

Nevada ruling on gay marriage may impact California's Prop. 8

By Scott Shafer, KQED-TV

Four days before the U.S. Supreme Court met to ostensibly discuss California's Proposition 8, a Nevada District Court issued a ruling upholding that state's ban on same-sex marriage. The ruling by Judge Robert C. Jones, a George W. Bush appointee, holds that Nevada's law does not violate the Equal Protection Clause of the 14th amendment.

That decision is at odds with Judge Vaughn Walker's 2010 decision that struck down Proposition 8 as a violation of both the Equal Protection and Due Process clauses. Walker also found that marriage is a fundamental right protected by the U.S. Constitution.

Lambda Legal, which represented the 16 plaintiffs in Nevada, will appeal Jones' decision to the 9th Circuit Court of Appeals.

Earlier this year, the 9th Circuit upheld Walker's decision but narrowed it considerably, declining to rule on his broader findings that marriage is a fundamental right. Unless the U.S. Supreme Court acts first, a new panel of 9th Circuit judges would consider the appeal to that Nevada ruling.

One well-placed legal observer told KQED that makes the Proposition 8 case something of a moving target for the Supreme Court.

Could it increase the likelihood that the Supreme Court will send the Proposition 8 case back to the 9th Circuit and ask them to address the fundamental questions addressed by Walker,

but skirted by 9th Circuit Judge Stephen Reinhardt in his Prop. 8 decision?

The answer may come Friday when the Supreme Court is expected to issue its decision on whether it will review the Proposition 8 case.