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Introduction

> [C]oncerns . . . about the preservation of minority rights . . . are particularly pronounced with regard to proposed legislation that targets homosexual rights. On many such matters, the ballot has proved a fertile *battleground* to restrict and repeal protections.
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> – Daniel R. Biggers, *Morality at the Ballot: Direct Democracy and Political Engagement in the United States* (2014, 172, emphasis added)

Q: What did the passage of Michigan's 2004 marriage amendment mean to you?

LINDA: It was totally demoralizing. I spent so much time trying to educate the students, faculty, and staff at my university about how such antigay campaigns give people permission to act out their disapproval. I tried to prepare my work community for the potential bias, harassment, and hate crimes that might and, in fact, did occur. My attempts on campus were first met with skepticism. Then things started to happen.

People were intimidated and assaulted. Knives were pulled, and beer bottles thrown. People were knocked down, including a faculty member and a blind, older, returning student. So the amendment really meant we didn't have the same rights as other people.

My partner Patricia, who has a chronic illness, wasn't included on the health insurance from my job. And the amendment would make getting coverage for her a lot harder. We were concerned about who would make the health care choices if one of us had to go to the hospital.

PATRICIA: The amendment really increased the number of people who helped us because they wanted to, but not because they had to. They made it clear to us, really clear, that they were just being kind.

LINDA: Because of the amendment, I started looking for jobs elsewhere. In January 2005, I began applying at universities in other, more welcoming places. The amendment was the last straw. We were going to leave Michigan.

PATRICIA: Actually, the last straw was Elizabeth.

LINDA: Elizabeth and Jennifer were our friends, because Elizabeth was a professor I knew through the state university system. In June 2005, her car was hit by a drunk driver, and Elizabeth died in the wreck. Then we watched Jennifer, in tremendous grief, suffer further because of the marriage amendment. The coroner's office wouldn't tell Jennifer, who knew something had happened, that her partner had died. Instead, the officials had to wait five hours for Elizabeth's blood relative to drive there from another city. Jennifer couldn't claim the body or have it moved to a funeral home. There was nothing Jennifer could do without Elizabeth's brother being there to sign the papers. And without the brother, Jennifer would've been completely lost. She had no legal rights. She had no control over any decision making.

Elizabeth had been teaching that summer. Generally what happens when somebody dies in the middle of a semester or other teaching period is that their sick time covers the remainder of their salary, and the spouse gets paid the balance. But the university didn't pay Jennifer, because she wasn't legally married to Elizabeth. So she didn't get any income from the salary.

PATRICIA: And Jennifer didn't get Elizabeth's pension, which was hard. Jennifer worked only part-time as a freelance writer and editor.

LINDA: The pension was just lost, and Jennifer was really struggling financially. She couldn't even sue the drunk driver for wrongful death. Under the marriage amendment, Jennifer had no legal standing to do so, even though she had lived with Elizabeth for twenty years.

PATRICIA: So the shock of her partner's death was compounded by being set down and told, over and over again, "You have no protections. You might have thought you had. But you don't."

LINDA: Patricia and I just couldn't imagine ourselves in the same position as Jennifer, if something were to happen to either one of us. It would be awful to be in that helpless place. And my biological family wouldn't be supportive of Patricia, if something were to happen to me. I worried that they would challenge our will under the marriage amendment.

So in July 2005, we decided to move to Canada. A friend of mine at the university was originally from Winnipeg, and had moved back to Canada the year before. The firm where I'm at now is where she worked. They had an opening for a manager. So she called me about it. I applied and got the job in March 2006.

PATRICIA: Bear in mind here that we're talking about Winnipeg. [They laugh. Winnipeg is about sixty-five miles north of the Canada–U.S. border, just above where the states of Minnesota and North Dakota meet.]

LINDA: Not Vancouver, which is much more temperate.

PATRICIA: Winnipeg is really frigid. People told me that it was going to be cold in the winter. But it was actually worse than what they said it would be: −50 degrees.

LINDA: But you know what?

PATRICIA: *It was still better than living in Michigan.*

LINDA: Because it was just the elements in Winnipeg that we had to deal with. You play with them and get cold, and then you do what you need to to warm up. But we could be legally married in Canada, and my company's extended health benefits covered Patricia. There was no condescension or hostility at getting service in the medical or legal communities or anywhere else. Canadians just took for granted that we were a married couple.

This striking story introduces the serious challenges faced by same-sex couples in American states that prohibited *any* legal or political recognition of their relationships. Thus, despite a twenty-year commitment with Elizabeth,[1] Jennifer had no binding right to receive official notice of her partner's death, nor to direct the disposition of Elizabeth's remains or estate, nor to receive employer-sponsored death benefits from her salary or pension, nor to sue the person responsible for Elizabeth's death. Confronted with their friends' tragic experience, Linda, age fifty-two,[2] and Patricia, forty-nine, came to grips with the difficult choice of whether to remain in a state and country that did not support their relationship. In addition, both couples had to rely on the good will of third parties (such as Elizabeth's brother in Jennifer's case, and health care personnel with regard to Linda and Patricia) to achieve kinship goals that married pairs take for granted as legal rights. These motifs and other themes infuse the oral histories that are the empirical foundation of this book, which documents how doors painfully slammed shut on same-sex couples and their families throughout much of the United States in the first decade and a half of the twenty-first century. This volume is the bookend to my 2006 work, *America's Struggle for Same-Sex Marriage*, which chronicled how doors in other parts of the country opened wide to welcome lesbian and gay pairs during the same era.

But before offering further narrative or commentary, some legal and political background is appropriate.

DECLARATIONS OF WAR

Congress

During the first term of the presidency of William Jefferson Clinton, Congress twice declared war, but not on a nation or other foreign entity. Rather, the hostilities were directed at just under 4 percent of the American population (Gates and Newport 2012; Lee 2014). In 1993, Congress passed, and President Clinton signed, the "Don't Ask, Don't Tell" (DADT) policy, which prohibited people who "demonstrate[d] a propensity or intent to engage in homosexual acts" from serving in the Armed Forces of the United States, because their presence "would [have] create[d] an unacceptable risk to the high standards of morale, good order and discipline, and unit cohesion that are the essence of

[1] All first names initially unaccompanied by surnames in this volume are pseudonyms. Since most of the states where the book's narratives take place had no legal protections against sexual-orientation discrimination in employment, housing, and public accommodations at the time this study was published (Eckholm 2015b; Wolfson 2015; cf. Scheiber 2015), I protect the identities of the people whose tales appear here. Indeed, when necessary to conceal information that could be used to identify individuals, I have changed salient facts of stories to shield the privacy of my sources.

[2] Unless otherwise indicated, I report the ages of interviewees at the time I met them.

military capability." During the seventeen years in which DADT was the law of the land, the Pentagon processed involuntary discharges for more than 14,000 service members because they were perceived to be lesbian or gay ("261 DADT Discharges in 2010" 2011).[3]

The other congressional war declaration against homosexual citizens was more consequential than DADT, because this second pronouncement was not limited to people who volunteered to serve in the military. Rather, two main provisions of the federal Defense of Marriage Act (DOMA) of 1996 potentially affected all gay Americans. First, DOMA defined civil marriage for the purposes of federal law as only a union between one man and one woman. Second, the statute authorized states to refuse to recognize civil marriages granted to same-sex couples under the law of other jurisdictions (cf. Liptak 2004).

But the worst was yet to come for queer folk. Because under the American federalist system of dividing powers between the national government and the states, the latter were granted primary authority to regulate domestic relations. Thus, states traditionally have defined the most basic terms and conditions of civil marriage for their citizens, including eligibility to enter and depart the institution. Accordingly, the most consequential proclamations of aggression against lesbian and gay pairs and their children would appear at the state level.

Super-DOMAs

Between 2000 and 2012, voters in twenty American states containing 43 percent of the nation's population ratified amendments to state constitutions banning recognition of all forms of relationship rights (i.e., marriage, civil unions, domestic partnerships, reciprocal benefits, etc.) for same-sex couples: Alabama, Arkansas, Florida, Georgia, Idaho, Kansas, Kentucky, Louisiana, Michigan, Nebraska, North Carolina, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Texas, Utah, Virginia, and Wisconsin.

These state measures were dubbed "Super-DOMAs." The nickname derived from the federal legislation that preceded them. In 2006, for example, 57 percent of Virginia voters authorized this amendment to their state constitution:

> Only a union between one man and one woman may be a marriage valid in or recognized by this Commonwealth and its political subdivisions. This Commonwealth and its political subdivisions shall not create or recognize a legal status for relationships of unmarried individuals that intends to approximate the design, qualities, significance, or effects of marriage. Nor shall this Commonwealth or its political subdivisions create or recognize another union, partnership, or other legal status to which is assigned the rights, benefits, obligations, qualities, or effects of marriage.

[3] As many as 100,000 gay and lesbian service members were discharged between World War II and the repeal of DADT (Philipps 2015). See D'Amico (2000) and Engel (2015) for historical overviews of the adoption and repeal of DADT.

More comprehensive language designed to limit the relationship options of lesbian and gays pairs would be difficult to imagine.[4]

The Virginia provision was far more ambitious than the constitutions of ten other states (Alaska, Arizona, California, Colorado, Mississippi, Missouri, Montana, Nevada, Oregon, and Tennessee) that were amended in the same time period to include "Mini-DOMAs" (i.e., just limiting marriage to one man and one woman and doing nothing more). For instance, California's notorious Proposition 8 of 2008 (which federal courts invalidated in 2013) said, "Only marriage between a man and a woman is valid or recognized in California." This language left intact the comprehensive statutory system of domestic partnerships that granted virtually all of the rights and responsibilities of civil marriage to same-sex couples in the Golden State. Likewise, despite the passage of Measure 36 ("It is the policy of Oregon, and its political subdivisions, that only a marriage between one man and one woman shall be valid or legally recognized as a marriage") in 2004, the Oregon legislature three years later enacted full civil unions for gay and lesbian couples.

Thus, the objectives of Super-DOMAs were substantially greater than those of Mini-DOMAs such as Proposition 8 and Measure 36. Whereas the latter spoke just to marriage and were silent about relationship arrangements such as civil unions, domestic partnerships, and reciprocal benefits, the former aspired to ensure that same-sex pairs could be nothing other than complete legal strangers to one another. In short, the goal of Super-DOMAs was to restrict the word *and all of its attributes* to heterosexual pairs.[5] In contrast, Mini-DOMAs preserved the word "marriage" exclusively for opposite-sex couples, but not necessarily the attributes of civil marriage. Thus, lesbian and gay couples who were in California domestic partnerships or in Oregon civil unions could inherit from each other under state intestacy law, could adopt or sue for custody of or visitation with minor children of the couple, and enjoyed a plethora of other rights comparable to those of civil marriage, regardless of the constitutional Mini-DOMAs. Yet same-sex pairs in Super-DOMA jurisdictions such as Virginia could not benefit from any such attributes of marriage. As a result, the variation in rights between gay-marriage-mecca Massachusetts and Measure-36 Oregon was minuscule compared with the difference between Super-DOMA states such as Virginia and many Mini-DOMA jurisdictions (cf. Conley 2007).

How Super-DOMAs Were Added to State Constitutions

American states typically amend their constitutions in one of two ways: through initiatives or referenda. The former involve the circulation among voters of

[4] The full texts of all state constitutional Super-DOMAs discussed in this volume appear in Appendix A.

[5] In addition to legal and social benefits, marriage also brings better health ("Married People Are Healthier, Study Finds" 2004).

petitions containing the proposed constitutional language, and if a legally specified threshold amount of signatures is obtained within a designated time period, the measure goes to a statewide ballot. In contrast, referenda originate in state legislatures and appear on the ballot as a result of the action of elected officials. Thus, initiatives bypass legislatures and are usually the product of interest groups having the organizational capacity to gather tens of thousands or more (depending on the size of the state) voter signatures, whereas referenda are the brainchild of political elites. Although every state embraces the option of legislative referenda, not all permit citizen initiatives.[6] Accordingly, referenda are more common nationwide. But initiatives as the mechanism of constitutional change can be important when grassroots movements are unable or unwilling to persuade political leaders to embrace their policy agendas.

Among the six states studied here, the legislatures in Georgia, North Carolina, Texas, and Wisconsin sponsored their Super-DOMAs. In Michigan, the state's Christian Citizens Alliance formed a committee called Citizens for the Protection of Marriage that crafted and supported the passage of the Wolverine State's initiative (known as Proposal 2). Likewise, Cincinnati-based Citizens for Community Values promoted Ohio's Issue 1. Both Michigan's Democratic governor Jennifer Granholm and Ohio's Republican governor Bob Taft (as well as both of the Buckeye State's Republican U.S. senators, Mike DeWine and George Voinovich, and Republican attorney general Jim Petro) publicly opposed their states' ballot measures against same-sex marriage (Witkowski 2004; Salvato 2004; "Marriage and Politics" 2004), thus demonstrating how initiatives can be used to flaunt the policy preferences of state political elites (cf. Rivkin and Casey 2006).[7]

The popular majorities garnered by the Super-DOMAs were 59 percent in Michigan and Wisconsin, 60 in North Carolina, 62 in Ohio, and 76 in Georgia and Texas.

A casual political observer might have expected the process by which the legislatures in Georgia, North Carolina, Texas, and Wisconsin decided to place Super-DOMA referenda on the ballot to have been more deliberative than what occurred in Michigan and Ohio with their citizen initiatives. After all, a basic tenet of Political Science 101 is that examination, discussion, and careful thought characterize the legislative action through which important public policies are adopted. Bills introduced with the prospect of becoming new laws are allocated to committees with specialized subject-matter jurisdiction. In turn, committees hold public hearings at which all potentially interested parties have

[6] "In 15 states, citizens can place a potential constitutional amendment on the ballot without legislative participation or approval .... In all other states except Delaware, constitutional amendments must be placed on the ballot by the legislature" (Lupia et al. 2010, 1225).

[7] Even President George W. Bush publicly disagreed with GOP opposition to civil unions for same-sex couples (Bumiller 2004; cf. Burger 2014), as did Vice President Dick Cheney (Toner 2004) and other Republicans in the U.S. Senate (Hulse 2004).

an opportunity to be heard on the prospective policy, and then committee members reasonably consider the evidence before them before voting bills out for consideration by the full legislative chamber. Public debate meant to persuade colleagues, as well as constituents, toward particular points of view on bills is expected throughout the entire time-consuming and contemplative legislative process. Such might have been a bystander's expectation of what happened in Atlanta (the capital of Georgia), Raleigh (NC), Austin (TX), and Madison (WI).

But what actually took place in Raleigh would certainly disappoint political science students, as reported by Maxine Eichner, a professor at the University of North Carolina School of Law in Chapel Hill and the lead author of a forty-page 2011 memorandum titled "Potential Legal Impact of the Proposed Same-Sex Marriage Amendment to the North Carolina Constitution."

EICHNER: On a Friday afternoon in September, the leadership of the relevant state senate committee took a bill that I believe was on term limits for legislators and stripped out its content. And in its place, they put the language of the Super-DOMA bill. Then they noticed it for a hearing on Monday. It looked to folks who are familiar with how things work in Raleigh that perhaps the committee was trying to prevent the public from learning about it in advance. So unless you pulled up the content of the bill, you wouldn't have understood that this was the marriage amendment being considered.

At the same time, the House committee chair announced there would be no public testimony or other hearing taken in that chamber. At which point, Democrats who opposed the bill said this was absolutely wrong. But apparently, failing to hold hearings wasn't a violation of House rules, although it certainly was an infraction of the spirit of democracy. So some of the legislators opposed to the bill said that this procedure was horrific, that a constitutional amendment was an incredibly important event, that the public needed to participate, and that experts like myself were there ready to testify.

The Republican leaders' response was that the public was going to get a chance to testify at the polls. So the House passed the referendum very expeditiously.

The Senate rules provided that, if one of its committees took up the same language of a bill passed in a House committee, then the Senate didn't have to hold a hearing of its own. So there was no public hearing on the Senate side either.

That was the process by which the bill passed the North Carolina General Assembly.

Q: So all of the legislative action essentially happened overnight then?

EICHNER: That's right. It happened very quickly. My coauthors and I sent our legal memorandum off to legislators in June, and months went by without a word. Then all of a sudden, boom, this thing moved right through the General Assembly without any public hearing.

Florence, a forty-eight-year-old Raleigh jeweler, characterized the action of North Carolina lawmakers this way:

When the legislature was considering Amendment 1, there should have been equal time for each chamber to discuss it and have questions and answers. The issue should have

been placed on the legislative calendar just like any other bill, as is the case with fracking right now [2012].

But Amendment 1 was shoved under the rug, as though the lawmakers didn't want to get caught addressing it. They behaved in such a shady, behind-the-scenes way, as if the topic itself were dirty. So the legislative process sent folks a message like "We just don't think this topic should be debated in public, because it's so unsavory."

Yet even legislatures that appeared to follow the PoliSci 101 procedural outline did not really engage in careful deliberation when considering Super-DOMAs. A psychology professor at a distinguished Georgia university shared this experience of what happened in the Peach State in 2004:

I'm a board member of the Georgia Psychological Association. Our organization attempted to work with the legislature when it considered the marriage amendment. We lobbied at the State Capitol, hoping to give legislators accurate information about statistics concerning same-sex couples' relationships and also about what the amendment's impact on children might be.

Professionally, our involvement was a big loss. We accumulated and presented published, bonafide research of empirical information, which was completely overwhelmed by people's religious fervor. Legislators were blinded by their own viewpoint, but had no factually based foundation for it.

As a scientist and a scholar, I think that's very disappointing. And as professionals, we in the Association knew the amendment was going to be a tremendous loss for clients and their families, who were going to feel this whether they were gay or lesbian themselves, or whether they had children or other family members who were gay or lesbian.

The legislature seemed to believe there'd only be a small group of people affected by the amendment. And that wasn't true.

In addition, a potentially very influential voice in public policy making – the business community – was largely absent in the nation's Super-DOMA debates (cf. McKinnon 2015). In July 2012, for instance, a twenty-seven-year-old New York–based private-equity banker born in North Carolina and a graduate of the university in Chapel Hill described what happened earlier that year in his home state during the nation's last Super-DOMA campaign:

I was really disappointed in the reaction to the marriage amendment from medium- to large-sized businesses in North Carolina, in that there was essentially none. Compare that to what we're seeing in Minnesota now. General Mills and other large companies there are publicly coming out against Minnesota's proposed amendment [which was defeated in the November 2012 general election].

Jim Rogers, the Duke Power CEO, spoke out in very strong words against Amendment 1. But if I think about the other companies that, frankly, I'm really very close with . . . like Bank of America, whose CEO I saw three weeks before the vote. He was pushed to act, but chose not to do anything.

For the amount of LGBT [lesbian, gay, bisexual, and transgendered] advocacy that those businesses do in New York, around recruiting – they're incredibly active with

LGBT recruiting organizations – and then for them not to take a stand in their home state, I thought was very disappointing.

I believe it showed a lack of values. I was just coming out of business school at the time, where I had a leadership and ethics class. So I felt what happened down in North Carolina was a big failure. I don't think public opposition would have cost the companies much, and their participation might have had a big political impact.[8]

THE BOOK'S RESEARCH METHODS

The first state to add a Super-DOMA to its constitution was Nebraska in 2000. One virtue of examining its implementation and effects is the long time in which they had to develop. However, the Cornhusker State is among the fifteen least populous in the nation, and identifying sufficient interview subjects there would have been especially daunting, as explained later.

The next states to adopt constitutional Super-DOMAs, in 2004, were Arkansas, Georgia, Kentucky, Louisiana, Michigan, North Dakota, Ohio, Oklahoma, and Utah. I chose the three most populous among these – Georgia, Michigan, and Ohio – to begin a national study. I also included Texas, which joined the Super-DOMA fold in 2005, Wisconsin (2006), and North Carolina (2012).

There is no way to document the grassroots effects of constitutionally based state policies without direct observation on the ground. Accordingly, to track the implementation and impact of Super-DOMAs (cf. Eskridge 1994; Fenno 1986), I set out in 2009 to conduct in-depth interviews (typically lasting between forty-five minutes and an hour) of same-sex couples and members of other relevant groups (such as the sponsors of the constitutional amendments, attorneys and law professors with expertise on Super-DOMAs, and officials with state LGBT organizations) in the most populous adopting jurisdictions, while choosing at the same time a sample of states that was geographically diverse. Thus, five of the six states studied here (with Wisconsin the exception[9]) are among the ten most populous in the country, and three states each are in the North and South.

I made a total of seven trips to the largest metropolitan areas of each state. I arrived at a destination on a Friday and departed on the second Monday thereafter. That way, I had two full weekends to get together with people who

[8] See also Davey (2015).

[9] A significant virtue of including Wisconsin in the study is that it was the sole Super-DOMA state to pass (in 2009) a limited domestic-partner registry for same-sex couples, despite the adoption of its constitutional amendment three years earlier.

To boot, another Badger State oddity is that Wisconsin has a criminal marriage-evasion statute, with a potential fine of up to $10,000 and/or nine months in prison for "any person residing and intending to continue to reside in this state who goes outside the state and there contracts a marriage prohibited or declared void under the laws of this state." In other words, lesbian and gay couples living, say, in Milwaukee or Madison (the state's largest cities) who went to Massachusetts, Canada, or elsewhere to get legally married would have been guilty of crimes upon return to their Wisconsin homes.

worked on weekdays. Moreover, interviewees typically had the option of meeting me at my hotel suite or of having me drive to their homes or businesses. The maximum number of interviews I conducted in a single day was six.

In January 2009, I drove to Detroit and its suburbs, as well as Ann Arbor and Lansing/East Lansing, in Michigan.[10] The next January, I went to Atlanta and the surrounding area in Georgia. In June and July 2010, I made separate journeys to Columbus and Cleveland and their respective environs because Ohio was of particular interest, as I explain at the end of this chapter. Then, in January 2011, I flew to the Dallas-Fort Worth metroplex. Six months later, I was in Milwaukee, Madison, and Appleton in Wisconsin. Finally, in July 2012, I drove to Charlotte, the Research Triangle (Chapel Hill, Durham, and Raleigh), Greensboro, and Winston-Salem in North Carolina.[11]

Hence, all of the book's 203 interviews were completed before there was any significant federal-court intervention in the same-sex-marriage policy arena. In other words, before 2013, there was no good reason to believe that the country's Super-DOMAs would go away any time soon. Rather, the couples and other people I spoke with accepted as fate that their states' marriage amendments would be in place for years to come. Time and again, in fact, gay people volunteered to me that they did not expect to be able to get legally married in their home states during their lifetimes.

Nearly 90 percent of the interviews here – 175 – were with same-sex couples,[12] because recognizing and documenting the grassroots effects of

[10] I chose the Wolverine State for the first field trip because, less than a year earlier, the Michigan Supreme Court interpreted its Super-DOMA more broadly than any other state court of last resort, as discussed in Chapter 2.

Note to field researchers: *never* go to Michigan in January, unless you really like to ski cross-country. It snowed nearly continuously for the entire ten days I was in the Wolverine State. Plus, my car's external thermometer in the mornings registered as low as 10 degrees below zero, and I had to cross my fingers that the engine would turn over. One day, moreover, as I was creeping along to within a half-block from my destination in a suburb north of Detroit, my otherwise dextrous front-wheel-drive vehicle got stuck in a snowdrift, and the couple I was scheduled to interview had to rescue me. I will never forget the sight of what initially appeared to be a small blizzard heading in my direction, but which turned out to be the spray from their gigantic snowblower. Michiganders are truly hardy souls.

[11] I made the North Carolina trip then because I was able to interview people within just two months of the May 8, 2012, popular vote on its Super-DOMA, while memories of the plebiscite were still very fresh. In contrast, I spoke with interviewees in the other states more than five years after the passage of their constitutional amendments. Indeed, my original plan was to select Florida (whose Super-DOMA passed in 2008) as the sixth state for my sample. But when the North Carolina referendum was scheduled for May 2012, I jettisoned going to the Sunshine State (in January) in favor of the upcoming Tar Heel referendum.

Note to field researchers: *never* go to the American South in July. My vehicle's thermometer registered as high as 112 degrees – while the car was in motion, not still.

[12] In a total of twenty-five instances, one partner in a couple was unavailable to talk with me. Sometimes travel or illness was the reason for their absence. So although I actually spoke with just one person, I still count those interviews as with a couple.

Likewise, I met some people whose partners had died, as well as still others whose relationships had ended due to incompatibility. But because my conversations in all cases substantially