

**PHOTOCOPY
PRESERVATION**

Gates & Gomers —

prop 22

(a whether the
file is called)

Same-Sex Marriage and California Ballot Initiative

Summary

You may soon be asked to state your position on Proposition 22, a ballot initiative now pending that would define marriage in California as heterosexual marriage. If asked, we believe you should state that Proposition 22 is divisive and unnecessary and contrary to your efforts to build a more tolerant American community. But you should not go much beyond this because, as we detail below, it is difficult to reconcile opposition to Proposition 22 with your support in 1996 for the Defense of Marriage Act. We have prepared Q and A's (attached) to guide your response on this issue.

Background: Defense of Marriage Act and Proposition 22

In 1996, you signed the Defense of Marriage Act, which holds 1) that a state cannot be required to recognize same-sex marriages performed in other states and 2) that for purposes of federal law, "marriage" means heterosexual marriage. When you signed DOMA, you noted your longtime opposition to "governmental recognition of same-gender marriages." But you added that DOMA ought not be used as an "excuse for discrimination, violence or intimidation ... on the basis of sexual orientation."

Proposition 22, which will be voted upon March 7, states in its entirety: "Only marriage between a man and a woman is valid or recognized in California." It is also known as the Knight Initiative for its author, State Senator William J. Knight, a Republican from Palmdale (north of Los Angeles).

The proposition says in effect that California should refuse to recognize same-sex marriages performed in other states. But no state in the country currently recognizes such marriages. In fact, no state is even close to passing such a law. Even Vermont, whose high court ruled recently that gay couples must be granted the same benefits and protections available to married heterosexual couples, is not headed toward a gay marriage law. Rather, Vermont is likely to draft a law that provides domestic partner benefits for same-sex couples. You have supported such treatment for domestic partners.

We recommend that, if asked, you characterize Proposition 22 as unnecessary -- because no state is even close now to passing a law recognizing same-sex marriages -- and therefore a thinly veiled attempt to pit one group against another. You could suggest that Proposition 22 might provoke even more discrimination against gays and lesbians.

It is difficult to say more than that, however, because of DOMA. In the first place, given your comments at the time you signed DOMA, you cannot now express support for same-sex marriages. Moreover, Proposition 22 is arguably consistent with DOMA. Since DOMA says that one state's recognition of same-sex marriages cannot be made

binding on other states, it follows naturally that each state must decide for itself whether to recognize such marriages. Indeed, 30 states have already passed "defense of marriage" laws, most of them in the wake of DOMA.

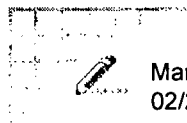
Both the Vice President and Senator Bradley have spoken out against Proposition 22, and both have used the "divisive and unnecessary" formulation -- without endorsing same-sex marriage. Senator McCain supports Proposition 22; Governor Bush has not taken a position on the ground that it is a state issue. However, some prominent Republicans have taken a position against it, including Ward Connerly, the former University of California regent who was behind Proposition 209.

Proposition 22 in California
Q&A
February 25, 2000

Q: What is the Administration's position on Proposition 22 in California which would allow California to decline to recognize same-sex marriages performed in another state?

A: The Administration has not taken a position on this specific ballot measure in California. The President supports more equal treatment for domestic partners, and has fought hard to combat discrimination against gays and lesbians. But he has said that he does not support formal recognition of marriage between persons of the same sex.

*Same-sex
marriage*



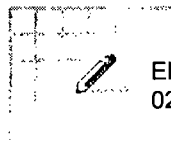
Mary L. Smith
02/25/2000 10:45:19 AM

Record Type: Record

To: Anna Richter/OPD/EOP@EOP
cc: Ann O'Leary/OPD/EOP@EOP, Ann O'Leary/OPD/EOP@EOP
Subject: Prop 22 press guidance -PROBLEM

PROBLEM -- Minyon apparently thinks the President is taking a position on this next week -- that we are going to come out against this -- call me

----- Forwarded by Mary L. Smith/OPD/EOP on 02/25/2000 10:44 AM -----



Elizabeth J. Potter
02/25/2000 10:06:20 AM

Record Type: Record

To: Ann O'Leary/OPD/EOP@EOP, Mary L. Smith/OPD/EOP@EOP, Edward W. Correia/WHO/EOP@EOP
cc: Ann Marie Wallace/WHO/EOP@EOP
Subject: Prop 22 press guidance

I have vetted this with Minyon and she is comfortable. Please respond ASAP.

Has the President taken a position on Proposition 22, the so called "Knight Initiative"?

The President has made his position clear that he believes the institution of marriage should remain between a man and a women. But, he also has fought long and hard against discrimination aimed at gays and lesbians. The Knight Initiative is counterproductive, divisive and unnecessary and does not support the Administrations efforts to create a more fair and just society.

NOTE: In 1996, the President signed Defense of Marriage Act, DOMA. It provides that no state shall be required to recognize the same sex marriage of another state, only a marriage between a man and a woman will be recognized.

**Domestic Partners
Q&A
February 10, 2000**

Q: What is the Administration's reaction to the news that the Vermont legislature is leaning toward providing domestic partner benefits to gay and lesbian couples? Does the President support legal protections for domestic partnerships?

A: While the Administration does not have a position on the specific legislation in Vermont, the President supports more equal treatment for domestic partners. This Administration has been very supportive of gays and lesbians during his Administration. The President has supported the Employment Non-Discrimination Act, which prohibits workplace discrimination against gays and lesbians, and has signed an executive order prohibiting discrimination based on sexual orientation in the federal workplace. He has also championed new legislation to prohibit hate crimes based on sexual orientation. While the President supports more equal treatment for domestic partners, he has said that he does not support formal recognition of marriage between persons of the same sex.

**Domestic Partners
Q&A
December 21, 1999**

Q: What is the President's opinion on the Vermont Supreme Court's decision that gay couples must be granted the same benefits and protections given married couples of the opposite sex?

A: We are pleased that the decision will result in more equal treatment of domestic partners in Vermont. In many cases, it is matter of basic fairness that domestic partners are eligible for the same benefits as spouses.

Q: Does the President now support the right of a gay couple to marry?

A: While the President supports more equal treatment for domestic partners, he has said that he does not support formal recognition of marriage between persons of the same sex.

Q: Will the Administration take this position in court?

A: The opinion was based on the Vermont State Constitution, not the Federal Constitution.

Q: What about DOMA? How does that effect the Vermont Court's decision?

A: In 1996, Congress passed the Defense of Marriage Act (DOMA), which denies federal recognition of homosexual marriage and allows states to ignore same-sex unions licensed elsewhere. DOMA does not address the provision of benefits for same-sex domestic partners. It only prohibits the recognition of same-sex partners in a formal marriage.

The Vermont Supreme Court decision only applies to statewide benefits for domestic partners. The court said these include access to a partner's medical, life, and disability insurance, hospital visitation and other medical decision making privileges, spousal support, intestate succession, homestead protections, and many other statewide statutory protections. The Court ruled that the Vermont State Legislature will establish a system for determining domestic status partnership in order for domestic partners to qualify for benefits.

Q: Can this be appealed to the Supreme Court?

A: Today's ruling cannot be appealed to the U.S. Supreme Court since the Vermont court based its decision on the state Constitution. The Vermont Supreme Court is the state's only appeals court. The court said the Legislature will determine whether such benefits will come through formal marriage or a system of domestic partnerships.

Q: What do think of the Vice President's comments on the Court's ruling?

A: Like the Vice President, we are pleased that the Vermont decision supports equal treatment for domestic partners.

Q: Does the President support legal protections for domestic partnerships?

A: While the Administration has not taken a formal position on this question, the President is heartened by the Vermont Supreme Court's decision. This Administration has been very supportive of gays and lesbians during his Administration. The President has supported the Employment Non-Discrimination Act, which prohibits workplace discrimination against gays and lesbians, and has signed an executive order prohibiting discrimination based on sexual orientation in the federal workplace. He has also championed new legislation to prohibit hate crimes based on sexual orientation.