

RECEIVED

FEB 07 2005

PRESTON GATES & ELLIS LLP

NOs. 75934-1, 75956-1

SUPREME COURT OF THE STATE OF WASHINGTON

HEATHER ANDERSEN, et al., *Respondents*

v.

KING COUNTY, et al., *Appellant*,

v.

STATE OF WASHINGTON, *Appellant*,
and

SENATOR VAL STEVENS, et al., *Intervenor Appellants*.

Appeal From the Superior Court of King County
The Honorable William L. Downing

CECELIA CASTLE, et al., *Respondents*,

v.

STATE OF WASHINGTON, *Appellant*.

Appeal From the Superior Court of Thurston County
The Honorable Richard D. Hicks

MOTION FOR PERMISSION TO FILE AMICUS CURIAE BRIEF

Lisa Brodoff, WSBA #11454
Seattle University School of Law
RONALD A. PETERSON LAW CLINIC
1112 E. Columbia
Seattle, WA 98122-4340
(206) 398-4145
Attorneys for *Amicus Curiae*

Senior Services of
Seattle/King County
Services & Advocacy
for Gay, Lesbian,
Bisexual & Transgender
Elders (SAGE)
Rainbow Train

1. IDENTITY OF MOVING PARTY

The moving parties are Senior Services of Seattle/King County, Services and Advocacy for Gay, Lesbian, Bisexual & Transgender Elders (SAGE), and Rainbow Train.

2. STATEMENT OF RELIEF SOUGHT

Senior Services of Seattle/King County, SAGE, and Rainbow Train request permission to file a Brief of Amicus Curiae in Support of Respondents Heather Andersen, et al., and Cecelia Castle, et al. and marriage equality generally under RAP 10.6.

3. FACTS RELEVANT TO MOTION

(a) Applicants' Interest and the Group Applicants Represent:

Amicus Curiae Senior Services of Seattle/King County is the largest non-profit agency serving seniors in King County. It supplies quality services that support the independence of elders by annually serving over 50,000 seniors, their families and care-givers through a variety of programs. *Amicus Curiae* Services and Advocacy for Gay, Lesbian, Bisexual & Transgender Elders (SAGE) is the world's oldest and largest national organization devoted specifically to meeting the needs of aging sexual minorities through education and advocacy on aging issues. It seeks to provide a better aging experience for GLBT seniors through education, advocacy and direct service. *Amicus Curiae* Rainbow Train is

a non-profit organization that trains health care and social service providers for the elderly on the unique needs of sexual and gender minorities so that providers can be appropriately responsive to those needs.

Each of these three organizations represents and advocates on behalf of the interests of senior citizens in obtaining appropriate services and treatment. SAGE and Rainbow Train focus their advocacy on the particular needs of lesbian, gay, bisexual and transgender elders through training of providers, education and advocacy.

(b) Applicants' Familiarity with Issues and Arguments Involved in *Anderson/Castle*:

The applicants are each familiar with the issues and arguments put forth in this case. We have reviewed all of the briefs currently filed with this court, as well as those filed at the trial court level. Further, Senior Services, SAGE, and Rainbow Train are knowledgeable about the impact of marriage equality on their elder clients in same-sex committed relationships, and can speak to those concerns.

(c) Specific Issues to Which the Amicus Curiae Brief will be Directed.

This amicus brief focuses on issues of particular concern to the elderly. It looks at the impacts of legal marriage recognition on aging couples, and the danger that results from the lack of marriage protections

on elder same-sex couples. Generally, these issues for elderly couples involve protection of assets, access to a spouse, and health care decision making when one spouse gets sick, and access to income, assets, and the family home when one spouse dies.

First, the brief talks about the issues that arise when one spouse gets sick and needs long term institutional or in-home care. Legally married couples have protections under the Medicaid program that preserve significant income, assets, and the family home for the well spouse when the other spouse needs expensive long term care. These same spousal “anti-impoveryishment” protections are unavailable to same-sex couples who cannot marry, resulting in the possible loss of basic support for the well partner, and loss of the family home upon the death of the sick partner. Marriage equality would remedy this inequity.

Second, the brief examines the protections automatically given to married couples for health care decision making and visitation when a spouse is hospitalized or placed in a nursing home. These protections guaranteed by law are unavailable to same sex couples without expensive and time consuming legal planning. Even with proper legal documents like medical powers of attorney, there are no guarantees without marriage that medical providers will honor the choices over the objection of legally recognized “family”.

Finally, the brief looks at the protections given legally married opposite sex couples when one spouse dies. Social Security benefits on the deceased spouse's account are only available to legally married spouses. If the deceased spouse leaves Washington State retirement account benefits upon death, state law protects access to those accounts for legally married partners. Same sex elder couples are denied these benefits and protections.

(d) Applicants' Reason for Believing that Additional Argument is Necessary on These Specific Issues.

We believe that additional briefing on the issues described above would assist the Court. None of the briefing filed thus far deals specifically with the special impacts of the denial of marriage for same-sex couples on the elder residents of Washington State. This amicus brief will assist the court in evaluating the effect of its decision in this case on our state's senior citizens.

4. GROUNDS FOR RELIEF AND ARGUMENT

RAP 10.1(e) and 10.6 afford this Court discretion to grant permission to interested applicants to file an amicus curiae brief. Leave should be granted in this case due to the significant impact the present

case has in ensuring marriage equality for elder same-sex couples in
Washington State.

Respectfully submitted this 31st day of January, 2005.

Seattle University School of Law

RONALD A. PETERSON LAW CLINIC

Attorneys for *Amicus Curiae*
Senior Services of Washington
SAGE
Rainbow Train

By: 

Lisa Brodoff WSBA #11454

#33942