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The Dance of Policy Argumentation: Recasting the Same-Sex Marriage Debate

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Abstract

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This project is motivated by a desire to examine the patterns that evolve as activists and their opponents struggle to control how the public and policymakers understand a particular issue at the center of contention. Competing activist groups fight in a context shaped by two important dynamics. As advocacy groups pursue change, or attempt to block change, they must confront the mobilizing activities of their opponents. The first question addressed by this project comes out of this dynamic. *Do activists engage, anticipate, or ignore their opponents' messages?* The second dynamic is the characteristics of particular institutional venues. Activist groups encounter different sets of institutional processes while fighting for their side through litigation than through ballot measure campaigns, for example. This raises a second question. *Do activists change their messages for different institutional arenas and venues?* Finally, the media are central to contentious politics, but are not directly responsible for policymaking. They are, however, partially responsible for making the public and policymakers aware of the messages and activities of activists on either side. Thus the third and final question motivating this project is: *what is the role of the media in contentious politics?*

I address these questions through an analysis of press release, newspaper, and campaign materials from same-sex marriage activists and their opponents in California. My findings challenge common assumptions about the dance of contentious politics and have

implications for concerns about deliberative democracy. I find that groups talk past each other more than they respond, engaging in largely separate rhetorical dances. Competing groups also pay more attention to those policy venues that appeal to their favored arguments, leading competing groups to devote attention to different institutions. Furthermore, these largely separate framing activities are done consistently regardless of policymaking venue. However, scholars and general audiences may be ignorant to this reality because the media construct, or “choreograph,” dialogue. While activists engage in an agenda setting game, talking about what they want, rather than engaging their opponents, newspapers construct a debate out of the largely separate framing strategies. In other words, the media choreograph a dance out of what are primarily separate routines.

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DEDICATION

To mom, dad, and Erin . . . thank you.

Chapter 1

INTRODUCTION

If it takes two to tango it takes at least two to 'contend.' That is, contentious politics always involves the mobilization of at least two groups of actors. We should be equally concerned with the processes and settings within which both sets of actors mobilize and especially interested in the unfolding patterns of interaction between the various parties to contention. –Doug McAdam in *Political Process and the Development of Black Insurgency, 1930-1970*, 2nd ed., page xiv

On May 15, 2008, the California Supreme Court ruled that excluding same-sex couples from marriage was unconstitutional and explicitly overturned the piece of California's marriage law restricting the institution to heterosexual couples. That law, placed on the state's ballot through the citizen initiative process, had been approved overwhelmingly by voters in California's primary election in March of 2000. The California Supreme Court's decision made California the second state, along with Massachusetts, to grant same-sex couples the right to marry in the United States, and to do so as the result of litigation. Same-sex couples began receiving California marriage licenses on June 16, 2008. Anticipating a decision in favor of same-sex marriage, opponents of issuing marriage licenses to same-sex couples had begun organizing even before the California Supreme Court announced its decision with the intention of placing a constitutional amendment limiting marriage to heterosexual couples on the ballot during the general election that year. Unfortunately for those same-sex couples who might have wished to marry after November 5, 2008, the constitutional amendment passed and marriages for same-sex couples were halted.

In the wake of the California Supreme Court's decision in 2008, Jennifer Pizer, Senior Counsel for Lambda Legal, praised the ruling for fulfilling the California constitution's promise of equality. Lambda Legal was one of several legal organizations advocating for

same-sex couples throughout the course of the litigation.

Like the 1948 decision recognizing the right of interracial couples to marry, this ruling keeps a promise that every Californian should hold dear—the California constitution embraces everyone equally. Each of us depends on the Supreme Court to enforce our basic rights to be free and equal under law—no more and no less than our neighbors and friends . . . California’s constitution safeguards all of us.¹

Glen Lavy, Senior Counsel for the Alliance Defense Fund, argued that the decision should be stayed and urged the public to understand and accept the necessity of Proposition 8. Glen Lavy had argued before the California Supreme Court during the case, defending the groups that helped to pass the state law prohibiting same-sex marriages in 2000.

The people of California have a constitutional right to vote on marriage, and we trust the high court will respect the democratic process. The possibility of significant and unnecessary legal and social problems can be avoided by waiting to see what the California people desire when it comes to the meaning of marriage.²

As Doug McAdam observes, quoted at the beginning of this introduction, “[i]f it takes two to tango it takes at least two to ’contend.’” The issue of same-sex marriage has mobilized numerous groups on both sides of the issue. Lambda Legal and Alliance Defense Fund are only two of many, and they fall on opposing sides. In the dance of contentious politics, many of the steps and routines include the way groups talk about an issue. It is unsurprising, perhaps, that both Jennifer Pizer and Glen Lavy appeal to legal language and ideas, since both individuals are lawyers representing legal organizations and they are quoted in the wake of litigation. Jennifer invokes legal rights and makes specific reference

¹May 15, 2008 Lambda Legal press release “Lesbian and Gay Couples Win Freedom to Marry in California”

²May 15, 2008 Alliance Defense Fund press release “ADF asks Calif. justices to hold marriage order until amendment vote”

to the civil rights struggle to overturn the ban on interracial marriages. Analogy to the civil rights movement has become a popular, and potentially powerful, frame embraced by many activists pursuing gay and lesbian rights. In the state of California it is potentially even more resonant, as California was the first state to overturn the ban on interracial marriages through a legal decision. Thus, implicitly, Jennifer Pizer is also appealing to notions about California identity. On the other hand, Glen Lavy combines legal ideas with appeals to popular democracy and respect for the democratic process. He alludes to arguments about activist judges in his hope that the California Supreme Court will show restraint and stay their decision until after election day. While Glen Lavy does not connect his claim that Californians have a constitutional right to vote on minority rights to the voting rights conflicts during the civil rights movement, some of his allies later would.

Representatives from Lambda Legal and Alliance Defense Fund used very similar “routines” in response to the passage of Proposition 8. Proposition 8, the ballot measure that added an amendment to California’s constitution restricting marriage to heterosexual couples, passed during the general election in 2008. On election day, Jennifer Pizer repeated her appeals to constitutionally protected rights and equality.

If the voters approved an initiative that took the right to free speech away from women, but not from men, everyone would agree that such a measure conflicts with the basic ideals of equality enshrined in our constitution. Proposition 8 suffers from the same flaw it removes a protected constitutional right here, the right to marry not from all Californians, but just from one group of us.³

Another senior attorney from the Alliance Defense Fund, Brian Raum, responded to the passage of Proposition 8 with appeals to majoritarian democracy and the idea that voters are the true representation and expression of public will, not legislatures and courts.

³November 5, 2008 NCLR press release “Legal Groups File Lawsuit Challenging Proposition 6, Should It Pass”

The principles of marriage transcend the personalities of the campaign. Voters do not want the will of the people thwarted by courts or legislatures that listen more to political special interests than they do to them.⁴

This is quite similar to Glen Lavy's response to the California Supreme Court's decision.

While Glen Lavy, Brian Raum, and Jennifer Pizer use legal language and concepts to respond to the California Supreme Court's decision and Proposition 8, they do so in different ways. Referring again to Doug McAdam's quote, the different responses on behalf of the Alliance Defense Fund and Lambda Legal potentially challenge the appropriateness of the tango analogy. The tango evokes images of pairs of individuals, almost always embracing, engaged in the same routine, and interacting closely with one partner leading and the other partner following. Jennifer Pizer appears, at least in this instance, to be doing separate "dances" or "routines" from the two Alliance Defense Fund attorneys. If we take seriously Doug McAdam's plea to examine the "unfolding patterns of interaction between the various parties to contention," then examining the patterns that evolve as groups like the Alliance Defense Fund and Lambda Legal define the issue of same-sex marriage and respond to relevant events is an important step towards understanding contentious politics. That is the motivation behind this project.

Lambda Legal pursues marriage rights for same-sex couples and the Alliance Defense Fund defends anti same-sex marriage policies in a context shaped by two important dynamics; activists obviously do not mobilize inside a vacuum. The first is the activities of their opponents. Lambda Legal and their allies advocate for same-sex marriage rights in an environment shaped by the activities of the Alliance Defense Fund and their allies, and vice versa. The first question addressed by this project comes out of this dynamic. *Do activists engage, anticipate, or ignore their opponents' messages?* The second dynamic is the characteristics of particular institutional venues. Lambda Legal and the Alliance Defense

⁴November 5, 2008 Alliance Defense Fund press release "ADF: Marriage amendment demonstrates voters don't want activist courts"

Fund encountered different sets of institutional processes while fighting for their side during litigation than they did during the campaigns for and against Proposition 8, for example. This raises a second question. *Do activists change their messages for different institutional arenas and venues?* Finally, the media are a collection of institutions central to contentious politics that are not directly responsible for policymaking. They are, however, partially responsible for making the public and policymakers aware of the messages and activities of activists on either side. Thus the third and final question motivating this project is: *what is the role of the media in contentious politics?*

This project is motivated by a desire to examine the patterns that evolve as activists and their opponents struggle to control how the public and policymakers understand the particular issue that is the focus of contention. My findings, presented in the chapters that follow, challenge common assumptions about the dance of contentious politics. In particular, they challenge the underlying assumption of Doug McAdam's analogy. Activists and their opponents, I find, are more often involved in their own, separate dances and routines, rather than directly engaging each other in something like a tango. There is very little overlap between the collection of messages that form each side's dance. Furthermore, these largely separate dances are done fairly consistently regardless of policymaking venue. However, scholars and general audiences may be ignorant to this reality because the media construct, or "choreograph," engagement that looks more like the tango Doug McAdam had in mind.

Empirical and theoretical justifications

These questions are important for several reasons. Empirically, contemporary social movement scholarship has encouraged (quite strongly) scholars to move away from movement-centric accounts of contention or mobilization and towards analyses that feature the contingent, relational, and dynamic aspects of movements (McAdam 1999; McAdam et al. 2001; Meyer and Staggenborg 1996). In the preface to their book *Dynamics of Contention*, Doug McAdam, Sydney Tarrow, and Charles Tilly declare that, if forced to label themselves

amidst the various intellectual battles that ensue over the study of contentious politics (or any subject, for that matter), they would call their perspective “relational”; “we think the area of contentious politics will profit most from systematic attention to **interaction among actors, institutions, and streams of contentious politics**” (McAdam, et. al 2001, xvii, emphasis mine). Underlying these pleas to account for the multiple sets of actors involved in contentious politics is the assumption that the interactions among them are in some way important. But what is the nature of these interactions?

Social movement scholars Meyer and Staggenborg note, “[t]he political opportunity structure changes in response to the actions of both movements and countermovements” (1996, 1635). The term “opportunity structure” is one regularly employed by scholars who rely on legal mobilization and political process approaches to studying contentious politics (Anderson 2005; McAdam 1999; McCann 1994; Meyer and Staggenborg 1996). Broadly, it refers to the configuration of “institutional and sociocultural factors that shape social movement options—by making some strategies more appealing and/or feasible than others” (Anderson 2005, 6). And, it can be loosely distinguished from “organizational resources and capacities”—factors internal to a movement like membership, finances, leadership, and others that make certain strategies more or less appealing and feasible than others over time (McAdam 1999; McCann 1994). Social movements act within political and legal opportunity structures and opposing (counter)movements are a component of these opportunity structures; they shape and reshape the more dynamic aspects of political and legal opportunity structures such as the alignment of elites, public policy, and political discourse. In the context of social movement framing, countermovements may co-opt certain language and phrases, making them less available to their opponents, or advance ideas that make their opponents’ framing strategies more vulnerable. And, scholars have begun to pay attention to the multiple ways in which opposing movements may force a shift in policymaking venue, increase media and other forms of attention, shift movement agendas, and change organizational structures among other things (see esp. Fetner 2008). However, while they struggle for control over the important and relevant issues to a policy debate, do opposing

movements do so on overlapping rhetorical terrain, or do they tend to steer themselves in different, and perhaps unrelated, directions? The quotations presented in the previous section illustrate moments during the struggle over same-sex marriage when opponents did the latter—rhetorically they fought using different routines and doing different dances. Does the fact that opposing movements shape, and often alter, the context in which competing sets of actors mobilize necessarily mean that those parties directly engage with and confront each other? Are there other moments when activists tango?

The study of electoral campaigns is an area in which many scholars argue that it is not necessary for competing actors to engage each other. In fact, several scholars of candidate centered campaigns argue that, in the context of electoral campaigns, engagement is irrational (W. L. Benoit et al. 2003; Ceaser and Busch 2001; Riker 1996; Simon 2002). Dialogue, or issue convergence—when candidates talk about the same issues—only increases an opponent’s visibility. If one assumes that issues favoring one candidate disadvantage the other, this only further draws candidates away from those issues emphasized by their opponents (Xenos and Foot 2006). If dialogue is like activists doing the tango, these scholars suggest that it is to one’s advantage to practice and repeat your own routine. Other scholars, however, argue that while models of candidate discourse suggest that dialogue is irrational, the evidence to support such claims is relatively sparse (Sigelman and Buell 2004). Sigelman and Buell (2004) find that it is not the exception for Presidential candidates to discuss similar issues and Xenos and Foot (2006) find that campaigning on the internet does not conform to the usual expectations about off-line campaigns. Candidate campaigns, in the long run, are relatively short. Movement campaigns for social, legal, and political change may last years, even decades. What, if anything, can we find by empirical study of movement campaigns?

Theoretically, there are implications for thinking about deliberative democracy. The concern over dialogue, or the lack thereof, in campaigns derives from normative standards of the “ideal campaign” for a democracy. Presumably, a society should want a campaign that educates voters sufficiently so that they may make informed choices on election days

(Bennett 1992; Simon 2002). “As has been argued by nearly all democratic theorists, the best means to this end is free and open public discussion” (Simon 2002, 2). John Stuart Mill’s notion of the “marketplace of ideas,” Simon argues, presumes a minimal normative requirement for some—and more is better—engagement or dialogue (2002). Without some dialogue, there is no real debate or deliberation. Absent debate, voters are forced to make choices with, at best, vague and distorted notions of what candidates think about particular issues. Why shouldn’t such concerns be relevant in the context of issue centered, rather than candidate centered, campaigns? Granted, there is much more to the outcome of movements for social change than votes on election day. (Arguably, there is much more to candidate success than votes on election day, as well.) But legal and social change includes not only changes in formal law, policy, and status, but also public perceptions and opinions and winning over the “hearts and minds” of other social groupings. Furthermore, with the increased use of the ballot initiative in policymaking, especially in the state of California, activist groups often find themselves engaging in campaign activities not unlike those practiced by individuals running for office.

Election campaigns are unnecessary, however, in order to comprehend the implications that the quality and quantity of deliberation can have for contentious politics. In *Distorting the Law: Politics, Media, and the Litigation Crisis*, Haltom and McCann explore how the media has disseminated a narrative about lawsuits and litigation that has encouraged the “common sense” understanding that the United States is in the midst of a lawsuit crisis and that reinforces cultural norms that discourage rights claiming (2004). Tort reformers constructed moralistic, sensational stories of greedy lawyers and irresponsible citizens that are in many ways a natural fit for journalistic norms. Haltom and McCann detail how a fairly diverse group of scholars and intellectuals directly contested the tort reformers’ claims about monetary awards, the frequency of filing, and the likelihood of resolution outside of a courtroom, through sophisticated empirical studies. Unfortunately, these do not translate well into the mass media. Trial lawyer organizations essentially abandoned appealing to the public and focused their attention on policymakers and policymaking.

Thus, while trial lawyers and academics directly confronted the claims of tort reformers, they largely did so in ways that left society uninformed, preventing the alternative narrative from becoming part of popular knowledge. The book concludes with a sobering thought about the promises of contentious politics. “[T]o the extent that legal lore also suppresses a more sophisticated politics of rights (Scheingold 1974) . . . we fear a profound loss in the potential for advancing justice and democracy in our society” (Haltom and McCann 2004, 306).

Framing and Fighting with Ideas

I situate this study at the intersection of legal mobilization and agenda setting scholarships. Both bodies of scholarship share an interest in the role of meaning and the interpretation of information as it shapes and constrains opportunities for social change and policymaking. I begin with Frances Zemans’ conceptualization of legal mobilization: “[I]aw is mobilized when a desire or want is translated into an assertion of right or lawful claim” (Zemans 1983). Many scholars recognize that legal mobilization does not necessarily require that litigation be the primary focus of a social movement. The law may be mobilized in any number of ways, only a few of which actually take place inside official legal institutions or require official legal and state actors. During a lengthy struggle, litigation efforts are often coordinated with, and sometimes in the background relative to, other activity targeted at changing the way people understand rights claims and particular legal categories and subjects. (And, arguably this is true for both proponents and opponents of same-sex marriage.)

While legal mobilization is commonly associated with litigation and legal decisions, it is certainly not restricted to courts as a policymaking venue. Rights can be asserted and claimed (or denied) in legislatures, courts, and before/during elections on the ballot. Litigation in court is only one possible way among many to attempt to shift the agenda for the public and policymakers and to pursue movement goals. Certainly this is true of those seeking marriage rights for same-sex couples and those seeking to oppose them. As the opening discussion of this introduction highlights, rights were mobilized by, and on behalf

of, same-sex couples during the 2008 election campaign in hopes of defeating Proposition 8. Furthermore, as the quotations from Glen Lavy and Brian Raum illustrate, it is not only rights that wind up being fought over; wrapped up in assertions of, and conflicts over, rights are claims about the meanings of family, democracy, sex, and so on. Both Glen Lavy and Brian Raum, responding to the California Supreme Court's ruling and the passage of Proposition 8, assert that citizens have a constitutional right to vote on same-sex marriage. Simultaneously, they are making claims about legitimate policymaking in a democracy; at the same time that they invoke a right to vote, they denounce courts and legislatures. Thus, rights and legal categories can be constructed in variable, dynamic, and often overlapping ways. Beginning with such an understanding of legal mobilization requires that one also recognize that law is not simply or only formal claims, official court decisions, and legislative statutes. Law, from this perspective, is also knowledge, understandings, aspirations, symbols, traditions, and social practices (Ewick and Silbey 1998; Galanter 1983; McCann 1994; Merry 1985). A central feature of social movement and legal mobilization efforts are attempts to advance particular versions and understandings of rights and other legal norms to multiple audiences and institutions.

Ideas, knowledge, and meaning matter because they shape our understandings of reality. Not only rights and legal categories, but all policy-relevant information is uncertain, ambiguous, and multidimensional (Jones and Baumgartner 2005). Each interpretation of policy relevant information, whether the information relates to a rights claim or prediction of financial impact⁵, implies something different about the particular situation, the nature of the problem, the possible solutions, and/or the possible groups that may be targeted and affected (Baumgartner and Jones 1993; Chong and Druckman 2007; Schneider and Ingram 1993; Stone 1989). This is equally true in regards to what people think the law is or says or does—what Ewick and Silbey refer to as “legality” (Ewick and Sibey 1998). Different social practices, cultural traditions, and everyday understandings of the law embed differ-

⁵A fairly common argument advanced in the legislature in favor of same-sex marriage was that doing so would help the California economy.

ent ideas about the relationships between society and its institutions, power, and what is normal. When a social movement pursues change, they often pursue not only changes in policy and law, but also changes in the way people understand and live.

The process through which an audience or institution comes to pay attention to some issues rather than others is called agenda setting. Individuals and the organizations they constitute can pay attention to only a limited number of things at a time; thus, they must be selective with their attention (Baumgartner and Jones 1993; Jones 1994; Jones 2001). As individuals and organizations process information, they are confronted with numerous issues or problems, multiple characterizations of each of the various issues, and competing solutions for the different interpretations (Jones and Baumgartner 2005). The activist groups discussed in the chapters that follow have already decided to pay attention to same-sex marriage. What I am most interested in is the second element—individuals and organizations advancing and hoping to draw attention to particular attributes of same-sex marriage policymaking. This is reflected in my selection of quotations in the opening paragraphs. In her quotations, Jennifer Pizer emphasizes constitutional rights and equality. The Alliance Defense Fund, on the other hand, highlights the procedural elements of same-sex marriage policymaking. Agenda setting also refers to the processes through which groups and institutions come to pay attention to particular attributes and characterizations of a particular issue.

Such interpretive processes are particularly important in the context of social movements. Shared rejections of routine assumptions about social life, priorities regarding what should change, and understandings of the relevant issues are some of the many factors that inspire individuals to mobilize collectively (Felstiner, Abel, and Sarat 1980-81; McAdam 1999; McCann 1994). Social movement scholars frequently use the concept of framing to examine these intersubjective, or shared, perceptions of information. Following Snow and Benford, a “frame” is defined as “an interpretive schemata that simplifies and condenses the “world out there” by selectively punctuating and encoding objects, situations, events, experiences, and sequences of actions within one’s present or past environment”

(1992, 137; see also Chong and Druckman 2007; Kinder 1998). Frames select out and give weight or salience to particular issues and attributes in an effort to make sense of the wealth of information contained within the social and political world. Interpretive frames define problems, diagnose causes, make moral judgments, and suggest possible remedies (Entman 1993; Gamson 1992). Frames are packages of ideas that highlight certain aspects of a problem (and, in many ways attempt to persuade others to perceive something as a problem), while deemphasizing others, all the while suggesting (sometimes more explicitly than others) solutions to the perceived problem. Collective action frames in particular are intended to inspire action and mobilization. Framing is the process through which social movement actors engage in this “signifying” behavior (Snow and Benford 1992). However, this behavior may not be consistent across the multiple actors and groups involved in a movement, as some may have different ideas of how best to frame the issue in question (Hull 2001; Javors and Reimann 2001).

Frames can be created and used by different actors in hopes of manipulating how the public and policymakers understand an issue. Shifts in frames may influence whether or not an issue makes it on to an agenda and have the potential to produce changes in public opinion (Baumgartner and Jones 1993; Chong and Druckman 2007; Pralle 2006). The stakes are high for parties to contentious politics. Individuals and groups compete for the predominance and subsequent maintenance of issue characterizations which they perceive as strategically beneficial to them or, conversely, as harmful to the opposition (Haltom and McCann 2004; Stone 1989). The Alliance Defense Fund, for example, appeals to ideas about majoritarian democracy because the group knows that, historically, anti same-sex marriage ballot measures tend to succeed when left up to voters. On the other hand, Lambda Legal uses the language of rights and equality to talk about same-sex marriage, knowing such frames have been successful in the past for other marginalized populations.

While there is an instrumental, or strategic, component to framing, social movement groups do not have complete freedom to choose what meanings and symbols to associate with a given issue. Framing must also interact, and is constrained by, prevailing “cultural

logics” and ideological constructs, or ways of seeing and understanding social life (Jones and Baumgartner 2005; McCann and Haltom 2004). Ideology and culture act as both resources and constraints, providing the tools from which new meanings are constructed, as well as limiting the possible and probable meanings from which actors might draw (Benford and Snow 2000; McAdam et al. 2001; McCann 1994; Tarrow 1992).

If it Takes Two to Tango...

If law is understood expansively, then scholars must concern themselves not only with court-centered movement activity, but also movement actions directed at the other policymaking arenas of government: the legislature, the executive, and especially, the public. However, disadvantaged groups in particular often rely on courts in the wake of failures in other arenas, like legislatures. These strategic shifts in policy venue, or decision making arena, based on hopes of finding success are what public policy scholars call venue shopping (Baumgartner and Jones; Pralle 2006). And, in the process of moving through different policy arenas, social movements might reframe the issue under consideration; “[a]dvocacy groups might also redefine an issue in order to conform to the discourse and norms of the targeted institution” (Pralle 2006, 30). Within particular policy venues, frames or issue definitions evolve and compete for attention (Hilgartner and Bosc 1988). Throughout these processes, “ongoing political competition pushes advocacy groups to compete on the same rhetorical turf, to lobby the same audiences, and to pursue (or fight) policy change in the same venues as their rivals” (Pralle 2006, 6-7). Often these rivals are not simply the state or individual state actors, but are countermovements engaged in similar mobilization processes. How do these interactions between frames and venues play out over a long episode of contention? What do the dynamics between opponents competing on the same “rhetorical turf” look like across those institutions?

Prior research on the backlash in response to Native American treaty rights claims (Dudas 2003) and same-sex-marriage rights claims (Dugan 2005; Gerstmann 1999; Goldberg-Hiller 2002; Goldberg-Hiller and Milner 2003), suggests that the countermobilization to

progressive rights claims have a number of characteristics. First, opposition groups in these studies adopted and mobilized a language of “special” rights. In doing so, these groups co-opted the language of equal rights and interpreted rights claims by these marginalized groups as excessive and exclusive and as undermining an historical commitment to equality. Labeling certain rights claims as “special rights” delegitimizes them and sets them up in opposition to legitimate equal rights claims. By appealing to universal claims of abstract equality, the opposition groups in these studies construct any apparently particular claims to civil rights as harmful to American political culture.

Second, parallel to arguments made in literature on legal mobilization and legal consciousness (Engel and Munger 2003; Ewick and Silbey 1998; McCann 1994; Silverstein 1996), the discourse used by opponents in the politics of backlash (re)shapes (and is shaped by) the constructions of the individual and group identities and interests of the majority. Wrapped up in opponents’ claims are constructions of what it means to be American, California, Christian (or Catholic, Protestant, etc.), a man or a woman, of a particular race or class, a “good” parent or citizen, and so on. These characteristics are used to implicitly or explicitly define who falls “inside” and who falls “outside” of the deserving community.

Third, the discourse of special rights transforms what are originally conflicts of interests and status into conflicts over values and culture. In an effort to avoid having to defend privilege, opponents justify resisting contemporary civil rights claims with appeals to sovereignty, popular control, security, equal opportunity, individual merit, the past, and traditional morality (Dudas 2003; Engel 1984; Goldberg-Hiller 2002; Goldberg-Hiller and Milner 2003). Furthermore, these appeals to sovereignty, security, and so on are understood to be endangered by minority-rights mobilization. Finally, the discourse mobilized by opposition groups reverses majority and minority positions in the conflict. In the politics of backlash, special-rights talk highlights the opposition’s sense of injury and attributes blame to marginalized populations (Dudas 2003; Goldberg-Hiller and Milner 2003). The opponents to civil rights claims come to understand themselves as the victimized, injured group needing protection and defending.

The struggle over meaning is at the center of these contests between movements and countermovements. The opening paragraphs of this chapter highlight only a few of the many instances where relevant parties to the same-sex marriage fight, such as Lambda Legal and the Alliance Defense Fund, struggled for control over how the public views same-sex marriage and responds to certain events. By approaching mobilization from a dynamic, interactive perspective, “we can view opposing movements as rival contenders not only for power and influence, but also for primacy in identifying the relevant issues and actors in a given political struggle” (Meyer and Staggenborg 1996, 1635). In other words, as already mentioned in the previous section, interactions with multiple institutions and opponents provide opportunities for strategically manipulating ideas (Haltom and McCann 2004).

As Tina Fetner argues, the media become an increasingly important institution once a movement has a viable opposing movement (2008). Once anti same-sex marriage activists began to organize and mobilize, they drew greater attention to the issue than same-sex marriage proponents did, or could have, on their own. Partially as a result of this, same-sex marriage proponents were forced to consider the opponents’ agenda in the construction of their own. However, the relationship is not uni-directional, media coverage may also lead to the development or further growth of countermovements, as journalists seek alternative perspectives in the midst of their reporting (Meyer and Staggenborg 1996). While the mass media are an important resource and platform for groups, it is one with “gatekeeper roles.” And, they are often active participants in framing issues and creating dialogue. Returning to the three questions in the introduction to this chapter, what do the interactions between these various actors—opposing movements, policymakers, and the media—look like?

Same-sex marriage in California

In order to explore how various parties to contention—activists, their opponents, policymakers, and the media—interact, I examine the mobilization of activist groups in regards to the issue of same-sex marriage. The growing visibility of lesbian, gay, bisexual, and

transgendered (LGBT) individuals has resulted in a number of legal and political struggles that have generated opposition. However, none have generated such a contentious cultural dispute as the decision by LGBT organizations to pursue equal marriage rights. Almost immediately following the first favorable state court ruling on the issue of same-sex marriage, conservative groups and legislators began mobilizing in opposition. In the debate over a controversial policy issue, competition for control over the agenda space or issue characterizations often is particularly intense. The debate over same-sex marriage, therefore, provides a fruitful case with which to examine the potential interaction of the framing efforts by both sides.

I use the case of same-sex marriage in California to examine these framing dynamics for several reasons. Of course, the same-sex marriage debate in California is a timely one. More important, California was one of the earliest states to change the language of its marriage laws in 1977, adding gender specific language, to specify that marriage should be between a man and a woman. The state of California also offers a unique opportunity to examine the policy debate in relation to nearly every possible policy venue. Same-sex marriage has been fought out in the state legislature, in state courts, on the ballot during election years, in cities, and in the governor's office.

Between 1971 and 1977, California's Family Code did not contain any specific language regarding sex or gender. In 1971, the Legislature removed references to "male" and "female" when it revised the language of the state's marriage laws to equalize the minimum age for men and women to marry. The relevant section now read "[a]ny unmarried person of the age of 18 years or upwards, and not otherwise disqualified, is capable of consenting to and consummating marriage." Relying on the gender neutral language, several same-sex couples sought marriage licenses in the mid-1970s.⁶ In 1977, the state legislature passed a law revising the section again so that it read "Marriage is a personal relation arising out of a civil contract between a man and a woman, to which the consent of the parties capable of

⁶In re Marriage Cases

making that contract is necessary.” (Family Code Sec. 300)

In order to further reinforce and, in the arguments of the opposition, clarify California’s marriage law so that only out of state marriages between a man and a woman would be recognized by the state of California, state Senator Pete Knight authored California’s Defense of Marriage Act. On March 7, 2000 California voters approved Proposition 22—“Limit on Marriages”—by 61.4%, adding the following to California’s Family Code: “Only marriage between a man and a woman is valid or recognized in California.” (Family Code Sec. 308.5)

Over the next several years, the California legislature passed several bills amending the mostly symbolic domestic partnership registry that had been created in 1999. In September 2003, the legislature passed AB 205, which extended nearly all of the state’s marriage rights to domestic partners. Days later, former California Senator Pete Knight and Randy Thomasson filed separate lawsuits in Sacramento and Los Angeles, respectively, arguing that AB 205 was invalid because of the passage of Proposition 22 in 2000. In 2005 and 2006, both the trial court in Sacramento and the California Court of Appeal upheld the domestic partnership law; the California Supreme Court declined to review the decisions (*Knight v. Schwarzenegger*).

On February 10, one week after the Supreme Judicial Court in Massachusetts released their advisory opinion in *Goodridge v. Department of Public Health* (2004 SJC-09163), San Francisco mayor Gavin Newsom concluded that prohibiting same-sex marriage violates the California constitution. On November 18, 2003, the Massachusetts Supreme Judicial Court became the first state high court to rule that denying same-sex couples the right to marry is unconstitutional. In response, the Massachusetts Senate requested an advisory opinion from the Supreme Judicial Court, asking if a proposed civil union bill would meet the Court’s earlier ruling. In the February 4, 2004 advisory opinion, the Court ruled that civil unions create a separate and unequal status and that only marriage rights would satisfy the Massachusetts constitution. By his own admission, Gavin Newsom was angered by the attacks on the Massachusetts ruling and, in particular, by President George W. Bush’s call

for a Federal Marriage Amendment to restrict marriage to heterosexual couples during his January 2004 State of the Union Address (Kendell 2006). As a result, in spite of serious reservations on behalf of leading gay and lesbian activists, Newsom ordered city officials to begin issuing marriage licenses (Kendell 2006). In only a few days, two cases were filed against Newsom and the city by same-sex marriage opponents: *Thomasson (Campaign for California Families) v. Newsom* and *Prop 22 v. City and County of San Francisco*.

On March 11, the California Supreme Court ordered San Francisco to stop issuing marriage licenses. The following day, several couples that had appointments to get married after March 11 filed a complaint in San Francisco Superior Court. The City of San Francisco also filed suit against the state of California in March. On August 15, the Supreme Court invalidated any marriage licenses that had been granted to same-sex couples, without saying anything about the constitutionality of marriage law in California (*Woo v. Lockyer*).

By the end of 2004, the two cases filed against Newsom and San Francisco, *Woo* and two other cases filed by same-sex couples, and the case filed by the City of San Francisco were coordinated. Judge Kramer tentatively ruled California's marriage law unconstitutional on March 14, 2005. On April 13, 2005 he finalized his decision and denied standing to Prop 22 and Campaign for California Families. On October 5, 2006, the Court of Appeal reversed the Superior Court's ruling. On December 20, 2006 the California Supreme Court granted review to the marriage cases and oral arguments were heard March 4, 2008. The state Supreme Court ruled that excluding same-sex couples from marriage was unconstitutional on May 15, explicitly overturning the statute passed by Proposition 22 in 2000.

While same-sex marriage lawsuits moved through California's courts, the state legislature passed same-sex marriage legislation twice. Then California Assemblyman Mark Leno⁷ introduced AB 1967 in February 2004, which would enact the "California marriage License Nondiscrimination Act," changing California statute to allow marriage between "2 persons" rather than between a man and a woman. The bill was debated and voted on in

⁷In 2008 Mark Leno was elected to California's Senate.

committee, but no further action was taken. The California legislature passed AB 849 on September 6, 2005 with a vote of 41 to 35 in the Assembly (the Senate approved the bill 21 to 15 on September 2) to change the state's marriage statute to include gender neutral language. The legislature passed a similar bill, AB 43, on September 7, 2007 with a vote of 22 to 15 in the Senate (the Assembly approved the bill on June 5 with a vote of 42 to 34). Both times, Governor Schwarzenegger vetoed the legislation. However, both times he suggested that the state's courts should be the ones to decide the constitutional questions raised by same-sex couples and marriage within the state.

In 2007, same-sex marriage opponents began collecting signatures in order to place an anti-marriage measure on California's ballot in November. They did so even before the Supreme Court announced its decision in 2008, arguing that an amendment to the constitution was needed to reinforce the statute that was eventually overturned. Proposition 8 was submitted to the California Secretary of State at the end of 2007. The state Supreme Court denied a request to delay issuing marriage licenses to same-sex couples until after the November 2008 election, given the pending ballot initiative, in June. On June 16, after 5pm, the first same-sex couples were married. A month later, the Supreme Court dismissed same-sex marriage supporters' lawsuit seeking to remove Proposition 8 from the ballot (*Bennett v. Bowen*).

On November 4, 2008, after what appeared to be a close race, California voters passed Proposition 8—"Eliminates Right of Same-Sex Couples to Marry"—by 52%. The following day—the day the Proposition went into effect and halted the issuing of marriage licenses to same-sex couples—Lambda Legal, the National Center for Lesbian Rights, and the ACLU challenged the validity of the constitutional amendment in the California Supreme Court. The cities of San Francisco, Los Angeles, and Santa Clara County filed a similar challenge. A private attorney filed a third. On November 19, the California Supreme Court agreed to hear the cases, but denied a stay of the initiative. On March 5, 2009 the California Supreme Court heard oral arguments in *Strauss v. Horton*. The case argued that Proposition 8 should actually qualify as a revision to the California Constitution, rather than a simple

amendment. Unlike a constitutional amendment, constitutional revisions require a two-thirds vote of the Legislature before being submitted to the voters.

On May 26, 2009 the California Supreme Court upheld Proposition 8 with a 6 to 1 vote. Unanimously, however, the Court affirmed the validity of the more than 18,000 marriages that took place between June 16 and November 4, 2008. The following day two attorneys unaffiliated with any LGBT legal organization—Ted Olson and David Boies—filed a federal challenge to Proposition 8 on behalf of two same-sex couples who were denied marriage licenses earlier in the month (*Perry v. Schwarzenegger*). Even though LGBT groups had expressed reservations about continuing to pursue litigation on behalf of same-sex marriage in California⁸, three of them (Lambda Legal, NCLR, and the ACLU) filed amicus briefs on June 26 and a motion to intervene on July 8. While permission to intervene was granted to supporters of Proposition 8, in part as a result of Governor Schwarzenegger’s and Attorney General Brown’s refusal to substantively defend the Proposition, Judge Walker of the US District Court for the Northern District of California denied the LGBT groups’ request. The trial began in January 2010.

Meanwhile, LGBT organizations began formulating strategies for future ballot measures, generating disagreement within the movement over the best year to pursue placing one on the ballot—2010, 2012, or a year further into the future.⁹ However, those favoring a more immediate vote during the 2010 election failed to gather the signatures required by April 12, 2010 to put the measure that would overturn Proposition 8 on the ballot.

Judge Walker announced his ruling in *Perry v. Schwarzenegger* on August 5. He ruled that the plaintiffs’ claim—the desire to exercise the right to marry—is subject to strict scrutiny and that Proposition 8 lacks any rational basis for restricting the right to marry to heterosexual couples. As a result, he ruled Proposition 8 unconstitutional under the Due Process

⁸See, for example, fact sheets “Make Change, Not Lawsuits 2009” and “Why the ballot box and not the courts should be the next step on marriage in California” both dated May 27, 2009 and found on Lambda Legal’s website.

⁹See “Winning Back Marriage Equality in California: Analysis and Plan” report released by Equality California at www.eqca.org

and Equal Protection clauses of the US Constitution. A week later, Judge Walker denied the request to stay his ruling, but put the effect of his ruling on hold until August 18, 2010 in order to give the Ninth Circuit Court of Appeals an opportunity to consider the stay.

The Ninth Circuit Court of Appeals agreed to consider the stay and held oral arguments in December 2010. During argument, the judges considered whether Proposition 8 opponents even had the right to appeal, as they did so alone. Both Attorney General Brown and Governor Schwarzenegger declined to appeal the *Perry v. Schwarzenegger* ruling. The Circuit Court certified a question to the California Supreme Court in January 2011, asking whether California law grants initiative proponents legal standing to represent a initiative in court. The California Supreme Court agreed to consider the question, both sides filed more briefs, and the Court held on November 17 that Proposition 8 proponents did, indeed, have standing to appeal the decision. This meant Proposition 8 proponents could proceed with appeals of the District Court's ruling.

In the interim, Judge Walker stepped down from the United States District Court and publicly announced what would generate some controversy—he was, himself, in a long-term same-sex relationship. In April, Proposition 8 supporters filed a motion to vacate Judge Walker's ruling against Proposition 8 because of his relationship status and sexual orientation. However, Chief Judge Ware of the US District Court for the Northern District of California, the man who replaced Judge Walker, denied the motion and ruled that Judge Walker's sexual orientation and relationship status do not disqualify him from hearing a case. Judge Ware also ruled that the video recordings made of the trial in *Perry v. Schwarzenegger* should be made publicly available.

On December 8, 2011 the Ninth Circuit Court of Appeals heard oral arguments on appeal of Judge Ware's two rulings. On February 7, 2012 the Ninth Circuit upheld Judge Walker's ruling declaring Proposition 8 unconstitutional. The 2-1 decision argued that Proposition 8 violated the Equal Protection Clause by stripping a group of a right without serving any other legitimate purpose. "By withdrawing the availability of the recognized designation of 'marriage,' Proposition 8 enacts nothing more or less than a judgment about

the worth and dignity of gays and lesbians as a class” (*Perry v. Brown*, 73).¹⁰ Proposition 8 supporters requested a rehearing two weeks after the decision was announced. At the time of the writing of this dissertation, the Ninth Circuit has neither granted nor denied the request.

A note on language and concepts

Framing and issue characterization patterns are the central focus of this dissertation. While the concept of a “frame” has a variety of problems and weaknesses, I use the concept of an “argument frame” to refer to more specific arguments made in a debate, as opposed to more general frames. This is consistent with Fisher (2008) as well as Katie Stenger’s (2005) use of the concept. Whereas a “frame” will tend to have multiple attributes and dimensions, an argument frame captures individual attributes and dimensions. For example, the quotations from Glen Lavy and Brian Raum presented earlier express broad ideas about separation of powers and democratic policymaking. Within a separation of powers frame, they also make specific arguments about majoritarian democracy (citizens’ right to vote on policy) and activist judges. Narrowing the process of framing in this way serves two purposes. First, it avoids potential problems with determining how to aggregate particular argument frames or attributes into more general frames. Second, focusing on specific issue attributes instead of broader frames is consistent with theories of attention in public policy agenda setting literature. The greater the number of attributes combined within an issue definition, the more complicated the debate. As a result of this, in conjunction with limited attention, individuals tend to favor and make decisions in regards to single attribute interpretations (Jones and Baumgartner 2005). Thus, focusing on argument frames or individual attributes comes closer to capturing what individuals are actually making calculations about when engaged in a policy debate.

More important for this section and the dissertation as a whole, I self-consciously and

¹⁰Same case, new name, as the Governor of California changed in the interim.

intentionally avoid the language of “social movements” in the remaining chapters. While much of this dissertation relies on insights and questions raised by social movement and legal mobilization scholars, I do not pretend to capture social movement behavior. Social movements are not monolithic, unitary actors. As social movements are inherently complex, multidimensional, and dynamic, I at best capture one piece of the variety of movement-related activities that have taken place around the issue of same-sex marriage in California.

Fractures exist among LGBT groups and LGBT-friendly groups over whether or not the analogy to the civil rights movement of the 1950s and 1960s is appropriate. The complicated relationship gay and lesbian organizations sometimes have with racial minorities was highlighted after the passage of Proposition 8 in California alongside the election of Barack Obama to the White House. Many initially blamed greater turnout among African American voters for the passage of the constitutional amendment (see Egan and Sherill 2009). Dissension also exists, and has existed, over the appropriate strategies for securing (and since Proposition 8, re-securing) marriage rights. If marriage rights are to be restored at the ballot, groups must decide when is the opportune time for such a campaign. Some wanted to try the ballot during the 2010 election, but did not obtain the necessary number of signatures. And, there remains a proportion of the LGBT population opposed to securing marriage rights, arguing that gays and lesbians should not be scrambling to assimilate into a heteronormative institution that feeds into gender issues. Anti same-sex marriage groups are not free from disagreement, either. There has been conflict among groups over how restrictive anti same-sex marriage measures should be. In 2005, two measures aiming to constitutionally prohibit same-sex marriage failed to collect sufficient signatures for the ballot that year. One was worded much like Proposition 8 in 2008, while the other went a step further and prohibited any non-marriage relationship from receiving legal recognition, essentially attempting to ban any domestic partnership rights.

In sum, there are theoretical and empirical reasons to avoid the use of the phrase “social movement.” Instead, I will generally refer to individuals as “activists”/“advocates” and

organizations, like the Alliance Defense Fund and Lambda Legal, as “activist groups” or “advocacy groups.” It’s worth noting that several respected “social movement” scholars have largely abandoned the term as well (McAdam et al. 2001; Tilly and Tarrow 2006).

Methods, data, and studying meaning

The methodology employed by a researcher should fit the question(s) posed. I’m interested in the framing patterns that evolve as activists confront their opponents, different policy-making venues (courts, legislatures, ballot measures), and the media. My questions, in essence, begin from the assumption that meaning matters. From this perspective, ideas, knowledge, and meaning matter because they shape individuals’ understandings of the social world. Knowledge of the social world, or reality, is largely intersubjective—composed of shared experiences, observations, perceptions, interpretations, and practices. An interpretivist perspective does not prevent empirical observations of patterns and change, it simply acknowledges that the information observed is contingent, multidimensional, complex and constituted of shared “cultural logics.” Individual and group behavior and decision-making, therefore, can not be neatly separated from the individual’s or group’s conscious, and sometimes subconscious, perceptions of their world.

Such a perspective largely precludes strict hypothesis testing towards the development of generalizable causal explanations and predictions. However, that is not necessarily my goal. Instead I set out to discover patterns in the framing activities of the various parties to contentious politics. I develop certain organizing categories for the ways in which activists—both proponents and opponents of same-sex marriage—talk about themselves, their opponents, their respective goals, and the policies being fought over. And, I do so while drawing comparisons and making distinctions across particular time periods (a ballot measure campaign in 2000 as compared to a ballot measure campaign in 2008) and different institutions (groups’ publicity materials and the news media). These are important empirical tasks, particularly when the subject of study—interactions in contentious politics—are understudied (McCann 1996; see also Rosenberg 1996).

As Gerald Rosenberg articulates in his review of Michael McCann's study of the pay equity movement in *Rights at Work*, "[t]he great strength of interpretivist work is its focus on the rich, complex, and contingent nature of social life" (Rosenberg 1996, 446). Towards this focus, I use only a single policy issue within a single state: same-sex marriage in California. Intentionally choosing a single case study, rather than concerning oneself with representative samples, prohibits me from saying much about how the nature of the issue affects the patterns and comparisons I develop. My study lacks controls for several variables, like variations across individual states, that might influence activist framing, for example. On the other hand, it facilitates the sort of in-depth analysis that reveals the variability and complexity of the claims made by the individuals and groups involved in this particular struggle. To try to do similar work across a wide range of cases would arguably be too burdensome for one project.

Much of the analysis in the chapters that follow involves in-depth discussion of advocates' messaging in regards to the issue of same-sex marriage and same-sex marriage politics. This includes textual analysis of press releases, newspaper articles, campaign commercials, and other group materials as well as occasional discussion of the photographs and images associated with them. I attempt to capture the complexities and richness associated with the ways in which activists think about, understand, and attempt to influence the ways in which others understand and think about the issue of same-sex marriage. Choosing to focus on a single issue allows me to think about the potential role of different institutional settings, as well. My perspective assumes that groups might change frames when talking about different institutions and that different institutions have different norms and biases that may shape framing interactions. I suggested earlier that the traditional focus on news media by scholars who study framing processes masks certain dynamics occurring in contentious politics. Focusing on a single case study allowed me to collect and analyze a large amount of discursive material from different sources.

However, I also suggest that insights can be gained from attempting to simplify and quantify such qualitative content as well. As a result, the descriptive, textual analysis is

supplemented by quantitative analysis. In order to capture patterns in messaging and illustrate trends across time or between different institutions, I systematically organize the qualitative information into categories. This includes content coding press releases, newspaper articles, and campaign commercials for a number of specific argument frames. The details of my coding scheme and document collection are outlined in the later chapters. Doing so allows me to calculate and display frequencies, intensities, and changes in messages. Of course, nuance and depth inevitably get left out of simply quantifying content analysis, which is why it is supported by interpretive stories constructed from the material I collected.

The dissertation

The dissertation proceeds as follows. Chapter 2 examines same-sex marriage activists' framing in California through official group press releases. I argue that press releases are an important data source if one is interested in activist framing, as they provide what groups actually want or intend to say and not what is later picked up by the media. The chapter presents data from coding a dataset of over 400 press releases for specific argument frames regarding same-sex marriage from groups at the forefront of same-sex marriage politics in California. I find that proponents and opponents of same-sex marriage in California employ a relatively small number of argument frames and that they do so regardless of the policy venue under discussion. Frames and policy venues interact, but they do so across competing groups. In other words, activists maintain consistent framing strategies across different policy venues; however, the competing groups pay more attention to those policy venues that appeal to their favored arguments or frames. Ultimately, groups talk past each other more than they respond, engaging in largely separate rhetorical dances.

Chapter 3 focuses on the framing dynamics surrounding the two ballot measure campaigns in California, Proposition 22 and 8, that set out (successfully) to statutorily and constitutionally prohibit same-sex marriage within the state. Theoretically, the two proposition campaigns could have provided opportunities for political learning in regards to strategic

framing and messaging. The chapter uses the data from the press releases focusing on the two campaigns as well as a database of commercials aired during both campaigns. I find that proponents and opponents of both ballot measures remained relatively consistent in their messaging strategies around both Propositions; this is strikingly true for same-sex marriage activists, who lost overwhelmingly in the 2000 campaign over Proposition 22, yet failed to change their framing strategy much, relying on very similar arguments eight years later in the campaign over Proposition 8. Both chapters 2 and 3 note the absence of “special rights” rhetoric on behalf of same-sex marriage opponents. The absence is particularly noticeable during the ballot campaigns, as the construction of equal marriage rights as “special” marriage rights had been successful in several anti-LGBT state initiative campaigns in the past. I do find, however, a similar heavy reliance on notions of popular sovereignty/democracy that previous scholars have found often exists within the backlash against progressive rights claims.

Chapter 4 examines the relationship between what same-sex marriage advocates in California advanced in their press releases and other materials and the information regarding same-sex marriage published in state and national newspaper articles. I argue that this is an important relationship to examine, as the dynamic between activists and the media is a key component of the processes through which rights are publicly defined, contested, expanded, and contracted. I find that the media constructs some dialogue where it was found mostly lacking in group press releases and related materials. The media’s tendency towards “balance” in reporting is especially evident in articles related to Propositions 22 and 8, where journalists frequently present arguments from both campaigns in contrast to one another. I also find the media far more likely to cite arguments from elites/politicians in the context of discussing legislative activity than they are to cite group members, group leaders, lawyers, litigants, and others. In essence, while activists engage in an agenda setting game in their press releases, talking about what they want, rather than doing much responding, newspapers construct a debate out of the largely separate framing strategies presented in chapters 2 and 3. In other words, the media choreograph a dance out of what are primarily separate

routines.

Chapter 5 concludes the dissertation by summarizing my findings from the previous chapters and considering some implications for the dynamics of contentious politics. My findings challenge some conventional wisdom regarding mobilization and agenda setting behaviors. As a result, I outline some issues worth reconsidering. Finally, I think briefly about the substantive implications for groups' strategy in the realm of same-sex marriage politics.

Chapter 2

TALKING PAST EACH OTHER: PRESS RELEASE FRAMING OF SAME-SEX MARRIAGE

“No matter how you feel about marriage, we can all agree that discrimination is wrong.”

–State Superintendent of Public Instruction Jack O’Connell in No on 8 press release “Education Leaders Say Prop 8 Ads are Shameful” from 10/21/08

“Marriage should not be undermined by the stroke of a pen from a single judge. Marriage is a fundamental policy issue that must be decided by the people.”–
Matthew Staver in Liberty Counsel press release “San Francisco Judge Rules Marriage Laws Unconstitutional from 3/14/05

Press Releases and Activist Framing

Most actors involved in legal and political struggles engage in some forms of activity dedicated to attracting media attention. Much of what the public understands and knows about policy issues, or what they come to think of as the terms of a policy debate, comes from media sources. However, by the time they are printed in the news, advocacy groups’ framing of an issue has been filtered through journalistic rules and norms. Press releases are a way for groups not only to try to attract media attention, but to try to attract a particular sort of media attention. Media scholars have shown that press releases are often ‘preformulated’ to match news styles so they can be easily translated, even copied, by journalists into news stories (Bell 1991; Sleurs et al. 2003; Sleurs and Jacobs 2004). Groups have more control over message management when constructing their own press releases than they do over what happens once the press releases are distributed into others’ hands. What message(s) regarding same-sex marriage have groups been trying to reinforce and publicize? In this

chapter, I use official group press releases to capture the arguments and frames made and advanced by proponents and opponents of same-sex marriage.

While newspaper articles are a more traditionally used data source for researchers studying framing, there are several compelling arguments to be made for using press releases, at least in conjunction with newspaper sources. Mass media are an important resource or platform for groups, but is “one with gatekeeper roles” (Rucht 2004, 201). And, they are not merely gatekeepers, but often active participants in framing issues and creating dialogue (Ferree, et al. 2002; Simon 2002). If a group hopes to influence how the public understands an issue, press releases are a primary resource for publicizing and reinforcing particular argument frames, and for advancing their preferred positions on an issue to the media. Press releases also provide an opportunity for groups to advance positions to their own members, as many groups regularly send email alerts containing these releases. Framing is not solely about message control; it is also about mobilizing current members and reaching out to potential new members. Press release alerts to email lists are opportunities to expand active membership. Activist groups in struggle or conflict with one another rarely communicate directly. Instead, communication occurs via the media, suggesting that press releases are also a medium for targeted messages to opponents. Finally, press releases play an important role in the construction of news (Sleurs et al. 2003). For example, journalists often rely on on-line press release archives for news material, particularly if they do not work for one of a small handful of major media outlets such as *The New York Times* or *The Washington Post*, which are more likely to have direct access to advocacy organizations and their leaders (Cochran 1996).

In essence, press releases are the closest a researcher can come to the pure, unadulterated, unmediated versions of a group’s desired or intended public message. “A critical component of a collective challenge is voice,” and press releases are a way of communicating that voice to other actors; they are a critical link between activists and the media (Levin 2002, 80). Analyzing the framing of same-sex marriage in press releases, I find that proponents and opponents tend to consistently highlight a few themes, but fail to engage

each other. As a result, there is little dialogue between these competing activist groups, at least as conveyed through press releases. In the next chapter, I reveal a similar pattern in the specific context of California's anti same-sex marriage ballot measure campaigns. Chapter 4 then examines same-sex marriage framing in California in national newspaper articles and compares the messages, and the level of dialogue, presented through the media to the original messages contained in group press releases. In doing so, I illustrate similarities between the frames presented to the public through news stories and press releases, but also—and more importantly—where these two sets of frames differ. I find more engagement between opponents and proponents of same-sex marriage in the media than I do in press releases.

Collecting Press Releases

I selected two national and one state organization, all of which have been involved in pursuing same-sex marriage rights in California. Lambda Legal Defense and Education Fund (Lambda), founded in 1973, was the first legal organization in the country devoted to LGBT individuals.¹ Lambda is a national organization with four regional offices, one of which is in Los Angeles. The National Center for Lesbian Rights (NCLR), founded in 1977, is a public interest legal organization dedicated to advancing the civil rights of LGBT individuals. Finally, Equality California (EQCA) was founded in 1998 in order to secure legal protections for LGBT individuals within the state of California through lobbying policy makers, sponsoring legislation, and developing relationships with other LGBT activist groups.

I also accessed the archived websites (at the UCLA library's digital archive) of the two campaigns organized by LGBT activists to defeat Proposition 22 and Proposition 8 - No on Knight (www.noonknight.org) and No on 8 (www.noon8.org), respectively.² Neither of

¹The ACLU was actually the first organization to begin litigating on behalf of gays and lesbians, but is not dedicated specifically to gay and lesbian issues (Eskridge 1999, 91, 105). They, too, have been involved in the litigation in California.

²No On Knight: http://digital.library.ucla.edu/websites/2000_999_035/main.html; No On 8: http://digital.library.ucla.edu/websites/2008_993_109/

these websites are in use any longer, both essentially disappearing shortly after the votes on their respective Propositions took place.

I selected two national and one state organization which have been involved in blocking or prohibiting same-sex marriage rights in California. The Alliance Defense Fund is a legal defense and advocacy organization founded in 1994 devoted to “religious freedom, the sanctity of human life, and traditional family values.”³ The ADF is a national organization with national offices in Arizona and six regional centers. Dedicated to the very same issues, Liberty Counsel is a national litigation, education, and policy organization founded in 1989.⁴ Finally, Save California was founded in 1999 as part of the Campaign for Children and Families to pursue and defend “pro-family” values (conservative, heterosexual, religiously based family values) in California through education, outreach, and lobbying policymakers.

I also accessed the websites of the two Protect Marriage campaigns organized in support of Proposition 22 and Proposition 8. The Protect Marriage campaign material and website for Proposition 22 (www.protectmarriage.net) are no longer in use and had to be found using the UCLA library’s digital archive.⁵ The Protect Marriage campaign website for Proposition 8 is still in use (www.protectmarriage.com). However, it does not contain press releases from before the general election in November 2008.

Groups were selected for their relevance to same-sex marriage politics in the state of California. However, the availability of online press release archives and the age of groups necessarily became factors to consider. The National Center for Lesbian Rights has a press release archive beginning in April 2000. Lambda Legal has a press archive beginning in

³<http://www.alliancedefensefund.org>

⁴In most cases, national organizations actively opposing same-sex marriage rights treat gay and lesbian issues as one piece of a larger agenda centered around the preservation of religious ideas and traditional family values. The National Organization for Marriage has become an important national player in the battle over same-sex marriage since its founding in 2007, and is dedicated solely to opposing same-sex marriage rights, but was not chosen for the purposes of this paper due to their short lifespan relative to the other organizations selected.

⁵Protect Marriage Initiative: http://digital.library.ucla.edu/websites/2000_999_034/index.html

May 1996. And, Equality California has a press archive beginning in October 2002. The Alliance Defense Fund has a press archive beginning in September 2003. Liberty Counsel has a press archive beginning in January 2004. And, Save California has a press archive beginning in January 2008.⁶

I collected press releases from each group's web site that specifically addressed same-sex marriage policymaking in the state of California.⁷ These included press releases on the following subjects: the introduction, vote on, or passage of same-sex marriage legislation; the vetoing of such legislation by the Governor; the issuing of marriage licenses to same-sex couples in San Francisco; filing a same-sex marriage case, submitting a brief, oral arguments, and court decisions; and, groups collecting signatures to place anti same-sex marriage measures on the state ballot. After omitting irrelevant and duplicate releases (frequently, allied groups issued joint press releases), my search yielded 243 press releases from pro same-sex marriage groups between June 1999 and March 2000, and February 2004 and November 2009. My search yielded 174 press releases from anti same-sex marriage groups between September 1999 and March 2000, and September 2003 and July 2009. Largely, the time period is a product of on-line, electronic availability of press releases.

This chapter focuses on the arguments groups make about same-sex marriage in the context of discussing particular policy venues or events. Generally, press releases target particular events associated with policy making - the introduction of a bill, the filing of a case, and so on. I classified each press release based upon the policy activity on which it was focused. For example, a press release focused on the Governor vetoing marriage

⁶Unfortunately, the only other significantly active state-level organization is the California chapter of the National Organization for Marriage. Their press archive goes back to October 2007. However, I made the decision to select Save California because of the organization's longer life and, as a result, more established involvement in marriage related issues in California.

⁷The National Center for Lesbian Rights can be found at www.nclrights.org; Lambda can be found at www.lambdalegal.org; and Equality California can be found at www.eqca.org. The Alliance Defense Fund can be found at www.alliancedefensefund.org; Liberty Counsel can be found at www.lc.org; and Save California can be found at savecalifornia.com

legislation was classified as “executive”; a press release focused on the introduction of same-sex marriage legislation was classified as “legislature”; a press release regarding the filing of court briefs was classified as “court”; a press release discussing an anti same-sex marriage initiative was classified as “ballot”. Press releases dealing with the litigation filed against Proposition 8 after it was passed received their own classification. Those press releases that didn’t fit neatly into any venue-related category received the designation “other.” Often, these press releases were more thematic, providing context and focusing on the underlying issues or bigger picture, rather than a single incident or event (Iyengar 1991)The 1999-2000 time period is made up entirely of archived Proposition 22 campaign materials. As a result, the 39 pro same-sex marriage press releases and 12 anti same-sex marriage press releases from these two years are all focused on the ballot.

Targeting Venues

The distribution of press releases over the time period and across categories can be found in Table 2.1. A time series graph of the count of press releases can be seen in Figure 2.1. In most cases, the distribution of press releases over the years is consistent with events that have unfolded related to same-sex marriage policymaking in California. Public policy literature has long acknowledged the potential agenda-setting effects of events (Baumgartner and Jones 1993; Birkland 1997; Kingdon 1995) and social movement scholars have highlighted the interactive relationship between collective action events and framing (Benford and Snow 2000; Ellingson 1995). Judicial decisions, the introduction of legislation, and elections draw greater elite and mass attention to an issue. They also provide focusing opportunities for interested groups to target the media (and, by extension the public) with arguments and information about the issue. Groups try to (de)legitimize certain types of events, behaviors, and activities through framing. They use framing strategies to elevate or minimize the importance of events. In turn, events and activities can undermine or reinforce frames, shaping beliefs and understandings associated with a particular issue.

All of the press releases collected for 1999 and 2000 focus on ballot measure Proposi-

Table 2.1: Count of Press Releases by Venue and Year

| Pro/Anti | Venue | 1999 | 2000 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | Total |
|----------|-----------------|------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|
| Pro ssm | court | 0 | 0 | 22 | 7 | 11 | 4 | 12 | 1 | 57 |
| | ballot | 20 | 19 | 0 | 4 | 1 | 0 | 36 | 2 | 82 |
| | legislature | 0 | 0 | 11 | 23 | 1 | 8 | 2 | 9 | 54 |
| | executive | 0 | 0 | 7 | 0 | 0 | 1 | 4 | 4 | 16 |
| | ballot in court | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 15 | 16 |
| | other | 0 | 0 | 1 | 0 | 0 | 1 | 6 | 10 | 18 |
| | Total | | 20 | 19 | 41 | 34 | 13 | 14 | 61 | 41 |
| Anti ssm | court | 0 | 0 | 24 | 13 | 9 | 5 | 23 | 5 | 79 |
| | ballot | 6 | 6 | 0 | 1 | 0 | 0 | 16 | 1 | 30 |
| | legislature | 0 | 0 | 0 | 2 | 0 | 0 | 1 | 0 | 4 |
| | executive | 0 | 0 | 12 | 3 | 0 | 0 | 2 | 0 | 18 |
| | ballot in court | 0 | 0 | 0 | 0 | 0 | 0 | 9 | 19 | 28 |
| | other | 0 | 0 | 1 | 3 | 2 | 0 | 5 | 4 | 15 |
| | Total | | 6 | 6 | 37 | 22 | 11 | 5 | 56 | 29 |

*Two were collected from 2003, 1 coded as legislature and 1 coded as executive.

tion 22. This is a result of the fact that all of the press releases for those two years are from the campaigns organized to pass and to defeat the measure. However, in 2004 (the first year that both proponents and opponents of same-sex marriage had press releases available on their websites) both proponents and opponents of same-sex marriage targeted the executive and judicial branches. That year had the second highest press release activity following 2008. Those press releases classified as “executive” focus primarily on Gavin Newsom’s decision to issue marriage licenses to same-sex couples in February 2004. The event corresponds to the first peak in Figure 2.1.

This was a particularly salient rallying event for same-sex marriage opponents, as they were able to attack Newsom for thwarting the will of the people, often with specific reference to the passage of Proposition 22 just four years prior, and for acting outside of his legal authority. On February 12, two days after Newsom announced his decision to begin issuing marriage licenses, Matthew Staver, President and General Counsel of Liberty Counsel, expressed a sentiment seen in many of the opponents’ press releases from around

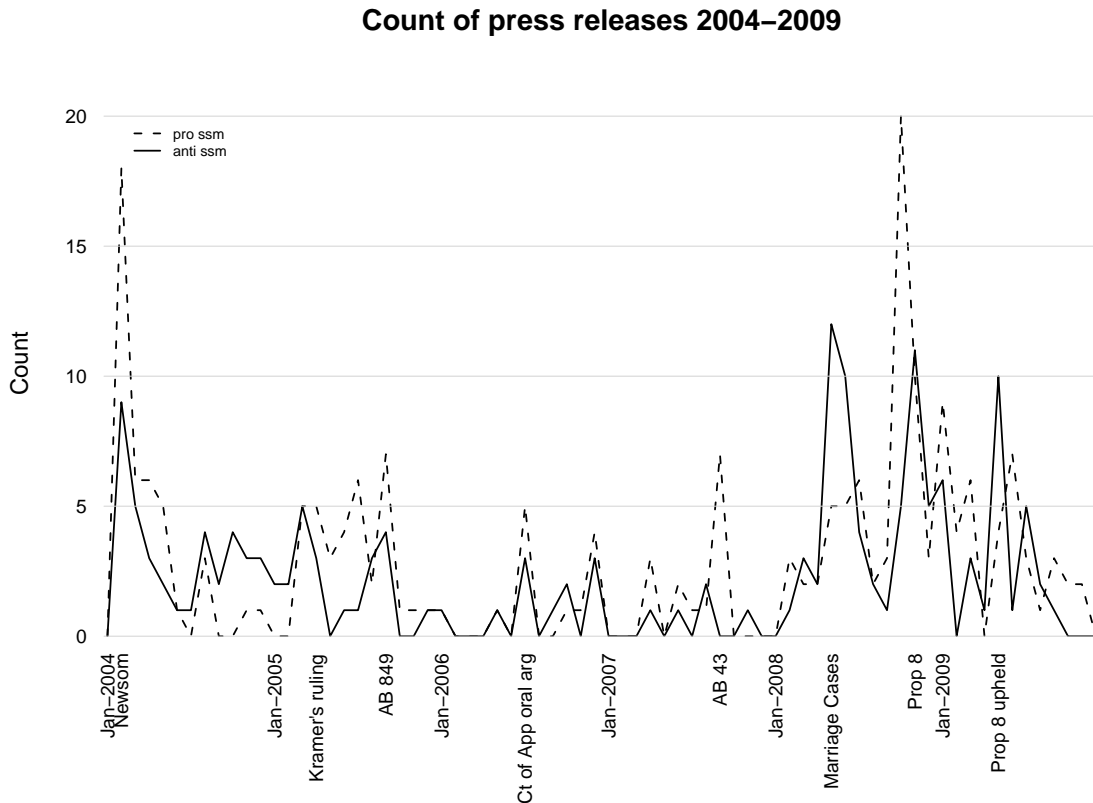


Figure 2.1: Time series graph of the counts of press releases collected per month across the time period 2004-2009. Same-sex marriage supporters are represented by solid lines; same-sex marriage opponents are represented by dashed lines. All press releases - from all possible venue categories - are included in this graph. The first month of each year, as well as several key events related to same-sex marriage politics in California, are marked on the horizontal axis.

this time. “Mayor Newsom has lost his mind. The Mayor obviously believes he is above the law. In 2000, the people of California overwhelmingly passed Proposition 22, which limits marriage to one man and one woman . . . We are a nation ruled by law, not by power hungry, renegade, radical activists.”⁸ The following day, Benjamin Bull, chief counsel for the Alliance Defense Fund, was similarly quoted. “This isn’t civil disobedience on the

⁸February 12, 2004 Liberty Counsel press release “Lawsuit Seeks Emergency Court Order to Stop Mayor of San Francisco From Issuing Same-Sex Marriage License.”

mayor's part; it's sheer unfettered anarchy and complete disdain for the rule of law. No mayor, not even the mayor of San Francisco, has the authority to defy the laws of the state in which they reside."⁹

In spite of her initial fears and reservations regarding Newsom's actions, Kate Kendell, Executive Director of the National Center for Lesbian Rights, has referred to being in San Francisco during 2004 as "one of the most profound experiences of [her] career" (Kendell 2006, 37). Press releases from same-sex marriage proponents celebrated: "This is an unforgettable day . . . For many Americans, their wedding day is one of the happiest days of their life. For these San Francisco couples, it is no different with one exception. Yesterday, they couldn't get married. Today, they can."¹⁰ Pro same-sex marriage groups instead chose to focus on the court activity that followed Newsom's actions and the introduction of and hearings on marriage legislation, AB 1967, that would make marriage in California between "two persons." Same-sex marriage opponents were conspicuously silent on the introduction and debate of AB 1967, with no press releases targeting the legislature or legislative activity that year. Both opponents and proponents dedicated the most press releases in 2004 to court related activity - not surprising since, by the end of 2004, six cases were filed in California regarding same-sex marriage.

In 2005, most of the press releases from same-sex marriage opponents focused on two court rulings and vowed to appeal both: Judge Kramer's ruling that California's marriage laws were unconstitutional and the Court of Appeal's ruling that AB 205 did not conflict with Proposition 22. On the day Judge Kramer (Superior Court of California in San Francisco) released his decision in *the Marriage Cases*, Glen Levy, senior Vice President of the Alliance Defense Fund's Marriage Litigation Center lamented the ruling. "The decision is a great disappointment. We knew Judge Kramer was under tremendous political pressure to redefine marriage, but we were hopeful that he would resist that pressure and sustain the

⁹February 13, 2004 Alliance Defense Fund press release "San Francisco Officials Violate Law with Illegal Same-sex "Marriage" Ceremonies."

¹⁰February 12, 2004 National Center for Lesbian Rights press release "Lesbian and Gay Couples in San Francisco Are Granted Marriage Licenses"

age-old meaning of marriage. We will obviously appeal his ruling.”¹¹ The rulings were linked, not only because of opponents’ broader concerns and fears regarding any recognition for same-sex relationships, but because Judge Kramer cited AB 205 when arguing that California had no rational reason for denying same-sex couples marriage rights. On the day the Court of Appeal refused to overturn AB 205, ADF attorney Robert Tyler was quoted: “It won’t stop here. This bill is an injustice to the people of California, and we will now ask for the bill to be invalidated by the California Supreme Court . . . It’s false to say that AB 205 has no impact on marriage or the will of the people.”¹²

While same-sex marriage proponents gave some attention in 2005 press releases to the court ruling, they gave more attention to legislative activity surrounding the introduction and passage of AB 849. The California legislature made history, becoming the first state legislature in the nation to pass marriage rights for same-sex couples. On the day The Religious Freedom and Civil Marriage Protection Act passed, Executive Director of Equality California Geoff Kors was quoted in an Equality California press releases: “Today in California, love conquered fear, principle conquered politics and equality conquered injustice. For the first time in our nation’s history, the people’s elected representatives have taken a stand to protect all families and ensure equality for all.”¹³ Same-sex marriage opponents gave very little attention on the legislative activity, but did devote a handful of press releases to condemning the legislature for acting contrary to the will of the California voters, as expressed through Proposition 22, and praising Governor Schwarzenegger for vetoing AB 849. According to Glen Lavy, senior vice president of Alliance Defense Fund’s Litigation Center, “The governor did exactly what he needed to do. The Legislature cannot lawfully overturn a voter-approved initiative. We hope this veto will be a lesson for lawmakers who

¹¹March 14, 2005 Alliance Defense Fund press release “ADF attorneys vow appeal of Calif. marriage ruling”

¹²April 4, 2005 Alliance Defense Fund press release “ADF: Court of Appeal’s refusal to overturn AB 205 will not end battle against it”

¹³September 6, 2005 Equality California press release “California Legislature Makes History by Passing Equality California’s Equal Marriage Rights Legislation”

are willing to slap the faces of their constituents in order to pursue their own agenda.”¹⁴

Years 2006 and 2007 had the fewest press releases from both opponents and proponents of same-sex marriage. (This excludes 1999 and 2000, which lack the group and policy/venue diversity of the others years.) Attention was almost entirely focused on the court in 2006, when oral arguments were heard and a decision against same-sex marriage was delivered by the California Court of Appeal. The highest count of press releases during that year is for July, when oral arguments were heard. Opponents of same-sex marriage continued this focus, but with only five press releases, in 2007. Proponents of same-sex marriage shifted their attention back to the legislature in 2007, once again preferring to focus on the activities surrounding the passage of another gender neutral marriage bill, AB 43. Their greatest number of press releases that year were in September, when AB 43 was passed.

The greatest amount of press release activity during the time period studied from both opponents and proponents of same-sex marriage occurred in 2008. Most of same-sex marriage proponents’ attention was focused on Proposition 8 leading up to the general election that year. In fact, the highest peak (count of press releases) for same-sex marriage supporters in Figure 2.1 is in October 2008, the month before the election. In part, this is a function of the No on 8 campaign, which began releasing its own press releases at the end of July 2008. Many of the ballot-focused press releases call on the LGBT community to support efforts to defeat the measure, provide a “who’s who” of celebrities and corporations supporting the effort to defeat the measure,¹⁵ and criticize the supporters of Proposition 8 for providing deceptive and misleading information in their campaign advertisements.¹⁶ Sev-

¹⁴September 29, 2005 Alliance Defense Fund press release “ADF: Schwarzenegger right to veto illegitimate bill redefining marriage”

¹⁵For example, No on press releases: October 14, 2008 “Ellen Urges Californians to Vote NO on Prop.8”; October 24, 2008 “Another Major Elected Official Says NO to Prop 8”; October 24, 2008 “NTV Networks/Viacom Urge Voters to Reject Prop 8”; Equality California September 12, 2008 “Senator Diane Feinstein Opposes Proposition 8”; National Center for Lesbian Rights July 29, 2008 press release “PG&E Announces \$250,000 Contribution to Fight Prop.8”

¹⁶For example, September 29, 2008 No on 8 press release “Prop 8 Opponents Call TV Ad False and

eral releases attempt to maintain confidence in Californians' distaste for discrimination and, when available, highlight Field Poll results illustrating favorable changes in public opinion regarding same-sex marriage since Proposition 22's passage in 2000.

Immediately following its passage, same-sex marriage proponents expressed their deep disappointment and immediately filed a lawsuit arguing that Proposition 8 was an improper and invalid use of the initiative process in California. Some of these urged community members to avoid blaming certain groups of voters for Proposition 8's passage. A joint press release issued on November 7, 2008 recognized that it had "been an incredibly difficult week for Californians who are disappointed in the passage of Proposition 8. . . We feel a profound sense of disappointment in this defeat, but know that in order to move forward we must continue to stand together as one community in order to secure full equality in California." While tempting to point fingers, same-sex marriage supporters "achieve nothing if [they] isolate the people who did not stand with [them] in this fight. [They] only further divide [the] state if [they] attempt to blame people of faith, African American voters, rural communities and others for this loss."¹⁷

The theme of the press releases leading up to the California Supreme Court's decision in *the Marriage Cases* is, first, one of hope and of being present during a historical moment and, second, a celebration of equality and civil rights in response to oral arguments and the resulting decision that prohibiting same-sex couples from marrying is unconstitutional. "This is a historic and landmark day for those who value fairness and opportunity. The court's decision today upheld the highest ideals of equality that are embodied in the California Constitution."¹⁸ Several times, these press releases make explicit connections to the California Supreme Court's ruling in *Perez v. Sharp* in 1948, when the Court became the

Misleading"; October 10, 2008 No on 8 press release "NO on Prop 8 Campaign Demands Ads Be Taken Off the Air"

¹⁷November 7, 2008 Equality California press release "NO on Prop 8 Campaign Leaders Call on Community to Stand Together"

¹⁸May 15, 2008 Lambda Legal press release "Lesbian and Gay Couples Win Freedom to Marry in California"

first to overturn a law banning interracial marriages. “Like the 1948 decision recognizing the right of interracial couples to marry, this ruling keeps a promise that every Californian should hold dear - the California Constitution embraces everyone equally.”¹⁹ Several press releases during this time counter opponents’ Petition for Rehearing asking the California Supreme Court to stay its May 15 decision.

Same-sex marriage opponents gave slightly more attention to the State Supreme Court’s ruling in favor of same-sex marriage than they did on Proposition 8. The highest count of press releases for same-sex marriage opponents, as seen in Figure 2.1, occurs in May 2008, the month the California Supreme Court announced its decision. Many of these suggest the Supreme Court should stay its decision until the voters have an opportunity to make their policy wishes known on election day. Both categories of press releases—those discussing the ballot measure and those discussing the court case—highlight a particular perspective on the role of marriage in society and contrast policymaking via initiative to that made by judges. Not only did the Supreme Court overturn a voter approved initiative, Proposition 22, but by the time the Court announced its decision, same-sex marriage opponents had begun collecting signatures for placing what would become Proposition 8 on the November ballot. Thus, not only did the Court thwart the already expressed will of the people, but according to this logic the Court should stay its decision in order to give the people another opportunity to vote on same-sex marriage.

On the day of the ruling, Matthew Staver expressed many of these sentiments: “This ruling defies logic. . . Traditional marriage is common sense. . . The California Supreme Court has defied logic, undermined the will of the people, and weakened our future. This decision will ignite California voters to amend their state constitution to protect marriage and prevent judges from wrecking marriage.”²⁰ On July 7, 2008, when the lawsuit seeking

¹⁹May 15, 2008 Lambda Legal press release “Lesbian and Gay Couples Win Freedom to Marry in California”; also March 4, 2008 National Center for Lesbian Rights press release “Same-Sex Couples Ask California Supreme Court to Strike Down Marriage Ban”

²⁰May 15, 2008 Liberty Counsel press release “The California Supreme Court Rewrites the Definition of Marriage - California voters may have the last word”

to remove Proposition 8 from the November ballot was dismissed, Campaign for California Families president Randy Thomasson highlighted the undemocratic nature of same-sex marriage supporters' efforts: "This is great news and not unexpected in light of the homosexual activists' undemocratic, intolerant, and extraordinary attack upon the voters' right to vote. Fortunately, activist judges are more used to inventing new 'laws' out of thin air than striking voter-qualified initiatives from the ballot."²¹

Finally, press release activity dropped for both same-sex marriage opponents and proponents in 2009. Both sides issued the greatest number of press releases discussing the litigation against Proposition 8, first in California court and—following the California Supreme Court's decision to uphold Proposition 8—then in federal court. Attention was more dispersed across venues in the press releases from same-sex marriage supporters. While the highest number of press releases from pro same-sex marriage groups in 2009 focused on the Proposition 8 litigation, such groups still gave considerable attention to the passage of a resolution opposing Proposition 8 and a law to clarify the rights of same-sex couples married outside of the State of California. Those press releases focusing on the Proposition 8 litigation emphasized the unprecedented nature of taking away a fundamental right through the initiative process. On the day briefs were filed, National Center for Lesbian Rights Director Shannon Minter argued that "If Prop 8 is permitted to stand, it would be the first time an initiative has successfully been used to change the California Constitution to take away an existing right only from a historically targeted minority group."²² They also suggested potentially dangerous implications for the relationship between majority and minority populations, and their respective rights, if Proposition 8 is allowed to remain valid. In contrast, same-sex marriage opponents emphasized the "simplicity" of Proposition 8 and insisted on the "inalienable right [of Californians] to control their constitution."²³ The 10 press releases

²¹July 16, 2008 Campaign for California Families press release "Celebrate! California Marriage Amendment Stays on Ballot"

²²January 5, 2009 Lambda Legal press release "New Filing in prop 8 Legal Challenge"

²³March 5, 2009 ProtectMarriage.com press release "Yes on 8 Urges California Supreme Court to Uphold Proposition 8"

Table 2.2: Percentage of Press Releases by Venue, 2003-2009

| venue | Pro ssm | Anti ssm | All |
|-----------------|---------|----------|------|
| court | 28% | 49% | 37% |
| ballot | 21% | 11% | 17% |
| legislature | 26% | 02% | 16% |
| executive | 08% | 11% | 9% |
| ballot in court | 08% | 17% | 12% |
| other | 09% | 09% | 9% |
| | 100% | 100%* | 100% |

Column sum is actually 99% due to rounding error.

in the “other” category for same-sex marriage supporters were more thematic. Several discussed broader efforts towards coalition building with hopes for a future ballot measure to overturn Proposition 8 in mind, while others celebrated the anniversary of California same-sex marriages and those couples who were able to get marriage licenses.

The Proposition 22 press releases are not temporally continuous with the remaining press releases and lack the group and venue diversity of the other press releases. If they are omitted from the group of press releases, the overall attention granted to each of the policymaking venues by both sides of the same-sex marriage debate can be seen in Table 2.2. Interestingly, same-sex marriage opponents spent the largest proportion of their press release activity—almost half—focusing on same-sex marriage policymaking in the California courts. During the time period, this is arguably the policymaking arena in which they had the least success, particularly at the level of the California Supreme Court. The California Court of Appeal is the sole court that has made a ruling against recognizing same-sex marriage rights since 2004 and the domestic partnership law was upheld by two courts. On the other hand, the ballot has been a much friendlier policymaking arena for same-sex marriage opponents—not just in California, but nationwide. Yet same-sex marriage opponents gave relatively little attention, only 11% of their press releases, to the ballot. Even if 2008 is considered in isolation, same-sex marriage opponents spent 29% of their

press release activity on the ballot, compared to 41% of their press release activity on the court.

Studies of legal mobilization have suggested that victory in court can be more likely to lead to complacency on behalf of activists and that losses in court may do better to mobilize members of activist groups (McCann 1994; Rosenberg 1990). Groups opposing same-sex marriage have acted consistently with this insight, not only in relation to litigation, but also to policymaking in other venues. As seen in Table 2.1, in every year from 2004 through 2008, same-sex marriage opponents devoted the greatest number of press releases to court related activity. Along with the ballot in 2008 and Proposition 8 litigation in 2009, the only other policymaker they gave substantial attention to was the executive in 2004. This was when Gavin Newsom made the possibility, or the threat, of same-sex marriage real when he decided to begin issuing marriage licenses to same-sex couples. In this case, the Alliance Defense Fund, Liberty Counsel, Campaign for California Families, and ProtectMarriage.com were more inclined to use defeats or potential defeats—either real or imagined—to try to rally support for their cause.

If press releases are one possible indicator of activists' activity, and certainly a relatively low cost activity, victory with Proposition 8 did not lead to complacency. Fifteen of the 56 press releases for same-sex marriage opponents in 2008 were released after November 5. Of course, a new potential threat was immediately raised by the litigation filed against Proposition 8. Still, the consistent focus on courts at the expense of other policymaking arenas, even when activity was taking place in those other arenas (as in 2005 and 2007 when the legislature passed gender neutral marriage laws), suggests anti same-sex marriage groups strategically rely on defeats and imagined threats for mobilization. Furthermore, the institutions responsible for the defeats, primarily the state courts, appeal to and strengthen several of the favored arguments advanced by same-sex marriage opponents discussed in the following section. Losses in court provided anti same-sex marriage activists opportunities to juxtapose judicial policymaking with their appeals to majoritarian, citizen-initiated policymaking through the ballot measure process.

On the other hand, same-sex marriage supporters were more even-handed with the attention they gave to the various policymaking venues through press releases. The percentages in the second column of Table 2.2 illustrate that Lambda Legal, the National Center for Lesbian Rights, Equality California, and No on 8 devoted relatively similar amounts of attention to executive, court, and legislative activity during the 2004-2009 time period. Furthermore, as seen in Table 2.1, same-sex marriage supporters varied the amount of attention they gave to different policymakers across years. They devoted the most attention to courts in 2004 and 2006, the legislature in 2005 and 2007, the ballot in 2008, and the Proposition 8 litigation in 2009. Unlike their opponents, same-sex marriage supporters' favorite argument frames do not have any natural affiliation with any particular policymaking venue. Thus, the variation in attention to different policymakers is consistent with how they used particular argument frames, as discussed in the next section below.

Framing Same-Sex Marriage for the Media

I coded the 417 press releases for argument frames regarding or related to same-sex marriage. Arguments regarding same-sex marriage were coded into one of 19 separate argument frames. I coded every sentence in a release - direct quotations and otherwise - under the assumption that if a group was using an argument in their press release, it was one they were attempting to advance. Using quasi-sentences as my unit of observation reduces the concerns over whether or not categories are mutually exclusive that would more readily exist if one were coding entire paragraphs or whole documents. An individual press release could have an essentially unlimited number of frames, but only one argument frame was recorded for any single sentence. If more than one argument frame was used in a single sentence, the dominant frame of that sentence was recorded. This was determined using a combination of proportion of the sentence devoted to each frame and which frame was mentioned first. While these 19 different arguments, found in Table 2.3 could be collapsed into fewer more general frames for purposes different from my own, I use "argument frame" to refer to these more specific arguments made in the same-sex marriage debate (Fisher 2009;

Stenger 2005). I coded a total of 1337 argument frames in the 243 press releases from LGBT organizations and a total of 800 argument frames in the 174 press releases from those organizations opposed to same-sex marriage.

Fair-minded Californians and the “new civil rights movement”

The primary message in same-sex marriage proponents’ press releases was one of fairness and equal treatment. Just over half (51%) of the statements coded in proponents’ press releases (687 of 1337 coded argument frames) used the language of rights and discrimination to frame the issue of same-sex marriage. These 687 coded argument frames were nearly evenly split between treating same-sex marriage as a fundamental or equal rights issue (311 - 23%) and an issue of discrimination or fairness (376 - 28%). Conceptually distinct enough to require their own frame categories, rights and discrimination frames advance the same broader message regarding same-sex marriage. Overwhelmingly, same-sex marriage proponents favored the message that it was wrong for Californians to discriminate, deny people an equal and fundamental right, and treat a group of people differently based upon their sexual orientation. Comparing Figure 2.1 with Figure 2.2 further suggests that same-sex marriage proponents consistently favored rights and discrimination frames, as the time series graphs of proponents’ press releases and proponents’ rights/discrimination frames closely mirror each other. Preference for rights and discrimination arguments related to same-sex marriage was consistent, not only across years, but also across whichever venue was being discussed (see Table 2.4).

Sometimes, rights related arguments regarding same-sex marriage made explicit reference to the civil rights movement, particularly the struggle to legalize interracial marriages. One of the plaintiffs to the *Marriage Cases*, Stuart Gaffney, made this connection on the day Judge Kramer issued his tentative ruling in March 2005. “Fifty years ago, the California courts paved the way for my mom and dad to get married when they struck down the state law banning interracial couples from marriage. Today, the court ruled that the

Table 2.3: Argument Frame Codebook

| <i>Frame</i> | <i>Description</i> | Pro | Anti |
|----------------|--|------|------|
| rights | Marriage is a civil rights issue/fundamental or basic right/equal rights | 311 | 0 |
| discrimination | Denying same-sex couples the right to marry is unfair and discrimination | 376 | 0 |
| violence | Banning same-sex marriage, and encouraging other discriminatory policies, encourages violence against gays and lesbians/Opponents do not have harmful or violent intentions | 17 | 16 |
| status | Marriage gives equal status to same-sex couples/alternatives to marriage relegate couples to second class citizenship | 74 | 0 |
| benefits | Gay and lesbian couples need economic and legal benefits/legal equality | 78 | 0 |
| love | Marriage is about love and personal freedom and choice | 56 | 0 |
| threat | Same-sex marriage is no threat to heterosexual marriage and society | 19 | 0 |
| diversion | Same-sex marriage is a divisive wedge issue/a way for groups and individuals to play politics and distract from more important issues | 40 | 24 |
| economy | Denial of marriage rights is harmful to the economy/recognizing same-sex marriage will be positive for the market | 30 | 0 |
| special | Same-sex marriage is a special right, not an equal right/banning same-sex marriage is not discrimination | 0 | 6 |
| marriage | protection of institution of marriage/marriage is the foundation of society/same-sex marriage would redefine the institution/ recognizing same-sex marriages will strengthen marriage as an institution | 11 | 227 |
| religion | Same-sex marriage is immoral/against God's will and religious values/unnatural and harmful/religious freedom/Religions will, or will not, be forced to recognize | 37 | 4 |
| family | Protection of traditional heterosexual family structure/Gay and lesbian couples have stable families that need protecting/ marriage is about family | 147 | 21 |
| children | Same-sex marriage will have negative consequences for impressionable children/marriage is about procreation and raising children/Gays and lesbians have children that are put at greater risk without marriage protections | 7 | 51 |
| slope | Same-sex marriage is a slippery slope issue/it will cause disorder, lead to social chaos and other undesirable things/allow people to marry siblings and pets | 0 | 16 |
| legal | Legality/constitutionality of same-sex marriage and same-sex marriage laws and bans | 71 | 120 |
| public | Public has a right to decide the issue/public opinion in regards to same-sex marriage/recognizing or banning is democratic (majority) representation | 57 | 261 |
| judges | same-sex marriage is the work of activist judges/judges are doing their job by protecting minority rights | 3 | 41 |
| states | Marriage is a portable institution/state's rights issue - whether to ban or recognize | 3 | 13 |
| Total | | 1337 | 800 |

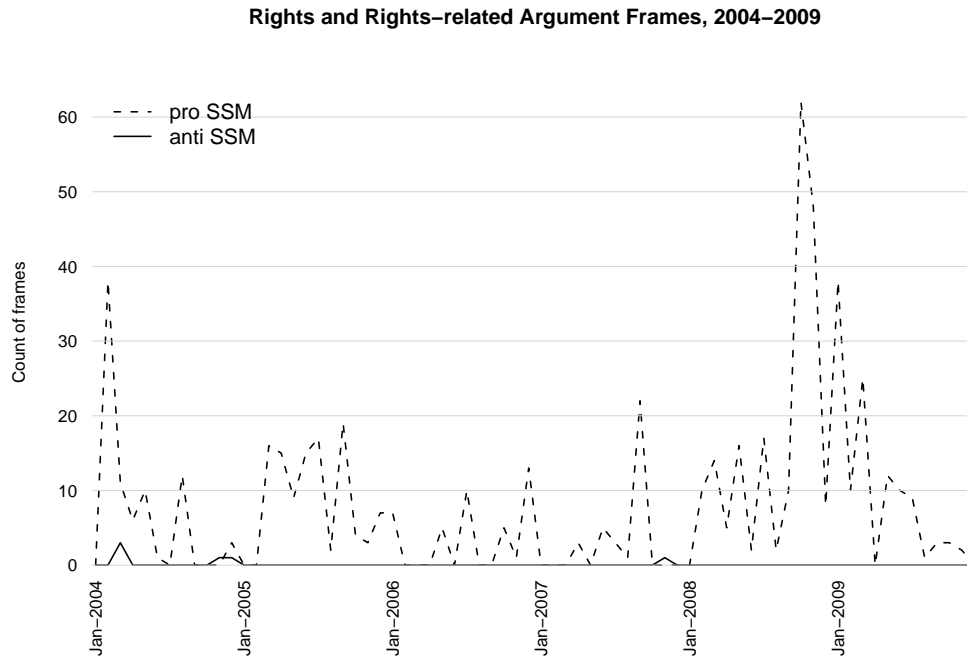


Figure 2.2: Time series graph of rights and rights related argument frames, 2004-2009. Because of the gap in time, 1999 and 2000 are omitted. The figure combines the *rights*, *discrimination*, and *special* argument frames. There were no special argument frames in 1999 or 2000. There were 72 rights/discrimination frames in 1999 and 45 rights/discrimination related frames in 2000.

California Constitution protects my right to marry my partner John.”²⁴ More often, such arguments appeal to Californians’ sense of compassion and fairness. This was especially true during both the Proposition 22 and Proposition 8 campaigns, discussed in greater detail in the next chapter. The NO on Knight campaign consistently described Proposition 22 as “unfair, divisive, and intrusive.”²⁵ The heading of every No on 8 press release has the words “Unfair. Wrong.” in bold, black text. The day before the California Assembly held a reconsideration vote for AB 19, Executive Director of Equality California Geoff Kors expressed

²⁴March 14, 2005 Equality California press release “California Court Rules Same-Sex Couples Must be Allowed to Marry”

²⁵Vote NO on Knight press releases from 1999 and 2000

hope that elected officials would take the opportunity to “to do what is right and open with their hearts by voting to ensure equality for all families.”²⁶ According to Kors: “The right to marry is as fundamental as other basic human freedoms like free speech, the right to vote and the pursuit of happiness.”²⁷ The state of California, if it’s to choose “the side of equality,” can not properly do so while simultaneously denying the gay and lesbian population such a fundamental right. Unequal treatment under marriage law is discrimination and, simply put, discrimination is wrong and unfair.

Along with marriage rights comes a cluster of specific benefits and social status. While the *benefits* and *status* frames are the fourth and fifth most frequently used in pro same-sex marriage groups’ press releases, they each make up only about 6% of their total frames. This serves to further illustrate the relative dominance of the *discrimination* and *rights* frames. Marriage, of course, is about allowing couples to “access one another’s health care plans, make joint medical decisions, inherit one another’s property, file joint tax returns, and provide for their children. . . .”²⁸, but is also about intangible, immaterial benefits. There is humanity, and dignity, associated with the right to choose to marry the person one loves. “Two people in a committed, trusting relationship deserve the honor and social support that comes with marriage.”²⁹ Marriages validate relationships and grant couples a particular level of social status and support. “Marriage is universally recognized and respected around the world and for many people is one of life’s most significant milestones.”³⁰ This is especially true when marriage is considered alongside other legal alternatives for relation-

²⁶June 1, 2005 Equality California press release “Historic marriage Equality Bill in California Assembly up for Reconsideration.”

²⁷April 24, 2008 Equality California press release “Equality for All Campaign Predicts Failure of Initiative Banning Marriage for Gay and Lesbian Couples

²⁸August 25, 2005 Equality California press release “Equality California-Sponsored Marriage Equality Legislation Now Heads for Historic Senate Vote

²⁹April 10, 2007 Equality California press release “Assembly Judiciary Committee Overwhelmingly Passes Bill Supporting Marriage for Same-Sex Couples.”

³⁰July 10, 2007 press release “Senate Judiciary Committee Approves Bill to End Exclusion of Same-Sex Couples from Marriage”

ship recognition. Civil unions and domestic partnerships, for example, relegate same-sex couples to second class citizens and shuts them out of the recognition and status that comes with marriage. Such arguments are particularly relevant in California, where domestic partnerships provide almost all of the same state rights and benefits as marriages (with the exception of federal rights and benefits). “Although California allows same-sex couples to register as domestic partners, marriage and domestic partnership remain two separate and unequal institutions. Domestic partnerships do not provide the universal recognition, honor and dignity that come with marriage.”³¹ Opponents made no direct counter frames to these two categories of arguments about same-sex marriage.

Prior research on counter-movements to progressive rights claims (Dudas 2003; Dugan 2005; Gerstmann 1999; Goldberg-Hiller 2002) suggests that these conservative groups often mobilize the rhetoric of “special rights,” arguing that equal rights claims by marginalized groups are in fact excessive, exclusive, and something other than equal rights. Surprisingly, there were very few statements advancing the “special rights” frame in the collection of press releases from anti same-sex marriage groups. As illustrated in Figure 2.2, opponents of same-sex marriage made 5 arguments classified as the “special” argument frame in 2004 and 1 in 2007. Furthermore, none of these actually use the phrase “special right.” Instead, they simply deny the equal rights and discrimination arguments, in some cases by going so far as to suggest there is no reason to expect equal treatment under the law since gays and lesbians are, in fact, different from heterosexuals. On March 5, 2004 the Alliance Defense Fund filed a brief with the California Supreme Court defending the state’s marriage laws. In a press release that day, Chief Counsel Benjamin Bull argued that the “California Constitution does not require that persons be treated similarly if they are, in fact, different. Uncontroversial social science research shows that male/male unions and female/female unions are substantively different. If those are different from each other,

³¹September 7, 2007 Equality California press release “California Legislature Again Passes Bill Giving Same-Sex Couples Choice to Marry

they cannot both be the same as male/female unions.”³² Same-sex marriage proponents were often referred to as “special interest groups” in opponents’ press releases, but this was usually in the context of *judges* and *public* argument frames.

The backlash in response to same-sex marriage rights in California is in itself a form of rights mobilization. However those groups involved have been less interested in criticizing equal rights claims for being “special” and more interested in advancing their own version of civil rights. This was made the most obvious, and expressed the most clearly, during the Summer for Marriage Tour 2010, a month long tour of 20 cities in east coast, mid-west, and southern states, organized by the National Organization for Marriage. On July 28, during the rally in St. Paul, Minnesota, executive director Brian Brown explicitly linked NOM’s cause to the civil rights movements of the 1960s. “We’ve taken great pains to make clear what we’re all about. We view ourselves as a new civil rights movement . . . committed to something that in the 1960s was key: the right to vote.”³³ (It’s worth noting in this context that that Minnesota does not have an initiative or referenda process. Thus, Minnesota voters only get to directly make policy through legislatively referred constitutional amendments.)

What constitutes legitimate policymaking?

Same-sex marriage opponents as the “new civil rights movement” was less clearly articulated prior to 2010. However, at the foundation of Brian Brown’s statement are ideas about democracy and, more specifically, about what constitutes legitimate policymaking in a democracy. The *public* and *judges* frames - first and fifth most frequently used frames by same-sex marriage opponents - shift the conversation over same-sex marriage to one of democratic representation and the appropriate role of democratic institutions. The *states* frame, albeit less frequently used, does so as well. The distribution of this cluster of frames can be found in Figure 2.3. These are less concerned with same-sex marriage as substantive

³²Alliance Defense Fund March 5, 2004 press release “ADF in California Supreme Court action Friday”

³³Quotation and video clip from the Summer for Marriage Tour 2010 blog at <http://www.marriagetour2010.com/blog> last accessed on August 18, 2010

policy, or the potential impacts of same-sex marriage policy, but focus on who should be allowed to make such policy in a constitutional, federalist democracy. The *judges* frame directly attacks California courts, arguing that they are counter-majoritarian institutions full of activist judges willing to impose their preferences on an unwilling majority. This has been a popular argument among same-sex marriage proponents nationally, but is particularly appealing in a state where courts made decisions favorable to same-sex marriage after the voters approved anti same-sex marriage legislation.

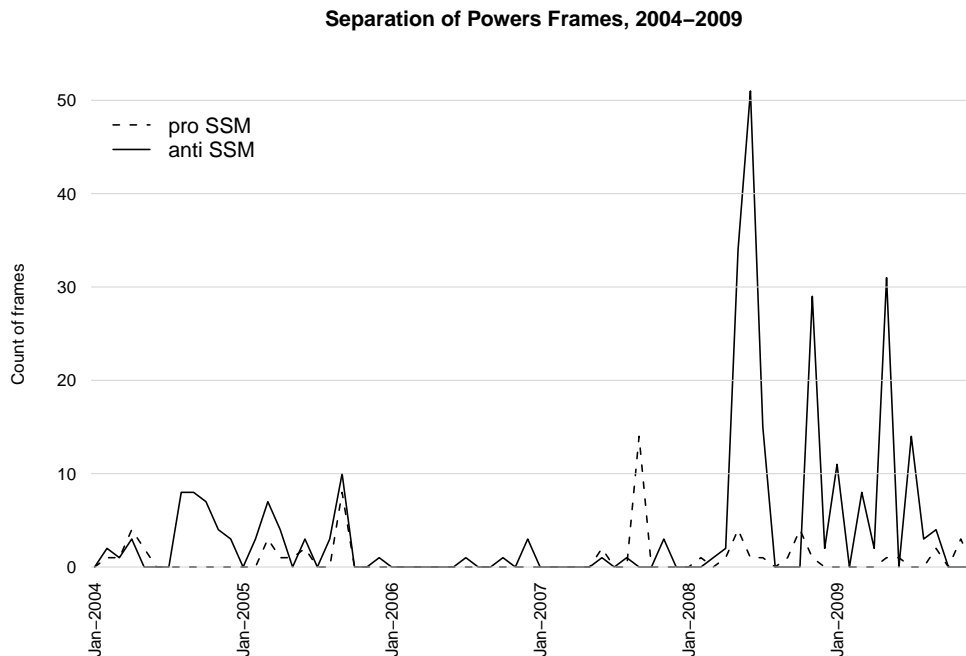


Figure 2.3: Time series graph of argument frames related to the separation of powers in a federalist government, 2004-2009. Because of the gap in time, 1999 and 2000 are omitted. The figure combines the *public*, *judges*, and *states* argument frames. Pro same-sex marriage groups advanced 3 of these frames in 1999. Anti same-sex marriage groups advanced 11 of these frames in 1999, 13 in 2000, and 7 in 2003.

Cries of judicial activism and accusations of undermining or ignoring the will of Californians were common following the Supreme Court ruling in *the Marriage Cases*. Al-

liance Defense Fund Senior Counsel Glen Lavy argued that the decision “ignores the will of the people of California who approved Proposition 22. . . . The court’s decision clearly demonstrates that marriage is not ultimately safe from tampering by activists and others in government until the voters have amended the constitution.”³⁴ Judges should be beholden to the citizens, the argument goes, but have instead become a tool of those who wish to thwart the democratic process. As Robert Tyler, Alliance Defense Fund attorney, has noted: “Radical groups dissatisfied with democracy are always trying to use the courts to implement their agenda.”³⁵ After the passage of Proposition 8, when for a second time California citizens made policy on this issue and chose to prohibit same-sex marriages, the lawsuit filed against it fueled these arguments. The Alliance Defense Fund characterized the lawsuit as “a brazen attempt to gut the democratic process . . . The people of California have spoken yet again . . . Once again, [gay and lesbian groups] are attempting to use the courts to push their agenda since they can’t achieve it legitimately at the ballot box.”³⁶ Ironically, while requesting that the California Supreme Court stay its decision until after the November 2008 election, Matthew Staver of Liberty Counsel suggested that allowing same-sex marriage along with California’s Domestic Partnership law (AB 205), in the context of a handful of other states with civil unions, would create legal chaos and confusion. As a result, the case “illustrates why judges should leave lawmaking to the legislature.”³⁷ Of course, he said this after the state legislature had passed same-sex marriage legislation twice. This suggests that part of the explanation for the limited attention to legislative activities on behalf of same-sex marriage opponents could be the lack of fit with their dominant story regarding same-sex marriage. And, on the other hand, that courts are a popular target of opponents precisely because they fuel the frames that are most popular with them.

³⁴May 15, 2008 Alliance Defense Fund press release “Marriage jeopardized after Calif. high court decision unless voters approve amendment”

³⁵October 15, 2004 Alliance Defense Fund press release “Green light for Proposition 22 defenders”

³⁶November 5, 2008 Alliance Defense Fund press release “Pretense of Tolerance is Over”

³⁷May 29, 2008 Liberty Counsel press release “Liberty Counsel Requests the California Supreme Court to Rehear and Stay its Marriage Decision”

California Supreme Court Associate Justice Carol Corrigan adopted this story about direct democracy and legitimate policymaking in her dissent in the *Marriage Cases*. Not surprisingly, she was quoted in same-sex marriage opponents' press releases: "The principle of judicial restraint is a covenant between judges and the people from whom their power derives. It protects the people against judicial overreaching. It is no answer to say that judges can break the covenant so long as they are enlightened or well-meaning. If there is to be a new understanding of the meaning of marriage in California, it should develop among the people of our state and find its expression at the ballot box."³⁸ The *public* frame argues that not only do the majority of Californians oppose same-sex marriage, but they have a right to make policy consistent with these preferences. According to Liberty Counsel's Matthew Staver, because "marriage is a fundamental policy issue" it "must be decided by the people."³⁹ Petitioning the Supreme Court to stay its decision in 2008 (it didn't), Alliance Defense Fund's Glen Lavy argued that the "people of California have a constitutional right to vote on marriage" and that failing to stay the decision until the November election would show the court's lack of respect for the democratic process.⁴⁰

Particularly in a federalist system, part of the public's right to make policy derives from the idea that each of the 50 states has sovereignty over certain areas of law within their borders. The *states* frame, as advanced by same-sex marriage opponents, suggests that Californians have the right to govern themselves and, in this context, determine what relationships their state should recognize. All but two of these occurred during the Proposition 22 campaign. During the early months of the campaign, the Vermont Supreme Court ruled in favor of providing same-sex couples the rights and benefits of marriage in *Baker v. Vermont* in December 1999. After the court decision in favor of same-sex marriage in Hawaii

³⁸May 23, 2008 Campaign for California Families press release "California Marriage Forms and Marriage Licenses Cannot be Changed until Legislature Changes Marriage Statutes"

³⁹March 14, 2005 Liberty Counsel press release "San Francisco Judge Rules Marriage Laws Unconstitutional"

⁴⁰May 22, 2008 Alliance Defense Fund press release "ADF asks Calif. justices to hold marriage order until amendment vote"

in 1994, Vermont was the next state to raise the real possibility (or fear, as it was usually constructed) that couples would try to pressure their home states to recognize licenses from other jurisdictions. In response, Communications Director for the Protection of Marriage campaign argued that “California’s right to define marriage for itself is now in grave danger . . . It’s one thing for another state to recognize same-sex relationships, but it should not be forced upon the citizens of another.” A supporter of the Proposition 22 campaign put it simply: “It’s our state, it should be our choice.”⁴¹ Arguments like these were used to garner support for Proposition 22, which passed overwhelmingly several months later.

Opponents have the passage of both Proposition 22 and Proposition 8 to empirically support the framing of same-sex marriage that pits California voters against the other policymaking branches of California government. Since Proposition 22 was passed years before Gavin Newsom began issuing marriage licenses, the California legislature passed gender neutral marriage statutes, and any California court issued a ruling in favor of same-sex marriage, the *public* frame was a frequent response to these activities. Particularly in ballot measure years, statements using the public frame often include arguments about voters’ rights. This is illustrated visually in Figure 2.3, where the largest peaks associated with the collection of frames dealing with separation of powers and democracy occur in 2008, first surrounding the Supreme Court decision in May and then the Proposition 8 campaign and vote in October and November.

Courts are not the only counter-majoritarian, anti-democratic institution in this picture; the California legislature is implicitly guilty of the same charges as well. On the day the legislature passed AB 849, Glen Lavy of the Alliance Defense Fund immediately encouraged the governor to veto the bill. “We believe the governor should veto this bill, which slaps the face of voters who passed California’s Defense of marriage Act, Proposition 22, in 2000.”⁴² Once the voters spoke on marriage in 2000, the rest of California’s government

⁴¹December 20, 1999 California Protection of Marriage Initiative press release “Passage of Proposition 22 Critical After Vermont Ruling”

⁴²September 7, 2005 Alliance Defense Fund press release “ADF condemns action of California Assembly

should have supported policy made in the “fourth branch of government” or, at a minimum, remained silent on the issue. Of course, suggesting that legislatures are anti-democratic institutions is a tenuous argument, which again may help to explain why same-sex marriage opponents dedicated so little press release attention to legislative activities. There is a small peak in the use of these frames around the passage of AB 849 in September 2005, as seen in Figure 2.3, but very little use of this collection of arguments in 2007, when the legislature passed same-sex marriage for the second time. Essentially, during the course of the last decade, same-sex marriage opponents in California have portrayed the initiative process as the only truly legitimate, democratic way to handle marriage policymaking.

While there is some effort to engage these arguments by same-sex marriage proponents, proportionately the effort is small. Proponents of same-sex marriage made only 57 statements arguing that same-sex marriage is democratic or that the public’s attitudes and opinions regarding same-sex marriage are shifting. Remarkably, same-sex marriage proponents made only 3 statements defending the role of judges as the protectors of minority rights. The *public* and *judges* frames combined are a small fraction of the arguments advanced by same-sex marriage supporters—only about 4.5%. In contrast, nearly 38% of the argument frames advanced by opponents of same-sex marriage treat the issue as one of democratic or majority representation.

The short peaks in Figure 2.3 representing same-sex marriage proponents’ use of the *public* frame in 2005 and 2007 illustrate the tendency to do so in the context of legislative activity. In contrast to the few arguments about the legislature made by same-sex marriage opponents, same-sex marriage supporters characterize the California legislature as following the growing support for same-sex marriage in the state and, as a result, appropriately fulfilling their role as a representative institution. According to supporters of same-sex marriage legislation, passing legislation allowing all voters and constituents to get married regardless of sexual orientation is democratic. On the day the legislature passed AB

43, Equality California Executive Director Geoff Kors was congratulatory. “We congratulate Assemblymember Leno for his incredible leadership on this issue and applaud the Legislature for representing the people of California in supporting fairness and equality.”⁴³ Equality California similarly called on the governor to consider not only the thousands of Californians who would benefit from the legislation, but the thousands more who support marriage equality, when considering whether to sign or veto the legislation.⁴⁴

The Social Consequences of Same-Sex Marriage

The second major theme in opponents’ arguments against same-sex marriage regards its potential broader social consequences. The distribution of these can be found in Figure 2.4. In many ways, this is the basis of their second most favored frame, *marriage*. These statements treat marriage as a unique, special institution from historical, moral, and social perspectives. There is something in the essence of marriage that requires a heterosexual couple, making same-sex “marriage” (groups like the Alliance Defense Fund regularly use quotation marks in this context to further emphasize the problems with associating the word “marriage” to same-sex couples) not only socially undesirable, but simply illogical. There is something irrational, and contrary to common sense, to suggest otherwise. At a UC Hastings College of Law Symposium in February 2005, Alliance Defense Fund Senior Counsel Jeffrey Ventrella spoke and argued that “advocating same-sex ‘marriage’ is like telling a geometry teacher to draw a square circle. Nobody-in their heart of hearts-really believes in square circles, and we should stop pretending that the law can draw them. This radical position fails legally, historically, and logically.”⁴⁵ In the law review article he published following the Symposium, he likened same-sex ‘marriage’ to the Tooth Fairy “because like

⁴³September 7, 2007 Equality California press release “California Legislature Again Passes Bill Giving Same-Sex Couples Choice to Marry”

⁴⁴September 21, 2007 Equality California press release “EQCA Delivers Nearly 15,000 Marriage Petitions to Governor”

⁴⁵February 10, 2005 Alliance Defense Fund press release “ADF Senior Counsel invited to speak on same-sex “marriage” at UC Hastings”

the Tooth Fairy, they do not really exist.”⁴⁶ It’s a fantasy, at best, and same-sex couples publicly professing their love for one another doesn’t make them any more like marriages than parents leaving money under a pillow makes the Tooth Fairy real. There is something more than “just any two people in a committed relationship. Americans understand and believe that there’s more to a marriage than that.”⁴⁷ Part of it is tradition, but it’s more than that. Again, there is something essential, definitional, and outside of human practice, desire, or control about marriage remaining between a man and a woman. “Marriage isn’t right because it’s traditional, it’s traditional because it’s right.”⁴⁸ As a result, the definition of marriage is outside of government control and was created before human beings organized to form government. “Marriage as one man and one woman predates government and is the foundation of society. To preserve it is essential. To rename or abolish it would be foolish.”⁴⁹

In his cognitive analysis of liberal and conservative thinking in American politics, George Lakoff argues that liberals and conservatives are constantly at odds with each other as a result of fundamentally different conceptions of family-based morality (2002). Conservatives’ model of an ideal family is a traditional, heterosexual, nuclear family with the father as the primary source of moral authority, and this shapes their stance on a wide range of political issues (Lakoff 2002, 65-71, 225). Children require both a mother and a father in order to develop appropriate levels of self-discipline, self-reliance, and responsibility. In the “strict father” model of morality, heterosexuality and homogeneity are the “natural” order of things; deviant behavior threatens the ability of future generations to grow into morally strong adults. Furthermore, the model suggests that people, not the government, know what is best for them, which underscores the discussion about legitimate sources of

⁴⁶July 13, 2005 Alliance Defense Fund press release “ADF legal expert in law journal”

⁴⁷Alliance Defense Fund August 24, 2009 press release “Federal court tosses lawsuit”

⁴⁸June 16, 2005 Alliance Defense Fund press release “Orange Crush

⁴⁹March 3, 2008 Liberty Counsel press release “Liberty Counsel Argues Historic Marriage Case at California Supreme Court”

authority in the previous section.

Underlying these essentialist arguments about marriage and marriage policy then, it seems, are the ideals contained within the Lakoff's analysis of the conservative model of morality. Anything claiming to be a 'marriage' that is something other than a man and a woman, same-sex marriage opponents argue, is unnatural and counterfeit. And the counterfeit of anything devalues the real thing; behavior that deviates from what is considered normal and natural - in this case the creation of same-sex relationships - is dangerous because it can suggest, especially to impressionable children, that alternative lifestyles and life paths are acceptable. This leads opponents of same-sex marriage to suggest that gay and lesbian activists "aren't really trying to redefine marriage; they're trying to eliminate it. If anything is marriage, than nothing is marriage."⁵⁰ To redefine such a fundamental institution by allowing same-sex couples to marry, the argument goes, would be to undermine one of the primary foundations of society and social order. As Matthew Staver has argued, "There is a direct correlation between marriage and the security of our community."⁵¹ According to the logic of the "strict father" model of morality, violations of the ideal family model and threats to community homogeneity eventually lead to moral degeneration (Lakoff 2002). A month before oral arguments in the *Marriage Cases*, Staver said: "California has many common sense reasons for preserving marriage as the union of one man and one woman. Marriage is a universally recognized social institution that forms the bedrock of every civilized society. Allowing same-sex couples to claim marital rights will destroy the unique institution that provides a stable cultural environment for children and their families."⁵²

While opponents make only 16 statements using the *slope* frame, these have a similar

⁵⁰October 3, 2008 Alliance Defense Fund press release "ADF attorney to participate in USD same-sex marriage debate"

⁵¹January 28, 2005 Liberty Counsel press release "Challenges to State Marriage Laws and Federal DOMA Continue in California"

⁵²February 6, 2008 Liberty Counsel press release "Liberty Counsel to Argue Landmark Marriage Case at California Supreme Court"

theme - allowing same-sex marriage will lead to socially undesirable consequences. All but one of these were made in May and June of 2008. “It is unreasonable” Mathew Staver commented in response to the petition to stay the California Supreme Court’s ruling on behalf of Liberty Counsel “to turn marriage upside down in thirty days and then expect that the myriad of laws and social institutions affected will fall into neat categories. This decision is a train wreck in the making, and the only prudent course requires the Court to push the pause button in implementing the decision.”⁵³ Liberty Counsel’s petition argued that the unintended consequences of the decision would be the creation of legal polygamous and polyamorous relationships. The presence of domestic partnerships and same-sex and heterosexual marriages in California as well as civil unions in Vermont and other states would lead to knots of legal entanglements.⁵⁴

Proponents of same-sex marriage made only 19 statements using the *threat* frame, arguing that allowing gay and lesbian couples to marry will not in fact lead to social disorder, the breakdown of community, or legal chaos. The week after Gavin Newsom ordered marriage licenses to be issued to same-sex couples in 2004, two separate California courts refused to immediately stop them. “The courts see that there’s no need to stop what’s happening in San Francisco right now,” said Jon Davidson, Senior Counsel for Lambda Legal. “Clearly, there’s no emergency here, and nobody is being harmed by these marriages.”⁵⁵ Two weeks later, more than 3400 same-sex couples had been married. And, as Executive Director of the National Center for Lesbian Rights Kate Kendell pointed out, “the sky has not fallen.”⁵⁶ Proponents also made 11 statements using the *marriage* frame, arguing

⁵³May 28, 2008 Liberty Counsel press release “Liberty Counsel Will File a Motion with the California Supreme Court Requesting a Stay and a Rehearing on the Marriage Decision”

⁵⁴“Parties A and B, C and D, and E and F, who are in a Vermont civil union, could all become interconnected when Parties A and C obtain a California same-sex marriage. At the same time B and F and D and E could get married, all at the same time.” May 29, 2008 Liberty Counsel press release “Liberty Counsel Requests the California Supreme Court to Rehear and Stay its Marriage Decision”

⁵⁵February 17, 2004 Lambda Legal press release “Second Judge Refuses to Stop Same-Sex Couples Marrying in San Francisco”

⁵⁶May 5, 2004 National Center for Lesbian Rights press release “Gay Rights Groups and Same-Sex Couples Ask California Supreme Court to Enforce Constitutional Requirement of Equal Protection”

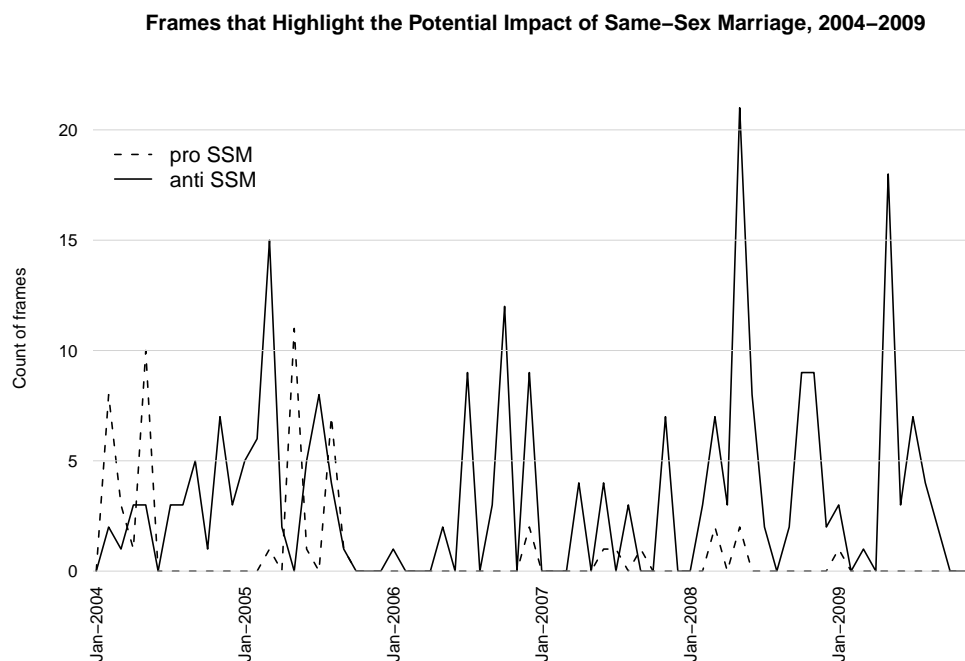


Figure 2.4: Time series graph of argument frames highlighting the potential impacts of same-sex marriage, 2004-2009. Because of the gap in time, 1999 and 2000 are omitted. The figure combines the *marriage*, *violence*, *slope*, *threat*, and *economy* argument frames. Pro same-sex marriage groups advanced 7 of these frames in 1999 and 17 of these frames in 2000. Anti same-sex marriage groups advanced 9 of these frames in 1999, 12 in 2000, and 3 in 2003.

that allowing more couples to marry will strengthen, not weaken, the institution of marriage. Shortly before reintroducing the Religious Freedom and Civil Marriage Protection Act at the end of 2006, Mark Leno made precisely this argument. “It is more important than ever that our legislative branch here in California reaffirms the belief that marriage is an institution only strengthened by inclusiveness. Our society is strengthened by stable and committed relationships, and our governmental bodies should be doing all they can to help these relationships flourish.”⁵⁷ They made no statements directly countering the slope

⁵⁷December 1, 2006 Equality California press release “Assemblymember Leno and EQCA reintroduce Religious Freedom and Civil Marriage Protection Act

frame.

Arguably, the *economy* and *violence* frames also fall under the umbrella of the wider ranging social consequences of same-sex marriage. The former, which same-sex marriage supporters use 30 times, argues that a potential positive side effect of allowing gays and lesbians to marry will be to California's economy and market. All but one of the *economy* frames are used in 2004 and 2005 press releases, and all of these are used in press releases classified as focusing on legislative activity. Several focus on the results of a study co-authored by the Williams Project that analyzed the potential financial impacts of passing same sex marriage legislation. The study suggests that California could gain millions of dollars a year in tax revenue, would "benefit from a boom in tourism," business revenues would increase, and the state would save millions of dollars from public benefits programs. According to Geoffrey Kors, the "study makes it clear that equal protection is not only the right thing to do morally, but also fiscally."⁵⁸

The *violence* frames highlight the potential negative social consequences of continuing to deny marriage rights to gay and lesbian couples. The argument frame is used 17 times by supporters and countered 16 times by opponents of same-sex marriage; all but 2 of these, 1 in 2008 and 1 in 2009, occur in the press releases from 1999 and 2000. During the No on Knight campaign, opponents of Proposition 22 frequently argued that the passage of the anti same-sex marriage ballot measure would further stigmatize and discriminate against gay and lesbian couples. More importantly, it would encourage the sort of intolerance that leads to violence and hate crimes. In a December 1999 press release, the No on Knight campaign quoted from a statement by Judy Shepard, mother of Matthew Shepard—a 21-year-old man who had been killed in the midst of a hate crime: "Anti-gay violence does not happen in a vacuum. It happens in a climate of fear, ignorance, and intolerance - the very climate the Knight Initiative fosters. If we want to stop hate crimes, we must stop these

⁵⁸August 24, 2005 Equality California press release "Equality California-Sponsored Marriage Equality Legislation Now Heads For Historic Senate Vote"; also May 18, 2005 "Historic Religious Freedom and Civil marriage Bill Heads Towards Appropriations Committee for Assembly Vote"; May 11, 2004 "UCLA Study Finds Marriage Equality Results in Huge Windfall for California's Budget"

hate initiatives. This initiative is so clearly not about defending marriage or families, it's about discrimination and dehumanizing and devaluing gays and lesbians."⁵⁹

On the other hand, Proposition 22 supporters repeatedly denied that the Knight Initiative was mean spirited. In doing so, they accused the No on Knight campaign of engaging in fear tactics in response to falling behind in polls before the 2000 March election. Robert Glazier, Communications Director for the Yes on 22 campaign, suggested that this was just one way among many that the Yes on 22 activists were being unfairly harassed. "The inference that anyone who supports Prop. 22 wishes to see violence committed against gays and lesbians is grossly offensive, fear tactic campaigning at its very worst. Proposition 22 does nothing to incite hatred or violence towards any individual or their family, and our opponents know this."⁶⁰ This is one of the few frame elements where same-sex marriage supporters and opponents consistently and directly address the arguments of the other side.

Taken together, the frames associated with the potential consequences of recognizing (or failing to recognize) same-sex marriage (227 *marriage*, 16 *slope*, and 16 *violence* frames) account for 32% of marriage opponents' argument frames. Related frames (17 *violence*, 19 *threat*, 30 *economy*, and 11 *marriage* frames) account for only 6% of same-sex marriage proponents' arguments. This illustrates a rather remarkable difference in the amount of attention given to these ideas among both sides. While the primary frame, *marriage* in this portion of the same-sex marriage debate is the second most frequently used by same-sex marriage opponents, none of the related frames are in the most frequently used frames by same-sex marriage supporters.

Framing and Venues

Tables 2.4 and 2.5 rank the six most frequently used argument frames by same-sex marriage proponents and opponents across venue categories, respectively. *Both tables suggest*

⁵⁹December 6, 1999 No on Knight press release "Judy Shepard Condemns Knight Initiative"

⁶⁰February 16, 2000 California Protection of Marriage Initiative press release "Anti-Prop 22 Hits the Airwaves with Deceptive Fear Mongering"

Table 2.4: Ranking of Frames by Venue Category - SSM proponents

| <i>ballot</i> | <i>legislature</i> | <i>executive</i> | <i>court</i> | <i>ballot/court</i> | Overall |
|----------------|--------------------|------------------|----------------|---------------------|-----------------------|
| discrimination | rights | discrimination | rights | discrimination | discrimination |
| rights | discrimination | rights | discrimination | rights | rights |
| family | family | legal | family | legal | family |
| diversion | status | love | legal | family | benefits |
| benefits | public | family | benefits | status | status |
| violence | economy | benefits | love | benefits | legal |

Table 2.5: Ranking of Frames by Venue Category - SSM opponents

| <i>ballot</i> | <i>legislature</i> | <i>executive</i> | <i>court</i> | <i>ballot/court</i> | Overall |
|---------------|--------------------|------------------|--------------|---------------------|------------------|
| public | public | legal | marriage | public | public |
| marriage | diversion | public | public | marriage | marriage |
| violence | marriage | marriage | legal | legal | legal |
| states | | diversion | children | judges | children |
| diversion | | children | judges | children | judges |
| children | | | slope | family | diversion |

that proponents and opponents of same-sex marriage consistently advance their one or two favorite argument frames regardless of the venue being targeted in the press release. As already mentioned, same-sex marriage supporters strongly favored *rights* and *discrimination* frames relative to any other arguments about same-sex marriage. The other four frames in the far right column of Table 2.4—*family*, *benefits*, *status*, and *legal*—account for just over half as many coded frames as do the *rights* and *discrimination* frames. Across all of the possible press release categories, pro-same sex marriage groups always advanced *rights* and *discrimination* frames more than any others. Thus, regardless of whether they were discussing a piece of legislation, oral arguments being presented in court, or preparation for a ballot measure, same-sex marriage supporters emphasized that denying same-sex couples marriage rights is simply wrong and a violation of equal rights.

There is some variation in the lower ranked frames across venues. The *love* frame was used more frequently when same-sex marriage supporters addressed court and executive related activities. This is a reflection of efforts to personalize the issue of same-sex marriage, particularly in the context of Gavin Newsom’s decision to issue marriage licenses and the litigation that followed shortly thereafter. One of the first couples married in February 2004, and one of the few to personally have Gavin Newsom present at the ceremony, was Del Martin and Phyllis Lyon, a couple who had been dating since 1952. Images of couples exiting city hall overcome with emotion, and stories of couples who had been in love for years, were retold in press releases while San Francisco continued to issue licenses to same-sex couples. Once the litigation began, the plaintiffs’ personal lives—how long they’d been in love, what their family life looked like—were repeatedly emphasized in press releases.⁶¹

When targeting legislative activities, pro same-sex marriage press releases linked the issue of same-sex marriage to a broader constituency, emphasizing that by supporting same-sex marriage legislation legislators would not only be representing their LGBT constituents, but the rest of the public as well. Further, they suggested that same-sex marriage would

⁶¹March 12, 2004 Equality California press release “Equality California, Six Couples and Our Family Coalition File Lawsuit Seeking the Right to Marry for Lesbian & Gay Couples”, for example

have far-reaching economic effects that would benefit the entire state of California. This was reflected in the greater use of *public* and *economy* frames over *benefits* and *legal* frames when press releases focused on the legislature. Finally, the *diversion* and *violence* frames replaced the *status* and *legal* frames when press releases focused on ballot measures.

Opponents of same-sex marriage had similarly little variation in their frames across venues. They also heavily favored their top two ranked frames; the *public* and *marriage* frames account for 61% of opponents' frames. While they almost always favored one of these two frames, the *legal* frame was the most frequently used when opponents of same-sex marriage discussed executive related activities. Just over half of opponents' use of the *legal* frame was in 2004, centered around arguments that Gavin Newsom's activities in San Francisco were outside of his legal authority and powers. This can be seen in Figure 2.5, which shows the distribution of this frame across time, where the highest peak occurs in early 2004. Same-sex marriage supporters had a corresponding peak in the use of *legal* frames in 2004, in defense of Gavin Newsom's actions. Both sides also had related peaks at the end of 2008 (for same-sex marriage opponents) and beginning of 2009 (for same-sex marriage proponents) regarding the future of Proposition 8. These reflect arguments raised immediately following Proposition 8's passage that centered on whether the Proposition was a constitutional amendment or constitutional revision. The legality and constitutionality of same-sex marriage policies is one of the few framing elements where same-sex marriage opponents and proponents directly engaged each other in a significant way. The *legal* frame is the only overlap in both sides' most frequently used six frames. The two sides, however, used it to different degrees; *legal* frames made up 15% of opponents' frames and only 5% of proponents' frames.

The *diversion* frame was overcome by *slope* frames when press releases discussed court related activities and *family* arguments when they focused on the Proposition 8 litigation. All but one of the *slope* frames occurred in 2008, reflecting opponents' emphasis on the potential social and legal confusions that would result from the California Supreme Court's decision in the *Marriage Cases*. Family related frames are another element of the same-sex

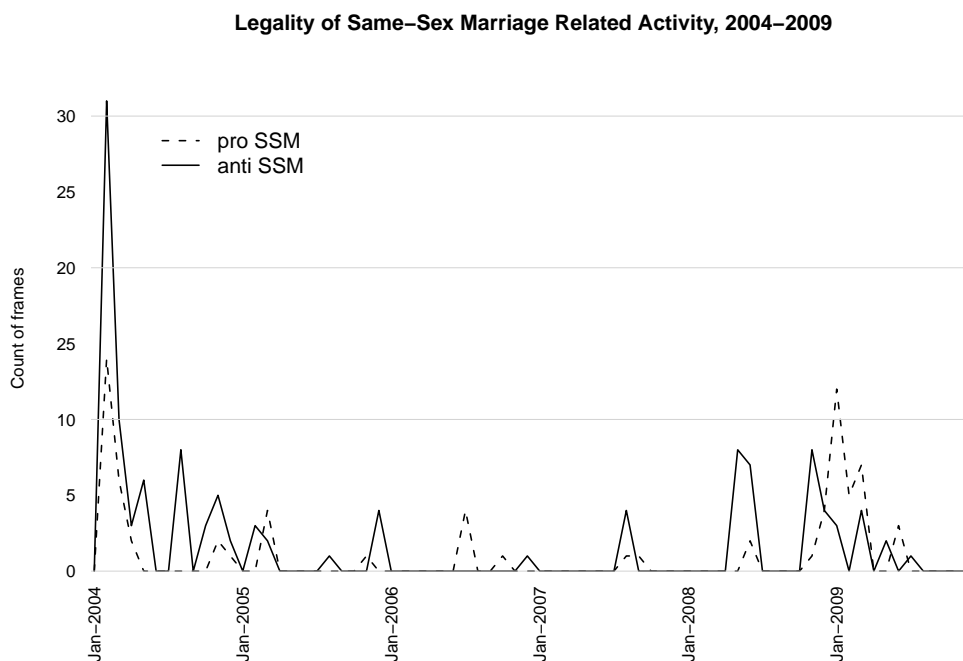


Figure 2.5: Time series graph of argument frames related to the legality or constitutionality of same-sex marriage, same-sex marriage bans, and same-sex marriage related activities, 2004-2009. Because of the gap in time, 1999 and 2000 are omitted. The figure shows the *legal* argument frame. Neither side advanced any of these frames before 2004.

marriage debate where both sides engage each other, although somewhat less directly. The distribution of *family* and *children* frames can be found in Figure 2.6.

While same-sex marriage supporters favored more general arguments about family, same-sex marriage opponents preferred to focus on the impact same-sex marriage would have on children. Both categories of frames account for similar proportions of arguments on both sides: 12% of same-sex marriage supporters' frames, and 9% of same-sex marriage opponents' frames were related to children and family. Supporters' arguments about family and children were broader, emphasizing the constellation of relationships and benefits that families entail. In Figure 2.6, pro same-sex marriage groups use of *family* frames peaked

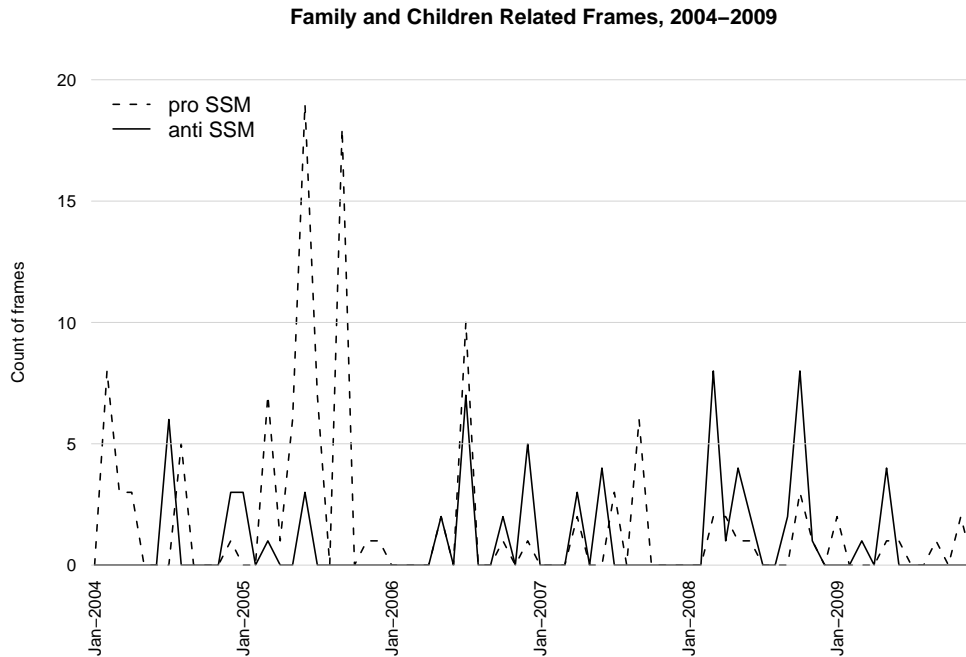


Figure 2.6: Time series graph of argument frames related to family and children, 2004-2009. Because of the gap in time, 1999 and 2000 are omitted. The figure combines the *family* and *children* argument frames. Pro same-sex marriage groups advanced 13 of these frames in 1999 and 19 of these frames in 2000. Anti same-sex marriage groups advanced 2 of these frames in 2000.

around Gavin Newsom’s decision to issue marriage licenses in 2004, and the legislature’s debate and passage of marriage legislation and the introduction of a constitutional amendment that would have eliminated all rights for any non-married family (that failed to gain enough signatures) in 2005. “This is an unforgettable day,” said Kate Kendell on the day San Francisco began issuing marriage licenses to same-sex couples. “For the first time in this country, lesbian and gay couples in loving, committed relationships were able to exercise the same right to protect their families that others take for granted.”⁶² Geoff Kors

⁶²February 12, 2004 Equality California press release “Lesbian and Gay Couples in San Francisco are Granted Marriage Licenses”

celebrated the passage of AB 19 in the state's Assembly Judiciary Committee as "a tremendous day for committed couples and their children who only wish to protect and provide for their families."⁶³ Response to the introduction of amendment language emphasized how much the measure would harm "millions of California families and children."⁶⁴

On the other hand, opponents of same-sex marriage focused on children. Many of these statements emphasized the "common sense proposition that children fare best when raised by a mom and a dad."⁶⁵ In the context of the same-sex marriage litigation in California and elsewhere in the United States, states have an interest, the argument goes, in promoting "responsible procreation and child rearing." Same-sex couples can not procreate without the involvement of a third party. This, combined with potentially relaxed gender roles, could be devastating and confusing for the children of same-sex couples. The "strict father" model of morality, as characterized by Lakoff, suggests that the world is a dangerous place and children, in particular, are at risk if they do not grow up in a context that teaches them strict standards of behavior, responsibility, and morality (2002). This line of thinking was especially relevant in the months leading up to the November 2008 election, when opponents of same-sex marriage expanded their *children* related arguments to include all public school children, regardless of the parents. Campaign advertisements in support of Proposition 8 suggested that failing to pass it meant school children would be taught about same-sex marriage.⁶⁶ This message became a central component to the Proposition 8 campaign, particularly as viewed through paid television commercials. There is even some evidence to suggest that these arguments helped to swing some undecided voters in favor

⁶³April 26, 2005 Equality California press release "Historic Marriage Equality Bill Passes the Assembly Judiciary Committee"

⁶⁴May 19, 2005 joint press release "Joint EQCA and NCLR Statement on Introduction of Constitutional Amendment to Hurt All California Families"

⁶⁵July 10, 2006 Liberty Counsel press release "Liberty Counsel Presents Oral Argument Today in California Defending Traditional Marriage on Behalf of Campaign for California Families"

⁶⁶October 29, 2008 Campaign for California Families press release "Prop. 8: Why Jack O'Connell Can't Read"

of the ballot measure in the last weeks before the election.⁶⁷ This will be discussed further in chapter 3.

Finally, when discussing ballot measures, the *violence* and *state* frames were used more frequently than *judges* and *legal*. This is only true in the context of Proposition 22, as the *violence* frame nearly disappeared after 2000. While they make up a proportionally small amount of the same-sex marriage debate, this is a clear instance of both sides directly engaging each other. Opponents of Proposition 22 argued that passage of the ballot measure would increase violence towards gays and lesbians, while supporters of Proposition 22 responded with an almost equal number of statements that such claims were false.

While the *diversion* frame is the sixth most frequently used by same-sex marriage opponents, it amounts to only 3% of their frames overall. They also only account for 3% of same-sex marriage proponents' frames. A majority of these frames, as used by opponents, occurred in 2008. All but one of same-sex marriage proponents' use of the frame occurred in ballot measure years: 1999, 2000, and 2008. Thus, while this was one of the few frames used by both sides, it was not generally used in the same context. Pro same-sex marriage groups used it frequently in 1999 and 2000 to reinforce the message that Proposition 22 was polarizing and divisive. The Knight Initiative, the No on Knight campaign argued, was simply "an attempt to use the issue of same-sex marriage to pit Californians against each another" and distract them from broader issues.⁶⁸ The majority of opponents' statements framing same-sex marriage this way occurred in 2006 and 2008. These accused same-sex marriage supporters—activists and legislators, alike—of grandstanding, evading democracy, and "playing politics" with the voters of California.

⁶⁷"The Prop 8 Report: What Defeat in California Can Teach Us About Winning Future Ballot Measures on Same-Sex Marriage" by the LGBT Mentoring Project

⁶⁸September 16, 1999 No on Knight press release "Vice President Gore Opposes Knight Initiative"

Conclusions

This chapter examines the characterization of same-sex marriage and same-sex marriage policy in California through activist group press releases. I use press releases in an attempt to capture, and analyze, the original message regarding same-sex marriage before it's been filtered through the news media. I do this not only to reveal how each side talks about same-sex marriage, but also to explore whether or not the messages overlap or interact in any ways. An analysis of the debate as portrayed through newspaper articles is presented in chapter 4.

Examining the debate through this collection of press releases reveals several things. First, *both sides of the debate tend to employ a small number of argument frames. And they do across time and regardless of policy venue.* In the case of same-sex marriage supporters, they overwhelmingly favored the *rights* and *discrimination* frames, which made up just over half of all of their coded frames. Consistently, across policy venues and years, proponents of same-sex marriage stressed how unfair and wrong denying marriage rights to same-sex couples is, attempting to appeal to Californians' sense of decency year after year. The year 2007 was the exception, when groups used the *status* frame more than any other frame. Not only have pro same-sex marriage groups remained consistent in favoring arguments about fairness and equality, they appear to be increasingly favoring them. The *rights* and *discrimination* frames were used the most relative to the other frames in 2008 and 2009. Encouraging Californians' to be open-minded, compassionate, and supportive of all families, same-sex marriage proponents fit well into George Lakoff's "nurturant parent" model of liberal thinking in America (2002).

Opponents of same-sex marriage, by appealing to populist sources of authority, notions of threat and fear of change, and heterosexual models of marriage and family, exemplify Lakoff's argument regarding the "strict father" model of conservative thinking (2002). Same-sex marriage opponents consistently favored the *public* and *marriage* frames across venues and years, which made up 61% of all of their coded frames (33% and 28%, re-

spectively). The *public* argument frame emphasizes the procedural aspects of same-sex marriage policymaking and argues that it should be up to the public to make decisions on such important issues. It's such an important issue, opponents continue, because marriage is a unique, special institution whose essence is violated if applied to non-heterosexual couples. This is the basis of the *marriage* frame. Repeatedly same-sex marriage opponents emphasized "common sense" notions about the definition of marriage and the right of the citizens of California to have the final say on what that should be, especially when given the chance to criticize any other branch of government for trying to make policy contrary to the expressed will of the voters. Opponents' focused on democratic process, what constitutes a legitimate source of authority, and an overwhelming resistance to changes in the practices associated with marriage. The year 2004 is the exception, when same-sex marriage opponents used *legal* frames in response to Gavin Newsom's decision to issue same-sex marriage licenses in San Francisco. Not surprisingly, in 2008 and 2009, same-sex marriage opponents favored the *public* frame over the *marriage* frame. The former lends itself well to the Proposition 8 campaign and the litigation that has followed since its passage.

A function of fairly consistent framing strategies, at least in part, is that the story as it is portrayed through press release framing is one of little dialogue. "The opposite of dialogue," of course, "is ignoring, responding by discussing a different subject" (Simon 2002, 1). *Over half of the frames advanced by both sides do not directly address the other. In other words, for most of the time, activists perform separate dances.* Same-sex marriage opponents devote almost no attention to directly countering the arguments about decency, fairness, and general equality as expressed through the *rights* and *discrimination* frames. On the other hand, supporters of same-sex marriage spend slightly more attention directly countering arguments about the institution of marriage and the democratic character of same-sex marriage policy as expressed through the *marriage* and *public* frames, but still only a small proportion of their collection of frames—5% over all (11 and 57 frames, respectively). And collectively, same-sex marriage has become increasingly about fairness and the public. Alongside same-sex marriage supporters' increasing use of *rights* and *discrim-*

ination frames, same-sex marriage opponents having increasingly used the *public* frame to emphasize voters' rights and construct the ballot process as the only legitimate law making venue in the state.

The finding that activist groups have a tendency to “talk past each other” is consistent with prior research on discourse in candidate-centered election campaigns, but extends it to sustained policy fights at the center of contentious politics (Simon 2002). In his study of campaign discourse, Adam Simon argues that dialogue, or engagement, should be the “minimal standard for normatively acceptable campaigns (1).” However, he finds very little dialogue in the context of U.S. Senate elections and that when candidates do engage their opponents, they tend to lose favor with their opponents and the public. Furthermore, he suggests that engaging in dialogue is actually an irrational strategy, creating a situation in which the democratic ideal of “the marketplace of ideas” is likely unattainable, at least in the context of election campaigns. However, one might argue it's not entirely irrational if groups are aware that newspapers often place their messages in dialogue with each other, as I find in chapter 4. If activists know journalists are likely to place their arguments in context with their opponents, then devoting at least some attention to countering those arguments would give activists greater control over the debate that's portrayed in the mass media.

There are a few elements of dialogue in the same-sex marriage debate, particularly in regards to the *violence*, *diversion*, *legal*, and family related frames. Sometimes, albeit infrequently, activists *do* tango. Engagement over the *violence* frame, however, did not last past the passage of Proposition 22 in 2000. Both sides have accused the other of using the issue of same-sex marriage to “play politics” with California citizens through the *diversion* frame. Both sides did fairly consistently use arguments about the legality and constitutionality of same-sex marriage policies across the time period. Finally, while both opponents and proponents used family and children related frames, their arguments tended to focus on different elements. Given that same-sex marriage supporters were somewhat more likely to engage opponents, particularly with regards to arguments about the institution of marriage and legitimate sources of policymaking authority, Adam Simon's findings suggest it is not

surprising that they lost voter support in the months leading up to the 2008 election.

The potential effects of maintaining relatively consistent framing strategies, at least for same-sex marriage proponents, are perhaps most clear in the context of the California ballot initiatives, particularly the Proposition 8 campaign in 2008. Depending upon the outcome of the federal challenge to Proposition 8, the ballot is also where future policy on same-sex marriage is likely to be made in California. The earlier Proposition 22 campaign in 2000 would have (or at least could have) provided information to activist groups about the potential framing strategies of the opposing side in this particular policymaking venue and about how well their own earlier framing strategies were received by the voting public. This is the focus of the next chapter which discusses the initiative process in California and group framing strategies as they relate to same-sex marriage.

Chapter 3

A TALE OF TWO CAMPAIGNS: FRAMING SAME-SEX MARRIAGE FOR CALIFORNIA'S FOURTH BRANCH

“The politics of the initiative thus centers much more on arguments that move voters than more arcane questions of federalism or intergovernmental relations.”

–Magleby 1998, 148

Same-Sex Marriage on the Ballot

Between 1998, when voters in Alaska and Hawaii approved state constitutional amendments restricting the institution of marriage to heterosexual couples, and the end of 2010, the issue of same-sex marriage appeared on state ballots 34 times.¹ On only one of these occasions did voters fail to pass an initiative or referendum prohibiting same-sex couples from marrying.² During the general election in 2006, only 48.2% of Arizona voters voted in favor of Proposition 107, which would have amended the state constitution. However, voters approved a similar constitutional amendment, submitted by legislative referenda, with 56.2% support during the general election in 2008. Of the 31 states that have seen same-sex marriage prohibitions on the ballot, California is the only state where voters approved two different measures: first Proposition 22 in 2000, which statutorily prohibited same-sex mar-

¹These 34 instances actually constitute 33 separate initiatives and referenda. Nevada requires that voters approve constitutional initiatives in two consecutive general elections before the initiative becomes law. Nevada voters thus voted on (and approved) Question 2, to amend the state constitution to recognize only marriages between a man and woman, twice - during the general elections of 2000 and 2002.

²Voters in Colorado and Washington have also been confronted with domestic partnership laws on the ballot in 2006 and 2009, respectively. Colorado's Referendum 1 failed to pass, with only 47.7% voting in favor of the law. Washington's Referendum 71, however, passed with 53.2% supporting the popular referendum. This was the first instance of voters approving a law granting same-sex couples some form of legal relationship recognition.

riage, and then Proposition 8 in 2008, which constitutionally prohibited same-sex marriage. As a result, California is a particularly useful case for studying activist groups' messaging and framing in the context of policymaking via ballot measures. While ballot measure campaigns tend to be relatively short-lived, lasting just several months, Proposition 22 and Proposition 8 provide two campaigns' worth of framing activity.

California is one of 24 states with the citizen initiative, the most direct form of democratic policymaking. While activists no doubt always have the public in mind when engaging in framing activity throughout a long policy struggle, ballot measure campaigns create a context in which the public and the policymakers are closely related audiences. Lacking the formal deliberative mechanisms present in other institutional venues (state legislatures, state courts), voters as policymakers rely almost entirely on information, framing, and cues from groups involved in direct legislation (Gerber 1999). Particularly in this context, activist groups' ability to shape the public's understanding of an issue and debate has the potential for the most direct impact on policy. This is also the context in which activists' behavior has the potential to look most like candidate behavior during an election, if it is going to at all. As referenced in chapter 2, Adam Simon (2002) suggests that candidate-centered campaigns do not adhere to the ideals proscribed by models of deliberative democracy. Does the same hold true for issue-centered campaigns?

Chapter 2 examined activist framing regarding same-sex marriage in California through an analysis of group press releases focusing on the issue. I illustrated that groups talk past each other more often than they engage or interact with their opponents' messages and frames. At least as portrayed through group press releases, the same-sex marriage debate contains very little dialogue. Furthermore, I suggested that issue framing in the context of the California ballot initiatives—when groups most directly appeal to the voting public—makes the potential consequences of framing interactions, or lack thereof, most striking. The two ballot campaigns in California provide an opportunity to examine not just whether or not groups respond to one another in the moment, but also whether or not they react to information gained from the earlier campaign. The earlier Proposition 22

campaign could have provided information to groups about the potential framing strategies of the opposing side in regard to the ballot and about how well their own earlier framing strategies were received by the voting public; in other words, the two campaigns provide an opportunity for political learning, where groups can assess the success of their strategies for “advocating a given policy idea or problem” during the Proposition 22 campaign and make adjustments towards potentially more successful, sophisticated, and compelling advocacy for the Proposition 8 campaign (May 1992).

This chapter uses the subset of press releases focusing on Proposition 22 and Proposition 8 as well as campaign commercials and related materials to capture the arguments and frames made and advanced by proponents and opponents of same-sex marriage when focusing on the ballot. If the findings from studies of candidate centered campaigns extend to other, more issue oriented campaigns, then we would expect to find a lack of engagement in the Proposition 22 and Proposition 8 campaign materials similar to that found in as was found in the entire collection of group press releases. And, indeed, while I find some minimal engagement in the campaign commercials, I find even less dialogue in the press releases focusing on the ballot than existed in the sample as a whole. The amount of attention paid to rights and discrimination frames by pro same-sex marriage activists and separation of powers frames by anti same-sex marriage activists is even greater in the context of the ballot measure campaigns in California. The argumentation in press releases focusing on the Proposition 8 litigation is narrower, maintaining and amplifying the preferences from both sides, but also adding a substantial use of arguments about the constitutionality and legality of same-sex marriage policy. Following a brief discussion of the California initiative process and same-sex marriage policymaking through that initiative process, the chapter turns to discussion of the argumentation that took place during the ballot measure campaigns in 2000 and 2008.

The California Initiative

California's ballot initiative process has been referred to as "California's fourth branch of government."³ For nearly a century, California's ballot initiative process has played a critical role in shaping the state's policy agenda. It allows California voters to propose both statutes and amendments to the state Constitution, thereby granting a considerable amount of control over California politics and policy to them. Of the 24 states that currently have some form of initiative procedures in place, California ranks second behind Oregon in the number of measures seen on the ballot since the process was established. Between the initiative's adoption in 1911 and August 31, 2010, 342 initiatives have appeared on the California ballot.⁴ Perhaps two of the better known initiatives that California voters have passed are Proposition 13 and Proposition 187. Proposition 13 passed in the 1978 primary election, severely capping property taxes within the state; the loss of property tax revenue arguably created revenue problems for many California cities and counties. Proposition 187 passed in the 1994 general election and made illegal aliens ineligible for any public services. The constitutional amendment was quickly challenged in court and eventually dropped during the appeals process. Along with taxes and immigration, the initiative process has allowed California voters to raise tobacco taxes, eliminate state affirmative action programs, adopt a state lottery, revise election laws, regulate toxic materials, and so on.⁵ On two occasions since 2000, California voters have been given the opportunity to make policy in regards to marriage recognition for gay and lesbian couples.

On October 10, 1911 California became the tenth state in the United States to adopt the initiative process when the voters overwhelmingly ratified Senate Constitutional Amendment 22 (168,744 to 52,093) in a special election called by Progressive Governor Hiram

³California Commission on Campaign Financing, *Democracy By Initiative: Shaping California's Fourth Branch of Government*, Center for Responsive Government, 1992.

⁴Information from the National Conference of State Legislatures website: www.ncls.org. Oregon adopted the initiative process in 1902 and has had 353 initiatives on the ballot.

⁵National Conference of State Legislatures website: www.ncls.org

Johnson. Earlier that year, the Amendment passed 35 to 1 in the Senate and 72 to 0 in the Assembly. Hiram had been instrumental in getting initiative and referendum ordinances passed in many California cities prior to his election to Governor. Originally, the measure amended Article II of the California State Constitution to establish both indirect and direct initiative processes. The former, where a citizen may appeal to the Legislature directly in order to place an initiative on the ballot, was repealed in 1966 when the voters ratified Proposition 1A. The previous year, the Constitutional Revision Commission recommended the indirect initiative be removed as a result of its rare use. Until that time, only 19 indirect initiatives had been circulated, only four had qualified, and only one of these was ever adopted by the Legislature. Prior to 1960, initiatives could only be placed on ballots during general elections. Since then, however, initiatives are seen on statewide primary, general, and special elections.

California's initiative and referendum guidelines are outlined in both statute and state constitution. They are collected together, and can be found, at the California Secretary of State's website⁶. According to the Initiative Guide prepared by the Secretary of State, there are five steps an individual or group must proceed through in order to qualify a measure for the ballot. First, proponents of a potential initiative must write a draft of the text of the proposed law, either with the assistance of the Legislative Counsel or privately. Second, the draft is submitted to the Attorney General along with a request for a title and summary and a \$200 fee. Within 15 days of receiving the final draft, the Attorney General determines the official title and summary of the measure and whether or not it requires fiscal analysis. Once proponents have received the official summary, they may begin circulating petitions in order to collect signatures. Signatures must be collected within 150 days of receipt of the title and summary and the measure must qualify no less than 131 days before the statewide election at which the measure is to be placed on the ballot. The format for the initiative petition is specified by California law and the number of signatures required is

⁶<http://www.sos.ca.gov/>

determined by the total votes cast for Governor in the state's last gubernatorial election. An initiative statute requires as many signatures as at least 5% of the total votes cast; an initiative constitutional amendment requires at least 8%.

Finally, the signed petitions must be filed with the appropriate county elections officials for verification. First, election officials determine the total number of signatures and submit the number to the Secretary of State. If proponents failed to obtain at least the required number, no further action is taken. On the other hand, if proponents were able to gather enough signatures, elections officials must verify a random sample of 500 signatures (or 3% of total signatures filed in county, depending on which number is higher). If it is determined that less than 95% of the required number of signatures are valid, the measure fails to qualify. If more than 110% of the required signatures are valid, the measure qualifies without the need for any more verification. If it's determined that the number of valid signatures is somewhere between 95% and 110% of the required total, every signature on the petitions must be verified.

In some ways, the California initiative process has evolved away from its Progressive and labor movement origins. During its first decades, the initiative was promoted as a way for citizens to check the State government. In other words, the initiative was intended to act as a supplement to, not a replacement for, legislative activity. Since the early 1970s, the number of initiatives circulated each year has increased dramatically.⁷ Spending on initiative campaigns has risen dramatically over the same period of time, so that millions of dollars are regularly spent on campaigns in support of and against initiatives every year. For some, this is evidence that special interests have co-opted the process in attempts to push policies through that might face resistance in the State Legislature.⁸

⁷J. Fred Silva, November 2000, "The California Initiative Process: Background and Perspective," Public Policy Institute of California.

⁸Robert M. Stern, "Democracy by Initiative: Shaping California's Fourth Branch of Government," Center for Governmental Studies.

Same-Sex Marriage on California's Ballot

Between 1971 and 1977, California's Family Code did not contain any specific language regarding sex or gender. In 1971, the Legislature removed references to "male" and "female" when it revised the language of the state's marriage laws to equalize the minimum age for men and women to marry. The relevant section now read "[a]ny unmarried person of the age of 18 years or upwards, and not otherwise disqualified, is capable of consenting to and consummating marriage." Relying on the gender neutral language, several same-sex couples sought marriage licenses in the mid-1970s.⁹ In 1977, the state legislature passed a law revising the section again so that it read "Marriage is a personal relation arising out of a civil contract between a man and a woman, to which the consent of the parties capable of making that contract is necessary." (Family Code Sec. 300) From this point, marriages for same-sex couples performed in the state of California were statutorily prohibited.

It was not until the early and mid 1990s that the issue of what to do with of out of state marriages between same-sex couples was raised. The Hawaiian case *Baehr v. Lewin* raised the real possibility (or threat, in the eyes of those opposed to same-sex marriage) of same-sex couples forcing their home state to recognize a marriage license obtained elsewhere. At the time, existing state law required California to honor out of state marriages, without any explicit reference to the sex of the parties of that marriage. In order to clarify California's marriage law so that only out of state marriages between a man and a woman would be recognized by the state of California, state Senator Pete Knight authored California's Defense of Marriage Act. After two failed attempts to pass it through the state legislature,¹⁰ the Act—dubbed the Knight Initiative after its author—was circulated and placed on the ballot during the 2000 primary election. On March 7, 2000 California voters approved Proposition 22—"Limit on Marriages"—by 61.4%, adding the following to California's Family Code: "Only marriage between a man and a woman is valid or recognized in California." (Family Code

⁹In re Marriage Cases

¹⁰AB 911 and AB 1982

Sec. 308.5). Originally, Knight cited *Baehr v. Lewin* in Hawaii as motivation for introducing the legislation.¹¹ In the months leading up to the election, the Vermont Supreme Court ruled that denying same-sex couples the legal rights and benefits of marriage was unconstitutional according to the state constitution in *Baker v. Nelson*. This wound up playing a fairly prominent role in Proposition 22 proponents' campaign.

Several constitutional initiatives related to same-sex relationship recognition were submitted in subsequent years. Many of them proposed amending the state constitution, not just to prohibit same-sex marriages, but to eliminate domestic partnership rights for any couple. Some argued that allowing a legal union with all of the rights of marriage, but with a different name, reduced marriage itself to nothing more than a name. This actually generated disagreement between conservative groups in 2005, when competing initiatives were submitted to the Secretary of State. ProtectMarriage.com, the group that would eventually be at the center of the Yes on 8 campaign, submitted an initiative that amended the constitution to restrict marriage to only a man and a woman. VoteYesMarriage.com submitted competing initiatives that banned any legal recognition for same-sex relationships.¹² None of these satisfied the signature requirements to make it to the ballot, perhaps because conservative groups failed to agree on a version of the amendment.

Proposition 8, originally titled "Limit on Marriage. Constitutional Amendment" was submitted to the California Secretary of State at the end of 2007. Proponents of the measure needed almost 700,000 valid petition signatures to qualify for the 2008 general election; proponents submitted 1.1 million signatures and Proposition 8 qualified for the November 4, 2008 election ballot on June 2. This was just two weeks after the Supreme Court announced its decision overturning the statute that resulted from Proposition 22. Prior to this, Proposition 8 supporters argued that an amendment to the constitution was needed to reinforce the statute that was eventually overturned by the Supreme Court on May 15.

¹¹Bill analysis.

¹²"Fatally-Flawed CA Marriage Amendment Won't Protect Marriage," September 22, 2005 article by Family Policy Network, familypolicy.net/ca

The state Supreme Court denied a request to delay issuing marriage licenses to same-sex couples until after the November 2008 election, given the pending ballot initiative, in June. On June 16, after 5pm, the first same-sex couples were married. A month later, the California Supreme Court denied a petition filed by same-sex marriage proponents requesting that Proposition 8 be removed from the ballot. During this time, Attorney General Jerry Brown changed the name of the ballot measure, in order to reflect the changed context that resulted from the Supreme Court's decision. Proponents of the measure challenged the new title, "Eliminates Right of Same-Sex Couples to Marry. Initiative Constitutional Amendment," in court arguing that it was prejudicial, but they were unsuccessful.

On November 4, 2008, after what appeared to be a close race, California voters passed Proposition 8—"Eliminates Right of Same-Sex Couples to Marry"—by 52%. The following day—the day the Proposition went into effect and halted the issuing of marriage licenses to same-sex couples—Lambda Legal, the National Center for Lesbian Rights, and the ACLU challenged the validity of the constitutional amendment in the California Supreme Court. The cities of San Francisco and Los Angeles, and Santa Clara County filed a similar challenge. A private attorney filed a third. On November 19, the California Supreme Court agreed to hear the cases, but denied a stay of the initiative. On March 5, 2009 the California Supreme Court heard oral arguments in *Strauss v. Horton*. The case argued that Proposition 8 was a revision to the California Constitution, rather than a simple amendment. Unlike a Constitutional amendment, Constitutional revisions require a two-thirds vote of the Legislature before being submitted to the voters.

On May 25, 2009 the California Supreme Court ruled that Proposition 8 was valid, but upheld the marriage licenses of those same-sex couples who had been married during the several months before Proposition 8 was passed. Just days before the ruling, Theodore Olson and David Boies filed a federal challenge to Proposition 8 to the US District Court for the Northern District of California on behalf of two gay and lesbian couples who applied for marriage licenses in May 2009, months after Proposition 8 amended the state constitution. Since state Attorney General Jerry Brown refused to defend Proposition 8, the official

proponents of the measure—ProtectMarriage.com—were allowed to intervene to defend the amendment and fill the void. On August 4, 2010 Judge Walker decided in favor of the same-sex couples, overturning Proposition 8 as a violation of the 14th Amendment of the US Constitution. The 9th Circuit Court stayed Judge Walker’s decision and heard oral arguments for the appeal in December 2010. Currently, the case is back in the hands of the California Supreme Court, after the Ninth Circuit certified a question to the Court asking whether or not supporters of Proposition 8 have standing.

Framing Same-Sex Marriage for California’s Fourth Branch

The count of press releases focusing on same-sex marriage policymaking through California’s ballot process can be found in Table 3.1. Press releases focusing on ballot measures to prohibit same-sex marriage (classified as “ballot”) as well as press releases focusing on the Proposition 8 litigation that quickly followed its passage (classified as “ballot in court”) are included. Proponents of same-sex marriage devoted proportionately more attention to the ballot than their opponents. Same-sex marriage proponents spent 21% of their press release activity focusing on the ballot from 2005 through 2008; opponents of same-sex marriage spent only 11% of their press release activity focusing on the ballot during this same time period. On the other hand, opponents of same-sex marriage devoted more attention to the ballot once Proposition 8 became the focus of litigation and court activity; 17% of opponents’ press releases were classified as “ballot in court,” while only 8% of proponents’ press releases were classified this way. The litigation against Proposition 8 created a context perfectly suited to same-sex marriage opponents’ arguments about separation of powers and the appropriate roles for government institutions. The opponents of same-sex marriage seized on the opportunity to juxtapose the majoritarian policymaking of the initiative against what they characterized as the “countermajoritarian” and “activist” policymaking of a few judges. The greater attention paid to Proposition 8 on behalf of same-sex marriage opponents once it became the focus of litigation suggests groups used the perceived threat created by the context to attract attention and mobilize supporters.

Table 3.1: Counts of Press Releases Focusing on the Ballot

| Pro/Anti | Venue | 1999 | 2000 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | Total |
|----------|-----------------|------|------|------|------|------|------|------|------|-----------|
| Pro ssm | ballot | 20 | 19 | 0 | 4 | 1 | 0 | 36 | 2 | 82 |
| | ballot in court | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 15 | 16 |
| Anti ssm | ballot | 6 | 6 | 0 | 1 | 0 | 0 | 16 | 1 | 30 |
| | ballot in court | 0 | 0 | 0 | 0 | 0 | 0 | 9 | 19 | 28 |

All of the press releases collected for 1999 and 2000 are from the archived No on Knight and Protect Marriage websites dedicated to Proposition 22. The remaining press releases from proponents of same-sex marriage are from the websites of Equality California, Lambda Legal, the National Center for Lesbian Rights, and No on 8.¹³ The remaining press releases from opponents of same-sex marriage are from the websites of the Alliance Defense Fund, Liberty Counsel, Save California, and Protect Marriage. Unsurprisingly, the majority of the press releases focusing on the ballot occur during the months leading up to the primary election in 2000, when voters approved Proposition 22, and the general election in 2008, when voters approved Proposition 8.

In 2005, at least three separate ballot measures were filed with the California Secretary of State to amend the California constitution to restrict marriage to between a man and a woman.¹⁴ Interestingly, opponents of same-sex marriage—proponents of the initiatives—devoted almost no press release activity attempting to generate attention for the initiatives. Randy Thomasson, founder of Campaign for Children and Families (or SaveCalifornia.com), was one of the proponents who submitted two of the measures. Only one press release from Liberty Counsel in August 2005 focused on one of the proposed initiatives. Foreshadowing a similar legal battle over the official title and summary of Proposition 8 in 2008, the press release criticized Attorney General Bill Lockyer for failing to “carry out his

¹³An archived version of the No on 8 website was used, as the site was no longer active. See chapter 2 for more detailed information on the collection of these press releases.

¹⁴November 17, 2005 California Secretary of State Bruce McPherson News Release “Three Proposed Initiatives Enter Circulation” obtained from the website www.sos.ca.gov

duty to prepare a neutral, factual title and summary.”¹⁵ Initiative proponents suggested a title and summary emphasizing the “protection of marriage rights;” the Attorney General, on the other hand, chose to emphasize how the initiative would impact, and in some cases eliminate, the rights granted through California’s domestic partnership law.¹⁶ Gay and lesbian groups, however, issued four press releases denouncing the measure as “extreme” and “mean-spirited.”¹⁷ A single press releases was issued in 2006 celebrating the initiative’s failure to qualify for the November 2006 ballot.¹⁸

The constellation of arguments regarding same-sex marriage in the ballot measure press releases is similar to that found in the entire collection of press releases, as discussed in chapter 2. There are a total of 517 statements in the press releases from LGBT organizations and a total of 270 statements in the press releases from anti-LGBT organizations. *Groups tended to favor a few frames and do little to engage or counter the arguments of their opposition. However, the tendency to “talk past each other” is even more extreme when groups targeted the initiative process.* Table 3.2 contains the counts and percentages of argument frames found within the press releases focusing on the ballot. It also contains the counts and percentages of argument frames in the press releases focusing on Proposition in court. I separated the statements in press releases focusing on ballot measures from those focusing on the Proposition 8 litigation in order to assess whether or not groups altered their framing at all once two policymaking venues—the ballot and courts—were intertwined. The table clearly illustrates the lack of engagement between proponents and opponents in this subset of press releases. With the exception of the *violence* frame, wherever one side uses

¹⁵August 2, 2005 Liberty Counsel press release “VoteYesMarriage.com Files Suit Demanding That the California Attorney General Amend the Inaccurate and Prejudicial Ballot Title and Summary”

¹⁶“Request for Title and Summary” exchange between the Office of the Attorney General and initiative proponents, 2005.

¹⁷May 19, 2005 joint EQCA and NCLR press release “Joint EQCA and NCLR Statement on Introduction of Constitutional Amendment to Hurt all California Families”; also press releases from May 25, July 25, and October 7, 2005.

¹⁸May 15, 2006 Equality California press release “Marriage Equality Opponents Fail In Effort to Place Discrimination Measure on California’s November 2006 Ballot.”

a frame with a frequency greater than a few percentage points, the other side either doesn't speak to at all or addresses it only a few times. Furthermore, the proportions of attention devoted to the few favored frames is accentuated in press releases focusing on ballot measures or the Proposition 8 litigation relative the entire collection of press releases. While *rights* and *discrimination* constituted 51% of same-sex marriage proponents' arguments overall, they accounted for 64% of their arguments in press releases discussing Proposition 22 or Proposition 8 and 74% in press releases discussing the Proposition 8 litigation. Same-sex marriage opponents devoted 54% of their arguments to separation of powers frames (*public, judges, and states*) in press releases aimed at the ballot measures, compared to 40% of their press release arguments overall.

Along with press releases aimed at creating and controlling the messages received by the public from the media, the ballot measure campaigns created several commercials that aired on California television channels in an effort to persuade voters. The archived ProtectMarriage.com website for Proposition 22 contained five television advertisements. The archived No on Knight website contained three television advertisements and a fourth was obtained from the website for the Gay and Lesbian Alliance Against Defamation's (GLAAD) archive of LGBT related print and video advertisements. The ProtectMarriage.com website for the Yes on 8 campaign had five commercials. The archived No on 8 website contained fourteen commercials; five more were found in GLAAD's website archive. A list of the commercials from both campaigns, including their lengths and date of release (when available) can be found in Table 3.¹⁹

While constrained in terms of time and financial resources, commercials provide a forum for activists to target messages at the public without filtering through journalistic norms and constraints like those discussed in the next chapter. They are also a low cost way for potential voters to learn about ballot measures, as all they require is having the appropri-

¹⁹Many of the release dates were determined by references in the collection of press releases. Many of the release dates for No on 8 commercials are the date the video was posted on the NO on 8 YouTube channel. However, the archived No on 8 website linked to the YouTube channel, so I used these dates when I could find no other resource.

Table 3.2: Argument Frame Counts in Ballot Related Press Releases

| <i>Frame</i> | SSM advocates | | SSM opponents | |
|----------------|----------------------|-----------------|----------------------|-----------------|
| | ballot | ballot in court | ballot | ballot in court |
| rights | .20 (81) | .30 (31) | 0 | 0 |
| discrimination | .44 (182) | .42 (43) | 0 | 0 |
| violence | .04 (17) | 0 | .11 (14) | .01 (1) |
| status | .00 (1) | .02 (2) | 0 | 0 |
| benefits | .04 (18) | .01 (1) | 0 | 0 |
| love | .01 (4) | 0 | 0 | 0 |
| threat | .02 (7) | 0 | 0 | 0 |
| diversion | .08 (35) | 0 | .06 (8) | 0 |
| economy | 0 | .01 (1) | 0 | 0 |
| special | 0 | 0 | 0 | 0 |
| marriage | 0 | 0 | .18 (22) | .25 (36) |
| religion | .01 (6) | 0 | .01 (1) | 0 |
| family | .11 (44) | .03 (3) | .02 (3) | .01 (2) |
| children | .01 (4) | 0 | .05 (6) | .02 (3) |
| slope | 0 | 0 | .02 (2) | 0 |
| legal | 0 | .20 (21) | .01 (1) | .14 (20) |
| public | .04 (15) | .01 (1) | .41 (51) | .51 (74) |
| judges | 0 | 0 | .03 (4) | .06 (9) |
| states | 0 | 0 | .10 (13) | 0 |
| Total | 414 | 103 | 125 | 145 |

Values in each cell are proportions of all frames advanced by that side from the press releases classified in that column. Values in parenthesis are the actual count of arguments.

| <i>Title</i> | <i>Position</i> | <i>Length</i> | <i>Date</i> |
|--|-----------------|---------------|--------------------|
| Proposition 22 | | | |
| 50th Anniversary (originally in Spanish) | Yes | 0:30 | January 20, 2000 |
| Memories | Yes | 0:30 | |
| Woman to Camera | Yes | 0:30 | |
| State's Choice | Yes | 0:30 | |
| Teacher/Schoolchildren | Yes | 0:30 | |
| Will & Grace | No | 0:26 | December 8, 1999 |
| Children/The Best | No | 0:30 | February 16, 2000 |
| More Government Interference/Man, Interrupted | No | 0:29 | February 16, 2000 |
| Second Class Citizens/Intend | No | 0:30 | March 1, 2000 |
| Proposition 8 | | | |
| Whether You Like it Or Not | Yes | 0:31 | September 29, 2008 |
| It's Already Happened | Yes | 0:31 | October 8, 2008 |
| Everything to do With Schools | Yes | 0:31 | October 24, 2008 |
| Finally the Truth | Yes | 0:31 | October 28, 2008 |
| Have You Really Thought About It? | Yes | 0:31 | October 29, 2008 |
| The Thorons | No | 0:39 | September 22, 2008 |
| Conversation | No | 0:31 | October 8, 2008 |
| Don't Buy Their Scare Tactics | No | 0:34 | October 9, 2008 |
| No vs. Yes | No | 0:55 | October 10, 2008 |
| Family | No | 0:57 | October 10, 2008 |
| Margaret Cho | No | 1:15 | October 14, 2008 |
| Who Prop 8 Really Affects | No | 0:32 | October 14, 2008 |
| Vote No on California Prop 8 - Ellen DeGeneres | No | 0:28 | October 14, 2008 |
| Unfair | No | 0:31 | October 15, 2008 |
| Prop 8 Has Nothing to do With Schools | No | 0:32 | October 22, 2008 |
| Tim Gunn Calls Prop 8 "Unattractive" | No | 0:34 | October 22, 2008 |
| Ugly Betty Cast (also in Spanish) | No | | October 25, 2008 |
| Constitution | No | 0:31 | October 28, 2008 |
| Senator Feinstein: No On Prop 8 | No | 0:32 | October 28, 2008 |
| Moms | No | 0:34 | October 29, 2008 |
| Discrimination (Samuel Jackson) | No | | October 30, 2008 |
| Divisive | No | 0:31 | November 1, 2008 |
| Parents | No | 0:31 | November 1, 2008 |
| Home Invasion | No | 1:01 | November 4, 2008 |

ate television station on, arguably a task that requires less effort than reading the daily newspaper. Cronin argues that advertising can be an important variable in ballot measure campaigns; many voters “make their decisions during the last few days of the election—precisely when media blitzes take place” (1989). Commercials, along with other sources of advertising, aim to define what an issue on the ballot should mean for voters and, subsequently, how they should vote. “While the authors of initiatives control the wording of their propositions, the campaign serves to define what the issue means for voters. Initiative campaigns are largely fought in thirty- and sixty-second commercials using attention-getting advertisements that motivate people either to care about a problem and vote for the proposition, or to create doubts about the initiative and scare voters into voting ‘no’” (Magleby 1998, 149).

I transcribed each of the commercials and coded them using the same coding scheme of 19 argument frames used in the previous two chapters. The results are in Table 3.3. While these will be discussed in greater detail below, a few findings are immediately clear from the table. First, there is similarly minimal engagement between opponents and proponents of the ballot measures in their commercials. Second, proponents of same-sex marriage privileged rights and discrimination frames even more in their No on 8 than in their No on 22 commercials. In doing so, they shifted away from their earlier messages about creating contexts for violence and avoiding government interference. Thirdly, anti same-sex marriage groups shifted away from essentialist arguments about traditional marriage, favored in their Proposition 22 commercials, towards arguments about children. They especially favored raising the possibility that failure to pass Proposition 8 would force school curriculums to teach school children about same-sex marriage.

A Tale of Two Campaigns

Perhaps it was of little surprise that Proposition 22 passed with such a wide margin. Opponents of the measure were outspent during the campaign by proponents by nearly 3.6 million dollars. Ten committees are on record on the California Secretary of State website

Table 3.3: Argument Frame Counts in Campaign Commercials

| <i>Frame</i> | Proposition 22 | | Proposition 8 | |
|----------------|-----------------------|-----------|----------------------|-----------|
| | pro SSM | anti SSM | pro SSM | anti SSM |
| rights | 1 | 0 | 25 | 0 |
| discrimination | 3 | 0 | 48 | 0 |
| violence | 4 | 0 | 0 | 0 |
| status | 1 | 0 | 0 | 0 |
| love | 1 | 0 | 3 | 0 |
| threat | 2 | 0 | 7 | 0 |
| diversion | 1 | 0 | 3 | 0 |
| marriage | 0 | 14 | 0 | 3 |
| religion | 0 | 0 | 5 | 2 |
| family | 0 | 5 | 3 | 0 |
| children | 5 | 5 | 11 | 21 |
| legal | 0 | 0 | 2 | 0 |
| public | 0 | 0 | 0 | 3 |
| judges | 0 | 1 | 0 | 2 |
| states | 0 | 3 | 4 | 0 |
| Total | 18 | 28 | 111 | 31 |

During the Proposition 22 campaign, four commercials were aired in opposition to the measure and five commercials were aired in support. During the Proposition 8 campaign, five commercials were aired in support of the measure and nineteen opposed.

Columns are designated by their position in regards to same-sex marriage, not in regards to their positions on the ballot measures. This is slightly confusing. Columns labeled “pro SSM” are for commercials opposed to both ballot measures—No on 22 and No on 8; columns labeled “anti SSM” are for commercials supporting both ballot measures—Yes on 22 and Yes on 8.

in opposition to Proposition 22; only four committees are on record in support of Proposition 22. However opponents spent only \$4.8 million in comparison to the \$8.4 million spent by proponents.²⁰ In the Field Polls asking California voters about same-sex marriage in the months prior to the passage of Proposition 22, a majority of those surveyed always responded that they would be inclined to vote yes on the measure. The last Field Poll conducted before the March 7, 2000 election was done in the last week of February. When asked how they would vote on Proposition 22 if the election were held that day, 53% of respondents said they would vote “yes” on the measure, only 40% said they would vote “no”, and 7% said they were “unsure.” If the Yes on 22 campaign was effective, this opinion data suggests that it may have helped persuade the undecided voters, as the eventual vote on Proposition 22 doesn’t indicate a switch in voter opinion, only a more dramatic margin between the two sides.

Eight years later, the social and political context had changed when same-sex marriage made it on to the California ballot again. By November 2008 all three branches of the California government had come out in favor of recognizing same-sex marriages. Same-sex marriage in California was no longer a hypothetical possibility, but a reality. Since the state Supreme Court announced its ruling on May 15, approximately 18,000 gay and lesbian couples had received marriage licenses.²¹ Same-sex marriages had been taking place in Massachusetts for over four years and the Connecticut state Supreme Court had recently legalized same-sex marriage in the state. the marriages that had been taking place in California, the initiative’s circulating title was changed from the more ambiguous “Limit on Marriage. Constitutional Amendment” (much like the title of its predecessor) to “Eliminates Rights of Same-Sex Couples to Marry. Initiative Constitutional Amendment” by the Attorney General for the initiative’s placement on the ballot. According to the Field Poll, it appeared that Californians’ attitudes in regards to same-sex marriage had gradually been

²⁰Information collected from The California Voter Foundation at www.calvoter.org and the website for the California Secretary of State www.sos.ca.gov

²¹November 5, 2008 EQCA press release “Legal Groups File Lawsuit Challenging Proposition 8, Should It Pass”

shifting in favor of recognizing such marriages legally, and away from banning such marriages either through statute or constitutional amendment. Finally, spending on the Proposition 8 campaigns, while much higher than for the 22 campaigns, was more equalized, with both sides spending approximately \$30 million.²²

What, if any, impact did the results of the Proposition 22 campaign and the changes that occurred politically, socially, and legally, have on the two ballot measure campaigns? Did proponents or opponents of the two campaigns make any adjustments or alterations to their primary messages? The following sections discuss the framing from the two campaigns in greater detail.

The right to be left alone and the fundamental right to marry

As already illustrated in the previous chapter and the tables above, proponents of same-sex marriage almost universally favored arguments about discrimination and rights in their press release and campaign materials. The NO on Knight website highlighted four characteristics of Proposition 22 in bold text on its home page, presumably as suggested reasons to vote against the measure: “It’s Government Interference,” “It Discriminates Against Lesbian and Gay Couples,” “It Puts Politics Over Family,” and “A Broad Coalition Opposes Prop 22.” With the California state flag at the top, visitors to the site would have been confronted with a particular version, or story about, California and Californians that the NO on Knight campaign hoped would lead to Proposition 22’s failure. Their California, as portrayed through the campaign site and ballot measure press releases, is one where citizens respect the privacy and personal lives of their neighbors; where people are decent, are compassionate, and don’t want to legalize discrimination, even if same-sex couples make them uncomfortable; and where, as a result, voters do not want to play a role in what the campaign characterized as Pete Knight’s public display of personal family conflicts. This was condensed neatly into a phrase found in nearly every NO on Knight press release, describ-

²²Figure is taken from www.calvoter.org and represents totals from slightly before the November 4 election.

ing the measure as “unfair, divisive, and intrusive.” California and its citizens are “better than that” and wouldn’t want to treat a group of people differently in the law because of their sexual orientation.²³ The NO on 8 campaign, instead of painting a portrait of California identity, chose to feature prominent politicians—Barack Obama, Arnold Schwarzenegger, and Dianne Feinstein—who opposed Proposition 8 on their home page. They opted to spend some attention on “trusted messengers” who had expressed opinions consistent with their overall arguments about fairness and equality. However, at the top of every page on the website and every NO on 8 press release were the same words: “Vote NO on Prop 8. Unfair. Wrong.” Visitors and readers were presented with a very similar message: ballot measures banning same-sex marriage violate values of fairness and decency.

Arguments using the language of equality, but especially of discrimination and fairness, were disproportionately favored in the NO on Knight press releases and all of the pro gay and lesbian press releases from the Proposition 8 campaign.²⁴ While just over half of the statements coded in all of same-sex marriage supporters’ press releases used the language of rights and discrimination, almost two-thirds (64%) of Proposition 22 opponents’ arguments in the subset of press releases focusing on the ballot were of these two argument frame categories. The preference for rights and discrimination arguments by pro same-sex marriage groups was even more dramatic during the Proposition 8 campaign, where 82% of statements regarding same-sex marriage and the ballot measure were based on ideas of rights, equality, and anti-discrimination.

The distribution of the use of rights and discrimination arguments in gay and lesbian groups’ press releases during the Proposition 22 and Proposition 8 campaigns can be found in Figure 3.1. The graph illustrates that pro gay and lesbian activists (opponents of both Propositions) consistently made arguments that Propositions 22 and 8 were discriminatory and in violation of equal rights. With the exception of two months during the No on Knight

²³Vote NO on Knight press releases from 1999 and 2000

²⁴Unfortunately, the only press releases obtained for 1999 and 2000 time period were from the NO on Knight campaign. However, later years include material from the other activist groups – EQCA, Lambda Legal, and NCLR—as well as NO on 8 campaign material.

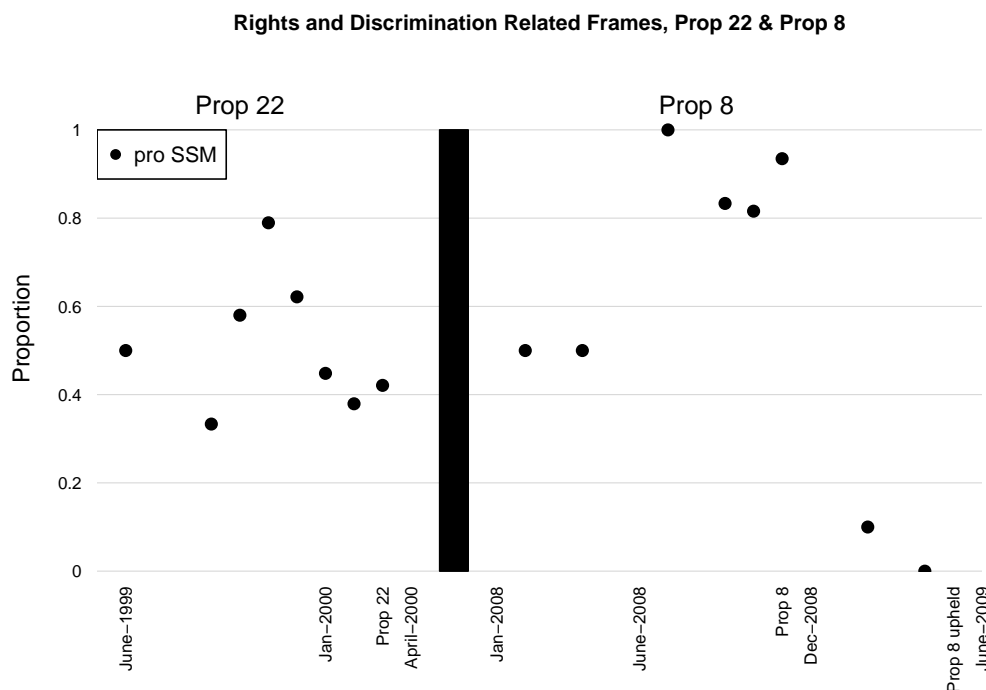


Figure 3.1: Times series graph of rights and rights related argument frames, as a proportion of argument frames, during the Proposition 22 and Proposition 8 campaigns: May 1999-April 2000; January 2008-December 2008. The thick, black vertical line separates the two non-contiguous campaign time periods. The figure represents the 243 *rights* and *discrimination* argument frames advanced by same-sex marriage supporters in their ballot measure press releases. The figure does not show the 15 rights/discrimination frames from 2005 and 2006. there were no *special* argument frames in the ballot measure press releases.

campaign in 1999 and 2000, rights and discrimination arguments constituted at least 40% of all arguments made by gay and lesbian advocates during any month with press releases regarding the ballot initiatives. Groups involved in the NO on 8 campaign overwhelmingly favored arguments about equal rights and treatment, even more than the NO on 22 campaign; in the months leading up to the 2008 general election, at least 80% of their arguments about same-sex marriage and Proposition 8 used these two argument frames.

Opponents of Propositions 22 and 8 both favored appealing to Californians' sense of decency and (presumed) unwillingness to treat a group of people differently to similar de-

grees. Arguments using the *discrimination* frame made up 45% and 47% of arguments advanced by pro gay and lesbian activists regarding Proposition 22 and Proposition 8, respectively. Particularly during the Proposition 22 campaign, arguments emphasized how the measure singled out a specific group of people for discriminatory treatment under the law. Voters should practice tolerance, not discrimination, and realize the measures are anti-gay rather than pro-family, as their proponents argue. “Prop 22 seeks to unfairly single out gay and lesbian people and their families” and was “intended to codify the second-class status of gay and lesbian couples.”²⁵ This sentiment was echoed throughout the press releases regarding Proposition 8. Several releases celebrated politicians publicly coming out against the “discriminatory measure” and argued that “Californians do not want their Constitution to single out people to be treated differently.”²⁶ Opponents of the measure—various politicians, companies, and major newspapers in the state—urged voters to recognize that “the state constitution shouldn’t be used to turn some people into second-class citizens.”²⁷

Likely in response to persistent reminders from the Yes on 8 campaign that California voters overwhelmingly approved Proposition 22 eight and a half years earlier, same-sex marriage activists tried to explicitly distance the two propositions and campaigns. “This campaign is not about what happened nearly nine years ago. This campaign is about whether Californians, right now, in 2008 are willing to eliminate a fundamental right for one group of citizens.”²⁸ The increase in rights/discrimination arguments during the Proposition 8 campaign, as illustrated in Figure 3.1 was due to more arguments like these that appealed to notions of equality and fundamental rights. Opponents of Proposition 22 made 16 *rights* arguments (7% of their arguments about Proposition 22), while opponents of

²⁵January 20, 2000 NO on Knight press release “Prop 22 Anti-Gay, Not Pro-Family”

²⁶July 16, 2008 EQCA press release “CA Supreme Court Rules on Bennett v. Bowen; also, for example: July 1, 2008 EQCA press release “EQCA Applauds Obama’s Opposition of Proposition 8;” April 11, 2008 EQCA press release “Governor Opposes Proposed Ban on Marriage for Same-Sex Couples”; July 29, 2008 EQCA press release “PG&E Announces \$250,000 Contribution to Fight Prop. 8”

²⁷October 26, 2008 No on 8 press release

²⁸September 29, 2008 No on 8 press release “Prop 8 Opponents Call TV Ad False and Mislead”

Proposition 8 made 53 of these arguments (35% of their arguments about Proposition 8). This is probably explained, at least in part, by the different legal and social context of the two campaigns. The Proposition 8 campaign took place in the wake of the California Supreme Court's declaration that denying same-sex couples the right to marry was unconstitutional and alongside the subsequent marriage of thousands of gay and lesbian couples. Proposition 8 would not only change California constitutional law, it would end or take away a right that had only recently been granted by the state's highest court. While the NO on 22 campaign had the option of avoiding explicitly addressing the topic of same-sex marriage because same-sex marriage was not yet a reality in any jurisdiction in the United States, the NO on 8 campaign was working while same-sex marriage rights in California were still new, being exercised, and being celebrated.

As a result, many of the arguments opposing Proposition 8, implicitly or explicitly referencing the Supreme Court ruling, reminded people that supporting the measure would take away same-sex couples' "fundamental right" to marry.²⁹ The language matched that used by Justice Ronald George in his majority opinion in the marriage cases. "Although our state Constitution does not contain any explicit reference to a "right to marry," past California cases establish beyond question that the right to marry is a fundamental right whose protection is guaranteed to all persons by the California Constitution." The same "fair-minded" Californians who approved Proposition 22 were now being asked, via Proposition 8, to "take away rights from one group of people" which would "set [the] state, and our country, back in the fight for fundamental fairness and equal rights."³⁰ In response to a Yes on 8 campaign television ad, the NO on 8 campaign issued a press release attempting to set the record straight. "Prop 8 eliminates a fundamental right to marry for same-sex couples, many of whom have been together for years. The proponents of Prop 8 know most voters do not support singling out specific members of our community to be treated differently under

²⁹The California Supreme Court regularly used "fundamental right" or "fundamental constitutional right" in its 121 page decision *In re Marriage Cases*.

³⁰October 30, 2008 No on 8 press release

the law. That's why they're trying to scare voters into believing Prop 8 is about something other than taking away fundamental rights from our friends, neighbors, and family members who are gay or lesbian." There is the same appeal to Californians' sense of decency and fairness as from pro gay and lesbian activists during the Proposition 22 campaign, but with the added weight of fundamental rights at stake. Underlying many of the appeals to fairness during the Proposition 22 campaign was the implicit desire, or right, to simply be left alone. On the other hand, opponents of 8 "...urge[d] all Californian voters to send the right message and uphold the rights of same-sex couples in California, by voting 'NO' on Prop 8 on Election Day."³¹ In 2008, same-sex marriage proponents were actively seeking formal equality in the law in relation to a particular legal status and the associated bundle of rights, benefits, and responsibilities.

The somewhat subtle and nuanced difference in the use of *discrimination* claims was clearer in a comparison of the No on Knight's and No on 8's campaign commercials. All four No on Knight commercials ask viewers to vote against discrimination, mirroring the overwhelming preference for rights and discrimination related arguments in same-sex marriage supporters' press releases. The first commercial that aired featured the four main characters of the television show "Will & Grace" talking to the camera, simply urging voters to protect "basic civil rights" and to "say no to discrimination by voting no on Knight." The next two commercials aired more than two months later: "The Best" and "Man, Interrupted."³² Both emphasize imparting the sorts of values featured on the website for No On Knight to one's children. The first asks, "You want the best for your children, but what if your child or the child of someone you know turns out to be gay? Do you still want the best for them?" The commercial begins with a mother tucking her young child into bed and continues with images of children and their (presumably heterosexual) parents—on the playground, in the family room, learning how to ride a bike. The second accuses Pete Knight

³¹October 24, 2008 No on 8 press release

³²February 16, 2000 No On Knight press release "No On Knight Launches Ad Campaign; Teachers Denounce Misleading "Yes" Ad"

of asking Californians to “vote on his private problem” with his gay son. By voting against Proposition 22, the man sitting on a couch in a home talking to the camera (identified as Jeff Davis from Van Nuys) will teach his kids the value of keeping the government out of private lives. Both advertisements appealed to parents’ assumed desire to do the best for their children, personalizing and individualizing the harm they claim Proposition 22 will cause. In the second half of “The Best”, text emphasizes that Proposition 22 “will be used to discriminate against gay people” and that “Gay marriage is already banned and stays banned” even if the measure doesn’t pass. Jeff Nuys suggests that voting for Proposition 22 will teach children that it’s okay to discriminate and invade the personal lives of others. There is an almost passive attitude in the commercials, simply asking voters to leave people alone and to not engage in actively (both by voting yes, but also by explicitly adding statutory language) discriminating against anyone.

The fourth and final commercial, called “Intend,” began airing on March 1, 2000.³³ This commercial most clearly and explicitly resonates with gay and lesbian activists’ use of the *violence* frame during the Proposition 22 campaign. It shows a still photo, increasing in size until it fills the screen, of anti-LGBT protestors holding signs with things like “God Hates Fags” and “Fags Burn in Hell” written on them. Meanwhile, words fade in and out and a women’s voice tells the viewer to vote no on Proposition 22. The word “No” is red, accompanied by “Discrimination,” then “Second Class Citizen,” then “Violence” as soon as the photo reaches full size, and finally “On 22” in white. Just like in the No on Knight press releases, the advertisement appealed to the viewer’s sense of fairness and presumed aversion to violence in hopes of encouraging them to vote against Proposition 22.

With the state Supreme Court’s decision behind them, the No On 8 campaign doesn’t fail to mention marriage rights in their commercials this time around, including in each some mention of the elimination of rights if Prop 8 is to pass. Eleven of the No on 8 commercials explicitly highlight rights and discrimination arguments. The commercial “Dis-

³³March 1, 2000 No On Knight press release “Prop 22 Hurts Gay People; New TV Ad By No On Knight Campaign”

crimination” (narrated by Samuel Jackson) makes explicit references to earlier versions of racial discrimination in California. Using historical photos and video footage, it references Japanese American internment camps, laws prohibiting Armenians from purchasing houses in the Central Valley, and miscegenation statutes. “It wasn’t that long ago that discrimination was legal in California.” Linking the type of discrimination advanced by Proposition 8 with that seen against racial and ethnic minorities in the first half of the 20th century in California, the commercial asks viewers to distance themselves from the latter “sorry time in our history.” The narrator concludes by insisting “we have an obligation to pass along to our children a more tolerant, a more decent society.” Others make more subtle arguments about discrimination, appealing to parents’ desire to avoid imparting negative values on their children. The commercial “Moms” features women claiming to be mothers, stating they want their children “to know about the American Dream. About dignity, compassion, and kindness.” “Parents” features men and women claiming they “don’t want [their] kids to grow up with discrimination or thinking it’s okay to take away people’s rights.” Still others denounce writing discrimination into the Constitution or passing laws that treat people differently (“Constitution,” “NO vs. YES,” “Divisive,” “Conversations”).

Six of the No On 8 campaign commercials directly addressed the claims made by the Yes On 8 campaign. The most explicit of these, “Don’t Believe Their Scare Tactics,” shows television screens stacked on top of each other, all showing clips of the Yes On 8 campaign’s commercials. A man’s voice: “Their attacks have come before. And they always use the same scare tactics. This time, they want to eliminate rights and their using lies to persuade you.” The commercial denies the claims that Proposition 8 will affect church tax status and teaching in public schools, claiming both are lies. Near the end, the screen turns black and white text appears: “Keep government out of all of our lives.” The commercial ends with the No On 8 logo filling the screen. Four other commercials suggest that the argument that same-sex marriage will be taught in schools is a lie (“Prop 8 Has Nothing To Do With Schools,” “Moms”, “Divisive” and “Senator Feinstein: No on 8”).

“It’s our state, it should be our choice”

Proponents of Propositions 22 and 8 devoted no attention to the *rights* and *discrimination* argument frames in either their press releases or campaign commercials. Again, contrary to prior research on conservative counter-movements to progressive rights claims, same-sex marriage opponents’ press releases contained no arguments about special rights. The “special rights” argument was particularly salient in the campaign to pass one of the first same-sex marriage related ballot measures in Hawaii in 1998 (Goldberg-Hiller 2002). However, the campaign for Amendment 2 in Hawaii took place while the battle for same-sex marriage was going on in the states’ courts, but before a final decision had been announced by the Hawaii Supreme court. In contrast, gay and lesbian activists were not yet actively pursuing same-sex marriage rights in California at the time of Proposition 22’s campaign and passage. On the other hand, anti same-sex marriage activists’ campaign for Proposition 8 occurred after the California Supreme Court declared that same-sex couples had a fundamental right to marry.

Instead, supporters of Propositions 22 and 8 appealed to arguments about how same-sex marriage threatens sovereignty. This is consistent with another key feature that Goldberg-Hiller uncovered in the campaign for Amendment 2 in Hawaii. Hawaiians opposed to same-sex marriage mixed native notions of sovereignty with appeals to respect for democracy in their opposition to same-sex marriage (2002). The distribution of these can be found in Figure 3.2. Just over half (54%) of anti same-sex marriage groups’ arguments were not about the policy issue itself, but instead about the public’s opinion of the issue and which institutions should have a legitimate claim to policymaking on the issue. Approximately one-fourth of Proposition 22 proponents’ arguments used the *states* frame, a majority of which were used during the Proposition 22 campaign, and insisted the ballot measure was necessary in order to protect California’s state sovereignty. This was primarily in response to perceived threats from same-sex marriage related activity in other states. When Pete Knight, the author of Proposition 22, originally tried to pass legislation banning same-sex

marriage he cited the pending case in Hawaii, *Baehr v. Lewin*. By the time Proposition 22 qualified for the March 2000 ballot and the campaign was underway, *Baker v. Vermont* was pending in Vermont's state Supreme Court. The fear in both cases, for those opposed to same-sex marriage, was that same-sex couples would be able to get married in their state of residence and then force an unwilling state—in this case California—to recognize that same-sex marriage. A majority of states had already passed anti same-sex marriage legislation and Congress had passed the federal Defense of Marriage Act with this logic as justification. Supporters of the measure argued that Proposition 22 “protects California sovereignty, and our state’s right to decide important issues for ourselves.” Unlike California, the states that had passed protection of marriage laws were “not in danger of the Vermont decision affecting their sovereignty.”³⁴ Once Vermont’s Supreme Court ruled that it was unconstitutional to deny the rights of marriage to same-sex couples, the matter became imminent. On the day of the ruling in *Baker v. Nelson*, Communications Director for the Protection of Marriage Campaign Robert Glazier argued that “California’s right to define marriage for itself is now in grave danger. . . Only the passage of Proposition 11 on March 7, 2000 will quickly and permanently ensure California’s right to define marriage for itself and protect Californians from being forced to recognize same-sex marriages from out of state.”³⁵

The slogan “it’s our state, it should be our choice” was particularly compelling in the months leading up the primary election in 2000, since public opinion polls still showed that a majority of Californians opposed same-sex marriage and approved of amending California law in order to prohibit such marriages. The last Field Poll conducted before the March 7, 2000 election was done in the last week of February. When asked how they would vote on Proposition 22 if the election were held that day, 53% of respondents said they would vote yes on the measure, only 40% said they would vote no, and 7% said they were unsure. Same-sex marriage opponents regularly cited such polls while suggesting that California

³⁴“Gays for 22”; also September 9, 1999 press release “Protection of Marriage Initiative Holds Wide Lead”

³⁵December 20, 1999 California Protection of Marriage Initiative press release “Passage of Proposition 22 Critical After Vermont Ruling”

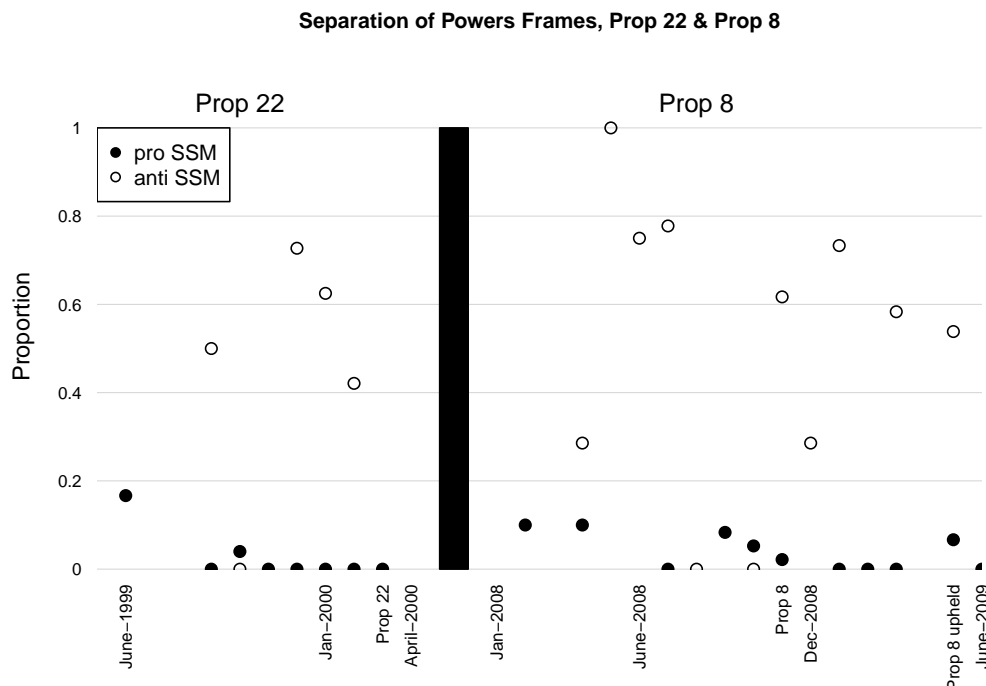


Figure 3.2: Time series graph of argument frames related to the separation of powers in a federalist government, as a proportion of argument frames, during the Proposition 22 and Proposition 8 campaigns: May 1999-April 2000; January 2008-December 2008. The thick, black vertical line separates the two non-contiguous campaign time periods. The figure combines the *public*, *judges*, and *states* argument frames. Pro same-sex marriage groups advanced 15 of these argument frames in their ballot measure press releases; anti-same sex marriage groups advanced 69. The figure does not show the 4 separation of powers frames advanced by pro same-sex marriage groups or the 5 separation of powers frames advanced by anti same-sex marriage groups in 2005 and 2009.

voters had a “right and responsibility...decide important issues for ourselves.”³⁶ This was the primary way in which the *public* frame was used during the Proposition 22 campaign. However, opinion shifted by the time the Field Poll asked about voting for Proposition 8. In the July before the general election in 2008, 51% of those polled said they would oppose Proposition 8 and only 42% said they would vote in favor of it. The context of same-sex marriage opponents’ use of the *public* frame shifted as well.

³⁶Gays for 22

During the Proposition 22 campaign, the frame was used to pit Californians against other states and other states' policymakers; during the Proposition 8 campaign, the frame was more often used to pit Californians against the other policymaking branches of the California government. "Our state" no longer included the various policymaking branches of government in 2008, but was an appeal to majority and populist rule. Instead of needing protection from other states, the California people must, the argument goes, recapture their sovereignty in the face of their representative government. Opponents of same-sex marriage had the passage of Proposition 22 in 2000 to empirically support these claims, and used the opportunity in the months leading up to the election to remind people that almost five million Californians voted for the measure. Just before signed petitions for Proposition 8 were submitted in April 2008, senior counsel for the Alliance Defense Fund, Joe Infranco, justified the need for the measure because "the amendment gives the people of California the opportunity to prevent activists from wrongfully using the courts to thwart what the voters made clear when they approved Proposition 22. The fact that Proposition 22 is under attack in the courts right now is evidence of how much the amendment is needed."³⁷ Supporters of the measure emphasized the need to respect the democratic process, and the people's right to make policy consistent with their preferences in regards to same-sex marriage. After the state Supreme Court announced its ruling, but before marriage licenses were issued to same-sex couples, Proposition 8 proponents asked the state Supreme Court to delay implementing the May 15 decision for these reasons. "The people of California have a constitutional right to vote on marriage, and we trust the high court will respect the democratic process."³⁸ Proponents of same-sex marriage were accused of trying to "silence the people's voice forever."³⁹

Pro same-sex marriage activists made very little effort to respond to these claims, but made a few statements usually highlighting evolving opinions on the issue of same-sex

³⁷April 23, 2008 Alliance Defense Fund press release

³⁸June 3, 2008 Alliance Defense Fund press release

³⁹July 1, 2008 Alliance Defense Fund press release

marriage. Before Proposition 8 actually qualified for the ballot, Governor Schwarzenegger suggested he didn't believe the measure would pass because he thought "California people are much further along on that issue."⁴⁰ The Field Polls from May, which for the first time in three decades of polling on the issue of same-sex marriage polls showed a majority of Californians approving of the right to marry (51% to 42%), generated hope and optimism among same-sex marriage supporters because "ballot measures that start off with a majority in opposition historically go down in defeat."⁴¹ Proportionately, the effort to respond to anti same-sex marriage groups' claims about state state sovereignty and majority rule was small, with *public* frames accounting for only 4% of their arguments. Gay and lesbian activists did not make any *states* or *judges* arguments.

The emphasis on sovereignty in press releases was not transferred to same-sex marriage opponents' campaign commercials. Only one commercial from each campaign (out of five collected) directly addressed the issue. The differences between them reflect the variations in conceptions of sovereignty appealed to by activists. One commercial during the Yes on 22 campaign, "State's Choice," takes place in what appears to be a law office - the camera scans across shelves of legal texts, marriage statutes open and lying on the desk, and a sheet of paper containing the text of Proposition 22 with a pen laying across it. The ad shows a quotation from Governor Gray Davis as it scans across the desk. In it, he said he didn't think the state was ready for same-sex marriages and that he would not sign a same-sex marriage bill if one were to cross his desk. As the camera zooms in on an open book with a page titled "Validity of Marriage," what looks like a large stamp appears over it: "OVERRULED, Superior Court of Another State." As the "Vote Yes on 22" logo appears, so do the words "Our State. Our Choice." Again, the focus is on the effect other states might have on California's ability to make its own decisions regarding marriage.

The first commercial aired by the Yes On 8 campaign, "Whether You Like It Or Not," focuses on the relationship between California voters and California policymakers. The ad

⁴⁰April 24, 2008 EQCA press release

⁴¹May 28, 2008 EQCA press release

highlights Gavin Newsom’s press conference on May 15th, 2008, the day the state Supreme Court overturned Proposition 22. It begins with a clip from the press conference, showing Newsom saying “The door’s wide open now; it’s gunna’ happen, whether you like it or not” and repeats Gavin saying those last six words at the end of the commercial. Over clips of the Court’s judges, a woman’s voice says “Four judges ignored four million voters and imposed same-sex marriage on California.” The commercial suggests that the judges made acceptance of gay marriage mandatory in California, but that California voters “don’t have to accept this.” Same-sex marriage doesn’t have to happen against the viewer’s wishes, as long as they vote yes on 8.

The past that never was, for the present

The remaining four of the five Yes on 22 commercials appeal to “tradition” and “common sense” understandings of marriage and family. With the exception of the “State’s Choice” commercial discussed above, it’s not clear that a yes vote on Proposition 22 is actually banning anything. Instead, the viewer is led to believe that voting for Proposition 22 is simply a vote for tradition and traditional values associated with family and marriage. The advertisements appeal to “common sense” understandings of “the way it’s always been” and to instilling those values in children. These messages are consistent with same-sex marriage opponents’ use of the *marriage* and *children* argument frames in their press releases. Only the last commercial makes any explicit connection between same-sex marriages and Proposition 22. The advertisement appeals to notions of state sovereignty, like the *state* frame in their press releases, and the fear that “activist judges” from other states could force California to adopt policy–recognition of same-sex marriages–contrary to the preferences of the state’s politicians and citizens.

The first television advertisement that aired in support of Proposition 22 was “50th Anniversary,” which first aired on Spanish language stations, directed at Latino voters⁴².

⁴²January 20, 2000 California Protection of Marriage Initiative press releases “YES on 22, Protection of Marriage, Debuts Campaign’s First AD: Air Campaign Begins on Spanish Language Stations”

During the commercial, several generations of a family celebrate outside - dancing, laughing, eating cake and drinking champagne - while a man's voice lets the viewer know that this is a celebration of his grandparents' 50th wedding anniversary. Family traditions, he claims, began with them. He never says how to vote on Proposition 22, just that it's about marriage and family. However, as the commercial comes to a close, the "Vote Yes on 22" logo appears.

A second commercial, "Memories," appealed directly to traditions associated with marriage and the notion that marriage has "always been" a particular way. An older woman appears to be sitting in an attic, going through what we assume is her own wedding memorabilia as a woman's voice asks the viewer if s/he remembers their wedding day. As she flips through wedding photos in an album, the voice answers for the viewer—"Of course you do." Just like generations before, it's one of the most important days of one's life. As the woman discovers her own wedding dress in a box and holds it against herself as she looks in a mirror, the voice reminds the viewer that marriage has always been about finding the right man or woman and raising a family and ends with "Please, vote yes on 22."

Two of the commercials, "Teacher" and "Woman to Camera," appealed more generally to traditional values and ask the viewer to think about what sort of message one is sending to children when they vote on Proposition 22. The first of these begins with a woman—who we quickly learn is a teacher—playing with young children on the playground; after a few seconds the woman is shown at her desk in a classroom while she addresses the camera. As she continues to speak, clips of elementary school children working and playing fill the screen. The emphasis is on shaping children's lives and sending a "simple, positive message" to them that marriage has been, and should remain, between a man and a woman. In the other, a woman addresses the camera against a blue background, explaining why she's voting yes on Proposition 22—it's the right, common sense thing to do that sends the appropriate message to children about "values, family, and marriage." Both conclude with the women saying "vote yes on 22."

In spite of their preoccupation with heterosexual marriage, opponents of same-sex mar-

riage made relatively few arguments emphasizing the potential impacts of same-sex marriage on family structure and children in their press releases. There was a single month during the Proposition 22 campaign when proponents of the measure made arguments using the *family* frame, as illustrated in Figure 3.3. The two *family* statements were actually made in the context of the campaign debuting its first television advertisement, which portrayed a large Latino family at a 50th wedding anniversary. The ad initially aired in Spanish, and was designed to “identify with the strong tradition of family within California’s Latino community.”⁴³

None of these four commercials mention same-sex marriage or the statutory language Proposition 22 would add to California’s marriage law. In other words, supporters of Proposition 22 did not ask voters to vote *against* something, but instead they asked voters to vote *for* something. A vote for Proposition 22, according to the commercials, is a vote for the protection, preservation, and reinforcement of tradition. Of course, one of the problems often encountered by counter- or backlash- movements is that the past, or status quo, that they devote attention to romanticizing rarely stands up to empirical “reality.” Or, at least, the past is much more complicated than such groups would have viewers believe. In this case, same-sex marriage opponents wax nostalgic for the idealized version of the heterosexual family, so central to the conservative model of morality according to George Lakoff (2002). Romance and nostalgia for the past such as this, in a way that masks or ignores imperfections, empowers the group of people the (re)memory of the past validates. Proposition 22 supporters have a positive vision, asking voters to look back, but also forward; the message about “traditional marriage” is not only about recapturing the pieces of an idealized heterosexual family, but also encouraging and reinforcing that model in ways that are even better than they were before. Nostalgia for the “way things used to be” is a powerful way for social and legal “insiders” to attempt to maintain and police boundaries from potential intrusion by “outsiders.” This is equally true for local contexts, like

⁴³January 20, 2000 California Protection of Marriage Initiative press release “YES on 22, Protection of Marriage, Debuts Campaign’s First Ad”

in the case of the residents of David Engel’s Sandor County (1984), as it is for broader, contemporary struggles for and against change, like in the case of same-sex marriage.

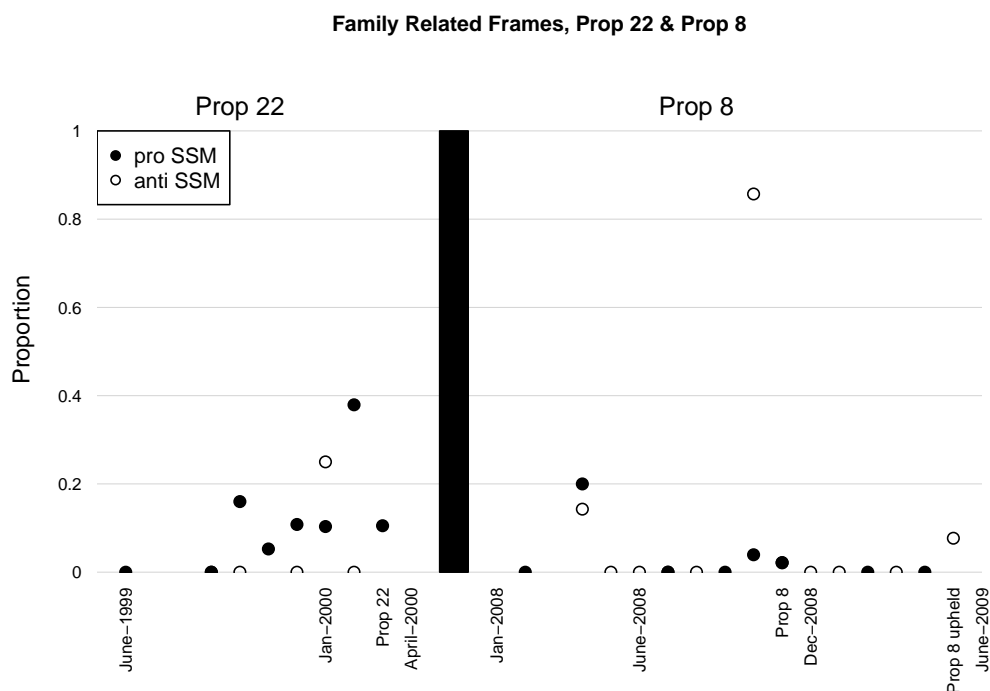


Figure 3.3: Times series graph of argument frames related to family and children, as a proportion of argument frames, during the Proposition 22 and Proposition 8 campaigns: May 1999-April 2000; January 2008-December 2008. The thick, black vertical line separates the two non-contiguous campaign time periods. The figure combines the *family* and *children* argument frames. Pro same-sex marriage groups advanced 48 of these argument frames in their ballot measure press releases; anti same-sex marriage groups advanced 9. The figure does not show the 9 family/child frames advanced by pro same-sex marriage groups in 2005 and 2006.

Children as “affective magnets”

At the center of the heterosexual family that shapes conservative morality, according to Lakoff, is children. Children need protecting from the dangers and temptations that exist in society. In the last two commercials discussed in the previous section, Proposition 22 supporters connect their romance with traditional marriage to the values voters should want to

instill in their children. During the Proposition 8 campaign, same-sex marriage opponents' focus shifted almost entirely to the potential effects a failure to pass the measure would have on children. This also indicates a shift away from arguments about the institution of marriage. Strategically, this could be for two reasons. First, several courts (and others) had, by this time, accepted studies and evidence to suggest that marriage as an institution has in fact not been static for centuries but, instead, has been dynamic over time. Secondly, same-sex couples had actually been getting married by the time the Proposition 8 campaign was underway. This could have made arguments about how gay and lesbian marriages would harm heterosexual marriages more difficult to persuade voters with.

Ann Burlein (2002) argues that the conservative right gets its popularity, not from overt bigotry or hatred, but by playing off of people's hopes and desires for their children. This, at least from their commercials, was the sort of campaign Proposition 8 supporters ran. An "affective magnet" is an object, target, or person(s) that has the power to transform someone's feelings and emotions into an inducement to *do* something. "Children act as affective magnets, attracting fears about sexuality and gender, race, class, and nationhood in ways that move people into the Right's orbit without requiring them actually to agree with its philosophical, doctrinal, or political positions. Conservative countermemories use children as the crossing point by which to reverse the direction of people's affective investments" (Burlein 2002, 8). In the case of Proposition 8, anti same-sex marriage activists relied on society's investment in children in hopes of encouraging them to vote yes on the initiative. Children remain at the center of this romance, or nostalgia, for an idealized heterosexual family unit, but the focus is on different attributes.

This shift is evident in frames found in the Yes on 22 and Yes 8 campaign commercials, detailed in Table 3.3. In their Yes on 22 commercials, 36% of anti same-sex marriage activists's coded arguments used the *family* and *children* frames; these were evenly represented, each with 18%. In contrast, arguments focusing on children accounted for 68% of their frames in the Yes on 8 campaign commercials. On the other hand, the use of the *marriage* frame dropped from 50% in the Yes on 22 commercials to 10% in the Yes on

8 commercials. The use of children during the Proposition 8 campaign was mirrored in same-sex marriage opponents' press releases, as illustrated by the single peak just before the election in Figure 3.3.

Three of the Yes on 8 commercials that aired—"It's Already Happened," "Everything to do With Schools," "Finally the Truth"—emphasized the potential impact a failure to pass Proposition 8 would have on young children. This was by far the strongest message in the Yes on 8 campaign's television advertisements, even though it was barely present in their press releases. The first of these shows a young girl coming home from school. As she hands a book over to her mom with the title *King & King*, she seems almost excited: "Mom, guess what I learned in school today?! . . . I learned how a prince married a prince and I can marry a princess!" The mother looks shocked and the camera freezes on her face. The second plays off similar fears, featuring a clip of an interview with two parents of a second grade boy who live in Massachusetts. They claim that after same-sex marriage was legalized there, their son came home from school one day and said he was taught that boys can marry other boys. The message from both commercials is clear: "It's already happened in Massachusetts. Gay marriage will be taught in your schools. Unless we vote yes on Proposition 8." The third of these showed clips of young children at a lesbian wedding. A man's voice says "Opponents of Proposition 8 said gay marriage has nothing to do with schools. Then a public school took first graders to a lesbian wedding calling it a teaching moment." While the commercial concludes and focuses on the young girl's face, it claims "Children will be taught about gay marriage unless we vote yes on Proposition 8."

The final commercial titled "Have you really thought about it?" aired on October 29 and combined the fear that failure to pass Proposition 8 would mean parents would lose control over what their children learned in schools with the suggestion that same-sex marriage was forced on California by judges in San Francisco. The commercial ends with a mother and daughter reading on a couch. A woman's voice asks "Have you thought about what same-sex marriage means. . ." and the young daughter on the couch finishes the question ". . . to me?" The image of the young girl's face stays on the screen while the Yes On 8 logo

appears.

Even though arguments about traditional marriage remained central to same-sex marriage opponents' arguments as portrayed through their press releases, only one of the Yes on 8 commercials explicitly uses the phrase "traditional marriage," telling the viewer that voting for Proposition 8 restores the institution as it has always been. "Traditional marriage" is of course implied in all of the commercials; the fear that schoolchildren will be taught same-sex marriage in favorable terms is rooted in parents' (assumed) desire to maintain heterosexual understandings of marriage for their young children. None of the commercials actually suggest what the horrible consequences of teaching schoolchildren about same-sex marriage will be, but the clear implication is that children will grow up confused, learn to devalue heterosexual relationships and marriage, and perhaps even choose to become gay themselves.

The case of the missing same-sex couple

While opponents of same-sex marriage mobilized to turn a political issue into a "gut" issue through the deployment of fears about impressionable children, proponents of same-sex marriage, arguably, set out to do the opposite (Burlein 2002). Part of this is reflected in the movement away from discussion of family and children in their campaign commercials. During their No on 22 campaign, activists devoted almost 28% of the arguments in their commercials to children. Primarily these had to do with teaching children the values of fairness and equality. In contrast, family and children related arguments were only 13% of the arguments in their No on 8 campaign commercials. Figure 3.3 illustrates this shift, as it shows activity around family and children frames during the Proposition 22 campaign, but only one month prior to Proposition 8 where press releases paid substantial attention to family and children related frames. Interestingly, however, even when used, such arguments rarely explicitly referenced gay and lesbian families or gay and lesbian children.

None of the advertisements suggest that a no vote on Prop 22 was in any way a pro-gay and lesbian position. The advertisements try to appeal to Californians' sense of decency

and fairness. The position taken in the commercials is a passive one, emphasizing that the No On Knight campaign is not asking the viewer to accept gays and lesbians at all, just to leave California law the way it currently stands. In an effort to move the debate over Proposition 22 away from thoughts and images of gays and lesbians getting married, arguments advanced by NO on Knight frequently began with some version of “no matter how you feel about marriage...” In fact, this idea was featured in the official ballot summary and arguments printed in the Voter’ Guide. “You don’t need to support gay marriage to oppose Proposition 22.” Even if the voter finds the idea of same-sex couples getting married uncomfortable, they can still exercise fairness and respect by voting against the measure. The argument echoed the bold text featured on the campaign’s website: “You just have to believe in a few basic values—keeping government out of our personal lives, respecting each other’s privacy, and not singling out one group for discrimination.”⁴⁴ Opponents of Proposition 22 reminded voters that California statute already defined marriage as a “personal relation arising out of a civil contract between a man and a woman” (California Family Code Part 1, Sec 300(a)) at this time, suggesting the measure was merely a needless law hiding a more complicated, sordid agenda. In this way, gay and lesbian activists’ arguments about fairness and discrimination were integrated into a broader effort to complicate and contextualize what proponents of Proposition 22 insisted was a very “simple” and “common sense” initiative.

Occasionally the use of the *family* frame by pro same-sex marriage advocates in their press releases was in specific reference to same-sex couple families, usually with reference to how laws similar to the Knight Initiative had been used in other states to oppose domestic partnership, child custody, and adoption rights.⁴⁵ However, it was more common that it was used in the context of more generic arguments about how anti-same sex marriage ballot measures would “hurt families” and were an “attack on families.” At times, this was

⁴⁴“2000 California Primary Election Ballot Measure Summary” and “Limit on Marriages. Initiative Statute. Official Title and Summary” obtained from the website for California’s Secretary of State.

⁴⁵February 10, 2000 press release “Premier Gay Financial Network Pledges to Match Donations in Grass-roots Push”

an appeal to particular groups of families—Latino families, working families—in hopes of winning those groups’ votes.⁴⁶ Frequently, during both campaigns, same-sex marriage activists used the frame to raise the possibility that voters might know a gay or lesbian family member, or someone with a gay or lesbian family member. “Proposition 22 hurts families that have a member of that family that is gay or lesbian - a son or daughter, a mother or a father.”⁴⁷ Opponents of both measures attempted to personalize and individualize the issue, reminding voters that if they were not gay or lesbian, they are probably somehow connected to someone who is, and thus the Propositions were not about random strangers. “As they prepare to vote, parents and grandparents should consider that it could be people they love who are disenfranchised by Proposition 8. Proposition 8 deprives people who are not strangers, but people we know and love, of the fundamental right to marry.”⁴⁸ Again, much like in the context of their use of rights and discrimination arguments, pro gay and lesbian activists used family related statements, not to refer to actual same-sex couples, but to gay and lesbian individuals who might be friends, neighbors, or family members. There is the same avoidance of issues that invoke thoughts of same-sex intimacy.

Since no one could reasonably pretend the fight was over something other than same-sex marriage, the suggestion that it didn’t matter how voters felt about same-sex couples and marriage was much less visible during the Proposition 8 campaign than during the Proposition 22 campaign. However, it was not completely absent. Presumably, the potential strategic benefit from keeping the “ick factor” outside of the campaign and from influencing peoples’ votes made the appeal difficult to resist. Gay and lesbian activists no doubt understood that many people, during both campaigns, still found the idea of intimacy between individuals of the same sex uncomfortable or even repellant (Thomas 2003). Drawing attention to gay and lesbian relationships, as the topic of marriage unavoidably

⁴⁶January 11, 2000 press release

⁴⁷February 29, 2000 press release “Labor/Latino Community Leader Dolores Huerta Says No to Prop 22”

⁴⁸October 20, 2008 EQCA press release “Legendary Pianist Leon Fleisher Performs for NO on 8 Fundraiser”

does, calls attention to the emotional and physical intimacy that occurs in these relationships. Gary Mucciaroni, in his study of different gay rights struggles in the United States, suggests that the ease with which an issue can be framed away from gay and lesbian relationships helps to explain variations in success across different types of policy (2008). In response to PG&E's decision to donate a quarter-million dollars to the No on 8 campaign, Senior Strategist of the campaign, Steve Smith, celebrated the company's support of equal rights. The press release announcing the donation concluded with a quote from him: "Regardless of how anyone feels about marriage for same-gender couples, it's wrong to deny a person's fundamental rights and freedoms."⁴⁹ Even while same-sex couples were getting married, same-sex marriage supporters still tried to shift the arguments against Proposition 8 to the individual's right to equal treatment under the law.

The first commercial aired by Proposition 8 opponents in many ways highlights this tension. It aired on September 22, 2008 and echoes the focus on discrimination and fairness of their other materials. The commercial features Sam and Julia Thoron, a heterosexual married couple with a lesbian daughter, who also signed the argument against Proposition 8 in the California Voter's Guide. The couple remark that they've never treated or loved their lesbian daughter any differently from their other two children and that the law shouldn't treat their children differently either. The viewer, however, never sees this lesbian daughter.

This commercial, "The Thorons," is one of a few (along with "Conversations") that feature heterosexuals referencing gay and lesbian individuals they know. Only four of the commercials aired against Proposition 8 actually feature gay and lesbian individuals. The first features Ellen DeGeneres talking to the camera about how she was finally able to get married, but that the Proposition 8 campaign is spending money to try to take that right away from her. "Who Prop 8 Really Affects" scans what appears to be a normal looking household for the first half of the commercial. The only words that are said are "I love you," by a man getting ready to leave through the front door of the house. The target of

⁴⁹July 29, 2008 EQCA press release "PG&E Announces \$250,000 Contribution to Fight Prop. 8"

the phrase is a man sitting on couch, but the viewer only sees the back of his head. Tim Gunn, an openly gay man and fashion designer, declares that over the years he's "seen some questionable fashion choices on the runway, but [he's] never seen anything as unattractive as the content of Proposition 8." The last commercial is probably the most subtle. In it, Margaret Cho corrects her neighbor, who is confused about how to vote on Proposition 8—she originally thinks that she should vote 'yes' since she supports same-sex marriage. Margaret Cho is openly bisexual, and a supporter of and advocate for LGBT rights.

With the exception of these, the other fourteen commercials use heterosexual couples and individuals, politicians, newspapers, and non-LGBT organizations to convey their opposition to the initiative. The campaign, much like in their press releases and No on Knight commercials, suggests to voters that it's okay if they don't approve of same-sex marriage, but that they should of course be against discrimination. Several conclude with the familiar "no matter how you feel about marriage" phrase before telling viewers to vote No on 8 because it's "unfair and wrong."

The omission of gay and lesbian couples is further illustrated in the failure, on behalf of same-sex marriage activists, to use the ongoing marriages of same-sex couples in the months preceding the November 2008 election to counter arguments advanced by same-sex marriage opponents about the threat such marriages posed. While same-sex marriage opponents avoided mention of gay and lesbian couples in their Proposition 22 campaign commercials, the implication in their arguments about protecting and preserving "traditional" marriage is that to recognize something other than heterosexual marriage would pose a threat. The NO on Knight campaign made a comparatively small effort to counter the arguments that same-sex relationship recognition would somehow alter, or even destroy, the institution of marriage. Seven statements in their press releases (only 2% of their arguments) mirrored the following, made by Reverend Lindi Ramsden in a January 2000 press release: "I have never heard a single complaint that the existence of a gay or lesbian couple

was in any way a threat to, damaging of, or demeaning to a couple's own marriage."⁵⁰ Pro same-sex marriage activists made no arguments about the potential social consequences of same-sex marriage during the Proposition 8 campaign. Again, this is surprising, as the activists would have had evidence—both from same-sex marriages occurring for several months in California, but also from same-sex marriages taking place for several years in Massachusetts—that recognizing same-sex marriage would do no harm to the heterosexual marriages in California. This is visually obvious from Figure 3.4, which shows almost no frame activity regarding regarding the potential consequences of recognizing same-sex marriages from proponents of same-sex marriage.

Further avoiding any reference to same-sex couples or issues that might relate to same-sex intimacy, the one area in which pro same-sex marriage activists *did* concern themselves with consequences was in regards to the potential effects on *individuals*. This comes out in their Proposition 8 commercials, where same-sex couples are almost never shown. When Ellen DeGeneres mentions getting married in her commercial, she is alone in the frame. In the “Who Prop 8 Really Affects” commercial, the viewer only clearly sees one half of the gay couple; all of the viewer sees of the other is the back of his head. When Sam and Julie Thorton talk about their lesbian daughter, it's in reference to never treating her differently—as an individual.

The *violence* frame is one of several concerned with the potential broader social consequences of same-sex marriage policy and policymaking. While a proportionately small component of gay and lesbian activists' messaging, the *violence* frames in press releases highlighted the potential negative social consequences for gay and lesbian individuals of passing a statutory ban against same-sex marriages. This was one of the few elements of either ballot measure campaign where the two competing sides directly engaged with each other; it's responsible for almost all of the activity shown during the Proposition 22 campaign in Figure 3.4. And, it was an important element of Proposition 22 opponents' efforts

⁵⁰January 5, 2000 NO on Knight press release “Remarks of Rev. Lindi Ramsden”

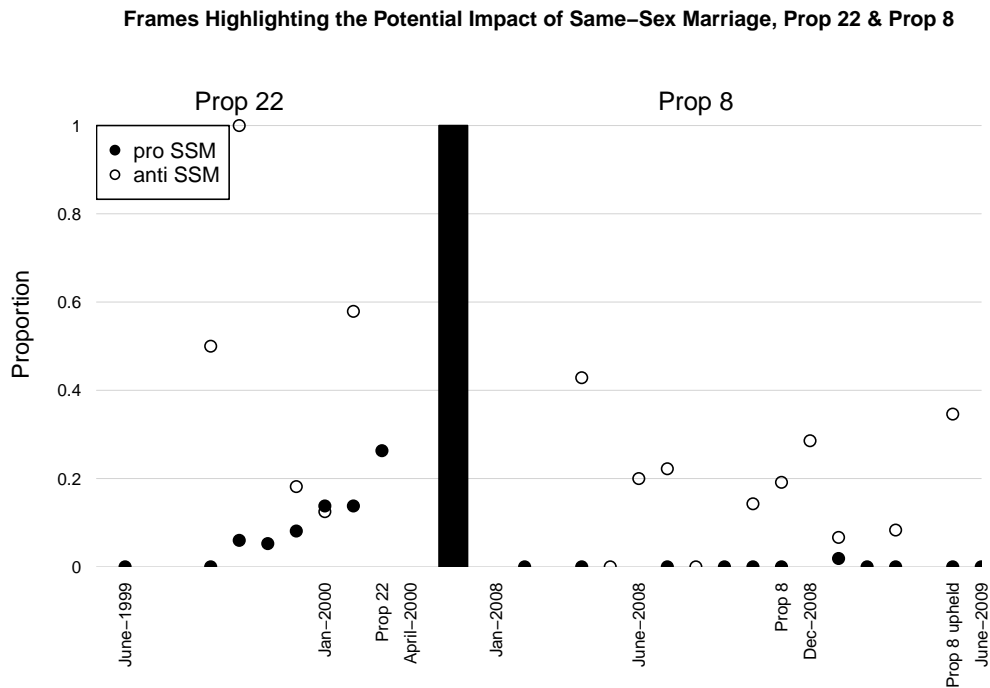


Figure 3.4: Times series graph of argument frames highlighting the potential impacts of same-sex marriage, as a proportion of argument frames, during the Proposition 22 and Proposition 8 campaigns: May 1999-April 2000; January 2008-December 2008. The thick, black vertical line separates the two non-contiguous campaign time periods. The figure combines the *marriage*, *violence*, *slope*, and *threat* argument frames. Pro same-sex marriage groups advanced 24 of these argument frames in their ballot measure press releases; anti same-sex marriage groups advanced 38. The figure does not show the 4 *marriage* frames advanced by anti same-sex marriage groups in 2005 and 2009.

to create a broader social context for the ballot measure. During the No on Knight campaign, opponents of Proposition 22 frequently argued that the passage of the anti same-sex marriage ballot measure would further stigmatize and discriminate against gay and lesbian couples. More importantly, it would encourage the sort of intolerance that leads to violence and hate crimes. After all, “anti-gay violence does not happen in a vacuum.” Judy Shepard, mother of Matthew Shepard—a young man who had been killed in 1998 in the midst of a hate crime—was an important public opponent of the Knight Initiative.⁵¹ In a January 2000 press release, the NO on Knight campaign quoted a Reverend from Sacramento: “We know for a fact that anti-gay initiatives such as the Knight Initiative can foster increases in anti-gay harassment and violence. . . . An initiative such as Proposition 22. . . can only foster the fear and misunderstanding that in turn leads to hate which - in turn - can lead to violence.”⁵² This was the central message in the No on Knight commercial “Intend,” which linked violence done to individuals gays and lesbians with discrimination like statutory prohibitions on marriage.

Proposition 22 supporters repeatedly denied that the Knight Initiative was mean spirited. Anti gay and lesbian activists devoted 11% of their arguments regarding same-sex marriage and the ballot measures to explicitly denying that they wished harm on gay and lesbian individuals. In doing so, they accused the No on Knight campaign of engaging in fear tactics in response to falling behind in polls before the 2000 March election. Robert Glazier, Communications Director for the Yes on 22 campaign, suggested that this was just one way among many that the Yes on 22 activists were being unfairly harassed. “Proposition 22 does nothing to incite hatred or violence towards any individual or their family, and our opponents know this.”⁵³ Proponents of the measure insisted gays and lesbians could go

⁵¹December 6, 1999 No on Knight press release “Judy Shepard Condemns Knight Initiative” Shepard’s two murderers were not charged with a hate crime, however, as Wyoming had not hate crime legislation at the time.

⁵²January 5, 2000 NO on Knight press release “Remarks of The Very Reverend Don Brown”

⁵³February 16, 2000 California Protection of Marriage Initiative press release “Anti-Prop 22 Hits the Airwaves with Deceptive Fear Mongering”

on living their lives as they pleased. Proposition 22 was a “simple” 14-word ballot measure defining marriage as between a man and a woman in California law and “what is so mean-spirited about that?”⁵⁴ In response to a September 1999 poll from the Public Policy Institute of California that showed 63% of the population in favor of Proposition 22, Protection of Marriage campaign manager Rob Stutzman said “voters clearly understand that a fair minded person’s support for marriage in no way qualifies as hatred or anti-gay discrimination. The Protection of Marriage Initiative denies no California citizen his or her chosen lifestyle. It simply closes a loophole in state law to ensure that marriage will remain as it always has been.”⁵⁵ Sometimes these arguments were joined by claims that particular legal benefits—hospital visitation, inheritance—would not be affected.⁵⁶ The campaign even found a small group of openly gay individuals to echo these statements. Tom Beddingfield, state chairman of Gays for 22, reassured gay and lesbian individuals a month before the primary election: “We want our fellow gays and lesbians who are concerned about this initiative to know that Prop. 22 won’t change the way we live our lives.”⁵⁷

A Little Bit Louder Now

Table 3.2, above, illustrates several differences between groups’ framing of same-sex marriage at the ballot and groups’ framing of same-sex marriage once Proposition 8 entered the state’s courts. First, both sides used a small number of frames overall in their arguments in the press releases talking about the ballot in court. Even though they very heavily preferred only a few of them, gay and lesbian groups advanced 12 different argument frames during the campaigns for Propositions 22 and 8. Similarly, while favoring only a few, same-sex

⁵⁴December 8, 1999 California Protection of Marriage Initiative press release “Marriage Opponents’ Ad Reveals Hollywood Hypocrisy

⁵⁵September 9, 1999 California Protection of Marriage Initiative press release “Protection of Marriage Initiative Holds Wide Lead”

⁵⁶October 28, 1999 California Protection of Marriage Initiative press release “Protection of Marriage Campaign Praises Gore for Comments on Same-Sex Marriage”

⁵⁷February 10, 2000 California Protection of Marriage Initiative press release “Protection of Marriage Campaign Expands Coalition, Introduces “Gays for 22””

marriage opponents advanced 11 different argument frames during the campaigns. Both sides reduced the total number of argument frames they used by four, with proponents of same-sex marriage advancing 8 and opponents of same-sex marriage advancing 7 while discussing Proposition 8 in court.

As a result, opponents and proponents of same-sex marriage could devote more attention to the arguments they had already been favoring. Same-sex marriage proponents increased their use of statements using the *rights* frame by 10% (and decreased their use of *discrimination* frames by 2%); while discussing the Proposition 8 litigation, 72% of gay and lesbian activists arguments used the language of rights and discrimination, as compared to the 64% while only discussing the ballot. This is shown in Figure 3.1. Opponents of same-sex marriage also increased the use of their favorite frame, *public*, by 10%. They also made more arguments about the appropriate role of judges (not surprising, since the litigation once again placed a popular vote in the hands of a few), increasing their use of the *judge* frame by 5%. Both of these are illustrated in Figure 3.2. Opponents also made 7% more arguments about preserving, or restoring, the traditional version of marriage as only between a man and a woman in the press releases discussing the Proposition 8 litigation.

One of the frames that was prominent for both sides during the Proposition 8 litigation was the *legal* frame. At the center of Proposition 8 litigation was the constitutionality of the way in which the measure was passed. While the *legal* frame was absent in the press releases focusing on the ballot measures, such arguments became a substantial portion of both sides' messaging after the Proposition 8 litigation was filed. Proponents and opponents of same-sex marriage made arguments about the legality and constitutionality of the amendment in 20% and 14% of their coded statements, respectively. Figure 3.5 illustrates this clearly. It's only after Proposition 8 passes that legal arguments make up a substantial portion of proponents' and opponents' argumentation in their press releases.

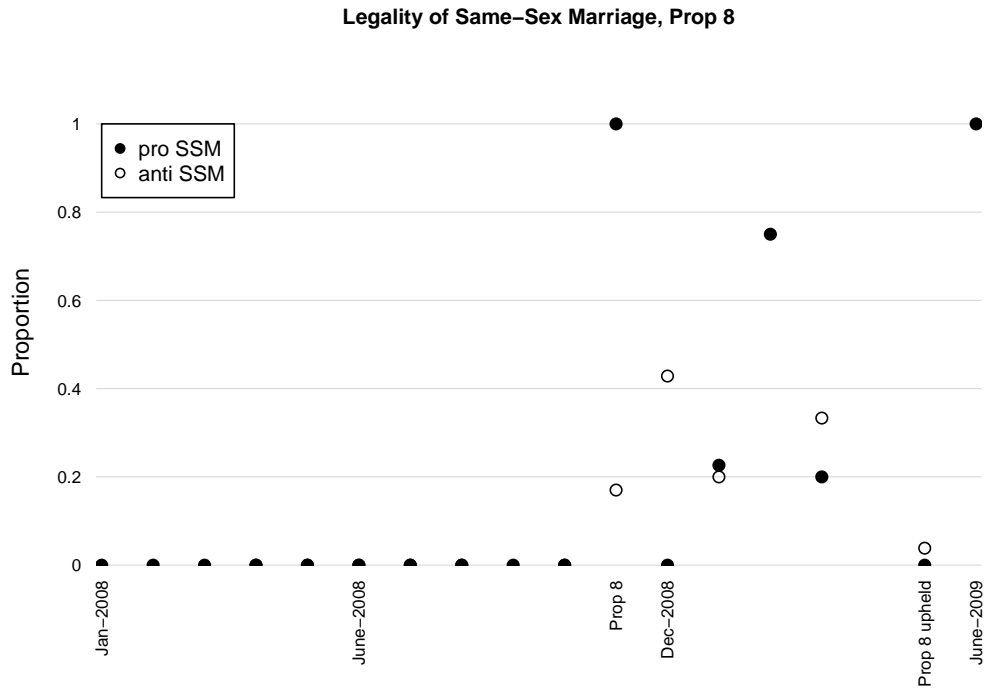


Figure 3.5: Times series graph of argument frames highlighting the legality and constitutional of same-sex marriage policy and, in particular, Proposition 8 during and after the initiative campaign: January 2008-June 2009. Pro same-sex marriage groups advanced 21 of these argument frames in their ballot measure press releases; anti same-sex marriage groups advanced 20. The figure does not show the 1 *legal* frame advanced by anti same-sex marriage groups during the Proposition 22 campaign.

Conclusions

As I suggested in the previous chapter, the potential implications of framing strategies are highlighted in the context of ballot measure campaigns, when activists are directly, and intensely, crafting messages in hopes of acquiring votes. Both proponents and opponents of same-sex marriage favored many of the same arguments when discussing the initiative process as they did when discussing other policymakers. In fact, they tended to use their preferred arguments with even greater intensity in the context of the ballot. As a result, at least in from the perspective of groups' press releases, there is very little dialogue.

The commercials reveal a similar portrait. None of the Proposition 22 commercials directly engage the arguments of the opposing side. The primary element of dialogue during this campaign was about the potential for increased violence done to gay and lesbian individuals, as opponents of Proposition 22 suggested in their commercial called “Second Class Citizens/Intend.” Proponents of Proposition 22 denied and countered these claims in their press releases, but devoted none of their limited advertisement time to them. A small handful of Proposition 8 commercials engaged the arguments of the opposing side. Opponents of Proposition 8 denied the claims made by the Yes on 8 campaign that public school children would be forced to learn about same-sex marriage. The No on 8 campaign commercial “Prop 8 Has Nothing to do With Schools” was a direct counter to the Yes on 8 campaign commercials “It’s Already Happened,” “Everything to do with Schools,” and “Finally the Truth.” Similarly, “Don’t Buy Their Scare Tactics” was in response to claims made in all of the Yes on 8 campaign’s commercials.

Gays and lesbians—and especially their relationships—are noticeably absent from, or at least rarely present in, the press releases and commercials created by same-sex marriage supporters. Possibly this is strategic, but arguably makes it difficult for same-sex marriage supporters to fight on the same emotional and “gut-reaction” level that same-sex marriage opponents do. While same-sex marriage activists’ messages were fairly similar in the press releases and campaign commercials, opponents of same-sex marriage placed greater emphasis on subjects that would appeal to people’s immediate emotional reactions. This was increasingly true for the Yes on 8 commercials as compared to the Yes on 22 commercials. Arguments about the “traditional” heterosexual institution of marriage were frequent in opponents’ press releases throughout the entire time period, but opponents shifted away from these nostalgic arguments in favor of placing school children at the center of the debate. By distancing themselves from same-sex couples and/or their children, presumably to avoid what some refer to as the “ick factor,” same-sex marriage proponents are left to continue battling on the level of abstract principles of equality, rights, and anti-discrimination.

Given their success, it would be no surprise that same-sex marriage opponents main-

tain fairly consistent framing strategies. However, it is potentially surprising that same-sex marriage proponents maintain consistent framing strategies, especially in the wake of their fairly dramatic defeat in 2000 over Proposition 22. Instead of changing strategy, however, same-sex marriage proponents continued emphasizing the equal and civil rights aspects of the issue, both in their press releases and commercials. In fact, they did so to an even greater degree during the Proposition 8 campaign than during the Proposition 22 campaign. In part, this is the result of the events that took place in between the two initiative campaigns. Appealing to arguments about fundamental rights and equality would have been a natural thing to do in the wake of the state Supreme Court's ruling that marriage was a fundamental right and could not constitutionally be denied same-sex couples. Unfortunately, these appeals don't seem to draw the same reaction in a brief 30- or 60- second commercial that some of the claims same-sex marriage opponents advance.

Chapter 4

CHOREOGRAPHING THE MARRIAGE DANCE: MEDIA COVERAGE OF SAME-SEX MARRIAGE IN CALIFORNIA

“Drama is the source of energy that gives social problems life and sustains their growth.”

–Hilgartner and Bosk, quoted in Bennett 2002, 62

“The arguments on both sides are weighty.

Supporters of same-sex marriage invoke the state’s commitment to equality regardless of gender or sexual orientation, the needs of the children of gay and lesbian couples, the persistence of societal discrimination, and legal rights such as freedom of expression, association and privacy.

In defense of its law, the state cites a cultural tradition far older than statehood, the will of the people as expressed in a 2000 initiative, the steps California has already taken toward equal rights for gays and lesbians, and the power of lawmakers and voters to determine state policy.

Beyond those arguments, groups opposing same-sex marriage want the court to justify the state law on moral or scientific grounds, as an affirmation that limiting matrimony to a man and a woman is best for children and society.”

–“California’s Highest Court Taking Up Gay Marriage,” *San Francisco Chronicle* March 3, 2008

Activists and the Media

A substantial amount of scholarship has demonstrated that frames shape the interpretations of “specific issues or events, attributions of responsibility, and evaluations of political ac-

tion” for consumers of media (Cargee and Roefs 2004, 216; see also Nelson and Kinder 1996; Iyengar 1996; Cappella and Jamieson 1996). Much of what the public understands and knows about policy issues, or what they come to think of as the terms of a policy debate, comes from media sources. As a result, activist groups regularly devote some portion of their resources to the production and maintenance of images and messages for potential consumption by the media. In chapter 2, I argued for the importance of utilizing press releases for capturing activist groups’ agenda and messaging. Press releases are a critical link between activists and the media (Levin 2002). My analysis of the framing of same-sex marriage in over 400 press releases obtained from groups active in the political and legal struggles for same-sex marriage rights in California resulted in a few key findings. First, proponents and opponents of same-sex marriage consistently highlighted—across years and policy venues—only a few competing frames or themes. As a result, the press releases reveal little engagement or dialogue between the competing activists. Proponents of same-sex marriage choose to emphasize arguments about fairness, equality, and discrimination, while opponents of same-sex marriage emphasized populist notions of sovereignty and democratic governance as well as essentialist arguments about the nature of marriage as a heterosexual institution.

In this chapter I examine the more traditionally used data source for studying framing—mass media. Gamson and Wolfsfeld suggest that activist organizations need the media for “mobilization, validation, and scope enlargement” (1993, 116). Media provide a means through which groups can reach out to potential members and sympathetic audiences. Sometimes news stories may provide a vehicle for membership activation through consciousness raising; in other words, the messages broadcast by the media can make individuals and groups aware of identities and grievances of which they were previously unaware. One of the most striking illustrations of this in the context of relationship recognition for same-sex couples in California is the coverage of Gavin Newsom’s decision to begin issuing marriage licenses to gay and lesbian couples. In the wake of the first marriage he performed, that of Del Martin and Phyllis Lyon, hundreds of gay and lesbian couples, many

of whom would not have previously even considered marriage, lined up outside of San Francisco City Hall hoping to be granted a license before the city's activities were halted by the California Supreme Court. When the California Supreme Court voided the licenses in August 2004, four-thousand couples became (newly) invested in recovering a right they had only briefly enjoyed. The media attention instantly expanded the scope of California's same-sex marriage battles, which had been taking place for years prior. Many of the four-thousand couples were not California residents and had flown to San Francisco from states all over the country. Alongside new movement participants came new sympathetic audiences, made newly aware of the disadvantages faced by gay and lesbian couples wanting to legally commit to one another. Of course, scope expansion can be a double-edged sword for minority populations because with it comes loss of control. Gavin Newsom's actions not only mobilized supporters of same-sex marriage, but reinvigorated efforts on behalf of same-sex marriage opponents to constitutionally ban same-sex marriage through the initiative process.

On the other hand, if they are able to compete successfully with other news sources, advocacy groups can provide "drama, conflict, and action; colorful copy; and photo opportunities" for the news (Gamson and Wolsfeld 1993, 117). The more controversial or contentious an issue, the more likely the media will pay attention; the interactive relationship has a feedback mechanism. The relationship between activists and media is dynamic and interactive, but it is not a relationship of equal power. "News stories [are] a forum for framing contests in which political actors compete by sponsoring their preferred definition of issues" (Carragee and Roefs 2004, 216). However, actors compete under conditions determined by the institutional rules and norms of a particular venue or arena. Activists, in their struggle for attention to an issue and attention to a particular way of thinking about that issue, are at the mercy of journalistic norms and "rules of access" in a context brimming with other issues battling for attention (Bennett 1990; Bennett 2002; Boykoff and Boykoff 2007; Gamson and Wolsfeld 1993). Institutional constraints and pressures encourage journalists to privilege authoritative sources (or, rather, those deemed authoritative) and

dramatic, personalized, and fragmented news stories (Bennett 2002; Haltom and McCann 2004). As a result, mass media are an important resource or platform for groups, but is “one with gatekeeper roles” (Rucht 2004, 201; see also Boykoff and Boykoff 2007; Carragee and Roefs 2004; Gamson and Wolsfeld 1993). A group’s issues and frames have to make it into the news if they are going to have any impact over the course of political, legal, and social struggles.

This chapter focuses on the relationship between arguments advanced by activists and those that eventually make it into the mass media. Which of the messages that activists have tried to publicize and reinforce have been picked up and emphasized, or ignored and deemphasized, in the news media for the public? If news media are often active participants in framing and dialogue creation, how does this activity—or its result, as portrayed through newspaper articles—compare to the original messaging? This is an important relationship to examine, as the dynamic between activists and the media is a key component of the processes through which rights get publicly defined contested, expanded, and contracted. Furthermore, several media studies suggest that the choices journalists make while covering an issue or event can influence the perceptions, and by extension the opinions, of media consumers (Haltom and McCann 2004; Iyengar 1991; Kinder and Sanders 1990; Nelson, et. al 1997). Through my analysis of a database of newspaper articles, I find that the media does construct some dialogue where it was found mostly lacking in group press releases and related materials. In essence, while activists engage in an agenda setting game in their press releases—talking about what they want, rather than doing much responding—newspapers become almost a court-like setting where “disputants” (in terms of the larger/broader policy struggle) are actually set up in debate with each other. *While activists perform their separate dances in their press releases and campaign materials, newspapers construct the tango Doug McAdam refers to in the opening to this dissertation.*

Collecting Newspaper Articles

I selected two national and six California newspapers for the purpose of examining same-sex marriage framing in the mass media. *The New York Times* and *The Washington Post* are frequently used by scholars interested in framing and mass media as national papers of record. The six California papers are *The San Francisco Chronicle*, *The Los Angeles Times*, *The San-Jose Mercury News*, *The Sacramento Bee*, *The San Diego Union Tribune*, and *The Orange County Register*. According to the Audit Bureau of Circulations¹, these are the six highest ranking California papers in terms of circulation numbers.² The papers are also distributed geographically and politically throughout the state.³

Seven of the eight newspapers were accessed via the Access World News Research Collection.⁴ Unfortunately, Access World News does not have a comprehensive archive of newspaper articles from *The Los Angeles Times*, covering only the years 2006 through 2009. *The Los Angeles Times* was accessed through the ProQuest Newsstand research database.⁵ Newspaper articles covering some aspect of the social, political, and legal struggles over same-sex marriage in California were obtained using Boolean keyword searches. While the search features in Access World News and ProQuest are slightly different, every effort was made to create relatively equivalent search parameters. In the Access World News database, each of the seven newspapers were searched for all articles prior to January 1, 2010 using the following search string: marriage NEAR1 (same sex or same gender or gay or lesbian or homosexual) in *Lead/First Paragraph* or marriage NEAR1 (same sex or same

¹<http://www.accessabc.com/index.html>

²Los Angeles Times, San Jose Mercury News, San Francisco Chronicle, The San Diego Union Tribune, The Sacramento Bee, and The Orange County Register.

³Only one of the six counties represented, San Francisco County, did not approve Proposition 22 in 2000. Both San Francisco and Santa Clara (of which San Jose is the county seat) Counties did not approve Proposition 8 in 2008.

⁴Lexis-Nexis, likely the most commonly used research database for media sources also did not include coverage across the time periods I was seeking for all eight papers.

⁵Both Access World News and ProQuest were accessed via the University of Washington's online library resources.

gender or gay or lesbian or homosexual) in *Headline* or marriage NEAR1 (same sex or same gender or gay or lesbian or homosexual) in *Publisher Index Terms* and California* in *All Text*. Articles in *The Los Angeles Times* were acquired in ProQuest using the following search string: ABSTRACT(marriage W/1 (same sex or same gender or gay or lesbian or homosexual)) AND (California*) [in document text].⁶

These searches generated a total of 2,633 items (including letters to the editor, editorials, and features) that the eight newspapers published from March 21, 1985 through 2009. From these I constructed a sample of newspaper articles in proportion to the volume of hits each paper generated, with an original goal of obtaining a sample of approximately 800 articles from the California newspapers and 200 articles from the national newspapers. For example, since *San Francisco Chronicle* generated 37% of the total number of hits, it makes up approximately 37% of the articles from California newspapers in my sample. Articles were first sorted by relevance before saving. Unfortunately, the final sample contains 931 articles discussing or reporting on some aspect of same-sex marriage politics in California, 69 short of the originally intended 1000. This is largely due to the lack of relevant articles from *The New York Times* and *The Washington Post*, which prevented me from including 200 articles from those two papers combined. As a result, I over-sampled from some of the California newspapers when possible (when there were more relevant items to code) in order to make up for some of the difference. Thus, if the final N for any paper is lower than the intended N, it is for lack of more unique, relevant, non-editorial/-opinion hits from that paper. Table 4.1 details the sampling scheme and the final article counts—99 articles from *The New York Times* and *The Washington Post* combined and 832 articles from the six California papers. The articles span the time period between March 21, 1985 and December 19, 2009, with the majority of articles falling after 1995.

The sample of newspaper articles contains both episodic and thematic news coverage

⁶The search strings were decided upon partially through trial and error towards receiving a manageable number of article hits. For example, adding “California*” to the search string reduced the number of hits from *The Washington Post* and *The New York Times* from several thousand to 557 and 812, respectively.

Table 4.1: Newspaper Article Sampling Scheme

| Newspaper | Date of first hit | No. Hits | Proportion | No. if N=800 | N |
|-------------------------|-------------------|----------|------------|--------------|------------|
| San Francisco Chronicle | 03/21/85 | 776 | .37 | 298 | 295 |
| San Jose Mercury News | 08/29/85 | 405 | .19 | 156 | 168 |
| Sacramento Bee | 06/01/94 | 330 | .16 | 127 | 116 |
| Los Angeles Times | 09/15/92 | 307 | .15 | 118 | 147 |
| San Diego Union-Tribune | 01/30/93 | 151 | .07 | 58 | 59 |
| Orange County Register | 08/08/90 | 113 | .05 | 43 | 47 |
| | | | | No. N=200 | |
| New York Times | 11/05/89 | 408 | .74 | 148 | 69 |
| Washington Post | 01/25/92 | 143 | .26 | 52 | 30 |
| Total | | | | 931 | |

(Iyengar 1991). Topics range from early efforts to pass anti same-sex marriage legislation in the state legislature, early church battles over symbolic same-sex wedding ceremonies, public opinion trends in California related to equal marriage rights, ballot measure campaigns, personal stories of same-sex couples who'd been married, litigation efforts and court decisions, etc. Since press releases were limited to those addressing activities within the state of California, I constrained my sample of newspaper articles similarly. Each article was classified using the same policy categories used for the press releases, but with a few additions. Along with the classifications based on policy activity, I added categories for "poll" and "marriage." A substantial number of articles reported on public opinion results associated with same-sex marriage and/or same-sex marriage policymaking; these were classified as "poll." The category "marriage" was applied to articles that reported on wedding ceremonies for same-sex couples (both while these marriages were legal for same-sex couples, but also before), provided portraits of the population of same-sex couples waiting outside San Francisco City Hall in 2004 or who were married in 2008, told stories of individuals who were able to get married or wished they had been able to get married, and conflicts

or debates over and about same-sex marriage in churches and schools. As for the press releases, an article focused on the Governor vetoing marriage legislation or Gavin Newsom deciding to issue marriage licenses was classified as “executive”; an article focused on the introduction, debate, or passage of same-sex marriage legislation was classified as “legislature”; an article discussing the filing of litigation briefs, oral arguments, or a court ruling was classified as “court”; an article discussing a same-sex marriage initiative (whether to legalize or ban) was classified as “ballot”; and articles dealing with the litigation filed against Proposition 8 received their own classification, “ballot in court.”⁷ All remaining newspaper articles, those that did not fit neatly into any category, usually because they were a mix of more than one without an obvious primary focus, were classified as “other.” Articles were then coded using the 19 argument frames detailed in Chapter , but those will be discussed later in this chapter.

Event Driven News

Gavin Newsom was not the first Mayor of San Francisco to publicly support same-sex marriage or to hold mass wedding ceremonies for same-sex couples. His predecessor, Willie Lewis Brown, celebrated same-sex unions on at least five occasions.⁸ Just a few weeks after he took office in January 1996, the City of San Francisco’s Board of Supervisors approved a measure granting gay and lesbian couples registered under the 1991 domestic partners law the right to a symbolic wedding ceremony. The wedding ceremonies would mirror the city-sanctioned wedding ceremonies of heterosexual couples and even provided marriage

⁷One article classified as “ballot in court” is from 1999 and regards the litigation over the wording of Proposition 22 on the ballot.

⁸“Brides, Grooms and Partners - San Francisco Ceremony Unites Same-Sex Couples” *Washington Post* March 26, 1996; “S.F. Officials Preside Over Weddings of 150 Gay and Lesbian Couples” *San Jose Mercury News* March 26, 1996; “10 Gay Couples to be Honored for Stability at S.F. Ceremony - Brown to officiate, more unions are set” *The San Francisco Chronicle* March 20, 1998; “Exchange of Vows at City Hall - 190 gay couples take part in S.F. ceremony” *The San Francisco Chronicle* March 27, 1999; “Nearly 100 Gay Couples Recite Vows of Commitment in S.F.” *Los Angeles Times* March 24, 2000; “Gay, Lesbian Couples United By Mayor at S.F. City Hall - Mass commitment draws 44 couples” *The San Francisco Chronicle* March 30, 2001

certificates. Just days after the law went into effect on March 21, 1996, Mayor Brown and Assemblywoman Carole Migden presided over a mass wedding ceremony—the first city-sanctioned mass wedding ceremony for same-sex couples in the nation—for 163 gay and lesbian couples. A spokesperson for Mayor Brown provided part of his justification: “If partnership, commitment and monogamy are what we value, then this ceremony confirms those values. They share what straight couples share. They are in love.”⁹ The largest occurred in March 1999, when Mayor Brown celebrated the weddings of 190 gay and lesbian couples, just a year before the state of California overwhelmingly passed Proposition 22 to ban the state from recognizing same-sex marriages. The 1999 ceremony at City Hall was the first time longtime lesbian couple Del Martin and Phyllis Lyon recited vows to each other. Years later, they would become the first couple married by Gavin Newsom in February 2004 and again on June 16, 2008. Mayor Brown held similar mass wedding ceremonies in March 1998, March 2000, and March 2001. Even though the ceremonies were primarily symbolic, nearly all of the newspaper articles reporting on them referred to them as “weddings” and to the couples as being “married.”

Mayor Brown’s actions correspond to the small peaks at the beginning of 1996 and 1999 in Figure 4.1, and is partially responsible for the media attention at the beginning of 2000. Figure 4.1 is a time series graph of the count of newspaper articles reporting on some aspect of same-sex marriage politics in California. My sample of articles contains no more than five articles for any single year prior to 1996, so the graph begins with January 1996. As with the counts of press releases over time in Figure 2.1 in Chapter 2, the distribution of newspaper articles over the years is consistent with events that have unfolded related to same-sex marriage policymaking in California. Public policy literature has long acknowledged the potential agenda-setting effects of events (Baumgartner and Jones 1993; Birkland 1997; Kingdon 1995) and social movement scholars have highlighted the interactive relationship between collective action events and framing (Benford and Snow 2000; Ellingson

⁹“Brides, Grooms and Partners - San Francisco Ceremony Unites Same-Sex Couples” *Washington Post* March 26, 1996

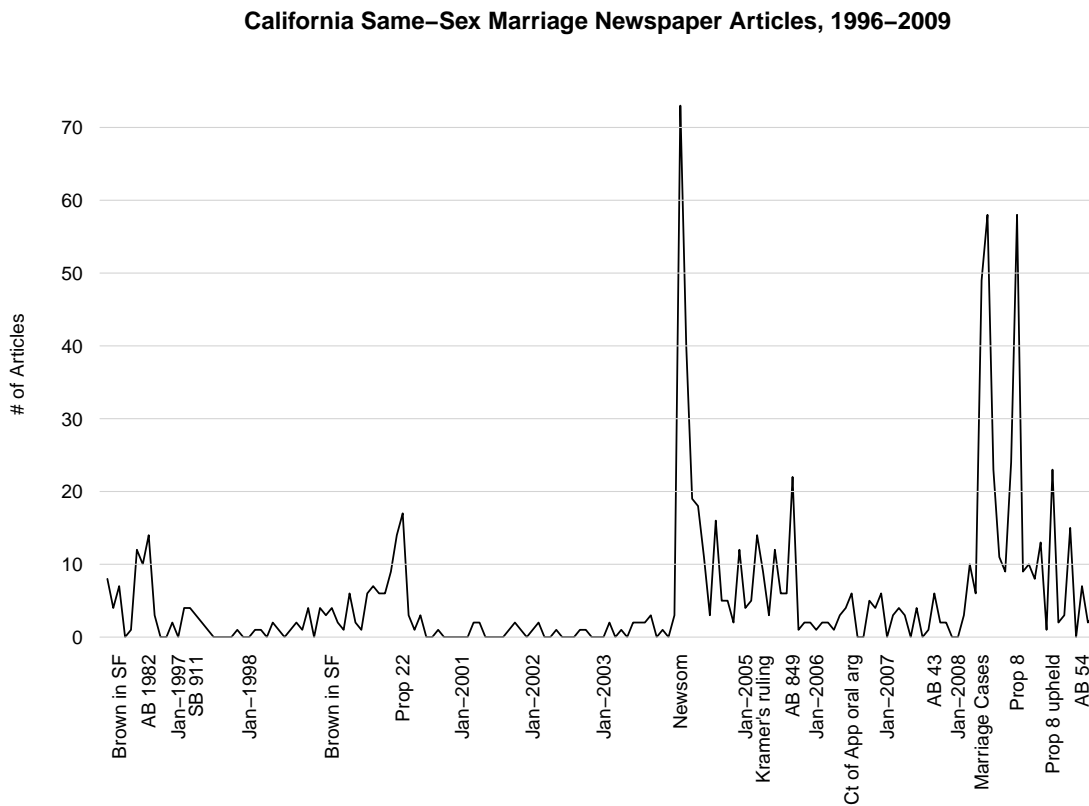


Figure 4.1: Time series graph of the count of newspaper articles on same-sex marriage in California from January 1996 through December 2009. No year prior to 1996 contains more than five articles, so the years 1985 through 1995 were omitted for the sake of space. The total number of articles prior to 1996 is 21; 910 newspaper articles are represented in this graph. The number of articles per year varies from 6 in 2002 to 260 in 2008.

1995). Birkland (1998) has defined a focusing event as an event “that is sudden; relatively uncommon; can be reasonably defined as harmful or revealing the possibility of potentially greater future harms; has harms that are concentrated in a particular geographical area or community of interest; and that is known to policy makers and the public simultaneously (54).” Such events are often dramatic and draw greater elite and mass attention to an issue. The public typically learns about such events through the mass media, where “news imperatives make sudden, novel, and injurious events particularly attractive to news coverage” (Birkland 1997, 30; Kingdon 1995). While the events frequently discussed in this literature are natural disasters and major accidents (hurricanes, oil spills, etc.) that generate some visible, physical damage, events like judicial decisions, acts of civil disobedience, and the introduction of legislation may also be or seem sudden, dramatic, novel, and perceived as harmful to a particular community or communities; naturally, if the issue is particularly contested or controversial, as is the case with same-sex marriage, newspapers will be motivated to cover it (Patterson 1993). Furthermore, such events not only “focus” elite and media attention, but also the attention of activist groups as well, who may use such opportunities to engage in movement-building activities, which in turn may encourage further attention from the media.

In September 1995, Pete Knight introduced Assembly Bill 1982, with explicit reference to the Hawaii Supreme Court’s 1993 decision in *Baehr v. Lewin*, declaring the denial of equal marriage rights a violation of Hawaii’s constitution unless the state could provide a “compelling state interest” under strict scrutiny for the denial, as part of his motivations. Originally AB 1982 was intended to prohibit same-sex marriages sanctioned in other states from being recognized in California. The bill was referred to committee and eventually passed the Assembly 41-31 in January, 1996. Knight and his supporters argued that if same-sex couples were able to get married in Hawaii, they might then travel to California and attempt to force the state to recognize their marriages. Supporters of the bill made the sorts of arguments about preserving the traditional definition of marriage for the sake of children and society that were common in same-sex marriage opponents’ press releases.

However, opponents of the measure amended the bill in the Senate, including the creation of some domestic partnership rights for same-sex couples.¹⁰ According to Pete Knight, the amendments “gutted the bill,” forcing previously supportive Republicans to turn against it, and the bill eventually died in the Senate later that year.¹¹ After moving to the Senate, Knight introduced a similar bill, Senate Bill 911, in February 1997. The bill failed passage in Committee in April.¹² Both of these bills are identified on Figure 4.1. The first substantial peak in the figure largely corresponds to media attention to the life-cycle of AB 1982: its introduction, floor debates and votes, and the legislative conflict spurred by the domestic partnership amendments. Senate Bill 911 received comparatively little attention, likely as a result of failing to make it out of Committee. Having suffered defeat in the legislature several times, Knight shifted his attention to California’s ballot, and in September 1998 submitted the signatures for an initiative that became Proposition 22 on the March 2000 ballot in California. The months leading up to the election and the passage of Proposition 22 correspond to the second fairly distinct peak that begins in the final months of 1999 and ends after March 2000. The remaining events responsible for fluctuations in media attention in Figure 4.1 after 2000 have been discussed in previous chapters.

Brown told the crowds that attended his first mass ceremony “I am pleased to be mayor of this city that has already reached the millennium and beyond. As usual, we are first. And by virtue of your participation in this ceremony, you are part of history.”¹³ But, who was recording this history? Until Gavin Newsom decided to issue same-sex marriage licenses in 2004, there was comparatively little attention to any aspect of same-sex marriage politics, as suggested by the pattern of article counts in Figure 4.1. Media coverage of Brown’s support for same-sex marriage and his officiating mass same-sex wedding ceremonies re-

¹⁰“Same-Sex Nuptials Prohibition Stalls” *Los Angeles Times* July 10, 1996

¹¹Complete Bill History for A.B. No. 1982 obtained from the website for California’s legislature: <http://www.leginfo.ca.gov>

¹²Complete Bill History obtained from <http://www.leginfo.ca.gov>

¹³“S.F. Officials Preside Over Weddings of 150 Gay and Lesbian Couples” *San Jose Mercury News* March 26, 1996

ceived little attention when compared to that received by Newsom. Newsom received more attention than all of Brown's wedding ceremonies combined, which were reported in seven articles in 1996, two articles in 1999, and one article in each of 1998, 2000, and 2001. The circumstances were not precisely identical, but both men were elected officials making a policy decision to support same-sex relationships in a state where same-sex marriages were either not legal or explicitly prohibited. In Mayor Brown's case, he issued purely symbolic marriage certificates that were the result of the Board of Supervisors' law passed in 1996. On the other hand, Mayor Newsom provided the newly designed gender-neutral marriage applications designed by the San Francisco County Clerk upon Newsom's request and issued actual marriage licenses. Newsom was also openly defiant, arguing that he was upholding the California Constitution in the face of the discriminatory changes to marriage law put in place by the passage of Proposition 22. Neither Brown's marriage certificates nor Newsom's marriage licenses held any legal status according to the state.

“Movements and media are both in the business of interpreting events, along with other nonmovement actors who have a stake in them. Events do not speak for themselves but must be woven into some larger story line or frame; they take on their meaning from the frame in which they are embedded” (Gamson and Wolfsfeld 1993, 117). The little attention Mayor Brown received illustrates two related things about the relationship between the media, activists, and events. The first is that context matters; the second is that similar events may be interpreted as more or less dangerous, threatening, and worthy of attention depending on that context. While media attention to issues affecting gays and lesbians had been growing since the 1970s, as had anti gay and lesbian activism, no one was preoccupied with the relationships of gay and lesbians, except for the attention the AIDS crisis of the 1980s generated towards sex and sexually transmitted diseases. Marriage, by all accounts, was not a priority for gay and lesbian groups through the early 1990s any more than it was for their opponents.

That began to change when, in 1991, three same-sex couples filed suit after being denied marriage licenses in Hawaii with independent counsel. For the first time, the resulting

Supreme Court decision in 1993 opened up the possibility of an historical legal victory for same-sex couples. The real possibility of legal same-sex marriages generated attention in Congress and a majority of state legislatures, as states scrambled to pass legislation that would prohibit their home states from recognizing same-sex marriages sanctioned elsewhere. Many, of course, also included prohibitions against their own states from sanctioning them as well. In 1996, 14 states successfully passed anti same-sex marriage legislation. At the state level, the majority of these generated little controversy or conflict, as most states passed these laws fairly easily. Knight's attempts to pass legislation to ban California from recognizing same-sex marriages was part of this.

At the federal level, the legal proceedings in Hawaii spurred the introduction, debate, and eventual passage of the Defense of Marriage Act (from which many of the state prohibitions got their name) under President Bill Clinton in 1996. Three years earlier, the issue of gays and lesbians openly serving in the military resulted in President Clinton's signing of Don't Ask Don't Tell. But during the course of Mayor Brown's career, no state issued marriage licenses to same-sex couples, so the threat perceived by his actions would have been low.¹⁴ Vermont began offering civil unions to same-sex couples on April 1, 2000 in response to the Vermont Supreme Court's decision announced on December 20, 1999, ruling that denying same-sex couples the benefits of marriage was unconstitutional. Massachusetts did not begin issuing marriage licenses to same-sex couples until May 17, 2004. While DOMA was passed in 1996, there was not yet talk about amending the United States Constitution to restrict marriages to heterosexual couples. Same-sex relationships received some national attention in June 2003 when the United States Supreme Court in *Lawrence v. Texas* overturned the eleven remaining state sodomy laws and their own 1986 precedent in *Bowers v. Hardwick*. Justice Scalia lamented the decision, fearing it removed the final legal barrier to same-sex marriage in his dissent, a sentiment echoed by conservative groups

¹⁴While the Massachusetts Supreme Judicial Court ruled that denying gay and lesbian couples the rights and benefits of marriage was unconstitutional on November 18, 2003 and issued an advisory opinion on February 4, 2004 regarding whether or not civil unions would satisfy their earlier decision in *Goodridge v. Department of Public Health*, the state did not begin issuing marriage licenses until May 17, 2004.

and politicians shortly thereafter (123 S. Ct. 2472); the Court's reasoning, he warned, "leaves on pretty shaky grounds state laws limiting marriage to opposite-sex couples." By his own admission, Newsom was angered by the attacks on the Massachusetts ruling and, in particular, by President George W. Bush's call for a Federal Marriage Amendment to restrict marriage to heterosexual couples during his January 2004 State of the Union Address (Kendell 2006). Newsom, in other words, was openly defiant and used arguments from the Massachusetts ruling to support his decision. President George W. Bush and the Massachusetts ruling had already mobilized anti same-sex marriage activists, who found Gavin Newsom's decision to begin issuing marriage licenses to same-sex couples to be the perfect focusing event for making arguments about governmental authority, traditional marriage, and the family.

The developments prior to Newsom taking office provided conservatives reasons to perceive his actions as a legitimate threat that did not exist in the late 1990s. As Tina Fetner recognizes in her discussion of how the religious right has influenced the gay and lesbian movement, one of the things organized opposition does is draw attention to an issue that gay and lesbian activists may not have achieved on their own; "balancing norms in the news media encourage the publication of stories about opposing movement issues more than other social movement issues" (Fetner 2008, 129; Meyer and Staggenborg 1996). Perceptions of harm and injury are, at least in part, socially constructed. Conservative opponents of same-sex marriage had the social and rhetorical leverage, especially after George W. Bush addressed the issue of same-sex marriage in his 2004 State of the Union address, as well as greater organizational and mobilizing resources to respond to Gavin Newsom's actions in February 2004. These developments primed opponents' moral outrage and Newsom provided the seemingly sudden, disruptive even for them target. Compare, for example, quoted responses to the two mayors printed in the media. In response to Mayor Brown's mass wedding ceremony in 1996, Art Croney, executive director of the now defunct Committee on Moral Concerns, said the participating couples "crave public acceptance. They have to bring it out onto the public square and have everybody agree to what they do. Most people

will think of this as just another crackpot scheme in California.”¹⁵ His tone treats Brown’s actions in a strikingly different way than Robert Tyler, lawyer for the Proposition 22 Legal Defense and Education Fund, did Newsom’s actions in 2004. “This is municipal anarchy here in San Francisco. This is a complete and blatant disregard for the law.”¹⁶ Brown may have challenged conventional notions of morality, but his “crackpot scheme” did not earn the same response Newsom’s creation of “anarchy” did, and was clearly not perceived to be the same level of potential harm to the broader American public. Livingston and Bennett (2003) distinguish news stories initiated by “routine institutional proceedings such as hearings, court cases, negotiations, conferences, or meetings between officials (373)” from news stories initiated by unanticipated events outside of normal organizational routines (also Lawrence 2000). However, while Gavin Newsom’s decision to issue marriage licenses may have been unanticipated and outside of “normal organizational routines,” there is opportunity for framing the “routine” events in ways that suggest they are out of the ordinary, unique, and outside of the normal roles and functions of government organizations and actors.

Once same-sex marriage in California garnered national attention, media attention to the issue in California closely followed that of attention paid to it by groups with a stake in the matter. The correlation coefficient between the count of newspaper articles each month between 2004 and 2009 and the count of press releases between 2004 and 2009 from groups supporting same-sex marriage is .68; the correlation coefficient between the count of newspaper articles between 2004 and 2009 and the count of press releases between 2004 and 2009 from groups opposing same-sex marriage is .84.¹⁷ In other words, levels of attention on behalf of activist groups as indicated by press releases issued are highly,

¹⁵“Brides, Grooms and Partners - San Francisco Ceremony Unites Same-Sex Couples” *Washington Post* March 26, 1996

¹⁶“S.F. gay marriage foes go to court - The city keeps issuing licenses as a judge sets a Tuesday hearing” *The Sacramento Bee* February 14, 2004

¹⁷Since both activist groups and mass media are responding quickly, and would want to respond quickly, to events and developments over the course of the time period, I did not lag press release attention when calculating these correlations.

positively associated with levels of attention paid by the media as indicated by articles published. When groups increase their attention to same-sex marriage, generally so does the media; when groups decrease their attention to same-sex marriage, so does the media. Interestingly, levels of attention among activist groups on either side of the same-sex marriage conflict are more highly correlated with attention in the media than with each other. The correlation coefficient between counts of press releases from proponents and opponents of same-sex marriage between 2004 and 2009 is .58. Not only do the groups talk past each other in terms of rhetoric and framing, but also in terms of timing. As already suggested in a previous chapter, this is partially due to the different amounts of attention opponents and proponents paid to different policymakers and venues.

Anti same-sex marriage activists devoted almost half of the press releases collected to court related activities between 2004 and 2009, more attention than they paid to any other policy venue and more attention than pro same-sex marriage activists paid to any particular policy venue. On the other hand, anti same-sex marriage activists spent almost no attention discussing legislative activities. The distribution of press releases across these categories is found in Tables 2.1 and 2.2 in chapter 2. The media was more even-handed in its distribution of attention to different policymakers. While opponents of same-sex marriage devoted a disproportionate number of press releases to court activities (49% of press releases between 2003 and 2009), the media redistributed much of this attention to other policy venues. Of the 430 newspaper articles that attribute at least one argument about same-sex marriage to anti same-sex marriage activists, 27% are classified as “court” and thus feature reporting on case briefs, oral arguments, and court rulings. While opponents of same-sex marriage spent disproportionately little attention to legislative activities in their press releases, devoting only 2% of them to the legislature between 2003 and 2009, 12% of newspaper articles with arguments attributed to anti same-sex marriage activists are classified as “legislature.” Much of this media attention was in response to the Assembly passing same-sex marriage legislation in 2004 and then the entire legislature passing new same-sex marriage legislation in 2005, the latter of which marriage opponents spent only two press releases on. Similarly,

media gave more attention to anti same-sex marriage arguments in response to ballot measure issues that anti same-sex marriage activists did themselves: 26% of articles attributing arguments to them are classified as “ballot,” most of which were in 2008, but only 11% of anti same-sex marriage press releases focused on the ballot.¹⁸ Finally, 17% of marriage opponents’ press releases focused on the Proposition 8 litigation, classified as “ballot in court,” but only 8% of newspaper articles mentioning their arguments were classified this way.

Because press release from marriage proponents were more evenly distributed across categories, there are fewer differences when compared to the newspaper articles. Same-sex marriage proponents devoted more attention to the legislature than the media did for them, devoting 26% of their press releases to legislative activities, while only 9% of articles referencing proponents’ arguments featured the legislature. Generally, the media didn’t pay as much attention to litigation and other court-related activities as either opponents or proponents did; 37% of all the press releases collected between 2003 and 2009 focused on court activity, while only 19% of the newspaper articles did. Media paid more attention to anti same-sex marriage activists’ arguments in the context of legislative activities and ballot measures than the activists themselves did, but paid less attention to pro same-sex marriage activists’ arguments in the context of legislative activities than marriage proponents did.

The distribution of news articles by category is in Table 4.2. First, the table contains counts of articles that explicitly reference arguments from pro or anti same-sex marriage groups in the first two columns. The numbers in the third column are counts of articles that contain arguments from both sides. In other words, 90 articles of the 112 classified as “court” that contained arguments from pro same-sex marriage activists and the 114 that contained arguments from anti same-sex marriage activists overlap. Many newspaper articles did not make or attribute arguments about same-sex marriage to activist groups. Of those articles that did, some referenced arguments only from one side, while others referenced ar-

¹⁸Newspaper articles and anti same-sex marriage press releases gave similarly little, or almost no, attention to the failed efforts to place a constitutional amendment on the ballot that took place in 2005.

| Article Category | Pro SSM | Anti SSM | Intersect/Both | All %/N |
|----------------------------------|---------|----------|----------------|-----------|
| court | 77%/112 | 78%/114 | 51%/90 | 19%/176 |
| ballot | 61%/98 | 69%/111 | 75%/83 | 17%/161 |
| legislature | 38%/46 | 43%/52 | 24%/31 | 13%/122 |
| executive | 39%/45 | 32%/36 | 20%/23 | 12%/114 |
| marriage | 73%/74 | 25%/25 | 21%/21 | 11%/102 |
| ballot in court | 66%/37 | 59%/33 | 54%/30 | 6%/56 |
| poll | 23%/7 | 23%/7 | 19%/6 | 3%/31 |
| other | 51%/87 | 31%/52 | 22%/38 | 18%/169 |
| references argument(s) from | 54%/506 | 46%/430 | 35%/322 | 100%*/931 |
| only references argument(s) from | 20%/184 | 12%/108 | | |

Column sum is actually 99% due to rounding error.

Percentages are row percentages, except for the final column, which are column percentages.

Table 4.2: Newspaper Articles that Do/Do Not Explicitly Reference Arguments Attributed to Pro and Anti SSM Groups by Category, 1985-2009

guments from both. Just over a third of the 931 articles in the sample contained arguments attributed to activists from both sides of the struggle. The number in the last row of Table 4.2 are the articles that reference arguments from only one side, without explicit reference to counter-arguments. The final column contains the total number of articles classified in each category. In the first illustration of “balanced reporting” in this chapter, Table 4.2 shows that across categories (with the exception of “marriage” articles) journalists quoted, or attributed arguments to, activists from either side of the same-sex marriage conflict in similar numbers and proportions of articles. While they were not always in the same article, this means that journalists devoted approximately equal amounts of attention to opponents and proponents in the context of each policy venue. Not surprisingly, a large majority of the newspaper articles featuring wedding ceremonies or personal stories of gay and lesbian couples predominantly contained arguments from pro same-sex marriage individuals and groups.

The three article categories with the highest percentages of overlap (in other words, the

three categories with the highest proportion of articles that explicitly attribute arguments to *both* proponents and opponents) are also the categories with the highest frame to article ratios. The “ballot” newspaper articles have a ratio of 4.0:1; the “ballot in court” articles have a ratio of 3.5:1; and, the “court” articles have a ratio of 3.6:1. These are in contrast to the “legislature” articles, which have a ratio of 1.8:1 and the “executive” articles which have a ratio of 1.6:1. Articles reporting on public opinion polls had the lowest frame to article ratio of less than one argument per article. The numbers are meaningful because they suggest that journalists are more likely to place arguments from proponents and opponents in the same article—print arguments and counter-arguments as if said in response to each other—when the article is reporting on a ballot or court related activity. An example of this is illustrated in the second quotation at the opening of this chapter. Articles covering Proposition 22 and Proposition 8 average four arguments for and/or against same-sex marriage and 75% of these articles essentially put these arguments in dialogue with each other. Similarly, articles reporting on the various cases that resulted in the decision *In re Marriage Cases* and the Proposition 8 litigation averaged almost four arguments about same-sex marriage, and a little over half of the articles in each category printed these arguments in debate with each other.

Balanced Reporting

I coded this sample of newspaper articles for the 19 argument frames regarding or related to same-sex marriage detailed in Table 2.3 in chapter 2. I coded only arguments *attributed to specific groups or activists* involved in same-sex marriage politics in California. I also recorded whether or not the group to which the argument was attributed would be considered *pro* or *anti* same-sex marriage.¹⁹ I did not restrict my coding to the groups that make up my collection of press releases. Since I am interested more broadly in the dynamics between competing activist groups, and specifically in this chapter about the relationship

¹⁹For a partial list of groups, see Table 4.7 in the appendix.

between activist groups and the mass media, I chose to code only arguments attributed to activist groups and individuals as a way of capturing which of the arguments advanced by these groups were given attention by journalists. In other words, arguments attributed to other elites and government officials (legislators, mayors, etc.) were not included in this coding scheme. Of course, the reception and dissemination of frames from activists, government actors, and others are likely interrelated processes. However, since I did not include press releases from government officials or agencies or other primary sources containing arguments from these actors in my earlier analysis, systematic coding and analysis of them are omitted here. I do include general patterns noticed in relation to other frame sources or sponsors in my discussion. The results of this content coding are displayed in Table 4.3. I coded a total of 2,625 statements framing or defining same-sex marriage; 1,422 of these were attributed to same-sex marriage proponents and 1,203 of these were attributed to same-sex marriage opponents.

One of the many journalistic norms confronted by activists hoping to gain media attention is balanced reporting. As Entman notes, balanced reporting is when journalists “present the views of legitimate spokespersons of the conflicting sides in any significant dispute, and provide both sides with roughly equal attention” (Entman 1989, 30). Within my sample of articles, the total count of arguments in Table 4.3 is divided roughly in half: 54% are pro same-sex marriage arguments and 46% are anti same-sex marriage arguments.²⁰ If, as I suggest, levels of attention correspond to the number of press releases or newspaper articles, then the number of arguments advanced by or attributed to activists groups or individuals can act as a proxy for the relative intensity of argumentation at a particular moment in time. Figure 4.2 compares the number of statements coded as arguments about same-sex marriage in the collection of press releases, Figure 4.2(a), with the number of statements coded as arguments about same-sex marriage in the sample of news articles, Figure 4.2(b),

²⁰These would have likely been closer had I included individuals like Pete Knight in my coding scheme, as he was frequently quoted, particularly in articles from the late 1990s and 2000. But, in order to remain consistent, since I omitted all other legislators from my coding scheme, I omitted him as well, even though he was the original creator of the Proposition 22 initiative.

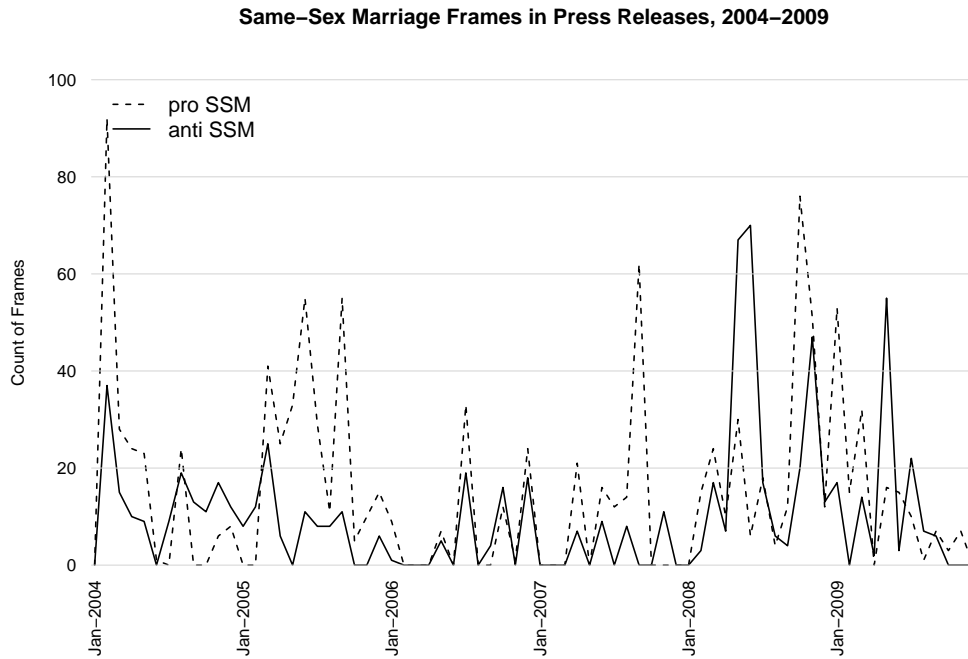
Table 4.3: Argument Frame Counts in Newspaper Articles

| <i>Frame</i> | pro | anti | all |
|----------------|------|------|------|
| rights | 270 | 0 | 270 |
| discrimination | 305 | 0 | 305 |
| violence | 46 | 22 | 68 |
| status | 169 | 0 | 169 |
| benefits | 108 | 0 | 108 |
| love | 84 | 0 | 84 |
| threat | 63 | 12 | 75 |
| diversion | 26 | 6 | 32 |
| economy | 23 | 2 | 25 |
| special | 0 | 47 | 47 |
| marriage | 28 | 329 | 357 |
| religion | 65 | 175 | 240 |
| family | 69 | 37 | 106 |
| children | 68 | 168 | 236 |
| slope | 0 | 48 | 48 |
| legal | 41 | 97 | 138 |
| public | 24 | 173 | 197 |
| judges | 18 | 69 | 87 |
| states | 16 | 17 | 33 |
| Total | 1422 | 1203 | 2625 |

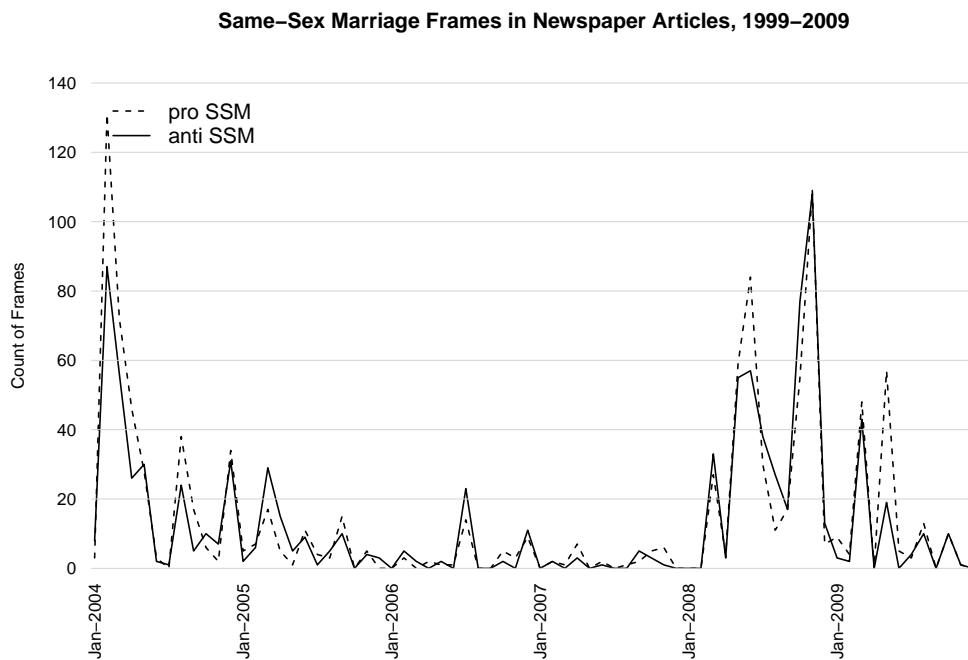
from the beginning of 2004 through 2009.²¹

The intensity of argumentation on behalf of proponents and opponents of same-sex marriage is presented in newspaper articles as if they were relatively equivalent. This is in contrast to the intensity of argumentation presented in groups' press releases, where the amount and type of attention varied between sides across time. Again, calculation of the correlation coefficients serve as a measurement of association, or covariation, between different pairings of frame counts across time. Further supporting the conclusion that proponents and opponents talk past each other in their press releases, counts of arguments from pro same-sex marriage press releases and counts of arguments from anti same-sex marriage press releases have the lowest correlation coefficient of .39. This of course says nothing about the substance of argumentation, which was discussed in greater detail in an earlier chapter, but suggests that levels of argumentation by proponents and opponents of same-sex marriage across time are not in step with each other. Several of the figures in that chapter illustrated this visually. Figure 4.2(a) illustrates this as well. More often than not, the two time series lines are out of step, or out of sync, with each other. A lot of arguments about same-sex marriage printed from one side does not necessarily correspond with similar amounts of argumentation from the other. Arguments in pro same-sex marriage press releases are somewhat more associated with their representation in newspaper articles, with a correlation coefficient of .58. The most visible differences are in 2005 and 2007, where argumentation on behalf of same-sex marriage activists is condensed in the media relative to the argumentation in their press releases. This is largely the result of the greater attention to legislative activities paid by same-sex marriage activists in their press releases than by journalists in the sample of news articles discussed in a previous section. Arguments in anti same-sex marriage press releases are even more highly associated with their representation in newspaper articles, with a correlation coefficient of .70. Marriage opponents' argumen-

²¹As a reminder, the press releases I collected were from 1999 and 2000, and then from 2004 through 2009. As with the other figures using press release data, I omitted 1999 and 2000 as it's discontinuous from the rest of the data. This also explains why the entire article dataset is not shown in this figure.



(a) Counts of Argument Frames in Press Releases, 2004-2009



(b) Counts of Argument Frames in Newspaper Articles, 2004-2009

Figure 4.2: Comparison of levels of argumentation regarding same-sex marriage in press releases and newspaper articles from 2004 through 2009.

tation is amplified in the media in early 2004 and late 2008, a result of the media devoting greater attention to executive activities (Gavin Newsom's decision to issue same-sex marriage licenses) and ballot measures (the campaign for and passage of Proposition 8) than anti same-sex marriage activists did in their own press releases. These last two correlations suggest that the amount of attention groups devote to framing same-sex marriage is not perfectly represented in, or associated with, the portrayal of that attention in the mass media. However, the level of argumentation attributed to proponents of same-sex marriage is nearly perfectly correlated with the level of argumentation attributed to same-sex marriage opponents. These two series have a correlation coefficient of .93; they nearly perfectly co-vary, with changes in one (either greater argumentation or less argumentation) almost always corresponding to changes in the other. In Figure 4.2(b), these two time series are visually similar and appear mostly in step with each other—high levels of argumentation on behalf of one side almost always correspond to similar levels of argumentation from the other. Argumentation from one side is sometimes amplified in the media relative to the press releases, in order to synchronize the two sides; at other moments, argumentation from one side is contracted, in order to more closely match that of the other side, with similar effects. This was clearly not the case in the press releases, which suggests something in the process of news story construction is responsible.

Mixing up the Repertoires

The previous sections of this chapter have already discussed three ways in which journalists and journalistic norms choreograph “the same-sex marriage dance.” The same-sex marriage debate, as represented through activist groups' press releases, involves minimal interaction; groups focus on different arguments, pay attention to different policymakers, and as a result, pay more or less attention to the issue at different times. So far, I've presented data that illustrates a somewhat different picture for the same-sex marriage debate as represented in mass media. *The timing of attention, the amount of argumentation, and the policymakers at the center of that attention look more like the tango Doug McAdams*

was referring to in the quote at the beginning of this dissertation: “If it takes two to tango it takes at least two to ‘contend’...” While I have not said much about the substance of the dance yet, media portray opponents and proponents of same-sex marriage as talking more frequently about the same events with similar levels of attention devoted to framing same-sex marriage in response to those events. I now turn to the actual substance of the same-sex marriage debate as portrayed through the mass media. While Table 4.3 provides the count of statements coded into each of the 19 frames, Table 4.4 compares the amount of attention devoted to particular frames or arguments in the collection of press releases and the sample of newspaper articles. Proportions are out of all of the arguments advanced by (in press releases) or attributed to (in newspaper articles) proponents or opponents of same-sex marriage, the totals of which are found at the bottom of the table. I include proportions for each individual argument frame as well as for the groupings I constructed in the press release chapter.

In their press releases, same-sex marriage activists overwhelmingly favored arguments about fairness, equality, and opposing discrimination. Just over half of their arguments were coded as *rights* or *discrimination* frames. One of the surprising findings relative to these rights related arguments was the almost complete lack of “special rights” language. Several studies have found that opponents to gay and lesbian rights, as well as other progressive rights claims, frequently co-opt the language of civil rights and reframe the claims of progressive groups in terms of “special” rights (Dudas 2003; Dugan 2005; Herman 1997; Goldberg-Hiller 2002). Opponents argue that gay and lesbian groups (and others) are not pursuing equal rights, but are instead seeking something extra, or unique, that is not and would not be granted to heterosexual citizens. Such a strategy was successful in several cities and states—Colorado’s Amendment 2 in 1992, Cincinnati’s Issue 3 in 1993, and Hawaii’s Amendment 2 in 1998 are just a handful of examples—in part because the framing was difficult to counter in a way that resonated with voters (Fetner 2008). Only six statements, less than 1% of all marriage opponents’ press release arguments, used the special rights logic. They did so, however, without using the precise language, choosing

| <i>Frame Category</i> | <i>Argument</i> | Press Releases | | | | Newspaper Articles | | | |
|--------------------------|-----------------|----------------|-----|------|-----|--------------------|-----|------|-----|
| | | Pro | | Anti | | Pro | | Anti | |
| Fair Minded Californians | rights | .23 | | 0 | | .19 | | 0 | |
| | discrimination | .28 | .51 | 0 | .01 | .21 | .40 | 0 | .04 |
| | special | 0 | | <.01 | | 0 | | .04 | |
| Separation of Powers | public | .04 | | .33 | | .02 | | .14 | |
| | judges | 0 | .04 | .05 | .40 | .01 | .04 | .06 | .22 |
| | states | 0 | | .02 | | .01 | | .01 | |
| Consequences of SSM | marriage | .01 | | .28 | | .02 | | .27 | |
| | slope | 0 | | .02 | | 0 | | .04 | |
| | violence | .01 | .05 | .02 | .32 | .03 | .11 | .03 | .34 |
| | threat | .01 | | 0 | | .04 | | 0 | |
| | economy | .02 | | 0 | | .02 | | 0 | |
| Family & Children | family | .11 | | .03 | | .05 | | .03 | |
| | children | .01 | .12 | .06 | .09 | .05 | .10 | .14 | .17 |
| Legality | legal | .05 | .05 | .15 | .15 | .03 | .03 | .08 | .08 |
| Benefits of Marriage | benefits | .06 | | 0 | | .08 | | 0 | |
| | love | .04 | .16 | 0 | 0 | .06 | .25 | 0 | 0 |
| | status | .06 | | 0 | | .12 | | 0 | |
| Other | diversion | .03 | | .03 | | .02 | | 0 | |
| | religion | .03 | .06 | .01 | .04 | .05 | .06 | .15 | .15 |
| Count of Frames | | 1337 | | 800 | | 1422 | | 1203 | |

Table 4.4: Proportions of attention to the different argument frames by, or on behalf of, proponents and opponents of same-sex marriage in their press releases and in the newspaper articles.

instead to deny the analogy to civil rights or that prohibiting gays and lesbians from marrying was in fact discrimination. Instead, same-sex marriage opponents devoted the majority of their arguments to ideas about legitimate democratic policymaking and the institution of marriage.

The media, however, devoted more attention to the special rights argument. There were 47 statements attributed to same-sex marriage opponents that denied that restricting marriage to heterosexual couples was discrimination, that same-sex marriage rights were equal rights, or that the movement for same-sex marriage rights was analogous to the civil rights movement. While still a small percentage, newspaper coverage of same-sex marriage in California spent more than four times as much attention to these arguments than opponents did in their own press releases.²² Many of these were in articles reporting on the ballot measure campaigns or results. The Proposition 22 campaign's first television ad was aired in January, 2000 and targeted Latino voters. In response to arguments made by opponents of Proposition 22 that once "they learn that Proposition 22 is discriminatory, [Latinos] will turn against it," former president of the Mexican American Political Association, Julio Calderon countered: "Having spent three decades fighting discrimination, I know bigotry when I see it." Proposition 22, he argued, is simply about protecting an institution (marriage) "that has been part of humanity... for eons."²³ The African American outreach director for the Protect Marriage Campaign, Derek McCoy, made a similar argument after Proposition 8 passed. "The reason I feel they [African Americans] came out so strong on the issue is one, for them, it's not a civil rights issue, it's a marriage issue. It's about marriage being between a man and a woman and it doesn't cut into the civil rights issue, about equality. The gay community was never considered third of a person."²⁴ Ini-

²²Mathematically, the 6 "special" statements in press releases constitutes .75% of same-sex marriage opponents' arguments. In the newspaper articles, the 47 statements equates to 3.91% of their arguments. The latter is 5.2 times greater than the former.

²³"California Voters and the West; TV Ad for Anti-Gay Marriage Initiative Targets Latino Voters" *Los Angeles Times* January 21, 2000

²⁴"Most of California's Black Voters Backed Gay Marriage Ban - 53% of Latinos Also Supported Proposition 8" *Washington Post* November 7, 2008

tiative battles are precisely the contexts in which previous studies have found the special rights logic, and the—albeit small—presence of these arguments in newspaper articles is what I would have expected to find in the press releases, but did not. Figure 4.3 compares rights and rights-related arguments about same-sex marriage advanced by marriage opponents in their press releases and attributed to marriage opponents in newspaper articles as well as two other categories of argument frames.²⁵

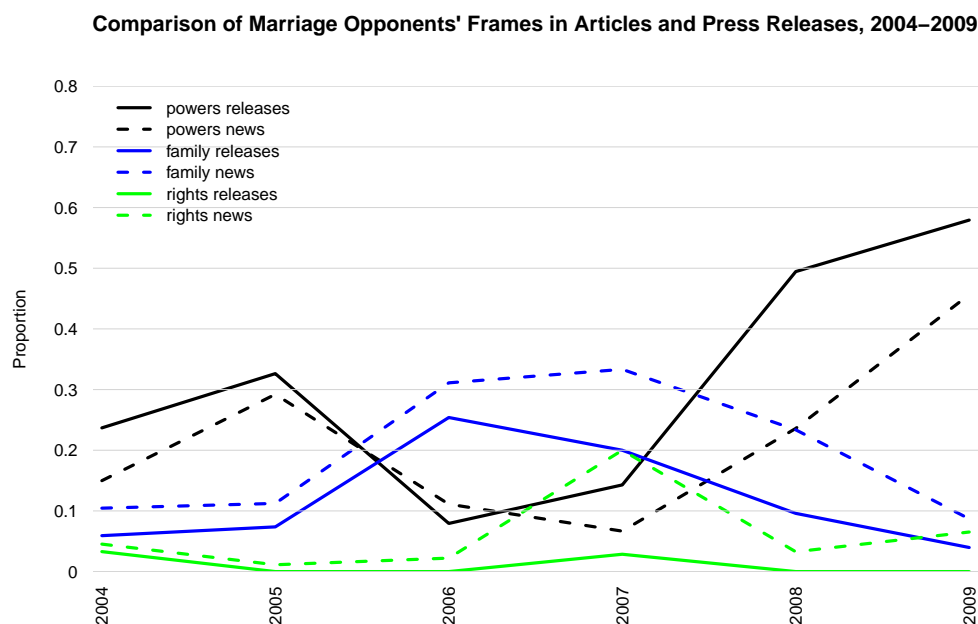


Figure 4.3: Time series graph comparing arguments in anti same-sex marriage groups' press releases and arguments attributed to same-sex marriage opponents in newspaper articles, 2004-2009, as a proportion of total arguments. Includes separation of powers arguments: *public*, *judges*, and *states* frames; rights arguments: *special*; and family related arguments: *family* and *children*.

In only two years shown in Figure 4.3 did same-sex marriage opponents have rights

²⁵Because all years are not pictured in the graph, the figure represents 38 of the 47 statements that made rights or discrimination arguments on behalf of same-sex marriage opponents. The other 9 were in newspaper articles from 1999 and 2000, in the months during the Proposition 22 campaign.

or discrimination related arguments in their press releases, 2004 and 2007. Newspaper articles, on the other hand, gave some attention to these arguments from same-sex marriage opponents in every year shown in the figure. While these were still small proportions, mostly less than 1%, use of special-rights type arguments constituted as much as 20% of opponents' arguments in 2007.

The second major theme in opponents' arguments against same-sex marriage advanced in their press releases regards the potential broader social consequences. In the media, however, this was the primary theme in arguments attributed to same-sex marriage opponents. Articles devoted similar amounts of attention to essentialist arguments about the institution of marriage and suggestions that legal recognition of same-sex marriage will lead to other socially undesirable consequences as opponents did in their press releases—34% to 32%, respectively. The difference comes, primarily, from the fact that the media paid almost half as much attention to what were same-sex marriage opponents' most preferred arguments regarding same-sex marriage in their press releases. The primary theme in anti same-sex marriage activists' press releases was arguments about majoritarian democracy and, more specifically, about what constitutes legitimate policymaking in a democracy. The *public*, *judges*, and *states* frames made up 40% of the arguments in their press releases. These frames shift the conversation over same-sex marriage to one of democratic representation and the appropriate role of democratic institutions. Only 22% of the statements attributed to anti same-sex marriage activists in the collection of newspaper articles used the *public*, *judges*, and *states* frames. Use of the *public* frame, which was the most frequently used frame in all of the anti same-sex marriage press releases, was cut to less than half of 33% to 14% of opponents' arguments in the newspaper articles. Figure 4.3 shows that, with the exception of 2006, opponents' consistently devoted more attention to populist notions of democratic policymaking than the media.

Instead, the media gave more attention to arguments about children and religion from anti same-sex marriage activists. Newspaper articles more than doubled the amount of attention paid to the potential effects same-sex marriage would have on children; such

arguments made up 6% of opponents' press release arguments, while they made up 14% of the arguments attributed to them in newspapers. In every year between 2004 and 2009, the media paid more attention to family and children related arguments than opponents did in their press releases, as illustrated in Figure 4.3. A second, potentially surprising, finding in regards to opponents' press releases was the near absence of religiously-based arguments, either concerning religious notions of what constitutes legitimate relationships and marriages or concerns over church autonomy and fears that religious groups would be forced to recognize a relationship they deem immoral, unnatural, unhealthy, and in some cases socially dangerous. While not shown in the figure comparing levels attention to different arguments by anti same-sex marriage activists, such arguments constituted 15% of all arguments attributed to marriage opponents in the media, as compared to the less than 1% they did in press releases.

Thus, media generated slightly more engagement on behalf of marriage opponents' with marriage proponents' most frequently used arguments about same-sex marriage by both reducing the magnitude of these arguments on behalf of same-sex marriage activists and increasing the magnitude of counter-arguments on behalf of same-sex marriage opponents. Table 4.4 shows that, overall, the media devoted less attention to rights oriented arguments from proponents of same-sex marriage than proponents did in their press releases; 40% of arguments attributed to same-sex marriage activists in the media used rights and discrimination frames, whereas same-sex marriage activists used these arguments 51% of the time in their press releases. Figure 4.4 illustrates that this difference is not consistent across years. Newspapers gave more attention to rights-related arguments from same-sex marriage activists in 2005, 2006, and 2007; but, they devoted almost 30% and 20% less attention to such arguments in 2008 and 2009, respectively.

The media shifted some of same-sex marriage activists' argumentation from rights and discrimination to arguments about the potential consequences of same-sex marriage and the benefits of marriage for same-sex couples. This is another way the media created slightly more engagement between the content of opponents' and proponents' argumentation. Ar-

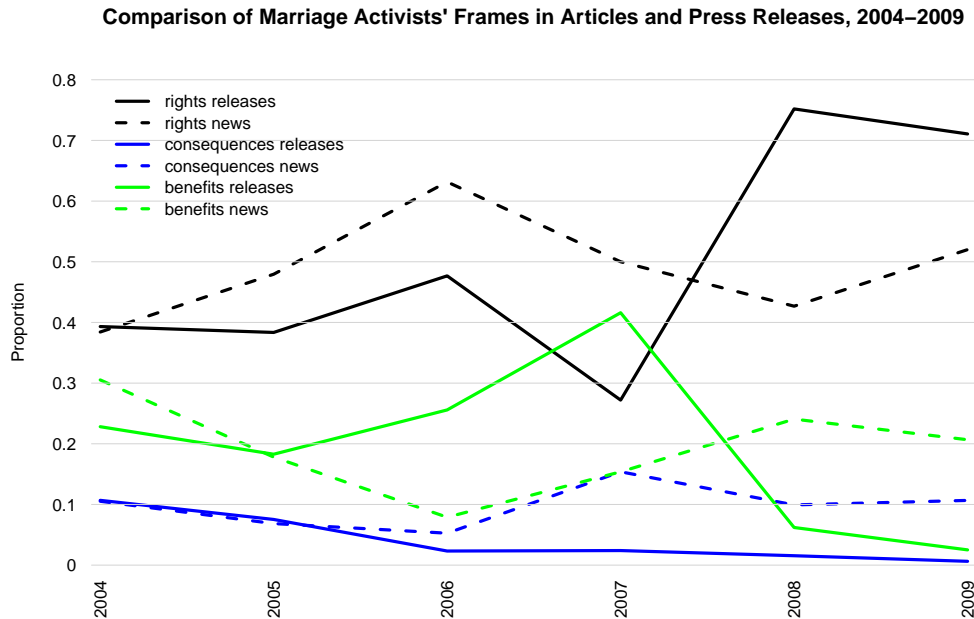


Figure 4.4: Time series graph comparing arguments in same-sex marriage activists' press releases to arguments attributed to marriage activists in newspaper articles, 2004-2009, as a proportion of total arguments. Graph includes rights arguments: *rights* and *discrimination*; arguments about the benefits of marriage: *benefits*, *love*, and *status*; and arguments about the potential consequences of same-sex marriage: *marriage*, *violence*, *threat*, and *economy*.

arguments from same-sex marriage opponents about the potential consequences of sanctioning same-sex marriages received similar levels of attention in opponents' press releases and in newspaper articles, but counter-arguments on behalf of same-sex marriage proponents were doubled. The media paid twice as much attention to arguments that same-sex marriage would actually strengthen the institution of marriage, that banning same-sex marriage could have broader harmful social consequences for gays and lesbians, and that same-sex couples are really no threat to heterosexual relationships than marriage activists did in their press releases. Anti same-sex marriage activists devoted about a third of their arguments to these frames; the potential consequences of same-sex marriage were the second major

theme in opponents' press releases. Same-sex marriage activists spent a mere 5% of their arguments countering these; in the media, however, 11% of the arguments attributed to same-sex marriage activists addressed the potential consequences (or, in some cases, lack of consequences) of recognizing same-sex marriages. Figure 4.4 shows that the magnitude of attention to these frames in the media in 2004 and 2005 was similar to, but in 2006-2009 was greater than, the attention to these arguments in marriage activists' press releases.

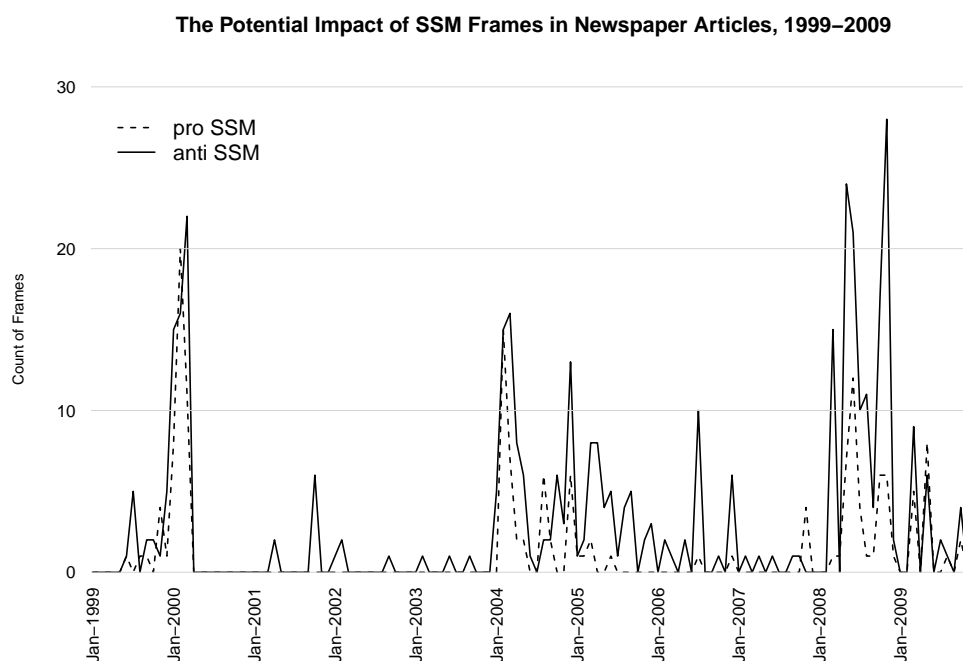


Figure 4.5: Time series graph of argument frames highlighting the potential impacts of same-sex marriage attributed to activists in the media, 1996-2009. The figure combines the *marriage*, *violence*, *slope*, *threat*, and *economy* argument frames. The graph includes 407 statements from anti same-sex marriage activists and 159 statements from pro same-sex marriage activists.

The distribution of arguments regarding the broader social consequences of same-sex marriage are in Figure 4.5. Visually, Figure 4.5 looks like more of a dialogue over the potential social consequences of same-sex marriage than the related Figure 2.4, showing

the distribution of similar arguments in press releases, in the chapter 2. Particularly during the Proposition 22 campaign (late 1999 and early 2000), the immediate period following Gavin Newsom's decision to issue marriage licenses to same-sex couples (early 2004), and in the wake of the California Supreme Court's decision that same-sex couples should be allowed to marry (middle of 2008), the amount of attention to these arguments among pro and anti same-sex marriage activists very closely match each other. The greater attention to the potential consequences of same-sex marriage, for same-sex marriage activists, was in the use of the *threat* and *violence* frames. Of the 63 *threat* arguments attributed to same-sex marriage activists, 40 of these were published in 2004 and 2008, the two years during which same-sex couples were actually getting married. Once gay and lesbian couples have marriage licenses, the argument that they are no threat to heterosexual couples' marriages and families transforms from a hypothetical argument to an empirical one. After more than 3,600 gay and lesbian couples were issued marriage licenses in San Francisco in 2004, city attorney Dennis Herrera made this argument to the California Supreme Court. Arguing that there was no reason for the Supreme Court to take up the issue immediately, he said "Not a single opposite-sex couple has faltered in their wedding vows. Only marriage, not anarchy, has broken out in San Francisco."²⁶ In the press releases, the *violence* frame was one of the few frames where opponents and proponents directly addressed each other. Its use, however, disappeared after the passage of Proposition 22. During the Proposition 22 campaign, opponents of the measure argued that the measure would foster and support feelings of hate, further discrimination, and hate crimes towards gays and lesbians; they suggested the measure was not as "simple" as its supporters did, but that instead it was part of broader efforts to further oppress gays and lesbians. While 30 of these statements were printed during the Proposition 22 campaign, the other 16 were in newspaper articles from later years. Obviously, press releases—while a very good measure of an activist group's agenda, in terms of issues and frames—are not comprehensive.

²⁶"State Supreme Court Urged By S.F. to Wait on Gay Nuptials" *San Jose Mercury News* March 6, 2004

The other difference in argumentation for same-sex marriage proponents was in the frames having to do with the benefits of marriage. There was slightly more attention paid to statements about specific benefits (custody, taxes, hospital visitation, health insurance) and love, but there was twice as much attention to the social and cultural status of marriage that is attached to the word itself in the media than in activists' press releases. These statements argue that marriage is about more than a collection of rights, benefits, and obligations, but also has social and cultural meaning that things like domestic partnership and civil unions do not. This was the third most frequently used frame by same-sex marriage activists in the collection of newspaper articles overall, accounting for 12% of pro same-sex marriage activists' coded arguments. Since January 1, 2005 domestic partners in California have been granted all of the rights and benefits afforded to married couples under state law. For many gay and lesbian couples, that is not enough. "The biggest difference," according to one couple who had a commitment ceremony in 2001, but were able to get married during the several month window in 2008, "is that we can say we are married, and everyone understands every single implication of that."²⁷ Molly McKay, executive director of Marriage Equality California, elaborated on the argument during the early days of same-sex couples getting married in San Francisco in 2004. "It really infringes on our ability to articulate who we are to other people. My wife and I got married four years ago. It wasn't legal, but it was vitally important to explain to our friends and family who Davina is to me. This is the woman I want to be buried next to. It's not a business arrangement."²⁸ While rights frames resonate in the context of American history, broad arguments about equality and discrimination can often be abstract and depersonalized. Statements like these, about emotions and family and what it actually means to particular couples to be called "married" are deeply personal and consistent with journalistic norms that prefer precisely those sorts of stories.

The final element of the same-sex marriage debate to examine as portrayed through the

²⁷Proposition 8 - Marriage is about emotions—and legal rights" *Sacramento Bee* May 29, 2009

²⁸California; rights vs. obligations of marriage *Los Angeles Times* February 19, 2004

Table 4.5: Ranking of Frames Attributed to SSM Proponents in Media by Venue Category

| <i>ballot</i> | <i>legislature</i> | <i>executive</i> | <i>court</i> | <i>ballot/court</i> | Overall |
|----------------|--------------------|------------------|-------------------|---------------------|-----------------------|
| discrimination | discrimination | status | discrimination | rights | discrimination |
| rights | rights | rights | rights | discrimination | rights |
| violence | benefits | discrimination | status | legal | status |
| children | family | benefits | threat | judges | benefits |
| religion | status | love | benefits | status | love |
| threat | children/diversion | threat/legal | love/legal/family | public | family |

Table 4.6: Ranking of Frames Attributed to SSM Opponents in Media by Venue Category

| <i>ballot</i> | <i>legislature</i> | <i>executive</i> | <i>court</i> | <i>ballot/court</i> | Overall |
|---------------|--------------------|------------------|--------------|---------------------|-----------------|
| marriage | marriage | legal | marriage | public | marriage |
| children | public | marriage | legal | marriage | religion |
| religion | children | public | children | special | public |
| public | religion | religion | public | religion | children |
| judges | legal | judges | judges | judges | legal |
| family | judges/slope | violence | religion | children/diversion | judges |

media is to examine whether or not journalists tend to change the arguments they emphasize depending upon the focus of an article. Tables 4.5 and 4.6 rank the six most frequently used argument frames attributed to same-sex marriage proponents and opponents across venue categories, respectively. Recall that similar tables in an earlier chapter suggest that proponents and opponents of same-sex marriage consistently advance their one or two favorite argument frames regardless of the venue being targeted in press releases. Across all of the press release categories, pro same-sex marriage groups always advanced *rights* and *discrimination* frames more than any others. Similarly, opponents of same-sex marriage almost always favored the *public* and *marriage* frames regardless of the focus of their press releases.

As in their press releases, the *marriage* frame was always the first or second most com-

mon argument attributed to anti same-sex marriage activists, regardless of an article's focus. Also much like in their press releases, the *legal* frame was the most frequently used when opponents were referenced discussing executive related activities. Approximately 87% of opponents' use of the *legal* frame was in articles from 2004, centered around arguments that Gavin Newsom's activities in San Francisco were outside of his legal authority and powers. Consistent with the argumentation in their press releases, the *discrimination* and *rights* frames were consistently the two most favored arguments in the media unless the article was classified as "executive," where *status* overcame both. Along with the *love* and *benefits* frames, this is a reflection of efforts to personalize the issue of same-sex marriage, particularly in the context of Gavin Newsom's decision to issue marriage licenses and the litigation that followed shortly thereafter. While *status* was ranked fifth in pro same-sex marriage groups' press releases, it was the third most common frame used on their behalf in newspapers. The *benefits* frame was the fourth most frequently used frame in proponents' press releases, much like in the media. While the *love* frame was used more frequently when same-sex marriage supporters addressed executive related activities, it ranked fifth overall for marriage supporters in the media. A majority of the attributed statements making arguments about the cultural and social significance of marriage were in articles from 2004 and 2008. Many of these arguments about the status of marriage came from individuals in newly married couples, which explains the predominance of this frame in both of those years and its position as the third most used frame attributed to same-sex marriage activists in articles featuring court activities.

When reporting on ballot measure activities, two frames frequently found attributed to same-sex marriage opponents, *children* and *religion*, were attributed to same-sex marriage supporters more than in the rest of the newspaper articles. In their press releases, same-sex marriage supporters tended to favor more general arguments about family to specific arguments about children, but in the newspaper articles equal amounts of attention were devoted to both *family* and *children* frames. Of arguments attributed to same-sex marriage opponents in articles reporting on ballot measures, the *children* frame is ranked second, reflect-

ing the use of children and arguments about the effects on children during both Proposition 22 and Proposition 8 ballot campaigns. Greater attention to the *children* frame on behalf of same-sex marriage supporters in the newspaper articles constitutes slightly more direct engagement with the arguments advanced by marriage opponents. This is similarly true in regards to the presence of the *religion* frame in ballot measure articles for both proponents and opponents. Over half of the *religion* frames, from both opponents and proponents of same-sex marriage, were printed in articles during the ballot measure campaigns for Proposition 22 and Proposition 8. Proposition 22 polarized California churches, particularly as several of the more socially liberal of them had been performing same-sex commitment ceremonies for years, in some cases decades, before the initiative.²⁹ While the role of the Mormon Church in the passage of Proposition 8 was probably the most publicized, many other religious groups and churches became directly involved—often through contributions to one side—in the campaign battle over Proposition 8.³⁰

There is also more overlap between the highly ranked frames in articles reporting on the Proposition 8 litigation than there was in the press releases. For proponents and opponents of the measure, the *public*, *judges*, and *rights* frames are in the top six most frequently advanced arguments. In the newspaper articles, there is more engagement over separation of powers issues in the context of the Proposition 8 litigation, as evidenced by presence of the *judges* and *public* frames in Table 4.5. In their press releases, same-sex marriage activists devoted almost no attention to defending the role of judges and courts; in the media, they were quoted countering the arguments made by same-sex marriage opponents about the appropriate roles of the public and judges in a democratic state. Marriage activists were quoted as defending the role of judges and courts as defenders of minority rights against potentially tyrannical majorities, who should not, the argument continues, have the power to

²⁹“Same-Sex Marriage Ban Galvanizes, Polarizes Churches” *Los Angeles Times* February 28, 2000; “Clergy Attack Initiative on Gay Marriage” *Los Angeles Times* January 24, 2000; “The Church” *San Francisco Chronicle* June 15, 2008

³⁰“Churches Take Sides on Gay Marriage” *San Jose Mercury News* October 25, 2008; “Mormon Church Draws Protest Over Marriage Act” *New York Times* November 9, 2008

strip minority groups of fundamental rights. “We are asking the California Supreme Court not only to assert the rights of equality and privacy uniquely enshrined in our state Constitution, but to reassert the judiciary’s rightful role in interpreting it,” said San Francisco City Attorney Dennis Herrera in a written statement following submission of briefs to the state Supreme Court in the consolidated marriage cases.³¹ After Schwarzenegger vetoed AB43 in 2007, Geoff Kors, executive director of Equality California, said he didn’t anticipate that marriage activists would bring the issue back to the public with another ballot measure. “You don’t put minority rights up for a vote from the majority,” he said.³² Perhaps because pro same-sex marriage groups feared this version of the *public* argument would be unpopular with the public, most of their use of the *public* frame in their press releases had to do with public acceptance of same-sex relationships or emphasized that supporting same-sex marriage policies was democratic if the state government was going to represent their entire constituencies. When the California Supreme Court agreed to hear the litigation against Proposition 8, Shannon Minter—lawyer for the National Center for Lesbian Rights—argued that Proposition 8 altered the basic principles of government. “Under the separation of powers, every branch has core functions, and the core function of the courts is to enforce the guarantee of equal protection, especially for minority groups. Proposition 8 takes that away from the court, and that is a very major change in the system of checks and balances.”³³

Conclusions

This chapter has examined the characterization of same-sex marriage and same-sex marriage policy in California as presented through the media. In an earlier chapter, I used group press releases to capture and analyze the original messages regarding same-sex marriage before they’ve been filtered through the news media. In this chapter I analyzed the debate

³¹“S.F. Officials Urge Justices to Drop Gay Marriage Ban” *San Jose Mercury News* April 3, 2007

³²“Governor cites Prop. 22 as he vetoes Leno bill” *San Francisco Chronicle* October 13, 2007

³³“High Court will review Prop. 8 suits” *San Diego Union-Tribune* November 20, 2008

as portrayed through eight newspapers in the context of what was learned through the press releases analysis. Examining the debate through my sample of over 900 newspaper articles reveals several things. The first, simply, is that the debate portrayed by the media is not precisely the same as that advanced by groups themselves in their press releases targeting the media.

Overall, the media paid similar levels of attention to same-sex marriage in California as groups did in their press releases. Both tended to concentrate their attention around particular events, with levels of attention dropping during the months in between. Consistent with journalistic norms and preferences for drama and conflict, the sample of newspaper articles is heavily skewed toward the last six years of the time-line. The earliest article is from March 1985, but 75% of the sample occurs between January 2004 and December 2009. Most of the public, both within and outside of California, paid little notice to same-sex relationships and marriage in the 1980s and 1990s. Once President George W. Bush addressed same-sex marriage in his January 2004 State of the Union Address and Gavin Newsom in San Francisco made same-sex marriage a legitimate possibility (and threat), same-sex marriage had much of the nation's attention, and the dramatic increase in media attention (measured as the number of newspaper articles per month or year) reflects that.

More interesting, however, is the representation of the same-sex marriage debate in the newspaper articles, not simply the amount of attention to the various aspects of the issue. The shifting levels of argumentation attributed to opponents and proponents of same-sex marriage in the media (as measured by the counts of frames) are almost perfectly correlated, with a correlation coefficient of .93. This is evidence of balanced reporting at work over several years. In other words, the media portrays a debate where competing groups are advancing similar amounts of argumentation per month and where those levels change to similar degrees from month to month. This is in fairly stark contrast to argumentation in the press releases, with a correlation coefficient of only .39, where the competing sides to the same-sex marriage debate did not tend to synchronize the intensity of their argumentation. Groups tended to advance greater or fewer arguments at different times from their oppo-

sition, which is more like agenda-setting behavior than activity geared toward deliberative debate.

The timing and magnitude of activists' argumentation is not the only thing that is more engaged in the media than in their press releases; the substance of their argumentation is connected as well. Less attention was devoted to arguments about fairness, equality, and discrimination on behalf of same-sex marriage activists in the media. Instead, attention is shifted towards some of the arguments that are most popular among same-sex marriage opponents. The media attributed twice as much attention to arguments about the potential consequences of same-sex marriage to pro same-sex marriage activists than those activists advanced in their own press releases. Likewise, the media shifted attention away from separation of powers arguments on behalf of same-sex marriage opponents and devoted more attention to special rights, children, and religious arguments.

In other words, journalists construct what seems like a relatively engaged dialogue (particularly in contrast to that found in the press releases) about the issue of same-sex marriage for their readers. Readers of the media will perceive the tango Doug McAdam references as a result of journalists choreographing it out of the largely separate solo routines. Perhaps this is in service towards what, for Adam Simon, would constitute "normatively acceptable campaigns" (2002, 1). However, in the translation of the relatively disengaged arguments from their press releases, activist groups don't get to select which of their arguments receive more or less attention. In both cases, news articles shift attention away from broader, abstract principles like equality and separation of powers towards arguments and ideas that can be personalized. This is not surprising, perhaps, since personalization is one of the journalistic norms outlined by Bennett and others. Presumably this is so that readers might have an easier time connecting to the subject matter; personalization is also more emotional and dramatic. Legitimate policymaking and the proper role of voters, courts, and legislatures in a democracy—the questions raised by same-sex marriage opponents most often in their press releases—do not immediately connect to readers' daily lives. On the other hand, an individual's connection to religion, a church, or their family identity does. Certainly

equal rights and civil rights frames have historical resonance and a history of being persuasive, but not everyone thinks of the movement towards equality based on sexual orientation as analogous to the previous movements who have adopted such language. Furthermore, arguments about constitutional protections and historical discrimination don't immediately connect to most reader's lives. Reporting on and featuring specific couples who have been together for years, and in some cases are raising families, puts a face on the individuals who are directly impacted by the denial of benefits in taxes, hospital visitation, custody, and so on. Arguably, journalists shift the implicit units of analysis targeted by the various arguments from democratic publics and politics to individual, common citizens. However, as part of this personalization, the media disconnects the same-sex marriage issue from the broader social, political, and legal contexts in which activists struggle.

According to Lance Bennett, "...news dramas emphasize crisis over continuity, the present over the past or future, conflicts" and "downplay complex policy information, the workings of government institutions and the bases of power behind the central characters" (2002, 46). As a function of this, the results of balanced reporting are not necessarily unbiased, accurate, or neutral. Necessarily they favor simplistic, immediately accessible, and potentially emotional appeals over those that require context, history, and more complicated theoretical arguments to support. Previous studies have shown that journalistic norms of balance, drama, and conflict can lead to news reporting that favors one side to a political battle over the other (Boykoff and Boykoff 2004; Haltom and McCann 2004). Balanced reporting, in essence, gives equal weight and attention to empirical claims and emotive appeals. While not scientifically complex like global warming, for example, social issues can be multifaceted and complex. Countering arguments about potential harm to the institution of marriage or to children growing up with two mothers or two fathers necessitates more than simple, quick, single line responses. When the media treats arguments about how same-sex marriages will weaken heterosexual marriages as roughly equivalent to appeals to fundamental rights and equal protection, as perhaps both Propositions 22 and 8 suggest, those making the latter may be at a disadvantage. Arguably deliberate democracy doesn't

simply mean engagement, but meaningful engagement. Given the constraints journalistic norms place on “acceptable” story material, making an argument about whether or not a majority of voters should be able to strip previously recognized constitutional rights from a minority is a difficult one to sell. As a result, much of the “engagement” that comes out of the media, still places same-sex marriage advocates in the role of simply trying to deny, without elaboration, the claims made by their opponents.

Table 4.7: Sample of groups recorded as having at least one argument attributed to them

| Pro Same Sex Marriage | Anti Same Sex Marriage |
|--|---|
| National Center for Lesbian Rights | Campaign for California Families |
| Freedom to Marry | ProtectMarriage.com |
| No on 8 | Yes on 8 |
| Equality California | Traditional Values Coalition |
| Lambda Legal | California Family Council |
| Courage Campaign | Focus on the Family |
| No on Knight | Knight Campaign |
| United Methodists | Committee on Moral Concerns |
| Gay and Lesbian Victory Fund | Protection of Marriage Campaign |
| Human Rights Campaign | Church of Jesus Christ of Latter Day Saints |
| All Our Families Coalition | National Organization for Marriage |
| National Gay and Lesbian Task Force | California Christian Coalition |
| Irvine United Congregational Church | Knights of Columbus |
| American Civil Liberties Union | Liberty Counsel |
| San Damiano Friary | Alliance Defense Fund |
| United Methodist Church | Proposition 22 Legal Defense and Education Fund |
| San Francisco LGBT Community Center | Advocates for Faith and Freedom |
| California Alliance for Pride and Equality | Catholic League for Religious and Civil Rights |
| LIFE Lobby | Concerned Citizens of Santa Clara County |
| Marriage Equality USA | Skyline Church |
| Metropolitan Community Church | Calvary Church |

Chapter 5

CONCLUSION

I began this dissertation with a quotation from Doug McAdam: “If it takes two to tango it takes at least two to contend.” I suggested that if we take seriously his plea to examine the “unfolding patterns of interaction between the various parties to contention,” then examining the patterns that evolve as groups fight over issue frames and respond to relevant events is an important step towards understanding contentious politics. Competing activist groups fight in a context shaped by two important dynamics. As advocacy groups pursue change, or attempt to block change, they must confront the mobilizing activities of their opponents. The first question addressed by this project comes out of this dynamic. *Do activists engage, anticipate, or ignore their opponents’ messages?* The second dynamic is the characteristics of particular institutional venues. Activist groups encounter different sets of institutional processes while fighting for their side through litigation than through ballot measure campaigns, for example. This raises a second question. *Do activists change their messages for different institutional arenas and venues?* Finally, the media are a collection of institutions central to contentious politics that are not directly responsible for policy-making. They are, however, partially responsible for making the public and policymakers aware of the messages and activities of activists on either side. Thus the third and final question motivating this project is: *what is the role of the media in contentious politics?* I addressed these questions through an analysis of press release, newspaper, and campaign materials from same-sex marriage activists and their opponents in California.

This study has made several contributions to research on law and social movements. In chapters 2 and 3, I analyzed how same-sex marriage activists and their opponents have framed the issue of same-sex marriage through group press releases and campaign materi-

als. What the materials from groups involved in the same-sex marriage fight in California reveal is a disengaged, non-conversation. Activists have primarily been doing their own routines as they fight over same-sex marriage. In the legal mobilization framework, law incorporates legal institutions, legal officials, and legal rules, norms, and ways of understanding and living. Primarily interested in the latter conception of law, legal mobilization scholars illustrate various ways the development and deployment of legality can be strategic and instrumental and/or ideological and constitutive. The framing activities of Lambda Legal, the National Center for Lesbian Rights, Liberty Counsel, the Alliance Defense Fund, and others are both. While the various sides are technically speaking of the same policy issue, they are in many ways not talking about the same thing. Pro and anti same-sex marriage advocates engage the issue of same-sex marriage from different logics, ideologies, or world-views. They talk past each other because, on the essential elements for their side of the argument, there is very little, or no, overlap or intersection. Activists construct and hope to reinforce particular understandings of the arenas of social life touched by the institution of marriage; in their deployment of their most preferred frames, groups adhere to their largely separate ideological positions associated with family, relationships, children, sex, sexuality, and marriage. For pro same-sex marriage advocates, the issue is one of equality, anti-discrimination, and tangible benefits. Sometimes, it is even about real individuals, families, and couples. On the other hand, anti same-sex marriage advocates understand the issue, not as one about tangible relationships and benefits, but as one that is really about the tensions between majority and minority populations in a democratic state, who has the right to govern or express a state's sovereignty, and an historical, essentialist, religious understanding of the institution of marriage. In doing so, opponents' appeal to law is in hopes of using its powers to "kill off" what they perceive as disruptive symbolically and materially to their ideology: formal, legal recognition and validation of same-sex relationships. Instead of a conversation where the parties address points put forth by their opponents, there are almost two separate and nearly independent conversations where each side talks primarily to themselves and, perhaps, those undecided individuals they hope to

convert. The two sides either can't, or simply won't, engage the issue of same-sex marriage outside of their ideological logics.

While dancing within their separate ideological comfort zones, activists make strategic decisions. The decisions are strategic in at least three ways, the first two of which are consistent with Adam Simon's arguments about candidate centered election campaigns. First, activists largely refuse to argue outside of their separate ideological positions because they know they are less successful when arguing on their opponents' terrain. Same-sex marriage advocates, for example, would find it difficult to make arguments about majoritarian policymaking for a number of reasons. Until recently, a majority of the public was opposed to granting marriage rights to same-sex couples. When same-sex marriage is placed on state ballots, voters almost always make policy opposed to same-sex marriage. Finally, at least during the time period covered by this dissertation, when same-sex marriage advocates have been successful, it has largely been in courts. This connects to the second strategic component of maintaining separate spheres of argumentation. They avoid drawing attention to the procedural elements of policymaking in order to avoid drawing greater attention to the arguments of same-sex marriage opponents, who frequently take advantage of court decisions to attack judges and appeal to populist notions of democracy.

There is a third possible strategic element to the separate dances. For same-sex marriage advocates, the issue is one of equality, anti-discrimination, and tangible benefits. They appeal to legal language and categories, linking equality and discrimination to constitutional principles. The tangible benefits of marriage derive from the institution as a legal status and category, as distinct from any of the institution's religious associations. These are precisely the sort of arguments same-sex marriage activists have made, and will continue to make, in their legal briefs and oral arguments in the midst of litigation. In other words, advocates might advance particular arguments with an eye towards the policymaking venue in which they have the greatest hope of success, even if attention is currently elsewhere. Lambda Legal and others, then, advance arguments about equality and discrimination even in the context of legislation and ballot measure campaigns, knowing eventually they will be in

court again, where such arguments often do well. Advocacy groups engage in venue shopping through their argumentation throughout contentious politics, even outside the most strategically beneficial policymaking venue for their side.

For same-sex marriage opponents, then, this means they praise majoritarian democracy and denounce policymaking by judges because they know they have the greatest chance of success through ballot measures. Anti same-sex marriage activists appeal to voters' rights, state sovereignty, and majoritarian policymaking because these are consistent with the principles underlying the initiative process. Activists make arguments about tradition and children, appealing to voters' emotions, knowing these arguments are often successful in the midst of ballot measure campaigns. They do so even if they are currently focused on litigation, ensuring the arguments are in the minds of voters whenever same-sex marriage makes it to the ballot again.

These findings challenge several pieces of conventional wisdom out of agenda setting and legal mobilization studies. Venue shopping is a strategy where activists seek to move policymaking into a space where they have the greatest chance of success. If activists have venue shopping in mind during long policy struggles, as I suggest, then they are likely to advance arguments they think will appeal to, and be successful in, that policymaking space. Such agenda setting behavior would necessarily generate a lack of engagement and encourage groups to keep dancing separately. Essentially, this framing behavior allows groups to build attention to and support for particular arguments that appeal to a particular venue throughout a policy struggle, even when they are forced to devote attention to a different venue where they are unlikely to find success for their policy goals.

This also means that advocacy groups do not necessarily privilege the language of rights when talking about courts and litigation. Liberty Counsel and the Alliance Defense Fund are explicitly legal organizations opposed to same-sex marriage. The attorneys from these groups rarely talked about rights and instead advanced the arguments about majoritarian democracy and traditional marriage discussed throughout chapters 2 and 3. Such findings further challenge a key finding in several previous studies on countermovements to

progressive rights claims. Several of these illustrated that opponents to progressive rights claims tended to co-opt the language of rights in order to declare rights “special rights.” In my analysis, anti same-sex marriage advocates rarely, if ever, used this particular language. They occasionally denied that what they were trying to accomplish, banning same-sex marriages, was discrimination, but did not use the language of “special rights.” In the context of the same-sex marriage debate, the logic of “special” rights suggests that gays and lesbians are in fact not prevented from participating in the institution of marriage; just like every heterosexual individual, they can marry whomever they want, as long as they are of the opposite sex. To create a right to same-sex marriage would be to create a right specific to a particular minority population, and one that does not apply to the entire populace as a whole. What I found is that instead of reacting to same-sex marriage activists appeals to equal rights with arguments about “special rights,” they attempted to shift the agenda to other issues and mobilize people *for* a certain vision rather than *against* a particular policy. Instead of accusing same-sex marriage activists of seeking “special rights,” anti same-sex marriage advocates in California have increasingly constructed themselves as a minority population in search of their own civil rights protections. They want protection to create policy that returns society to an idealized version of marriage and family. The construction of their identities in this fashion was more subtle prior to the passage of, and litigation against, Proposition 8. Since then, however, anti same-sex marriage activists, particularly the National Organization for Marriage, have characterized their movement as one seeking civil rights protections for religious faith, personal preferences, and with explicit reference to Propositions 8 and 22, the right to vote and have that vote be respected in a democracy.

Few scholars have identified the lack of engagement between opposing movements because they tend to rely on media accounts. The finding that groups talk past each other is made even more interesting in light of the same-sex marriage debate as portrayed through my analysis of newspaper articles over the same time period. Media accounts of the same-sex marriage debate create the illusion of opposing groups doing the tango, engaging each other’s arguments. The amounts of attention paid, and to which types of arguments, by

journalists is not precisely the same in the collection of newspaper articles as what I found in the press releases. In contrast to the latter, journalists construct what seems like a relatively engaged dialogue about the issue of same-sex marriage for their readers. Perhaps this is in service towards what, for Adam Simon, would constitute “normatively acceptable campaigns” (2002, 1). However, in both cases, news articles shift attention away from broader, abstract principles like equality and separation of powers towards arguments and ideas that can be personalized. As part of this personalization, the media disconnects the same-sex marriage issue from the broader social, political, and legal contexts in which activists struggle. Furthermore, there are potentially interesting implications for the findings that balanced reporting in the news does generate similar levels of attention to both sides to a policy conflict. As a function of institutional norms, the attention tends to favor simplistic, accessible, and emotive appeals over arguments that require some social, political, and historical context. Empirical arguments in support of same-sex marriage, or against same-sex marriage bans, unfortunately often require context in order to truly be persuasive. When the media treats arguments about how same-sex marriages will weaken heterosexual marriages as roughly equivalent to appeals to fundamental rights and equal protection, those making the latter may be at a disadvantage.

The dissertation makes a contribution in the realm of group strategy, as well. This is highlighted by a sentiment expressed by Geoff Kors, executive director of Equality California, in the midst of of same-sex marriage advocates’ efforts to determine when they would put a measure on California’s ballot in an attempt to overturn Proposition 8. In an August 12, 2009 press release, he said “For the first time in our state’s history, our community will determine the timing of an election for our equality instead of having to defend ourselves at an election chosen by our opponents.”¹ There was fairly dramatic disagreement among activists as to whether the 2010 election was too soon; not enough time had passed, several groups argued, since the passage of Proposition 8 to feel confident in a victory. Other

¹August 12, 2009 Equality California press release “”

groups wanted to take advantage of the momentum apparently generated by the passage of Proposition 8, and feared waiting a few years would allow the sudden outrage, anger, and awareness the Proposition generated to pass. At the time of the press release, Equality California favored waiting until 2012, believing the election that year would provide the best opportunity to overturn Proposition 8. They have since changed their position, deciding to avoid a ballot campaign in a political and economic climate, the group fears, would not sustain the financial costs required to run a successful campaign, as well as increased hopes the *Perry v. Brown* litigation will generate a favorable outcome without the risks of the ballot.² As the group notes, a loss would not only hurt efforts in California, but “could create a chilling effect on efforts to overturn DOMA and pass other pro-equality legislation. It could also embolden our opposition to try to roll back other hard-fought rights and protections across the state and the country.”

The group Love, Honor, Cherish is backing a constitutional amendment that has been approved for circulation and must receive over 800,000 signatures by May 2012 in order to appear on the ballot in November. Constitutional amendments to ban same-sex marriage have been certified for 2012 ballots in Minnesota and North Carolina, while efforts to repeal same-sex marriage bans or generate new same-sex marriage bans are a possibility in several others. I suggested in chapter 3 that it is during ballot measure campaigns when the potential implications of framing strategies are highlighted and intensified. While the close results of the Proposition 8 election doesn't necessarily provide clear lessons to other groups for victory, it at least suggests that, control over the timing of an initiative is not enough. Even in the face of growing support for same-sex marriage in California, same-sex marriage activists lost on election day. And, they did so using a very similar collection of arguments and frames as they did only eight years prior during the Proposition 22 campaign. Particularly in the face of two losses at the ballot, the campaign suggests that same-sex marriage activists may need to reevaluate their framing strategies and more aggressively

²Equality California website, “Win Marriage Back,” www.eqca.org

try to control the discourse of a campaign, both in terms of timing and messaging.

The dissertation raises questions just as much, if not more, than it attempts to answer them. The first, and most obvious, is whether or not the patterns I find are generalizable to other issues and, if so, what sorts of issues. This is an empirical question, and one that could be addressed along two dimensions. First, is there something about issues like same-sex marriage that lend themselves to a lack of dialogue? Are policy issues that are more easily construed as “morality policy” more likely to generate the almost ideologically isolated discourses found in my empirical chapters? Secondly, does the institutional configuration of the state influence the range of arguments and frames activists on either side of an issue are likely and willing to use? It’s interesting to note that several of the stops on the National Organization for Marriage’s Summer for Marriage Tour in 2010 were in states that do not have an initiated ballot measure procedure in place. Speakers on the tour, however, consistently urged supporters to mobilize around their right to vote on marriage.

Originally, same-sex marriage opponents’ ability to expand the scope of the same-sex marriage battle to the initiative gave them the freedom to mobilize their populist notions of sovereignty and heterosexual standards for family and marriage. Both are discourses that have been mobilized successfully in previous anti same-sex marriage campaigns. What remains to be shown, however, is whether or not these arguments are, and will be, equally persuasive to an audience of judges, for example, as they are to an audience of citizen voters. So far, information out of the *Perry v. Brown* trials suggests that anti same-sex marriage activists are relying primarily on arguments very similar to those they have been for years prior. Once the public is no longer a direct participant, or audience, in the policymaking, will these arguments still find success under the scrutiny of judges and the institutional norms and procedures of court?

BIBLIOGRAPHY

- [1] Anderson, Ellen. 2005. *Out of the Closets and into the Courts: Legal Opportunity Structure and Gay Rights Litigation*. Ann Arbor: The University of Michigan Press.
- [2] Baumgartner, Frank R. and Bryan D. Jones. 1993. *Agendas and Instability in American Politics*. Chicago: University of Chicago Press.
- [3] Bell, Allan. 1991. *The Language of News Media*. Oxford: Blackwell.
- [4] Benford, Robert D. and David A. Snow. 2000. "Framing Processes and Social Movements: An Overview and Assessment." *Annual Review of Sociology* 26: 611-39.
- [5] Bennett, W. Lance. 1990. "Towards a Theory of Press-State Relations in the United States." *Journal of Communication*. 40(2): 103-125.
- [6] Bennett, W. Lance. 1992. *Media, Money and Marketing in American Elections*. New York: St. Martin's.
- [7] Bennett, W. Lance. 2002. *News: The Politics of Illusion*. White Plains, NY: Longman.
- [8] Benoit, William L., John P. McHale, Glenn J. Hansen, P. M. Pier, and John P. McGuire. 2003. *Campaign 2000: A Functional Analysis of Presidential Campaign Discourse*. Lanham, MD: Rowman & Littlefield.
- [9] Birkland, Thomas. 1997. *After Disaster: Agenda Setting, Public Policy and Focusing Events*. Washington, DC: Georgetown University Press.
- [10] Birkland, Thomas. 1998. "Focusing Events, Mobilization, and Agenda Setting." *Journal of Public Policy* 18(1): 53-74.
- [11] Boykoff, Maxwell T. and Jules M. Boykoff. 2004. "Balance as bias: global warming and the US prestige press." *Global Environmental Change*. 14: 125-136.
- [12] Boykoff, Maxwell T. and Jules M. Boykoff. 2007. "Climate change and journalistic norms: A case-study of US mass-media coverage." *Geoforum*. 38(6): 1190-1204.
- [13] Burlein, Ann. 2002. *Lift High the Cross: Where White Supremacy and the Christian Right Converge*. Durham: Duke University Press Books.

- [14] Cappella, Joseph N. and Kathleen H. Jamieson. 1996. "News frames, political cynicism, and media cynicism." *Annals of the American Academy of Political and Social Science*. 546: 71-84.
- [15] Carragee, Kevin M. and Wim Roefs. 2004. "The Neglect of Power in Recent Framing Research." *Journal of Communication*. 54(2): 214-233.
- [16] Ceaser, James W. and Andrew E. Busch. 2001. *The Perfect Tie: The True Story of the 2000 Presidential Election*. Lanham, MD: Rowman & Littlefield.
- [17] Chong, Dennis and James N. Druckman. 2007. "Framing Public Opinion in Competitive Democracies." *American Political Science Review*. 101(4): 637-655.
- [18] Cochran, Wendell. 1996. "The Boys On the 'Net." *American Journalism Review*.
- [19] Dudas, Jeffrey. 2003. *Rights, Resentment, and Social Change: Treaty Rights in Contemporary American*. Dissertation, University of Washington.
- [20] Dugan, Kim. 2005. *The Struggle Over Gay, Lesbian, and Bisexual Rights: Facing off in Cincinnati*. New York: Routledge.
- [21] Egan, Patrick J. and Kenneth Sherrill. 2009. "California's Proposition 8: What Happened, and What Does the Future Hold?" National Gay and Lesbian Task Force Policy Institute.
- [22] Ellingson, Stephen. 1995. "Understanding the Dialectic of Discourse and Collective Action: Public Debate and Rioting in Antebellum Cincinnati." *The American Journal of Sociology*. 101(1): 100-144.
- [23] Engel, David. 1984. "The Oven Birds Song: Insiders, Outsiders, and Personal Injuries in an American Community." *Law and Society Review* 18: 551-82.
- [24] Engel, David and Frank Munger. 2003. *Rights of Inclusion: Law and Identity in the Life Stories of Americans With Disabilities*. Chicago: University of Chicago Press.
- [25] Entman, Robert M. 1989. *Democracy Without Citizen: Media and the Decay of American Politics*. New York: Oxford University Press.
- [26] Entman, Robert M. 1993. "Framing: Toward Clarification of a Fractured Paradigm." *Journal of Communication*. Autumn, 51-58.

- [27] Eskridge, William N. 1999. *Gaylaw: Challenging the Apartheid of the Closet*. Cambridge: Harvard University Press.
- [28] Ewick, Patricia, and Susan S. Silbey. 1998. *The Common Place of Law: Stories from Everyday Life*. Chicago: The University of Chicago Press.
- [29] Felstiner, William L.F., Richard L. Abel and Austin Sarat. 1980-81. "The Emergence and Transformation of Disputes: Naming, Blaming, Claiming." *Law & Society Review* 15, no. 3-4: 631-54.
- [30] Ferree, Myra Marx, William Gamson, Jurgen Gerhards and Dieter Rucht. 2002. *Shaping abortion discourse: Democracy and the public sphere in Germany and the United States*. Cambridge, England: Cambridge University Press.
- [31] Fetner, Tina. 2008. *How the Religious Right Shaped Lesbian and Gay Activism*. Minneapolis: University of Minnesota Press.
- [32] Fisher, Shauna. 2009. "It Takes (At Least) Two to Tango Fighting with Words in the Conflict over Same-Sex Marriage." In Mary Bernstein, Anna-Maria Marshall, and Scott Barclay (eds), *Queer Mobilizations: LGBT Activists Confront the Law*. New York: New York University Press.
- [33] Galanter, Marc. 1983. "Reading the Landscape of Disputes: What We Know and Don't Know (and Think We Know) About Our Allegedly Contentious and Litigious Society." *UCLA Law Review*. 31 (4): 4-71.
- [34] Gamson, William. 1992. *Talking Politics*. New York: Cambridge University Press.
- [35] Gamson, William. 2004. "On a Sociology of the Media." *Political Communication*. 21: 305-307.
- [36] Gamson, William and Gadi Wolsfeld. 1993. "Movements and Media as Interacting Systems." *Annals of the American Academy of Political and Social Science*. 526: 114-127.
- [37] Gerber, Elisabeth R. 1999. *The Populist Paradox: Interest Group Influence and the Promise of Direct Legislation*. Princeton: Princeton University Press.
- [38] Gerstmann, Evan. 1999. *The Constitutional Underclass: Gays, Lesbians, and the Failure of Class-Based Equal Protection*. Chicago: University of Chicago Press.

- [39] Goldberg-Hiller, Jonathan. 2002. *The Limits to Union: Same-Sex Marriage and the Politics of Civil Rights*. Ann Arbor: The University of Michigan Press.
- [40] Goldberg-Hiller, Jonathan and Neal Milner. 2003. "Rights as Excess: Understanding the Politics of Special Rights." *Law & Social Inquiry*. 28: 1075-1118.
- [41] Haltom, William and Michael McCann. 2004. *Distorting the Law: Politics, Media, and the Litigation Crisis, The Chicago Series in Law and Society*. Chicago: Chicago University Press.
- [42] Hilgartner, Stephen and Charles L. Bosk. 1988. "The Rise and Fall of Social Problems: A Public Arenas Model." *American Journal of Sociology*. 94(1): 53-78.
- [43] Hull, Kathleen E. 2001. "The Political Limits of the Rights Frame: The Case of Same-Sex Marriage in Hawaii." *Sociological Perspectives*. 44(2): 207-232.
- [44] Iyengar, Shanto. 1991. *Is Anyone Responsible?* Chicago: University of Chicago Press.
- [45] Iyengar, Shanto. 1996. "Framing responsibility for political issues." *Annals of the American Academy of Political and Social Science*. 546: 59-70.
- [46] Javors, Irene and Renate Reimann. 2001. "Building Common Ground: Strategies for Grassroots Organizing on Same-Sex Marriage." In *Queer Families, Queer Politics: Challenging Culture and the State*, ed. Mary Bernstein and Renate Riemann, 293-305. New York: Columbia University Press.
- [47] Jones, Bryan D. 1994. *Reconceiving Decision-Making in Democratic Politics: Attention, Choice, and Public Policy*. Chicago: University of Chicago Press.
- [48] Jones, Bryan D. 2001. *Politics and the Architecture of Choice: Bounded Rationality and Governance*. Chicago: University of Chicago Press.
- [49] Jones, Bryan D. and Frank R. Baumgartner. 2005. *The Politics of Attention: How Government Prioritizes Problems*. Chicago: University of Chicago Press.
- [50] Kendell, Kate. 2006. "The Right to Marry and the San Francisco Experience." *Family Court Review*. 44(1): 33-44.
- [51] Kinder, Donald R. 1998. "Communication and Opinion." *Annual Review of Political Science* 1: 167-197.

- [52] Kingdon, John W. 1995. *Agendas, Alternatives, and Public Policies*. New York: Longman.
- [53] Lakoff, George. 2002. *Moral Politics: How Liberals and Conservatives Think*. 2nd ed. Chicago: University of Chicago Press.
- [54] Lawrence, Regina G. 2000. *The Politics of Force: Media and the Construction of Police Brutality*. Berkely: University of California Press.
- [55] Levin, David. 2002. "Making a Good Impression: Peace Movement Press Release Styles and Newspaper Coverage." *Press/Politics* 7(1): 79-101.
- [56] Livingston, Steven and W. Lance Bennett. 2003. "Gatekeeping, Indexing, and Live-Event News: Is Technology Altering the Construction of News?" *Political Communication*. 20: 363-380.
- [57] Magleby, David B. 1998. "Ballot Initiatives and Intergovernmental Relations in the United States." *Publius: The Journal of Federalism*. 28(1): 147-163.
- [58] May, Peter J. 1992. "Policy Learning and Failure." *Journal of Public Policy*. 12(4): 331-354.
- [59] McAdam, Doug. 1999. *Political Process and the Development of Black Insurgency, 1930- 1970*. Chicago, University of Chicago Press.
- [60] McAdam, Doug, Sidney Tarrow, and Charles Tilly. 2001. *Dynamics of Contention*. New York, Cambridge University Press.
- [61] McCann, Michael. 1994. *Rights at Work: Pay Equity Reform and the Politics of Legal Mobilization*. Chicago: The University of Chicago Press.
- [62] McCann, Michael., 1996. "Causal versus Constitutive Explanations (or, On the Difficulty of Being so Positive . . .)" *Law & Social Inquiry*. 21(2): 457-482.
- [63] Merry, Sally Engle. 1985. "Concepts of Law and Justice Among Working-Class Americans: Ideology as Culture." *Legal Studies Forum*. (9): 1. 59-69.
- [64] Meyer, Savid S. and Suzanne Staggenborg. 1996. "Movements, Countermovements, and the Structure of Political Opportunity." *The American Journal of Sociology*. 101(6): 1628-1660.

- [65] Mucciaroni, Gary. 2008. *Same Sex, Different Politics: Success and Failure in the Struggles over Gay Rights*. Chicago: University of Chicago Press.
- [66] Nelson, Thomas E. and Donald R. Kinder. 1996. "Issue Frames and Group-centrism in American Public Opinion." *Journal of Politics*. 58: 1055-1078.
- [67] Patterson, Thomas. 1993. *Out of Order*. New York: Vintage Books.
- [68] Pralle, Sarah Beth. 2006. *Branching Out, Digging In: Environmental Advocacy and Agenda Setting*. Washington, DC: Georgetown University Press.
- [69] Riker, William H. 1996. *The Strategy of Rhetoric: Campaigning for the American Constitution*. New Haven: Yale University Press.
- [70] Rosenberg, Gerald N. 1996. "Positivism, Interpretivism, and the Study of Law." *Law & Social Inquiry*. 21(2): 435-455.
- [71] Rucht, Dieter. 2004. "Movement Allies, Adversaries, and Third Parties." *The Blackwell companion to social movements*.
- [72] Scheingold, Stuart A. 1974. *The Politics of Rights: Lawyers, Public Policy, and Political Change*. New Haven: Yale University Press.
- [73] Schneider, Anne and Helen Ingram. 1993. "Social Construction of Target Populations: Implications for Politics and Policy." *The American Political Science Review*. 87 (2): 334- 347.
- [74] Sigelman, Lee and Emmett H. Buell, Jr. 2004. "Avoidance or Engagement? Issue Convergence in U.S. Presidential Campaigns, 1960-2000." *American Journal of Political Science*. 48(4): 650-661.
- [75] Silverstein, Helena. 1996. *Unleashing Rights: Law, Meaning, and the Animal Rights Movement*. Ann Arbor: The University of Michigan Press.
- [76] Simon, Adam. 2002. *The Winning Message: Candidate Behavior, Campaign Discourse, and Democracy*. Cambridge: Cambridge University Press.
- [77] Sleurs, Kim, et. al. 2003. "Constructing press releases, constructing quotations: A case study." *Journal of Sociolinguistics*. 7/2: 192-212.
- [78] Sleurs, Kim and Geert Jacobs. 2005. "Beyond preformulation: an ethnographic perspective on press releases." *Journal of Pragmatics*. 37: 1251-1273.

- [79] Snow, David A. and Robert D. Benford. 1992. "Master Frames and Cycles of Protest." In *Frontiers in Social Movement Theory*, edited by Aldon D. Morris and Carol McClurg Miller. New Haven: Yale University Press.
- [80] Stenger, Katherine, E. 2005. *Voices Crying Out in the Wilderness: Religious Groups and Media Coverage of National Policy Debates*. Political Science, University of Washington. PhD.
- [81] Stone, Deborah A. 1989. "Causal Stories and the Formation of Policy Agendas." *Political Science Quarterly* 104, no. 2: 281-300.
- [82] Tarrow, Sidney. 1992. "Mentalities, Political Cultures, and Collective Action Frames: Constructing Meaning through Action." In *Frontiers in Social Movement Theory*, edited by Aldon D. Morris and Carol McClurg Miller. New Haven: Yale University Press.
- [83] Thomas, Evan. 2003. "The War Over Gay Marriage." *Newsweek*. July 7, 38.
- [84] Tilly, Charles and Sidney Tarrow. 2006. *Contentious Politics*. Boulder: Paradigm Publishers.
- [85] Xenos, Michael A. and Kirsten A. Foot. 2005. "Politics as Usual, or Politics Unusual? Position Taking and Dialogue on Campaign Websites in the 2002 U.S. Elections." *Journal of Communication*. 55(1): 169-185.
- [86] Zemans, Frances Kahn. 1983. "Legal Mobilization: The Neglected Role of the Law in the Political System." *American Political Science Review*. 77: 690-703.

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