



Written by [Dave Bohon](#) on April 28, 2011

Prop. 8 Defenders Ask Court to Vacate Ruling of Homosexual Judge

Proponents of California's Proposition 8, the state constitutional amendment passed by voters in 2008 that defines marriage as between a man and a woman, are asking a U.S. district court to vacate a federal judge's ruling that struck down the amendment because the judge is a practicing homosexual.

As reported by the [Christian Post](#), the legal team for the group [protectmarriage.com](#) is "urging the district court to vacate retired Judge Vaughn Walker's (pictured at left) ruling that marriage is a constitutional right for same-sex couples based on new evidence suggesting he was likely prejudiced because of his own long-term same-sex relationship." The attorneys pointed out that Walker failed to disclose that he was involved in a 10-year homosexual relationship, a circumstance they argue severely tainted his ability to rule impartially in the case.



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"The American people have a right to a fair judicial process, free from even the appearance of bias or prejudice," said Andy Pugno, general counsel for [ProtectMarriage.com](#). "Judge Walker's ten-year-long same-sex relationship creates the unavoidable impression that he was not the impartial judge the law requires."

Walker's ruling in August 2010 that Prop. 8 somehow violated the "constitutional rights" of homosexuals to marry their same sex partners came in direct opposition to the 52 percent of Californians who voted for the amendment defining marriage as only between a man and a woman.

In his 136-page opinion striking down the amendment, Walker wrote, "Moral disapproval alone is an improper basis on which to deny rights to gay men and lesbians. The evidence shows conclusively that Proposition 8 enacts, without reason, a private moral view that same-sex couples are inferior to opposite sex couples."

According to the *Post*, in August 2009 [Salon.com](#) reported "that Walker had been reportedly seen with his same-sex partner at professional and social events. Reuters also published details of the relationship, describing Walker's partner as a physician and asserting that the relationship had been going on for 10 years."

In early April of this year Walker confirmed that he is, indeed, a practicing homosexual, but insisted that the fact had no bearing on his ability to rule impartially in the Prop. 8 case. "I don't think it's



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relevant,” he told reporters. “I never thought it was appropriate to recuse myself from that case.”

Equating his homosexuality with race and nationality, Walker told reporters that it would “not be a positive development if you thought a judge’s sexuality, ethnicity, national origin, or gender would prevent a judge from handling a case.”

At least one constitutional law expert agreed with Walker’s reasoning. [Time](#) magazine quoted Erwin Chemerinsky, a constitutional scholar and dean of the law school at the University of California-Irvine, as saying that the latest motion by the pro-marriage team is “offensive” and has “no chance of success.”

“I know of no instance in which a judge has been disqualified because of his or her race, religion, sexual orientation, or gender,” *Time* quoted Chemerinsky as saying. “This would mean that no African-American judge could have heard a challenge to segregation laws or no woman judge a challenge to a law discriminating based on sex. No court ever has suggested any such thing, nor will it. This is simply a personal attack on Judge Walker in an effort to embarrass him.”

But Matt Barber of the conservative legal advocacy group [Liberty Counsel](#) argued that given Walker’s homosexuality and his involvement in a same-sex relationship, the judge should have immediately recused himself from the case, and the fact that he did not offers a strong case for vacating his ruling. “With Judge Walker’s recent admission that he does in fact practice homosexuality, the case for recusal has been proven,” Wrote Barber in an online commentary. “His ruling on the Prop 8 case should be immediately vacated as he possessed both an incontrovertible and disqualifying conflict of interest.”

According to the *Christian Post*, the request for the district court to vacate Walker’s ruling is one in a series of efforts by the pro-family coalition on behalf of the marriage amendment. “The ProtectMarriage.com legal team has already appealed the ruling to the U.S. 9th Circuit Court of Appeals, which has, in turn, asked the California Supreme Court to decide whether the group has the legal standing to defend the ballot measure in court,” reported the *Post*. “The state high court’s ruling is expected sometime this year.”

As reported by [The New American](#), in December of last year the 9th Circuit Court heard arguments from the ProtectMarriage.com coalition, who contended that “Walker’s ruling ‘defames as anti-gay bigots not only seven million California voters, but everyone else in this country, and elsewhere, who believes that the traditional opposite-sex definition of marriage continues to meaningfully serve the legitimate interests of society — from the current President of the United States, to a large majority of legislators throughout the nation, both in statehouses and in the United States Congress, and even to most of the scores of state and federal judges who have addressed the issue.’ ”



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