

Tucson Observer Archives

What's Next: Can Prop 8 Decision Be Appealed?

SAN FRANCISCO (Observer Update) - The Keen news service, on 365Gay.com, reports that the waiting game around the Proposition 8 challenge in a federal court in San Francisco grows. U.S. District Court Judge Vaughn Walker has issued his decision in the case. On August 4, he said the voter-approved amendment to the state constitution that barred same-sex marriages in California is unconstitutional. He said it violates the federal constitution's guarantees of equal protection and due process. He also issued a temporary "stay"—or delay—of the enforcement of his decision.

Now, people interested in the case are waiting again—this time, for Judge Walker's decision on whether to approve a permanent "stay" until the 9th Circuit U.S. Court of Appeals can weigh in on the merits of the case.

That decision—on whether to extend the stay on when to make his ruling enforceable—could come any day now. Some thought it might come as early as last Friday, when briefs were due from attorneys challenging Proposition 8. Those attorneys—from the Ted Olson-David Boies legal team and the city of San Francisco—did not support a stay.

But the bigger surprise Friday was that California Governor Arnold Schwarzenegger and state Attorney General Jerry Brown also opposed the stay. Schwarzenegger had twice vetoed bills from the legislature that sought to allow marriage licenses for same-sex couples. As governor, he and the attorney general are, technically speaking, the defenders of the state constitution, including Proposition 8. In court, they were identified as the defendants.

In the Perry v. Schwarzenegger lawsuit, however, the state declined to defend Proposition 8. And in the governor's brief concerning the stay, his attorneys say there is no burden on the state to implement Walker's ruling now and that "implementing the Court's order now, without further delay, serves the public interest." A briefer document from Attorney General Brown essentially agrees.

If Walker denies the request for the extended stay, then same-sex couples can begin seeking marriage licenses again in California—at least until a higher court reverses Walker's ruling, which may or may not happen. Jon Davidson, legal director for Lambda Legal Defense and Education Fund, told reporter Karen Ocamb (at LGBTPOV.com) that Schwarzenegger and Brown's filings opposing a stay "have dramatically changed the

likelihood" that Walker will grant the stay.

"This is an unusual situation," said Davidson, because the state, which Walker's ruling orders to stop enforcing Proposition 8, has asked Walker to deny the stay. More importantly, noted Davidson, the Olson-Boies team and San Francisco argue that Yes on 8 may have no right to appeal Walker's ruling.

When the California government declined to defend Proposition 8, Yes on 8, the coalition that campaigned for the amendment, took over that role. Yes on 8 was identified in court as "defendant-intervenor" and "proponents." Because the government-defendants, California's government, are apparently not going to appeal Walker's decision, said Davidson, "there will be a legal question of whether, when those who are ordered to do something don't appeal, someone not ordered to do anything has any right to appeal."

"To understand this," Davidson told Ocamb, "one has to appreciate a few things about federal courts."

"Federal courts can only hear cases where there is what's called a 'case or controversy,'" explained Davidson. So, to have an appeal heard, the party that requests the appeal must show that it has a "direct stake in the outcome" of the appeal decision. And, said Davidson, it must also show that it has been "injured" by the lower court ruling in a "concrete manner that is particularized to that party and different from citizens at large who may not like the judge's ruling."

In a case involving Arizona's constitutional amendment declaring English the 'official language' of the state, noted Davidson, the U.S. Supreme Court said it had "grave doubts" about whether proponents of that ballot initiative could appeal lower court decisions that found the initiative unconstitutional. The Arizona government did not appeal. In that case, *Arizona v. United States*, the Supreme Court, in 1997, decided the case on other grounds, "but its comments," said Davidson, "strongly indicate that the proponents may have no right to appeal if the other defendants do not."

"A definitive ruling on whether the proponents have a right to appeal if the defendants do not," said Davidson, "is not likely to be made in connection with" the ruling about the Proposition 8 stay. But, he said, "Judge Walker or a higher court may comment on the issue" and ".if [Yes

on 8 has] no right to appeal, they obviously can't show they likely would prevail on an appeal."

So, if the California government—the defendants—do not appeal Walker's ruling on the merits of the case within 30 days from the day the judge actually "enters" his judgment in the case (which has not yet happened), "then the plaintiffs and San Francisco could file a motion to dismiss the appeal that has already been filed by [Yes on 8] on the ground that the proponents have no right to appeal."

Therefore, three issues are now in waiting: whether Walker will issue a more extended stay, whether the government will file an appeal on the merits, and whether the 9th Circuit will take the appeal filed by Yes on 8.

If the 9th Circuit does take Yes on 8's appeal, it will first be heard by a three-judge panel and then, almost certainly, by the 9th Circuit sitting en banc. While, in some circuits, sitting en banc means every judge of the circuit hears the case, in the 9th's unusually large circuit, said Davidson, it means "a panel of 11 randomly assigned" judges.

If the 9th Circuit refused to hear an appeal from Yes on 8, the group could appeal to the U.S. Supreme Court. The group, said Davidson, "could ask the Supreme Court to decide whether they have a right to appeal."

"If the Supreme Court declines to hear that," said Davidson, "the case is over. If the Supreme Court agrees to consider the question, it could decide that [Yes on 8 has] no right to appeal and, again, the case would be over."

But if the Supreme Court said Yes on 8 does have a right to appeal, said Davidson, it would "likely" send the case back to the 9th Circuit for three judges to rule on the merits of the appeal, "resulting in a delay of the final determination of the validity of Prop 8 for some time."

Davidson said that, even if Walker does deny Yes on 8's request for a stay, he could extend his temporary stay for a brief period of time (a week or so) in order to give the proponents time to ask for a stay from the Ninth Circuit while there's a temporary stay in place.

"The Ninth Circuit would then apply the same test as Judge Walker did in deciding whether or

not to issue a stay of Judge Walker's order pending the appeal," said Davidson. "If they deny a stay as well, the proponents could ask Supreme Court Justice Anthony Kennedy (who reviews such matters arising out of the Ninth Circuit) to issue a stay pending the appeal. If he also denies a stay, the proponents could seek a stay from the full Supreme Court."

Meanwhile, at least a couple of dates are penciled in. The 9th Circuit has given Yes on 8 until November 12 to file its appeal brief, and given the plaintiffs until December 13 to file their response. Davidson said Yes on 8 would then have until January 12 to file any brief in response to plaintiffs.

Any oral argument of the appeal, said Davidson, would "not likely" happen until late 2011.

"It is not unusual for it to take more than a year from the date of argument until the appeal is decided by the Ninth Circuit," said Davidson. "Once the case is decided, the losing party can seek review" en banc, and "that could add another year or more before the case is even in a position for a party to seek Supreme Court review."

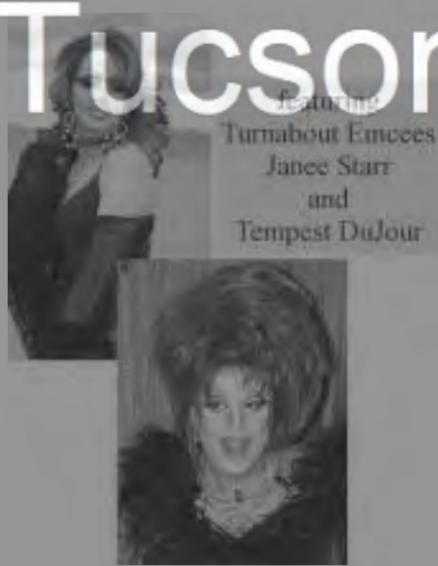
"Thus, if the appeal is not dismissed, it is possible that a request to the Supreme Court to hear the case might not even have been made by the time of the November 2012 elections," said Davidson. "If an effort to repeal Prop 8 is made that year and succeeds, it could 'moot' the case (meaning that there would no longer be any "live" dispute because Prop 8 would no longer be in effect) and the appeal could be dismissed for that reason."



No On Prop 8

UPDATE

One Of Tucson's Biggest Shows Of The Year, Sunday, Sept. 5



TUCSON (Observer Update) - "Turnabout for TIHAN" is an annual show put on by Tucson's GLBT clubs and their bar staff. The staff request donations from their friends and customers in order to do a "turn-about" from male to female (or vice versa) and put on a fabulous show to benefit the work of TIHAN, the Tucson Interfaith HIV/AIDS Network (www.tihan.org).

Get ready for the glitz and glamour, the pumps and passion for this year's "Turnabout for TIHAN" benefit show! It's one of the biggest drag shows of the year, and takes place on Sunday, September 5 at the Doubletree Hotel at Reid Park (445 South Alvernon Way, Tucson, Arizona). The doors open at 5:00 pm, and the show starts at 6:00 pm. Advance tickets are only \$10.00 per person, or \$100 for a table of 10. Tickets at the door will cost \$15.00 each (if available). The evening also features a raffle with some great prizes.

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through the TIHAN office (credit card orders can be taken -299-6647), or at participating bars. For more information about the event, or to volunteer, contact Scott Blades at 299-6647 or scott@tihan.org.

Arizona To Appeal Ruling On Same-Sex Health Benefits

PHOENIX (Observer Update) - Arizona will appeal a federal judge's ruling that Arizona cannot deny family health insurance to employees' same-sex partners, officials said, reported the Arizona Republic.

Last month, U.S. District Judge John Sedwick granted a temporary injunction prevents the state from enacting House Bill 2013. The 2009 law changed eligibility requirements for insurance benefits in an effort to deny coverage to domestic partners.

"We are appealing the preliminary injunction because we disagree with the federal court's initial injunction ruling and we believe the legislature has the ultimate authority to make state employee benefit decisions," said Paul Senseman, a spokesman for Gov. Jan Brewer, in an e-mail. The appeal will be filed shortly by Attorney General Terry Goddard, Senseman said.

Arizona spends about \$3 million annually on domestic-partner benefits, a fraction of the \$625 million spent on benefits for all employees. Gay and lesbian couples are said to represent a small minority of the 893 domestic partners who participated in the plan in 2009-10. The law was to go into effect Dec. 31.

Although Sedwick's ruling stops the state from eliminating family-insurance eligibility for gay state workers, unmarried heterosexual state workers will lose benefits for their domestic partners at the end of 2010. The court did not consider whether removing benefits from straight couples violated their rights.

LGBT Bowling League Starting Sept. 8

TUCSON (Observer Update) - The first meeting will take place Wednesday, September 8, 6 p.m., at Golden Pin Lanes, 1010 W. Miracle Mile.

Teams will consist of two to three people. There is the rules meeting with bowling to follow.

For more information, call Dan (520), 404-3591, Marge (520) 481-7151 or Franc (520) 578-9393.

All Mexican States Must Recognize Gay Marriages

MEXICO CITY (Observer Update) - AP on 365Gay.com reported that Mexico's Supreme Court has ruled that all 31 states must recognize same-sex marriages performed in the capital, though its decision does not force those states to begin marrying gay couples in their territory.

In a 9-2 decision, the tribunal cited an article of the constitution requiring states to recognize legal contracts drawn up elsewhere. It did not specify what degree of recognition must be granted to same-sex couples. Mexico City's same-sex marriage law, enacted in March, extends to wedded gay couples the right to adopt children, to jointly apply for bank loans, to inherit wealth and to be covered by their spouses' insurance policies. Some of those may end up applying only in the capital.

The Supreme Court ruled that same-sex weddings are constitutional - though it is holding separate discussions on the adoption clause. One of the justices, Sergio Aguirre, argued against adoptions by same-sex couples Tuesday, saying children might suffer discrimination as a result.

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EDITOR/PUBLISHER: Bob Ellis
MANAGING EDITOR: Mark Kerr
Special Events Photos: Bill Morrow, Amanda Irvin
Contributing Columnists: Mark R. Kerr, Jack Melichar

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Target Protests To Continue

WASHINGTON (Observer Update) - Following the breakdown of negotiations, the nation's leading gay rights organization said that it will continue to protest Target Corp. over a donation used to support a Republican gubernatorial candidate with a history of opposing gay rights, reported latimes.com.

Officials with the Human Rights Campaign said the giant retailer had effectively rejected the group's proposals to donate to gay rights organizations to offset the earlier donation.

Target's handling of the protests has been closely watched because it is the first case in this election cycle of a company receiving national protests over a campaign donation. The topic is especially sensitive this year because of a Supreme Court decision that allows corporate organizations and unions to use their treasury funds in election campaigns.

Human Rights Campaign is considering whether to suspend Target's 100 percent rating on its "Corporate Equality Index," a measurement of corporate hiring diversity policies on a scale of 0 to 100. "If their initial contribution was a slap in the face, their refusal to make it right is a punch in the gut and that's not something that we will soon forget," said Joe Solmonese, the group's president. Target representatives did not respond to requests for comment.

Target CEO Gregg Steinhafel has told employees that sending a \$150,000 donation to the new political group MN Forward was a business decision. The group used Target's funds to help underwrite ads backing Minnesota Republican gubernatorial candidate Tom Emmer, who opposes gay marriage and other legislative initiatives sought by gay rights groups.

In response, San Francisco officials threatened to block the construction of two new Target stores in the city, where gay advocates have long had strong influence. In addition, MoveOn.org and other left-leaning groups have asked supporters to boycott Target. MoveOn posted a video on YouTube Monday that showing a group of its members performing a musical number inside a Seattle Target store. Republicans and several organizations on the right have complained that Target was the victim of "liberal thuggery."

Human Rights Campaign said it had reached two tentative agreements with Target but the retailer then backed out. The gay rights group said it plans to give \$150,000 to organizations that support candidates in favor of gay rights. In addition to Target, Best Buy Co. has also given to MN Forward. Human Rights Campaign said it has also been negotiating with Best Buy and that talks are still ongoing.



SUNDAY'S

12PM-BAR OPENS

NOON-9PM-HAPPY HOUR

4PM-8PM-BBQ BEER BUST FOR REVEILLE MEN'S CHORUS

4PM-KARAOKE ON THE PATIO

9PM-CLOSE-DANCE ON THE PATIO WITH DJ HILL

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IT'S.BOUT.TIME

Sad Story Of Gay Soldier Who Leaked Secret Documents



PFC Bradley Manning

WASHINGTON, D.C. (Observer Update) - Pfc. Bradley Manning is finally getting some attention. Unfortunately it's not the kind he wanted, 365Gay.com reported.

The Army intelligence analyst is suspected of leaking approximately 90,000 Afghanistan war reports to Wikileaks.org. He now sits in solitary confinement in Quantico, Virginia, facing accusations of federal criminal law, including two counts under the Uniform Code of Military Justice. There are two parts of this story worth paying attention to. Manning's elevated sense of sense can't be disregarded.

"Hillary Clinton and several thousand diplomats around the world are going to have a heart attack," he wrote in a computer chat with a friend.

This boast is sort of laughable considering the information released was common knowledge to anyone

paying attention. The people who actually had heart attacks were Afghans cooperating with NATO forces. Their names were not redacted and the Taliban has threatened to "punish them."

"Don't Ask, Don't Tell" is the background and foreground of the Manning story. When he was in high school he moved with his mother to Haverfordwest, Wales (his parents are divorced). Teasing and taunts became standard because of his accent and perceived sexuality.

"It was probably the worst experience anybody could go through," said Rowan John, a former classmate who was openly gay in high school. "Being different like me, or Bradley, in the middle of nowhere is like going back in time to the Dark Ages."

Manning came back to the

States to live with his father, but was kicked out for being gay. In 2007 he joined the military, but that didn't give him the order he was looking for. Who he was, a nerdy, gay liberal, found no home in the Army. He could only be himself with a bunch of Cambridge friends, including Tyler Watkins, a

college student, musician, and drag queen.

Don't know how this story will end, but if Manning wanted to make a splash he could have picked another avenue that did not put lives at risk.

Economy, Not Gay Marriage, Will Guide Republican Voters

WASHINGTON, D.C. (Observer Update) - The Proposition 8 ruling will not be a huge election factor this year, according to the Washington Post, reports 365Gay.com.

While some marriage equality advocates feared the ruling would fuel social conservatives in the Republican Party, it seems that the matter is not going to have a large effect on elections.

Geoff Garin, a Democratic pollster said, "The impact is minimal—certainly compared to what it might have been in other years and in other circumstances. The economy is such a dominant issue and people are so focused on the day-to-day challenges in life that I think this will pale in comparison."

In the past, other judicial decisions on gay marriage had launched the Republicans into a campaigning frenzy. The 2003 decision in Massachusetts led Republicans to put forward ballot initiatives banning same-sex marriage all across the nation. Analysts say that while Republicans might use the Proposition 8 ruling to reach out to select anti-gay voters, it will not be a major campaign tactic.

"Republicans are better off focusing on fiscal issues—economy,

spending, taxes, debt—in this political environment," said a Republican who is helping outline the party's political strategy. "For the first time in years, Republicans have regained their credibility as the party of fiscal responsibility, and most voters are concerned with the direction of our country's economy, so it could backfire with independent voters if the campaigns get bogged down on immigration or marriage."

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Air Force Tentatively Agrees Not To Discharge Victor Fehrenbach



Lt. Col. Victor Fehrenbach

WASHINGTON, D.C. (Observer Update) - The U.S. Air Force has agreed not to discharge Lt. Col. Victor Fehrenbach under "Don't Ask, Don't Tell" while a pending lawsuit is heard, reported ontopmag.com.

The 40-year-old officer asked a federal court in Idaho last week to block the Air Force from discharging him under the 1993 law that prohibits gay troops from serving openly.

"The agreement recognizes the immediate harm to Lt. Col. Fehrenbach and insures that he will eventually get to make his case at a full blown hearing without losing his job," Aubrey Sarvis, executive director of the gay rights group Servicemembers Legal Defense Network (SLDN), which is advising Fehrenbach, said. "This agreement is a victory for Lt. Col. Fehrenbach and our nation."

Fehrenbach has been under investigation since 2008, when a civilian man accused him of sexual assault.

The military quickly placed him on desk duty at Mountain Home Air Force Base in Idaho as the investigation continued. In a statement to Boise police officers, the 40-year-old officer acknowledged he had sex with his accuser but said it was consensual. Within three weeks, Fehrenbach was cleared of the sexual assault allegation. But the Air Force continued to investigate whether to discharge the highly-decorated flight officer for violating "Don't Ask."

SLDN said that it acted because a recent Air Force Personnel Board recommendation to Air Force Secretary Michael B. Donley indicated the discharge was imminent. The board only moves a case up to the secretary when recommending separation.

Under new regulations put in place by Secretary of Defense Robert Gates, third party outings are placed under greater scrutiny, but that policy has yet to be tested.

"The Air Force can still do the right thing and retain Lt. Col. Fehrenbach under the Pentagon's own revised regulations on 'Don't Ask, Don't Tell,'" Sarvis added.

Fehrenbach is 13 months from a 20-year retirement. If discharged, he would lose his right to a pension, according to documents filed with the court.

"He flew the longest combat sorties in his squadron's history, destroying Taliban and Al Qaeda targets in support of Operation Enduring Freedom and Operation Iraqi Freedom. And after the Sept. 11th attacks, Fehrenbach was hand-picked to protect the airspace over Washington, D.C." the documents say.

The case relies heavily on the 2008 Witt vs. Department of the Air Force ruling, which found that discharging troops for their sexuality was unconstitutional unless the military could show an overriding government interest. The Witt ruling only applies to the Ninth Circuit, which includes Idaho.

The House of Representatives voted in May to repeal the policy, and the Senate is expected to debate the issue in September. However, Republicans, led by Arizona Senator John McCain, have said they'll fight against repeal.

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Mission-Critical Troops Fired Under DADT

LOS ANGELES (Observer Update) - New data from the Palm Center shows that the military continued to discharge openly gay mission-critical troops under the "don't ask, don't tell" policy in 2009, while a disproportionately high number of women and minorities were discharged under the policy.

The data, released Monday morning, shows that discharges included eight linguists, 20 infantrymen, 16 medical aides, seven combat engineers, six missile artillery operating crew members, one member of the Special Forces, and others, according to a news release from the Palm Center.

The Defense Manpower Data Center collected the data, which under law was made available to the House Armed Services Committee. The disclosure arrives as the Senate is expected to vote on repeal of the "don't ask, don't tell" policy when it returns from the August recess on September 13.

In a continuation of another trend, the data showed that racial minorities and women were discharged at rates higher than their level of representation in the military.

"In the Navy, two officers were discharged in FY 2009 and both were Asian," said the release. "In the Army, of the five Officers discharged, two were African American, one was Asian and two were white."

Where women in the armed forces are concerned, "Although women comprise only 14% of the Army, lesbians received 48% of the Army's 'don't ask, don't tell' discharges in FYI 2009. In the Marines, women comprise just 6% of the force, but received 23% of discharges under the policy. The numbers represent a dramatic shift from last year, when women received 36% of Army discharges and 18% of Marine Corps discharges. In the Air Force, women comprise 20% of the service but received 51% of 'don't ask, don't tell' discharges in FY 2009. Women comprise 14% of the Navy but received 27% of the discharges last year."

COMMENTARY

The editor's of advocate.com wrote: Fighting to halt any marriages for same-sex couples in California pending an appeal in the landmark federal case, attorneys representing Proposition 8 supporters lashed out in a Monday letter to the court, claiming that arguments in favor of marriage equality are divorced from centuries of tradition and rife with "distortions, caricatures, straw men."

Charles J. Cooper, the lead attorney who defended Prop. 8 in federal court, wrote to the U.S. court of appeals for the ninth circuit that "Plaintiffs' ... constitutional challenge to Proposition 8 boils down to this: the institution of marriage has been deliberately defined as an opposite-sex union by virtually every society throughout history—from the ancients to the American states—for no good reason."

Cooper's arguments favoring a stay of U.S. district judge Vaughn Walker's decision pending appeal, however, were largely a rehash of those that Walker rejected for lack of evidence in his 136-page opinion released August 4. Among them: that

the overriding purpose of marriage is to encourage "responsible procreation and childbearing," that California voters had the right to strip same-sex couples of the right to marry, that sexual orientation is not immutable, and that gays have substantial political power.

Though Gov. Arnold Schwarzenegger and Atty. Gen. Jerry Brown have both requested that marriage rights for gay couples resume in the state as soon as possible, Cooper wrote that "the State's interest are ultimately those of its People, and the actions of [Schwarzenegger and Brown] in this case only confirm the People's wisdom in authorizing [Prop. 8 supporters] to represent their interest when their elected officials refuse to do so."

Attorneys representing the two gay couples who sued the state have argued that opponents of marriage equality lack standing to seek a stay of the decision, in part because they have neither shown they are likely to win the case on appeal nor demonstrated why a resumption of marriages specifically would cause them harm.

It's also yet unclear whether Prop. 8 supporters, who defended the ballot measure after state officials declined to do so, have standing to appeal the case itself, one that many expected would end up before the U.S. Supreme Court.

National Center for Lesbian Rights executive director Kate Kendall told The Advocate last week, "Judge Walker's order clearly sets out his view that the proponents of Prop. 8 do not have standing to appeal without a state defendant, so no doubt that issue will be a very interesting one to watch."

In lieu of a state defendant in the case, the board of supervisors for Imperial County, where 70% of voters supported Prop. 8 in 2008, have attempted to intervene in the case, though Walker has previously denied their attempts to do so.

Tucson Observer Archives

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COMMENTARY

by Rachel B. Tiven

Save The 14th Amendment

Fourteenth Amendment.

The Fourteenth Amendment was the centerpiece of Reconstruction, and it finally provided the United States with a definition of who exactly was a citizen. Its very first words read: "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."

Reread that sentence and ask yourself, Without it, who would be an American? Would I? On what basis? In a nation where 98% of us are here as the result of immigration at some point in time, who among us has been here "long enough"? Who gets to decide?

The spectacle of our country's leaders calling for a repeal of birthright citizenship is despicable, disappointing, and thoroughly predictable. For too many of our politicians, history and context are irrelevant; all that matters is the next election.

Of course, the people being targeted by this rhetoric are undocumented immigrant workers, the majority of whom are Latino. These millions of workers keep American agriculture, construction, and service industries afloat. They often earn below the minimum wage and are too intimidated to demand the safety rules and labor

protections to which they are legally entitled. The echoes of slavery are loud: People of color working for next to nothing, without legal standing or any current hope of ever gaining it, whose toil supports the "American way of life" —today not cotton but cheap food, overbuilt housing, and disposable consumer goods. To complete the disenfranchisement of undocumented workers by denying their children the very rights for which we fought the Civil War would be the perfect irony.

LGBT people should find this particularly disgusting. At Immigration Equality, we hear every day from people who face double discrimination: because they are immigrants and simultaneously because they are also lesbian, gay, bisexual, or transgender.

Those dual lines of attack are no coincidence: The very same people who are leading the charge to strip citizenship from the children of immigrants are those who have long led the charge to strip the rights of full citizenship from LGBT people. On the latter front, their crusades are beginning to falter, with historic judicial and legislative victories affirming the rights of LGBT people. Sadly, politicians desperate for a scapegoat in an era of recession and war are attacking not only the newest citizens, they are attacking our precious Constitution.

The Fourteenth Amendment is a cornerstone of our liberty —it is precisely what makes us who we are, and without it we would not know

ourselves as Americans.

(Rachel B. Tiven is executive director of Immigration Equality and the Immigration Equality Action Fund. This article is the opinion of the writer and not advocate.com, from which this is reprinted from or The Observer.)



That's a sad statement to make about the U.S. Congress, but evidently a true one, given the recent pile-on of Republican senators calling for repeal —or "investigation" —of birthright citizenship. Senate majority leader Harry Reid noted that his colleagues have "either taken leave of their senses or their principles."

In fact, they may have taken leave of both, as their ridiculous, racist campaign betrays a basic misunderstanding of American history and of the Constitution.

First, a quick history lesson: Before the Civil War, there was no definition of American citizenship. Slaves were not citizens, and women's citizenship was tenuous at best. A woman who married a foreign national could be stripped of her citizenship, and of course, women, slaves, and most nonwhites could not vote. Neither the Declaration of Independence nor the U.S. Constitution, as originally ratified, defined who was an American citizen or how to become one. The Supreme Court's infamous Dred Scott decision —which brought pre-Civil War tensions closer to a boil by holding that Congress could not prohibit slavery in federal territory —reaffirmed that "Negroes" were not and could not be citizens.

For slaves, the needed result of the Civil War was not just freedom from bondage but entry into the social contract. Freedom without citizenship was an empty promise, and thus 2-1/2 years after the Thirteenth Amendment ended slavery, Congress ratified the

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BUZZ - BUZZ - BUZZ - BUZZ -- NPH Expecting Twins

LOS ANGELES (Observer update) - Neil Patrick Harris and longtime partner David Burtka are expecting twins, Harris confirmed on his Twitter, reports advocate.com.



So, get this: David and I are expecting twins this fall. We're super excited/nervous/thrilled. Hoping the press can respect our privacy...Earlier in the day E! broke the news of the impending October arrivals. E! News has exclusively

learned that the ubiquitous actor and his longtime partner, David Burtka, are going to become the parents of twins, via a beautiful surrogate, this October...

A source tells E! that the happy couple have put baby shower plans in motion, as if Harris' chance of winning three Emmys this month wasn't already enough to celebrate!

Radio's Stephanie Miller Comes Out



morning (Aug. 13), reports advocate.com.

Miller, who had sometimes joked about having crushes on men, such as fellow liberal commentator Keith Olbermann, led up to her announcement by tweeting, "Mama's got something to tell you." After making her statement, she received numerous supportive comments from listeners, in both phone calls and online posts. One of her guests on Friday's show was country singer Chely Wright, who also recently came out.

Miller, 48, is a former stand-up comic and for a time had a television show on MSNBC. She grew up in a conservative Republican family—her late father, attorney and congressman William Miller, was Barry Goldwater's running mate in the 1964 presidential election. Goldwater, who has a gay grandson, voiced gay-supportive positions late in his life.

LOS ANGELES (Observer Update) -Liberal radio talker Stephanie Miller came out as gay on her nationally syndicated show Friday

West Point Cadet Shares Her DADT Story

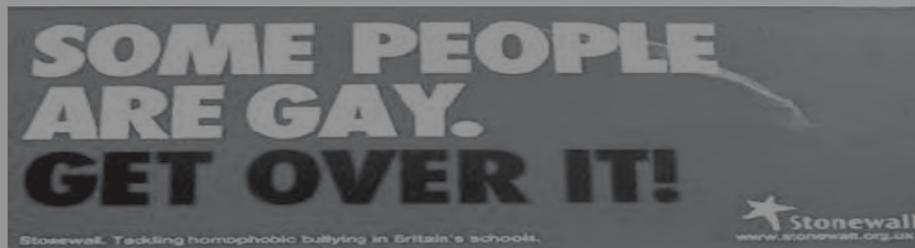
NEW YORK (Observer Update) - Cadet Katherine Miller was ranked ninth in her class at West Point, but she is resigning because she says she can no longer deny her identity as a lesbian, reports 365Gay.com.

In her resignation letter to West Point Miller wrote, "I intend for my resignation to offer a concrete example of the consequences of a failed law and social policy." West Point cadets can resign at any point during their first two years, but at the beginning of their third year, they must sign a document committing themselves to 10 years of military service.

"I can't bring myself to sign on the dotted line, to commit myself to the military for 10 years while the policy remains in place," she told Rachel Maddow on Wednesday.

"Being re-closeted has been a much bigger challenge than I ever anticipated. It's taken a much bigger toll socially, mentally, emotionally than I could have imagined. And I completely underestimated this when I decided to enter into the military."

"Social policies absolutely matter," she said. "The military is seen as this sort of backward organization that still has this draconian law."



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Poet's Corner

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By Ron Rose - Tucson

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(* A hair piece for the pubic area)

KJLL Needs To Cancel Laura Schlessinger And Replace Her With King Daevid MacKenzie

by King Daevid MacKenzie

KJLL-AM 1330 South Tucson (520-529-5865) must cancel its Laura Schlessinger Show and give me, a broadcaster of 40 years' experience, the same air time each weekday. From 1:00 to 3:00 P.M. Monday through Friday, KJLL airs the Los Angeles-based Schlessinger, an infamous homophobe and racist.

This bigotry is forced on her audience under the guise of "tough love" advice. Her syndicator unethically promotes her show under the name "Dr. Laura," and indeed she does hold a doctorate from Columbia University. However, that doctorate is in physiology, the science of the bodies of living things. She only holds a master's degree in psychology. The medical board in California specifies that, even if one holds a doctorate, only those who hold a clinical license in the field they work in may call themselves 'Doctor' in public; why they have not nailed her on this fraud (as they did Barbara De Angelis, one of Schlessinger's former co-workers at KFI Los Angeles), many are still wondering.

Last week, Schlessinger, whose flagship station is now the CBS-owned KFWB, took a call from an African-American woman who was married to a White man and was extremely upset by the racially disrespectful comments her husband and his friends made around her. For whatever reason, Schlessinger used this incident to start using the "N-word" on the air (no less than eleven times within two minutes of programming time), told the woman that "if [you don't] have a sense of humor, don't marry outside of your race," and stated that many African-Americans "unthinkingly" voted for President Barack Obama simply because of his ethnic heritage.

This hardcore bigotry is certainly not surprising to the GLBT communities. Schlessinger has uttered vicious statements in relation to us since the mid-æ90s. "A huge portion of the male homosexual populace is predatory on young boys." "If you're gay or lesbian it's a biological error." "When we have the word 'homosexual,' we are clarifying the dysfunc-

tion." "When homosexuals adopt children, these children are intentionally robbed of a necessary mom and dad." All of these are direct quotes from Schlessinger's mouth and writings.

Curiously, after Schlessinger made these vicious attacks on us, CBS handed her a syndicated daily one-hour television show in 2000. Through the efforts of the legendary Robin Tyler and her allies in the StopDrLaura.com website, that show was indeed stopped. Proctor & Gamble was the first sponsor to publicly drop her, leading to no less than 170 other advertiser cancellations across the U.S. and Canada. United Airlines refused to allow its in-flight magazine to sell ad space to CBS to publicise the show. And 30 more sponsors quit her radio show, costing her an additional \$30 million in annual income.

Despite these widespread rejections of her hate speech, over 400 radio stations across the United States, in addition to KJLL, most either owned or affiliated with the Salem pseudoChristian hate talk radio chain, still give her daily airtime to spew her bigotry a decade after her TV fiasco. She has since 'moderated' her stance on homosexuality but continues to oppose marriage equality, establishing that she has not adequately changed her hatred of us.

Schlessinger's bigotry continues to plague our airwaves because her distributors û first Clear Channel's subsidiary Premiere Radio Networks, and today Talk Radio Networks - offer her program to local stations who want to operate on the cheap. TRN 'barter' the program, offering it to the station without cost in exchange for the first one or two commercials in each set of ads aired within and directly adjacent to each hour of the program. Why, the station reasons, should they pay people to operate a program locally when here's a national show being handed to it on a silver platter with that one little string attached? Any local spots sold are automatically profit as a result.

Consequently, many local stations have absolutely no locally-based programs. They are simply



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feeder plants for national material produced by people who would never bother setting foot in the station's community of service, let alone live there.

KJLL, the Tucson affiliate for Schlessinger, largely operates as one such station. Its only daily program host in Tucson is John C. Scott, who, as the station's General Manager, hands himself those two afternoon hours (significantly, immediately following Schlessinger's show). The remainder of the time is given to national programs bartered by syndicators, ranging from the similarly racist Don Imus and Lou Dobbs to the politically progressive Ed Schultz, Thom Hartmann and Stephanie Miller (the last of which, incidentally, came out of the closet as a lesbian on last Friday's program). An additional three or four hours a day are sold by KJLL for \$500 an hour (the price had been quoted to me when I inquired about joining the station two years ago) for vanity programs that wind up becoming infomercials for the host's primary business (realtors, restaurateurs and the like).

KJLL has absolutely no local issue-oriented, event-driven talk programming personnel outside of the schedule territory Scott hands himself.

This policy is all too common across the country. It is designed to prevent local discourse on community matters by experienced program hosts that the stations don't want to have to pay a salary to, or that station owners oppose politically.

Unfortunately, I am one such experienced program host. I have been involved in broadcasting in one form or another since I was 9 years old, as a child actor in supermarket commercials. I have been news director and talk programming host in the Chicago radio market; hosted talk

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programs in Phoenix, Milwaukee and Oshkosh, Wisconsin; and performed many on-air tasks in radio and TV on the CKY-TV Network in Manitoba, Wisconsin Public Radio, the "LesBiGay Radio" daily program in Chicago, and my historical radio series "Echoes of a Century."

As well, and particularly pertinent to the GLBT communities, I have always been open about my bisexuality, never closeted.

I am also physically disabled, having severe degenerative disc disease and lumbar stenosis. Thus, I currently qualify for SSI payments. However, I still retain all of my skills as a broadcaster.

KJLL's office phone number is 520-529-5865. Everyone reading this article needs to telephone John C. Scott at KJLL and demand that he cancel Schlessinger's program and replace it with mine, one that will not insult or harass its audience. That is the very least Scott owes Tucson and the online listening audience for KJLL polluting the Southern Arizona airwaves with Schlessinger's hateful bilge for these many years.

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COYOTE MOON PUB - Open 11am. Beer Bust Sunday - \$1 draft beers (12 oz), domestic only; \$2.25 domestic long necks. Hair of dog special \$1.50 well bloody mary, screwdriver, Cape Cod, salty dog or margarita.

IBT's - Open Noon. Happy Hour Noon-8pm \$2 Well or Domestic Beer. Karaoke on the Patio 4-8:30pm. Burger BBQ 5-8pm + \$1 pint draft. 9pm-close Karaoke inside with Troy & \$1.50 Well or Domestic Beer, \$2.50 Call or Premium Beer. DJ Hurricane on the Patio.

WOODY'S - Open 11am-2am. Peter's Build Your Own Bloody Mary Bar 11am-2pm. Happy Hour 11am-8pm (excluding special events). Full Menu Kitchen open 11am-8pm. Back Pocket Patio Bar 2pm-2am. Beer Bust 2pm-7pm. Karaoke with Michael D 9pm-Close. Drag Bingo every other Sunday 8-9pm. Check our Ad for Special Events or Parties

MONDAY

THE BIZ - Closed for employee training.

COYOTE MOON PUB - Open 3pm. Happy Hour 3 - 8 p.m. \$2.50 well, domestic longnecks & pints. \$3.50 sm. Pitcher/\$5.50 lg. Pitcher. Bucket o' Beer - \$10 Domestic, \$12 Imports and microbrews (4 beers to a bucket, for 2 or more people, some brands excluded).

IBT's - Open Noon. Happy Hour Noon-8pm \$2 Well or Domestic Beer. 8pm-close \$5 Scratch Long Island Varieties. 9pm-close DJ Hurricane with "All Request Music".

WOODY'S - Open 11am-2am. Happy Hour 11am-8pm (excl spec events) Full Menu Kitchen open 11am-10pm Back Pocket Patio Bar 8pm-close. Karaoke with Michael D. 9pm-close.

TUESDAY

THE BIZ - Open 5pm-2am. Happy Hour 5-8 and Game Night all night long. Play Wii, beer pong and pool with the staff.

COYOTE MOON PUB - Open 3pm. Happy Hour 3-8. \$2.50 well, domestic longnecks & pints. Girlz Nite .75 for your favorite well drink or domestic drafts 6-8pm. Ladies only Texas Hold 'Em Poker 6 p.m. Y-Not Karaoke with Anna at 8pm. - Drink specials during karaoke \$1 Michelob Ultra or Bud Light.

IBT's - Open Noon. Happy Hour Noon-8pm, \$2 Well or Domestic Beer. 8pm-close "2'sDay" - \$2 Well or Domestic Beer. DJ Q 9pm-close.

WOODY'S - Open 11am- 2am. Happy Hour 11am-8pm (excl spec events). Full Menu Kitchen open 11am-10pm. Back Pocket Patio Bar open 8pm-close, Caribbean Party Night with Woody's own Specialty Mojitos, Caprioskas and Martinis with Tucson's Hottest Bartenders.

WEDNESDAY

THE BIZ - Open 5pm-2am. Happy Hour 5-8pm. Wild Wednesday 18+ Party with DJ White Shadow spinning the hottest Hip Hop, R&B and top 40 remix dance of today. 21+ NO COVER. 18+ \$8 Cover.

COLORS - Open 4-10pm. Happy Hour 4-7pm, \$3.75 Skyy cocktails, \$3.00 Domestic and Well. 1/2 price appetizers 4-6. Full menu served until 10pm. Nightly dinner specials.

COYOTE MOON PUB - Open 3pm. Happy Hour All Day \$2.50 well, domestic longnecks & pints. \$3.50 sm. Pitcher/\$5.50 lg. Pitchers. Boyz Night - .75 for your favorite well drink or domestic draft beer for men 6-8pm. Karaoke with Anna at 8pm drink specials during karaoke \$1 Michelob Ultra or Bud Light..

IBT's - Open Noon. Happy Hour Noon-8pm, \$2 Well or Domestic. "Diva-Licious" show w/Bunny FuFu. 11pm - -close "Reverse Happy Hour". DJ Q Inside & DJ Mike Lopez playing 80s music on the Patio.

WOODY'S - Open 11am-2am;. Happy Hour 11am-8pm excl. special events). Ful Kitchen open 11am-10pm. Back Pocket Bar open 8pm-close. Service Industry Employee Special All Day Long - \$1 off all drinks except schnapps and draft. Different Themed Underwear Party 9pm-close with \$1.00 off for those who participate (excl. Schnapps and Draft). Retro 80s & 90s Dance with DJ Clint 9 til close..

THURSDAY

THE BIZ - Open 5pm-2am. Happy Hour 5-8pm. Y-NOT Karaoke 9pm-2am with Meco pouring the best drinks in town. Come out and play.

COYOTE MOON PUB - Open 3pm. Happy Hour 3 - 8 pm, \$2.50 well, domestic longnecks & pints, \$3.50 sm. Pitcher/\$5.50 lg. Pitcher. Latin Thursday: Latin music 8pm to close. \$2,50 well margaritas. \$3 Mexican beers, \$3.50 Jose Cuervo.

IBT's - Open Noon. Happy Hour Noon-8pm, \$2 Well or Domestic. 10pm-close "Boyz Nite Out" w/ Bartenders in their underwear. DJ Hurricane spinning Top 40 & DJ Mike Lopez on the patio. \$1.75 Long Island, \$1.50 Tequila Shots, \$3 Skyy Cape Cods and \$4 Skyy Cosmos.

WOODY'S - Open 11am-2am; Happy Hour 11am-8pm (excl Spec Events); Full Menu Kitchen open 11am-10pm. Back Pocket Patio Bar open 8pm-close. Cheap Party Day **FREE POOL**, \$1.00 PBR Longnecks, \$2.00 Tecate Longnecks. Techno and Top 40 Dance with DJ Jeff 9pm - close..

FRIDAY

THE BIZ - Open 5pm-2am. Happy Hour 5-8 pm. GoGo Fridays with 2-4-1 drinks for the ladies til midnight. Catch Shorty spinning the hottest Hip Hop, R&B and Top 40 remix dance of today.

COYOTE MOON PUB - Open 3pm. Happy Hour 3 - 8 pm, \$2.50 well, domestic longnecks & pints. \$3.50 Sm. Pitcher/\$5.50 lg. Pitcher. Shots shot specials 8-close.. Dance lessons with Lawrence at 7pm \$5 per person, Country Dancing 8:30 p.m. to close with DJ Pat.

IBT's - Open Noon. Happy Hour Noon-8pm, \$2 Well or Domestic. 9pm-close DJ Hurricane inside. 10pm-close DJ Mike Lopez with "I'm a Sexy Bitch Night" on the patio.

WOODY'S - Open 11am-2am; Happy Hour 11am-8pm (excl spec events). Full Menu Kitchen open 11am-11pm Back Pocket Patio Bar open 5pm-close. Enjoy the Live Blues/Motown/Soul sounds of Simon Crown 6-9 p.m.; Request your favorite Music Dance Night with DJ Clint 9pm-close. Monthly Birthday Party every 2nd Friday Night of the month.

SATURDAY

THE BIZ - Open 5pm - 2am. Latin night with Latin Drag Show the 1st, 3rd and 4th Saturdays of the month. DJ Dmenace spinnin' the best Cumbias, Salsa & Merengue. \$3 pitchers and \$2 Tequila shotz all night long!

COYOTE MOON PUB - Open at 2pm. Happy Hour 2-8pm, \$2.50 well, domestic longnecks & pints. \$3.50 sm. Pitcher/\$5.50 lg. Plus check out the bartenders choice of shot specials. \$5.00 cheeseburger & fries. \$3.00 Cuervo and \$4.75 Jager Bombs. Check our calendar for the Saturday Night Special Entertainment.

IBT's - Open Noon. Happy Hour Noon-8pm, \$2 Well or Domestic. 5-8pm Karaoke on the patio \$1 Draft Pints. 9pm "Saturday Starrlett's" w/Bunny FuFu & Jane Starr. After the show, DJ Q spinning inside & 10pm-close, DJ Mike Lopez with the "Party on the Patio".

WOODY'S - Open 11am-2am; Happy Hour 10am-8pm (excl spec events); Full Menu Kitchen open 11am-11pm. Back Pocket Patio Bar open 5pm-close. Techno and Top 40 Dance with DJ Jeff 9pm til close. Check our ad for Twice-A-Month Special Events or Themed Parties.

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Washington State Gay Partnership Signature Case Back In Court

TACOMA (Observer Update) - Opponents of the state's expanded domestic partnerships for gay couples are heading back to federal court, hoping to block the release of signed referendum petitions, reports 365Gay.com.

U.S. District Judge Benjamin Settle is holding a hearing where he may decide whether to continue blocking the names and addresses of people who signed Referendum 71 petitions. The referendum was approved last fall by voters.

The U.S. Supreme Court ruled in June that generally, the release of petition signatures does not violate constitutional rights. However, the court said Protect Marriage Washington could go back to the lower courts and try to prove that the release of their names would put them in danger.

AROUND THE GAY GLOBE . . .

In a preliminary vote, the Mexican Supreme Court ruled in favor of gay adoption. Nine of 11 justices voted that same-sex married couples have the right to adopt, according to CNN Mexico. Only eight votes were needed.

Three same-sex couples staged an illegal wedding ceremony in Brisbane, Australia, on Saturday to protest the country's ban on marriage equality, the Sydney Morning Herald reports.

"Sixty percent of Australians support same-sex marriage rights," said organizer Kat Henderson, who reported that between 600 and 1,000 people marched through Brisbane's central business district to call for marriage rights. "No one should deny [us] the right to choose whether or not they want to marry, who they want to marry or love."

This weekend's festivities are the first in three years in Tokyo, as many gay Japanese still are wary of coming out to their family and colleagues, Reuters reports.

The celebration includes a pride parade on Saturday, with the aim of raising awareness of gay people throughout the conservative country. And then a festival in the city's gay district, Shinjuku (or "2-chome"), on Sunday.

"I lead two separate lives—during the day, I'm a full-time 'salaryman' in a web design company, but at night I come to '2-chome' to work here as a barman, Yuu, who declined to give his last name, told Reuters. "At work no one knows about my secret and I have been living this double-life for some seven years now."

One of the first gay men to marry under Argentina's new marriage equality law has died after falling ill at his wedding party, Bloomberg reports.

Nestor Berchot, 45, died early Friday morning after he and his husband, Gustavo Garcia, became the first gay couple to get married in the city of Mar del Plata. Berchot died after fainting during his wedding reception because of high blood pressure, according to the Buenos Aires newspaper Clarin.

Judge Rules Against Anti-Gay Michigan Counseling Student

DETROIT (Observer Update) - In a second case about an anti-gay counseling student, there comes some good news, reported advocate.com.

A federal judge ruled in favor of Eastern Michigan University, which kicked Julea Ward out of its masters program in counseling because she refused to counsel gay clients. She attributed her anti-gay beliefs to her Christianity and accused the school of religious bias when it demanded that she leave the program.

Ward's attorney David French said, "Christian students shouldn't be penalized for holding to their beliefs. When a public university has a prerequisite of affirming homosexual behavior as morally good in order to obtain a degree, the school is stepping over the legal line."

But U.S. District Judge George Caram Steeh wrote in the decision, "Plaintiff was not required to change her views or religious beliefs; she was required to set them aside in the counselor-client relationship—a neutral, generally applicable expectation of all counselors-to-be under the ACA (American Counseling Association) standard."

French said he plans on appealing the court's decision.

The decision comes just days after a student in a counseling program in Georgia sued Augusta State University. Jennifer Keeton said that as a Christian, she believed homosexuality to be immoral. She accused ASU of violating her first amendment rights when the school mandated that she undergo sensitivity training or that she leave the program.

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Only A Fourth Of Troops Surveyed On Gays Respond

WASHINGTON, D.C (Observer Update) The Defense Department says that only about a quarter of the troops sent a survey on gays in the military have responded, reports 365Gay.com.

Pentagon spokeswoman Cynthia Smith said Thursday that close to 103,000 service members have completed the survey, which asks questions like how they would react if assigned to a room with a gay person.

The Defense Department had delivered 400,000 surveys to troops as part of its study on how it could lift the ban without hurting morale. Smith said 150,000 surveys will be sent to troops' family members later this month.

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