

# Exhibit D

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## Distilling the same-sex marriage case

*Because he opted for a detailed trial of related issues, Chief Judge Vaughn R. Walker's decision will be the foundation for higher courts' verdicts.*

June 21, 2010 | By Maura Dolan, Los Angeles Times

Chief Judge Vaughn R. Walker was supposed to be a bit player in *Perry vs. Schwarzenegger*, a federal constitutional challenge of the Proposition 8 ban on same-sex marriage.

Lawyers on both sides of the case viewed his federal courtroom in San Francisco as little more than a launching pad where they would argue fine points of constitutional law before the case moved to the appeals bench and eventually to the Supreme Court.

But the iconoclastic U.S. District Court judge had something else in mind: a full-blown nonjury trial to test assumptions about whether gays were inferior parents, whether same-sex marriage hurt straight marriage and whether sexual orientation was changeable.

Walker's intentions took lawyers on both sides by surprise, but those who know the lanky, silver-haired jurist said it was fitting that he would want to gather facts on an issue that tends to be viewed with considerable emotion.

"The one characteristic of Judge Walker that separates him from some other judges is that he loves to come up with a twist or a new idea that the parties haven't thought of," said Rory Little, a professor at UC Hastings Law School. "He is a very creative thinker."

The Republican appointee will soon fire the first volley in the federal legal battle over same-sex marriage. Walker's written decision, based on testimony he has heard, will become the foundation on which higher courts build.

Initially dubious about a trial, gay rights lawyers quickly saw advantages to Walker's plan. Indeed, the 2 1/2 weeks of often moving testimony in January substantially bolstered opponents of Proposition 8.

The confidence that gay rights lawyers expressed at testimony's end — closing arguments were held Wednesday — belied the anxiety some activists expressed when Walker was randomly chosen last year to oversee the case.

"People were saying that this assignment should leave no one resting easily," said Kate Kendell, who heads the National Center for Lesbian Rights.

Although openly gay, Walker, 66, was considered a traitor by some gay activists for having represented the U.S. Olympic Committee in a trademark lawsuit against the Gay Olympics, Kendell said.

The case, brought more than two decades ago when Walker was still a lawyer in private practice, went to the U.S. Supreme Court and ended up a historic setback in the struggle for gay rights. Gay rights lawyers viewed the case as being more about gay equality than about an athletic competition.

There had been dog Olympics, diaper Olympics and police Olympics, Kendell said, and gays felt targeted by the fact that the Gay Olympics had been challenged.

"Vaughn Walker was in the center of it," Kendell said, "and from the gay community's perspective, on the wrong side."

Gay rights groups and liberals opposed Walker's nomination by President Reagan and later by President George H.W. Bush.

But after his confirmation, Walker surprised critics.

He has been an independent judge, skeptical of government and protective of individual freedom — more libertarian than conservative. He favors the decriminalization of drugs, and he recently ruled against Bush administration policies in a major wiretap lawsuit.

That he vigorously represented the USOC over a gay athletic competition says nothing about his personal views, nor will his decision in the Proposition 8 case, said Boris Feldman, a corporate litigator who has appeared before Walker several times.

"It was a client he was hired to represent and represented very well," Feldman said. "He is a classic conservative legal scholar in that he actually believes in rules.... You don't hear a lot about fairness from him. You hear a lot about the law."

Walker, who declined to be interviewed with the marriage case pending, said at the time of his nomination that he believed good lawyers should not permit personal views to affect a client's representation.

Judge Maxine M. Chesney, who serves on the federal court with Walker, described him as "very smart, very thoughtful and not result-oriented."

Being gay "is not a political part of his life," she said.

Earlier this year, Walker was overturned by the U.S. 9th Circuit Court of Appeals in a case involving a gay man who sued a federal agency for emotional distress after it revealed his HIV status to another federal department.

Walker threw out the lawsuit on the grounds that a federal privacy act did not permit damages for emotional distress. The 9th Circuit resurrected the suit, ruling for the gay plaintiff.

Lawyers defending Proposition 8 have refused to discuss Walker's sexual orientation and have not made an issue of it. They have complained, however, that his pretrial rulings hurt their side and that the trial was irrelevant.

Although there has never been a federal trial over same-sex marriage, a state trial was held in Hawaii in 1996 and was broadcast on Court TV. The judge ruled in favor of the gay plaintiffs, and Hawaii's highest court concurred. Voters later reinstated the marriage ban at the polls.

Walker wanted to broadcast the Proposition 8 trial on the Internet, but the U.S. Supreme Court slapped him down. Gay rights activists said public dissemination of the testimony would educate the public. Backers of Proposition 8 countered that cameras would intimidate their witnesses and possibly spark reprisals.

Walker was born in Watseka, Ill., the youngest of three children. He was an economics major at the University of Michigan and earned his law degree at Stanford University. He spent 18 years at the blue-chip law firm of Pillsbury Madison & Sutro in San Francisco, where he represented the National Rifle Assn. in an attempt to overturn a San Francisco gun law.

When he is not working, he travels the globe, attends the San Francisco Symphony, listens to traditional jazz, collects German Expressionist graphics and watches old movies (his favorites are "Sunset Boulevard" and "Double Indemnity"). He swims regularly and attends bar functions with a companion, a physician, colleagues say.

Walker is a commanding force in the courtroom, exuding energy and humor as he questions lawyers and witnesses in a baritone voice and tries to keep the proceedings on a brisk pace.

His creativity extends to sentencing. He once required a mail thief to stand in a post office with a sign that read: "I stole mail. This is my punishment."

Lawyers say Walker is always well-prepared and organized and demands strong performances. During the marriage trial, he twice chided San Francisco City Atty. Dennis Herrera for the legal work of one of his deputies and praised the performance of a lawyer defending Proposition 8.

A decision in the marriage trial is expected within weeks.

UC Hastings' Little said Walker faces a "very delicate and historic" task in crafting his Proposition 8 ruling and buttressing it with evidence from the trial.

Although higher courts could disregard his findings, "he also could lead a path to success at the Supreme Court," Little said.

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