
WHEN LITIGATION COLLIDES WITH GRASSROOTS ORGANIZING: THE IMPACT OF THE *PERRY* LAWSUIT THROUGH THE EYES OF ASIAN AMERICANS ORGANIZING FOR MARRIAGE EQUALITY

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I. INTRODUCTION

In less than a decade, marriage equality has moved from the margins of political and social consciousness into the mainstream as a result of grassroots organizing, ballot measure campaigns, legislative advocacy, and litigation on both sides of the issue. For those who support the freedom to marry for same-sex partners, these strategies have worked in tandem to advance the issue overall. But there exist internal and inherent tensions amongst the different strategies in pursuing marriage equality, particularly between the work at the grassroots level and the efforts to address this issue through the legal system. In this essay, I describe how the Asian American community in Southern California began actively organizing around the issue of marriage equality; the impact of the passage of Proposition 8¹ on the marriage equality movement in California; and the impact of the federal lawsuit against Proposition 8 on grassroots efforts to advance equality for same-sex couples.

II. ORGANIZING FOR MARRIAGE EQUALITY IN THE ASIAN AMERICAN COMMUNITY

In February 2004, the City of San Francisco began issuing marriage licenses to same-sex couples, and hundreds of gays and lesbians jumped at the opportunity to legalize their committed relationships. The City's actions prompted a backlash from those who oppose marriage equality—including vociferous protests from some members of the Chinese American community. Organized by Chinese immigrant churches, thousands of Chinese Americans turned out for protests in San Francisco² and Los Angeles.³ As a community that

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1. Proposition 8 was a California state constitutional amendment that limited “marriage” to “only . . . between a man and a woman.” CAL. CONST. art. I, § 7.5. Prop 8 passed narrowly in November 2008 with 52 percent of the vote. Adam Nagourney, *California Ban on Gay Unions Is Struck Down*, N.Y. TIMES, Feb. 5, 2012, at A1.

2. Ulysses Torassa, *Thousands Protest Legalizing Same-Sex Marriage—Asian Americans, Christians Rally in Sunset District*, S.F. CHRON., Apr. 26, 2004, at B1.

rarely engages in large-scale public protests—at least not in the United States—the Chinese American protestors drew attention from the mainstream media.⁴

I remember those newspaper stories clearly. I worked then, as I do now, at the Asian Pacific American Legal Center (“APALC”), a civil rights organization based in Los Angeles. After the stories ran, I received inquiries from friends and strangers asking if these protestors accurately reflected the larger Asian American community’s perspective on “gay marriage”⁵ and on the lesbian, gay, bisexual, and transgender (LGBT) community in general.

Although I had never worked on LGBT issues up to that point, I was appalled that these anti-gay protestors were perceived as speaking for all Asian Americans, including myself. I immediately reached out to a few LGBT friends and other civil rights activists, and we began discussing how to respond.

Not long after the protests, community activists founded Asian American and Pacific Islander (API) coalitions in San Francisco and Los Angeles to amplify an alternative voice. These two API coalitions, API Equality-Northern California and API Equality-LA, were comprised of organizations and individuals representing diverse constituencies within the API community—legal, social service, faith, youth, LGBT, and allied—united by a common desire to demonstrate strong API support for the freedom of gays and lesbians to marry.

As independent entities with a common mission, API Equality-Northern California and API Equality-LA began the challenging task of advancing the issue of marriage equality within API communities in California. The coalitions adopted multiple strategies aimed primarily at connecting with non-LGBT members of the API community to increase acceptance of LGBT community members as well as foster openness to issues like marriage equality. For example, in Los Angeles County, API Equality-LA members attended ethnic community festivals to speak one-on-one with individuals and identify supporters for future advocacy. To reach a broader segment of the community, API Equality-LA launched mass media efforts, placing dozens of stories in Asian language newspapers and other media about impacted API gays and lesbians and their family members.⁶ API Equality-LA also built a strong coalition in support of marriage equality by cultivating support from some 50 API organizations across Southern California, ranging from cultural to legal groups.⁷ Many highly respected API individuals also lent their names to support

3. Emanuel Parker, *Group Protests Same-Sex Marriage*, SAN GABRIEL VALLEY TRIBUNE, June 27, 2004, at A1.

4. See Torassa, *supra* note 2; Parker, *supra* note 3.

5. I put “gay marriage” in quotations because the term implies that marriage between same-sex couples is different than marriage between heterosexual couples. The marriage equality movement seeks to put both types of marriages on equal footing, hence the use of the terms “marriage equality” and “freedom to marry” in this essay.

6. See *API Equality-LA News*, API EQUALITY-LA, <http://apiequalityla.org/news> (last visited Feb. 23, 2013).

7. See *Endorsers and Partners*, API EQUALITY-LA, <http://apiequalityla.org/endorsers-and->

marriage equality, including legislators, nonprofit directors, faith leaders, activists, and celebrities.⁸ Most of these organizational and individual supporters are not LGBT-focused or -identified.

Although it began in 2005 as an all-volunteer organization on a shoe-string budget, API Equality-LA has since evolved into a strong and respected voice for not just marriage equality, but broader LGBT equality. Over the past seven years, it has reached out to thousands of APIs in Southern California, played an active role in fighting California's Proposition 8 ("Prop 8") in 2008, built relationships with API faith leaders and institutions, educated ethnic media and community leaders, documented the stories of pioneering API LGBTs, and trained a new generation of young activists. API Equality-LA still employs many of the same tactics from its earliest days—one-on-one conversations, outreach at community events, outreach through the media—but it has also embraced other strategies such as educating and mobilizing voters and weighing in on legal cases. For example, in the lawsuit that successfully challenged California's limitation of marriage to heterosexual couples,⁹ API Equality-LA helped to organize more than sixty Asian American groups in support of an amicus brief filed on behalf of gay and lesbian couples.¹⁰ The brief proved to be a terrific tool to organize the larger API community in support of its LGBT sisters and brothers, by providing an opportunity for non-LGBT community groups and individuals in the API community to publicly "come out" in support of marriage equality.¹¹

The ongoing battle for marriage equality is not just a legal or political battle, but also one for the hearts and minds of average Americans. In this battle, on-the-ground groups like API Equality-LA are key because it is the individual conversations and the personal stories that will turn the tide. The importance of on-the-ground groups like API Equality-LA can be seen in exit poll data from the 2008 election in California. Although Prop 8 narrowly passed (fifty-two to forty-eight percent),¹² and an exit poll conducted by APALC found that Asian Americans in Southern California voted similarly to voters overall (fifty-four to

partners (last visited Feb. 23, 2013).

8. *Id.*

9. See *In re Marriage Cases*, 183 P.3d 385 (Cal. 2008) (ruling that barring gay and lesbian couples from civil marriage violates the California Constitution).

10. See Brief of Amici Curiae Asian American Bar Association of the Greater Bay Area & 62 Asian Pacific American Organizations in Support of Respondents Challenging the Marriage Exclusion, *In re Marriage Cases*, 183 P.3d 385 (Cal. 2008) (No. S147999).

11. See Robert S. Chang & Karin Wang, *Democratizing the Courts: How an Amicus Brief Helped Organize the Asian American Community to Support Marriage Equality*, 14 UCLA ASIAN PAC. AM. L.J. 22, 27–30 (2009) (describing how the amicus brief drew parallels between anti-miscegenation laws targeting early Asian immigrants in California and current anti-marriage equality movement, and succeeded in organizing strong Asian American support for freedom of gays and lesbians to marry).

12. Kevin Fagan & John King, *National Protests Condemn Prop. 8*, S.F. CHRON., Nov. 16, 2008, at A1.

forty-six percent),¹³ more relevant is the trend in voting on marriage equality between 2000 and 2008.

In the March 2000 election, California voters considered Proposition 22 (“Prop 22”), a ballot initiative to statutorily prohibit California from recognizing marriage between same-sex partners. APALC’s exit poll from that election showed that Asian American voters in Southern California supported Prop 22 by wide margins, with sixty-eight percent in support of Prop 22 and only thirty-two percent opposed.¹⁴ Voters overall also supported Prop 22 but to a lesser degree (fifty-eight to forty-three percent).¹⁵ In the eight years between Prop 22 and Prop 8, the state of California made remarkable strides in building support for marriage equality, with the gulf between voters who supported and opposed marriage equality narrowing from fifteen points (fifty-eight vs. forty-three percent) in 2000 to only four percent (fifty-two vs. forty-eight percent) in 2008—a remarkable shift in less than a decade.

But more striking is the even greater shift over the same period in the Southern California Asian American community—tumbling from a thirty-six point margin (sixty-eight vs. thirty-two percent) in 2000 to six percent (fifty-four vs. forty-six percent) in 2008. In other words, in the same span of time, Asian American voters moved more rapidly towards support for marriage equality than the general electorate. While many factors may have contributed to this change, there is one clear difference between what was happening in the larger community and in the Asian American community: the active presence of API Equality-LA, with its significant education and organizing efforts in the years leading up to the 2008 election.

III.

THE STATE OF THE MARRIAGE EQUALITY MOVEMENT IN CALIFORNIA IMMEDIATELY FOLLOWING THE PASSAGE OF PROP 8

Wednesday, November 5, 2008, was a bittersweet day for many Californians, who awoke to news that the nation had elected its first African American President in Barack Obama—but learned that California had failed to defeat Prop 8.

Many LGBT and social justice activists who had worked to defeat the initiative were surprised to see it pass. After many pre-election polls seemed to indicate that Prop 8 would be defeated by a small margin, its passage provided a much-needed wake-up call to the LGBT and social justice communities, spurring

13. ASIAN PACIFIC AM. LEGAL CENTER OF SOUTHERN CAL. & CYRUS CHUNG YING TANG FOUNDATION, *ASIAN AMERICANS AT THE BALLOT BOX 2008: THE 2008 GENERAL ELECTION IN LOS ANGELES COUNTY 10* (2009) [hereinafter *ASIAN AMERICANS AT THE BALLOT BOX 2008*], available at http://apalc.org/sites/default/files/APALC_BallotBox_LA2008_FINAL.pdf.

14. ASIAN PACIFIC AM. LEGAL CENTER, *EXIT POLL DATA FOR MARCH 2000 CALIFORNIA ELECTION (2000)* (on file with Asian Pacific American Legal Center Archives).

15. *Id.*

a frenzy of dialogue and organizing that had been largely absent in the weeks leading up to the passage of Prop 8.

For API Equality-LA, there were two major issues in the immediate aftermath of the election. First, as shock gave way to anger, finger-pointing threatened to divide the LGBT community that was otherwise coming together in new and promising ways. Looking for a scapegoat, some in the LGBT community and many in the mainstream media singled out people of color,¹⁶ based on initial exit poll data that was later debunked.¹⁷ The reality was that Prop 8 passed because of support across *all* racial communities. However, the tension after the passage of Prop 8 helped bring to the forefront a growing realization that those conducting the “No on Prop 8” work had neglected communities of color who collectively comprise a majority of California’s population and a growing segment of California’s voters. Although groups like API Equality-LA and its counterparts in the African American and Latino communities had been working in our respective communities to oppose Prop 8, the larger “No on Prop 8” campaign had not focused on communities of color—and the end result was a multi-million dollar campaign that largely bypassed communities of color for months. It was not until after the election that there was clear acknowledgment of the importance of California’s “majority minority” communities—and the need to focus resources on those communities.

Second, the LGBT and other progressive communities were angry about the passage of Prop 8 and began swiftly mobilizing in response. Seemingly every day, new grassroots organizations popped up, with literally dozens of new LGBT activist groups formed in the weeks after the election.¹⁸ Pro-marriage equality groups that existed before the election, like API Equality-LA, were inundated with new members and supporters.¹⁹ New coalitions and alliances formed. What drove most of this organizing was the desire to overturn Prop 8—and, in particular, to overturn Prop 8 at the ballot box. An intense debate arose centered on timing—i.e., whether to aim for the midterm elections of 2010 or to wait until the 2012 Presidential election. Those who wanted to reclaim equality sooner

16. See, e.g., Dan Savage, *Black Homophobia*, THE STRANGER (Nov. 5, 2008), http://slog.thestranger.com/2008/11/black_homophobia; Joe Von Kanel & Hal Quinley, *Exit Polls: Gay Marriage in California*, CNN (Nov. 5, 2008), <http://politicalticker.blogs.cnn.com/2008/11/05/exit-polls-gay-marriage-in-california/>.

17. A number of researchers and organizations analyzed exit polls and other data in depth after the 2008 election and found that race did not affect the Prop 8 vote, but that other factors such as age, party identification, and religiosity did. See, e.g., ASIAN AMERICANS AT THE BALLOT BOX 2008, *supra* note 13, at 20; PATRICK J. EGAN & KENNETH SHERRILL, CALIFORNIA’S PROPOSITION 8: WHAT HAPPENED, AND WHAT DOES THE FUTURE HOLD? (2009).

18. Among the Southern California groups that sprang to life in response to the passage of Proposition 8 were Equal Action (www.facebook.com/EqualAction), Equal Roots Coalition (www.equalroots.com), OUTWest (www.outwestcoalition.org), Korean-Americans United for Equality (kue-la.org), and Roots of Equality (www.rootsofequality.org).

19. For example, API Equality-LA hosted one of its biggest membership meetings ever the month after the election, with approximately 80 attendees, compared to an average of 20 to 25 per meeting before the election.

rather than later advocated for 2010; those who were concerned about how soon a pro-marriage equality measure could win at the ballot pushed for 2012, when a larger turnout of voters sympathetic to marriage equality was likely to go to the polls.

These two issues—the role of people of color in the marriage equality movement and the timing of a pro-marriage equality ballot measure—converged in the months following the election, as many LGBT activists who were also people of color coalesced around a strategy for 2012 (or later). For these leaders of color, it was clear that their communities needed more time before another vote on marriage equality occurred. As the larger LGBT community struggled over the timing issue, API Equality-LA and two other LGBT groups of color (Jordan Rustin Coalition and HONOR PAC) released a statement in the summer of 2009 that helped to shape the dialogue on the timing issue. Titled “Prepare to Prevail: Why We Must Wait In Order to Win,” the statement argued for waiting until at least 2012 in order to invest in the community education and organizing necessary for a future win at the ballot box.²⁰ Although there continued to be groups and activists that advocated for a quicker return to the ballot box, the voices in support of “Prepare to Prevail” slowly gained ground. It was a remarkable moment for communities of color to be in a position of leadership in the marriage equality movement.

IV.

THE IMPACT OF THE *PERRY V. SCHWARZENEGGER* LAWSUIT ON ASIAN AMERICAN COMMUNITY ORGANIZING AROUND MARRIAGE EQUALITY²¹

Anger at the passage of Prop 8 and excitement over the possibility of overturning it at the ballot box drew to the marriage equality movement not only new activists, but also more funding and donors. Organizations like API Equality-LA blossomed in the post-election period, raising for the first time enough resources to hire three full-time staff members.

In May 2009, while California was still grappling with the aftermath of the Prop 8 vote, the *Perry v. Schwarzenegger*²² lawsuit was filed, challenging Prop 8 on federal Constitutional grounds. The filing of the case in federal district court surprised many in the LGBT and social justice communities, not just because Prop 8 was a state ballot measure, but also because the federal courts have not been a favored venue for furthering progressive change given the socially

20. *Latino, Black, Asian LGBT Groups and Pro-Marriage Supporters Issue Call for Public Education Campaign to Regain Marriage Equality in California*, PREPARE TO PREVAIL, www.preparetoprevail.com (last visited Jan. 12, 2013). The statement was released on July 13, 2009. *Id.*

21. The comments in this section are based largely on my experience and observations working on the issue of marriage equality post-Prop 8 in California.

22. 704 F. Supp. 2d 921 (N.D. Cal. 2010), *aff'd sub nom.* *Perry v. Brown*, 671 F.3d 1052 (2012), *cert. granted sub nom.* *Hollingsworth v. Perry*, 81 U.S.L.W. 3075 (U.S. Dec. 7, 2012) (No. 12-144).

conservative majority of the current U.S. Supreme Court.

With high profile lawyers Theodore Olson and David Boies involved, the lawsuit made an immediate splash in the media and has loomed large over the marriage equality debate and LGBT rights in general. Besides the obvious impact it stands to have on the legality of marriage equality in California, the case has also had a significant impact on the marriage equality movement, including grassroots education and organizing by groups like API Equality-LA.

On the legal front, at the time of publication, the U.S. Supreme Court has granted *certiorari* on the issues of the constitutionality of Proposition 8 as well as whether the supporters of Proposition 8 have standing;²³ a decision is expected in mid-2013. Although the ultimate legal legacy of the case rests on the U.S. Supreme Court's pending decision, another important legacy of the case is its larger impact on the LGBT community. To date, that larger legacy is mixed, with some positive developments along with some significant challenges.

On the positive side, the lawsuit has dominated media headlines and public consciousness like few legal cases in recent memory. From the moment it was filed, through every hearing and decision, the case has regularly grabbed headlines and sparked water cooler discussions. By keeping marriage equality in the headlines, *Perry* has indirectly aided groups like API Equality-LA in one of its core areas of work: community education. Each time a new twist in the case is covered by the media, API Equality-LA has had a chance to provide our pro-LGBT perspective, whether through press statements or in interviews with reporters. As a result, we have been able to maintain a greater presence in the media, especially in the local Asian ethnic media, than we would have been able to do otherwise. When there are no "breaking news" opportunities that provide a reason to call a press conference or issue a press release, it is much more difficult for grassroots groups to enter the media spotlight. Alternatives like paid media, such as advertisements, are not usually an option for a community-based nonprofit group such as API Equality-LA.

Another positive aspect of the *Perry* lawsuit's dominance of headlines, social media, and the general public's consciousness is that the case has helped to "normalize" the issue of marriage equality (and LGBTs more generally).²⁴ Of course, the *Perry* case is unfolding in the context of several other major LGBT legal or policy developments, including the repeal of the military's "Don't Ask, Don't Tell" policy, challenges to the federal Defense of Marriage Act, and a series of tragic suicides or deaths of bullied LGBT youth. Collectively, the

23. *Hollingsworth v. Perry*, 81 U.S.L.W. 3075 (U.S. Dec. 7, 2012) (No. 12-144), *granting cert. to Perry v. Brown*, 671 F.3d 1052 (9th Cir. 2012), *aff'g Perry v. Schwarzenegger*, 704 F. Supp. 2d 921 (N.D. Cal. 2010).

24. Elena Shore, *California Same-Sex Couples Anxiously Await Supreme Court Decision*, NEW AMERICA MEDIA (Dec. 5, 2012), <http://newamericamedia.org/2012/12/california-same-sex-couples-anxiously-await-supreme-court-decision.php> (describing how publication of photo of Asian American lesbian couple in major Chinese language newspaper helps to "create[] a sense of normalcy" for LGBTs in the larger Asian American community).

reporting of these issues in the news has helped the public become more open-minded about the LGBT community.

On the other hand, the *Perry* case has posed major challenges for groups working on marriage and LGBT equality issues. In particular, *Perry* has diverted resources from—thus undermining any prior commitment to—grassroots organizing, whether it be the day-to-day work of community education and organizing or the effort to mount a pro-marriage equality ballot measure to overturn Prop 8. The momentum in the field around a 2010 or 2012 ballot measure shifted once *Perry* was filed, as the attention of the public and many donors settled on the lawsuit. Whereas in early 2009, the LGBT community was dominated by the idea of a grassroots campaign to win back marriage equality, three years later, few talk about that, even though recent polling shows that supporters of marriage equality may now have the upper hand at the ballot box.

In addition, *Perry* has created the impression that the courts are the only place where this battle can be won, when the reality is that the courts often follow, rather than lead, public opinion. On-the-ground organizers and community activists like those in API Equality-LA do the hard work of reaching individuals in the community—but resources to continue this work have become increasingly scarce. Immediately after Prop 8 passed, groups like API Equality-LA were able to secure funding to engage in important work such as researching what messages effectively moved Asian American voters to support marriage equality. Peer organizations, like Equality California, launched campaigns to educate and organize communities (including communities of color) across California in anticipation of a ballot measure campaign. But funding for these projects has evaporated and grassroots efforts have scaled back or been abandoned.

One other problematic consequence of *Perry* is that the case has skewed public perception of who speaks for the marriage equality movement. As a high profile case, *Perry* has made the lawyers and plaintiffs in the case the de facto spokespeople for the entire movement, whether they sought that role or not. The concern with their elevation to the role of “movement spokespeople” is that while the lawyers and plaintiffs are accountable to each other, they have no specific accountability to the larger community and are largely unconnected to the many grassroots groups that mobilized before and after the passage of Prop 8. Furthermore, the marriage equality movement in California—both pre- and post-Prop 8—is a diverse and complex community, including many people of color, civil rights leaders, and LGBT allies. Many of these stakeholders, like API Equality-LA, have made real progress in building support for marriage equality, yet these voices are not reflected in the coverage of the *Perry* case and this broader work is often overlooked by the media. Whereas people of color were moving into positions of leadership in the marriage equality movement in the months immediately following the passage of Prop 8, the current placement of the *Perry* plaintiffs and lawyers front and center in the marriage equality movement provides no space for these diverse voices to be raised or heard.

V.
CONCLUSION

Regardless of what the Court decides, the *Perry* case has already indelibly shaped the marriage equality landscape. As one of the highest profile lawsuits of the past decade, it has dominated all forms of media and loomed over other aspects of the marriage equality movement. For the Asian American community in Southern California, the *Perry* lawsuit has proved a mixed blessing in that it has helped to keep LGBT individuals and marriage equality issues in the media, including the Asian ethnic media. But, at the same time, the lawsuit has raised significant challenges, especially for long-neglected communities of color, by diverting limited resources from organizing and education efforts and by privileging a handful of voices—namely those of the lawyers on the case—over nearly all others working in the marriage equality movement. The legal fight embodied by the *Perry* lawsuit is only one of several battlefields in securing the freedom to marry. Changing the “hearts and minds” of family, friends, neighbors, and community is a much more difficult task, one that is waged outside of the spotlight. As the lawsuit draws to a close, let’s hope that attention will shift back to work that will ultimately secure true equality for the LGBT community.