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California county renews gay marriage fight

By LISA LEFF
Associated Press

California's Imperial County renewed its effort to defend the state's gay marriage ban by asking Friday to join an attempt to overturn the court ruling that struck down the measure known as Proposition 8.

Sponsors of the voter-approved gay marriage ban so far have taken the lead in defending the voter-approved law in court, after former Gov. Arnold Schwarzenegger and former Attorney General Jerry Brown refused to do so.

But the move by sponsors has been questioned because they are not elected government representatives, which threatens the viability of their case before the 9th U.S. Circuit Court of Appeals.

Imperial County's newly elected clerk-recorder, Chuck Storey, on Friday asked the 9th Circuit panel handling the appeal to allow him to step in as the primary defendant if the coalition of religious and legal groups that sponsored Proposition 8 is removed.

In a declaration accompanying his motion, Storey, a 57-year-old Republican, said he should be allowed to intervene because his office is responsible for issuing and recording marriage licenses in Imperial County, where 70 percent of voters approved Proposition 8 in November 2008.

"I am concerned that an unappealable ruling by a single district court striking down Proposition 8 would create significant confusion for me and other Imperial County deputy clerks and officials in the performance of our legal duties regarding marriage," Storey said.

The county Board of Supervisors and its deputy clerk first sought to intervene in the case last year, when U.S. District Judge Vaughn Walker held a trial on a lawsuit brought by two gay couples and the city of San Francisco challenging the measure's constitutionality.

Walker overturned the gay marriage ban in August as a violation of gay Californians' civil rights. He also ruled that Imperial County was ineligible to be part of the case.

The county subsequently appealed to the 9th Circuit, reiterating its argument that staff members who issue marriage licenses and perform weddings had a direct stake in the fate of Proposition 8. But the court also dismissed the request, asking why the head county clerk at the time, Dolores Provencio, wasn't part of the case.

"Were Imperial County's elected county clerk the applicant for intervention, that argument might have merit," the court said.

Storey succeeded Provencio, who had declined to get involved in the case before she retired last month.

San Francisco Chief Deputy City Attorney Therese Stewart believes it's too late for Imperial County to intervene, even though it now has a clerk willing to defend Proposition 8.

The deadline for appealing Walker's ruling passed in September, she said.

"Having failed timely to file a notice of appeal, the county clerk for Imperial County cannot now create jurisdiction by filing a motion to intervene," Stewart said.

The 9th Circuit court currently is mulling the constitutionality of Proposition 8. But the three-judge panel said in January it can't reach a decision until it knows if ballot proposition sponsors have legal standing to step in when the attorney general and governor refuse to defend voter-approved initiatives in court.

The California Supreme Court agreed last week to consider the standing issue and to rule on the 9th Circuit question late in the year.

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