

## A biased ruling on gay marriage in California

U.S. District Chief Judge Vaughn R. Walker should have recused himself, but he had a legal and political statement he wanted to make.

**By Tim Wildmon,** August 13, 2010

The people of California spoke clearly at the polls in 2008 when they passed an amendment to the state Constitution that defined marriage as a union between one man and one woman. The public debate was held, the media wars were fought, both sides spent millions of dollars and the people voted for Proposition 8 by a margin of 52% to 48%.

The people's will carried the day, as it is supposed to — until U.S. District Chief Judge Vaughn R. Walker came along.

Last week, Walker nullified the votes of 7,001,084 people. In his decision to invalidate the constitutional amendment, he wrote: "That the majority of California voters supported Proposition 8 is irrelevant."

This judge believes that defining a person by sexual behavior is the same as defining a person by skin color. And given the fact that he is widely reported to be homosexual, it is obvious he believed this before the case was even brought to his courtroom. Walker should have recused himself, but he had a legal and political statement he wanted to make.

Colin L. Powell once said of this comparison: "Skin color is a benign, nonbehavioral characteristic. Sexual orientation is perhaps the most profound of human behavioral characteristics. Comparison of the two is a convenient but invalid argument."

This case will end up in the U.S. Supreme Court sometime soon, and there will be a 4-4 split in opinion, leaving the decision once again to one man in a black robe — Justice Anthony M. Kennedy.

The Constitution envisioned a system in which the judiciary would serve to check the excesses of the legislative or executive branches. But today, federal judges have far exceeded their intended role, becoming little gods in our republic. They have lifetime appointments, and their only accountability is the potential for impeachment.

But in the history of our country, only 15 judges have been impeached by the House of Representatives. Of those, four were acquitted, seven were convicted, three resigned and one is still pending. In other words, Congress almost never removes federal judges. For all practical purposes, the checks and balances of the federal government no longer exist. The judiciary trumps. Our country is basically now run by judges.

Thomas Jefferson warned about this possibility in a Sept. 28, 1820, letter to William Jarvis: "You seem ... to consider the judges as the ultimate arbiters of all constitutional questions; a very dangerous doctrine indeed, and one which would place us under the despotism of an oligarchy. Our judges are as honest as other men, and not more so ... and their power [is] the more dangerous, as they are in office for life and not responsible, as the other functionaries are, to elective control. The Constitution has erected no such single tribunal, knowing that to whatever hands confided, with corruptions of time and party, its members would become despots."

The Founding Fathers understood the selfish and sinful nature of man and therefore divided the government up so that no one branch would be all powerful over the other branches or over the American people. What we have today is judicial tyranny and exactly what Jefferson feared. Unless Congress asserts its constitutional power of impeachment, judges will continue to impose their personal opinions on whatever controversy is before them, regardless of what the Constitution does or does not say.

In his ruling, Walker wrote: "The evidence shows conclusively that moral and religious views form the only basis for a belief that same-sex couples are different from opposite-sex couples."

This is clearly a judge imposing his personal opinions. What Walker is saying is that you cannot hold a valid view about marriage if you base it on religion or morality. Those are illegitimate considerations in his worldview.

Contrast Walker's dismissal of our country's rich Judeo-Christian heritage with George Washington's affirmation in his famous farewell address: "Of all the dispositions and habits which lead to political prosperity, religion and morality are indispensable supports."

If moral and religious values are no longer valid, what does the judge put in their place? I would suggest, as Jefferson wrote in the Declaration of Independence, that we continue to rely on, and revere, "the Laws of Nature and Nature's God."

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