Civil Rights Movements are Far from Over

Contributed by Reba Birmingham
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Prop. 8 Primer:
Civil Rights Movements are Far from Over
By Reba Birmingham

Birmingham joined Long Beach Law in 1998, a firm founded in 1990 by Audrey Stephanie Loftin, who Birmingham eventually married during the “142 days of equality” in 2008.

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If you are like me, the many twists and turns taken on the LGBT road to marriage equality can be dizzying. How did we end up in federal court, and why? What happens next?

You have probably heard of: “Judge Walker’s Ruling.” To understand what that ruling means and how we got to the Walker ruling, a little history is in order.

In 1996, under President Bill Clinton, Congress passed the “Defense of Marriage Act” (aka DOMA) which holds that individual states are exempted from giving full faith and credit to other state’s marriage laws.

In 1998, Hawaii was set to pass same-sex marriage, but a well coordinated plan funded by organized religion defeated it with a change to Hawaii’s constitution. Our first solid victory was Massachusetts, which was the first to allow same-sex marriage in 2004. To see how insidious the 1996 “Defense of Marriage Act” was, DOMA made Massachusetts an island of gay same-sex couples, preventing say, Nevada or Florida from having to recognize these marriages.

In 2000, the so-called “California Defense of Marriage Act” (Proposition 22) was passed by 61 percent of voters into law. This act stated that only marriage between a man and a woman would be valid and/or recognized in our Golden State. It was immediately challenged in court, and since this

was an act passed by initiative at the state level, our judicial system could declare it unconstitutional, which it did in 2008. The California Supreme Court, in its landmark ruling: “In Re Marriage Cases” declared Prop 22 violated the California Constitution, Article 1, Section 7. This threw open the doors for gays and lesbians to marry, and approximately 18,000 of us did this 4-month magical summer of love. Our Supreme Court also established in its ruling that laws relating to sexual orientation should be subject to “strict scrutiny” the same test used for time-honored classes of people such as race, gender, etc, versus more lenient standards.

What stopped the music was the passage of Proposition 8, November 4, 2008, which outlawed gay marriage. As we now know, misleading commercials were aired and the deep pockets of some organized religions fueled a successful campaign to take away our marriage equality. Prop. 8 was different from Prop. 22 because it altered our California Constitution to declare only marriage between a man and a woman would be valid or recognized. The only misstep by proponents of Prop. 8 was to fail to include invalidating the marriages already granted during the summer of love. Now we have an island of same-sex married people in California, just like our island of same-sex married folk in Massachusetts, see the pattern?

In response to this odious slap in the face, a sampling of harmed parties sued in both state and federal court, with vastly different results. The state court action, Strauss v. Horton , challenged whether an initiative could take away fundamental rights. Sadly, the California Supreme Court said yes, holding the ballot initiative constitutional.

This brings us to the Walker decision. Kristin M. Perry vs. Arnold Schwarzenegger argued that the Constitution being violated by banning same-sex marriage is the U.S. Constitution. Under the 14th amendment to that foundational document, equal protection is applied to the states. Perry vs. Schwarzenegger argued that this includes same-sex couples seeking to marry, a civil right. The case ended up in front of Judge Vaughn R. Walker, of the Northern District of California, who agreed. To do it justice, please read his ruling yourself, it is moving and important as we live through this history. In short, he held that not only does Prop. 8 fail a strict scrutiny test; it fails to pass even a rational basis test when studied. Prop. 8 violated due process and failed to give equal protection under the law. The right-wing blogs went crazy, denouncing Judge Walker as an activist judge. These folks fail to recognize our tripartite government

of checks and balances.

These folks with
their burning torches (through initiative) wanted to take away rights from the minority, another branch stepped in (the judiciary) to say you can't do that. If we made laws solely by "majority rules," our founding fathers knew chaos would ensue. I might add that the Walker decision was made after months of both sides arguing and presenting evidence, not in the heat of passion.

Stunned with
the decision, the proponents of Prop 8 asked the Walker court to issue a stay of marriage licenses and this was declined. Judge Walker granted the anti-gay marriage folks until this Wednesday at 5 p.m. to convince the 9th Circuit Federal Court of Appeals that irreparable harm will ensue if those dreaded gays are again allowed to marry. In light of the Aug. 16 news that the 9th Circuit court of appeals panel continued the stay, it appears that this is no slam dunk. The appeal is to the federal 9th Circuit Court, which is no slam dunk. If we prevail there, then no doubt Prop. 8 proponents will ask the U.S. Supreme Court to rule. If we win there, then same-sex marriage will be the law of the land in all 50 states and territories. If we lose, there is no appeal . The stakes are high and we must keep doing whatever it is individually we can do to make a difference in this long fight. Please donate generously to LAMBDA Legal Defense and Education fund, National Center for Lesbian Rights. We took the hill, but this battle is far from over.

See Judge Walker's ruling by clicking here.