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Before the Wedding Dance: Citizen Policymaking on Same-Sex Marriage

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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 Supreme Court's decision in *Obergefell v. Hodges* on June 26, 2015, the issue of same-sex marriage appeared on state ballots 39 times.¹ On two of these occasions voters failed to pass an initiative or referendum prohibiting same-sex couples from marrying.² Voters in three states voted in favor of same-sex marriage in 2012—Washington, Maryland, and Maine. Of the 33 states that have seen same-sex marriage prohibitions on their ballots, California is the only state where voters approved two different measures: first Proposition 22 in 2000, which statutorily prohibited same-sex marriage, 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.

California is one of 24 states with the citizen initiative, the most direct form of democratic policymaking. Issue framing in the context of ballot initiatives—when groups most directly appeal to the voting public—makes the potential consequences of framing interactions most striking. Social movement and policy scholars frequently use the concept of framing to examine efforts to create and maintain particular understandings of a policy issue (Baumgartner and Jones 1993, Benford and Snow 2000, Chong and Druckman 2007, Pralle 2006). Rights, legal categories, and other policy-relevant information is multidimensional and potentially ambiguous (Jones and Baumgartner 2005). Frames simplify and condense this information, giving weight and salience to particular attributes of an issue, while deemphasizing others; they define problems, diagnose causes, and suggest possible remedies (Entman 1993, Gamson 1992). They are used strategically by actors in hopes of manipulating how the public and policymakers understand a particular policy issue. Shifts in frames may influence whether or not an issue receives attention and have the potential to generate shifts in support for that issue (Baumgartner and Jones 1993, Chong and Druckman 2013, Pralle 2006).

¹ These 39 instances actually constitute 38 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.

² Arizona voters failed to pass Proposition 107 during the 2006 general election with 48.2 percent in favor, but passed a similar constitutional amendment with 56.2 percent support in 2008. During the 2012 general election, 47.4 percent of Minnesota voters voted in favor of Amendment 1, which would have amended the state constitution.

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. As they campaign, groups compete for the attention and support of these audiences through the creation and dissemination of issue frames they perceive as strategically beneficial to them or harmful to their opponents (Haltom and McCann 2004, Pralle 2006, Stone 1989). 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.

Some scholars argue that initiative campaigns do not consistently affect voter preferences or policy outcomes (Bowler and Donovan 1998, Gerber 1999). Still, there is more recent scholarship arguing that campaign and ballot information can have a substantial, if short-lived, effect on voter preferences and that campaign spending can increase the likelihood of success for either side (Burnett and Kogan 2015; Gerber, Gimpel, Green, and Shaw 2011; Rogers and Middleton 2015). To the extent that election outcomes indicate campaign effectiveness, there are implications for thinking about the effectiveness of different frames in competition with one another. And, while this question motivates some of the discussion that follows, that is not the primary goal of this article. There is more to the outcome of movements for change than election results. Legal and social change includes not only changes in formal policy, but also public perceptions and opinions. Ballot measure campaigns are parts of these broader efforts and the framing strategies groups employ are also meaningful within that context.

Both campaigns provide an opportunity to examine whether or not competing groups engage with each other's arguments over the course of a campaign. A concern for engagement or dialogue leading to an election 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). There is some research suggesting that competing activist groups do willingly engage in "frame contestation"—publicly confronting and challenging opponents' frames (Boscarino 2015). However, scholars of candidate-centered campaigns argue that engaging one's opponent during an election is irrational (Benoit et al. 2003; Ceaser and Busch 2001, Riker 1996, Simon 2002). It is worth considering these dynamics in the context of issue-centered campaigns. Do activists involved in an initiative campaign confront and engage their opponents prior to an election?

Not only did the Proposition 22 campaign and subsequent change in law become a part of the evolving political opportunity structure that groups mobilized within,³ but it provided an opportunity for learning. Both campaigns provide a within-case comparison to examine whether or not groups respond to information gained from an earlier campaign. They provide an opportunity for political learning, where groups can assess the success of their strategies for advocating a particular position during the Proposition 22 campaign and make adjustments towards potentially more successful, sophisticated, and compelling advocacy for the Proposition 8 campaign (May 1992, see also Solomon 2014). What, if any, impact did the results of the Proposition 22 campaign and the changes that occurred politically, socially, and legally, have on the Proposition 8 campaign?

³ See Anderson (2005), McAdam (1999), McCann (1994), and Meyer and Staggenborg (1996) for discussion of legal and political opportunity structures.

This paper uses 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 during ballot measure campaigns. First, I examine whether or not opposing groups respond to each other in their framing during ballot measure campaigns. Second, I examine whether or not groups shift their framing strategies following a success or failure. While I find some engagement in the campaign commercials, I find little in the press releases. With some nuanced shifts reflecting the new context, both opponents and supporters of same-sex marriage maintained fairly consistent framing strategies when comparing the Proposition 22 and Proposition 8 campaigns. Following a brief discussion of same-sex marriage policymaking through California’s initiative process I turn to discussion of the framing activities that took place during the ballot measure campaigns in 2000 and 2008.

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. Relying on the gender-neutral language, several same-sex couples sought marriage licenses in the mid-1970s.⁴ In 1977, the state legislature passed a law revising Family Code Sec 300 again so that it once again specified “a man and a woman.” From this point, marriages for same-sex couples performed in the state of California were statutorily prohibited.

It wasn’t until the early and mid-1990s that the issue of what to do with out-of-state marriages between same-sex couples was raised. The Hawaiian case *Baehr v. Lewin* (1993) 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,⁵ 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 percent, adding sex-specific language to California’s Family Code (Family Code Sec. 308.5). Originally, Knight cited *Baehr v. Lewin* (1993) as motivation for introducing the legislation. 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* (1999). This played 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

⁴ In re Marriage Cases.

⁵ AB 911 and AB 1982.

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.⁶ 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 and qualified for the November 4, 2008 election ballot in June. This was shortly after the Supreme Court announced its decision overturning the statute that resulted from Proposition 22 (*In re Marriage Cases* 2008). The state Supreme Court denied a request to delay issuing marriage licenses to same-sex couples, and on June 16, 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 percent. The following day, when the law went into effect, 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. The California Supreme Court agreed to hear the cases, but denied a stay of the initiative.

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 (*Strauss v. Horton* 2009). Days before the ruling, Theodore Olson and David Boies filed a federal challenge to Proposition 8 in the US District Court for the Northern District of California on behalf of two gay and lesbian couples who applied for marriage licenses 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. 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. Following appeal, the US Supreme Court ruled that Proposition 8 proponents did not have standing to appeal the District Court’s ruling on June 26, 2013. This left Judge Walker’s 2010 decision binding. Two days later the first same-sex marriages in California since 2008 began.

⁶ “Fatally-Flawed CA Marriage Amendment Won’t Protect Marriage,” September 22, 2005 article by Family Policy Network, familypolicy.net/ca

Framing Same-Sex Marriage for California's Fourth Branch

In order to capture the arguments made regarding marriage for same-sex couples in the context of ballot initiatives, I collected press releases and campaign commercials from a number of groups involved in both the Proposition 22 and Proposition 8 campaigns. I collected press releases from each group's web site that specifically addressed same-sex marriage policymaking through the initiative process in the state of California. I accessed the archived websites 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.⁷ I also accessed the websites of the two Protect Marriage campaigns organized in support of Proposition 22 and Proposition 8.⁸ The remaining press releases from groups supporting same-sex marriage are from Equality California, Lambda Legal, and the National Center for Lesbian Rights. The remaining press releases from groups opposing same-sex marriage are from the Alliance Defense Fund,⁹ Liberty Counsel, and Save California. The count of press releases focusing on same-sex marriage policymaking through California's ballot process can be found in Table 1. Throughout the paper, I will primarily refer to groups based on their support or opposition to same-sex marriage, since how groups discuss the policy issue is the primary thrust of the paper. This can be somewhat confusing, given the structure of ballot initiatives. Groups *supporting* same-sex marriage campaigned against both Propositions 22 and 8; groups opposing same-sex marriage campaigned in support of both propositions.

Along with press releases aimed at 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 14 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 a table in the appendix.¹⁰

While constrained in terms of time and financial resources, commercials provide a forum for activists to target messages to the public without filtering through journalistic norms and constraints. They are also a low-cost way for potential voters to learn about ballot measures, as all they require is having the appropriate television station on, arguably a task that requires less

⁷ The archived sites were found at the UCLA library's digital archive. Both sites essentially disappeared shortly after the votes on their respective Propositions took place.

⁸ The Protect Marriage campaign material and website for Proposition 22 (www.protectmarriage.net) are no longer in use and were found using the UCLA library's digital archive. The Protect Marriage campaign website for Proposition 8 was still in use, but did not contain press releases from before the general election in November 2008. This website (www.protectmarriage.com) is no longer in use, but was at the time of data collection. The coalition of groups has since moved to Facebook.

⁹ The group changed its name to The Alliance Defending Freedom in 2012.

¹⁰ Many 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 1. Counts of Press Releases Focusing on the Ballot

	Prop. 22 6/1999–3/2000	Prop. 8 4/2008–11/2008	Total
Pro SSM	39	36	75
Anti SSM	12	16	28

effort than reading the daily newspaper. Advertising can be an important variable in ballot measure campaigns, particularly during the last several days of an election (Cronin 1989, Gerber et al. 2011). Commercials, along with other sources of advertising and campaign materials, aim to define what an issue on the ballot should mean for voters and, subsequently, how they should vote (Magleby 1998).

Arguments regarding same-sex marriage in the press releases and commercials (after they were transcribed) were coded into one of 19 separate argument frames.¹¹ I coded every sentence in a release and every line in a commercial—direct quotations and otherwise. 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. 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 could be collapsed into fewer more general frames, which I do further on, I use “argument frame” to refer to these more specific arguments made in the same-sex marriage debate (Stenger 2005).

There are a total of 376 statements in the press releases from LGBT organizations and a total of 116 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. Table 2 contains the counts of argument frames found within the press releases focusing on the ballot. 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 regularly a frame, the other side either does not speak to it at all or addresses it only a few times. The *rights* and *discrimination* arguments accounted for 64 percent of same-sex marriage proponents’ arguments in press releases discussing Proposition 22 or Proposition 8. Same-sex marriage opponents devoted 54 percent of their arguments to separation of powers frames (*public*, *judges*, and *states*) in press releases aimed at the ballot measures. I discuss the differences between the two campaigns later.

The results of coding the transcribed commercials are in Table 3. 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, supporters 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. Third, 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

¹¹ See Table 4 in the appendix for descriptions of the arguments.

Table 2. Argument Frame Counts in Ballot Related Press Releases

Frame	Proposition 22		Proposition 8	
	pro SSM	anti SSM	pro SSM	anti SSM
rights	16	0	53	0
discrimination	101	0	71	0
marriage	0	7	0	11
violence	17	14	0	0
slope	0	0	0	2
threat	7	0	0	0
family	29	2	6	1
children	3	0	0	6
legal	0	0	0	1
public	3	13	8	33
judges	0	0	0	4
states	0	11	0	2
status	0	0	1	0
benefits	16	0	1	0
love	0	0	3	0
diversion	30	1	5	7
religion	2	0	4	1
Total	224	48	152	68

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. Ten committees are on record on the California secretary of state website opposing Proposition 22; only four committees are on record in support of Proposition 22. However, opponents of Proposition 22 were outspent by nearly \$3.6 million.¹² 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 percent of respondents said they would vote “yes” on the measure, only 40 percent said they would vote “no,” and 7 percent 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

¹² Information collected from The California Voter Foundation at www.calvoter.org and the website for the California Secretary of State www.sos.ca.gov

Table 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
marriage	0	14	0	3
violence	4	0	0	0
threat	2	0	7	0
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
status	1	0	0	0
love	1	0	3	0
diversion	1	0	3	0
religion	0	0	5	2
Total	18	28	111	31

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 was no longer a hypothetical possibility, but a reality. Since the state Supreme Court announced its ruling in May, approximately 18,000 gay and lesbian couples had received marriage licenses.¹³ 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. Due to 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 its placement on the ballot. According to the Field Poll, it appeared that Californians' attitudes in regards to same-sex marriage had gradually been 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.¹⁴

¹³ November 5, 2008 EQCA press release "Legal Groups File Lawsuit Challenging Proposition 8, Should It Pass."

¹⁴ Figure is taken from www.calvoter.org and represents totals from slightly before the November 4 election.

The Right to Be Left Alone and the Fundamental Right to Marry

As illustrated in Tables 2 and 3 above, supporters of same-sex marriage almost universally favored arguments about discrimination and rights in their press releases 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 of 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, describing 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.¹⁵ 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 (see: Callaghan and Schnell 2009, Joslyn and Haider-Markel 2006 for discussions on the role of the messenger on framing effects). 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.

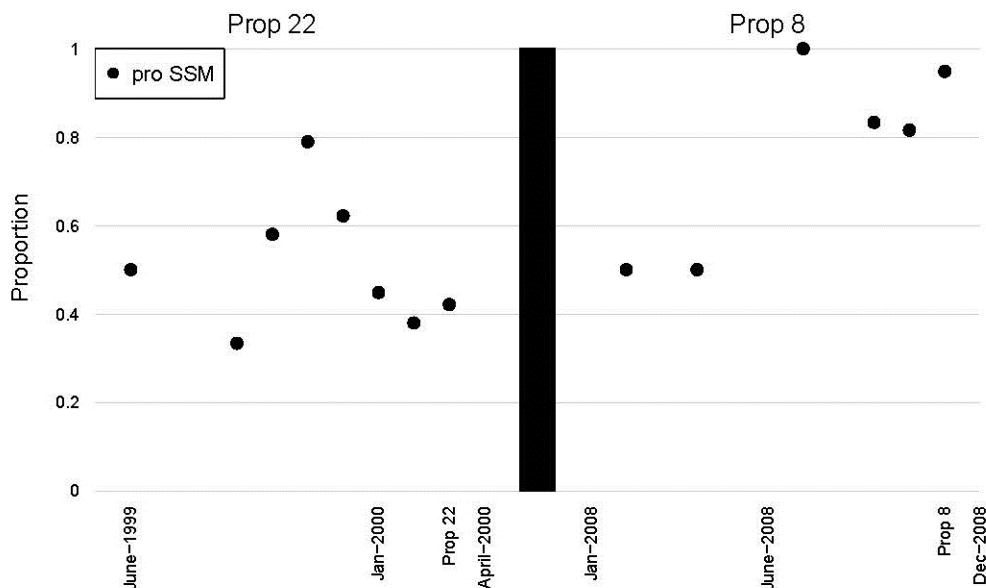
Arguments using the language of equality, but especially of discrimination and fairness, were disproportionately favored in the No on Knight press releases and all of the press releases from groups supporting same-sex marriage during the Proposition 8 campaign.¹⁶ About half of the press release statements from groups opposing Proposition 22 were from the rights and discrimination 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 percent of statements 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 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 campaign in 1999 and 2000, rights and discrimination arguments constituted at least 40 percent 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

¹⁵ Vote No on Knight press releases from 1999 and 2000.

¹⁶ Unfortunately, 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 1. Rights and Discrimination Related Frames, Prop. 22 and Prop. 8



Note: 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 combines the rights and discrimination argument frames advanced by same-sex marriage supporters in their press releases about the ballot measures.

and treatment, even more than the No on 22 campaign; in the months leading up to the 2008 general election, at least 80 percent 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 degrees. Arguments using the *discrimination* frame made up 45 percent and 47 percent 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.¹⁷ 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.”¹⁸ Opponents of the measure—various politicians, companies, and ma-

¹⁷ January 20, 2000 No on Knight press release “Prop. 22 Anti-Gay, Not Pro-Family.”

¹⁸ July 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.”

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.”¹⁹

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.”²⁰ The increase in rights/discrimination arguments during the Proposition 8 campaign, as illustrated in Figure 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 (seven percent of their arguments about Proposition 22), while opponents of Proposition 8 made 53 of these arguments (35 percent of their arguments about Proposition 8). This is 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 marriages 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.²¹ 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.”²² 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 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.”²³ In 2008, same-sex marriage proponents were actively seeking formal equality in the

¹⁹ October 26, 2008 No on 8 press release.

²⁰ September 29, 2008 No on 8 press release “Prop. 8 Opponents Call TV Ad False and Mislead.”

²¹ The California Supreme Court regularly used “fundamental right” or “fundamental constitutional right” in its 121-page decision *In re Marriage Cases*.

²² October 30, 2008 No on 8 press release.

²³ October 24, 2008 No on 8 press release.

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."²⁴ 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 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 will teach his kids that it is not ok to discriminate against gays and lesbians and 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. There is a 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, 2000.²⁵ 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 Proposition 8 is to pass. Eleven of the No on 8 commercials explicitly highlight rights and discrimination arguments. The commercial "Discrimination" (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 mis-

²⁴ February 16, 2000 No on Knight press release "No on Knight Launches Ad Campaign; Teachers Denounce Misleading "Yes" Ad."

²⁵ March 1, 2000 No on Knight press release "Prop. 22 Hurts Gay People; New TV Ad by No on Knight Campaign."

regation statutes. 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”).

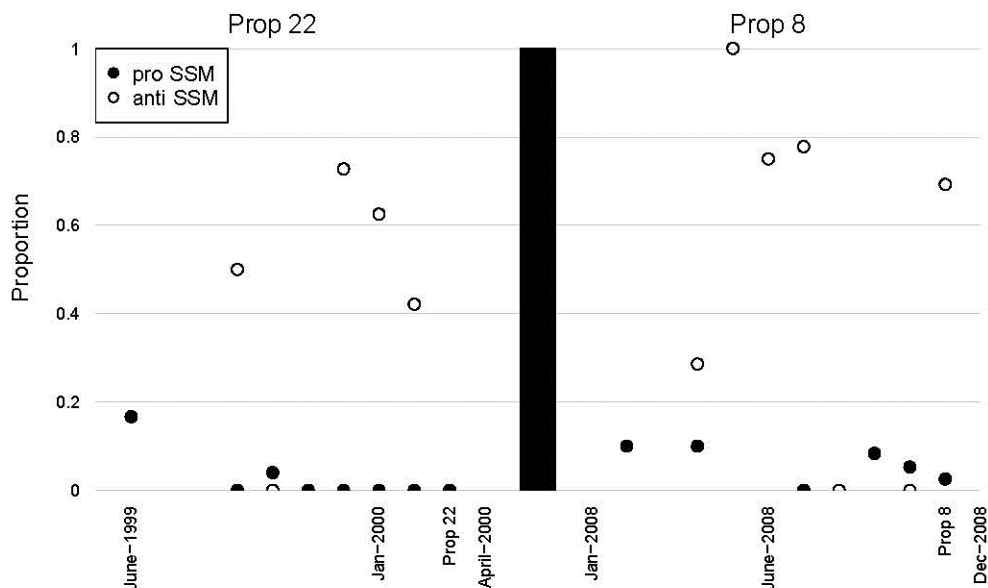
Six of the No on 8 campaign commercials directly addressed the claims made by the Yes On 8 campaign. The most explicit of these, “Don’t Believe Their Scare Tactics,” shows television screens stacked on top of each other, all showing clips of the Yes on 8 campaign’s commercials. A man’s voice says: “Their attacks have come before. And they always use the same scare tactics. This time, they want to eliminate rights and they’re 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 (groups opposed to same-sex marriage) devoted no attention to the *rights* and *discrimination* argument frames in either their press releases or campaign commercials. Contrary to prior research on conservative counter-movements to progressive rights claims, same-sex marriage opponents’ press releases contained no arguments about special rights (Dudas 2003, Dugan 2005, Gerstmann 1999, Goldberg-Hiller 2002). 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 state’s 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 2. Over half of anti same-sex marriage groups’ arguments during both campaigns were not about the policy issue itself, but instead about the public’s opinion and which institutions should have a legiti-

Figure 2. Separation of Powers Frames, Prop. 22 and Prop. 8



Note: 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 noncontiguous campaign time periods. The figure combines the public, judges, and states argument frames.

mate claim to policymaking on the issue. Approximately one-fourth of same-sex marriage opponents' arguments used the *states* frame during the Proposition 22 campaign, insisting 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* (1999) 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 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.”²⁶ 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* (1999), 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. . .

²⁶ “Gays for 22”; also September 9, 1999 press release “Protection of Marriage Initiative Holds Wide Lead.”

Only the passage of Proposition 22 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."²⁷

The slogan "it's our state, it should be our choice" was particularly compelling in the months leading up to 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 percent of respondents said they would vote yes on the measure, only 40 percent said they would vote no, and 7 percent said they were unsure. Same-sex marriage opponents regularly cited such polls while suggesting that California voters had a "right and responsibility . . . to decide important issues for ourselves."²⁸ 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 July 2008, 51 percent of those polled said they would oppose Proposition 8 and only 42 percent said they would vote in favor of it. The context of same-sex marriage opponents' use of the *public* frame shifted as well.

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."²⁹ Supporters of Proposition 8 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 supporters asked the state Supreme Court to delay implementing the May 15 decision because "[t]he people of California have a constitutional right to vote on marriage, and [they] trust the high court will respect the democratic process."³⁰ Proponents of same-sex marriage were accused of trying to "silence the people's voice forever."³¹

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

²⁷ December 20, 1999 California Protection of Marriage Initiative press release "Passage of Proposition 22 Critical after Vermont Ruling."

²⁸ February 10, 2000 California Protection of Marriage Initiative press release.

²⁹ April 23, 2008 Alliance Defense Fund press release.

³⁰ June 3, 2008 Alliance Defense Fund press release.

³¹ July 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."³² The Field Polls from May, which for the first time in three decades of polling on the issue showed a majority of Californians approving of the right to marry for same-sex couples (51 percent to 42 percent), generated hope and optimism among same-sex marriage supporters.³³ Proportionately, the effort to respond to anti same-sex marriage groups' claims about state sovereignty and majority rule was small, with *public* frames accounting for only one percent and five percent of their arguments during the Proposition 22 and 8 campaigns, respectively. 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 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 highlights Gavin Newsom's press conference on May 15, 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 gonna 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 *mar-*

³² April 24, 2008 EQCA press release.

³³ May 28, 2008 EQCA press release.

riage 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 voters.³⁴ 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.”

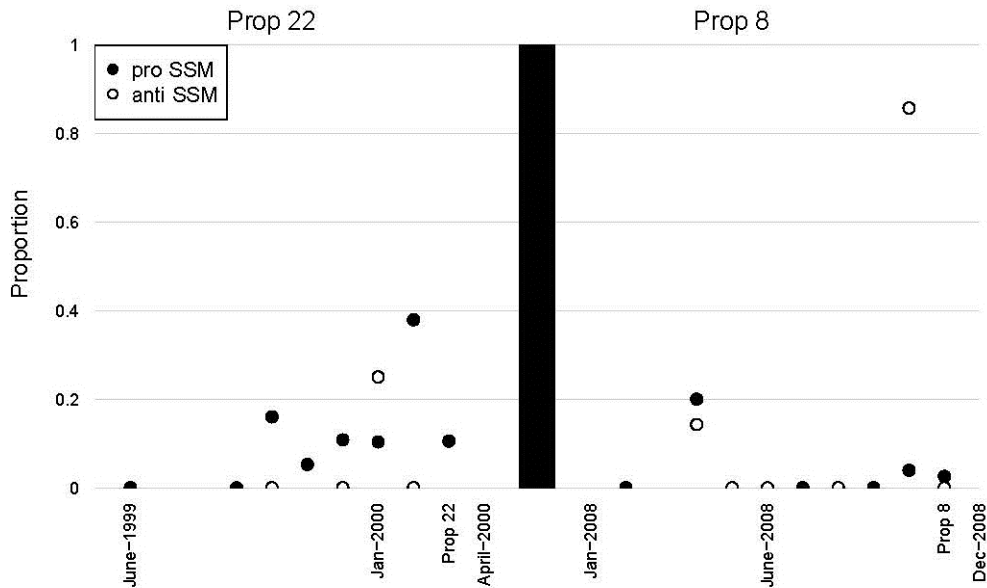
In spite of their preoccupation with heterosexual marriage, opponents of same-sex marriage made relatively few arguments emphasizing the potential impacts of same-sex marriage on family structure and children in their press releases. There was a single month during the Proposition 22 campaign when they made arguments using the *family* frame, as illustrated in Figure 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.”³⁵

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,

³⁴ January 20, 2000 California Protection of Marriage Initiative press release.

³⁵ January 20, 2000 California Protection of Marriage Initiative press release.

Figure 3. Family Related Frames, Prop. 22 and Prop. 8



Note: 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 noncontiguous campaign time periods. The figure combines the family and children argument frames.

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 empirics. 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 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.

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, same-sex marriage opponents 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. Second, 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 counter-memories 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. In their Yes on 22 commercials, 36 percent of anti same-sex marriage activists' coded arguments used the *family* and *children* frames; these were evenly represented, each with 18 percent. In contrast, arguments focusing on children accounted for 68 percent of their frames in the Yes on 8 campaign commercials. On the other hand, the use of the *marriage* frame dropped from 50 percent in the Yes on 22 commercials to 10 percent 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.

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: unless people vote yes on Proposition 8, same-sex marriage will be taught to children in schools. 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, supporters of same-sex marriage, arguably, set out to do the opposite (Burlein 2002, Gadarian and van der Vort 2017, Solomon, 2014). 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 percent 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 percent of the arguments in their No on 8 campaign commercials. Figure 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 from same-sex marriage supporters 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 voting no on Proposition 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 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's 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."³⁶ 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 groups supporting same-sex marriage 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.³⁷ However, it was more common that it was used in the context of more generic arguments about how ballot measures prohibiting same-sex marriage hurt, and are an attack on, families. At times, this was an appeal to particular groups of families—Latino families, working families—in hopes of winning those groups' votes.³⁸ Frequently, 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.³⁹ Opponents of both Propositions 22 and 8 attempted to personalize and individualize the issue, reminding voters that if they weren't gay or lesbian, they were probably somehow connected to someone who is, and thus the measures weren't 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."⁴⁰ 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 wasn't 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

³⁶ "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.

³⁷ February 10, 2000 press release "Premier Gay Financial Network Pledges to Match Donations in Grassroots Push."

³⁸ January 11, 2000 press release.

³⁹ February 29, 2000 press release, "Labor/Latino Community Leader Dolores Huerta Says No to Prop. 22."

⁴⁰ October 20, 2008 EQCA press release "Legendary Pianist Leon Fleisher Performs for No on 8 Fund-raiser."

the topic of marriage unavoidably 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."⁴¹ 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 the phrase is a man sitting on a 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 14 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, suggested 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

⁴¹ July 29, 2008 EQCA press release "PG&E Announces \$250,000 Contribution to Fight Prop. 8."

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 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.”⁴² 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 4, which shows almost no frame activity 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 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; the viewer only sees the back of the head of the other person. When Sam and Julie Thorton talk about their lesbian daughter, it’s in reference to never treating her differently—as an individual.

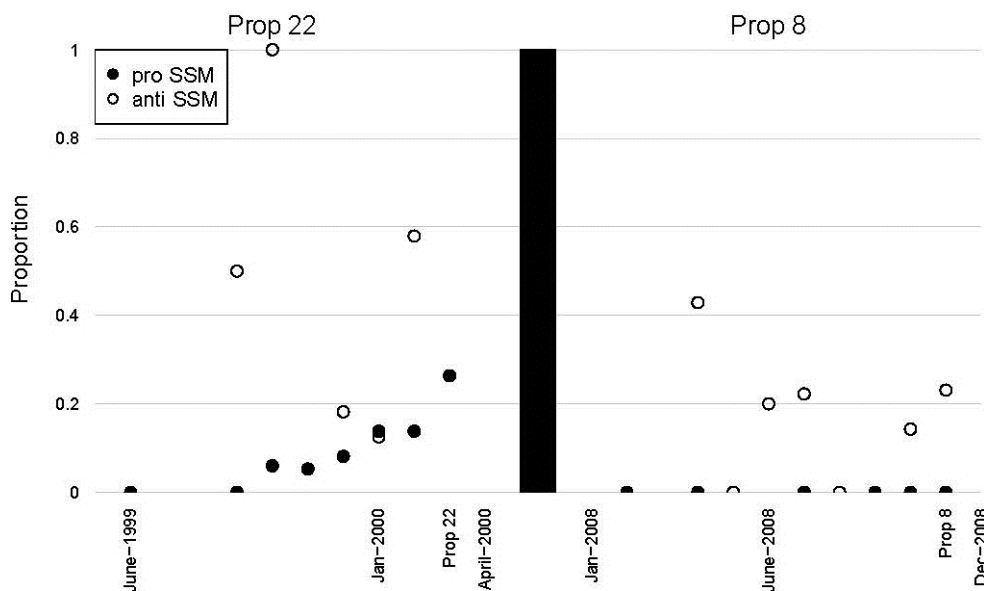
The *violence* frame is one of several concerned with the potential broader social consequences of same-sex marriage policy and policymaking. While a proportionately small component of gay and lesbian activists’ messaging, the *violence* frames in press releases highlighted the potential negative social 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 4. And, it was an important element of Proposition 22 opponents’ efforts 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 ballot measure prohibiting same-sex marriage 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.⁴³ 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.”⁴⁴ This was the central message in the No on Knight commercial “Intend,”

⁴² January 5, 2000 No on Knight press release “Remarks of Rev. Lindi Ramsden.”

⁴³ December 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.

⁴⁴ January 5, 2000 No on Knight press release “Remarks of The Very Reverend Don Brown.”

Figure 4. Frames Highlighting the Potential Impact of Same-Sex Marriage, Prop. 22 and Prop. 8



Note: Times series graph of argument frames highlighting the potential impacts of samesex 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.

which linked violence done to individual 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 29 percent of their arguments during the Proposition 22 campaign 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.”⁴⁵ Proponents of the measure insisted gays and lesbians could go 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?”⁴⁶ In response to a September 1999 poll from the Public Policy Institute of California that showed 63 percent of the population in

⁴⁵ February 16, 2000 California Protection of Marriage Initiative press release “Anti-Prop. 22 Hits the Airwaves with Deceptive Fear Mongering.”

⁴⁶ December 8, 1999 California Protection of Marriage Initiative press release “Marriage Opponents’ Ad Reveals Hollywood Hypocrisy.”

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.”⁴⁷ Sometimes these arguments were joined by claims that particular legal benefits—hospital visitation, inheritance—would not be affected.⁴⁸ 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.”⁴⁹

Conclusion

Proposition 22 in 2000 and Proposition 8 in 2008 provide a unique opportunity to examine framing strategies between competing activist groups across two similar initiative campaigns. Using press releases about the initiatives and commercials aired during the campaigns, this paper examines two dynamics. First, do activists engage their opponents during ballot measure campaigns? This would be consistent with ideals for deliberative democracy, but contrary to rational behavior and what is common found in candidate-centered campaigns. More significantly, do activists shift their framing strategies between initiative campaigns? Theoretically, we might expect actors to make strategic shifts to reflect their win or loss in a previous campaign. The potential implications of framing strategies are underlined in the context of ballot measure campaigns, when activists are directly, and intensely, crafting messages in hopes of acquiring votes.

Both supporters and opponents of same-sex marriage favored only a few frames in their press releases and failed to engage the other side. The commercials reveal a similar portrait. The primary element of dialogue during the Proposition 22 campaign was about the potential for increased violence done to gay and lesbian individuals. Same-sex marriage opponents denied and countered these claims in their press releases, but devoted none of their limited advertisement time to them. During the Proposition 8 campaign, same-sex marriage activists denied the claims made by their opponents in several commercials that public school children would be forced to learn about same-sex marriage. Similarly, at least one commercial aired by same-sex marriage supporters (“Don’t Buy Their Scare Tactics”) attempted to discredit claims made in all of the Yes on 8 campaign’s commercials. This suggests variation in groups’ willingness to engage in “framing contestation” (Boscarino 2015)—either across specific frames or perhaps across different policy areas.

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 terrain that same-sex marriage opponents do (Solomon 2014). While same-sex marriage activists’ messages were fairly consistent across the two campaigns, opponents of same-sex marriage placed greater emphasis on subjects that would appeal to peo-

⁴⁷ September 9, 1999 California Protection of Marriage Initiative press release “Protection of Marriage Initiative Holds Wide Lead.”

⁴⁸ October 28, 1999 California Protection of Marriage Initiative press release “Protection of Marriage Campaign Praises Gore for Comments on Same-Sex Marriage.”

⁴⁹ February 10, 2000 California Protection of Marriage Initiative press release “Protection of Marriage Campaign Expands Coalition, Introduces ‘Gays for 22.’”

ple's immediate emotional reactions in the later campaign. 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, same-sex marriage supporters were left to continue battling on the level of abstract principles of equality, rights, and anti-discrimination.

Given their success, it should be no surprise that same-sex marriage opponents maintained fairly consistent framing strategies. However, it is potentially surprising that same-sex marriage proponents maintained consistent framing strategies, especially in the wake of their dramatic defeat in 2000 over Proposition 22. In fact, they emphasized the equal and civil rights aspects of the issue to an even greater degree during the latter campaign. In his retelling of the battle to win marriage equality in the United States, Marc Solomon details how groups reflected on their Proposition 8 loss as they prepared for battle over ballot measures in other states (2014). But this raises the question as to when and why activists make the strategic decisions to maintain and or change framing strategies—another avenue for future study.

Appendix Table 1. Argument Frame Codebook

rights	Marriage is a civil rights issue/fundamental or basic right/equal rights
discrimination	Denying same-sex couples the right to marry is unfair and discrimination
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
violence	Banning same-sex marriage, and encouraging other discriminatory policies, encourages violence against gays and lesbians/Opponents do not have harmful or violent intentions
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
threat	Same-sex marriage is no threat to heterosexual marriage and society
family	Protection of traditional heterosexual family structure/Gay and lesbian couples have stable families that need protecting/ marriage is about family
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
legal	Legality/constitutionality of same-sex marriage and same-sex marriage laws and bans
public	Public has a right to decide the issue/public opinion in regards to same-sex marriage/recognizing or banning is democratic (majority) representation
judges	Same-sex marriage is the work of activist judges/judges are doing their job by protecting minority rights
states	Marriage is a portable institution/state's rights issue - whether to ban or recognize
status	Marriage gives equal status to same-sex couples/alternatives to marriage relegate couples to second class citizenship
benefits	Gay and lesbian couples need economic and legal benefits/legal equality
love	Marriage is about love and personal freedom and choice
diversion	Same-sex marriage is a divisive wedge issue/a way for groups and individuals to play politics and distract from more important issues
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

Appendix Table 2. Campaign Commercials for Propositions 22 and 8

Proposition 22			
Title	Position	Length	Date
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, Inter-	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 De-	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

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