



Proposition 8: The Colorado Connection

by Dr. Glenda Russell

What a happy and appropriate confluence of events: Out Boulder will sponsor one of the limited US productions of **the play "8"** during the same year that we mark the twentieth anniversary of the notorious Amendment 2. So, what is the connection between these two things—a play about the trial of California's Proposition 8 and the anniversary of Colorado's Amendment 2?

In 1992, voters in this state endorsed a ballot measure called Amendment 2. The measure effectively legalized discrimination against lesbian, gay, and bisexual (LGB) people and, in the process, struck down Boulder's (as well as Denver and Aspen's) anti-discrimination protections for LGB people. The vote for Amendment 2 followed a year-long campaign in which the lives of LGB people were debated, scrutinized, and objectified. Misinformation and downright lies were a central part of the campaign to pass Amendment 2. The strategy worked when, on November 3, 1992, Colorado voters went to the polls and endorsed Amendment 2 by a 53-47%

The campaign and election left many LGB Coloradans scarred and scared as well as angry and mobilized. Our neighbors, friends, and sometimes even our family members had voted to deprive us of the right to jobs, housing, and public accommodations. And it was the first time that LGB people had experienced the political and psychological violation of having their rights voted down by any state. The shock and horror were palpable among LGB people as well as among their heterosexual allies. The shock waves went far beyond the boundaries of the state. People in other states initiated a large-scale boycott of Colorado.

In the midst of their shock, fear, and anger, LGBT people and allies began organizing. They fought Amendment 2 in the courts and in the hearts and minds of people in Colorado. Many LGBT people came out for the first time; others stepped farther out of the closet than they had ever imagined they would. Heterosexual allies took public stands, some taking significant risks to do so. The aftermath of Amendment 2 forever changed the place of LGBT people in the

state. Eventually—on May 20, 1996—the U.S. Supreme Court decided that Amendment 2 violated the Constitution. Writing for the majority of the court, Justice Kennedy took Colorado voters to task for classifying LGB people “not to further a proper legislative end but to make them unequal to everyone else.” Kennedy concluded, “This Colorado cannot do.” This was the Romer decision, named after the then governor who was sued by plaintiffs to overturn Amendment 2.

And what does all of this have to do with Proposition 8? Proposition 8 was also a referendum, in this case in California. Designed to take away marriage equality that had already been granted by the California Supreme Court, Proposition 8 was passed by that state’s voters in 2008. When Ted Olson and David Boies—the unlikely pair of ally lawyers—set out to defeat Proposition 8 in the courts, they fashioned a legal argument rooted in the Romer decision.

The case against Proposition 8 won its first round in U. S. District Court in August 2010. Although the testimony in the trial was videotaped, that tape has never been released. The proponents of Proposition 8 argue against the release of the videos, and so far, their argument has prevailed. In a move that demonstrates how necessity is the mother of invention, the Academy Award-winning screenwriter (for “Milk”), Dustin Lance Black, has culled the court transcript for a narrative to show what the supporters of Proposition 8 did not want us to hear—just how clear the case for marriage equality was and is. The result is the play “8.”

Recently—on February 7 of this year—California’s Ninth Circuit Court of Appeals panel declared that Proposition 8 was unconstitutional. Those of us who had read (and re-read) Colorado’s Romer decision recognized the parallels between the two decisions. Even the language was familiar: “Proposition 8 served no purpose, and had no effect, other than to lessen the status and human dignity of gays and lesbians in California.” Amendment 2 had dealt a horrible blow to LGBT people and, indeed, to all people who believe in justice and equal rights. Despite the pain it caused, we rose up and changed the face of the state and eventually won a Supreme Court ruling that represented the first time the high court had spoken of LGB people with anything like respect. Now that same decision is used as the legal scaffolding for the Ninth Circuit’s decision in the Proposition 8 case.

The Proposition 8 case has a long journey ahead of it as it makes its way to what many assume will be a hearing by the U.S. Supreme Court. Whatever the eventual outcome of the Proposition 8 case, its progress to date has already demonstrated how seemingly awful defeats can be turned into important victories. We would do well to take this as a powerful reminder of how defeats are temporary when we are willing to continue fighting for our rights. Indeed, this is how change it is in that spirit that it is so appropriate that we in Colorado commemorate the twentieth anniversary of Amendment 2 in the same year that the Romer decision played such an important role in the Proposition 8 case. It is similarly appropriate that we welcome the play “8” to our home. Its roots, after all, are already here.