

MORE NDCA GOODNESS: JUDGE WALKER DENIES PROP 8 PROPONENTS' MOTION

As most of you know, Proposition 8 in California is the anti gay marriage provision. Supporters of the basic right to gay marriage sued the State of California after passage of Proposition 8 as a ballot initiative in last falls elections. Today were oral arguments on a motion for summary judgment filed by a group of intervenors against gay marriage and supporting the validity of the law. The case is set in front of the one and only Chief Judge Vaughn Walker of NDCA.

Here is the report from the San Jose Mercury News:

A federal judge on Wednesday refused to dismiss a legal challenge to Proposition 8, concluding that the ongoing courtroom battle over California's voter-approved ban on gay marriage must be resolved in a full-blown trial.

After two hours of legal sparring, Chief U.S. District Judge Vaughn Walker rejected the arguments of Prop. 8 supporters, who maintained that U.S. Supreme Court precedent and a lack of proof of constitutional violations should sidetrack a lawsuit designed to overturn the ballot measure. Instead, Walker, sensing the challenge to Prop. 8 ultimately could wind up before the Supreme Court, wants a trial to develop a full factual record, including forcing Prop. 8 supporters to justify the reasons behind a state ban on allowing gay couples to wed.

One by one, the judge shot down the legal reasons Prop. 8 lawyers presented

to resolve the case now and allow the same-sex marriage ban to remain in force. In particular, the judge seemed particularly unpersuaded by Prop. 8 attorney Charles Cooper's chief argument for a state law confining marriage to heterosexual couples – that the state has an interest in protecting “traditional” marriage because of its importance to procreation in society.

“Procreation doesn't require marriage,” Walker noted, citing statistics showing that a large percentage of children are born out of wedlock.

A representative from Law Dork was on hand and related this analysis:

Questions about whether animus animated Proposition 8 and the relevance of that claimed animus, Walker ruled, would benefit from a more complete record to be developed at trial because both issues remain in dispute.

Finally, the Proposition 8 proponents had asked the Court to rule against the Plaintiffs based on the U.S. Supreme Court decision in *Baker v. Nelson*. The *Baker* decision is a 1972 opinion by the Court dismissing a marriage case from Minnesota “for want of a substantial federal question.” 409 U.S. 810 (1972). The Plaintiffs were represented today in court by Ted Olson.

The proponents of Proposition 8, represented today in court by Charles Cooper, argued that the brief Supreme Court dismissal in 1972 meant that no federal judge could hear a similar case because the only the Supreme Court could reverse its *Baker* opinion. This was considered a very weak argument by many lawyers to consider the matter, particularly in light of *Romer* and

Lawrence, and Judge Walker agreed.

This is an extremely notable ruling as Judge Walker appears to have made it from the bench at the conclusion of oral argument; he did not even bother to take it under advisement and save it for his written opinion. That is a judge totally convinced of the decision.

This is a very good, if not great, ruling and sets the stage for trial on the matter, which is already set for January of next year. Civil libertarians have to take their victories where they find them. This is another striking one coming out of the hallowed ground of the Northern District of California. My hat is off, there is something special going on up there.