

California Western School of Law
CWSL Scholarly Commons

Faculty Scholarship

2015

From One Town's 'Alternative Families' Ordinance to Marriage Equality Nationwide

Barbara Cox
California Western School of Law, bjc@cwsl.edu

Follow this and additional works at: <https://scholarlycommons.law.cwsl.edu/fs>

 Part of the [Law and Gender Commons](#)

Recommended Citation

California Western Law Review, Vol. 52, 2015

This Article is brought to you for free and open access by CWSL Scholarly Commons. It has been accepted for inclusion in Faculty Scholarship by an authorized administrator of CWSL Scholarly Commons. For more information, please contact alm@cwsl.edu.

ESSAY

**FROM ONE TOWN’S “ALTERNATIVE FAMILIES”
ORDINANCE TO MARRIAGE EQUALITY NATIONWIDE**

BARBARA J. COX*

INTRODUCTION

Many articles have already discussed the Supreme Court’s *Obergefell v. Hodges* decision.¹ In that opinion, the Supreme Court held that individuals who are same-sex couples have a fundamental right to marry just as individuals who are different-sex couples.² Basing its decision on the Due Process and Equal Protection Clauses of the Fourteenth Amendment, the Court held that states could not deny same-sex couples that right. In ringing words, the Court concluded:

No union is more profound than marriage, for it embodies the highest ideals of love, fidelity, devotion, sacrifice, and family. . . . It would misunderstand [these petitioners] to say they disrespect the idea of marriage. Their plea is that they do respect it, respect it so deeply that they seek to find its fulfillment for themselves. . . . They ask for equal dignity in the eyes of the law. The Constitution grants them that right.³

Instead of the numerous scholarly works analyzing the *Obergefell* decision, this essay looks back at my part in the marriage equality

* Vice Dean for Academic Affairs and Clara Shortridge Foltz Professor of Law at California Western School of Law; Chair of the Board of Directors for Freedom to Marry, Inc.

1. 135 S. Ct. 2584 (2015).
2. *Id.* at 2607.
3. *Id.* at 2608.

movement, before it was a movement and before it was about marriage, and its transition to both.

I have been working toward obtaining legal rights for same-sex couples since 1983. My work began when I helped draft what became the third domestic partnership ordinance in the country in Madison, Wisconsin,⁴ and my work will continue into early 2016 when my service as the chair of the board of directors for Freedom to Marry, Inc. will end.⁵ Over the past three decades, I played a small but regular role in helping to end the exclusion of same-sex couples from legal recognition of our relationships in the United States.⁶ This essay considers how my experiences as an activist, scholar, and married lesbian mirrored those of the movement since the early 1980s.

The essay is divided into three parts that roughly correspond with the three decades of the marriage equality movement: the early 1980s to 1993, 1993 to 2003, and 2003 to 2015. Part I discusses the early efforts to win limited rights through city ordinances and employer health insurance benefits and how those efforts led activists to recognize the inherent limitations with the options to protect the legal rights of same-sex couples. Part II discusses the legal changes that resulted in the decade following the Hawaii Supreme Court's decision in *Baehr v. Lewin*;⁷ changes not marriage itself, but numerous statutes

4. Barbara J. Cox, *Fifteenth Anniversary Celebration: "The Little Project" From Alternative Families To Domestic Partnerships To Same-Sex Marriage*, 15 WIS. WOMEN'S L.J. 77, 78 n.4 (2000) [hereinafter *The Little Project*]. I will be primarily citing my work throughout this essay in an effort to reference defining moments of the movement. My purpose is not to overemphasize my work but rather to provide an efficient and comprehensive resource to other scholarly works, laws, and relevant cases compiled over more than thirty years.

5. *Freedom to Marry, Inc. Board of Directors*, FREEDOM TO MARRY, <http://www.freedomtomarry.org/pages/steering-committee> (last visited Nov. 25, 2015).

6. These opportunities would not have been possible without the continuous support of California Western School of Law. I received numerous research grants over the past three decades, travel support to make presentations and attend board meetings, and research assistant support. Thanks to Deans Emeritus Michael H. Dessent and Steven R. Smith and Dean Niels B. Schaumann for their continuing support. Thanks as well to my spouse, Peg Habetler, who has shared this journey with me for more than 25 years.

7. 852 P.2d 44 (Haw. 1993), *aff'd sub nom.* *Baehr v. Miike*, 910 P.2d 112 (Haw. 1996), *rev'd*, 994 P.2d 566 (Haw. 1999). The Supreme Court of Hawaii reversed the previous decision after voters approved a constitutional amendment

and constitutional amendments purporting to deny recognition of any Hawaiian or other marriage by same-sex couples. Part III focuses its attention on the movement after the first state started marrying same-sex couples, the ups-and-downs resulting from the adoption or rejection of anti-marriage ballot measures by states across the country, and the national resolution that finally came with the *Obergefell* decision.

I. DOMESTIC PARTNERSHIP BENEFITS THROUGH ORDINANCE AND EMPLOYMENT

I was serving on the Madison Equal Opportunities Commission (MEOC) following law school when Barbara Lightner, a local lesbian activist, told me that she had “a little project” for me.⁸ She wanted Madison to join the few cities and organizations that had begun to protect same-sex couples by legally recognizing our relationships.⁹ As someone who came out in 1976 and was a recent law school graduate, it was my first step toward becoming a lesbian legal activist.

I never anticipated the refusal by the city’s mainstream politicians and city employers to take this effort seriously. For four years, MEOC’s task force met in school rooms, libraries, churches, and other free locations where we could listen to community members, talk through alternative proposals to present to the city council, and debate among ourselves whether we should limit our “alternative families” ordinance to “two adults” or “two or more adults” and their dependent children who were in “mutually supportive committed relationships.”¹⁰ Although the MEOC Task Force opted for the

limiting marriage to opposite-sex couples, which rendered the case moot. *See Hawaii Legislative Power to Reserve Marriage, Question 2* (1998), BALLOTPEDIA, [https://ballotpedia.org/Hawaii_Legislative_Power_to_Reserve_Marriage,_Question_2_\(1998\)](https://ballotpedia.org/Hawaii_Legislative_Power_to_Reserve_Marriage,_Question_2_(1998)) (last visited Nov. 25, 2015).

8. Cox, *The Little Project*, *supra* note 4, at 78.

9. *Id.*

10. Barbara J. Cox, *Alternative Families: Obtaining Traditional Family Benefits Through Litigation, Legislation, and Collective Bargaining*, 2 WIS. WOMEN’S L.J. 1, 3 n.8 (1986).

broader definition, the first thing the MEOC commission did was to reduce the adult members of such families to two.¹¹

As a new legal writing professor at the University of Wisconsin Law School, I also recognized that this activist work meshed well with my desire to participate in the legal academy's conversation about whether legal rights could or should be sought for same-sex couples. My first two articles analyzed my experiences as part of the MEOC Task Force,¹² and my first scholarly presentation on this topic was at the Feminism and Legal Theory Conference in July 1987.¹³

Between 1983 and 1993, several towns adopted domestic partnership ordinances, and employers slowly started to offer partner and family health insurance benefits to employees in same-sex relationships.¹⁴ By 1999, 3500 organizations in the United States had domestic partner health insurance benefits, and seven European countries had "registered partnerships," which gave some, but not all, of the rights received by married couples.¹⁵ Again, my experience mirrored that of the movement as universities started offering domestic partner benefits to their employees.¹⁶ Upon my arrival at California Western School of Law in San Diego, I worked with other faculty to obtain domestic partnership health insurance benefits.¹⁷ While the administration initially did not understand why same-sex couples would want our relationships to be recognized, it was much easier to obtain these health insurance benefits at an independent law school than it was when negotiating with the Madison city bureaucracy and the Wisconsin Department of Insurance.

11. Barbara J. Cox, *Choosing One's Family: Can The Legal System Address The Breadth Of Women's Choice Of Intimate Relationship?*, 8 ST. LOUIS U. PUB. L. REV. 299, 318 (1989).

12. *See id.* and Cox, *The Little Project*, *supra* note 4.

13. The Feminism and Legal Theory Project began in 1984 and had its first conference the following year. Two years later, I gave my first scholarly presentation in the Project's second conference. Today, the Project continues stronger than ever. *See generally The Feminism and Legal Theory Project*, EMORY LAW, <http://law.emory.edu/faculty-and-scholarship/centers/feminism-and-legal-theory-project.html> (last visited Nov. 25, 2015) (the "Archive" section contains a transcript of my presentation at the 1987 conference).

14. Cox, *The Little Project*, *supra* note 4, at 80.

15. *Id.* at 81-82.

16. *Id.* at 82-83.

17. *Id.* at 83-84.

We also convinced the law school to “gross up” the salaries of employees who were receiving domestic partnership benefits so that the school “paid” the additional taxes that same-sex couples were forced to pay.¹⁸ Encountering discrimination because the Internal Revenue Service did not accord our relationships with equal status to those of married, different-sex couples, these benefits were treated as additional taxable income on which taxes were owed.¹⁹ But my employer — unlike most — understood that, if its purpose was to equalize benefits among its employees, it must also equalize the cost of receiving the benefits for those in same-sex relationships.

At this same time, Lesbian Gay Bisexual Transsexual Queer/Questioning (LGBTQ) legal activists were fighting against the terrible difficulties that couples faced when, for example, one of them was seriously injured, but the injured person’s family knew little about his or her same-sex relationship. Some families would step in, take over the care of their family member, and exclude the partner or survivor from making treatment decisions and evict them from their homes.²⁰ Additional examples include gay and lesbian parents in the divorce process who lose the custody of their children, or couples who had children together but encounter a legal system that refuses to recognize the non-biological parent.²¹

Through these experiences, the LGBTQ community realized that city and employer-based alternative statuses could not replicate the hundreds of state rights and 1138 federal rights that came with marital status, which are pervasive throughout society.²² Despite many

18. *Id.* at 84.

19. *Id.*

20. *E.g.*, *In re Guardianship of Kowalski*, 478 N.W.2d 790 (Minn. Ct. App. 1991) (granting guardianship of a severely disabled woman to her lesbian life partner despite her family’s objections but only after numerous years of struggle); *see also* Barbara J. Cox, *But Why Not Marriage: An Essay on Vermont’s Civil Union Law, Same-Sex Marriage, and Separate But (Un)Equal*, 25 VT. L. REV. 113, 115 n.11 (2000) [hereinafter *But Why Not Marriage*].

21. *See* Barbara J. Cox, *Love Makes a Family—Nothing More, Nothing Less: How the Judicial System Has Refused to Protect Nonlegal Parents in Alternative Families*, 8 J.L. & POL. 5, 7-8 (1991).

22. Barbara J. Cox, “*The Tyranny Of The Majority Is No Myth*”: *Its Dangers For Same-Sex Couples*, 34 HAMLINE J. PUB. L. & POL’Y 235, 251-52 (2013) [hereinafter *Tyranny of Majority*](referring to the Federal “Defense of Marriage” Act that excluded same-sex married couples from federal rights and privileges).

activists' disdain for marriage, due to its confining role for women, its racist and sexist history, and its patriarchal nature, we recognized that same-sex couples continually ran into a legal structure that disdained and harmed our relationships.²³ We began to realize that winning the freedom to marry would be the only way to end this discrimination.

II. HOW THE QUESTION OF INTERSTATE MARRIAGE RECOGNITION BECAME THE LEGAL BATTLEGROUND BEFORE ANY MARRIAGE OF SAME-SEX COUPLES OCCURRED

In 1993, a case in Hawaii caught the nation's attention when three same-sex couples sought the right to marry.²⁴ They were not the first couples to sue when they were denied marriage licenses; the country had seen a few cases in the post-Stonewall days when same-sex couples sought the freedom to marry.²⁵ But those challenges were rejected in opinions filled with incredulity that same-sex couples could consider their relationships as qualifying to obtain a marriage license.²⁶ As the Kentucky Supreme Court noted, "A license to enter a status or a relationship which the parties are incapable of achieving is a nullity."²⁷ In another early case, generating a summary affirmance from the United States Supreme Court, two Minnesota

23. See Barbara J. Cox, *A (Personal) Essay on Same-Sex Marriage*, in SAME-SEX MARRIAGE: THE MORAL AND LEGAL DEBATE 27-29 (Robert M. Baird & Stuart E. Rosenbaum eds., 1997) (discussing Stoddard/Ettelbrick and Eskridge/Polikoff debates).

24. *Baehr v. Lewin*, 852 P.2d 44, 48 (Haw. 1993).

25. Barbara J. Cox, *Same-Sex Marriage and Choice of Law: If We Marry in Hawaii, Are We Still Married When We Return Home*, 1994 WIS. L. REV. 1033, 1049-1050 [hereinafter *If We Marry*]; See generally ARTHUR S. LEONARD, SEXUALITY AND THE LAW: AN ENCYCLOPEDIA OF MAJOR LEGAL CASES xviii-xix (John W. Johnson ed., 1993) (providing a discussion of the Stonewall riots, widely recognized as the start of the modern LGBTQ's rights movement).

26. See *Jones v. Hallahan*, 501 S.W.2d 588, 589 (Ky. Ct. App. 1973) ("In substance, the relationship proposed by the appellants [a same-sex couple] does not authorize the issuance of a marriage license because what they propose is not a marriage.").

27. *Id.*

men not only were refused a marriage license but they were ridiculed for attempting to do so.²⁸

Then the Hawaii Supreme Court held that, if the couples could prove discrimination at trial, then the denial of marriage licenses to them might violate its state constitutional prohibition against sex discrimination.²⁹ Although the court rejected that the couples had a fundamental right to marry,³⁰ it held that allowing a person to marry someone of a different sex, while denying that same person the right to marry someone of the same sex, could be unconstitutional.³¹ Although the plaintiffs won the trial following remand, in 1998, Hawaii's legislature and its voters amended their constitution to ban marriage by same-sex couples.³² In the face of a likely court order requiring the state to open its marriage laws to same-sex couples, the state chose to incorporate discrimination into its constitution to avoid this result.

Like the states that adopted marriage bans to prevent interracial couples from marrying, ultimately more than forty states chose to prohibit these marriages rather than provide marital rights for same-sex couples.³³ After Hawaii, state after state adopted statutes clarifying that marital status was limited to different-sex couples, and thirty underscored their animus by inserting such limitations into their state constitutions.³⁴

Before Hawaii adopted its constitutional amendment; however, I began researching whether my partner and I could marry in Hawaii and be recognized as married when we returned to California. I spoke

28. See *Baker v. Nelson*, 191 N.W.2d 185, 186-87 (Minn. 1971), *cert. denied*, 409 U.S. 810 (1972) (denied due to lack of a substantive federal question), *overruled by Obergefell v. Hodges*, 135 S. Ct. 2584 (2015).

29. See *Baehr v. Lewin*, 852 P.2d 44, 67 (Haw. 1993).

30. Cox, *If We Marry*, *supra* note 25, at 1055-56. *But see* Barbara J. Cox, *A Fundamental Right to Marry for All*, L.A. DAILY JOURNAL, July 1, 2015 (noting that the Supreme Court held that same-sex couples have this right in the *Obergefell* opinion).

31. Cox, *If We Marry*, *supra* note 25, at 1051-52.

32. See Barbara J. Cox, *Using an "Incidents of Marriage" Analysis When Considering Interstate Recognition of Same-Sex Couples' Marriages, Civil Unions, and Domestic Partnerships*, 13 WIDENER L.J. 699, 706 n.18 (2004) [hereinafter *Incidents of Marriage*].

33. Cox, *Tyranny of Majority*, *supra* note 16, at 240.

34. *Id.* at 243.

with a colleague who taught Conflicts of Law, and he explained that interstate recognition of marital status became settled after marriages by interracial couples were constitutionally protected. He thought this area of law was too settled and that it would not be interesting to determine whether marriages by same-sex couples would receive interstate recognition.

Instead, I spent almost two decades writing two dozen articles and book chapters in my search for an answer to a question that repeatedly morphed. Although many lawyers and legal commentators initially thought the Full Faith and Credit (FF&C) clause of the United States Constitution might guarantee interstate recognition of one's marital status, the courts had never treated marriage as something to which the FF&C applied.³⁵ Instead, the question of relationship recognition from one state to another was addressed within the framework of conflict of laws. Generally, a marriage from one state is recognized in another state so long as it does not violate the strong public policy of the new state.³⁶ For example, my parents were married in Illinois, moved to Wisconsin and then Kentucky over the fifty-five years of their marriage. One sister married in Tennessee before living in Kentucky and Maine, and the other married in South Carolina before living in Kentucky. They never wondered whether they could marry in one state and have that marriage recognized when they moved because they were in different-sex relationships, and interstate recognition of their marriages was as "boring" as my colleague suggested so there was no question and nothing interesting to consider.

My partner and I were in for a rude awakening when I started analyzing whether we could marry in Hawaii, return to California, and later travel around the country with our marital status recognized. Primarily developed to address concerns about the marriages of interracial couples, treatises and articles explained that each state could refuse to recognize another state's marriages if those marriages violated its strong public policy.³⁷ Many states' laws conflicted

35. U.S. CONST. Art. IV, § 1.

36. Cox, *If We Marry*, *supra* note 25, at 1063-64.

37. RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 283 (AM. LAW INST. 1971); *see also* Cox, *If We Marry*, *supra* note 25, at 1063 (citing § 283 and other articles therein).

because some allowed marriages by interracial couples, marriage by individuals under eighteen, marriages between first-cousins, and marriages between previously divorced individuals.³⁸ Several states adopted statutes holding marriages to be void if their residents returned home after marrying in a state where their marriage was permitted.³⁹

A research effort that I helped organize involving more than seventy other law professors, law students, and lawyers determined that many states regularly recognized prohibited marriages despite laws and clear policy statements indicating they would not.⁴⁰ In the majority of cases, the public policy exception was practiced more in the breach than used to avoid interstate recognition of marriages.⁴¹ Even in opinions from southern courts filled with bigoted language whose state statutes prohibited marriages by interracial couples, many couples had their marriages recognized as long as they were seeking some “incident of marriage” (such as inheriting property), rather than in-state cohabitation as a married couple.⁴² The public policy exception existed as part of the legal framework but rarely was used to invalidate a prohibited marriage, except when one of the parties (often a minor) sought to have his or her marriage invalidated.⁴³

Following the Hawaii Supreme Court’s decision, when marriage by same-sex couples seemed possible, however, more than forty states adopted statutes and constitutional amendments preventing them from marrying in their state and refusing to recognize those marriages if entered into elsewhere.⁴⁴ Congress passed and President Bill Clinton signed the (so-called) Defense of Marriage Act that purported to use Congress’s power under the FF&C Clause and its corresponding Act to impose a national rule allowing states to do what the conflicts framework already allowed them to do.⁴⁵ To further emphasize its

38. See generally Cox, *Incidents of Marriage*, *supra* note 32, at 723-28.

39. Cox, *If We Marry*, *supra* note 25, at 1074-79.

40. Barbara J. Cox, *Same-Sex Marriage and the Public Policy Exception in Choice-of-Law: Does It Really Exist?*, 16 QUINNIPIAC L. REV. 61, 61-62 (1996).

41. *Id.* at 66-67.

42. Cox, *Incidents of Marriage*, *supra* note 32, at 724-25.

43. Cox, *But Why Not Marriage*, *supra* note 20, at 138-39.

44. See generally Cox, *Tyranny of Majority*, *supra* note 22, at 240.

45. See generally Cox, *But Why Not Marriage*, *supra* note 20, at 114 n.6.

disdain for same-sex couples' relationships, Congress also adopted a federal definition of marriage for the first time in history, limiting all federal marriage rights to those couples consisting of "one man and one woman."⁴⁶

Between 1993 and 2003, no state in the United States permitted same-sex couples to marry. Instead, several adopted alternative statuses, such as civil unions in Vermont, registered beneficiaries in Hawaii, and domestic partners in California.⁴⁷ Even though marriage was only a theoretical possibility, some states across the country rushed to prohibit our marriages and refused to recognize them if they became possible in another state. Notably, fewer than ten states had statutes prohibiting these marriages before the Hawaii Supreme Court's 1993 decision.⁴⁸ By 2002, most states denied a legal relationship that did not yet exist in the entire Western hemisphere.

My scholarly interest was rarely focused on the legal arguments over whether the United States Constitution required marriage equality for same-sex couples.⁴⁹ Instead, I spent that decade exploring whether those marriages, once permitted, would be recognized by other states as same-sex couples moved or traveled around the country. Eventually, marriages started to happen and a new focus for the movement occurred.

III. WINNING THE FREEDOM TO MARRY NATIONWIDE

When Canada started marrying same-sex couples in 2003, my partner and I went to Windsor, Ontario in July 2003 to join the couples who were marrying abroad and returning to the United States.⁵⁰ Later that fall, the Massachusetts Supreme Judicial Court

46. *Id.*

47. Cox, *Incidents of Marriage*, *supra* note 32, at 701-02.

48. *See generally* Cox, *If We Marry*, *supra* note 25, at 1069-70.

49. *Id.* at 1053-61 (explaining why the fundamental right to marry applies to same-sex couples); Barbara J. Cox, "A Painful Process of Waiting," *The New York, Washington, New Jersey, and Maryland Dissenting Justices Understand that "Same-Sex Marriage" Is Not what Same-Sex Couples Are Seeking*, 45 CAL. W. L. REV. 139, 139 (2008) [hereinafter *Painful Process of Waiting*] (discussing the constitutional marriage analysis and arguing that it was the dissenting justices in those cases who best understood the plaintiffs' arguments).

50. Cox, *Incidents of Marriage*, *supra* note 32, at 703-06.

held that the ban against marriages of same-sex couples violated its state constitution.⁵¹ But the movement stalled until Connecticut followed suit in 2008;⁵² followed by Iowa, Vermont, New Hampshire, and Washington, D.C. in 2009; and New York in 2011.⁵³

Initiative battles continued in many states. In California, fifty-two percent of voters adopted a constitutional amendment rejecting the marital rights for same-sex couples that had been gained only six months earlier when the California Supreme Court held that California's marital statutes were unconstitutional.⁵⁴ Forward progress occurred in some states, was lost in others, and a patchwork quilt blanketed the country as same-sex couples married in one state but could not have their marriages recognized when they moved and traveled to other states.⁵⁵

This final decade focused on winning more states. According to a strategy adopted by several marriage equality organizations in 2005, the movement created a "2020 Vision" with plans to reach ten states with marriage, ten with broad partnership recognition, ten more with limited rights, and achieving positive goals in the remaining twenty states by 2020.⁵⁶ By 2009, the marriage movement continued its focus on winning more states, while also trying to overturn anti-marriage statutes and constitutional amendments, repealing or striking down the federal DOMA, and moving public opinion to support the freedom to marry.⁵⁷ In order to reach even these moderate goals by 2020, we recognized that we must: (1) centralize the effort to create effective messaging and message-delivery tools and strategies; (2) use

51. *Goodridge v. Dep't of Pub. Health*, 798 N.E.2d 941 (Mass. 2003).

52. *Kerrigan v. Comm'r of Pub. Health*, 957 A.2d 407 (Conn. 2008).

53. For a timeline of the entire marriage movement, see *History and Timeline of the Freedom to Marry in the United States*, FREEDOM TO MARRY, <http://www.freedomtomarry.org/pages/history-and-timeline-of-marriage> (last updated June 26, 2015).

54. *In re Marriage Cases*, 183 P.3d 384 (Cal. 2008); see also Cox, *Tyranny of Majority*, *supra* note 22, at 251. Proposition 8 was ultimately overturned in *Hollingsworth v. Perry*, 133 S. Ct. 2652 (2013).

55. Cox, *Tyranny of Majority*, *supra* note 22, at 236-38.

56. See Freedom to Marry, *Freedom to Marry: Advancing the Needed Campaign, New Capacities for the Multi-Faceted Strategy Concept Paper 2* (Aug. 19, 2009) (unpublished concept paper) (on file with author).

57. *Id.* at 3-4.

technology to support states facing legislation or litigation battles; (3) develop political expertise for ballot-measure campaigns; and (4) centralize technical support and resources.⁵⁸

Between 2003-2015, Freedom to Marry changed from an organization with four staff members and an annual budget of about one million to one with over twenty staff members and an eleven million dollar budget.⁵⁹ It fulfilled many of the functions expressed in the 2009 concept paper by providing a national center for messaging, technology, and resources.⁶⁰

During this expansion of the movement generally, and Freedom to Marry specifically, it remained a long difficult journey, especially when losses at the ballot box and in the courts were so disheartening. A string of losses in the Supreme Courts of New York, Washington, New Jersey, and Maryland in 2006, followed by the brief win in California before the loss in the Proposition 8 battle, led us to fear that the marriage movement would be unable to achieve its 2020 vision.⁶¹

Once the movement achieved its first four wins at the ballot box in 2012,⁶² however, the positive momentum exploded. Litigation wins started to pile up, and the Supreme Court struck down section 3 of DOMA in *Windsor v. United States*.⁶³ Then, four consecutive Federal Courts of Appeals struck down anti-marriage statutes and constitutional provisions, expanding the marriage states to thirty-

58. *Id.* at 5-7.

59. Documents regarding Freedom to Marry's annual budget on file with author.

60. See Molly Ball, *The Marriage Plot: Inside This Year's Epic Campaign for Gay Equality*, THE ATLANTIC (Dec. 11, 2012), <http://www.theatlantic.com/politics/archive/2012/12/the-marriage-plot-inside-this-years-epic-campaign-for-gay-equality/265865/>.

61. See Cox, *Painful Process of Waiting*, *supra* note 40.

62. See generally Cox, *Tyranny of Majority*, *supra* note 22, at 237-38 (discussing electoral victories in Maine, Maryland, Minnesota, and Washington).

63. Section 3 defined marriage as between one man and one woman. Defense of Marriage Act (DOMA), Pub. L. No. 104-199, 1996 U.S.C.C.A.N. (110 Stat.) 2419, *invalidated by* *Windsor v. United States*, 133 S. Ct. 2675, 2693 (2013). See also *History and Timeline of the Freedom to Marry in the United States*, *supra* note 44.

seven.⁶⁴ In June 2015, the Supreme Court ended marriage discrimination across the country.⁶⁵

CONCLUSION

Rarely is one as fortunate as I have been to combine my activist work with my professional efforts and to have my personal relationship intertwined with both. Starting as a commissioner on the Madison Equal Opportunities Commission and ending after more than twelve years as chair or co-chair of the national Freedom to Marry organization, I dedicated my activist efforts to winning marital rights for same-sex couples and our families. At the same time, my scholarly agenda centered on articles and presentations across the country on these same issues. I joked that I had become a “professional lesbian,” whose work as an activist and a law professor had become intertwined with the marriage movement.

My twenty-five-year relationship with my spouse, Peg Habetler, followed the movement’s path as well. We had a private commitment ceremony in 1992, gathering with friends and family to celebrate the commitment we wanted to make to one another, knowing that our ceremony — though filled with love and laughter — had no legal standing. We registered as domestic partners in Madison, Wisconsin, and received a few local rights such as permission to visit each other if one of us were in jail or in the hospital. Between 1992 and 2000, Peg received health insurance benefits through my employer, but we shared no legal status with each other. We registered again as domestic partners in California once it provided limited rights to same-sex couples in 2000, and received expanded partnership rights in 2005. We joked that we would keep registering our relationship until we received all the rights that different-sex couples received.⁶⁶

When Canada started marrying same-sex couples, Peg and I went to Windsor, Ontario in July 2003 to join the couples who were marrying abroad and returning to the United States. Due to the Defense of Marriage Act and California’s Proposition 22, our marriage was discriminated against in every state. For a few months

64. *See id.*

65. *Obergefell v. Hodges*, 135 S. Ct. 2584, 2604-05 (2015).

66. Details about these laws can be found in Cox, *Incidents of Marriage*, *supra* note 32, at 703-05.

in 2008, we felt the joy of having our marriage recognized in California. Then, Proposition 8 left us questioning why our neighbors rejected marriage equality and we felt disrespected as a couple. Finally, in 2013, our marriage again became recognized in California following the Supreme Court's decision in *Hollingsworth v. Perry*.⁶⁷ With family in Minnesota, Wisconsin, and Kentucky, we gradually gained rights in the states we regularly visited when Minnesota (2013), Wisconsin (2014), and Kentucky (2015) finally recognized us as married.

I have participated as our movement grew from seeking limited city ordinance benefits to helping implement a national strategy to win marriage equality across the country. I have had the good fortune of working closely with Evan Wolfson, Mary Bonauto, Marc Solomon, Matt Coles, Kate Kendell, Shannon Minter, Thalia Zepatos, Matt Stephens, Jon Davidson, Jenny Pizer, Anne Stanback, Scott Davenport, and countless other activists whose hard work and tears changed the face of this country. I have also worked with numerous law professors, including Mark Strasser, Andy Koppelman, Bill Eskridge, Brad Sears, Nan Hunter, Nancy Polikoff, Frank Valdes, David Cruz, Carlos Ball, Deborah Henson, Jennifer Gerrada Brown, Courtney Joslin, and many others debating and challenging the legal system's treatment of same-sex couples.

As I look back over these personal and professional efforts, I am grateful that Barbara Lightner asked me to join this "little project" that expanded into one that changed the country. The movement she helped to ignite has succeeded in a way that few of us could imagine when we started in the early 1980s. The marriage equality movement has much to offer ongoing and future progressive movements on how to embrace the hard work that social justice work entails. As I near the end of my career, I doubt that I will get involved in another "little project" that will have as much impact on my life as this one has had. It is a rare and priceless gift to see such a radical change over one's lifetime.

67. *Hollingsworth v. Perry*, 133 S. Ct. 2652 (2013).