



## NATIONAL CENTER FOR LESBIAN RIGHTS

### **Judge Walker's Ruling Extending Stay Until August 18— What Does It Mean and What Happens Next?**

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#### **Does Judge Walker's ruling mean that same-sex couples in California will be able to marry starting August 18, 2010?**

Not necessarily. Judge Walker ruled that there is no legal reason to delay letting same-sex couples marry; however, he kept the stay on his ruling in place until August 18. That extra time will allow the Ninth Circuit Court of Appeals to decide whether to let same-sex couples in California marry while the appeal proceeds, or whether to continue the stay until the Ninth Circuit reviews Judge Walker's decision that Prop 8 is unconstitutional.

In practice, this means that the proponents of Prop 8 have a chance to file a motion for stay with the Ninth Circuit, and the Ninth Circuit has a chance to grant or deny that motion, but it must do so by August 18. If it does not, marriages will automatically start again at that time. The proponents of Prop 8 filed an emergency motion for stay pending appeal on August 12, 2010, shortly after Judge Walker issued his new ruling.

#### **Does the Ninth Circuit have the final say over whether to stay Judge Walker's ruling?**

No. If the Ninth Circuit denies a stay, the proponents of Prop 8 can ask the United States Supreme Court to issue a stay. That request would be directed to Justice Anthony Kennedy, because he is the justice designated to hear requests for stays in the Ninth Circuit. If Justice Kennedy denied the motion to stay, the proponents of Prop 8 could ask the entire court to rule on that issue. Remember, this is not about whether Prop 8 is unconstitutional, but only about whether couples can marry based on Judge Walker's ruling while the case is being appealed.

#### **If same-sex couples in California can begin to marry again starting on August 18, will those marriages be valid if Judge Walker's ruling is later overturned on appeal?**

We strongly believe that marriages based on Judge Walker's decision should be valid, even if the decision is later overturned on appeal (which we do not expect, given the strength of Judge Walker's opinion). In his stay order, Judge Walker also supported that position, stating, "The court has the authority to enjoin defendants from enforcing Proposition 8. It appears, then, that marriages performed pursuant to a valid injunction would be lawful, much like the 18,000 marriages performed before the passage of Proposition 8 in November 2008. See *Strauss v Horton*, 46 Cal 4th 364, 472 (2009) (holding that married couples' rights vest upon a lawful marriage)."

That said, to be safe, we strongly encourage same-sex couples in California who marry based on Judge Walker's decision to also register as domestic partners to ensure that you are protected in the event your marriage is ever challenged. California law permits a couple both to marry and register as domestic partners, so long as it is with the same person. Also, you do not have to be a California resident to marry in California or to register as domestic partners.

### **What if the Ninth Circuit stays Judge Walker's decision?**

If the Ninth Circuit stays the decision, then same-sex couples in California will not be able to marry until the case is resolved on appeal.

### **Why is Judge Walker's August 12 ruling important?**

Even though Judge Walker did not immediately let same-sex couples in California marry, the ruling provides important insight into the merits of the issues that the Ninth Circuit will consider on appeal. For example, in his stay order, Judge Walker casts serious doubt on whether the proponents of Prop 8 even have "standing" to pursue an appeal because they do not speak for the state of California, and the official representatives of the state agree that Prop 8 is unconstitutional. Standing refers to whether a particular person has a legal right to bring an appeal.

In his stay order, Judge Walker said: "As it appears at least doubtful that proponents will be able to proceed with their appeal without a state defendant, it remains unclear whether the court of appeals will be able to reach the merits of proponents' appeal."

### **What would happen if the proponents of Prop 8 do not have standing to appeal?**

That would mean that Judge Walker's decision would go into effect and could not be appealed. Same-sex couples in California would once again be able to marry, and Prop 8 would be permanently struck down.

### **Who gets to decide whether the proponents of Prop 8 have standing to appeal?**

The Ninth Circuit will have the first chance to rule on that issue. No matter which way the Ninth Circuit rules, either side could appeal that decision to the United States Supreme Court. The Supreme Court can then choose whether to rule on the issue or let the Ninth Circuit's decision stand.

### **Would it be unusual for a federal court opinion striking down a state law not to be appealed?**

Not particularly. For example, in 1997, a federal district court struck down most of Proposition 187, a California ballot initiative that tried to exclude undocumented immigrants from many basic rights. The State of California ultimately decided not to appeal the court's ruling.