

# WAIT & SEE

## CONSORTIUM OF RIGHTS GROUPS WON'T PUSH FOR MARRIAGE EQUALITY VOTE

By Michael W. Sasser



In the wake of recent advances in the quest for full marriage rights, there have certainly been milestone moments. The Supreme Court decisions in regard to the reviled federal Defense of Marriage Act (DOMA) and California's anti-gay marriage, referendum-delivered Proposition 8 are certainly among the most recent and the most impactful. But other moments dating back further stand out too. When Iowa – a Midwestern state with a strong Christian legacy – adopted gay marriage and the policy survived challenge, it showed that same-sex marriage isn't an issue owned by wealthy, liberal states. As some have described, the dominoes seem to fall as state after state adopt similar policies, either as a result of legislation or litigation.

With all that progress, some perhaps couldn't help but wonder when a Florida ballot initiative would be launched to give state voters the chance to join the other rapidly advancing civil rights states.

Well, those people might have a while to wait.

In a recent press release, a consortium of LGBT rights groups, human rights groups and civil rights groups asserted that they are not affiliated with a recently announced referendum effort to place a marriage amendment on the 2014 ballot.

"As organizations that work together for LGBTQ equality and justice, achieving our right to marriage is a top priority. There is a strong coalition of local, state and national organizations actively planning and executing a strategy to capitalize on the recent Supreme Court decisions," began the statement signed off on by the ACLU, Equality Florida, the Aqua Foundation, the LGBT Visitor Center, the Miami-Dade Gay & Lesbian Chamber of Commerce, the National Gay & Lesbian Task Force and several other organizations.

"We are writing to clarify that our organizations are not affiliated with the recently declared efforts to put a marriage amendment on the ballot in 2014. We believe that the timing is premature, because the intensive work that would make victory possible has not been done and that a failed effort would set us back at a time of tremendous momentum," the release continued. "In consultation with state and national legal and political experts, we believe that the fastest path forward involves shifting public opinion and charting a strategy to achieve victory through the courts. We are investing our time in these strategies. Nearly 500 couples have signed up as plaintiffs for a potential lawsuit. A ballot measure should be a last resort, not a path taken hastily. And a deep investment would be required to lay the groundwork for success, especially in our state where a 60 percent majority is required to amend the constitution.

"We are not closing the door entirely on a future ballot fight. Fundamental rights by their very nature should not be subject to a public vote. But in a state with a hostile legislature and a challenging legal path, we must consider the possibility of returning to the ballot box to undo the harm. The timing and resources needed to win must be a part of the strategy. We must enlist thousands of marriage equality advocates to join a public education campaign aimed at shifting public opinion in our favor. Our success will determine if and when it would make

sense to return to the ballot and will strengthen the chances that a legal challenge will prevail," the statement concluded.

Effectively the statement asserts that the included organizations feel, at the moment, that litigation offers the most efficient pathway to marriage equality in Florida – as opposed to legislation. Several individuals and groups around Florida have launched petition campaigns to get the issue placed on the ballot, prompting the announcement from the consortium.

"In a nutshell, we like winning," said Elizabeth Schwartz, prominent Miami attorney specializing in LGBT issues and a supporter of the consortium statement. "We don't like losing and we don't like the idea of our momentum being slashed by losses. We don't yet have the ability to move enough people at the polls."

Schwartz said there is something else to consider that one must, if he is aware of the way politics works. Next year's is a mid-term election and mid-term elections tend to attract more strongly opponents to the political status quo. With a vulnerable Democrat Senate and a scandal-ridden Democrat presidential administration, historically speaking, the result will be strong Republican turnout in 2014. And while a surprising percentage of Republicans in the U.S. now support marriage equality, that might not reflect voters in Florida, where a strong Christian conservative culture still holds sway over parts of central and northern Florida.

The message: Florida voters are unlikely to approve same sex marriage equality in 2014 and a loss at the ballot box could curb state and

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national momentum in that direction.

However, the well-respected Schwartz also pointed out that all signs point to the litigation approach being a particularly strong option.

"There are some excellent cases making their way through the court system – in particular, a case is working its way through right now that could be very important, but I can't talk about it yet," Schwartz said. "We're very happy to have some excellent language to work with in litigation but we want to also make sure it's the right time. In the current climate, we feel litigation is the most reasonable, calculated way to bring the victory we want."

The litigation process includes the many stories being collected from couples, from which activists hope to find evidence of harm, which then provides ammunition for litigation. The Supreme Court effectively moved the first-down marker by essentially placing the impetus on governments to prove anti-gay measures aren't specifically targeted at harming LGBT persons. Previously the legal shoe was on the other foot.

Schwartz and others feel time will reveal plenty of cause to go to court and effectively have anti-gay marriage laws declared unconstitutional.

Still, no matter the approach, advances in Florida are not expected to be easy.

"I don't think it's fair to all the lesbian and gay couples in Florida, who deserve full legal equality and the freedom to marry, to create the false expectation that we are just one lawsuit or one petition drive away from achieving marriage equality in Florida," said Howard Simon, ACLU of Florida executive director. "That is not accu-

rate – given the political environment in Florida and the unprogressive state of our federal appeals court, marriage equality is going to come, but Florida is going to be the beneficiary of victories in other states, sadly it won't be a leader."

Not all well-known advocacy groups are included in the consortium, however, including SAVE Dade. A statement from SAVE delineated its position.

"In spite of the Court's rulings, the pathway forward to marriage equality in Florida remains unclear. In fact, there are several possible routes to take when it comes to achieving marriage equality statewide," stated the SAVE release.

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"These include a pro-equality ballot measure, pro-equality action on the part of the Florida legislature, pro-equality legislation on a national level from Congress, litigation originating in Florida with the aim of achieving a statewide pro-equality ruling, and litigation originating in another state with the eventual aim of achieving a national pro-equality decision from the Supreme Court. At this critical juncture, SAVE

Dade believes it would be premature to pick out any of these possibilities as the best way forward. We continue to exchange dialogue with state and national ally organizations as we assess the options for bringing marriage equality to Miami-Dade County and to the entire state of Florida."

"We don't want to close one pathway in favor of another," explained SAVE Dade Deputy Director Maria Barth. "We're not sure what the best pathway is. There are a lot of opinions on that. As a local advocacy organization, our job is to advocate any pathway. At a certain point if we get confirmation at the state or local level, we might opt for one pathway over another."

Prominent local gay elected officials also have a range of opinions.

"I always pride myself on being a commissioner for everyone and I will always fight for equality for all," said Miami Beach Commissioner Michael Góngora. "Therefore, I fully support marriage equality in Florida. I always believe that working together as a group you can achieve more, so I respect and defer to the current position of gay rights groups that feel that now is not the moment to not push for statewide change."

North Miami Councilman Scott Galvin, often cited as being the first Florida elected official to come out voluntarily while in office feels that when the issue does come before voters, the community might finally see legislative progress. "It's great to see the discussion around getting rid of this foolish amendment," he said. "Whenever the measure finally goes before voters, I'm sure it will be overturned."

