

Philanthropy's Role in The Fight for Marriage Equality
A Literature Review and Historical Investigation for the Open
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INTRODUCTION

On June 26, 2015, the Supreme Court announced its decision on *Obergefell v. Hodges*, ruling that the Constitution guarantees the right to marry to same-sex couples. It was the culmination of a decades-long movement and a reflection of a dramatic transformation of social mores and public attitudes. “Within living memory, gay people in America were a despised, oppressed minority,” one account of the campaign noted. “Same-sex couples’ love was scorned, summarily rejected by enormous swaths of the country, feared, deemed ‘immoral’ and ‘pathological,’ and made illegal. The notion of same-sex couples lawfully marrying was unthinkable.” And yet a corps of activists had nourished the thought for decades and their vision had finally been recognized as a fundamental right.¹

The campaign to secure marriage equality has also often been cited as one of the great philanthropic triumphs of recent times. The nonprofit consulting firm Bridgespan included it among its “[15 Success Stories of Audacious Philanthropy for Large-Scale Social Impact](#)”; social impact consultants FSG [highlighted](#) it as “a story that should resonate for funders across the social justice landscape.” “[I]f ever there was a great case study of focused and strategic philanthropy that got results, this is it,” [notes](#) philanthropy journalist David Callahan. “For nearly 15 years, a relatively small group of super-wealthy individuals, along with a handful of foundations, have pushed hard for marriage equality and other changes to grow public support for LGBT rights more generally.”

The amount of money that funders put into the campaign to win marriage equality is difficult to determine with any precision. According to Evan Wolfson, for the last two decades the issue’s leading advocate, private donors contributed \$120 million to the movement. But this defines the contributions rather narrowly, excluding donations to promote LGBT rights more broadly, which likely contributed to the marriage equality movement’s success (to give a sense of scale, according to Funders for LGBTQ Issues, from 2010 to 2015 the top 100 foundations gave \$784.3 million—in nominal dollars—to LGBT issues).²

There is little doubt that philanthropy played an important role in the campaign to secure marriage equality. The organized elements of that campaign were protracted and

¹ Freedom to Marry, “Winning the Freedom to Marry Nationwide: The Inside Story of a Transformative Campaign,” accessed online at <http://www.freedomtomarry.org/pages/how-it-happened>.

² Evan Wolfson, “Lessons for Philanthropy from the Marriage Equality Win,” *Chronicle of Philanthropy*, June 28, 2015, accessed at <https://www.philanthropy.com/article/Opinion-Lessons-for/231213/>; “LGBTQ Funding By U.S. Foundations: 2015 Tracking Report,” Funders for LGBTQ Issues, accessed online at https://www.lgbtfunders.org/wp-content/uploads/2017/05/2015_Tracking_Report.pdf.

expensive and required significant funding. The basic counter-factual seems dispositive: a survey of the accounts of the marriage equality campaign suggests that without that funding, it is unlikely that the campaign would have achieved such dramatic results in a relatively short period of time (whether marriage equality would have eventually won out over a longer period of time is another, more difficult question to resolve).

But like many claims of exceptional philanthropic impact, laying out a detailed narrative of philanthropic causal agency proves more challenging. Doing so requires disentangling the relationship between activists and funders, which in the case of marriage equality, with an aggressive contingent of living donors, is especially difficult, since the lines between the two were often blurred. Philanthropy in the campaign played two roles—donors supplied funds to activists but also shaped the nature and direction of the activism itself. Determining the contributions of philanthropy also requires analyzing the relationship between political advocacy and legal advocacy; victories and setbacks at the ballot, in campaigns backed by philanthropy, interacted with legal challenges, also supported by private funders, in ways that were not always predictable.

The following literature review is meant to shed light on these questions and to suggest places where more research is necessary. It highlights the key nodes of philanthropic impact that emerge from the leading accounts of the marriage equality campaign and analyzes what the evidence base is for those claims. It is *not* meant to serve as a comprehensive research report; the author limited his research to the major monographs and journalistic accounts of the movement but did not make an exhaustive review or conduct interviews of key stakeholders.

SOURCES CONSULTED

The sources used for this literature review fall roughly into three categories. The first are academic or journalist monographs which either focus on particular episodes within the marriage equality campaign or take in the entire campaign as their subject. The most comprehensive, insightful and helpful of these is Nathaniel Frank's *Awakening: How Gays and Lesbians Brought Marriage Equality to America* (2017). Frank places the struggle for marriage equality within the larger arc of the movement for gay and lesbian rights and in the light of broad transformations in the American understandings of family, personal identity, morality and law; he tells both the long-term and proximate stories of the cause. His account makes clear the vast range of characters involved, the complex interplay between outsiders and insiders, and the internal divisions within the LGBT community as to what gay marriage did and should represent, and how forcefully the cause should be championed. In one reading, the deep context that Frank provides (both historical and in terms of a diverse *dramatic personae*) could be said to weaken philanthropy's *particular* case for impact; the book makes clear that philanthropy must be considered alongside a host of other causal actors. Yet philanthropy does play a significant role in the book, and Frank comes the closest to offering a sober analysis of what that role might have been.

There are several other monographs that take as their subject the marriage equality campaign that assume a less objective stance, providing more of an insider's perspective. These include *New York Times* investigative reporter Jo Becker's account of the legal challenge to Prop

8, a California ballot initiative that deemed only the marriage of a man and woman legal in California. Marc Solomon, who led campaigns on behalf of marriage equality in New York and Massachusetts and served as national campaign director of Freedom to Marry, the leading advocacy organization pushing for same-sex marriage, wrote an account of his experiences as well. Neither of these works attempts to assess the scale and nature of their organization's impact relative and in relation to other organizations. They are highly weighted toward the author's or the subjects' own experience (this is especially the case with account from Becker, who was given full access to the legal team behind the Prop 8 challenge).³

Several of the organizations involved published shorter retrospective accounts of their work after the *Obergefell* decision. Indeed, marriage equality is one of the more scrutinized social campaigns of recent times. Of these, two accounts bear special mention. Freedom to Marry, the organization that spearheaded the nationwide marriage equality campaign, published a wide range of reports on various dimensions of their work; these proved enormously helpful as historical resources, though they do not explicitly take on the question of philanthropy's distinct contribution to the overall campaign. The Civil Marriage Collaborative, a group of funders who pooled resources and coordinated giving to further the marriage equality campaign, produced a report that made philanthropy the central focus of the narrative, although it was not especially comprehensive. There were also several well-researched journalistic articles—such as ones in *Rolling Stone* and the *New Yorker*—that also focused on particular funders of the campaign, that provided valuable material, yet that rarely situated their subjects within the larger context of general philanthropic support for marriage equality.

Finally, there were a series of formal evaluations sponsored by several of these organizations (especially from the Civil Marriage Collaborative and Freedom to Marry) that sought to gauge the impact of advocacy efforts on state-based campaigns. These provided the most rigorous examination of the contributions of philanthropy—the ultimate funder of such efforts—within the struggle for nationwide marriage equality.

KEY EVENTS IN THE CAMPAIGN AND NODES OF PHILANTHROPIC IMPACT

As with any effort to explain how a particular policy outcome was achieved, it is relatively easy to work backwards from the final success and to arrive at a causal narrative outlining the key events and initiatives that moved the campaign forward. There's an even stronger pressure to construct a narrative along those lines in the case of marriage equality, because of the role momentum itself seemed to play, as incremental victories accumulated to a critical point where a sense of marriage equality's ultimate inevitability (or strong likelihood of success) itself helped secure that success. Of course, an evaluator must also guard against imposing too much of a teleological perspective onto the campaign and eliding the contingencies, failures and false starts that defined it as much as did victories (and for which philanthropy must also bear some responsibility). In this report, I've tried to strike a balance

³ Marc Solomon began his professional life as a Republican, but a Rockefeller Foundation fellowship for "Next Generation Leadership" connected him with a network of progressive community activists and led him to embrace marriage equality as a cause. Marc Solomon, *Winning Marriage: The Inside Story of How Same-Sex Couples Took on the Politicians and Pundits—and Won* ([Lebanon, New Hampshire]: ForeEdge, 2014), 10.

between granting too much retrospective order to the campaign and selecting what I believe to be its most consequential moments, and those in which philanthropy played the most important role.

These include: 1993 the Hawaii Supreme Court's overturning of the state ban on same-sex marriage; the 1996 passage of the Defense of Marriage Act; the establishment of Freedom to Marry in 2001, with support from the Evelyn and Walter Haas, Jr. Fund; the *Lawrence v. Texas* (2003) decision in which the Supreme Court struck down Texas' anti-sodomy laws, and *Goodridge v. Dept. of Public Health* (2003), in which the Massachusetts Supreme Court struck down the state's gay marriage ban; 2004's wave of anti-gay marriage ballot initiatives; the emergence in early 2005 of a shared strategy forged between the Civil Marriage Collaborative (CMC), a network of major funders committed to marriage equality, and leading grantees, the 10-10-10-20 Roadmap to Victory; California's 2008 ballot initiative, Proposition 8, which restricted marriage to opposite-sex couples, and the efforts to overturn it, led by American Foundation for Equal Rights; the strategic messaging reorientation led by Freedom to Marry and funded by the CMC; the 2012 victories in ballot initiatives in Maine, Maryland, Minnesota and Washington, utilizing these new messaging strategies; president Barack Obama's public endorsement of marriage equality in May 2012; the Supreme Court decision, announced in June 2013, in *United States v. Windsor*, overturning sections of the Defense of Marriage Act; and the landmark 2015 Supreme Court decision, *Obergefell v. Hodges*.

Hawaii and the Early Years of Marriage Equality Philanthropy

As Nathaniel Frank points out in his account of the marriage equality campaign, the protection and promotion of LGBT rights is a relatively recent organized enterprise. The ACLU did not agree to defend the rights of gay individuals till 1964, and it was only two years after that decision when the first national organization devoted to those rights was established. The 1970s witnessed the creation of "a permanent organizational framework within the gay movement that was national in scope, professional in operation, and fully committed to a reformist approach"; it included organizations like Lambda Legal Defense Task Force and the National Gay Task Force (which would later become the National LGBTQ Task Force). The hostility directed to the gay community by the Reagan administration and the rise of the Religious Right in the 1980s generated another wave of LGBT rights organizations, several devoted to advocacy, such as the Human Rights Campaign.⁴

Given its novelty as an organized cause, it is not surprising that LGBT rights only began to attract significant philanthropic support in recent decades. In 1982, when a small group of grantmakers gathered to discuss their shared interest in giving to support LGBT causes, "philanthropic resources to those communities were negligible." According to Funders for LGBTQ Issues, total grantmaking for LGBT projects and organizations did not reach the \$1 million mark until 1987 and didn't reach the \$10 million mark till more than a decade later. So it is only in recent decades that we can even begin to consider the impact of philanthropy on the marriage equality campaign. In fact, by 2010, total giving had climbed to nearly \$100 million,

⁴ Nathaniel Frank, *Awakening: How Gays and Lesbians Brought Marriage Equality to America* (Cambridge: Harvard University Press, 2017), 27, 38, 49.

with funding to support marriage and civil unions representing a significant proportion of those dollars (9.8% of the total funding between 1970 and 2010, second only to “civil rights” as an issue area). Funding in this area was dominated by a core group of advocacy organizations, led by the National Gay and Lesbian Task Force, Lambda Legal, GLSEN and Gay & Lesbian Alliance Against Defamation (GLAD). Between 1973 and 2010, 38 percent of total grantmaking dollars directed to LGBT issues went to just twenty nonprofit organizations.⁵

Even if not specifically targeted to marriage equality, philanthropic support for these LGBT advocacy groups clearly boosted the cause, freeing up additional funds that could be specifically directed to it, and contributing to a varied range of policy successes that provided a more favorable environment for the campaign. A range of funders offered support for these organizations, most notably Ric Weiland, one of the original employees of Microsoft. In 2008, Weiland’s estate gave nearly \$68 million to the Pride Foundation, 70 percent of it to be distributed to ten leading LGBT organizations over the course of the decade. His bequest, LGBT activists told the *Chronicle of Philanthropy*, “stabilized fledgling organizations at a crucial time for the LGBT movement, enabling them to grow and to deploy resources when they were needed most” and to survive the Great Recession with minimal disruption to personnel. The importance of general philanthropic support to the leading LGBT rights-based organizations to the marriage equality campaign complicates efforts to evaluate the role of private philanthropy within it since it is nearly impossible to weigh the benefits that accrued to the specific cause as opposed to the LGBT rights movement as a whole. Without diminishing the causal significance of those contributions, this report will focus largely on donors who directly targeted marriage equality.⁶

Initially, despite its eventual centrality, marriage equality was peripheral to the broad movement for LGBTQ rights and to the funders who supported them. Other issues took priority, such as workplace discrimination and safety. Within gay and lesbian communities, the appropriateness of traditional marriage as a social objective was fiercely debated, with significant factions arguing that it represented a conventional, patriarchal model that should be rejected.

There was an initial push, in the early 1970s, to gain legal recognition for LGBT relationships which culminated in *Baker v. Nelson*, a Minnesota case, sponsored by the ACLU, which challenged a state law limiting marriage to opposite-sex couples. In 1972, however, the Supreme Court refused to take up the case, and little additional progress was made in the legal realm on marriage equality for another two decades (activists did record some victories in the extension of health and pension benefits to the same-sex partners of employees). The marriage equality movement experienced a profound setback in 1986 with the *Bowers v. Hardwick* decision, in which the Supreme Court upheld Georgia’s sodomy laws, which had been targeted at gays. The decision energized LGBT grassroots advocacy, but also established a powerful cautionary strain within it. As historian Nathaniel Frank writes, “The lesson of *Bowers* was that movement winds would require leaders to be cautious, strategic, and patient, and to devote

⁵ Funders for LGBTQ Issues, “Forty Years of LGBTQ Philanthropy 1970-2010” (Funders for LGBTQ Issues, 2012), 24, 27, 30, 36.

⁶ Funders for LGBTQ Issues, “Forty Years of LGBTQ Philanthropy 1970-2010,” 22-23; Heather Joslyn, “The Angel Investor,” *Chronicle of Philanthropy*, May 31, 2007.

their energy to laying the groundwork for public approval of homosexuality before filing further lawsuits, especially in federal court.” The caution that came to guide the movement’s established leaders provided the opportunities for movement outsiders to intervene and fostered a more fractured philanthropic landscape.⁷

The first major victory of the gay marriage campaign did not occur until early 1993, when the Hawaii Supreme Court declared the state’s banning of gay marriage to be unconstitutional sex discrimination. The case established a precedent which endured throughout the long nationwide campaign to achieve marriage equality, in which actors peripheral to the movement, who often initially lacked support from the traditional philanthropic backers of LGBT rights, played catalyzing roles.

In 1990, three Hawaii same-sex couples who were denied marriage licenses sought to challenge the state’s ban on same-sex marriage. They approached both the ACLU and Lambda Legal, where leading gay marriage advocate Evan Wolfson was on staff, to take on the case. Both organizations declined. “[N]o organization wanted to take” it on, the lead plaintiffs in the case later recalled. As Nathaniel Frank writes, “The lawsuit that had catapulted marriage equality to center stage was filed without the support of the gay movement’s largest groups and leaders, and against the wishes of some of them.”

The sources differ in how they interpret this rejection—and thus how divorced the Hawaii case was from the leading LGBT advocacy organizations. Frank claims that Wolfson was fired from Lambda for pushing too strenuously for the organization to sign on, though he was ultimately reinstated. Wolfson did manage to help behind the scenes, and the account he himself later provided through the organization he ultimately founded, Freedom to Marry, notes that, once the case reached the state Supreme Court, Lambda Legal cleared him of most of his other cases so that he could focus on Hawaii in an advisory capacity. In this account, the organization indirectly subsidized Wolfson’s work. The case was eventually taken up by a local Hawaii lawyer who had previously worked at the ACLU, but most national LGBT rights groups paid little attention to it until the initial 1993 state Supreme Court ruling, which required the state to demonstrate a “compelling state interest” in order to justify its same-sex marriage ban. Likewise, the major funders who would come to be associated with the cause were not yet involved; the plaintiffs had to raise the funds to support the case through small local donors, while their lawyer agreed to charge only half his normal rate.⁸

The Hawaii decision had an immediate, galvanizing effect on national LGBT organizations, convincing them that pursuing marriage equality was not necessarily quixotic. “To anyone paying attention,” writes Frank, “it was increasingly clear that marriage equality

⁷ The major LGBT rights organizations experienced a boost in fundraising from the *Bowers* decision; Lambda Legal reported an almost threefold increase in its income between 1985 and 1986, mainly from individual donors. Steven A. Boutcher, “Mobilizing in the Shadow of the Law: Lesbian and Gay Rights in the Aftermath of *Bowers v. Hardwick*,” in *Research in Social Movements, Conflicts and Change*, ed. Patrick Coy (Bingley, UK: Emerald Group, 2011), 191. Frank, *Awakening*, 70.

⁸ Frank, *Awakening*, 92, 95, 98 (quote); Nina Baehr and Genora Dancel, “Neither the First Nor the Last” in *Love Unites Us: Winning the Freedom to Marry in America*, eds. Kevin M. Cathcart and Leslie J. Gabel-Brett (New York: New Press, 2016), 46; Freedom to Marry, “The Freedom to Marry in Hawaii: A Victory 20 Years in the Making,” accessed online at <http://www.freedomtomarry.org/blog/entry/20-years-in-the-making-hawaii-stands-on-the-verge-of-the-freedom-to-marry>.

had gone in a few short years from an outlandish thought experiment to a serious matter of constitutional law.” The debate over whether the LGBT community should focus on the issue of marriage had been settled. “That ship has sailed,” remarked Wolfson. In its aftermath, Wolfson notes, “For the first time ever, a broad swath of the gay national and local groups came together around a single statement of belief, the Marriage Resolution, and began meeting regularly to coordinate and promote efforts through the National Freedom to Marry Coalition.”

It’s important to emphasize here that this important transformation in the campaign was accomplished with minimal direct philanthropic investment, although one could also argue that the general support for LGBT rights through the establishment advocacy organizations helped to establish a cultural context in which the Hawaii Supreme Court decision was possible. How to incorporate this general support for the broader cause of LGBT rights into an account of philanthropy’s impact in securing marriage equality is one of the more difficult challenges confronted by this sort of analysis.⁹

The Hawaii decision triggered an immediate backlash, establishing gay marriage as one of the nation’s most polarizing issues, one that social conservatives could reliably employ to rally their base. In the wake of the Court’s decision, in fact, a number of states (starting with Utah in 1995) passed laws prohibiting the recognition of same-sex marriage; by 2000, thirty had done so. In fact, in 1998, Hawaii voters passed a constitutional amendment allowing the legislature, but not the courts, to rule on marriage equality, bringing the initial legal challenge to the state’s gay marriage ban to a close. At the national level, conservatives pushed for legislation that would deny federal recognition of same-sex marriage and that would define marriage as the union of a man and a woman. In 1996, Congress passed (and president Clinton signed) the Defense of Marriage Act, with an explicit statement that the law reflected the lawmakers’ “moral disapproval” of homosexuality.

This backlash led some activists to pursue alternatives to same-sex marriage, such as domestic partnership laws. It also convinced some of the largest LGBTQ rights groups, such as the Human Rights Campaign, that marriage equality was not a winnable issue for them at the moment. Polls did seem to bear out this assessment, with all showing majority opposition to gay marriage (though with a trend-line sloping moderately toward support).¹⁰

The Establishment of Freedom to Marry and the Birth of the Nationwide Marriage Equality Campaign

Evan Wolfson, however, took the opposite lesson. He became even more convinced that marriage equality would serve as a “gateway” to other rights for gay and lesbian Americans, and thus saw the need for a more aggressive campaign of political organizing and public

⁹ Frank, *Awakening*, 101; Evan Wolfson, “The Hawai’i Marriage Care Launches the U.S. Freedom-to-Marry Movement for Equality,” in *Love Unites Us*, 41.

¹⁰ For instance, Gallup began polling specifically on the legality of gay marriage in 1996. That year, only 27% of Americans polled were in favor; the number climbed to 35% in 1999 and to 42 percent in 2010. This slow increase in support suggests there were broader cultural forces at play that pushed the movement forward, even at its lowest moments. Frank, *Awakening*, 110; Jeffrey M. Jones, “Americans’ Opposition to Gay Marriage Eases Slightly,” *Gallup News*, May 24, 2010, accessed online at <http://news.gallup.com/poll/128291/americans-opposition-gay-marriage-eases-slightly.aspx>.

education. He launched a new marriage equality project at Lambda, the National Freedom to Marry Coalition, which attracted the attention of the Evelyn and Walter Haas, Jr. Fund. In 2000, the Haas Fund approached Wolfson and asked how it could best support the gay rights movement. Wolfson noted that there was no single, centralized organization dedicated exclusively to the promotion of marriage equality and pitched the need for one.¹¹

As Wolfson explained in a 2001 strategy document: “We cannot win equality by focusing just on one court case or the next legislative battle—or by lurching from crisis to crisis. Rather, like every other successful civil rights movement, we must see our struggle as long-term and must set affirmative goals, marshal sustained strategies and concerted efforts, and enlist new allies and new resources.” All these objectives would require an intensified philanthropic engagement with the cause.¹²

In 2001, Haas provided a \$2.5 million grant to help Wolfson set up a new organization, Freedom to Marry (FtM), which would soon become the central hub for funding and assisting state-based groups across the country fighting for marriage equality. It would also become the largest recipient of philanthropic funds targeted to the cause; from 2001 to 2015, FtM raised nearly \$60 million for the campaign.¹³

Haas’s early support for FtM marked a new milestone for philanthropic investment in marriage equality; it was the first major financial commitment from an established foundation specifically targeted to the cause. If one assumes the centrality of Freedom to Marry to the success of the general campaign (a claim that is borne out by the major accounts of the campaign that I encountered), Haas’s role in helping to establish the organization should represent one of philanthropy’s chief claims of impact. The initial reluctance of other foundations to step forward with major financial commitments (see below) underscores the significance of Haas’ contribution. It is possible that, given Wolfson’s commitment to marriage equality, he would have established a stand-alone organization dedicated to the cause even with little initial funding, but it is also likely that, in that case, the organization would have been considerably less effective. At the very least, in his own account of FtM’s founding, Wolfson gives Haas particular credit.

Initially, Haas had offered a \$10 million matching grant, over four to five years, to nurture the organization, which, as Wolfson remarked, would have been at the time “the largest foundation award in the history of the gay movement.” Wolfson had hoped that the grant “from a highly respected, nongay foundation would swiftly help open the doors of many other foundations supporting social-justice causes. We were wrong.” FtM was unable to secure the matching funds. As a FtM retrospective noted, this failure demonstrated the path-breaking nature of Haas’ commitment, since it highlighted the fact that “nobody was really giving to our movement in these amounts and were more timid to donate significantly to the marriage

¹¹ Freedom to Marry, “Winning the Freedom to Marry Nationwide.” There is some confusion within the various accounts of this exchange over who initiated the contact, Wolfson or the Haas Fund.

¹² Freedom to Marry, “Winning the Freedom to Marry Nationwide.”

¹³ As FtM noted in a retrospective account it later published, “Approximately 80% of the funding was secured for 501c3 (tax-deductible public education) purposes...and 20% for 501c4 (political/lobbying) purposes. More than 90% of the funding came from individuals and private foundations with the remainder coming from corporate gifts and in-kind contributions.” Freedom to Marry, “Raising the Funds Needed to Fuel the Movement,” accessed online at <http://www.freedomtomarry.org/pages/Raising-the-Funds-to-Fuel-the-Movement>.

work.” As Wolfson later recalled, “At the time, there wasn’t even agreement within the LGBT movement that working on marriage was the way to go, and many leaders rolled their eyes at what they saw as my quixotic or misplaced vision.”¹⁴

So Haas offered a smaller grant of \$2.5 million, in what an FtM account termed the “if you build it, they will come” model. In January 2003, Haas provided FtM with an additional \$800,000, at which point FtM launched itself as an independent entity (before then, it had “operated as a fiscally sponsored project of the Astraea Foundation,” a funder that rarely is granted a place in the narrative but that played an early, incubating role). Until 2009, FtM remained “in the annual revenue range of \$1.2 million to \$1.5 million,” receiving most of its funding from foundations, like the Haas Fund, that were not associated with living donors.¹⁵

In these early years, Wolfson and FtM honed and championed a three-pronged incremental strategy to secure marriage equality throughout the nation, “with state, national, and federal synergistic opportunities to advance and reinforce progress toward creating the climate for a Supreme Court win.” First, the organization would seek to secure a critical mass of states where same-sex couples could legally marry through campaigns of public education and advocacy. Then, when a critical mass of legal victories was won in the states, a push could be made to secure federal legislation or a Supreme Court decision. This deliberate incremental pacing was premised on a desire to avoid a too-precipitous legal challenge that might provoke backlash and set back the movement, as had the *Bowers* decision.

This state-by-state focus ultimately had important consequences for philanthropy’s engagement with the marriage equality cause. It encouraged a diffusion of the campaign to more states and ultimately through more state-based groups, which provided increased opportunities for state-based funders. It meant that the national campaign would make use of a wider range of funders. How much causal weight should we grant the strategic framework that Freedom to Marry championed—and thus how much impact should we assign to the Haas Fund’s support for FtM? According to Freedom to Marry’s claims—which many of the accounts of the campaign tend to echo—their national state-focused strategy was the plan “responsible for the movement’s long climb to success.” A counterfactual is especially difficult to establish here. It’s possible that another plan might have also achieved national marriage equality, but none did. And yet, as the account below will show, there were several ways in which the actual course of events that led to *Obergefell* deviated from this framework. In a sense, much of the power of the strategic plan designed by Freedom to Marry emerges in retrospect. But by helping to fuel FtM, to give Wolfson and his allies confidence and a sense of direction in their work, the plan almost certainly did have a significant impact. Given the organization’s centrality in the marriage equality campaign, simply by helping to bring FtM into being, the Haas Fund can claim a significant share of credit for helping to secure marriage equality.¹⁶

¹⁴ I am uncertain about some of these figures and need to confirm them with Freedom to Marry and/or the Haas Fund. Wolfson, “Lessons for Philanthropy from the Marriage Equality Win”; Freedom to Marry, “Raising the Funds Needed to Fuel the Movement.”

¹⁵ Freedom to Marry, “Raising the Funds Needed to Fuel the Movement.”

¹⁶ Freedom to Marry, “Winning the Freedom to Marry Nationwide;” Freedom to Marry, “The Roadmap to Victory,” accessed online at <http://www.freedomtomarry.org/pages/Roadmap-to-Victory>.

State-Based Victories and Setbacks (2003-2004) and the Increased Engagement of Gay Donors

Besides the official launch of Freedom to Marry, 2003 brought several other promising developments in the campaign to achieve marriage equality. In June, the Supreme Court ruled on *Lawrence v. Texas*, striking down the state's sodomy laws which had been targeted at gays. Lambda Legal had taken on the case, with pro bono assistance from the law firm Jenner & Block.¹⁷ Justice Antonin Scalia noted that the reasoning in *Lawrence*, which acknowledged the evolving nature of societal attitudes toward sexuality and marriage (noting the shifts that had occurred even since *Bowers*, seventeen years before), and that emphasized that gays and lesbians were entitled to the same rights and respect as other citizens, opened the door to the court's upholding marriage equality. The majority's "reasoning leaves on pretty shaky grounds state laws limiting marriage to opposite-sex couples," he noted. Many leading LGBT legal activists agreed, interpreting the decision as a signal they had the wind at their backs.¹⁸

The pro-equality legal campaign was given another boost in November, when the Massachusetts Supreme Court ruled in favor of the plaintiffs in *Goodridge v. Dept. of Public Health*. In 2001, Mary Bonauto, the civil rights project director at Gay and Lesbian Advocates and Defenders (GLAD) had filed a suit on behalf of several same-sex couples who had been denied marriage licenses by the state. With the *Goodridge* decision, the court struck down the state's ban on same-sex marriage, citing some of the arguments within *Lawrence*. As was the case with *Lawrence*, *Goodridge* was in part the result of general philanthropic investment in LGBT advocacy organizations, and of the decisions of activists within those organizations to make marriage equality a priority.¹⁹

As in Hawaii, the Massachusetts court decision sparked an immediate backlash—which in the state took the form of an attempt to roll back the decision through a constitutional amendment. Marriage equality advocates quickly formalized the constellation of pro-marriage equality groups (several of which had formed in the wake of the Hawaii decision under Wolfson's urging) and state-based funders that had come together in the run-up to the filing of *Goodridge*; MassEquality, as this coalition became known, led the defense of the decision through a "grassroots campaign on the ground, a targeted lobbying campaign in the statehouse, and strategic work re-electing pro-equality lawmakers and defeating a few who were opposed."

In the past, these groups, focused specifically on marriage equality, had received little financial support from donors; FtM's political director in the state described the assistance as "take this and go away" money. Due to the lack of funding, the organizations in Massachusetts had been forced to rely heavily on volunteers. It is fair to say that philanthropy's impact before this point was minimal (although GLAD, which had secured the *Goodridge* decision, was one of

¹⁷ The role played by lawyers who offered their services *pro bono* is an underexplored theme that runs throughout accounts of the marriage equality campaign and suggests the need to address the specific contributions of corporate philanthropy. Suzanne B. Goldberg, "'Not Tonight, Dear—It's a Felony': *Lawrence v. Texas* and the Path to Marriage Equality," in *Love Unites Us*, 56-65.

¹⁸ Freedom to Marry, "Raising the Funds Needed to Fuel the Movement."

¹⁹ Frank, *Awakening*, 138-140; Mary L. Bonauto, "The Litigation: First Judicial Victories in Vermont, Massachusetts, and Connecticut," in *Love Unites Us*, 73-89.

the top LGBTQ grantees in the first decade of the new century). But after *Goodridge*, MassEquality was able to raise a considerable amount of funding from individual living donors, including from the son of the New York hedge fund billionaire Paul Singer and from the tech entrepreneur Tim GIII. Using these funds, MassEquality was able to beat back attempts to pass a constitutional amendment banning same-sex marriage in the state. Its success reflects a general principle that emerged out of the campaign—funding was attracted to a fight, but significant (often poorly funded) work had to be done initially to create the conditions for the contest. The fight over marriage equality in Massachusetts set an important precedent that would shape the role that philanthropy would come to play in the effort. The campaign was the most sophisticated to date; in 2004, for instance, it involved dozens of polls, more than half a million mailings, and hundreds of coordinated volunteers. The work became considerably more expensive, costing some \$700,000. From this point forward, even as such campaigns showcased a wide array of activism and volunteer work, they also relied more heavily on philanthropic investment.²⁰

Goodridge had an impact on the marriage equality campaign well beyond Massachusetts. San Francisco mayor Gavin Newsom was inspired by the decision to begin issuing marriage licenses to same-sex couples, despite a law enacted by California voters in 2000 that restricted marriage to opposite-sex couples. It took the California Supreme Court several weeks to put a stop to the weddings and in the interim, thousands of gays and lesbians wed. The story captured national media attention and produced a wave of powerful images of joyful unions transmitted on televisions and newspapers across the country. (Officials in Sandoval County, New Mexico, New Paltz, New York, and Multnomah County, Oregon took similar actions).²¹

As in Hawaii more than a decade before, a movement outsider (Newsom) triggered a wave of backlash and then a round of defensive activism, which gave the incrementalist framework of the marriage equality movement a shock. Some of the predictions of movement leaders regarding the dangers of precipitous activism did seem to come to pass, as in the wake of Newsom's actions, public opinion toward gay marriage fell. Marriage equality also took up an increased prominence within national politics. Provoked by *Goodridge* and Newsom's freelancing, President George W. Bush publicly lent his support to a constitutional amendment that would ban same-sex marriage. His political adviser, Karl Rove, urged Republican leaders in key states to initiate ballot measures banning same-sex marriage as a means of turning out the conservative base to vote. In the 2004 election, GOP leaders in eleven states took Rove's advice and bans won in all of them, receiving on average 70 percent support.²²

This was a dark moment for the movement. Some Democrats blamed the gay marriage issue for their loss in the presidential election, while some leading LGBT rights groups took the ballot initiatives as a sign for the need to make a strategic retreat from the marriage equality fight. State and local groups pushing for marriage equality reported that it became more

²⁰ Frank, *Awakening*, 5 (Josh Friedes quote), 142-143, 170; Freedom to Marry, "Winning the Freedom to Marry Nationwide"; Solomon, *Winning Marriage*, 77, 103, 117.

²¹ Freedom to Marry, "Winning the Freedom to Marry Nationwide."

²² Daniel A. Smith, Matthew DeSantis, and Jason Kassel, "Same-Sex Marriage Ballot Measures and the 2004 Presidential Election," *State & Local Government Review* 38, no. 2 (2006), 78; Frank, *Awakening*, 164.

difficult to get funding from some of their traditional sources of support, such as the leading advocacy organization, the Human Rights Campaign.²³

At the same time, the 2004 losses pushed many of those groups toward a self-accounting, impressing upon them the need for greater coordination, discipline and resources. As one account of the marriage equality campaign noted, “It was clear to anyone with a working knowledge of the LGBT movement that it did not have the financial or operational capacity to confront this multi-state onslaught and mount the larger public education, policy advocacy and litigation effort to hold onto victories in the courts and see them implemented, let alone push marriage equality over the finish line nationally.”²⁴

In fact, the multiple state-level defeats helped to spur a small group of “deep-pocketed gay donors” to make a more aggressive investment in the cause of marriage equality. Philanthropy journalist David Callahan has highlighted a “cabal” of five funders who became especially active, spurred by dissatisfaction with what they considered the timidity that had gripped the leading LGBT rights advocacy groups: Tim Gill, Jon Stryker, David Bohnett, James Hormel, and Henry van Amerigen. These donors, and a handful of others, often coordinated their efforts—both with respect to their private philanthropy and to their political giving—in order to maximize its impact. They were also able to strategically target state-based groups, often bypassing national organizations.²⁵

Of these funders, the most influential was likely Tim Gill, the founder of the publishing software company Quark; according to one recent *Rolling Stone* profile, over the last three decades, Gill “poured \$422 million of his fortune into the cause of equal rights for the LGBTQ community—more than any other person in America.” In the mid 1990s, Gill had formed a foundation as a response to the passage of an anti-gay-rights amendment in his home state of Colorado. At first, the foundation was devoted largely to LGBT issues in the state (and to moving Colorado from Republican to Democratic control). It also helped to foster a network of “LGBT and allied philanthropists,” called OutGiving. After Gill sold his company in 1999, he devoted himself full-time to his philanthropy and the elections of 2004 jolted him into even more urgent activism. He established the Gill Action Fund, a 501(c)(4) adjunct to his foundation, which worked closely with a team of political strategists to help “focus LGBT funders to invest their donations into advocacy campaigns and candidates that would advance LGBT rights in the states.”²⁶

The Civil Marriage Collaborative and the 10-10-10-20 Roadmap to Victory

²³ Frank, *Awakening*, 166-167; Freedom to Marry, “Winning the Freedom to Marry Nationwide.”

²⁴ Proteus Fund, *Hearts & Minds: The Untold Story of Philanthropy and the Civil Marriage Collaborative Helped America Embrace Marriage Equality* (Proteus Fund, 2015), 3.

²⁵ Frank, *Awakening*, 171; David Callahan, “The Marriage Equality Hall of Fame: 8 Funders Who Helped Make it Happen,” *Inside Philanthropy*, October 7, 2014, accessed online at <http://www.insidephilanthropy.com/lgbt/2014/10/7/the-marriage-equality-hall-of-fame-8-funders-who-helped-make.html>.

²⁶ Andy Kroll, “The Quiet Crusader: How Tim Gill turned a \$500 million fortune into the Nation’s Most Powerful Force for LGBTQ Rights,” *Rolling Stone*, June 2017, accessed online at <http://www.rollingstone.com/politics/features/meet-tim-gill-megadonor-behind-lgbtq-rights-movement-wins-w489213>; Freedom to Marry, “Winning the Freedom to Marry Nationwide.”

Gill was not alone in appreciating the need for funders to develop a more coordinated campaign to promote marriage equality. Even before the November 2004 defeats, in March, a handful of foundations—including the Gill, Haas, Open Society, Bohnett and Ford Foundations, as well as Atlantic Philanthropies—came together to create the Civil Marriage Collaborative (CMC), a group of institutional funders who would pool funds (housed at the Proteus Fund) and channel them to strategically chosen states. In its first year, it made 19 grants, totaling \$935,000, funding 17 organizations in ten states. It would ultimately channel \$20 million directly into the marriage equality fight, while as a whole, its contributing partners put in \$153 million.²⁷

The CMC played an important role in the campaign not merely through its grantmaking power, but also through its convening power. In February 2005, at the Gill Foundation’s Denver headquarters, CMC funders gathered with leading marriage equality organizations to discuss how to move the campaign forward, the first time that funders and grantees had coordinated on such a scale. The meeting represented the moment in which funders and organizational advocates began to coalesce around a shared strategy. In some accounts, activist provided the initial push for such a consolidation as a means of attracting additional funding; in others, the initiative came largely from funders, and especially from the Gill Foundation. This represents another of the major nodes of philanthropic impact within the narrative. Here, for instance, is the account of the meeting from a *Rolling Stone* profile of Gill:

“Soon after the 2004 elections, Rodger McFarlane, a legendary AIDS activist who had recently joined the Gill Foundation, summoned the leaders of the major LGBTQ groups to Denver [where the Foundation was located] for a meeting at Gill's behest. Gill couldn't tell the Human Rights Campaign or Lambda Legal or the ACLU what to do. But he had the clout to tell them they needed to get along, a task he left to McFarlane, an imposing former Navy officer, baldheaded and standing six feet seven. McFarlane gathered the LGBTQ leaders in a conference room at the foundation's headquarters and shut the doors. *No one leaves this fucking room, he told them, until we have a plan.*”²⁸

They did ultimately make it out of the room, with a working group emerging out of this meeting comprised of staff-level representatives from the major organizations working to promote marriage equality. By June, they had completed a concept paper (drafted chiefly by Matt Coles of the ACLU), the “Winning Marriage” blueprint, also known as the 10-10-10-20 [Roadmap to Victory](#). Every major LGBT group signed on to the concept paper; it helped squelch any inclination among the groups to retreat from the cause by bridging proximate, reasonable objectives to the more ambitious goal of securing marriage equality nationwide.

The Roadmap sought to push the nation past a “tipping point” on marriage equality by achieving marriage equality in 10 states, getting 10 others states to adopt civil unions, another

²⁷ The account produced by Freedom to Marry of the CMC’s origins claims that Wolfson and a FtM board member orchestrated the CMC’s creation. Freedom to Marry, “Building a Collaborative Model: Fiscal Sponsorships,” accessed online at <http://www.freedomtomarry.org/pages/building-a-collaborative-model-fiscal-sponsorships>. Proteus Fund, *Hearts & Minds*, 3, 5; Frank, *Awakening*, 170.

²⁸ Proteus Fund, *Hearts & Minds*, 3, 4, 5; Kroll, “Quiet Crusader.”

10 states to enact more general forms of legal recognition of same-sex couples, such as domestic partnerships, and achieving some significant shift in public opinion and organizing capacity behind marriage equality in the remaining 20 states. It was built around a strategic pathway that would begin in the courts in the states with the highest probability of achieving and securing victories (where repeal by initiative was the least likely), while also pushing marriage equality through state legislatures. When a critical mass of states victories was reached, only then would the movement go national, either through congressional legislation or through the court system. The plan was firmly committed to the incrementalism that had come to define the movement; by classing states into different groups of ripeness and tractability in relation to marriage equality, it took seriously the dangers of overreach, and by postponing federal action till a critical mass of public support had been reached, it sought to prevent a backlash that might produce a constitutional amendment banning gay marriage.²⁹

Despite this level of caution, the plan also displayed real ambition. It insisted upon the need to extend the movement beyond the coasts and to improve its messaging capacity, its coordination, its technical sophistication and its overall professionalism. In this respect, the Roadmap underscored the need for a significant boost in overall funding; it augured a new phase of philanthropic commitment to the cause, even as it was itself the product of philanthropy. The CMC, for instance, increased its grantmaking after its first year to \$1.5 million. In its first four years, it distributed more than \$5 million to advocates in 17 states.³⁰

Returning again to the question of philanthropic impact, it is clear that the major funders had a significant role in pushing LGBT rights organizations to unite around a shared “Roadmap”; there is little indication that without the prodding of the Gill Foundation and the other CMC funders, their grantees would have achieved the same sort of formal strategic consolidation. Of course, it is possible that this consolidation would have occurred over the course of the campaign itself, as various LGBT groups cooperated and Freedom to Marry asserted its role as a central coordinator. But it would likely have been less formal, with more potential for groups to back out, and would have occurred at a later date, which would have meant it would have been less effective in sustaining the overall campaign’s momentum.

A related question addresses the causal impact of the Roadmap itself. This is more difficult to answer conclusively; although the construction of the Roadmap is granted a prominent place within most narratives of nationwide marriage equality, it is also the case that the course of the campaign ended up deviating in significant ways from the timetable developed in the plan (nationwide marriage equality was achieved in a shorter period of time, for instance, and with activists from states that didn’t undergo substantial public education campaigns seeking to achieve full legal equality). Do those deviations suggest that the impact of the Roadmap was limited, or do they actually point to the impact of the strategic plan and the coordinated campaign that it fueled, which accelerated its pace? Addressing these questions will help arrive at a clearer understanding of philanthropy’s role in the overall campaign.

²⁹ Matt Coles, “The Plan to Win Marriage,” in *Loves Unites Us*, 103; Freedom to Marry, “Winning the Freedom to Marry Nationwide.”

³⁰ Proteus Fund, *Hearts & Minds*, 8; Frank, *Awakening*, 170.

The Reactions to Prop 8: Freedom to Marry's and CMC's Strategic and Messaging Reorientation

The more ambitious, coordinated strategy bore some initial fruit when, in September 2005, California became the first state whose legislature approved same-sex marriage (though Gov. Arnold Schwarzenegger vetoed the bill). 2006 was an especially favorable year for the marriage equality cause. 50 of the 70 candidates targeted by the Gill Action Fund, in its first election season, were defeated. "Four of the 13 states where Gill Action directed its funds saw at least one legislative chamber flip from Republican to Democratic control." Of course, it was also a good political year for Democrats more generally, many of whom tended to support marriage equality, and so it is difficult to determine how much credit Gill Action should receive for these political victories. Meanwhile, activists pressed onward with a public education campaign in California which helped lay the groundwork for a case brought by the ACLU, Lambda Legal, and the National Center for Lesbian Rights challenging the state's same-sex marriage ban. In May 2008, the state Supreme Court declared it unconstitutional. The state began issuing licenses to gay and lesbian couples soon after.³¹

But as so often happened throughout the broader campaign, these victories triggered an immediate backlash. Conservatives, both in California and nationwide, organized a state constitutional amendment that would override the court's decision by defining marriage for opposite-genders only—what became Proposition 8 on the November 2008 ballot. Marriage equality supporters underestimated the power of the opposition, especially since initial polling showed little support for Prop 8. These surveys missed the intensity of the organizing efforts of conservative churches, especially Mormons and Catholics, as well as the effectiveness of the often-times homophobic campaign Prop 8 supporters waged. Prop 8 supporters ultimately raised more than \$39 million (nearly half came from the Mormon Church). According to one account, marriage equality supporters were actually outraised for the initial stages of the campaign; a desperate call for more funds to oppose the measure brought in a wave of additional support, and the anti-Prop 8 campaign ultimately raised more than \$44 million.³²

Prop 8 ended up passing with 52% of the vote, including majorities of black, Hispanic and Asian voters. It was a stunning, stinging defeat for the marriage equality campaign, made even more difficult to bear given the contrast with progressives' general celebratory mood over the election of Barack Obama. Yet some have claimed that the Prop 8 defeat was an ultimate boon for the movement because it galvanized another generation of marriage equality activists who made productive use of social media and who operated largely outside the bounds of the national advocacy organizations. This suggests that among the philanthropic contributors to marriage equality campaign, we might paradoxically need to consider the causal impact of funders of the opposition to the cause, to the extent that they inadvertently aroused pro-equality activism.³³

³¹ Kroll, "Quiet Crusader"; Freedom to Marry, "Winning the Freedom to Marry Nationwide."

³² Jo Becker, *Forcing the Spring: Inside the Fight for Marriage Equality* (New York: Penguin Books, 2015), 163; Solomon, *Winning Marriage*, 223-228; Frank, *Awakening*, 179-180.

³³ Frank, *Awakening*, 188.

The setback in California (as well as those in Maine, where a 2009 referendum overruled a law allowing same-sex marriage in the state, and in New York, where the state Senate rejected same-sex marriage legislation in December 2009) convinced Freedom to Marry and several of its major donors that it needed to take more of the initiative on legislative and ballot measures and not merely react defensively to anti-gay marriage initiatives. This entailed initiating more robust public education campaigns conducted well before the issue came before voters or the courts. It also required more national coordination with state-based groups and led to the creation of a separate 501(c)(4) organization that could engage more freely in political campaigns. FtM went from “a five-person outfit to a 40-person organization, opened a Washington, DC office and hired a team of top-notch political operatives to lead its campaign.”³⁴

Not surprisingly, this expansion required another boost in philanthropic support, and the organization increasingly turned to individual donors, alongside the foundation support it had received in the past. FtM’s revenues jumped from \$2.5 million in 2010 to \$4.9 million the following year, nearly doubled again in 2012 to \$8.5 million, and reached their peak in 2014, at \$12.2 million. In fact, “[o]f the \$60M Freedom to Marry raised, just over \$45M or more than 75%, was raised between 2011 and 2015.” These philanthropic funds did not only support Freedom to Marry’s work, but also, through FtM re-granting, the work of other LGBT organizations. As a representative from the organization explained, “Our aim was to serve as a funding engine, whether the resources flowed through our ‘watering can’ or directly to other colleagues in the field.”³⁵

The setbacks of 2008 and 2009 also shook the CMC funders and convinced them of the need for a more targeted, strategic focus on winnable states and for a more data-driven approach to grant-making. After 2010, the CMC cut the number of states in which it invested by half, and working with FtM, began to require state organizations to submit polling to determine if they had the requisite level of support for marriage equality before receiving funding, and to submit a well-defined public education plan. If the state was deemed “ripe” enough for funding, CMC would channel money to support “public education campaigns that included door-to-door canvassing, polling, phonebanking, mobilizing faith communities and earned and paid media.” As a CMC report explained, “The goal was to focus in states where either pro- or anti-equality ballot measures loomed on the horizon, but there was still time for public education efforts to move a majority of the population to support marriage equality. Then, as the ballot initiative or legislative campaign geared up and Election Day got closer, the public education efforts funded

³⁴ Proteus Fund, *Hearts & Minds*, 10; Freedom to Marry, ““Why Marriage Matters: Getting the Movement on Message,” accessed online at <http://www.freedomtomarry.org/pages/Why-Marriage-Matters>; Wolfson, “Lessons for Philanthropy from the Marriage Equality Win.”

³⁵ As Wolfson later explained, “as we rebounded [from the Prop 8 defeat], several of my foundation supporters and movement colleagues urged me to morph Freedom to Marry from the catalyst and strategy center it had primarily been to the full-fledged, on-the-ground national campaign we had long called for. Once again, grant makers increased their support, enabling us to vastly expand — and setting the stage for dramatic wins from 2010 on.” Wolfson, “Lessons for Philanthropy from the Marriage Equality Win.” Freedom to Marry, “Raising the Funds Needed to Fuel the Movement,” accessed online at <http://www.freedomtomarry.org/pages/Raising-the-Funds-to-Fuel-the-Movement>.

by the CMC and others would wind down, and c4 and non-private foundation dollars would be used to push marriage equality over the finish line.”³⁶

CMC funders and FtM came to share an assessment of what went wrong in the defeats in California and Maine. As early as 2005, the Gill Foundation had funded research into why same-sex marriage had struggled to achieve victories at the ballot box. One study they funded found that 57% of respondents believed that gay Americans did not share their basic values. In 2006, CMC and its funders began investing in “deep psychographic” research in California, including “focus groups, multi-hour interviews, ad development and testing, and rounds of surveys.” The research was expensive and limited in duration, but it resulted in early hints that ads that focused on generating empathy toward the experience of gay and lesbian couples could boost support for marriage equality (the one California media market in which such an ad was field-tested with a full control group was the only county in Southern California that rejected Prop 8; after a week of running the ad, support for gay marriage increased by eleven points, while it remained flat in the control county).³⁷

FtM built on these early experiments, pushed by staff who had been brought on in the organization’s expansion after the California setback, and so these developments can be considered, in part, the product of increased philanthropic investment (some accounts credit the Gill Foundation with actively pushing for the research as well). According to FtM’s account, the organization’s director of public engagement, “Thalia Zepatos, working with pollster Lisa Grove, dove into and analyzed existing research data – more than 85 sets – from state marriage campaigns. Zepatos also oversaw the coordination of a confidential research collaborative, the Marriage Research Consortium, with state and national partners working on marriage messaging like the Movement Advancement Project, Basic Rights Oregon, the Center for American Progress, and Third Way coming together to compare notes, avoid duplication and learn from one another.” Philanthropic support allowed for this meta-research and funded even more in-depth polling.³⁸

Indeed, the tactical and strategic reforms that resulted from this analysis are considered some of the most consequential of the entire campaign. In this instance, the main sources do not provide a clear causal weighting between the contributions of funders and activists. Yet even if the initiative to pursue the research came largely from activists, it is important to stress that it required significant financial investments to complete, especially in areas with expensive media markets, and could not have been done without substantial philanthropic support.

³⁶ Frank, *Awakening*, 277; Matt Foreman, “Winning Marriage Equality,” *Washington Monthly* Success of Philanthropy Series, accessed online at https://philanthropy.washingtonmonthly.com/portfolio_page/winning-marriage-equality/.

³⁷ Proteus Fund, *Hearts & Minds*, 8; Molly Ball, “The Marriage Plot: Inside This Year’s Epic Campaign for Gay Equality,” *Atlantic* December 11, 2012, accessed online at <https://www.theatlantic.com/politics/archive/2012/12/the-marriage-plot-inside-this-years-epic-campaign-for-gay-equality/265865/>; Frank, *Awakening*, 275.

³⁸ In Solomon’s account, Zepatos is also credited as the driving force behind the data research that led to the strategic messaging reorientation. Solomon, *Winning Marriage*, 230. Freedom to Marry, “Winning the Freedom to Marry Nationwide”; David Callahan, “No One Left Behind: Tim Gill and the New Quest for Full LGBT Equality,” *Inside Philanthropy*, August 25, 2015, accessed online at <https://www.insidephilanthropy.com/home/2015/8/25/no-one-left-behind-tim-gill-and-the-new-quest-for-full-lgbt.html>.

With assistance from the CMC funders, activists began to field test the new campaign in Oregon. From the polling data they analyzed, activists began to appreciate that rights-based arguments, demonstrating the ways in which gays and lesbians were excluded from many of the benefits and privileges that marriage conferred on straight individuals, were not changing hearts and minds. Straight Americans could too easily dismiss these arguments since they understood marriages in their own lives as stemming not from such legalistic concerns but from basic emotions of love and respect. So marriage equality advocates came to craft an alternative messaging grounded in the human elements of the marriage relationship—companionship, love, commitment, intimacy—which ultimately proved more successful in attracting supporters. They stopped referring to their campaign as motivated by the push for “same-sex marriage,” a term which could lead the public to assume that these relationships differed in some fundamental way from straight ones, and began to frame their movement as a call for “marriage equality.” They also learned that the most effective messengers for the campaign were family members of gay or lesbian couples who could talk about how their own attitudes toward same-sex marriage had developed over time.³⁹

Based on this research Freedom to Marry created a new public education campaign, Why Marriage Matters, and recruited more than forty national and state-level partners, with which FtM shared its “centralized messaging and opposition research, political and legal toolkits, and digital and communications expertise.” FtM also employed a number of consulting firms to conduct field-based research, including one that George W. Bush had used in the 2004 election, that specialized in micro-targeting. In the next few years, this research was applied in several key states and the campaign experienced a string of victories. As Sylvia Yee of the Haas Fund stated, “The better we got at this messaging, the more we began to win.” This is perhaps the strongest causal claim for philanthropy’s contributions to the marriage equality campaign; it funded research which seems to have contributed to a decisive shift in the campaign’s momentum (for more on those victories, see below). Yet the precise nature of that contribution, and how to disentangle the impact of the philanthropically supported research from broader cultural trends that were also encouraging support for marriage equality, are questions that the existing literature does not entirely resolve.⁴⁰

Legal Challenges to DOMA and Prop 8

At the same time that activists began honing a new approach to messaging in state elections and ballot initiatives, activists also began laying the groundwork for a series of court-based challenges. “From 2009 on, movement attorneys had brought [some half dozen] lawsuits against the federal government to challenge the so-called Defense of Marriage Act.” One of these was *Windsor v. United States*, brought on behalf of Edie Windsor, an eighty year-old New Yorker who had inherited the estate of her long-time companion (they were legally married in Canada), but because of DOMA, was denied the spousal exemption from federal estate taxes

³⁹ Proteus Fund, *Hearts & Minds*, 12; Ball, “The Marriage Plot.”

⁴⁰ Yee made her comments during a panel on model models of philanthropy at a May 2015 conference sponsored by the Center for Effective Philanthropy. A video of her remarks is available at <https://www.youtube.com/watch?v=FLJ3gSvfGU0>. Frank, *Awakening*, 281-282; Freedom to Marry, “Why Marriage Matters”; Freedom to Marry, “Winning the Freedom to Marry Nationwide.”

and was hit with over \$600,000 in state and federal taxes. In 2009, when Windsor approached some of the leading gay rights organizations, she was told it was “the wrong time for the movement.” She was ultimately introduced to Roberta Kaplan, a partner at Paul, Weiss, Rifkind, Wharton & Garrison, who agreed to take her case pro-bono. Kaplan then invited the director of the ACLU’s LGBT & AIDS Project to join as co-counsel. This case and others (including one which originated in Massachusetts and which was spearheaded by GLAD’s Mary Bonauto, who had also led the *Goodridge* legal team) made their way through the system, with the 1st, 2nd, and 3rd Circuit Courts of Appeals affirming decisions that struck down DOMA. In August 2012, the Supreme Court announced it would hear Windsor’s case.⁴¹

During the same period of time, on the other coast, another group of activists peripheral to the LGBT rights establishment had orchestrated a challenge to California’s Prop 8. The case had been masterminded by Chad Griffin, a young political consultant who had worked in President Clinton’s press office. Griffin recruited conservative legal luminary Ted Olson (who had served as President G.W. Bush’s Solicitor General and had successfully argued *Bush v. Gore*) to mount a challenge to Proposition 8 in federal court, in an effort to secure a ruling from the U.S. Supreme Court in defense of marriage equality as soon as possible. Griffin and Olson then brought in David Boies, the lawyer who had argued on the losing Democratic side of *Bush v. Gore*, as a partner, forming a bipartisan legal team meant to demonstrate widespread acceptance of the cause. In May 2009, Griffin, with initial funding from the Hollywood producer Rob Reiner, created the American Foundation for Equal Rights (AFER), to fundraise and conduct public education around the case.⁴²

AFER represented another vector in the philanthropic campaign to win nationwide marriage equality, one based largely in Hollywood and which did not overlay neatly with the other dominant organizational actors. AFER’s leaders explicitly framed their efforts as a rejection of the incrementalist (and, as they viewed it, excessively cautious) state-by-state approach that the major advocacy organizations and their donors had championed. At the same time, those organizations argued that AFER’s attempt to mount a federal challenge to Prop 8 was ill-considered and ill-timed, and risked a damaging *Bowers*-like blowback. Nearly every major group working on behalf of the cause (the groups, in other words, that had previously absorbed the bulk of philanthropic funding)—FtM, GLAD, ACLU, HRC—thought the movement wasn’t ready yet for a Supreme Court showdown because activists hadn’t built up the necessary critical mass of state wins or public support.⁴³

In fact, as Nathaniel Frank recounts, “The same day that AFER held its press conference announcing a federal lawsuit, nine major gay rights groups released a letter denouncing the idea of a federal lawsuit.” These groups countered the AFER announcement with the slogan “Make Change, Not Lawsuits,” arguing that marriage equality advocates should accumulate a critical mass of state victories first.⁴⁴

Despite their insurgent posturing, Griffin and AFER had initially reached out to Lambda and ACLU to try to recruit them to join their campaign (unsurprisingly, the organizations

⁴¹ Freedom to Marry, “Winning the Freedom to Marry Nationwide”; Ariel Levy, “The Perfect Wife,” *New Yorker*, September 30, 2013, accessed online at <https://www.newyorker.com/magazine/2013/09/30/the-perfect-wife>.

⁴² Becker, *Forcing the Spring*; Solomon, *Winning Marriage*, 319.

⁴³ Becker, *Forcing the Spring*, 51; Solomon, *Winning Marriage*, 319.

⁴⁴ Frank, *Awakening*, 229; Becker, *Forcing the Spring*, 18.

declined), and also turned to many of the same funders that had backed the coordinated, state-by-state campaign to support their Prop 8 lawsuit. But Griffin had little luck in soliciting funds. He sought to tap into Gill's donor network, OutGiving, but at one fundraising event, Gill himself denounced the plan for its naiveté, while the president of the Gill Foundation used the occasion to issue a rousing defense of the incrementalist strategy and to fault the AFER crew for acting as if no past approach to marriage equality had any merit.⁴⁵

This pushback didn't dissuade Griffin and the other AFER leaders, who insisted that the courts should lead and not follow public opinion. They could take such a position largely because they were ultimately able to access an alternate set of donors from the Hollywood elite to cover the considerable costs of both the litigation (although Olson agreed to charge reduced rates, his firm still billed around \$6 million; Boies did not offer any discount), and the public education and strategic media campaign that would accompany it. As the *Hollywood Reporter* [noted](#), "Reiner used his Hollywood insider status to court a handful of millionaires and billionaires, including Norman Lear, Steve Bing, and David Geffen, who provided the \$3 million-\$5 million in seed money that allowed the foundation to support" the work of both lawyers. Reiner also organized two productions of a play based on the Prop 8 court case which raised another \$3 million. Finally, AFER was able to bring in at least one significant foundation grant from a CMC funder, which allowed them to increase and professionalize their staff. In fact, the fundraising efforts were so successful that they raised complaints from some of the supporters of the Roadmap to Victory strategic plan—which itself had been funded by a small group of living donors—that their carefully calculated campaign was being hijacked by a small clique of wealthy, West Coast activists.⁴⁶

This initial split in funder pools represents a distinguishing feature of the marriage equality campaign, one which introduces a complicating element into efforts to evaluate the role of philanthropy within it, since the different funders at times seemed to be pushing at cross-purposes. Yet the divide was minimized once AFER actually filed their suit; the other advocacy organizations realized that, once the suit was initiated, there was little sense in actively opposing it, especially if by cooperating, they could wield some influence over the case's strategy and tactics. When the district court judge initially overseeing the case, Justice Vaughn Walker, demanded a full trial, which would allow "a national airing, in a federal court of law, of nearly all the questions around marriage and sexual orientation that they had been working for years to bring to the American public's attention in an accessible way," these groups had an even greater incentive to cooperate, and to help Olson and his team prepare. The trial proved a major coup for the movement, since it showed the paucity of the social science evidence behind Prop 8 and the extent to which the campaign against marriage equality in California was fueled not by policy considerations but by prejudice. It is difficult to disentangle its effects from the various other forces at play shaping attitudes toward gay

⁴⁵ Frank, *Awakening*, 220, 226; Becker, *Forcing the Spring*, 29, 31.

⁴⁶ The David Bohnett Foundation was the largest funder of AFER; it is possible that other CMC funders did as well. David Callahan, "What Does it Feel Like to Win? This Top LGBT Funders Tells Us," *Inside Philanthropy*, July 3, 2014, accessed online at <https://www.insidephilanthropy.com/home/2014/7/3/what-does-it-feel-like-to-win-this-top-lgbt-funder-tells-us.html>; Frank, *Awakening*, 302. Gregg Kilday, "How Rob Reiner Became anti-Prop-8 Kingpin," *The Hollywood Report*, August 5, 2010, accessed online at <http://www.hollywoodreporter.com/news/how-rob-reiner-became-anti-26362>; Becker, *Forcing the Spring*, 51; Frank, *Awakening*, 336.

marriage, but to the extent that the Prop 8 legal challenge helped to discredit the case against marriage equality, it represents another vector of impact for which philanthropy can claim some responsibility in the campaign.

When, in 2012, Griffin was appointed head of Human Rights Campaign, the lines between AFER's outsider and insider status within the movement blurred even more; AFER's war room was housed within HRC headquarters. As the Prop 8 and DOMA challenges made their way through the courts, a shared effort to score enough state-level victories to signal to the courts that the public was prepared for a pro-marriage equality decision also encouraged the coalescence of philanthropic investments on behalf of marriage equality into a more unified nationwide campaign.⁴⁷

The push to secure marriage equality in New York state provided an early test for a newly energized and sophisticated state-level approach and highlights the importance of philanthropy within these increasingly costly campaigns. It combined intensive grassroots mobilizing, coordination of local activist groups from FtM and of legislative outreach by the Gill Action Fund, significant commitment of manpower and financial resources from national groups like HRC, the active engagement of a sympathetic governor, and the support of major individual donors. In 2009, the state legislature failed to pass a marriage equality bill, and two years later, when Gov. Andrew Cuomo came to office, he made clear he considered marriage equality to be a major priority. With the active engagement of Cuomo's senior staff, FtM partnered with a number of national and state-based advocacy groups (including the Empire State Pride Foundation, to which CMC had given nearly \$1.3 million) and pushed these groups to sign a joint memorandum of understanding mandating that they would coordinate their efforts under the aegis of a new organization, New Yorkers United for Marriage (NYUFM). The group hired top-shelf communications and media consultants and worked closely with the Gill Action Fund to identify lawmakers to target. FtM (with help from Cuomo's administration) also successfully courted hedge-fund billionaire Paul Singer, who quietly helped convince other Wall Street donors to support the campaign and tapped GOP consultant Ken Mehlman (who would soon come out publicly as gay), to recruit key Republican state lawmakers as well.

Cuomo's staff pushed the importance of securing television ads in one of the priciest markets in the country, while NYUFM leadership insisted on the need for intensive, targeted field-work. Over-all, it would prove an extremely expensive campaign, requiring raising more than \$1.8 million. Activists were ultimately able to do so, and in June 2011, the state legislature passed the Marriage Equality Act, doubling the share of the American population living in states that supported marriage equality and gaining tremendous media coverage for the cause. Anecdotal evidence supplied in FtM accounts of the campaign suggest that the retail, grass-roots push was crucial in securing votes; several senators explained that they had switched their votes to support marriage equality because they had heard from so many of their constituents who supported the cause. Given the past failures in the state to secure marriage equality, and the sophisticated and expensive campaign put in place as a response to those disappointments, it seems very likely that those interventions, which required significant

⁴⁷ Becker, *Forcing the Spring*, 231, 361; Frank, *Awakening*, 231.

philanthropic investment, did prove decisive, or at least played a major role, alongside broader cultural forces.⁴⁸

2012 State-level Ballot Initiative Victories

In 2012 the movement's new research orientation demonstrated its worth even more conclusively. In November of that year, marriage equality appeared on the ballot in four states—in Maine, Maryland, Minnesota and Washington. Over the past decade and a half, and in over thirty states, when marriage equality had been put before voters, the cause had lost. “The only poll that counts is the vote, and we’ve never lost the vote,” Brian Brown, president of the National Organization of Marriage, an organization opposing same-sex marriage, told the *Atlantic* in August of that year. The November contests presented an opportunity for marriage equality forces to demonstrate that the tide had turned. Polling seemed to confirm as much; for the first time, in August 2010, a national tracking poll found majority support for marriage equality (before, it should be noted, the widespread public education and advocacy push using the new messaging paradigm). This trend-line complicates, though it does not undermine, the causal narrative in which the messaging reforms developed after Prop 8 with philanthropic funding are assumed to be primarily responsible for the victories in the 2012 initiatives. General public support for marriage equality was on the rise; the new messaging likely tapped into and amplified this more receptive climate and helped channel it toward legislative ends, but did not create it.⁴⁹

Although some funders worried about the movement spreading itself too thin, FtM threw itself into these campaigns, investing more than \$5 million directly into them, and becoming the leading out-of-state funder in Massachusetts, Minnesota and Washington. (Maryland did not meet FtM's benchmarks to trigger financial assistance and so the organization did not provide money or staffing for the advocacy organizations in that state. Human Rights Campaign stepped in and provided funding.) In the process, FtM guaranteed that the state campaigns would massively outraise the initiatives' opponents (nearly \$42 million compared to about \$11 million). FtM advised advocacy organizations in all four states (including in Maryland), which utilized the new messaging research that CMC and FtM had developed. The funding arrived well before the ballot initiatives had officially begun, allowing activists to “set the terms of the debate, and ensure lower rates for air time throughout the campaign.” The early research and data collection conducted in each of the four states allowed activists to tailor messaging to key constituents, such as families with children, communities of color, and people of faith. It also allowed the campaigns to respond to negative ads within minutes with material that had been tested to repel the standard arguments of marriage equality opponents. The campaigns also received significant funding from a corps of major donors, including Facebook co-founder Chris Hughes (whose partner, Sean Eldridge, served as the communications director for Freedom to Marry), John Stryker of the Arcus Foundation (the second-largest contributor to LGBT causes from 1970 to 2010), and New York hedge fund manager Paul Singer, who

⁴⁸ A Civil Marriage Collaborative report cites an evaluation of its funding of the Empire State Pride Foundation, but I have not tracked it down. Proteus Fund, *Hearts & Minds*, 12; Solomon, *Winning Marriage*, 194-220 (esp. p. 198).

⁴⁹ Freedom to Marry, “Winning the Freedom to Marry Nationwide”; Ball, “The Marriage Plot.”

contributed \$1 million and also recruited additional Wall Street donors. Amazon founder Jeff Bezos contributed \$2.5 million to the campaign in Washington.⁵⁰

The marriage equality campaign won in all four state ballot initiatives. Although the victories were achieved by relatively close margins, 2012 often serves as a narrative pivot in many accounts of the campaign in which the momentum clearly shifts and marriage equality comes to take on an air of inevitability. For this reason, nearly all of the accounts of philanthropy's role in the campaign focus on these initiatives and on how philanthropic funding helped to secure the decisive victories.

The CMC itself attempted to determine how much credit they could claim, commissioning an evaluation, with support from the Ford Foundation, that sought to assess "whether and how funding for non-lobbying public education, typically a c3 activity, affected the debate on marriage equality in the four states in question, including the eventual ability of the independent state campaigns to persuade voters, a c4 activity, on a ballot initiative for marriage equality."⁵¹

The evaluation, which relied largely on qualitative analysis, acknowledged that there were "limits to what we could conclude about the 2012 c3 funding in the context of a state moving towards marriage equality...[T]he c3 strategies employed by the states were comingled with and impacted in the public space by current events, from in-state political factors to larger national influences. There is also the challenge of a dearth of real data — baseline polling in particular — from some of the target communities where significant c3 investments were made. While contributions of public education funding are clear, assigning direct attribution is far less achievable."⁵²

Ultimately, however, despite these caveats, the CMC-sponsored evaluation found "*strong and encouraging indicators of impact, efficacy and the contributions of c3 funding*" in all four states. The evaluation cited Maine as the state in which "good polling coupled with clearly defined public education campaigns" allowed the evaluators to draw the strongest causal relationship between c3 funding and changes in attitudes toward marriage equality and thus to demonstrate the strongest claims for philanthropic causal agency. CMC channeled \$1.6 million into the state (FtM contributed \$1.3 million and helped raise an additional \$1.3 million). A local philanthropist, Donald Sussman, added \$1.1 million more, the Gill Foundation contributed \$250,000, and anonymous donors added another \$450,000. The evaluation specifically cited the role played by Sussman. An early financial commitment from this local funder "caused national groups and funders to take Maine seriously much sooner in the arc of the effort to

⁵⁰ Frank, *Awakening*, 237; Becker, *Forcing the Spring*, 327; Solomon, *Winning Marriage*, 237-246; Freedom to Marry, "Winning the Freedom to Marry Nationwide"; Proteus Fund, *Hearts & Minds*, 12-13; Funders for LGBTQ Issues, "Forty Years of LGBTQ Philanthropy," 20; Ball, "Marriage Plot."

⁵¹ Rebecca Rittgers, "Advancing Marriage Equality in 2012: The Impact and Efficacy of Public Education Funding" Civic Marriage Collaborative, September 2013, accessed online at <http://files.ctctcdn.com/7d4cc276001/ceed19bb-1170-4301-8bb6-8a339e41497d.pdf>.

⁵² Rittgers, "Advancing Marriage Equality in 2012."

advance marriage equality. It was clear by the end of 2010 that there would be a “game” in Maine, and groups wanted to be part of it.”⁵³

Much of this philanthropic support was given before the official ballot campaign started; nearly half of CMC’s funding in Maine supported work in 2010 and early 2011. According to the evaluation, this early funding allowed the major grantees, GLAD and Equality Maine, to evaluate and develop new strategies. “During this time period, early c3 resources allowed advocates to do extensive qualitative messaging research and field-testing. In partnership with Freedom to Marry and Basic Rights Oregon, WMMM [Why Marriage Matters Maine] conducted focus groups, online video tests and field-testing that incorporated messaging from a number of research sources, including the Movement Advancement Project, Grove Insight, and the Arcus Foundation. This comparative research allowed advocates to narrow in on universal themes and responses to opposition attacks. It also laid out the foundation for how advocates engaged specific demographic groups within the state.” The evaluators also noted that c3 and c4 organizations in the state worked well together, and that there was an especially well-executed handoff between public education and ballot advocacy.

Since from 2010 to early 2012 work in Maine advancing marriage equality was done exclusively with c3 dollars, before organizing efforts around the ballot began, the evaluators concluded it “was possible to align public education efforts in Maine with actual polling numbers and shifts in those numbers.” In November 2009, only 47% of those surveyed supported marriage equality on a ballot initiative. “*After a year and a half of intense c3 organizing, communications and fieldwork, polling in June 2011 revealed that support for the freedom to marry rose by six percentage points.*” Support for marriage equality stayed at around 53% till the November vote. This polling data represents some of the strongest evidence for the impact claims of philanthropy in the marriage equality campaign, although as the initial caveat acknowledged, it does not fully address the question of how exogenous forces (such as broader cultural and social trends) might have affected those results.⁵⁴

Obama’s Support and the DOMA And Prop 8 Rulings: Marriage Equality on the National Stage

A month after these state electoral victories, the focus shifted to the national stage, when the Supreme Court agreed to hear the challenge to DOMA and AFER’s challenge to Prop 8. The announcement only intensified the drive to achieve more state-level wins in order to convince the court that the public was ready for a decisive validation of marriage equality. The leaders of the major advocacy organizations involved in the legal battles sponsored a \$2 million coordinated media campaign, whose aim was to create an air of inevitability behind the movement, to convince the justices that ruling for marriage equality would “put them on the

⁵³ Rittgers, “Advancing Marriage Equality in 2012”; Freedom to Marry press release, November 6, 2012, accessed online at <http://www.freedomtomarry.org/blog/entry/victory-in-maine-weve-made-history-by-winning-marriage-at-the-ballot>.

⁵⁴ The evaluation determined that the public education campaign in Washington State, which cost a bit under \$1.5 million, also successfully pushed public opinion. “*Through its analysis of polling and data, WUFM was able to establish that its public education media work contributed to a one to three percentage increase in support for marriage equality statewide.*” Since the margin of victory in the initiative was more than 7 points, however, it is not clear how decisive a role the media campaign played. Rittgers, “Advancing Marriage Equality in 2012.”

right side of history without creating a backlash,” as journalist Jo Becker noted. Advocates also made a concerted effort to recruit high-profile converts to the cause, including Red-state Democrats and a few Republicans.⁵⁵

By far the most significant public recruit, President Obama, was brought on board in a way that highlights the convergence of the varying streams of philanthropic support for the movement. In his first years in office, Obama’s reluctance to endorse gay marriage had frustrated the LGBT community. The White House appreciated that a significant gap was opening between the president and much of his base on the issue; the division became especially pronounced after the Administration defended DOMA in a 2009 federal suit. LGBT advocacy organizations began an intensive lobbying campaign. Freedom to Marry assumed a major role in the effort (one of the organization’s key staffers, Sean Eldridge, husband of Facebook co-founder and major Democratic donor Chris Hughes, had important White House contacts that proved valuable). Evan Wolfson met frequently with senior members of the administration to garner their support. At the same time, FtM pushed the Democratic Party to add a marriage equality plank to the party platform for the 2012 National Convention. The organization also had a hand in convincing the Justice Department to announce, in February 2011, that it considered DOMA unconstitutional and would no longer defend it in federal court (I have not been able to determinate how causally significant FtM’s contributions were in this case).⁵⁶

On May 6, 2012, shortly after attending an AFER event at which he seemed to reply to an impassioned question from Chad Griffin regarding his position on marriage equality with an unscripted affirmation of support, vice president Joe Biden announced on *Meet the Press* that he was “perfectly comfortable” with gay marriage. Although the counter-factual is impossible to prove conclusively, it seems likely that Biden would not have issued this public support without AFER’s prodding (Biden has a reputation for speaking off-the-cuff and I’ve seen no reporting that suggests he was planning a formal announcement). Biden’s statement placed even more pressure on the White House and, with considerable coaching from Wolfson on framing, three days later Obama announced his own support for marriage equality, using many of the themes that had emerged from FtM research as the most effective in promoting support for the cause. Obama made it clear how his own positions had developed over time and emphasized the importance of fairness and the support due to loving relationships. The president soon became a leading champion of gay marriage and campaigned for the issue in the states in which it was on the ballot in November. Soon after Obama made his public endorsement, the NAACP offered its backing as well. Obama (as well as the NAACP) was likely key in rallying African-American support to the cause, which might have provided the decisive margins for the tight victory in Maryland. As the *Atlantic* noted, “Polls showed support for same-sex marriage among black voters moving as much as 10 points virtually overnight, from the low- to mid-30s to the mid-40s.” According to Nathaniel Frank, in exit polls from the November elections, 52 percent of African American and Latino voters surveyed supported same-sex marriage, “a massive increase from just two years earlier, when a mere 30 percent of African Americans and 41 percent of Latinos backed marriage equality.” Philanthropy, which

⁵⁵ Solomon, *Winning Marriage*, 333; Becker, *Forcing the Spring*, 362.

⁵⁶ Freedom to Marry, “Winning the Freedom to Marry Nationwide”; Solomon, *Winning Marriage*, 267-300.

funded the key advocacy organizations pushing same-sex marriage, had a hand in those increases, although public pressure on the White House also came from individuals acting in their private capacity. At the very least, it seems undeniable that these advocacy groups pushed Obama to move faster on gay marriage than he otherwise might have done and allowed the dividends of his “conversion” to be applied to the 2012 elections.⁵⁷

2013 brought a series of additional state-level victories, all coming at the end of intensive (and expensive) grassroots campaigns. Democratic governors in Rhode Island, Delaware, and Minnesota signed pro-marriage equality laws, bringing the number of states that allowed same-sex marriage to 12, representing 18 percent of the total U.S. population. Polls continued to suggest that more than a majority of Americans supported same-sex marriage; in the weeks before the Court actually released its decision on marriage equality, support for it was at an all-time high. As Nathaniel Frank points out, this meant that more Americans supported marriage equality than had supported interracial marriage when the Supreme Court had struck down bans on it in 1967, though considerably fewer states had passed laws allowing same-sex marriage than had permitted interracial marriage. So though support was trending in a positive direction, there was still some ambiguity as to how widespread that support should be considered. Given that ambiguity, many commentators speculated that the Supreme Court would seek a middle-ground position.⁵⁸

These prognostications proved correct. In June 2013, the Supreme Court issued its decisions. It ruled that the challengers to the trial ruling that had struck down Prop 8 did not in fact have standing to do so, meaning that the state’s overturning of Prop 8 stood. Although the ruling did not extend beyond California (and did not establish a federal right to same-sex marriage) and was therefore something of a disappointment to the ambitions of the AFER team, by restoring marriage equality to the state, it vastly expanded the proportion of American citizens who could claim those rights. Most consequentially, the court, by a 5-4 ruling, also struck down sections of DOMA restricting federal interpretation of the term “marriage” and “spouse” to opposite-sex couples. *United States v. Windsor* had actually sought a relatively circumscribed remedy, seeking only that the federal government recognize same-sex couples in the nine states in which same-sex marriage had already been made legal. In other words, unlike the Prop 8 challenge, it did not demand a national resolution.

But the *Windsor* decision did indeed have an enormous nationwide impact. The majority opinion, written by Justice Kennedy, echoed the themes that had been central to the marriage-equality campaign since its strategic reorientation, emphasizing the significance of marriage as an expression and guarantor of human dignity—not just a formal conveyor of legal rights and privileges—and noting the emotional injuries inflicted on gay couples denied the right to wed. To the extent that philanthropy assisted in supporting the development and dissemination of these themes, its role in shaping the decision represents another of its chief claims to impact. Kennedy also referenced the number of states that had recently determined that same-sex couples had the right to marry and stated that they provided the “background” against which the legality of DOMA must be considered. It’s impossible to determine to what extent such

⁵⁷ Frank, *Awakening*, 284 (quote); Ball, “The Marriage Plot”; Freedom to Marry, “Winning the Freedom to Marry Nationwide.”

⁵⁸ Frank, *Awakening*, 297-298; Becker, *Forcing the Spring*, 376.

developments actively shaped Kennedy’s reasoning, but since philanthropy can claim some responsibility for achieving those state-level victories, it might assert another line of impact on the *Windsor* decision.

Jo Becker, in her account of the Prop 8 challenge, also emphasizes that the AFER campaign (and by extension, its philanthropic backers) must be given some share of the credit for *Windsor*—that the two decisions in a sense formed a single whole that allowed a “negotiated outcome.” Not only did Justice Kennedy adapt in his *Windsor* majority opinion many of the themes that Ted Olson had developed in his arguments to the court during the hearing over Prop 8. But, as Becker argues, dismissing the Prop 8 challenge on standing grounds while rejecting parts of DOMA allowed the majority justices to postpone a 50-state ruling on whether gays and lesbians had a right to marry, without being “seen as moving the country backwards by denying a right polls now showed most American supported.” Robbie Kaplan, who represented Edie Windsor, entertained the key counter-factual: “had the Prop 8 case not been there, maybe they would not have ruled so expansively in the *Windsor* case, because clearly they were trying to send a signal on the larger question.” This counter-factual requires further analysis in order to fully adjudicate the relative weight we should give to the contributions of the various philanthropic agents in the marriage equality campaign.⁵⁹

In any case, the *Windsor* decision, in the words of Nathaniel Frank, “made imminent the end of legal marriage discrimination in the United States.” In fact, in his dissenting opinion, Justice Scalia noted that even though Kennedy’s decision did not explicitly rule on whether state bans on same-sex marriage violated the constitution, it would lay the groundwork for challenges to those bans nationwide. And in fact, in the first month after the *Windsor* ruling, “gay and lesbian couples filed at least half a dozen new lawsuits in both federal and state courts challenging marriage discrimination in Pennsylvania, Arkansas, Louisiana, Virginia, Ohio, and Kentucky.” A few months after that, every existing gay marriage ban in the nation faced a legal challenge. Much of the funding for these challenges, as well as legal representation, came from the leading advocacy organizations such as the ACLU, GLAD, Lambda Legal and the National Center for Lesbian Rights.

The movement’s momentum picked up sharply, suggesting that a new political dynamic now presided. Victories did not produce backlash that set the movement back, but more victories, which in turn placed greater pressure on those states which banned same-sex marriage, and more strain on the multiple legal categorizations of gay relationships short of marriage, such as domestic partnerships and civil unions. By the end of 2013, more than 40 suits were pending in 20 states, a surge of judicial activism which became known as the “Windsor Effect.” Among them was a case from Ohio. Soon after the *Windsor* decision, Jim Obergefell and his partner, who suffered from ALS, had traveled to Maryland to get married. Ohio refused to recognize their marriage (so that Obergefell would not have appeared as surviving spouse on his husband’s death certificate) and the couple sued. A district judge ruled

⁵⁹ United States v. Windsor, 570 U.S. ___ (2013); Becker, *Forcing the Spring*, 419 (quote), 420-421; Solomon, *Winning Marriage*, 319.

in their favor, stating that *Windsor* required states to recognize other states' same-sex marriages. This case, like many others, worked its way through the system.⁶⁰

Throughout 2013, the movement won a string of victories; in high courts in New Jersey and New Mexico, and in state legislatures in Illinois and, especially consequential given the movement's origins, in Hawaii, where the campaign had long stalled. In December, in Utah, a state that did not boast an especially strong grass-roots movement, a federal judge struck down an anti-marriage constitution amendment, citing Scalia's comments in *Windsor*, suggesting the power of the nationwide wave that was cresting, as well as the persistence of a small corps of local activists. The momentum picked up in the new year. In May, a state judge struck down the state's same-sex ban in Arkansas; same-sex couples there soon after became the first in the American South to marry legally. In one week in October, sixteen additional states secured marriage equality, from Alaska to Nevada, Kansas to South Carolina.⁶¹

The favorable rulings continued throughout 2014—in Oklahoma, Virginia, Texas; in several of these states, the cases were initially brought with the help of relatively small firms doing *pro bono* work. Their involvement was key—and little noted in accounts of philanthropy's role in the overall campaign. The string of victories allowed the Supreme Court to refrain from weighing in on the issue. But in November, the 6th Circuit ruled against marriage equality, setting up a court split which the Supreme Court would need to address. The following January, it agreed to hear six lawsuits consolidated into one case, *Obergefell v. Hodges*, with oral arguments set for April. "The case felt like a perfect summation of the decades-long journey to this moment," Freedom to Marry noted in its account of the victory. "Each of the four national LGBT legal organizations – ACLU, GLAD, Lambda Legal, and NCLR – was involved in at least one of the cases, alongside private attorneys and law firms."⁶²

At that point, 37 states granted marriage equality—Alabama joining the roster just a few months before oral arguments on *Obergefell v. Hodges*, in April 2015. The momentum was clear on marriage equality's side, and, as Nathaniel Frank notes, it seemed even disproportionate to the polling numbers, which though showed majority support, did not show considerably more support than causes such as gun control that hadn't witnessed such rapid advances. On June 26, 2015, the Court announced its decision, a 5-4 ruling written by Justice Anthony Kennedy that affirmed that the Constitution guarantees gay people the freedom to marry. The decision itself reflected much of the messaging that the campaign had promoted over the last years, including an emphasis on the historical evolution of American traditions, and cited the multiple grassroots campaigns and the numerous cases that had reached the Courts of Appeals in recent years to push back against the argument that the court should let a longer process of national deliberation play out. The brick-by-brick incrementalist approach, notes Frank, "seemed critical to Kennedy's ability to surmount his own concern about moving too quickly and short-circuiting the democratic process." This was an approach that drew key

⁶⁰ Frank, *Awakening*, 303, 309-313; Solomon, *Winning Marriage*, 339; Freedom to Marry, "Winning the Freedom to Marry Nationwide."

⁶¹ Solomon, *Winning Marriage*, 31; Frank, *Awakening*, 306-309; Freedom to Marry, "Winning the Freedom to Marry Nationwide."

⁶² Frank, *Awakening*, 314-317; Freedom to Marry, "Winning the Freedom to Marry Nationwide."

sustenance from a range of major donors. If “Love won,” as Evan Wolfson explained in a *New York Times* op-ed, one could say that the victory was progressive philanthropy’s as well.⁶³

MAJOR THEMES and ANALYTIC CHALLENGES

In the concluding section, I will briefly highlight a few of the major themes associated with philanthropy’s contributions to securing marriage equality in the U.S. that are most forcefully reflected in this literature review, as well as some of the main analytic challenges I confronted in assessing the extent and nature of those contributions.

1) Interplay of Key Dichotomies: National vs. Local Actors, Outsiders vs. Insiders

There are several key dichotomies that shaped the nationwide marriage equality campaign. First, there was the relationship between national and state-level (or local) organizations. The campaign ultimately depended on the accretion of state-level victories, often supported by state- and locally-focused funders, such as Donald Sussman in Maine or Fred Eychaner in Illinois. But its progress also depended on key advances in the coordination of these state campaigns, orchestrated by nationwide organizations, chiefly Freedom to Marry, as well as by funders with a nationwide focus, like the Haas Fund and the Gill Foundation, and the work of national LGBT legal and advocacy organizations. State-level victories smoothed the way for a nationwide challenge to DOMA, but the publicity generated by the national campaigns went on to benefit the state-level ones as well. This intertwined yet tiered jurisdictional system is not unique to the marriage equality movement, but it was an especially pronounced characteristic of its development, and an evaluation of the role of philanthropy within it has to attend to both the state-level and the national organizational dynamics, as well as to the relationship between them.⁶⁴

Complicating this relationship is another between coordinated and uncoordinated interventions. As mentioned above, activists often pointed to the coordination provided by FtM and the Civil Marriage Collaborative as key to providing momentum to the campaign. And yet that momentum was also sustained throughout the campaign by the work of “accidental activists”—to use Nathaniel Frank’s phrase describing the Hawaiian couples who initially challenged their state’s same-sex marriage ban. Unlike the establishment umbrella organizations, who attracted considerable philanthropic attention, these accidental activists often did not have strong ties to the national advocacy organizations and had to rely on small donations from the local community.⁶⁵

Finally, on top of these two dichotomies is another between movement insiders and outsiders. These terms, though frequently invoked in many of the accounts of the marriage equality campaign, are rarely strictly defined. “Insiders” often refer to the leading national LGBT rights organizations that over the last few decades received the bulk of funding from other

⁶³ Frank, *Awakening*, 342-343, 353; Evan Wolfson, “What’s Next in the Fight for Gay Equality,” *New York Times*, June 26, 2015.

⁶⁴ Solomon, *Winning Marriage*, xx; Frank, *Awakening*, 251.

⁶⁵ Frank, *Awakening*, 98.

organizations and that tended to follow a cautious, pragmatic course of action. Outsiders had less access to the main sources of funding and were more willing to take riskier approaches.

Somewhat paradoxically, private funding of insider groups rarely appears in accounts of philanthropy's role in the marriage equality campaign. As Nathaniel Frank makes clear in his own narrative, even if the initial reluctance of "insider" groups like HRC and the ACLU to take on the cause of nationwide marriage equality provided the space for "outsiders" to move into, those insider groups did important work in terms of shaping the general attitudes toward LGBT rights, and in joining the fight toward nationwide marriage equality once it had begun. This means that an account of philanthropy's role in securing nationwide marriage equality must also consider the extent to which funders supported the major LGBT-rights organizations (Lambda Legal, HRC, ACLU), even before or independent of the initiation of a nationwide marriage equality campaign. Here it's worth mentioning again the 2006 bequest from Ric Weiland, which ultimately channeled more than \$67 million to the major establishment LGBT rights groups, including \$1.4 million each year to Lambda Legal through the Pride Foundation. The relationship between movement insiders and outsiders, and the ways in which the boundaries between those categories blurred as the campaign gained momentum, is one of its more striking elements. In many respects, Freedom to Marry straddled the divide between insiders and outsiders, and Frank argues that the Gill Foundation did so as well, since it funded both the national advocacy organizations as well as smaller, state-focused campaigns. Both the Prop 8 and DOMA challenges that made it to the Supreme Court and produced the *Windsor* ruling were instigated by private lawyers, whose initial requests to partner with the national advocacy organizations had been turned down. And in three of the four states whose cases were consolidated into *Obergefell*, the lawsuits were initially led by private attorneys. Yet in all these cases, outsider legal challengers were incorporated into a unified campaign, alongside insiders. As Frank writes, the brick-by-brick approach, in which state-based victories accumulated to create the momentum and critical mass that would propel a national-level victory, "grew out of the interplay between movement outsiders...and LGBTQ movement professionals." Philanthropy's role in cementing that alliance is an important theme that merits further exploration.⁶⁶

2) Relationship of Broader Shifts in Public Opinion to Philanthropically Funded Advocacy

Nearly every account of the achievement of nationwide marriage equality notes the astounding shift in public opinion over the last several decades on both homosexuality in general and gay marriage in particular. As Nathaniel Frank writes, "Moral approval of homosexuality mushroomed in tandem with support for same-sex marriage. Between 1985 and 2015, the percentage of Americans who believed same-sex relations were 'morally acceptable,' after remaining unchanged for more than a decade, tripled, jumping from 21 percent to 63 percent. Over roughly the same period, national support for same-sex marriage closely tracked those numbers." The rise in public support for marriage equality was especially steep in the half decade before *Obergefell*. Jo Becker cites Alex Lundy, a Republican political consultant who served as director of data science for Mitt Romney's 2012 presidential campaign, who stated

⁶⁶ Frank, *Awakening*, 222, 252, 335, 337-338.

that it represented “the most significant, fastest shift in public opinion that we’ve seen in modern American politics.”⁶⁷

Those changes in public opinion must be understood as both cause and effect in relation to the marriage equality campaign; that is, the campaign can claim some degree of responsibility for precipitating that shift (especially its final kick), but the shift was also clearly the product of broader transformations in social, cultural, political and religious values and norms, which had been brewing for several decades. These shifts in turn were both reflected and amplified by certain key cultural arbiters, which in many conventional narratives were prominently featured as causal actors in their own right; for instance, in his 2012 *Meet the Press* interview in which he first came out in support of gay marriage, vice president Joe Biden claimed that “‘Will & Grace’ probably did more to educate the American public than almost anything anybody has ever done so far.”⁶⁸

As Biden’s comment suggests, a focus on broader cultural attitudinal transformations, or on the cultural agents of those changes, can overshadow the contributions of movement activists—*Glee* eclipsing Gill. But there is also evidence that suggests that philanthropy-funded advocacy and activism played a significant role (though its extent is difficult to determine with precision) in effecting those transformations. Research from the Williams Institute, a think tank on LGBTQ issues at UCLA Law School shows that states that legalized same-sex marriage saw the highest rates of growth in public support for it and the largest drops in anti-gay sentiment. Additionally, the polling research marriage equality campaigns conducted showed that at least half of the shift in support for the cause came from individuals changing their minds, and not just from the demographic rise of a younger, more tolerant generation. As Nathaniel Frank concludes, “These data suggest that the years of opinion research, groundwork, political advocacy, and litigation on behalf of same-sex marriage truly created changes in attitudes and beliefs.”⁶⁹

The relationship between the shifts in opinion toward marriage equality produced by the marriage equality advocacy campaign and those produced by broader cultural forces is unresolved in much of the literature and could be the subject of future inquiry to more precisely determine philanthropy’s contribution.

3) The importance of personally-engaged living donors and interpersonal interactions within the marriage equality campaign

⁶⁷ Frank, *Awakening*, 358; Becker, *Forcing the Spring*, 323.

⁶⁸ In fact, research on “parasocial contact” has suggested that encountering gay characters on television could decrease the homophobia of individuals who did not have much real-world contact with gays. Jane Borden, “‘Will & Grace’ reduced homophobia, but can it still have an impact today?” *Washington Post*, September 15, 2017. Solomon, *Winning Marriage*, 292; Becker, *Forcing the Spring*, 281.

⁶⁹ The Williams Institute was itself a product of philanthropy, founded in 2001 by Chuck Williams with a \$2.5 million donation, at the time the largest donation ever given to an academic institution in support of a gay or lesbian academic program. Its research was heavily cited by Judge Vaughn Walker in the initial Prop 8 challenge in US District Court. David Callahan, *The Givers: Wealth, Power, and Philanthropy in a New Gilded Age* (New York: Vintage Books, 2016), 146-147. Frank, *Awakening*, 359.

If the marriage equality campaign benefited from sweeping, long-term cultural trends that reshaped attitudes toward love, marriage, gender, and the state, it is also the case that it relied on small-scale, interpersonal, and intimate interactions as well. According to Frank, the most common reason individuals cited during the campaign in explaining why they changed their opinions on gay marriage was coming to know a gay person. Many of these encounters likely occurred informally—that is, outside the bounds of an official advocacy campaign. Indeed, the literature on marriage equality often situates it within the broader context of the increased visibility of gay relationships in the final decades of the 20th century and of the willingness of gay men and women to “come out of the shadows” and to demand that their relationships be treated with respect. Following the announcement of the *Obergefell* decision, President Obama, for instance, attributed the victory to “countless small acts of courage of millions of people across decades who stood up” and “came out.” Tim Gill himself, the largest funder of advocacy efforts toward marriage equality, has emphasized the other forces that amplified those efforts, “the most important...by far” the growing number of LGBT people who started coming out to friends and family.⁷⁰

The grassroots marriage equality campaign formalized encounters between voters and policy-makers and gay men and women and directed them to strategic effect. Marc Solomon, in his account of the securing of marriage equality in Massachusetts, for instance, argued that legislators were most powerfully swayed by getting to know gay constituents, many of whom contacted their representatives as part of the philanthropically-funded advocacy campaigns. Yet, of course, many of these encounters might have also occurred outside the official campaign. The difficulty of determining the causal weight behind the formally orchestrated personal interactions (which required funding to sustain), and those that developed informally, is another factor complicating the determination of philanthropy’s contributions to the marriage equality campaign.⁷¹

The marriage equality campaign was also distinguished in another way by its intensely personal nature: the prominent involvement of gay living donors (or donors with close relatives who were LGBT). The prominence of these donors marked the maturation of the campaign; in its early years, legacy foundations—Ford and Haas, most prominently—dominated the scene. But the conservative backlash to some of the campaign’s early successes precipitated the active engagement and substantial financial commitments of a corps of living donors, such as John Stryker, Tim Gill, Jonathan Lewis, and James Hormel. Because gay identity cuts across the boundaries of class and partisanship that often segment advocacy campaigns, the group of active donors was a notably bipartisan one. Five of the 25 donors who gave more than \$100,000 to Freedom to Marry were Republicans (and they contributed close to \$5 million combined). More generally, the deeply personal nature of the commitment to marriage equality allowed the campaign call upon local funders in many of the state-based campaigns.⁷²

Donors contributed not merely financial resources but strategic expertise and connections. Wall Street investor Paul Singer, whose gay son married his partner in Massachusetts, is a Republican with strong ties to the finance world and who helped recruit

⁷⁰ Frank, *Awakening*, 355, 359; Callahan, “No One Left Behind.”

⁷¹ Solomon, *Winning Marriage*, 118-134.

⁷² Freedom to Marry, “Raising the Funds Needed to Fuel the Movement.”

other Wall Street funders (such as Daniel Loeb) and Republicans to support New York's marriage equality campaign. Ken Mehlman, who had served as chairman of the Republican National Committee and oversaw George W. Bush's 2004 re-election campaign, came out as gay in 2010 and served as a crucial liaison to Republicans for the marriage equality campaign. Sean Eldridge, who served as communication director for Freedom to Marry, was able to gain access to Barack Obama's inner circle and help mold strategy toward the president's public support for marriage equality in part through the clout of Eldridge's husband, Facebook co-founder Chris Hughes (who had played a prominent role on Obama's campaign team).

These powerful, wealthy, personally implicated, and actively engaged donors were a major asset to the campaign. "The movement, by and large," notes one researcher at the National Committee for Responsive Philanthropy, "has been led by the least marginalized representatives of the LGBTQ community: white, well-educated, cisgender men. Their privilege has redounded to the movement's benefit." It's possible that the prominence of such privileged living donors is an exceptional characteristic of the marriage equality campaign that would complicate efforts to apply its lessons to other campaigns to expand rights.⁷³

Finally, yet another significant dynamic associated with the prominence of engaged living donors, one that complicates a consideration of the impact of philanthropy (strictly defined) on the marriage equality campaign, was the intertwining of philanthropic and political giving within the marriage equality campaign.

The most obvious example here is Tim Gill (John Stryker is another). Alongside the Gill Foundation, which gave more than \$300 million toward the marriage equality campaign, he also established the Gill Action Fund, a 501(c)(4) organization which sought to elect legislators that would support gay marriage and defeat those who failed to do so. Through the Action Fund, for instance, Gill spent \$1 million in a successful effort to flip the New York senate in 2008 to Democratic control. When several Democrats ended up opposing pro-marriage equality legislation in 2009, leading to its defeat, the Fund targeted legislators who voted against the bill, and, working closely with the Cuomo administration, secured its passage in 2011. Through the OutGiving conference that Gill organized, he also bolstered a network of other donors committed LGBTQ issues. OutGiving "host[ed] a political program during election years to bundle donations for campaigns and ballot measures hand-picked by Gill Action," largely directed to state-level races. Because such political giving was so often undertaken in close partnership with private philanthropy, it is difficult to isolate the contributions of one from the other.⁷⁴

⁷³ Ryan Schlegel, "What Can Philanthropy Learn From the Movement For Marriage Equality," July 30, 2015, accessed online at <https://www.ncrp.org/2015/07/lessons-for-philanthropy-from-the-obergefell-v-hodges-victory.html>.

⁷⁴ It's worth noting the important role played by certain "champion" governors in pushing marriage equality. In its evaluation of its funding in light of the 2012 ballot victories, the Civil Marriage Collaborative highlighted this. "All analysis of the efficacy of the campaigns conducted by HRC, Freedom to Marry, and the LGBT community in November's ballot victory must be considered in the light of the extraordinary role played by Governor Martin O'Malley," the report noted. "It was his pollsters that refined the messages that worked for target constituencies, and his chief strategist that backstopped the campaign's organizing and mobilization strategies. It was his patronage that brought out the Democratic Party machine to mobilize the vote for marriage and his chief fundraiser (and his own solicitations) that brought in significant resources during the final months of the

4) Philanthropy's response to backlash and failure

Looking back on the marriage equality campaign, the setbacks often appear as prominent as the victories. Defeat could produce contradictory reactions among activists. On the one hand, the campaign seems to have been characterized by a dialectic between bursts of progress and the backlash that they engendered. This backlash, in turn, often led to a counter-response of mobilization on behalf of the cause, provoked by a sense from LGBT men and women, even those who hadn't considered marriage equality central to their identity, that their fundamental rights and basic dignity were under attack. At a certain point, the force of the backlash lessened, while the force of the counter-mobilization continued to grow. Given this dynamic, some observers have wondered whether the ferocity of the opposition to marriage equality might have actually been a significant contributing factor to the movement's success, drawing attention (and funding) to the issue. "The average American wasn't thinking about LGBT rights," Tim Gill has remarked. "It was because the other side kept bringing it up that it became part of the national conversation." For this reason, philanthropy journalist David Callahan has even joked that Karl Rove should be considered the "unwitting hero" of the marriage equality story.⁷⁵

Yet such a view should not minimize the debilitating effects that electoral losses could have on activists. The dialectic described above depended on the resilience and persistence of the activist and advocacy community, yet those qualities should not be taken for granted. Setbacks might just as easily have produced disillusionment and decisions to pursue other causes; and in fact, after some of the most significant setbacks, such as the 2004 election, some gay rights organizations were prepared to make exactly that sort of strategic retreat.

It is in fostering such resilience that the key philanthropic funders of the movement, the Haas Fund and the Gill Foundation, played one of their most important roles. Several of the accounts of the marriage equality campaign emphasized the significance of the philanthropies' willingness to hold steady after losses as key in maintaining the movement's momentum. As the *Rolling Stone* profile of Gill relates, "Even at the lowest points of the push—for instance, when the New York state Senate unexpectedly voted down a marriage bill in 2009—Gill never flinched. [Bill] Smith, who had run the New York campaign, was nursing a beer in a bar in Albany, filled with dread as he texted Gill about the defeat. Years later, he still remembers Gill's succinct reply: 'That's sad. What's next?'" (Gill and Smith would go on to form the Fight Back New York campaign and unseat three senators who voted against gay marriage in 2009, clearing the way for the passage of the Marriage Equality Act in 2011). Similarly, Marc Solomon notes that after the January 2007 legislative setback in Massachusetts, many of the activists worried that funders would abandon the cause. "Thankfully, we had one donor, Tim Gill, who was in for the long haul, knew that losses were part of any social movement, and had cultivated a community of donors who invested in LGBT equality and looked to Tim for leadership." And Evan Wolfson has also praised the movement's key foundation supporters for embracing a

campaign." Rittgers, "Advancing Marriage Equality in 2012"; Becker, *Forcing the Spring*, 266; Callahan, *Givers*, 185; Kroll, "Quiet Crusader"; Callahan, "The Marriage Equality Hall of Fame."

⁷⁵ Frank, *Awakening*, 9; Callahan, "No One Left Behind."

“lose forward” approach to defeat, which led them to stay with the activists even in the midst of “tough times,” and to push for revisions to strategy or tactics that could move the movement beyond them.⁷⁶

One of the Gill Foundation’s governing principles is “Failure is Good.” This sounds like the standard entrepreneurial celebration of risk-taking that characterizes the philanthropic approach of many former tech figures. But it also suggests the importance of persistence and adaptability in social change philanthropy, values that defined the engagement of Gill and some of the other leading philanthropic supporters of marriage equality.⁷⁷

⁷⁶ Sylvia Yee of the Haas Fund made a similar point when she argued that foundation support allowed marriage equality activists to “fail forward.” See citation to note 40. Kroll, “Quiet Crusader”; Wolfson, “Lessons for Philanthropy From the Marriage Win”; Solomon, *Winning Marriage*, 103.

⁷⁷ Kroll, “Quiet Crusader.”