

California Decision Makes Same-Sex Marriage a 2008 Issue

John Nichols
May 15, 2008

Same-sex marriage just made a major comeback as a campaign issue.

Today's ruling by the California Supreme Court that a reasonable reading of the state constitution prevents the denial of marriage protections to same-sex couples means that both Democrat Barack Obama and Republican John McCain -- as well as congressional candidates of each party -- will be debating the most contentious of social issues this fall.

The California decision is, of course, a legal one. **As the National Gay and Lesbian Task Force explains, "Today's decision overturns a ruling by the California Court of Appeals, which had reversed a trial court's decision that the California Constitution forbids the exclusion of same-sex couples from marriage. California first established statewide domestic partnerships in 1999 and greatly expanded them in 2005 to include broad family recognition. In 2005 and 2007, the California Legislature passed measures that would have ended the exclusion of same-sex couples from marriage, but Gov. Arnold Schwarzenegger vetoed the legislation both times, saying the California Supreme Court should resolve the constitutional questions presented by California's discriminatory marriage laws. With today's decision, California joins Massachusetts in extending full marriage rights to same-sex couples."**

But, as it arrives in presidential election year, the decision of the highest court in the nation's largest state is also a political one.

In California, the political test could take the form of an initiative vote this fall. Conservative churches and grassroots organizations have filed petitions to force a referendum on whether to enact a California Marriage Protection Act that would amend the state constitution to require discrimination against gays and lesbians.

But the debate won't stop in California. Especially if the initiative vote is scheduled, there is no way that the candidates for president won't be drawn into the fight.

That's got some Democratic strategists scared. They think the only way to deal with social issues is to avoid them.

Those strategists are wrong. And if Obama and other candidates listen to their bad advice, damage will be done to the party's prospects.

The fact is that the Democratic party has in recent years moved tentatively toward being a pro-gay rights party -- just as it moved tentatively in the 1950s toward being a pro-civil rights party. The process has been slow, and it remains incomplete. But most Americans see Democrats as supporting gay rights, just as they see Republicans as opposing equality.

Democrats can't change that fact.

And they shouldn't try to.

Instead, if Democrats are smart, they will embrace the opening created by the California Supreme Court decision.

To do so, they need to learn from mistakes of the past.

In 2004, Democratic presidential nominee John Kerry was generally good on issues of concern to gays and lesbians -- and the community's straight supporters. But the senator from Massachusetts didn't want to be too good. And his ham-handed attempts to avoid appearing to be overly sympathetic to the rights of same-sex couples helped Republicans portray him -- fairly or not -- as a man of fluid principles.

The smarter approach is to err on the side of the future and say that the law should not get in the way of love.

That's what U.S. Senator Russ Feingold, D-Wisconsin, did.

Feingold didn't fool around with talk of civil unions or lesser compromises. The Wisconsin Democrat always stood strong against moves to exploit the marriage issue and finally came out as an explicit supporter of the rights of gay and lesbian couples to wed.

Feingold was always blunt. He told voters that moves to bar same-sex marriage were "mean-spirited attempts" to develop wedge issues a singular political purpose: "to hurt Democrats who are against discrimination."

But how exactly do the Democrats get hurt?

It's not the wounds that come from standing on principle that do them harm.

It's the wounds that are self-inflicted by candidates who are afraid to level with the electorate -- and to use debates over social issues as what the late Paul Wellstone referred to as "teaching moments." (Wellstone, who voted in 1996 for the federal Defense of Marriage Act would later express regret for getting the moment, and the issue, wrong.)

In 2004, in Wisconsin, when Kerry was running cautious for the presidency, Feingold ran dangerous for reelection. Both faced serious, big-spending Republican opposition -- indeed, Feingold's opponents went much further than Kerry's in suggesting that their Democratic target was soft on terrorism.

Yet, when the votes were counted, Kerry won Wisconsin -- a state that, lest anyone think it to be unduly progressive, would in 2006 endorse a constitutional ban on same-sex marriage -- by barely 11,000 votes.

On the same day, Feingold won by 330,000 votes.

By any measure, a lot of voters who opposed same-sex marriage voted for Feingold. Indeed, it can fairly be suggested that hundreds of thousands of "values voters" who might have differed with the Democratic senator on specific social issues ended up voting for him because they were impressed by his frankness and his willingness to take political risks to uphold *his* values.

The point here is not to suggest that Feingold's stance on gay rights accounted for his advantage. The point is that Democrats who campaign from a place of confidence and strength make a better impression -- and win more votes -- than those who campaign from a place of fear and reaction.