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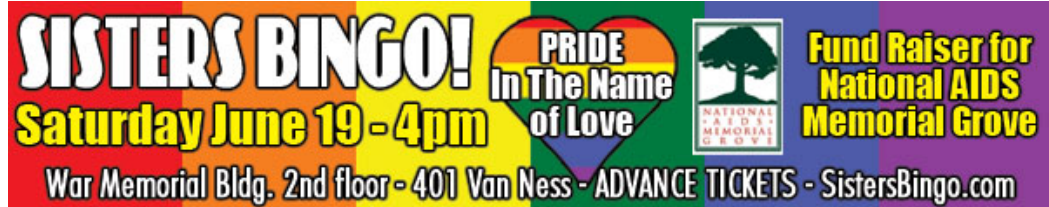
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# SAN FRANCISCO Bay Times

THE GAY/LESBIAN/BITRANS NEWSPAPER & EVENTS CALENDAR FOR THE BAY AREA

For the week of June 03, 2010  
Last updated on June 10, 2010  
10:06 AM PT



**SISTERS BINGO!**  
**Saturday June 19 - 4pm**  
War Memorial Bldg. 2nd floor - 401 Van Ness - ADVANCE TICKETS - SistersBingo.com

**PRIDE In The Name of Love**

**Fund Raiser for National AIDS Memorial Grove**

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## Ann Rostow National News Roundup

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By Ann Rostow

Published: June 10, 2010

Good morning dear readers. Oops, looks like good afternoon is the correct term, and as a matter of fact, the "good" is in question since it is gray and storming here in central Texas, where we now have to import our shrimp from South America and where our cat just got run over by a car. Poor little thing!

He wasn't really "our cat," but he lived in our back yard and we fed him and named him and bought him his own little dish and cat bed. The moral is, do not get attached to quasi-feral animals.

Before I start, I should tell you that Mel and I summoned up our communal loyalty and attended the Austin Pride Parade on Saturday night. This despite the fact that I've been going to pride parades for a quarter of a century now and can remember when the very idea of being out, about and associated with a gay parade felt daring. What if I got on TV and my parents saw me? (Answer: I might actually have to talk to them like an adult.)

It also felt thrilling. All these gay men and women in the streets! At my first pride parade, my friends and I had no money, so we collected about \$20 in nickels, dimes and quarters and the three of us each carried a coin bag and paid for everything as a group. Now, I have plenty of cash and plastic, I hate crowds, I can see gay people whenever I like, my parents are dead and they accepted my sexual orientation years before they passed away.

But we went anyway, put glowing rainbow bracelets on our wrists, caught some candy and after about 30 minutes ducked into a restaurant for carpaccio and a nice bottle of South African rose. Now that's the way to celebrate Pride.

**Question Time for Vaughn Walker**

Do you remember way way back when we were following the Prop 8 trial in Vaughn Walker's San Francisco courtroom? Judge Walker put the trial on hold for a few weeks before scheduling closing arguments, but thanks to some arcane discovery motions, several months went by instead. I call the motions "arcane" simply because I don't feel like going into detail, even though they were pretty straightforward.

Well, the time has come at last, and closing arguments are scheduled for June 16, next Wednesday. Meanwhile, Judge Walker has issued a list of 39 questions for the lawyers to answer, either in writing, at argument, or both. Given the looming hearing date, our champions at the bar, David Boies and Ted Olson, will give a press conference tomorrow, the tenth.

And in related news, John Podesta and Robert Levy have joined the board of the Americans Foundation for Equal Rights, the group formed by political operative Chad Griffin for the purpose of filing the Prop 8 lawsuit. Podesta is the head of the leftist think tank, the Center for American Progress, while Levy runs the libertarian Cato Institute.

But back to the questions, and what they might reveal about Judge Walker's mindset and about the legal issues presented in the case. The first 12 questions are addressed to our side, the next 12 are directed at the Prop 8 side, and the last 15 are for everyone to consider.

The first question for us is a little odd. Assuming that the ban on recognizing same-sex marriage is not rationally related to a legitimate state interest, asks the judge, what if the voters were under the (false) impression that it was? What if they had a "common sense" belief that, for example, children would be better off with a mommy and a daddy?

Just because the San Francisco Bay Times legal experts never went to law school does not mean they can't answer these questions as well as anyone else. And Bay Times analysts agree that a law that does not pass the lowest standard of judicial review is unconstitutional regardless of the "common sense" beliefs of the voters. Voters in Colorado may have thought that Amendment Two made a lot of sense back in the 1990s, but that didn't stop the High Court from overturning the amendment in *Romer v Evans*. Children would no doubt be better off with two multi-millionaires as parents, but that does not mean we can institute a means test for adoptions.

(Yes, I know that children are not "better off" with straight parents. But the argument over who makes the best parent should never be engaged to begin with. What about the parent who feeds her kids junk food versus the one who starts every morning with oatmeal?)

Next, Walker asks whether there's any evidence that maintaining "traditional marriage" does not have a "rational basis" to begin with. But the legal test is whether a law is rationally related to a legitimate state interest, not whether it is "rational." Could fear of change or dislike of gay couples be considered "rational?" Nope. So what is the state interest in question, how do gay couples threaten this theoretically important policy goal, and how have voters internalized this relationship? We don't know because we've never heard of any state interest that even comes close to being worthy of the adjective "legitimate," let alone any rational argument from an anti-marriage voter.

Question three points out that same-sex relationships have only recently been recognized by civil authorities. How then can they be considered "fundamental" in constitutional law? The same way that interracial marriages were deemed fundamental in 1969 and the same way that African Americans were recognized as equal citizen years after *Dred Scott*.

Oh, don't worry. I'm not going to delve into all 39 questions! But some of them are certainly in the softball category for our side. Others seem tangential to a constitutional analysis, including questions about the economic benefits of recognizing gay unions, as if questions of fundamental rights and equal protection turn on business considerations.

In question ten, Judge Walker asks us whether or not it's possible to rule on the status of Prop 8 under the federal Constitution without also ruling on the constitutionality of the Defense of Marriage Act. Now here, Ladies and Gentlemen, we have a real stumper.

The backers of our lawsuit would say no. They would say that one simple question ties Prop 8 to DOMA like a ball and chain, namely whether or not the U.S. Constitution allows the "state" to restrict the fundamental right of marriage on the basis of gender and sexual orientation. More nuanced observers note that Judge Walker could rule narrowly that the state of California may not, under federal law, institute separate but equal nomenclature for similarly situated citizens. Having said that, Judge Walker could then duck DOMA all together.

As I mentioned, the Prop 8 people have their own set of 12 questions, and from my perspective, they are not softballs. Most of them ask the antigay side to explain just exactly why the state is legitimately allowed to ban same-sex unions and how exactly such a ban would improve the lives of California children and others, conundrums of the sort that anti-marriage activists have stumbled over for years.

My favorite question, number 11, asks why the Prop 8 proponents argue that moral disapproval is somehow distinct from "discrimination." And further, by implication, why disapproval based on religious or moral sentiment is somehow sacrosanct and worthy of protection. After all, Bay Times analysts point out, racism and slavery were both based on religious and "moral" codes at one time.

Finally, we have the 15 common questions. Unfortunately, even though many of them are quite interesting, I am tired of rehashing questions in general and ready to move on to something a little less important. I'm sure I speak for you, dear reader, as well.

But let's look at two of them, just for fun. Question 11 is one that I have never considered. What if, asks Judge Walker, it turns out that sexual orientation is immutable for men, but not for women? Woah, Nelly!

Bay Times analysts have a few things to say on this point. First, it is most likely the case that there are some genetic elements in sexual orientation for women as well as men. Don't forget the ring finger test! Second, for some people of both sexes, sexual orientation is not "immutable" or at least it is not at firm "either/or" status. Obviously, all bisexuals fall into this category.

Finally, the whole question of immutability, like the question of "who makes the best parent?" is a red herring. Just as a specific religion is a protected category under federal law, so should be sexual orientation. Whether hard wired, soft wired, genetic, "chosen," or whatever, sexual orientation is a

profound personal characteristic that one should not have to adjust in order to access equal treatment. Period.

And we'll end on the last question, which is key. If Prop 8 is found to be unconstitutional, asks his honor, what is the appropriate remedy? Or specifically, asks Walker, what remedy: "would yield to the constitutional expression of the people of California's will?"

It seems to me that the people of California "willed" a separation between gay and straight marriages. If that is found to be unconstitutional, I can't see that a "constitutional expression" of that concept exists. I would note that 48 percent of Californians voted against that separation, so if I were advising Judge Walker, I'd suggest that maybe three percent of the Yes on 8 voters had no idea what they were doing, and that combined with the other 48 percent, the "will of the people of California" would be to strike Prop 8 off the books.

Alternatively, he could kick the whole ball of wax up to the Ninth Circuit.

#### **Who Wants to be a Millionaire?**

Well, that little exercise seems to have absorbed a vast section of this week's column, leaving me very little space for subjects like gay tax policy, the latest Gallop poll, lesbian parents, and John Kerry's intervention on behalf of a bi-national gay couple.

Moreover, the Gay Google news search is serving up tedious tidbits like: "Why Rush Limbaugh Loves Elton John," "Gay Love Exhibition Opening in Warsaw Museum," and "Miley Cyrus calls Liam Hemsworth's Taste in Clothes Odd."

I gather that Elton John accepted a million bucks to play at Rush Limbaugh's wedding, which stuns me, since I really can't imagine anyone would marry the slobby and obnoxious pill-popping radioman. Oh, don't tell me he's reformed. I like calling him a pill-popper and will continue to do so, in part because I enjoy the way sound of "pill-popper."

Pill-popper. Pill-popper. Pill-popper. Just writing that makes me want to pop a fun pill of some sort. When we were kids, we used to steal random drugs from the medicine cabinet to see if they had any effect. I can tell you from experience that you do not get high from Premarin.

But as for Elton, I gather he's getting gay community flak for his betrayal. Normally, I'd defend the man, because I'd do a lot of things for a million bucks myself. But Elton doesn't need the money, I presume. Maybe he does. You never know. But I'll tell you what. The list of things I would not do for a million dollars is a lot shorter than the reverse. And singing at Rush's wedding is well within my price range.

As for taxes, the IRS has ruled that California domestic partners must split their joint earning down the middle and each report half of the total on their federal tax forms. That's not the same as accepting joint taxes, but it is, in fact, a roundabout way for the federal government to recognize same-sex unions.

The decision is based on joint property laws in the Golden State but I like it because it's one more needless complexity that encumbers the mishmash collection of dos and don'ts now passing for national policy on gay unions. There is one simple, elegant and fair way to bring order to the United States, separately and as a whole, which is to tear down marriage restrictions throughout the country. And the more complicated the current piecemeal rules and regulations become, the more attractive that solution appears.

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