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Majority Tyranny or Minority Power? Impact of Direct Democracy on Same-Sex Relationship Rights

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**MAJORITY TYRANNY OR MINORITY POWER?
IMPACT OF DIRECT DEMOCRACY ON SAME-SEX
RELATIONSHIP RIGHTS**

by

Jylisa Renea Doney

**Thesis submitted in partial fulfillment
of the requirements for the degree**

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ABSTRACT

This research study examined the conditions under which direct democracy advanced versus impeded gay relationship rights. Many policy makers argue that direct democracy works to create a “tyranny of the majority” in which the majority impedes the rights of minority citizens. However, other researchers disagree and note that direct democracy contests advance gay rights as seen in Switzerland (Frey & Goette, 1998). I hypothesize that direct democracy *advanced* gay relationship rights legislation when influenced by non-traditional norms regarding family and gender, and/or the contests occurred in states or cantons that were heterogeneous in their values, while direct democracy *hindered* gay relationship rights legislation when influenced by traditional norms regarding family and gender, and/or the contests occurred in states or cantons that were homogeneous in their values. To study this topic I conducted a comparative historical analysis of the gay relationship rights initiatives that appeared on state, canton, and national ballots in the United States and Switzerland between 2000 and present. I then examined whether significant differences were seen between the contests in the United States and Switzerland that either advanced or hindered gay relationship rights legislation. Within the United States it was discovered that when direct democracy was used to determine marriage amendments and/or marriage laws, the rights of gay and lesbian individuals were continuously obstructed. This type of outcome was not experienced in Switzerland when similar rights were put to the public vote, as direct democracy, in certain instances, advanced the rights of gay and lesbian individuals.

Keywords: direct democracy, gay relationship rights, United States, Switzerland

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Majority Tyranny or Minority Power?

Impact of Direct Democracy on Same-Sex Relationship Rights

Direct democracy has resulted in very different outcomes in gay relationship rights contests in the United States and Switzerland. In the United States, direct democracy increasingly impeded pro-gay relationship rights legislation; in Switzerland direct democracy has promoted pro-gay relationship rights legislation. Under what conditions did direct democracy advance or hinder minority rights? Direct democracy, unlike representative democracy, occurs when citizens vote on the laws themselves. In the United States these contests usually only occur at the state or local level of government when citizens are given the chance to vote on initiatives, referendums, or propositions, while in Switzerland they are more prevalent.

Many policy makers argue that direct democracy creates a “tyranny of the majority” in which the majority impedes the rights of minority citizens. However, others disagree and cite that these contests advance gay rights as seen in Switzerland (Frey & Goette, 1998). This created the dilemma of why direct democracy hindered gay relationship rights legislation in the United States but advanced similar legislation in Switzerland, and what factors potentially created this variation in outcome. This topic has been studied in the past by numerous researchers (Donovan & Bowler, 1998; Frey & Goette, 1998; Gamble, 1997; Haider-Markel, Querze, & Lindaman, 2007) but they only examined whether gay rights initiatives passed or failed and the potential influential variables. There has not been a comparison as to why gay relationship rights were hindered in the United States when direct democracy was used, but advanced in Switzerland under similar conditions. One potential reason why this occurred may be the fact that the debate about gay relationship rights is possibly framed differently in the United States than in Switzerland. In the United States the gay relationship rights debate is

currently framed in terms of “equal rights” and the protections provided by the 14th Amendment. However, DeLaet & Caufield (2008) hypothesized that gay marriage legislation, specifically, could be advanced by reframing this debate as a “religious right.” This reframing would be based on the foundation that “freedom from government-imposed religious belief or practice and liberty of conscience as central to religious liberty under the First Amendment” (DeLaet & Caufield, 2008) is necessary. Therefore, instead of focusing solely on “equal rights,” this change to the debate would emphasize that all individuals have religious freedom and that the government should not be able to impose their religious views on same-sex couples and their supporters. However, it is unknown as to whether this change would increase the passage of pro-gay relationship rights legislation within direct democracy contests. Even so, DeLaet & Caufield (2008) speculate that this change could be very influential in the United States. It would show that all individuals, including same-sex couples, churches, and religious people, who support same-sex marriage are discriminated against if the government chooses to support certain religious rights over others.

Because of this gap in research, my thesis specifically addressed: under which conditions did direct democracy advance versus hinder gay relationship rights? The answers to this question sought to determine which of two independent variables - cultural or structural factors - were most important in predicting pro-gay or anti-gay direct democracy contest outcomes, and how these factors influenced the variations between the United States and Switzerland. I also hypothesized that direct democracy *advanced* gay relationship rights legislation when influenced by non-traditional norms regarding family and gender, and/or the contests occurred in states or cantons that were heterogeneous in their values, while direct democracy *hindered* gay

relationship rights legislation when influenced by traditional norms regarding family and gender, and/or the contests occurred in states or cantons that were homogeneous in their values.

Literature Review

Past Research

In the United States there has been an historic pattern of minority groups fighting for equal rights and protections under the law. The most celebrated battles for equal rights are well recognized and equal rights and protections were, as a result, awarded to these minority groups (i.e. the women's suffrage movement, the civil rights movement, and the fight for women's reproductive rights). However, there are still minority groups within the United States who do not enjoy equal rights. These groups include individuals who identify their sexual orientation as gay, lesbian, or bisexual. Even though these individuals are privy to some of the rights awarded to heterosexual individuals, distinctions among these groups are still made within the areas of law and policy. For example, the Defense of Marriage Act passed by Congress in 1996 defined marriage as a legal union between one man and one woman, thus allowing states and the federal government to reject marriages between same-sex couples (The Library of Congress: H.R.3396, 1996). In addition, according to the Human Rights Campaign (HRC) there are currently 29 states “with constitutional amendments restricting marriage to one man and woman,” as well as 12 states “with laws restricting marriage to one man and one woman” (HRC, 2010). These laws and constitutional amendments therefore prohibit marriage between any individuals of the same gender. Whereas only five states and the District of Columbia (Connecticut, Iowa, Massachusetts, New Hampshire, and Vermont) issue marriage licenses to gay and lesbian couples, four states (Hawaii [effective January 1, 2012], Illinois [effective June 1, 2011], New Jersey, and Delaware [effective January 1, 2012]) allow civil unions, and four states (California

Nevada, Oregon, and Washington) allow domestic partnerships (HRC: Marriage Equality & Other Relationship Recognition Laws, 2010). These rights of marriage, civil union, or domestic partnership occurred only after legalization by state legislatures or court decisions. Furthermore, there are only three states (Rhode Island, New York, and Maryland) that recognize same-sex marriages performed in other states (CNN Wire Staff, 2011). In addition a 2004 report by the United States General Accounting Office determined that there are 1,138 federal statutory provisions in the United States which provide federal benefits, rights, and privileges to married couples (U.S. General Accounting Office, 2004). Based on the current laws in the United States same-sex couples, even if legally married, are unable to receive these benefits because marriage is federally defined as a union between one man and one woman. In contrast, in all 50 states and the District of Columbia it is illegal to prevent heterosexual couples from marrying and receiving subsequent benefits provided that they are consenting adults or consenting minors with parental permission.

Equal rights supporters view this type of discrimination as unbelievable and unconstitutional because the United States was built on the philosophy that “all men are created equal.” Because of this philosophy, Snyder (2006) argues that barring same-sex couples from entering into the institution of marriage marginalizes them from mainstream society in a way that is objectionable in the “world’s oldest democracy” (p. 8). Based on the belief that the rights of gay and lesbian individuals should be protected, two schools of thought have emerged that address the impact of direct democracy on this group of individuals. The first holds the belief that direct democracy negatively impacts gay and lesbian rights (Donovan & Bowler, 1998; Gamble, 1997; Haider-Markel, Querze, & Lindaman, 2007). The other believes that direct democracy either does not impact gay and lesbian rights, or the impacts are based on other

factors, such as jurisdiction size or the possible distribution of funds if the initiatives were to become law (Frey & Goette, 1998). These findings are important because they reflect how minority groups within the United States are affected by direct and representative democracy contests.

Gamble (1997) hypothesized that the use of direct democracy to resolve civil rights conflicts promotes a tyranny of the majority. According to James Madison in *Federalist No. 10*, a tyranny of the majority occurs when “measures are too often decided, not according to the rules of justice and the rights of the minor party, but by the superior force of an interested and overbearing majority” (The Library of Congress, 2009, par. 1). Direct democracy, in contrast to representative democracy, often increases the risk of such tyranny because the laws are determined by the majority population without regard to minority rights. To test her hypothesis Gamble (1997) studied three decades of initiatives and referenda that focused on “five major civil rights areas: housing and public accommodations for racial minorities, school desegregation, gay rights, English language laws, and AIDS policies” (Gamble, 1997, p. 1). After studying these initiatives and referenda, which spanned from 1959-1993, Gamble (1997) discovered that voters approved over three-quarters of those initiatives or referenda that restricted civil rights. In addition, when looking at gay rights in particular, Gamble (1997) determined that of the 43 initiatives to reach the ballot, 88% tried to restrict gay rights by repealing existing laws or forbidding the legislature to pass new laws. In these cases voters approved 79% of the measures that restricted gay rights (Gamble, 1997). Based on these findings Gamble (1997) concluded that minority rights suffered disproportionately when the process of direct democracy was used.

Furthermore, Donovan & Bowler (1998) extended Gamble's (1997) research and showed that direct democracy is harmful to minorities as described previously; however, their findings suggest that harm is only present in small jurisdictions. They also showed that direct democracy does not always produce policies that are harmful or hostile towards minorities (Donovan & Bowler, 1998). For example, in larger jurisdictions the population was generally better educated and more likely to support policies that were pro-gay and lesbian. In contrast, gay and lesbian minorities were less protected in small jurisdictions that employed either representative or direct democracy because these areas seemed to be more homogeneous, and the majority of the population shared similar beliefs on key issues. From these findings, the researchers concluded that both representative and direct democracy produced policies that were either tolerant or hostile toward minority rights, depending on the size of the jurisdiction (Donovan & Bowler, 1998).

Another group of researchers, Haider-Markel, Querze, & Lindaman (2007), reexamined the issue of how direct democracy affected the rights of gay and lesbian individuals in the United States. The authors replicated previous research by Donovan & Bowler (1998) as well as Gamble (1997). They determined that when studying this issue it was misleading to use only one criterion, the population size of a political jurisdiction (Haider-Markel, Querze, & Lindaman, 2007). The most important criteria used in their study were the comparison of direct and representative democracy outcomes, jurisdiction size, and the importance of the issue for the specific location. Applying these criteria, the authors arrived at many conclusions. They determined that their research supported Gamble's (1997) original finding that gay and lesbian minorities tend to lose in direct democracy contests (Haider-Markel, Querze, & Lindaman, 2007). Their findings added an additional aspect to Donovan and Bowler's (1998) conclusion

that gay and lesbian minorities have better opportunities for equal rights in larger jurisdictions. Haider-Markel, Querze, & Lindaman (2007) also discovered that most of these issues were put to a vote only in smaller jurisdictions, where negative outcomes were more probable. Finally, the authors concluded that the rights of gay and lesbian minorities are more protected in representative democracy contests because the elected officials represented all people, not just the majority (Haider-Markel, Querze, & Lindaman, 2007). This representation offered greater protection for minority rights because decisions were based on what was best for all people, and representatives were not required to act according to the wishes of the majority.

In contrast to the past research described above, Frey & Goette (1998) showed that in Switzerland there was no inherent predisposition for direct democracy to negatively affect the rights of minority groups. These findings challenged the main conclusion of Gamble's (1997) research, which demonstrated that the use of direct democracy in the United States negatively affected the rights of minority groups. Frey & Goette (1998) found that only 20% of issues, when put to a public vote at the national level, hindered the rights of minorities. According to Frey & Goette (1998), this showed that the use of direct democracy does not *necessarily* abolish minority rights, as proposed by Gamble (1997). In contrast, at the canton or state level it was found that 62% of these issues had anti-minority outcomes. The outcomes of these contests at the city level were similar to that of the national level. Frey & Goette (1998) argued that anti-minority outcomes occurred at the canton level because the issues focused on the distribution of cantonal funds between rural and urban areas, in addition to touching on civil rights. Even with these anti-minority outcomes, the findings showed that in more than two-thirds of the contests the voters supported instead of hindered the rights of minority groups (Frey & Goette, 1998).

Influential Factors

Why, with the success of direct democracy in Switzerland, does it hinder gay rights legislation in the United States? Possibly, gay rights legislation has not passed in the majority of the United States because of the perceived negative impact on children, possible negative outcomes for the economy, and current views about sexuality. With the first two factors, many researchers (Anderssen, Amlie, & Ytterøy, 2002; Badgett & Gates, 2006; Bennett & Gates, 2004; Farr, Forssell, & Patterson, 2010; Holtz-Eakin, 2004; McVeigh & Diaz, 2009; Pawelski et al., 2006) have discovered that gay rights legislation actually results in positive, rather than negative outcomes. According to numerous research studies gathered by Pawelski et al. (2006), children raised by divorced lesbian mothers have very similar lives to those children raised by divorced heterosexual mothers. In addition, these studies showed that there are no significant differences between both groups on “personality measures, measures of peer-group relationships, self-esteem, behavioral difficulties, academic success, or warmth and quality of family relationships” (Pawelski et al., 2006, p. 360). Children raised by gay and lesbian parents are also more “tolerant of diversity and more nurturing toward younger children than children whose parents are heterosexual” (Pawelski et al., 2006, p. 360). These findings were confirmed by researchers in Norway who found that children raised by lesbian mothers do not differ from other children on the basis of “emotional adjustment, sexual preference, stigmatization, gender role behavior, behavioral adjustment, gender identity, or cognitive functioning” (Anderssen, Amlie, & Ytterøy, 2002 p. 350). Even though there were not enough studies to provide ample evidence that children raised by gay fathers experienced the same positive benefits, it is logical to assume that similar findings would be discovered. Another research study conducted by Farr, Forssell & Patterson (2010) discovered that parental sexual orientation is unrelated to the

adjustment of children. In parental situations, family processes are most clearly associated with positive outcomes for both parents and children in adoptive families than the structure of the family. The potential variables found in family processes include “parenting stress, parenting strategies, and couple relationship satisfaction” (Farr, Forssell, & Patterson, 2010). These findings are important for family policy and developmental theory because they show that the family processes are more important than family structure (e.g. whether the parents were in heterosexual or homosexual relationships) in the development of children in adoptive families (Farr, Forssell, & Patterson, 2010).

Within the economic realm, Badgett & Gates (2006) discovered that if employment policies in the United States treated same-sex partners/spouses and heterosexual partners/spouses equally the welfare and health of their families would improve. There are small costs associated with these policies but they are greatly outweighed by the positive impacts experienced by their employees. In addition, the legalization of same-sex marriage would result in increased gains for the wedding industry in all states within the United States (Badgett & Gates, 2006, p. 7). Same-sex marriage affects the United States federal budget as well because in some cases, the legalization of same-sex marriage could minutely increase or decrease outlays and revenues. For example, the Congressional Budget Office (CBO) approximated that the legalization of same-sex marriage, in all 50 states, would improve the federal budget by “less than \$1 billion in each of the next 10 years” (Holtz-Eakin, 2004). However, the CBO also found that the legalization of same-sex marriage would reduce outlays, specifically for Social Security, by approximately \$100 million to \$200 million each year between 2010 and 2014 (Holtz-Eakin, 2004).

Other potential factors that may affect the passage of gay rights legislation are the social controls on sexuality. According to DeLamater (1981), the main sources of control over

sexuality include religion and family. These sources of control provide norms for behavior, informal controls, and sanctions for those who violate the norms (DeLamater, 1981). In the United States both the institutions of family and religion are important and provide specific guidelines for sexuality. These guidelines usually include abstaining from premarital sex and the view that same-sex relationships are immoral (DeLamater, 1981). It is possible, that the differences in direct democracy outcomes in the United States and Switzerland are based on the fact that these institutions have different levels of control in each country. For example, according to Allan Guggenbühl, a youth psychologist at the Institute for Conflict Management and Mythodrama in Zurich, “sexuality is not condemned in Switzerland, it is not considered as something dirty, as something which one should approach with moral categories” (SwissInfo, 2009). Likewise, McVeigh & Diaz (2009) found that opposition to same-sex marriage was largely based on traditional family structure and gender roles, which are very similar to the social controls of sexuality described by DeLamater (1981). For example, opposition to same-sex marriage was higher “in counties with low percentages of women working in the labor force, high levels of occupational sex segregation, and high percentages of households made up of married couples with children” (McVeigh & Diaz, 2009). On the contrary, opposition “tends to be lower in counties with a high median income, high levels of educational attainment, and high percentages of residents enrolled in college” (McVeigh & Diaz, 2009). These findings show that communities with more traditional values tend to oppose same-sex marriage more often than communities that are shifting away from more traditional values (McVeigh & Diaz, 2009).

All of these factors described above may have potentially affected the different views of gay rights legislation in the United States and Switzerland. To further investigate this issue it was necessary to identify the specific cultural and structural factors that advanced or hindered

gay rights legislation. This could help to determine why there were differences in direct democracy contest outcomes in both the United States and Switzerland.

Research Methods

To answer the questions posed above, I conducted a comparative historical analysis of the gay relationship rights initiatives that have appeared on state, canton, and national ballots in the United States and Switzerland between 2000 and present. I chose to compare the United States and Switzerland because both are prominent countries have used direct democracy to determine gay relationship rights legislation. This time frame was chosen based on convenience and manageability. The Utah State University Merrill-Cazier Library was used as a reliable source to locate preliminary scholarly articles and books within the fields of gay rights and direct democracy. To build a catalogue of cases I used BallotPedia, National Public Radio, CNN, and State Department websites to locate the specific initiatives that focused on gay relationship rights issues. I gathered as many details about the cases I found and chose not to include any initiative that did not include the year it was on the ballot, in which state or canton it appeared, the specific gay relationship rights issue it addressed, and whether it passed or failed. I also created an Appendix to document the outcomes of each initiative (Appendix A).

As discussed above, my two independent variables included the cultural and structural factors while my dependent variable was the outcome of direct democracy contests. The specific cultural factors I focused on included traditional versus non-traditional norms regarding family and gender, held by residents of the state, canton, or nation. To determine the norms of the state, canton, or nation I verified whether the state governor or ruling party identified as Liberal (left-of-center) or Conservative (right-of-center) at the time the law was placed on the ballot. Therefore, I defined Liberal as “open-minded or not strict in the observance of orthodox,

traditional forms or ways” (Merriam-Webster, 2003, p. 716) and I defined Conservative as “adherence to traditional methods or views” (Merriam-Webster, 2003, p. 265). This information helped to categorize whether the citizens of the state, canton, or nation held more traditional or non-traditional norms. Traditional norms were associated with Conservative political leanings while non-traditional norms were associated with Liberal political leanings. In order to make this comparison accurate within the United States and Switzerland, it was necessary to observe the two major political parties in the United States, Republican and Democrat, as well as the four major political parties of Switzerland: “Swiss People's Party (SVP), Social Democratic Party (SP), Free Democratic Party (FDP) (also known as the Radical Democratic Party), and the Christian Democratic Party (CVP)” (U.S. Department of State, 2010). In the United States, Republican was associated with political leanings right-of-center while Democrat was associated with political leanings left-of-center. In Switzerland the SVP was historically Conservative, the SP was historically center-left, the FDP was historically moderate, and CVP was historically center-right (Switzerland Political Parties: Encyclopædia Britannica, 2010).

The structural factors I examined included whether the legislation was focused within the states, cantons, or the nation as a whole and whether the citizens were homogenous or heterogeneous in their values. The definitions of these variables allowed my findings to be comparable at the state, canton, and national level. In order to determine whether or not traditional or non-traditional norms influenced the outcomes of direct democracy contests, I first compared states that were historically more Conservative with those that were historically more Liberal and then completed the same comparison of the cantons in Switzerland to determine whether direct democracy contest outcomes were varied. In addition, I also compared the United States and Switzerland as a whole in order to make a general determination of why gay

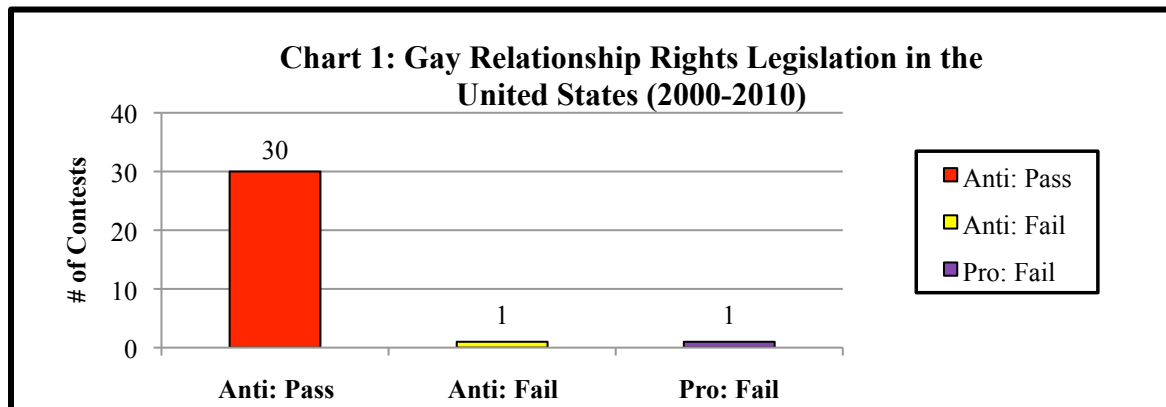
relationship rights legislation, when decided by direct democracy, was hindered in the United States and advanced in Switzerland.

In order to determine if my hypotheses were supported by my data I examined whether significant differences were seen in the United States' contests that advanced versus hindered pro-gay relationship rights legislation. In my comparison between the United States and Switzerland, my hypotheses were supported if states and cantons with similar norms and values had similar direct democracy contest outcomes. My hypotheses were also supported if states and cantons with different norms and values had varied direct democracy contest outcomes.

Results

As Appendix A (p. 27) shows, when issues related to defining marriage were put on the public ballot in the United States the rights of gay and lesbian individuals and couples were nearly always restricted. Since 2000, 28 states have sought to pass “constitutional amendments restricting marriage to one man and woman” and one state sought to pass a “law restricting marriage to one man and one woman” (HRC: Statewide Marriage Prohibitions, 2010) through direct democracy. Each of these initiatives, 30 in total, passed with the exception of Arizona Proposition 102 in 2006 (Appendix A) (Chart 1). It is interesting to note that states with either Liberal or Conservative governors at the time the law was introduced on the ballot experienced the same outcomes, therefore in the United States political affiliation at the state level did not appear to impact direct democracy contests. In addition, even when “Colorado Referendum 1” sought to “legalize domestic partnerships, providing same-sex couples the opportunity to obtain the legal protections and responsibilities granted to married couples under Colorado law,” it failed by a vote of 53% against and 47% for (CNN: Key Ballot Measures, 2006). These results

clearly show that when direct democracy is used in the United States to define marriage or to provide protections similar to marriage for same-sex couples, their rights are limited (Chart 1).



However, in Switzerland the use of direct democracy at the national level had overwhelmingly positive outcomes for same-sex couples. In January 2007, the *Eingetragene Partnerschaft* referendum (“registered partnership” in German), which allowed registered partnerships for same-sex couples, was legalized (ILGA Europe, 2010). This law gave same-sex couples “the same rights and responsibilities as married different-sex partners, except for the right related to adoption, fertility treatment and take[ing] the same surname” (ILGA Europe, 2010). Even though this law was not as progressive in rewarding “equal rights” to same-sex couples as those in other countries like Belgium, the Netherlands, Norway, Spain, and the UK (ILGA Europe, 2010), it was voted on and passed by the citizens of Switzerland through the use of direct democracy. Similar outcomes, where marriage rights were given and not taken away from same-sex couples, did not occur in the United States when direct democracy was used.

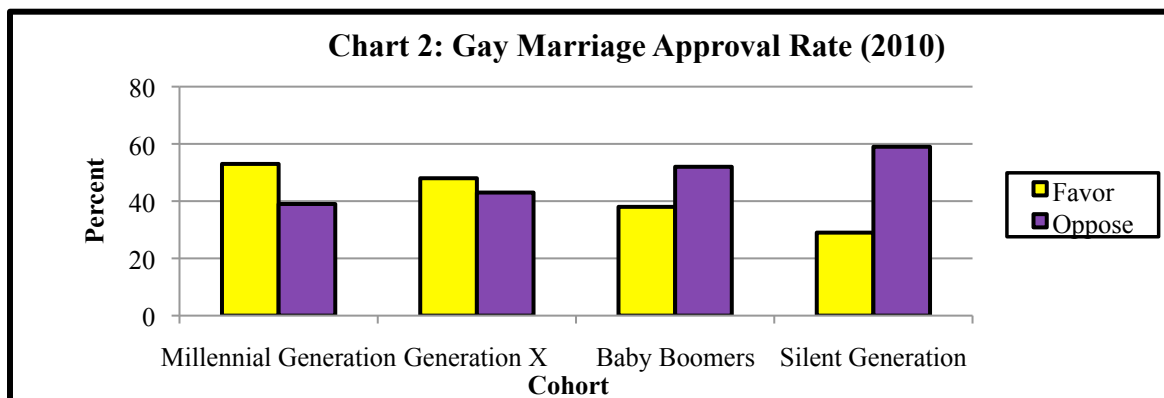
Based on these outcomes within the United States I was unable to accept my hypotheses that direct democracy *advanced* gay relationship rights legislation when influenced by non-traditional norms regarding family and gender, and/or the contests occurred in states or cantons that were heterogeneous in their values, while direct democracy *hindered* gay relationship rights

legislation when influenced by traditional norms regarding family and gender, and/or the contests occurred in states or cantons that were homogeneous in their values. I was unable to accept these hypotheses because direct democracy contests that sought to restrict marriage rights of same-sex couples passed, while contests that sought to broaden the marriage rights of same-sex couples failed (Appendix A). Therefore, I was unable to compare the states and cantons based on their norms and values regarding family and gender. I was however, able to compare the United States and Switzerland as a whole.

According to the Progressive Studies Program at the Center for American Progress, within the United States, “34% of the country self-identified as ‘conservative’, 29% as ‘moderate’, 15% as ‘liberal’, 16% as ‘progressive’, and 2% as ‘libertarian’” (ThinkProgress, 2009). However, when Moderates were asked to choose between Liberal and Conservative, the country was almost equally divided (ThinkProgress, 2009). These data do show however that in 2009 the plurality of Americans self-identified as Conservative. These data are possibly correlated with the Pew Research surveys from 2010 which discovered that 48% of American adults opposed same-sex marriage while 42% favored same-sex marriage (Pew Research Center Publications, 2010). Based on the findings of ThinkProgress (2009) and the Pew Research Center (2010) I assume that the plurality of Americans self-identified as Conservative and opposed same-sex marriage. This was in stark contrast to the beliefs of the majority of Swiss citizens. Even though I was unable to determine whether Switzerland was historically a Liberal or Conservative country because they remained neutral on many issues, I assert that they are more socially Liberal than the United States when it comes to extending rights to same-sex individuals and couples. Because of this, and the fact that direct democracy outcomes were vastly different in the United States and Switzerland, I determined that the United States was

more influenced by traditional norms while Switzerland was more influenced by non-traditional norms regarding family and gender. However, in order for these findings to be quantified, further research within the areas of direct democracy contest outcomes for gay relationship rights and the norms of each country will need to be completed. Within the Discussion section I offer hypothetical explanations as to why direct democracy contest outcomes did not vary in the United States, and why the United States and Switzerland experienced such different outcomes.

After further analysis of these data it was determined that the proposed hypotheses, non-traditional norms *advanced* gay relationship rights legislation while traditional norms *hindered* gay relationship rights legislation, were not accepted at the state level. The evidence suggests that direct democracy contest outcomes did not vary in the United States because the majority of citizens who voted were older and against gay marriage rights. For example, among Millennial Generation individuals (born after 1980), 53% favored gay marriage while 39% opposed; Generation X individuals (born between 1965 and 1980), 48% favored gay marriage while 43% opposed; among Baby Boomers (born between 1946 and 1964), 38% favored gay marriage while 52% opposed; and among the Silent Generation (born between 1928 and 1945), 29% favored gay marriage while 59% opposed (Pew Research Center Publications, 2010) (Chart 2). The percentages of those who favored gay marriage however have increased in all four populations since 2009.



In addition, according to the *New York Times* most exit poll data showed that in nonpresidential election years a higher proportion of voters were either middle-age or older (Thee-Brenan, 2010). In 2006 it was discovered by the National Election Pool that 63% of individuals who voted were over 45 years old and in 2008 the same age group cast 53% of the votes (Thee-Brenan, 2010). This data shows that the majority of voters in the United States in both 2006 and 2008 were adults age 45 or over, and consequently there may be a correlation between the average age of the electorate and the lack of support for gay rights legislation (Pew Research Center Publications, 2010). Because most voters, especially in nonpresidential election years, were part of Generation X, the Baby Boomers, or the Silent Generation, I hypothesize that their decisions to vote and their positions on gay marriage strongly influenced the outcomes of the direct democracy contests in the United States. It is possible that greater variation in outcomes could have occurred if a larger percentage of the Millennial Generation (born after 1980) voted in these contests, as 53% of them favored gay marriage while only 39% opposed (Pew Research Center Publications, 2010). However, in order to fully determine whether the age of the electorate affected the outcome of these direct democracy contests, as well as direct democracy contests in Switzerland, further research using state level and national level electorate data from both countries would need to be completed.

Another potential reason why there was a lack of variation in the United States' direct democracy contest outcomes may be due to the public's opinion of gay individuals and their relationships. For example, in 2006 the General Social Survey found that 56.2% of those surveyed believed "sexual relations between two adults of the same-sex" were always wrong, while only 32.3% believed "sexual relations between two adults of the same-sex" were not wrong at all (General Social Survey, 1972-2006). These findings show that the individual beliefs

of those surveyed could strongly impact the voting patterns within gay marriage direct democracy contests in the United States.

Discussion

I propose that the United States and Switzerland experienced such varied outcomes in gay marriage and registered partnership direct democracy contests because Switzerland as a whole is more progressive in certain areas of gay relationship rights legislation than the United States. These include relationship recognition rights (as discussed in the Results section), the inclusion of gay and lesbian individuals in the military, and the decriminalization of same-sex relationships. Based on these findings, it is possible that my preliminary hypotheses hold true to some extent if it is taken into account that another factor may have influenced the advancement or hindrance of gay relationship rights legislation. This factor is the national or federal political attitudes regarding gay rights. For example, in the Swiss military “gays and lesbians are allowed to serve and there is no ban... their ability to serve is only questioned if their sexual orientation somehow interferes with their service [and] both the Swiss Military and its gay and lesbian organization agree on this matter” (Palm Center: Blueprints for Sound Public Policy, 2009). In the United States the “Don’t Ask, Don’t Tell” law, “which allowed gays to serve in the military so long as they kept their sexual orientation quiet” (New York Times, 2010) is still enforced by the United States Military. This law was declared unconstitutional in September 2010 by Virginia A. Phillips, a federal judge in California. However a Federal Appeals Court has determined that the United States Military could continue enforcing “Don’t Ask, Don’t Tell” while an appeal to the court’s decision was made (New York Times, 2010).

In addition to allowing same-sex individuals in the military, same-sex relations have been legal in Switzerland since 1942 (International Lesbian, Gay, Bisexual, Trans and Intersex

Organization: Switzerland, 2009). In contrast, same-sex relations in the United States were not legally allowed in all states until the *Lawrence v. Texas* Supreme Court decision in 2003 (International Lesbian, Gay, Bisexual, Trans and Intersex Organization: United States, 2009). This decision invalidated same-sex partner sodomy laws in four states (Texas, Kansas, Oklahoma, and Missouri) as well as in nine states (Alabama, Florida, Idaho, Louisiana, Mississippi, North Carolina, South Carolina, Utah, and Virginia) where the law could have applied to both same-sex and opposite sex partners (New York Times, 2003). Both the rights of gays and lesbians to participate in the military and to engage in same-sex relationships without fear of penalty were and are vastly different in the United States and Switzerland. These different views could have potentially impacted the voting patterns of each nation's citizens.

The differences between the United States and Switzerland in their federal and national views of gay and lesbian individuals and their rights appear to have strongly influenced the outcomes of gay marriage and registered partnership direct democracy contests. Within the United States it was discovered that when direct democracy is used to determine marriage amendments and/or marriage laws, the rights of gay and lesbian individuals are continuously obstructed. This type of outcome is not experienced in Switzerland when similar rights are put to the public vote. As discussed above, in January 2007 the majority of Swiss citizens (58%) favored and enacted a "registered partnership" law which gave same-sex couples similar rights as those given to heterosexual couples, except in the areas of adoption, fertility, and surname rights (ILGA Europe, 2010). This result in Switzerland showed that direct democracy had, in certain instances, advanced the rights of gay and lesbian individuals. In addition, this research clearly showed that direct democracy overwhelming hindered the advancement of gay relationship rights in the United States. Not only was it determined that direct democracy

hindered gay relationship rights legislation in the United States, this type of legislation within the area of marriage rights was *only* advanced by state legislatures or courts decisions. It is hypothesized that the differences in outcomes between the United States and Switzerland were due to specific cultural and structural factors. Even though these hypotheses were not accepted at the state level a comparison was made at the federal and national level. This comparison led to the preliminary finding that the United States and Switzerland experienced different direct democracy contest outcomes in the area of gay relationship rights because the plurality of United States citizens self-identified as Conservative and disapproved of gay marriage. The same political ideology cannot be applied to Switzerland within the area of gay relationship rights as the majority of citizens voted to allow registered partnerships for gay and lesbian individuals. Therefore, based on these initial findings I hypothesize that the differences in gay marriage and registered partnership direct democracy contests were seen between the United States and Switzerland because the United States is more Conservative towards gay relationship rights than Switzerland.

Conclusion

In the future, further research on the topic of why the United States and Switzerland experienced such different outcomes in gay marriage and registered partnership direct democracy contests will need to be completed in order to test the additional proposed hypotheses. There were three main limitations of this study that affected the overall ability to generalize my findings. The first limitation was my decision to compare only the United States and Switzerland. This decision impacted my findings about direct democracy as I did not gather information about other countries with similar or dissimilar stances on gay relationship rights. The second limitation of this study was that I only examined how direct democracy contests

impacted gay relationship rights legislation. By choosing to examine only gay relationship rights legislation, I was unable to determine whether the use of direct democracy to decide numerous other types of gay rights legislation would have resulted in the same outcomes for the United States and Switzerland. The last limitation of my study was that I only reviewed state, canton, and national level gay relationship rights legislation. This decision allowed me to conclude how gay relationship rights fared at the state and national level when direct democracy was used, but I was unable to discover whether different outcomes for other types of gay rights legislation would have occurred at the local or county level.

To address the first limitation, future research will need to be conducted on the outcomes of direct democracy contests in other countries in order to determine whether direct democracy hinders or advances gay relationship rights legislation. In addition, it would be necessary to investigate the impact of direct democracy contests on other types of gay rights legislation, such as adoption or employment discrimination. This research would identify the specific types of gay rights legislation that direct democracy hinders or advances in both the United States and other countries. In order to address the last limitation, research regarding gay rights legislation in local and county direct democracy contests would need to be completed. This type of research could potentially discover whether gay rights direct democracy contest outcomes are affected by the voting level; i.e. local, county, state, or federal. Both the results and limitations identified in this project will work to move the study of direct democracy and gay rights legislation forward in the future.

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Appendix A: Direct Democracy Ballot Initiatives¹

<u>State</u>	<u>Policy #</u>	<u>Year</u>	<u>Liberal/Conservative²</u>	<u>Pro/Anti³</u>	<u>Pass/Fail</u>
Alabama	Amendment 774 (Act 2005-35)	2006	Conservative	Anti	Pass
Arizona	Proposition 107	2006	Liberal	Anti	Fail
Arizona	Proposition 102	2008	Liberal	Anti	Pass
Arkansas	Amendment 3	2004	Conservative	Anti	Pass
California	Proposition 22	2000	Liberal	Anti	Pass
California	Proposition 8	2008	Conservative	Anti	Pass
Colorado	Referendum 1	2006	Conservative	Pro	Fail
Colorado	Amendment 43	2006	Conservative	Anti	Pass
Florida	Amendment 2	2008	Conservative	Anti	Pass
Georgia	Amendment 1	2004	Conservative	Anti	Pass
Idaho	Amendment 2	2006	Conservative	Anti	Pass
Kansas	Kansas Marriage Amendment	2005	Liberal	Anti	Pass
Kentucky	Amendment 1	2004	Conservative	Anti	Pass
Louisiana	Amendment 1	2004	Liberal	Anti	Pass
Maine	Question 1	2009	Liberal	Anti	Pass
Michigan	Proposal 04-2	2004	Liberal	Anti	Pass
Mississippi	Amendment 1	2004	Conservative	Anti	Pass
Missouri	Constitutional Amendment 2	2004	Liberal	Anti	Pass
Montana	Initiative 96	2004	Conservative	Anti	Pass
Nebraska	Initiative 416	2000	Conservative	Anti	Pass
Nevada	Question 2	2000/2002	Conservative	Anti	Pass
North Dakota	Measure 1	2004	Conservative	Anti	Pass
Ohio	Issue 1	2004	Conservative	Anti	Pass
Oklahoma	Question 711	2004	Liberal	Anti	Pass
Oregon	Measure 36	2004	Liberal	Anti	Pass
South Carolina	Amendment 1	2006	Conservative	Anti	Pass
South Dakota	Amendment C	2006	Conservative	Anti	Pass
Tennessee	Amendment 1	2006	Liberal	Anti	Pass
Texas	Proposition 2	2005	Conservative	Anti	Pass
Utah	Amendment 3	2004	Conservative	Anti	Pass
Virginia	Ballot Question 1	2006	Liberal	Anti	Pass
Wisconsin	Referendum 1	2006	Liberal	Anti	Pass
Switzerland	Eingetragene Partnerschaft	2005/2007		Pro	Pass

¹ From 2000 to Present

² Liberal or Conservative refers to the state governor's or ruling party's political affiliation during the year the policy was proposed.

³ "Pro" refers to pro-gay rights legislation; "Anti" refers to anti-gay rights legislation.

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Author Biography

Jylisa Doney, born in Bay Saint Louis, Mississippi, was raised in Broomfield, Colorado and Logan, Utah, and graduated as a home-school student from high school in 2007. A Dean's Scholar and Undergraduate Research Fellow, she entered Utah State University in fall 2007 as a Social Work major. After two years she changed her major to Sociology with a minor in Family and Human Development in order to focus her studies in the area of gay rights. While at Utah State University, Jylisa supplemented her education as an Undergraduate Research Fellow, Honors Undergraduate Teaching Fellow, Honors Mentor, Honors Student Council Member, Editorial Assistant, and Writing Fellow. After she graduates in May 2012, Jylisa plans to attend graduate school and study Family and Human Development specifically focusing on the cognitive development and literacy of young children as well as human rights issues that affect women, children, and families.