Table 8.1 Classification of Statewide Antigay Initiatives, 1978–1998

Effect of Proposed Laws:
1) Reverse recent laws, court decisions, or executive actions
   (incrementalism, return to recent status quo)

<table>
<thead>
<tr>
<th>State/Year</th>
<th>Sponsors</th>
<th>Election Result</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alaska, 1998*</td>
<td>State legislature</td>
<td>(68% in favor)</td>
</tr>
<tr>
<td>Hawaii, 1998*</td>
<td>State legislature</td>
<td>(69% in favor)</td>
</tr>
<tr>
<td>Maine, 1998*</td>
<td>Christian Civic League</td>
<td>(51% in favor)</td>
</tr>
<tr>
<td>Oregon, 1988</td>
<td>Oregon Citizens Alliance</td>
<td>(57% in favor)</td>
</tr>
</tbody>
</table>

Avg. = 61%

2) Repeal existing local protections; prevent future protections
   (non-incremental change; roll-back protections and freeze future acts)

<table>
<thead>
<tr>
<th>State/Year</th>
<th>Sponsor</th>
<th>Election Result</th>
</tr>
</thead>
<tbody>
<tr>
<td>Colorado, 1992</td>
<td>Colorado for Family Values</td>
<td>(53% in favor)</td>
</tr>
<tr>
<td>Idaho, 1994</td>
<td>Idaho Citizens Alliance</td>
<td>(49% in favor)</td>
</tr>
<tr>
<td>Maine, 1995</td>
<td>Concerned Maine Families</td>
<td>(47% in favor)</td>
</tr>
<tr>
<td>Oregon, 1994</td>
<td>Oregon Citizens Alliance</td>
<td>(44% in favor)</td>
</tr>
</tbody>
</table>

Avg. = 48%

3) Adopt new restrictions on gay rights
   (radical change from status quo, new conservative policies)

<table>
<thead>
<tr>
<th>State/Year</th>
<th>Sponsor</th>
<th>Election Result</th>
</tr>
</thead>
<tbody>
<tr>
<td>California, 1978</td>
<td>Sen. John Briggs</td>
<td>(41% in favor)</td>
</tr>
<tr>
<td>California, 1986</td>
<td>Lyndon Larouche</td>
<td>(29% in favor)</td>
</tr>
<tr>
<td>California, 1988</td>
<td>Rep. William Dannemeyer</td>
<td>(32% in favor)</td>
</tr>
<tr>
<td>California, 1988</td>
<td>Rep. William Dannemeyer</td>
<td>(34% in favor)</td>
</tr>
<tr>
<td>Oregon, 1992</td>
<td>Oregon Citizens Alliance</td>
<td>(43% in favor)</td>
</tr>
</tbody>
</table>

Avg. = 35%

*A legislative referenda to amend a state constitution.

*A citizen's referenda to repeal a legislative act. The policy was not directly drafted by a citizen's group.

changes. The final category includes measures that propose the adoption of new policies that constitute a radical departure from the state's existing policies. Proposals in this class include laws requiring that gay teachers be fired, requiring mandatory AIDS testing, and requiring quarantine of AIDS victims.

The table illustrates a gradual trend over time away from the more radical proposals. Nearly all of the “first wave” of antigay state initiatives, starting with Briggs in California and continuing through Oregon’s Measure 9 in 1992, fall into the “radical policy change” category. Between 1986 and 1988, for example, three controversial initiatives targeting AIDS victims qualified for the California ballot: two by the religious conservative U.S. Representative William Dannemeyer (R) and one by fringe political figure Lyndon Larouche. These three measures included a call for mandatory AIDS testing and forced quarantine of people testing positive for the disease. All of these proposals were rejected by very large vote margins. A fourth, moderate, AIDS-testing initiative was proposed by law enforcement elites in 1988 requiring testing only of criminals convicted of violent crimes. The measure was not seen as antigay and was approved by California voters in 1988 (Donovan and Bowler 1997).

That same year in Oregon, however, antigay activists successfully used direct democracy to repeal a new executive-branch ruling that protected state employees from job actions based on their sexual orientation. The 1988 Oregon measure involved a relatively incremental change in administrative policy, returning state discrimination protections to the status that existed prior to the extension of protections to state employees (the initiative was later reversed by the Oregon Court of Appeals).

With one exception (Oregon in 1992), contemporary antigay state initiatives have had a slightly less radical edge than those on ballots prior to 1990, although most ballot measures from 1992 to 1996 continued to propose nonincremental changes in gay rights policies. Most proposed state laws eliminating long-standing local ordinances protecting gays and lesbians. Two of the initiatives from this period appeared in Oregon, where the drafting, circulation, and qualification of antigay initiatives became something of a cottage industry. Most of this activity is associated with the efforts of Lon Mabon and his Oregon Citizen’s Alliance (“OCA”). The OCA found its base of support in Christian churches and was particularly active outside of the state’s major metropolitan area. In 1992, the OCA qualified for the state ballot Measure 9, a proposed law that declared homosexuality “abnormal, wrong, unnatural and perverse” while equating it with pedophilia. Measure 9 also banned categorical civil rights protections based on sexual orientation and sexual preference (Donovan and Bowler 1997). Such a proposal represented a sharp departure from existing state law.

Two years later, the OCA was back on the ballot with Measure 13, a bill similar to Measure 9 but with slightly less caustic denunciations of homosexuality. The 1994 Oregon proposal would have repealed Portland’s local gay rights ordinance, which dated back to 1974 (Haider-Markel 1997, appendix C). Both initiatives were soundly defeated. In June of 1996, shortly after the Romer decision, the OCA withdrew from circulation another initiative that combined the ban on categorical protections with a prohibition of gay marriage and a prohibition of teaching that sexual behavior constituted “differences” similar to race, gender or religion. The Romer
Dannemeyer sought the Republican nomination for the U.S. Senate in
soon after their respective antigay campaigns. John Briggs and William
were sponsored or advocated by politicians who sought higher elected office
higher office. In fact, a majority of the thirteen antigay state ballot measures
visibility among "core supporters"—particularly those who will be con-
ctacted for campaign contributions in any bid the politician might make for
opportunities for building the political capital of enhanced public visibility
drives, as well as a possible campaign (if the measure qualifies), are all
of newly drafted initiatives, the attention of associated initiative petition
officials and representatives of major religious organization might enjoy,
an affair Foster allegedly had with Hillary Clinton).9

Lacking the level of access to mainstream media that incumbent elected
officials and representatives of major religious organization might enjoy,
politicians such as Mabon and Lyndon Larouche can remain in the public
eye by occasionally proposing new ballot initiatives. The announcement
of newly drafted initiatives, the attention of associated initiative petition
drives, as well as a possible campaign (if the measure qualifies), are all
opportunities for building the political capital of enhanced public visibility
and an expanded base of potential contributors.

The process can also provide advantages for marginalized politicians
like Dannemeyer or Briggs. Antigay initiatives can increase their public
visibility among "core supporters"—particularly those who will be con-
tacted for campaign contributions in any bid the politician might make for
higher office. In fact, a majority of the thirteen antigay state ballot measures
were sponsored or advocated by politicians who sought higher elected office
soon after their respective antigay campaigns. John Briggs and William
Dannemeyer sought the Republican nomination for the U.S. Senate in
California in different years, and Lon Mabon ran in the 1996 Republican
U.S. Senate primary in Oregon. Larouche continued to run for President.
Gary Bauer, a conservative Christian activist and eventual presidential can-
didate, used his Washington, D.C.-based American Renewal group10 to
raise $50,000 for the campaign to pass Alaska's same-sex marriage ban
(Ruskin 1998). None of these candidates won a nomination.

At this point we should consider the use of direct democracy from the
point of view of progay groups. After all, if there are rewards that flow to
those who promote initiatives, then in principle at least we should be just
as likely to see rival entrepreneurs sponsoring as many progay initiatives
as antigay ones. But we do not. Before moving to consider the impact of
Romer, then, we should address the question of this imbalance between
the use of the initiative by progay and antigay groups.

With the notable exceptions of Prohibitionists and the women's move-
ment early in the twentieth century (Banaszak 1996), and perhaps environ-
mentalists in the last part of the century, most modern initiatives are not
the product of social movements promoting their goals. Outside of these
striking examples, however, more contemporary attempts have probably
been made to use direct democracy as a roadblock than as a vehicle for the
advancement of minority interests. In part, of course, this is definitional. As
a majoritarian institution, direct democracy requires majorities of voters
to support a particular policy and, by definition, minority groups are disad-
vantaged. Because of this we are less likely to see attempts to build entre-
preneurial movements around minorities, unless active antiminority efforts
can attract majority support. As we have seen, this has been harder for
antigay groups to accomplish than might be thought at first.

But, in part, the relative infrequency of attempts to mobilize around
progay initiatives may reflect a strategic choice by a minority group that
finds pursuing their cause through the legal process a more successful one.
The judicial arena, after all, is one where minority rights are entrenched,
while the arena of direct democracy is one where majority rule prevails.
As many feared, the initiative process has been the scene of repeated at-
ttempts to roll back a variety of social gains, and not just those made by
gays. To a considerable extent the courts have played their role as they
should as protectors of minority rights and repeatedly defused or over-
turned attempts to reverse social advances made by a variety of groups.
And, again, this pattern is not restricted to the battles over gay rights, as
court decisions over California's anti-immigration Proposition 187 show.