

EXCELLENT PANEL ANNOUNCED FOR PERRY PROP 8 APPEAL

When the appeal in *Perry v. Schwarzenegger* was initially lodged, I put forth the possibility that the panel assigned to hear the full merits appeal in December might be the earlier panel of Judges Wardlaw, Fisher and Berzon, which had heard substantive interlocutory appeals from the trial portion of the case when it was in Judge Vaughn Walker's court. This was an exciting possibility as it would be a very favorable panel. That is not to be; however, the panel just announced that will hear the merits appeal on the morning of December 6 is very good and favorable to upholding Judge Walker's seminal ruling.

Today it was announced the panel will consist of Judges Stephen Reinhardt, Michael Hawkins and N. Randy Smith. Stephen Reinhardt is the living epitome of an old school dyed in the wool liberal; you simply could not ask for a better man. Mike Hawkins is also an excellent judge and, although not quite as liberal as Reinhardt, should be expected to have little patience for the poorly fleshed out case the defendant-intervenors put on in the trial in front of Walker or that they belligerently reargue on appeal as if they never lost. N. Randy Smith, on the other hand, is a very conservative judge from Idaho, of Brigham Young University heritage both undergraduate and law school, and was appointed by George W. Bush. Smith is not so promising.

The bottom line is, early odds are on a 2-1 decision upholding Judge Vaughn Walker's fine decision in *Perry*. The one stumbling block, of course, is the issue of standing, and on that I still have some concern that Hawkins, who can be a stickler on procedural details, might align with Smith to hold that there is no standing on the appeal. So, while there are still problems

with the standing issue and therefore there should be no premature wild celebrations today, it is nevertheless a very favorable panel the *Perry* appeal has drawn. For that, there should be some joy.

As a reminder, the oral argument on the *Perry* appeal is scheduled for 10:00 am PST Monday December 6, 2010 – one week from today. Marcy and I will be live blogging it and, incredibly, it is currently set to be televised on, among other stations, CSPAN. So, one and all can watch this historic argument and join in the discussion!