

No. 10-16696
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

KRISTIN PERRY, et al.,
Plaintiffs-Appellees,

v.

ARNOLD SCHWARZENEGGER, et al.
Defendants,

and

DENNIS HOLLINGSWORTH, et al.,
Defendant-Intervenors-Appellants.

**Appeal from United States District Court for the Northern District of
California**
Civil Case No. 09-CV-2292 VRW (Honorable Vaughn R. Walker)

**BRIEF OF *AMICUS CURIAE* OF PARENTS AND FRIENDS OF EX-GAYS
(PFOX) AND DESERT STREAM MINISTRIES IN SUPPORT OF
DEFENDANT-INTERVENORS-APPELLANTS',
SUPPORTING REVERSAL**

Dean R. Broyles, Esq.
James M. Griffiths, Esq.
Attorneys for Amicus Curiae
THE WESTERN CENTER FOR LAW & POLICY
539 West Grand Avenue
Escondido, California 92025
(760) 747-4529; (760) 747-4505 Fax

FRAP RULE 26.1 DISCLOSURE STATEMENTS

Amicus Curiae, Parents and Friends of Ex-Gays (PFOX) has not issued any shares to the public, and it has no parent company, subsidiary, or affiliate that has issued shares to the public. Thus, no publicly held company can hold more than 10% of stock.

Amicus Curiae, Desert Spring Ministries (DSM) has not issued any shares to the public, and it has no parent company, subsidiary, or affiliate that has issued shares to the public. Thus, no publicly held company can hold more than 10% of stock.

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	iii
STATEMENT OF INTEREST OF AMICUS CURIAE.....	1
SUMMARY OF THE ARGUMENT.....	2
STANDARD OF REVIEW.....	4
LEGAL ARGUMENT.....	5
I. THE DISTRICT COURT’S FINDINGS OF “FACT” REGARDING THE IMMUTABILITY OF SEXUAL ORIENTATION ARE DUE NO DEFERENCE AND, IN ANY EVENT, ARE FACTUALLY INCORRECT.....	5
II. THE ISSUE OF IMMUTABILITY IS RELEVANT FOR THIS COURT TO CONSIDER IN LIGHT OF THE FUTURE IMPLICATIONS INHERENT IN THE DISTRICT COURT’S FINDINGS OF “FACT” ON THAT SUBJECT.....	7
III. THE EXISTANCE OF THOUSANDS OF EX-HOMOSEXUALS AND THE MYRIAD OF ORGANIZATIONS DEDICATED TO ASSISTING INDIVIDUALS WHO HAVE RENOUNCED THEIR SAME-SEX ATTRACTION PROVIDE JUDICIALLY COGNIZABLE LEGISLATIVE FACTS IN SUPPORT OF AMICI’S POSITION THAT SAME-SEX ATTRACTION IS NOT AN IMMUTABLE CHARACTERISTIC	9
A. Richard Cohen, M.A.’s Story.....	10
B. Alan Medinger’s Story.....	16

C. Kristin (Johnson) Tremba, M.Div.’s Story.....	22
D. Brenna Kate Simonds’ Story.....	25
CONCLUSION.....	29

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Berger v. City of Seattle</i> , 569 F.3d 1029, 1035 (9th Cir. 2009).....	4
<i>Dunagin v. City of Oxford</i> , 718 F.2d 738, 748 n.8 (5th Cir. 1983).....	5
<i>Equality Found. v. City of Cincinnati</i> , 54 F.3d 261, 265 (6th Cir. 1995).....	4
<i>Free v. Peters</i> , 12 F.3d 700, 706 (7th Cir. 1993).....	4, 5
<i>Frontiero v. Richardson</i> , 411 U.S. 677, 686 (1973).....	8
<i>High Tech Gays v. Defense Indus. Sec. Clearance Office</i> , 895 F.2d 563, 574 (9th Cir. 1990).....	2, 7
<i>Lockhart v. McCree</i> , 476 U.S. 162, 168-69 n.3 (1986).....	5
<i>Massachusetts Board of Retirement v Murgia</i> , 427 US 307, 313 (1976).....	8
<i>Menora v. Illinois High Sch. Ass'n</i> , 683 F.2d 1030,1036 (7th Cir. 1982).....	5
<i>San Antonio School District v Rodriguez</i> , 411 US 1, 28 (1973).....	8
<i>United States v. Sahhar</i> , 56 F.3d 1026, 1028 (9th Cir. 1995).....	4
<i>United States v. Singleterry</i> , 29 F.3d 733, 740 (1st Cir. 1994).....	4
MISCELLANEOUS	
Advisory Committee Note, Fed. R. Evid. 201.....	5

STATEMENT OF INTEREST OF THE *AMICUS CURIAE*

Amicus Parents and Friends of Ex-Gays & Gays (PFOX) is a national non-profit organization that supports families, advocates for the ex-gay community, and educates the public on sexual orientation. PFOX's statement of principles is found at www.pathinfo.org. PFOX promotes an inclusive environment for the ex-gay community, and works to eliminate negative perceptions and discrimination against former homosexuals. PFOX conducts public education and outreach to further individual self-determination and respect for all Americans, regardless of their sexual orientation.

Amicus Desert Stream Ministries (DSM), a Missouri nonprofit corporation, is a Christian equipping ministry established in 1980. It is founded upon the transforming power of Jesus Christ to heal those struggling with unwanted sexual attractions or behavior (e.g. homosexuality, sexual addiction, marital infidelity), as well as upon proven psychological principles that are appropriate for the laity to exercise. We equip pastors and lay leaders within their local churches to lead healing groups in their faith communities, namely an in-depth healing/discipleship course entitled *Living Waters: Sexual and Relational Redemption in Christ*. At the core of the program is the realistic hope that individuals with same-sex attraction can choose a course of action that enables them to identify and live as whole-enough heterosexuals. As of 2010, DSM has released over 125 groups in churches

in over 30 states. DSM also has equipped churches in over 45 countries to run Living Waters groups.

In light of the district court's findings of "fact" regarding the purported immutability of homosexuality and the contrary position of *amici* that individuals can and do change their sexual orientation, these organizations have an interest in petitioning this Court. This brief is filed pursuant to consent of Counsel of Record for all parties.

SUMMARY OF ARGUMENT

The sole issue addressed in this brief is whether same-sex attraction is a fixed and immutable characteristic like race. This issue is critically important because, if a court were to erroneously decide that same-sex attraction is an immutable characteristic, as the district court has in this case, a tribunal in the future might be led to further conclude that homosexuals are a "suspect class" for purposes of the Equal Protection Clause. Such an erroneous conclusion would improperly subject laws like Proposition 8 to "strict scrutiny" rather than the existing legally appropriate "rational basis" review.

Like every other federal court of appeals to address the issue, the Ninth Circuit has held that "homosexuals do not constitute a suspect or quasi-suspect class entitled to greater than rational basis scrutiny." *E.g., High Tech Gays v.*

Defense Indus. Sec. Clearance Office, 895 F.2d 563, 574 (9th Cir. 1990). And although the district court scrupulously avoided the specific *legal* issue of whether homosexuals qualify as a suspect class under the Equal Protection Clause when it determined that Proposition 8 would not survive even “rational basis” review, the lower court nonetheless made several unsupported *factual* findings which directly bear on the issue of immutability, improperly implying a “strict scrutiny” standard. Specifically, the district court made three findings of “fact” which directly state or strongly imply that the homosexual sexual orientation is an immutable characteristic. It is these so-called “facts” which are refuted in this brief.

Same-sex attraction, also known as “sexual orientation,” is a transient and changeable personal characteristic. The overwhelming factual evidence that supports the very mutable nature of same-sex attraction was completely ignored by the district court in its findings. *Amici* will demonstrate herein that same-sex attraction is not immutable or pre-determined, but is in fact changeable and mutable.

This brief documents the compelling individual stories of four of the thousands of men and women who, although formerly deeply entrenched in same-sex relationships, are now leading successful and fruitful lives in opposite-sex relationships. This brief will not address the medical and scientific evidence, as that issue is thoroughly addressed in the brief filed by Herbert G. Gray on behalf of

amici Paul McHugh, M.D., Professor of Psychology and Psychiatry. In addition to the scientific and medical evidence, the well documented existence of ex-gays clearly demonstrates that same-sex attraction is not a pre-determined, unchangeable and immutable characteristic, like race, which would subject Proposition 8 to heightened scrutiny.

STANDARD OF REVIEW

The district court's rulings that Proposition 8 violates the Equal Protection and Due Process Clauses of the United States Constitution, *see* ER 152, 167, are questions of law reviewed *de novo*. *United States v. Sahhar*, 56 F.3d 1026, 1028 (9th Cir. 1995). The same standard of review also applies to any mixed questions of law and fact underlying these judgments. *Berger v. City of Seattle*, 569 F.3d 1029, 1035 (9th Cir. 2009). Specifically relevant to our inquiry here, the district court's operative "factual" determinations relate to legislative facts and are therefore also subject to *de novo* review¹.

¹ Appellate review of legislative facts such as those at issue here is "plenary." *Free v. Peters*, 12 F.3d 700, 706 (7th Cir. 1993) (Posner, J.); *see also, e.g., Equality Found. v. City of Cincinnati*, 54 F.3d 261, 265 (6th Cir. 1995) (subjecting district court "findings designed to support 'constitutional facts' (to wit, the existence of a 'quasi-suspect' class, or of a fundamental right which was invaded by the Amendment) ... to plenary review"), *vacated on other grounds*, 518 U.S. 1001 (1996); *United States v. Singleterry*, 29 F.3d 733, 740 (1st Cir. 1994) ("The clear error standard does not apply ... when the fact-finding at issue concerns

LEGAL ARGUMENT

I. THE DISTRICT COURT’S FINDINGS OF “FACT” REGARDING THE IMMUTABILITY OF SEXUAL ORIENTATION ARE DUE NO DEFERENCE AND, IN ANY EVENT, ARE FACTUALLY INCORRECT.

The district court dedicates nearly 100 pages of its ruling to recounting the trial proceedings, identifying the evidence it considered, and setting forth 80 separate findings of fact, as though the legal issues in the case turned on *adjudicative facts* rather than *legislative facts*. See ER45-144. However, the key legislative fact “findings” upon which the district court bases its decision are due no deference from this Court. See, e.g. *Free v. Peters*, 12 F.3d 700, 706 (7th Cir. 1993) (Posner, J.) and FN 1, *supra*.

‘legislative’ ... facts. ... Accordingly, we need not defer to the lower court’s assessment of the ‘evidence’”); *Menora v. Illinois High Sch. Ass’n*, 683 F.2d 1030,1036 (7th Cir. 1982) (Posner, J.) (same). Nor is appellate review restricted by the testimony and evidence considered below, for plainly “[t]here are limits to which important constitutional questions should hinge on the views of social scientists who testify as experts at trial.” *Dunagin v. City of Oxford*, 718 F.2d 738, 748 n.8 (5th Cir. 1983) (en banc) (plurality); see also *Lockhart v. McCree*, 476 U.S. 162, 168-69 n.3 (1986); Advisory Committee Note, Fed. R. Evid. 201(federal rules leave “judicial access to legislative facts” unconstrained by “any limitation in the form of indisputability, any formal requirements of notice other than those already inherent in affording opportunity to hear and be heard and exchanging briefs, and any requirement of formal findings *at any level*”) (emphasis added).

In addition, although the standard the Court was required to apply for the purposes of Equal Protection analysis was the “rational basis” standard, the district court infused its opinion with “factual” findings and legal discussions more appropriate to “strict scrutiny” review. Specifically, the district court made three findings of “fact” that are relevant to whether an individual characteristic, such as sexual orientation, is immutable, which, in turn, might tend to improperly invoke a strict scrutiny review of Proposition 8. Although, as will be discussed in more detail below, it was not directly relevant to rational basis analysis the district court made three finding of fact which bear on the issue of the “immutability” of sexual orientation. In findings of fact numbers 44, 45 and 46, the district court made the following “determinations”:

“44. Sexual orientation is commonly discussed as a characteristic of the individual. Sexual orientation is fundamental to a person’s identity and is a distinguishing characteristic that defines gays and lesbians as a discrete group. Proponents’ assertion that sexual orientation cannot be defined is contrary to the weight of the evidence.” *See* ER, 107.

“45. Proponents’ campaign for Proposition 8 assumed voters understood the existence of homosexuals as individuals distinct from heterosexuals.” *See* ER, 108.

“46. Individuals do not generally choose their sexual orientation. No credible evidence supports a finding that an individual may, through conscious decision, therapeutic intervention or any other method, change his or her sexual orientation.” *See* ER, 109.

Those factual determinations, while ultimately irrelevant to the district court's decision, are in fact erroneous and legally dangerous "time bombs" inserted in the district court's opinion that cannot go unaddressed by this honorable Court.

II. THE ISSUE OF IMMUTABILITY IS RELEVANT FOR THIS COURT TO CONSIDER IN LIGHT OF THE FUTURE IMPLICATIONS INHERENT IN THE DISTRICT COURT'S FINDINGS OF "FACT" ON THAT SUBJECT

Like every other federal court of appeals to address the issue, the Ninth Circuit has squarely held that "homosexuals do not constitute a suspect or quasi-suspect class entitled to greater than rational basis scrutiny." *E.g., High Tech Gays v. Defense Indus. Sec. Clearance Office*, 895 F.2d 563, 574 (9th Cir. 1990). Specifically, this Court has held that that suspect or quasi-suspect classification requires a showing that a group (1) has suffered a history of discrimination, (2) is defined by an *immutable characteristic*, and (3) is politically powerless, and that gays and lesbians do not satisfy the second and third requirements. *Id.* at 573-74 (emphasis added).

Yet this established precedent did not restrain the district court from exploring the tempting possibility of applying strict scrutiny to Proposition 8 when in its meandering opinion, the court stated: "Although Proposition 8 fails to possess even a rational basis, the evidence presented at trial shows that *gays and lesbians are the type of minority strict scrutiny was designed to protect.*

Massachusetts Board of Retirement v Murgia, 427 US 307, 313 (1976)(noting that strict scrutiny may be appropriate where a group has experienced a “‘history of purposeful unequal treatment’ or been subjected to unique disabilities on the basis of stereotyped characteristics not truly indicative of their abilities” (quoting *San Antonio School District v Rodriguez*, 411 US 1, 28 (1973)) (emphasis added). See ER, 156.

As Proponents demonstrated at trial and as *Amici* will show in this brief, far from being an immutable characteristic² (like race) sexual orientation is a complex and amorphous phenomenon that defies consistent and uniform definition. See ER 1489-1493. As Proponents demonstrated at trial and as *Amici* will show herein, however it is defined, sexual orientation is a ***mutable*** characteristic which can shift over time and does so for a significant number of people. *Id.* And while its nature and determinants are not fully understood, it is plain that sexual orientation is not “determined solely by accident of birth.” *Frontiero v. Richardson*, 411 U.S. 677, 686 (1973) (plurality). *Id.* Both the evidence at trial and the evidence embodied in this brief clearly show that many people freely choose and change their sexual orientation. *Id.*

² Although the district court made findings of “fact” regarding the two other factors relevant to achieving strict scrutiny under the Equal Protection Clause, namely “a history of discrimination” and “political powerlessness,” *Amici* only address the issue of immutability in this brief.

III. THE EXISTANCE OF THOUSANDS OF EX-HOMOSEXUALS AND THE MYRIAD OF ORGANIZATIONS DEDICATED TO ASSISTING INDIVIDUALS WHO HAVE RENOUNCED THEIR SAME-SEX ATTRACTION PROVIDE JUDICIALLY COGNIZABLE LEGISLATIVE FACTS IN SUPPORT OF AMICI'S POSITION THAT SAME-SEX ATTRACTION IS NOT AN IMMUTABLE CHARACTERISTIC

The District Court's factual findings regarding immutability are best disputed by the existence of a multitude of organizations in the United States and around the world who, like *Amici*, have helped thousands of men and women successfully leave unwanted homosexuality behind them and who now live happy heterosexual lives.³ Below are the stories of four individuals, two men and two

³ In addition to the four organizations represented herein as *Amici*, a partial list of the other organizations who in the U.S. around the world provide assistance to those struggling with same-sex attractions are as follows: **Alive in Christ** (<http://www.alive-in-christ.net/ministry.html>); **Courage** (www.couragerc.net); **Family Watch International** (www.familywatchinternational.org); **The German Institute for Youth and Society** (www.dijg.de); **Homosexual Anonymous** (www.ha-fs.org); **International Healing Foundation** (formerly Gay to Straight) (www.comingoutstraight.com or <http://www.gaytostraight.org>); **Jews Offering New Alternatives for Healing, Inc.** (<http://jonahweb.org>); **National Association For Research & Therapy of Homosexuality (NARTH)** (www.narth.com); **Witness Freedom Ministries** (<http://www.witnessfortheworld.org>); **Parakaleo** (www.parakaleo.co.uk); **People Can Change** (<http://www.peoplecanchange.com>); **Positive Alternatives to Homosexuality (PATH)** (<http://www.pathinfo.org>); **True Freedom Trust** (<http://www.truefreedomtrust.co.uk>); **VENSER** (<http://www.venser.org>); **Regeneration Ministries** (<http://www.regenerationministries.org>).

women, who although once deeply entrenched in an active homosexual lifestyle, are now happily married to persons of the opposite sex and have children. The fact that there are well adjusted ex-gays clearly demonstrates that same-sex attraction is not an immutable characteristic.

A. Richard Cohen, M.A.'s Story

Richard Cohen, M.A., is a former homosexual who is now married with 3 children who struggled for much of his life with unwanted same-sex attraction (SSA). Richard is the founder of the International Healing Foundation (IHF) and the author of *Coming Out Straight*, *Gay Children Straight Parents*, *Let's Talk About Sex*, and *Alfie's Home*. Richards' journey is found at <http://www.gaytostraight.org/RichardCohenStory.asp>. Following are excerpts from his story.

“In childhood and adolescence, I remember my father screaming at us and my mother clinging to me. I was quite distant from him and too close to her. When I was five, a friend of the family came to live with us. He gained my trust, won my heart, and sexually abused me. In addition, I was more artistic, whereas my father and brother were more athletic. My dad would emotionally beat my brother Neal, and then Neal would beat on me. These are some of the causes that led to my experiencing same-sex attractions.

From middle school, I began to experience same-sex attractions... My same-sex desires got stronger with each passing year. I had more sexual experiences with school friends. For them it was a novelty, but for me it was a growing obsession. At the same time, I tried to act "normal," so I had girlfriends. But this growing obsession for a man continued to haunt me ...

In my first year of college, I had several boyfriends, each lasting several months. After one visit home, my father wrote a letter that hurt me deeply. At the same time, I felt suffocated by my current boyfriend, Mike. Besides all that, my schoolwork was overwhelming. I decided to take a bottle of Bufferin and end it all. However, I woke up in the middle of the morning sick as a dog, and still alive. I called my sister, who lived nearby. She came over and took me to the emergency room at the hospital where they pumped my stomach and stabilized my condition.

I recovered, continued therapy, went back to school, ended my relationship with Mike, changed my major to theater, and felt a bit more hopeful. In my second year of school, I met Tim, an art major. We would become lovers for the next three years...

Since I loved Tim, I wanted to see why he loved this Jesus so much. For the first time in my life, I began reading the New Testament. As part of my Jewish upbringing, I was both bar-mitzvahed and confirmed, studying only the Old Testament.

I had always been on a spiritual quest, trying to find the meaning and purpose of life. I tried so many kinds of faiths and ways: Judaism, Buddhism, and therapies. Then I met Jesus. He was a remarkable individual. In fact, he was the kind of man I had always wanted to be myself. What I admired in him was that his thoughts, feelings, words, and deeds were one. He was a congruent man, the same inside as he was on the outside. He spoke of forgiveness and God's grace. These were new concepts for me. I wanted to be like him. This began my journey as a Christian...

More and more, Tim and I knew that homosexuality was not compatible with God's Word, so we eliminated the physical part of our relationship...

While performing, I met my wife-to-be...In 1982, Jae Sook and I married, and I was on my way to fulfilling my third dream. The first few months were wonderful. I told her about what I thought was my

homosexual past. Then the problem resurfaced. I felt so much rage toward my wife. I projected onto Jae Sook all the pent-up hostility I had previously felt toward my mother...

At home, Dr. Jekyll turned into Mr. Hyde, a rageaholic. I had become what I vowed I would never be-just like my father. My wife soon became pregnant with our first child. I knew I must begin therapy again. So, in May 1983, while living in New York City, I went to see a noted psychologist. For one year, I attended weekly individual and group sessions.

It was the beginning of my journey out of homosexuality. Slowly, my heart began to heal as I grieved the effects of the sexual abuse in therapy and I spent time with my friend. However, there was still a deep wound in the pit of my soul. We had had a second child during all this. Jessica was a beautiful girl...

By the grace of God, I found a Christian friend who was willing to help me heal the homo-emotional wounds of my past. He himself was quite stable and comfortable in his masculinity. I cannot describe everything that took place between David and me. Yes, his name was

David. God is just. It was Dave who abused me at five, and it was David who helped me heal at thirty-five!...

In that instant, the connection between my childhood abuser and I was cut, and I became free for the first time in my life. With that sense of freedom, I sobbed for about an hour in David's arms. It was such a release and relief to know that I wasn't responsible for what had happened and that God had forgiven me. In those moments of release, I found my freedom from same-sex desires. Cutting this neurological connection to the sexual desires freed me from thirty years of relentless pain and an endless pursuit of men.

Jae Sook and I attended an EXODUS Conference in 1987, just after I had my breakthrough with David. (EXODUS is the umbrella organization for the ex-gay Christian ministries around the world.) There I prayed to God to show us the next step-what to do and where to go...

At the same time, I began graduate school to obtain my master's degree in counseling psychology. After graduation, through the guidance of God, I founded the International Healing Foundation. My vision was to establish healing centers throughout the world to help

men, women, and children to experience their value as children of God. This is still my vision, as we continue our journey.

I began to give public presentations on the process of transitioning from homosexuality to heterosexuality. I thought that, because of my heart toward the homosexual community, they would see that I was not their enemy, but just presenting another possibility for those who desire to change. I was naive. We received death threats at our home and at my office! We received obscene telephone calls at home with angry, venomous words of threat and accusation. The Gay and Lesbian Task Force of the mayor's office in Seattle requested that the American Red Cross fire me from my position as an HIV/AIDS educator. Many in the homosexual community have felt threatened by my work. I understand their fears and their pain.

Over the past twelve years, I traveled extensively throughout the States, giving presentations about the healing of homosexuality on college and university campuses, in churches, in mental health institutions, at therapeutic conferences, and on TV and the radio.

Another blessing occurred five years ago. God gave us a precious son, Alfie. He came on the foundation of our (God's) battles and victories.

Now, Jae Sook and I and our three children are growing more deeply in love.

I love God with all my heart, mind, and soul. I live to end His suffering and pain. I pray the understanding of same-sex attractions and the treatment plan for recovery that I am about to share is a blessing to you and those whose lives you will touch. I have learned over the past twelve years of counseling hundreds of men, women, and adolescents, and working with thousands of people in healing seminars around the world, that no matter what issue or issues we are facing in our lives, our wounds all originate from the same sources.⁴

B. Alan Medinger's Story

Alan Medinger is a former homosexual who, having come out of the homosexual lifestyle twenty five years ago, was married with two daughters and six grandchildren. Alan, who is now deceased, was founder of Regeneration and is the author of *Growth into Manhood*. Alan's journey is found at http://www.peoplecanchange.com/About_Us_Medinger.htm. Following are excerpts from his story.

⁴ <http://www.gaytostraight.org/RichardCohenStory.asp>

“My journey into homosexuality fits the same pattern that I have seen over and over again in many other men I have worked with. I was an unplanned child, born to parents who would have preferred a girl. My older brother was more athletic and generally fit the "all boy" model far better than I, and somehow, he became Dad's and I became Mom's...

My father was subject to severe depression, so severe that that he was under psychiatric care for many years, and on a few occasions had to be hospitalized. He could barely cope with life, much less be the husband and father that we needed him to be. In his bad times, he drank heavily and he and my mother fought verbally quite often.

My mother's life was difficult, and to a limited extent I became her comfort and confidant. I certainly identified with her more than with my father. I also retreated into a world of fantasy, sexual and otherwise. It became my secure retreat from the pain of life. In a typical fantasy I would be a boy hero leading men into battle, and then when the fighting was over, the men would use me sexually. I both longed for my own manhood and for the manhood of other men.

Eventually, these longings for male contact turned sexual. A strong aggressive neighbor boy who was about a year older than I, when he found out I was more than willing to take care of him sexually, was delighted to let me do so. Although my fears of being found out limited my activity, I was homosexually active with other boys from about age 13 through high school.

My sexual activities stopped when I went to college... I believe that my craving for male contact was at least partially satisfied through all of the activities that I had with my fraternity brothers.

Still, the direction of my sexual desires never changed and my fantasies abated very little. Although I dated some girls, there was never any doubt that my overwhelming desire was for a man.

I was blessed to grow up in a time and culture in which there was no gay alternative lifestyle out there calling me into it... Like so many homosexually oriented men of that time, I would get a job, marry, have children and cope the best I could...

That's exactly what happened. Willa Benson had been my friend from elementary school days. We dated through high school, off and on

during college, and two years after college we were married. I told Willa nothing of my homosexual desires . . .

The first years of marriage went well. We had two daughters and I started to move up in the business world. We were active in our little neighborhood church, and we led an active social life. But gradually, the pressures of career and family started to build up on me, and at the same time a faulty thyroid gave Willa some emotional problems. My response was to retreat into my old means of finding comfort; homosexual fantasy and pornography, and five years into the marriage, sex with other men.

For ten years I led the classic double life. Successful in business, vice-president and treasurer of a prestigious Baltimore company, a pillar of my local church. The front was masterfully constructed and maintained. In reality, my life was out of control and my marriage had become a sham. I was drinking heavily, and turned much of my guilt on Willa. We fought frequently. For the last two years of my homosexual activity, I was unable to function sexually in the marriage.

Although I believed in God and had an intellectual acceptance of most of the basics of my religion, my faith seemed to have no impact on my life. I prayed routinely and I did pray that I would be able to stop my homosexual behavior, but I was never aware of any of my prayers being answered. I suppose I prayed the way I did most things, out of duty.

I never justified what I was doing, but I felt powerless to stop it. Gradually sinking into a fatalistic attitude, I saw my life as being on a downward spiral which eventually would cost me my family, my job, maybe even my life, and there was nothing I could do about it.

But God could. Two things happened. Willa, searching for help, got herself into a prayer group. She did not tell them of the exact nature of our problems, but they started praying for me and for our marriage.

Not long after this, a friend at work had a profound religious conversion. As Jim tried to explain to me what had happened, I became certain that he had had a true spiritual experience. Somehow I knew that I could too...

But things were desperate enough that after six or seven weeks of agonizing, on Tuesday, November 26, 1974, I went to an interdenominational meeting with Jim. He didn't know my problem, nor did anyone there. At some point during the evening, I prayed quietly, "God, I give up. My life is a total mess. I can't handle it any more. I don't care what You do; you take over." And He did.

Within a few days, I knew that some profound changes had taken place in me. First of all, I fell head over heels in love with Willa and I desired her physically. My homosexual fantasies that had almost never left me were gone. And most important of all, I knew that Jesus was real, that He loved me, and I was starting to love Him.

A few weeks later, I told Willa the whole truth about my life...Being able to trust me and receive my love came very slowly. A part of the new start in life that we were both given was the birth of our son, Stephen, 18 months after my conversion...Today, I believe that my need for male friendships are as normal and healthy as any man's. This process took years, but today I am confident in and at total peace with my manhood...

Although not too many people experience change the way I did, everything that happened to me -- being set free to love, desexualizing my unmet emotional needs, breaking the power of my addiction, having the deep needs of my heart for masculine love met by Jesus, and growing into manhood--can happen to any man whose heart is ready to overcome homosexuality. I know this because I have seen it happen hundreds of times...

Our two daughters have grown up, married and provided us with six wonderful grandchildren. Steve, our little child of the promise, grew to be a strong man, was recently married and is teaching school.

Today, 25 years later, if God were to bring me the best looking man in the world, and say, "Here, you can do whatever you want with him." My response would be, "No thank you, I'm not interested."”⁵

C. Kristin (Johnson) Tremba, M.Div.’s Story

Kristin J. Tremba, (formerly Kristin Johnson) is a former homosexual who is now married with a child. Kristin holds a Master of Arts degree from Columbia

⁵ http://www.peoplecanchange.com/About_Us_Medinger.htm

University as well as a Master of Divinity degree from Gordon-Conwell Theological Seminary. She is the author of *Sexual Wholeness in a Broken World*. Kristin's journey is found at http://pfox.org/Grove_City_College.pdf. Following are excerpts from her story.

While my sister was attending [college], I was going to a small liberal arts college in Indiana. My freshman year I had high hopes to have fun at school, make lots of friends find my "calling" in life, and then get married. Instead, I found something unexpected and frightening happening: I was falling in love with my freshman roommate. The feelings I felt for her were the feelings I had hoped to have felt for the guys I had dated in high school. I was overwhelmed and confused and had nowhere to go...

My roommate and I lived together all throughout college and one year after college, but we never talked about our feelings for one another or engaged in any physical sexual relationship. Regardless, we were a couple. We were emotionally dependent upon each other (we viewed other people as a threat to our relationship, preferred to spend time alone and were frustrated when this didn't happen, became angry or depressed when the other withdrew slightly, lost interest in other

friendships, and experienced romantic and sexual feelings for the other)...

After college, I entered the Peace Corps, which required me to leave my roommate. This was not easy for either of us. However, on my flight to Albania, I prayed that God would bring a man into my life. Thus began my search for love and the hopes to marry again. I was 23 years old. In Albania, I found myself having sexual feelings for both men and a particular woman as I served as a volunteer. I lost my virginity and became more promiscuous with men...

It was not soon after this that I fell into a sexual relationship with a woman who was openly gay, and who pursued me. In my loneliness and neediness for intimacy, I gave in to her and found being with her to meet a deep emotional need inside of me. This relationship continued until I moved to a different state for work. When I heard that she would be coming to live with me, I was euphoric and ready to come "out" of the closet, so to speak. I began telling friends, and I even attended a gay-friendly church, but it all seemed so foreign and unsatisfying . . .

[Ultimately,] God taught me that sexual sin was my attempt to meet legitimate emotional needs in sexually illegitimate ways. He showed me that there were some emotional needs that had not been met in my family relationships growing up, there were some wounds, and so I was attempting to meet these needs and cover these wounds in sexual relationships as an adult. He taught me that there were also things I was born with: a sin nature, a particular temperament, various weaknesses, and a negative body image and negative view of my femininity. He taught me that even though I did not choose all my circumstances and struggles, I could choose to overcome them. I could choose to let God change my life. . .

People ask me, “Do you still struggle with same-sex attraction?” My answer is no, I don’t, but I still struggle with worry and doubt and lots of other things...”⁶

D. Brenna Kate Simonds’ Story

Brenna Kate Simonds, is a former homosexual who has been married to her husband for eight years. She is the Director of Alive in Christ, an organization based in Boston, Massachusetts that helps men and women find freedom in their

⁶ http://pfox.org/Grove_City_College.pdf

struggle with same-sex attraction. Brenna's journey is found at

<http://www.exodusinternational.org/content/view/548/148/>. Following are

excerpts from her story.

“I was born in 1975, the second of two girls. My mother was an alcoholic who stayed home with me and my sister while my father worked long hours... I'd quickly zero in on any themes of abandonment in everything I heard, and I carried those feelings of fear with me into my adulthood.

Eventually, my parents divorced... I began experimenting sexually with girls when I was a young age and this continued until, as a freshman in high school, I found myself physically attracted to my best friend. Before our relationship became physical, it was already emotionally unhealthy. When we began to act out our attraction physically, I became totally dependent on her for my self-worth . . .

At college, it was much easier to be gay. My sexuality was affirmed and accepted. My girlfriend of three-and-a-half years and I broke up during my first semester, but within a year, I met a much older woman, and we began dating. I dropped out of college and moved across the country to live with her. During the time we lived together,

I became even more involved with the gay community. I spoke out for gay rights and further embraced my lesbian identity . . .

After three months, [my girlfriend] said to me, “Listen - you can’t be a Christian and be gay. The Bible says you must either be hot or cold - one or the other, but not lukewarm.” She was quoting Scripture to me! With that, she ended our relationship.

After that, I just threw my arms up into the air, saying “Fine, God! I don’t want to live like this. Please - take these desires away from me.” And in many ways, He did. My attraction to women lessened greatly.

However, I soon realized that the events and circumstances of my life that led me in the direction of the lesbian lifestyle had not changed. I knew I needed help . . .

I somehow got my hands on a copy of “Pursuing Sexual Wholeness” by Andrew Comiskey. I just devoured that book and applied many of the principles presented to my life. I also opened up to my Christian friends about my struggle and asked for accountability. I committed to a few women that when I faced moments of temptation, I would call them, so that they could check in with me later and pray for me.

I met a man through a ministry I was involved with, and he was interested in me! As ideal as the situation appeared, dating was much more difficult than I thought it would be! If dating was this difficult, I could only imagine that marriage would be exponentially more so. I recognized that though I could continue to survive as I was, I wouldn't thrive without additional help. At that difficult point, I made the decision to start seeing a Christian counselor . . .

Looking back, I realize I needed my entire thought life to be transformed, but my patterns of thinking were so deeply ingrained that I couldn't have identified them by myself. It wasn't simply that I had moments of feeling worthless and unlovable; in the core of my being, I was sure it was true . . .

Since I had been mistreated and abused by several men I had allowed to get close to me, I had a very difficult time trusting Roy and letting him in to my world. She helped me realize that Roy was a safe person, and that I needed to be willing to trust him and be vulnerable with him. Later, when Roy & I were engaged to be married, she helped us to prepare for that transition by meeting with us together...

I believe that the majority of people who struggle with same-sex attraction are in that same place. Though they may be able to survive the struggle, only receiving support from a few groups, or by attending a support group, they could really thrive if they were willing to receive the intense, one-on-one help that therapy offers. Some people in recovery are hesitant to see a therapist or a counselor because they think that counseling is for the “world,” that they just need to pray harder, expecting God to reveal everything to them personally and healing them in their prayer closets...

My journey to recovery has been long and arduous, but more than worth it. God has helped me in many ways along the path to recovery. Therapy played a key role in expediting my experience of God’s healing in my life. My own therapy taught me how to help others experience their own journey of healing and restoration.”⁷

CONCLUSION

Same-sex attraction is not an immutable characteristic. The personal testimonies of the individuals included above clearly show that same-sex attraction is a phenomenon that can and does change. The homosexual sexual orientation is

⁷ <http://www.exodusinternational.org/content/view/548/148/>

not pre-determined and fixed, but is in fact subject to alteration and change.

Therefore, amici ask this honorable Court to not accept the district court's findings of fact numbers 45, 46 and 47.

For the foregoing reasons, this Court should reverse the district court's ruling invalidating Proposition 8 and direct that court to enter judgment rejecting Plaintiffs' claims.

Dated: September 23, 2010

Respectfully submitted,

s/ Dean R. Broyles

Dean R. Broyles

Attorney for *Amicus Curiae*

CERTIFICATE OF COMPLIANCE

I hereby certify that, Fed. R. App. 32(a)(7)(C), the attached brief amicus curiae has been produced using Times New Roman font which is proportionately spaced. The brief contains 5,949 words as calculated by Microsoft Word 2003.

s/ Dean R. Broyles

Dean R. Broyles

Attorney for *Amicus Curiae*

United States Court of Appeals
For the Ninth Circuit
Case Number 10-1669

Certificate of Service

When All Case Participants are Registered for the Appellate CM/ECF System

I hereby certify that I electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on September 23, 2010.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the Appellate CM/ECF System.

Signature (use "s/" format)

s/Dean R. Broyles
Dean R. Broyles