

BRIGGS INITIATIVE



By Tom Steel

National Lawyers Guild

State Senator John Briggs' anti-gay school worker initiative will appear on November's statewide ballot. On May 31st, Secretary of State March Fong Eu certified the measure stating that it had gathered well over the required number of valid signatures. On the following day, Public Response Associates announced the result of a comprehensive poll of 980 voters, concluding that a slight margin of Californians favor passage of the initiative at present. Over the coming months the initiative is likely to be the subject of heated debate throughout the state. As progressive lawyers and legal workers, it is important that we understand the proposed law fully and are able to explain its repressive features.

WHAT IS THE BRIGGS INITIATIVE?

The initiative provides that school districts shall refuse to hire, and shall dismiss, any employee who engages in "public homosexual activity" or "public homosexual conduct" likely to come to the attention of school-children or other employees, if the governing board determines that the employee is thereby "unfit" for service. The phrases used in the initiative are somewhat deceptive and it is necessary to look beyond the wording to understand the actual reach of the proposed law.

"Public homosexual activity" is defined as oral copulation and sodomy between members of the same sex which is not practiced in private and which is not "discreet." The initiative does not explain what is meant by the requirement that such acts be

"discreet." Is sexual activity indiscreet if persons of the same sex are observed entering a residence at night and leaving in the morning? The requirement of "discretion" presumably paves the way for the punishment of private sexual activity which is insufficiently clandestine because some person somewhere learns of it.

The initiative does not stop at an attack on sexual "activity," whether public or private. The heart of the initiative is its prohibition of "public homosexual conduct," which in fact does not refer to conduct at all but instead to what is ordinarily denominated "pure speech." The "conduct" prohibited is thus defined by the initiative as: "...the advocating, soliciting, imposing, encouraging or promoting of private or public homosexual activity directed at, or likely to come to the attention of school-children and/or other employees."

The potential applications of this section are virtually limitless. A participant in a demonstration in support of civil rights for gay people could be said to "advocate" or "encourage" private homosexual activity by seeking to remove legal obstacles facing gay people. This advocacy might well be "likely to come to the attention of... other employees..." through direct observation or media coverage. Similarly, the removal of legal impediments to private homosexual conduct is among the stated goals of numerous gay teachers organizations, as well as progressive organizations in general. It is entirely possible that membership in an organization actively supporting

this issue could in itself be considered "encouraging, or promoting," sufficient to lead to dismissal. Thus, membership in the Anti-Sexism Committee of the Lawyers Guild would qualify as basis for loss of employment by any school employee.

NOT LIMITED TO GAYS

Moreover, the initiative is not confined to gay people or to what is ordinarily considered "public" advocacy. Thus, any heterosexual who defended gay rights in a situation "likely to come to the attention of... other employees..." could be refused a job or fired. This would presumably include a private discussion in a home where another teacher was present.

It might also include the assignment of Walt Whitman or Sappho by an English teacher, attendance at a gay bar by a school administrator, or any response short of condemnation to students' questions concerning homosexuality. All of these could conceivably "promote," "encourage," or "advocate" private homosexual activity for some hypothetical person. The initiative contains no requirement of specific intent and it is not necessary that the offender desire to promote or encourage homosexual activity.

The initiative is clearly an invitation to a witch-hunt. The extent to which this invitation is accepted will depend largely on the county involved. In many counties, particularly in rural areas, there is very little support for gays. In such areas, conservatives may well bring charges based on any of the examples described above. Opportunistic politicians will