

WHY “MILK” MATTERS: PROPOSITION (8) CONTINUES

NOVEMBER 23, 2008

Here I am again back at Prop. H(8). At first, I was happy that the CA Supreme Court had decided last week to hear arguments on whether Prop.8 should be overturned. It didn't say whether the 18,000 of us who married during that magical period between June 16th and Nov. 4th are still married. It did say no other same-sex couples can marry in CA until it decides – sometime this coming Spring – whether to overturn H(8) or not¹. It makes me really mad that I don't know whether we're married or not. One reason is that I'd planned on challenging the Defense of Marriage Act (“DOMA”) given that we'd have standing as a married couple to sue the federal government for depriving us of social security and other rights. Those rights that include the right to transfer property freely between husband and wife won't become our rights until the IRS is required not to tax transfers between people who are in same-sex marriages. This has real consequences, just like those that occur if one member of a same-sex marriage dies and the other doesn't get social security benefits the way the surviving spouse in a straight marriage does. So, I've been reading the L.A. Times and came upon an article about the movie “Milk”, starring Sean Penn, that's being released on Wednesday. That's the movie about Harvey Milk, the murdered gay-rights crusader and San Francisco supervisor who participated vociferously in the gay-rights battles of 30 years ago. Well, it turns out that that one of the distributors of “Milk” is Cinemark and that Cinemark's CEO is Alan Stock who actually **contributed money** to “Yes” on H(8). So there are vigils and protests planned, most notably a call for folks to go see “Milk” on December 5th at a gay-friendly theatre (not part of the Cinemark) chain. While we want “Milk” to be one of the top three-grossing films that weekend, we don't want to enrich Mr. Stock. This may just be the beginning of nationwide boycotts against companies that, through their top management, have supported the effort to strip us of our rights. For example: Richard Raddon, L.A. Film Festival Director, is facing heavy criticism in Hollywood, for donating to the Yes on H(8) campaign and Scott Eckern, director of the California Musical Theatre in Sacramento, resigned when his contribution to the Yes on H(8) campaign became publicly known and prominent theatre artists like Marc Shaiman (“Hairspray”) complained.

I was also delighted to read that the writers of “Milk”, Lance Black and Cleve Jones, published a manifesto in the *San Francisco Chronicle* last week, calling on President-elect Obama, even though he's said that he – or maybe it's his Christian faith – believes that marriage is between a man and a woman, to support comprehensive federal legislation guaranteeing gay rights, including the right to marry. As for me, I'd like to see Obama in the very near future, calling for the repeal of both DOMA and “Don't Ask; Don't Tell”. He may think he has a few valid excuses for dilly dallying but there's no reason he can't multi-task: work on fixing the economy and ending the war(s), as well as

¹ The court also is interested now in the question of “separation of powers”. I.e. Did the “people”, meaning a majority, really have the right to deprive a minority of the fundamental right to marry, as granted to us by the California Supreme Court last May?

ensuring that all Americans have equal rights. It doesn't take all that much energy and it certainly doesn't cost the government any more money.

Anyway, back to the real issue. The court has delayed my right to demand fairness, because I don't know if we have standing to sue for the big stuff – from the federal government. Worse, I don't even know what will ensue if the court rules for us, *i.e.* says that Prop. 8 should have come in the form of a constitutional revision rather than an amendment and, therefore, has no legal significance. The H(8)ers are threatening to put another measure on the ballot to take our rights away in 2010 and/or to oust Supreme Court justices (via recall) who were on our side. The whole thing makes me furious. Can you imagine this happening to straight couples?!

The good news is that a whole generation of young gays and lesbians has been galvanized. One group, the “Courage Campaign”, has hired two community organizers this past week. Another campaign is called “Shame on 8”, and yet another, “jointheimpact.com”. And word has it that young gay leaders (and we sure need more of those) have been holding meetings and building online networks on sites like Facebook, YouTube and MySpace.

As for me, I'm planning to do what I always do: fight for our equal rights on all fronts, even if respectable organizations like Lambda Legal, NCLR, the ACLU, etc. continue to caution us to act carefully, which sounds a lot like what my mother would have implored us to do: act like ladies and gentlemen. I'm just plain sick and tired of the second class status that we have endured all these years and have no intention of patiently waiting for rights to be handed us on a platter. I identify completely with Harvey Milk who 30 years ago wouldn't settle for crumbs. He was one of the leaders of the successful campaign against Proposition 6, a 1978 ballot initiative that would have prohibited gays and lesbians from teaching in California public schools. He shouted at a rally: “If this thing passes, fight the hell back!” Thanks, Harvey. That's finally what we're doing.

Brenda Feigen is Of Counsel to Kenoff & Machtinger, LLP, where she practices anti-discrimination and entertainment law. A graduate of Harvard Law School, she co-founded *Ms. Magazine* with Gloria Steinem and directed with (now Justice) Ruth Bader Ginsburg the Women's Rights Project of the ACLU. Her memoir, *Not One of the Boys: Living Life as a Feminist*, was published by Alfred A. Knopf in 2000. She moved from Manhattan to Los Angeles to produce her first feature film and lives there now with Joanne Parrent, her longtime partner and maybe spouse.