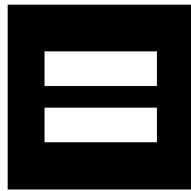


The Backlash Myth

Progress Toward
Gay, Lesbian, Bisexual and Transgender
Equality Since May 17, 2004



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A Report of the
Human Rights Campaign

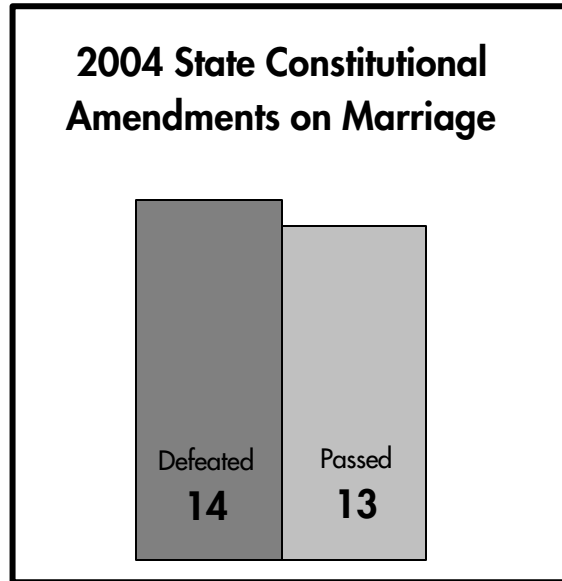
May 12, 2005

Background

Widespread media reports have described the 2004 elections as a supposed “backlash” against gay, lesbian, bisexual and transgender Americans resulting from court decisions like *Goodridge v. The Department of Public Health*¹ and *Lawrence v. Texas*.² In reality, the country is continuing to make progress toward full equality for GLBT Americans in groundbreaking ways.

Significant progress in states like California, Maryland, Hawaii, Connecticut, Washington, Oregon and other states and localities across the country debunks the “backlash” myth. Likewise, attempts to deny rights to GLBT Americans are failing more often than not. Fourteen state legislatures defeated anti-gay constitutional amendments in 2004 (compared to the 13 states where these measures passed) and six state legislatures have defeated them already in 2005.³

GLBT Americans and their allies celebrate May 17, 2005, as the first anniversary of the implementation of marriage rights for same-sex couples in Massachusetts — where a recent poll indicates that a majority of voters in the state support the right of same-sex couples to marry.



¹ In *Goodridge v. The Department of Public Health*, a decision by the Massachusetts Supreme Judicial Court on Nov. 18, 2003, the court held that under the Massachusetts Constitution, it was unlawful for same-sex couples to be excluded from the right to marry. The decision took effect on May 17, 2004.

² *Lawrence v. Texas*, a decision by the U.S. Supreme Court on June 26, 2003, affirmed the right to privacy and overturned the sodomy laws in 13 states.

³ In 2004 the legislatures of Alabama, Arizona, Delaware, Idaho, Indiana, Illinois, Kansas, Maine, Maryland, Michigan (a separate citizen-initiated measure proceeded), Minnesota, North Carolina, Vermont and Washington defeated efforts to amend their state constitutions. Measures passed and were ratified by voters in Arkansas, Georgia, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Montana, North Dakota, Ohio, Oklahoma, Oregon and Utah. In 2005 proposed state amendments have been defeated in California, Colorado, Idaho, Maryland, New Mexico and Washington. We expect at least six additional states to defeat these measures in 2005.

Electoral Perspective and Gains

- On Nov. 2, 2004, voters re-elected 94 percent of state legislators who had voted against measures that sought to deny same-sex couples the right to marry.
 - Of the 640 such legislators facing re-election, 604 won and a mere 11, or 1.7 percent, of these legislators lost their races in part because of their vote against banning marriage for same-sex couples.⁴
- In Georgia, Kentucky, Oklahoma and Utah, the same voters who approved constitutional amendments banning marriage for same-sex couples also re-elected 97 percent of the legislators who had voted *against* these amendments.
- Voters in three states elected openly gay or lesbian candidates for state legislative office — Jeannette Mott-Oxford in Missouri, Nicole LeFavour in Idaho and Julia Boseman in North Carolina.
- Voters in Cincinnati overturned a provision of the city charter prohibiting the city council from passing any legislation intended to help GLBT residents.
- On March 1, 2005, voters in Topeka, Kan., rejected an attempt to repeal the ordinance prohibiting discrimination against city employees on the basis of sexual orientation.

94%

...the percentage of state legislators voting against discriminatory marriage amendments who won reelection in 2004 – higher than the national average reelection rate for state legislators

In Massachusetts, the only state where same-sex couples are extended the freedom to marry, public opinion and election results indicate a sustained support for marriage equality.

- In the 2004 election, voters in Massachusetts re-elected every legislator who voted against overturning the court's decision. Special elections following the Nov. 2 victories demonstrated a continuing trend of anti-gay legislators being replaced by legislators in favor of marriage equality.

⁴ See "Standing Up for Equality: A Report on the Impact of Marriage-Related Votes on State Legislative Races," by HRC and The Equality Federation, released in January 2005 and available at www.hrc.org/standingup.

Progress on Family and Marriage Equality

In State Legislatures

- On April 21, 2005, Connecticut became first state to enact civil unions without the prompting of a court decision. Same-sex couples in the state are now provided with almost all of the state-level spousal rights given to opposite-sex couples. The bill signed by Republican Gov. Jodi Rell had bipartisan support in both chambers of the state Legislature and widespread support across the state.
- Meanwhile, champions of marriage equality in the California Legislature have sponsored Assembly Bill 19, “The Religious Freedom and Civil Marriage Protection Act,” which would permit same-sex couples in California to marry. Authored by Assembly Member Mark Leno, D-San Francisco, and Assembly Speaker Fabian Núñez, D-Los Angeles, the bill passed the Assembly Judiciary Committee on April 26, 2005, by a 6-3 vote and has the support of the California NAACP.
- In Maryland, the General Assembly sent a bill to the governor on April 11, 2005, that establishes a life partnership registry for unmarried couples and confers 11 rights, such as medical decision-making, hospital visitation and the right to share a room in a nursing home, on registered couples. The General Assembly also passed a bill that would exempt individuals from the taxes incurred on adding domestic partners to the deeds of their homes — an exemption already extended to most family members.
- Oregon continues to move forward on a bill introduced in their Legislature that would allow same-sex couples to enter into civil unions. The legislation is supported by a bipartisan coalition of state legislators and is a top legislative priority of Democratic Gov. Ted Kulongoski.

In the Courts

- On February 4, 2005, the New York Supreme Court (a trial-level court) ruled that under the state constitution, same-sex couples could not be denied the right to marry. In her ruling, Justice Doris Ling-Cohan stated, “Similar to opposite-sex couples, same-sex couples are entitled to the same fundamental right to follow their hearts and publicly commit to a lifetime partnership with the person of their choosing. The recognition that this fundamental right applies equally to same-sex couples cannot legitimately be said to harm anyone.” This case has been appealed.
- On March 8, 2005, the Washington Supreme Court heard oral arguments in a case brought by Lambda Legal, the Northwest Women’s Law Center and the American Civil Liberties Union seeking to strike down Washington’s so-called “Defense of Marriage Act” of 1998, which restricts marriage to the union of a man and a woman.
- On March 14, 2005, San Francisco County Superior Court Judge Richard Kramer held that denying marriage licenses to same-sex couples violated that state’s constitution, saying, “It appears that no rational purpose exists for limiting marriage in this state to opposite-sex partners.” The case, *Woo v. Lockyer*, has been appealed to the California Appellate Court.

State and Federal Legislative Victories

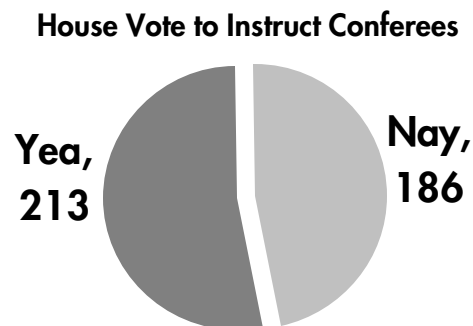
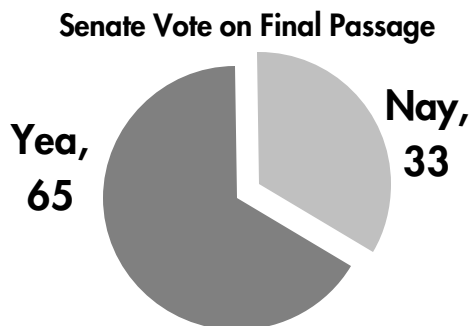
Already in 2005, legislatures in Colorado, Hawaii, Illinois and Maine have passed anti-discrimination laws protecting GLBT citizens. The governors of Illinois and Maine immediately signed these measures into law. Not since 1992, when three governors signed anti-discrimination bills, has there been so much progress at the state level toward ending discrimination against GLBT Americans. The Maryland General Assembly, in addition to passing two bills aimed at granting same-sex couples some measure of equity, also passed a bill that adds sexual orientation and gender identity to the state hate crimes law. In addition, the governor of Virginia signed a bill which allows insurance companies to sell insurance policies that include coverage for domestic partners.

“Not since 1992... has there been so much progress at the state level toward ending discrimination against GLBT Americans”

Also for the first time this year, a chamber of the Montana Legislature passed an anti-discrimination measure. Although the Senate passed the measure by a 26-23 vote, it died in a House committee. The Senate also passed a bill by a 28-21 vote that would have created a “next-of-kin” registry that would permit an individual’s registered next of kin to visit him or her in medical care facilities, to make health care decisions and to receive his or her deceased body.

Notably in 2004, despite election-year pressure and President George W. Bush’s attempts to use marriage equality as a “wedge issue,” both the U.S. Senate and U.S. House of Representatives rejected an amendment to the U.S. Constitution banning marriage for same-sex couples. The amendment would have required a two-thirds majority in both houses, but not even a simple majority of senators supported it. Likewise, the U.S. House of Representatives rejected the measure by more than 60 votes. By contrast, a bipartisan majority of both houses of Congress voted to support a federal hate crimes law protecting GLBT Americans. In the Senate, 18 Republicans joined all 47 Democrats voting in favor of the measure, while a “motion to instruct conferees” passed in the House by a margin of 213-186.

Congressional Votes on Hate Crime Legislation



Growing Support for Marriage Equality

- On Nov. 2, 2004, national exit polls showed that 60 percent of voters support either marriage or civil unions for same-sex couples.
- A recent poll conducted by *The Boston Globe* found that 56 percent of Massachusetts residents support the right of same-sex couples to marry, while only 37 percent were opposed. The poll showed strong support among Bay State Democrats, at 71 percent, as well as Independents, at 53 percent.
- A May 4, 2005, Garden State Equality-Zogby poll found that New Jersey voters favor marriage equality by a margin of 55-40 percent, echoing the support found in a similar survey two years ago. This poll also found that a majority of Catholics, Jews, Hispanics, Democrats and Independents all favor marriage for same-sex couples.
- A Global Strategy Group survey in April 2005 found that 51 percent of New Yorkers support marriage for same-sex couples, while 42 percent do not. The margin of support was nine points higher than the margin a year earlier in a poll conducted by the same firm.
- The state Democratic parties of California, Colorado, Iowa, Massachusetts and New York have all passed resolutions in support of marriage equality. In Colorado, Iowa and Massachusetts, support of marriage equality is included in the state party platforms. For the first time in 2004, the Democratic national platform called for “equal responsibilities, benefits and protections” for the families of same-sex couples. In addition, the platform repudiated the proposed amendment to the U.S. Constitution.

