

# **PERRY V. SCHWARZENEGGER 9TH CIRCUIT ORAL ARGUMENT LIVEBLOG PRIMER**



Liberty & Justice by Mirko Ilic

Emptywheel and Firedoglake have covered the groundbreaking marriage equality civil rights litigation in *Perry v. Schwarzenegger* from the outset. today is the critical appeal in the 9th Circuit and it is being televised on CSPAN live. In a separate dedicated post, Marcy Wheeler will be liveblogging and I will be assisting with color commentary both through her and in comments.

The case was filed by plaintiffs Kristin Perry, Sandra Stier, Paul Katami and Jeffrey Zarrillo in response to the passage of an amendment to California's constitution by Proposition 8 providing "Only marriage between a man and a woman is valid or recognized in California."

There was a three week long evidentiary trial in the Northern District of California last January in front of Judge Vaughn Walker with closing arguments made on June 16 (summary of EW live coverage [here](#)) and Judge Walker's opinion finding such marriage discrimination unconstitutional was issued on August 4th. The appeal being argued today is from that decision by Judge Walker.

The oral argument is being televised live by CSPAN, will be carried by live feed on numerous internet sites, and will likely be on several other television networks as well. Here is a page with links and viewing information.

Here is Firedoglake's dedicated Proposition 8

Resource Page containing just about everything you could possibly want to know about the case from start to finish including links to all of our coverage of the trial, closings, and judgment process, as well as the lead up to today's argument, and nearly every important document, filing and brief in the case.

An article yesterday by Maure Dolan in the Los Angeles Times hit the nail on the head as to where to focus watching the oral argument:

When a federal appeals court meets in San Francisco on Monday for arguments on Proposition 8, legal analysts will be closely watching Judge Michael Hawkins, a moderate Democratic appointee whose vote is expected to be critical in the same-sex marriage case.

The randomly chosen three-judge panel of the U.S. 9th Circuit Court of Appeals also includes Judge Stephen Reinhardt, a California liberal appointed by President Carter, and Judge N. Randy Smith, a conservative from Idaho appointed by President George W. Bush.

"It's a very favorable panel for the challengers to Proposition 8," said Arthur Hellman, a University of Pittsburgh law professor and expert on the 9th Circuit.

Hawkins, an Arizonan appointed by President Clinton, "is the one to watch most closely," Hellman said. He has sided with liberals in some key cases and will probably cast the decisive vote in the case if there is a split decision, Hellman and other analysts said.

Having spent my legal career practicing in the 9th Circuit, I can tell you Dolan is spot on here. Reinhardt is simply a fantastic judge and a true liberal lion on the bench; Smith I do not know, but is clearly very conservative. Mike

Hawkins I know from working with him on a case or two during his time in Phoenix as a private practitioner, as well as his time here as the United States Attorney for the District of Arizona, all prior to being appointed by Clinton to the 9th Circuit. He is a good and fair man, extremely bright and likes to bore straight to the gist of issues. Ideologically, he leans to the left, but in a pretty moderate manner. However, Hawkins has a track record and personal belief system that is very much against discrimination and inequality. On the merits, he is a likely vote with Reinhardt to uphold Judge Walker's opinion.

The bigger issue, and the first one argued, however, is whether the court should even address the merits of the appeal. Specifically, Plaintiffs Perry et. al are arguing that the Appellant Proposition 8 supporters (Defendant-Intervenors below in trial court) do not have standing to appeal without being officially joined by the State of California. California, by and through Governor Schwarzenegger and Attorney General Jerry Brown has refused to participate in the appeal.

Today's oral argument will be two hours long, divided into two distinct segments, each an hour in length. The first segment and issue will be the standing issue. David Boies will argue on behalf of Plaintiffs Perry et. al that the Appellant opponents of marriage equality lack the requisite Article III standing to appeal. Washington-based lawyer Charles Cooper, representing Appellant ProtectMarriage.com, the sponsors of Proposition 8, will argue there is sufficient standing. Also appearing and arguing as an Appellant in favor of standing will be an attorney representing Imperial County of California who has filed a separate appeal in order to attempt to give governmental cover to the Appellant Proponents of Proposition 8. That appeal was consolidated for purpose of today's argument.

For the second hour, on the merits portion of

the oral argument, famed attorney and former Solicitor General Theodore Olson will handle the constitutional issues of equal protection, due process and fundamental fairness on behalf of Perry et. al and Charles Cooper will again argue on behalf of Appellant sponsors of Proposition 8.

This is history being made right in front of your eyes, enjoy the festivities!

[The absolutely incredible graphic, perfect for the significance and emotion of the *Perry* Prop 8 case, and the decision to grant marriage equality to *all citizens* without bias or discrimination, is by Mirko Ilić. Please visit Mirko and check out his stock of work.]