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California and Beyond: The Battle Over Gay Marriage

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Two weeks to go, and already the fight over the constitutional amendment to ban gay marriage in California is the costliest campaign about a social issue in U.S. history. Spending by both sides has topped \$50 million, and the figure is growing. Most of those dollars have poured in since May, when the California Supreme Court turned what had been a slow-moving ballot initiative into a white-hot controversy by issuing the most sweeping declaration of fundamental gay rights to be found in U.S. law. Not only must gays be allowed to marry, the Republican-dominated court said, but it also flatly outlawed nearly any kind of discrimination against them.

The ruling struck down a 2000 statewide vote that had made gay marriage illegal (but not unconstitutional), and touched off a backlash among California conservatives. They put more than a million signatures together to force a Nov. 4 vote that, if successful, would undo the high court's ruling on gay marriage and stop what has been a stampede by gay and lesbian couples to Golden State courthouses.

California's fight over the initiative to ban gay marriage (popularly called Prop. 8) has attracted its share of million-dollar donors. The big contributors in the fight to approve Prop. 8 include the Knights of Columbus (\$1 million); the National Organization for Marriage (\$500,000); Dr. John Templeton, the son of the philanthropist Sir John Templeton (\$450,000); and Focus on the Family (\$500,000). Fighting against approval of Prop. 8 are celebrities like Steven Spielberg and his wife Kate Capshaw (\$50,000 each), as well as former GOP U.S. Senate candidate Michael Huffington (\$100,000); Robert Haas, chairman emeritus of Levi Strauss (\$200,000); and the California Teachers Union Issues PAC (\$2 million). The media battle has been intense. Talk-show host Ellen DeGeneres (who had vice-presidential candidate Joe Biden on her show to oppose Prop. 8) has thrown \$100,000 to buy TV time to fight the ban. Meanwhile, proponents of Prop. 8 - conservative groups and churches among them - have put up their own ads.

While California may be host to the most spectacular battle over marriage equality, it's anything but a new phenomenon. In the 10 years since reaction to gay-friendly court rulings sent Hawaiians to the polls to change the state constitution to forbid gay marriage, 29 other states have had similar votes. In what must be one of the most successful electoral runs in history, marriage traditionalists have won a remarkable 29 times out of 30 - and often by margins that political strategists regard as near mythical: 78% in Louisiana; 76% in Oklahoma; and four years ago, fully 86% in Mississippi. Two years ago, however, the winning streak stopped in John McCain's home state of Arizona, perhaps because conservatives had reached for too much, attempting to forbid both gay marriage and civil unions.

Californians who embraced the powerful language of the supreme court decision are hoping that the Arizona win signals a cresting of the electoral push back against gay-friendly court rulings. But it's still too early to tell. A string of opinion polls shows that Californians are ready to embrace gay marriage. Of seven bipartisan, statewide polls cited by the Initiative & Referendum Institute at the University of Southern California law school since May, only one gives the advantage to supporters of Prop. 8. But that poll, by SurveyUSA, also happens to be the most recent; released on Oct. 6, it shows the anti-gay-marriage campaign ahead 47% to 42%.

(Click here for a video about gay marriage.)

Backers of a similar amendment that would forbid gay marriage in Florida appear to be ahead in the polls as well. That's left gay-rights supporters there pinning hopes on a new law that requires a supermajority of 60% to pass an amendment, thanks to a law pushed through by former governor Jeb Bush.

In Arizona, opponents of gay marriage are trying again, having lost no time fretting over the 48-52 loss in 2006. They've raised \$7 million for a new ballot initiative - seven times what the losing effort raised two years ago, and 70 times what opponents have raised this year. The effort to forever define marriage as between one man and one woman has drawn the strong support of the Mormon Church as well as the Roman Catholic bishops in the state.

The ballot-box battles can be dispiriting for gays, who have otherwise grown used to hailing spectacular victories in the courts. Three state supreme courts - in Massachusetts, California and, just last week, Connecticut - have ruled that gays have the fundamental right to marry. Those courts have ruled that not even civil unions with all the legal trimmings of marriage can compensate. Gay-rights activists hope that Iowa's high court, will hear arguments in December and then rule as soon as January 2009 on a lower court's decision in favor of gay marriage, will bring judicial victories in state high courts to four.

Those kinds of victories are far more likely in the near term than any kind of wholesale reversal of fortune at the ballot boxes, says Kristina Wilfore, executive director of the Washington-based Ballot Initiative Strategy Center, an advocacy organization that specializes in using ballot initiatives to further liberal causes. Wilfore says her group picks its battles in fighting anti-gay-marriage amendments largely because most votes aren't even close. "We would never bring gay marriage up before the voters," she says. "This is strategy." She admits they've been terribly good at it.

The Ballot Initiative Strategy Center, however, is fighting in Arizona in an attempt to protect gay marriage's sole Election Day success story. They've been involved in California too, though Wilfore says things there could go either way, in part because it's unclear what impact Senator Barack Obama's popularity in the state will have on the gay-marriage vote. Blacks and Hispanics, she says, are likely to vote with conservatives on gay marriage, but young people of all backgrounds tend to vote the other way. Which group will prove dominant is anyone's guess, she says, but it could determine the outcome of the Prop. 8 vote.

Meanwhile, with every court victory comes an electoral backlash. When a divided Connecticut Supreme Court ruled last week that gays have the right to marry, it took a far more cautious approach than California's Chief Justice Ronald George did in May. George issued a thundering declaration of gay rights, ruling that any law that discriminates on the basis of sexual orientation will from now on be met with the same strict scrutiny typically reserved for laws involving race or religion. By contrast, Connecticut's Justice Richard Palmer writes that "our conventional understanding of marriage must yield to a more contemporary appreciation of the rights entitled to constitutional protection."

A University of Connecticut poll out this week shows that most residents support the decision, but that hasn't stopped a furious last-minute campaign by opponents to get conservatives to the polls on Nov. 4. Every 20 years, voters in the Constitution State can choose to convene a constitutional convention, and as luck would have it, 2008 is one of those years. If supporters of a gay-marriage ban get enough votes, they'll be able to force a convention where they could push for changes that would nullify the ruling.

In Iowa, the supreme court hasn't even ruled yet, but already a similar voter push is underway. Conservatives are urging gay-marriage foes to not leave anything to chance: they're backing a group of judicial candidates that could utterly remake the majority on the high court.

Wilfore says she's prepared to take the long view in California. "I am not going to be discouraged if we lose," she says. Victory will come over time in the courts, as demographics works its influence on the nation's voting patterns, she says, noting that young people support gay marriage far more than their parents and grandparents do. "A lot of people are going

to have to die" before Election Day is an easy day for gay marriage, she says.

But not everyone has such patience. San Francisco mayor Gavin Newsom, whose office has officiated over marriage ceremonies for thousands of gays since the California Supreme Court decision, told TIME recently that he thinks the outcome of the marriage vote will impact far more than just who can marry and who can't. "We're going to have a chance to find out whether America, and California, is ready for the change embodied in Barack Obama's campaign," said Newsom. "Or does it simply stop with him?" The country will know soon enough.

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