

Proposition 8 Battle Just the Beginning for Gay Marriage Rights
Published on wowOwow (11/18/2008)

I don't think any of us realized what a watershed moment the defeat of Proposition 8 would turn out to be. Joanne and I were domestic partners until we got married on July 4th. It was the obvious thing to do since we'd been together 16 years, but I have to admit that part of me was in it for the legal challenge. Once we were married in California, we could challenge Defense of Marriage Act ("DOMA"), Bill Clinton's really big early mistake. Frankly, right now we don't even know if we're married. If we are, we feel bad for our cohorts who just waited a tad too long after the great California Supreme Court decision that came down on May 15th. But anyway, if we're still married in CA, we have miles to go. If we're no longer 2nd class citizens in California, we can't stop there. We then have to challenge DOMA, because what really matters is that now we pay our social security taxes like other good citizens, but if one of us dies, the other, thanks to DOMA, doesn't get those benefits. And if I buy a house (with my own money), I can't make Joanne a co-owner because I'd have to pay a federal gift tax on anything more than \$14,000 a year. Real married people can transfer property back and forth with no consequences whatsoever. In short, it is a big deal to be married here in CA, yes, but also have that marriage recognized by the federal government.

The day the May 15th decision came down, I read every word, amazed and delighted that the highest court in this state had decided that discrimination against gays and lesbians is as bad as discrimination against blacks or women. Such discrimination the court said would be viewed as "suspect" and, to withstand judicial scrutiny, any distinctions between straights and gays would have to be justified by a compelling state interest. The court also threw in that marriage is a fundamental right and that gays and lesbians can't be deprived of such a right any more than any other group can be. In the old days, of course, before *Loving v. Virginia* blacks and whites could be denied the right to marry. This is just like that. – bad. In fact on June 12, 2007, Mildred Loving issued a rare public statement prepared for delivery on the 40th anniversary of the *Loving v. Virginia* decision of the US Supreme Court, which commented on same-sex marriage. The concluding paragraphs of her statement moved me very much:

Surrounded as I am now by wonderful children and grandchildren, not a day goes by that I don't think of Richard and our love, our right to marry, and how much it meant to me to have that freedom to marry the person precious to me, even if others thought he was the "wrong kind of person" for me to marry. I believe all Americans, no matter their race, no matter their sex, no matter their sexual orientation, should have that same freedom to marry. Government has no business imposing some people's religious beliefs over others. Especially if it denies people's civil rights.

I am still not a political person, but I am proud that Richard's and my name is on a court case that can help reinforce the love, the commitment, the fairness, and the family that so many people, black or white, young or old, gay or straight seek in life. I support the freedom to marry for all. That's what Loving, and loving, are all about.

What's going on now is that Prop. 8's passage has awakened a sleeping giant. We've gone to protests and marches ever since election day and more and more signs like "Another Hetero Family against (H)8" keep popping up, along with "No more Mr. Nice Gay", "Where is the Gay Tax Discount?", "When do I Get to Vote on Your Marriage?", along with all sorts of other creative slogans, peppered with rainbow flags and trinkets. On Saturday there were protests at city halls all over the country organized not by the polite groups like Equality California, NCLR, the ACLU and NO on 8, but instead via the Internet, on YouTube and many other sites I've never even seen. All those kids that got involved in the election have taken up the cause, which has been a bit muddled by the now president-elect. Before election day, Obama said he opposed Prop.8 because constitutional rights should be decided by the courts. But, all of a sudden, on the morning of Nov. 4th, as I was heading out to vote, in came a robo call, with Obama loudly proclaiming that his Christian faith dictates that marriage is between a man and a woman. That was the message that the black churches were spreading and that was certainly a part of the reason for Prop. 8's defeat: 70% of African Americans apparently voted for 8.

The real truth as we all probably know by now is that the religious right decided that it would use Prop. 8 as its personal tool in bashing down the separation of church and state. With signs quoting religious homilies the yes people invaded our protests. Actually, not a single person that I have seen or heard has tried to defend Prop. 8 on anything other than religious grounds. I guess the fact that they think our marriages will destroy their families makes sense to some of them. And lest we forget, there's supposed to be a separation of church and state in this country. There was a poignant episode in San Francisco when a 2nd grade teacher, who happened to be a lesbian, kept getting peppered by her class with questions about her upcoming marriage to her longtime partner, a woman. The kids got their parents' permission to attend the wedding -- with said parents -- to watch their teacher get married. Not long after that, an ad popped up on TV, saying that children would be taught about same-sex marriage in school. Well, that's just not true; parents in California have to give their permission before their children are taught about sex and/or marriage in our public schools. In San Francisco the parents of those kids went with their children, proudly. To make matters even more weird the Yes on (H)8 people took a video of several of the children in attendance, emphasizing their point about our wanting to brainwash their children. Now, I'm happy to say that's prompted a lawsuit by the (straight) parents who believe in same-sex marriage, claiming that the (H)8 people have no right to use images of their kids without their permission. And so it goes.

Anyway, a challenge has been filed in the California Supreme Court arguing that Prop. 8 should be overturned because it's really a constitutional revision that requires a 2/3 vote of the legislature before it goes to the people for their vote. Clearly it's a revision, because we had been granted full and equal rights by the court and then along came Prop.8 that carved out specific rights (from the rights we'd just obtained), namely the right to marry, that the religious right doesn't think we deserve. Furthermore, our challengers argued that an amendment to the constitution can't do what Prop. 8 tried to do: namely, take rights away from a minority group, because if it could then all sorts of chaos could ensue against disliked minority groups and we would see up close and personal a real "tyranny of the majority".

If, for some horrible reason, we lose in state court, the next step would be to go to federal court, arguing that Prop. 8 is a violation of the equal protection and due process clauses of the 14th amendment to the U.S. Constitution because the state (here via a constitutional amendment) not only has denied us equal protection but also has stripped us of the

fundamental right to marry. I really hope it doesn't come to that but, if it does, I can't wait to read what Justice Ginsburg has to say, having sat next to her 35 years ago at the U.S. Supreme Court's counsel table as she argued that discrimination against women is suspect and subject to the highest level of scrutiny and that there has to be a compelling state interest (the term used by the California Supreme Court in protecting gays and lesbians) to uphold any discrimination against these protected groups, in both of which I happen to belong.

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