

Schwarzenegger under pressure from Republicans to defend Prop 8

Tuesday, 07 September 2010 09:06

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Supporters of Proposition 8 this month conjured up the ghost of Ronald Reagan to defend the voter-approved state constitutional amendment banning same-sex marriage. But, so far, it hasn't worked.

The Pacific Justice Institute, a conservative legal group, failed September 1 to get a California appeals court to force current Governor Arnold Schwarzenegger and Attorney General Jerry Brown to sponsor an appeal of the federal district court decision that struck down California's same-sex marriage ban.

The 3rd Appellate District of California summarily dismissed the lawsuit, *Beckley v. Schwarzenegger*, without comment. The Pacific Justice Institute (PJI) has reportedly appealed this decision to the California Supreme Court, but as of Monday, no such appeal had been recorded.

Brown and Schwarzenegger have until September 11 to enter a state-sponsored appeal in the 9th Circuit U.S. Court of Appeals of the landmark *Perry v. Schwarzenegger* decision. Brown has made clear he would not defend the law.

In response to U.S. District Court Judge Vaughn Walker's decision in *Perry*, Schwarzenegger issued a statement saying the "decision affirms the full legal protections and safeguards I believe everyone deserves." Two days later, he issued another statement, urging the judge not to delay enforcement of the decision, saying his administration "believes the public interest is best served by permitting the Court's judgment to go into effect, thereby restoring the right of same-sex couples to marry in California."

"Doing so is consistent with California's long history of treating all

people and their relationships with equal dignity and respect," said the statement.

But Schwarzenegger has twice vetoed bills from the legislature that sought to allow marriage licenses for same-sex couples, and the Republican Caucus of the California Assembly sent a letter to him August 31, pressuring him to defend Proposition 8.

“The importance of this court case to millions of Californians and indeed to countless other Americans cannot be overstated,” stated the letter. The legislators, like the PCI, argued that the governor’s failure to appeal the decision would jeopardize the “rule of law.”

PCI put it much more dramatically, saying that, by refusing to defend Proposition 8 in court, Attorney General Jerry Brown is creating a “dictatorial precedent whereby he could simply refuse to defend a law in court for which he does not agree.” This, said the PCI, would make the attorney general “more powerful than the legislature, the governor, and the people.”

“We are witnessing what is essentially a coup,” said PCI.

In his brief, PCI attorney Kevin Snider included an affidavit from former U.S. Attorney General Edwin Meese stating, under oath, “Governor Reagan understood it to be his sworn duty to defend all laws and constitutional provisions of the State of California.” He also said Reagan, as governor, “never refused or declined to defend a state law or state constitutional provision, regardless of his own opposition or dislike for a challenged provision.”

The claim may not be untrue, but it ignores the well-known fact that Reagan opposed the 1978 Briggs Initiative that sought to ban gay people from teaching in public schools. And it ignores the irony that Reagan appointed Walker to his federal bench seat at Meese’s recommendation, according to the conservative Cato Institute.

And it ignores the reality that Governor Ronald Reagan criticized the California initiative process when voters rejected a proposition to reduce state income taxes. In an op-ed piece for the *National Review* in 1973, Reagan sounded very much like marriage equality supporters in 2008. He said opponents of the initiative to reduce taxes had waged a “campaign of distortion and falsehood” against the measure and that many people who voted “no” were “confused by the TV blitz and newspaper advertising campaign staged by the opposition.”

“It was a victory for political demagoguery,” wrote Reagan, “a triumph for the unsubstantiated charge that sounds convincing in a thirty-second television commercial but which does more to confuse than inform.”

Most political observers seem to think there is very little chance Governor Schwarzenegger will involve his administration in the 9th Circuit appeal of Walker’s decision on Proposition 8. The Sacramento Bee newspaper quoted a spokesman for the governor, Aaron McLearn, as saying –in response to the Republican caucus letter—that the governor ““has been and will remain neutral in this case.”

Meanwhile, the Yes on 8 coalition’s appeal brief to the 9th Circuit is due September 17. A three-judge panel will hear the appeal –and the question of whether Yes on 8 has standing to bring the appeal – during the week of December 6.

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