

MEMO

TO: Marc Solomon

FROM: Dave Fleischer

DATE: July 17, 2009

RE: When to return to the ballot

Thanks for inviting my opinion on this tough question.

My views may differ in some ways from yours, from Equality California, and from other smart, dedicated LGBT leaders.

I offer the analysis below hoping it will contribute to the thoughtful discussion underway, and prove useful to others, whether they agree fully, in part, or not at all. In my experience, the exchange of diverse perspectives helps our community think together, and move forward together.

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I've been fighting anti-LGBT ballot measures since 1993, when I was given the opportunity to create and run the national training program for the Gay and Lesbian Victory Fund; in addition to preparing out candidates and their campaign managers for their state and local campaigns, I also sought out and assisted LGBT leaders and allies fighting the rash of measures

besetting us around the country.

I got much more deeply involved starting in 1999, when I moved to the National Gay and Lesbian Task Force. I created its Organizing & Training Department and directed it to focus intensively on ballot measures affecting our community. One of our best results, in collaboration with state and local groups, was helping those groups win the majority of the LGBT-related ballot measures voted on around the country for three consecutive years, from 2001 through 2003. To the best of my knowledge, those were the first years our community prevailed in a majority of ballot measure fights.

My work at both national LGBT organizations resulted in 28 national trainings. Of the 2,275 people trained, 25% were people of color. More than 1,200 put the training to full-time use in at least one campaign.

I currently direct a small pilot project, the LGBT Mentoring Project, which helps LGBT leaders around the country build stronger organizations and in particular prepare to cope with these tough ballot measure campaigns. I was not involved in the Prop 8 fight, because I was fully engaged in projects in Florida and Ohio. But since December 2008, I have worked closely with Vote for Equality at the Los Angeles Gay and Lesbian Center, helping them develop their canvass program that is starting to give a better understanding of whether and how we can persuade a larger group of voters to stand with us on marriage, and gathering information that can potentially give all of us insight into the strengths and weaknesses of the strategies used in the No on 8 campaign. One of our team is also at work full-time in Maine helping them fight the anti-marriage measure that has seemingly qualified for the November 2009 ballot; she moved there in January. Another is in Cleveland, where an anti-LGBT measure was threatened earlier this year.

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Despite my past involvement in these ballot measure campaigns, I approach each new one with humility. On marriage, our community has won 1 and lost 33 since 1998. Even the one victory, in Arizona, has since been reversed. The fact is, these are tough elections. We are still learning a great deal about what it takes to win them.

There are, however, a few things that we know.

First, though money is vital, these campaigns can't be won by money alone. No on 8 raised \$43 million, an unprecedented amount. Our opposition raised \$40 million. These sums bought important opportunities for both sides, because there is much that money can buy. We could not have competed without the money. But the most conventional path to victory employed by a wide variety of campaign strategists – bury your opposition by dramatically outspending them, effectively drowning out their message – isn't an option when the opposition is as well-funded as ours is in California. Under these circumstances, any failure on our part to raise money can do us in; but remarkable success on our part raising money, as important as it is, cannot by itself produce or predict victory.

Second, though polling is extraordinarily helpful, victory can't be predicted by polling alone. That's because polling frequently overstates how well we'll do. Recall the repeated Field and PPIC polls in 2008 that showed Prop 8 going down to defeat. Even on anti-LGBT measures not related to marriage, polls often show more support for our positions than materializes at the ballot box. For example, in 2002, in our wonderful victory in Miami-Dade County where voters retained their non-discrimination law by 53% to 47%, well-conducted, professional polling showed beforehand that more than 70% of voters were on our side of the issue. Even terrific pollsters who do

their best can easily get it wrong, or partially wrong, for a wide variety of reasons, a few of which I discuss briefly below. That doesn't mean we should disregard polling. Far from it. It helps us immensely. But polling is only one of several types of data upon which we should rely when we're trying to gauge whether and how we can win an election on a gay-related issue.

Third, when we lose an election, one of the valuable pieces of information we gain is the margin by which we lost. In the case of Prop 8, we lost by roughly 600,000 votes. What this tells us is the scale on which we need to do better to reverse the result. We need to have a strategy that will, minimally, produce 600,000 new votes for us – or change 300,000 minds – or some combination of both – in a year where voter turnout could be comparable to what we saw in 2008. In a year where voter turnout is likely to be lower, the absolute number might be lower than the 600,000 new votes – or the 300,000 changed minds – but we can know that number with a fair degree of certainty. Then we can ask ourselves two key questions:

- 1) Do we have a strategy to gain that number of votes; and
- 2) Are we on track to execute that strategy, so we can see if we are likely to gain the necessary number of votes by our deadline (election day)?

Can our strategy include registering and turning out to vote some who did not vote on Prop 8 in 2008? Sure. But given that 2008 was a high-stimulus Presidential election, with relatively high voter turnout, we are not likely to get to 600,000 votes or anything like that solely from this strategy. It can contribute to our success, but not assure it.

Can our strategy, in a lower turnout year, insure that those who voted with

us in 2008 return to the polls in greater numbers than those who voted against us? We can certainly try. But we have to acknowledge that this would be very difficult. Key blocs of our supporters, such as younger voters, often turn out to vote in reduced numbers in off-years. Polls attempting to measure intensity of feeling among voters on the issue of marriage show many highly-motivated voters on both sides – but more on the other side. We should try like hell to identify our supporters and get them out to vote – surely it can contribute to our strategy to win – but we don't yet have evidence that we erase the 600,000 vote margin this way.

Therefore, for us to win on marriage in California, it seems likely that our strategy will have to include an important component of voter persuasion. We will need to persuade some who voted against us in 2008 to reconsider. We will have to get many – perhaps as many as 300,000 – to change their minds. Perhaps a lesser number will do, if we also greatly increase our ability to turn out our base. But it's fair to guess that voter persuasion on a significant scale will be an essential component of any path to victory.

Perhaps this seems like a simple idea. But it has large implications. It means that: yes, we will need money, not only a large amount of it by the end of the campaign, but also a remarkable portion of it early, so we compete effectively with our opposition at every step and also know that we're on track to get to the full amount needed.

Yes, we will want encouraging polling – not just at one moment in time, but all along the way, so we can measure whether we're making progress.

But in addition to the above, we will also need not only promising ideas that poll well that tell us how to persuade voters to change their minds. We also need to test out those ideas to see if they work under real-world conditions.

Fourth, our difficulties with persuasion include, but also go beyond, the limitations of polling. The fact is, it's not easy to persuade voters to alter their views on marriage for gay and lesbian couples. Our past history with marriage measures shows that many of the promising ideas that make sense to us – and that appeal to many political professionals – and that poll well -- come up short when we attempt to use them in real-world conditions. Even the best of the 34 marriage campaigns to date have encountered this problem.

No-one has yet found a “silver bullet”, a clear, simple message that appeals to a broad swath of those not already with us. It is easy in hindsight to question messages chosen, and to regret those not selected. But it's important to remember that, over the past ten years, several messages -- “Protect the Constitution”; “Keep government out of all of our lives”; “Don't discriminate against one [unnamed] group of people” -- have tested well in repeated polls.

They have, however, tested better than they have performed in actual campaigns.

There are multiple reasons why polling, and our gut, may overstate the power of some messages. One reason is that we sometimes fail to fully consider or pose the arguments the opposition will make against us. We don't fully take into account the way the average voter will experience the totality of the campaign. They will hear not only hear from us; they will also hear from our opposition; and they will be exposed to earned media and other sources of information in the larger political environment.

Here's one specific example. In any one poll, we often ask something to the effect of “Are you more likely to go along with marriage if you know [fill in the blank]” – without adding, “and also if you hear [the opposition's most

persuasive argument against us].”

For example, the latest poll includes encouraging numbers suggesting the possible appeal of a religious exemption. But it could easily overstate the real-world impact of the new language in the face of a predictably vigorous opposition campaign that focuses on children. This particular poll has many virtues, but it does not test the idea of the religious exemption in this way, even though this is the way voters would experience the religious exemption argument in the real world.

Another, related problem: Our arguments tend to be rational. For instance, the religious exemption idea is one more rational argument we are now considering adding to our arsenal. Even when we seek to express our rational arguments emotionally, part of their power comes from their rationality. They appeal to reason.

But our opponents’ arguments are not rational. They are almost purely emotional; they attempt to arouse disgust and fear.

Now consider how fully a telephone poll is able to convey a rational argument – and how incompletely it does justice to the power of an emotional argument. It is possible that telephone polling, valuable though it is, frequently understates the impact that our opposition arguments will have in the real world.

Fortunately, many groups around the state are beginning to try out persuasion arguments in ways that allow us to get past some of the limitations of polling. Door-to-door canvasses by Vote for Equality, Equality California, the Courage Campaign, and other groups are currently in the field on a regular basis. One of the great strengths of the Vote for Equality canvasses (the ones with which I am most familiar) is that we ask every

voter to think back to the Prop 8 campaign: we ask them how did they vote, and why they voted as they did. These questions prompt those who voted against us to recall the opposition arguments that resonated with them, or whatever concerns of theirs were most powerful. At every door, with every voter, we help them remember and articulate the portion of the opposition view that moved them in the past – and only then do we try out our new arguments. This approach may be impractical in a poll, but we're getting better and better at doing it in the field, and it gives us the chance to gain insight into how our new potential messages will fare in the real-world environment of a seriously contested election.

I love our canvassing, but I have to acknowledge that it has its own important limitations. One key limitation is that, to the best of my knowledge, none of the canvasses have yet established which arguments consistently work, nor have they (yet) confirmed the value of the arguments that poll well. This valuable in-the-field message testing needs to be continued and expanded, and it will take time before it yields insight. That's because: a) it is happening on a modest scale; b) we are still learning how to train our volunteer teams well enough so that they explore the full potential of each argument; and c) we are very much at the beginning of the learning curve at figuring out how our volunteers can record their results in a way that maximizes our learning.

Other forms of testing under real-world conditions – other experiments in persuasion – are worth trying as well. For example, I know that Basic Rights Oregon is about to begin a two-month experiment that sounds promising.

Fifth, the most scarce resource in every campaign is time. There are 66 weeks between July 25, 2009 and November 2, 2010.

66 weeks is a very brief time to raise \$40-50 million. Based on my experience fundraising, and looking at the remarkable fundraising success of the No on 8 campaign, I think the minimum immediate fundraising goals to be ready for 2010 – to see if we can get on track to raise \$40-50 million -- would be \$2 million by October 1, 2009, and \$5 million by December 1, 2009. This represents roughly the cost of qualifying for the ballot and beginning to set up a campaign. This is much less than the average weekly amount we would need to raise over the 66 weeks (\$600-700,000 each week, every week). But it would cover start-up costs and demonstrate some of the breadth of support necessary to assure donors we could get to the level reached in No on 8, and hopefully beyond it.

In most of these ballot measure campaigns on marriage, our community is put in a financially brutal position by our opposition, because they control the timetable. But we control the timetable now. Let's use that advantage, and return to the ballot when we're financially ready.

Similarly, 66 weeks is a very brief time to solve the problem of persuasion that has stymied us for more than ten years, since the first ballot measures on marriage in 1998. The short time available doesn't mean it's impossible. But we're not yet on track to complete it. We need to follow through with the message testing work door-to-door and expand it. That requires substantially increasing the number of volunteers who systematically engage in voter persuasion. If the good feeling and sense of momentum at rallies and demonstrations is to shorten the timetable for our knowing enough to return to the ballot and win, we need a much higher percentage of the rally participants to also come out and canvass.

Preliminarily – and I offer this only as a cautious guess, not as anything yet proven – it seems that the arguments that have power at the door are very

different from the ones towards which past polling has pointed us. This is an exciting possibility. But let's explore it fully – and consider together how we want to more seriously test what we seem to be learning – so that when we return to the ballot, we truly know more about real-world persuasion and can wage an improved campaign.

In summary: We should go back to the ballot. A terrible injustice was visited upon our community in 2008, and we must remedy it.

But we should go back to the ballot when we're ready to win: when we have insight into persuasion, as well as fundraising progress, as well as promising polling. Then, we will have a much greater chance of finding and delivering the real-world votes we need to win.

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