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# Fear of activist judges, losing couples' rights frames debate

**By Howard Fischer**

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PHOENIX — The outcome of the political and legal battle over the 58-word constitutional amendment banning gay marriage could depend on whether voters see it as a "gay" issue.

And both sides are making considerable effort to pitch it their way.

Supporters of Protect Marriage Arizona say the initiative planned for the state's November ballot is designed to prevent homosexuals from marrying in the state.

That is not surprising: Several polls show that Arizonans do not want same-sex weddings, which are already illegal under Arizona law. And that decision has been upheld by the state Supreme Court.

But campaign consultant Nathan Sproul said voters need to approve a constitutional amendment to protect against "activist judges" who could overrule that statute.

That view is buttressed by "talking points" from the Protect Marriage Arizona Web site.

"If Arizona does not act, then its marriage laws could eventually be overturned by a new challenge presenting different facts," it states. "The next case will likely involve a 'couple' married in Massachusetts that will seek marriage recognition and benefits in Arizona."

But foes of the amendment are attempting just as strongly to portray the initiative as an attack on "straight" couples who choose not to marry.

Steve May, treasurer of the Arizona Together Coalition, said there are not only no gay marriages in Arizona, there also are no civil unions.

"The only practical effect is that real people — the majority of them straight — who currently get domestic-partner benefits from their employer will lose them," he said.

Here, too, polls are shaping how foes spin the issue.

A 2003 survey done by the Social Research Laboratory at Northern Arizona University showed that while only 42 percent of those questioned believe gays should be able to marry, 53 percent supported allowing civil unions to give gays the same rights and benefits as married couples. And 59 percent said they support allowing same-sex couples to share health coverage from one partner's job.

In fact, a lawsuit filed last week to knock the initiative off the November ballot names five couples as plaintiffs — three in Tucson and two in Phoenix — all in heterosexual relationships. They say the measure, if approved, would interfere with their current rights and benefits.

But it remains clear the driving force behind the opposition is the gay community. It is leading and financing both the lawsuit to knock it off the ballot and any campaign that would be necessary if that litigation is unsuccessful.

May, a former state legislator, is gay; state Rep. Kyrsten Sinema, D-Phoenix, who chairs Arizona Together, is bisexual.

And the largest single source of funds comes from the Human Rights Campaign, which describes itself as the nation's "largest civil rights organization working to achieve gay, lesbian, bisexual and transgender equality."

May said gays needed to lead the fight because there is no organization of heterosexuals in domestic partnerships.

"We have union money, we have business money, we have a lot of straight money," he said. "This is not a gay issue."

Arizona Together is fighting not just Protect Marriage Arizona on framing the issues but also the state's three Roman Catholic bishops, who issued a pastoral letter to parishioners earlier this year supporting the initiative. And they back that with their statements.

"The very first two chapters of the Bible are about God creating man and woman, and they were intended for one another, complementary, between the sexes," Bishop Thomas J. Olmstead of Phoenix said in February. "And already you see there God's plan for marriage."

Opponents of the initiative, in responding to the bishops, recognized the issue as discrimination based on sexual preference.

The Rev. Gordon McBride, pastor of Grace St. Paul's Episcopal Church in Tucson, called the measure "a fear-based effort" by people who are afraid of those who are different. He compared the proposal to laws that used to exist in some states which barred people of different races from getting married.

"It looks the same to me," he said. "I've got to tell you: Prejudice is prejudice."

Olmstead rejected McBride's comparison as invalid. Laws denying marriage or rights to gay couples are not comparable to laws that barred interracial weddings, he said.

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