

FILED*Perry v. Brown*, Nos. 10-16696, 11-16577

JUN 05 2012

REINHARDT and HAWKINS, Circuit Judges, concurring in the denial of rehearing en banc:

MOLLY C. DWYER, CLERK
FEDERAL CIRCUIT COURT OF APPEALS

We are puzzled by our dissenting colleagues' unusual reliance on the President's views regarding the Constitution, especially as the President did not discuss the narrow issue that we decided in our opinion. We held only that under the particular circumstances relating to California's Proposition 8, that measure was invalid. In line with the rules governing judicial resolution of constitutional issues, we did not resolve the fundamental question that both sides asked us to: whether the Constitution prohibits the states from banning same-sex marriage. That question may be decided in the near future, but if so, it should be in some other case, at some other time.