

Cambridge University Press

978-1-107-12359-5 — America's War on Same-Sex Couples and their Families

Daniel R. Pinello

Frontmatter

[More Information](#)

## America's War on Same-Sex Couples and Their Families

*America's War on Same-Sex Couples and Their Families* is a legal, political, and social history of constitutional amendments in twenty American states (with 43 percent of the nation's population) that prohibited government recognition of all forms of relationship rights (marriage, civil unions, and domestic partnerships) for same-sex couples. Based on 175 interviews with gay and lesbian pairs in Georgia, Michigan, North Carolina, Ohio, Texas, and Wisconsin, the volume has great human-interest value and chronicles how same-sex couples and their children coped within harsh legal environments. The work ends with a lively explanation of how the federal judiciary rescued these families from their own governments. In addition, the book provides a model of the grassroots circumstances under which harassed minority groups migrate out of oppressive state regimes, together with an estimate of the economic and other costs (to the refugees and their governments) of the flight from persecution.

Daniel R. Pinello is a professor of political science at John Jay College of Criminal Justice of the City University of New York and was educated at Williams College (B.A.), New York University (J.D.), and Yale University (Ph.D., political science). His scholarship includes *America's Struggle for Same-Sex Marriage* (2006), *Gay Rights and American Law* (2003), "Linking Party to Judicial Ideology in American Courts: A Meta-Analysis," in *Justice System Journal* (1999), and *The Impact of Judicial-Selection Method on State-Supreme-Court Policy: Innovation, Reaction, and Atrophy* (1995).

# America's War on Same-Sex Couples and Their Families

*And How the Courts Rescued Them*

DANIEL R. PINELLO

*John Jay College of Criminal Justice of the  
City University of New York*



CAMBRIDGE  
UNIVERSITY PRESS

Cambridge University Press  
978-1-107-12359-5 — America's War on Same-Sex Couples and their Families  
Daniel R. Pinello  
Frontmatter  
[More Information](#)

## CAMBRIDGE UNIVERSITY PRESS

One Liberty Plaza, New York, NY 10006, USA

Cambridge University Press is part of the University of Cambridge.

It furthers the University's mission by disseminating knowledge in the pursuit of education, learning, and research at the highest international levels of excellence.

[www.cambridge.org](http://www.cambridge.org)

Information on this title: [www.cambridge.org/9781107559004](http://www.cambridge.org/9781107559004)

© Daniel R. Pinello 2017

This publication is in copyright. Subject to statutory exception and to the provisions of relevant collective licensing agreements, no reproduction of any part may take place without the written permission of Cambridge University Press.

First published 2017

Printed in the United States of America by Sheridan Books, Inc.

*A catalogue record for this publication is available from the British Library.*

### *Library of Congress Cataloging-in-Publication Data*

Names: Pinello, Daniel R., author.

Title: America's war on same-sex couples and their families : and how the courts rescued them / Daniel R. Pinello.

Description: New York : Cambridge University Press, 2017. |

Includes bibliographical references and index.

Identifiers: LCCN 2016000899 | ISBN 9781107123595 (hardback) |

ISBN 9781107559004 (paper back)

Subjects: LCSH: Same-sex marriage—United States. | Same-sex marriage—Law and legislation—United States.

Classification: LCC HQ1034.U5 P556 2017 | DDC 306.84/80973 — dc23

LC record available at <http://lcn.loc.gov/2016000899>

ISBN 978-1-107-12359-5 Hardback

ISBN 978-1-107-55900-4 Paperback

Cambridge University Press has no responsibility for the persistence or accuracy of URLs for external or third-party Internet websites referred to in this publication and does not guarantee that any content on such websites is, or will remain, accurate or appropriate.

Cambridge University Press

978-1-107-12359-5 — America's War on Same-Sex Couples and their Families

Daniel R. Pinello

Frontmatter

[More Information](#)

---

*For Lee*

## Contents

<i>Acknowledgments</i>	page xi
1 Introduction	1
<i>Declarations of War</i>	3
<i>The Book's Research Methods</i>	9
<i>A Description of the Couples Sample</i>	12
<i>Contemplating Super-DOMA Effects</i>	15
<i>The Motivations of Amendment Sponsors and of Voters</i>	17
<i>Ohio</i>	25
2 State Judicial Interpretations of Super-DOMAs	34
<i>Ohio State-Court Action regarding Issue 1</i>	36
<i>Michigan State-Court Action regarding Proposal 2</i>	43
<i>Wisconsin State-Court Action regarding Referendum 1</i>	50
<i>Other State-Court Action</i>	53
<i>Understanding the Lack of Further State-Court Super-DOMA</i>	
<i>Litigation</i>	54
<i>Conclusion</i>	58
3 The Effects of Super-DOMAs on Same-Sex Couples	59
<i>The Initial Shock: Personal Devastation and Isolation</i>	60
<i>Positive Effects</i>	62
<i>Super-DOMAs as Impediments to Change</i>	66
<i>Health Care</i>	69
<i>The Limitations of Legal Paperwork</i>	77
<i>Employment Discrimination</i>	80
<i>Housing Discrimination</i>	81
<i>Public Hazing When Changing Names</i>	82

	<i>Tax Penalties</i>	84
	<i>Alienation from Family, Friends, and Associates</i>	86
	<i>Fear, Insecurity, and Emotional Loss</i>	89
	<i>Little Things</i>	94
	<i>Wisconsin's Domestic-Partner Registry as a Rights Touchstone</i>	96
	<i>Inability to Divorce or Otherwise Access Legal Remedies</i>	101
	<i>Conclusion</i>	104
4	The Effects of Super-DOMAs on Families with Children Being Raised by Same-Sex Couples	107
	<i>Michigan and Ohio</i>	111
	<i>North Carolina</i>	111
	<i>Wisconsin</i>	112
	<i>Texas</i>	115
	<i>Georgia</i>	118
	<i>The Value of Having Two Legal Parents Raising Children in Households Headed by Same-Sex Couples</i>	126
	<i>The Added Costs of Raising Children in LGBT Families</i>	134
	<i>The Message to Children</i>	135
	<i>Marrying out of State to Solidify and Clarify Intrafamily Relationships</i>	136
	<i>When Parents Were Separated</i>	137
	<i>Other Challenges for Same-Sex Couples Raising Children</i>	144
	<i>Conclusion</i>	147
5	Super-DOMAs and LGBT Migration: Fight or Flight?	149
	<i>An Estimate of LGBT Emigrants from Super-DOMA States</i>	150
	<i>Other Relevant Migrations</i>	152
	<i>Knowledge and Appreciation of the Threat to Well-Being</i>	153
	<i>Loyalty to Country or State</i>	155
	<i>The Bubble Effect</i>	156
	<i>Family Ties</i>	160
	<i>An Expectation of Legal or Political Redemption</i>	162
	<i>Economic Issues</i>	163
	<i>The Impact of Traditionally Gendered Relationship Roles</i>	165
	<i>Internalized Homophobic Social Stigma</i>	168
	<i>The Ability to Pass as Members of the Majority or Otherwise Play the System</i>	173
	<i>Same-Sex Couples Who Left Super-DOMA States Partially or Temporarily</i>	177
	<i>Same-Sex Couples Who Did Emigrate Permanently</i>	181
	<i>Super-DOMA Effects on Immigration into Super-DOMA States</i>	199
	<i>Conclusion</i>	222

<i>Contents</i>	ix
6 How the Federal Courts Rescued Same-Sex Couples and Their Families	224
<i>The Impact of Lower Federal Courts</i>	225
<i>The Legal Precedents</i>	226
<i>The Lower Federal Courts' Lopsided Interpretations of Windsor</i>	232
<i>The Impacts of Good Fortune and Political Party</i>	234
<i>The Importance of Precedent</i>	236
<i>Justice Scalia as a Double Agent</i>	237
<i>The Alternative to Judicial Action: The Roberts-Scalia-Alito Thesis of Waiting, and Waiting, and Waiting for the Democratic Process</i>	241
<i>Other Difficulties with the Roberts-Scalia-Alito Democratic-Process Thesis</i>	249
7 Conclusion	253
<i>Did Super-DOMAs in Fact Defend and Protect Marriage?</i>	258
<i>The Economic Losses to Super-DOMA States</i>	260
<i>Sponsor Motivations for Super-DOMAs: Bigotry or Not?</i>	267
<i>Judicial Efficacy</i>	279
<i>Appendix A: The Texts of Super-DOMAs</i>	285
<i>Appendix B: Protocol of Interview Questions for Same-Sex Couples</i>	287
<i>Case References</i>	291
<i>References</i>	295
<i>Index</i>	309

## Acknowledgments

This book would not have been possible without the unsparing generosity of the people who invited me into their homes and offices to conduct the 203 in-depth interviews on which the volume is based. They have my particular gratitude.

A variety of professionals, community leaders, and interest group representatives graciously gave me their time and attention. They were, in Georgia, Dr. Frank A. Anania of Emory University School of Medicine; Michael L. Baker, aide to former Atlanta mayor Shirley Franklin; Daniel A. Bloom, Esq.; Douglas L. Brooks, Esq.; Jason A. Cecil of Atlanta Stonewall Democrats; Deepali Gokhale, co-chair of the Atlanta steering committee opposing referendum Question 1 of 2004; Jeff Graham, Georgia Equality's executive director; Barbara E. Katz, Esq.; Gregory R. Nevins, supervising senior staff attorney of the southern regional office of Lambda Legal; Debbie Seagraves, executive director of the ACLU of Georgia; and John F. Szabo, director of the Atlanta-Fulton Public Library. In Michigan, I spoke with Mary A. Ferguson, diversity officer of the Michigan State University College of Law; Jay Kaplan, staff attorney for the LGBT Project of the ACLU of Michigan; and Dr. Eric P. Skye of the University of Michigan Medical School.

In North Carolina, Maxine Eichner of the University of North Carolina School of Law in Chapel Hill; Tracy L. Hollister, a Democratic political operative in Raleigh; Paula A. Kohut, Esq.; Jaye J. Kreller, a Chapel Hill real estate agent; and Terri Lynn Phoenix, director of the LGBTQ Center at the University of North Carolina in Chapel Hill, shared valuable information and opinion with me. In Ohio, I spoke with Michael D. Bonasera, Esq.; A. Lynne Bowman, founding executive director of Equality Ohio; Phil Burress, president of Citizens for Community Values; Carrie L. Davis, staff counsel of the ACLU of Ohio; Susan Doerfer, executive director of Equality Ohio; Timothy J. Downing, Esq.; Carol Ann Fey, Esq.; Mellissia Fuhrmann, president of Stonewall Democrats of



Central Ohio; LeeAnn M. Massucci, Esq.; and Marc Spindelman of the Ohio State University College of Law.

In Texas, Phillip D. Archer, contender for Martha Stewart of Dallas; Lorie L. Burch, Esq.; Patrick J. Tester, a Dallas real estate agent; and Chad West, Esq., met with me. In Wisconsin, I spoke with Katie Belanger, executive director of Fair Wisconsin, and the Rev. Wendy R. Woodruff, pastor of the Metropolitan Community Church of Milwaukee.

Equally crucial to the book's empirical foundation were interviews with 325 people in 175 same-sex relationships in Georgia, Michigan, North Carolina, Ohio, Texas, and Wisconsin. As the introductory chapter explains, I am not at liberty here to divulge their real names. These couples' participation in the volume occurs under pseudonyms to protect against sexual-orientation discrimination in employment, housing, and public accommodations within five of those jurisdictions (Wisconsin being the exception), which have no statewide policies prohibiting such behavior. For Chapter 5, I had conversations with Michael L. Falk, formerly of Ann Arbor, Michigan, and other Super-DOMA refugees in their new places of residence.

Many of the interviews for this volume and my 2006 book, *America's Struggle for Same-Sex Marriage*, are preserved for posterity at the Department of Manuscripts and Archives at Yale University's Sterling Memorial Library. I am very grateful to Yale for accepting the gift of my collection and raising the resources necessary for its preservation. Yale historian George Chauncey presented my data to William Massa, Head of the Collection Development, and Christine Weideman, the Director of Manuscripts and Archives at the Sterling Library. Their positive assessments of the interviews' historical value were most gratifying.

I also appreciate the funding received from the City University of New York for four of this project's seven field trips. John Jay College of Criminal Justice provided a Research Support Grant of \$3,500 for equipment and travel to conduct interviews in Michigan in January 2009, and then a Research Assistance Grant of \$2,000 to go to Georgia in January 2010. The Research Grant program of CUNY's Professional Staff Congress awarded a total of \$3,700 for journeys to Columbus, Ohio in June 2010, and to Texas in January 2011. I bore the expense of the field trips to Cleveland, Ohio in July 2010, Wisconsin in July 2011, and North Carolina in July 2012.

I presented preliminary findings at the 2010 Annual Meeting of the American Political Science Association in Washington, DC. John J. Dinan and Keith E. Whittington were discussants and provided helpful appraisals. In February 2013, I delivered a precursor of Chapter 5 at a Human Rights Seminar held at the CUNY Graduate Center and sponsored by the Center for International Human Rights of John Jay College of Criminal Justice. George Andreopoulos and Kenneth Sherrill supplied useful insights and guidance there. Other friends in academe – Ellen Ann Andersen, H. N. Hirsch, and Charles Anthony Smith – also gave generous commentary to shape the project.

*Acknowledgments*

xiii

I owe special gratitude to Jack Jacobs, my colleague at John Jay College of Criminal Justice, for introducing me to the scholarship of historian Marion A. Kaplan during a departmental research colloquium. John Jay political scientists Samantha Ann Majic and Andrew H. Sidman also provided helpful advice at the forum. My other John Jay colleagues – George Andreopoulos, Brian K. Arbour, Janice Bockmeyer, James Bowen, Jean Carmalt, James N. G. Cauthen, Susan L. Kang, Maxwell H. H. Mak, G. Roger McDonald, Verónica Michel, Jill Norgren, Peter Romaniuk, Jennifer Geist Rutledge, Monica W. Varsanyi, and Michael W. Yarbrough – supplied steadfast encouragement and support.

Robert Dreesen at Cambridge University Press is an indulgent editor as any author could hope to work with. Indeed, my experience over three titles with Cambridge taught me well that its editorial staff is uniformly among the finest in academic publishing. Gail Naron Chalew, the copy editor, provided the most sure-handed guidance transforming the manuscript into a book.

My husband, Lee Nissensohn, nurtured this endeavor in every way. He has been my rock for more than twenty precious years.