

# BALLOTWATCH

## Notable

- Three measures proposing to ban gay marriage (AZ, CA, FL)
- Historically, 29 of 30 measures banning same-sex marriage have passed.
- More than \$50 million raised for California's Prop. 8, apparently a record amount for a social issue

## SAME-SEX MARRIAGE: BREAKING THE FIREWALL IN CALIFORNIA?

California voters seem poised to reject Proposition 8 in November, thereby affirming the right to same-sex marriage in the state that helped set off the movement to ban gay marriage. Since 2000, when California's Proposition 22, a statutory initiative banning same-sex marriage, was approved, gay rights supporters have scored victories in the supreme courts of Massachusetts and California, but been completely routed at the ballot box. A total of 30 ballot propositions concerning gay marriage have come before the voters in the last 10 years, and 29 of them have passed, often with margins greater than 30 points. The only measure to fail, Arizona's Proposition 107 in 2006, lost because it included limits on civil unions as well marriage, and even that measure only failed narrowly.

California's Proposition 8 proposes to amend the state constitution to define marriage to encompass only one man and one woman. Voters approved a similar measure, Proposition 22, in 2000, but it was a statutory rather than a constitutional initiative, and thus vulnerable to being overruled on constitutional grounds. That is exactly what happened in May 2008, when the California Supreme Court ruled (*In re Marriage Cases*) that the state constitution contained a right to gay marriage, and invalidated Prop 22.

Skirmishing over gay marriage began in 1993 when the Hawaii Supreme Court ruled (*Baehr v. Lewin*) that a refusal to grant same-sex marriage licenses was sex discrimination under the state constitution. State legislators responded by placing a constitutional amendment on the ballot in 1998, giving the legislature the power to define marriage as solely between one man and one woman. The measure was approved 68-32. At about the same time, fearing similar judicial developments in their states, conservative activists placed "defense of marriage" measures on the ballot in Alaska (1998), California (2000), Nebraska (2000), and Nevada (2000), all of which were approved. The situation appeared to be static.

But then in May 2004, the Massachusetts Supreme Judicial Court ruled (*Goodridge v. Department of Public Health*) that the state constitution contained a right to gay marriage. This ruling set off a pitched battle across the nation over the next three years as marriage traditionalists in 24 states qualified constitutional amendments prohibiting gay marriage for the ballot. Two-thirds of these amendments were proposed and placed on the ballot by state legislatures, and one-third were proposed and qualified by citizen groups using the initiative process. All of them passed, usually by large margins, except for Proposition 107 in Arizona that narrowly failed.




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## SAME-SEX MARRIAGE

Spending on Proposition 8 is likely to reach a record level for a social issue, with total contributions of \$55 million reported by early October. The record amount of spending on a single proposition is \$154 million on California's Proposition 87 in 2006 that would have placed a windfall profits tax on oil companies. A handful of other measures have exceeded \$100 million in spending – but in every case the measures had significant financial ramifications for an industry with deep pockets: gambling, oil, tobacco, or insurance. The playing field for Proposition 8 is balanced so far, with both sides having raised about \$27 million. Much of the money has come from individuals in relatively small amounts, and apparently more than usual has come from outside the state.

The huge amount of money being channeled to fight this proposition, despite its minimal economic impact, reflects the view of both sides that California is a critical firewall in the battle over gay marriage. Rejection of Proposition 8, in effect a popular affirmation of the right to gay marriage, would provide tremendous momentum to the gay rights side, especially since it comes in a huge state that is seen by many as a trendsetter. Passions run high among supporters of Prop 8, as well, many of whom feel that the issue's impact on the family could profoundly alter the foundation of American society.

Opinion surveys indicate that Proposition 8 is headed toward rejection. Field and PPIC polls in late September show the measure trailing by more than 10 points, essentially where it stood in August. Since support for ballot propositions tends to erode over the time, the substantial deficit facing Proposition 8 at this time strongly suggests its prospects for passage are dim. (The SurveyUSA poll from October 6 appears to anomalous.)

In addition to California, Arizona (Proposition 102) and Florida (Amendment 2) are voting on gay marriage bans in November. A poll in late September found Proposition 102 heading toward passage with 49 percent in favor and 40 percent opposed. Florida's measure is attracting majority support in recent polls, but it requires 60 percent approval to pass, which looks difficult.

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*“Spending on Proposition 8, currently at \$55 million, is likely to reach a record level for a social issue.”*

### Summary of Recent Opinion Surveys on California's Proposition 8

Organization	Date	For-Against
Field Poll	May 28	42-51
Field Poll	July 17	42-51
PPIC	August 27	40-54
Field Poll	September 16	38-55
PPIC	September 24	41-55
SurveyUSA	September 25	44-49
SurveyUSA	October 6	47-42

Complete List of State-Level Same-Sex Marriage Ballot Propositions				
State	Year	Measure	Vote	Source
Alaska	1998	Ballot Measure 2	68-32	Legislature
Hawaii	1998	Amendment 2	69-31	Legislature
California	2000	Prop 22	61-39	Initiative
Nebraska	2000	416	70-30	Initiative
Nevada	2000	Question 2	70-30	Initiative
Nevada	2002	Question 2	67-33	Initiative
Arkansas	2004	Amendment 3	75-25	Initiative
Georgia	2004	Amendment 1	77-23	Legislature
Kentucky	2004	Amendment 1	75-25	Legislature
Louisiana	2004	Amendment 1	78-22	Legislature
Michigan	2004	Proposal 04-2	59-41	Initiative
Mississippi	2004	Amendment 1	86-14	Legislature
Missouri	2004	Amendment 2	71-29	Legislature
Montana	2004	CI-96	67-33	Initiative
North Dakota	2004	Amendment 1	68-32	Initiative
Ohio	2004	Issue 1	62-38	Initiative
Oklahoma	2004	Question 711	76-24	Legislature
Oregon	2004	Measure 36	57-43	Initiative
Utah	2004	Amendment 3	66-34	Legislature
Kansas	2005	Amendment	70-30	Legislature
Texas	2005	Prop 2	76-24	Legislature
Alabama	2006	Amendment	81-19	Legislature
Arizona	2006	Prop 107	48-52	Initiative
Colorado	2006	Amendment 43	55-45	Initiative
Idaho	2006	HJR 2	63-37	Legislature
South Carolina	2006	Amendment 1	78-22	Legislature
South Dakota	2006	Amendment C	52-48	Legislature
Tennessee	2006	Amendment 1	81-19	Legislature
Virginia	2006	Ballot Question 1	57-43	Legislature
Wisconsin	2006	NA	59-41	Legislature
Arizona	2008	Prop 102	TBD	Legislature
California	2008	Prop 8	TBD	Initiative
Florida	2008	Amendment 2	TBD	Initiative

This table was compiled using data from the Initiative and Referendum Institute ([iandrinstute.org](http://iandrinstute.org)) and National Conference of State Legislatures ([ncsl.org](http://ncsl.org)).

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