



NATIONAL CENTER FOR LESBIAN RIGHTS

## **Frequently Asked Questions About Marriage for Same-Sex Couples in California**

Updated June 9, 2011

On August 4, 2010, U.S. District Court Judge Vaughn Walker issued a decision in the case of *Perry v. Schwarzenegger* (now renamed *Perry v. Brown*), concluding that Proposition 8, the California constitutional amendment barring same-sex couples from marrying, violates the United States Constitution. Judge Walker wrote a 136-page decision that analyzed all the evidence submitted in the three-week trial. He ruled that Prop 8 violates the federal constitutional guarantees of due process and equal protection. The group that put Prop 8 on the ballot, known as the Prop 8 “proponents,” has appealed that decision to the Ninth Circuit Court of Appeals.

### **The Appeal – What’s Happening Now and What We Can Expect**

#### **1. My partner and I want to get married in California. Now that Judge Walker has ruled that Prop 8 is unconstitutional, when/where/how can we do that?**

Same-sex couples in California cannot yet marry because the Ninth Circuit “stayed” Judge Walker’s ruling while the appeal is pending. That means that same-sex couples will not be able to get married in California until the appeals court has finished reviewing the case.

Same-sex couples can currently get married in five states in the U.S.: Connecticut, Massachusetts, Iowa, New Hampshire, and Vermont, as well as Washington, D.C. A number of other countries also allow same-sex couples to marry, including Canada.

Same-sex couples in California can also register as domestic partners, a status that provides most of the legal rights and responsibilities of marriage under state law.

#### **2. What is the status of the appeal?**

The Ninth Circuit held a hearing on the appeal on December 6, 2010. Soon afterwards, it “certified” a question to the California Supreme Court, asking that court to clarify whether California law gives ballot initiative

proponents a special right to step into the shoes of the state and defend those measures in court. The California Supreme Court has received briefs from all the parties and will probably hold a hearing on that issue sometime in September. After the California Supreme Court hears the case, it will issue a decision. If the hearing is held in September, the decision will most likely be issued around December 2011. After the California Supreme Court issues its decision, the case will return to the Ninth Circuit. The Ninth Circuit could issue its decision without further proceedings, or it may ask for additional written briefs or oral argument from the parties.

### **3. How long will the Ninth Circuit take to issue a decision?**

The Ninth Circuit won't issue a final decision in the case until it receives a response back from the California Supreme Court about the question it asked that court to answer. The Ninth Circuit is not required to issue its decision within any particular time frame, but when an appeal is expedited, the court tends to issue decisions more quickly than usual. It will probably issue a decision within a few weeks or months after it gets the answer back from the California Supreme Court. The Ninth Circuit probably will not issue its decision until the spring of 2012 or later.

Once the Ninth Circuit rules, the losing side can ask the United States Supreme Court to hear the case. The Supreme Court can choose whether to take the case or to let the Ninth Circuit's decision stand.

If the Supreme Court takes the case, it could take anywhere from a few months to a year to issue a decision. If the Supreme Court were to get the case sometime in 2012, the soonest we could expect a decision would probably be the spring of 2013.

### **4. Why is the appeal being decided by a three-judge panel at the Ninth Circuit? Will the whole Ninth Circuit ever hear the case?**

It is typical for appeals to the Ninth Circuit to be heard by three-judge panels. That is the normal process. The three judges are randomly selected in each case.

After the three-judge panel rules, the losing party can request that a bigger panel of 11 judges review that decision. That is called "rehearing *en banc*." All the active judges on the Ninth Circuit would then vote on that request, and rehearing *en banc* would only be granted if a majority of the Ninth Circuit judges approve it.

**5. I've heard that the question that the Ninth Circuit certified to the California Supreme Court has to do with whether the Prop 8 proponents have "standing" to appeal Judge Walker's decision. What does that mean and when will that question be decided?**

"Standing" means whether a particular person or group has a legal right to appeal a court ruling. As a general rule, in order to have standing to appeal a decision, you must be able to show that you are harmed by it. In the Prop 8 case, Judge Walker said that the Prop 8 proponents may not have standing to appeal because they were not able to show that they would be personally harmed in any way if same-sex couples are permitted to marry.

The questions that the Ninth Circuit asked the California Supreme Court to answer have to do with the issue of standing. If the California Supreme Court decides that ballot-initiative proponents don't have standing under California law to defend in court the measures they supported, that will likely end the matter and the Ninth Circuit will reject the appeal. But if the California Supreme Court concludes that ballot-initiative proponents do have standing under California law, the Ninth Circuit will still have to do a separate analysis to determine if they meet the standard for bringing an appeal in *federal* court.

Either way, if the Ninth Circuit decides that Prop 8's proponents don't have standing to appeal, it will dismiss the appeal. In that event, Judge Walker's ruling will stand and the State of California will be prohibited from enforcing Prop 8 anywhere in the state.

If the Ninth Circuit decides that the Prop 8 proponents do have standing to appeal, then it will have to review the "merits" of Judge Walker's opinion—that is, his conclusion that Prop 8 violates the U.S. Constitution. If it agrees that Prop 8 is unconstitutional, then Judge Walker's ruling could go into effect and couples could start marrying again. The Prop 8 proponents could try to appeal that decision to the U.S. Supreme Court. If the Ninth Circuit decides that Judge Walker was wrong and Prop 8 is not unconstitutional, then the plaintiffs could try to appeal that ruling to the U.S. Supreme Court.

**6. If the Ninth Circuit decides that the Prop 8 supporters don't have standing to bring an appeal, would they be able to appeal that ruling to the Supreme Court? Or does the case stop there?**

If the Ninth Circuit rules that the Prop 8 proponents don't have standing to bring an appeal, the proponents could ask the Supreme Court to review that decision. The Supreme Court could choose to hear that appeal or to let the Ninth Circuit's decision stand.

### **The Effect the Ruling Will Have on Marriage Laws Across the Country**

**7. I live in a state other than California. Does Judge Walker's decision mean that same-sex couples can now get married in every state? If not, would that be the result of a decision from the Ninth Circuit, or the Supreme Court?**

Judge Walker's decision is just about California, but other courts could apply his language and logic to other discriminatory marriage laws across the country.

The Ninth Circuit Court of Appeals has jurisdiction over all the states in the Ninth Circuit, which include Alaska, Washington, Montana, Oregon, Idaho, Nevada, Arizona, and Hawaii. If the Ninth Circuit decides that Prop 8 violates the federal constitution, it could issue a broad ruling that that applies to all of the states in the Ninth Circuit or it could issue a narrower ruling that only applies to California.

Similarly, if the Supreme Court decides that Prop 8 violates the federal constitution, it could strike down all state marriage bans across the country or it could focus only on Prop 8.

**8. If Prop 8 is eventually struck down for good by the Ninth Circuit or the Supreme Court, and a same-sex couple gets married in California, will that marriage be recognized in other states or by the federal government?**

A victory in the Prop 8 case will not automatically require other states or the federal government to recognize the marriages of same-sex couples who marry in California. Right now, at least eight states and the District of Columbia recognize marriages between same-sex couples. Those states include the five states that permit same-sex couples to marry: Connecticut, Massachusetts, Iowa, New Hampshire, and Vermont, as well as Washington, D.C. In addition, New York and Maryland, and New Mexico do not permit same-sex couples to marry within their borders, but they recognize marriages from other places. Additionally, Wyoming

recognizes out of state marriages of same-sex couples at least for purposes of letting couples divorce. Other states may do so as well, although the courts have not yet addressed that question. Unfortunately, many other states deny recognition to marriages between same-sex couples.

The federal government currently doesn't recognize any marriages between same-sex couples due to the discriminatory Defense of Marriage Act (DOMA). Legal challenges to DOMA are underway in Massachusetts, Connecticut, New York, and California. In the Massachusetts case, a federal district court ruled in July 2010 that the part of DOMA prohibiting the federal government from recognizing valid marriages of same-sex couples is unconstitutional. That decision has been stayed (i.e., put on hold) pending an appeal to the First Circuit Court of Appeals.

**9. If the Ninth Circuit or the Supreme Court ultimately rules that Prop 8 is constitutional, what will that mean for the fight for marriage equality in California? Will it be over for good?**

The fight for marriage equality in California will still go on, even if Judge Walker's decision is overturned on appeal. Prop 8 can always be repealed by another ballot initiative – and in fact, efforts in support of a repeal measure are currently underway. Contact Equality California to find out how you can get involved: [www.EQCA.org](http://www.EQCA.org)

**10. What will be the effect on other states if the Supreme Court rules that Prop 8 is constitutional? Will that mean that same-sex couples can no longer marry in states like Massachusetts?**

Prop 8 is blatantly unconstitutional, and we believe the United States Supreme Court should affirm Judge Walker's decision striking it down. But even if the Supreme Court reverses Judge Walker's decision and says that Prop 8 is valid, that would not take away equal marriage rights for same-sex couples in any states where it's currently legal. State courts would still be free to strike down marriage bans under their state constitutions, just like the state supreme courts in Massachusetts, Connecticut, and Iowa have already done. And state legislatures (and Congress) would still be free to repeal marriage bans.

**Current Marriage and Domestic Partnership Rights in California**

**11. My partner and I are registered as domestic partners with the state of California, but we want to get married as soon as it's allowed. Will we need to dissolve our domestic partnership in order to marry?**

You do not need to dissolve your domestic partnership in order to marry your domestic partner. Under California law, an individual can be married and in a registered domestic partnership at the same time, as long as it's with the same person. As a practical matter, it is a good idea to do both to get the maximum legal protection.

**12. We got married in California between June 16, 2008 and November 5, 2008. Is our marriage still recognized in California?**

Yes. In 2009, in the case of *Strauss v. Horton*, the California Supreme Court held that it would be unconstitutional to take away the marriages of same-sex couples who married in California before Prop 8 passed. If you married in California during that period, your marriage is completely valid and entitled to full recognition and respect.

**13. If my partner and I got married in another state or country before Prop 8 passed, does California recognize our marriage? Should we remarry in California when we can?**

California fully recognizes the marriages of same-sex couples who married outside of California before Prop 8 passed (Nov. 5, 2008). If you married in another state or country before Nov. 5, 2008, you are entitled to full recognition as married under California law. There is no need to remarry in California.

For more details about the current rights of same-sex couples who get married outside of California, please see [www.NCLRights.org/SB54FAQ](http://www.NCLRights.org/SB54FAQ)

**14. If my partner and I got married in another state or country after Prop 8 passed, will California recognize our marriage? Should we remarry in California when we can?**

Same-sex couples who marry outside California after November 5th, 2008 currently have all of the rights, benefits, and responsibilities of marriage under California law except for the name "marriage." That means the state of California will treat you as married, but it cannot officially recognize your marriage as a marriage.

If Judge Walker's decision is upheld on appeal, same-sex couples who are already married will not need to remarry in California. Marriages between same-sex couples from other states or countries will be recognized as valid marriages in California, no matter when the couple got married.

For more details about the current rights of same-sex couples who get married outside of California, please see [www.NCLRights.org/SB54FAQ](http://www.NCLRights.org/SB54FAQ).

### **Winning Marriage Equality Across the Country**

#### **15. How can we help in the fight to win marriage equality in every state?**

The only way we can ultimately win marriage equality across the entire country is to build public support for full inclusion and acceptance of our relationships and families. That will give legislators and courts the confidence they need to do the right thing and repeal or strike down discriminatory marriage laws. Polls show that around half of the public supports marriage equality. Support is growing, but we need to make that number higher. All of us can help make that happen by talking to everyone we know about why marriage equality is important to us.

To find out other ways you can get involved with the marriage equality fight in your state, contact your local LGBT-rights organization. You can find a listing of the statewide groups at [www.EqualityFederation.org/template.aspx?id=502](http://www.EqualityFederation.org/template.aspx?id=502). For information about how to get involved in California, contact Equality California at [www.EQCA.org](http://www.EQCA.org).

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For more information about your legal rights and how to protect your family, you can contact NCLR's helpline anytime at [www.NCLRights.org/GetHelp](http://www.NCLRights.org/GetHelp) or call 415.392.6257 or toll-free 1.800.528.6257.