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Lauren L. Yehle
University of Denver

Joshua C. Wilson
University of Denver - Advisor

Nancy D. Wadsworth
University of Denver - Advisor

Susan Schulten
University of Denver - Advisor

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Keywords

LGB rights, Anti-discrimination, Equality, Discrimination, Colorado

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Lauren L. Yehle¹, Joshua C. Wilson², Nancy D. Wadsworth², and Susan Schulten³.

¹Student Contributor, University of Denver

²Advisor, Department of Political Science, University of Denver

³Advisor, Department of History, University of Denver

Abstract

This sample of the case study of Equality Colorado will demonstrate how counter movements and litigation may limit and change how an organization surrounding a social movement acts. Colorado for Family Values helped pass Colorado's Amendment 2 in 1992, which limited any present and future anti-discrimination legislation that would protect sexuality as a class. This ballot initiative passed by 53% of Colorado voters, and other states like Idaho and Oregon attempted to replicate this type of initiative. Amendment 2 challenged the LGB community and compelled the movement to collectively respond to the religious right with coalitions, pooled resources, and litigation. Equality Colorado, established in 1992, will exemplify how a social movement could respond to prejudicial legislation. One of Equality Colorado's primary tactics was to reframe religion as inclusive of gay rights. It did not cede religion entirely to its opponents and attempted to delegitimize them by labeling them "radical right" as opposed to the more popular term "religious right" or "Christian Conservatives". Additionally, Equality Colorado tried to compensate for the downsides of litigation by "translating" the legal terms to the general public and connecting litigators with the broader movement.

Keywords: LGB rights – anti-discrimination – equality – discrimination – Colorado

1 INTRODUCTION

1992 was a critical year for the religious right and LGB movements¹. A movement-countermovement dynamic manifested in Colorado's Amendment 2, a public fight regarding whether sexual minorities should be protected by anti-discrimination ordinances that historically had protected race and gender. A religious right social movement organization in Colorado Springs, Colorado for Family Values, helped pass this ballot initiative with 53.4% of the vote². The Supreme Court overruled Amendment 2 in *Romer v. Evans*³ as a result of a successful lawsuit and activist activity from local Colorado LGB organizations. This critical moment offers insight as to how key defensive actors within a social movement responded in unexpected but remarkable ways in the face of classically demobilizing factors such as legal attacks and a larger

countermovement.

Before proceeding, it is critical to understand just how jarring and comprehensive Amendment 2 was in restricting LGB rights. The Amendment would have been added to the Colorado constitution as follows:

NO PROTECTED STATUS BASED ON HOMOSEXUAL, LESBIAN, OR BISEXUAL ORIENTATION. Neither the state of Colorado through any of its branches or departments, nor any of its agencies, political subdivisions, municipalities, or school districts, shall enact, adopt, or enforce any statute, regulation, ordinance, or policy whereby homosexual, lesbian, or bisexual orientation, conduct, practices, or relationships shall constitute or otherwise be the basis of, or entitle any person or class of persons to have or claim any minority status, quota preferences, protected status, or claim of discrimination. This section of the constitution shall be in all respects self-executing.⁴

This amendment would have blocked preexisting pro-

¹LGBTQ+ stands for Lesbian, Gay, Bisexual, Transgender, and Queer/Questioning and is the most inclusive and widely used acronym by American activists and academics for sexual and gender minorities¹. However, this is a historic case study and will be limited to the terminology of the organizations studied.

tection ordinances in the progressive cities of Denver, Boulder, and Aspen. In addition, it would have limited future political action, in essence barring the LGB community from passing basic civil rights protection laws. No other initiative like this had ever been passed against any minority groups traditionally categorized by race or gender, but Oregon attempted a similar LGB discriminatory ballot initiative that same election year and Idaho attempted one a year later⁵. Colorado Legal Initiatives Plan (CLIP) brought forth a lawsuit within two weeks of the election causing a court injunction that prevented Amendment 2 from going into force⁶.

This lawsuit culminated in the Supreme Court case *Romer v. Evans*³ where Amendment 2 was overturned on grounds of the equal protection clause of the 14th Amendment in the Constitution. The Rehnquist court did not enfranchise sexual minorities a protected class. Instead, the supportive justices claimed that Amendment 2 was an undue burden and that a group, regardless of their legal class standing, should not undertake in regards to future action by the state constitution. In the words of Justice Anthony Kennedy, “If the constitutional conception of ‘equal protection of the laws’ means anything, it must at the very least mean that a bare desire to harm a politically unpopular group cannot constitute a legitimate governmental interest”³. This was the first time the courts had ruled on behalf of the LGB community since *One, Inc. v. Olesen* (1958)⁷.

Even though Amendment 2 disputes originated in Colorado, there were nationwide implications for the religious right and LGB community. If the Supreme Court had not ruled Amendment 2 unconstitutional in *Romerv.Evans*³ other states could have enforced similar ballot initiatives. Colorado is the best place to investigate the countermovement and litigation effects because it had all the vital local elements that were products of broader national trends — evangelical institutions, a strong LGB presence, Christian LGB members, and a broadly conservative constituency.

2 LITERATURE REVIEW

The Colorado LGB movement in the 1990s indicates great political savviness and resilience through its social movement organizations in a few major ways. Focusing on organizational features, the LGB movement would be considered a social movement because it consists of “preference structures directed toward social change” whereby structures would become more inclusive or less discriminatory against sexual minority groups⁸. Equality Colorado (EC), Colorado Legal Initiatives Plan (CLIP), and Equal Protection Ordinance Coalition (EPOC), however, constitute social movement organizations (SMOs) because they were “complex, or formal, organization[s] which [identify] goals with the preferences of a social movement or counter movements

and attempted to implement those goals”. The LGB social movement demonstrated McCarthy and Zald’s resource mobilization framework by capitalizing on its preexisting social networks to delegate jobs within the movement and fight Amendment 2 from different angles⁸. For example, CLIP handled a lawsuit while EC focused on education and outreach. Next, those social movement organizations, specifically EC, challenged the religious right countermovement in nontraditional ways through a religiously inclusive framework.

Countermovement scholars like Meyer, Staggenborg, and Mottl argue that when a countermovement attacks a movement, the original movement can become disoriented and lose sight of its own goals in the attempt to fight the countermovement. The movement must perceive some gained traction over the opposition, or it may dismantle itself. EC defied this expectation by fighting the religious right culturally through an inclusive religious framework^{9,10}. EC offensively positioned itself against the religious right by harnessing and maintaining its own LGB religious networks through the Voices of Faith campaign. This borrows from Hayes’ notion of trait ownership in candidacy whereby the LGB movement encroached on its opposition’s perceived traits¹¹. Given the historically imbedded moment, religion was a politically viable and opportune choice in the early 1990s given the perceived national weakening of the religious right. What’s more, using McCarthy and Zald’s language⁸, religion was a means to capture potential beneficiaries in the mainstream community while turning LGB constituents to adherents. That is to say, religion could mobilize new people and expand awareness of the LGB experiences pertaining to Amendment 2.

Perceptively aware of the downsides of litigation, EC acted as a litigation translator and lawyer-activist liaison to compensate for the demobilizing effects of a lawsuit. Street activists are often frustrated by the resource drain caused by litigation and the relatively limited goals that can be realized through litigation^{12,13}. In regard to Amendment 2, the Colorado LGB movement did not have a choice but to litigate, so it was vital to prevent resentment within the LGB activists. By equipping the LGB members with rights language, Amendment 2 grievances could be understood through legal terms that secured the attention of the mainstream public¹⁴. This was a way to export the LGB experience to the mainstream through the legal argument that if Amendment 2 could disenfranchise LGB people, it could adversely infringe on *universal* rights.

This research is grounded in the American Political Development (APD) notion that history is vital to understanding politics. Institutions and ideas underpin how political actors can realize their goals¹⁵. This historic case study may expand current academic assumptions about the presence of litigation in counter movements¹⁶. With this in mind, there is much that can be learned

from this case study, but it is historically imbedded, and its transferability limited.

3 METHODS

In order to study these LGB SMOs, I visited the Denver Public Library's archives from February to April 2019 and interviewed local Colorado LGB historian David Duffield affiliated with the LGBTQ+ Center on Colfax. I clustered the following materials chronologically and categorically: meeting minutes, internal planning documents, event fliers, correspondence between EC and other SMOs, educational pamphlets, and newsletters. I relied on David Duffield for broader LGB context beyond the SMOs. I investigated any emergent and key actors who were writing the articles and any event advertisements either hosted by EC or their allies. Based on the literature pertaining to movements, the two most prevalent and surprising aspects of this concept mapping were litigation and the religious appeal. Thus, the remainder of this paper will focus on how EC attempted to realize these two emergent trends.

4 CASE STUDY

The religious right put Amendment 2 on the ballot with the help of a Colorado Springs-based organization called Colorado for Family Values (CFV). As parachurch organizations² cropped up in the 1980s, Colorado Springs became a hub for politically engaged evangelicals who spread "family values," a code for conservative social policy. Behind this small local group run by a local car salesman was a much larger conservative religious movement. The same year that Amendment 2 passed, Focus on the Family moved to Colorado Springs from southern California¹⁸. Amendment 2 emerged from this growing evangelical political network.

In order to pass the amendment, CFV framed the public debate within the constructed idea of "special rights" and relied on the broader Colorado evangelical community for support. According to political scientist Nancy Wadsworth, this argument worked within the framework of a larger "special rights" campaign put forth by evangelicals at the time claiming to protect racial minorities. This galvanized other protected classes like the African American community to support Amendment 2⁴. CFV proposed that gay rights were "special rights" as opposed to civil rights. This "special rights" campaign was a public appeal, not a legal argument specified in the language of the ballot initiative or constitution⁶.

Cities in Colorado had been focal points for the LGB community since WWII. Denver was the main hub for

the intermountain west and was the only major LGB friendly city between Chicago and San Francisco^{7, 19}). By 1990, Denver, Boulder, and Aspen had passed municipal ordinances that protected the LGB community from public accommodation discrimination. These were the very ordinances that Amendment 2 overturned, exemplifying the movement-countermovement dynamic studied by sociologists like Mayer Zald, John McCarthy, David Meyers, and others. According to social movement scholar Tina Fetner in her book *How the Religious Right Shaped Lesbian and Gay Activism*²⁰, the religious right and LGB community had challenged each other since the Stonewall Riots in 1969 even within the state of Colorado.

Prior to Amendment 2, the LGB community had been politically latent. In order to pass municipal protections, a handful of lawyers like Tea Schook had worked together in the short term in EPOC, but there were few permanent, local SMOs²¹. These weak organizations largely contributed to why CFV could be successful. However, after Amendment 2 passed, the LGB community was in crisis. The preexisting activists like Tea Schook started CLIP to handle the lawsuit and EC to educate and inform the LGB and mainstream community about the lawsuit and effects of Amendment 2^{22 23}.

No matter how surprised the LGB community was by the passage of Amendment 2, the members had no choice but to organize and respond. In the words of lawyer Jean Dubofsky, who represented the LGB position at the Supreme Court, "[Amendment 2 prohibited] all levels of government in the State of Colorado from ever providing any opportunity for one to seek protection from discrimination on the basis of gay orientation"²⁴. The LGB community could not remain complacent; it merely became a question of how best to respond in a politically astute way.

State and national legislation was impossible. At the state level, the nature of Amendment 2 as a Colorado Constitutional amendment prevented state and municipal legislation efforts. Furthermore, if Amendment 2 were to be fully enacted, it would be nearly politically impossible to act collectively to produce the necessary signatures to overturn Amendment 2 as a ballot initiative in the following election cycle. Nationally, a federal bill or amendment could have nullified the state amendment under the Supremacy Clause of Article VI in the Constitution. However, this too, was not feasible. Even though Democrats had just won control of the presidency, house, and senate in the same election that Amendment 2 passed, the Democrats were only natural allies because the religious opposition successfully wedged itself into the Republican Party with the help of Ralph Reed's new leadership in the Christian Coalition. However, a seat at the legislative or executive table did not necessarily translate into beneficial legislation. According to a Gallup Poll taken June 1992, only 48% of respondents

²Parachurches are typically nondenominational organizations doing evangelical work funded privately. They can have religious or nonprofit status. They could range in interests from homelessness services to multicultural community centers¹⁷).

thought homosexual relations should be legal between consenting adults, and 8% had no opinion²⁵. Thus, the national legislature and executive were also unlikely to politically support overturning Amendment 2. A lawsuit starting at the local level was the only viable solution for the LGB movement despite the downsides of litigation.

By the end of 1992, EC had a clear, concise goal to challenge the religious right, but it had an identity crisis regarding *how* to achieve this about a year after initial establishment. According to meeting minutes from September 26, 1993, EC appeared to have lost focus in the year between the organization's founding and this meeting. Discussions during this meeting revolved around, amongst other things, whether to advocate or educate, resentment towards wasted time in coalitions, whether to boycott, buycott³, or neither. The occasion for debate was pressing because the stakes to overturn Amendment 2 by compelling new people to donate their time or money towards the effort were high. A meeting attendee said, "we are imploding—what the religious right wants" and "our mission is not about what CFV is, it's about us"²⁶.

Ultimately, what this document confirms is that members of EC felt themselves to be "focusing on too many things." By the end of 1993, a new goal emerged focusing on an offensive position relative to the religious right. "We don't counter the CFV, we should be proactive and tell the truth so that what [CFV] says is laughed out of the room"²⁶. From this point forward, EC emphasized its religious appeal to the LGB and mainstream community. Harnessing religion as inclusive was strategic in that it delegitimized its opposition and was offensive by garnering new support for LGB goals from the mainstream community.

5 RELIGIOUS APPEAL

EC's first critical internal choice was to refer to the religious right only as the radical right. In 1993, the first two newsletters use the term religious right. By the third newsletter, EC put religious right in quotes as "religious right." This first subtle rhetoric shift questioned the opposition's religiosity. EC wanted readers to question both aspects of this term—the religiosity and the political right-wing character. In parallel, CFV and the religious right more broadly embraced the term "radical gay agenda" with films like "the Gay Agenda" documentary in 1993.

After this subtle syntactical shift, EC started using the term radical right. This was a powerful usurping of language. First, by deleting religion all together, the term deflated the legitimacy of the religious right as a whole. Religion can be and has been a mobilizing

force for progressive and conservative politics. Nothing about the term religious should imply either. Furthermore, the term religion typically often gives organizations some semblance of legitimacy for those who find religion salient. Most people may not support an organization labeled "discriminatory right" but they might if it is labeled "religious right." Organizations like Focus on the Family and CFV stood to lose their credibility if they were to stop being perceived as grounded in religion or the political mainstream.

However, a natural argument to debunk CFV may have been to argue for a greater wall of separation between church and state where the religious right should not have been allowed to impose its religiously informed politics on others. In an undated memo, EC directly addressed the role of religion in civil society more broadly by harnessing the constitution and arguing on behalf of a porous wall of separation.

Equality Colorado trusts that the constitutional framers knew what they were doing when they called for freedoms of and from religion. We know that religion can be a transforming vehicle for people of faith. We know that religion can hurt people when it is used to exclude... we respect everyone's right to make moral and ethical decisions based on its values. Equality Colorado is organizing "Voices of Faith for Human Rights," an interfaith collation of people whose religious beliefs lead them to be human rights.²⁷

In this quotation, EC critiqued the opposition as using religion to exclude but recognized the transformative nature of religion. EC recognized that if it could harness religiously founded values, it could be more compelling than other types of value claims like human rights. Based on this memo, EC decided against demonizing religion and rather opted to harness it for its own ends. Additionally, this memo substantiates why EC started Voices of Faith, an education initiative to build its religious network.

Amidst EC's internal memos, external newsletters, and critical decisions depicted in meeting minutes, a nuanced attack against its countermovement emerged. Instead of the LGB movement remaining backed in a defensive corner with the religious right demoralizing them and causing a potential implosion, it adopted an offensive position by harnessing inclusive religion to connect its own religious network and to equip the community with counterarguments to the religious right. This is an interesting example of how a movement with relatively little political opportunity can mobilize and condemn its opponents in a nontraditional way. EC redefined the traits of the opposition in order to garner more support and undermine the countermovement's legitimacy.

³A buycott refers to only economically supporting LGB friendly businesses.

6 LITIGATION EDUCATION

EC attempted to fill a vital role in Amendment 2's lawsuit process as an educator. EC clarified legal terms, set expectations, and made the courts more palpable to the public through relatable appeals and by connecting litigators to activists. These were attempts to compensate for the potential downsides of litigation whereby the grassroots activists may have felt disenfranchised by how much money and effort was invested in litigation. Like the countermovement offensive tactic in the earlier section, this litigation work depicted a savvy SMO aware of the downsides of litigation, attempting to overcome those institutional barriers. As previously discussed, a lawsuit was the only option, but a lawsuit can cause detrimental effects on the movement as a whole because it can split the activists from the litigators. Activists may become disenchanted with litigation because it tends to shift the movement's goals and resources toward a small cohort of elite actors like attorneys. "Litigation strategies, regardless of outcome, have the potential to deradicalize and subtly reshape social movements in undesirable ways, all while supporting the status quo"¹².

In order to keep the broader movement engaged in the litigation process, EC emerged as a sort of liaison between the litigators and activists. This served to keep the other LGB activists realizing social movement goals even though other SMOs were litigating. According to Alan Hunt, each court decision, regardless of outcome, can be an opportunity to have critical dialogue regarding the nature of the lawsuit¹⁴. For this reason, EC incrementally updated the public on the litigation process while explaining legal terms in layman terms so that each litigation success could be perceived as a step towards overturning Amendment 2²⁸.

Another beneficial role that EC filled was emotionally connecting the LGB activists and community members to the litigators. Legal scholar Sandra Levitsky argues that queer activists in Chicago felt compelled to take direction from the litigators without having any control of whether they actually wanted to spend money and effort on a lawsuit. Levitsky's study exemplifies how a large separation between the grassroots activists and the litigating elites can fracture a movement¹³. The case study of EC offers an alternative to the LGB Chicago experience. Instead, EC consistently thanked CLIP, ACLU, and the Lambda Legal Defense for its "tireless work on the court case"²⁸. EC also hosted events to connect activists and litigators during the four-year process. For example, on October 9, 1995, the evening before the hearings at the US Supreme Court, CLIP and EC hosted a Q&A session for people to ask questions about the lawsuit and proceedings²⁹.

Publishing emotional appeals to make litigation seem less dry and distant was another way EC prevented the broader movement from resenting the lawsuit. For

instance, when covering the Supreme Court case, litigator Pat Steadman, who later won the Harvey Milk Champion of Change award for his vital legal work in fighting Amendment 2 as a lawyer and community organizer, published his personal account of the experience. Steadman wrote like a storyteller creating imagery and introducing characters²⁹. He reported the experience in a dramatic way potentially in an attempt to make readers imagine themselves at the Supreme Court. Steadman concluded his observations,

Standing outside the court, feeling the warm sunshine on my conservative, dark blue suit, I felt an incredible sense of relief. Looking up at the Court, and reading the word *Equal Justice Under the Law* which are inscribed on the pediment, I felt... as though those words really did apply to me too... it was very obvious that those four words were at the heart of this case.²⁹

This emotional commentary appealed to the sanctity of the courts like the cinematic end Amendment 2 deserved after years of litigation. The judicial branch was established to protect the minority from the masses, and in this case, Steadman felt that the courts had filled that role.

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7 CONCLUSION

EC was established in order to fight CFV and inform the broader LGB movement about the litigation process. This very specific niche was constructed to fight Amendment 2 as an information disseminator. When the fight ended in 1996, EC was in a quandary. It had never existed beyond the scope of its countermovement, litigation, and Amendment 2. EC disbanded by the early 2000s. Though EC did not survive to see marriage equality or the first openly gay governor in the country, it may have created the model of a litigation and political educator for future Colorado LGB SMOs²¹. Within ten years of EC's closure, One Colorado emerged on the local activist scene doing similar work to EC, such as promoting legislation and undergoing litigation efforts. Moreover, "One Colorado [is now] working to change the hearts

and minds of everyday Coloradans on LGBTQ issues. Through [its] public education efforts where [members] tell the stories of the barriers LGBTQ Coloradans face every day”³⁰. One Colorado’s emphasis on education and outreach is strikingly similar to EC and indicates that EC modeled an effective local SMO in its short existence. The LGB social movement and its SMOs like EC and CLIP defied what legal, political, and social movement scholars would expect to observe after the passage of Colorado’s Amendment 2. EC set a precedent within the state that future organizations like One Colorado attempted to fill. This case study is important for the LGB community who was comprehensibly attacked by the religious right in 1992 and would be attacked numerous times again in years to come. Furthermore, its organizational and political savviness inspires new questions in the academic fields of social movements and law and society.

8 EDITOR’S NOTES

This work was adapted from a senior thesis and has been condensed for publication. Contact DUURJ staff for the full publication.

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