

## Memorandum

*Sunday, July 19, 2009*

**To: Marc Solomon**

**From: Jill Darling**

**Regarding: Return to the ballot in 2010 or 2012**

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Marc,

Thank you for asking for my input on the question of when to take marriage equality back to the voters in California.

As you know, until the end of last year, I was Associate Director of the Los Angeles Times Poll. The Times Poll had been studying California issues (among many other things) for a decade before I arrived on the scene in 1988, and during my twenty year tenure as a newspaper pollster there, voting, elections and voters in the state were not my complete focus, but they were, and continue to be, my area of special interest. I decided that my best contribution to this discussion would be to look at what data was available, and to pull together the narrative as I see it from the point of view of any of those data sources I could access on short notice. To talk about what the numbers tell us, and what they do not.

In putting together this memo I consulted data from the Los Angeles Times Poll and from two other major public polls in the state: The Field Poll and the Public Policy Institute of California (PPIC). Each provides a rich and different history of data. I also looked at the data released from the most recent campaign survey done by David Binder and Amy Simon last May. There is of course the election itself and the studies which give us information about the vote: the National Pool Election exit poll, and the PPIC post-election survey of general election voters in the state released in December 2008.

The question I first posed for myself was exactly what is under discussion here: Do the numbers tell us that the campaign should take a vote to overturn Proposition 8 back to the ballot in 2010, or in 2012? After looking at this data and trying to work out a definitive answer to that question, I quickly found that there is no way to do so. I don't believe that 2010 or 2012 is the first question that needs to be answered.

What I see in the numbers, which I will discuss in detail below, is that very little movement has occurred in recent times. We are in a situation not much different than it was in November 2008 when Proposition 8 passed, which was not terrifically different than it was the previous May when the California Supreme Court overturned the ban on same-sex marriage. There is evidence that not much has changed in public opinion on same-sex marriage in several years.

The Field Poll measured approval for same-sex marriage at 28% in 1977, 38% in 1997, and support reached 50% in 2003, where it has remained static ever since. PPIC's December 2008 "Just The Facts" release said "attitudes about same-sex marriage have remained about the same among likely voters since 2005". The LA Times Poll asked a question that offered voters a choice between support for same-sex marriage, civil unions or no recognition at all and in that measure as well, support for marriage has not changed since 2004.

I have no doubt that a dedicated and nimble coalition working together toward a common goal has the ability to overcome inertia and win the support we need. Proposition 8 and the court's ruling to leave the existing same-sex marriages intact left all Californians in an ethically untenable, emotionally disheartening, politically volatile, and legally unstable condition and we must take whatever steps are required to remedy the situation. But there are a lot of steps to take and nothing to show that what we have done so far is working.

Did the 2008 campaign move voters? Are the post-elections efforts having any effect? Nothing measurable, as of May. There is anecdotal evidence, and informal data that indicate new efforts are having an effect, or will. They are certainly important, but we have yet to see any significant and measurable movement.

Let me give a rather dramatic example of measurable change over a short period of time. In June 1978, the LA Times Exit Poll asked voters in the primary election if they agreed or disagreed that public schools should have the right to fire homosexual employees. Nearly six out of 10 (58%) agreed that schools should have that right. The Briggs Initiative subsequently qualified for the November ballot, and the Times Poll began asking a question about it on its pre-election polls. It found measurable diminishing support as the campaign progressed and more and more public officials came out against it, (including Ronald Reagan). In August, support was at 41% with 49% opposed. By September, it was 38% to 52% opposed, and by late October 29% to 61%. The actual vote was 41% to 59%, so the Times Poll understated voter support for Briggs by nearly 10 points. I'll get into more detail on the difficulties of polling initiatives like this in a section further on.

The arguments for going back to the ballot in 2010, for getting right back into the fight while passions are high and motivation is strong, are undeniably compelling and I'm familiar and sympathetic with the arguments making the case that now is the time. However, it does not make sense to me to go back to the polls in 2010 or even 2012 unless we are prepared to win. Those who oppose same-sex marriage have a running start. They won an election six months ago. Recent surveys show that they have more supporters. They come to the fight well armed with election-tested messages that carry potent (if misleading) content able to fire basic protective emotions that pull conflicted voters to their side. We won't win until we work out how to craft messages that effectively counter these appeals to fear and uncertainty and craft messages that have a positive effect on conflicted voters to help them feel comfortable supporting same-sex marriage.

This is not a clear issue for many voters. Even among some of those who we should be able to count on as a base of support, there is ambiguity and conflict. Binder and Simon

measured voter conflict in their May survey in a variety of ways, but the most direct was to ask the voters themselves if they feel conflicted about whether gay and lesbian couples should marry. More than one in five said they did. The Field Poll also captured that conflict last year before the election by testing a series of pro and anti same-sex marriage questions. They found a great deal of surprising crossover in the vote. In this type of issue, we may need new and different testing models to parse out what will help a voter comfortably make the decision to disregard appeals to fear, to overcome worry over whether they are going against their faith, and to actually vote to support equal marriage rights.

I hope those in charge of crafting our campaign messages will consider what new and innovative methods of testing will help us find the messages we need. As a campaign strategist noted to me recently, the arguments used to make the case for LGBT equality can be quite abstract. They argue for justice, equality, fairness, and sorting out truth from lies. These are compelling as concepts, and they test well with voters in a research setting. However, voters make voting decisions not in a research environment, but one that is anything but clinical. They hear arguments they have no way to counter, from their pastors, from their friends, and from conservative new and traditional media. “I don’t have anything against gay people and they should be treated fairly“ is a sense to be encouraged, but it may not be an effective counter to the discomfort instilled in a voter by an ad that implies if gays are allowed to marry, that voter will then have to talk to their small child about sex.

When our messages are working, when we have vocal public leadership support, when momentum is with us, we will see measurable change.

### *Holding Pattern?*

Looking at past data as I have done is one thing, but what about more recently? Has progress been made in the last year and a half? To answer that question, I turned to the surveys done during the campaign last year.

A Los Angeles Times/KTLA Poll in May 2008 measured support for a Proposition 8 style amendment (the ballot language had not yet been drafted) at between 52% and 54% among all registered voters. The Field Poll asked the question in a different way and found majority opposition among all registered voters.

Voter conflict may provide some insight into why Proposition 8 was so difficult to accurately poll. PPIC and the Field Poll measured support for Proposition 8 below 45% in mid to late October. Another example of this problem can be seen in the example I gave above, the pre-election polling done by the LA Times in 1978 on the Briggs Initiative. The question of what was measured and why is still being studied, and I will have a little more to say on this later, but right now, let’s take a look at the most recent numbers.

The California Marriage Equality survey conducted by Binder and Simon last May found a steeply divided electorate, with opposition to same-sex marriage only very slightly higher than support: 47% to 48%, with 5% not sure. Experience tells us that our side can’t count on much help from the few who remain undecided, but if we use exit poll data to allocate

them in the way that late deciders voted in the election, support closely mirrors the vote on election day with a statistically insignificant one point change: 49% in favor of same-sex marriage and 51% opposed.

### *What Next?*

Binder and Simon provided models of their findings based on projections of electorates in a gubernatorial election like 2010 and found marriage equality behind by four points (46% to 50%). In a presidential electorate projection for 2012, voters would split 47% favor to 48% opposed. If we allocate them using the exit poll estimates for late deciders, support for marriage equality could be at 48% right now among a 2010 electorate and 49% among voters in 2012. In other words, support for marriage equality is almost exactly where it was a year and a half ago no matter how you model it, and opposition remains nearly as strong as it was last November, despite a hard-fought campaign and the emotional and intellectual discussion and media coverage in the aftermath of our loss.

Binder and Simon remind us that their models show what future elections could look like, if nothing other than electorate composition were different than it is now. The researchers pointed out in their Get Engaged presentation materials that other ballot measures and the top-of-ticket races have impact on voter turnout as well as on the composition of the electorate. From my own history of exit and pre-election polling I know that voter turnout and the composition of the electorate are variables that we can model but cannot truly predict and there are other things that effect elections as well. Few would have foreseen Obama's candidacy and its effect on the demographics of the electorate, on turnout, or on the issues that were being discussed, for example.

While thinking about this, I wondered what the vote on Proposition 8 might have been in an electorate that looked more like the voters of 2004. So I used demographics from the 2008 exit poll, PPIC's 2008 December survey of general election voters, and demographics from the 2004 Los Angeles Times exit poll to put together a quick model. It shows that if voter turnout and demographic makeup had been more like it was in 2004 but the vote in those demographic groups remained the same, support for Proposition 8 could have run two points higher.

### *What We Don't Know and What We Can Learn*

I gave a few examples earlier which underscore the difficulties of pre-election polling on issues that involve the sort of head and heart conflict that is set up in voters on same-sex marriage. More study is needed to understand why conflicted voters make the decisions they do, and how that conflict is reflected in polling numbers. When those issues are more clearly understood, researchers can account for them and provide more accurate readings.

In the section above, I mentioned the need to consider new ways to test messages. I think it is very important to find out and take into account the types of conflict voters feel not only to inform the polling but also to inform our messages. We have to find a way to give conflicted voters effective antidotes to fear and uncertainty. As long-time campaign strategist Dave Fleisher has noted, to do this, we may need to find techniques for testing

these messages that go beyond the traditional to simulate as realistic an environment as possible. He makes a strong case that telephone polls and traditional focus groups may not be the best medium for this.

One more item I would add into the mix is to question and study the truism in ballot initiative polling which posits that one type of “undecided” voter (in surveys) might tend to vote “no” when faced with a long list of initiatives on a ballot. This may or may not be true and should be further studied in this context. I see scant evidence of it in the polling I’ve examined. However, if it exists, we would need to take that tendency into account in the numbers we see.

### *In Conclusion*

The decision as to when to take the issue back to the voters should be made when the campaign is supplied with well-tested messages, resources, and real evidence that voter inertia can be overcome.

I recommend an ongoing survey be conducted on a regular basis by one organization using the same methodology each time in order to track movement (or lack of it) and uncover signs of momentum when they occur. This should go on whether there is an active campaign underway or not. When an election is pending I would suggest adding a second survey done regularly but less frequently to give a second opinion on the actual vote. When we see evidence that our messages are working, when we have all of the elements in place to win hearts, minds, and votes, that will be the time to take same-sex marriage back to the ballot.