

## **Perry v. Brown – Summary of the Motion to Vacate Judgment**

On April 25, 2011, the ProtectMarriage.com legal team filed a motion to vacate former Chief Judge Vaughn R. Walker's judgment striking down Proposition 8 because he was disqualified from hearing the case.

Federal law requires that a judge must disqualify himself in any proceeding where "his impartiality might reasonably be questioned" or where he has an "interest that could be substantially affected by the outcome of the proceeding." Earlier this month, Chief Judge Walker publicly disclosed that he has been in a same-sex relationship for ten years.

An objective observer, aware of this long-term relationship, would question Chief Judge Walker's impartiality as a judge in this case. For if Chief Judge Walker desired to marry his partner, he possessed an interest that could be substantially affected by the outcome of these proceedings. Indeed, such a personal interest would place him in precisely the same position as the plaintiffs who brought this lawsuit. But Chief Judge Walker failed to inform the parties about this relationship or whether he intended to marry his partner, thus reinforcing the appearance of partiality.

And the doubt surrounding Chief Judge Walker's impartiality is heightened by his pattern of unprecedented and irregular rulings throughout this case—including, among others, (1) his decision finding a right under the Federal Constitution for same-sex couples to have their relationships recognized as marriages, which conflicts with the judgment of *every state and federal appellate court* to consider the validity of marriage laws under the Federal Constitution, and (2) his decision declaring that sexual orientation is a suspect classification under the Federal Constitution, which conflicts with *all eleven federal appellate courts that have considered that issue*. The unprecedented and irregular nature of these rulings (and other rulings issued in this case) is difficult—very difficult—to accept as the product of an objective, impartial judicial mind.

In short, a genuine question regarding Chief Judge Walker's impartiality arises from his long-term same-sex relationship, his failure to disclose that relationship at the outset of this case, his failure to disclose whether he has any interest in marrying his partner, and his actions throughout the course of this lawsuit.

Because Chief Judge Walker violated federal law by failing to disqualify himself, the only responsible and just course is to vacate his decision in this case. That is the only way to purge the perception of partiality tainting this case and to affirm the public's confidence in these judicial proceedings.