

BALLOTWATCH

Notable

- One amendment to ban same-sex marriage (MN), one referendum to repeal a previously approved ban (ME), and two referendums to repeal laws passed by legislature authorizing gay marriage (MD, WA)
- Historically, voters have approved 34 of 35 measures banning same-sex marriage.

SAME-SEX MARRIAGE: WILL VOTERS BREAK THE FIREWALL?

Despite signs that public opinion may be shifting in favor of same-sex marriage, voters have yet to approve a law legalizing gay marriage. To date, all state laws permitting same-sex marriage have been created by legislatures or courts. A total of 35 ballot propositions banning gay marriage have come before the voters since 1998, and 34 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 voters approved a suitably modified ban two years later.

Skirmishing over gay marriage began in 1993 when the Hawaii Supreme Court ruled (*Baehr v. Lewin*) that refusal to grant same-sex marriage licenses was sex discrimination under the state constitution. Hawaii 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 its 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 for the ballot that prohibited same-sex marriage. 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.

The battle over same-sex marriage reached a fever pitch in 2008 during California's intense battle over Proposition 8 that reinstated a ban on gay marriage that had been previously removed by the state supreme court. Despite trailing in the polls for most of the campaign, voters ultimately approved Proposition 8 by a 52-48 margin.

The issue appears to be gaining momentum again, in part because of surveys that suggest a large and rapid shift in public opinion in favor of permitting gay marriage. The hypothesis of growing public support for gay marriage will be put to the test in four states in November 2012. Minnesota voters will decide whether to amend the state constitution to ban gay marriage in a proposal placed on the ballot by the legislatures. Voters in Maine, Maryland, and Washington will weigh in on the issue thanks to citizen-sponsored referendums that seek to repeal existing laws. Maine's Question 1 gives voters the option to repeal a ban that was previously approved by the voters. Maryland's Question 6 and Washington's R-74 give voters the option to repeal laws passed by the legislature that legalize same-sex marriage.

The report updates BW 2008-2. Please direct media inquiries to Gilien Silsby, Director of Public Relations, (213) 740-9690 (office), (213) 500-8693 (cell), gsilsby@law.usc.edu.



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Complete List of State-Level Propositions Relating to Same-Sex Marriage

State	Year	Measure	Vote (yes-no)	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	56-44	Legislature
California	2008	Prop 8	52-48	Initiative
Florida	2008	Amendment 2	62-38	Initiative
Maine	2009	Question 1	53-47	Referendum
North Carolina	2012	Amendment 1	61-39	Legislature
Maine	2012	Question 1	TBD	Referendum
Maryland	2012	Question 6	TBD	Referendum
Minnesota	2012	Amendment	TBD	Legislature
Washington	2012	R-74	TBD	Referendum

*Voters have never
approved a ballot
proposition legalizing
same-sex marriage.*