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Proposition 8 Ruling Is a Game-Changer

By Jeff Krehely, Director of LGBT Research and Communications, Center for American Progress - 08/05/10 03:02 PM ET

U.S. District Chief Judge Vaughn R. Walker's decision yesterday in *Perry v. Schwarzenegger*, which struck down California's ban on marriage for gay couples, will be remembered as a turning point in the gay rights movement. And that's not because it was the first time a court struck down a ban on marriage rights for gay couples on constitutional grounds. As important and key as that outcome is, the big win was finally having a thorough, factual, and evidence-based analysis of what marriage for gay couples actually means.

The marriage fight has largely played out in the court of public opinion, usually via state ballot initiatives that sought to prevent gay people from marrying. These campaigns were incredibly heated, and each side made its case through 30-second sound bites on the radio or TV, shouting matches on CNN or Fox News, or one-sided editorial pieces. Real debate, complete with an examination of actual facts and evidence, was lacking. These fights were about politics, not policy.

But the *Perry* case changed all that. Judge Walker showed a keen focus on gathering, examining, and questioning evidence from both sides in the debate. The result is what gay rights supporters have long known: Opponents to marriage equality—and likely a whole host of other rights for lesbian, gay, bisexual, and transgender people—have no rational evidence for their opinions or beliefs. As the decision said, “Moral disapproval alone is an improper basis on which to deny rights to gay men and lesbians.”

Judge Walker's ruling artfully dismantled the primary arguments against allowing gay couples to marry, including that marriage's primary purpose is to support procreation, that having gay parents is somehow harmful to children, and that domestic partnerships are an adequate substitute for marriage. Both sides in the case had the same opportunity to present evidence and otherwise argue why they were right. Witnesses for the plaintiffs seeking to overturn Prop 8 and secure marriage for gay couples included psychologists, economists, and other experts. The defense offered just two witnesses, whose credibility could not withstand questions from Judge Walker or the plaintiffs.

But some conservatives are still fighting against marriage rights for gay couples despite the evidence and facts and the judge's rather robust legal reasoning. After the ruling Pat Buchanan suggested on MSNBC that Judge Walker was influenced by the fact that he is (rumored to be) gay. Perhaps Buchanan thinks the case should have been heard by someone who identifies as asexual so he or she wouldn't have a dog in the fight.

Newt Gingrich and Mike Huckabee are also jumping on the crashing antigay bandwagon. Gingrich said “Judge Walker's ruling overturning Prop 8 is an outrageous disrespect for our Constitution...Congress now has the responsibility to act immediately to reaffirm marriage as a union of one man and one

woman as our national policy.”

Not to be outdone, Huckabee said: “Today’s ruling tramples on the will of the people and sadly, it seems judicial activists are determined to advance their personal radical agenda. That’s why I believe it’s time for a federal constitutional amendment that defines marriage as a union between one man and one woman. That is the only action that will truly protect marriage.”

Some members of Congress attempted from 2002 to 2008 to pass the Federal Marriage Amendment, but it was repeatedly defeated. Why Gingrich and Huckabee think it would move now—after the painstakingly clear evidence presented in the *Perry* decision and an American public that increasingly favors relationship rights for gay couples—shows that they are merely thinking about the voters they need to appeal to in the 2012 Republican presidential primary.

Again, it’s a matter of politics over policy.

Thankfully, many conservatives are changing their views on the issue. Ted Olson, President George W. Bush’s solicitor general, is leading the case, along with his *Bush v. Gore* opponent David Boies. Judge Walker himself was originally appointed by President Ronald Reagan, and his nomination faced vehement opposition from Senate Democrats and a coalition of progressive organizations. My organization, the Center for American Progress, is partnering with the Cato Institute on work around the Proposition 8 case.

This mix of strange of bedfellows shows that evidence and facts are slowly winning the day. The Buchanans, Gingriches, and Huckabees of the world are likely lost causes. But they don’t matter in the long run. And thanks to yesterday’s ruling even their short-term viability is questionable.

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<http://thehill.com/blogs/congress-blog/civil-rights/112899-proposition-8-ruling-is-a-game-changer>

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