 1, Second Special Session of 2013). The bill was signed into law by Gov. Neil Abercrombie on Nov. 13, 2013, and took effect on Dec. 2, 2013. Since December, more than a thousand same-sex couples have been married in Hawaii. “In light of these developments, it is inappropriate to continue to defend the old law,” he stated.

“Recent court rulings by the United States Supreme Court and the Ninth Circuit have made it clear that prohibitions against marriages between same-sex couples are unconstitutional,” added Louie.

In United States v. Windsor, the U.S. Supreme Court struck down a portion of the federal Defense of Marriage Act (DOMA), which prohibited federal recognition of marriages between same-sex couples. In its reasoning, the court noted that the principal purpose of DOMA was to “impose inequality” and placed same-sex couples in a “second-tier marriage” that demeaned and humiliated such couples and their children. In SmithKline Beecham Corp. v. Abbott Laboratories, the Ninth Circuit held that “heightened scrutiny applies to classifications based on sexual orientation.” Both of these cases were decided after Judge Kay’s ruling in the Jackson case. Under the “heightened scrutiny” standard, which is stricter than the “rational basis” standard applied by Judge Kay, laws banning marriages between same-sex couples are certain to fail. Since the Windsor decision, federal district courts in Ohio, Michigan, Tennessee, Texas, Virginia, Kentucky, Oklahoma, Utah and Illinois have held that laws banning marriages between same-sex couples are unconstitutional.

“Finally, terminating the defense of the old law by Director Rosen is simply the right thing to do at this point,” stated Louie. Other state attorneys general in California, Illinois, Pennsylvania, Virginia, Nevada, Oregon and Kentucky have declined to defend state laws prohibiting marriages between same-sex couples. U.S. Attorney General Eric H. Holder, Jr. also refused to defend DOMA, and has encouraged state attorneys general not to defend laws in the rare cases where they believe such laws are discriminatory and unconstitutional.

“I support the decision of the Attorney General in this matter,” said Gov. Neil Abercrombie.

Director Linda Rosen added, “I applaud the decision of the Attorney General, as the law has changed for the better, and it is no longer necessary to perpetuate discrimination. The Hawaii Department of Health has been pleased to implement the new law and help more than 1,400 same-sex couples obtain marriage licenses over the past five months.”

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For more information, contact:

Anne Lopez
Special Assistant to the Attorney General
(808) 586-1284
Anne.E.Lopez@hawaii.gov
<http://ag.hawaii.gov>