

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

APRIL DEBOER, *et al.*,

Plaintiffs,

-vs-

ED MI #12-civ-10285
Hon. Bernard A. Friedman

RICHARD SNYDER, *et al.*,

Defendants.

EXPERT REPORT OF ANNA R. KIRKLAND

I, Anna R. Kirkland, J.D., Ph.D., hereby declare and state as follows:

I. EXPERT BACKGROUND AND QUALIFICATIONS

1. I have been retained as an expert witness by counsel for plaintiffs in this matter. My professional background, experience and publications are detailed in my curriculum vitae, which is attached to this declaration as Exhibit A. This declaration is based on my personal specialized knowledge and years of research, teaching, learning, and writing about American discrimination law and the politics of sexual orientation and other legally regulated personal identity categories as described here and on my curriculum vitae. I have actual knowledge of the matters stated in this declaration, and I could and would so testify if called as a witness.

2. I am an Associate Professor of Women's Studies and Political Science at the University of Michigan. My affiliation with the Political Science department is a courtesy extended by a vote of the faculty. I have held my faculty appointment at the University of Michigan since 2004. I spent the academic year 2010-2011 at Princeton University as a fellow of the Law and Public Affairs Program.

3. In 2001, I received a law degree from the University of California at Berkeley and was admitted to the California bar that year. I earned my Ph.D. in 2003 from the Jurisprudence and Social Policy program from the University of California at Berkeley, focusing my doctoral study on contemporary U.S. discrimination law. In 1997 I received a master's degree in Government and Foreign Affairs from the University of Virginia.

4. My research interests include American antidiscrimination law, and my first book, *Fat Rights: Dilemmas of Difference and Personhood* (New York University Press, 2008), focused on anti-discrimination law as seen through the highly contested category of obesity. In scholarly articles and lectures, I have also published work on disability discrimination and transgender discrimination, as well as diversity in the university setting.

5. My expertise extends beyond my publication record into the many areas of law and politics that have been the subject of my teaching since my graduate school years. Among the courses I offer regularly are those in gender and the law, law and politics of sexuality, disability rights, and advanced undergraduate and graduate seminars on discrimination law. I have taught courses in these areas at the undergraduate and graduate level as well as at the University of Michigan Law School. I cover such topics as employment discrimination, constitutional protections under the 14th Amendment, and reproductive rights.

6. I regularly serve as an academic peer reviewer for many journals in women's studies, sociology, and political science as well as for academic presses. I am a member of the American Political Science Association and the Law and Society Association, and regularly attend and present scholarly papers on law and politics at their conferences as well as in other professional settings.

7. I have not served as an expert witness in the last four years.

8. I have agreed to serve as an expert witness in this litigation for no compensation.

9. In this declaration, I rely upon my 16 years of research, teaching, learning, and writing about American discrimination law and the politics of sexual orientation and other legally regulated personal identity categories as set out in my curriculum vitae. The claims and evidence in this declaration come from the sources cited in my relevant books and scholarly articles, court decisions, statutes, as well as the work of other scholars and informational sources listed in the bibliography attached as Exhibit B. The materials I have relied upon in preparing this declaration are the same types of materials that experts in my fields of study rely upon when forming opinions on the subject.

II. SUMMARY OF FACTS AND OPINION

10. Political power is the foundational interest that unites the broad discipline of political science, and scholars conceptualize and study it in different ways. Scholars of American politics are primarily focused on the politics of pluralism in democracy, in which groups try to advance their interests in government through supporting or opposing legislation, lobbying, engaging with or participating in political campaigns, and mobilizing tools of direct democracy such as the ballot initiative process. Classic markers of political powerlessness include stagnation of or outright defeats of measures clearly benefiting the group, inability to elect or otherwise place members of the group in powerful positions, and the inability to prevent enactments of policies clearly harming the group. Scholars of law and politics study (among many other things) the relationship between rights and political power, particularly contests between majority groups and minority groups in which the question is whether, how, to what extent, and upon what basis majoritarian political will is properly limited by minority rights.

11. Rights for gays and lesbians have been a highly visible focus of struggles over political power in the United States for over four decades now. Gay and lesbian political mobilization has certainly increased from the days of a few tiny protests earlier in the twentieth century. A significant share of this organization, particularly at the local and state levels, developed during defensive efforts to ward off political actions meant to harm them, and these defensive campaigns took a significant share of energy and resources that could have otherwise been directed at achieving more positively beneficial political outcomes.

12. One important way that gays and lesbians responded to political efforts against them was to come out of the closet in greater and greater numbers in recent decades. Gays and lesbians have responded to campaigns against their rights by revealing themselves as they are and by describing their experiences with discrimination. There has been a marked increase in the majority's acceptance of gays and lesbians over time, and heightened visibility of gays and lesbians and greater awareness of their stories of discrimination are thought to be important drivers of this shift.

13. In federal equal protection law, courts must determine what standard of review to apply to laws that are challenged because they treat one group differently and unequally. In those cases analyzing whether to apply heightened judicial scrutiny to a law that classifies on the basis of a particular characteristic or trait, the U.S. Supreme Court always requires that (1) the disfavored group has faced a history of discrimination that is (2) based on a characteristic that does not bear upon a person's ability to contribute to society. Some cases also consider (3) political power of the disfavored group and/or (4) the nature of the characteristic or its relative immutability.

14. The Supreme Court has not discussed the political powerlessness prong in every case applying heightened scrutiny, and when it has analyzed degrees of political power, it has not required that the group show that it is completely unable to advance its interests in the democratic process. The Supreme Court first began applying heightened scrutiny to race and sex when some federal and state level protective legislation had been passed to protect women and racial minorities, particularly African Americans, from discrimination. Heightened scrutiny has been compatible with a variable history of social change in which the status of the protected classes would rise and fall. Moreover, women and racial minorities have secured additional protections as well as increased their status in some significant ways since heightened scrutiny was applied, but the Supreme Court continues to treat sex and race as quasi-suspect and suspect classes respectively.

15. Some political advancements by and broader acceptance of gays and lesbians are consistent with the condition of women and African-Americans when they received judicial protections against discrimination. Moreover, gay and lesbian citizens actually enjoy fewer federal rights and protections today than women or racial minorities as a group had won when the Supreme Court applied heightened scrutiny to sex and race.

III. POLITICAL POWER AND GENDER IN THE APPLICATION OF HEIGHTENED SCRUTINY

16. The Supreme Court explicitly grappled with applying heightened scrutiny to sex classifications in *Frontiero v. Richardson* in 1973.¹ In that case, a servicewoman challenged the military's benefits rule that a serviceman could automatically earn extra quarters allowances and health benefits for his wife but a service woman had to prove that her husband was at least 50% dependent on her to secure the same allowances and benefits. A plurality of Justices in *Frontiero*

¹ See *Frontiero v. Richardson*, 411 U.S. 677 (1973).

endorsed strict scrutiny as the proper standard for reviewing laws treating citizens unequally on the basis of sex,² while others concurred in the judgment but thought it more prudent to wait for the outcome of the Equal Rights Amendment (ERA) ratification process, which would have had the constitutional effect of subjecting sex classifications to strict scrutiny.³ The plurality observed that burdensome, paternalistic stereotypes had long assumed that women would be dependents rather than providers. Conceding that “[i]t is true, of course, that the position of women in America has improved markedly in recent decades,”⁴ the plurality nonetheless noted that “women still face pervasive, although at times more subtle, discrimination in in our educational institutions, in the job market and, perhaps most conspicuously, in the political arena.”⁵ The Supreme Court subsequently settled on an intermediate form of heightened scrutiny in the 1976 case of *Craig v. Boren*.⁶

17. When a plurality of Supreme Court Justices applied strict scrutiny to sex classifications in *Frontiero* and when a majority applied intermediate scrutiny in *Craig*, women as a class had received significant majoritarian protections and remedies at the federal level. These include ratification of the 19th Amendment to the U.S. Constitution in 1920 securing the right to vote, the Equal Pay Act of 1963 forbidding disparate wages for substantially similar jobs, inclusion in the Civil Rights Act of 1964 addressing discrimination in employment and public accommodations, and Title IX of the Education Amendments of 1972 prohibiting discrimination on the basis of sex in education programs and activities by recipients of federal financial

² *Id.* at 688.

³ *Id.* at 692 (Powell, J., concurring).

⁴ *Id.* at 685.

⁵ *Id.* at 686.

⁶ *See Craig v. Boren*, 429 U.S. 190 (1976).

assistance. Additional protections against sex discrimination in federal contracting were added by executive order of the President in 1967.

18. Prior to *Frontiero* and *Craig*, more than the required two-thirds of the U.S. House and Senate approved of the Equal Rights Amendment (ERA) in 1972 and presented it to the states for ratification. The *Frontiero* plurality opinion construes these Congressional actions against sex discrimination as a “conclusion of a coequal branch of Government” that “classifications based upon sex are inherently invidious.”⁷ Upon referral to the states in 1972, the ERA was ratified by 30 states within one year. ERA supporters were confident that the amendment would be ratified by the necessary three-fourths of the states, and in 1973 that confidence was reasonable, although ultimately mistaken.

IV. POLITICAL POWER AND RACE IN THE APPLICATION OF HEIGHTENED SCRUTINY

19. The Supreme Court’s decision in *McLaughlin v. Florida* in 1964 marks the first time strict scrutiny was applied to a law that classified using race and the law was struck down.⁸ While it was not the first time the Supreme Court protected the constitutional rights of African Americans using equal protection, *McLaughlin* is the first ruling to bring together both the language of strict scrutiny and its application. At issue was Florida’s criminal statute aimed at inter-racial couples (made up of a “Negro” and a white person) who spent time together at night in the same room. The Court announced that the 14th Amendment’s “strong policy renders racial classifications ‘constitutionally suspect,’ and subject to the ‘most rigid scrutiny,’ and ‘in most circumstances irrelevant’ to any constitutionally acceptable legislative purpose.”⁹ The Court

⁷ *Frontiero*, 411 U.S. at 687-88.

⁸ See *McLaughlin v. Florida*, 379 U.S. 184 (1964). The December 7 ruling followed passage of the landmark Civil Rights Act of 1964 the previous July.

⁹ 379 U.S. at 192 (internal citations omitted).

analyzed Florida’s race-based law according to its own stated purpose of preventing breaches of sexual decency. The majority doubted, however, “that promiscuity by the interracial couple presents any particular problems requiring separate or different treatment if the suggested over-all policy of the chapter is to be adequately served.”¹⁰ “Without such justification,” the Court found, “the racial classification . . . is reduced to an invidious discrimination forbidden by the Equal Protection Clause.”¹¹

20. Prior to its decision in *McLaughlin*, the Supreme Court had first used the language of strict scrutiny in *Korematsu v. United States* (1944), a case challenging an World War II-era exclusion order commanding all people of Japanese descent to leave certain areas of the Pacific coast considered militarily sensitive and report to assembly centers.¹² Fred Korematsu, a U.S. citizen of Japanese descent, had been convicted of failing to report to his assembly center. Despite announcing that race-based laws should be held to the highest judicial scrutiny, the Court ruled that the exclusion order was necessary and valid. The *Korematsu* majority did not analyze the race-based exclusion law according to the strict scrutiny jurisprudence we know today. That is, the majority did not actually scrutinize the government’s justification for its race-based law. The debate between the majority and the dissenting justices focused on whether to defer to the government’s proffered justification of wartime exigency or whether to scrutinize the racial classification at the center of the exclusion order.¹³ Legal scholars regard *Korematsu* as the first usage of the term “strict scrutiny,” but because of the majority’s deference to the law being

¹⁰ *Id.* at 193.

¹¹ *Id.* at 192-93.

¹² See *Korematsu v. United States*, 323 U.S. 214 (1944).

¹³ Compare the majority’s conclusion that the exclusion was not race-based, *id.* at 223, with *id.* at 226 (Roberts, J., dissenting) (exclusion based on ancestry clearly violates constitutional rights) and *id.* at 234 (Murphy, J., dissenting) (military’s claim of exigency must be subjected to judicial review for its reasonableness and not simply accepted).

challenged, we do not understand it as an application of strict scrutiny to race that fits with the doctrine as it evolved.

21. It is also notable that the Supreme Court did not adopt a racial classification rule in *Brown v. Board of Education* in 1954.¹⁴ There is no mention or application of strict scrutiny for race-based classifications; rather, the unanimous Court simply held that “in the field of public education, the doctrine of ‘separate but equal’ has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs . . . are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment.”¹⁵

22. The Supreme Court’s deployment of the strict scrutiny standard in *McLaughlin* came after a series of federal laws had been put in place to protect African Americans from discrimination. After the Civil War, the U.S. Constitution was amended with the 13th Amendment banning slavery, the 14th Amendment providing for equal protection and due process for all persons, and the 15th Amendment ensuring the right to vote without regard to race, color or prior servitude. Congress also passed Civil Rights Acts: in 1866, defining former slaves as U.S. citizens and conferring equal rights to make and enforce contracts, sue and be sued, give evidence in court, and inherit, purchase, lease, sell, and own property; 1871, enabling federal prosecutions for rights violations by the Ku Klux Klan, later amended and codified as 42 U.S.C. Section 1983, the claim upon which the present suit is based); 1875, banning private race discrimination in public accommodations such as inns, hotels, transportation, and entertainment venues; 1957, setting up the Civil Rights Commission to look into the deprivation of voting rights; 1960, extending the Commission and granting inspection rights to monitor voting; and

¹⁴ See *Brown v. Board of Ed. of Topeka*, 347 U.S. 483 (1954).

¹⁵ 347 U.S. at 495.

1964, enacting the landmark civil rights bill banning discrimination on the basis of race, sex, religion, color, and national origin in employment and public accommodations. The Civil Rights Act of 1964 also included voting rights protections, increased enforcement powers for the Attorney General in desegregation efforts, an expanded Civil Rights Commission, and prohibition on race discrimination in programs receiving federal funds. There were also additional discrimination protections in place for federal government contractors by executive order of the President.¹⁶

V. POLITICAL POWER AND SEXUAL ORIENTATION

23. There is no federal employment law against firing, refusing to hire, or harassing an employee because of his or her actual or perceived sexual orientation. No federal law prohibits public accommodations, housing, credit, or education discrimination on the basis of sexual orientation. Moreover, 29 states, including Michigan, have no laws forbidding employment, housing or public accommodations discrimination based on sexual orientation.

24. Public opinion research at both the national and state levels shows that there is public support for civil rights for gays and lesbians, especially employment protections, but gays and lesbians have not had the political power to translate support on these issues into legislative success. One study of the congruence between citizens' support for laws protecting gays and lesbians against discrimination in jobs, health benefits, and housing discrimination and against hate crimes found that even when support reached 50% in state polls, the probability that the state would adopt the policy was "roughly zero."¹⁷ For passage of legislation protecting gays and

¹⁶ See, e.g., Exec. Order No. 8802, 3 C.F.R. 957 (1938-1943) (forbidding race discrimination by national defense contractors); Exec. Order No. 10479, 18 Fed. Reg. 4899 (Aug. 13, 1953) (forbidding discrimination by government contractors).

¹⁷ Jeffrey R. Lax and Justin H. Phillips, "Gay Rights in the States: Public Opinion and Policy Responsiveness," *American Political Science Review* 103, no. 3 (2009): 376.

lesbians from housing discrimination in particular, the 50% threshold for likelihood of policy adoption was not reached until measured public support for it was over 75%.

25. Laws in some states continue to hold out sexual orientation for disfavored treatment. For example, some states mandate the ways educators can present gays and lesbians in public schools, banning any positive presentations and requiring ones that reinforce negative views and associations with disease. Arizona law prohibits schools from portraying gays and lesbians in a positive way;¹⁸ Oklahoma law requires teachers in HIV/AIDS prevention programs in schools to present homosexual activity as primarily responsible for contact with the AIDS virus;¹⁹ South Carolina law prohibits sex education classes from discussing gay and lesbian relationships unless the topic is sexually transmitted diseases;²⁰ Utah bans advocacy for gays and lesbians from its public schools²¹ and requires students to obtain parental consent before joining a school club (the latter is designed to make it difficult for students to join a Gay-Straight Alliance);²² and several states effectively ban adoptions by gay and lesbian couples, either explicitly as in Mississippi,²³ or by barring unmarried, cohabiting couples from adopting, as in Utah.²⁴

26. Gay and lesbian advocates have had to expend a great deal of their organizational, economic, and political resources in defensive postures in political struggles, either attempting to thwart unfavorable legislation or ballot initiatives or working to keep protections from being

¹⁸ Ariz. Rev. Stat. Ann. § 15-716(c) (West 2013).

¹⁹ Okla. Stat. tit. 70, § 11-103.3 (West 2013).

²⁰ S.C. Code Ann. § 59-32-30(5) (West 2013).

²¹ Utah Code Ann. § 53A-13(101)(1)(c)(iii)(A) (West 2013).

²² Utah Code Ann. § 53A-11-1210 (West 2013).

²³ Miss. Code Ann. § 93-17-3 (5) (West 2013).

²⁴ Utah Code Ann. § 78B-6-102 (West 2013). An Arkansas law barring unmarried cohabitants from adopting was struck in *Ark. Dep't of Human Serv's v. Cole*, 380 S.W.3d 429 (Ark. 2011), as was Florida's ban on gay people adopting. *Fla. Dep't of Children & Families v. X.X.G.*, 45 So.3d 79 (Fl. Ct. App. 2010).

repealed at the ballot box. While there have indeed been successes for the gay and lesbian position, many political “wins” over the last 40 years were what I have termed elsewhere “defensive wins,” or wins that preserve a favorable status quo rather than advance new ground. (By contrast, outright advancements of a group’s agenda would be “offensive wins,” or wins after an attempt to pass a law favorable to one’s group.)

27. Opponents of rights for gays and lesbians mobilized in the 1970s and adopted strategies of both reacting to pro-gay political developments (such as a town passing a nondiscrimination ordinance) by holding a referendum to repeal them as well as proactively passing anti-gay legislation or ballot measures in what one anti-gay activist called “tak[ing] the battle to the enemy.”²⁵ In assessing the political position of gays and lesbians, then, it is important to consider the history of *de jure* discrimination against them and to understand gay and lesbian political organizing as securing some advancements but more importantly as pushing back against a steady stream of rights-stripping majoritarian actions.

28. Between 1974 and 2009, there were at least 158 state and local ballot measures addressing issues of gay and lesbian rights put to voters across the United States. This included attempts to roll back previously passed anti-discrimination measures, curtail protections for people with HIV and AIDS, limit the presentation of gay and lesbian-related topics taught in public schools and to prohibit gays and lesbians from teaching in public schools, and to prohibit extending anti-discrimination coverage to gays and lesbians. Gay and lesbian rights were defeated at the ballot box 70% of the time.

29. Not every attempt to put a referendum or initiative on the ballot restricting gay and lesbian rights was successful in gathering enough valid signatures within the time allotted to

²⁵ Amy L. Stone, *Gay Rights at the Ballot Box* (University of Minnesota Press, 2012), 6.

appear on election day. During the same time period discussed above (1974-2009), there were a total of 245 attempts to place a measure restricting gay and lesbian rights before voters.

30. The Supreme Court's decision in *Romer v. Evans* in 1996 invalidated one type of ballot initiative—the so-called “special rights” protection-stripping initiative amendment—that repealed and banned anti-discrimination laws that protected gay men and lesbians from discrimination in employment and housing.²⁶ After *Romer*, these initiatives slowed to a halt, but in 2011 Tennessee enacted a law prohibiting its municipalities from extending nondiscrimination protection to any new category not covered under the state's civil rights law. The state law does not include sexual orientation, and the law was passed in response to Nashville's adoption of a sexual orientation nondiscrimination law.

31. Even as initiatives stripping nondiscrimination protections (which account for 31% of all attempted ballot initiatives from 1974-2009) receded, the question of marriage for same sex couples provided another opportunity for resort to ballot measures against gay people.

32. In 1993, the Hawaii Supreme Court issued a preliminary ruling stating that the exclusion of same-sex couples from marriage constituted unconstitutional sex discrimination under the state constitution and gave the State an opportunity to defend the marriage exclusion at trial.²⁷ In 1994, the legislature passed a statute limiting marriage to a man and a woman. At trial, the judge found that the state's justifications for its marriage exclusion failed under heightened scrutiny. Before the state Supreme Court took up the issue again, the legislature referred out for ratification a constitutional amendment reserving to itself the sole power to determine the definition of marriage, which was approved by voters in November 1998.

²⁶ See *Romer v. Evans*, 417 U.S. 620 (1996).

²⁷ See *Baehr v. Lewin*, 852 P.2d 44 (Haw. 1993).

33. Voters in Alaska also approved a constitutional amendment limiting marriage in November 1998 after a trial court ruled that barring marriage for same sex couples was sex discrimination and violated the state constitution's privacy protections.²⁸

34. The U.S. Congress in 1996 overwhelmingly passed and President Clinton signed the Defense of Marriage Act or DOMA. Section 2 of the law allows states to refuse to recognize marriages lawfully certified in other states. Section 3 of DOMA codified definitions of "marriage" and "spouse" to apply to opposite sex couples only and placed them in the Dictionary Act so that these terms would be amended in over 1000 federal laws in the U.S. Code.

35. As the U.S. Supreme Court has since described it, DOMA's "congressional purpose [was] to influence or interfere with state sovereign choices about who may be married . . . to discourage enactment of state same-sex marriage laws . . . to restrict the freedom and choice of couples married under those laws if they are enacted . . . [and] to put a thumb on the scales and influence a state's decision as to how to shape its own marriage laws."²⁹

36. Even though no marriage of a same sex couple had been certified anywhere in the country, states rushed to pass laws restricting marriage to one man and one woman. Before Massachusetts became the first state to license marriages for same-sex couples in May 2004, 39 states had already passed statutes barring marriage (and sometimes other protections as well) for same sex couples and four had enacted constitutional amendments: Hawaii, Alaska, Nebraska, and Nevada.

37. In 2003, the Massachusetts Supreme Judicial Court ruled that the exclusion of same-sex couples from marriage violated the state constitution, and stayed implementation of its

²⁸ *Brause v. Bureau of Vital Statistics*, No. 3AN-95-6562 CI (AK Super. Ct. Feb. 27, 1998).

²⁹ *United States v. Windsor*, 133 S.Ct. 2675, 2693 (2013) (internal citation and quotation marks omitted).

ruling until May 2004.³⁰ During the six-month stay, the U.S. President and the Governor of Massachusetts urged ratification of an amendment to the U.S. Constitution to foreclose the possibility of same-sex couples marrying in any state.

38. In 2004, even after the usual legislative process had resulted in state laws prohibiting marriage for gays and lesbians, highly mobilized organizations opposed to gay and lesbian rights qualified constitutional amendment proposals for the ballot in Arkansas, Montana, Michigan, North Dakota, Ohio, and Oregon. State legislators simultaneously placed constitutional amendment questions on the ballots in Georgia, Kentucky, Louisiana, Mississippi, Missouri, Oklahoma, and Utah. All 13 measures won by large margins.

39. More constitutional amendment proposals were ratified in 2006, in the States of Alabama, Colorado, Idaho, South Carolina, South Dakota, Tennessee, Virginia, and Wisconsin and in 2008 in Arizona, California, and Florida. Notably, California's Proposition 8 was approved in 2008, effectively taking away the right to marry that had been granted by the State Supreme Court in *In re Marriage Cases* earlier that year.³¹

40. As of January 2013, the marriage question has been on the ballot 39 times in 35 states. Marriage rights were voted down at almost every opportunity. The only exceptions were in Arizona in 2006 where the measure would have affected health care and hospital visitation for unmarried heterosexual couples as well as gay and lesbian couples and then again in November 2012 when voters in Maine, Maryland, and Washington approved of marriage laws for same-sex couples and Minnesota voters rejected a constitutional ban.

41. Michigan has no state level protections against discrimination on the basis of sexual orientation. The state's 1976 Elliott-Larsen Civil Rights Act bans discrimination in

³⁰ *Goodridge v. Dep't. of Pub. Health*, 798 N.E.2d 941 (Mass. 2003).

³¹ *See In re Marriage Cases*, 183 P.3d 384 (Cal. 2008).

employment, housing, and public accommodations on the basis of religion, race, color, national origin, age, sex, height, weight, and marital status. The statute was designed to be generous in its coverage at the time of its passage, but sexual orientation was not included at its inception and the legislature has repeatedly failed to advance amendments to include sexual orientation as a protected characteristic. Michigan lawmakers introduced bills to add sexual orientation to Elliott-Larsen in 1983, 1997, 2001, 2003, and 2005, for example, but did not leave committee. A 2010 version left the Judiciary Committee but did not get a floor vote, and the same bill was re-introduced in 2012 without success.

42. A recent compilation shows that 31 Michigan communities have extended local non-discrimination ordinances to include sexual orientation, including Ann Arbor, Battle Creek, Birmingham, Dearborn Heights, Detroit, East Lansing, Grand Rapids, Flint, Kalamazoo, Saginaw, and Ypsilanti.

43. While some Michigan localities have enacted and successfully defended (in referendums) discrimination protections for their gay and lesbian citizens, others of these laws have been defeated in referendums. Lansing's nondiscrimination ordinance was defeated in 1996, Ferndale's in 2000, Royal Oak's in 2001, and Hamtramck's in 2008. Ferndale voters re-instated their nondiscrimination ordinance in 2006, and Royal Oak voters did the same in November 2013. The Lansing city council re-instated their ordinance in 2006.

44. The Michigan marriage amendment, a constitutional initiative, passed in 2004 with 58% in favor. The amendment states that "the union of one man and one woman in marriage shall be the only agreement recognized as a marriage or *similar union for any purpose*" (emphasis mine).³² Political scientists refer to measures invalidating all forms of legal

³² Const. 1963, art. 1, sec. 25.

recognition between same sex partners as a “super-DOMA” as opposed to a law or amendment that simply limits marriage to or defines marriage as the union of a man and a woman.

45. In 2005 the Michigan Attorney General opined that the marriage amendment prohibited the city of Kalamazoo from offering health insurance to the same sex partners of its city workers,³³ and the city withdrew those benefits from its contracts beginning in 2006. The city of Kalamazoo joined Michigan labor unions who wanted to include domestic partner benefits in their contract bargaining in a lawsuit challenging this interpretation of the amendment, but in 2008 the Michigan Supreme Court held that the plain language that voters had ratified clearly encompassed a same sex partnership with health benefits as “similar” to marriage and thus such arrangements had been included in the ban.³⁴ The University of Michigan accordingly does not offer domestic partner benefits, but offers a vehicle for benefits called Other Qualified Adult (OQA) that includes an adult (of the same sex or different sex) sharing the household with the employee who is not a spouse.

46. Even as most states forbid marriage for gays and lesbians by statute, amendment, or both, 16 states and the District of Columbia now authorize government marriage licensing for same sex couples, with the first four states allowing marriage as a result of state supreme court decisions (Massachusetts, Connecticut, California,³⁵ Iowa), three authorizing marriage legislatively while *United States v. Windsor* was pending (Rhode Island, Delaware, and Minnesota) and three more authorizing marriage since the *Windsor* decision (Illinois, Hawaii and New Jersey (by court decision)).

³³ MI Att’y Gen. Op. No.7171 (March 16, 2005), available at <http://www.ag.state.mi.us/opinion/datafiles/2000s/op10247.htm>

³⁴ *National Pride at Work v. Governor*, 481 Mich. 56 (2008).

³⁵ California’s ruling was overturned by Proposition 8 but marriage was restored by virtue of the California Supreme Court’s ruling in *Hollingsworth v. Perry*, 133 S.Ct. 2652 (2013).

47. Congress repealed the military's "Don't Ask, Don't Tell" (DADT) policy banning open service by gays and lesbians in 2010, but without banning discrimination on the basis of sexual orientation in the military. It is important to remember that DADT was a compromise after President Clinton raised the idea of equal service for gays and lesbians and received an uproar of disapproval. An expansion of federal hate crimes law in 2009 added sexual orientation to the list of biases grounding a hate crime, although twenty states do not have a hate crimes law that includes sexual orientation. Statistics about anti-gay hate crimes have been gathered by law since 1992.

VI. COMPARATIVE LEVELS OF POLITICAL POWER: RACE, GENDER, AND SEXUAL ORIENTATION

48. The forms of legal protection that had been extended on the basis of race and sex at the times these traits received heightened judicial scrutiny were early steps, hard-won and piecemeal. Yet even so, federal rights protections on the basis of the traits of sex and race were more robust at the time the Supreme Court extended heightened scrutiny to them than they currently are on the basis of sexual orientation. Moreover, heightened scrutiny has not been withdrawn from the traits of race and sex even when the status of racial minorities and women has improved.

49. In the *Frontiero* decision, the Supreme Court noted that women's under-representation in politics made it difficult for them to defend against rights-stripping legislation and suggested the need for heightened judicial scrutiny.³⁶ Political science research has shown that having members of a group represented in government decision-making matters for whether issues important to that group are considered. Gays and lesbians, believed to comprise about 3.5% of the population, have seen very few members of their group serve in national government.

³⁶ 411 U.S. at 686.

There are 8 self-identified gay or lesbian members of Congress today (one Senator and seven Representatives), and since Rep. Gerry Studds of Massachusetts acknowledged his homosexuality in 1983 there have been a total of 13 gay or lesbian candidates either elected openly, outed in office, or coming out of the closet in office (4 of these elected in 2013). Moreover, even though about 450 gay and lesbian candidates have won elective office at all levels throughout the country as of 2009, they are generally limited to running as Democrats in districts that are particularly receptive and largely Democratic.

50. At the time the Supreme Court extended heightened scrutiny to race and gender, racial minorities and women were also scantily represented in positions of political power. Yet, African Americans and women had been elected and appointed to government positions in greater numbers than gays and lesbians today. For example, when *McLaughlin* affirmed that race classifications would receive strict scrutiny in 1964, there were five African American members of the House of Representatives and 29 African Americans had been elected to Congress up to that point. When the *Frontiero* plurality applied heightened scrutiny, there were 15 women serving in the House, and 86 women total had been elected or appointed to seats to Congress.

51. The President had appointed and the Senate had confirmed seven women as Article III federal judges when the Supreme Court handed down the *Frontiero* decision. By the time *McLaughlin* was decided, eight African American Article III judges had been appointed by the President and confirmed by the Senate to serve. Openly gay or lesbian Article III judges have been appointed and confirmed in similar numbers (eight to date), seven of those since 2011 and four since 2013.

52. At the time *McLaughlin* was decided, 31 states had enacted their own laws against race-based discrimination in public accommodations, and 26 state laws barred race

discrimination in employment. When the Supreme Court extended heightened scrutiny to sex, at least 29 states had enacted their own laws prohibiting sex discrimination in employment, and 37 states had equal pay laws. Currently 21 states forbid employment discrimination based on sexual orientation.

53. Gays and lesbians are consistently at or near the bottom polls asking the public how they feel about different types of people, and often well below other minority groups. In what are termed “feeling thermometer” studies in political science, people are asked to rate different groups such as gays and lesbians on a scale of 1 to 100, which the higher numbers indicating warmer or more favorable feelings and lower numbers indicating cooler or more negative feelings. In the 2004 survey, gays and lesbians received 49 out of 100 and ranked lower than Muslims, people on welfare, rich people, feminists, and fundamentalists and just above illegal immigrants, the group at the bottom of the rankings. The 2004 ranking of gays and lesbians was 20 points “cooler” than numbers given for Hispanics, Catholics, Asians, Jews, and African Americans. People answering the survey were also more comfortable giving gays and lesbians very low rankings compared to other groups. For example, respondents were twenty times more likely to rate gays and lesbians below 10 than they were to give whites or Jews such a cold rating, and fifty times more likely to give a rating of less than 10 to gays and lesbians than poor people or the elderly. Feeling thermometer responses were stable from 2004 to 2008. Generally the trajectory of public opinion about gays and lesbians has been trending upward (with some declines when marriage for same sex couples has been at its most prominent in the news), but these feeling thermometer studies show that people do not regard gays and lesbians as highly as other protected minority groups.

54. Over the last century, democratic majorities in the states have voted to strip African Americans of voting rights, to thwart school desegregation efforts, to repeal fair housing laws, to ban immigrant employment, and to prohibit Asians from owning land. Gays and lesbians have had to defend their civil rights at the ballot box more frequently than any other minority group.

A handwritten signature in cursive script that reads "Anna Kirkland". The signature is written in black ink and is positioned above a horizontal line.

Anna Kirkland, Ph.D, J.D.

Dated: December 19, 2013

EXHIBIT A

CURRICULUM VITAE

Anna R. Kirkland

University of Michigan Women's Studies Department
204 South State Street
Ann Arbor, Michigan 48109-1290
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Education

Ph.D., Jurisprudence and Social Policy Program, University of California, Berkeley. December 2003.

J.D., University of California, Berkeley School of Law. May 2001.

M.A., Department of Government and Foreign Affairs, University of Virginia. January 1997.

B.A., Philosophy, Davidson College. May 1995. Phi Beta Kappa.

Academic Appointments

Associate Professor of Women's Studies and Political Science (by courtesy), University of Michigan. 2010 to present.

Director of Undergraduate Studies, Women's Studies Department (2011-2013)

Co-Director, Disability Studies Initiative (UMInDS) (2011-2012)

Affiliated Faculty, Science, Technology & Society (STS) Program, ongoing

Assistant Professor of Women's Studies and Political Science (by courtesy), University of Michigan. 2004 to 2010.

Visiting Assistant Professor of Law, University of Michigan School of Law. Winter 2006 term.

Honors and Awards

Class of 1923 Teaching Award, University of Michigan College of Literature, Science, and the Arts, 2010.

Law and Public Affairs Fellowship, Princeton University, 2010-2011.

Faculty Fellow, National Center for Institutional Diversity at the University of Michigan, 2008-2009.

University of Michigan Institute for Research on Women and Gender Faculty Research Award, 2005, 2006.

University of California President's Dissertation Year Fellowship, 2002-2003.

2001-2002 Kadish Fellow at the Kadish Center for Morality, Law, and Public Affairs, Boalt Hall School of Law.

2002 Abigail Hodgen Publication Grant for women writing in the social sciences from the University of California, Berkeley.

Fall 2000 American Jurisprudence Award in Federal Courts (top grade), Boalt Hall School of Law.

California Law Review, Boalt Hall School of Law. 1999-2001.

Outstanding Graduate Student Instructor Award from the Legal Studies Department, University of California, Berkeley. May 2000.

1997 Zora Neale Hurston Writing Prize for my Master's Thesis, "Rights and the Representation of Social Conflict: A Feminist Critique."

Books

Fat Rights: Dilemmas of Difference and Personhood (New York University Press, 2008).

Co-editor with Jonathan Metzl, Against Health: How Health Became the New Morality (New York University Press, 2010).

Articles

"Credibility Battles in the Autism Litigation," *Social Studies of Science*, Vol. 42, Issue 2 (April 2012): 237-261.

"The Legitimacy of Vaccine Critics: What's Left after Autism?," *Journal of Health Policy, Politics and Law*, Vol. 37, No. 1 (February 2012): 69-97.

(with Ben Hansen), "How Do I Bring Diversity?: Race and Class in the College Admissions Essay," *Law & Society Review*, Vol. 45, No. 1 (2011): 103-138.

"The Environmental Account of Obesity: A Case for Feminist Skepticism," *Signs: Journal of Women in Culture and Society*, Vol. 36, No. 2 (Winter 2011): 411-436.

"Revisiting Rights across Contexts: Fat, Health, and Antidiscrimination Law," *Studies in Law, Politics and Society*, Vol. 48 (Fall 2009): 121-145.

"Think of the Hippopotamus: Rights Consciousness in the Fat Acceptance Movement," *Law & Society Review*, Vol. 42, No. 2 (June 2008): 397-431.

“What’s at Stake in Transgender Discrimination as Sex Discrimination?” *Signs: Journal of Women in Culture and Society*, Vol. 32, No. 1 (Autumn 2006): 83-111.

“What’s at Stake in Fatness as a Disability?,” *Disability Studies Quarterly*, Vol. 26, No. 1 (Winter 2006).

“Victorious Transsexuals in the Courtroom: A Challenge for Feminist Legal Theory,” *Law & Social Inquiry*, Vol. 28, No. 1 (March 2003): 1-37.

“Representations of Fatness and Personhood: Pro-Fat Advocacy and the Limits and Uses of Law,” *Representations*, No. 82 (Spring 2003): 24-51.

Book Chapters

“Childhood Vaccines,” in Brent Steel, ed., Science and Politics: An A to Z Guide to Issues and Controversies, (Congressional Quarterly Press/Sage Books, in press, publication in May 2014).

“Conclusion: What Next?,” in Jonathan Metzl and Anna Kirkland, eds., Against Health: How Health Became the New Morality (New York University Press, 2010).

“When Transgendered People Sue and Win: Feminist Reflections on Strategy, Activism, and the Legal Process,” in Vivien Labaton and Dawn Lundy Martin, eds., The Fire This Time: Young Feminists and the New Activism (Anchor Books, 2004).

Works in Progress

Vaccine Trials (book manuscript on the politics of science and knowledge in the U.S. vaccine safety and injury compensation system)

Charting the Future of Wellness, co-edited volume special issue with Diana Bowman (University of Michigan School of Public Health) under review at *Journal of Health Politics, Policy, and Law* (anticipated for Volume 39.2 in April 2014)

“Introduction” and “Critical Approaches to Wellness,” manuscripts for Charting the Future of Wellness

“Power and Persuasion in the Vaccine Debates: An Analysis of Political Efforts and Outcomes in the States, 1998-2012,” with Denise Lillvis (first author, doctoral student in Political Science and Public Health) and Anna Frick (master’s student in Public Health), under review at *Milbank Quarterly*

“Health,” with Amanda Grigg, manuscript in preparation for the *Oxford Handbook of Feminist Theory*, Lisa Disch and Mary Hawkesworth, eds. (Oxford University Press)

“The Future of Employment Discrimination Research,” with Lilia Cortina, manuscript in preparation for the *Oxford Handbook of Employment Discrimination*, Adrienne Colella and Eden King, eds. (Oxford University Press)

Grants

University of Michigan Associate Professor Research Fund Award, 2012-2014 (PI, \$29,000)

“Charting the Future of Wellness Research: An Interdisciplinary Approach to Understanding the Future of an Ascendant Population Health Intervention,” University of Michigan Robert Wood Johnson Foundation Health and Society Scholars Program grant (co-PI, \$25,000)

University of Michigan College of Literature, Science and the Arts, Faculty research grant for *Vaccine Lawsuits and Mobilization*, August 2009 (PI, \$6,740)

National Center for Institutional Diversity (NCID) Faculty Fellow Grant for *The Diversity Essay as Citizenship Preparation*, 2008-2009 (PI, \$20,000)

Other Publications

Book review of *The Beauty Bias: The Injustice of Appearance in Life and Law* by Deborah Rhode (Oxford University Press, 2010), *Law & Society Review*, vol 45, Issue 3 (September 2011), pp. 798-791.

Book review of *The Cult of True Victimhood: From the War on Welfare to the War on Terror* by Alyson M. Cole (Stanford University Press, 2006) in *Perspectives on Politics*, Vol. 7, Issue 1 (March 2009), pp. 188-89.

Book review of *Chicano Students and the Courts: The Mexican American Struggle for Educational Equality* by Richard R. Valencia (New York University Press, 2008) in *Law and Politics Book Review*, Vol. 19, No. 1 (January 2009), pp. 92-94.

“Fat” entry in Susan Burch, ed., *Encyclopedia of American Disability History*, New York: Facts on File, 2009.

Book review of *Disability Harassment* by Mark C. Weber (New York University Press, 2007) in *The Review of Disability Studies*, Vol. 4, Issue 3 (2008).

Invited Talks

2013 Pellegrino Lecturer on “Moving from Individual Blame to the Environmental Account of Obesity: An Ethical and Political Discussion” at the University of Missouri Medical School Center for Health Ethics, October 10, 2013.

Keynote Speaker on “The Ethics of Obesity,” University of Missouri Medical School Center for Health Ethics Annual Conference, October 11, 2013.

Ethics Grand Rounds presentation on “Weight Stigmatization in Health Care,” University of Missouri Medical School, October 10, 2013.

Invited discussant on “Law and Concepts of Self: Bodies, Minds, Images, Identities” at the West Coast Law and Society Retreat, University of Washington School of Law. September 21, 2013.

Presentation on national conference call for the Centers for Disease Control (CDC) National Center for Immunization and Respiratory Diseases on the anti-vaccine movement, January 24, 2012.

“How the Vaccine Court Settled the Autism Question (Mostly),” August 26, 2011, University of California, Los Angeles School of Law Faculty Colloquium.

“Ruling that Vaccines Don’t Cause Autism: Credibility Struggles at the Vaccine Injury Compensation Court,” February 21, 2011, Law and Public Affairs Seminar, Princeton University.

“Ruling that Vaccines Don’t Cause Autism: Credibility Struggles at the Vaccine Injury Compensation Court,” January 24, 2011, University of Pennsylvania Health Law Students Association.

“Public Assessments of Scientific Claims: The Case of Vaccines and Autism,” November 16, 2010 at the University of Michigan Center for Ethics in Public Life.

“Vaccines On Trial: From the Omnibus Autism Proceeding to the Supreme Court,” November 16, 2010 at the Child Health and Evaluation Research Unit, University of Michigan School of Medicine (Department of Pediatrics).

“Using Law to Reshape the Obesogenic Environment: A Critical Perspective,” faculty seminar presentation on October 18, 2010 at Rutgers University School of Law, Camden.

“The State of the Anti-Vaccine Movement,” paper presented at the American Society for Law, Medicine, and Ethics on September 13, 2010, Atlanta, GA.

“Law, Politics, and Activism in the Vaccine Debates,” December 15, 2009 for the Michigan Science and Technology Studies Program Speaker Series.

“Diversity as Citizenship Training: The Case of the College Admissions Essay,” October 22, 2008 at the University of Connecticut School of Law Faculty Seminar Series.

“Contesting the ‘Obesity Epidemic’: Where is Feminism?,” September 25, 2007 at the Centre for Law, Gender, and Sexuality, University of Kent (UK) and October 2, 2007 at Keele University (UK).

“Feminism and Fat Rights: Gendering the Obesity Epidemic?,” September 10, 2007 at the Feminist Legal Theory Project, Emory University School of Law.

“Ideologies of the Fat Rights Movement,” April 5, 2007, Columbia University Institute for Research on Women and Gender (Gender and Politics Colloquium Series).

Invited participant, 2007 Transgender Roundtable, March 16-17, 2007 in New York, sponsored by Gay and Lesbian Advocates and Defenders (GLAD).

“What Can Antidiscrimination Law Do for Fat Women?,” October 5, 2007, Institute for Research on Women and Gender, University of Michigan.

“What Do Fat Rights Activists Want from Law?,” April 19, 2006, University of Michigan School of Law.

“Gender in the Study of Law and Society,” February 14, 2006, University of Michigan Women’s Studies Department and Institute for Research on Women and Gender.

“What Do UM Undergraduate Applicants Think Diversity Means?: From Racial Preferences to Building Model Boats,” January 17, 2006, University of Michigan School of Law.

“Identity and the Properly Functioning Individual: Imagining the Confluence of Fat Rights and Disability Law,” October 6, 2004, University of Southern California Center for Law, History, and Culture.

Conference Papers and Presentations

“Power and Persuasion in the Vaccine Debates: What Arguments Influence State Policymakers?,” paper presented at the American Political Science Association in Chicago. August 29, 2013.

“Law and Science at the Vaccine Court,” paper presented at the American Political Science Association in Chicago. August 29, 2013.

“Against Wellness,” paper presented at the Law and Society Association Annual Meeting in Boston. May 31, 2013.

“Converging Expertise at the Vaccine Court: Mothers, Lawyers, and Scientists,” paper presented at the Society for the Social Studies of Science (4S) Annual Meeting in Cleveland, November 3, 2011.

“Law, Politics, and Activism in the Vaccine Debates,” paper presented at the Law and Society Association Annual Meeting in Chicago. May 28, 2010.

“What’s Wrong with the Environmental Approach to Anti-Obesity Policy?,” paper presented at the American Political Science Association Annual Meeting in Toronto. September 3, 2009.

Author at author-meets-readers panel for *Fat Rights* at the Law and Society Annual Meeting in Denver. May 28-30, 2009.

“Ideologies of Diversity in the UM Application Essay: A Multi-Method Study” (with Ben Hansen), Center for Political Studies Workshop on Democratic Politics, University of Michigan. October 8, 2008.

“Diversity and Citizenship Training: The Case of the Undergraduate Application Essay,” paper presented at the 2008 Law and Society Annual Meeting in Montreal. May 28-June 1, 2008.

Roundtable organizer and speaker: “Culture Clash over Fat: History, Politics, and Law,” American Political Science Association Annual Meeting in Chicago. August 30-September 2, 2007.

“Ideologies of Fat Rights Claims in the United States,” paper presented at the Law and Society Annual Meeting in Berlin. July 24-28, 2007.

“Examining Ideologies of Legal Protection: The Case of the Fat Acceptance Movement,” paper presented at the Law, Culture, and Humanities Meeting in Washington, D.C. March 23-24, 2007.

“What Do Fat Rights Activists Want from Law?,” paper presented at the Law and Society Annual Meeting in Baltimore. July 6-9, 2006.

“What’s at Stake in Fatness as a Disability?,” paper presented at the Law and Society Annual Meeting in Las Vegas. June 2-5, 2005.

“Why Do Antidiscrimination Laws Fail?,” paper presented at the Meeting for the Working Group on Law, Culture, and the Humanities in Austin. March 11-13, 2005.

Discussant, “Cultures of Censorship,” American Studies Association Annual Meeting in Atlanta. November 11-14, 2004.

“The Nexus of Legal Personhood and Group Identity: A Comparative View,” paper presented at the Law and Society Annual Meeting in Pittsburgh. June 5-8, 2003.

“Legal Categories of Personhood Meet Group Identities: Law’s Choices as Politics,” paper presented at the Meeting for the Working Group on Law, Culture, and the Humanities in New York. March 7-9, 2003.

“Four Models of Personhood: Fatness in U.S. Law,” paper presented at the Meeting for the Working Group on Law, Culture, and the Humanities in Philadelphia. March 8-9, 2002.

“Equality and Liberty in Antisubordination Theory,” paper presented at the Law and Society Association Annual Meeting in Budapest, Hungary. July 2001.

“What Subordinates?: The Problem of Law and Social Meanings,” paper presented at the *Thinking Gender* Feminist Graduate Student Conference, University of California, Los Angeles. March 2001.

“Gender Cosmetics: Sex Change Law and the Hope of Transgression,” paper presented at the *Boundaries in Question* Feminist Graduate Student Conference, University of California, Berkeley. March 1998.

Teaching at the University of Michigan

WS 111: Gender and Sexuality in U.S. Law (undergraduate seminar)

WS 151: Theories of Rights (freshman seminar)

WS 270: Gender and the Law (undergraduate lecture course)

WS 308/PS 308: Law and Politics of Sexuality (undergraduate lecture course)

PS 317: Courts, Politics, and Society (undergraduate lecture course)

WS 331: Advanced Gender and Law (undergraduate seminar)

WS 440: Senior Capstone Seminar on Gender Discrimination (required seminar for majors)

WS 441/442: Senior Honors Writing Seminar (undergraduate honors thesis seminar)

Rackham 580: Disability Rights (university-wide graduate seminar)

PS 614: Law and Society Proseminar (graduate seminar)

WS 698: Law and Politics of Identity (graduate seminar, also SOC 595, PS 688)

WS 698: Discrimination Law (graduate seminar, also SOC 595, PS 688)

LAW 840: Law and Politics of Identity (law school seminar)

Service

National

Law and Society Association Dissertation Award Committee, 2012.

American Political Science Association Teaching and Mentoring Award Committee, 2012.

Law and Society Association Diversity Committee, 2006-2011.

Panelist on service panel “Entering the Job Market and Succeeding as a Junior Teacher/Scholar” at the 2009 Law and Society meeting.

Coordinator for service panel on mentoring at the 2010 Law and Society Annual meeting.

2008 American Political Science Association Sophonisba Breckenridge Award Committee (for the selection of the best paper on gender and politics presented at the Midwestern Political Science Association Meeting).

Law and Society Faculty Workshop Leader for Graduate Student Activities, 2007 annual meeting.

University of Michigan

Steering Committee Member, SHARP: The Sport, Health and Activity Research and Policy Center for Women and Girls (2011 to present).
Office of the Vice President for Research (OVPR) grant reviewer (ongoing).
Fulbright Award Committee Member, 2011.
Rackham Outstanding Graduate Student Instructor Awards Committee, 2009 and 2010.
Rackham International Research Awards (RIRA) Committee, 2009.
Initiative on Disability Studies Steering Committee, 2006 to present.
2005 Constitution Day Committee.
Conference organizing committees: *The New Politics of Gay Marriage* (October 21, 2004) and *Against Health: Resisting the Invisible Morality* (October 12 and 13, 2006).

Women's Studies and Political Science

Director of Undergraduate Studies, Women's Studies Department, 2011-2013.
Women's Studies Program Undergraduate Committee, Winter 2008, 2008-2009.
Women's Studies Program Executive Committee, 2006-2007, 2008-2009, 2011-present.
Graduate Certificate Committee, Women's Studies Program, 2005-2006.
Law and Politics Search Committee, Department of Political Science, 2005-2006.
Graduate Student Hiring Committee Member, Women's Studies Program, 2004-2005, 2006.
MacGuigan Essay Award Committee Member, Women's Studies Program, 2004-2005.

Visiting Scholar Appointments

Princeton University, Law and Public Affairs. 2010-2011.

Feminist Legal Theory Project, Emory University School of Law. September 10-14, 2007.

Centre for Law, Gender and Sexuality, University of Kent School of Law, Keele University School of Law, and University of Westminster School of Law (UK). September 24-October 10, 2007.

Manuscript Reviews

American Political Science Review
American Journal of Sociology
Law & Social Inquiry
Signs: Journal of Women in Culture and Society
Journal of Health Politics, Policy, and Law
Feminist Theory
PS: Political Science and Politics
Social Problems
Contemporary Sociology
Politics & Gender
Law, Culture & the Humanities
National Women's Studies Association Journal
Studies in Law, Politics, and Society

Organizational Studies
Routledge Press
New York University Press
Oxford University Press
University of Illinois Press

EXHIBIT B

BIBLIOGRAPHY

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Donovan, Todd and Caroline Tolbert. “Do Popular Votes on Rights Create Animosity Toward Minorities?” *Political Research Quarterly* 66, no. 4 (2013): 910–922.

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“Employment-Related Discrimination.” *National Conference of State Legislatures*. Last modified January 2013. <http://www.ncsl.org/research/labor-and-employment/discrimination-employment.aspx>

“Female Article III Federal Judges by Commission Date.” *Just the Beginning Foundation*. Last updated March 20, 2008. <http://www.jtbf.org/clientuploads/docs/articleIIIFemalebydate.pdf>

“Find a Leader.” *VictoryInstitute.org*. Accessed on December 16, 2013.
http://www.victoryinstitute.org/out_officials/view_all

Gamble, Barbara. “Putting Civil Rights to a Popular Vote.” *American Journal of Political Science* 41, no. 1 (1997): 245-269.

Haider-Markel, Donald P. *Out and Running: Gay and Lesbian Candidates, Elections, and Policy Representation*. Washington, DC: Georgetown University Press, 2010.

Haider-Markel, Donald P., Alana Querze and Kara Lindaman. “Lose, Win, or Draw?: A Reexamination of Direct Democracy and Minority Rights.” *Political Research Quarterly* 60, no. 2 (2007): 304-314.

“Hate Crimes Laws in the U.S.” *National Gay and Lesbian Task Force*. Last modified June 21, 2013. http://www.thetaskforce.org/downloads/reports/issue_maps/hate_crimes_06_13.pdf

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Hillman, Susan. “TN Governor Reverses Anti-Discrimination Law.” *Examiner.com*. Last modified May 27, 2011. <http://www.examiner.com/article/tn-governor-reverses-anti-discrimination-law>

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http://www.mlive.com/news/kalamazoo/index.ssf/2009/07/antidiscrimination_law_likely.html

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Landau, Eliot A. and Kermit L. Dunahoo. “Sex Discrimination in Employment: A Survey of State and Federal Remedies.” *Drake Law Review* 20 (1971): 417-527.

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http://www.michigan.gov/documents/mdcr/MDCR_Report_on_LGBT_Inclusion_409727_7.pdf

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<http://online.wsj.com/news/articles/SB107594365960321326>

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“Same Sex Marriage and Domestic Partnerships on the Ballot.” *National Conference of State Legislatures*. Last modified November 7, 2012. <http://www.ncsl.org/research/elections-and-campaigns/same-sex-marriage-on-the-ballot.aspx#3>

“Same Sex Marriage Laws.” *National Conference of State Legislatures*. Last modified December 2, 2013. <http://www.ncsl.org/research/human-services/same-sex-marriage-laws.aspx#1>

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<http://www.annarbor.com/news/rebekah-warren-introducing-legislation-to-protect-gays-against-discrimination-in-michigan/>

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<http://history.house.gov/Exhibitions-and-Publications/WIC/Historical-Data/Women-Representatives-and-Senators-by-Congress/>