

com/news/politics/voterguide/20081030-prop8letter.html (accessed July 3, 2009).

25. *In re Marriage Cases*, 43 Cal.4th 757, 855 (2008).

26. Abby Goodnough, "New Hampshire Legalizes Same-Sex Marriage," *New York Times*, June 3, 2009, notes that the final bill included extensive protection for religious organizations.

How We Talk about Marriage (and Why It Matters)

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A decade from now, same-sex marriage will likely be the law in a majority of states. Given the domino effect of legislatures embracing a cause that has successfully claimed the mantle of equality, coupled with the stark generational shift in views on same-sex marriage, our national conversation seems headed toward a resolution. Nevertheless, the conversation will remain vital to our country, not just in terms of the end result, but in terms of the way the conversation unfolds. It matters very much how we talk about same-sex marriage, as well as how we talk about those who reject the idea of same-sex marriage.

To begin to understand why the conversation is so difficult, we need to understand why opponents of same-sex marriage—particularly those whose opposition is rooted in their Christian beliefs—have struggled to halt the swing in public opinion. Two factors that have little to do with the issue's merits have nevertheless created nearly insurmountable obstacles for Christians hoping to persuade their fellow citizens that marriage must be limited to a husband and wife.

First, Christians in general have been much more outspoken about same-sex marriage than about other threats to the sanctity of marriage: no-fault divorce, the rise of prenuptial agreements, popular culture's pervasive denigration of marriage, et cetera. I recently spoke to a group of conservative evangelical Christians about same-sex marriage, and this is the image I used to convey the GLBT community's distrust of Christians on this issue: "Imagine

that marriage is a house, and the Christian is sitting on the front porch. The house is engulfed in flames. A gay person is walking down the sidewalk, lighting a cigarette with a match. The Christian stands up and yells, 'Hey, don't throw your match near my house—that's a fire hazard!' Viewing the scene, the gay person can't help but conclude: 'This isn't about marriage. This is about me.'

Second, over the past fifty years, few prominent Christians have taken leadership roles in condemning obvious injustices against the GLBT community. Instead of letting Anita Bryant and Jerry Falwell define the "Christian" perspective on the law's treatment of homosexuality as the gay rights movement began to gather momentum, what if more mainstream Catholics, evangelicals, and Mormons had been outspoken regarding job discrimination, harassment, and violence targeting gays? Just as it became impossible to separate bans on interracial marriage from the scandalous history of race in this country, it is becoming difficult to separate bans on same-sex marriage from the scandalous history of homosexuality in this country. I am not suggesting that there are no grounds for distinguishing bans on interracial marriage from bans on same-sex marriage, but the historical contexts of the bans are leading the public to embrace similar conclusions regarding their rationales. History has made it too easy for observers to conclude that opposition to same-sex marriage is part of a rearguard action by Christians who are perceived as trying to marginalize gays and lesbians at every turn.

The difficulty of the conversation is exacerbated by the merits of the case against same-sex marriage. Especially when aligned against captivating concepts such as "marriage equality," the arguments available to same-sex marriage opponents are ill-suited to sound-bite advocacy. Same-sex marriage does change marriage to the extent that it further decouples marriage and procreation, but it is difficult to translate this change into terms that resonate with America's live-and-let-live pragmatism.

Most arguments focus on the importance of connecting children to their biological fathers and mothers. The thrust of the argument is not always clear, though. Emphasizing "biological" appears to marginalize adoption, not just parenting by same-sex couples. Emphasizing "father and mother" makes more sense, sug-

gesting that both genders are necessary to child-rearing because men and women have different functions in child-rearing. But as socially grounded gender roles become fuzzier, our confidence in biologically grounded distinctions between the caregiving functions of men and women has become a bit shakier, as has our confidence in the constitutional validity of such characterizations. Does the fact that, all things considered, we would like children to be raised by mothers and fathers mean that we should prohibit adoption by same-sex couples, especially if the alternative is a life in foster care? And if we are willing to permit adoptions by same-sex couples, do we thereby lose a fundamental premise of the case against same-sex marriage?

The strongest argument against same-sex marriage seems to be, “Look, we’re messing with the definition of a very important social institution that has served us well for many years. Because the idea of two men or two women being parents together is relatively new, we do not have enough empirical data to say whether children will be better or worse off. We should not take that risk.” But if people acknowledge the risk, count the cost of excluding an entire class of committed couples from the stabilizing and identity-affirming institution of marriage, and conclude that gender differences are no longer a sufficient basis for that exclusion, do Christians have a compelling, publicly accessible reason for telling them that they are making the wrong decision?

These concerns about same-sex marriage are not inconsequential, though, and they cannot be written off as thin covers for bigotry. In that regard, we have to care about more than the merits of the same-sex marriage debate; we also need to care about the way in which we carry on the debate—especially the assumptions made about the opposing side. Much of the rhetoric offered in support of same-sex marriage is unhelpful and unproductive. Take, for example, a recent speech by New York Governor David Paterson, who unveiled his proposal for same-sex marriage and made it very clear what he thinks of anyone who does not get on board:

Anyone that has ever experienced degradation or intolerance would understand the solemn duty and how important it actually is. Anyone that’s ever experienced antisemitism or racism, any New Yorker who is an immigrant, who has experienced discrimination, any woman who has faced harassment at work or suffered violence

at home, any disabled person who has been mocked or marginalized, understands what we're talking about here. We have all known the wrath of discrimination. We have all felt the pain and the insult of hatred. This is why we are all standing here today. We stand to tell the world that we want equality for everyone. We stand to tell the world that we want marriage equality in New York State.¹

Yes, it is undeniably true that many gays and lesbians have experienced discrimination, violence, and marginalization on account of their sexual orientation. But to imply that all opposition to same-sex marriage is coming from a place of "hatred" is inaccurate and irresponsible. It further polarizes a debate that is already deeply contentious. And when the governor of New York appears eager to engage in this sort of stark line-drawing, it does not bode well for the future viability of religious liberty. Same-sex marriage is well on its way toward becoming the law of the land, but the tone and substance of the political discourse used along the way matter a lot.

The debate about marriage is not, and should not be, primarily a debate about individual rights. The state has an interest in marriage beyond its general interest in facilitating the satisfaction of individual preferences. Marriage is an essential social institution; and reasonable, caring, non-bigoted citizens can disagree about how malleable the institution can be without losing its social function. Christians who oppose the redefinition of marriage are not invariably engaged in gay-bashing, nor are they plotting a theocratic takeover of government. Their arguments may not prove persuasive, but their arguments are often (though not always) perfectly consistent with the norms of public reason—i.e., not dependent on religious authority or experience for their persuasive appeal. While I readily concede that not all Christians have honored the spirit of public reason in this debate (e.g., "God created Adam and Eve, not Adam and Steve"), it is important for proponents of same-sex marriage to do so, especially when responding to Christians who have tried to ground the conversation in public values.

Especially in the wake of Proposition 8, the conversation has shown signs of devolving from an exercise of public reason into an exercise of public shaming. One television ad supporting Proposition 8 showed two Mormon missionaries entering a lesbian couple's home saying: "We're from the Church of Jesus Christ of

Latter Day Saints, and we're here to take away your rights." The missionaries remove the couple's wedding rings, ransack their house, and rip up their wedding certificate. A voice proclaims, "Members of the Mormon Church have given over \$20 million to pass Proposition 8" and urges viewers to "Say no to a church taking over your government."² Picketing churches, mocking religious tenets, and shaming believers—all of which happened in Proposition 8's aftermath—hollow out the conversation about marriage by reducing it to a crass form of religious identity politics. The best way to encourage religious believers to embrace accessibility in their political discourse is to engage them as citizens rather than through a direct attack on their religious identities.

By using religious identity as a stand-in for substantive arguments about the meaning of marriage, some proponents of same-sex marriage seem intent on narrowing the circle of legitimate political participation, as some Christians would undoubtedly like to do, though on different grounds. A Christian's political views cannot help but be shaped by his or her religious beliefs. Christians should be encouraged to articulate those views in terms that are accessible—even if not agreeable—to their fellow citizens. At the same time, those other citizens should work to engage Christians on the merits of their expressed views, not on the reasonableness or rationality of the sources from which the views derive.

I am not suggesting that religiously shaped political positions should somehow be immune from criticism. But battling over the policy implications of religious beliefs is different than targeting the religious communities from which those beliefs emerge. In particular, shaming Mormons based on their support of Proposition 8 has to be seen against the background of this country's long history of shaming Mormons in general.

Proposition 8's supporters came from a variety of racial, ethnic, and socioeconomic backgrounds, and, yes, most of them are religious. But the debate about marriage is about more than religious identity. Marriage as an institution contributes significantly to the common good, and thus we all have a stake in its viability and vitality. As our society's view of marriage changes (as it surely does), we cannot dismiss or demonize disagreement as a product of mere prejudice, personal animus, or ignorance. Doing so may not alter the trend toward same-sex marriage that is currently tak-