

# CALIFORNIA SUPREME COURT RULES THERE IS STANDING FOR PROP 8 INTERVENORS



Liberty & Justice by Mirko Ilic

When the Ninth Circuit initially referred the issue of standing for the Defendant-Intervenors in the Perry v. Schwarzenegger/Brown back at the start of the year, I wrote this:

I still look for the California Supreme Court to certify this issue, and my best guess is they will find standing, the case will be sent back to the 9th Circuit for a merits decision and the 9th will uphold Vaughn Walker. Assuming all that is the case and plays out accordingly, it will sure eviscerate much of the ability of the US Supreme Court to avoid the merits on standing (which I think they otherwise would do). The bad news is this is going to take well over a year, and could easily be two years if there is an en banc process as well in the 9th. An attempt to repeal Proposition 8 will almost certainly be on the ballot for the 2012 election and if it gets repealed, this case is moot. That would not be so bad, as it would reinstate marriage equality in California. However if it fails, and Barack Obama loses in 2012, and there is a very early opening on the Supreme Court, the resulting extreme rightward shift would be very detrimental. There are a lot of ways this could go in the future, stay tuned!

The California Supreme Court just issued its

opinion and I have been affirmed! In short, the highest California appellate court has certified to the 9th Circuit that, as a matter of state law, the DI's have legitimate standing to represent their side of the matter in Federal appellate courts.

The key finding is:

At the request of the United States Court of Appeals for the Ninth Circuit, we agreed to decide a question of California law that is relevant to the underlying lawsuit in this matter now pending in that federal appellate court. (Perry v. Brown (9th Cir. No. 10-16696); see Cal. Rules of Court, rule 8.548.) As posed by the Ninth Circuit, the question to be decided is "whether under Article II, Section 8 of the California Constitution, or otherwise under California law, the official proponents of an initiative measure possess either a particularized interest in the initiative's validity, which would enable them to defend the constitutionality of the initiative upon its adoption or appeal a judgment invalidating the initiative, when the public officials charged with that duty refuse to do so".

....

Accordingly, we respond to the question posed by the Ninth Circuit in the affirmative. In a postelection challenge to a voter-approved initiative measure, the official proponents of the initiative are authorized under California law to appear and assert the state's interest in the initiative's validity and to appeal a judgment invalidating the measure when the public officials who ordinarily defend the measure or appeal such a judgment decline to do so.

Here is the full decision.

The opinion was written by newly seated Chief Judge Tani Cantil-Sakauye, who was literally sworn in the day before the 9th Circuit dumped this question in the laps of the California Supremes. It appears quite well sculpted and the full court signed on to her opinion; however, Judge Kennard issued a specially concurring opinion to "highlight the historical and legal events that have led to today's decision and to explain why I concur in that decision". As I said back in January, this was not really all that novel of an issue in California jurisprudence, and so the court has noted and, now, established with certainty.

Time for Steve Reinhardt and his merry band of 9th Circuit pranksters to fire up the cert alert in the stodgy halls of SCOTUS! And I think that will be happening sooner rather than later as the 9th has already received full briefing and oral argument on the merits. I would even go so far as to say there are draft opinions already written and ready to be tweaked and supplemented with today's California Supreme Court ruling. So expect a ruling from the 9th fairly quickly.

I will be adding in some more analysis after a thorough reading of the full opinion.

[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.]