

# CALIFORNIA SUPREME COURT TO HEAR PERRY PROP 8 QUESTION

The breaking news out of the California Supreme Court is that they WILL entertain a full merits consideration of the question certified to them by the 9th Circuit in the *Perry v.*

*Schwarzenegger* appeal. From the LA times:

The California Supreme Court decided Wednesday to determine whether the sponsors of Proposition 8 have special authority to defend the anti-gay marriage initiative in court.

The state high court, meeting in closed session, agreed to a request by the U.S. 9th Circuit Court of Appeals to determine the status California law gives initiative sponsors.

The court was unanimous in deciding to accept the case. The court's order set an expedited briefing schedule to permit a hearing by "as early as September." The court must rule on a case 90 days after oral argument.

A panel of the 9th Circuit has indicated it would have to dismiss an appeal by proponents of Proposition 8 on procedural grounds unless the California court determines that the initiative's sponsors have legal standing. A procedural ruling would not affect gay marriage outside of California.

This is fantastic news, even though it was pretty much expected in the legal community. The California supremes simply would have taken far too much grief if they had punted without answering the question at all and leaving the 9th Circuit hanging. That was not going to happen, and it didn't.

Now the question is how will the Supreme Court decide the question of whether the Proposition 8 sponsors have standing? That is unclear, but the smart early money would be that the court will indeed find standing based on the tenor of their consideration of *Strauss v. Horton*. *Strauss* was a consolidated decision of three different suits originally filed after the passage of Proposition 8, and in it the court gave some weight and deference to the initiative's sponsors and voters. Giving standing to the Prop 8 sponsors would also seem to be in line with other cases that have upheld the initiative process in California over the years.

The full text of the order, including the briefing schedule, is as follows:

The request, pursuant to California Rules of Court, rule 8.548, that this court decide a question of California law presented in a matter pending in the United States Court of Appeals for the Ninth Circuit, is granted.

For the purposes of briefing and oral argument, defendant-intervenors Dennis Hollingsworth, Gail J. Knight, Martin F. Gutierrez, Mark A. Jansson, and ProtectMarriage.com (collectively "Proponents") are deemed the petitioners in this court. (Cal. Rules of Court, rule 8.520(a)(6).)

In order to facilitate expedited consideration and resolution of the issues presented, and to accommodate oral argument in this matter as early as September, 2011, the normal briefing schedule is shortened, pursuant to California Rules of Court, rule 8.68, as follows:

The opening brief on the merits is to be served and filed on or before Monday, March 14, 2011. The answer brief on the merits is to be served and filed on or before Monday, April 4. A reply brief

may be served and filed on or before  
Monday, April 18.

Any person or entity wishing to file an  
amicus curiae brief must file an  
application for permission to file such  
brief, accompanied by the proposed  
brief, on or before Monday, May 2, 2011.  
Any party may serve and file an omnibus  
reply to any or all amicus curiae briefs  
on or before Monday, May 9, 2011.

The court does not contemplate any  
extension of the above deadlines.