



The testimony they're trying to hide

Kenneth Miller

Called as an “expert” on gay and lesbian political power, despite having no knowledge or expertise on key subjects, and having previously expressed contradictory opinions.

An outspoken public figure, Ken Miller has never shied away from the spotlight before.

- Associate Director of the Rose Institute of State and Local Government, a think tank funded by anti-gay foundations ^{1, 2}
- Though Proponents claim that he fears retribution for his testimony, Miller has gladly pursued publicity with two books, five book chapters, five articles, thirty-one conference talks, and frequent media appearances -- in other words, **only when there is no risk of cross-examination.** ³
- It's only now that he has appeared **under oath and penalty of perjury** that Miller suddenly claims to fear for his privacy.

As soon as he took the stand, it was clear that Miller lacks basic knowledge and credibility on the very subject about which the Prop 8 Proponents called him to testify.

- Despite being called as an expert on gay and lesbian political power, Miller admitted that he has not published any peer-reviewed articles on the subject; has performed no research; and was unable to identify key facts and figures involved. ^{4, 7}
- The Court found “that Miller's opinions on gay and lesbian political power are **entitled to little weight** and only to the extent they are amply supported by reliable evidence.” ⁵
- The Court also found that Miller “is **not sufficiently familiar with gay and lesbian politics** specifically to offer opinions on gay and lesbian political power.” ⁸
- Proponents even admitted that they feared that their lackluster witnesses would be subjected to “**ridicule.**” ¹²

He admitted under cross-examination that his testimony was fed to him by the Prop 8 attorneys.

- Miller confessed that proponents’ counsel provided him with most of the “materials considered” in his expert report. ⁸
- He **could not remember** how much of the material that he based his research on was provided by attorneys, totalling well over 200 documents and articles.

He also admitted that gays and lesbians are, in fact, politically disadvantaged.

- Under cross-examination, Miller confessed, “My view is that at least some people **voted for Proposition 8 on the basis of anti-gay stereotypes and prejudice.**” ⁹
- He also testified, “Looking at the institution of marriage, the state does treat heterosexual couples differently than same-sex couples.”

Miller was actually opposed to discriminatory ballot measures before he was paid to testify in support of them.

- Before Proposition 8 passed, Miller specifically cited its language as an example of “bypassing checks and balances ... at the expense of certain minorities.” He added that such measures “may indeed have been **motivated by animus.**” ¹⁰
- He continued, “The direct initiative can be and has been used to disadvantage minorities,” and “initiative proponents are **accountable to no one.**” ¹⁰
- The Federal Court noted Miller’s convenient self-contradiction: “the opinions he offered at trial were **inconsistent with the opinions he expressed before he was retained as an expert.**” ¹¹

1. http://www.claremontmckenna.edu/rose/staff/senior_staff.php
 2. <http://rosereport.org/component/content/article/101>
 3. 3-09-cv-02292-280
 4. Tr. 2435:21-2436:4
 5. 704 F.Supp.2d at 952; Slip Op at 53

6. 704 F.Supp.2d 921, 951; Slip Op. at 50
 7. Tr. 2535:9-2539:13
 8. 704 F.Supp.2d at 951; Slip Op. at 50
 9. Tr. 2608:16-18
 10. Miller, Kenneth P. (2001). “Constraining Populism: The Real Agenda of Initiative

Reform,” *Santa Clara Law Review*, Vol. 41, No. 4, 1037-1084.

11. 704 F.Supp.2d at 952; Slip Op at 53
 12. Proponents’ Application for Immediate Stay of the District Court’s Order Permitting Public Broadcast of Trial Proceedings