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TV ad backing gay marriage doesn't mention Prop. 8

Producers say the commercial isn't targeting the ballot measure that would ban same-sex marriage. Foes say it's a way to avoid disclosing donors' names.

By Dan Morain, Los Angeles Times Staff Writer
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SACRAMENTO -- The scene plays out like a bad dream.

A bride is trying to make her way to the altar, but she keeps encountering obstacles. She trips over cans tied to the back of a car; a flower girl tries to block her way; a wedding guest trips her with a cane.

Finally, after the groom is restrained from going to the bride's aid, words come up on the screen: "What if you couldn't marry the person you love?"

The 60-second commercial, which is now airing on cable television statewide, might look like an early salvo in the campaign to defeat Proposition 8, the November ballot initiative that would prevent gays and lesbians from marrying in California. But according to its producers, the television spot is not about getting votes in the election. They say that the nonprofit corporation that put up millions of dollars to air it is simply trying to encourage tolerance of same-sex marriage.

Some experts believe that the ad's producer, Let California Ring, is skirting federal tax law, which restricts political campaigning by nonprofit organizations with tax-exempt status. By using such an entity, backers also avoid a fundamental requirement of state campaign finance law -- public disclosure of donors' identities.

"The ad calls on people to 'support the freedom to marry,' " said Donald B. Tobin, a professor at Ohio State University's Moritz College of Law and an expert on tax and election law. "In the midst of an initiative campaign, this kind of call-to-action advocacy should be seen as lobbying against the current initiative."

Attorney Evan Wolfson of the New York group, Freedom to Marry, and a board member of Let California Ring, disagreed.

"Of course, it has a viewpoint," he said of the commercial. "But it is not a political viewpoint."

The ad, he said, "is untethered to any political moment, election year, political decision or vote. It is all about asking people how they would feel if they or their loved ones couldn't marry who they love."

Consultants running the campaign against Proposition 8 said they had no involvement in the ad.

Let California Ring is a project of the San Francisco-based nonprofit Equality California Institute. Equality California also has a political arm that is helping raise political donations to defeat Proposition 8 on the Nov. 4 ballot. Unlike donations to the nonprofit Equality California Institute, contributions to Equality California's political arm and to the campaign itself are not deductible.

The commercial, which can be seen on the Internet, concludes by referring people to LetCaliforniaRing.org. The site includes a donation button promising donors that their donations are deductible.

"Running a campaign of this size and scope is costing millions of dollars," the site says. "This is our chance to put all our time, hard work and money into changing the climate in California. This is the time to do whatever you can and all you can."

The site makes no mention of Proposition 8, though it contains links to sites of groups that are expressly advocating the initiative's defeat, including Equality California's political arm.

"Absolutely. No question about it," Frank Schubert, who is overseeing the campaign for Proposition 8, said when asked whether the spot is a campaign ad.

"It ain't for wedding gowns," he said. "Of course it is a campaign ad."

But Schubert said his campaign lawyers had reviewed the spot and concluded that it would probably squeak by as legal.

"It is clearly use of a loophole in the law," Schubert said. "Whether it is an effective campaign tool is a different matter. Clearly, they're trying to set a soft message in place to get the electorate ready for the battle that is likely to come."

Wolfson would not say exactly how much the ad was costing, only that it was a "multimillion-dollar" ad buy. The campaign for Proposition 8 estimates that the ad's producers are spending as much as \$4 million to air it in the Los Angeles media market, and \$500,000 in Sacramento and San Diego. Nonprofits such as Equality California Institute are not required to disclose donors' identities, addresses, dates of the donations or the exact amounts of gifts.

Equality California Institute does volunteer some details about donors on its website, though it did not disclose the donor or donors responsible for its largest gift, or provide the exact amount of the check, other than to say it was for \$500,000 or more.

Several of the donors named by the institution as its supporters are also major donors to the campaign against Proposition 8.

Philanthropist and technology entrepreneur David Bohnett said he donated \$500,000 to air the Let California Ring ad and helped fund the group in the past.

"We believe it is completely legal," Bohnett said, noting that the ad, in various forms, has aired since 2006. "The ad helps educate voters so they can make up their own minds," Bohnett said.

Separately, Bohnett has given \$100,000 to defeat Proposition 8.

James C. Hormel, former ambassador to Luxembourg, donated between \$250,000 and \$499,000 to Let California Ring. Hormel has given \$150,000 to fight Proposition 8.

Two organizations that have political action arms -- the National Gay and Lesbian Task Force and Human Rights Campaign -- also have given between \$250,000 and \$499,000 to Equality California Institute. The two groups have spent a combined amount of more than \$500,000 to defeat the initiative.