

Transcript of The Gavin Newsom Show
June 21, 2008

ANNOUNCER: From San Francisco, California, the epicenter of the progressive nation, this is the Gavin Newsom Show on Green960.

GN: Hi, this is Gavin Newsom on Green960, and you're listening to The Gavin Newsom Show. What an extraordinary week this has been. Here we are, a week after the first, historic marriages and weddings were performed in San Francisco City Hall. What an extraordinary honor it is for me to have the very enthusiastic Kate Kendall, Executive Director of the National Center for Lesbian Rights, NCLR, in the studio to reflect upon in the last number of months this historic Supreme Court decision. Kate Kendall, how are you feeling?

KK: Well Mr. Mayor, as you said, enthusiastic, joyful, ecstatic, overwhelmed, relieved. I mean, that ruling on May 15th, changed everything for every lesbian, gay, bisexual, transgender, person in this country, not just California.

GN: All right, take me back, May 15th, it's 9:30 in the morning, 9:45. The ruling you know is coming out at 10:00 AM, how are you feeling? Are you confident going in? Do you feel like that it was going to be a positive outcome? What were you doing? Where were you?

KK: Well, I felt very confident. And then I walked into a certain Mayor's office who had been hearing that maybe we weren't going to get the ruling I was hoping we were going to get. It's always hard to argue with the head of your city, but I do remember saying on several occasions that I thought we were going to win.

GN: Yeah, you walked in. What Kate's talking about is 9:30 or so that morning she came in and said, how are you feeling? She was all excited and enthusiastic and absolutely confident. And she walked in, there were four or five of us with our heads down, saying I'm not feeling so good about this. Let's really focus on how we can mediate some of the disappointment. And you got me thinking that perhaps we could win, but I candidly thought, with all the rumors about one judge going one way, and then the next day going another way. Someone's staff member resigning, and why that staff member

resigned, etc, that it would be four to three, but not on the end of the outcome that we enjoyed. But needless to say, ten o'clock comes around, and how did you find out?

KK: Oh gosh, we're standing in the court building, the building that houses the Supreme Court where the oral argument had been held on March 4th, just three or so months before then. And there is a huge line of people waiting to be handed the ruling, waiting for the ruling to be handed out. There are a couple hundred people standing on the steps, and somebody from the court's office walks out with a big box, lid on it, and of course the buzz starts. They know that in that box is the ruling, and holds the fate of our entire community. Drops the box, pulls the lid off, begins handing out the ruling with something the court usually doesn't issue, a press release. Five-page press release with this enormous opinion attached to it, and immediately someone grabs the press release and starts reading the first sentence.

GN: And what's the first sentence say?

KK: And in that first sentence, it says:

Today, May 15th, by a four-three ruling, a majority of the California Supreme Court struck down laws and language in California law, which would prohibited lesbian and gay people from having the right to marry, and finds that under equal protection, and the fundamental right to marry lesbian and gay couples have and enjoy a right to marry in California.

And of course his voice is breaking, as he's getting to the point. He's yelling this, and reading it in front of all of us, and you know, you don't have to get too far into the sentence because of course you know where it's headed. You only need a few of those key words, and then when his voice started breaking, because of course his eyes were moving a little bit a head. The place, pandemonium breaks out. We're all crying, hollering, hugging each other. It really was, other than I've said before, other than when my children were born, there has been no other moment where I have been more ecstatic.

GN: Oh I love it. You know, it's interesting, as you were reading the press release, my office gets online, and we're reading the computer, and on the computer we are reading the actual opinion. It doesn't start off so favorably. So our press secretary starts reading it, and goes

we lost, and he starts walking away upset, and angry, and depressed. And I start walking back into my office feeling like I told you so, literally you and others. Then all of a sudden, I hear the roars outside, you and others, and I say, what the heck is that, and walk back in. And folks are on their cell phones going we won, we won.

KK: You heard CNN did the same thing? CNN went on a three-minute story about the loss because the first paragraph of the opinion says, we held in *Lockyer vs. blah blah blah*, that the city and county officials did not have authority to issue marriage licenses. And you know, they are recounting the history from four years ago!

GN: And that's how the opinion started.

KK: And that's how the opinion starts. And you know, the poor legal analyst on CNN, I'm afraid she's not going to have a job much longer because you know you never—if you look at the language closely, and you're not trying to be the first people to break the story, it's very clear they are talking about history. And as soon as I saw that paragraph and realized that when they said city and county officials, I knew they couldn't be talking about their case, because their case is about the law. It's not about what somebody did, or your decision, your historic decision four years ago. It's about what's the law. So I immediately go to the end.

GN: Yeah, of course.

KK: And that's where, in the last couple of paragraphs where they say—you know, it's the kind of language I remember reading in *Lawrence vs. Texas*. Where Kennedy and the U.S. Supreme Court...

GN: And *Lawrence vs. Texas* struck down the anti-sodomy laws.

KK: All remaining laws that criminalized same-sex intimacy, and overruled *Bowers vs. Hardwick*.

GN: And the *Bowers vs. Hardwick* was established that basically affirmed the anti-sodomy laws from Georgia.

KK: Yup, said it was perfectly fine to make intimacy between same-sex people criminal, and to make you a criminal on that basis.

GN: In this decision, that was a decision that was adjudicated in 1986. People forget that.

KK: In 1986 we lost. We lost the Bowers vs. Hardwick decision. Heart breaking decision, and then finally, many years later, just in 2003. 2003-2004 was an amazing time for us. And Kennedy, I'll never forget reading when Kennedy struck down Bowers vs. Hardwick, he says the decision was wrong then in 1986, and it's wrong now. And I just remember feeling so affirmed as a human being with that sentence. I had the same feeling reading the sentence where George writes, laws, language that say lesbian and gay people can not marry shall be stricken from the statutes.

GN: Yeah. It's interesting too looking back at the Lawrence vs. Texas decision in dissent, Justice Scalia was rather pressing. He said that this would open the door to same-sex marriage.

KK: Yep, he does. And you know in some ways he is very right. I mean how can you, if you no longer make people criminals because of who they love, how do you say, well but you don't have civil protection under the laws.

GN: You're listening to Kate Kendell on the Gavin Newsom Show on Green960. And Kate, let me just pick up on that. In 1986 in that Bowers vs. Hardwick, it made it a criminal act. You were breaking the law. You were subject to prosecution for engaging in a relationship in same-sex.

KK: Yep. And the most far reaching, and tragic affects of those laws which existed in about eighteen states at the time, was not that people were thrown in jail for same-sex intimacy. I mean, that rarely happened. Those laws were used, though, to deny employment protection, custody, adoption, and the ability to even feel safe in your communities. There was a subhuman treatment of lesbian and gay people to have laws like that on the books. And the 1980s is not that long ago. I'm in college at that time. So it's more than in the lifetime of many people listening to this show. And to have us come so far, the

ruling of the California Supreme Court, because it's so expansive, many people have said this, and I completely agree. It is the most important and far-reaching on lesbian and gay rights from any court, anywhere in the world, in our history. It is a win win win!

GN: Well let's talk about that. I don't think people realize this. People comment, oh we are just the second state to have a supreme court adjudicating in favor of the constitution and against the laws that were written in to deny same-sex couples their ability to marry. But there is a major distinction, and I think you just brought it up between the Massachusetts Supreme Court decision and the California Supreme Court decision. What aspects of the decision distinguish the two decisions distinguish themselves?

KK: Two observations right off the bat. The first is that this court takes great pains and goes to great lengths even more than the Massachusetts Supreme Court did. And you know, you want to also say, look, what the Massachusetts Supreme Court did made it possible for the California court to rule the way they did. And being the first is always the hardest path to walk, and especially when you are breaking new ground, making history, and you know there is going to be controversy about it. So I don't want to take anything away from the Massachusetts ruling. They set the stage for the ruling we got last week. But what the California Supreme Court did, and what Justice George did writing the majority opinion, is he talks about what marriage and relationships mean. He stressed the significance the kinship of marriage has on human dignity, families, culture, and neighborhoods. Not just with a couple, but with everybody that cares about them, and wants to see them succeed. And you know, so much of that, I have to give major kudos to our legal director Shannon Minter who argued the case and wrote the briefs. Because his arguments, Shannon poured his heart and soul into those briefs and arguments. And George picks up so much of the spirit and language that Shannon imbued in those briefs to really understand what marriage meant.

So that's the first observation. The second, and this is really something that all the lawyers are just ecstatic about is that the court applied two laws that discriminate on the basis of sexual orientation, the most rigorous kind of scrutiny. What they essentially have done, way beyond marriage, is said, look, if a law discriminates based on

sexual orientation, it is going to be struck down period. Now, there are very few exceptions in which a law might be upheld, but you can only uphold a law that discriminates if there is a very, very good reason for doing so. Like, it's the only way we can possibly protect a particular state interest is if we discriminate against gay people. And it's hard to imagine any law that would now survive this kind of scrutiny. The court did not have to apply that what we call strict scrutiny as lawyers. In order to get to the marriage win, Massachusetts did not apply that level of scrutiny to get to the marriage win for gay people there. For the court to do that really does indicate—they are saying once and for all, any vestiges of discrimination against our lesbian and gay citizens will not be tolerated plain and simple.

GN: Well coming up in just a moment, we'll continue our conversation with Kate Kendell, the Executive Director of the National Center for Lesbian Rights, and we'll continue to talk about this historic week in the city and county of San Francisco.

(Commercial Break)

GN: This is Green960, this is Gavin Newsom, and again my guest is Kate Kendell the head of the National Center for Lesbian Rights. And we are talking about that historic decision by the California Supreme Court on May 15th. Now Kate, we are looking at the prospects, with apparently 1.1 million signatures that were submitted to the California Secretary of State, that prospectively looks to get an initiative on the ballot to write discrimination into the Constitution that in essence would overturn the court's decision. How are we looking in terms of the November election? Do we expect that they will have enough signatures, and where is California in all of this?

KK: Well we completely expect they're going to qualify for the ballot. There's very little doubt about that. They have submitted the number of signatures they need. We all know that in California, it's far too easy from my perspective, as a lawyer, and someone who cares about a constitutional democracy to get an amendment on the ballot in California. However, that's what we're facing in November.

GN: How many signatures do you have to get to put something on the ballot in the state in referendum?

KK: You only need a very small percentage of the voters who voted in the last general election. And with this particular amendment specifically, 693,000 signatures is all you need.

GN: So less than the population of the city and county of San Francisco, even though the state has well over 30 million people. You need less than a million signatures; you can put anything on the ballot. And it's important for people to understand this. You can put something on the ballot that can overturn a Supreme Court decision.

KK: Overturn a Supreme Court decision, and endorse wholesale discrimination against whole categories of people. One thing you agree to do in a democracy, and there is a lot of talk about democracy and what democracy means and bringing freedom to populations who have endured tyranny. What democracy means is that we all sort of make a pact with each other. That even though I may not like your beliefs, or I may not like the choices you make and the way you live your life, I'm still going to say the law should protect you because we all agree that under a system of laws. And while you're not my cup of tea, and I may not want to spend the weekend with you, or invite you to my house, we're all part of the same citizenry and should be protected by the same laws. What this kind of constitutional amendment process does in California is it says we're not going to abide by that; we're going to go along and make compromises to live in a democracy. It says if I decide I don't like, fill in the blank, in this case, the idea of gay people getting married, I can foment enough voter support for that to get it on the ballot, and then force you to engage in a millions and millions of dollar campaign to defend your own existence to fight that at the ballot, and leaving the future of lesbian and gay relationships and families up to majority will. I mean, there's a reason in this country why we don't let the majority rule in many places and on many issues, because sometimes the majority is wrong. And in a constitutional democracy, we all have to agree to get along even if the certain way people are living or their belief system contradicts the majority will. So that's my little soapbox about that.

GN: So, let's talk about the likelihood that this gets on the ballot. This is a state that overwhelmingly in 2000, said marriage is between a man and a woman. In 1977, and that was another principled part of the California Supreme Court decision actually struck down a '77 law as well, not just the 2000 law. But, I'm looking at polls, Kate even as early as today, an L.A. Times poll shows over 50% of people support a constitutional amendment to ban same-sex marriage. So how do you view the next few months? Are we prepared to fight this initiative and more importantly, are we prepared to lose it?

KK: We are prepared to fight this amendment. There is a campaign; I am on the executive committee of the campaign to defeat the amendment. We have hired the best team of consultants. This is how you do these things in California; you have to hire the experts. We are going to make sure that from Ukiah to San Diego, this state is engaged in fighting this. And you know, those poll numbers you referenced, there's an L.A. Times poll that came out on May 23rd, the morning of May 23rd, saying that 54% of those polled support a constitutional amendment. I'll tell you what, I like those numbers.

GN: You like those numbers?

KK: I like those numbers. When you—the conventional wisdom is that, and especially after this court ruling, where people kind of have a knee jerk reaction because this is the first time that many of them have thought about the fact that they live in a state where now gay and lesbian people can marry. We only need to defeat this amendment by the 50% plus one. Now they only need 50% plus one to pass it, but right now they have 56% of those polled supporting this amendment. I think 5,6,7,8,9% of those folks just need some time. They need to think about this. They need to digest it. They need to come to terms with it, and guess what they are also going to do with it over the summer; they are going to attend the weddings of people they care about. Family members, employers, co-workers, neighbors, I think we have more that a fighting chance of defeating this amendment. And to your last point, losing is not an option. We cannot bare a loss on this amendment. It takes away—it could potentially take away the Supreme Court ruling. I do think—I mean obviously as lawyers, we would make every legal argument to stop that from happening, but we have to behave over the course of the

next five months as if our lives and futures depends on it, because in many ways they really do. And if we were to win, and protect this precious ruling from the court, and permit lesbian and gay people to go forward with their lives, marrying in California. Put that nail in the coffin of our anti-gay opponents who have engaged in a tireless campaign to undermine our lives and strip us of dignity. If we win in November, they are done. I do not think can be back in 2010 on the next statewide ballot. They are driven from our state. We can live in the kind of California that we can all be proud of, but it requires an enormous amount of work between now and November.

GN: You're listening to Kate Kendell, head of NCLR, and Gavin Newsom on Green960. I think it's important for people to be reminded in 1948, it was the same California Supreme Court that took the leadership in the Perez decision and denied the perversity, the absurdity that blacks for example couldn't marry whites. The ban against interracial marriage in this country at the time 90% of Americans opposed interracial marriage. It took between 1948-1967 for Loving vs. the state of Virginia to finally reconcile that where 70% of Americans in 1967, seven, zero, still opposed interracial marriage. Had we gone on the basis of the whims of the majority, we would simply not be here today celebrating interracial marriages, celebrating marriage equality. Not just in the context of same-sex couples, but opposite gender couples that happen to be of different races. And it's interesting, and I think people need to be reminded of this. The same arguments were being used in 1967, when the Loving case against Mildred Jeter, an African American, and a Caucasian that got married; it finally went to the U.S. Supreme Court. The judge said in the case, Mr. Loving, God put different races on different continents for a reason; Sir, God never wanted the races to mix. So the same Biblical arguments, the same traditional arguments, the same institutionalized governments were used even in my lifetime in 1967, the year of my birth. So I just think this is principled stand by the California Supreme Court. Six out of seven of these jurists were appointed by Republican governors. In fact, Ron George originally appointed by Ronald Reagan. Here we are, at this historic time, this historic moment, where millions and millions of people including Kate Kendell, my guest today celebrated the affirmation of not their cause, but their lives. And that is a rather extraordinary thing, and I couldn't be more proud, and more proud of you Kate, and your

leadership, and the team, and Dennis Herrera, and the city attorney's office, and all of those that stood up on principle, and were part of the plaintiffs in this case, and now we have to work hard to defeat this November initiative. Again, my guest today was Kate Kendell, the head of NCLR. Kate, again, thank you for your leadership, your consistency, your faith, your hard work on this, and I want to encourage everyone listening, do not dream of regretting. If we sit back, and just accept this historic Supreme Court decision guarantees rights and perpetuity, we have another thing coming to us in November. We got to stand up and we've got to fight, and we've got to reject this initiative. I want to encourage everyone to contact NCLR, contact the campaign Equality For All. I thank you very much for being my guest this afternoon.

KK: My pleasure so much. Thank you Mr. Mayor.

GN: We want to hear from you at the Gavin Newsom Show. If you could email me at gavin@green960.com or call at 415-273-5754. This is Gavin Newsom on Green960.