

# EXPECT A WIN FOR PLAINTIFFS AND MARRIAGE EQUALITY IN PERRY PROP8 CASE

As I indicated earlier, and as nearly every media outlet and blog has now figured out and related, the decision from Judge Vaughn Walker in the *Perry v. Schwarzenegger* Prop8 gay marriage case is to be issued tomorrow sometime between 1 pm and 3 pm Pacific time. Here is what other media sources and blogs either do not know or won't relate: the lead attorneys for the respective sides likely got courtesy copies from the court of Judge Walker's draft opinion around 2 or 3 o'clock yesterday afternoon.

As a courtesy on really big opinions, so as to give counsel a chance to prepare appropriately for media response and/or immediate motions that need to be filed, courts occasionally give lead counsel on each side their draft opinion slightly ahead of public filing and release, but do so with a strict gag order so no one ever knows this happens. This is something that Vaughn Walker has, from experience, a track record for doing, and I think it likely, actually almost certain, that he did just that here. Which makes the fact that the H8ter Defendant Intervenors (DIs), who propagated the hateful Proposition 8, and who oppose gay marriage, have already lodged a Motion For Stay Pending Appeal very, very telling.

PLEASE TAKE NOTICE that, should the Court enter judgment for Plaintiffs, on October 21, 2010, or as soon as the matter may be heard, before the Honorable Vaughn R. Walker, United States District Court, Northern District of California, 450 Golden Gate Avenue, San Francisco, California, Defendant-Intervenors Hollingsworth, Knight, Gutierrez, Jansson, and

ProtectMarriage.com ("Proponents") will move the Court for a stay pending appeal. In the alternative, Proponents request a limited seven-day stay of the Court's judgment to permit them to seek a stay pending appeal from the Ninth Circuit and, if necessary, the Supreme Court.

DIs filed this Motion For Stay Pending Appeal at shortly after 6 pm Tuesday night according to the docket notice issued by the court. Exactly what they would do if they know they lost. As the Washington Post reported late Tuesday night:

Both sides previously said an appeal was certain if Walker did not rule in their favor. The case would go first to the 9th U.S. Circuit Court of Appeals then the Supreme Court if the high court justices agree to review it.

Anticipating such a scenario, lawyers for the coalition of religious and conservative groups that sponsored Proposition 8 in 2008 filed a legal brief Tuesday asking Walker to stay his decision if he overturns the ban so same-sex couples could not marry while an appeal was pending.

"Same-sex marriages would be licensed under a cloud of uncertainty, and should proponents succeed on appeal, any such marriages would be invalid," they wrote.

Well, yes. Both sides have said all along they would appeal from a negative decision. But only one side is laying the groundwork for it, and that side is the Proposition 8 supporting gay marriage hating bigots. They have a courtesy copy of Walker's decision and they don't just think they lost, they *know* they lost.

And it is hilariously ironic that the gay hating Proposition 8 bigots base their Motion For Stay on the thought that failure to stay might harm

the gays wanting to get married. How nice of them to be concerned. What a load of disingenuous dung.

The decision by Vaughn Walker to have a full fledged trial with a full evidentiary record was inspired and put the Perry case in a unique position compared to how such issues are usually handled on submitted pleadings and argument. This one had a real trial with a real record; that makes a ton of difference for the appeal.

Appellate courts cannot just substitute their views for that of the trial court when there is an evidentiary record, findings of fact and conclusions of law like this, where it is much easier to do so if it has been decided by preliminary injunctive relief, motions or on the pleadings. Walker can really put this in a unique posture with how he frames his findings of fact and conclusions of law; and I expect him to do just that. Walker is very detailed and very smart and crafty. He will lock in and protect his decision to every extent he can, and trust me Walker is very good at this. One of the best I have ever seen. Ted Olson, David Boies, Plaintiffs Perry et. al and fans of Constitutional equality everywhere could not ask for anything more.

So tomorrow looks to be not only a historic day, but a very good one for equality and civil rights under the Constitution. It is about time.