



For Gays, New Math **Rethinking tactics after a series of setbacks nationwide**

Sunday, 6 Aug 2006

By Scott Michels

After the Massachusetts Supreme Judicial Court legalized gay marriage in 2003, and gay and lesbian couples began to wed in San Francisco and Portland, Ore., soon after, it seemed to Lisa Stone that a new era was sweeping the country. In 2004, Stone, a Seattle gay-rights advocate, sued to overturn Washington's 1998 gay-marriage ban. "There was a youthful optimism about what was ahead of us," she says.

Now, though, "nobody's swept up anymore," says Stone. For advocates of same-sex marriage, the outlook is dark, that early enthusiasm tempered by a wave of anti-gay-marriage voter initiatives and a string of courtroom losses. And more court decisions and initiatives expected this year could result in devastating setbacks. "We may face a reality by the end of this year that is so radically different ... that we may have to completely rethink and rework how we're going to move forward," says Ed Murray, a gay Washington State representative. Jordan Lorence of the conservative Alliance Defense Fund is more blunt: "One side is clearly prevailing, and one is losing."

The losses may have been self-inflicted. Despite some early recognition of gay couples' legal rights in Hawaii and Vermont courts, the Massachusetts case seemed to spark a torrent of voter hostility. Today, 44 states have laws restricting marriage to a man and a woman, and voters have written gay-marriage bans into the constitutions of 19 states--16 since 2003.

Decisions.

Last month, the Washington and New York high courts, thought to be friendly to gay rights, refused to recognize a right to same-sex marriage, calling it an issue for the legislature. A federal appellate court upheld Nebraska's ban on gay marriage, civil unions, and domestic partnerships. Even the Massachusetts high court declined to stop a proposed voter initiative to outlaw gay marriage. If approved by the legislature, it will go before voters in 2008. Six constitutional amendments to restrict marriage to a man and a woman are on the ballot this November, in places like Wisconsin and Virginia, and most are expected to pass. And six cases, most seeking a state constitutional right to gay marriage, are now pending, many of them in states where courts are still thought to be sympathetic to gay rights, such as New Jersey and Maryland. "If we lose, it's probably going to be a couple of decades" before there's a widespread right to gay marriage, says Jon Davidson, legal director of Lambda Legal in New York. "If we win a bunch, we're talking about a very different state of affairs."

At the same time, the number of states where constitutional amendments seem like a sure bet is dwindling. Attempts to get marriage bans on the ballot failed in at least five states, including Florida. Says Patrick Guerriero, president of the Log Cabin Republicans, "There's some recognition among Republicans that using this as a wedge issue is probably going to be relatively short-lived."

Avoiding backlash.

Some activists are putting more emphasis on backing gay-friendly candidates in local and state races and winning more legal rights--but not necessarily marriage--in the legislatures. A group of nearly 250 gay-rights supporters recently urged less focus on marriage, saying it "has left us isolated and vulnerable to a virulent backlash." Legislative victories could avoid that backlash. "The politics is driven by the lawsuits," says Matt Daniels of Alliance for Marriage, which opposes gay marriage. "No more lawsuits, no more state amendments." Matt Foreman of the National Gay and Lesbian Task Force acknowledges, "Our legal strategies got ahead of our political strategies."