My coauthor, Mike Strong, and I were watching the movie Milk which was a biography about Harvey Milk who was the first openly gay elected official in the United States. And during the course of the movie there was a big map that was furled out to look at the election returns from something known as the Briggs Initiative which was an initiative to prevent gays and lesbians from serving as school teachers in California. And that naturally piqued the interest of my coauthor because he’s a cartographer and also has an interest in politics and it got his wheels turning about how many other times have gay rights issues been voted on at the ballot box. And after watching the movie, he began to start doing some research into the initiatives and started to talk to me about it and we saw that there were some very good synergies because he had the focus on geography. I had the focus on law. We both had a mutual interest in politics and so it made for a good coauthored project.

The initial step was just to get an idea of how many times this has occurred at the ballot box that there’s been an election. And that wasn’t the only thing that we were looking because we were just looking at generally laws that impact gay rights. And we realized that it was an enormous project there’s so many different laws out there enacted by legislatures, by city councils, by the voters, that we decided we really had to narrow our scope on this initial get together on a project. So we decided to focus solely on the question of relationship recognition, in other words marriage and functional equivalents such as civil unions and domestic partnerships. So Mike started to do a little bit of research with the Secretary of State’s offices to get some of the voting data so that he could start putting the maps together. At the same time I was doing research on the actual laws as they were enacted how they go about amending their constitutions in various states, the exact wording of the various laws that have been enacted either favorable to or unfavorable to same sex marriage and other relationship rights.

I think this book is useful as a civics lesson. I think it’s useful in someways not just for gays and lesbians but really for people who don’t know much but want to know about the rights of other people. I think that a lot of people who are not directly impacted by it don’t even know what rights necessarily come with marriage. And in some ways I think it’s because you don’t think about those things until something really bad happens and you need to invoke those particular rights. So one of the things we do is we try to identify what we think are some of the key rights associated with marriage and we compare how the different states fare in extending some of those rights to same sex couples. I think it’s helpful to see who is eligible for domestic partnerships and civil unions in different states. I think for example people didn’t necessarily know that in a lot of states, if you are a heterosexual couple you are eligible if one of you is over a certain age. So there’s a lot that people can learn about the various alternatives that are out there. I think from the west coast perspective one of the things I am hoping that this will do is change what I think is a bias sometimes in the media which is they almost forget that states like Washington and Oregon and Nevada actually do extend all of the rights associated with marriage to same sex couples. They’ll often list the East
Coast marriage states and the civil union states but they often forget about those of us who use the phrase domestic partnerships.

I think the book can be used in multiple ways. One it’s simply informational. It gives you a snapshot of the rights that gay and lesbian couples have across the country. I think one thing that’s interesting about the findings that we have is that while there’s a lot of money and time being spent on the question whether the word marriage should be given to same sex couples, and I certainly am a strong advocate that it should be, but in terms of where the resources and focus should be spent, you see on the nationwide maps that we have very large areas of the country that have no rights whatsoever for gay and lesbian couples whereas in states like Washington, despite the fact that same sex couples do not get the legal term marriage, all of the state level rights associated with marriage are extended to those couples. And when you look at some of the states that have taken baby steps, Maine is an example, Wisconsin is an example, they have identified a small set of key rights that while certainly not the same as marriage or full fledged civil unions or domestic partnerships are extremely valuable for the couples in those states. And so I think that more energy might be well spent trying to get smaller steps taken in those vast areas of the country about two-thirds of the population is covered that have no rights at all.

A lot of people are confused about the various terms that are used to describe relationships. Everyone, I think is familiar with “marriage” which has both a legal meaning as well as for some people a religious meaning. And one of the things that I think has been confusing for many people is that “marriage” has that dual meaning, it’s both a legal term and it’s a religious term. When it became clear that large portions of the public were uncomfortable with same sex couples getting married in part because a lot of them associated it with the religious meaning of marriage and were concerned that it meant that churches and synagogues would have to marry same sex couple. A lot of legislatures started to craft alternatives, “civil unions”, “domestic partnerships”, “reciprocal beneficiaries” another term that’s also out there but more unusual. So far every state that has used the term “civil union” has used it in exactly the same way as “marriage” it’s just all the same rights, benefits, responsibilities, but it has a different name. So there’s no difference except for the term. “Domestic partnership” has a more complex and broader range of meanings. Initially “domestic partnership” described a symbolic relationship that was recognized at the city level. First in a few cities in California and subsequently it spread to about a hundred cities nationwide where local governments were trying to allow gay and lesbian couples to express symbolically their relationship even though it didn’t come with any benefits. Then states started to take baby steps giving same sex couples a handful of rights. California is an example of that, Washington is an example of that. Typically states that did that used the term “domestic partnership” initially. Now currently in states like that “domestic partnership” means the same thing as “civil union”, means the same thing as “marriage” they all have all of the rights and responsibilities associated with marriage. There also seems to be a geographic bias. “Civil union” seems to be a term used more on the east coast and domestic partnership more on the west coast.

I think that if marriage isn’t the ultimate goal, marriage is probably the ultimate goal I would say, but I think that when push comes to shove, you can always call yourself a married couple. We have free speech in this country no one can stop you from referring to the person you love as your husband or wife even if as a legal matter they are not. But when marriage rights mostly come into play are when a crisis occurs when someone dies when someone is seriously ill. And at that point what really matters are the rights there that you need. The right to visit the person in a hospital. The right to inherit if your partner didn’t write a will, the right to decide how to dispose of the person’s remains, the right not to testify against one another if you get called into court. Things that you don’t really think about when you get married but they become critical when they actually come into play.
When you look at a map for example, that shows how strongly for or against those who voted on marriage amendments to state constitutions for example you see that the entire country except for small pockets vote, has had a tendency to vote strongly against same sex marriage when they’ve been asked to vote on the issue. So on the one hand, one surprise is whether you’re in what’s viewed as a progressive state like a California, for example, or a conservative state the color is pretty similar. On the other hand even within some of those more conservative states, you do see pockets of support for gay rights, so that was also interesting. And another thing that was interesting and that spawned further research in a section of our book was, well okay you’ve had thirty states approximately that have voted on the question of same sex marriage, why not the other twenty? And that uncovered something very valuable from our perspective was that we saw there was a rather striking difference between how you can amend the constitution in some states versus others. In some states the constitution hardly seems worth the paper it’s printed on it can simply be changed at will if enough signatures are gathered. On the other hand, you look at some other states where they haven’t amended the constitution and you see that they usually have gatekeeper requirements. The legislature must vote by usually a super-majority in order to get something on the ballot. Sometimes they have to do that for multiple successive sessions. And I found that very valuable now, because I’m a news junkie when it comes to gay rights issues and so right now in the news you’ll hear about votes taking place in legislatures in Indiana, Iowa, North Carolina, and Wyoming to try to restrict marriage rights and every time I see a news story I turn to that section of the book and I see okay that’s going to be hard to do because they need a two-thirds super-majority or that’s not going to be on the ballot for four years because they have a successive session requirement so that I think is something that was striking. I think it’s also striking to see where you have a state that’s viewed as conservative, Wyoming for example, which is actually in the news right now because their legislature defeated an effort to try to institute a ban on recognizing out of state same sex marriages and one of the things our book points out is that Wyoming law actually supports recognition of our of state same sex marriages that has yet to, even though they have been presented with a case of that sort although one is now pending in the Wyoming supreme court.

One state that has a really interesting place in the story of same sex marriage and relationship recognition is the state of Hawaii. That’s the state where a court for the first time back in the 1990’s held that there was a constitutional right to marry for same sex couples under the state constitution. And it was actually that decision which kicked off much of what this book is about which is reactions to that in efforts to amend state constitutions in other states to prevent that possibility. And initially the legislature in Hawaii hoped that it would not have to actually extend marriage rights. So they created this alternative where people could designate one another as beneficiaries. They didn’t call it domestic partnership or civil union and it is a very modest level of relationship recognition that isn’t even necessarily limited to same sex couples but it was their effort to satisfy the court decision. Ultimately the court decision was overruled by a constitutional amendment in Hawaii and things lay fallow in Hawaii for a number of years. And then last year the legislature voted to enact a civil union bill that would have granted same sex couples all the rights and responsibilities of marriage but it was vetoed by the governor at the time. Since then a new governor's been elected and he has an interesting connection to the history of marriage rights in America because he was a member of congress when congress was debating the defense of marriage act and he was one of the handful of congressmen to vote against the defense of marriage act. So everyone knew as governor that he would be very supportive of gay rights if he was feeling that way fifteen years ago. And sure enough the legislature re-enacted it and as of January of 2012, Hawaii will have civil unions for same sex couples as well as opposite sex couples which is a new development that is starting to take place in states. Illinois is another example of that where states initially that were extending an alternative to marriage for same sex couples created something limited to same sex couples or in some cases senior citizens who were opposite sex couples and now they’re starting to broaden it. There’s more and more people regardless of sexual orientation who are saying well I’m not sure I want to get married but maybe some other form of legal
recognition would be okay. and it could signal a future in which marriage a function of the state as one of the things that has impacted the discussion about marriage has shown a lot of people feel that marriage is something religious and that it should be separate from what the government does. And so I could imagine a future where you go to the government if you want a civil union or a domestic partnership and you go to your religious institution if you want to get married. And I think that’s what the developments in places like Hawaii and Illinois are potentially showing might be the future for the US.

California is a state that we take a careful look at in the book in part because voters in California have voted twice on the issue of same sex marriage. Back in 2000 they voted on the question whether to enact essentially a statute that would ban same sex marriage. That statute was later struck down by California’s supreme court and so in 2008 they voted again on the question whether to amend the constitution to overturn the California supreme court’s decision. And while the vote was close, voters in California narrowly approved an amendment to that state’s constitution. and one of the things that that spotlights is that even traditionally progressive states are not immune from reacting to an immediate development in sort of a reactive manner and it pointed to a weakness in California’s constitution which is that it’s very easy to amend. All you need is a couple of signature gatherers who get enough signatures and it goes directly to the voters and it can happen in a matter of months and so sometimes when emotions are running high people may vote in a way if they’ve had time to think about it they don’t necessarily come to the same conclusion. That’s why states like Washington for example make it very hard to amend the constitution. You can’t go out and gather signatures you have to persuade two-thirds of the legislature before you can get something on the ballot and that’s really designed to cool emotions. There was a design to the Washington constitution that I think is missing in a state like California. But another aspect of the California vote is that the New York times did an analysis of the vote and it found that some of the vote was correlated to race. that for better or for worse, the African American community is still not as supportive of same sex marriage as the Caucasian community is. And one of the positive developments from a progressive standpoint I think for many people was the election of Barak Obama in 2008 but a side effect of Barak Obama being on the ballot was that he did attracted a lot of voters who have a traditional view about marriage and who were not ready to support same sex marriage.

One thing that was exciting about writing this book being from the State of Washington and working at the University of Washington is that we have the honor in Washington of being the only state to grant rights to same sex couples at the ballot box. This is the first time that the question of some form of legal recognition for same sex relationships has come up at the ballot box and been approved by voters. And it came up in an unusual way it wasn’t meant to get to the ballot box. It was a response to an effort by our legislature to extend domestic partnerships to same sex couples. and that created a signature gathering attempt in Washington which was not to amend the state constitution but merely an effort to say we’d like a referendum on this particular act enacted by the legislature and once that got on the ballot, it was the job of gay rights advocates to get people to vote in favor of it and voters pretty strongly came out in support of it. A large part of the support came from some of the more traditional areas including King County which amounted to a large percentage of the vote in favor of the initiative and there are certainly parts of the state that came out strongly against it, but there were a lot of counties that voted in favor of it.

One of the silver linings if you’re looking at this from the perspective of a gay rights advocate is if you’re looking at these results is that even as a state might vote by very strong margins against same sex marriage or relationship recognition you find these pockets of support and some of them came in surprising places. States like South Dakota, and Texas that you don’t normally associate with having a strong pro-gay rights contingency and as you start to drill down in those states because for some of them we had to go back and check the data because we thought is it possibly
wrong because sometimes they would vote strongly in favor of gay rights. and one of things that we discovered is that often those were associated with university towns which were generally full of younger people and we thought that may be a predictor of the future that this tells you something about the younger generation and what they feel on this particular issue and that’s sort of consistent with what I’ve heard in just reading about the younger generation that even as, for example, religious conservatives remain strongly against let’s say abortion for example that they feel differently about same sex marriage and I think some of that has to do with just being more exposed to gay individuals, gay couples, that I think younger people regardless of political stripe have a different view than they might of ten or fifteen years ago. Also particularly in some of the Western and Mountain states there’s a streak of libertarianism that overlaps with conservatism that sometimes leads to unexpected results on this particular issue where even though voters may generally have a conservative perspective, they also have a perspective that government shouldn’t be too involved in regulating people’s lives and I think that sometimes explains votes in those jurisdictions against these sorts of bans on same sex marriage. And one place where it’s interesting and where it hasn’t made it to the ballot box and which I think does surprise a lot of people that we mention in the books is Wyoming. Wyoming is a state that, according to our book, will recognize if it’s ever presented with an opportunity an out of state same sex marriage. It’s one of a handful of states that have neither amended their constitution to ban recognition of out of state same sex marriages nor have they enacted a law refusing to recognize those. And I think part of that is explained by a strong independent streak that people in Wyoming have. Their legislature recently voted down an effort to put such a question on the ballot box and so I think that’s one thing that we thought was interesting and surprising.

Generally speaking you can see that certain regions of the country are more supportive of gay rights at least on the question of marriage and relationship recognition. The Northeast is a clear, strong supporter often extending not just civil union or domestic partnerships but in many cases marriage. And that will extend in the next year or so as more states in the Northeast look poised to extend marriage rights to couples in those states. Same thing on the West coast you have a large number of states looking to extend something other than marriage to same sex couples and then a small but growing area in the Midwest. But that’s about it the rest of the country is pretty starkly unsupportive of same sex relationships at least on the state level, if you go micro you do see pockets of support.

At the moment our focus in doing this research is rights for same sex couples in the United States. We’ve certainly thought about it outside of the United States and there are a lot of places that have begun to recognize marriage or its equivalent for same sex couples, Canada, England, various European countries we’re starting to have some countries in South and Central America. One of the things thought that makes the Us perspective interesting for us is that the US is one of the few places where you put these issues to a vote of the people and that's one of the things that we find very interesting in writing this is how things turn out at the ballot box. So I think that basically our focus is primarily domestically and we’d like to do more in this area, but I think before we go outside of the US, we’d like to start looking at some of those issues that voters have voted on at the ballot box for example, employment rights is another area that is very near and dear to people’s personal lives and something that we’d like to take a closer look at.

If people take nothing else away from this book, I’d like them to see how large a percentage of the country is still not protected in any way by state laws in terms of recognition of their relationships, so that’s one piece of it and on the flip side I’d like them to also take away that even a baby step taken by a state even a very modest domestic partnership law on the state level with five or six rights can make a huge difference to the gay and lesbian couples in that state. And so those two facts together I hope will encourage efforts to enact at least initial modest legislation in those states that currently don’t provide any recognition of same sex couples.
Having gone through this project despite the fact that there are a lot of ballot initiatives that have limited rights for same sex couples I am still optimistic about the future I’ve been teaching this subject for almost twelve years, I’ve been interested in it for longer and I tell my students that the world is a very different place today than it was a dozen years ago. We now have two-thirds of the country that is covered in some way by, if not marriage, something functionally equivalent to it and those numbers are growing everyday. this year, for example, legislatures in Maryland, Rhode Island, and New York are taking a serious look at extending marriage rights to same sex couples. Colorado is looking at enacting civil unions, lots of legislative activity is taking place and I think if you look carefully at the data with each election on marriage even though the gay rights side has lost in all of these elections except for one where it was also banning civil unions, the margins are getting closer and closer each time. And if you look at where the support for gay rights is strongest in those ballot initiatives it’s in the areas where younger people are living and that tells you something about the future and the likely support for same sex marriage and other gay rights issues in the future.

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