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Marriage Equality: Lessons from Spain

The fight for marriage equality transcends international borders



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In 2005, Spain became the third nation to offer same sex couples the right to marry. Recently, two women who lead Spain's successful campaign for marriage equality traveled to San Francisco to share their strategy with Californians.

California has the largest number of gay and lesbian residents of any state in the nation, and its legislature was the first to approve same sex marriage. It did so in 2005 (AB 849), and again last year (AB 43), with a wider margin of victory.

But Governor Schwarzenegger vetoed both measures, and advocates are now pinning their hopes on the California Supreme Court, which has scheduled oral arguments in the case on March 4, 2008. Within 90 days of oral argument, the Court will decide whether banning same sex marriage violates the state's constitution. In September, more than 90 civil rights organizations, and numerous California municipal governments, bar associations, and religious organizations filed some 30 *amicus* briefs in support of marriage equality.

Learning from Spain's experience

Beatriz Gimeno, the former president of Spanish Federation LGBT (lesbian, gay, bisexual, and transgender), was the first Spaniard to address the crowd gathered at the Commonwealth Club in San Francisco to learn about Spain's experience. "We extended our marriage law to include same sex partners," Gimeno said. "In Spain there is no legal distinction between gay, lesbian and heterosexual citizens."

Gimeno said that Spain's 2005 law was supported by 67 percent of its people. "That was the real revolution – not just the law, but that the majority of Spaniards support it," she said.

Political unity

Gimeno explained that the movement she led was carefully planned over several years, and had three fundamental components. The first was political unity. Spain's marriage equality coalition was broad and contained groups that ranged across the political spectrum and included mainstream business leaders.

"We spoke with one voice," Gimeno said. "We had to make compromises over our differences, but we focused on what united us, not what divided us. If there are many different voices, politicians will always focus on the most moderate ones and ignore the ones they consider too radical."

Equality

Second, Gimeno's coalition decided to adopt one simple theme: *Equality*.

"We insisted on the right to marriage," Gimeno said. "For us, this fight was not strictly a question of rights . . . above all it was a fight for our dignity." Gimeno said advocates rejected settling for civil unions or domestic partnerships. "We preferred nothing if we could not get equality and marriage," Gimeno said. "We didn't want society to think that we are less because we have a lesser law rather than the same protection."

Lobbying from within

The third component of Spain's strategy was to lobby for their cause from within political parties, by finding supporters within the nation's legislators. Carmen Monton, a young heterosexual lawmaker in Spain's national legislature and a member of its ruling political party, led the debate for the bill. She traveled with Gimeno to San Francisco to recount her role.

"It wasn't a political risk for me, but rather an honor and a point of pride to represent my party and



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defend this bill," Monton said. "Morality belongs to no one, and laws are for everyone, regardless of diversity."

Monton reported that while the Catholic Church opposed Spain's law, its influence was less pronounced than outsiders might imagine. "Spain is the most secular country in Europe, and religion plays little part in daily life," she said. "Same sex marriage is a change that some fought against, and that worries others, but it will open the way to a modern society where individual freedom and citizen rights are above any moral code of conduct."

Kate Kendell, Executive Director of the National Center for Lesbian Rights, moderated the two Spaniards' presentation at the Commonwealth Club, and later reflected on what Californians could learn from their Spanish counterparts. Although California law has allowed gay and lesbian couples to register with the state as domestic partners since 1999, Kendell agrees with Gimeno and Monton that this is not enough.

"Marriage is the only mechanism by which relationships are afforded full equality and protection," Kendell said.

Kendell hopes the California Supreme Court (scheduled to hear oral argument on same-sex marriage on March 4) will be influenced by Massachusetts, which on May 17, 2004, became the first and only state to allow its gay and lesbian residents to marry as the result of a state supreme court decision. Since then, more than 9,000 marriage licenses have been issued to gay or lesbian couples, which Kendell believes has led to more acceptance.

"There is no substitute for actual experience when it comes to prejudice. People harbor prejudices, and as long as they live in ignorance, that fear and prejudice will persist. But once exposed to the light of day [in Massachusetts], attitudes softened, and the most vociferous hostility has tempered," Kendell said. "Poll after poll in California shows that support for marriage equality runs about fifty-fifty. Five years ago, 70 percent of Californians op-

posed it, so we're making real progress."

In addition to insisting on nothing less than marriage, Kendell also agrees with Spain's strategy of emphasizing the fight for dignity, rather than rights.

"People marry because it's the singular mechanism in this country to demonstrate commitment and desire to spend the rest of your life with one person," Kendell said. "That's a vocabulary and experience that transcends all else. It's more resonant than rights or benefits."

Without access to marriage, Kendell said, gay and lesbian couples will continue to suffer the indignities that come with second-class citizenship.

"We see so many cases where the couple, had they been married, would have been able to avoid truly debilitating government-sanctioned discrimination: survivors losing their home when their partner dies, a child unable to receive Social Security survivor benefits, blood relatives swooping in to take property on the death of a partner, not being able to enter a grievously injured or ill partner's hospital room."

Kendell believes that Americans will become more supportive of same sex marriage as they become more familiar with these and other indignities faced by gay and lesbian couples and the children they raise, and as they become more accustomed to gay marriage by watching Massachusetts' experience.

Kendell also agrees with her Spanish counterparts' strategy of using established political parties to champion her cause. "We need allies in the political mainstream who wield political power," she said.

But Kendell says that Spain's ability to persuade marriage equality supporters to speak in one unified voice is unlikely to work in California. "In Spain, six advocates did most of the work involved. Our community is too big, too diverse, and too geographically spread out to put our movement in one room, and say these are our talking points and let's stick to them," she said.

Beyond California

Beyond California, Kendell believes two things must happen before same sex marriage becomes the law of the land. "We need a change in the composition of the U.S. Supreme Court, and an ongoing national dialogue and more common experience with LGBT people," Kendell said.

In the meantime, Kendell says plaintiffs' attorneys who support marriage equality have an important role to play. As a first step, she suggests principled one-on-one discussions. "Make this an issue of conscience. If you're at a cocktail party and have a conversation about driving hybrids, you should also talk about supporting candidates who support equality for LGBT people and support our right to marry," Kendell said.

The National Center for Lesbian Rights also welcomes cooperating attorneys who will accept client referrals and who practice a wide variety of law – not just family law but also employment discrimination, immigration, elder law, and other areas. More information about how to contribute legal skills appears at www.nclrights.org by clicking on "get involved."

"This is a social justice issue every bit as important as race and class issues, since gay people are represented in every class, race, and community," said Kendell. "It should be seen as important to stand on the side of fairness."

Interested readers can listen to an audio recording of Gimeno and Monton's presentation by visiting the Commonwealth Club of San Francisco's Web site. Go to <http://www.commonwealthclub.org/archive/?monthRecording=&yearRecording=2008&ascend=1>, and click on "How Marriage Equality Was Achieved in Spain," which was recorded on January 7, 2008.

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