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Friends in Low Places

Cassie Heuckroth

Golden Gate University School of Law, lawreview@ggu.edu

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Friends in Low Places

MARCH 20, 2013 BY [CASSIEHEUCKROTH](#) 0 COMMENTS

Amicus curiae, which translates to “friend of the court,” refers to an entity that supplies a court with information or advice relating to a case. Amicus briefs are submitted by third parties, who have no direct interest in the case, but who are nonetheless passionate about the outcome. For a divisive issue like the legalization of same-sex marriage, there are a great many who fall into this category.

It seems everyone wanted a piece of the action in *Hollingsworth v. Perry* (the Prop 8 Case). From law professors to religious organizations to professional athletes, the amicus briefs poured in on both sides. While most of the briefs were well-reasoned and articulate, a few hit below the belt.

There is virtually no limitation regarding who can file an amicus brief. Organizations or even passionate individuals can write and submit briefs to the Supreme Court. Presented below are some of the more outrageous and offensive briefs filed in this case.

Westboro Baptist Church, widely known for protesting the funerals of slain soldiers and of the young victims of the Newtown, Connecticut shooting, submitted a brief asserting that the government has a compelling interest in preventing the “destructive effects of same-sex marriage.” The brief warned that this “devastating immoral behavior” will lead to the wrath of God. The “References” section included an astonishing 34 individual citations to “The Holy Bible.”

A brief submitted by Citizens United’s National Committee for Family, Faith and Prayer et al. warned of the dangers to heterosexual marriage if same-sex marriage were legalized. The brief suggested that “‘same-sex marriage’ ... is truly ‘anti-marriage,’ in the same way that ‘adulterous marriage’ or ‘incestuous marriage’ would be.”

Because classification of homosexuals as a protected class would warrant strict scrutiny by the Supreme Court, the Citizens United’s National brief distinguished between homosexuals and members of already-protected classes, such as African-Americans. “Gay discrimination,” the brief argued, is not like racial discrimination because gay people have never been “bought and sold as merchandise” and because gay people have committed a “crime against nature.”

A brief by the Liberty, Life and Law Foundation (LLF) alleged that the demand of same-sex couples to have equal access to marriage would infringe on the First Amendment rights of their opponents. The brief argued that the rights of homosexuals “did not supercede those of everyone else.” LLF went on to state that same sex marriage would infringe on the rights of opponents, maintaining, “It is dangerous indeed to breed a citizenry that lacks conscience and integrity.” The irony of this argument was apparently lost on this amicus.

Even given the contribution from the Westboro Baptist Church, the most absurd brief was submitted by David Boyle, a “Counsel of Record” from Long Beach, California. Despite the author’s claim that he supports gay rights in general, the amicus makes frequent ill-informed and sometimes utterly ridiculous remarks throughout the brief regarding homosexuality and marriage.

Mr. Boyle muses on the label of “gay” as a measure of cheerfulness, proposing that the label indicates a “state of permanent happiness that has little basis in reality.” He further alleges that what little happiness there is in a homosexual relationship stems from the “status of being able to have endless sexual relations without ever risking pregnancy.” Amicus continues on this train of thought, comparing heterosexual parents to soldiers risking their lives. Heterosexual couples, he argues, could at any point get pregnant and suffer through the extreme hardships inherent in raising a child. Without the “risk” of pregnancy, amicus argues marriage between homosexuals is insulting to “those who have fought on the battleground” by granting them an “unmerited

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reward.”

Mr. Boyle addresses what he refers to as “sodomy norming” in popular culture in his brief, arguing without a shred of evidence that “children are being pressured into sodomy these days more than before.” Amicus alleges “many believe” the song “Mickey” contains “an offer to be sodomized” and cites an article calling out Judge Dredd as gay.

Finally, amicus discusses the potential for a “slippery slope,” which he believes is a “horribly real” possibility. Citing a “legal academic,” amicus argues that perhaps bestiality should be more protected than same-sex relationships. He concludes by warning the Supreme Court of “hubris” and reassuring the Court that “America has been a comparative paradise to gays.”

For the most part, the amicus briefs filed on both sides were founded on solid legal reasoning, and all of the briefs were clearly the result of at least some measured deliberation and planning. Despite the subjective flaws in their arguments, Mr. Boyle and the other organizations mentioned in this article took it upon themselves to take a stand in shaping American jurisprudence. They wrote these briefs because of a drive to get involved in an issue they were passionate about, and one can hardly fault them for their activism.

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