

**2012-2013 ASA Council
MINUTES
July 25, 2013
Email Vote on Submitting an ASA *Amicus Curiae* Brief in
Jackson v. Abercrombie and *Sevcik v. Sandoval*
to the United States Court of Appeals for the Ninth Circuit**

Background

At its August 21, 2012, meeting, Council voted to submit an *amicus curiae* brief on behalf of the American Sociological Association (ASA) on the sociological and related social science research regarding the impact of child outcomes of having gay or straight parents if the United States Supreme Court agreed to hear either the Defense of Marriage Act (DOMA) or the California Proposition 8 case or both. Wendy Diane Manning, Bowling Green State University, agreed to prepare the scientific content and the law firm of Cleary Gottlieb Steen & Hamilton in New York City agreed to submit the brief on behalf of the ASA on a *pro bono* basis. The Supreme Court granted *certiorari* in both cases in the fall of 2012, and ASA proceeded to submit the *amicus* brief.

In July 2013, ASA President Cecilia Ridgeway and the Executive Officer Sally T. Hillsman were contacted by an attorney from Lambda Legal asking if the ASA and Cleary Gottlieb would be willing to submit an *amicus curiae* brief with the same content to the Ninth Circuit in two other important cases in which the same social science research was pivotal. After consultation with the President, the Executive Officer sent the following email to Council on July 24, 2013, requesting a vote.

ACTION REQUESTED: TO APPROVE ASA SUBMITTING A REVISION OF ITS SUPREME COURT AMICUS BRIEF TO THE NINTH CIRCUIT COURT OF APPEALS IN TWO RELATED SAME SEX MARRIAGE CASES

Background: Next Steps for ASA's Amicus Brief on DOMA and Proposition 8

As you are undoubtedly aware, ASA's *amicus* brief to the United States Supreme Court this spring in the DOMA and Proposition 8 cases has been extremely well received in both the social science and legal communities. The scientific review was done by Wendy Manning combined with superb legal work by a team of attorneys experienced in this area of litigation at Cleary Gottlieb Steen & Hamilton in New York. The ASA *amicus* brief has been complimented as a unique contribution to the current legal debate because it is a crisp and compelling review of the highest quality social scientific research, presented in a manner that is clear to judges and focused tightly on one central question courts are being asked to consider, namely, do children fare as well when they are raised by same-sex parents when compared to children raised by parent of different sexes.

It comes as no surprise, therefore, that ASA has been asked to submit this same content in a new *amicus* brief in two cases of national importance on appeal to the Ninth Circuit: a case from Hawaii (*Jackson v. Abercrombie*) and one from Nevada (*Sevcik v. Sandoval*). Both deal with the same question about children of

same-sex parents, and in both cases the trial judges said that as long as the answer to this question was “debatable”, “The legislature could rationally conclude that other things being equal, it is best for children to be raised by a parent of each sex.” The ASA Supreme Court amicus brief is viewed as an important challenge to that view.

Lambda Legal’s attorney Tara Borelli who is litigating these cases said:

Both cases seek marriage equality for same-sex couples, and are pending in the Ninth Circuit. Unfortunately, both resulted in disappointing losses in the district court... Because we are in the position of having to persuade the Ninth Circuit to overturn both district court rulings, we believe that a robust amicus effort will be particularly important for the cases on appeal. We believe that a brief from the ASA, modeled on its amicus brief in Hollingsworth, would be a particularly valuable contribution. The ASA’s brief is beautifully written, and offers unique analysis that isn’t presented by any other amici. We would be thrilled if the Ninth Circuit could have the benefit of your expertise as it considers the appeal.

The ASA amicus brief team is ready to work on a revision of the brief for the Ninth Circuit

After ASA President Ridgeway was contacted by Borelli about our willingness to submit an amicus brief in Jackson and Sevcik, I contacted Wendy Manning and our lead attorney at Cleary Gottlieb, Carmine D. Boccuzzi, Jr. Cleary Gottlieb’s *pro bono* committee decided that these cases were important and has committed its resources to submitting the brief for ASA. Wendy was available and willing to work with them. Carmine will lead their legal team. (There is no cost to ASA.)

It is anticipated that the primary changes to the existing brief will be to cut the length from the 9000 words permitted by the Supreme Court to the 7000 word limit of the Ninth Circuit. There will be no new social science content added; the science and the legal arguments will be pared down to meet the word limit and to focus explicitly on matters covered by the ASA brief that were raised in these particular cases. [I have attached ASA’s brief as well as the decisions in Jackson and Sevcik.]

The Timeframe

The brief is due September 25, 2013. If Council approves, I will need to sign the Client Agreement with Cleary Gottlieb making them our attorney of record for the submission so we can proceed forthwith. Consequently, Council’s decision cannot wait until its face-to-face meeting in New York City in three weeks.

Council Vote:

Please email me any questions you have, copying other Council members if you wish. Please send me your vote:

YES = ASA should submit an amicus brief in Jackson and Sevcik.

NO = ASA should NOT submit an amicus brief in Jackson and Sevcik

<p>Council voted by email on July 25, 2013, to submit an <i>amicus curiae</i> brief to the United States Court of Appeals for the Ninth Circuit in <i>Jackson v. Abercrombie</i> and <i>Sevcik v. Sandoval</i>, after a review of the penultimate draft by Council. Carried Unanimously.</p>
