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California Supreme Court Rules on Proposition 8 'Standing' Issue

Court Decides Initiative Proponents Have Standing to Defend Initiatives When Public Officials Decline to Do So

San Francisco—Answering a question of state law submitted to it by the United States Court of Appeals for the Ninth Circuit, the California Supreme Court today held, in a unanimous opinion authored by Chief Justice Tani Cantil-Sakauye, that under California law the official proponents of a voter-approved initiative measure are authorized to defend the validity of the initiative in court and to appeal a lower court judgment invalidating the measure when the public officials who ordinarily defend the measure or file an appeal decline to do so. (*Perry v. Brown* (S189476).)

The question whether initiative proponents have standing to defend the validity of a challenged initiative measure is one of the issues currently pending before the Ninth Circuit in the appeal of a federal district court decision that determined that Proposition 8 — the initiative measure that amended the California Constitution to provide that "only marriage between a man and a woman is valid or recognized in California" — violates the United States Constitution.

In today's ruling, however, the California Supreme Court emphasized that although the legal question submitted to it happened to arise in litigation challenging the validity of Proposition 8, the procedural issue before it in the current proceeding "is totally unrelated to the substantive question of the constitutional validity of Proposition 8" and "may arise with respect to *any* initiative measure, without regard to its subject matter."

The court observed that the procedural question of an official initiative proponent's standing to defend the initiative's validity when public officials decline to do so does not depend "on the substance of the particular initiative measure at issue, but rather on the purpose and

(over)

integrity of the initiative process itself."

In analyzing the standing issue under California law, the court noted that because the fundamental purpose of the initiative process in California is "to enable the people to amend the state Constitution or to enact statutes when current government officials have declined to adopt (and often have publicly opposed) the measure in question, the voters who have successfully adopted an initiative measure may reasonably harbor a legitimate concern that the public officials who ordinarily defend a challenged state law in court may not, in the case of an initiative measure, always undertake such a defense with vigor or with the objectives and interests of those voters paramount in mind. As a consequence, California courts have routinely permitted the official proponents of an initiative to intervene or appear as real parties in interest to defend a challenged voter-approved initiative measure 'to guard the people's right to exercise initiative power.' "

The court explained that "[a]llowing official proponents to assert the state's interest in the validity of such litigation . . . (1) assures voters who supported the measure and enacted it into law that any residual hostility or indifference of current public officials to the substance of the initiative measure will not prevent a full and robust defense of the measure to be mounted in court on the people's behalf, and (2) ensures a court faced with the responsibility of reviewing and resolving a legal challenge to an initiative measure that it is aware of and addresses the full range of legal arguments that reasonably may be proffered in the measure's defense."

The court further noted that past cases had explicitly cautioned that in most instances it might well be an abuse of discretion for a court to fail to permit the official proponents to intervene to protect the people's right to exercise their initiative power even when one of more government defendants are defending the initiative's validity in the proceeding. The court concluded that in an instance — like that identified in the Ninth Circuit's question — in which the public officials have declined to defend the initiative's validity at all, it would clearly constitute an abuse of discretion to deny the proponents the opportunity to participate as formal parties to defend the measure's validity or to appeal a judgment invalidating the measure.

The majority opinion by the Chief Justice was signed by Associate Justices Joyce L. Kennard, Marvin R. Baxter, Kathryn M. Werdegar, Ming W. Chin, Carol A. Corrigan, and Goodwin Liu.

In addition to signing the majority opinion, Justice Kennard authored a separate concurring opinion, highlighting the historical and legal events that led to today's decision and briefly explaining the basis of her concurrence.

The concurring opinion observed in part: "The judicial system is designed to operate through public proceedings in which adversaries litigate factual and legal issues thoroughly and vigorously. When an initiative measure is challenged in court, the integrity and effectiveness of the judicial process require that a competent and spirited defense be presented. If public

officials refuse to provide that defense, the ability of the initiative proponents to intervene in the pending litigation, and to appeal an adverse judgment, is inherent in, and essential to the effective exercise of, the constitutional initiative power. To hold otherwise not only would undermine the constitutional power, it also would allow state executive branch officials to effectively annul voter-approved initiatives simply by declining to defend them, thereby permitting those officials to exceed their proper role in our state government's constitutional structure."

After the California Supreme Court's decision becomes final, further proceedings in the underlying federal litigation will proceed before the Ninth Circuit. (*Perry v. Brown* (9th Cir. No. 10-16696).)

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