



## 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 <sup>1, 2</sup>
- 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.** <sup>3</sup>
- 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. <sup>4, 7</sup>
- 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.” <sup>5</sup>
- 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.”<sup>8</sup>
- Proponents even admitted that they feared that their lackluster witnesses would be subjected to “**ridicule.**” <sup>12</sup>

**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.<sup>8</sup>
- 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.**” <sup>9</sup>
- 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.**”<sup>10</sup>
- He continued, “The direct initiative can be and has been used to disadvantage minorities,” and “initiative proponents are **accountable to no one.**”<sup>10</sup>
- 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.**” <sup>11</sup>

1. [http://www.claremontmckenna.edu/rose/staff/senior\\_staff.php](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