

The Strategies of Gay Marriage and Immigration Reform Advocates

After congress passed the Defense of Marriage Act (DOMA) in 1996, which defined marriage as between a man and a woman, 38 states enacted similar laws banning same-sex marriage (PBS 2004). However, in 2014, 32 states permitted gay marriage (LA Times Staff 2014). The seismic shift in same-sex marriage laws contrasts sharply with the progress made on comprehensive immigration reform. In recent efforts, activists have only been able to obtain incremental changes through executive orders, such as Deferred Action for Childhood Arrivals (DACA) in 2012. Nevertheless, both gay marriage and immigration reform advocates pursued strategies that maximized their chance of affecting policy. Gay marriage advocates initially focused on overturning laws through the court system and defeating similar voter initiatives at the state level, while proponents of new immigration policies targeted lawmakers in Washington in hope of more comprehensive solutions.

Early on, the lack of public support forced gay rights advocates to challenge the constitutionality of anti-gay marriage laws through the court system. In the late 1990s and early 2000s, public acceptance of gay marriage was low among the electorate, with less than a third of Americans in support (Gelman et al. 2010). Winning through the court system was simply easier. Indeed, early gay marriage victories were from court cases rather than elections. While Hawaii voters rejected same-sex marriage in 1998, the Vermont court ruled in *Baker v. Vermont* in 1999 that not providing same-sex couples with the same benefits of heterosexual married couples was unconstitutional (PBS 2004). Similarly, in 2004, the Massachusetts court ruled that the state's gay marriage ban violated its constitution (PBS 2004). While gay rights groups were initially successful with court cases, defeating subsequent ballot initiatives banning same-sex marriage posed a major challenge due to poor campaign tactics. After the Massachusetts decision, a flurry

of ballot initiatives to ban gay marriage required advocates to respond quickly. In these early efforts, proponents avoided broaching the subject of gay marriage in ballot initiative campaigns. While this method was rational because conservative states did not support gay marriage, its effects were transient. Take Arizona's ballot question in 2006. Since the referendum also outlawed straight domestic partnerships, gay rights advocates chose to highlight the negative effects of the proposal on straight couples rather than on gays (Geis 2006). While Arizona's initiative was defeated in 2006, the state voted to reinstate bans on same-sex marriage in 2008 along with Florida and California ("Dispatches" 2006).

The 2008 election results compelled gay marriage proponents to take a direct approach to messaging. "How can you have a campaign based on equality and then hide what it would look like?" questioned Eugene Hedlund, a California media consultant (Talbot 2010). Activists now made an explicit case for marriage. They began airing television advertisements depicting gay couples raising children with "strong morals, compassion and love" (Talbot 2010). These ads struck familiar tone, with many television shows and celebrities already highlighting gay rights. Outreach efforts went beyond television. Groups canvassed towns door-to-door, telling personal stories inform others about the importance of gay marriage (Talbot 2010). The new strategy worked. Fifty-five percent of Republicans thought the advertisements were effective and the overall reaction suggested people might change their minds over time due to these emotional stories (Talbot 2010). Growing public support and Obama's later support of same-sex marriage also aided the direct efforts of advocates. In Maryland, Obama's switch caused a 12-point swing in support of equality (Sorenson 2012). Almost all of the change came from black voters, who then supported marriage 55% to 36% (Sorenson 2012). Due to the new message centered on love, Maryland, Maine, and Washington voted to allow gay marriage in 2012 (Brumfield 2012). Minnesota voters defeated a ban on same-sex marriage (Brumfield 2012).

Despite early internal disagreements, gay marriage advocates also expanded their court strategy to capitalize on the public's rapidly changing views. They filed cases *US v. Windsor* and *Hollingsworth v. Perry* after 2008 challenging DOMA and Proposition 8, a ballot initiative that defeated gay marriage in California (Liptak 2013). Pursuing this strategy was ambitious, but justifiable. In many liberal states, the majority now supported same sex marriage, a giant shift from a decade before (Gelman et. al 2010). Also, President Obama stopped enforcing DOMA in 2011. As a result, these changes supported advocates and pressured courts to follow public opinion. Some experts, like Tribe (2011) argued that any ruling against gay marriage would be incredible. Certainly, many opposing arguments cannot withstand the Supreme Court's process of strict scrutiny or rational basis review (Talbot 2010). For example, opponents frequently claim that gay marriages harm children, lack procreation, and violate religious doctrine. Yet, the points lack evidence, are hypocritical due to analogous situations for straight couples, and run against the separation between church and state. Thus, the probability of the court upholding DOMA was low, further justifying the strategy. In 2013, the Supreme Court ruled that DOMA was unconstitutional and declined to revisit the Ninth Circuit Court's decision, effectively overturning Proposition 8 (Liptak 2013).

While gay marriage was primarily a local turned national issue, immigration was the opposite. Since Washington controls immigration policy, rather than the states with marriage, activists have lobbied congress for comprehensive action. The strategy appeals to the incentives of politicians. According to polls, 71% of Hispanics, the demographic most concerned about immigration reform voted, Democrat in 2012 (Lopez 2012). They played a pivotal role in Obama's reelection and will continue to do so in future elections. In addition, the technology industry, which wants more H-1B visas for skilled foreign workers, is a large source of campaign

funding (Lizza 2013). However, even recent efforts like the bill written by bipartisan Gang of Eight in 2013 stalled due to gridlock, putting doubt into this rational strategy (Lizza 2013).

Due to inaction from congress and hopeful signaling from Obama, proponents of immigration reform pushed for executive action instead. Although the president cannot give citizenship and visas to undocumented immigrants, he can reinterpret old laws and effectively grant some of the wishes of reform advocates. Consider Obama's 2012 executive order, DACA. For \$495, a young undocumented immigrant with a high school diploma can receive insurance against deportation for two years and also apply for permits to work legally in the US (Lind 2014). While Washington Post editors criticize these actions as being "amnesty-by-fiat," experts see no end to increased unilateral moves. Moe and Howell (1999) argue that the Constitution's ambiguity constrains the efforts of the Courts and Congress to stop the president. The actions of immigration advocates demonstrate their understanding of this perspective. Even with complaints from congress, proponents still press for another expansion of DACA to the first generation and the technology industry persists asking for government to allow more skilled foreign workers to stay in the country through executive action (Davis 2014).

Although most of their actions center on targeting Washington lawmakers, activists also saw value in crafting an emotional public narrative at the local level to motivate action, akin to that of gay marriage groups. Young illegal immigrants organized to launch the DREAMer (Development, Relief, and Education for Alien Minors) movement, named after the stalled 2001 congressional bill that provided a path to citizenship for young authorized immigrants (Lind 2014). Like gay marriage advocates after 2008, DREAMer advocacy groups work "classroom to classroom, worksite to worksite" in order to dispel fears of coming out as an illegal immigrant (Lind 2014). With a "public story," DREAMers hope that citizens are called to action to fight for reform. DREAMers know that people are afraid of coming out because it risks deportation.

However, they are also keenly aware that it is difficult to create a movement if those affected are politically disinterested (Stone 1989). So far, Obama has responded to DREAMers with DACA and has pledged to do even more, showing the movement's positive influence.

Both gay marriage and immigration reform proponents pursued strategies that maximized their chances of affecting policy change. Gay marriage supporters' initial focus on challenging state laws and influencing results of voter initiatives proved effective at bringing marriage equality to over 30 states. Similarly, proponents of immigration reform successfully pressed for executive action. However, advocacy efforts for neither issue are not over. After the Supreme Court ruled on *Hollingsworth*, the Second, Fourth, Seventh, Ninth, and 10th Circuit Courts have overturned bans on gay marriage (Ford 2014). However, the Sixth Circuit Court recently upheld its states' gay marriage bans and several Circuit Courts have yet to rule on the issue (Ford 2014). Therefore, gay marriage advocates will continue to dedicate resources towards these cases. Another concern is that conservative states like Utah and Idaho, where gay marriage is now legal, still have populations who largely oppose the allowing such unions. Thus, conducting effective outreach efforts will likely continue, but advocacy efforts for gay marriage will move away from changing marriage policy towards shaping opinion. In contrast, immigration reformers are likely to increase the pressure on congress and the president, while also continuing their public "coming out" efforts. Obama's liberal use of executive power will encourage activists to push for more DACA-like actions, especially before the new GOP congress is inaugurated. Due to the size of the Hispanic voting block and the technology industry's supply of campaign donations, president and congress could find these groups' views hard to ignore.

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