

FOREWORD

“FROM WHENCE WE HAVE COME”: A FOREWORD FROM THE EDITORS OF THE FIRST ANNUAL REVIEW

BY JONATHAN J. BOYLES* AND RACHEL L. JENSEN**

It has been more than 10 years since we served as the inaugural editors of the *First Annual Review of Gender and Sexuality Law*. In May 1999, we had the honor of being selected to serve as the *Annual Review*'s leaders in the Journal's first year of print publication. Over the next year, we worked with over seventy Georgetown University Law Center law students who researched and authored the text of the *First Annual Review*. Just after July 4, 2000—well after graduation and dangerously close to the bar examination—we sent the *First Annual Review* to the printer. Only one year before, the *Annual Review* had been just a concept with no words put to paper. When published, the *First Annual Review* spanned more than 20 chapters; 500 pages of text; 3,000 footnotes; and 9,000 citations.

Before the *Annual Review*, there was no comprehensive academic survey of gender and sexuality law that was updated annually. The *Annual Review* fills this void by providing an objective restatement of the law that illuminates the intricate web of gender and sexuality law. As chronicled by the *Annual Review*, the scope of protected rights varies wildly depending on the laws of the relevant jurisdiction. This is due in part to the fact that States and municipalities have been on the cutting edge of crafting protections from invidious discrimination. But until the *Annual Review*, there had been no academic source that systematically tracked the developments from the “laboratories of democracy”¹ in a concise and methodical way. In filling this gap, our goal has been to identify differences not

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** Partner, Robbins Geller Rudman & Dowd LLP; Editor in Chief, *First Annual Review of Gender and Sexuality Law*; J.D., Georgetown University Law Center, 2000; B.A., Florida State University, 1997. Thank you to Trisha and Christian for providing a forum for our reflections and for their able assistance and patience in the publication of this Foreword. I am grateful to my esteemed colleague and dear friend Jonathan Boyles for burning the midnight oil to make this Foreword happen. As my partner Erin and I anticipate the birth of our first child, I look not only back from whence we have come but also forward to what may yet lie ahead, with the optimistic hope that the world our son inherits will provide more a level-playing field regardless of one's sex, gender or sexual orientation. © 2011, Jonathan J. Boyles and Rachel L. Jensen.

1. *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J. dissenting).

only in the substantive protections of those varied laws, but also the particular procedural rules that differ from federal protections. Since the publication of the *First Annual Review*, many of these substantive protections and procedural rules have evolved. For example, when we edited the *First Annual Review*, employers in all but 12 States and the District of Columbia could legally fire an employee on the basis of her sexual orientation.² Over the last decade, nine additional States have enacted sexual orientation discrimination laws, although there are no such legal protections in a majority of the States.³ The *Annual Review* has provided an annual catalog of these developments.

In our *Introduction*⁴ to the *First Annual Review*, we wrote that it was our hope that the “legacy of the *First Annual Review* will build year upon year, as the terminology and the issues evolve by virtue of social and technological change, so that we might better understand from whence we have come.”⁵ These last words “**from whence we come,**” resound heavily, especially upon reading the *Annual Review* more than a decade after its inaugural publication. When the *First Annual Review* was published in 2000, marriage for same-sex couples did not exist anywhere—not in the United States or anywhere in the world. Although courts in Alaska⁶ and Hawaii⁷ had held that restricting marriage to opposite-sex couples violated the respective constitution of each State, both rulings were nullified in 1998 by statewide constitutional referenda.⁸ At the time, civil unions were the legal, political, and social cutting-edge issue. In December 1999, while we were drafting the *First Annual Review*, the Supreme Court of Vermont held that withholding the legal benefits of marriage from same-sex couples violated the state constitution.⁹ In a procedural move, the court suspended its decision in order to allow the Vermont legislature an opportunity to pass legislation affording same-sex couples the same rights as married opposite-sex couples, although without access to the institution of marriage.¹⁰ The civil union legislation was passed and signed into law on April 26, 2000,¹¹ just one month prior to our

2. See Rachel L. Jensen & Jonathan J. Boyles, *Introduction to the First Annual Review of Gender and Sexuality Law*, 1 GEO. J. GENDER & L. 205, 574 (2000) (In 2000, twelve states and the District of Columbia, along with more than 120 cities, counties, and other local governments prohibited discrimination on the basis of sexual orientation in private employment).

3. See Sandra Fluke & Karen Hu, *LGBTQ Employment Discrimination*, 11 GEO. J. GENDER & L. 613, 614, n. 3 (2011). The Employment Nondiscrimination Act (ENDA), which would prohibit employment discrimination on the basis of sexual orientation, was first introduced more than 17 years ago in June 1994, but there still is no federal protection banning sexual orientation discrimination in the workplace. See S. 2238, 103d Cong. (1994).

4. Jensen & Boyles, *supra* note 2, at 210.

5. Jensen & Boyles, *supra* note 2, at 210.

6. *Brause v. Bureau of Vital Statistics*, No. 3AN-95-6562CI, 1998 WL 88743 (Alaska Super. Ct. Feb. 27, 1998).

7. *Baehr v. Lewin*, 852 P.2d 44 (Haw. 1993) (plurality).

8. See ALASKA CONST. art. 1, § 1.25; HAW. CONST. art I, § 23.

9. *Baker v. Vermont*, 744 A.2d 864, 869 (Vt. 1999).

10. *Id.* at 888.

11. 2000 Vt. Legis. Serv. 91 (West) (codified at VT. STAT. ANN. tit. 15, §§ 1201 *et seq.* (West 2011)).

graduation.

Fast forward to 2011: same-sex couples are afforded the full rights and responsibilities of legal marriage in five U.S. States,¹² the District of Columbia,¹³ one sovereign Native American tribe,¹⁴ and ten countries.¹⁵ In addition, although Maryland, New Mexico, and New York do not allow same-sex couples to marry within their state lines, legal authority exists in all three states to recognize marriages of same-sex couples validly performed elsewhere.¹⁶ Further, eleven states now grant same-sex couples certain quasi-marriage rights in the form of civil unions or comprehensive domestic partner registration.¹⁷ Within the

12. Connecticut (2009), CONN. GEN. STAT. ANN. § 46b-20 (West 2011); New Hampshire (2010), N.H. REV. STAT. ANN. § 457:1-a (2011); Vermont (2009), VT. STAT. ANN. tit. 15, § 8 (West 2011); Iowa (2009), *Varnum v. Brien*, 763 N.W.2d 862 (Iowa 2009); Massachusetts (2003), *Goodridge v. Dep't of Pub. Health*, 798 N.E.2d 941 (Mass. 2003).

13. District of Columbia (2010), D.C. Code § 46-401(a) (2011).

14. The Coquille Indian Tribe of Oregon recognized marriage for same-sex couples in 2008. COQUILLE INDIAN TRIBAL CODE § 740.010(3) (2008), available at <http://www.coquilletribe.org/documents/740MarriageandDomesticPartnership.pdf>.

15. These countries are Argentina (2010), Belgium (2003), Canada (2005), Iceland (2010), Netherlands (2001), Norway (2009), Portugal (2010), South Africa (2006), Spain (2005), and Sweden (2009). *A Decade on, Progress on Same-Sex Marriages*, HUMAN RIGHTS WATCH (Mar. 14, 2011), <http://www.hrw.org/en/news/2011/03/14/decade-progress-same-sex-marriages>. In addition, Mexico City recognizes marriages of same-sex couples and several countries including Israel, Mexico, and New Zealand have started recognizing marriages of same-sex couples validly performed elsewhere. *Id.* In the wake of a 2008 ruling by the Supreme Court of Nepal ordering the formulation of laws to grant gays and lesbians full rights, Nepal is also on the way towards providing legal recognition of same-sex relationships. *Nepal SC approves same-sex marriage*, HINDUSTAN TIMES (Nov. 19, 2008), <http://www.hindustantimes.com/News-Feed/nepal/Nepal-SC-approves-same-sex-marriage/Article1-352722.asp>; Utpal Parashar, *Nepal charter to grant gay rights*, HINDUSTAN TIMES (Jan. 19, 2010), <http://www.hindustantimes.com/News-Feed/nepal/Nepal-charter-to-grant-gay-rights/Article1-499154.aspx>.

16. 95 Md. Op. Att'y Gen 3 (Feb. 23, 2010); *Martinez v. County of Monroe*, 50 A.D.3d 189 (N.Y. 4th Div. 2008); see also N.M. Attorney General Opinion 11-01 (Jan. 4, 2011), available at <http://www.nmag.gov/pdf/4%20Jan%2011-Rep.%20A1%20Park-Opinion%2011-01%5B1%5D.pdf>.

17. California (2003), CAL. FAM. CODE §§ 297-299.6 (West 2011); Colorado (2009), COLO. REV. STAT. ANN. §§ 15-22-101 *et seq.* (West 2011); Hawaii (1997), HAW. REV. STAT. ANN. § 572C (West 2011); Illinois (2011), 2010 Ill. Legis. Serv. 96-1513 (West), Maine (2004), 2004 Me. Legis. Serv. ch. 672 (West), Maryland (2008), 2008 Md. Laws 590 (Lexis); Nevada (2009), NEV. REV. STAT. ANN. §§ 122A.010 *et seq.* (West 2011); New Jersey (2009), N.J. STAT. ANN. §§ 37:1-28-37:1-36 (West 2011); Oregon (2007), OR. REV. STAT. ANN. §§ 106.300 *et seq.* (West 2011); Washington (2007), WASH. REV. CODE ANN. §§ 26.60.010 *et seq.* (West 2011); Wisconsin (2009), WIS. STAT. ANN. §§ 770.011 *et seq.* (West 2011). How these quasi-marriage rights will be treated in jurisdictions without equivalent statuses remains unclear. Prior to the LGBT rights movements, marriages from other states and countries were always recognized, aside from cases of incest. The aftermath created by these quasi-marriage rights is just starting to unfold. See IRS Chief Counsel Advice 201021050 (May 28, 2010) (holding that, effective January 1, 2007, California registered domestic partners must report one-half of community income (combined income of two domestic partners) on federal income tax return. For tax years beginning before June 1, 2010, domestic partners may, but are not required to, amend returns); Internal Revenue Manual § 25.18.1.2.3 (last revised March 4, 2011) (noting that laws of California, Nevada, and Washington allow domestic partner registration, which status is subject to state community property laws in the same manner as married couples); compare *Dickerson v. Thompson*, 897 N.Y.S.2d 298 (3d Dept. 2010) (holding New York court has jurisdiction to dissolve Vermont civil union), with *O'Darling v. O'Darling*, 188 P.3d 137 (Okla. 2008) (holding Oklahoma court had no jurisdiction to dissolve Canadian marriage between two lesbians).

last twelve months alone, two states have enacted civil union legislation.¹⁸ In the midst of finalizing this *Foreword*, Delaware passed civil union legislation that will be effective as of January 1, 2012.¹⁹ Each of these important developments over the last decade has been captured in the interim volumes of the *Annual Review*.²⁰

By and large, civil rights movements have relied on the judicial process to remedy injustices. It is, therefore, remarkable that much of the progress made over the past decade in gender and sexuality law has been through legislative and executive action. For example, Vermont, which was the first state to grant quasi-marriage rights through civil unions, also became the first state to grant marriage to same-sex couples through legislation.²¹ The District of Columbia has since enacted marriage equality legislation.²²

In the *First Annual Review*, we primarily focused on protections codified in constitutions, legislation, and regulation, in addition to judicial challenges brought to vindicate denied rights. In 2000, it would have been difficult to anticipate the extent of the positive impact the executive branch has since had on the development of gender and sexuality law. In 2004, former San Francisco Mayor Gavin Newsom (now California Lieutenant Governor) ordered the city clerk to issue marriage licenses to same-sex couples, even though California law prohibited it. The mayor defended his order on the basis that the California law was unconstitutional under the equal protection clauses of the California constitution and that the executive branch should not enforce an unconstitutional law.²³

In a similar move, the Obama Administration announced earlier this year that it would no longer defend the constitutionality of certain provisions of the Defense of Marriage Act (DOMA).²⁴ Under Section 3 of DOMA, for all federal law

18. See 2011 Haw. Legis. Serv. 1 (West); 2010 Ill. Legis. Serv. 96-1513 (West).

19. An Act to Amend Title 13 of the Delaware Code Relating to Civil Unions, S.B. 30, 146th Del. Gen. Assembly (2011), <http://legis.delaware.gov/LIS/LIS146.NSF/vwlegislation/916160214DBB1927852578540067CE78>; see also <http://governor.delaware.gov/news/2011/1105may/20110511-civilunions.shtml> (May 11, 2011).

20. See, e.g., Nadia Asanchev, *Same-Sex Couples: Marriage, Civil Unions, and Domestic Partnerships*, 6 GEO. J. GENDER & L. 731 (2005); Julie L. Davies, *State Regulation of Same-Sex Marriage*, 7 GEO. J. GENDER & L. 1079 (2006); Ellen Stern, *Federal Regulation of Same-Sex Marriage*, 7 GEO. J. GENDER & L. 1055 (2006); Matthew T. Cook & Jason E. Shelly, *Recognition of Same-Sex Marriage*, 8 GEO. J. GENDER & L. 683 (2007); Brandon Burkart & Kay Rousslang, *Recognition of Same-Sex Marriage*, 9 GEO. J. GENDER & L. 1031 (2008); Jennifer N. Hawkins, *Legal Recognition of Same-Sex Relationships*, 10 GEO. J. GENDER & L. 751 (2009).

21. See *supra* notes 9 & 12.

22. See *supra* note 13.

23. *Mayor Defends Same Sex Marriage*, CNN JUSTICE (Feb. 22, 2004), http://articles.cnn.com/2004-02-22/justice/same.sex_1_marriage-licenses-couples-political-career?_s=PM:LAW. But see *Lockyer v. City and County of San Francisco*, 95 P.3d 459 (Cal. 2004) (invalidating marriages performed pursuant to Mayor Newsom's order and ordering compliance with statute restricting marriage to opposite sex couples).

24. 1 U.S.C. § 7 (2006).

purposes, “the word ‘marriage’ means only a legal union between one man and one woman as husband and wife, and the word ‘spouse’ refers only to a person of the opposite sex who is a husband or a wife.”²⁵ The Administration concluded that Section 3 of DOMA violates the Equal Protection Clause of the Fifth Amendment when applied to same-sex couples who are legally married under state law.²⁶

Notably, the Obama Administration concluded that sexual orientation classifications, such as the discrimination against same-sex couples embedded in DOMA, should be subject to heightened scrutiny.²⁷ Under heightened scrutiny, restrictions applicable to a suspect classification (like sexual orientation) must be “substantially related to an important government objective.”²⁸ The Obama Administration determined that DOMA cannot withstand such heightened scrutiny, and, in the absence of precedent, the Administration cannot thus defend the unconstitutional law.

The Administration’s announcement was precipitated by the fact that challenges to DOMA had been brought in circuits where there was no precedent as to what standard of review applied to sexual orientation classifications.²⁹ The Supreme Court dodged the standard of review question in *Romer v. Evans*³⁰ and *Lawrence v. Texas*³¹ and has yet to address it. Under rational basis review, courts must uphold laws that are “rationally related” to a “legitimate” government interest.³² However, it is worth noting that at least one federal court found that a state law seeking to deny marital status to same-sex couples—California’s Proposition 8—could not even satisfy minimal rational basis review.³³

A decade ago, the *First Annual Review*’s Marriage chapter focused on constitutional law and the applicable standard of review. Although these rules are obviously still relevant and will ultimately inform the merits of the issues at hand,

25. *Id.*

26. See Letter from the Attorney General to Congress on Litigation Involving the Defense of Marriage Act (Feb. 23, 2011), available at <http://www.justice.gov/opa/pr/2011/February/11-ag-223.html>.

27. *Id.* (“[T]here is a growing acknowledgment that sexual orientation ‘bears no relation to ability to perform or contribute to society.’” *Frontiero v. Richardson*, 411 U.S. 677, 686 (1973) (plurality). Recent evolutions in legislation (including the pending repeal of Don’t Ask, Don’t Tell), in community practices and attitudes, in case law (including the Supreme Court’s holdings in *Lawrence* and *Romer*), and in social science regarding sexual orientation all make clear that sexual orientation is not a characteristic that generally bears on legitimate policy objectives. See, e.g., Statement by the President on the Don’t Ask, Don’t Tell Repeal Act of 2010 (“It is time to recognize that sacrifice, valor and integrity are no more defined by sexual orientation than they are by race or gender, religion or creed.”).

28. *United States v. Virginia*, 518 U.S. 515, 533 (1996).

29. See *supra* note 26; see, e.g., *Windsor v. United States*, No. 1:10-cv-8435 (S.D.N.Y.); *Pedersen v. OPM*, No. 3:10-cv-1750 (D. Conn.).

30. *Romer v. Evans*, 517 U.S. 620 (1996).

31. *Lawrence v. Texas*, 533 U.S. 558 (2003).

32. *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1985).

33. See *Perry v. Schwarzenegger*, 704 F. Supp. 2d 921, 1003 (N.D. Cal. 2010) (holding Proposition 8 unconstitutional). Cf. *Romer*, 517 U.S. at 636 (state constitutional amendment prohibiting state and local entities from enacting legislation or policies to protect lesbians and gay men from discrimination not rationally related to any legitimate governmental purpose).

it appears that procedural rules will have the greatest influence in the outcome of cases in the near term. For example, the U.S. House of Representatives hired the law firm of King and Spalding³⁴ to defend DOMA in Connecticut and New York courts where the Obama Administration has announced it cannot defend the unconstitutional law. In the federal challenges to California's Proposition 8, neither the governor nor the attorney general defended the law or appealed the trial court decision holding it unconstitutional to deny same-sex couples marriage rights. A California intermediate court held that Governor Schwarzenegger and Attorney General Jerry Brown did not have any duty to defend Proposition 8,³⁵ and the California Supreme Court, without an opinion, refused to overrule the intermediate court's decision.³⁶ The Ninth Circuit Court of Appeals has heard arguments in the Proposition 8 case, but the appellate decision may ultimately hinge on whether anti-gay groups have standing in the litigation. In February 2011, the California Supreme Court accepted a certified question as to whether the anti-gay proponents of Proposition 8 have standing to challenge the law under California law, but as of the date of this writing, the court has not yet resolved the question.³⁷

Procedural questions may resolve pending litigation, but without addressing any issues on the merits. In some cases, this strategy may prove to be genius. Civil rights will be protected on procedural grounds, while the substantive questions concerning the scope of constitutional and civil rights protections will be held in abeyance, affording more time for the populace to see that marriage inclusion for same-sex couples does not denigrate the institution of marriage or infringe on religious freedom. Indeed, the sky has not fallen in the seven years since the right to marriage was recognized in Massachusetts. Perhaps resolution of these cases on procedural grounds in the short term will provide enough time for the arc of history to bend further towards justice. Nevertheless, constitutional questions remain open and new executive branch leadership could exercise discretion to advocate for more restrictive interpretations that would limit civil rights, including wholesale defense of DOMA in all litigation.

While procedural strategies have been utilized to combat civil rights infringements by the government, corporate defendants have aggressively pursued

34. King & Spalding, the law firm hired by the House of Representatives in April of 2011 to defend DOMA, withdrew from the case later that same month. Sandhya Somashekhar, *Law Firm Defending Defense of Marriage Act Withdraws*, WASH. POST, Apr. 25, 2011, at A02. Former Solicitor General Paul Clement resigned from King and Spalding and continues to represent the House of Representatives in defending DOMA. David G. Savage, *Law firm won't defend Defense of Marriage Act*, CHI. TRIB., Apr. 26, 2011, at 13; *see, e.g.*, Notice of Mot. and Mot. of the Bipartisan Legal Advisory Group of the U.S. House of Representatives to Intervene for a Limited Purpose, *Dragovich v. U.S. Dep't of Treas.*, No. 4:10-cv-01564-CW (N.D. Cal. May 2, 2011) (motion to intervene in case challenging DOMA's application to prohibit same-sex spouses from enrollment in qualified long-term care plans).

35. Bob Egelko, *High Court Won't Order State to Defend Prop. 8*, S.F. CHRON., Sept. 9, 2010, at A1.

36. *Id.*

37. News Release, Judicial Counsel of Cal., Supreme Court to Decide Prop. 8 'Standing' Question from 9th U.S. Circuit Court of Appeals (Feb. 16, 2011), *available at* <http://www.courts.ca.gov/7408.htm>.

procedural strategies to deny victims their day in court and the leverage needed to combat systemic discrimination. For example, Goodyear Tire & Rubber defeated Lilly Ledbetter’s Title VII claims on the basis of untimely complaints with the Equal Employment Opportunity Commission (EEOC), even though she did not discover she was a victim of unequal pay until much later.³⁸ Similarly, the Supreme Court’s recent decision in *AT&T Mobility LLC v. Concepcion*,³⁹ which allows corporate defendants to effectively avoid liability through class action waivers, arguably may be applied in the employment context, thus allowing employers to unilaterally force employees to resolve disputes through individual arbitration, with limited judicial review. Finally, many practitioners predict that the Supreme Court’s forthcoming decision in *Wal-Mart Stores, Inc. v. Dukes*,⁴⁰ will further ratchet back employment discrimination class actions under Rule 23 of the Federal Rules of Civil Procedure.

The above examples above are but a few illustrations of the dramatic changes over the last decade. In her Foreword to the *First Annual Review*, Professor Suzanne Goldberg⁴¹ observed the “Jekyll and Hyde dimensions of the law as an alternating safe haven and a dangerous port.”⁴² This dynamic has not changed. The law continues to both protect and penalize individuals in a patchwork of inconsistent laws affecting gender and sexuality in myriad ways. While progress has been over the last decade in some state to recognize marriage rights for same-sex couples, many States have taken the drastic step of amending their state constitutions to prohibit same-sex couples from marrying in the state or having their marriages recognized in the state, even when validly performed elsewhere.⁴³ Similarly, while women continue to earn 75 cents for each dollar men earn,⁴⁴ Congressional action to expand our federal civil rights bills to address this stagnation perennially fails.⁴⁵ Indeed, our legislative branch has shown open hostility to civil rights and freedoms of expression. This is exemplified nowhere more clearly than in the engagement letter between the House of Representatives and the law firm of King and Spalding, in which King and Spalding agreed that

38. *Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S. 618 (2007). Congress later overturned the *Ledbetter* decision through the Lilly Ledbetter Fair Pay Restoration Act of 2009, P.L. 111-2, which was signed into law on January 29, 2009.

39. No. 09-893, 2011 U.S. LEXIS 3367 (Apr. 27, 2011).

40. *See Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 795 (2010) (cert. granted).

41. Clinical Professor of Law; Director, Center for Gender and Sexuality Law, Columbia University. *Suzanne B. Goldberg*, COLUMBIA LAW SCH., http://www.law.columbia.edu/fac/Suzanne_Goldberg.

42. Suzanne B. Goldberg, *Foreword: Personal Harms and Political Inequities*, 1 GEO. J. GENDER & L. 197, 204 (2000).

43. *See, e.g.*, ALA. CONST. art. I, § 36.03 (prohibiting marriages between persons of the same sex and the recognition of marriages between persons of the same sex); ALASKA CONST. art I, § 25 (same); ARIZ. CONST. art. XXX, § 1 (same); COLO. CONST. art. II, § 31 (same); FLA. CONST. art. I, § 27 (same); GA. CONST. art. I, § 4 (same); KAN. CONST. art. XV, § 16 (same); LA. CONST. art XII § 15 (same).

44. U.S. DEP’T OF COMMERCE, *ET AL.*, WOMEN IN AMERICA: INDICATORS OF SOCIAL AND ECONOMIC WELL-BEING, at 32 (March 2011).

45. Paycheck Fairness Act, H.R. 1519, S. 797, 112th Cong. (2011).

its partners and employees—literally thousands of individuals—would not engage in any lobbying or advocacy related to the Defense of Marriage Act.⁴⁶ Although King and Spalding has since withdrawn from the representation, it is plainly shocking that our elected representatives considered it acceptable to include a gag order impinging on First Amendment rights in a service contract that reached far beyond those employees working on the DOMA matter.

For all of these reasons, the *Annual Review* continues to be vital to chronicling developments in the law for practitioners and advocates alike. Indeed, in each and every year over the past decade, the *Annual Review* has provided an up-to-date analysis of the current state of the law cutting across significant areas where gender and sexuality are concerned. We are proud that the *Annual Review* has grown by two hundred additional pages over the last decade and that additional sections have been added, including sections on prostitution and sex work and a new chapter covering health care issues.

In addition to our *Introduction* and Professor Goldberg's *Foreword*, the *First Annual Review* included commentary from each of the frontline chapter editors. We regret that subsequent editions of the *Annual Review* have not included introductions from the current staff or a foreword. After spending hundreds of hours managing and editing the *First Annual Review*, we thought it important to explain our vision. Spending a year on this project is a unique experience and the editors of the *Annual Review* have important insights to share. Over the past decade, decisions have been made to restructure the *Annual Review*, to rename certain sections, and add or modify the subject material.⁴⁷ We encourage future editors of the *Annual Review* to share their thought processes behind such choices with the reader and with editors both past and present. In that vein, we applaud

46. Contract for Legal Services between General Counsel for the U.S. House of Representatives and King & Spalding, April 14, 2011, ¶ 4(g) http://www.politico.com/static/PPM176_110419_legal_contract.html (“The Contractor [King & Spalding] agrees and warrants: . . . That all of its partners and employees who do not perform services pursuant to this Agreement will not engage in lobbying or advocacy for or against any legislation (i) that is pending before the Committee [on House Administration of the U.S. House of Representatives] during the term of this Agreement, or (ii) that would alter or amend in any way the Defense of Marriage Act and is pending before either the U.S. House of Representatives or the U.S. Senate or any committee of either body during the term of the Agreement.”).

47. For example, several years ago, the Employment Law chapter was restructured to include sections on “Title VII of the Civil Rights Act of 1964,” “State Regulation of Sexual Harassment,” and “Sexuality and Transgender Issues in Employment Law.” These sections used the word “sexuality” in a manner that departs from the original conception we outlined in our *Introduction* to the *First Annual Review*: “a matter of immense importance to the reader of the *Annual Review* is its use of the terms ‘gender’ and ‘sexuality.’ ‘Gender,’ although varied in its definitional treatment under the law, has three dimensions, encompassing the anatomical ‘sex’ of males and females, which protects men qua men and women qua women; social gender roles or sex stereotypes; and sexual or gender identity. ‘Sexuality,’ on the other hand, refers to a person’s ‘erotic sensibilities’ which includes not only sexual proclivity, but also sexual behavior and the consequences flowing therefrom.” 1 GEO. J. GENDER & L. 205, 205-06. Subsequent editors have had different and evolving views of the subject matter and the *Annual Review*’s purpose. This is just one example where we believe an introduction would have been useful to capture an editor’s rationale for a change or expansion of core concepts.

the editors of the current *Twelfth Annual Review*, Trisha Pasdach and Christian Pangilinan, for restoring the *Foreword* and the *Introduction* in this edition. In particular, Pasdach and Pangilinan have boldly chosen to address the tension between advocacy and scholarly writing and where the *Annual Review* fits within that larger context.

Our vision has always been that the *Annual Review* will capture the gender and sexuality civil rights issues of our day and memorialize them in an annual yearbook for both contemporary and future reference. Each *Annual Review* has taken on historical significance, and we hope that the record created will be used by practitioners, historians, academics, and advocates to better understand the strengths and weaknesses of previous strategies and lead to future innovations. Additionally, the historical record captured by each *Annual Review* demonstrates the incremental, sometimes tenuous, and frequently sideways evolution in the LGBT, gender equality, and sexuality civil rights movements.

We are proud of the *Annual Review*'s growth and commend this year's issue to your reading. It is our hope—our new vision for the *Annual Review*—that its readers and Journal alums will become engaged in an ongoing, dynamic discussion with the Journal's current and future leadership about the developments chronicled in each *Annual Review* so we may collectively have a greater understanding of from whence we have come.