

January 8, 2007

TO: Interested Parties

FROM: Rachel Laser, Director of the Culture Project; Matt Nosanchuk, Senior Policy Fellow; Scott Winship, Research Consultant; and Michael Earls, Policy Advisor

RE: Colorado in 2006: A Case Study of How to Win Same-Sex Relationship Recognition in the Future

Overview

The 2006 mid-term elections presented an opportunity to gain tremendous insight into America's current views towards gay and lesbian relationships. In particular, Colorado provided an ideal laboratory to understand voters' attitudes and deeper feelings in this arena. Voters there faced two ballot measures addressing same-sex relationships—Amendment 43, a proposed state constitutional ban on gay marriage, and Referendum I ("eye"), a proposal to "extend to same-sex couples in a Domestic Partnership the benefits, protections and responsibilities that are granted by Colorado law to spouses." Coloradans passed the marriage ban 56-44% and voted down domestic partnerships 53-47%.

Various surveys have shown that Americans prefer domestic partnerships (or civil unions) when they are viewed as the middle ground between no legal protection and same-sex marriage.¹ Arguably, therefore, a favorable climate existed for passing domestic partnerships: voters could both reject same-sex marriage *and* create the new legal status of domestic partnerships for same-sex couples in the same election. Yet, the ballot initiative to permit domestic partnerships failed.

In order to better understand voters' views towards domestic partnerships in Colorado, Third Way, together with the Victory Fund, conducted an 800 person post-election poll through Zogby International. The poll demonstrated that many Coloradans were "gray" on the issue of same-sex relationships, expressing simultaneous support *and* ambivalence towards same-sex relationships.

What Does it Mean to be “Gray” on Gay Issues?

Based on our poll, Third Way broke down Colorado’s electorate into three distinct blocs—**36%** were **pro-gay polars** (consistent and solid support for same-sex legal protections), **26%** were **anti-gay polars** (consistent and solid opposition to same-sex legal protections), and **34%** were ambivalent—**gay grays** (conflicted and ambivalent towards same-sex legal protections). An additional 4% had no discernable view.

Third Way determined this breakdown by averaging respondents’ positions on seven questions testing people’s attitudes about same-sex relationships.² Polars “strongly agreed” or “strongly disagreed,” while grays “somewhat agreed” or “somewhat disagreed” with each question. Though the grays leaned pro-gay (57-43%), their ambivalence prevented the passage of Referendum I. Only slightly more than half of grays reported voting for Referendum I (53%) despite their pro-gay lean in answering the seven attitudinal questions. Due to the discrepancy between polling on same-sex relationships and actual support achieved, less than half of grays may actually have voted for Referendum I.³

Our research on attitudes towards same-sex relationships, in Colorado and elsewhere, has highlighted three consistent areas of concern that arise in the context of the same-sex relationship debate. This paper will argue that advocates on behalf of Referendum I needed to win the arguments surrounding these three underlying “flash points” in order to pass the ballot initiative. The three key arguments are:

1. Domestic partnerships solve a real, not made up, problem.
2. Domestic partnerships do not undermine marriage.
3. Domestic partnerships represent progress in America.

Proponents had to win those arguments, and win them *decisively*. Referendum contests involve votes to change the status quo—in this case, on a particularly divisive topic. So the bar here was particularly high.

This paper illuminates how the race was fought over these three arguments and how Coloradans were, on the whole, not sufficiently convinced.

On the other hand, this paper also shows that the ballot initiatives did not meaningfully affect the state’s hotly-contested 2006 races. In other words, conservatives seeking to use the issue as a wedge against candidates failed.

Argument I: Domestic Partnerships Solve a Real, Not Made Up Problem

Referendum I advocates recognized they had to educate voters about the lack of legal protections available to same-sex couples in Colorado (such as an inability to have family-status hospital visitation or property inheritance rights).

The lead organization on behalf of Referendum I, Coloradans for Fairness and Equality, sponsored a series of television ads that led with the question, "Is it Fair?", followed by a brief description of the specific protection denied to a Colorado same-sex couple (ranging from hospital access to property inheritance to funeral arrangements). The group's website described Referendum I as attempting to fix "a hole in state law by clarifying the legal status of committed Colorado couples" and providing "committed couples with basic legal protections and responsibilities."⁴

Colorado Family Action, associated with Focus on the Family, led the opposition to Referendum I and sought to muddle the pro-Referendum I message about the lack of current protections available to same-sex couples. The organization labeled Referendum I as "unfair and unneeded" and claimed that "gay people are already treated fairly and equally to all other citizens. Referendum I is not needed because homosexuals already have access under Colorado law to nearly every benefit they claim they are denied."⁵

In the end, too many Coloradans remained unconvinced that domestic partnerships would fix a real problem. At first glance it appears that a majority grasped that same-sex couples "don't have even the most basic rights that other couples have" (59-37%). *But only 40% strongly agreed. This number demonstrates that a super-majority of Coloradans are far from sold on this basic fact.* By comparison, and to further illustrate this point, imagine only 40% of Coloradans "strongly agreeing" that Colorado is one of the nation's premier destinations for downhill skiing. It wouldn't happen—because, unlike their view of the inequities facing same-sex couples—they are solidly convinced that their state is indisputably one of the best places to ski in the country.

Over a third of the Colorado population (35%) were gray on this question—they either somewhat agreed or somewhat disagreed with the notion. Notably, a majority of gray respondents on this question indicated that they voted against Referendum I (slightly over 50%).⁶

Similarly, while voters disagreed, by a margin of 52-45%, that "domestic partnerships are a solution in search of a problem," only one-third (34%) strongly disagreed with that notion. *Thus, two-thirds of voters either expressed some doubt or total disbelief that same-sex couples need more legal protections.* Again, the numbers show that Coloradans do not accept as fact that same-sex couples lack basic legal protections. Of the 35% percent of respondents who were gray on this question, 40% indicated that they voted against Referendum I.

Finally, though 54% of respondents agreed with the statement "domestic partnerships fix a hole in state law without changing Colorado marriage laws," only 27% strongly agreed. *Once again, a strong majority of Coloradans demonstrated that they were not sufficiently convinced that there is a problem to feel certain or "strongly" about it.* Of the 42% percent of respondents who were gray on this question, 39% indicated that they voted against the domestic partnership referendum.

Argument II: Domestic Partnerships Do Not Undermine Marriage

Referendum I advocates sought to convince voters that domestic partnerships were different from marriage. The Coloradans for Fairness and Equality campaign used the tagline “It’s Not Marriage. It’s Basic Legal Rights” to highlight the difference between Referendum I and the marriage amendment. The organization also ran several television ads that similarly focused on the difference between marriage and Referendum I and described the ballot initiative as “more like a will than a marriage.”⁷

On the other side, Referendum I opposition deliberately linked domestic partnerships to marriage in their campaign against domestic partnerships. Colorado Family Action promoted the message: “Don’t be fooled. Referendum I isn’t about hospital visitation and funeral arrangements. It’s not about benefits at all. It’s about gay marriage.” In their materials and advertisements, Colorado Family Action linked domestic partnerships to marriage by pegging it as “marriage lite”, “gay marriage by another name”, and “counterfeit marriage”.⁸

Too many Colorado voters remained concerned about the potential impact recognition of same-sex relationships would have on marriage. Nearly half of Coloradans (45%) believed that domestic partnerships were “a slippery slope” that would “weaken traditional marriage.” *Notably, only 38% of Coloradans strongly disagreed with this statement.* Of the 29% of Coloradans who were gray on this question, only a narrow majority (54%) indicated that they voted for Referendum I.

Additionally, just under half of Colorado voters (49%) disagreed with the notion that domestic partnerships are “counterfeit marriages that redefine what it means to be married and to be a spouse,” with only one-third of Coloradans “strongly disagreeing”. *The vast majority of Coloradans remained too concerned to “strongly disagree” that domestic partnerships are really counterfeit marriages that would ultimately reinvent marriage as they know it.* Thirty percent of Coloradans were gray on this question and 40% of gays indicated that they voted against Referendum I.

As we noted earlier, because ballot initiatives change law, these questions need to be won by a decisive margin to ensure victory—a margin that was clearly lacking here.

Argument III: Domestic Partnerships Represent Progress

The third argument advocates needed to win is that domestic partnerships would represent progress for Colorado and America. If the other arguments are more rational in nature, this one is more emotional. When we refer to “progress” in the context of culture issues, we mean it in the sense of America’s journey. Are we heading in the right direction or the wrong direction? Moving too fast or too slow? Are we ready to make this change or do we need more time? If this changes, what’s next?

Given the depth and level of support needed to change the status quo, a solid majority of Coloradans had to have been sufficiently convinced that domestic partnerships were progress to vote to give legal status to gay and lesbian relationships.

Colorado Family Action took on the progress argument by warning that Referendum I would ultimately move the state to same-sex marriage and comparing this movement to Chinese water torture. As the group's website stated, "like the 'drip, drip, drip' of Chinese water torture, gay activists believe that approval of Referendum I by the voters of Colorado will be an incremental change—allowing the public to adjust to the idea of legalized homosexual unions and paving the way for their ultimate goal—full marriage for gay couples."⁹

According to our poll, a striking 42% of respondents felt that legalizing domestic partnerships would represent "the wrong course" in the state and an additional 9% were unsure of their position—equaling at least 51% of Coloradans who expressed concern. In the case of ballot initiatives on divisive cultural issues, unsure is as bad as "wrong course" in that both prevent advocates from attaining the decisive margin needed to change the status quo.

In another question, half of Coloradans disagreed that "change in this country is happening too fast" on gay-relationship recognition, and *only 37% "strongly disagreed"*. Nearly one-third of Coloradans (28%) were gray on this question, with only a slight majority *indicating* that they voted in favor of Referendum I.

Colorado voters' hesitancy on the progress question mirrors the national trend. In Third Way's nationwide post-election poll, 70% thought domestic partnerships were inevitable, but just 49% felt that *legalizing* these unions would represent progress rather than the wrong course.

The Ballot Measures Did Not Substantially Affect Colorado Races

Organizers of anti-gay marriage ballot initiatives have two goals when they initiate a campaign. They want to pass a law or constitutional amendment that defines the family unit, and they want to elect sympathetic politicians to elective office.

Organizers of the constitutional ban in Colorado succeeded in the first goal, but not in the second. Opponents of same-sex legal recognition failed in contested races at the gubernatorial and congressional levels.

In the gubernatorial race, the candidate more closely aligned with gay rights, Bill Ritter, defeated Bob Beauprez 56-41%. In the open District 7 race for the U.S. House, Referendum I supporter Ed Perlmutter won the seat vacated by Bob Beauprez. The other six Colorado races for the U.S. House remained under the incumbent party's control, but anti-gay activist Marilyn Musgrave had a near-death experience holding onto her House seat. Democrats also increased their share of both the Colorado State House and State Senate despite shepherding Referendum I through the legislature.

For only one in five Colorado voters in our poll (21%), the two ballot initiatives were "very" motivating in their decision to vote. Moreover, these voters split their allegiances between conservative and progressive candidates.

The Haggard Scandal: Another Stumbling Block for Referendum I?

In addition to the gay-related ballot measures, the Reverend Ted Haggard scandal cast a wide shadow over the 2006 Colorado election cycle. On the Thursday immediately before the November election, Colorado and the nation learned that Haggard, the head of the National Association of Evangelicals and of Colorado Springs' New Life megachurch, had paid for sex with a gay prostitute and engaged in frequent drug use. Before resigning as head of his church, Haggard was a chief proponent of the ballot initiative to ban same-sex marriage.

Although it remains unclear how the scandal affected the Amendment 43 or Referendum I votes, there are possible signs that its impact was negative. Many feel that it could have raised fears voters had about same-sex relationships. As Christine Nelson of the National Conference of State Legislatures said, the "words 'gay sex' made many people say, 'No, no, no, we'll have none of that going on here.'" ¹⁰ Additionally, backers of Referendum I believed that their efforts to highlight committed long-term gay and lesbian relationships were thwarted by coverage of Haggard's extramarital sex-for-pay arrangement. ¹¹

A *Denver Post* poll conducted between October 24 and 26 showed Amendment 43 passing 51-43%. The final vote—56-44%—implies that if anything, more undecided voters broke in favor of Amendment 43 than against it during the Haggard scandal. Similarly, the October survey showed Referendum I leading by a 47-42% margin though the final vote was 47-53% against. ¹²

Moving Forward: How to Win Next Time

We believe that Coloradans didn't vote "no" on Referendum I; they voted "not yet."

Coloradans, like other Americans, are on a journey towards feeling comfortable with legal recognition of gay and lesbian relationships. However, the journey is one with many caution signs, speed bumps, and detours.

In a positive trend, the Colorado polling firm Ciruli Associates has documented broad liberalization on gay equality issues among the state's voters since 1992. ¹³ Additionally, there were many instances where Coloradans demonstrated acceptance of same-sex relationships in our poll. A majority of respondents leaned in favor or expressed full-fledged support for the progressive, pro-relationship recognition position on all seven attitudinal questions in our poll. ¹⁴

However, this pro-gay lean clashed with competing beliefs and deeply-held attitudes with respect to three "flash points." This dissonance, amplified by the fact that a "yes" vote on Referendum I was a vote for change, prevented many voters from concretely pulling the lever for change.

Although we did not ask Coloradans if they thought legal recognition of same-sex relationships was inevitable in the near future, we suspect that we would find

numbers similar to those we found in our national poll—70%. In addition, there is a huge generation gap on gay equality issues. Younger voters are more open and accepting, older voters are more closed, and middle-aged voters are in between.

As our analysis of the Colorado poll results demonstrates, advocates of legal recognition of same-sex relationships must decisively win the three key arguments outlined in this paper, especially among grays, to achieve the relationship recognition and protections they nearly approved in Colorado in 2006.

Appendix A: Third Way Colorado Poll

<i>Domestic partnerships, they are basic legal protections</i>			
Pro-Gay Polars	Pro-Gay Grays (27.6%)	Anti-Gay Grays (13.7%)	Anti-Gay Polars
(39.4%)	GRAYS (41.3%)		(13.6%)
<i>Reported Referendum I Vote Among Blocs</i>			
72-27%	49-50%		13-86%

<i>Domestic partnerships are counterfeit marriages that redefine what it means to be married and to be a spouse</i>			
Pro-Gay Polars	Pro-Gay Grays (16.4%)	Anti-Gay Grays (13.1%)	Anti-Gay Polars
(33.4%)	GRAYS (29.5%)		(34%)
<i>Reported Referendum I Vote Among Blocs</i>			
91-9%	57-40%		9-91%

<i>Currently, same-sex couples do not have even the most basic rights that other couples have, like hospital visitation rights, inheritance rights, and sharing insurance policies</i>			
Pro-Gay Polars	Pro-Gay Grays (19.1%)	Anti-Gay Grays (15.9%)	Anti-Gay Polars
(39.9%)	GRAYS (35%)		(21.5%)
<i>Reported Referendum I Vote Among Blocs</i>			
73-26%	49-48%		20-79%

<i>Legal recognition of same-sex relationships is a slippery slope that will weaken traditional marriage</i>			
Pro-Gay Polars	Pro-Gay Grays (15.7%)	Anti-Gay Grays (13.4%)	Anti-Gay Polars
(37.9%)	GRAYS (29.1%)		(31.6%)
<i>Reported Referendum I Vote Among Blocs</i>			
89-10%	54-45%		6-93%

<i>Change in this country is happening too fast, and we should take our time and think things through before we start granting gays and lesbians the right to form a legal union that looks a lot like marriage</i>			
Pro-Gay Polars	Pro-Gay Grays (13.2%)	Anti-Gay Grays (14.3%)	Anti-Gay Polars
(37%)	GRAYS (27.5%)		(33.3%)
<i>Reported Referendum I Vote Among Blocs</i>			
88-12%	53-45%		12-86%

<i>Domestic partnerships are a solution in search of a problem. Most gay people have all of the basic legal protections they need</i>			
Pro-Gay Polars	Pro-Gay Grays (17.9%)	Anti-Gay Grays (16.9%)	Anti-Gay Polars
(34.1%)	GRAYS (34.8%)		(28.3%)
<i>Reported Referendum I Vote Among Blocs</i>			
86-13%	53-45%		11-88%

<i>Domestic partnerships fix a hole in state law without changing Colorado marriage laws</i>			
Pro-Gay Polars	Pro-Gay Grays (27.1%)	Anti-Gay Grays (15.1%)	Anti-Gay Polars
(27.3%)	GRAYS (42.2%)		(20.6%)
<i>Reported Referendum I Vote Among Blocs</i>			
67-32%	60-39%		21-78%

Methodology

Using our November 2006 Colorado Zogby International poll, Third Way determined the polars and grays breakdown by averaging respondents' positions on the above seven questions, testing people's attitudes about same-sex relationships. Polars "strongly agreed" or "strongly disagreed," while grays "somewhat agreed" or "somewhat disagreed" with each question. Third Way judged Referendum I support among each group by cross-tabulating each of the seven questions with a question determining how the respondents voted on Referendum I.

Poll Results vs. Election Results

In our poll, a majority of voters (52%) said that they voted for Referendum I, but in reality, only 47% did. Because our poll accurately reflected the official vote in the gubernatorial race, survey problems are an unlikely culprit. This discrepancy, statistically significant because it was outside of the margin of error of 3.5%, was probably the result of respondents' discomfort or embarrassment with their vote against domestic partnerships. It exemplifies the internal conflicts that voters seem to have on this issue.

Endnotes

¹ Gallup Polling in 2004 and Professor Clyde Wilcox, Professor of Government at Georgetown University, have highlighted this “middle ground” concept.

² See Appendix A.

³ Please refer to the Appendix for an explanation of why support for Referendum I in our poll differed from the actual support at the ballot box.

⁴ Coloradans for Fairness website and television advertisements archive:
http://www.fairnessandequality.org/site/PageServer?pagename=Press_TV_Spots.

⁵ Colorado Family Action website, fact sheet on Referendum I:
<http://www.cofamily.org/WhatisReferendumI.htm>.

⁶ Among the polars, their view on this question did not completely coincide with their vote for Referendum I. Twenty-seven percent of pro-gay polars on this question indicated that they voted against the domestic partnership referendum. By comparison, only 13% of anti-gay polars on this question indicated that they voted for Referendum I.

⁷ Coloradans for Fairness website: <http://www.fairnessandequality.org>

⁸ For examples of Colorado Family Action advertisements, go to
<http://www.cofamily.org/downloadads.htm>.

⁹ <http://www.cofamily.org/WhatisReferendumI.htm>.

¹⁰ “Gay Marriage Votes Get Diverse Spins from Activists,” Elizabeth Mehren, L.A. Times, 11/9/2006.

¹¹ Ibid.

¹² “Seeming Split Over Same-Sex Issues on Ballot,” George Merritt, Denver Post, 10/29/2006.

¹³ <http://www.ciruli.com/archives/amend2-10yrs/amend2-704.htm>

¹⁴ See Appendix A for a detailed overview.