

RURAL RESENTMENT AND LGBTQ EQUALITY

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Abstract

In 2015, the U.S. Supreme Court in *Obergefell v. Hodges* settled a decades-long national debate over the legality of same-sex marriage. Since *Obergefell*, however, local and state legislatures in conservative and mostly rural states have proposed and passed hundreds of anti-LGBTQ bills. *Obergefell* may have ended the legal debate over same-sex marriage, but it did not resolve the cultural divide. Many rural Americans, especially in predominately white communities, feel that they are under attack. Judicial opinions and legislation protecting LGBTQ people from discrimination are serious threats to rural dwellers because they conflict with several core tenets of rural identity: community solidarity, self-reliance, and compliance with religiously informed gender and sexual norms. This conflict is amplified by the relative invisibility of gay and transgender people who live in rural areas, and the predominately urban media representations of gay and transgender people. In several respects, the conflict is merely perceived and is not real. It is at these junctures of perceived conflict that we can draw important lessons for bridging the cultural divide, thereby protecting LGBTQ people across geographic spaces.

This Article examines the sources and modern manifestations of rural LGBTQ resentment to provide foundational insights for the ongoing fight to protect all vulnerable minorities. Pro-LGBTQ legislation and judicial opinions symbolize a changing America in which white rural inhabitants see their identities disappearing, devalued, and disrespected. The left, popularly represented in rural America as a group of urban elites, characterizes anti-LGBTQ views as bigoted, and many people in small towns feel victimized by this criticism. Drawing on a robust body of social science research, this Article suggests that these feelings of victimization lead to resentment when outside forces, like federal judges and state and big-city legislators, tell rural Americans how to act, think, and feel. Rural Americans resent “undeserving” minorities who have gained rights and recognition, in contrast to the identities of, and at the perceived expense of, white, straight, working-class prestige. They resent

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that liberal, largely urban outsiders are telling them that they must change who they are to accommodate people they perceive as unlike them. Opposing LGBTQ rights is thus one mechanism to protect and assert rural identity. It is important to unearth and pay attention to white rural anti-LGBTQ resentment in the post-*Obergefell* era because it is part of a larger force animating conservative politics across the United States.

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INTRODUCTION

In 2015, the U.S. Supreme Court held in *Obergefell v. Hodges*¹ that state bans on same-sex marriage are unconstitutional.² *Obergefell* settled a decades-long national debate over the legality of same-sex marriage that began in earnest in 1993, when the Hawaii Supreme Court in *Baehr v. Lewin*³ signaled that it would strike down its state’s same-sex marriage ban.⁴ In the decades following *Baehr*, anti-gay activists engaged in widespread and largely successful campaigns to ban same-sex marriage at the state level.⁵ The same-sex marriage debate had a strong geographic

1. 135 S. Ct. 2584 (2015).
 2. *Id.* at 2607–08.
 3. 852 P.2d 44 (Haw. 1993), *abrogated by* *Obergefell v. Hodges*, 135 S. Ct. 2585 (2015).
 4. *Id.* at 58–68 (instructing lower courts to apply strict scrutiny).
 5. “In all, twenty-nine states, most of which already had legislative prohibitions on the books, passed state constitutional amendments limiting relationship recognition for same-sex

component in that people living in rural areas were much more likely than urban dwellers to support the bans.⁶ Even after controlling for other factors, such as age, education, sex, and race, “[t]he odds of supporting an anti-gay marriage amendment are more than twice as high in rural communities of fewer than a thousand people as they are in cities of 250,000 people or more.”⁷

The marriage debate was never just about marriage. Marriage symbolized a greater cultural clash over LGBTQ⁸ acceptance, tradition, and competing identities. Rural Americans, and white rural Americans in particular, feel that their distinctively rural way of life and their place-based identities are under attack.⁹ Judicial opinions and legislation protecting LGBTQ people from discrimination are perceived as serious threats to rural dwellers because they directly conflict with several core tenets of a shared rural identity: community solidarity, self-reliance, and compliance with religiously informed gender and sexual norms.¹⁰ Heterosexuality and biologically congruent gender expression are interwoven into all three tenets. Pro-LGBTQ laws symbolize a changing America in which rural inhabitants see their identities disappearing, devalued, and disrespected in mainstream media and culture.¹¹ Rural Americans once felt that opposition to homosexuality and gender nonconformity were shared American values, but now they feel that urban elites cast anti-LGBTQ views as shameful and bigoted.¹² Many people in small towns feel victimized by this criticism.

couples.” Stacey L. Sobel, *Culture Shifting at Warp Speed: How the Law, Public Engagement, and Will & Grace Led to Social Change for LGBT People*, 89 ST. JOHN’S L. REV. 143, 161 (2015).

6. ROBERT WUTHNOW, *THE LEFT BEHIND: DECLINE AND RAGE IN RURAL AMERICA* 129 (2018) (“Data from a national survey show that support for a constitutional amendment banning gay marriage rises steadily as the size of communities in which people live decreases . . .”).

7. *Id.*

8. This Article often uses “LGBTQ” as an acronym for lesbian, gay, bisexual, transgender, and queer. “Queer” is a “multifaceted term that may refer to an attraction toward people of many genders, a challenge to the status quo, and/or a claim to not conforming to cultural norms around sexual orientation.” Erin S. Lavender-Stott et al., *Challenges and Strategies of Sexual Minority Youth Research in Southwest Virginia*, 65 J. HOMOSEXUALITY 691, 693 (2018). For stylistic breaks and diversity, and sometimes because not all members of the LGBTQ community are implicated by an issue, this Article also uses the acronym “LGBT” and the terms “gay” and “trans.”

9. See, e.g., THOMAS FRANK, *WHAT’S THE MATTER WITH KANSAS? HOW CONSERVATIVES WON THE HEART OF AMERICA* 191–92 (2004) (explaining that conservative Christians—who comprise most of rural Red State America—feel that they are being persecuted by elitist outsiders in a culture war).

10. See *infra* Part III.

11. See generally ARLIE RUSSELL HOCHSCHILD, *STRANGERS IN THEIR OWN LAND: ANGER AND MOURNING ON THE AMERICAN RIGHT* (2016) (describing some rural Americans’ despair that their sense of what is “good” is no longer widely shared).

12. *Id.* at 165 (noting that “[i]nstead of the county agreeing . . . on the natural rightness of heterosexual marriage as the center of family life,” rural Americans now have to defend

Further, rural residents view LGBTQ protective laws as particularly out of sync with rural life because lesbian, gay, bisexual, and transgender people remain largely invisible in rural areas.¹³ LGBTQ people live in small towns, of course, but most tend to live quiet, “don’t ask don’t tell,” kinds of lives to fit into rural communities that apply both subtle and overt pressures to adopt the tenets of rural identity.¹⁴ Many rural LGBTQ individuals survive and live comfortably by heeding the following lessons: do not “flaunt” a gay or trans “lifestyle,”¹⁵ do not publicly carve out a distinctively queer identity, and do not seek acceptance and celebration of difference.¹⁶

Accordingly, the most visible gay and trans people tend to appear in media representations of urban LGBTQ life, and these representations tend to highlight people who act in distinctively queer ways and seek acceptance and celebration of those differences.¹⁷ In rural Americans’ eyes, these visible—sometimes class-infused—markers of queer difference are antithetical to rural identity premised on community solidarity values like humility, sameness, and fitting in.¹⁸ Many rural communities thus view LGBTQ people and issues as urban phenomena, and they perceive urban LGBTQ people as particularly undeserving of special legal protection¹⁹ that will increase the size and reach of government at their expense.²⁰ LGBTQ people are thriving in the big city,

themselves against claims that these views are “sexist, homophobic, old-fashioned, and backward”).

13. See, e.g., Clare Forstie, *Ambivalently Post-Lesbian: LBQ Friendships in the Rural Midwest*, 22 J. LESBIAN STUD. 54, 55–56 (2018) (providing an example of LGBTQ invisibility through conservative commentator Rush Limbaugh’s disbelief in the existence of lesbian farmers).

14. See, e.g., Miriam J. Abelson, ‘You Aren’t from around Here’: Race, Masculinity, and Rural Transgender Men, 23 GENDER PLACE & CULTURE 1535, 1537 (2016) (explaining that sexual and gender minorities can establish belonging in rural areas by claiming sameness in some aspect of “place, origin, values, and lifestyle”).

15. See, e.g., Larry Mutz, *A Fairy Tale: The Myth of the Homosexual Lifestyle in Anti-Gay-and-Lesbian Rhetoric*, 27 WOMEN’S RTS. L. REP. 69, 73 (2006) (explaining that the Christian Right uses the term “lifestyle” as a rhetorical device to imply that homosexuality is a “morally corrupt” choice “to engage in perverse sexual behavior”).

16. MARY L. GRAY, *OUT IN THE COUNTRY: YOUTH, MEDIA, AND QUEER VISIBILITY IN RURAL AMERICA* 37 (2009) (“Community belonging turns not on appeals to difference deserving equal respect . . . but a plea to be seen first and foremost as a member of your family no matter how different you may seem.”).

17. *Id.* at 27.

18. Eric Swank et al., *Region, Social Identities, and Disclosure Practices as Predictors of Heterosexist Discrimination Against Sexual Minorities in the United States*, 83 SOC. INQUIRY 238, 239 (2013) (explaining that rural areas embrace “cultural homogeneity” and “localism”).

19. See *infra* Part III.

20. ARLENE STEIN, *THE STRANGER NEXT DOOR: THE STORY OF A SMALL COMMUNITY’S BATTLE OVER SEX, FAITH, AND CIVIL RIGHTS* 117 (2001) (articulating the commonly held rural

the thinking goes, so why should rural taxpayers fund protections and benefits for people who do not live in small towns or share small-town values?

In tandem with rural Americans' feelings of social marginalization and victimization, they have also suffered real financial harm due to disappearing jobs and stagnant wage growth.²¹ Rural America thus feels socially and economically overlooked by those who hold power, and they resent their perceived invisibility.²² Meanwhile, Congress, under President Obama, passed legislation permitting gays to serve openly in the military²³ despite rural opposition,²⁴ the Supreme Court paved the way for same-sex marriage in all fifty states²⁵ despite rural opposition,²⁶ and courts and legislatures are increasingly prohibiting sexual orientation and gender identity discrimination in local workplaces and schools, despite rural opposition.²⁷ The resentment stemming from feelings of invisibility has become exacerbated due to outside forces like big cities and state legislatures telling rural Americans how to act, think, and feel—

belief that demands for LGBT-inclusive antidiscrimination laws “drive up the cost of government and create the need for higher taxes”).

21. Cynthia Duncan, *Foreword* to ECONOMIC RESTRUCTURING AND FAMILY WELL-BEING IN RURAL AMERICA, at ix (Smith & Tickamyer, eds., 2011) (noting that low-skilled manufacturing and natural-resource-dependent jobs have steadily declined in rural America). Indeed, much of then-candidate Trump's small-town appeal was his repeated campaign promises to bring steel, timber, and coal jobs back to rural America. See, e.g., Lisa Hagen, *Trump to Coal Country: Election 'Is the Last Shot for the Miners,'* HILL (Aug. 10, 2016, 4:40 PM), <https://thehill.com/blogs/ballot-box/presidential-races/291041-trump-to-coal-country-this-election-is-the-last-shot-for> [<http://perma.cc/MU7T-MESR>].

22. See, e.g., JOAN C. WILLIAMS, WHITE WORKING CLASS: OVERCOMING CLASS CLUELESSNESS IN AMERICA 64 (2017) (explaining that working-class whites feel ignored by “elites” who direct “them to feel sorry for a whole range of other groups” but do not address the economic challenges they face).

23. Don't Ask, Don't Tell Repeal Act of 2010, Pub. L. No. 111-321, 124 Stat. 3515.

24. Julia A. Puckett et al., *Out in the Country: Rural Sexual Minority Mothers*, 15 J. LESBIAN STUD. 176, 177 (2011) (summarizing findings showing that rural inhabitants are less comfortable with gays in the military than are urban people).

25. “The Court now holds that same-sex couples may exercise the fundamental right to marry. No longer may this liberty be denied to them.” *Obergefell v. Hodges*, 135 S. Ct. 2584, 2604–05 (2015).

26. Puckett et al., *supra* note 24 (summarizing findings showing that more rural than urban people oppose same-sex marriage).

27. See, e.g., GRAY, *supra* note 16, at 83 (discussing rural communities' opposition to outside groups “steamrolling over the will of locals” to advocate for LGBT protections in schools and comparing this to “other times federal and state laws have intervened in rural schools' affairs”).

particularly when those directives conflict with rural inhabitants' moral sense of themselves.²⁸

The Supreme Court in *Obergefell* ended the legal debate over same-sex marriage, but it did not resolve the cultural divide. Instead, it may have hardened opposition in some quarters and stoked the building resentment.²⁹ For many rural Americans, opposing LGBTQ rights is an important mechanism to preserve a distinctively rural way of life, assert identities rooted in a rural place, and fight back against perceived victimization by urban elites. Historically, “the U.S. states that have the most intolerant laws related to gay and lesbian parenthood,” for example, “are disproportionately rural states.”³⁰ In the last several years, legislators of predominantly rural states and small towns have channeled anti-gay resentment into hundreds of anti-LGBTQ bills and proposals.³¹

It is important to unearth and pay attention to rural anti-LGBTQ sentiment in the post-*Obergefell* era. In national discourse since the 2016 election and Donald Trump's political ascension, LGBTQ issues have been somewhat muted in comparison to other important civil rights issues, such as the Muslim travel ban,³² anti-immigrant sentiment and policies,³³ and sexual harassment of women in the workplace.³⁴ The popular national narrative suggests an LGBTQ progress arc, with *Obergefell* symbolizing the ultimate victory in a long-fought struggle. To either overlook anti-LGBTQ sentiment or assume that it did not

28. “Resentment toward cities often served as the glue between anti-government and small-government attitudes. . . . Many people openly resented having decision makers in the cities impose regulations on rural life that they felt displayed an obvious lack of understanding of what life in their community was like.” KATHERINE J. CRAMER, *THE POLITICS OF RESENTMENT: RURAL CONSCIOUSNESS IN WISCONSIN AND THE RISE OF SCOTT WALKER* 154–55 (2016).

29. WUTHNOW, *supra* note 6, at 134 (explaining that same-sex marriage conversations in rural America sparked a major backlash for many who “were angry that President Obama, military leaders, and others in Washington were expressing greater support for the rights of homosexuals”).

30. Chris Wienke & Gretchen J. Hill, *Does Place of Residence Matter? Rural-Urban Differences and the Wellbeing of Gay Men and Lesbians*, 60 *J. HOMOSEXUALITY* 1256, 1258 (2013).

31. *See infra* Section III.C.

32. In June 2018, the Supreme Court upheld the travel ban, reasoning that Donald Trump's anti-Muslim statements did not supplant the otherwise facially neutral governmental rationales for a policy that limits U.S. entry of nationals from five predominately Muslim countries. *Trump v. Hawaii*, 138 S. Ct. 2392, 2417–18, 2423 (2018).

33. *See, e.g.*, Bill Ong Hing, *Entering the Trump Ice Age: Contextualizing the New Immigration Enforcement Regime*, 5 *TEX. A&M L. REV.* 253, 317 (2018) (noting that the Trump administration's anti-immigrant actions dominated news in 2017–18).

34. *See, e.g.*, Tristin K. Green, *Was Sexual Harassment Law a Mistake? The Stories We Tell*, 128 *YALE L.J.F.* 152, 167 (2018) (“The #MeToo movement presents an extraordinary moment of awareness and willingness to listen to and believe people who tell their stories of harassment.”).

significantly impact the 2016 election is a mistake for LGBTQ progress and civil rights more broadly. The same sentiment that fueled popularly enacted same-sex marriage bans still exists, and today it takes new and sometimes less visible forms. Dissecting rural resentment can help to forge a path that allows for the partial preservation of a distinctly rural way of life, while still protecting LGBTQ people from discrimination.

Further, anti-LGBTQ resentment is part of a large social force in rural America that animates conservative politics across the United States. White rural Americans resent “undeserving” minorities who have gained rights and recognition, in contrast to the identities of and at the perceived expense of white, straight, working-class prestige. In the rural “deep story,”³⁵ to borrow a phrase from Arlie Russell Hochschild, undeserving minorities seek special benefits, special rights, and special protection from federal and state governments, while white and straight rural Americans foot both the economic and social bill.³⁶ Resentment toward undeserving LGBTQ people who seek rights and protection from the government in various forms, including marriage, remains an important fixture of conservative political mobilization.

This Article examines the sources and modern manifestations of rural LGBTQ resentment. Anti-LGBTQ resentment is one part of the story that explains our current national politics, and this Article provides insight that may be useful in the ongoing fight to protect all vulnerable minorities from a populist movement fueled in large part by white rural feelings of disenfranchisement.

Part I lays the foundation for understanding the rural–urban divide as it relates to anti-LGBTQ legal mobilization by discussing two notable examples from different eras: Colorado’s Amendment 2 and North Carolina’s HB2. Part II identifies and explains three core tenets of rural identity that constitute a widely shared culture: community solidarity, self-reliance, and religiously informed gender and sexuality norms. Part III unpacks the disconnect between rural identity and LGBTQ identities. Part III.A explains how LGBTQ identities differ from rural identities, and why LGBTQ identities have urban connotations. Part III.B focuses on what resentment is, why it exists, and how it relates to the legally significant concept of animus. Part III.C illustrates how this resentment manifests in local and state law, and Part III.D suggests that *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission*³⁷ is a national

35. HOCHSCHILD, *supra* note 11, at 135 (describing the rural “deep story” as a shared set of feelings that “focuses on the relationships between social groups within our national borders”).

36. *See generally id.* at 135–51 (discussing “The Deep Story” behind white heterosexual Americans’ animosity stemming from another’s race, gender, or socioeconomic class).

37. 138 S. Ct. 1719 (2018).

symbol of the rural–urban divide in the ongoing culture war over gay and trans rights.

This Article could be perceived as an example of one of the very things I argue fuels rural resentment: a law professor who currently lives and works in the San Francisco Bay Area purporting to diagnose and meddle in local, rural affairs.³⁸ My response to this potential criticism is twofold. First, I draw heavily on and synthesize existing social science literature about rural America and the rural LGBTQ experience. Second, I am not an outsider to rural communities. I grew up in Washington, West Virginia (population 1,175³⁹), which is just a short drive from Parkersburg, West Virginia (population 30,096⁴⁰). Almost all of my family still lives in this area. I left West Virginia only a decade ago, which means I have spent most of my life in this predominately rural state. I came out as gay when I was twenty-three years old, while I attended the West Virginia University College of Law. My experiences both before and after I openly identified as gay provide direct insight into clashes between rural and gay identities. As in the tradition of feminist and critical race scholars,⁴¹ I share this small window into my background to position myself in this scholarly field as someone with a personal connection and perspective.

I. THE RURAL–URBAN LGBTQ LEGAL DIVIDE

Long before the marriage equality battle began in earnest,⁴² gay rights activists sought legal protections prohibiting discrimination on the basis

38. Leon Ginsberg, *Introduction: An Overview of Rural Social Work*, in *SOCIAL WORK IN RURAL COMMUNITIES* 3, 11 (Leon Ginsberg ed., 3d ed. 1998) (explaining that rural people resent when people from big cities and distant places intervene in local issues).

39. *Washington CDP, West Virginia*, U.S. CENSUS BUREAU: AM. FACT FINDER, <https://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml> [https://perma.cc/ZDM2-JXAC] (Enter “Washington CDP, West Virginia” into the search bar under the “Community Facts” heading; then click “GO”) (providing the 2010 population).

40. *QuickFacts: Parkersburg City, West Virginia*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/parkersburgcitywestvirginia/PST045217> [https://perma.cc/VV8M-ZVBV] (providing the 2017 estimated population).

41. See, e.g., Martha Minow, Essay, *The Young Adulthood of a Women’s Law Journal*, 20 HARV. WOMEN’S L.J. 1, 2 (1997) (explaining that personal narratives can humanize and offer richer complexity to scholarship).

42. In the early 1970s, three cases produced written opinions regarding the constitutionality of statutes limiting marriage to one man and one woman: *Baker v. Nelson*, 191 N.W.2d 185 (Minn. 1971); *Jones v. Hallahan*, 501 S.W.2d 588 (Ky. 1973), *abrogated by Obergefell v. Hodges*, 135 S. Ct. 2584 (2015); and *Singer v. Hara*, 522 P.2d 1187 (Wash. Ct. App. 1974). As Michael Boucai explains, however, these cases were different from those that movement activists brought beginning in the 1990s in that they “stood no chance of winning” and they were about radical liberation rather than formal equality. Michael Boucai, *Glorious Precedents: When Gay Marriage Was Radical*, 27 YALE J.L. & HUMAN. 1, 4–5 (2015).

of sexual orientation in employment, housing, and public accommodations. In 1972, East Lansing, Michigan, home to Michigan State University, became the first municipality to adopt a pro-gay law, banning discrimination on the basis of sexual orientation in hiring practices.⁴³ By 1993, approximately 140 state and county laws, local ordinances, and executive orders prohibited certain forms of discrimination on the basis of sexual orientation.⁴⁴ The brunt of these antidiscrimination laws were adopted in urban areas and progressive college towns.⁴⁵ Today, twenty-one states and Washington, D.C. ban discrimination on the basis of sexual orientation and gender identity in employment, housing, or public accommodations.⁴⁶ Hundreds of localities do the same.⁴⁷ In some states, however, protection is either non-existent or minimal. In Georgia, for example, only the major city of Atlanta has an ordinance prohibiting gender identity-based and sexual orientation-based discrimination.⁴⁸ In Arkansas, North Dakota, South Dakota, and Tennessee, no locality has any such ordinance.⁴⁹

During this longstanding and ongoing push for LGBTQ-inclusive antidiscrimination laws, two high-profile national controversies stand out as examples of a rural–urban divide over gay and transgender rights. These examples come from two different historical eras, one before marriage equality and one after, but both showcase an underlying sentiment that is relatively consistent across time. The first example is Colorado’s 1992 voter-initiated rebuke of urban attempts to prohibit certain forms of sexual orientation discrimination. This controversy culminated in the U.S. Supreme Court’s famous *Romer v. Evans*⁵⁰ decision, wherein Justice Scalia in dissent made explicit the implicit rural–urban divide.⁵¹ The second example is the more recent 2016

43. See Jane S. Schacter, *Romer v. Evans and Democracy’s Domain*, 50 VAND. L. REV. 361, 371 (1997); see also Gretchen Millich, *East Lansing Marks 40th Anniversary of Gay Rights Ordinance*, WKAR (Mar. 6, 2012), <http://wkar.org/post/east-lansing-marks-40th-anniversary-gay-rights-ordinance#stream/0> [<https://perma.cc/BHC6-98HN>] (reporting the city of East Lansing commemorating the 40th anniversary of the city’s passing of the first local law in the country protecting gay rights).

44. Dominick Vetri, *Almost Everything You Always Wanted to Know About Lesbians and Gay Men, Their Families, and the Law*, 26 S.U. L. REV. 1, 32 n.113 (1998).

45. *Id.* at 32–33.

46. *Non-Discrimination Laws*, MOVEMENT ADVANCEMENT PROJECT, http://www.lgbtmap.org/equality-maps/non_discrimination_laws [<https://perma.cc/B7KE-HWW6>].

47. *Local Non-Discrimination Ordinances*, MOVEMENT ADVANCEMENT PROJECT, http://www.lgbtmap.org/equality-maps/non_discrimination_ordinances/policies [<https://perma.cc/J88S-LE8A>].

48. *Id.*

49. *Id.*

50. 517 U.S. 620 (1996).

51. See *id.* at 645–46 (Scalia, J., dissenting).

controversy over North Carolina's House Bill 2, colloquially known as "HB2."⁵² After the republican-led General Assembly called a highly unusual special session, North Carolina passed a law targeting and effectively voiding a Charlotte, North Carolina ordinance that guaranteed certain protections for LGBTQ people.⁵³

This Article offers these two examples to position the struggle for gay and trans liberation, equality, and social acceptance in a broader geographic context. When opponents and proponents of LGBTQ rights clash, debates are rarely framed around issues of place. However, as Parts II and III discuss below, many rural inhabitants: (1) share identities strongly informed by small-town social and physical realities; (2) view LGBTQ issues and people as primarily urban; and (3) perceive rural identity as incompatible with, and under attack by, supposedly urban LGBTQ forces. This place-based divide serves as fuel in the national LGBTQ rights battle, particularly today as the religious right—a strong political force in small-town America—overtly deploys the rhetoric of victimhood in debates about religious liberties. *Romer* and HB2 thus offer two lenses for viewing some of the usually unseen geographic components of why LGBTQ equality remains so contentious.

A. *Romer v. Evans*

Colorado is a somewhat dichotomous state in terms of population density. Its western region has "a low population and is primarily rural agricultural," whereas its eastern region "has a high population and is generally urban."⁵⁴ Colorado's most progressive inhabitants live in large cities like Boulder and Denver, or in resort cities like Aspen, while the majority of Colorado's conservative voters live in the state's rural areas.⁵⁵

In 1977, Aspen became the first city in Colorado to pass an ordinance prohibiting sexual orientation discrimination in employment, housing, and public accommodations.⁵⁶ In 1987, without much organized

52. See, e.g., Michael Gordon et al., *Understanding HB2: North Carolina's Newest Law Solidifies State's Role in Defining Discrimination*, CHARLOTTE OBSERVER (Mar. 30, 2017), <https://www.charlotteobserver.com/news/politics-government/article68401147.html> [<https://perma.cc/KBM4-JVFD>].

53. Public Facilities Privacy & Security Act, H.B. 2, 2016 Gen. Assemb., 2d Extra Sess. (N.C. 2016), *repealed by* An Act to Reset S.L. 2016-3, H.B. 142, 2017 Gen. Assemb., Reg. Sess. (N.C. 2017).

54. Conference Report, *Thirty-Fifth Annual American Bar Association Water Law Conference*, 20 U. DENV. WATER L. REV. 440, 441 (2017).

55. Pamela Coukos, *Civil Rights and Special Wrongs—the Amendment 2 Litigation*, 29 HARV. C.R.-C.L. L. REV. 581, 583 (1994).

56. See Howard Pankratz, *Amendment 2 Faces First Test*, DENV. POST, Jan. 6, 1993, 1993 WLNR 5814025; Carol Taylor, *Boulder County History: Lesbians Led 1987 Anti-Discrimination Ballot Measure*, BOULDER DAILY CAMERA, Dec. 3, 2017, 2017 WLNR 37571878.

opposition, voters in Boulder approved by referendum the state's second sexual orientation-inclusive antidiscrimination law.⁵⁷ In 1990, Denver joined Aspen and Boulder after its City Council passed a pro-gay antidiscrimination measure in an 8–4 vote.⁵⁸

In the wake of Denver's legislative move, anti-gay forces rallied to stop the pro-gay momentum they perceived in Colorado and elsewhere across the country. A group called Colorado Family Values (CFV) formed, collaborated with well-known anti-gay televangelist Pat Robertson, drafted Amendment 2, and began the petition drive to get Amendment 2 in front of voters in the 1992 statewide election.⁵⁹ Amendment 2 purported to repeal all existing Colorado ordinances prohibiting discrimination on the basis of sexual orientation, and it would bar all future "legislative, executive or judicial action at any level of state or local government designed to protect" homosexual or bisexual people.⁶⁰

CFV campaigned in support of Amendment 2 around the theme that gays should not receive "special rights" that would dilute legitimate discrimination claims by other marginalized groups.⁶¹ The argument suggested that gay people are not like racial minorities because gays already have economic and social privilege and are merely seeking protection to engage in immoral conduct.⁶² CFV published and disseminated a tabloid called "Equal Rights—Not Special Rights!"⁶³ in which it explicitly characterized gay people as wealthy, well-educated, more likely to hold professional or managerial positions, more likely to travel overseas, and regular attendees of (urban) gay pride parades and festivals that display "offensive" messages.⁶⁴ This characterization of the

57. Taylor, *supra* note 56.

58. Brian Weber, *Equal Justice Denver Joins National Trend in Protecting Gay Rights*, DENV. ROCKY MTN. NEWS, Oct. 21, 1990, 1990 WLNR 414151.

59. Coukos, *supra* note 55, at 583–84; Meredith Bennett-Smith, *Anti-Gay Televangelist Pat Robertson: It's OK to Call Jason Collins an 'Abomination,'* HUFFINGTON POST (May 1, 2013, 9:49 AM), https://www.huffingtonpost.com/2013/05/01/pat-robertson-jason-collins-abomination_n_3187977.html [<https://perma.cc/KQT7-S6KD>].

60. *Romer v. Evans*, 517 U.S. 620, 624 (1996).

61. See Brief for Petitioners at 6–7, *Romer v. Evans*, 517 U.S. 620 (1996) (No. 94-1039) ("Supporters of the Amendment claimed that the extension of minority status or preference laws to include sexual orientation would be tantamount to granting special rights, which are not enjoyed by the public at large."); COLO. FOR FAMILY VALUES, EQUAL RIGHTS—NOT SPECIAL RIGHTS! (1992), reprinted in Robert F. Nagel, *Playing Defense*, 6 WM. & MARY BILL RTS. J. 167 app. A at 192 (1997).

62. COLO. FOR FAMILY VALUES, *supra* note 61, at 192–93.

63. *Id.* at 191–99.

64. See *id.* at 192, 193. For a description and critique of CFV's "special rights" tabloid, see Anthony Michael Kreis, *Gay Gentrification: Whitewashed Fictions of LGBT Privilege and the New Interest-Convergence Dilemma*, 31 LAW & INEQ. 117, 130–35 (2012).

gay community's affluence and privilege is grossly inaccurate,⁶⁵ and it obscures the reality that many same-sex couples are drawn to and live in rural areas.⁶⁶

During the weekend before the election, CFV engaged in a "television blitz in the state's more rural markets that featured lewd homosexual behavior in [the] San Francisco Gay Pride parade."⁶⁷ Amendment 2 ultimately passed with fifty-three percent of voters in favor and forty-seven percent opposed,⁶⁸ and it received significant support in western and rural areas of the state.⁶⁹ In a subsequent study of the vote, researchers found that "localities supporting the amendment . . . tended to be rural, have agricultural economic bases, have histories of net out migration, and have relatively smaller proportions of single-person households than the state as a whole."⁷⁰ By contrast, those opposing the amendment tended to live in tourist and resort areas, college towns, and large urban areas.⁷¹ After the election, in commenting on the increasing urbanization of the American west and its attendant negative social and economic effects on rural communities, one columnist for the Denver Post wrote, "Denver, Boulder and Aspen needn't have been quite as surprised by rural support for anti-gay Amendment 2 if they had been paying more attention to rural problems and sensitivities."⁷² An activist expressed similar sentiments about a rural electoral blind-spot, lamenting that pro-gay groups "virtually ignored the more conservative suburban and rural districts,"

65. See, e.g., Leonore F. Carpenter, *The Next Phase: Positioning the Post-Obergefell LGBT Rights Movement to Bridge the Gap Between Formal and Lived Equality*, 13 STAN. J. C.R. & C.L. 255, 274–75 (2017) (discussing data showing that queer people are slightly poorer and more vulnerable to poverty than straight people); Darren Lenard Hutchinson, "Gay Rights" for "Gay Whites"?: Race, Sexual Identity, and Equal Protection Discourse, 85 CORNELL L. REV. 1358, 1381–82 (2000) (critiquing the arguments made in favor of Amendment 2 and the subsequent litigation as reliant on race- and class-biased data).

66. See Luke A. Boso, *Urban Bias, Rural Sexual Minorities, and the Courts*, 60 UCLA L. REV. 562, 580–85 (2013) (drawing attention to the many sexual minorities who live in rural areas either by choice or out of necessity).

67. Brian McGrory, *Gays See Growing Backlash Face Potential Defeats on Rights Across US*, BOS. GLOBE, Nov. 28, 1993, 1993 WLNR 1956634.

68. Bruce Finley & Michael Booth, *Amendment 2 War Not Over: City to Sue; Gays to Boycott*, DENV. POST, Nov. 5, 1992, 1992 WLNR 5689927.

69. Peggy Lowe, *Anti-Gay Rights Law Deepens the Split Among Coloradans*, NEW ORLEANS TIMES PICAYUNE, Jan. 9, 1993, 1993 WLNR 877179.

70. Raymond Christopher Burnett & William M. Salka, *Determinants of Electoral Support for Anti-Gay Marriage Constitutional Amendments: An Examination of 2006 Votes on Ballot Measures in the States*, 56 J. HOMOSEXUALITY 1071, 1074 (2009).

71. *Id.*

72. Bill Hornby, *As the West Grows, Urban and Rural Areas Collide*, DENV. POST, Mar. 21, 1993, 1993 WLNR 5814394.

and suggesting, “[w]e should have been out there knocking on doors and explaining we’re not all leather freaks, queens and child molesters.”⁷³

The “special rights” argument was a direct appeal to rural voters. First, the special rights rhetoric stoked rural class resentment. Most rural communities are comprised of blue-collar workers who have seen manufacturing and natural resource-reliant jobs dwindle in recent decades.⁷⁴ Many rural families are struggling financially and have difficulty paying for basics like food, clothing, mortgage payments, and health care.⁷⁵ Meanwhile, Amendment 2 proponents painted gays as monied white-collar workers who have both the time and resources to live in comfort—and even take expensive international vacations.⁷⁶ The image of international vacationers can be particularly galling to many rural inhabitants because it suggests cosmopolitanism and elitism, and because such an overt showing of wealth belies rural humility norms.⁷⁷

Second, the special rights rhetoric stoked gender resentment. For rural men, hard and dirty manual labor is often a core tenet of masculinity.⁷⁸ Many rural men view urban white-collar workers as reaping financial and status rewards by doing softer, less manly work. Moreover, rural class and gender resentment intertwine due to the material financial realities⁷⁹ of disappearing rural jobs and what those realities mean for rural men’s masculinity. Most rural families now require two wage-earners, and rural men can no longer satisfy the traditional masculine requirement of being the sole breadwinner for their families.⁸⁰ While rural men’s sense of

73. Norma Greenaway, *Backlash: Colorado Reels in the Aftermath of Its Anti-Gay Rights Initiative*, CALGARY HERALD, May 9, 1993, 1993 WLNR 2903367.

74. See *infra* Part III (describing how Donald Trump’s rural base felt “left behind” when factories closed).

75. See Ginger Adams Otis, *Rural Families Rely More on Food Stamps than Those in Large Cities, Study Shows*, N.Y. DAILY NEWS (Aug. 2, 2017, 8:49 PM), <https://www.nydailynews.com/news/national/rural-families-rely-food-stamps-metro-areas-article-1.3379148> [<https://perma.cc/9BKN-UJZ4>] (“Nationally, food stamp participation is highest overall among households in rural areas . . . and small towns . . .”).

76. See Margaret Russell, *Lesbian, Gay, and Bisexual Rights and the “Civil Rights Agenda,”* 1 AFR.-AM. L. & POL’Y REP. 33, 47–48 (1994) (highlighting that prior to the Amendment 2 election, anti-gay advocates characterized gays as a “privileged and powerful class”); see also Kreis, *supra* note 64, at 142 (“The briefs [supporting Amendment 2] expressly depicted the LGBT community as wealthy, powerful, and educated.”).

77. See *infra* notes 308–09 and accompanying text.

78. See *infra* notes 245–52 and accompanying text.

79. See Alemayehu Bishaw & Kirby G. Posey, *A Comparison of Rural and Urban America: Household Income and Poverty*, U.S. CENSUS BUREAU (Dec. 8, 2016), https://www.census.gov/newsroom/blogs/random-samplings/2016/12/a_comparison_of_rura.html [<https://perma.cc/N4ZS-JA97>].

80. See *A Comparison of Rural and Urban Middle-Income Households*, CTR. FOR RURAL PA., http://www.rural.palegislature.us/documents/factsheets/middle_income07.pdf [<https://perma.cc/4MEM-S4Y5>] (“Rural households . . . were more likely to have dual wage earners . . .”).

power as men, both at home and in society, deflates, the special rights rhetoric positions gay men as financially and politically powerful. The perceived power of urban gay men is particularly insulting to both rural men and women because rural gender norms value a male and female binary with congruent masculine and feminine gender presentation, and because those same gender norms equate homosexuality with gender inversion.⁸¹

Third, the special rights rhetoric stoked religious resentment. A core part of rural identity is religiosity, particularly Christianity.⁸² Pursuant to most Christian teachings, sexuality is properly contained in a marriage between one man and one woman, while homosexuality is a sinful lifestyle from which individuals can be saved by prayer.⁸³ Proponents of Amendment 2 stoked rural Christians' worst fears about unrestrained sexuality by distributing literature and saturating small-town television sets with images of shirtless LGBTQ people kissing, dancing, and groping each other in public.⁸⁴ It was no accident that much of the visual media saturation featured images specifically from San Francisco Pride; this confirmed, for rural people, that the deviant and immoral sexuality of LGBTQ people is an urban rather than rural phenomenon.

After Colorado voters approved Amendment 2, litigation began that culminated in the U.S. Supreme Court's *Romer v. Evans*⁸⁵ decision. The Court in *Romer* held that Amendment 2 violated the Equal Protection Clause because it bore no rational relationship to any legitimate governmental interest.⁸⁶ Instead, due to the law's breadth and the gross mismatch between its effects and Colorado's asserted interests,⁸⁷ it raised "the inevitable inference that the disadvantage imposed is born of animosity" toward gays, bisexuals, and lesbians.⁸⁸ The Court on multiple

81. See *infra* Part III.

82. *Infra* Section II.C.

83. *Infra* Section II.C.

84. Amendment 2 proponents released a video called "Gay Rights Special Rights," highlighting colorful drag and sexual spectacles in several pride parades in major U.S. cities. StraightGazette, *Gay Rights Special Rights Part I*, YOUTUBE (July 19, 2009), http://www.youtube.com/watch?v=XTvqla_YK5I [<https://perma.cc/US53-QB49>]; see also Boso, *supra* note 66, at 606 ("[O]ne group that supported . . . Amendment 2 disseminated a video entitled 'Gay Rights/Special Rights' that focused on activist-organized pride parades in major U.S. cities" (footnote omitted)).

85. 517 U.S. 620 (1996).

86. *Id.* at 635.

87. *Id.* at 632. Amendment 2 "is at once too narrow and too broad. It identifies persons by a single trait and then denies them protection across the board." *Id.* at 633. Colorado's primary asserted interests are "respect for other citizens' freedom of association" and "conserving resources to fight discrimination against other groups. The breadth of the amendment is so far removed from these particular justifications that we find it impossible to credit them." *Id.* at 635.

88. *Id.* at 634.

occasions has held that animosity toward a disfavored group is an illegitimate governmental interest.⁸⁹

Justice Scalia dissented from the majority's opinion, expressly deploying the rural–urban divide to frame his discussion of the national gay rights legal movement. First, Justice Scalia rejected the Court's analysis that animus infected Amendment 2, instead characterizing those who voted for Amendment 2 as “tolerant Coloradans” seeking to “preserve traditional sexual mores” who were victims of “a politically powerful” gay minority group.⁹⁰ Second, in casting gays as politically powerful, Scalia unambiguously adopted the CFV's special rights depiction of who gay people are: “those who engage in homosexual conduct tend to reside in disproportionate numbers in certain communities” and “have high disposable income.”⁹¹ Scalia sympathized with the rural resentment of these urban outsiders, stressing that, not only had (rural) Coloradans been exposed to “homosexuals’ quest for social endorsement” in “newspaper accounts of happenings in places such as New York, Los Angeles, San Francisco, and Key West,”⁹² but also gay rights had already arrived in nearby cities like Aspen, Boulder, and Denver.⁹³ The ominous message seems to be: if it can happen *there* (big cities) it can happen *here* (small towns in Colorado and elsewhere). Playing again on the theme of victimization, Scalia concluded with regret that Coloradans’ modest attempt to “counter both the geographic concentration and the disproportionate political power”⁹⁴ of gays and lesbians, and their “adherence to traditional attitudes,”⁹⁵ were “verbally disparag[ed] as bigotry.”⁹⁶

Implied in both CFV's rhetoric and in Justice Scalia's analysis is the belief that gays are powerful, wealthy, and immoral urbanites. This representation pits gays directly against rural Americans' self-concept as invisible to political elites, lacking in political power, hard workers of

89. See, e.g., *Dep't of Agric. v. Moreno*, 413 U.S. 528, 534 (1973) (“[A] bare congressional desire to harm a politically unpopular group[—hippies—]cannot constitute a *legitimate* governmental interest.”); see also *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 450 (1985) (finding that prejudice against “the mentally retarded” is an illegitimate governmental interest). See generally Susannah W. Pollvogt, *Unconstitutional Animus*, 81 *FORDHAM L. REV.* 887, 930 (2012) (analyzing Supreme Court cases that invoke the concept of animus and concludes that animus is a constitutionally impermissible governmental interest).

90. *Romer*, 517 U.S. at 636 (Scalia, J., dissenting).

91. *Id.* at 645.

92. *Id.* at 646.

93. *Id.*

94. *Id.* at 647.

95. *Id.* at 652.

96. *Id.*

modest financial means, and religiously wholesome. This identity gulf is the crux of rural resentment.

Notably, after Amendment 2 passed but before the Supreme Court struck it down as unconstitutional, conservative activists in Oregon deployed the special rights strategy and its attendant rural–urban divide component in attempts to block gay rights at the state level and in many small towns. As Professor Mary Gray explains, “[a]rguments that gays and lesbians might get a leg up through ‘special rights’ proved persuasive because they tapped into a palpable stress over status loss and a sense of disenfranchisement locals experienced across much of the economically depressed rural communities”⁹⁷ Professor Arlene Stein elaborates that the Oregon anti-gay campaign hit all three strains of rural resentment discussed above: class, gender, and religion.⁹⁸ Homosexuality “was a perfect ‘wedge’ issue” because, for rural Americans, it sanctions “the worst excesses of the permissive society: tolerance for a nonprocreative sexuality;” “lack of respect for men and women’s ‘true’ differences; and the rise of civil rights strategies that improved the position of women, minorities, and even homosexuals, purportedly at the expense of working families.”⁹⁹ In the summer of 1993, six small towns and rural counties in Oregon voted to approve—some by a 2–1 margin—local ballot measures to prevent governments from spending money to promote homosexuality.¹⁰⁰ By the end of 1994, twenty-six mostly rural localities had endorsed anti-gay initiatives, many barring special protections for gays, lesbians, and bisexuals in the same vein of Amendment 2.¹⁰¹

The Amendment 2 campaign, the Oregon anti-gay initiatives, and *Romer v. Evans* are strong, yet somewhat rare, examples of how the rural–urban divide visibly motivates anti-gay politics. This geographic conflict remains at play today, but often in subtler ways than in the special rights campaigns of the ‘90s.

B. North Carolina’s HB2

North Carolina is a predominately rural state. After the 2010 Census, North Carolina ranked thirty-seventh among the fifty states for proportion of population classified as urban—with “urban” referring generally to

97. GRAY, *supra* note 16, at 76.

98. STEIN, *supra* note 20, at 7 (noting that gay rights stoked both religious and secular resentments).

99. *Id.* at 27.

100. Valerie Richardson, *Gay-Rights Foes Win in Oregon Six Communities Approve Anti-Homosexual Measures*, WASH. TIMES, July 1, 1993, 1993 WLNR 179102.

101. Jeff Barnard, *Oregon Gays Take Little Comfort from Failure of Rights Initiative*, SEATTLE TIMES, Nov. 13, 1994, 1994 WLNR 1257886 (noting also that statewide legislation rendered these initiatives moot).

“persons living in densely settled areas.”¹⁰² Today, with 3.2 million rural inhabitants, North Carolina is second only to Texas among states with the largest rural populations.¹⁰³ Inhabitants’ perceptions of their states’ rurality also matter.¹⁰⁴ A former University of North Carolina School of Law Dean notes, “North Carolina has long been a rural state,” and she explains that “its citizens often identify themselves in terms of their county rather than necessarily in terms of towns or cities.”¹⁰⁵ In *State v. Peck*,¹⁰⁶ even the North Carolina Supreme Court characterized North Carolina as a “primarily rural State.”¹⁰⁷ Charlotte is North Carolina’s largest city.¹⁰⁸

In November 2014, a representative from the national Human Rights Campaign gave a presentation to the Charlotte City Council, proposing that Charlotte add marital status, familial status, sexual orientation, gender expression, and gender identity¹⁰⁹ to the list of protected traits in several local anti-discrimination ordinances.¹¹⁰ On March 2, 2015, the City Council held a public forum on proposed amendments to existing ordinances.¹¹¹ City Council members received nearly 40,000 e-mails

102. N.C. STATE DATA CTR. & OFFICE OF STATE BUDGET & MGMT., HOW NORTH CAROLINA RANKS 3, 10 (2012), http://data.osbm.state.nc.us/staterank/state_rankings.pdf [<https://perma.cc/S8AP-68KP>].

103. Kirk Ross, *Rural North Carolina Communities Under Political and Economic Stress*, CHARLOTTE POST, May 3, 2018, 2018 WLNR 15343500.

104. For a robust discussion of the various ways in which law and society define rural, including according to subjective measures, see Lisa R. Pruitt, *Rural Rhetoric*, 39 CONN. L. REV. 159, 177–84 (2006).

105. Judith Welch Wegner, *North Carolina’s Annexation Wars: Whys, Wherefores, and What Next*, 91 N.C. L. REV. 165, 178–79 (2012).

106. 291 S.E.2d 637 (N.C. 1982).

107. *Id.* at 644.

108. See *Annual Estimates of the Resident Population for Incorporated Places of 50,000 or More, Ranked by July 1, 2017 Population*, U.S. CENSUS BUREAU: AM. FACT FINDER, <https://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml> [<https://perma.cc/ZDM2-JXAC>] (click on “Advanced Search”; type “Annual Estimates of the Resident Population for Incorporated Places of 50,000 or More, Ranked by July 1, 2017 Population” in the “topic or table name” search bar; click “GO”; then click on the “Annual Estimates of the Resident Population for Incorporated Places of 50,000 or More, Ranked by July 1, 2017 Population” hyperlink).

109. *Charlotte’s Nondiscrimination Ordinance and N.C. House Bill 2 (HB2)*, CITY CHARLOTTE (Dec. 21, 2016), <https://charlottenc.gov/NonDiscrimination/Pages/default.aspx> [<https://perma.cc/4LDK-WDRC>] [hereinafter *Charlotte’s Ordinance*].

110. Mark Price, *Understanding the Origin of Charlotte’s ‘Bathroom Law,’ and How it Led to HB2*, CHARLOTTE OBSERVER (July 29, 2016, 5:48 PM), <http://www.charlotteobserver.com/news/local/article92685957.html> [<https://perma.cc/BV78-QUAG>]. The protections were modest: they prevented discrimination only in public accommodations and for-hire passenger vehicles. *Charlotte’s Ordinance*, *supra* note 109.

111. Ely Portillo & Mark Price, *Charlotte LGBT Ordinance Fails 6-5 in Contentious Meeting*, CHARLOTTE OBSERVER (Mar. 2, 2015, 10:17 AM), <http://www.charlotteobserver.com/news/local/article11908907.html> [<https://perma.cc/WUJ5-WPTJ>].

from interested citizens, and 120 people spoke at the forum.¹¹² The most controversial part of the proposed amendments was a provision allowing transgender people to use male- and female-designated public restrooms that comport with their gender identity.¹¹³ At the end of the forum, the proposal failed on a 6–5 vote.¹¹⁴ Nevertheless, after seating two new elected members who favored the proposed amendments, the City Council hosted another public forum on February 22, 2016.¹¹⁵ This forum lasted for over three hours and featured 140 interested speakers.¹¹⁶ Again, the most controversial aspect of the proposal was the restroom accommodation for transgender people.¹¹⁷ At the forum’s close, the City Council voted 7–4 in favor of the pro-LGBTQ amendments.¹¹⁸

Backlash to Charlotte’s pro-LGBTQ ordinance came swiftly, and it took place against the backdrop of a widening political gulf between rural and urban areas, with people in rural areas increasingly feeling like they were “being left behind” amidst urban population growth and social change.¹¹⁹ On March 21, 2016, Republican Lieutenant Governor Dan Forest (acting as Senate President) and Republican House Speaker Tim Moore invoked a seldom-used constitutional provision to act on their own accord and call a special session to address the Charlotte ordinance before it took effect.¹²⁰ On March 23, 2016, the General Assembly convened the special session, which was the first of its kind in thirty-five years.¹²¹ The only item on the legislative agenda was House Bill 2 (HB2), entitled “An Act to Provide for Single-Sex Multiple Occupancy Bathroom and Changing Facilities in Schools and Public Agencies and to create

112. *Id.*

113. *Id.*

114. *Id.*

115. Steve Harrison, *Charlotte City Council Approves LGBT Protections in 7-4 Vote*, CHARLOTTE OBSERVER (Feb. 22, 2016, 3:06 PM), <http://www.charlotteobserver.com/news/politics-government/article61786967.html> [<https://perma.cc/2WDU-C2Q4>].

116. *Id.*

117. *Id.*

118. *Id.*

119. Ross, *supra* note 103.

120. Jim Morrill, *NC Lawmakers Heading for Special Session Wednesday to Discuss LGBT Ordinance*, NEWS & OBSERVER (Mar. 21, 2016, 7:15 PM), <http://www.newsobserver.com/news/politics-government/state-politics/article67418872.html> [<https://perma.cc/GHY5-7FHX>].

121. Camila Domonoske, *North Carolina Passes Law Blocking Measures to Protect LGBT People*, NPR (Mar. 24, 2016, 11:29 AM), <https://www.npr.org/sections/thetwo-way/2016/03/24/471700323/north-carolina-passes-law-blocking-measures-to-protect-lgbt-people> [<https://perma.cc/WPM9-AF7X>].

Statewide Consistency in Regulation of Employment and Public Accommodations.”¹²²

Although public debates about Charlotte’s pro-LGBTQ ordinance focused on transgender restroom access, HB2 was broad in scope. First, HB2 required that all North Carolina multiple-occupancy public restrooms and changing facilities be segregated by biological sex.¹²³ The bill defined “[b]iological sex” as “[t]he physical condition of being male or female, which is stated on a person’s birth certificate.”¹²⁴ In North Carolina, changing sex on a birth certificate requires sex reassignment surgery,¹²⁵ which is a medical procedure that many trans people cannot afford or do not want.¹²⁶ Second, HB2 preempted all local anti-discrimination ordinances by declaring that only the state can enact laws addressing discrimination.¹²⁷ North Carolina state law, however, does not prevent discrimination on the basis of sexual orientation, gender expression, or gender identity.¹²⁸ The intended effect of this part of HB2, then, was to repeal every aspect of Charlotte’s pro-LGBTQ ordinance, and to bar other liberal cities from including sexual orientation and gender identity as protected traits in civil rights laws. In this way, HB2 was reminiscent of Colorado’s popularly enacted Amendment 2, which similarly repealed several cities’ gay rights laws and barred future pro-gay efforts.¹²⁹

After just three hours of debate, the state House passed HB2 in an 84–25 vote, with all republicans voting in favor.¹³⁰ HB2 then passed in the state Senate in a 32–0 vote, after all Senate Democrats refused to vote

122. See Public Facilities Privacy & Security Act, H.B. 2, 2016 Gen. Assemb., 2d Extra Sess. (N.C. 2016), *repealed by* An Act to Reset S.L. 2016-3, H.B. 142, 2017 Gen. Assemb., Reg. Sess. (N.C. 2017).

123. *Id.*

124. *Id.*

125. *Changing Birth Certificate Sex Designations: State-by-State Guidelines*, LAMBDA LEGAL, <https://www.lambdalegal.org/know-your-rights/article/trans-changing-birth-certificate-sex-designations> [<https://perma.cc/4X2U-ZNQZ>].

126. See Dean Spade, *Documenting Gender*, 59 HASTINGS L.J. 731, 753–59 (2008) (discussing healthcare policy, financial, and personal reasons for why many transgender people do not have gender-confirming surgeries).

127. H.B. 2, 2016 Gen. Assemb., 2d Extra Sess. (N.C. 2016).

128. *North Carolina’s Equality Profile*, MOVEMENT ADVANCEMENT PROJECT, http://www.lgbtmap.org/equality_maps/profile_state/NC [<https://perma.cc/Z45J-T8XQ>].

129. See *supra* Section I.A.

130. Steve Harrison, *N.C. Governor Pat McCrory Signs into Law Bill Restricting LGBT Protections*, CHARLOTTE OBSERVER, (Mar. 23, 2016, 5:48 PM), <http://www.charlotteobserver.com/news/local/article67845317.html> [<https://perma.cc/8ZCU-MAES>].

and walked out in protest.¹³¹ Hours later, Republican Governor McCrory signed HB2 into law.¹³² The Governor explained, “[The Charlotte City ordinance amendments] def[y] common sense and basic community norms by allowing, for example, a man to use a woman’s bathroom, shower or locker room.”¹³³

It took the General Assembly only one month and a day to pass HB2 and rebuke its biggest city’s pro-LGBTQ policy. The state legislature’s rapid response left little time for activists and politicians to overtly deploy the politics of rural identity and resentment and mobilize opposition to perceived urban overreach on gay and trans rights issues, unlike the lengthy public campaign that conservatives ran decades earlier in support of Colorado’s Amendment 2. Nevertheless, circumstantial evidence suggests that small-town values fed the need to strike back at urban Charlotte and dictated the scope of the anti-LGBTQ backlash.

First, the geopolitical makeup of the General Assembly offers one indication that the rural–urban divide was at play. Historically, small towns and their attendant socially conservative ideologies have dominated North Carolina state politics.¹³⁴ That tradition remained strong in 2016, when Republicans hailing from small towns and rural areas across the state controlled the General Assembly with veto-proof majorities in both chambers.¹³⁵ As the *Raleigh News & Observer* declared, “Rural legislators rule the roost in the General Assembly.”¹³⁶ The day following Charlotte’s approval of the gay and trans rights ordinance, the Speaker of the North Carolina House of Representatives, Republican Tim Moore, vowed that North Carolina lawmakers would take steps “to correct this radical course.”¹³⁷ Moore is from the small town of Kings Mountain, North Carolina, which has a population of

131. Joel Brown et al., *McCrory Signs Bill Overturning Transgender Ordinance*, WTVD-TV (Mar. 23, 2016), <http://abc11.com/news/mccrory-signs-bill-overturning-transgender-ordinance/1258961/> [<https://perma.cc/U9VG-TKFS>].

132. *Id.*

133. *Id.*

134. Rob Christensen, Editorial, *Misreading the Political Winds*, COURIER-TIMES, Apr. 8, 2017, 2017 WLNR 10981711.

135. *Id.*

136. *Urban, Rural but One State*, NEWS & OBSERVER (Nov. 26, 2016, 6:27 PM), <https://www.newsobserver.com/opinion/editorials/article116801543.html> [<https://perma.cc/53CQ-8L89>].

137. Steve Harrison & Jim Morrill, *After LGBT Vote, NC House Speaker Says Lawmakers Will ‘Correct This Radical Course,’* CHARLOTTE OBSERVER (Feb. 23, 2016, 9:59 AM), <https://www.charlotteobserver.com/news/politics-government/article61932507.html> [<https://perma.cc/P6ED-UYEN>].

10,791.¹³⁸ House Majority Leader, Republican Mike Hager, promptly commented, “[r]estrooms and locker rooms . . . should remain distinctly private.”¹³⁹ Hager is from Rutherfordton, North Carolina, which has a population of 4,213.¹⁴⁰ Only eleven House Democrats voted for HB2, and all eleven represented rural districts.¹⁴¹ Indeed, in the wake of HB2’s passage, Republican Representative Charles Jeter straightforwardly told one reporter, “This is about rural and urban, not Democrats and Republicans.”¹⁴² Jeter elaborated on his statement, telling another news outlet, “Right now rural North Carolina controls this state,” and “[w]hen you [are] having competing interests between urban and rural in this General Assembly, rural’s going to win every time.”¹⁴³ Another Republican who represented urban Raleigh and supported a partial repeal of HB2, Gary Pendleton, told the press, “Basically, it’s a few of us urban people against all those rural people.”¹⁴⁴

Second, local media coverage about the Charlotte ordinance and HB2 explicitly referenced the rural–urban divide on multiple occasions. In one story about HB2 for the *Raleigh News & Observer*, a journalist explained that the state’s “skepticism of social movements is rooted in its Bible Belt, rural and small-town heritage,” and noted that gay and trans acceptance is “different in Charlotte than in [small-town] Rocky Mount” because it “depends, in part, on geography.”¹⁴⁵ That journalist noted in an earlier *News & Observer* article that HB2 “underscored” the rural–urban cultural differences: “rural areas tend to be far more culturally

138. *Quick Facts: Kings Mountain City, North Carolina*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/kingsmountaincitynorthcarolina/PST045217> [<https://perma.cc/DM9Y-4L6N>].

139. Harrison & Morrill, *supra* note 137.

140. *Population, Housing Units, Area, and Density: 2010*, U.S. CENSUS BUREAU: AM. FACT FINDER, <https://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml> [<https://perma.cc/ZDM2-JXAC>] (search “North Carolina” in the “community facts” search bar; then follow “Compare Cities and Town for Population, Housing, Area and Density” hyperlink).

141. Steve Harrison, *In Tim Moore’s Cleveland County, a Different View on HB2*, CHARLOTTE OBSERVER (Apr. 9, 2016, 9:00 AM), <https://www.charlotteobserver.com/news/politics-government/article70751437.html> [<https://perma.cc/375G-5C8F>].

142. Erik Spanberg, *From Ashes of Collapsed HB2 Talks, Little Hope for LGBT Consensus*, TRIAD BUS. J., Dec. 23, 2016, 2016 WLNR 39357841.

143. Jim Morrill, *Election Exposes NC Urban and Rural Fault Lines*, CHARLOTTE OBSERVER (Nov. 18, 2016, 6:41 PM), <https://www.charlotteobserver.com/news/politics-government/article115779373.html> [<https://perma.cc/X5HA-DN5Y>].

144. Jim Morrill & Craig Jarvis, *Despite Last-Minute Pleas, NC Lawmakers Could End HB2 in Special Session*, CHARLOTTE OBSERVER (Dec. 20, 2016, 5:06 PM), <https://www.charlotteobserver.com/news/politics-government/article122038109.html> [<https://perma.cc/22KG-8YD6>].

145. Rob Christensen, *NC Republicans’ Political Miscalculation on HB2*, NEWS & OBSERVER (Oct. 7, 2016, 1:28 PM), <http://www.newsobserver.com/news/politics-government/state-politics/article106696857.html> [<https://perma.cc/PVL7-MK33>].

conservative, while the metro areas tend to be accepting of social change such as protecting the rights of transgender people and gays.”¹⁴⁶ In the *Charlotte Observer*, another journalist characterized HB2 as representative of rural–urban fault lines, noting that “[m]isconceptions of transgender people are common in small towns” and some rural people are simply “morally opposed to gays, lesbians or transgender people.”¹⁴⁷ In a piece for the *Winston-Salem Journal* following Donald Trump’s presidential election, another journalist highlighted North Carolina’s rural–urban divide, characterizing the state as “the battleground in a fight between two centuries,” and pointing to HB2 as the manifestation of rural fears over what LGBT equality and changing demographics mean for North Carolina’s economic and cultural future.¹⁴⁸

Finally, the scope of HB2 and its predominant focus on limiting transgender rights aligns with key aspects of rural identity. As this Article discusses more fully in Part II, a core tenet of rural identity is Christianity.¹⁴⁹ In southern states like North Carolina, Christians are more likely to be evangelical fundamentalists,¹⁵⁰ and many evangelicals view the Bible as the literal word of God.¹⁵¹

In conflict with gay rights, most Christian denominations in the United States, and certainly fundamentalist denominations, teach that homosexuality is immoral, sinful, and should be discouraged in favor of heterosexuality.¹⁵² HB2’s provisions preventing large cities from protecting gay individuals from sexual orientation-based discrimination is thus one way for rural communities to project and preserve this central component of the self. In conflict with trans rights, most Christian denominations share a belief in “natural gender differences”¹⁵³ that spring congruently from biological sex assignments made by anatomical

146. Rob Christensen, *Presidential Campaigns Reflect NC Divide*, NEWS & OBSERVER (Oct. 29, 2016, 4:43 PM), <https://www.newsobserver.com/news/politics-government/politics-columns-blogs/rob-christensen/article111355727.html> [<https://perma.cc/ZN5K-223>] (paraphrasing what Andrew Taylor, “a political scientist at N.C. State University” said).

147. See Harrison, *supra* note 141.

148. Michael A. Cooper, Jr., *Bridge the Divide*, WINSTON-SALEM J. (Dec. 25, 2016), https://www.journalnow.com/opinion/columnists/michael-a-cooper-jr-bridge-the-divide/article_27070baa-6088-5a7a-8963-a36646bdfd5c.html [<https://perma.cc/62X5-JVXV>].

149. See *infra* Section II.C.

150. Stephen P. Casazza et al., *Heterosexual Attitudes and Behavioral Intentions Toward Bisexual Individuals: Does Geographic Area Make a Difference?*, 15 J. BISEXUALITY 532, 535–36 (2015).

151. See STEIN, *supra* note 20, at 6 (discussing the evangelical beliefs of the rural residents in her study and explaining that they view homosexuality as a threat because it represents “morally lax behavior”).

152. Melinda D. Kane, *Finding “Safe” Campuses: Predicting the Presence of LGBT Student Groups at North Carolina Colleges and Universities*, 60 J. HOMOSEXUALITY 828, 835 (2013).

153. See STEIN, *supra* note 20, at 21.

observation at birth. Christianity stigmatizes gender nonconformity and strongly encourages men and women to assume appropriate male and female roles.¹⁵⁴ Requiring transgender individuals to use the restroom that matches their biologically assigned sex defeats trans individuals' claims to legally sanctioned gender differences, choice, and fluidity. HB2's bathroom components are thus another way for rural residents to project and preserve their identities.

After intense economic backlash against HB2 from outside businesses,¹⁵⁵ this particular gay and trans rights controversy ended in compromise when Charlotte partially repealed its LGBTQ rights ordinance¹⁵⁶ and North Carolina partially repealed HB2.¹⁵⁷ At the national level, North Carolina as a whole took heat from LGBTQ rights activists as a backwards state.¹⁵⁸ The story on the ground is far more geographically complicated. It is important to draw attention to the rural–urban divide because it silently, yet powerfully animates many remaining LGBTQ rights battles across the country today.

II. RURAL IDENTITY

To discuss a shared sense of “rural identity,” it is important to first clarify what “rural” means. Many definitions focus on population size or population density,¹⁵⁹ which is typically the approach that federal and

154. See, e.g., Joseph G. Kosciw et al., *Who, What, Where, When, and Why: Demographic and Ecological Factors Contributing to Hostile School Climate for Lesbian, Gay, Bisexual, and Transgender Youth*, 38 J. YOUTH ADOLESCENCE 976, 984–85 (2009) (equating rural religious beliefs with lower tolerance of rural LGBT people); Melanie D. Otis et al., *Violent Victimization and Substance Dependency: Comparing Rural Incarcerated Heterosexual and Sexual Minority Women*, 16 J. SOC. WORK & PRAC. ADDICTIONS 176, 178 (2016) (“[R]ural life is informed by a strong adherence to traditional gender norms, conservative political views, and fundamentalist religious beliefs.” (citation omitted)).

155. See Corinne Journey, *North Carolina's Bathroom Bill Flushes Away \$630 Million in Lost Business*, FORBES (Nov. 3, 2016, 11:37 AM), <https://www.forbes.com/sites/corinnejourney/2016/11/03/north-carolinas-bathroom-bill-flushes-away-750-million-in-lost-business/#428952e04b59> [<https://perma.cc/833U-UM45>].

156. Steve Harrison, *Charlotte Council Mulling Whether to Reinstate LGBT Ordinance in a Symbolic Vote*, CHARLOTTE OBSERVER (Jan. 11, 2017, 10:31 AM), <https://www.charlotteobserver.com/news/politics-government/article125838159.html> [<https://perma.cc/58F6-FF36>].

157. An Act to Reset S.L. 2016-3, H.B. 142, 2017 Gen. Assemb., Reg. Sess. (N.C. 2017).

158. Lucy Westcott, *Google, Facebook Among Those Opposing North Carolina's Anti-LGBT Law*, NEWSWEEK (Mar. 25, 2016, 10:07 AM), <https://www.newsweek.com/north-carolina-hb2-google-facebook-oppose-440722> [<https://perma.cc/U8LP-4ASU>].

159. See, e.g., Mick Brewer, *Good Ol' Country Boys Playin' on the Farm: Online Articulations of Rural Masculinity by Men Who Have Sex with Men*, 22 SEXUALITY & CULTURE 355, 356 (2018) (using “rural” to describe somewhere “that has fewer than 75,000 residents, and/or is located 1 hour more from an urban city”).

state governments take.¹⁶⁰ At base, then, “rural” refers to small towns or settlements with low population density that are somewhat removed from more densely populated cities.¹⁶¹ Social scientists acknowledge, however, that rurality is a contested concept that includes economic and cultural considerations as well as population.¹⁶² In this way, rurality, much like gender, is a contextually shifting and socially constructed category.¹⁶³

Discussing rural people and places is thus inherently problematic in that not all rural areas are the same. This Article does not seek to essentialize all rural people and places, and it acknowledges the vast diversity of small towns in America.¹⁶⁴ Indeed, exurbs, small college towns, and resort communities look and feel very different from the average low population density environment.¹⁶⁵ This Article deploys “rural” only to describe the social and economic commonalities of most, but certainly not all, rural areas. Simply put, research shows that most rural areas tend to be white,¹⁶⁶ socially conservative¹⁶⁷ less tolerant of

160. See, e.g., Emily Kazyak, *Disrupting Cultural Selves: Constructing Gay and Lesbian Identities in Rural Locales*, 34 QUALITATIVE SOC. 561, 567 (2011) (“Government agencies and researchers generate multiple definitions of ‘rural.’ Definitions based on population size define areas with fewer than 2,500, 10,000, or 50,000 people as ‘rural.’”).

161. See, e.g., Fern K. Willits et al., *Persistence of Rural/Urban Differences*, in RURAL SOCIETY IN THE U.S.: ISSUES FOR THE 1980S, at 69, 70 (Don A. Dillman & Daryl J. Hobbs eds., 1982).

162. See, e.g., Hugh Campbell & Michael Mayerfeld Bell, *The Question of Rural Masculinities*, 65 RURAL SOC. 532, 539 (2000) (explaining that most researchers believe that “there can be no such thing as a singular object called ‘the rural’”); John Paul Jameson & Michael B. Blank, *The Role of Clinical Psychology in Rural Mental Health Services: Defining Problems and Developing Solutions*, 14 CLINICAL PSYCHOL. 283, 284 (2007) (noting that researchers cannot reach a consensus “on a definition that fully captures the demographic, cultural, and economic aspects of rurality”).

163. MICHAEL WOODS, RURAL GEOGRAPHY 11 (2005); Paul Cloke & Jo Little, *Introduction to Contested Countryside Cultures: Otherness, Marginalisation and Rurality* 1, 4 (Paul Cloke & Jo Little eds., 1997).

164. See, e.g., J. Dennis Murray & Peter A. Keller, *Psychology and Rural America: Current Status and Future Directions*, 46 AM. PSYCHOLOGIST 220, 222 (1991) (“The people of rural America are a heterogeneous group with great diversity in cultures, occupations, wealth, lifestyles, and physical geography.”).

165. Boso, *supra* note 66, at 571 (noting the diversity of rural communities according to region, industry, and other factors, but nevertheless explaining that there are traits common to most rural areas).

166. “Outside the South, rural families are predominately White.” Cynthia B. Struthers & Janet L. Bokemeier, *Myths and Realities of Raising Children and Creating Family Life in a Rural County*, 21 J. FAM. ISSUES 17, 21 (2000).

167. See, e.g., Megan R. Yost & Jennifer F. Chmielewski, *Narrating Rural Lesbian Lives: Body Image and Lesbian Community in Central Pennsylvania*, 15 J. LESBIAN STUD. 148, 150 (2011) (noting that “rural areas are often more . . . conservative regarding sexual orientation” than urban areas).

difference,¹⁶⁸ religious,¹⁶⁹ and economically struggling.¹⁷⁰

These demographic, social, and economic realities in most sparsely populated areas shape how “people construct themselves as being rural.”¹⁷¹ In other words, rural is more than just geography and population density—it can be a state of mind, or an identity.¹⁷² Indeed, these social and economic commonalities contribute to a shared sense of rural identity that is surprisingly similar from individual to individual across much of the sparsely populated landscape of the United States. Rural-specific identities include shared moral and cultural values.¹⁷³ Often, these shared values form and operate in opposition to the actual or perceived values of urban areas.¹⁷⁴ In fact, many people stay in or move to rural areas because they actively dislike big cities and what they perceive to be big city attitudes and behaviors.¹⁷⁵ This Article heavily draws on both quantitative and qualitative social science work about rural America and the rural LGBTQ experience to identify three core tenets¹⁷⁶ that constitute rural

168. See, e.g., Deborah Bray Preston et al., *Issues in the Development of HIV-Preventive Interventions for Men Who Have Sex with Men (MSM) in Rural Areas*, 23 J. PRIMARY PREVENTION 199, 200 (2002) (“[L]ess tolerance of difference can distinguish urban from rural settings in powerful ways.”).

169. Melanie D. Otis, *Issues in Conducting Empirical Research with Lesbian and Gay People in Rural Settings*, in HANDBOOK OF RESEARCH WITH LESBIAN, GAY, BISEXUAL, AND TRANSGENDER POPULATIONS 280, 283 (William Meezan & James I. Martin eds., 2009) (“Religious institutions typically play a primary role in defining the norms and expectations of rural communities.”).

170. See, e.g., Abelson, *supra* note 14 (noting that many rural communities are in economic crisis); Jennifer Sherman, *Men Without Sawmills: Job Loss and Gender Identity in Rural America*, in ECONOMIC RESTRUCTURING AND FAMILY WELL-BEING IN RURAL AMERICA, *supra* note 21, at 82, 84–85 (“While both rural and urban America have experienced industrial decline and job loss, these processes have been more concentrated in rural areas, which are often reliant on single industries.”).

171. See WOODS, *supra* note 163.

172. See, e.g., Linda Lobao, *Gendered Places and Place-Based Gender Identities: Reflections and Refractions*, in COUNTRY BOYS: MASCULINITY AND RURAL LIFE 267, 268 (Hugh Campbell et al. eds., 2006) (including “place” and “location” as major sources of personal identity construction); Edward W. Morris, *The ‘Hidden Injuries’ of Class and Gender among Rural Teenagers*, in RESHAPING GENDER AND CLASS IN RURAL SPACES 221, 223 (Barbara Pini & Belinda Leach eds., 2011) (“[R]urality [i]s a dynamically constructed identity, not simply a geographical location . . .”).

173. See, e.g., Marc Mormont, *Who is Rural? Or How to be Rural: Towards a Sociology of the Rural*, in RURAL RESTRUCTURING: GLOBAL PROCESSES AND THEIR RESPONSES 21, 25 (Terry Marsden et al. eds., 1990).

174. SCOTT HERRING, ANOTHER COUNTRY: QUEER ANTI-URBANISM 13 (2010).

175. Ginsberg, *supra* note 38.

176. I borrow the terms “tenet” and “pillar” from Russell Robinson to discuss the dominant but not universal aspects of rural identity, in much the same way that Robinson discusses the dominant but not universal aspects of gay identity. See Russell K. Robinson, *Masculinity as Prison: Sexual Identity, Race, and Incarceration*, 99 CALIF. L. REV. 1309, 1335–45 (2011).

identity: community solidarity, self-reliance, and compliance with religiously informed gender and sexual norms.

A. Community Solidarity

Rural identity includes the valued notion of community solidarity.¹⁷⁷ Community solidarity helps foster a sense of belonging and purpose in geographic locations otherwise physically isolated from the rest of society.¹⁷⁸ Community solidarity forms due to a confluence of factors. First, although every rural community is unique in many ways, a nearly universal characteristic is the relative lack of individual anonymity.¹⁷⁹ People develop close personal ties with each other, and the community as a whole operates on a highly personalized basis.¹⁸⁰ Even in small towns that are too large for people to know literally every resident, low population density means that “everybody knows everybody else” is a common rural sentiment.¹⁸¹ The relative lack of rural anonymity helps facilitate the dissemination and policing of shared and deeply held moral and cultural values.¹⁸²

Second, the fact that many rural inhabitants have deep family roots in the area amplifies feelings of familiarity.¹⁸³ Some families have local ties dating back to the first white settlers, rendering rural areas internally homogenous in heritage and ethnic backgrounds.¹⁸⁴ Most rural areas today are losing residents rather than gaining newcomers,¹⁸⁵ which exacerbates the problem of racial and cultural homogeneity. This relative lack of diversity,¹⁸⁶ paired with the sense that everyone knows each other,

177. See Yueh-Huang Huang & William P. Stewart, *Rural Tourism Development: Shifting Basis of Community Solidarity*, 34 J. TRAVEL RES. 26, 26 (1996).

178. *Id.* at 26–27.

179. See, e.g., Colleen S. Poon & Elizabeth M. Saewyc, *Out Yonder: Sexual-Minority Adolescents in Rural Communities in British Columbia*, 99 AM. J. PUB. HEALTH 118, 118 (2009) (explaining that gay rural youth have difficulty expressing same-sex affection due to lacking rural anonymity); Mark L. Williams et al., *The Social/Sexual Environment of Gay Men Residing in a Rural Frontier State: Implications for the Development of HIV Prevention Programs*, 21 J. RURAL HEALTH 48, 53 (2005) (“[A]nonymity in rural areas and small towns is virtually nonexistent.”).

180. Ginsberg, *supra* note 38, at 10.

181. WUTHNOW, *supra* note 6, at 14, 31.

182. *Id.* at 14–15.

183. See, e.g., Shawn N. Mendez et al., *Minority Stress in the Context of Rural Economic Hardship: One Lesbian Mother’s Story*, 12 J. GLBT FAM. STUD. 491, 495 (2016) (noting that rural communities are organized around kinship ties).

184. Otis, *supra* note 169, at 283–84.

185. See, e.g., Linda Marie Bye, ‘How to Be a Rural Man’: *Young Men’s Performances and Negotiations of Rural Masculinities*, 25 J. RURAL STUD. 278, 278 (2009) (discussing the rural “brain drain” that occurs when smart and ambitious people leave small towns for better opportunities).

186. Struthers & Bokemeier, *supra* note 166, at 21.

leads to the widely shared feeling that everyone is “pretty much the same here.”¹⁸⁷ That sense of sameness is part of what community solidarity means.¹⁸⁸ As Mary Gray explains in her ethnography on queer youth living in small towns, rural communities “organize around an appreciation for solidarity expressed through blending in” and sameness.¹⁸⁹ Family connections can be particularly important to solidarity because they show that an individual has some personal understanding and investment in the community and is therefore unlikely to disrupt deeply held moral and cultural values.¹⁹⁰

Familiarity and sameness provide both the glue for community solidarity and the guidelines for how to live in a rural area. Each rural community is somewhat different in terms of the specific traditions and values that its inhabitants share, but some values are relatively consistent from place to place. For example, many people in small towns point to “being known as a good person” as important, and this often goes hand-in-hand with having strong family connections and personal ties with others.¹⁹¹ Importantly, being a good person also means being humble and authentic.¹⁹²

Humility and authenticity in rural America can mean many things, including but not limited to: blending in,¹⁹³ not calling undue attention to oneself, and not being “disruptive”¹⁹⁴ (that is, being “normal”¹⁹⁵); modesty and unpretentiousness about one’s skills and financial resources; honesty; and a down-to-earth style in daily interactions.¹⁹⁶ Much of humility and authenticity is about class performativity, and many of the rural class markers at work embody an implicit or explicit rejection of the

187. WUTHNOW, *supra* note 6, at 31.

188. GRAY, *supra* note 16, at 38.

189. *Id.*

190. *Id.*

191. *E.g.*, Kazyak, *supra* note 160, at 571; *see also* WUTHNOW, *supra* note 6, at 43, 78 (describing rural communities as connected by a moral fabric regarding what is “right and good”).

192. FRANK, *supra* note 9, at 113–14 (characterizing the divide between conservatives and liberals, and red and blue states, as about authenticity and humility).

193. *See, e.g.*, GRAY, *supra* note 16, at 38; Katherine M. Slama, *Toward Rural Cultural Competence*, 53 MINN. PSYCHOLOGIST 6, 7 (2004) (noting that rural people perceive their lives as more circumscribed due to pressures to conform).

194. WILLIAMS, *supra* note 22, at 17.

195. *See, e.g.*, Alexis Annes & Meredith Redlin, *The Careful Balance of Gender and Sexuality: Rural Gay Men, the Heterosexual Matrix, and “Effeminophobia,”* 59 J. HOMOSEXUALITY 256, 257, 260 (2012) (explaining that many rural gay men strive to be “normal” based on strongly enforced gender, sexual, and social interaction norms).

196. FRANK, *supra* note 9, at 27. “What makes one a member of the noble proletariat is . . . unpretentiousness, humility, and the rest of the qualities that our punditry claims to spy in the red states that voted for George W. Bush.” *Id.* at 113–14.

trappings of perceived (urban) elitism and actual wealth.¹⁹⁷ American author and venture capitalist J.D. Vance offers the rejection of elitism as one explanation for why so many rural people disliked Barack Obama: he is from Chicago, a graduate of two Ivy League schools, is “brilliant” and “wealthy,” has a “clean, perfect, neutral” accent, and “[n]othing about him,” including his race, “bears any resemblance” to most people in white rural America.¹⁹⁸

Further, people everywhere express identity and project their sense of authentic self through consumption-related activities. In rural America, those cultural activities include things like people’s “selection of music (country versus rap) and their choice of clothing (cowboy boots versus wing tips).”¹⁹⁹ For men, this might mean avoiding certain “art, music, language[,] and culture” interests that do not comport with blue collar rural gender norms, while doing things that signal authentic rugged masculinity such as wearing “T-shirts” and “shorts” and “watching football.”²⁰⁰ Humility and authenticity in rural America, then, often require an identity performance that contrasts with urbanized connotations of class elitism and unfamiliar otherness,²⁰¹ and are also inextricably tied to the core rural tenets of self-reliance²⁰² and gender and sexual norm conformity²⁰³ as discussed below.

In expressing her discomfort over Chaz Bono’s public statements on the prejudice he suffers as a transgender person, one rural woman nicely illustrated the value that small towns place on community solidarity—and by extension humility and authenticity: “Just be a regular person, go to work, mow the lawn, fish. You don’t have to be shouting it from the mountaintops.”²⁰⁴

197. *Id.* at 113 (arguing that class is about authenticity more than occupation, and class authenticity is about “what one drives and where one shops and how one prays”); *see also* ELI CLARE, *EXILE AND PRIDE: DISABILITY, QUEERNESS, AND LIBERATION* 38 (1999) (suggesting that stylistic and cultural rural–urban differences and class are inseparable).

198. *See* J.D. VANCE, *HILLBILLY ELEGY: A MEMOIR OF A FAMILY AND CULTURE IN CRISIS* 191 (2016).

199. Gerald W. Creed & Barbara Ching, *Recognizing Rusticity: Identity and the Power of Place*, in *KNOWING YOUR PLACE: RURAL IDENTITY AND CULTURAL HIERARCHY* 3 (Barbara Ching & Gerald W. Creed eds., 1996).

200. Annes & Redlin, *supra* note 195, at 268–69.

201. *See, e.g.*, HOCHSCHILD, *supra* note 11, at 114 (explaining that much of rural resentment comes from perceptions that small-town people of “good character” are losing out to people of “bad character”).

202. *Infra* Section II.B.

203. *Infra* Section II.C.

204. HOCHSCHILD, *supra* note 11, at 162.

B. *Self-Reliance*

Rural individuals often depend on their families and the community for social, and sometimes economic, support.²⁰⁵ Somewhat paradoxically, however, rural communities strongly value independence and self-reliance—the second tenet of rural identity.²⁰⁶ While seemingly in tension, closer inspection reveals that community solidarity and self-reliance work well in tandem.

For most rural Americans, independence expressed through self-reliance means hard work. In particular, men are expected to have a job and provide for their families (more on this later).²⁰⁷ Small towns subscribe very much to a pull-oneself-up mentality.²⁰⁸ Community solidarity comes into play here as well in a number of ways. First, the community ideally should give individuals the tools they need to succeed by their own merits: “‘help’ is about letting people work hard enough so that they can make it on their own.”²⁰⁹ The community can be a useful resource for creating and helping people find jobs.²¹⁰ Second, hard work and the self-reliance that hard work brings confer honor, allowing the worker to identify as a good person and be received in that way by the community.²¹¹ Being a good person, as discussed above, is a commonly shared small-town value and a core component of community citizenship. Third, those who work hard and are self-reliant serve as examples and assurances to the community that rural identity is more natural than and perhaps morally superior to urban identity.

To make sense of this third point, it is useful to underscore how rural identity and its constituent tenets are formed, at least in part, in opposition to urban identities.²¹² According to Professor Katherine Cramer, resentment of urban areas is part of rural consciousness.²¹³ People living

205. *E.g.*, Daniel Walinsky & David Whitcomb, *Using the ACA Competencies for Counseling with Transgender Clients to Increase Rural Transgender Well-Being*, 4 J. LGBT ISSUES COUNSELING 160, 170 (2010).

206. *E.g.*, Anastasia R. Snyder & Diane K. McLaughlin, *Female-Headed Families and Poverty in Rural America*, 69 RURAL SOC. 127, 129 (2004).

207. *See infra* Section II.C.

208. *See* CRAMER, *supra* note 28, at 153 (noting that some rural people believed in “pulling themselves up by the bootstraps”).

209. *Id.* at 76.

210. *Id.* at 76–77.

211. HOCHSCHILD, *supra* note 11, at 158.

212. *See, e.g.*, John C. Cross & Alfonso Hernández, *Place, Identity, and Deviance: A Community-Based Approach to Understanding the Relationship Between Deviance and Place*, 32 DEVIANT BEHAV. 503, 507 (2011) (explaining that “marginalized areas,” including rural areas, form identities around places that “in some ways must run counter to the dominant norms of the society”).

213. CRAMER, *supra* note 28, at 5.

in small towns view big cities as comprised of people—racial minorities, specifically²¹⁴—who do not work hard for a living, but instead ask for handouts from federal and state governments.²¹⁵ White rural inhabitants resent that the government is stealing “from hardworking men and women”²¹⁶ in small towns, and giving money and resources to undeserving and primarily urban people who do not work hard for a living.²¹⁷ Worse, when the government helps the undeserving, the perception percolating in rural consciousness is that those recipients often use the resources to engage in practices that are immoral and unnatural according to rural values.²¹⁸ In defiance of the rural version of independence that leads to virtuous self-reliance and bolstered status as a good family-oriented person, it is statistically true that more people in urban areas exercise independence by rejecting “restrictions on sexuality, [the] insistence on marriage, or the stigmatization of single parents.”²¹⁹ Accordingly, when federal and state tax monies help the urban poor, many people in small towns think of Ronald Reagan’s offensive and stereotypical “Welfare Queen”:²²⁰ the immoral, unmarried woman of color who has multiple children with different fathers.²²¹

These beliefs stem from the fact that most rural areas are predominately white,²²² their inhabitants view racial minorities as (urban) outsiders,²²³ and stereotypes of racial minorities as “lazy, inferior, and

214. *Id.* at 179 (“[W]hen people in rural areas were expressing resentment against urban areas and perceiving that power and resources were unfairly focused on cities, race was embedded in those arguments.”).

215. *Id.* at 148, 153.

216. NANCY ISENBERG, *WHITE TRASH: THE 400-YEAR UNTOLD HISTORY OF CLASS IN AMERICA* 312 (paperback ed. 2017).

217. HOCHSCHILD, *supra* note 11, at 114 (articulating the widely held rural sentiment that the federal government is “taking money from the workers and giving it to the idle”).

218. In part because many rural areas economically depend on the land and its resources, there is a strong national sense that rural people lead more “natural” and “fulfilled” lives. *See* MICHAEL BUNCE, *THE COUNTRYSIDE IDEAL: ANGLO-AMERICAN IMAGES OF LANDSCAPE* 29 (1994); *see also* LYNDA JOHNSTON & ROBYN LONGHURST, *SPACE, PLACE, AND SEX: GEOGRAPHIES OF SEXUALITIES* 95 (2010) (“Rural spaces are often represented as natural or pure spaces, contrasted with urban spaces which are often represented as unnatural and impure.”); David Bell, *Farm Boys and Wild Men: Rurality, Masculinity, and Homosexuality*, 65 *RURAL SOC.* 547, 558 (2000) (characterizing the city as a place of “unnatural” practices and performances”).

219. NAOMI CAHN & JULIE CARBONE, *RED FAMILIES V. BLUE FAMILIES: LEGAL POLARIZATION AND THE CREATION OF CULTURE* 2–3 (2010).

220. For a brief discussion of the Welfare Queen stereotype, see Lisa R. Pruitt, *Welfare Queens and White Trash*, 25 *S. CAL. INTERDISC. L.J.* 289, 289–91 (2016).

221. *See, e.g.*, STEIN, *supra* note 20 (noting that rural people view gays and mothers who receive welfare as “promiscuous, unmarried, morally lax,” and as “particularly suspect” because they increase the size and expense of government).

222. *See, e.g.*, Struthers & Bokemeier, *supra* note 166.

223. *See, e.g.*, Abelson, *supra* note 14.

responsible for their own poverty” are pervasive.²²⁴ In this way, rural demographic segregation helps to racialize the tenet of community solidarity as white, promoting a positive sense of group belonging around whiteness and a negative sense of nonwhites²²⁵ as undeserving urbanized others.²²⁶ When rural residents find work and become self-reliant despite other physical or economic hardships, those success stories strengthen the positive sense of white community solidarity and reaffirm the negative perception that needy urban outsiders simply refuse to help themselves.

C. Religiously Informed Gender and Sexual Normativity

The third major tenet of rural identity could be spliced into multiple subparts or even other tenets. Instead, this Article pours religiosity, gender conformity, and heterosexuality into a single pillar because of the interconnected way in which these components work. Religion is the foundational material from which all else is built.

Simply put, the “church is often the center of the rural community.”²²⁷ On average, rural residents are more religious than their urban counterparts.²²⁸ Moreover, because individual rural areas see little immigration and are home to many families with deep genealogical roots, each place tends to be religiously as well as racially homogenous.²²⁹ Most rural communities tend to be Christian, and rural Southern states include more fundamentalist strains of Christianity than do others parts of America.²³⁰ Churchgoing in rural communities is thus a core

224. Mendez et al., *supra* note 183, at 493.

225. See EDUARDO BONILLA-SILVA, *RACISM WITHOUT RACISTS: COLOR-BLIND RACISM AND THE PERSISTENCE OF RACIAL INEQUALITY IN THE UNITED STATES* 104 (2d ed. 2006).

226. See, e.g., Jon Garland & Neil Chakraborti, *Another Country? Community, Belonging, and Exclusion in Rural England*, in *RURAL RACISM* 122, 132 (Neil Chakraborti & Jon Garland, eds., 2004) (explaining how rural localism leads to the “othering” of anyone perceived to be outside mainstream rural values).

227. Sarah L. Hastings & Alysia Hoover-Thompson, *Effective Support for Lesbians in Rural Communities: The Role of Psychotherapy*, 15 *J. LESBIAN STUD.* 197, 198 (2011).

228. See, e.g., MICHELE DILLON & SARAH SAVAGE, *CARSEY INST., VALUES AND RELIGION IN RURAL AMERICA: ATTITUDES TOWARD ABORTION AND SAME-SEX RELATION* 9 (2006) (finding that rural areas are more religious than urban areas and that rural residents are most likely to attend church weekly and identify as “born-again”); Amanda Rickard & C. Theresa Yancey, *Rural/Non-Rural Differences in Psychological Risk Factors Among Sexual Minorities*, 30 *J. GAY & LESBIAN SOC. SERVS.* 154, 155 (2018).

229. See, e.g., WILL FELLOWS, *FARM BOYS: LIVES OF GAY MEN FROM THE RURAL MIDWEST* 15 (1996) (describing rural areas as “very homogenous with regard to racial, ethnic, and religious heritage”).

230. Casazza et al., *supra* note 150.

performative activity required by community solidarity, and scripture and church teachings inform the values by which rural people should live.²³¹

This Article does not intend to denigrate Christianity writ large. Christianity does much good in the world, and many good people are Christians. However, two related aspects of Christianity tend to shape rural environments, and their effects can make life particularly difficult for many women and LGBTQ people who live in rural areas. In short, rural Christianity tends to be conservative and traditional with regard to gender and sexuality.²³² It largely promotes ideas such as: sex is a God-given trait determined at birth; gender differences are natural, rigid, and have widely-understood meanings; and sexuality is primarily about procreation and should be channeled into a marital relationship between one man and one woman.²³³ These religious beliefs are not uniquely rural, of course, but they guide rural life in a unique way because they are fundamental parts of the community's social and cultural fabric.²³⁴ These religious beliefs also take on a secular nature in that they function alongside other factors contributing to rural community solidarity—such as lack of diversity, geographic and social insularity, and popular calls for sameness and blending in—to reinforce and even harden pre-existing attitudes about sex, gender, and sexuality.²³⁵

In small towns, gender relations are still highly patriarchal.²³⁶ This patriarchal ideology and the primacy it gives to men and male power codes rural spaces as highly masculine.²³⁷ Although rural women have increasingly entered the workforce in the last few decades,²³⁸ the ideology of male dominance and separate male and female roles at work

231. “Religious fundamentalism and an active churchgoing population in many small rural communities may . . . impose strong moral proscriptions against nonmarital sexual activity.” Daniel T. Lichter & Deborah Roempke Graefe, *Rural Economic Restructuring: Implications for Children, Youth, and Families*, in ECONOMIC RESTRUCTURING AND FAMILY WELL-BEING IN RURAL AMERICA, *supra* note 21, at 26, 33–34.

232. *See, e.g.*, Kosciw et al., *supra* note 154, at 985 (highlighting the high rural concentration of religious and conservative views on sexuality and gender).

233. *See, e.g.*, STEIN, *supra* note 20, at 21; *see also* Luke A. Boso, *Policing Masculinity in Small-Town America*, 23 TEMP. POL. & CIV. RTS. L. REV. 345, 358–60 (2014) (discussing religion's influence on rural gender and sexuality norms).

234. JO LITTLE, GENDER AND RURAL GEOGRAPHY: IDENTITY, SEXUALITY AND POWER IN THE COUNTRYSIDE 43 (2002).

235. Lorene Gottschalk & Janice Newton, *Rural Homophobia: Not Really Gay*, 5 GAY & LESBIAN ISSUES & PSYCHOL. REV. 153, 154 (2009).

236. Hugh Campbell et al., *Masculinity and Rural Life: An Introduction*, in COUNTRY BOYS: MASCULINITY AND RURAL LIFE, *supra* note 172, at 1, 5.

237. Bye, *supra* note 185.

238. *See, e.g.*, Sherman, *supra* note 170, at 84–85 (explaining that industrial change in rural areas has led to male job loss and more women in the workforce).

and home persists.²³⁹ Indeed, many rural men resent the fact that their wives have gotten jobs.²⁴⁰ Hegemonic masculinity historically dictated that men are the economic providers for their wives and children, and many rural men feel emasculated by losing their sole-provider status.²⁴¹ Many rural women likewise resent the fact that they have to work due to economic necessity.²⁴² In what sounds like a rejection of modern feminism, many rural women support dominant conceptions of masculinity, and value their identities as wives and mothers above all else.²⁴³ As Professor Michael Kimmel explains, so many rural women voted for Donald Trump in the 2016 election because they voted as mothers and not as women: they were “working mothers who didn’t want to be working,” and who “believed that their role was to raise the kids and keep the home.”²⁴⁴

Much of what rural masculinity means is tied to the work that rural men do²⁴⁵ and the tools required for that work.²⁴⁶ Traditionally, most men in small towns worked in blue-collar industries involving the land and its resources.²⁴⁷ In Appalachia, rural men were coal-miners; in the Pacific Northwest, rural men were loggers or fishers; and in the Midwest and

239. JOHNSTON & LONGHURST, *supra* note 218, at 96.

240. Donna L. Perry, *Wolof Women, Economic Liberalization, and the Crisis of Masculinity in Rural Senegal*, 44 *ETHNOLOGY* 207, 210 (2005).

241. “The core feature of American manhood has always been as ‘breadwinner,’” and working-class white men feel humiliated because they wanted to support their families by themselves. MICHAEL KIMMEL, *ANGRY WHITE MEN: AMERICAN MASCULINITY AT THE END OF AN ERA*, at xii (2017); *see also* WILLIAMS, *supra* note 22, at 91 (explaining that, because of the loss of sole breadwinner status, working-class men feel that they have also lost masculine dignity).

242. *See generally* Meghan Casserly, *Is ‘Opting out’ the New American Dream for Working Women?*, *FORBES* (Sept. 12, 2012), <https://www.forbes.com/sites/meghancasserly/2012/09/12/is-opting-out-the-new-american-dream-for-working-women/#67046a50623a> [<https://perma.cc/MND4-U3M2>] (discussing a survey showing that women generally would prefer to stop working to stay at home with children and some “resent their partner for not earning enough to make that dream a reality”).

243. *See, e.g.*, HOCHSCHILD, *supra* note 11, at 147 (explaining that some women wanted to enjoy the luxury of being a homemaker).

244. KIMMEL, *supra* note 241.

245. Nancy E. Dowd et al., *Feminist Legal Theory Meets Masculinities Theory*, in *MASCULINITIES AND THE LAW: A MULTIDIMENSIONAL APPROACH* 25, 42 (Frank Rudy Cooper & Ann C. McGinley eds., 2012) (“Work is an important site of masculinity construction.”); *see also* Kerry Carrington & John Scott, *Masculinity, Rurality and Violence*, 48 *BRIT. J. CRIMINOL.* 641, 651 (2008) (identifying physical work as holding a privileged masculinity status in rural areas).

246. *See* Margaret K. Nelson & Joan Smith, *Economic Restructuring, Household Strategies, and Gender: A Case Study of a Rural Community*, 24 *FEMINIST STUD.* 79, 91 (1998) (noting that rural men take “manly” pride in work equipment such as a pickup truck, a John Deere tractor, and a chainsaw).

247. *See* Morris, *supra* note 172, at 228, 235 (describing a rural working-class masculinity historically reliant on manual labor, like coal-mining).

much of the South, rural men were farmers.²⁴⁸ Indeed, in the national imagination, rural men are often thought of as “real men” because of their connection to the land and the strength, toughness, and bravery required for these physical, laborious jobs.²⁴⁹ Globalization, technology, government regulation, and changing economic circumstances have decreased or eliminated the workforce in many of these traditionally male fields.²⁵⁰ This work previously afforded men opportunities to engage in hard physical labor requiring stamina, bravery, and dominance over the land—all performative elements of hegemonic masculinity.²⁵¹ As these opportunities disappeared or became harder to find, and as women entered the workforce and competed with men for the few jobs that do exist in small towns, many rural men became increasingly angry.²⁵² Because patriarchy remains the dominant gender ideology in most small towns, many rural men feel entitled to traditional indicia of masculinity and resent the sources they perceive to have taken them away.²⁵³ As a presidential candidate, Donald Trump directly tapped into white rural male identity politics in his campaign by promising to bring industrial jobs back to forgotten Americans.²⁵⁴

Rigid gender norms go hand-in-hand with rigid sexuality norms, and family is the commonality. Family is one of the most important things in rural communities because it provides the foundation for being seen as a good person with deep ties to the community and the church.²⁵⁵

248. See, e.g., Swank et al., *supra* note 18, at 239 (identifying farming, mining, and forestry as rural America’s primary industries).

249. See, e.g., Campbell et al., *supra* note 236, at 2 (theorizing that the “[r]eal men are rural men” idea is politically important); see also, e.g., Abelson, *supra* note 14 (“Rural men tend to be represented as ‘real men’”); Carrington & Scott, *supra* note 245, at 650 (“[R]ural men have also come to symbolize what comprises ‘authentic’ masculinity in national culture and among urban men.” (citation omitted)).

250. See, e.g., Michael Kimmel & Abby L. Ferber, “White Men Are This Nation:” *Right-Wing Militias and the Restoration of Rural American Masculinity*, 65 RURAL SOC. 582, 584 (2000).

251. “Rural men are often expected to dominate and control nature and rural spaces via their own changing labor markets in a given location—a dominance that is accomplished through both the body and machine.” Brewer, *supra* note 159, at 357 (citations omitted).

252. See, e.g., Kimmel & Ferber, *supra* note 250 (describing how rural Americans feel like victims of global changes in the industrial workforce).

253. See *id.* at 592 (describing white rural men’s feelings of entitlement and identifying the minority groups who are the prime objects of their anger).

254. See HOCHSCHILD, *supra* note 11, at 229–30 (characterizing Donald Trump as “the identity politics candidate for white men.”). “Implicitly Trump promised to make men ‘great again’ too” *Id.* at 229.

255. See GRAY, *supra* note 16, at 39 (“The possibility of a local family connection gives every rural resident a claim to community membership.”); see also M.D. Davis et al., *Man to Man: Homosexual Desire and Practice Among Working-Class Men*, in R.W. CONNELL, THE MEN

Practically speaking, families are especially important for survival in sparsely populated areas, given the extra helping hands of children and relatives that can speed up and simplify hard work (on the farm, at the family business, etc.). Families also help in the production and enforcement of gender norms, and conforming to those gender norms is part of what community solidarity requires.²⁵⁶

In many rural areas, a sharp division still exists between men's and women's roles within the family, and declining economic circumstances may exacerbate the importance of those roles.²⁵⁷ Further, and to state the obvious, sex between men and women often results in procreation. Heterosexuality is thus literally key to traditional family formation, and symbolically key to how men and women should correctly perform masculinity and femininity.²⁵⁸ Consequently, gays and lesbians are more clearly marked in rural areas as gender nonconforming.²⁵⁹ Finally, churches teach that sex outside of marriage and homosexuality are sinful.²⁶⁰ Many people believe that homosexuality is particularly threatening because they see it as a selfish "choice" that eschews family obligations in favor of individual pleasure.²⁶¹

Professors Naomi Cahn and Julie Carbone identify a "red family paradigm," which is more likely to be religious and rural,²⁶² and which positions marriage as the most important institution.²⁶³ According to the red family model, "marriage channels sexuality, connects it to childrearing, and continues to be the foundation for community life in

AND THE BOYS 102, 107 (2000) (identifying "family" as what working-class people value most in life).

256. See Emanuella Grinberg & Victoria Larned, *This Is What Happens When Gender Roles Are Forced on Kids*, CNN (Oct. 3, 2018, 5:09 PM), <https://www.cnn.com/2017/09/20/health/geas-gender-stereotypes-study/index.html> [<https://perma.cc/BC8B-2NTS>].

257. See BONILLA-SILVA, *supra* note 225, at 145 (theorizing that white working-class men respond to the "bad times (when 'their' women have had to work in the paid labor force)" by reinforcing a patriarchal family structure at home).

258. See LITTLE, *supra* note 234, at 41 (explaining that family and "dominant characteristics of gender identity" contribute to the rural privileging of heterosexuality and "those who do not conform are marginalised in terms of a broader rural identity").

259. See Boso, *supra* note 233, at 360 (arguing that heterosexuality is a "cornerstone of rural . . . masculinities and femininities").

260. See Kane, *supra* note 152.

261. Many rural "Christians see gay people—affirming relationships that have no strings attached, no mutual duty, and no guarantee of duration—as the antithesis of moral individuals, the embodiment of a world in which rules, order, self-discipline, and stability are severely lacking." STEIN, *supra* note 20, at 106; see also WUTHNOW, *supra* note 6, at 130 (explaining that homosexuality threatens the traditional family because it represents "permissive 'anything goes' thinking").

262. CAHN & CARBONE, *supra* note 219, at 2.

263. *Id.* at 13.

much of the United States.”²⁶⁴ Moreover, the red family model “continues to identify the well-being of children with the unity of sex, procreation, and childrearing. It places greater importance for relationship stability on the presence of a *biological* father and mother, their modeling of complementary masculine and feminine roles, and the exclusivity of their relationship.”²⁶⁵ Traditional family formation, then, provides opportunities to perform clearly defined gender roles, steer sexuality into a morally sanctioned union, perform heterosexuality according to community solidarity demands and religious teachings, and identify a common threat in homosexuality.

III. RURAL RESENTMENT

In November of 2016, Donald Trump stunned the world by winning the U.S. presidential election. Trump rode a populist wave fueled by economic and cultural anxieties in America’s rural working class. Exit polls showed that sixty-two percent of rural voters chose Trump, while only thirty-five percent of urban voters did so.²⁶⁶ My rural home state of West Virginia voted for Trump by a greater margin than “any other state.”²⁶⁷

Leading up to and since the 2016 election, the nation has spent considerable time and energy dissecting Donald Trump’s working-class and predominately rural base. J.D. Vance discusses how factory closings and the loss of good, well-paying jobs in rural America “left behind” communities of truly disadvantaged and desperate poor people with few resources and support.²⁶⁸ The first episode of the temporarily successful 2018 *Roseanne* reboot highlights the economic optimism that Trump offered his downtrodden supporters through the eyes of blue-collar matriarch Roseanne Conner, who, while fighting with her anti-Trump sister Jackie, states with exasperation, “[h]e talked about jobs.”²⁶⁹ Professor Joan Williams likewise focuses on the economic hardships of rural working-class whites, but she suggests that more than economic

264. *Id.*

265. *Id.* at 128.

266. WUTHNOW, *supra* note 6, at 1. Wuthnow also notes that rural voters also went for George W. Bush in 2000 and 2004. *Id.* at 95.

267. See Scott Finn, *West Virginia Most Pro-Trump State, Election Results Show*, WV PUB. BROAD. (Dec. 5, 2016), <http://wvpublic.org/post/west-virginia-most-pro-trump-state-election-results-show#stream/0> [<https://perma.cc/XD9G-WEMK>].

268. VANCE, *supra* note 198, at 144.

269. Lynn Elber, *Can ‘Roseanne’ Revival Unite a Divided Country?*, CHI. TRIB., Mar. 26, 2018, 2018 WLNR 9163914.

insecurity is at play: “the white working class has been insulted or ignored during precisely the period when their economic fortunes tanked.”²⁷⁰

Variations on invisibility and insult are in fact consistent themes in much of the scholarly research about rural people in the modern political era. Professor Robert Wuthnow characterizes rural America’s “moral outrage” as two things: (1) fear that small-town values are disappearing, and (2) anger that small-town values are “under siege” because of outside forces seeking to change culture broadly.²⁷¹ Katherine Cramer identifies three similar components in what she calls “rural consciousness”: (1) feelings of rural powerlessness to make meaningful change, (2) feelings that rural areas are distinct from urban areas “in their culture and lifestyle (and that these differences are not respected),” and (3) feelings that rural areas do not get their fair share of resources.²⁷² Thomas Frank theorizes that rural Americans feel victimized, marginalized, and persecuted by arrogant elites who have all the power and do not like or understand rural cultures.²⁷³ Nancy Isenberg argues that “Make America Great Again,” Donald Trump’s campaign slogan, is essentially a dog-whistle to rural Americans who feel that their hard work is not rewarded, and who resent federal and state governments for giving special rights and handouts to undeserving minorities.²⁷⁴ And Professor Arlie Russell Hochschild, after spending years immersed in and studying one southern rural community, finds that rural America “seeks release from liberal notions of what they should feel—happy for the gay newlywed, sad at the plight of the Syrian refugee, unresentful about paying taxes.”²⁷⁵

These and other social science sources suggest that many people who live in rural areas share a strong collective identity rooted in place. This Article organizes this shared identity, or culture, into three core tenets, as discussed above: community solidarity, self-reliance, and compliance with religiously informed gender and sexual norms. These core tenets converge as a broad cultural tableau from which rural inhabitants pull to shape their perceptions of both themselves and the communities in which they live. These tenets also fuel the growing resentment that rural America feels toward state and federal laws, regulations, and spending that purport to protect and help certain groups.²⁷⁶

270. WILLIAMS, *supra* note 22, at 3.

271. WUTHNOW, *supra* note 6, at 6.

272. CRAMER, *supra* note 28, at 23.

273. FRANK, *supra* note 9, at 115, 120–21.

274. ISENBERG, *supra* note 216, at xxii.

275. HOCHSCHILD, *supra* note 11, at 15 (emphasis omitted).

276. See CRAMER, *supra* note 28, at 23 (indicating some of the resentment rural America experiences toward such laws).

A. Rural Identity Versus LGBTQ Identities

This Part lays the foundation for understanding why much of rural America resents LGBTQ rights. This Article suggests that the seeds of resentment grow due to the ways in which LGBTQ identities conflict with the three core tenets of rural identity. Moreover, an embedded part of that conflict stems from the widely shared yet incorrect belief that LGBTQ people and identities are largely urban phenomena.²⁷⁷

LGBTQ identities conflict in multiple ways with the tenet of rural community solidarity and the related tenet of religiously informed gender and sexual normativity.²⁷⁸ The most important aspect of community solidarity is assimilation to community norms by virtue of “being the same” as everyone else in the community and avoiding standing out.²⁷⁹ Being the same as everyone else, in turn, tends to require community members to exercise humility, be genuine and authentic, and be good people. Heterosexuality and gender normativity are presumptively natural and therefore authentic.²⁸⁰ Heterosexuality as expressed by getting married to a different-sexed person and having children allows individuals to showcase traditional family values and abide by religious teachings, all of which augment a person’s status as good.²⁸¹

When people in small towns come out and openly identify as gay, lesbian, bisexual, or transgender, the act of coming out is a direct affront to the myth of community sameness, and a clear violation of religiously informed sexuality norms that require heterosexuality. The act of coming out is a declaration of sexual difference to the world, which inherently breaks rules of sameness and blending in.²⁸² Many straight rural people

277. See generally Boso, *supra* note 66, at 597 (analyzing the stereotype that sexual minorities come from an urban background).

278. Luke A. Boso, *Acting Gay, Acting Straight: Sexual Orientation Stereotyping*, 83 TENN. L. REV. 575, 637 (2016).

279. Swank et al., *supra* note 18, at 239 (“Rural areas . . . prize cultural homogeneity . . . and ‘traditional values.’”) (citation omitted).

280. See, e.g., Karin A. Martin, *Normalizing Heterosexuality: Mothers’ Assumptions, Talk, and Strategies with Young Children*, 74 AM. SOC. REV. 190, 190 (2009) (“[H]eterosexuality is . . . taken for granted as normal and natural.”).

281. See Rory McVeigh and Maria-Elena D. Diaz, *Voting to Ban Same-Sex Marriage: Interests, Values, and Communities*, 74 AM. SOC. REV. 891, 894 (2009) (“[A]rguments against same-sex marriage characterize marriage as an ‘altruistic space’ wherein adults subordinate their own self-interest to their children’s welfare. This altruistic space serves an important public function [by] . . . ‘train[ing] good citizens, rear[ing] superior children, and creat[ing] greater happiness in the long run.’” (quoting WILLIAM N. ESKRIDGE, JR. & DARREN R. SPEDALE, SAME-SEX MARRIAGE: FOR BETTER OR WORSE? WHAT WE’VE LEARNED FROM THE EVIDENCE 28–29 (2006))).

282. See William J. Spurlin, *Remapping Same-Sex Desire: Queer Writing and Culture in the American Heartland*, in DE-CENTRING SEXUALITIES: POLITICS AND REPRESENTATIONS BEYOND

think that coming out and proudly identifying as LGBTQ is “flaunting” or “forcing” a lifestyle on unwilling community members.²⁸³ Accordingly, some people who experience same-sex attraction and live in small towns may never openly claim a gay identity.²⁸⁴ Instead, some will lead discrete lives, perhaps identifying as straight in public and acting on same-sex desires in private or never at all.²⁸⁵

Coming out and openly identifying as LGBTQ in sparsely populated areas, however, is not necessarily damning to an individual’s claims to community membership and rural identity. Many queer people simply lead quiet, discrete lives in small towns.²⁸⁶ They may identify as gay, for example, but they largely live a “public secret” in which they privately participate in gay life and do not openly discuss it.²⁸⁷ Rural LGBTQ people often explain that their silence around their sexual orientation or gender identity permits tacit acceptance, even as the community denounces LGBTQ identities and queer people as a whole.²⁸⁸ Indeed, rural straight people are largely okay with “good gays” who do not “draw

THE METROPOLIS 182, 193 (Richard Phillips et al. eds., 2000) (explaining that claiming a queer identity in rural areas is difficult due to heteronormative demands for sameness).

283. See, e.g., HOCHSCHILD, *supra* note 11, at 162 (recounting one story in which a rural woman equated a trans man’s public discussion of trans identity and issues as “forcing his way of living on me” (emphasis omitted)).

284. See, e.g., Brewer, *supra* note 159, at 357 (“Many rural men and women who have same-sex sex do not take on a gay or queer identity . . .”).

285. See Kazyak, *supra* note 160, at 564 (explaining that “having sex with a same-sex partner” does not “entail adoption of a gay or lesbian identity” in rural areas); see also Linda McCarthy, *Poppies in a Wheat Field: Exploring the Lives of Rural Lesbians*, 39 J. HOMOSEXUALITY 75, 82 (2000) (highlighting a rural “split” between same-sex sex and gay identity).

286. See Ramona Faith Oswald & Linda S. Culton, *Under the Rainbow: Rural Gay Life and Its Relevance for Family Providers*, 52 FAM. REL. 72, 75 (2003) (documenting study results wherein rural LGBT people attested to “downplaying or completely hiding their sexual orientation”); see also Carol A. Snively, *Building Community-Based Alliances Between GLBTQQA Youth and Adults in Rural Settings*, 16 J. GAY & LESBIAN SOC. SERVS. 99, 101 (2004) (discussing how rural same-sex interested people keep their LGBTQ connections a “secret”); Michael G. Lee & Jean K. Quam, *Comparing Supports for LGBT Aging in Rural Versus Urban Areas*, 56 J. GERONTOLOGICAL SOC. WORK 112, 122 (2013) (analyzing results from a national survey with a large sample size and finding that rural LGBT respondents’ “levels of outness” are lower than their urban peers).

287. See R. Bruce Brasell, *Greetings from out Here: Southern Lesbians and Gays Bear Witness to the Public Secret*, in *OUT IN THE SOUTH* 159, 162–66 (Carlos L. Dews & Carolyn Leste Law eds., 2001) (explaining that many LGBTQ people in the south live a “public secret”—relying on the trope of “southern eccentricity” to explain their lifestyles, but hiding their gay identity to preserve the “unspoken cultural rule of polite behavior”).

288. See, e.g., CLARE, *supra* note 197, at 32 (“As long as I maintained the balance—my unspoken queerness weighed against their tacit acceptance—I would be fine.”); JOHN HOWARD, *MEN LIKE THAT: A SOUTHERN QUEER HISTORY* 32 (1999) (explaining that public silence about queer identity can create space for self-affirmation and private same-sex sex).

public attention to themselves” or challenge “the self-conception of the community as a whole.”²⁸⁹ In this way, rural straight people compartmentalize by placing “the gay individuals they know into a separate category from the LGBT community as a whole, thus accepting the individual but denying the larger group.”²⁹⁰ Conversely, the people who are the most “out” about their sexual orientation and gender identity in small towns experience the most discrimination²⁹¹ and detachment from the community.

The legalization of same-sex marriage in all fifty states has complicated the relationship between queer identity and rural community solidarity. When the Supreme Court in *Obergefell v. Hodges* held that same-sex marriage bans violate the U.S. Constitution, rural communities were suddenly required by law to accept public manifestations of gay, lesbian, and bisexual identities in the form of state-sanctioned same-sex marriages.²⁹² *Obergefell* grants gay individuals the “special right” to be publicly different in rural communities that demand sameness. *Obergefell* encourages gay individuals to both ask and tell in defiance of community solidarity values that counsel silent obedience to the religiously informed norms of heterosexuality and gender conformity. From the perspective of small-town Americans, *Obergefell* is a particularly egregious example of how rural identity is overlooked and maligned in that nine unelected people—who live and work in Washington D.C. and were educated at Ivy League schools—have now dictated to rural citizens how they must act and, by implication, how they must think and feel. The Supreme Court disrupted the delicate balance between the gay public secret and rural community solidarity, fanning the flames of a long-burning fire over identity recognition.

Beyond the mere claiming of queer identity as a direct marker of difference, rural areas also perceive LGBTQ identities as violative of the values that comprise community solidarity due to the urban connotations of LGBTQ issues and people. Historically, cities served as both imagined and real places where same-sex interested people and gender nonconformists could flee from hostile hometowns, come out, and form communities with other queer people.²⁹³ The sheer size of cities makes them likelier than small towns to host a critical mass of other like-minded people, and the anonymity of cities offers the freedom to explore sexuality and gender differences in ways unimaginable under watchful

289. STEIN, *supra* note 20, at 163.

290. Kristina Drumheller & Bekki McQuay, *Living in the Buckle: Promoting LGBT Outreach Services in Conservative Urban/Rural Centers*, 61 COMM. STUD. 70, 80 (2010).

291. Swank et al., *supra* note 18, at 250.

292. *Obergefell v. Hodges*, 135 S. Ct. 2584, 2608 (2015).

293. See Boso, *supra* note 66, at 576–78 (discussing queer urban migration).

eyes in a small town.²⁹⁴ The urban spaces in which queer people meet and congregate have been crucial in both the formation of LGBTQ identities and a shared queer culture.²⁹⁵ Much of society's understanding of what it means to be gay or transgender, then, naturally comes from cities.²⁹⁶

While LGBTQ identities and culture have deep urban ties, obviously not all queer people are alike. Because rural LGBTQ people tend to be less out and open than their urban counterparts, rural Americans are primarily exposed via media to more visible urban iterations of LGBTQ people and culture.²⁹⁷ Simply put, "media play a central role in circulating the meaning of 'LGBT' identities,"²⁹⁸ and this meaning is widely received and understood.²⁹⁹ Urban gay "stock characters" have developed and become lodged in the national imagination.³⁰⁰ Those stock characters come loaded with a bevy of stereotypes. "The word on the street is that we look a certain way, dress a certain way, think a certain way, [and] consume a certain way."³⁰¹ Take Pride for example: both straight and queer rural people point to Pride parades and celebrations as something "extreme" that urban LGBTQ people participate in.³⁰² The perception of Pride events as extreme comes in part from their "uniquely queer, transgressive, [and] carnivalesque contingents," including drag queens, porn stars, "dykes on bikes," and plenty of nearly naked men.³⁰³ These are not the kinds of folks who can typically be found in small-town parades because they are in open violation of rural gender and sexuality norms.

294. See JOHNSTON & LONGHURST, *supra* note 218, at 80 (explaining that cities' size, density, and anonymity make them "spaces of illicit sexualities and nonconformist gender practices"); LITTLE, *supra* note 234, at 163 (theorizing that public sexuality, both homosexual and heterosexual, with its power to "disrupt" norms, "is more at home in the urban than the rural").

295. See Mark Bartholomew, *Advertising and Social Identity*, 58 *BUFF. L. REV.* 931, 960 (2010) (identifying bookstores, bars, and bathhouses as places where queer identities can be "discovered and affirmed").

296. See, e.g., Bell, *supra* note 218, at 548 ("Metropolitan queer culture . . . restates as intrinsic the links between urban life and homosexual identity and community.").

297. Yvette Taylor, *Not All Bright Lights, Big City? Classed Intersections in Urban and Rural Sexual Geographies*, in *RESHAPING GENDER AND CLASS IN RURAL SPACES*, *supra* note 172, at 179.

298. GRAY, *supra* note 16, at 27.

299. See PHILIP GAMBONE, *TRAVELS IN A GAY NATION: PORTRAITS OF LGBTQ AMERICANS* 6 (2010).

300. Kazyak, *supra* note 160, at 563.

301. GAMBONE, *supra* note 299.

302. Kazyak, *supra* note 160, at 570.

303. DAVID M. HALPERIN, *HOW TO BE GAY* 74 (2012) (describing pride events and the perennial backlash over their brazen disregard of respectability politics).

Another popular conception of urban gay stock characters is that they are activists,³⁰⁴ loudly advocating for change and the end of LGBTQ oppression. In rural areas, however, activism can be a dirty word.³⁰⁵ Activism suggests questioning well-settled norms and calling attention to oneself—exactly the opposite of what community solidarity requires. Activism also conflicts with the rural identity tenet of self-reliance because activism often involves demands for help or protection from federal, state, or local governments. But in rural consciousness, hard work leads to dignity and respect, not appeals to the government for a handout.³⁰⁶

Further, effective activism often takes time (off from work) and money, and thus “[w]orking-class and poor gay people are not the population to whom the gay and lesbian movement’s events, newspapers, magazines, enterprises, and efforts at political mobilization are aimed.”³⁰⁷ In this way, the stereotype of the urban LGBTQ activist bleeds into the stereotype that gay people are wealthy.³⁰⁸ The rural line of thinking then goes something like this: if queer people can afford to go the gym, spend money in bars, take exotic vacations, buy stylish clothes and accessories, consume LGBTQ media, and donate both time and money to political campaigns and causes,³⁰⁹ then how are they so oppressed? By contrast, rural areas are financially struggling and have little free time or tangible resources to buy and do things that are not necessities.³¹⁰ To poor rural ears, calls to end oppression sound in many ways like a request for “special rights” by already privileged queer people.³¹¹

304. Kazyak, *supra* note 160, at 576.

305. Mychael Bond, *Why is “Activist” a Dirty Word?*, MEDIUM (Mar. 26, 2018), <https://medium.com/@mychaeljuliannebond/why-is-activist-a-dirty-word-3bfa2f8cad11> [https://perma.cc/XB4K-6SHA].

306. Arlene Stein paraphrases the popular rural sentiment about LGBTQ activism: “Homosexuals and other minority groups are getting special rights, circumventing the channels that reward those who work hard. Why should they be rewarded for their choices? No one helped me.” STEIN, *supra* note 20.

307. URVASHI VAID, *VIRTUAL EQUALITY: THE MAINSTREAMING OF GAY AND LESBIAN LIBERATION* 256 (1995).

308. See Hutchinson, *supra* note 65, at 1373 (discussing and dispelling the racialized myth that gay people are disproportionately wealthy).

309. See, e.g., David M. Skover & Kellye Y. Testy, *LesBiGay Identity as Commodity*, 90 CALIF. L. REV. 223, 241–43 (2002) (discussing the ways in which LGBTQ identities are connected to capitalism and markers of wealth).

310. Willow Mata & Ana Quiroz, *Raising Awareness of Rural Community Needs*, HARDERCO (Dec. 19, 2017), <https://harderco.com/raising-awareness-rural-community-needs/> [https://perma.cc/3G27-7Q7Q].

311. Skover & Testy, *supra* note 309, at 228 (arguing that the “misperception that LesBiGays constitute a wealthy constituency” fuels the “special rights” rhetoric and thinking).

Finally, urban stereotypes about LGBTQ people and culture conflict with religiously informed rural gender and sexuality norms in ways apart from the simple act of claiming an anti-majoritarian sexual orientation- or gender-based identity. First, many rural people—including rural gay people—perceive the urban LGBTQ community and especially urban gay men to be sexually promiscuous and non-monogamous.³¹² That perception is not entirely false: in one 2005–07 study of male same-sex couples living in the San Francisco Bay Area, forty-seven percent reported having some kind of non-monogamous agreement.³¹³ The problem is that gay men in the Bay Area do not represent all gay men, yet media and popular discourse nevertheless tend to generalize and apply their experiences to gay men everywhere.³¹⁴

Second, many rural people—including rural gay people—perceive urban gay men as effeminate.³¹⁵ Here, at least two other stereotypes work together to help create the effeminacy perception. One stereotype suggests that urban LGBTQ people are part of a creative class that ostensibly cares about culture and aesthetics more than the population at large.³¹⁶ This stereotype standing alone is not necessarily harmful because it is arguably positive.³¹⁷ However, a related stereotype suggests that urban gays' attention to aesthetics leads to an excessive—and, to some, snobbish—interest in fashion, apparel, accessories, and personal grooming.³¹⁸ Masculinity is highly valued and policed in rural areas, and rural men largely equate things like fashion and shopping with

312. See, e.g., HOWARD, *supra* note 288, at 109 (explaining the disconnect between a sexually permissive urban gay culture and rural Mississippians who “clung to a belief in monogamy and to the values of a committed long-term relationship with a single life partner”).

313. Colleen C. Hoff et al., *Relationship Characteristics and Motivations Behind Agreements Among Gay Male Couples: Differences by Agreement Type and Couple Serostatus*, 22 AIDS CARE 827, 829 (2010).

314. See, e.g., Jay Michaelson, *Were Christians Right About Gay Marriage All Along?*, DAILY BEAST (May 27, 2014, 5:45 AM), <https://www.thedailybeast.com/were-christians-right-about-gay-marriage-all-along> [<https://perma.cc/9U6D-D9FZ>] (suggesting that same-sex marriage is changing all marriages because “about half of gay marriages . . . were not strictly monogamous”). The author notes in a parenthetical that this study comes from a survey of gay men in San Francisco. *Id.*

315. See JUDITH HALBERSTAM, IN A QUEER TIME AND PLACE: TRANSGENDER BODIES, SUBCULTURAL LIVES 41 (2005).

316. *Id.* at 15 (noting that the perception of gays as part of a creative class is often used to pit them “in opposition to the small-town family life and values of Midwestern Americans”); see also Luke A. Boso, *Dignity, Inequality, and Stereotypes*, 92 WASH. L. REV. 1119, 1167–82 (2017) (arguing that group culture is essentially an amalgamation of stereotypes, and these stereotypes are not all harmful or bad).

317. See JUDITH HALBERSTAM, FEMALE MASCULINITY 180 (1998) (explaining that whether a stereotype is harmful depends on “the work that the stereotype performs”).

318. SCOTT HERRING, ANOTHER COUNTRY: QUEER ANTI-URBANISM 15–16 (2010).

effeminacy—which they devalue.³¹⁹ After years of absorbing urban representations of gay men in popular culture, rural gay men commonly blame these representations for painting all gay men as effeminate and “disseminating negative images of homosexuality” due to the “emphasis on superficial matters.”³²⁰ Accusations of superficiality are additionally telling because they conflict with the rural community solidarity values of authenticity and humility.

In sum, the visibility of urban LGBTQ people and culture can often emphasize for rural people the perceived excesses of urban queer life and their differences from rural norms. Notably, urban gay stock characters can have a decidedly affluent and freewheeling flavor. When rural inhabitants view representations of urban queerness from afar, they see examples of expendable income spent on unnecessary items and activities, relaxed and even “flamboyant” public gender presentations for both men and women, and laissez-faire attitudes toward sex. In this way, the LGBTQ community can be dismissed as just another subgroup of privileged urban elites who in many ways represent the antithesis of rural identity.

B. *Of Animus and Resentment*

Law and society often characterize discrimination against minority groups as motivated by animus. Indeed, the Supreme Court relied on the concept of animus in two important gay rights cases as a rationale for why laws violated the U.S. Constitution. First, in *Romer v. Evans*, the Court in 1996 struck down Colorado’s Amendment 2 as a violation of the Equal Protection Clause.³²¹ The Court inferred animus from the law’s structure and effect; in short, the law imposed a sweeping burden (no anti-discrimination protections) on a small group (lesbians, gays, and bisexuals) without any logical explanation.³²² Second, in *United States v. Windsor*,³²³ the Court in 2013 struck down section 3 of the Defense of Marriage Act (DOMA), which defined “marriage” under federal law as between one man and one woman, as a violation of the Equal Protection Clause.³²⁴ The Court inferred animus from both DOMA’s structure and effect and found direct evidence of animus in the statute’s text and

319. See Annes & Redlin, *supra* note 195, at 282 (discussing how one “effeminate boy” felt anxious about his effeminate characteristics while growing up in a rural town and adopted “typical masculine behavior” and acted like a “real jock” as a result).

320. *Id.* at 278.

321. *Romer v. Evans*, 517 U.S. 620, 635–36 (1996).

322. See Kevin M. Barry et al., *A Bare Desire to Harm: Transgender People and the Equal Protection Clause*, 57 B.C. L. REV. 507, 545–46 (2016) (discussing this inference).

323. 570 U.S. 744 (2013).

324. *Id.* at 774.

legislative history.³²⁵ The federal reporters are filled with many other cases dealing with discrimination against gay and trans people that feature evidence of hateful and derogatory comments directed at queer victims.³²⁶

Courts have not yet landed on a coherent definition of animus or agreed on its legal significance.³²⁷ Professor Susannah Pollvogt analyzed every Supreme Court case invoking the concept of animus, and she concludes that definitions vary on a spectrum from “a form of impermissible subjective intent” to “a form of impermissible objective function.”³²⁸ Pollvogt argues that this body of jurisprudence taken as a whole suggests that “animus is present where the public laws are harnessed to create and enforce distinctions between social groups—that is, groups of persons identified by status rather than conduct.”³²⁹ This Article does not dispute that animus motivated discriminatory action in cases like *Romer* and *Windsor*, nor does it dispute that the presence of animus is legally sufficient to find discrimination in violation of statutes or Equal Protection principles. Instead, it focuses on resentment as a concept related to, and perhaps even part of, animus,³³⁰ but nevertheless worthy of separate discussion given the cultural ways in which it motivates widespread rural anti-LGBTQ attitudes and legislative actions.

The Oxford Dictionary defines resentment as “[b]itter indignation at having been treated unfairly.”³³¹ Resentment “reflects the sense that the victim of an injury is slighted if the source of injury is allowed to carry on unaffected—or worse yet, to profit.”³³² In short, resentment is about

325. Barry, *supra* note 322, at 547.

326. See, e.g., Keith Cunningham-Parmeter, *Marriage Equality, Workplace Inequality: The Next Gay Rights Battle*, 67 FLA. L. REV. 1099, 1132 (2015) (discussing the evidence of anti-gay animus and gender stereotyping in several of the most notable federal appellate court cases regarding Title VII’s protection of LGBT employees).

327. See, e.g., Russell K. Robinson, *Unequal Protection*, 68 STAN. L. REV. 151, 186 (2016) (noting that the Court “has never defined animus” and describing competing “‘thick’ and ‘thin’” interpretations of the concept).

328. Pollvogt, *supra* note 89, at 924.

329. *Id.* at 926.

330. Russell Robinson notes that the Court often employs a “thin” definition of animus, asking whether some action was motivated by a “bare desire to harm” the group in question. Robinson, *supra* note 327. The fear and anger that comprise resentment can likewise lead to a desire to harm the source of that fear and anger. The “thick” definition probes more deeply into the biases and stereotypes that support some policy affecting the group in question. *Id.* Fear and resentment can likewise stem from stereotypes and implicit biases about the source of that fear and anger.

331. *Resentment*, OXFORD DICTIONARIES, <https://en.oxforddictionaries.com/definition/resentment> [<https://perma.cc/6YAA-ND2Q>].

332. See, e.g., Emily Sherwin, *Reparations and Unjust Enrichment*, 84 B.U. L. REV. 1443, 1458–59 (2004) (characterizing resentment as about “the diminished position of the victim”).

feelings of victimization.³³³ In an increasingly pluralistic America, many white rural people feel that their shared identity is disappearing and disrespected.³³⁴ Further, they feel that predominately urban elites dictate laws, policy, and cultural norms that do not comport with their rural way of life, nor do these urban elites understand or care about what that way of life is. These are the perceived injuries and unfair treatment that unite much of rural America in our current political moment; white rural Americans believe that they are victims, and they resent their victimizers, whom they imagine to be profiting in various ways at their expense. Donald Trump has masterfully weaponized the concept of “unfair treatment”³³⁵—repeatedly tapping into the feelings of victimization shared by his predominately rural base.

Regarding LGBTQ rights, rural communities and rural people do not necessarily hate all individuals who identify as gay or transgender,³³⁶ especially those who actually live among them and have deep family ties in the community or follow most of the community solidarity rules.³³⁷ Accordingly, a thin definition of animus as a “bare desire to harm”³³⁸ may not be a perfect fit to describe rural America’s relationship to LGBTQ people. Rather, small towns feel resentment toward the broader concept of gay and transgender equality, and they do so in large part because of the creeping presence of outside forces who are now telling rural people that they must accept LGBTQ people while disregarding the clash between rural identity and urban-infused LGBTQ identities.

Justice Scalia subtly tapped into the cultural themes of rural identity and resentment in his *Lawrence v. Texas*³³⁹ dissent. *Lawrence* is one of the Supreme Court’s most important gay rights decisions because the majority held that states cannot criminalize private consensual sex between two unrelated adults.³⁴⁰ As Justice O’Conner noted in her concurrence, criminalization of sodomy made “homosexuals unequal in

333. *Id.* at 1459.

334. *See generally* *Lawrence v. Texas*, 539 U.S. 558, 602 (2003) (Scalia, J., dissenting) (discussing this phenomenon).

335. As just one of many examples, in June 2018, Donald Trump told a supportive crowd in South Carolina that “he has been treated unfairly” about “most everything.” Josh Dawsey, *In Rally for S.C. Governor, Trump’s Mind Is All Over the Map*, WASH. POST, June 26, 2018, 2018 WLNR 19489666.

336. *See* STEIN, *supra* note 20, at 108 (explaining that, while rural areas disapprove of homosexuality, they believe that individual gay people can be “good” and “decent”).

337. *See, e.g.*, Abelson, *supra* note 14, at 1539–40 (finding that transgender men living in rural areas achieve tolerance and even acceptance “by making claims to sameness and belonging”).

338. Robinson, *supra* note 327.

339. 539 U.S. 558 (2003).

340. *Id.* at 578–79.

the eyes of the law by making particular conduct—and only that conduct—subject to criminal sanction.”³⁴¹ Justice Scalia, however, expressed outrage at the Court for taking “sides in the culture war.”³⁴²

Justice Scalia called to mind the image of a quaint and wholesome small-town America by sympathizing with average people in the “mainstream” who may not want gay people as “scoutmasters for their children, as teachers in their children’s schools, or as boarders in their home.”³⁴³ He then painted homosexuality as an “immoral and destructive” “lifestyle,” evoking the rhetoric that proponents of Colorado’s Amendment 2 deployed to distance moral small-town America from immoral urban LGBTQ people.³⁴⁴ Ultimately, Justice Scalia suggested that “the people” were victims of an out-of-touch Court influenced by a “law-profession culture that has largely signed on to the so-called homosexual agenda.”³⁴⁵ In other words, elite outsiders were disrespecting and unfairly treating average people and their beliefs.

Justice Scalia’s *Lawrence* rhetoric here is reminiscent of his *Romer v. Evans* dissent,³⁴⁶ wherein he characterized “tolerant Coloradans” seeking to “preserve traditional sexual mores” as victims of “a politically powerful” gay minority group.³⁴⁷ In both cases, Scalia essentially accepted conservative arguments that gays are seeking “special rights” that they do not need because they already have resources and elite culture on their side.³⁴⁸ Conservatives can make persuasive arguments like this because of the specific ways in which LGBTQ identities and culture have been urbanized: if gay and trans people are largely features of big cities who defy rural community solidarity values of humility, authenticity, sexual conservatism, and gender conformity, and if gay and trans people have accumulated wealth and acceptance in these big cities, then why are rural Americans being asked to change who they are to accommodate people so fundamentally at odds with rural identity and

341. *Id.* at 581 (O’Connor, J., concurring). Many, but not all, LGBTQ engage in oral and anal sex, and thus a “legal prohibition on sodomy thus has the effect of tangibly harming most, but not all, individual LGBTQ people.” Boso, *supra* note 316, at 1175.

342. *Lawrence*, 593 U.S. at 602 (Scalia, J., dissenting).

343. *Id.* at 602–03.

344. *Id.* at 602.

345. *Id.*

346. For a robust discussion of Justice Scalia’s *Romer* dissent, see *supra* Section I.A.

347. *Romer v. Evans*, 517 U.S. 620, 636 (1996) (Scalia, J., dissenting).

348. “In the politics of backlash, special-rights talk highlights the opposition’s sense of injury and attributes blame to marginalized populations. The opponents to civil rights claims come to understand themselves as the victimized, injured group needing protection and defending.” Shauna Fisher, *It Takes (at Least) Two to Tango: Fighting with Words in the Conflict Over Same-Sex Marriage*, in *QUEER MOBILIZATIONS: LGBT ACTIVISTS CONFRONT THE LAW* 207, 211 (Scott Barclay et al. eds., 2009) (citation omitted).

who are seemingly doing well? Simply put, rural Americans feel that they are falling behind while queer people are getting ahead at rural Americans' expense. For many people in small towns, *Obergefell* was the final straw because the Supreme Court took from rural Americans one of the last things they felt they had left:³⁴⁹ the religiously informed legal commitment to the sanctity and preciousness of traditional marriage between one man and one woman.³⁵⁰

National and local conservative activists, groups, and politicians have tapped into the resentment that much of rural America feels toward gay and transgender progress. Modern conservatives have appropriated the concepts of injury and unfair treatment that propelled LGBTQ legal victories in the past to now cast rural Americans and Christians as the real victims.³⁵¹ If a "bare desire to harm" gays and trans people historically motivated anti-LGBTQ policies, resentment is the shield and sword that conservatives use today to protect themselves from LGBTQ progress.

C. *Anti-LGBTQ Resentment at the State and Local Level*

State and local anti-LGBTQ legislation serve as two close-to-home mechanisms that rural communities can use to shield themselves from, and fight back against, the perceived injustice of being told what to do by outsiders who do not consider their needs, wants, and collective rural identity.³⁵² The Supreme Court's 2015 pro-same-sex marriage decision in *Obergefell* seemingly sparked a legislative fury. The state legislative director and senior counsel for the Human Rights Campaign, Cathryn Oakley, recently commented that the three years following the marriage equality decision ushered in an "onslaught" of anti-LGBTQ legislation.³⁵³ In 2016, pro-LGBTQ activists identified over 200 newly

349. See Cross & Hernández, *supra* note 212 (explaining that the poor have a close attachment to place and place-based identity "because they have few other options").

350. See GRAY, *supra* note 16, at 179 (noting that rural rejection of LGBT rights in part reflects reliance on the "symbolic preciousness" of traditional marriage); STEIN, *supra* note 20, at 21 ("If homosexuality is affirmed along with heterosexuality, Christians believed, the meaning of heterosexual marriage is diminished.").

351. See Kyle C. Velte, *All Fall Down: A Comprehensive Approach to Defeating the Religious Right's Challenges to Antidiscrimination Statutes*, 49 CONN. L. REV. 1, 8–13 (2016) (chronicling the Religious Right's shift in strategy from vilifying homosexuals in the 1950s through the 1980s, to positioning themselves as "victims in need of protection for their religious beliefs" in the 1990s through today).

352. See generally Susan Miller, *3 Years After Same-Sex Marriage Ruling, Protections for LGBT Families Undermined*, USA TODAY (June 4, 2018, 4:00 PM), <https://www.usatoday.com/story/news/nation/2018/06/04/same-sex-marriage-ruling-undermined-gay-parents/650112002/> [<https://perma.cc/V5MZ-5BHB>] (discussing efforts by state legislators to limit and undermine the rights of the LGBTQ community).

353. Carolyn M. Proctor, *See Just How Well, or Poorly, Our States Stack up in LGBTQ Protections*, WASH. BUS. J., June 8, 2018, 2018 WLNR 17810906.

proposed state and local anti-gay and anti-trans bills across America.³⁵⁴ In just the first half of 2017, more than 100 anti-gay and anti-trans bills were proposed in just twenty-nine states—including primarily rural states like Arkansas, South Dakota, and Alabama.³⁵⁵ In 2018, there were over 150 anti-gay and anti-trans bills at the state level alone.³⁵⁶

Some of the proposed legislation is unambiguously anti-LGBTQ. In 2018, at the state level, for example, republican state legislators in Wyoming and South Carolina introduced nearly identical bills referring to same-sex marriages as “parody marriages” and prohibiting state-sponsored recognition of such parody marriages.³⁵⁷ At the local level, in Starkville, Mississippi (population 25,352),³⁵⁸ the local governing Board in 2018 denied a request for a special permit to hold the town’s first Pride parade.³⁵⁹ The Board had not denied a special permit request in years, and it did not explain why it denied this request.³⁶⁰ Two residents spoke against the Pride parade at a town meeting, and one implored the Board to “not turn our city into a sin city.”³⁶¹ As another example, in Portland, Tennessee (population 12,697³⁶²), the local governing Board in 2017 unanimously voted to proceed toward amending an existing ordinance dealing with adult-oriented businesses to include “male or female impersonators.”³⁶³ The amended ordinance would effectively prohibit

354. Katy Steinmetz, *Why So Many States are Fighting Over LGBT Rights in 2016*, TIME (Mar. 31, 2016), <http://time.com/4277247/north-carolina-georgia-lgbt-rights-religious-liberty-bills/> [<https://perma.cc/YQ5V-FYR7>].

355. Susan Miller, *LGBT Activists Are ‘Playing Defense’: They Say A Wave of Repressive Legislation Among States Targets Their Communities*, USA TODAY, June 2, 2017, 2017 WLNR 17070940.

356. Shane Stahl, *Highs and Lows of the 2018 Legislative Session for LGBTQ Nondiscrimination*, FREEDOM FOR ALL AMS. (June 2, 2018, 4:44 PM), <https://www.freedomforallamericans.org/highs-and-lows-of-the-2018-legislative-session-for-lgbtq-nondiscrimination/> [<https://perma.cc/L6YU-579D>].

357. Julie Moreau, *Slew of State and Local Bills are Targeting LGBTQ People*, NBC (Feb. 21, 2018, 1:27 PM), <https://www.nbcnews.com/feature/nbc-out/slew-state-local-bills-are-targeting-lgbtq-people-n849966> [<https://perma.cc/R6CQ-394C>].

358. *QuickFacts: Starkville, Mississippi*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/starkvillecitymississippi/PST045217> [<https://perma.cc/855L-2LPH>].

359. Zachary Zane, *This Mississippi Town Just Banned a Pride Parade*, NEWNOWNEXT (Feb. 22, 2018), <http://www.newnownext.com/this-mississippi-town-just-banned-a-pride-parade/02/2018/> [<https://perma.cc/G244-94H8>].

360. *Id.*

361. *Id.*

362. *QuickFacts: Portland City, Tennessee*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/portlandcitytennessee/PST045217> [<https://perma.cc/AB5G-EUVQ>].

363. Natalie Allison, *Large Rally Supports Drag Shows in Portland*, TENNESSEAN (Sept. 18, 2017, 8:06 P.M.), <https://www.tennessean.com/story/news/local/summer/2017/09/18/portland-tn-hundreds-expected-attend-rally-support-drag-shows/677340001/> [<https://perma.cc/P9DK-ZA3D>].

drag performances at popular local venues such as restaurants and bars.³⁶⁴ One woman who attended the Board meeting and supported the ban explained, “I don’t think it should be in our town” because “a woman is a woman and a man is a man.”³⁶⁵ The mayor of nearby Mitchellville, Tennessee (population 196³⁶⁶) attended the meeting to show his support for the Board, explaining, “There’s a time and a place for everything, and that’s not it on the main street of a small town.”³⁶⁷

Other proposed legislative items, particularly at the state level, are more benign in appearance but decidedly anti-LGBTQ in effect. For example, some states have parroted North Carolina’s controversial HB2 by attempting to prohibit localities from enacting anti-discrimination protections which go further than existing state law. In February 2015, Arkansas enacted a law that prohibits any “county, municipality[,] or other political subdivision of the state” from adopting any law that “creates a protected classification or prohibits discrimination on a basis not contained in state law.”³⁶⁸ Arkansas state law does not prohibit discrimination on the basis of sexual orientation or gender identity.³⁶⁹ Republican state senator Bart Hester from Cave Springs, Arkansas (population 3,811³⁷⁰) introduced the bill, explaining that state legislation is necessary to respond to Fayetteville’s “unfair” attempts to pass pro-LGBTQ anti-discrimination ordinances.³⁷¹ In February 2017, the Arkansas Supreme Court struck down Fayetteville’s pro-LGBTQ ordinance as a violation of state law.³⁷² Like in Arkansas, legislators in

364. *Id.*

365. *Id.*

366. *Annual Estimates of the Resident Population*, U.S. CENSUS BUREAU: AM. FACT FINDER, <https://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml> [<https://perma.cc/6MQ5-UC4Q>] (click on “get data” hyperlink next to “Populations Estimates Program” under “What We Provide” heading; enter “Mitchellville city, Tennessee” in the “state, county or place (optional)” search bar and click “GO”; click on the “Annual Estimates of the Resident Population: April 1, 2010 to July 1, 2017” hyperlink).

367. Allison, *supra* note 363.

368. Bill Bowden, *Bill Would Ban Passage of Local Anti-Bias Laws: Cave Springs Legislator Says Such Edicts Scare Off Business*, ARK. DEMOCRAT GAZETTE, Feb. 3, 2015, 2015 WLNR 4526179.

369. *Id.*; Rebecca Hersher, *Arkansas Supreme Court Strikes Down Local Anti-Discrimination Law*, NPR (Feb. 23, 2017), <https://www.npr.org/sections/thetwo-way/2017/02/23/516702975/arkansas-supreme-court-strikes-down-local-anti-discrimination-law> [<https://perma.cc/K4J4-6UX6>].

370. *Special Census Program: Official Counts for Governmental Units in Arkansas*, U.S. CENSUS BUREAU, https://www.census.gov/programs-surveys/specialcensus/data_products/official_counts/arkansas.html [<https://perma.cc/VR9F-6PYR>].

371. Bowden, *supra* note 368.

372. Hersher, *supra* note 369. Fayetteville is the third largest city in Arkansas with a population of 85,257, and it is home to the University of Arkansas. *QuickFacts: Fayetteville city*,

the West Virginia House of Representatives voted in February 2015 to advance a bill that would prevent localities from enacting anti-discrimination provisions that go beyond state law; like Arkansas, West Virginia does not prohibit sexual orientation- or gender identity-based discrimination.³⁷³ In Michigan, Republican state representative Earl Poleski from Jackson, Michigan (population 32,704³⁷⁴) proposed similar legislation in 2015.³⁷⁵ Michigan does not prohibit discrimination based on sexual orientation or gender identity, meaning that the proposed bill would effectively nullify pro-LGBTQ laws in thirty-seven Michigan municipalities.³⁷⁶

Perhaps most ubiquitous are state and local laws that purport to protect religious freedom from LGBTQ rights claims in various contexts. Much of the proposed and enacted legislation flows directly from the Supreme Court's marriage equality decision, evidenced by the wedding-specific services that the bills target: "bakers, caterers, florists, calligraphers, photographers, videographers, and venues," for example.³⁷⁷ Other legal developments paint in much broader strokes, granting special protection to religious beliefs regarding housing, health care, and child welfare services.³⁷⁸ Since *Obergefell*, and as of July 2018, ten mostly rural states have enacted some new form of religious freedom legislation, presumably in response to recent LGBTQ legal victories: Alabama, Kansas, Michigan, Mississippi, North Dakota, Oklahoma, South Dakota, Tennessee, Texas, and Virginia.³⁷⁹

For queer people, perhaps the most tangibly harmful iterations of religious freedom laws deal with child welfare. In 2018, for example, Kansas and Oklahoma both enacted laws that legally allow any state-

Arkansas, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/fayetteville-cityarkansas/PST045217> [<https://perma.cc/AMM6-DKUG>].

373. Stephen Peters, *Anti-LGBT Bill Stripping Local Non-Discrimination Ordinances Advances in West Virginia*, HUM. RTS. CAMPAIGN (Feb. 25, 2015), <https://www.hrc.org/blog/anti-lgbt-bill-stripping-local-non-discrimination-ordinances-advances-in-we> [<https://perma.cc/9HQD-ZGXV>].

374. *QuickFacts: Jackson city, Michigan*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/jacksoncitymichigan/PST045217> [<https://perma.cc/3JY2-DERF>].

375. Daniel Marans, *Michigan Bill Aims to Wipe out Local LGBT Anti-Discrimination Laws*, HUFFINGTON POST, May 13, 2015, 2015 WLNR 14049176.

376. *Id.*

377. HUMAN RIGHTS WATCH, "ALL WE WANT IS EQUALITY: RELIGIOUS EXEMPTIONS AND DISCRIMINATION AGAINST LGBT PEOPLE IN THE UNITED STATES 6 (2018), https://www.hrw.org/sites/default/files/report_pdf/lgbt0218_web_1.pdf [<https://perma.cc/8DTN-6EQX>].

378. *Id.*

379. *Id.* at 5; see also Stahl, *supra* note 356 (noting that Kansas and Oklahoma recently enacted anti-LGBTQ exemptions).

licensed child welfare agency to cite sincerely held religious beliefs in refusing to place children in LGBT homes or provide services to LGBT families.³⁸⁰ Kansas and Oklahoma join seven other states that already permit child welfare agencies to cite religion in refusing potential LGBT parents.³⁸¹ These laws limit the ability of gay and trans people to adopt or foster children, and they can have a particularly devastating effect in rural areas where there are already so few child welfare agencies and other public accommodations.³⁸²

To be clear, the recently reinvigorated push for religious freedom to effectively discriminate against LGBTQ people is not solely a rural phenomenon. Religious objections to gay and trans rights thrive in cities, too. Religious freedom claims do, however, neatly align with core tenets of rural identity, particularly as those claims relate to children and family. For most of rural America, children are the center of a family unit structured around the marital relationship of one woman and one man. As Joan Williams explains, respect for traditional family values, especially monogamous heterosexuality, is a key part of working-class (rural) identities, yet liberals and the “elite class” now derive honor from embracing same-sex marriage and alternative sexualities.³⁸³ For rural America in particular, then, same-sex marriage and other gains in LGBTQ equality signal disrespect, and disrespect stokes resentment. In the summer of 2015, Kim Davis, an elected county clerk in Rowan County, Kentucky (population 24,517³⁸⁴), famously refused to issue marriage licenses to same-sex couples after the Supreme Court issued the *Obergefell* decision.³⁸⁵ Davis subsequently went to jail for defying a court order to issue the licenses³⁸⁶ and in the process became a highly visible martyr for the conservative cause and a symbol of rural victimization.

380. See, e.g., Miller, *supra* note 352.

381. The other states are: Alabama, Mississippi, Michigan, North Dakota, South Dakota, Texas, and Virginia. Samantha Allen, *These States Want to Make LGBT Adoption as Hard as Possible*, DAILY BEAST (Apr. 24, 2018, 4:38 AM), <https://www.thedailybeast.com/these-states-want-to-make-lgbt-adoption-as-hard-as-possible> [<https://perma.cc/H77C-JG2F>].

382. See, e.g., Brief for Freedom of Speech Scholars as Amici Curiae Supporting Respondents at 9, *Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm’n*, 138 S. Ct. 1719 (2018) (No. 16-111) (arguing the same in urging the Court to reject a religious freedom defense regarding the refusal to bake a cake for a same-sex wedding).

383. WILLIAMS, *supra* note 22, at 32–33.

384. *QuickFacts: Rowan County, Kentucky*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/rowancountykentucky/PST045217> [<https://perma.cc/2QVR-FYL4>].

385. See Robin Fretwell Wilson, “*Getting the Government out of Marriage*” *Post Obergefell: The Ill-Considered Consequences of Transforming the State’s Relationship to Marriage*, 4 U. ILL. L. REV. 1445, 1448 (2016).

386. *Id.* at 1449.

Much of what has happened in rural and other conservative places since *Obergefell* is a re-entrenchment of anti-gay sentiment, expressed through proposed and enacted legislation and in legal arguments in defense of existing laws that seemingly run afoul of *Obergefell's* mandate.³⁸⁷ These governmental actions send a message of LGBTQ inferiority, reinforcing and solidifying heterosexuality's status as superior to homosexuality or bisexuality. They also send a punitive message about the perils of seeking "special rights" based on different and otherized identities tied to sexuality or gender. In this way, local and state anti-LGBTQ actions can serve as vessels for outward manifestations of rural identity and expressions of rural citizens' deeply held feelings of victimization.

D. Masterpiece Cakeshop and its Rural Symbolism

Conservative activists at the national level have tapped into aspects of rural identity and resentment to channel anti-gay and anti-trans activism into arguments about religious freedom. As Professor Reva Siegel explains, opponents of LGBTQ rights have mobilized to seek exemptions from "the heavy hand of the law," speaking as "religious minorities asserting full-throated objections to same-sex marriage that before *Obergefell* they asserted as legislative majorities."³⁸⁸ The same-sex marriage victory for gay and bisexual people propelled the victimhood narrative on the right, with conservatives now increasingly fighting back against accusations that they are bigoted for opposing marriage equality.

The litigation leading to the Supreme Court's 2018 *Masterpiece Cakeshop* decision directly implicates the tension between religious freedom and LGBTQ inclusive anti-discrimination laws.³⁸⁹ While it never explicitly mentions geography, *Masterpiece Cakeshop* serves as a nationalized symbol of the rural-urban divide undergirding much of the anti-LGBTQ activism today.

On July 19, 2012, Charlie Craig and David Mullins visited Masterpiece Cakeshop in suburban Colorado and asked the owner, Jack

387. For instance, the Arkansas Supreme Court held that a state law *excluding* a non-biological parent in a same-sex relationship from a child's birth certificate, while simultaneously *requiring* a non-biological parent in a different-sex relationship to be included on a child's birth certificate, did not violate the *Obergefell* mandate. *Pavan v. Smith*, 137 S. Ct. 2075, 2076–77 (2017) (per curiam) (overruling the Arkansas Supreme Court).

388. Reva B. Siegel, *Community in Conflict: Same-Sex Marriage and Backlash*, 64 UCLA L. REV. 1728, 1760 (2017).

389. *Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm'n*, 138 S. Ct. 1719, 1723 (2018).

Phillips, to design and create a cake for their upcoming wedding.³⁹⁰ Phillips refused, citing his religious opposition to same-sex marriage.³⁹¹ Craig and Mullins filed a discrimination charge with the Colorado Civil Rights Division, alleging sexual-orientation discrimination in violation of Colorado’s Anti-Discrimination Act (CADA).³⁹² Specifically, Colorado law today (unlike during the Amendment 2 era) makes it “a discriminatory practice and unlawful for a person . . . to refuse, withhold from, or deny to an individual or a group, because of . . . sexual orientation . . . the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation.”³⁹³ The Colorado Civil Rights Commission affirmed and adopted an administrative law judge’s decision for the same-sex couple,³⁹⁴ which the Colorado Court of Appeals in turn affirmed.³⁹⁵ The U.S. Supreme Court granted Phillips’s Petition for Writ of Certiorari.³⁹⁶

In what would be one of his last decisions before announcing his retirement, and continuing in his role of authoring the Court’s key LGBTQ rights decisions,³⁹⁷ Justice Kennedy wrote the opinion for the Court’s majority.³⁹⁸ While the Court did not issue a holding that embraced religious conservatives’ core argument that the Free Exercise Clause or statutory Religious Freedom Restoration Acts entitle individuals to broad exemptions from all sexual orientation- and gender identity-protective laws, the Court nevertheless ruled for Phillips based on the unique facts of the case.³⁹⁹ The Court focused with laser-like precision on what happened during the Colorado Civil Rights Commission’s formal public hearings on the matter, finding evidence of hostility to Phillip’s religious beliefs.⁴⁰⁰ The Court bristled at commissioners’ apparent endorsement of the idea that “religious beliefs cannot legitimately be carried into the public sphere or commercial domain” because such a view implies “that religious beliefs and persons

390. *Craig v. Masterpiece Cakeshop, Inc.*, 370 P.3d 272, 276 (Colo. App. 2015), *overruled by Masterpiece Cakeshop*, 138 S. Ct. 1719.

391. *Id.*

392. *Id.* at 277.

393. COLO. REV. STAT. ANN. § 24–34–601(2)(a) (2018).

394. Final Agency Order at 1, *Craig*, 370 P.3d 272 (No. CR 2013-0008).

395. *Craig*, 370 P.3d at 276.

396. *Masterpiece Cakeshop*, 138 S. Ct. at 1727.

397. For a compelling discussion and analysis of Justice Kennedy’s outsized and unique role in the successes of the LGBTQ rights movement, see generally Justin O’Neill, *The Queer Case of the LGBT Movement*, 41 U. HAW. L. REV. 27, 66–69 (2018).

398. *Masterpiece Cakeshop*, 138 S. Ct. at 1723.

399. *Id.*

400. *Id.* at 1729–31.

are less than fully welcome in Colorado’s business community.”⁴⁰¹ More damning, however, were comments by one commissioner in particular, who said:

Freedom of religion and religion has been used to justify all kinds of discrimination throughout history, whether it be slavery, whether it be the holocaust, . . . we can list hundreds of situations where freedom of religion has been used to justify discrimination. And to me it is one of the most despicable pieces of rhetoric that people can use to—to use their religion to hurt others.⁴⁰²

Through a pro-LGBTQ rights lens, the commissioner’s comments about how religion has historically been used to harm others might seem relatively innocuous and even obvious. From American singer and political activist Anita Bryant’s 1977 religious crusade to overturn a pro-gay anti-discrimination ordinance in Dade County, Florida,⁴⁰³ to ubiquitous chants of “Adam and Eve, not Adam and Steve” at anti-LGBTQ rallies,⁴⁰⁴ queer people deeply understand the ways in which religion can be used to harm them. Justice Kennedy did not view these comments through a pro-LGBTQ rights lens, however. Instead, he sympathized with a Christian “victim,” characterizing this comment as “disparag[ing]” of Phillips’s religious beliefs.⁴⁰⁵ In this way, Justice Kennedy echoed Justice Scalia’s *Lawrence* and *Romer* concerns for average Americans who have seemingly lost the culture war to special gay interests. Indeed, several amicus curiae expressed similar sentiments about identity and victimization in briefs supporting Phillips. As one put it:

Many Christians, like Petitioner Jack Phillips, find their identity in Jesus Christ and the ageless, sacred tenets of His Word memorialized in the Holy Bible. For followers of Jesus Christ, adhering to His commands is *the* most personal and central choice to define their individual dignity and autonomy. Christians, whose identity inheres in their religious faith, are entitled to at least as much constitutional

401. *Id.* at 1729.

402. *Id.*

403. For a detailed discussion of Bryant’s “Save Our Children” campaign, see Clifford J. Rosky, *Fear of the Queer Child*, 61 *BUFF. L. REV.* 607, 645–48 (2013).

404. See, e.g., Josephine Ross, *The Sexualization of Difference: A Comparison of Mixed-Race and Same-Gender Marriage*, 37 *HARV. C.R.-C.L. L. REV.* 255, 264 (2002) (noting that the Reverend Jerry Falwell coined this “famous anti-gay phrase”).

405. *Masterpiece Cakeshop*, 138 S. Ct. at 1729.

protection as those who find their identity in their sexual orientation. There can be no doubt that the right of personal identity protects against government authorities who use public policy to persecute, oppress, and discriminate against Christians and their religious identity.⁴⁰⁶

Masterpiece Cakeshop is not explicitly about place, but place is quietly present. The tension between LGBTQ rights and religious freedom represents the latest iteration of a longstanding culture war that is heavily fought on geographic lines. Because rural identity's core tenets are connected in various ways to Christianity, and because most of rural America is politically conservative, rural identity and resentment serve as useful pieces of armor for conservative soldiers in the culture war.⁴⁰⁷ Federal and state anti-discrimination laws—i.e., legislation stemming primarily from progressive urban centers—that prohibit individual florists and wedding planners, for example, from discriminating against same-sex couples are powerful examples of how outsiders force rural communities and religious dissenters to tolerate and even promote public displays of same-sex difference that contradict their values and signal disrespect for their way of life.

CONCLUSION

This Article is in some ways a counter-narrative to the linear assumption of LGBTQ progress. While LGBTQ rights have indeed moved forward in recent years, a stubborn resistance remains and may even be growing in some corners—particularly in white rural America. Since *Obergefell*, local and state legislatures in conservative and mostly rural states have proposed and passed hundreds of anti-LGBTQ bills. Increasingly popular religious freedom rhetoric taps into traits and anxieties characteristic of white rural culture. For these reasons, anti-LGBTQ identity politics may be an overlooked component of Donald Trump's political rise and eventual election as President of the United States. Remember that candidate Trump picked former Indiana Governor Mike Pence as his running-mate, whose major claim to national fame prior to the Vice Presidency was signing and defending, amidst public

406. Brief of Amicus Curiae Christian Business Owners Supporting Religious Freedom in Support of Petitioners at 24–25, *Masterpiece Cakeshop*, 138 S. Ct. 1719 (No. 16-111).

407. David Knoke & Constance Henry, *Political Structure of Rural America*, 429 ANNALS AM. ACAD. POL. & SOC. SCI. 51, 52 (1977) (“Rural conservatism has been a more durable, pervasive orientation in the hinterland, suffusing not only politics but religion, morality, and lifestyle.”).

backlash, an anti-LGBTQ religious freedom bill.⁴⁰⁸ Moreover, in his first year in office, Donald Trump pleased his largely rural base by issuing an Executive Order banning transgender people from serving in the military.⁴⁰⁹ He has since quietly dismantled many of the Obama-era regulations and administrative guidelines protecting LGBTQ people.⁴¹⁰

A key component of far-right activism and sentiment is resentment toward liberal admonishments and directives regarding for which groups society should feel sympathy.⁴¹¹ The left has largely embraced the cause of LGBTQ rights and often accuses the right of bigotry for not doing likewise. For rural Americans, however, accepting LGBTQ people and rights may require wrestling with and even rejecting parts of their own identity. Rural identity is comprised of at least three core tenets: community solidarity, self-reliance, and religiously informed gender and sexuality conformity. In many ways, these tenets directly conflict with calls for acceptance of LGBTQ difference, especially given the urban connotations of LGBTQ identities. This conflict can signal to rural Americans that their identities are diminishing in importance and are not respected. White rural Americans resent that liberal, largely urban outsiders have been telling them that they must change who they are to accommodate people whom they perceive as unlike them.

We should strive to understand and, to the extent possible, respect rural identity. The failure to do so only increases rural feelings of victimization that lead to civil rights backlash more broadly. Understanding and respect, however, do not mean that rural identity and resentment should thwart others' claims to be free from discrimination.

Some of the conflict between rural and LGBTQ identities is fundamentally intractable. For example, it is unlikely that progressives and gay rights activists can change the rural identity tenet anchoring the belief that homosexuality is sinful. For people living in small towns who,

408. See, e.g., Steve Sanders, *RFRAs and Reasonableness*, 91 IND. L.J. 243, 243 (2016) (discussing the national controversy over the law that business and civic leaders felt “sent a message endorsing anti-gay discrimination”).

409. “On July 26, 2017, President Donald J. Trump issued a statement via Twitter announcing that ‘the United States Government will not accept or allow transgender individuals to serve in any capacity in the U.S. Military.’ A formal Presidential Memorandum followed on August 25, 2017.” *Doe 1 v. Trump*, 275 F. Supp. 3d 167, 175 (D.D.C. 2017) (granting plaintiffs’ request for a preliminary injunction to block the ban from taking effect), *overruled by Doe 2 v. Shanahan*, No. 18-5257, 2019 WL 102309 (D.C. Cir. Jan. 4, 2019).

410. See, e.g., Lydia Wheeler, *Gay Rights Groups Feel They Are Under Siege*, HILL (Oct. 11, 2017, 6:00 AM), <https://thehill.com/homenews/administration/354829-gay-rights-groups-feel-they-are-under-siege> [<https://perma.cc/5RXJ-6DRK>] (chronicling the behind-the-scenes moves that the Trump administration has taken to weaken and eliminate LGBTQ protections).

411. See HOCHSCHILD, *supra* note 11, at 15 (explaining how the right opposes federal power and federal taxation).

as Barack Obama once ineptly put it, “cling to guns or religion,”⁴¹² same-sex marriage is akin to the state-sponsored sanction of sin. Similarly, laws that require individuals to house, employ, and serve openly gay and transgender people will perhaps always make many small-town people feel uncomfortable or complicit in sin. At this juncture between rural and LGBTQ identities, gay and trans rights should triumph. On balance, the law should protect the tangible housing and employment needs, and public accommodations access, of queer people over the feelings and beliefs that help to construct rural identity.

At other points, however, the gulf between rural and LGBTQ identities is narrower. One important mechanism for softening rural opposition to LGBTQ equality is to draw more attention to the reality that small towns are home for queer people, too. As I have illustrated in previous work, many sexual minorities live in small towns either because they cannot leave or because they prefer to stay.⁴¹³ Many stay by choice precisely because they appreciate and embody most of the core tenets of rural identity. A lesbian in rural Alabama nicely summed up the sentiment: “Folks ride by and wave at you when you are sitting on your porch. I like being involved in community things here. It is easy for me to do that in a small town.”⁴¹⁴ To the extent that rural resentment is fueled in part by perceptions that outsider others are getting ahead while small-town Americans are falling behind, targeting the LGBTQ community across the board makes little sense when so many queer people live in rural areas and are just like their blue-collar, hard-working, humble, and good-natured neighbors.

Another important mechanism for softening rural opposition to LGBTQ equality is to contest and combat the urban queer stock characters and the stereotypes that comprise them. Big cities are home to many gay and trans people, of course, but the LGBTQ people who live in them are not all white, wealthy, superficial, or unabashedly sexually liberated. Urban gay stock characters simply do not represent the whole community: they occlude the poverty that continues to plague queer people, on average even more than their straight and cisgender counterparts,⁴¹⁵ they leave out the many gay and trans people who are

412. Lisa R. Pruitt, *The Geography of the Class Culture Wars*, 34 SEATTLE U. L. REV. 767, 775 (2011). Lisa Pruitt identifies this moment as an example of why rural Americans fear that “liberal elites” write them off as a joke. *Id.*

413. Boso, *supra* note 66, at 580–81.

414. NEIL MILLER, IN SEARCH OF GAY AMERICA: WOMEN AND MEN IN A TIME OF CHANGE 21 (1989).

415. See, e.g., Brad Sears & Lee Badgett, *Beyond Stereotypes: Poverty in the LGBT Community*, WILLIAMS INST. (June 2012), <https://williamsinstitute.law.ucla.edu/williams-in-the-news/beyond-stereotypes-poverty-in-the-lgbt-community/> [<https://perma.cc/MW53-V6PA>].

religious;⁴¹⁶ they ignore monogamous gay men;⁴¹⁷ and they render invisible the blue-collar LGBTQ people who live and work in small towns and urban areas alike. If rural resentment is fueled in part by the perception that LGBTQ people are monolithically both different and better off than rural people, highlighting how urban queer people are economically and culturally similar to rural Americans could help bridge the divide.

Finally, and perhaps most controversially, if we are committed to easing rural opposition to LGBTQ equality, queer activists and advocates may need to resort to assimilation and respectability politics when pushing for social and legal change. This is a controversial strategy because many gay and transgender people *are* different from most rural Americans—by virtue of their sexual orientation and gender identity, of course, but also in terms of their culture. For example, many gay men *are* non-monogamous; many gay and transgender people *have* rejected religion; many queer people *do* cast off gender norms of presentation and style; many LGBTQ people *are* immersed in popular culture regarding music, cinema, art, and fashion; and the identity marker “queer” is by definition about rejecting the status quo. As Professor Michael Warner warned in the 1990s, arguing for LGBTQ equality by using appeals to sameness alienates, isolates, and even puts at risk those among us who cannot or do not want to be just like everyone else.⁴¹⁸ But as Mary Gray explained after conducting an extensive multi-year ethnography in rural Appalachia, small-town belonging does not turn “on appeals to difference deserving equal respect,”⁴¹⁹ and in fact highlighting queer difference can “come at a cost.”⁴²⁰ Still, it is unclear how far assimilation and respectability politics can take us. After all, it was gays’ assimilative entry into the institution of marriage—a conservative institution rife with patriarchal and heteronormative meaning—that seemingly sparked much of the modern rural and conservative backlash.

Identifying tenets of rural identity and understanding what rural resentment looks like and where it comes from are important first steps in devising strategies to bridge the rural–urban cultural divide on issues

416. See generally Brian Soucek, Essay, *The Case of the Religious Gay Blood Donor*, WM. & MARY L. REV. (forthcoming 2019), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3206854 [<https://perma.cc/6CMR-SM6T>] (noting that gay rights advocates have yet to bring a case for gay blood donation).

417. See, e.g., Russell K. Robinson & David M. Frost, *The Afterlife of Homophobia*, 60 ARIZ. L. REV. 213, 260–65 (2018) (discussing how Truvada has fanned stereotypes in the queer community about gay men and their supposed masculinist hypersexuality).

418. See generally MICHAEL WARNER, *THE TROUBLE WITH NORMAL: SEX, POLITICS, AND THE ETHICS OF QUEER LIFE* (1999) (explaining that normalizing LGBTQ overlooks the structural inequalities and challenges that LGBTQ people experience that other Americans do not).

419. GRAY, *supra* note 16.

420. *Id.* at 59.

regarding gender and sexuality. Unearthing these identity tenets and resentment triggers can also help us devise social and legal strategies to help racial and religious minority groups who have also been otherized in the shared rural imagination, consciousness, and deep story. This Article provides the necessary foundation to facilitate progressive action in this modern civil rights struggle.