

# Exhibit B

## Judge being gay a nonissue during Prop. 8 trial

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The biggest open secret in the landmark trial over same-sex marriage being heard in San Francisco is that the federal judge who will decide the case, Chief U.S. District Judge **Vaughn Walker**, is himself gay.

Many gay politicians in San Francisco and lawyers who have had dealings with Walker say the 65-year-old jurist, appointed to the bench by President **George H.W. Bush** in 1989, has never taken pains to disguise - or advertise - his orientation.

They also don't believe it will influence how he rules on the case he's now hearing - whether Proposition 8, the 2008 ballot measure approved by state voters to ban same-sex marriage, unconstitutionally discriminates against gays and lesbians.

"There is nothing about Walker as a judge to indicate that his sexual orientation, other than being an interesting factor, will in any way bias his view," said **Kate Kendell**, head of the National Center for Lesbian Rights, which is supporting the lawsuit to overturn Prop. 8.

As evidence, she cites the judge's conservative - albeit libertarian - reputation, and says, "There wasn't anyone who thought (overturning Prop. 8) was a cakewalk given his sexual orientation."

State Sen. **Mark Leno**, D-San Francisco, who has sponsored two bills to authorize same-sex marriage that were vetoed by Gov. **Arnold Schwarzenegger**, said that as far as he's concerned, Walker's background is a nonissue. "It seems curious to me," he said, that when the state Supreme Court heard a challenge to Prop. 8, the justices' sexual orientation "was never discussed."

Leno added, "I have great respect for Judge Walker, professionally and personally."

Walker has declined to talk about anything involving the Prop. 8 case outside court, and he wouldn't comment to us when we asked about his orientation and whether it was relevant to the lawsuit.

Many San Francisco gays still hold Walker in contempt for a case he took when he was a private attorney, when he represented the U.S. Olympic Committee in a successful bid to keep San Francisco's Gay Olympics from infringing on its name.

"Life is full of irony," the judge replied when we reminded him about that episode.

And did he have any concerns about being characterized as gay?

"No comment."

Shortly after our conversation, we heard from a federal judge who counts himself as a friend and confidant of Walker's. He said he had spoken with Walker and was concerned that "people will come to the conclusion that (Walker) wants to conceal his sexuality."

"He has a private life and he doesn't conceal it, but doesn't think it is relevant to his decisions in any case, and he doesn't bring it to bear in any decisions," said the judge, who asked not to be identified because of the sensitive nature of the Prop. 8 trial.

"Is it newsworthy?" he said of Walker's orientation, and laughed. "Yes."

He said it was hard to ignore the irony that "in the beginning, when (Walker) sought to be a judge, a major obstacle he had to overcome was the perception that he was anti-gay."

In short, the friend said, Walker's background is relevant in the same way people would want to know that a judge hearing a discrimination case involving Latinos was Latino or a Jewish judge was ruling in a case involving the Anti-Defamation League.

Walker, by the way, didn't seek out the Prop. 8 case - it was assigned to him at random.

If the judge decides that Prop. 8 is unconstitutional, supporters of the measure are sure to take it to the federal appeals court and the U.S. Supreme Court, if necessary. Kendell expects that if that happens, the measure's proponents will make an issue of the judge's sexual orientation - at least in the public arena.

Not so, said **Andy Pugno**, general counsel for the group that sponsored the Prop. 8 campaign.

"We are not going to say anything about that," Pugno said.

He was quick to assert, however, that Prop. 8 backers haven't gotten a fair shake from Walker in court. He cited both the judge's order for the campaign to turn over thousands of pages of internal memos to the other side and Walker's decision to allow the trial to be broadcast - both of which were overturned by higher courts.

"In many ways, the sponsors of Prop. 8 have been put at significant disadvantage throughout the case," Pugno said. "Regardless of the reason for it."

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