

PARK SQUARE ADVOCATES, INC.

**GLAD**

Gay & Lesbian Advocates & Defenders

**FACT SHEET FOR AMICI CURIAE**

**JOHN J. HURLEY AND SOUTH BOSTON ALLIED WAR VETERANS COUNCIL V.  
IRISH-AMERICAN GAY LESBIAN AND BISEXUAL GROUP OF BOSTON  
No. 94-749**

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**WHAT IS THIS CASE AND WHY SHOULD YOU CARE ABOUT IT?**

This is a case about discrimination, not the First Amendment.

From the time the Council revoked permission for the Irish-American Gay, Lesbian and Bisexual Group of Boston to participate in the Parade, the motivating factor has been the sexual orientation of GLIB members. The First Amendment did not surface as an issue until the Council unsuccessfully tried to exclude GLIB, first on the grounds of public safety, then because they were radical activists and then because they had a "sexual theme". When these efforts failed with the courts, the Council simply rewrote history and attempted to recast the St. Patrick's Day/Evacuation Day celebration as a "private parade" and raised the First Amendment.

The fact is that from time immemorial, this event has been a public celebration open to all. It celebrates both the public holiday of Evacuation Day--one of the early military victories of the Revolutionary War-- and St. Patrick's Day. The closest analogy for this event is Mardis Gras or a street festival.

When people think of a Parade, they think of a civil rights demonstration in Selma, the KKK marching through Skokie, or the pro-choice demonstrations in Washington. In each of those instances, the Parade is used as a vehicle of expression.

The Boston event is entirely different. Its participants range from the Joey's Clowns to the South Boston Bible Baptist Trolley to the Budweiser Clydesdale Horses to Schubert's Smoke Shop. As one of the Parade organizers put it, "Everyone is Irish on St. Patrick's Day" and virtually everyone who shows up can get into the Parade. So the notion that the Council is using this Parade as a vehicle for carrying a message is entirely false. That may be counter-intuitive to your ideas about "parades" but it is completely consistent with the nature and history of this civic

event.

The Council never owned this Parade, but rather acted as trustees or agents of the event. For decades, the Parade was City-sponsored, and the Council enjoyed direct financial contributions to the event as well as the City of Boston's extensive assistance in planning, coordinating and publicizing the event. The history and nature of the event, regardless of whether the Council now refuse the City's money, is public. They have no First Amendment rights to assert.

Moreover, it is equally misleading to say that GLIB has a message other than "Happy St. Patrick's Day". What GLIB has is an identity, and it is their identity which offends the Council, not GLIB's message. Unlike some other minorities (except perhaps religious minorities), GLIB has to identify itself in order to be known. Of course, in some contexts, identifying oneself as gay, lesbian or bisexual is political speech. In this Parade, it is simply de rigueur--all groups do so. GLIB's carrying a banner with the group's name is no more or less of a message than that of all the other group which carry identifying banners.

The Council is abusing the First Amendment to impose a "don't ask don't tell" policy on gay, lesbian and bisexual participants in this civic celebration. They claim we could participate as long as we--unlike other groups--do not identify ourselves. But every other group--political, commercial or civic-- carries a sign or in some other way identifies itself. The Council objects only to GLIB's self-identification. Plainly and simply, the Council is using the First Amendment in this case as a pretext to justify discrimination against gay, lesbian and bisexual people.

#### Why does GLIB want to participate in this Parade?

GLIB's interest is not in making a legal point. Its members are Irish-American who are also gay, lesbian and bisexual and who are very proud of both of these aspects of their identity. They are part of the Irish family and only ask to be treated as such. It is an outrage that they should have to be forced to choose between these two integral parts of their identity by the Parade organizers.

In the years that they marched in the Parade under their own banner, GLIB members were spit upon and attacked all along the 4.5 mile route with stones, ice and snow, smoke bombs, hot coffee, beer and other items simply for being who they are. It is a supreme irony that the Council is using the First Amendment to justify such treatment. Irish gay groups march without event in Cork, Dublin and even Jackson, Mississippi. GLIB deserves your support.

#### How does GLIB's Struggle Fit Into the Larger Civil Rights Movement?

Historically, every time there is an expansion of rights,

there is a backlash. Often the backlash comes in the guise of claimed First Amendment rights to say whatever one wants or associate with whomever one wants. Think about Ollie's Barbecue which became a private eating club for whites only when Congress passed the Civil Rights Act of 1964 forbidding racial discrimination in restaurants and other places of public accommodation. The Justice Department took Ollie's to court and had little trouble persuading the federal judge that Ollie's "private club" was just a trick. The same is true here.

Massachusetts amended several of its civil rights laws in 1989 to forbid sexual orientation discrimination in places of public accommodation. For more than forty years, the South Boston Allied War Veterans Council has been given permission by the people of Boston to run the biggest public celebration of Irish heritage in New England. Traditionally, all have been welcome. When the Council told GLIB they were not welcome in the Parade because of their sexual orientation, they broke the law, and late in the day tried to cloak their discrimination in the First Amendment.

### History of the Litigation

This case would not have occurred but for expansions of the Massachusetts civil rights statutes in 1989 which forbade discrimination based on sexual orientation in places of public accommodation. Those changes in the law were followed seventeen years of defeats for the gay and lesbian civil rights law.

In 1992, GLIB sought and won the right to participate in the Parade on First Amendment grounds. City sponsorship of the Parade spanned the entire century. The Council administered the Parade beginning in 1947.

In 1993, the Council claimed they had privatized the Parade. GLIB participated in the Parade under a preliminary injunction based on both the First Amendment and state public accommodations law. After a four day trial on the merits later in 1993, the state trial court ruled the Parade was a unique public event to which the public accommodations law applied. He ruled against GLIB on state action.

Just before the scheduled 1994 Parade, the State Supreme Judicial Court upheld the trial judge's decision. Rather than comply with the Court's order, the Council canceled the Parade. In the decision issued in July, the SJC (1) affirmed the expansive reading of the public accommodations law, and (2) ruled that the Veterans failed to establish that they were using the Parade as a vehicle for expression. Thus, the First Amendment was not a bar to the application of the statute and the Council could not "cloak their discriminatory acts in the mantle of the First Amendment."

Merely because a celebration is ambulatory doesn't transform it into an expressive event belonging to the Council. Nor has GLIB ever argued that the Parade is immutable. Every court opinion has

acknowledged that the Parade before the Court was unique, and could change in such a way that the Parade would be protected by the First Amendment.

### **What Can We Expect From the Supreme Court?**

If the past is any guide to the present, the United States Supreme Court trivializes litigants presenting lesbian and gay issues. For a number of years, the Supreme Court has been seeking to narrow civil rights protections. Their targets have been varied, including women and racial minorities. We expect the same treatment. Moreover, the Court could use this case as an opportunity to expand First Amendment defenses to any claims of discrimination, particularly First Amendment rights of religion and association, as well as expression. We are deeply aware that the First Amendment has been a friend to gay people. Our commitment to it remains strong. We are particularly troubled by this abuse of the First Amendment as a weapon against civil rights laws, particularly when they have lived peacefully side by side for many years.

We are aware that we are addressing a wide variety of potential amici. Some of you may have no trouble agreeing with our analysis. Even if you disagree, a state has a compelling interest in the enforcement of its anti-discrimination statutes, and the Court should be encouraged to weigh those interests against the Council's expressive interests. The other potential danger we see from the United States Supreme Court is that the Court will attempt to divide and conquer the broader civil rights community to suggest that some groups have a greater claim to equal treatment than do others. Amici could be very helpful in attempting to dissuade the Court from embarking on such a path. No Court should establish a hierarchy of protected interests since the state should have a compelling interest in enforcing each part of its civil rights laws.

### **Briefing Schedule and Other Information**

The legal team in this matter has been fielded by Gay & Lesbian Advocates & Defenders (GLAD), GLIB's counsel in the case from the very beginning. The Supreme Court team consists of GLAD Civil Rights Director Mary Bonauto, along with cooperating attorneys John Ward (who will argue the case), Gretchen Van Ness, Gary Buseck, Professor Larry Yackle, David Duncan and Charles Sims.

The Council's Brief is due February 21. Amici supporting GLIB should expect to file by March 23 at the latest.

For more information, contact GLAD.

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