

PROP 8 CHALLENGE PUTS RELIGION ON TRIAL

The voters in 30 states who have taken up the issue of gay marriage have voted 30-0 to affirm marriage as a union between a man and a woman; Proposition 8 did exactly that in California. Attorneys David Boies and Theodore B. Olsen, however, have been contesting this issue in a San Francisco court.

On January 20, the judge allowed Boies and Olsen to submit e-mails they obtained between the director of the U.S. Conference of Catholic Bishops and the bishops. Allowing such communication in a trial is unusual enough, but the purpose was even more invidious: to show that Catholics played a major role in passing Prop 8. The lawyers did the same thing to Mormons, offering more e-mail "proof" of their involvement.

Now some would reply that it should not matter what the adherents of any religion say about public policy issues. After all, the First Amendment guarantees freedom of religion and freedom of speech. Unfortunately, this misses the point the lawyers hope to make.

Their goal is not to contest the First Amendment rights of Catholics and others—their goal is to put religion on trial. What they are saying is that religious-based reasons for rejecting gay marriage are irrational, and thus do not meet the test of promoting a legitimate state interest. That is why they have trotted out professors like Gary Segura of Stanford and George Chauncey of Yale to testify to the irrationality of the pro-Prop 8 side. Chauncey was even given the opportunity to read from a Vatican document that rejects homosexual marriage.

Society cannot exist without families; families cannot exist

without reproduction; reproduction cannot exist without a sexual union between a man and a woman; *and every society in the history of the world* has created an institution called marriage to provide for this end. But what took place in the courtroom smacked of an animus toward religion.

The lawyers for the anti-Prop 8 side touted Segura's testimony that religious groups which supported Prop 8 constituted 34 percent of the nation's population, while only 2 percent of religions opposed it. A comment that was grossly misleading.

For starters, far more than 2 percent of religions support gay marriage: Buddhism has no official position but it is well known that Buddhists in California worked against Prop 8; the Evangelical Lutheran Church of America supports gay marriage, just so long as the term "marriage" isn't used; the Episcopal Church also opposes all state and federal bans on gay marriage, therefore putting it on the side of the anti-Prop 8 forces; Hinduism has no official position on gay marriage, though those who follow Hindu texts like the Kama Sutra are fine with it; Reform and Reconstructionist strands of Judaism support gay marriage; the Presbyterian Church (USA) is similar to the Evangelical Lutherans in supporting gay marriage just so long as "marriage" is not used; Unitarian Universalist Association is pro-gay marriage; the Universal Fellowship of Metropolitan Community Churches is pro-gay marriage; the United Church of Christ also supports gay marriage.

Second, over 100 faith-based organizations, listed on the website of Vote NO on Prop 8, support gay marriage and worked hard to defeat Prop 8.

Third, though there are many religions opposed to gay marriage, there is nothing analogous to the coordinated effort of the National Religious Leadership Roundtable—it enlists the aid of all the aforementioned religions, and even includes Quakers, Baptists, Eastern Orthodox and Methodist members.

In short, if the lawyers wanted to drag religion into the trial, they should have an honest debate and not rely on homosexual activists and academics for help.

A few days after Segura's testimony, Boies served up a wild pitch. He pointed out that Catholicism teaches that homosexual acts are a "serious depravity," and that the Southern Baptist Convention labels them an "abomination." He was asking the presiding judge to connect the dots between the identification of sinful acts and the sanctioning of incivility against the sinners.

The argument failed miserably. As the Church has long noted, there is a huge difference between condemning sinful behavior and condemning those who engage in it. It is even more preposterous to sanction incivility against sinners by the self-righteous.

When African Americans were seeking equal rights, they never sought to upend the most fundamental social institutions in society, namely marriage and family. Nor did they ever denigrate world religions. Instead, people like Martin Luther King, himself a minister, spoke respectfully of Christianity and other religions. But the situation in San Francisco is different: Boies and Olsen cannot make their case for homosexual marriage without demonizing religion. And they have a fondness for bashing Catholicism.

Plato condemned sodomy. Jefferson thought it should be a felony. Neither was Catholic. And neither they, nor the Catholic Church, ever thought it was okay for gay bashers to act out their hatred. That this even needs to be said doesn't speak well for where Boies wants to go.

A gay judge, clearly sympathetic to the plaintiffs, presided over the trial. Whatever the outcome (our side expects to lose), it will be appealed to the Ninth Circuit, the most liberal appeals court in the nation. Eventually, the U.S.

Supreme Court will have the last word, but that won't happen for a few years.