

Proposition 8 Trial and Appeal Facts and Common Questions

The Trial: In January 2010, attorneys Ted Olson and David Boies went to trial in *Perry v. Schwarzenegger*, a federal case challenging the constitutionality of Proposition 8—California’s discriminatory ballot measure that took away same-sex couples’ right to marry in the state. The suit was filed on behalf of same-sex couples, who were denied marriage licenses, on the grounds that Proposition 8 violated the Equal Protection Clause and the Due Process Clause of the U.S. Constitution. At trial, the U.S. District Court for the Northern District of California heard testimony from witnesses on both sides on issues including how having same-sex parents affects children, whether same-sex marriages undermine opposite-sex marriages, and how lesbians and gays are affected by discrimination.

Decision: On August 4th, 2010, the federal district court announced its decision that California’s denial of marriage licenses to same-sex couples violates the Equal Protection Clause and the Due Process Clause of the 14th Amendment to the U.S. Constitution. The court concluded that California had no rational basis, or vested interest, in denying same-sex couples marriage licenses. In its decision, the court noted that Proposition 8 was based on moral disapproval of homosexuality, which is not sufficient legal justification for discrimination. While the decision of the federal district court overturns Proposition 8, it is not the final word on the matter. The decision is currently on appeal to the U.S. Court of Appeals for the Ninth Circuit.

Question: *Can same-sex couples in California get married now?*

Answer: No. On August 16th, 2010, the U.S. Court of Appeals for the Ninth Circuit entered a stay on the federal district court’s ruling. A stay stops the order from taking immediate legal effect.

Question: *What is the next step in the case?*

Answer: The proponents of Proposition 8 have filed a merits appeal with the U.S. Court of Appeals for the Ninth Circuit. A merits appeal essentially asks the court to review whether the judge’s decision was proper. On appeal, cases are heard before a three-judge panel. Written briefs will be filed and the court will set a date for oral arguments.

Question: *What would be argued on appeal before the Ninth Circuit?*

Answer: The U.S. Court of Appeals for the Ninth Circuit has asked the parties two brief two issues on appeal. First, the court has asked the parties to address whether the proponents of Proposition 8 have standing to file an appeal. The defendants in the case, Governor Arnold Schwarzenegger and California Attorney General Brown, have refused to defend Proposition 8. While the proponents of Proposition 8 were allowed to intervene to defend Proposition 8 at trial, they may not be entitled to appeal the decision of the district court since they are not the named defendants in the case. If the Ninth Circuit holds that the proponents of Proposition 8 have standing, the second issue for review is whether Proposition 8 violates the Equal Protection and Due Process Clauses of the 14th Amendment of the U.S. Constitution. Ted Olson and David Boies would argue that marriage is a fundamental constitutional right that cannot be denied to same-sex couples by voters. Proponents of Proposition 8 are expected to argue that states have the right to define marriage as between one man and one woman.

Question: *What happens after the Ninth Circuit announces its ruling?*

Answer: After the Ninth Circuit announces its ruling, the losing side can request that an en banc panel of 11 judges of the Ninth Circuit reconsider the decision. However, the losing side may skip over a request for an en banc rehearing and petition the U.S. Supreme Court to hear the case. The U.S. Supreme Court does not have to review a case, and it is not clear if it would take up an appeal of this ruling.

Question: *How would a ruling in this case affect states like Illinois?*

Answer: Rulings of the U.S. appellate courts are binding only on the courts in states that are covered by that circuit. If a valid appeal were filed in this case with the Ninth Circuit, a Ninth Circuit ruling upholding or overturning the district court’s analysis of the law would be binding on courts in states within the Ninth Circuit. If the Ninth Circuit determines that a valid appeal has not been filed, then the district court’s decision will be upheld, but it will be limited to California—other states in the Ninth Circuit would not be bound. If the U.S. Supreme Court were to take the case on appeal from the Ninth Circuit and uphold the decision of the district court that the denial of marriage licenses to same-sex couples violates the Equal Protection Clause and the Due Process Clause of the 14th Amendment, then states could no longer deny marriage licenses to same-sex couples. If the U.S. Supreme Court were to overturn the decision, then it will remain up to each state to decide whether or not to provide marriage licenses to same-sex couples.