

COURTS V. COURTS OF PUBLIC OPINION

On election day, voters in eight states were asked to decide whether or not to amend their state constitutions to ban gay marriage. In seven of those states, initiatives were passed to make such amendments.

Voters in Colorado, Idaho, South Carolina, South Dakota, Tennessee, Virginia and Wisconsin decided to ban gay marriage. In Wisconsin, Madison Bishop Robert C. Morlino led the battle, directing all the priests of his diocese to play a tape-recorded message from him in place of a homily on the weekend before Election Day. In the recording, Bishop Morlino addressed those who say opposition to gay marriage is discriminatory, "unfair or unloving." The bishop's response: "I'm so tired of reading that... Nobody has a right to redefine marriage."

Surprisingly, Arizona voters turned down the ballot initiative in their state by a narrow margin, 51-49 percent. But if you combine the results from this past election with the other 20 states where similar measures have previously passed, the message is clear: a majority of Americans are not in favor of allowing gays to marry.

It's interesting, though, that gays find they can't win with the American public, so they've decided to take the battle elsewhere: the courts. And so far, they've been successful there, most recently in New Jersey.

On October 25, the New Jersey Supreme Court said that gay couples have a constitutional right to the same benefits as married men and women, but it stopped short of saying gays had the right to marry. In 2003, Massachusetts's Supreme Judicial Court ruled that gays should have a right to marry.

Such decisions are a wakeup call to the vast majority of Americans who are opposed to gay marriage but are reluctant to access the constitutional amendment process as the right remedy. Their reluctance is prudent: it is a grave decision to amend the constitution. But when faced with the prospect of arrogant judges who continue to appropriate powers to themselves that are nowhere authorized in law, many will now reconsider their reservations.