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par Kenneth P. MILLER

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The Democratic Coalition's Religious Divide: Why California Voters Supported Obama but Not Same-sex Marriage

Kenneth P. MILLER

mots-clés/key-words

California; Proposition 8;
same-sex marriage;
Barack Obama; civil rights;
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Latinos; African Americans

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droits civiques; religion;
Parti démocrate; Latinos;
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En Californie, les élections de novembre 2008 ont produit un résultat qui peut paraître contradictoire. Alors que l'État a très largement contribué à l'élection du premier président africain-américain, il a dans le même temps approuvé la Proposition 8 qui abroge le droit au mariage nouvellement acquis par les homosexuels. Selon l'auteur de l'article, ce vote peut être expliqué par la religion, facteur de division au sein de la coalition démocrate qui domine l'État. L'aile progressiste du Parti démocrate, toujours plus séculière, s'est fortement opposée aux efforts visant à interdire le mariage homosexuel. Pour certains de ses membres, la question du mariage des homosexuels est même, en matière de droits civiques, la question la plus importante de notre époque. A contrario, les études et les sondages de sortie des urnes montrent que les nombreux électeurs démocrates africains-américains et latinos ont voté en faveur de la Proposition 8. Les noirs et les Latinos sont plus pratiquants que la moyenne de la population de l'État. Pour eux le mariage se définit en relation à la religion et non aux droits civiques.

On November 4, 2008, liberals across the United States and around the world celebrated Barack Obama's election as President of the United States. Many viewed the election of a black man to the presidency as a culmination of Martin Luther King, Jr.'s dream of racial equality and a

landmark victory in the nation's long struggle for civil rights. Yet in the midst of the celebration, a discordant note could be heard. Late on election night, it became clear that voters in the state of California, while strongly supporting Obama, had also passed a ballot measure to eliminate the state's newly-established right of same-sex marriage. Many observers were mystified. They saw marriage rights for same-sex couples as the civil rights issue of our time and believed that California was at the forefront of that movement. If those assumptions were true, how could voters in California embrace Obama, the great fulfillment of the civil rights movement, yet at the same time reject the right of same-sex couples to marry?

The apparent contradiction can be explained by examining the religious characteristics of California's Democratic voters.

California's New Democratic Majority

Although it is known as a solidly "blue" or Democratic state, California is politically complex. Just a generation ago, California was known as "Reagan Country." A largely white, middle-class, suburban population dominated the state's politics. From 1968 to 1988, Republican candidates (Richard Nixon, Gerald Ford, Ronald Reagan, and George H.W. Bush) won California's electoral vote in six consecutive presidential elections and Republican candidates frequently won the governorship and other important state offices. But since that time, the state's population and politics have changed dramatically.

A sustained period of foreign immigration—largely from Mexico, other Latin American countries, and Asia—has made the state much more diverse. According to the U.S. Census, by 2000 Latinos accounted for one-third of the state's population and Asians over 10%. Combined with blacks (approximately 6%), racial and ethnic minorities now constitute the state's population majority. Meanwhile, the white population has also changed. As foreign immigration has increased, many middle class whites have moved out of the old coastal suburbs to new communities farther inland or completely out of state. The whites who remain in San Francisco and Los Angeles and other coastal cities now tend to be highly educated, professional, secular, and liberal on social issues.¹

These major demographic changes have produced a new Democratic majority in California. Blacks and Latinos have joined forces with liberal whites to ensure Democratic victories in California statewide elections—with the important exception of Republican Arnold Schwarzenegger's two elections as governor. Schwarzenegger, an immigrant from Austria and a political centrist, gained considerable support from California's large immigrant and minority population and from white moderates. But most

other Republican candidates have alienated these constituencies and thus have regularly lost to Democrats, often by large margins.

Since 1992, Democrats have won California's large trove of electoral votes in every presidential election. In recent cycles, Republican presidential nominees have completely conceded the state to the Democrats, and the Democratic nominee's share of California's popular vote has continued to expand. Obama's share of California's popular vote—60.95%—was the highest of any presidential candidate since Franklin D. Roosevelt won 66.95% of the state's vote in 1936.²

But while California's new Democratic majority is united in its support of Obama and other Democratic candidates, it is not uniformly liberal on all issues. While many California Democrats (especially whites in San Francisco, Los Angeles, and other coastal cities) hold strongly liberal views on cultural issues, other members of the Democratic coalition, including many Latinos and African Americans, hold more conservative views on these matters. This divide in the Democratic coalition can be traced to differences in religious belief and practice.

California's Religious Characteristics

According to surveys by the Pew Forum on Religion and Public Life, California is one of the ten least religious states in the U.S., with over 20% of the population claiming no religious affiliation and one third stating that they seldom or never attend religious services. The San Francisco Bay Area has an especially high concentration of people who say they have no religion. Yet most Californians claim to have religious belief. One-third of the state's residents say they attend church services at least once per week, and one third at least a few times a year. African Americans and Latinos are the most religious groups in the state, as measured by their attendance at religious services. Most Californians identify as Christian—either Roman Catholic, Evangelical, or Mainline Protestant. Members of the Church of Jesus Christ of Latter Day Saints (also known as the Mormons) constitute approximately 2% of the state's population. Adherents of other religions, including Jews, Buddhists, Hindus, and Muslims, collectively account for less than 10%.³

California's largely white mainline Protestant churches—including Episcopalians, Lutherans, Presbyterians, and Methodists—are in steady decline, with their members dropping below 15% of the state's population. But Catholic and Evangelical numbers are growing. The Catholic Church benefits from immigration and the expanding population of Latinos and Filipinos, most of whom identify as Catholics. At present, approximately 30% of Californians identify as Roman Catholic with the percentage

expected to increase in future years. Meanwhile, Evangelicals in California now surpass mainline Protestants. According to the Pew survey, nearly 20% of Californians identify as Evangelicals.⁴

As they decline in numbers, the mainline churches have struggled with deep internal disputes regarding homosexuality. Entire Protestant denominations are dividing over whether to ordain gay clergy and recognize same-sex marriages. California's mainline Protestant congregations and clergy have often staked out the liberal position in these denominational controversies. But liberal Protestant churches are exceptions within California's larger Christian community. The more numerous Evangelicals and Catholics generally accept traditional Christian teachings on these matters, including the doctrine that marriage is a union between a man and a woman.

Religious belief and practice in California has thus become increasingly polarized. Many Californians now have no religion, and some religious groups have become quite liberal on cultural issues. But, at the same time, growing numbers of Californians—including most Latinos and blacks—identify as Catholic or Evangelical, traditions that hold conservative positions on these issues. This expanding religious divide runs through the heart of the Democratic coalition. On a number of controversial questions, secular (or religiously liberal) Democrats fundamentally disagree with others in the party who hold traditional views on matters of faith.

Obama's Effort to Bridge Divides

Barack Obama based his presidential candidacy on a promise to reconcile the nation's partisan and cultural divides. Obama naturally appealed to cultural liberals, who saw him—a biracial, Harvard-educated, liberal-Protestant, sophisticated urbanite—as one of them. He reinforced this trust by going out of his way to affirm the dignity and rights of gays and lesbians. In speech after speech, he argued that the nation needed to move beyond divisions of gay and straight in the same way that it needed to transcend the divisions of black and white. Yet, at the same time, Obama offered gestures of respect to evangelicals and others with conservative religious beliefs. For example, on August 16, 2008, Obama visited Southern California to participate in a televised forum at Saddleback Church with its pastor, Rick Warren. Saddleback is an evangelical, suburban mega-church with an average weekly attendance of 22,000, and Warren is one of the best-known evangelical pastors in the country.

At the forum, Warren asked Obama to define marriage. Obama replied, "It's a union between a man and a woman. Now, for me as a Christian, it is a sacred union. You know, God's in the mix." Without missing a beat,

however, Obama then asserted that society should grant legal recognition to same-sex relationships. “I am not somebody who promotes same-sex marriage, but I do believe in civil unions. I do believe [...] that for gay partners to want to visit each other in a hospital, for the state to say, you know what, that’s all right, I don’t think in any way inhibits my core beliefs about [marriage]. I think my faith is strong enough and my marriage is strong enough that I can afford those civil rights to others, even if I have a different perspective or a different view.”⁵

Obama’s statements in the evangelical forum—affirming civil unions but rejecting same-sex marriage—carefully straddled the divide between liberals who advocate full marriage equality as a basic civil right and more culturally conservative voters who may accept legal recognition of same-sex relationships but draw the line at marriage.

Warren did not press the issue further, which was somewhat surprising because Obama’s statement that marriage is “a union between a man and a woman” seemed to contradict his public opposition to Proposition 8, the pending ballot measure that sought to reestablish that definition of marriage in California law. In June, Obama had announced that he opposed Proposition 8 because the measure was “divisive and discriminatory.”⁶

Obama’s ambiguous position artfully served his political purposes. He satisfied his liberal base on the litmus test of Proposition 8, while also showing respect to the religious constituency that was an essential part of his coalition. Obama’s nuanced approach to this controversy, as well as other potentially divisive social issues, helped unify his coalition of liberals and more culturally conservative voters. According to the National Election Poll, Obama won nearly 90% of liberals, while also dominating among African American voters (95%) and Latinos (67%). He also won a majority of the Catholic vote and nearly split the vote of Protestants, which in this poll included Evangelicals.⁷

But while this coalition united behind Obama, it divided when voting on the definition of marriage.

The Same-Sex Marriage Controversy in California

The fight over the definition of marriage has been at the heart of America’s “culture wars” for over a decade. The debate has developed along the following lines.

Gay rights activists have come to believe that winning legal recognition of same-sex marriage is necessary if gays and lesbians are to achieve full acceptance of their identities and relationships.⁸ These activists argue that marriage is a socially-constructed institution that has changed over time and across cultures and should now be defined to include committed same-sex

partners. They note that marriage confers practical benefits—legal rights for the marriage partners—as well as symbolic social affirmation and dignity. They argue that the freedom to marry the person of one's choice—male or female—is a precious and fundamental right, and securing this right for homosexuals is the most important civil rights issue of our time. To underscore the point, they draw an analogy to anti-miscegenation laws, which banned marriage between the races in many states until the U.S. Supreme Court declared them void in 1967.⁹ The logic is straightforward: In the same way that laws banning interracial marriage violated fundamental rights, so do prohibitions on same-sex marriage.¹⁰ By thus framing the issue in the language of rights and legal precedents, gay rights activists conclude that the definition of marriage is not ultimately a question for majorities to decide. Instead, courts have the power to strike down any law that denies same-sex couples the right to marry.

Social and religious conservatives have tenaciously resisted this movement. Some candidly believe that homosexual relationships are sinful and should not be affirmed in any way. Others take a more moderate stance, concluding that society may legally recognize committed same-sex relationships (through civil unions or domestic partner laws), but should not confer on same-sex unions the status of marriage. All opponents of same-sex marriage agree that the institution of marriage has a specific meaning—a union between a man and a woman. This definition, they believe, is rooted in human nature and is a foundation of human civilization.¹¹ For many, the marriage relationship is sacred, ordained by God—or, in Obama's formulation, "God is in the mix." For these reasons, the state should not presume to redefine the institution to include homosexual relationships. Many religious groups adamantly reject the analogy between interracial marriage and same-sex marriage. The Roman Catholic Church, for example, has drawn a sharp distinction between the two. The church fought to eliminate bans on interracial marriage but steadfastly believes that same-sex unions fall outside the definition of marriage.¹² Finally, these groups argue that courts may not legitimately establish a *right* to same-sex marriage, thus removing the question from popular control. Instead, in their view, the definition of marriage is a matter of social policy that should be resolved by popular majorities through normal democratic means.¹³

The conflict between these two views started to take shape in the 1990s when gay rights organizations began bringing lawsuits challenging state-level marriage restrictions and religious conservatives mobilized to counter these efforts. Religious groups won an early victory in 1996 when the U.S. Congress enacted the *Federal Defense of Marriage Act (DOMA)*.¹⁴ *DOMA* defines "marriage" for purposes of federal law as a union between a man and a woman, and declares that no state is required to recognize a same-sex marriage formed in another state.

In 1997, a coalition of Evangelical and Roman Catholic groups began organizing an effort to place the nation's first citizen-initiated "defense of marriage act" on the California ballot.¹⁵ The initiative's proponents drafted the measure as a statute, rather than an amendment to the California Constitution, partly because in California—as in many other states that allow for direct citizen lawmaking—a constitutional amendment requires more petition signatures to reach the ballot, and is thus more expensive.¹⁶ Based on research indicating that the proposal had the best chance of success if drafted in concise, easy-to-understand language, the measure's proponents settled on a simple one-sentence text. Just fourteen words long, the proposal added a section to the state Family Code to read, "Only marriage between a man and a woman is valid or recognized in California." When the measure appeared as Proposition 22 on the March 2000 ballot, California voters approved it by a 61 to 39% margin, with majorities in all regions of the state except the San Francisco Bay area supporting its adoption.

California was not alone in adopting measures to preserve the traditional definition of marriage. In the decade between 1998 and 2008, thirty states held statewide elections on state constitutional amendments defining marriage as a union between a man and a woman. Legislatures placed nineteen of the measures on the ballot for voter approval; citizens initiated twelve amendments. Voters approved marriage amendments in all thirty states where they were able to vote on the question, usually by large margins.¹⁷

In California, as in some other states, proponents of same-sex marriage fought back. In early 2004, San Francisco Mayor Gavin Newsom defied the voter-approved marriage law by ordering San Francisco officials to issue marriage licenses to same-sex couples. Approximately 4,000 same-sex couples participated in marriage ceremonies in the city before the California Supreme Court stepped in and declared these *ultra vires* marriages void. At the time, the court expressly noted that it was reserving judgment on the substantive question of Proposition 22's constitutional validity.¹⁸

Meanwhile, the California legislature crafted domestic partner legislation that extended virtually all of the state-level, substantive rights and obligations of marriage to same-sex couples who registered as domestic partners. In 2003, the state legislature enacted the *California Domestic Partner Rights and Responsibilities Act*, which states:

*Registered domestic partners shall have the same rights, protections, and benefits, and shall be subject to the same responsibilities, obligations, and duties under law, whether they derive from statutes, administrative regulations, court rules, government policies, common law, or any other provisions or sources of law, as are granted to and imposed upon spouses.*¹⁹

California's expansive domestic partner law was a compromise outcome, but it offended activists on both sides of the controversy. Many

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Votes on State "Defense of Marriage" Laws			
State	Year	Form of Measure	% Yes (popular vote)
Hawaii	1998	LCA	69
Alaska	1998	LCA	68
California	2000	Initiative Statute	61
Nebraska	2000	Citizen-Initiated Amendment	70
Nevada	2000/2002	Citizen-Initiated Amendment	70/67
Louisiana	2004	LCA	78
Georgia	2004	LCA	76
Kentucky	2004	LCA	75
Mississippi	2004	LCA	86
Oklahoma	2004	LCA	76
Utah	2004	LCA	66
Arkansas	2004	Citizen-Initiated Amendment	75
Michigan	2004	Citizen-Initiated Amendment	58
Montana	2004	Citizen-Initiated Amendment	67
North Dakota	2004	Citizen-Initiated Amendment	73
Ohio	2004	Citizen-Initiated Amendment	62
Oregon	2004	Citizen-Initiated Amendment	57
Kansas	2005	LCA	70
Texas	2005	LCA	76
Alabama	2006	LCA	81
South Carolina	2006	LCA	78
South Dakota	2006	LCA	52
Tennessee	2006	LCA	81
Virginia	2006	LCA	57
Idaho	2006	LCA	63
Wisconsin	2006	LCA	59
Colorado	2006	Citizen-Initiated Amendment	55
Arizona	2006	Citizen-Initiated Amendment	48
Arizona	2008	LCA	56
California	2008	Citizen-Initiated Amendment	52
Florida	2008	Citizen-Initiated Amendment	62

Source: Kenneth P. Miller, *Direct Democracy and the Courts* (Cambridge University Press, forthcoming 2009). "LCA" is a state constitutional amendment placed on the ballot by the legislature and ratified by the people. "Citizen-initiated Amendment" is a state constitutional amendment placed on the ballot by citizen petition and ratified by the people. "Initiated Statute" is a statute placed on the ballot by citizen petition and ratified by the people.

conservatives believed that this statute violated the mandate of Proposition 22 by granting quasi-marriage rights to same-sex couples. A number of conservative groups challenged the domestic partner law, but the California courts upheld its validity. At the same time, advocates of same-sex marriage were dissatisfied with the domestic partner arrangement because, in their view, it imposed second-class status on same-sex unions. They were determined to win full marriage rights for same-sex couples.

During this period, gay rights activists in California were greatly encouraged by a legal victory in Massachusetts. In November 2003, the Massachusetts Supreme Judicial Court became the first in the nation to hold that same-sex couples had a fundamental right to marry.²⁰ Gay and lesbian couples soon filed a number of similar lawsuits challenging California's marriage laws. These cases, which came to be known as *In re Marriage Cases*, reached the California Supreme Court in late 2006.²¹

Both sides understood that the stakes were high. After the 2003 Massachusetts decision, no other state court had followed its lead. Indeed, courts in New York (2006), Washington (2006), New Jersey (2006), and Maryland (2007) had ruled the other way, and similar challenges were still pending in Connecticut and Iowa (the supreme courts of Connecticut and Iowa would later declare that same-sex couples had the right to marry in those states).²² The outcome in California, the nation's most populous state, would either reinforce the consensus against same-sex marriage or, conversely, revive the movement for recognition of this right.

On May 15, 2008, a divided California Supreme Court issued its decision. By a 4-3 vote, the court declared that Proposition 22 was void because the California Constitution protected the right of same-sex couples to marry.

The gay community and its allies were jubilant. On the day of the court's decision, San Francisco's Mayor Newsom exclaimed: "As California goes, so goes the rest of the nation. It's inevitable. The door's wide open now. It's going to happen, whether you like it or not!"²³ When the ruling took effect, gay couples in San Francisco and across the state immediately began obtaining marriage licenses and celebrating weddings. Over the next five months, approximately 18,000 same-sex couples married in California.

But the opponents of same-sex marriage were unwilling to surrender. In anticipation of the court's historic ruling in *Marriage Cases*, a coalition of religious groups had prepared a new ballot measure designed to override the decision. This measure, known as Proposition 8, sought to amend the California Constitution to require that "only marriage between a man and a woman is valid or recognized in California." If adopted by the voters, it would eliminate the newly-established right of same-sex couples to marry in the state.

The Proposition 8 Campaign

The fight over Proposition 8 was intense. Again, both sides understood that California, the nation's most populous and culturally influential state, was a crucial battleground in the larger war over same-sex marriage. Grassroots activism was remarkably high for a California election and both sides flooded the airwaves with advertisements. The campaign was the most expensive in history for a social issue. According to official reports, the Yes-on-8 campaign raised \$38.8 million; No-on-8, \$44.1 million.²⁴

Churches and religious organizations supplied most of Proposition 8's institutional support, with Catholics, Evangelicals, and Mormons leading the way. California's Roman Catholic bishops and many Evangelical pastors, including in black churches, encouraged parishioners to support the initiative through financial contributions and volunteer efforts. Meanwhile, leaders of the Mormon church organized a massive effort to support the initiative. While Mormons are only about 2% of California's population, members of the church (both from California and from other states) provided critical financial contributions and volunteer support. The Yes-on-8 ads emphasized the message that citizens (not the courts) should have the right to decide the definition of marriage. They also implied that the people should have the religious freedom to believe that marriage is only between a man and a woman.

The Yes-on-8 campaign also used Barack Obama to their advantage. The campaign sent a recorded telephone message to Democratic voters. The message began with a voice saying, "Here is Barack Obama in his own words on the definition of marriage." Obama's voice could then be heard: "I believe marriage is a union between a man and a woman. Now, for me as a Christian, it is also a sacred union. God is in the mix." Another voice then urged the listener to vote yes on Proposition 8. This carefully targeted message reinforced the desire of many religious Democrats to vote for Obama—and for Proposition 8.²⁵

Meanwhile, the campaign against Proposition 8 was led by gay and lesbian rights organizations, liberal interest groups, and liberal religious congregations. The No-on-8 campaign received major financial contributions from corporations, labor unions, advocacy groups such as the American Civil Liberties Union (ACLU), and wealthy activists such as Hollywood director Steven Spielberg and Google founders Sergey Brin and Larry Page. In a controversial move, the campaign chose not to air advertisements showing images of gay couples. Instead, the advertisements featured celebrities, public officials, parents of gays, and others making general arguments about equality and fairness.

In one widely-aired advertisement, Democratic U.S. Senator Diane Feinstein appeared on the screen and said:

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*In my lifetime, I've seen discrimination, and I see it again in Proposition 8. Eight would be a terrible mistake for California. It changes our Constitution, eliminates fundamental rights, and treats people differently under the law. Proposition 8 [...] is about discrimination, and we must always say "no" to that. No matter how you feel about marriage, vote against discrimination, and vote No on 8.*²⁶

Notably, while Barack Obama issued a *written* statement calling the measure “divisive and discriminatory,” he did not actively speak out against the measure or personally appear in any No-on-8 ads.

Some grassroots activists were frustrated by the tone of the No-on-8 campaign, which they considered too tepid and “safe.” Others feared that the campaign had failed to organize in minority neighborhoods or to persuade blacks and Latinos to view same-sex marriage as a civil rights issue.²⁷

The Outcome

Voters approved Proposition 8 by a 52.3-to-47.7% margin, with over 7 million Californians voting in favor of the proposition and 6.4 million voting against.²⁸ While the vote was relatively close (far closer than the vote on Proposition 22 in 2000), exit polls and post-election survey research confirmed that the issue of same-sex marriage had again divided the Democratic coalition.

The National Election Poll Exit Poll reported that 36% of Democrats (and 30% of Obama voters) supported Proposition 8.²⁹ While white liberals overwhelmingly opposed the measure, many Democrats, especially blacks and Latinos, supported it. The same NEP poll reported that 70% of African American voters supported Proposition 8, as did 53% of the Latinos.³⁰ Later survey research by Patrick Egan of New York University and Kenneth Sherrill of Hunter College indicated that Latino support for Proposition 8 was higher than the NEP data reported, and that African American support was lower—but agreed that both figures were well over 50%.³¹

Egan and Sherrill noted several that several factors contributed to support for Proposition 8, including age, party identification, ideology, and religiosity. In particular, these researchers confirmed that religion was critical in determining voter attitudes toward Proposition 8. According to their findings, approximately 70% of Californians who attend worship at least weekly—across all racial and ethnic groups—supported Proposition 8. Conversely, most voters (from all ethnic groups) who attend worship less than once per week voted “No” on Proposition 8, and only 30% of those who “hardly ever attend” religious services voted for the measure. Egan and Sherrill noted that “African Americans are more religious (as measured by frequency of attendance at religious services) than any other racial or ethnic group of California voters” and that “much of African Americans’ support

for Proposition 8 can be explained by the fact that blacks tend to be more religious than Californians as a whole.”³² Similar factors contributed to Latino support for the measure.³³

It is important not to overstate these findings. Not all African Americans and Latinos in California are religiously observant or culturally conservative, and many opposed Proposition 8.³⁴ Yet a striking number did part ways with their more culturally liberal co-partisans on the issue of same-sex marriage. The evidence indicates that through the teaching and mobilization of churches or by other means, many of the state's blacks and Latinos viewed the marriage controversy in terms of religion rather than civil rights and thus believed that they could, without contradiction, support civil rights, identify as a Democrat, vote for Barack Obama—and vote for Proposition 8.

After the election, many gay rights activists lashed out in anger. In post-election rallies they took to the streets, proclaimed gay pride, and attacked Proposition 8 supporters as being motivated by religious bigotry and anti-gay hatred. Some protested at churches and boycotted contributors to the Proposition 8 campaign. Others wrote angry messages on blogs, attacking blacks and other minorities who voted to deny marriage rights to same-sex couples.

Still other opponents of Proposition 8 returned to court and filed challenges to the initiative.³⁵ The suits argued that by eliminating a fundamental right, Proposition 8 would change the California Constitution so significantly that it exceeded the people's lawmaking power under the state's system of direct democracy. The California Supreme Court heard oral arguments in the case on March 5 and seemed to signal that it would uphold the initiative against this challenge. But whatever the ruling, it is clear that both sides are now fully mobilized on this issue and that the conflict will continue for some time to come.

Implications of the Proposition 8 Vote

In many ways, the vote on Proposition 8 was a devastating loss for advocates of same-sex marriage. The November election had presented a golden opportunity to break the long streak of votes, in state after state, banning same-sex marriage. If voters in California—the nation's largest state—had given their blessing to the court's decision in *Marriage Cases*, they would have conferred popular legitimacy on same-sex marriage and likely would have emboldened courts and legislators in other states to embrace it, as well. Understanding the stakes, the proponents of same-sex marriage invested massive resources into the effort. And the timing seemed to be favorable: Californians who went to the polls in November 2008 were the most solidly Democratic electorate ever to address the marriage

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question. But the opportunity was lost in large part because the state's Democratic coalition divided along religious lines. Many Democrats—including religious blacks and Latinos—appeared to define the issue in terms of religious conviction rather than civil rights. This split in the Democratic coalition, combined with the votes of most Republicans and many independents, tipped the balance in favor of Proposition 8. California thus joined a list of thirty states that have approved state constitutional amendments defining marriage as between a man and a woman. This outcome made it clear that while gay rights activists have made major gains in the past decade, they have more work to do if they hope to win broad popular support for same-sex marriage, especially among the more conservative religious segments of the population.

The vote on Proposition 8 should also give President Obama and congressional Democrats pause as they develop their legislative priorities. Democrats are at the zenith of power now that they have won an historic victory in the 2008 elections and enjoy control of both the presidency and the Congress for the first time since they lost their congressional majority in 1994. Many in the party's liberal base want to seize this opportunity to advance liberal priorities on a range of long-contested social policies, including abortion and gay rights. In particular, many activists are demanding that Congress and the President move quickly to repeal the federal *Defense of Marriage Act* and the prohibition on homosexuals serving openly in the U.S. armed forces (the so-called "Don't-Ask-Don't-Tell" policy). President Obama has expressed his opposition to these policies, but at the beginning of his administration it remained unclear whether—or how quickly—he would move to repeal them. California's vote on Proposition 8—combined with similar votes in other states—suggests that Obama would risk a backlash among a large segment of his coalition, including many religious blacks and Latinos and other culturally conservative Democrats, if he were to move decisively on the marriage question. Instead, Obama would be prudent to focus attention on matters that unify his supporters, while finessing the issues that divide them, as he did so successfully during the recent campaign.

KENNETH P. MILLER is associate professor of Government at Claremont McKenna College in California. He holds a B.A. from Pomona College, a J.D. from Harvard Law School and a Ph. D. from the University of California, Berkeley. His research focuses on direct democracy, state and federal constitutional law, and California politics. Recent works include *The New Political Geography of California* (coedited with Frederick Douzet and Thad Kousser) (Berkeley: Berkeley Public Policy Press, 2008) and *Direct Democracy and the Courts* (Cambridge, forthcoming 2009).

OUVRAGES CITÉS

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STATUTES

1 U.S.C. § 7 and 28 U.S.C. § 1738C.

California Family Code Section 297.5(a).

NOTES

1. Douzet and Miller, "California's East-West Divide."
2. Bowen, *Statement of Vote: November 4, 2008 General Election*.
3. The Pew Forum, *U.S. Religious Landscape Survey* (February 2008). See also Zambiras, "Shifts in the Religious Divide," 81.
4. The Pew Forum, *U.S. Religious Landscape Survey*, 99.
5. Transcript of Presidential Candidates Forum, Saddleback Church, August 16, 2008.
6. Lopez, "Obama Rejects Proposed California Gay Marriage Ban."
7. "National and California Exit Poll Results," *Los Angeles Times*, November 6, 2008.
8. Not all gay rights activists have agreed that marriage is a desirable goal, with many viewing it as an oppressive institution. See Ettelbrick, "Since When is Marriage a Path to Liberation?" But a number of gay activists, including attorney Evan Wolfson, the former marriage project director for the Lambda Legal Defense and Education Fund and now Executive Director of Freedom to Marry, has helped build a consensus within the gay rights movement that marriage is an important right in itself, as well as a necessary condition for achieving social acceptance and dignity. See Wolfson, *Why Marriage Matters*.
9. *Loving v. Virginia*, 388 U.S. 1 (1967) invalidated laws against interracial marriage. Two decades earlier, the California Supreme Court struck down that state's anti-miscegenation law in *Perez v. Sharp*, 32 Cal. 2d 711 (1948).
10. See Wolfson, "*Loving v. Virginia* – and Mrs. Loving – Speak to Us Today." A number of courts have agreed that bans on same-sex marriage are analogous to bans on interracial marriage, while others have distinguished the two restrictions.
11. See George, "Neutrality, Equality, and Same-sex Marriage."
12. Compare, for example, the Roman Catholic Church's amicus brief in *Perez v. Sharp* (1948) (attacking California's ban on interracial marriage, and its brief in *In re Marriage Cases* (2008), supporting California's ban on same-sex marriage.
13. For a discussion of the fight over framing same-sex marriage as a right, see Reed.
14. Codified at 1 U.S.C. § 7 and 28 U.S.C. § 1738C.
15. The California measure, which became Proposition 22 of 2000, was the first to be put on the ballot by citizen petition. In 1998, voters in Hawaii and Alaska approved defense of marriage amendments that had been placed on the ballot by the legislatures of those states.
16. At the time, this meant that a constitutional amendment would need over 693,000 valid signatures, compared with slightly more than 433,000 valid signatures for an initiative statute—a difference of nearly 260,000 signatures.
17. In Arizona, voters rejected a 2006 constitutional amendment on the issue but approved a revised version in 2008.
18. *Lockyer v. City and County of San Francisco*, 33 Cal.4th 1055, 1073-74 (2004).
19. California Family Code Section 297.5(a). Gay rights activists note, however, that Section 3 of the federal Defense of Marriage Act (codified at 1 U.S.C. sec. 7), denies same-sex unions equal status as marriages for purposes of federal law. This is true even if the union is recognized as a marriage for purposes of state law. On March 3, 2009, plaintiffs in Massachusetts filed a lawsuit in federal district court seeking to invalidate this federal restriction. See *Gill et al. v. Office of Personnel Management, et al.* available at <http://commonlaw.findlaw.com/massachusetts/>.
20. The Massachusetts case was *Goodridge v. Department of Public Health*, 440 Mass. 309 (2003).
21. *In re Marriage Cases*, 43 Cal.4th 757 (2008).
22. See *Hernandez v. Robles*, 7 N.Y.3d 338 (2006), upholding New York's marriage laws; *Andersen v. King County*, 158 Wn.2d 1 (2006), upholding Washington marriage laws; *Lewis v. Harris*, 188 N.J. 415 (2006), declaring a right to same-sex civil unions with benefits of marriage but not requiring those unions be labeled "marriages;" and *Conaway v. Deane*, 401 Md. 219 (2007), upholding Maryland marriage laws. In October 2008, five months after the California Supreme Court's decision in *In re Marriage Cases*, the Connecticut Supreme Court

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issued its decision in *Kerrigan v. Commissioner of Public Health*, 289 Conn. 135 (2008) striking down Connecticut's marriage laws and establishing the state constitutional right of same-sex couples to marry. In April 2009, Iowa Supreme Court issued a similar ruling in *Varnum v. Brien*.

23. Allday, "Newsom was Central to Same-sex Marriage Saga."

24. "Proposition 8: Tracking the Money: Final Numbers" *Los Angeles Times*.

25. "Black Vote Helped Gay Marriage Ban," UPI.com, November 8, 2008.

26. Feinstein, "No on Prop. 8."

27. For a post-mortem by gay-rights activists, see Marriage Equality USA, "We Will Never Go Back: Grassroots Input on California's No on 8 Proposition 8 Campaign".

28. The vote for Proposition 8 was 7,001,084 Yes; 6,401,482 No. Bowen, *Statement of Vote: November 4, 2008 General Election*, 62-65.

29. "National and California Exit Poll Results." According to the official *Statement of Vote*, 8,274,473 Californians voted for Obama while 6,401,482 voted "No" on Proposition 8—a difference of over 1.87 million votes.

30. "National and California Exit Poll Results." See also DiMassa, Mia and Garrison. "Why Gays, Blacks are Divided on Proposition 8".

31. According the Egan-Sherrill study, 58% of African Americans and 59% of Latinos voted for Prop. 8. Egan and Sherrill. "California's Proposition 8: What Happened, and What Does the Future Hold?"...

32. *Ibid*, 11.

33. *Ibid*, 12.

34. For a discussion of black and Latino opponents of Prop. 8, see Osborne, "Pushback on Prop. 8."