

May 7, 2013

San Francisco Human Rights Commission
25 Van Ness Avenue, Room 800
San Francisco, CA 94102

COMPLAINT OF UNLAWFUL DISCRIMINATION

To the Human Rights Commission:

We write to file a formal complaint against the San Francisco Pride Board of Directors. The basis of our complaint is the following:

The San Francisco Pride Board (hereinafter, "Board") repudiated San Francisco Pride's Electoral College's (hereinafter, "Electoral College") selection of Bradley Manning as a 2013 Grand Marshal for the Pride Parade. The Board's action:

1. Violated San Francisco Administrative Code sections 12A and 12B;
2. Violated San Francisco's Grants for the Arts funding guidelines;
3. Violated San Francisco Pride's marshal selection policy;
4. Violated San Francisco Pride's non-discrimination policy.

Additionally, the Board's action has caused embarrassment, discord, and outrage in the community and has resulted in scathing criticism from San Francisco to London to Cairo. We therefore respectfully request that the Human Rights Commission take immediate action to ameliorate the Board's prejudicial, discriminatory and unlawful action against those members of the Electoral College who nominated and voted for Bradley Manning.

I. JURISDICTION

The San Francisco Charter Article IV, section 4.107 provides:

The Commission shall [inter alia] investigate complaints of unlawful discrimination against any person; promote understanding among the residents of the City and County and work cooperatively with governmental agencies, *community groups and others to eliminate discrimination* by furnishing information, guidance and technical assistance; study, investigate, mediate and make recommendations with respect to *the solving of community-wide problems resulting in intergroup tensions and discrimination*; and implement the provisions of ordinances prohibiting *discrimination in all contracts* or other agreements for or on behalf of the City and County.

San Francisco Administrative Code section 12A.3 provides:

This ordinance applies to *all discriminatory practices and to resulting intergroup tensions specifically covered by the provisions of this ordinance that occur within the territorial limits of*

or within any agency under the jurisdiction of the City and County of San Francisco and to the extent permitted by law...

Additionally, the San Francisco Administrative Code section 12A.5 provides:

[T]he Commission shall have the power and duty to: *Study, investigate, mediate and hold public hearings on community-wide problems arising in this City and County which may result in intergroup tensions or discrimination* because of actual or perceived race, religion, color, ancestry, age, sex, sexual orientation, gender identity, physical disability, weight, height or place of birth.

Therefore, the San Francisco Human Rights Commission has jurisdiction to investigate this complaint and take all necessary steps to bring about a resolution that ends the ongoing discrimination because: 1) the discrimination is occurring within the City and County of San Francisco; 2) San Francisco Pride receives funding from the City and County of San Francisco; 3) the discrimination is causing substantial tension and conflict among San Francisco community groups.

II. BACKGROUND

A. Pride's Grand Marshal Process

San Francisco Pride has four categories of grand marshals: 1) community grand marshals; 2) organizational grand marshal; 3) celebrity grand marshals and 4) lifetime achievement grand marshals. Of these categories, one community grand marshal and the organizational grand marshal are selected by public vote. Another community grand marshal is selected by the Pride membership. The Pride Board may also select additional community grand marshals, celebrity grand marshals and a lifetime achievement grand marshal.

Finally, at issue in this case, Pride has an Electoral College, comprised of past community grand marshals, that also selects a community grand marshal. All grand marshals are selected by a democratic vote. The Pride Board has never retracted a past vote for any grand marshal.

B. Bradley Manning

Bradley Manning is a gay and possibly transgender soldier who is currently facing court martial for his role in giving classified materials to WikiLeaks. The material Manning leaked document war crimes committed by US service members in Iraq, as well as embarrassing diplomatic cables which are widely believed to have inspired the Arab Spring. Because of the extraordinary material he leaked, and because of the way the Pentagon has treated Manning, Manning has become an international cause célèbre for human rights activists, the peace movement, LGBTQ veterans, and countless academics, intellectuals, artists, scientists, diplomats, etc., who believe that Manning's actions constitute courageous whistle blowing, and that the Pentagon's treatment of Manning has amounted to torture under international law.

Manning was also a vocal opponent of DADT and an LGBTQ rights activist in his own right prior to his arrest. He has twice been nominated for a Nobel Peace prize and was nominated by the readers of the British newspaper, the Guardian, as the 2012 person of the year. The Pentagon has accused Manning of “aiding the enemy,” among other serious charges, and has gone so far as to label Manning a “traitor.”

III. FACTS

San Francisco Pride received \$58,400 from the City and County of San Francisco’s Grants for the Arts Program in fiscal year 2012/2013.

Past Pride Board president and Electoral College member, Joey Cain, nominated Bradley Marshal to be a grand marshal. The nomination, along with a list of other nominees, was distributed to voting-eligible members of the Electoral College. The College members cast their votes, and Manning’s representative was notified he had won.

Manning’s representative and Cain were subsequently notified that an audit of the vote was required. Current Pride Board President Lisa Williams, in the interim, informed Joey Cain by phone that the Board would “do the right thing” and that Manning would be a grand marshal.

The decision was nevertheless reversed, and Williams thereafter sent out a press release repudiating the College’s vote, describing it as a “mistake,” caused by a rogue staff member who had been “disciplined”. Williams went on to declare that not a “hint of support” for Manning would be tolerated by Pride’s leadership.

IV. APPLICABLE POLICIES AND LAW

San Francisco Pride’s Non-Discrimination Policy provides:

San Francisco Pride shall not discriminate in its human resources practices, policies, procedures, program delivery or otherwise on the basis of the fact or perception of a person’s race, color, *creed*, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or HIV/AIDS status.

San Francisco Administrative Code section 12A.2 provides:

It is hereby declared: That the policy of the City and County of San Francisco is to act to give effect to the rights of every inhabitant of the City and County to *equal economic, political and educational opportunity*...

San Francisco Administrative Code section 12B.1 (a) provides:

All contracting agencies of the City, or any department thereof, acting for or on behalf of the City and County, shall include in all contracts and property contracts hereinafter executed or

amended in any manner or as to any portion thereof, a provision obligating the contractor not to discriminate on the basis of the fact or perception of a person's race, color, *creed*...

San Francisco's Grants for the Arts funding guidelines state:

Once funded, an organization must: comply with the provisions of Chapter 12B of the San Francisco Administrative Code which prohibits discrimination on the grounds of race, color, *creed*...

V. ANALYSIS

A democratic vote is perhaps the greatest expression of freedom of speech. In this case, votes cast for Bradley Manning were invalidated not because they had been tampered with, or because the voters were ineligible to vote, or because the voting mechanism was flawed. The votes cast for Bradley Manning were invalidated for only one reason: because they were cast for Bradley Manning.

Within hours of San Francisco Pride issuing a press release announcing that Manning had been selected a grand marshal, Sean Sala, a San Diego gay veteran, and Josh Seefried, a gay Air Force officer based in Washington, D.C., took to Facebook to declare their outrage (see <http://www.buzzfeed.com/saeedjones/san-francisco-pride-sparks-outrage-by-naming-bradley-manning>). Sala also announced that he had called Pride and threatened a national boycott. Hours later, Pride had reversed course, repudiating Manning almost as quickly as they'd announced his selection.

The Board repudiated the Electoral College's vote because, in the words of Board President Williams, support for Manning "would be, an insult to every one, gay and straight, who has ever served in the military of this country." This is a partisan view that panders to Manning's critics. There can be no question that the decision to reverse the selection of Manning was political and had absolutely nothing to do with process, fairness or the Electoral College's vote. The fact that no other Electoral College selection was announced to replace Manning underscores this point.

The San Francisco Charter and Administrative Code make it clear that San Francisco Pride is barred from discriminating against anyone due to the political content of her or his speech. The statement issued by Pride Board President, Lisa Williams, makes clear that Manning was an unacceptable choice because of what he stands for politically. Williams admits the process was followed; she just didn't like the outcome.

Williams' statement also forbids *any* member of Pride's leadership from supporting, or even *hinting* at supporting Manning. Such a boldfaced declaration presuming to ban First Amendment-protected speech is itself chilling. Turning the First Amendment on its head, Williams then claims that those who feel differently may "show up, participate and voice their opinions at Pride this year" *because* Manning will no longer be grand marshal. Thus, the Board is violating the First Amendment in order to protect it.

While the Board's bait-and-switch logic may persuade some, the Board may not hide behind smoke and mirrors to protect an unprecedented and arbitrary act of discrimination. The Board violated its own rules, as well as city law, and then declared it had "disciplined" a staff member for its own egregious conduct. But one outrage is not cured by committing another.

San Francisco has a long tradition of protecting freedom of expression and rejecting authoritarian attempts to ban constitutionally protected speech. In this case, the Pride Board apparently forgot that Pride itself was founded upon the celebration of dissent. The Human Rights Commission should step in and reverse this unfortunate action to suppress political expression.

VI. CONCLUSION

The Board's invalidation of a democratic vote by executive fiat is unconscionable. Moreover, it's illegal. The Pride Board must reinstate the will of the Electoral College. Failing that, the Human Rights Commission should investigate this complaint of discrimination and take whatever steps necessary to ameliorate its harmful effects as soon as possible.

Respectfully Submitted,

Individual Signatories:

David Waggoner, former President, Harvey Milk LGBT Democratic Club*; former Vice President, National Lawyers Guild*

Gary Virginia, Member, SF Pride Electoral College (Community Grand Marshal 2012 elected by the Electoral College)*; Former Member, SF Human Rights Commission LGBT Advisory Committee*

Becca Von Behren, Staff Attorney, Swords to Plowshares*; San Francisco ACT UP

Sue Englander, Board Member, Harvey Milk LGBT Democratic Club*

Stephen Funk, Founder, Artistic Director, Veteran Artists*; Honorary Founding Member, Organizer, Iraq Veterans Against the War*; Advisory Board, Warrior Writers*; 1st public conscientious objector to the Iraq War*

Gabriel Haaland, former President, Harvey Milk LGBT Democratic Club*; Former SF Pride Community Grand Marshal*

Joe Wicht (aka Trauma Flintstone), former Honorary Grand Marshal, SF Pride*

Clinton Fein, Artist, Writer, Activist, President of the Board, First Amendment Project*

Tommi Avicelli Mecca, organizer Gay Pride March/ Philadelphia*, 1972-77; co-founder Castro Tenants Union*; co-founder Queers for Affirmative Action*

Peter Tatchell, Director, Peter Tatchell Foundation*

Lt. Dan Choi, 2009 SF Pride Celebrity Grand Marshal*; West Point* Class of 2003; Iraq War Combat Veteran 2006-2007

Tom Temprano, President, Harvey Milk LGBT Democratic Club*

Debra Walker, former President, Harvey Milk LGBT Democratic Club*

James Martel, Chair, Political Science Department, San Francisco State University*

Eileen Hansen, former Commissioner, San Francisco Ethics Commission*

Glendon Anna Conda Hyde, Commissioner, San Francisco Entertainment Commission*; former President, Harvey Milk LGBT Democratic Club*

Alan Gutierrez, St. James Infirmary*; San Francisco ACT UP*

Anne Befu, former board member, National Lawyers Guild*

Paul Melbostad, former Commissioner, San Francisco Ethics Commission*

Kyle Kitson, Staff Attorney, Homeless Action Center*

Carlos Villarreal, Executive Director, San Francisco Bay Area National Lawyers Guild*

Organizational Signatories:

The Military Law Task Force of the National Lawyers Guild

National Lawyers Guild Queer Caucus

ACT UP San Francisco

The San Francisco Chapter of the Civilian Soldier Alliance

The Bay Area Military Law Panel

*Organizations listed for ID purposes only