



From the Chambers of
Hon. Douglas L. Rayes

SUPERIOR COURT OF ARIZONA
IN MARICOPA COUNTY
East Court Building, 101 West Jefferson, Suite 411

Phoenix AZ 85003
602-506-0816
602-372-1850 (Fax)
602-506-3100 (TDD)

August 10, 2006

TO: Lisa Hauser, Diana Varela, Glen Lavy, Charles Blanchard, &
Peter Gentala

FROM: Mary Farmer JA to Judge Douglas L. Rayes

RE: Arizona Together vs. Janice Brewer et al
CV 2006-010505

4 pages

Michael K. Jeanes, Clerk of Court
*** Filed ***

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2006-010505

08/10/2006

JUDGE DOUGLAS L. RAYES

CLERK OF THE COURT
C. Johnston
Deputy

ARIZONA TOGETHER, et al.

LISA T HAUSER

v.

JANICE K BREWER, et al.

DIANA L VARELA

GLEN LAVY
CHARLES A BLANCHARD
PETER A GENTALA

MINUTE ENTRY

This matter was taken under advisement following the oral argument held August 4, 2006. The Court has considered Plaintiff's Memorandum of Points and Authorities in Support of Request for Injunctive Relief, Real Party in Interest Response in Opposition to Plaintiff's Memorandum in Request for Injunctive Relief, Plaintiff's Reply in Support of their Memorandum of Points and Authorities in Support of Request for Injunctive Relief as well as the arguments of counsel and the exhibits admitted at the time of the oral argument.

The question before the Court is whether Proposition 107, the "Protect Marriage Amendment" encompasses two or more separate constitutional amendments and therefore violates Article XXI, Section 1 of the Arizona Constitution. Proposition 107 would amend the constitution to define marriage as only a union between one man and one woman and would further prohibit creating or recognizing legal status for unmarried persons that is similar to that of marriage.

Plaintiffs, opponents to Proposition 107 (hereinafter "opponents") argue that the amendment violates the separate amendment rule of Article XXI by having multiple purposes:

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2006-010505

08/10/2006

(1) prohibiting same sex marriages; (2) prohibiting civil unions and (3) prohibiting political subdivisions of the state from conferring benefits and rights to domestic partners. Real Party in Interest (hereinafter "proponent") argues that the proposition has a single purpose of protecting marriage. Proponent argues the first clause protects marriage from redefinition and the second clause protects marriage by prohibiting extension of official status to marriage imitations. Proponent concedes that the amendment will ban the government from providing domestic partner benefits.

When a proposed amendment contains more than one provision, the amendment satisfies the "one amendment" requirements of Article XXI only if its provisions are "sufficiently related to a common purpose or principle that the proposal can be said to constitute a consistent and workable whole on the general topic embraced, that, logically speaking, should stand or fall as a whole." *Kerby v. Luhrs*, 44 Ariz. 208, 221, 36 P.2d 549, 554 (1934).

The Court in *Kerby*, supra, defined the "common purpose or principle test,"

"[i]f any one of the propositions, although not directly contradicting the others, does not refer to such matters, or if it is not such that the vote supporting it would be expected to support the principle of the others, then there are in reality two or more amendments to be submitted, and the proposed amendment falls within the constitutional prohibition." *Id.*

In support of its position, proponent cites decisions from other states where similar amendments facing similar challenges were found constitutional. Those decisions have some persuasive value, but the Court in *Slayton v. Shumway*, 166 Ariz. 87, 90, 800 P.2d 590, 593 (1990) reaffirmed the *Kerby* test in Article XXI challenges, and noted that it is a more restrictive test than the test applied by other states.

"We are aware that other states have evolved less restrictive formulations.

* * *

What *Kerby* requires is simply that "logically speaking, [the different portions] should stand or fall as a whole" because the voters "supporting [each portion] would reasonably be expected to support the principle of the others." *Slayton v. Shumway*, 166 Ariz. 87, 91, 800 P.2d 590, 594 (1990).

Opponents argue that the proposition fails the second prong of the *Kerby* test. They argue the proposition is not such that a voter supporting the first clause would be expected to support the principle of the second clause. Opponents argue that voters in favor of marriages being limited to a union between one man and one woman would not

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2006-010505

08/10/2006

be expected to support the elimination of legal status for unmarried persons which would eliminate domestic partner benefits between same-sex and opposite-sex couples.

The second prong of the *Kerby* test does not create a test distinct from the common-purpose test, but rather provides an alternate approach for determining whether a proposal falls within the common-purpose or principle test. *Korte v. Bayless*, 199 Ariz. 173, 177, 16 P.3d 200, 204 (2001). Opponents submitted results of two polls or surveys of Arizona voters through the revised declarations of Paul Harstad and Celinda C. Lake. Both polls were uncontradicted and both polls indicate a substantially different outcome on the vote to preserve marriage as the union of one man and one woman if the amendment also denies domestic partner benefits to opposite-sex partners as well as same-sex partners. However, polls are not included in the list of objective factors identified in *Korte* to assist the Court in determining whether various provisions further a common purpose. *Korte*, 199 Ariz. at 177, 16 P3d. at 204. Polling data submitted by opponents is not the type of "objective factor" discussed in *Korte*.

Both proponent and opponents make cogent and persuasive arguments. Applying the test established by the Court in *Kerby* this court, narrowly concludes that Proposition 107 complies with the requirements of Article XXI of the Arizona Constitution.

THE COURT FINDS the two clauses of the proposed amendment have but one purpose, the protection of marriage by preventing redefinition and extension of official status to marriage substitutes.

Therefore,

IT IS ORDERED denying Plaintiff's Request for Injunctive Relief.

/ s / JUDGE DOUGLAS L. RAYES

JUDICIAL OFFICER OF THE SUPERIOR COURT