

Gary William Hallford, T-58516

MAR 15 2011

Folsom State Prison, 3-B1-27L

FILED _____
DOCKETED _____ DATE _____
INITIAL _____

P.O. Box 715071

Represa, CA 95671-5071

In Pro Per

Court of Appeal for the Ninth Circuit

Kristin Perry, et al.) No. 10-16696 ;
)
 vs.) No. 3:09-cv-02292-VRW ,
) N.D. California, San Francisco
 Edmund G. Brown, Jr., et al.)
) BRIEF OF AMICUS CURIAE

Introduction

I submitted an informal MOTION for permission to file this brief on August 18, 2010, and it was received by the Clerk of this Court on August 20, 2010. As noted in the attached Exhibit, it was logged as being part of Hallford v. Mendez, 10-15381. I finally received a listing of the 320 docket entries, as well as an exhaustive list of relevant counsel, on March 11, 2011.

As the request to file this brief was devoid of the case title, and the political implications of this particular case, it is assumed the Court granted me leave to file this brief per FRAP 29. Furthermore, as an unrepresented prisoner without formal legal training, I am broadly utilizing Circuit Rule[s] 30-3; 32-5; et al. Also, FRAP 2 may be relevant due to the vast complexity of this case, and the absolute impossibility to read the entire text, or make sufficient copies for the Court's use. For the aforementioned reasons, this text might lack certain sophistication, but should be included nonetheless.

Rationale Behind Brief

As a result of a highly contested election, **Proposition 8** eliminated the ability of same-sex couples to be legally married in the State of California. The right for same-sex couples to be legally wed was a long fought civil rights matter which has gone both ways in both public opinion polls, and in the social consciousness. After having been legalized, a coalition of many different religious orders, and political personnel, chose to devote exorbitant time, effort, money, and judicial expertise, into regaining the earlier prohibition. Conversely, those who had been denied the assorted legal rights afforded to heterosexual married couples, have fought long and hard to regain their hard-won right to marry. As a disinterested observer it would be quite easy to ignore the assorted disparities between those "allowed" to marry, and those "forbidden", but from the most pragmatic viewpoint, I see the validity of both arguments, and must conclude that the only legitimate answer is for this Court to rule in favor of the plaintiffs (Kristin Perry, et al.). The following argument should elucidate my position sufficiently enough to eliminate doubt of my rationale:

Argument

The primary focus of the Defendant's position has appeared to be their interpretation of religious scripture as defining "marriage" as a union between one man and one woman. While this may be a legitimate claim fully ensconced in the **1st Amendment**, it does not provide them with the authority to enforce their doctrinal beliefs upon others. The Founders [of the Constitution]

were adequately clear by stating "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech...". Since membership in a religious group is a matter of personal choice, it is reasonably accepted that membership could be limited to those who think and/or believe in the same doctrine[s]. This is readily apparent by the innumerable varieties of Jewish, Christian, Islamic, Hindu, Buddhist, and other religious sects. If the group preaches a dogma someone is uncomfortable with, they are free to join a different religious group. The same is observed in political parties, social clubs, and virtually everywhere more than two human beings congregate.

While there is significant concern that "exclusion" from a private facility might show prejudice against someone's race, creed, national origin, gender, or a myriad of other divisors, if it is "private", there should be an ability to choose whom the membership associates with. However, if the exclusive party is a "public" entity (school, government license, et al...), both the 9th & 14th Amendments become significant enough for interdiction of the deprivation. Section 1, of the Fourteenth states: "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without

due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." (emphasis mine). Also of note, is the short and succinct text of the Ninth: "The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people."

From recent decades, there has been an "anti-intellectual" segment of the population, who have effectively removed classic literature from the classroom. Be it the removal of Huckleberry Finn, for Mark Twain's use of the word "nigger"; The Socratic Dialogues, for Plato's reportage of homosexual acts in Athenian bath houses; or assorted other explicit or implicit bans, there has been a significant attempt at denying educational opportunity to those who do not have "regular contact" with certain minority groups. When a person is denied access to various view points, they are deprived of an opportunity to learn the other person's side of the argument. While the press tries to portray life's conflicts as being linear, reality is far more abstract: right or left; conservative or liberal; up or down; black or white; ad infinitum; are not "accurate". There are far more "shades of gray", than whites or blacks....

Personal observation of those who agree with Proposition 8, has been overwhelmingly from those who either choose to follow a religious leader's dogma, or neglect to investigate the real impact of the ongoing deprivation of the right to legally marry. Almost every time the subject comes up, someone interjects the old adage: "Adam and Eve, not Adam and Steve." Though they might

be sincere in their beliefs, they are interposing them upon others, and have done so contrary to the First Amendment, and Article I, Section 4, of the California State Constitution: "Free exercise and enjoyment of religion without discrimination or preference are guaranteed. This liberty of conscience does not excuse acts that are licentious or inconsistent with the peace or safety of the State. The Legislature shall make no law respecting an establishment of religion...". (Emphasis mine). The comment of "licentious", would appear more as a prohibition against actions with minors, than between two consenting adults (i.e.: Hugh Hefner can marry a 20 year old at age 80+, but Jane Doe could not marry an adult, when she is 8± years old...).

In reference to the Ninth Amendment, I personally can find no legitimate authority to ban the contractual agreements between two consenting adults who happen to be homosexual. To preclude two consenting adults from forging the marriage contract (with all the rights and responsibilities therein...), but allow them to sell property to one another, or rent property to each other, or for one to hire the services of the other, contraindicates any perception of "equal protection" (as noted in 14th Amendment) or the State's acceptance of "rights not enumerated". To disallow the opportunity of marriage from one group, the RIGHT OF OTHERS to marry, must be brought under scrutiny. Incidentally, those who have been denied their right to enter into a matrimonial contract solely on the basis of their sexuality, should place liability upon those who supported Proposition 8, for any losses incurred for protection of their human rights.

CONCLUSION

For the foregoing reasons, and too many other to adequately reference, I believe that Proposition 8 was unconstitutional, and violates both State and Federal law. If discrimination is allowed against one subset of humanity, it allows the de facto discrimination of others. I am currently prosecuting another action against the United States State Department, over similar age-related issues: Hallford v. Clinton, 10-17547 (9th Cir.), and can not in good conscience fight for one one group, while ignoring another. Though I am heterosexual, I have innumerable friends who are members of the LGBT community, and have witnessed the vagaries of discrimination they face. Furthermore, a United States citizen has an inherent responsibility to work to protect the rights of others, and as Thomas Jefferson so deftly noted in the second paragraph of The Declaration of Independence: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness." When my neighbor suffers, I too am deprived of happiness; when another is treated with injustice, I too am affected, as are all other citizens, and those who visit. If we are to "LEAD BY EXAMPLE", we must, to allow anyone's persecution, be willing to persecute. I refuse to follow that ideology, and therefore compassionately AGREE WITH THE PLAINTIFFS and ask this Court to rule accordingly.

DATED: March 12, 2011

Respectfully submitted,



Points and Authorities

<u>Cases</u>	<u>Page[s]</u>
<u>Hallford v. Clinton</u> , 10-17547 (9th Cir. <active>);	6
<u>Hallford v. Mendez</u> , 10-15381 (9th Cir. <active>);	1

Legal Authorities

Circuit Rule[s] 30-3; 32-5; et al.,	1
California State Constitution, Article I, Section 4;	5
California Proposition 8;	2, 4, 5 & 6
Federal Rules of Appellate Procedure (FRAP) 2 & 29;	1
United States Constitution,	
First Amendment;	2 & 5
Ninth Amendment;	3, 4 & 5
Fourteenth Amendment;	3 & 5

OTHER

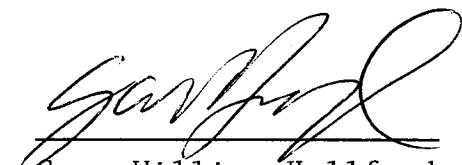
"The Adventures of Huckleberry Finn", by Mark Twain;	4
"The Socratic Dialogues", by Plato.	4
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PROOF OF SERVICE

I, Gary William Hallford, hereby certify that I placed the attached BRIEF OF AMICUS CURIAE, in a postage paid envelope and deposited it in the United States Mail, per the "Prison Mailbox Rule", addressed to the following party:

Clerk of the Court
Office of the Staff Attorneys
Court of Appeal for the Ninth Circuit
P.O. Box 193939
San Francisco, CA 94119-3939

I further declare under penalty of perjury the foregoing is true and correct, and this declaration was executed on March 12, 2011, in the confines of Folsom State Prison, in Represa, California.



Gary William Hallford

EXHIBIT "A"

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RECEIVED
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

AUG 20 2010

FILED
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DATE

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Folsom State Prison, 1-D2-14L

P.O. Box 715071

Represa, CA 95671-5071
In Pro Per

10-15381

Motions Clerk -

August 18, 2010

Please excuse the informality of this request and allow it to proceed forthwith.

I hereby motion this Court for the opportunity to file an Amicus Brief on the current case involving California Proposition #8. Furthermore, since I do not know the proper case citation(s) for this case, I also request the necessary docket information to file the Brief. I do not anticipate the Brief to exceed five pages, plus Points and Authorities.

I declare under penalty of perjury all comments on this Motion are true and accurate, and were made on August 18, 2010, in Folsom State Prison, in Represa, California.

Respectfully submitted,


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