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Kamala Harris says Obama's action dooms Prop. 8

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(03-01) 16:07 PST SAN FRANCISCO -- State Attorney General Kamala Harris told a federal appeals court Tuesday that the Obama administration's repudiation of a federal law denying marital benefits to gay and lesbian couples dims the legal prospects for Proposition 8, California's ban on same-sex marriage.

Harris asked the Ninth U.S. Circuit Court of Appeals in San Francisco to let same-sex weddings resume in California while the court reviews Prop. 8. The case is on hold while the state Supreme Court decides whether the measure's sponsors can appeal a federal judge's decision declaring Prop. 8 unconstitutional.

Even if backers have legal standing, Harris said, "the likelihood that the appeal will succeed on the merits has been substantially diminished" by the Obama administration's declaration last week that the federal Defense of Marriage Act is unconstitutional.

The 1996 law prohibits the federal government from granting marital privileges - including joint tax filing, Social Security payments and immigration sponsorship - to same-sex couples who are married under state law.

Attorney General Eric Holder told federal courts considering challenges to the law that the administration now considers any government discrimination based on sexual orientation to be constitutionally suspect.

"While it lacks the force of law, Attorney General Holder's reasoned analysis is entitled to consideration," Harris told the appeals court.

Every day that Prop. 8 remains in effect, she said, "justice has been denied."

The November 2008 initiative overturned a state Supreme Court ruling six months earlier that had allowed gays and lesbians to marry. Chief U.S. District Judge Vaughn Walker struck down Prop. 8 in August 2010, but the Ninth Circuit suspended his ruling while it is on appeal, a process that could take an additional year or more.

Because then-Attorney General Jerry Brown and Gov. Arnold Schwarzenegger declined to appeal Walker's ruling, the case can proceed only if the appeals court decides that Prop. 8's campaign

committee or the elected clerk in conservative Imperial County can appeal. The court asked the state Supreme Court to consider the question.

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